
SUBSTITUTE HOUSE BILL 2176

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Local Government (originally sponsored by Representatives G. Cole, Edmondson, Jacobsen, Padden, Dunshee, Orr, Lemmon and Carlson)

Read first time 02/04/94.

1 AN ACT Relating to city and town incorporations and annexations;
2 amending RCW 35.02.030, 35.02.020, 35.02.001, 36.93.100, 36.93.150,
3 35.02.070, and 35.02.078; adding new sections to chapter 35.02 RCW;
4 adding a new section to chapter 35.13 RCW; adding a new section to
5 chapter 35A.14 RCW; adding new sections to chapter 36.93 RCW; adding a
6 new section to chapter 43.21C RCW; creating a new section; repealing
7 RCW 35.13.175, 35A.14.230, 36.93.115, and 36.93.152; and declaring an
8 emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.02 RCW
11 to read as follows:

12 Any person proposing the incorporation of a city or town shall file
13 a notice of the proposed incorporation with the county legislative
14 authority of the county in which all or the major portion of the
15 proposed city or town is located. The notice shall include the matters
16 required to be included in the incorporation petition under RCW
17 35.02.030 and be accompanied by both a one hundred dollar filing fee
18 and an affidavit from the person stating that he or she is a registered
19 voter residing in the proposed city or town.

1 The county legislative authority shall promptly notify the boundary
2 review board of the proposed incorporation, which shall hold a public
3 meeting on the proposed incorporation within thirty days of the notice
4 being filed where persons favoring and opposing the proposed
5 incorporation may state their views. If a boundary review board does
6 not exist in the county, the county legislative authority shall provide
7 the public meeting. The public meeting shall be held at a location in
8 or near the proposed city or town. Notice of the public meeting shall
9 be published in a newspaper of general circulation in the area proposed
10 to be incorporated at least once ten days prior to the public meeting.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.02 RCW
12 to read as follows:

13 Within one working day after the public meeting under section 1 of
14 this act, the county auditor shall provide an identification number for
15 the incorporation effort to the person who made the notice of proposing
16 the incorporation. The identification number shall be included on the
17 petition proposing the incorporation.

18 The petition proposing the incorporation may retain the proposed
19 boundaries and other matters as described in the notice, or may alter
20 the proposed boundaries and other matters.

21 **Sec. 3.** RCW 35.02.030 and 1986 c 234 s 4 are each amended to read
22 as follows:

23 The petition for incorporation shall: (1) Indicate whether the
24 proposed city or town shall be a noncharter code city operating under
25 Title 35A RCW, or a city or town operating under Title 35 RCW; (2)
26 indicate the form or plan of government the city or town is to have;
27 (3) set forth and particularly describe the proposed boundaries of the
28 proposed city or town; (4) state the name of the proposed city or town;
29 (5) state the number of inhabitants therein, as nearly as may be; and
30 (6) pray that ~~((it may))~~ the city or town be incorporated. The
31 petition shall conform to the requirements for form prescribed in RCW
32 35A.01.040. The petition shall include the identification number
33 provided under section 2 of this act and state the last date by which
34 the petition may be filed, as determined under RCW 35.02.020.

35 If the proposed city or town is located in more than one county,
36 the petition shall be prepared in such a manner as to indicate the
37 different counties within which the signators reside.

1 A city or town operating under Title 35 RCW may have a
2 mayor/council, council/manager, or commission form of government. A
3 city operating under Title 35A RCW may have a mayor/council or
4 council/manager plan of government.

5 If the petition fails to specify the matters described in
6 subsection (1) of this section, the proposal shall be to incorporate as
7 a noncharter code city. If the petition fails to specify the matter
8 described in subsection (2) of this section, the proposal shall be to
9 incorporate with a mayor/council form or plan of government.

