

HOUSE BILL REPORT

HB 1500

As Reported by House Committee On:
Local Government

Title: An act relating to new counties.

Brief Description: Establishing procedures for forming new counties.

Sponsors: Representatives Nixon, Shabro, McCune and Springer.

Brief History:

Committee Activity:

Local Government: 2/24/05, 3/1/05 [DP].

Brief Summary of Bill

- Creates a comprehensive statutory scheme for the establishment of new counties.
- Provides for the equitable apportionment of debts, liabilities and assets between a new county and the remaining portion of the parent county(s).

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 7 members: Representatives Simpson, Chair; Clibborn, Vice Chair; Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; B. Sullivan, Takko and Woods.

Staff: Hannah Lidman (786-7291).

Background:

Constitutional Provisions Pertaining to the Creation of New Counties

In Article XI, sections 1 through 5, the Constitution of the State of Washington (State Constitution) provides that counties shall be the primary legal subdivision of the state and outlines the general requirements for county governance. Under these constitutional provisions, the Legislature is required to establish a uniform system of county government and to provide for the election and compensation of county commissioners, sheriffs, clerks, treasurers, prosecuting attorneys, and other necessary officers. Five new counties have been formed since statehood, and no new counties have been formed since 1911. No county has ever been dissolved.

In section 3 of Article XI, the State Constitution establishes general requirements for the creation of a new county, although few specific procedural guidelines are provided. This constitutional provision, as interpreted by the Supreme Court of the State of Washington (Supreme Court), allows the Legislature to create specific statutory procedures for the creation of a new county, subject to four constitutional requirements:

- a majority of the voters living in the territory encompassed by the proposed new county must sign a petition in favor of the creation of the county;
- the new county must contain at least 2,000 residents and may not reduce the population of an existing county to less than 4,000 residents;
- each county or portion thereof that is incorporated into the newly created county is individually responsible for its proportional share of any preexisting debts and liabilities; and
- the creation of the new county requires that the Legislature enact special legislation creating the new county out of territory that is removed from the parent county or counties and which sets forth the conditions under which the new county shall be created.

Little guidance is provided under either the State Constitution or state law regarding the procedural or substantive requirements that must be met before a new county may be created. At present, there is no state statutory scheme that addresses exactly how, or under what conditions, a new county may be created. However, in the case of Cedar County Committee v. Munro (1988), the Supreme Court determined that as long as the requirements of Article XI, section 3, are met, the Legislature has unbridled discretion in determining whether a new county will be created and under what conditions this may be done. In its ruling, the court noted that "...the creation of a new county is an exercise of legislative power subject only to state constitutional limitations: the Legislature cannot be compelled to form a new county." Furthermore, the court went on to state that under Article XI, section 3:

"[The Constitution] does not state that a county shall be created if certain conditions are met; it mandates that no new counties can be created unless the conditions are met. The plain language of the constitution prohibits the Legislature from exercising its discretion to create a new county unless specified requirements are fulfilled. It does not mention a ministerial duty to create a county nor provide a right by citizens to form a county."

Summary of Bill:

Introduction

The act sets forth a comprehensive statutory scheme for the creation of new counties that is designed to comply with the requirements of Article XI, section 3 of the State Constitution, as interpreted in the Cedar County case. The bill is structured such that its initial sections outline the steps necessary to satisfy state constitutional requirements regarding the petition process, the requisite population requirements, and the distribution of debts and liabilities. Following this, the provisions of the act cover the following subject matter:

- the procedural requirements for the enactment of the special legislation necessary to create the new county, including a provision allowing the voters in the new county to override a legislative refusal to create the new county;
- the establishment of an interim period in order to implement the financial arrangements, election requirements, governmental entities, and public services necessary for the creation of the new county;
- the division of assets and liabilities between the new county and the parent county(s);
- the division of property between the new county and the parent county(s);
- arrangements for the transfer of power between the new county and the parent county(s); and
- the division of taxing powers and other arrangements regarding taxes.

Definitions

The act contains a definitions section that include definitions for the following terms:

- "Parent county"- the existing county(s) out of which territory is stricken to create a new county.
- "New county"- the county created by striking territory from a parent county(s).
- "Proponent"- the up to five registered voters residing within the territory of the proposed new county who initiate the petition process to create a new county.
- "Interim period"- the one-year period during which a new county government is established; debts, liabilities and assets are apportioned; and records are transferred.

Petition Procedures: Process and Requirements

To create a new county, the proponent(s) must initiate the process by filing a statement with the name of the new county, a legal description of the territorial boundaries of the new county, and an affidavit with the Office of the Secretary of State (Secretary).

Within 30 days after filing, the Office of Financial Management (OFM) must verify and certify that the legal description is accurate and that the populations of the proposed new county and the parent county(s) that remain meet the constitutional population requirements. If the legal description is inaccurate, OFM must notify the Secretary and the proponent(s) of the errors.

When the legal descriptions and population figures are certified, the proponent(s) of the new county have two years to file petitions supporting formation of a new county with the Secretary.

Petitions in support of forming a new county must be signed by at least 50 percent of the registered voters in the affected area. The Secretary must validate the signatures within 60 days of receipt and certify the petition. Certification is filed with the Legislature, and is also sent to the appropriate court of appeals of the largest affected existing county to begin the legal process necessary for the division of assets, debts and liabilities in the event a new county is eventually created.

Procedures for the Enactment of Special Legislation Creating a New County

If all requirements of Article XI, section 3, of the State Constitution are met in accordance with the procedures outlined above, the Legislature, during the first regular session after the certification by the Secretary, is permitted to enact special legislation to:

- create the new county, or
- provide that the creation of the new county be subject to approval by the registered voters residing in the proposed new county.

