

Local Government Committee

BILL ANALYSIS HB 1676

TITLE OF THE BILL: Relating to new counties.

WHAT THIS BILL DOES: *Specifies procedures for creating a new county in statute.*

SPONSORS: Representatives Lambert and Linville

HEARING DATE: Thursday, February 18, 1999

FISCAL NOTE: Not Requested.

ANALYSIS PREPARED BY: Scott MacColl (786-7106)

BACKGROUND:

The State Constitution established a procedure to create a new county that has been used by the Legislature to create five counties since statehood. No implementing statutes exist relating to the creation of new counties. However, several old statutes exist relating to distribution of the parent county's debts, property, and property taxes that have been imposed but not collected.

In recent years, four proposed petitions for new counties were presented to the Secretary of State's office; however none of these counties petitions were certified because they did not have signatures that equaled a majority of the voters living in the affected area. Recently the Washington Supreme Court interpreted the State Constitution to prohibit creation of a new county unless a majority of the area's registered voters sign petitions.

New County Formation Process:

Three requirements exist prior to create a new county:

1. A **petition** proposing the creation of the new county must be submitted that has been signed by a majority of the voters living in– the territory of the parent county that is to be removed for the new county;
2. The proposed county must have a **population** of at least 2,000, and the removal of territory out of the existing counties to create the new county may not reduce the population of any existing county to fewer than 4,000; and
3. **Special legislation** must be enacted by the Legislature, at its option, to create the new county out of territory removed from a parent county or counties.

The Legislature has not enacted general statutes establishing additional conditions or requirements. The State Supreme Court has held that the State Constitution implies that there must be special legislation enacted by the Legislature to form a new county. If there is no action by the Legislature, then the petition for a new county is no longer valid.

Transfer of Powers:

There is no specific provision for the transfer of powers within the State Constitution. However, the last new county (Pend Orielle, 1911) was created by special legislation of the Legislature. The transfer of powers between the parent county(s) and the new county is specified in the language of the special legislation.

Distribution of Assets, Debts and Liabilities:

The State Constitution provides that a new county is liable for a just portion of the existing debts and liabilities– of the parent county. However, a constitutional provision does not exist requiring that a portion of the parent county’s property and assets be distributed to the new county.

Statutes providing for the distribution of the parent county’s property differ from this constitutional provision. Chapter 36.09 RCW provides for distribution of the parent county’s debts, property, and property taxes that have been levied but not collected between the new county and the remaining parent county. However, Article XI, Section 3, of the State Constitution merely refers to a just– distribution of the debts and liabilities of the parent county.

The State Supreme Court ruled that these statutory provisions only apply to the creation of a new county if the special legislation creating the new county expressly references these provisions (See, Douglas County v. Grant County, 72 Wash. 324, 332 (1913)). The special legislation creating a new county could provide for an alternative distribution scheme as long as the constitutional requirement is met providing for a just distribution of the debts and liabilities of the parent county.

SUMMARY:

A process for creating a new county is specifically described in statute. The intent is to provide for the orderly formation of new counties and for an equitable apportionment of the debts, assets and liabilities of the parent county or counties between the new county and the existing county or counties.

New County Formation Process:

1. The procedure to meet the **population** requirement:

New procedures are provided for proponents of a new county to initiate a campaign to form a new county by filing a legal description with the Office of Financial Management to verify and certify that the legal description is accurate and populations of the proposed county, and the county(s) that remain, meet the constitutional requirements for minimal population.

2. The **petition procedure** for the formation of a new county is established:

When the legal descriptions and population figures are certified, proponents of establishing a new county have two years in which to file petitions supporting formation of a new county with the Secretary of State. Petitions signed in support of forming a new county must have at least 50% of the registered voters in the affected area. The Secretary of State must validate the signatures within 60 days of receipt and certify the result. The certification is filed with the Legislature, and is also sent to the appropriate court of appeals of the largest affected existing county to provide for the division of assets, debts and liabilities.

The standard for acceptance or rejection of signature petitions are the same as for initiatives. Appeals of a refusal by the Secretary of State to file signature petitions are the also the same as initiatives. Signatures that are proved to be false are punishable as a gross misdemeanor or a Class C felony. Once the Secretary of State accepts and certifies the petitions, proponents or opponents of the new county that are dissatisfied with the certification may appeal to the superior court of Thurston County, and the superior court will proceed in the same manner as initiatives.

Any petitions for new counties that are already being circulated when the act becomes effective, and filed with the Secretary of State within two years of the effective date, do not have to meet the specific petition form requirements.

3. The Legislature is authorized to **enact special legislation:**

If all requirements of Article XI, Section 3, of the State Constitution are met, the Legislature is specifically permitted to enact special legislation during the first regular session after the certification to either create the new county, or to provide for the creation of the new county to be subject to a vote of the registered voters in the affected areas. If the legislature does not act during the first session after certification, the question of creating the new county must be submitted to the voters in the proposed new county at the next state general election

Specific components are required to be in the special legislation language that include: the initial salaries of county officials; provisions for superior and district courts; and the initial county seat. Procedures for the conduction of the formation election are provided, including declarations of candidacy, local voter pamphlets, and canvassing of primary and general elections. The existing county pays the bill for the election if the ballot proposition is rejected.

Transfer of Powers:

A one-year interim period for a new county and its officials is provided with terms of office for interim

officials specified. The initial officials are authorized to adopt an interim budget, collect sales and use taxes, and borrow money from the State Treasurer.

Time periods for transferring existing court cases 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.

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 are authorized.

Distribution of Debts, Assets and Liabilities:

Current statutes relating to the division of assets, debts and liabilities and other inconsistent provisions are repealed, and are replaced with the following process:

A special master is appointed by the presiding judge of the appropriate division of the Washington Court of Appeals to make recommendations about the division of assets, debts and liabilities. New counties are to receive equitable apportionment for 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. New counties are also responsible for an equitable portion of the debts and liabilities of the parent county(s).

Each parent county retains ownership of real property it owns that remain within its boundaries. At the effective date of the creation of the new county, the new county acquires ownership of real property without compensation that was owned by the parent county(s) that is located in the new county. Equipment used for transportation construction and maintenance is divided by apportionment based on the number of miles of roads in the new county, that were a part of that parent county.

The Washington Court of Appeals must divide the assets, debts and liabilities and provide a method for a transfer of payment within six months after receipt of notice.