
SUBSTITUTE SENATE BILL 5727

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Governmental Operations (originally sponsored by Senators Amondson, Vognild, Owen, Stratton, McCaslin, West and Johnson).

Read first time March 6, 1991.

1 AN ACT Relating to the imposition of moratorium or interim zoning
2 by permit-granting agencies; adding new sections to chapter 36.70 RCW;
3 adding new sections to chapter 35.63 RCW; adding new sections to
4 chapter 35A.63 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The declaration of moratoria on
7 construction and land development by any permit-granting agency or the
8 imposition of an interim zone may have a negative effect on the
9 policies and goals of state and other local governments within the
10 state, and therefore is a matter of state-wide concern. Such moratoria
11 or interim zoning, particularly when limited in duration and scope and
12 adopted pursuant to growth management systems that further the
13 community planning goals and local comprehensive plans, may be both
14 necessary and desirable.

1 However, clear state standards should be established to assure that
2 the need for moratoria or interim zoning is considered and documented,
3 the impact on necessary development and particularly housing is
4 minimized, and necessary and properly enacted moratoria or interim
5 zoning are not subjected to undue litigation.

6 NEW SECTION. **Sec. 2.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout sections 2
8 through 5 of this act.

9 (1) "Moratorium" means a pattern or practice of delaying or
10 stopping issuance of permits, authorizations, or approvals necessary
11 for the subdivision and partitioning of real property or development on
12 real property or any construction pursuant to such a permit.

13 (2) "Permit-granting agency" means any branch of state government
14 which is a lead agency or an agency with jurisdiction under the state
15 environmental policy act, chapter 43.21C RCW, involved with the
16 development, subdivision, or construction on real property.

17 (3) "Facilities or resource-based emergency" means the emergency
18 which exists with respect to facilities or resources when the projected
19 development within an area will result in the creation of a demand or
20 impact on the facilities or resources which will exceed the capacity of
21 the facilities or resources within the period of the moratorium or
22 interim zoning. Facilities may include transportation, sewer, water,
23 storm water, or septic systems. Resources may include any property or
24 interest identified as environmentally sensitive, including but not
25 limited to agricultural or timber lands, ground water, surface water,
26 shorelines and wetlands, and air. Capacity or permitted levels of
27 contamination must be measured by existing adopted regulations at the
28 state, federal, or local level.

1 (4) "Land use emergency" means the emergency which exists when an
2 unanticipated change occurs in a community or upon the adoption of a
3 change in plan in a community which creates a situation in which a
4 community may lose the benefits of planning unless a moratorium is
5 imposed or an interim zone is adopted. Development which occurs in
6 accordance with an adopted comprehensive plan or proposed changes to
7 adopted plans may not be considered an unanticipated change for
8 purposes of declaring a land use emergency.

9 (5) "Interim zoning" means a deliberate and purposeful action
10 designed to classify or regulate uses of land and related matters and
11 is necessary to preserve the zoning scheme as presented to the public
12 in the comprehensive plan and attendant maps and resolutions or
13 ordinances.

14 (6) "Regulation" means a statute, rule, or standard adopted by the
15 permit-granting agency to establish standards, procedures, or criteria
16 for the subdivision, development, or construction of real property.

17 NEW SECTION. **Sec. 3.** Any permit-granting agency seeking to
18 adopt a rule or ordinance which would impose a moratorium or interim
19 zoning because of a facilities or resource-based emergency or land use
20 emergency, shall only adopt such regulation as provided in this
21 section.

22 (1) If the permit-granting agency deals through a planning agency,
23 the matter must be recommended by the planning commission and adopted
24 by the governmental board, council, or commission of the permit-
25 granting agency. Any other permit-granting agency must effect the
26 action by regulation adopted by the governing board. Such regulations
27 shall have no force or effect after thirty days unless notice and
28 public hearing have occurred and findings are made under this section
29 within thirty days after adoption.

