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SENATE BILL 5591

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State of Washington

59th Legislature

2005 Regular Session

By Senator Honeyford

Read first time 01/28/2005. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to the zoning authority of local jurisdictions with  
2 respect to activities licensed by the gambling commission; amending RCW  
3 9.46.285 and 9.46.295; and adding new sections to chapter 9.46 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.46.285 and 1973 2nd ex.s. c 41 s 8 are each amended  
6 to read as follows:

7 (1) This chapter constitutes the exclusive legislative authority  
8 for the licensing and regulation of any gambling activity and the state  
9 preempts such licensing and regulatory functions, except as to the  
10 powers and duties of any city, town, city-county, or county which are  
11 specifically set forth in this chapter. Any ordinance, resolution, or  
12 other legislative act by any city, town, city-county, or county  
13 relating to gambling in existence on September 27, 1973 shall be as of  
14 that date null and void and of no effect. Any such city, town, city-  
15 county, or county may thereafter enact only such local law as is  
16 consistent with the powers and duties expressly granted to and imposed  
17 upon it by chapter 9.46 RCW and which is not in conflict with that  
18 chapter or with the rules of the commission.

1       (2) An ordinance, resolution, or other legislative act by any city,  
2 town, city-county, or county conflicts with this chapter if the act:

3       (a) Changes, or purports to change, any provision within the scope  
4 of a license issued under this chapter; or

5       (b)(i) Is not an ordinance enacted or enforced in conformance with  
6 section 3 or 4 of this act; and (ii) applies or is enforced differently  
7 upon an entity required to possess a gambling license issued under this  
8 chapter than it would be applied or enforced if the entity were not  
9 required to possess a gambling license issued under this chapter.

10       **Sec. 2.** RCW 9.46.295 and 1974 ex.s. c 155 s 6 are each amended to  
11 read as follows:

12       Any license to engage in any of the gambling activities authorized  
13 by this chapter as now exists or as hereafter amended, and issued under  
14 the authority thereof shall be legal authority to engage in the  
15 gambling activities for which issued throughout the incorporated and  
16 unincorporated area of any county, except that a city located therein  
17 with respect to that city, or a county with respect to all areas within  
18 that county except for such cities, may absolutely prohibit(~~(, but may~~  
19 ~~not change the scope of license,)~~):

20       (1) Any or all of the gambling activities for which the license was  
21 issued; or

22       (2) Only as provided in section 3 or 4 of this act, any or all  
23 gambling activities from being located or operating within less than  
24 all of the city or county.

25       NEW SECTION. **Sec. 3.** A new section is added to chapter 9.46 RCW  
26 to read as follows:

27       (1) A city or county that has, pursuant to chapter 36.70A RCW,  
28 adopted a comprehensive plan containing a statement identifying the  
29 jurisdiction's policy regarding the extent to which licensed gambling  
30 activity is to be prohibited within the jurisdiction, and within areas  
31 that may be annexed into the jurisdiction, may enact, amend, and  
32 enforce an ordinance, resolution, or other legislative act prohibiting  
33 any or all licensed gambling activities from being located within less  
34 than all of the city or county if the ordinance, resolution, or other  
35 legislative act: (a) Is consistent with the policy statement in the

1 comprehensive plan required by this section; and (b) applies absolutely  
2 throughout all substantially similar land use zones within the  
3 jurisdiction.

4 (2) If an ordinance, resolution, or other legislative act enacted  
5 or amended pursuant to this section or section 4 of this act creates or  
6 alters an area within the jurisdiction where commercial gambling  
7 activity is allowed, the ordinance, resolution, or other legislative  
8 act conflicts with this chapter if:

9 (a) The area in which commercial gambling activity is allowed is  
10 less than one-third of the area within the jurisdiction in which an  
11 eating and drinking establishment licensed by the liquor control board  
12 is allowed to locate as a matter of right; and

13 (b) A lawsuit is commenced by any resident of, or owner of a  
14 business located in, the jurisdiction which makes a prima facie  
15 challenge that the ordinance, resolution, or other legislative act has  
16 a disproportional and adverse effect on the jurisdiction's minority or  
17 low-income residents, and the jurisdiction fails to rebut the challenge  
18 by clear and convincing evidence.

19 (3)(a) The land use petition act, chapter 36.70C RCW, governs  
20 challenges regarding the adoption or enforcement of an ordinance,  
21 resolution, or other legislative act adopted under this section or  
22 section 4 of this act.

