

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 303
HOUSE BILL 2557

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6.2, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-463.06; AMENDING TITLE 11, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-833; RELATING TO CITY AND COUNTY LAND DEVELOPMENT.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Legislative findings; purpose

3 The legislature finds and declares that:

4 1. The declaration of moratoriums on construction and land development
5 by cities, towns and counties may have a negative effect both on the property
6 rights and property owners and on the housing and economic development
7 policies and goals of other local governments in this state and, therefore,
8 is a matter of statewide concern.

9 2. Such moratoriums, particularly if limited in duration and scope,
10 and adopted pursuant to growth management systems that further the statewide
11 planning goals and local comprehensive plans, may be both necessary and
12 desirable.

13 3. Clear state standards should be established to ensure that:

14 (a) The need for moratoriums is considered and documented.

15 (b) The impact on property rights, housing and economic development
16 is minimized.

17 (c) Necessary and properly enacted moratoriums are not subjected to
18 undue litigation.

19 Sec. 2. Title 9, chapter 4, article 6.2, Arizona Revised Statutes, is
20 amended by adding section 9-463.06, to read:

1 9-463.06. Standards for enactment of moratorium; land
2 development; limitations; definitions

3 A. A CITY OR TOWN SHALL NOT ADOPT A MORATORIUM ON CONSTRUCTION OR LAND
4 DEVELOPMENT UNLESS IT FIRST:

5 1. PROVIDES NOTICE TO THE PUBLIC PUBLISHED ONCE IN A NEWSPAPER OF
6 GENERAL CIRCULATION IN THE COMMUNITY AT LEAST THIRTY DAYS BEFORE A FINAL
7 PUBLIC HEARING TO BE HELD TO CONSIDER THE ADOPTION OF THE MORATORIUM.

8 2. MAKES WRITTEN FINDINGS JUSTIFYING THE NEED FOR THE MORATORIUM IN
9 THE MANNER PROVIDED FOR IN THIS SECTION.

10 3. HOLDS A PUBLIC HEARING ON THE ADOPTION OF THE MORATORIUM AND THE
11 FINDINGS THAT SUPPORT THE MORATORIUM.

12 B. FOR URBAN OR URBANIZABLE LAND, A MORATORIUM MAY BE JUSTIFIED BY
13 DEMONSTRATION OF A NEED TO PREVENT A SHORTAGE OF ESSENTIAL PUBLIC FACILITIES
14 THAT WOULD OTHERWISE OCCUR DURING THE EFFECTIVE PERIOD OF THE MORATORIUM.
15 THIS DEMONSTRATION SHALL BE BASED ON REASONABLY AVAILABLE INFORMATION AND
16 SHALL INCLUDE AT LEAST THE FOLLOWING FINDINGS:

17 1. A SHOWING OF THE EXTENT OF NEED BEYOND THE ESTIMATED CAPACITY OF
18 EXISTING ESSENTIAL PUBLIC FACILITIES EXPECTED TO RESULT FROM NEW LAND
19 DEVELOPMENT, INCLUDING IDENTIFICATION OF ANY ESSENTIAL PUBLIC FACILITIES
20 CURRENTLY OPERATING BEYOND CAPACITY AND THE PORTION OF THIS CAPACITY ALREADY
21 COMMITTED TO DEVELOPMENT, OR IN THE CASE OF WATER RESOURCES, A SHOWING THAT,
22 IN AN ACTIVE MANAGEMENT AREA, AN ASSURED WATER SUPPLY CANNOT BE PROVIDED OR,
23 OUTSIDE AN ACTIVE MANAGEMENT AREA, A SUFFICIENT WATER SUPPLY CANNOT BE
24 PROVIDED, TO THE NEW LAND DEVELOPMENT, INCLUDING IDENTIFICATION OF CURRENT
25 WATER RESOURCES AND THE PORTION ALREADY COMMITTED TO DEVELOPMENT.

26 2. THAT THE MORATORIUM IS REASONABLY LIMITED TO THOSE AREAS OF THE
27 CITY OR TOWN WHERE A SHORTAGE OF ESSENTIAL PUBLIC FACILITIES WOULD OTHERWISE
28 OCCUR AND ON PROPERTY THAT HAS NOT RECEIVED DEVELOPMENT APPROVALS BASED UPON
29 THE SUFFICIENCY OF EXISTING ESSENTIAL PUBLIC FACILITIES.

