

HOUSE BILL REPORT

HB 2020

As Reported by House Committee On:
Local Government & Housing

Title: An act relating to the annexation of unincorporated areas served by fire protection districts.

Brief Description: Concerning the annexation of unincorporated areas served by fire protection districts.

Sponsors: Representatives Simpson, Chase, Hunter and Van De Wege.

Brief History:

Committee Activity:

Local Government & Housing: 2/18/09, 2/19/09 [DPS].

Brief Summary of Substitute Bill

- Revises state law regarding city annexations and incorporations involving fire protection districts, fire departments, multiple cities, and unincorporated areas. The provisions of the act address: (1) specified notice requirements for fire protection personnel facing a proposed annexation; (2) the civil service rights of fire protection employees subject to the annexation; (3) annexation through an interlocal agreement among the parties to the annexation; (4) annexation petition requirements; (5) maintenance of fire protection levels during the annexation process and; (6) fire safety impact reporting.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, White and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Ericksen, Short and Upthegrove.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Thamas Osborn (786-7129)

Background:

Fire Protection Districts.

Fire protection districts are created to provide fire prevention, fire suppression and emergency medical services within a district's boundaries. Fire protection districts are governed by a board of commissioners consisting of either three or five members. The districts finance their activities and facilities by imposing regular property taxes, excess voter-approved property tax levies, and benefit charges.

Annexations: Employment and Civil Service Protections for Fire Protection District Employees.

When a city, code city, fire protection district, or unincorporated area is subject to annexation or incorporation by a city, state law provides specified employment rights to a fire protection district employee from the annexed area regarding transferring his or her employment to the fire department of the annexing city. If such employee is capable of performing the duties and meeting the minimum requirements of a position to be filled by the fire department of the annexing city, then the eligible employee may transfer his or her employment to the annexing city in accordance with statutory civil service regulations. Under these regulations, the eligible employee must first make a written request to transfer into the civil service system of the annexing city. Once the Civil Service Commission receives an employee's written request to transfer employment the transfer must be made. Transferred employees are placed on probation for the same period as new employees of the fire department of the annexing city or town. An employee on probation can be removed from his or her position for virtually any reason unless the individual has already completed a probationary period as a firefighter prior to the transfer, in such case termination must be for cause.

During this probationary period the employee: (1) is eligible for promotion before the probationary period ends; (2) receives a salary at least equal to that received by new employees of the annexing city in the position filled; and (3) will have the rights, benefits, and privileges to which the employee would be entitled as a member of the city fire department from the beginning of his or her employment with the annexed fire department or fire protection district. Accrued benefits are transferable so long as the receiving agency offers comparable benefits.

Only transferring employees that are needed will be placed on the payroll. The fire department determines the need, and employees are taken in order of seniority. Employees who are not transferred and were not needed are placed on a re-employment list, in order of seniority, for future employment in the civil service system. Employees placed on the re-employment list remain on that list for a period no longer than three years unless there is an agreement providing otherwise.

Interlocal Agreements.

Under the Interlocal Cooperation Act (ICA), chapter 39.34 RCW, "public agencies," including cities and counties, are granted broad authority to engage in joint or cooperative actions that may include the consolidation or merger of a broad range of functions and/or structures. The ICA specifically states that: (1) "Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority..."; and that (2) "Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter..." Accordingly, the ICA is often utilized by cities and counties to engage in cooperative activities and agreements with respect to law enforcement, fire protection, public utility administration, etc.

The ICA defines "public agency" to include any agency, political subdivision, or unit of local government. The term includes municipal corporations, counties, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, as well as other states' political subdivisions.

Annexation Methods.

Current law authorizes multiple methods for municipal annexations. While code and non-code cities and towns have separate statutory requirements for governance and operation, the annexation methods employed are generally similar.

The direct petition method of annexation requires approval of direct petitions signed by property owners comprising a specific percentage of land value, without voter action. In non-code cities and towns, the petition must be signed by the owners of not less than 75 percent of the land value of the property for which annexation is petitioned. This value requirement is set at 60 percent for code cities. An alternative direct petition method based upon the signatures of qualifying property owners and registered voters meeting specified criteria was enacted into law in 2003.

Some annexations may occur through direct legislative action of a city or town. For example, the legislative bodies of code cities may, by a majority vote, annex territory outside their corporate limits for any municipal purpose if the territory is owned by the city. Additionally, while some requirements differ, legislative bodies of code and non-code cities and towns may resolve to annex qualifying territory if there is within the city or town, unincorporated territory with residential property owners:

- containing less than 100 acres and having at least 80 percent of the boundaries of such area contiguous to the code city; or
- of any size and having at least 80 percent of the boundaries of the area contiguous, provided other requirements are satisfied.

Public hearing and notice requirements must be met under this legislatively-based annexation method, and annexations under this method are subject to referendum for 45 days after the legislative body adopts the annexation resolution.

The Growth Management Act.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities.

The GMA includes numerous requirements relating to the use or development of land in urban and rural areas. Among other requirements, counties that fully plan under the GMA must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature.

Summary of Substitute Bill:

Overview of the Act.

The act creates new statutes and amends numerous existing statutes pertaining to city and code city annexations and incorporations involving fire protection districts, multiple cities, and unincorporated areas. The provisions of the act address: (1) specified notice requirements for fire protection personnel facing a proposed annexation; (2) the civil service rights of fire protection employees subject to annexation; (3) new alternative methods of annexation; (4) annexation petition requirements; (5) maintenance of fire protection levels during the annexation process; and (6) fire safety impact reporting. Hereafter, unless otherwise indicated, references to a "city" or "cities" means cities, towns, and code cities.