10 **Sec. 4.** RCW 35.02.020 and 1986 c 234 s 3 are each amended to read
11 as follows:

12 A petition for incorporation must be signed by ~~((qualified))~~
13 registered voters resident within the limits of the proposed city or
14 town equal in number to at least ten percent of the ~~((votes cast at the~~
15 ~~last state general election and presented to))~~ number of voters
16 residing within the proposed city or town and filed with the auditor of
17 the county in which all, or the largest portion of, the proposed city
18 or town is located. The petition must be filed with the auditor by no
19 later than one hundred eighty days after the date the public meeting on
20 the proposed incorporation was held under section 1 of this act, or the
21 next regular business day following the one hundred eightieth day if
22 the one hundred eightieth day is not a regular business day.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.02 RCW
24 to read as follows:

25 No city or town in a county in which urban growth areas, or interim
26 urban growth areas, have been designated under chapter 36.70A RCW may
27 incorporate an area that includes territory located beyond an urban
28 growth area or interim urban growth area.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 35.02 RCW
30 to read as follows:

31 For a period of ninety days after a petition proposing the
32 incorporation of a city or town is filed with the county auditor, a
33 petition or resolution proposing the annexation of any portion of the
34 territory included in the incorporation proposal may be filed or
35 adopted and the proposed annexation may continue following the
36 applicable statutory procedures. Territory that ultimately is annexed,

1 as a result of the filing of such an annexation petition or adoption of
2 such an annexation resolution during this ninety-day period, shall be
3 withdrawn from the incorporation proposal.

4 A proposed annexation of a portion of the territory included within
5 the proposed incorporation, that is initiated by the filing of an
6 annexation petition or adoption of an annexation resolution after this
7 ninety-day period, shall be held in abeyance and may not occur unless:
8 (1) The boundary review board modifies the boundaries of the proposed
9 incorporation to remove the territory from the proposed incorporation;
10 (2) the boundary review board rejects the proposed incorporation and
11 the proposed city or town has a population of less than seven thousand
12 five hundred; or (3) voters defeat the ballot proposition authorizing
13 the proposed incorporation.

14 NEW SECTION. **Sec. 7.** Where a petition proposing the incorporation
15 of a city or town has been filed with a county auditor prior to the
16 effective date of this act, the time limitations on competing
17 annexation proposals that are provided under section 6 of this act are
18 modified as follows:

19 (1) A petition or resolution proposing the annexation of any
20 portion of the territory included in the incorporation proposal, that
21 was filed or adopted within the later of ninety days after the date the
22 incorporation petition was filed or the effective date of this act, may
23 continue following the applicable statutory procedures. A boundary
24 review board may simultaneously consider the proposed incorporation and
25 such an annexation.

26 (2) A petition or resolution proposing the annexation of any
27 portion of the territory included in the incorporation proposal, that
28 is filed or adopted within the later of ninety days after the date the
29 incorporation petition was filed or the effective date of this act,
30 shall be held in abeyance and may not occur unless: (a) The boundary
31 review board modifies the boundaries of the proposed incorporation to
32 remove the territory from the proposed incorporation; (b) the boundary
33 review board rejects the proposed incorporation and the proposed city
34 or town has a population of less than seven thousand five hundred; or
35 (c) voters defeat the ballot proposition authorizing the proposed
36 incorporation.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 35.13 RCW
2 to read as follows:

3 After a petition proposing an annexation by a city or town is filed
4 with the city or town or the governing body of the city or town, or
5 after a resolution proposing an annexation by a city or town has been
6 adopted by the city or town governing body, no territory included in
7 the proposed annexation may be annexed by another city or town or
8 incorporated into a city or town unless: (1) The boundary review board
9 modifies the boundaries of the proposed annexation and removes the
10 territory; (2) the boundary review board or review board created under
11 RCW 35.13.171 rejects the proposed annexation; or (3) the city or town
12 governing body rejects the proposed annexation or voters defeat the
13 ballot proposition authorizing the annexation.

14 NEW SECTION. **Sec. 9.** A new section is added to chapter 35A.14 RCW
15 to read as follows:

16 After a petition proposing an annexation by a code city has been
17 filed with the city or the city legislative authority, or after a
18 resolution proposing the annexation by a code city has been adopted by
19 the city legislative authority, no territory included in the proposed
20 annexation may be annexed by another city or town or incorporated into
21 a city or town unless: (1) The boundary review board or county
22 annexation review board created under RCW 35A.14.160 modifies the
23 boundaries of the proposed annexation and removes the territory; (2)
24 the boundary review board or county annexation review board created
25 under RCW 35A.14.160 rejects the proposed annexation; or (3) the city
26 legislative authority rejects the proposed annexation or voters defeat
27 the ballot proposition authorizing the annexation.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.93 RCW
29 to read as follows:

30 A boundary review board may simultaneously consider the proposed
31 incorporation of a city or town, and the proposed annexation of a
32 portion of the territory included in the proposed incorporation, if the
33 resolution or petition initiating the annexation is adopted or filed
34 ninety or fewer days after the petition proposing the incorporation was
35 filed.