1 (2) For a facilities or resource-based emergency, the following
2 findings shall be reasonably documented by the permit-granting agency:

3 (a) The current level, service, or current contaminant level of the
4 affected facilities or resources;

5 (b) The adopted regulation defining capacity of the facility or
6 safe levels of potential contaminants in the affected resource.
7 However, if the affected resource is drinking water, ground water,
8 aquifers, or air, the adopted standard for emergency purposes may not
9 be more stringent than the standards adopted through state or federal
10 regulations;

11 (c) The factors which demonstrate that capacity or safe levels for
12 potential contaminants will be exceeded during the period of the
13 moratorium or interim zoning ordinance;

14 (d) The factors which demonstrate that the scope and definition of
15 the moratorium or interim zoning ordinance will serve to equalize the
16 effect of the moratorium or interim zoning over all property owners to
17 the extent possible and not merely limit the effect to a select few.

18 (3) For a land use emergency, the following findings shall be
19 reasonably documented by the board:

20 (a) The nature of the change in the community and the reason it was
21 unanticipated;

22 (b) The factors which make the interim rules during a moratorium or
23 interim zoning period consistent with adopted comprehensive plans;

24 (c) The geographic extent of the emergency and the reason the
25 boundaries selected are the minimum necessary to deal with the
26 identified emergency;

27 (d) The facts which demonstrate why the prohibited development or
28 activity which will be shifted out of the area affected by the
29 emergency during the period of moratorium or interim zoning will not

1 cause an emergency in nearby or adjoining areas to which the prohibited
2 development or activity would likely shift;

3 (e) The facts which demonstrate that the cost to the public of the
4 consequences of the unanticipated change will be greater than the cost
5 to the property owners within the area affected by the emergency; and

6 (f) The nature and extent of the public resources which demonstrate
7 the permit-granting agency can resolve the emergency within the time
8 limits identified in subsection (4) of this section.

9 (4) No moratorium or interim zoning shall be effective for a period
10 longer than one hundred twenty days, but such a moratorium or interim
11 zoning may be extended provided the city, county, or special district
12 adopting the moratorium or interim zoning:

13 (a) Finds that the problem giving rise to the need for a moratorium
14 or interim zoning continues to exist;

15 (b) Demonstrates that reasonable progress is being made to
16 alleviate the problem giving rise to the moratorium or interim zoning;
17 and

18 (c) Sets a specific duration for the renewal of the moratorium or
19 interim zoning. A moratorium or interim zoning may be extended more
20 than once but no single extension may be for a period longer than six
21 months.

22 (5) A renewal shall only be after a notice and public hearing.

23 (6) A renewal shall require reconfirmation of the factual issues
24 identified in subsections (2) and (3) of this section.

25 NEW SECTION. **Sec. 4.** Any moratorium or interim zoning
26 ordinance adopted on an emergency basis, including an emergency under
27 the state environmental policy act, is null and void unless the
28 procedures in section 3 of this act are followed.

1 NEW SECTION. **Sec. 5.** Any person aggrieved by violation of
2 sections 2 through 4 of this act may bring an action in superior court
3 in the county in which the moratorium or interim zoning takes effect.
4 The successful party in any action shall be entitled to reimbursement
5 of reasonable costs and fees, including attorneys' fees.

6 NEW SECTION. **Sec. 6.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout sections 6
8 through 9 of this act.

9 (1) "Moratorium" means a pattern or practice of delaying or
10 stopping issuance of permits, authorizations, or approvals necessary
11 for the subdivision and partitioning of real property or development on
12 real property or any construction pursuant to such a permit.

13 (2) "Permit-granting agency" means any branch of state government
14 which is a lead agency or an agency with jurisdiction under the state
15 environmental policy act, chapter 43.21C RCW, involved with the
16 development, subdivision, or construction on real property.

