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Development Moratoria

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R-STEP

August 14, 2025

Caveats

- I am not an attorney
- This presentation is for educational purposes. It is not legal advice.
- When talking about Indiana legal requirements, I will be generalizing. Anyone adopting on a moratorium or defending against one should consult the statute for particulars.



Utility-scale wind, solar, and battery storage projects

1. Increasing number proposed
2. Best case—communities update their zoning text and maps to address these uses in advance of a proposal.
3. Moratoria can give communities time to get ready.



What is a development moratorium?

1. The legally authorized delay of new construction or development.
2. Temporary pause in development to hold the status quo for a local government to prepare.
3. Can be applied to all development or specific types.



The law on development moratoria in Indiana

- Federal courts have established that development moratoria are zoning actions and must meet state requirements for adopting/amending a zoning ordinance.
- Generally, Indiana doesn't have statutory rules regarding most potential land use moratoria. They would just be subject to the provisions regarding changing zoning.



The law on development moratoria for electricity generating facilities in Indiana

- IC 36-7-4-1109.52025 SEA 425 became effective July 1, 2025.
 - A local authority may prohibit by regulation or otherwise, the siting, construction, installation, permitting, or deployment of one or more projects within [its jurisdiction] used in the generation of electricity for a period of not more than 1 year.
 - After June 30, 2025, the prohibition cannot be extended regardless of when the prohibition first takes effect.
 - Excludes electricity generating entities that locals likely would be preempted from regulating anyway—public utilities, rural electric member corporations, rural electric membership corps that are classified as a general district corporation, non-profit electric co-operatives that include a rural electric member corporation, and joint municipal agencies
 - Also excludes “an affiliate” of a public utility.



Elements of a moratorium

Zoning ordinance or amendment adopted that establishes:

- Types of development included
 - Fiscal concerns
 - Changing market or development trends
 - Sometimes applies to new land uses
 - Public opposition to development
- Geographic area affected
 - Entire jurisdiction
 - Particular areas
- Pause is generally to development applications, permits
- Period in effect
 - Time limits
 - Until an action occurs (plan, another amendment)
 - Can't be retroactive



Req's for passing/amending zoning ordinance

- Must have a plan commission (and a board of zoning appeals)
- Adopted comprehensive plan
- Adopts or amends zoning ordinance with moratorium
 - Zoning amendment can be proposed by legislative body or initiated by the plan commission
 - Plan commission – Develops ordinance language, gives public notice, holds public hearing, and certifies recommendation
 - Legislative body – Gives public notice and acts on the plan commission proposal
 - If legislative body rejects or amends, process can be extended. See 2025 SEA 425 language for new language for advisory planning.



Takings and Vested Rights

- Takings—Regulatory
 - “Temporary”
- Vested rights (IC 36-7-4-1109 et seq as amended by 2025 SEA 425)
 - Moratoria can’t be retroactive.
 - If a completed development application has been received by a local government, developer can rely on the ordinance that was in place at the time and any approval or permit for at least 3 years.
 - Protection under this statute terminates if the development is not completed within 10 years.
 - Some provisions around having to apply for applicable state permits within 90 days.



Utility Preemption

- Utilities are not subject to local zoning and building authority with respect to the location and use of utility facilities within a zoning jurisdiction.
 - IC 8-1-1-7
 - IC 8-1-2-54
 - IC 8-1-2-115



Bonus material—Energy production zones

- Creates a pre-emption for local regulation of:
 - A premise with an electric generation facility with 80 megawatts capacity
 - A premise with surface or underground mine that is not operational
- Excludes:
 - Properties with wind power devices (defined in IC 8-1-41-7) that are integrated into an electricity generation facilities
 - One or more commercial solar energy systems (defined in IC 8-1-42-2)
- An owner does not have to obtain a permit for the construction of an electric generation facility if the IURC grants the project owner a certificate for construction under IC 8-1-8.5-2 or declines jurisdiction over construction under IC 8-1-2.5-5.
- Requires notice to the local government and that the owner hold a public hearing.



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