30 3. THAT THE HOUSING AND ECONOMIC DEVELOPMENT NEEDS OF THE AREA
31 AFFECTED HAVE BEEN ACCOMMODATED AS MUCH AS POSSIBLE IN ANY PROGRAM FOR
32 ALLOCATING ANY REMAINING ESSENTIAL PUBLIC FACILITY CAPACITY.

33 C. A MORATORIUM NOT BASED ON A SHORTAGE OF ESSENTIAL PUBLIC FACILITIES
34 UNDER SUBSECTION B OF THIS SECTION MAY BE JUSTIFIED ONLY BY A DEMONSTRATION
35 OF COMPELLING NEED FOR OTHER PUBLIC FACILITIES, INCLUDING POLICE AND FIRE
36 FACILITIES. THIS DEMONSTRATION SHALL BE BASED ON REASONABLY AVAILABLE
37 INFORMATION AND SHALL INCLUDE AT LEAST THE FOLLOWING FINDINGS:

38 1. FOR URBAN OR URBANIZABLE LAND:

39 (a) THAT APPLICATION OF EXISTING DEVELOPMENT ORDINANCES OR REGULATIONS
40 AND OTHER APPLICABLE LAW IS INADEQUATE TO PREVENT IRREVOCABLE PUBLIC HARM
41 FROM DEVELOPMENT IN AFFECTED GEOGRAPHICAL AREAS.

42 (b) THAT THE MORATORIUM IS SUFFICIENTLY LIMITED TO ENSURE THAT A
43 NEEDED SUPPLY OF AFFECTED HOUSING TYPES AND THE SUPPLY OF COMMERCIAL AND

1 INDUSTRIAL FACILITIES WITHIN OR IN PROXIMITY TO THE CITY OR TOWN ARE NOT
2 UNREASONABLY RESTRICTED BY THE ADOPTION OF THE MORATORIUM.

3 (c) STATING THE REASONS THAT ALTERNATIVE METHODS OF ACHIEVING THE
4 OBJECTIVES OF THE MORATORIUM ARE UNSATISFACTORY.

5 (d) THAT THE CITY OR TOWN HAS DETERMINED THAT THE PUBLIC HARM THAT
6 WOULD BE CAUSED BY FAILURE TO IMPOSE A MORATORIUM OUTWEIGHS THE ADVERSE
7 EFFECTS ON OTHER AFFECTED LOCAL GOVERNMENTS, INCLUDING SHIFTS IN DEMAND FOR
8 HOUSING OR ECONOMIC DEVELOPMENT, PUBLIC FACILITIES AND SERVICES AND BUILDABLE
9 LANDS AND THE OVERALL IMPACT OF THE MORATORIUM ON POPULATION DISTRIBUTION.

10 (e) THAT THE CITY OR TOWN PROPOSING THE MORATORIUM HAS DEVELOPED A
11 WORK PLAN AND TIME SCHEDULE FOR ACHIEVING THE OBJECTIVES OF THE MORATORIUM.

12 2. FOR RURAL LAND:

13 (a) THAT APPLICATION OF EXISTING DEVELOPMENT ORDINANCES OR REGULATIONS
14 AND OTHER APPLICABLE LAW IS INADEQUATE TO PREVENT IRREVOCABLE PUBLIC HARM
15 FROM DEVELOPMENT IN AFFECTED GEOGRAPHICAL AREAS.

16 (b) STATING THE REASONS THAT ALTERNATIVE METHODS OF ACHIEVING THE
17 OBJECTIVES OF THE MORATORIUM ARE UNSATISFACTORY.

18 (c) THAT THE MORATORIUM IS SUFFICIENTLY LIMITED TO ENSURE THAT LOTS
19 OR PARCELS OUTSIDE THE AFFECTED GEOGRAPHICAL AREAS ARE NOT UNREASONABLY
20 RESTRICTED BY THE ADOPTION OF THE MORATORIUM.

21 (d) THAT THE CITY OR TOWN PROPOSING THE MORATORIUM HAS DEVELOPED A
22 WORK PLAN AND TIME SCHEDULE FOR ACHIEVING THE OBJECTIVES OF THE MORATORIUM.