The special legislation creating the new county must include the following components:

- a legal description of the new county;
- the initial salaries of county officials;
- provisions for the new county's financial resources prior to receipt of revenues;
- provisions for superior and district courts;
- boundaries for county commission districts; and
- the location of the initial county seat.

If the special legislation involves the modification of the boundaries of the new county, the Legislature must contemplate the economic, transportation, administrative and natural factors that effect counties. The Legislature may not make any changes to the boundaries of the new county that would conflict with constitutional population requirements or other requirements of Article XI, section 3 of the State Constitution.

If the Legislature does not enact special legislation during the first session after certification or if the issue was referred to the voters, the question of the creation of the new county must be submitted to the registered voters in the proposed new county at the next state general election.

If special legislation is enacted that does not provide otherwise or if the question was referred to the voters, a primary must be held to nominate candidates for new county elected offices. The election must be held at the next state general election. Provisions for these elections and offices are specified, including the following:

- declarations of candidacy for county offices and count commissioner positions;
- provision of a local voters' pamphlet;
- canvass of election and certification of results by the Secretary;
- extent of powers for newly elected officials during and after interim period;
- initial and standard terms of office; and
- responsibility for election costs.

Process for Transfer of Powers

Once a new county is established either by special legislation or by approval of a majority of voters in the new county, a one-year interim planning period commences. The interim period begins on January 1 of the year after the county is established and expires on December 31 of the same year. During this interim period, the initial county officials and commissioners are authorized to:

- adopt ordinances and resolutions;
- purchase or lease land and assets, contract for services, and employ staff;

- enter interlocal agreements;
- submit ballot propositions on levies;
- adopt an interim budget;
- collect sales and use taxes; and
- borrow money from the State Treasurer.

Time periods for transferring existing court cases and county records are specified. Parent county(s) are required to continue providing all services during the interim period, and all ordinances, rules, and regulations of the parent county or counties remain in effect. The formation of a new county does not affect the boundaries of other jurisdictions except a public transportation benefit area. The superior court and district court for the new county obtain jurisdiction over all new matters filed on or after the expiration of the interim period.

Initial county officials may establish county commissioner districts, and property tax levies may be adjusted to reflect the new boundaries. Allocation of transportation funds to the new county after the interim period is required.

Process for Distribution of Debts, Liabilities, and Assets

The Act repeals obsolete statutes relating to the division of assets and liabilities and replaces them with a judicial process that results in a court order regarding such division.

This judicial process for the division of the assets and liabilities between the new and parent counties is begun when the Secretary notifies the appropriate division of the Washington Court of Appeals. Upon receiving the requisite notice, the presiding judge appoints a special master. The principal proponent and the legislative authority of the parent county(s) may recommend candidates for the position. The special master is responsible for:

- gathering facts, conducting hearings, and reviewing evidence, and
- making recommendations to the court about the division of assets and liabilities.

The special master may employ experts and consult with state and local agencies in fulfilling his or her responsibilities.

Within six months of receiving the requisite notice, the Washington Court of Appeals must enter an order dividing the assets, debts and liabilities and provide a method for a transfer of payment. This court order becomes effective once the new county is created.

Debts and Liabilities

New counties are responsible for an equitable portion of the debts and liabilities of the parent county(s) without affecting the rights of creditors. The debts and liabilities of the parent county(s) are allocated to the new county according to the proportion of total assessed valuation in the new county to the valuation in the parent county(s) before the creation of the new county. Assessed valuations are those used for taxes imposed the year before election or special legislation authorized the creation of the new county.

Assets

New counties are to receive an equitable apportionment of property and other assets according to standards based on the relative assessed valuation of the new and existing county(s) without affecting the rights of creditors. Each parent county retains ownership of real property it owns that remain within its boundaries. On the effective date of the creation of the new county, the new county acquires ownership of the real property within its territory that was once owned by the parent county(s). Equipment used for transportation, construction, and maintenance is divided according to the proportional number of miles of roads in the new county relative to the number in that parent county prior to the creation of the new county.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is needed to create the procedures for creating new counties. It addresses procedures required by the State Constitution that the state has never dealt with before. The State Constitution vests this power with the Legislature and the bill is intended to comply with the requirement set forth by the court in the Cedar County case. It is important for the Legislature to finally create a comprehensive statutory process for creating new counties. New counties are needed in order to keep up with changes that have occurred in this state over the last 100 years. New county creation will create efficiencies and has an inherent geographic logic. For example, King County alone is larger than 12 states in this country. This is too large and presents governance problems. Smaller jurisdictions can sometimes be more efficient than larger jurisdictions. "Access" to county government is an important democratic principle and overly large counties defeat this principle. Creation of new counties promotes freedom of association and is consistent with the intentions of the Founding Fathers. It is unfair to always allow the larger jurisdiction to control the affairs of smaller, weaker communities. People should be allowed to create "communities of interest" that allow for greater local control. The bill sets up a very elaborate process involving stringent petition requirements and the county creation process could take up to three years. Some amendments are desirable, such as lowering the percentage of registered voters who must sign the petition from 50 percent to 25 percent.

Testimony Against: This bill is based on a false reading of the Cedar County case and is inconsistent with constitutional requirements. The State Constitution does not give the Legislature the power to control the process of creating new counties. This power rests with the people. The bill itself is a good idea, but it takes the wrong approach and many of its provisions are ill-considered. Much of it is unconstitutional and needs to be reworked.

Persons Testifying: (In support) Kathy Lambert; Don Whiting; and Rodney McFarland, Citizens' Alliance for Property Rights.

(Opposed) Commissioner Tom Satterlee and Commissioner David Guadalupe, Freedom County.

Persons Signed In To Testify But Not Testifying: (With concerns) Genesee Adkins, Futurewise.