17 (3) "Facilities or resource-based emergency" means the emergency
18 which exists with respect to facilities or resources when the projected
19 development within an area will result in the creation of a demand or
20 impact on the facilities or resources which will exceed the capacity of
21 the facilities or resources within the period of the moratorium or
22 interim zoning. Facilities may include transportation, sewer, water,
23 storm water, or septic systems. Resources may include any property or
24 interest identified as environmentally sensitive, including but not
25 limited to agricultural or timber lands, ground water, surface water,
26 shorelines and wetlands, and air. Capacity or permitted levels of
27 contamination must be measured by existing adopted regulations at the
28 state, federal, or local level.

1 (4) "Land use emergency" means the emergency which exists when an
2 unanticipated change occurs in a community or upon the adoption of a
3 change in plan in a community which creates a situation in which a
4 community may lose the benefits of planning unless a moratorium is
5 imposed or an interim zone is adopted. Development which occurs in
6 accordance with an adopted comprehensive plan or proposed changes to
7 adopted plans may not be considered an unanticipated change for
8 purposes of declaring a land use emergency.

9 (5) "Interim zoning" means a deliberate and purposeful action
10 designed to classify or regulate uses of land and related matters and
11 is necessary to preserve the zoning scheme as presented to the public
12 in the comprehensive plan and attendant maps and resolutions or
13 ordinances.

14 (6) "Regulation" means a statute, rule, or standard adopted by the
15 permit-granting agency to establish standards, procedures, or criteria
16 for the subdivision, development, or construction of real property.

17 NEW SECTION. **Sec. 7.** Any permit-granting agency seeking to
18 adopt a rule or ordinance which would impose a moratorium or interim
19 zoning because of a facilities or resource-based emergency or land use
20 emergency, shall only adopt such regulation as provided in this
21 section.

22 (1) If the permit-granting agency deals through a planning agency,
23 the matter must be recommended by the planning commission and adopted
24 by the governmental board, council, or commission of the permit-
25 granting agency. Any other permit-granting agency must effect the
26 action by regulation adopted by the governing board. Such regulations
27 shall have no force or effect after thirty days unless notice and
28 public hearing have occurred and findings are made under this section
29 within thirty days after adoption.

1 (2) For a facilities or resource-based emergency, the following
2 findings shall be reasonably documented by the permit-granting agency:

3 (a) The current level, service, or current contaminant level of the
4 affected facilities or resources;

5 (b) The adopted regulation defining capacity of the facility or
6 safe levels of potential contaminants in the affected resource.
7 However, if the affected resource is drinking water, ground water,
8 aquifers, or air, the adopted standard for emergency purposes may not
9 be more stringent than the standards adopted through state or federal
10 regulations;

11 (c) The factors which demonstrate that capacity or safe levels for
12 potential contaminants will be exceeded during the period of the
13 moratorium or interim zoning ordinance;

14 (d) The factors which demonstrate that the scope and definition of
15 the moratorium or interim zoning ordinance will serve to equalize the
16 effect of the moratorium or interim zoning over all property owners to
17 the extent possible and not merely limit the effect to a select few.

18 (3) For a land use emergency, the following findings shall be
19 reasonably documented by the board:

20 (a) The nature of the change in the community and the reason it was
21 unanticipated;

22 (b) The factors which make the interim rules during a moratorium or
23 interim zoning period consistent with adopted comprehensive plans;

24 (c) The geographic extent of the emergency and the reason the
25 boundaries selected are the minimum necessary to deal with the
26 identified emergency;

27 (d) The facts which demonstrate why the prohibited development or
28 activity which will be shifted out of the area affected by the
29 emergency during the period of moratorium or interim zoning will not

1 cause an emergency in nearby or adjoining areas to which the prohibited
2 development or activity would likely shift;

3 (e) The facts which demonstrate that the cost to the public of the
4 consequences of the unanticipated change will be greater than the cost
5 to the property owners within the area affected by the emergency; and

6 (f) The nature and extent of the public resources which demonstrate
7 the permit-granting agency can resolve the emergency within the time
8 limits identified in subsection (4) of this section.