23 D. ANY MORATORIUM ADOPTED PURSUANT TO THIS SECTION DOES NOT AFFECT ANY
24 EXPRESS PROVISION IN A DEVELOPMENT AGREEMENT ENTERED INTO PURSUANT TO SECTION
25 9-500.05 OR AS DEFINED IN SECTION 11-1101 GOVERNING THE RATE, TIMING AND
26 SEQUENCING OF DEVELOPMENT, NOR DOES IT AFFECT RIGHTS ACQUIRED PURSUANT TO
27 A PROTECTED DEVELOPMENT RIGHT GRANTED ACCORDING TO CHAPTER 11 OF THIS TITLE
28 OR TITLE 11, CHAPTER 9. ANY MORATORIUM ADOPTED PURSUANT TO THIS SECTION
29 SHALL PROVIDE A PROCEDURE PURSUANT TO WHICH AN INDIVIDUAL LANDOWNER MAY APPLY
30 FOR A WAIVER OF THE MORATORIUM'S APPLICABILITY TO ITS PROPERTY BY CLAIMING
31 RIGHTS OBTAINED PURSUANT TO A DEVELOPMENT AGREEMENT, A PROTECTED DEVELOPMENT
32 RIGHT OR ANY VESTED RIGHT OR BY PROVIDING THE PUBLIC FACILITIES THAT ARE THE
33 SUBJECT OF THE MORATORIUM AT THE LANDOWNER'S COST.

34 E. A MORATORIUM ADOPTED UNDER SUBSECTION C, PARAGRAPH 1 OF THIS
35 SECTION SHALL NOT REMAIN IN EFFECT FOR MORE THAN ONE HUNDRED TWENTY DAYS, BUT
36 SUCH A MORATORIUM MAY BE EXTENDED FOR ADDITIONAL PERIODS OF TIME OF UP TO ONE
37 HUNDRED TWENTY DAYS IF THE CITY OR TOWN ADOPTING THE MORATORIUM HOLDS A
38 PUBLIC HEARING ON THE PROPOSED EXTENSION AND ADOPTS WRITTEN FINDINGS THAT:

39 1. VERIFY THE PROBLEM REQUIRING THE NEED FOR THE MORATORIUM TO BE
40 EXTENDED.

41 2. DEMONSTRATE THAT REASONABLE PROGRESS IS BEING MADE TO ALLEVIATE THE
42 PROBLEM RESULTING IN THE MORATORIUM.

43 3. SET A SPECIFIC DURATION FOR THE RENEWAL OF THE MORATORIUM.

1 F. A CITY OR TOWN CONSIDERING AN EXTENSION OF A MORATORIUM SHALL
2 PROVIDE NOTICE TO THE GENERAL PUBLIC PUBLISHED ONCE IN A NEWSPAPER OF GENERAL
3 CIRCULATION IN THE COMMUNITY AT LEAST THIRTY DAYS BEFORE A FINAL HEARING IS
4 HELD TO CONSIDER AN EXTENSION OF A MORATORIUM.

5 G. NOTHING IN THIS SECTION SHALL PREVENT A CITY OR TOWN FROM COMPLYING
6 WITH ANY STATE OR FEDERAL LAW, REGULATION OR ORDER ISSUED IN WRITING BY A
7 LEGALLY AUTHORIZED GOVERNMENTAL ENTITY.

8 H. IN THIS SECTION:

9 1. "COMPELLING NEED" MEANS A CLEAR AND IMMINENT DANGER TO THE HEALTH
10 AND SAFETY OF THE PUBLIC.

11 2. "ESSENTIAL PUBLIC FACILITIES" MEANS WATER, SEWER AND STREET
12 IMPROVEMENTS TO THE EXTENT THAT THESE IMPROVEMENTS AND WATER RESOURCES ARE
13 PROVIDED BY THE CITY, TOWN OR PRIVATE UTILITY.