1 NEW SECTION. Sec. 11. A new section is added to chapter 36.93 RCW
2 to read as follows:

3 The proposed incorporation of any city or town that includes
4 territory located in a county in which a boundary review board exists
5 shall be reviewed by the boundary review board and action taken as
6 described under RCW 36.93.150.

7 **Sec. 12.** RCW 35.02.001 and 1989 c 84 s 25 are each amended to read
8 as follows:

9 (~~(Actions taken under chapter 35.02 RCW may be)~~) The incorporation
10 of a city or town is subject to ((potential)) review by a boundary
11 review board under chapter 36.93 RCW if a boundary review board exists
12 in the county in which all or any portion of the territory proposed to
13 be incorporated is located.

14 **Sec. 13.** RCW 36.93.100 and 1992 c 162 s 1 are each amended to read
15 as follows:

16 The board shall review and approve, disapprove, or modify any of
17 the actions set forth in RCW 36.93.090 when any of the following shall
18 occur within forty-five days of the filing of a notice of intention:

19 (1) Three members of a five-member boundary review board or five
20 members of a boundary review board in a county with a population of one
21 million or more files a request for review: PROVIDED, That the members
22 of the boundary review board shall not be authorized to file a request
23 for review of the following actions:

24 (a) The incorporation of any special district or change in the
25 boundary of any city, town, or special purpose district;

26 (b) The extension of permanent water service outside of its
27 existing corporate boundaries by a city, town, or special purpose
28 district if (i) the extension is through the installation of water
29 mains of six inches or less in diameter or (ii) the county legislative
30 authority for the county in which the proposed extension is to be built
31 is required or chooses to plan under RCW 36.70A.040 and has by a
32 majority vote waived the authority of the board to initiate review of
33 all other extensions; or

34 (c) The extension of permanent sewer service outside of its
35 existing corporate boundaries by a city, town, or special purpose
36 district if (i) the extension is through the installation of sewer
37 mains of eight inches or less in diameter or (ii) the county

1 legislative authority for the county in which the proposed extension is
2 to be built is required or chooses to plan under RCW 36.70A.040 and has
3 by a majority vote waived the authority of the board to initiate review
4 of all other extensions;

5 (2) Any governmental unit affected, including the governmental unit
6 for which the boundary change or extension of permanent water or sewer
7 service is proposed, or the county within which the area of the
8 proposed action is located, files a request for review of the specific
9 action;

10 (3) A petition requesting review is filed and is signed by:

11 (a) Five percent of the registered voters residing within the area
12 which is being considered for the proposed action (as determined by the
13 boundary review board in its discretion subject to immediate review by
14 writ of certiorari to the superior court); or

15 (b) An owner or owners of property consisting of five percent of
16 the assessed valuation within such area;

17 (4) The majority of the members of boundary review boards concur
18 with a request for review when a petition requesting the review is
19 filed by five percent of the registered voters who deem themselves
20 affected by the action and reside within one-quarter mile of the
21 proposed action but not within the jurisdiction proposing the action.

22 If a period of forty-five days shall elapse without the board's
23 jurisdiction having been invoked as set forth in this section, the
24 proposed action shall be deemed approved.

25 If a review of a proposal is requested, the board shall make a
26 finding as prescribed in RCW 36.93.150 within one hundred twenty days
27 after the filing of such a request for review. If this period of one
28 hundred twenty days shall elapse without the board making a finding as
29 prescribed in RCW 36.93.150, the proposal shall be deemed approved
30 unless the board and the person who submitted the proposal agree to an
31 extension of the one hundred twenty day period.

32 **Sec. 14.** RCW 35.02.039 and 1986 c 234 s 7 are each amended to read
33 as follows:

34 (1) The county legislative authority of the county in which the
35 proposed city or town is located shall hold a public hearing on the
36 proposed incorporation if no boundary review board exists in the
37 county(~~(, or if the boundary review board does not take jurisdiction~~
38 ~~over the proposal)~~). The public hearing shall be held within sixty

1 days of when the county auditor notifies the legislative authority of
2 the sufficiency of the petition if no boundary review board exists in
3 the county, or within ninety days of when notice of the proposal is
4 filed with the boundary review board if the boundary review board fails
5 to take jurisdiction over the proposal. The public hearing may be
6 continued to other days, not extending more than sixty days beyond the
7 initial hearing date. If the boundary review board takes jurisdiction,
8 the county legislative authority shall not hold a public hearing on the
9 proposal.