Employment and Civil Service Rights of Fire Department and Fire Protection District Employees Subject to Transfer Following an Annexation.

Unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, a transferring employee is entitled to the employee rights, benefits, and privileges to which that employee would have been entitled as an employee of the annexed fire protection district or fire department, including rights to:

- compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer;
- retirement, vacation, sick leave, and any other accrued benefits;
- promotion and service time accrual; and
- the length of terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

Unless an agreement for different terms of transfer are reached, the benefits, rights, and privileges received by a transferring employee are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

Creation of Alternative Annexation Methods.

Alternative annexation methods are established. The legislative body of a code city or non-code city or town in a county planning under the GMA that has more than 1.5 million residents may resolve to annex territory to the city or town if:

- the area subject to annexation is within the same county and UGA as the city or town; and
- at least 51 percent of the boundaries of the area subject to annexation are contiguous to the city or town.

The resolution must describe the boundaries of the area to be annexed, state the number of voters residing in the area, and set a date for a public hearing on the resolution for annexation. Notice of the hearing must be given by publication in newspapers, according to prescribed requirements.

For purposes of determining contiguity percentages under the new annexation method:

- territory bounded by a river, lake, or other body of water is considered contiguous to a city or town that is also bounded by the same river, lake, or other body of water; and
- the boundaries of areas proposed for annexation that are coterminous with UGA boundaries, and the boundaries of areas proposed for annexation that are coterminous with a city or town that is not proposing annexation under this section, must not be considered.

The adopted annexation ordinance is subject to referendum for 45 days after its passage. Upon the filing of a referendum petition with the legislative body, signed by qualified electors in number equaling at least 50 percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in an election. The annexation is approved unless two-thirds of the votes cast in the election oppose the annexation.

After the expiration of the 45th day from, but excluding the date of, passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed must become a part of the city or town upon the date fixed in the annexation ordinance.

Procedures for Direct Petition Annexations

Direct petition annexation method requirements are modified. Direct petitions for annexations in a county with more than 1.5 million residents must be signed by the owners of not less than 51 percent of the land value of the property for which annexation is petitioned.

Interlocal Agreements for Annexations of Areas that Include One or More Fire Protection Districts.

A city or code city that is proposing to annex territory served by one or more fire protection districts may complete the annexation through the passage of an ordinance after entering into an interlocal agreement with the county and the fire protection district(s) that have jurisdiction over the territory proposed for annexation. The interlocal agreement must describe the boundaries of the territory proposed for annexation. A supplemental interlocal agreement may be negotiated to address issues for a specific annexation if the issues are not

sufficiently addressed in the initial, general interlocal agreement. The term of the agreement must be for a term of at least five years, which may be extended by mutual agreement of the parties.

An interlocal annexation agreement must include a statement of the goals of the agreement. The subject matter that must be addressed in the goals statement includes:

- the transfer of revenues and assets between the fire protection district(s) and the city;
- the consideration of the impact on the level of service to the unincorporated area as the result of the annexation;
- an agreement that the functional ability of the fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;
- a discussion with the fire protection district(s) regarding the division of assets and its impacts on citizens inside and outside the newly annexed area;
- community involvement, including an agreed-upon schedule of public meetings in the area proposed for annexation;
- revenue sharing, if any;
- debt distribution; and
- an overall schedule or plan on the timing of the annexation covered by the agreement.

An interlocal annexation agreement must also include the subject areas, policies, and procedures the parties agree to undertake as part of the annexation, including:

- roads and traffic impact mitigation;
- surface and storm water management;
- annexation procedures;
- outstanding bonds and improvement district assessments;
- coordination and timing of comprehensive plan and development regulation updates.; and
- financial and administrative services.

If the fire protection district, annexing city, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing city and county reach an agreement on the enumerated goals, the city and county may proceed with annexation under the interlocal agreement, but the annexation ordinance is subject to referendum for 45 days after its passage.

Notice to Fire Protection District Employees of Proposed Annexation or Incorporation.

If any portion of a fire protection district is proposed for annexation or incorporation into a city, both the fire protection district and the annexing/incorporating municipality must inform fire protection district employees about hires, separations, terminations, and any other changes in employment that will be a direct consequence of the proposed annexation or incorporation.

Maintenance of Fire Protection and Emergency Services During the Annexation Process.

Cities and towns annexing all or part of fire protection districts must, at least through the budget cycle in which the annexation occurs, maintain existing fire protection and emergency

services response times in the newly-annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district. If the city or town is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur pursuant to specific requirements set forth in the act.

Annexations and Fire Safety Impact Reporting.

Upon the written request of a fire protection district, and prior to completing the annexation, cities annexing territory under this chapter must issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address the provisions pertaining to fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least 5 percent of the assessed valuation of the fire protection district will be annexed.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- makes several small changes to the organization of the original bill for the purpose of clarification and creating consistency among parallel sections;
- adds a provision requiring that the initiation of an annexation through interlocal agreement comply with specified notice requirements, including notification to the local boundary review board;
- establishes new ordinance-based annexation methods for cities and towns located in counties with more than 1.5 million residents; and
- lowers the property value threshold that must be met for direct petition annexations in counties with more than 1.5 million residents.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The bill would facilitate annexations, make them less contentious, and at the same time ensure transferring fire protection personnel receive equitable treatment.

(Opposed) None.

Persons Testifying: Bud Sizemore, Washington State Council of Fire Fighters.

Persons Signed In To Testify But Not Testifying: Dave Williams, Association of Washington Cities; Mark Brown; and Ryan Spiller, Washington Fire Commissioners.