9 (4) No moratorium or interim zoning shall be effective for a period
10 longer than one hundred twenty days, but such a moratorium or interim
11 zoning may be extended provided the city, county, or special district
12 adopting the moratorium or interim zoning:

13 (a) Finds that the problem giving rise to the need for a moratorium
14 or interim zoning continues to exist;

15 (b) Demonstrates that reasonable progress is being made to
16 alleviate the problem giving rise to the moratorium or interim zoning;
17 and

18 (c) Sets a specific duration for the renewal of the moratorium or
19 interim zoning. A moratorium or interim zoning may be extended more
20 than once but no single extension may be for a period longer than six
21 months.

22 (5) A renewal shall only be after a notice and public hearing.

23 (6) A renewal shall require reconfirmation of the factual issues
24 identified in subsections (2) and (3) of this section.

25 NEW SECTION. **Sec. 8.** Any moratorium or interim zoning
26 ordinance adopted on an emergency basis, including an emergency under
27 the state environmental policy act, is null and void unless the
28 procedures in section 7 of this act are followed.

1 NEW SECTION. **Sec. 9.** Any person aggrieved by violation of
2 sections 6 through 8 of this act may bring an action in superior court
3 in the county in which the moratorium or interim zoning takes effect.
4 The successful party in any action shall be entitled to reimbursement
5 of reasonable costs and fees, including attorneys' fees.

6 NEW SECTION. **Sec. 10.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout sections 10
8 through 13 of this act.

9 (1) "Moratorium" means a pattern or practice of delaying or
10 stopping issuance of permits, authorizations, or approvals necessary
11 for the subdivision and partitioning of real property or development on
12 real property or any construction pursuant to such a permit.

13 (2) "Permit-granting agency" means any branch of state government
14 which is a lead agency or an agency with jurisdiction under the state
15 environmental policy act, chapter 43.21C RCW, involved with the
16 development, subdivision, or construction on real property.

17 (3) "Facilities or resource-based emergency" means the emergency
18 which exists with respect to facilities or resources when the projected
19 development within an area will result in the creation of a demand or
20 impact on the facilities or resources which will exceed the capacity of
21 the facilities or resources within the period of the moratorium or
22 interim zoning. Facilities may include transportation, sewer, water,
23 storm water, or septic systems. Resources may include any property or
24 interest identified as environmentally sensitive, including but not
25 limited to agricultural or timber lands, ground water, surface water,
26 shorelines and wetlands, and air. Capacity or permitted levels of
27 contamination must be measured by existing adopted regulations at the
28 state, federal, or local level.

1 (4) "Land use emergency" means the emergency which exists when an
2 unanticipated change occurs in a community or upon the adoption of a
3 change in plan in a community which creates a situation in which a
4 community may lose the benefits of planning unless a moratorium is
5 imposed or an interim zone is adopted. Development which occurs in
6 accordance with an adopted comprehensive plan or proposed changes to
7 adopted plans may not be considered an unanticipated change for
8 purposes of declaring a land use emergency.

9 (5) "Interim zoning" means a deliberate and purposeful action
10 designed to classify or regulate uses of land and related matters and
11 is necessary to preserve the zoning scheme as presented to the public
12 in the comprehensive plan and attendant maps and resolutions or
13 ordinances.

14 (6) "Regulation" means a statute, rule, or standard adopted by the
15 permit-granting agency to establish standards, procedures, or criteria
16 for the subdivision, development, or construction of real property.

17 NEW SECTION. **Sec. 11.** Any permit-granting agency seeking to
18 adopt a rule or ordinance which would impose a moratorium or interim
19 zoning because of a facilities or resource-based emergency or land use
20 emergency, shall only adopt such regulation as provided in this
21 section.