10 (2) If the proposed city or town is located in more than one
11 county, a public hearing shall be held in each of the counties by the
12 county legislative authority or boundary review board. Joint public
13 hearings may be held by two or more county legislative authorities, or
14 two or more boundary review boards.

15 **Sec. 15.** RCW 36.93.150 and 1990 c 273 s 1 are each amended to read
16 as follows:

17 The board, upon review of any proposed action, shall take such of
18 the following actions as it deems necessary to best carry out the
19 intent of this chapter:

20 (1) ~~((Approval of))~~ Approve the proposal as submitted~~((;))~~.

21 (2) Subject to RCW 35.02.170, ~~((modification of))~~ modify the
22 proposal by adjusting boundaries to add or delete territory~~((; PROVIDED, That))~~. However, any proposal for annexation ~~((by the board))~~ of territory to a town shall be subject to RCW 35.21.010 and
23 the board shall not add additional territory, the amount of which is
24 greater than that included in the original proposal~~((; PROVIDED FURTHER, That such))~~. Any modifications shall not interfere with the
25 authority of a city, town, or special purpose district to require or
26 not require preannexation agreements, covenants, or petitions~~((; AND PROVIDED FURTHER, That))~~. A board shall not modify the proposed
27 incorporation of a city with an estimated population of seven thousand
28 five hundred or more by removing territory from the proposal, or adding
29 territory to the proposal, that constitutes ten percent or more of the
30 total area included within the proposal before the board~~((, but))~~.
31 However, a board shall remove territory in the proposed incorporation
32 that is located outside of an urban growth area or is annexed by a city
33 or town, and may remove territory in the proposed incorporation if a
34 petition or resolution proposing the annexation is filed or adopted

1 that has priority over the proposed incorporation, before the area is
2 established that is subject to this ten percent restriction on removing
3 or adding territory. A board shall not modify the proposed
4 incorporation of a city with a population of seven thousand five
5 hundred or more to reduce the territory in such a manner as to reduce
6 the population below seven thousand five hundred((+)).

7 (3) (~~Determination of~~) Determine a division of assets and
8 liabilities between two or more governmental units where relevant((+)).

9 (4) (~~Determination~~) Determine whether, or the extent to which,
10 functions of a special purpose district are to be assumed by an
11 incorporated city or town, metropolitan municipal corporation, or
12 another existing special purpose district((+or)).

13 (5) (~~Disapproval of~~) Disapprove the proposal except that the
14 board shall not have jurisdiction: (a) To disapprove the dissolution
15 or disincorporation of a special purpose district which is not
16 providing services but shall have jurisdiction over the determination
17 of a division of the assets and liabilities of a dissolved or
18 disincorporated special purpose district; (b) over the division of
19 assets and liabilities of a special purpose district that is dissolved
20 or disincorporated pursuant to chapter 36.96 RCW; nor (c) to disapprove
21 the incorporation of a city with an estimated population of seven
22 thousand five hundred or more, but the board may recommend against the
23 proposed incorporation of a city with such an estimated population.

24 Unless the board (~~shall disapprove~~) disapproves a proposal, it
25 shall be presented under the appropriate statute for approval of a
26 public body and, if required, a vote of the people. A proposal that
27 has been modified shall be presented under the appropriate statute for
28 approval of a public body and if required, a vote of the people. If a
29 proposal, other than that for a city, town, or special purpose district
30 annexation, after modification does not contain enough signatures of
31 persons within the modified area, as are required by law, then the
32 initiating party, parties or governmental unit has thirty days after
33 the modification decision to secure enough signatures to satisfy the
34 legal requirement. If the signatures cannot be secured then the
35 proposal may be submitted to a vote of the people, as required by law.

36 The addition or deletion of property by the board shall not
37 invalidate a petition which had previously satisfied the sufficiency of
38 signature provisions of RCW 35.13.130 or 35A.14.120. When the board,
39 after due proceedings held, disapproves a proposed action, such

1 proposed action shall be unavailable, the proposing agency shall be
2 without power to initiate the same or substantially the same as
3 determined by the board, and any succeeding acts intended to or tending
4 to effectuate that action shall be void, but such action may be
5 reinitiated after a period of twelve months from date of disapproval
6 and shall again be subject to the same consideration.

