

# SENATE BILL REPORT

## SB 5574

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As of February 5, 2022

**Title:** An act relating to new counties.

**Brief Description:** Concerning new counties. [**Revised for 1st Substitute:** Concerning the consolidation of counties.]

**Sponsors:** Senator Fortunato.

**Brief History:**

**Committee Activity:** Housing & Local Government: 1/27/22, 2/03/22 [DPS-WM, DNP, w/oRec].

**Ways & Means:** 2/05/22.

**Brief Summary of First Substitute 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.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5574 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Sefzik, Warnick and Wilson, J.

**Minority Report:** Do not pass.

Signed by Senators Das, Vice Chair; Salomon.

**Minority Report:** That it be referred without recommendation.

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

Signed by Senators Cleveland, Lovelett and Trudeau.

**Staff:** Maggie Douglas (786-7279)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Monica Fontaine (786-7341)

**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 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 (First Substitute):** Petition Procedures for the Formation of New Counties. A proponent or proponents may initiate the process of consolidating two or more existing counties by filing a statement with the Office of the Secretary of State (Secretary). The statement must include the name of the proposed county, a legal description of the territorial boundaries, and an affidavit from each proponent that he or she is a registered voter within the territory of the proposed county.

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

Upon the certification of the legal description and population figures of the proposed county, the proponent(s) has three calendar years to file petitions supporting the consolidation of two or more existing counties with the Secretary.

Petitions in support of consolidating two or more existing counties must be signed by at least 50 percent of the registered voters in the combined portions of each parent county that is proposed to be consolidated 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 that 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 consolidate two or more existing counties, 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 consolidating the parent counties, the question of the consolidation of two or more existing counties and the creation of that 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 begin 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 state and federal agencies.

Parent counties are required to continue providing all services during the interim period, and all ordinances, rules, and regulations of the parent counties remain in effect. 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.

Distribution of Debts, Liabilities, and Assets. 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 Superior Court.

Within six months of receiving the requisite notice: (1) the Superior Court must enter an order dividing the assets, debts and liabilities and provide a method for a transfer of payment, which becomes effective once the new county is created; and (2) the DOR, in conjunction with the Department of Commerce and the OFM must analyze and prepare a report on the impact of the new county on the revenues and expenditures of the parent counties.

**EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):**

- Provides that the county superior court is responsible for review of matters relating to the consolidation of counties.
- Outlines the process in which a proponent may bring a petition to consolidate two or more existing counties into one county.
- Establishes the procedures for the consolidation of two or more existing counties in forming a new county.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* 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 (Housing & Local Government):** PRO: Senator Phil Fortunato, Prime Sponsor.

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

**Persons Signed In To Testify But Not Testifying (Housing & Local Government):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** None.

**Persons Testifying (Ways & Means):** No one.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.