23 (b) The commission is immune from any action challenging the  
24 adoption or enforcement of an ordinance enacted or amended under this  
25 section or section 4 of this act.

26 (4)(a) An ordinance, resolution, or other legislative act enacted  
27 or amended under this section or section 4 of this act may not be  
28 amended or repealed within three years of the effective date of initial  
29 enactment or most recent amendment of the ordinance, resolution, or  
30 other legislative act.

31 (b) No jurisdiction shall enact an ordinance, resolution, or other  
32 legislative act under this section if: (i) The act authorizes  
33 commercial gambling activity in any zone within the jurisdiction where  
34 the activity was prohibited on January 1, 2005; and (ii) any zone in  
35 which commercial gambling activity is newly authorized was created or  
36 reduced in size within the three years prior to the date the ordinance,  
37 resolution, or other legislative act authorizing the activity was  
38 enacted.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 9.46 RCW  
2 to read as follows:

3        (1) A local jurisdiction that has, under chapter 36.70A RCW,  
4 adopted a comprehensive plan containing a statement identifying the  
5 jurisdiction's policy regarding the extent to which licensed gambling  
6 activity is to be prohibited within the jurisdiction, may enact, amend,  
7 and enforce an ordinance, resolution, or other legislative act  
8 absolutely prohibiting one or more licensed gambling activities from  
9 locating within five hundred feet of any of the uses identified in  
10 subsection (2) of this section, if: (a) The use existed on the initial  
11 application date of the license; and (b) the ordinance, resolution, or  
12 other legislative act is consistent with the policy statement in the  
13 comprehensive plan required by this section.

14        (2) Subject to subsection (1) of this section, a local jurisdiction  
15 may absolutely prohibit any and all gambling activities within five  
16 hundred feet of any or all of the following uses:

17        (a) A building used exclusively for religious worship, religious  
18 schooling, or other activity in connection therewith;

19        (b) A residence located in a zone composed predominantly of single-  
20 family or multifamily residences;

21        (c) A tax-supported public elementary or secondary school or  
22 private school meeting the requirements for private schools under Title  
23 28A RCW; or

24        (d) Publicly owned or leased buildings designated within the  
25 jurisdiction's comprehensive plan for the purposes of this section and  
26 used exclusively by the jurisdiction as a place of business for its  
27 employees, elected officials, or for public meetings, including but not  
28 limited to any library, court house, jail, police station, or fire  
29 station.

30        (3) Any distances to be established for the purposes of this  
31 section shall be measured in a straight line from the perimeter  
32 property line of the grounds of the use identified under this section  
33 to the nearest property line of the property within which an applicant  
34 has applied to locate a facility requiring a license issued under this  
35 chapter.

36        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 9.46 RCW  
37 to read as follows:

1 For the purposes of sections 3 and 4 of this act:

2 (1) "Commercial gambling activity" means any social card game,  
3 punch board, or pull-tab, as authorized under RCW 9.46.0325, other than  
4 as conducted by a bona fide charitable or nonprofit corporation  
5 pursuant to RCW 9.46.0351.

6 (2) "Land use zone" means any discretely defined area that: (a)  
7 Appears on the jurisdiction's land use zoning map; (b) is situated  
8 within a single, continuous boundary perimeter; and (c) is subject to  
9 a defined set of zoning regulations, definitions, or standards that are  
10 not in conflict with this chapter.

11 (3)(a) A gambling activity is "absolutely prohibited" and a  
12 legislative act prohibiting a licensed gambling activity applies  
13 "absolutely throughout" a jurisdiction or any applicable land use zone  
14 within the jurisdiction when:

15 (i) All prohibited licensed gambling activity not in existence on  
16 the effective date of the ordinance prohibiting gambling activities are  
17 completely and uniformly prohibited within the applicable area; and

18 (ii) No prohibited licensed gambling activity is allowed through  
19 the granting of a variance, nonconforming use, or other exception  
20 process.

21 (b) Unless the voters of the jurisdiction decided otherwise by a  
22 sixty-percent affirmative vote on a measure placed on the ballot by  
23 initiative or by an action of the jurisdiction's legislative body, a  
24 licensee legally conducting a licensed gambling activity within a zone  
25 on the effective date of an ordinance prohibiting such activity shall  
26 be allowed to continue to operate, but only as allowed by the scope of  
27 the preexisting license, which may be renewed without alteration by the  
28 gambling commission.

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