

SENATE BILL REPORT

SB 5574

As of January 27, 2022

Title: An act relating to new counties.

Brief Description: Concerning new counties.

Sponsors: Senator Fortunato.

Brief History:

Committee Activity: Housing & Local Government: 1/27/22.

Brief Summary of Bill

- Creates the statutory framework for the formation of new counties or consolidation of existing counties.
- Provides for the equitable apportionment of debts, liabilities, and assets between a new county and the remaining portion of the parent county or counties.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Maggie Douglas (786-7279)

Background: The Washington State Constitution authorizes the Legislature to establish a system of county government and provide for the creation of new counties based on population. Since the adoption of the constitution, the Legislature has created five additional counties, with the final county formed in 1911.

The constitution outlines four general requirements for creating a new county:

- 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 2000 residents and may not reduce the

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- population of an existing county to less than 4000 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 the Legislature to 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.

The constitution does not provide procedural requirements for the formation of new counties, and state law does not address how or under what conditions a county may be created. In the case of *Cedar County Committee v. Munro* (1988), the Supreme Court determined that as long as the four constitutional requirements of formation of counties are met, the Legislature has complete discretion in determining whether a new county will be created, and under what conditions it may do so.

Summary of Bill: Petition Procedures for the Formation of New Counties. A proponent or proponents may initiate the process of forming a new county by filing a statement with the Office of the Secretary of State (Secretary). The statement must include the name of the new county, a legal description of the territorial boundaries, and an affidavit from each proponent that they are a registered voter within the territory of the proposed county.

Within 30 days of filing, the Office of Financial Management (OFM) must verify the legal description is consistent, the territory described is a single, contiguous area, and the constitutional population requirements are met. If any portion of the description is inaccurate, OFM must notify the Secretary and the proponents of the errors prior to certification.

Upon the certification of the legal description and population figures of the proposed county, the proponents have three calendar years to file petitions supporting the 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 combined portions of each parent county from which the territory is proposed to be stricken and included in the new county. The Secretary must validate the signatures within 60 days of receipts and certify the petition.

Following the Secretary's certification of the petition, the certification must then be filed with the Legislature and distributed 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. The Secretary must also notify the Department of Revenue (DOR) that a petition for the formation of a new county has been filed and certified.

Special Legislation. If the petition has met all constitutional and procedural requirements, the Legislature may, during the first regular session after the certification by the Secretary, enact special legislation to create the new county, subject to approval by a majority of voters in the proposed new county.

The special legislation 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 the receipt of revenues;
- provisions for superior and district courts;
- boundaries for county commission districts; and
- the location of the initial county seat.

If the Legislature does not enact special legislation to create the new county, the question of the creation of the new county must be referred to a vote of the registered voters residing in the proposed new county at the next 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.

Transfer of Powers. A new county must enter a one-year interim planning period following its establishment. The interim period must start on January 1st of the year after the county is established and expires on December 31st 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 state and federal agencies.

A parent county or counties 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 must obtain jurisdiction over all new matters filed on or after the expiration of the interim period.

Initial county officials may establish county commissioner districts, adopt a budget authorizing expenditure of moneys, borrow money from the state treasurer, and impose taxes. Property tax levies may be adjusted to reflect the new boundaries. The Department of Transportation must adjust the allocation of transportation funds to the new county.

Appointment of a Special Master. The juridical process for the division of the assets and liabilities between the new and parent counties begins when the Secretary notifies the appropriate division of the Washington Court of Appeals. Upon receiving the requisite notice, the presiding judge must appoint a special master. If the original petition proposes the consolidation of existing counties where there is no remaining territory in any parent county, the presiding judge may enter an order without appointing a special master.

The special master is responsible for gathering facts, conducting hearings, and reviewing evidence, as well as making recommendations to the court regarding the division of assets and liabilities. The special master may employ experts and consult with appropriate state and local agencies in fulfilling the responsibilities of the position.

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. DOR, in conjunction with the Department of Commerce and OFM must analyze and prepare a report on the impact of the new county on the revenues and expenditures of the parent counties.

Distribution of Debts, Liabilities, and Assets. New counties are responsible for an equitable portion of the debts and liabilities of the parent county or counties without affecting the rights of creditors. The debts and liabilities of the parent county or counties 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 or counties before the creation of the new county. The assessed valuations must be those used for taxes imposed in the year before the election was held, or special legislation was enacted that authorized the creation of the new county.

New counties must receive an equitable apportionment of property and other assets according to standards based on the relative assessed valuation of the new and existing county or counties without affecting the rights of creditors. Each parent county retains ownership of real property it owns that remain within its boundaries. 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: Requested on January 21, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This idea has been floating around for more

than two decades, and was recently an agency request legislation on behalf of the Secretary of State. This bill provides a way to pool or consolidate resources between counties if needed. As of late, some eastern Washington counties were wanting to discuss merging counties to pool resources and tax bases, but upon conversation with the Secretary of State, realized that there is no existing process for an individual or group of individuals to bring forward a petition for the formation of a new county. The bill doesn't form any new county, but provides a process for how a county may be formed whether it be by merger or division of existing counties.

OTHER: The court of appeals asks the committee to reconsider Sections 11 through 17 of this bill, which places on the court of appeals the responsibility of deciding in the first instance the equitable division of assets and liabilities between a new and parent county. Appellate courts determine whether there have been legal errors in the rulings of lower courts, and as such, are not best suited for carrying the responsibilities set forward in Section 11 through 17 of this bill. Appellate courts do not have any existing procedure for reviewing facts and determining the equitable division of assets and liabilities. Trial courts, however, are best prepared and are accustomed to appointing special masters for this purpose.

Persons Testifying: PRO: Senator Phil Fortunato, Prime Sponsor.

OTHER: Beth Andrus, Court of Appeals, Division One.

Persons Signed In To Testify But Not Testifying: No one.