22 (1) If the permit-granting agency deals through a planning agency,
23 the matter must be recommended by the planning commission and adopted
24 by the governmental board, council, or commission of the permit-
25 granting agency. Any other permit-granting agency must effect the
26 action by regulation adopted by the governing board. Such regulations
27 shall have no force or effect after thirty days unless notice and
28 public hearing have occurred and findings are made under this section
29 within thirty days after adoption.

1 (2) For a facilities or resource-based emergency, the following
2 findings shall be reasonably documented by the permit-granting agency:

3 (a) The current level, service, or current contaminant level of the
4 affected facilities or resources;

5 (b) The adopted regulation defining capacity of the facility or
6 safe levels of potential contaminants in the affected resource.
7 However, if the affected resource is drinking water, ground water,
8 aquifers, or air, the adopted standard for emergency purposes may not
9 be more stringent than the standards adopted through state or federal
10 regulations;

11 (c) The factors which demonstrate that capacity or safe levels for
12 potential contaminants will be exceeded during the period of the
13 moratorium or interim zoning ordinance;

14 (d) The factors which demonstrate that the scope and definition of
15 the moratorium or interim zoning ordinance will serve to equalize the
16 effect of the moratorium or interim zoning over all property owners to
17 the extent possible and not merely limit the effect to a select few.

18 (3) For a land use emergency, the following findings shall be
19 reasonably documented by the board:

20 (a) The nature of the change in the community and the reason it was
21 unanticipated;

22 (b) The factors which make the interim rules during a moratorium or
23 interim zoning period consistent with adopted comprehensive plans;

24 (c) The geographic extent of the emergency and the reason the
25 boundaries selected are the minimum necessary to deal with the
26 identified emergency;

27 (d) The facts which demonstrate why the prohibited development or
28 activity which will be shifted out of the area affected by the
29 emergency during the period of moratorium or interim zoning will not

1 cause an emergency in nearby or adjoining areas to which the prohibited
2 development or activity would likely shift;

3 (e) The facts which demonstrate that the cost to the public of the
4 consequences of the unanticipated change will be greater than the cost
5 to the property owners within the area affected by the emergency; and

6 (f) The nature and extent of the public resources which demonstrate
7 the permit-granting agency can resolve the emergency within the time
8 limits identified in subsection (4) of this section.

9 (4) No moratorium or interim zoning shall be effective for a period
10 longer than one hundred twenty days, but such a moratorium or interim
11 zoning may be extended provided the city, county, or special district
12 adopting the moratorium or interim zoning:

13 (a) Finds that the problem giving rise to the need for a moratorium
14 or interim zoning continues to exist;

15 (b) Demonstrates that reasonable progress is being made to
16 alleviate the problem giving rise to the moratorium or interim zoning;
17 and

18 (c) Sets a specific duration for the renewal of the moratorium or
19 interim zoning. A moratorium or interim zoning may be extended more
20 than once but no single extension may be for a period longer than six
21 months.

22 (5) A renewal shall only be after a notice and public hearing.

23 (6) A renewal shall require reconfirmation of the factual issues
24 identified in subsections (2) and (3) of this section.

25 NEW SECTION. **Sec. 12.** Any moratorium or interim zoning
26 ordinance adopted on an emergency basis, including an emergency under
27 the state environmental policy act, is null and void unless the
28 procedures in section 11 of this act are followed.

1 NEW SECTION. **Sec. 13.** Any person aggrieved by violation of
2 sections 10 through 12 of this act may bring an action in superior
3 court in the county in which the moratorium or interim zoning takes
4 effect. The successful party in any action shall be entitled to
5 reimbursement of reasonable costs and fees, including attorneys' fees.

6 NEW SECTION. **Sec. 14.** (1) Sections 2 through 5 of this act are
7 each added to chapter 36.70 RCW.

8 (2) Sections 6 through 9 of this act are each added to chapter
9 35.63 RCW.

10 (3) Sections 10 through 13 of this act are each added to chapter
11 35A.63 RCW.