7 The board shall not modify or deny a proposed action unless there
8 is evidence on the record to support a conclusion that the action is
9 inconsistent with one or more of the objectives under RCW 36.93.180.
10 Every such determination to modify or deny a proposed action shall be
11 made in writing pursuant to a motion, and shall be supported by
12 appropriate written findings and conclusions, based on the record.

13 **Sec. 16.** RCW 35.02.070 and 1986 c 234 s 9 are each amended to read
14 as follows:

15 (1) If a county legislative authority holds a public hearing on a
16 proposed incorporation, it shall establish and define the boundaries of
17 the proposed city or town, being authorized to decrease (~~but not~~) or
18 increase the area proposed in the petition(~~(, except for adjusting the~~
19 ~~boundaries out to the right of way line of any portion of a public~~
20 ~~highway, street, or road pursuant to RCW 35.02.170. Any decrease shall~~
21 ~~not exceed twenty percent of the area proposed or that portion of the~~
22 ~~area located within the county: PROVIDED, That the area shall not be~~
23 ~~so decreased that the number of inhabitants therein shall be less than~~
24 ~~required by RCW 35.02.010 as now or hereafter amended)) under the same
25 restrictions that a boundary review board may modify the proposed
26 boundaries. The county legislative authority, or the boundary review
27 board if it takes jurisdiction, shall determine the number of
28 inhabitants within the boundaries it has established.~~

29 (2) A county legislative authority shall disapprove the proposed
30 incorporation if, without decreasing the area proposed in the petition,
31 it does not conform with RCW 35.02.010. A county legislative authority
32 may not otherwise disapprove a proposed incorporation.

33 (3) A county legislative authority or boundary review board has
34 jurisdiction only over that portion of a proposed city or town located
35 within the boundaries of the county.

36 **Sec. 17.** RCW 35.02.078 and 1986 c 234 s 10 are each amended to
37 read as follows:

1 An election shall be held in the area proposed to be incorporated
2 to determine whether the proposed city or town shall be incorporated
3 ((if)) when the boundary review board (~~(approves or modifies and~~
4 ~~approves))~~ takes action on the proposal other than disapproving the
5 proposal, or if the county legislative authority does not disapprove
6 the proposal as provided in RCW 35.02.070. Voters at this election
7 shall determine if the area is to be incorporated.

8 The initial election on the question of incorporation shall be held
9 at the next special election date specified in RCW 29.13.020 that
10 occurs sixty or more days after the final public hearing by the county
11 legislative authority or authorities, or (~~(the approval or modification~~
12 ~~and approval))~~ action by the boundary review board or boards. The
13 county legislative authority or authorities shall call for this
14 election and, if the incorporation is approved, shall call for other
15 elections to elect the elected officials as provided in this section.
16 If the vote in favor of the incorporation receives forty percent or
17 less of the total vote on the question of incorporation, no new
18 election on the question of incorporation for the area or any portion
19 of the area proposed to be incorporated may be held for a period of
20 three years from the date of the election in which the incorporation
21 failed.

22 If the incorporation is authorized as provided by RCW 35.02.120,
23 separate elections shall be held to nominate and elect persons to fill
24 the various elective offices prescribed by law for the population and
25 type of city or town, and to which it will belong. The primary
26 election to nominate candidates for these elective positions shall be
27 held at the next special election date, as specified in RCW 29.13.020,
28 that occurs sixty or more days after the election on the question of
29 incorporation. The election to fill these elective positions shall be
30 held at the next special election date, as specified in RCW 29.13.020,
31 that occurs thirty or more days after certification of the results of
32 the primary election.

33 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.21C
34 RCW to read as follows:

35 Annexation of territory by a city or town is exempted from
36 compliance with this chapter.

1 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 35.13.175 and 1973 1st ex.s. c 164 s 18 & 1965 c 7 s
4 35.13.175;

5 (2) RCW 35A.14.230 and 1967 ex.s. c 119 s 35A.14.230;

6 (3) RCW 36.93.115 and 1982 c 220 s 5; and

7 (4) RCW 36.93.152 and 1990 c 273 s 2.

8 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.

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