14 3. "MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT" MEANS ENGAGING IN
15 A PATTERN OR PRACTICE OF DELAYING OR STOPPING ISSUANCE OF PERMITS,
16 AUTHORIZATIONS OR APPROVALS NECESSARY FOR THE SUBDIVISION AND PARTITIONING
17 OF, OR CONSTRUCTION ON, ANY LAND. IT DOES NOT INCLUDE DENIAL OR DELAY OF
18 PERMITS OR AUTHORIZATIONS BECAUSE THEY ARE INCONSISTENT WITH APPLICABLE
19 STATUTES, RULES, ZONING OR OTHER ORDINANCES.

20 4. "RURAL LAND" MEANS ALL PROPERTY IN THE UNINCORPORATED AREA OF A
21 COUNTY OR IN THE INCORPORATED AREA OF THE CITY OR TOWN WITH A POPULATION OF
22 TWO THOUSAND NINE HUNDRED OR LESS PERSONS ACCORDING TO THE MOST RECENT UNITED
23 STATES DECENNIAL CENSUS.

24 5. "URBAN OR URBANIZABLE LAND" MEANS ALL PROPERTY IN THE INCORPORATED
25 AREA OF A CITY OR TOWN WITH A POPULATION OF MORE THAN TWO THOUSAND NINE
26 HUNDRED PERSONS ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS.

27 6. "VESTED RIGHT" MEANS A RIGHT TO DEVELOP PROPERTY ESTABLISHED BY THE
28 EXPENDITURE OF SUBSTANTIAL SUMS OF MONEY PURSUANT TO A PERMIT OR APPROVAL
29 GRANTED BY THE CITY, TOWN OR COUNTY.

30 I. A LANDOWNER AGGRIEVED BY A MUNICIPALITY'S ADOPTION OF A MORATORIUM
31 PURSUANT TO THIS SECTION MAY FILE, AT ANY TIME WITHIN THIRTY DAYS AFTER THE
32 MORATORIUM HAS BEEN ADOPTED, A COMPLAINT FOR A TRIAL DE NOVO IN THE SUPERIOR
33 COURT ON THE FACTS AND THE LAW REGARDING THE MORATORIUM. ALL MATTERS
34 PRESENTED TO THE SUPERIOR COURT PURSUANT TO THIS SECTION HAVE PREFERENCE ON
35 THE COURT CALENDAR ON THE SAME BASIS AS CONDEMNATION MATTERS AND THE COURT
36 SHALL FURTHER HAVE THE AUTHORITY TO AWARD REASONABLE ATTORNEY FEES INCURRED
37 IN THE APPEAL AND TRIAL PURSUANT TO THIS SECTION TO THE PREVAILING PARTY.

38 Sec. 3. Title 11, chapter 6, article 2, Arizona Revised Statutes, is
39 amended by adding section 11-833, to read:

40 11-833. Standards for enactment of moratorium: land
41 development; limitations; definitions

42 A. A COUNTY SHALL NOT ADOPT A MORATORIUM ON CONSTRUCTION OR LAND
43 DEVELOPMENT UNLESS IT FIRST:

1 1. PROVIDES NOTICE TO THE PUBLIC PUBLISHED ONCE IN A NEWSPAPER OF
2 GENERAL CIRCULATION IN THE COMMUNITY AT LEAST THIRTY DAYS BEFORE A FINAL
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9 WATER RESOURCES ARE PROVIDED BY THE COUNTY OR PRIVATE UTILITY.

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11 A PATTERN OR PRACTICE OF DELAYING OR STOPPING ISSUANCE OF PERMITS,
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28 MORATORIUM HAS BEEN ADOPTED, A COMPLAINT FOR A TRIAL DE NOVO IN THE SUPERIOR
29 COURT ON THE FACTS AND THE LAW REGARDING THE MORATORIUM. ALL MATTERS
30 PRESENTED TO THE SUPERIOR COURT PURSUANT TO THIS SECTION HAVE PREFERENCE ON
31 THE COURT CALENDAR ON THE SAME BASIS AS CONDEMNATION MATTERS, AND THE COURT
32 SHALL FURTHER HAVE THE AUTHORITY TO AWARD REASONABLE ATTORNEY FEES INCURRED
33 IN THE APPEAL AND TRIAL PURSUANT TO THIS SECTION TO THE PREVAILING PARTY.

~~APPROVED BY THE GOVERNOR APRIL 29, 1996~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 1996~~