THE CLOSEST GOVERNMENTS TO THE PEOPLE

A Complete Reference Guide
to Local Government in
Washington State

By
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Acknowledgments

Second Edition

Many people assisted with the development of the second edition of *The Closest Governments to the People*.

As with the first edition, I want to pay particular thanks to Linda Bondurant, my wife, for all her patience and love. She spent many long hours proof reading the entire second edition of the book and providing valuable advice and assistance.

A consortium of interested parties supported the second edition, which would both update the prior edition and add additional chapters on the many special purpose districts that where not discussed in separate chapters in the first addition. The consortium included the following organizations and personnel in those organizations, listed alphabetically:

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The Municipal Research and Services Center will be publishing an electronic version of The Closest Governments to the People, and maintain the book for posterity.

First Edition

This book would not be possible without the generous assistance provided by many individuals with expertise in the various subjects addressed by this book. The number of these individuals is quite large, given the breadth of the subjects that are included in the book.

I want to pay particular thanks to Linda Bondurant, my wife, for all her patience and love. She spent many long hours proof reading the entire book and providing valuable advice and assistance.

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Chapter 1, relating to the origins of local government in Washington, was reviewed by Shanna Stevenson, an historian employed by Thurston County who has authored many books and articles on the history of Thurston County. The chapters relating to

[a] Chapter numbers listed below in the remainder of the acknowledgements for the first edition refer to chapters in the first edition, which are the same as chapters 1 through 18 in the second edition, but beginning with chapter 19 differ from chapter numbers in this second edition.

county government (Part I, Chapters 2 through 5) were reviewed by both Bill Vogler, a former Grays Harbor county commissioner and current executive director of the Washington State Association of Counties. The chapters relating to city government (Part II, Chapters 6 trough 9) were reviewed by Stan Finkelstein, the executive director of the Association of Washington Cities.

Many different individuals reviewed portions of Part III of this book, relating to special purpose districts. Eugene Green, who retired from the Washington State Senate as a coordinator and senior research analyst for the committee through which most local government legislation passed, reviewed a number of chapters. This includes chapters relating to special purpose districts in general (Chapters 10, 19, and 26), as well as chapters relating to water districts and sewer districts (Chapter 18), flood control zone districts (Chapter 30), and townships (Chapter 29). Pete Spiller, a retired Executive Secretary of the Washington Fire Commissioners Association, reviewed Chapter 11 concerning fire protection districts. Ken Hirst, who retired as a senior research analyst for the Washington State House of Representatives and who staffed the committee to which agriculture legislation was referred, reviewed Chapter 12 concerning irrigation districts. Byron Olson, Management and Budget Director for the Metropolitan Park District of Tacoma, reviewed Chapter 13 concerning metropolitan park districts, and Chapter 30 concerning park and recreation service areas. Pat Jones, Executive Director of the Washington Public Ports Association, reviewed Chapter 14 concerning port districts. Jeff Mero, Executive Director of the Association of Washington Public Hospital Districts, reviewed Chapter 15 concerning public hospital districts. Steve Johnson, Executive Director for the Washington Public Utility District Association, reviewed Chapter 16, concerning public utility districts, and Chapter 21 concerning joint operating agencies. Dwayne Slate, who retired as the Associate Executive Director for Governmental Relations for the Washington State School Directors Association, reviewed Chapter 17 concerning school districts. Jan Walsh, the Washington State Librarian, reviewed Chapter 20 concerning library districts, and Chapter 32 concerning library capital facility areas. Ron Main, a previous long time policy analyst for the King County Council and lobbyist for King County, reviewed Chapter 22, concerning metropolitan municipal corporations. Gene Baxstrom, a senior

research analyst for the Joint Transportation Committee, reviewed chapters relating to special purpose districts providing transportation improvements and service. This includes: Chapter 23 concerning public transportation benefit areas; Chapter 24 concerning regional transit authorities; Chapter 25 concerning regional transportation investment districts; Chapter 27 concerning road districts; Chapter 31 concerning transportation benefit districts; and Chapter 33 concerning city transportation authorities. Ernie Geissler, a past county road engineer who retired as the director of the Washington State County Road Administration Board, reviewed Chapter 27 concerning road districts.

Many different individuals also reviewed portions of Part IV of this book, relating to general concepts and laws. Hugh Spitzer, an attorney in private practice, adjunct professor at the University of Washington Law School, and author of many articles on local government, reviewed Chapter 34 concerning municipal finance, and Chapter 36 concerning home rule. Bill Perry, a retired senior counsel for the Washington State House of Representatives, reviewed Chapter 35 concerning eminent domain, and Chapter 37 concerning constitutional provisions relating to local government. Dave Elliot, the past director of the Elections Division of the Office of the Washington State Secretary of State, reviewed Chapter 38 concerning local election. Pat Mason, a long time Senior Legal Consultant for the Municipal Research and Services Center of Washington, reviewed Chapter 39 concerning local initiative and referendum powers, and Chapter 43 concerning miscellaneous concepts and laws. Gerry Alexander, Chief Justice of the Washington State Supreme Court and author of many articles on the judiciary in Washington State, reviewed Chapter 40 concerning the local judiciary. Mike McCormick, a retired land use planner for Washington State who now is a land use consultant, reviewed Chapter 41 concerning the Growth Management Act. Gene Baxstrom also reviewed Chapter 42 concerning transportation.

These many friends and colleagues provided valuable comments and recommendations. Naming these individuals as reviewing and providing comments does not imply their endorsement of any points or interpretations made in this book. I take full responsible for any errors or inaccuracies that may occur in this book.

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General Introduction

This book is a comprehensive, general reference book and resource guide to the complex and varied systems of local governments in Washington State.

The second edition of this book reflects changes to local governments occurring since 2007, as well as 28 additional chapters on special purpose districts that were not discussed in detail in the first edition. A separate chapter discusses each different type of special purpose district, or several similar special purpose districts, that may be formed in the Washington State.

Local governments in Washington State include counties, cities,[a] and scores of different special purpose districts. General subjects are also discussed, including local government finance, home rule, local elections, and the local judiciary. The historical development of local governments in Washington is described.

This book is intended as a resource book for officials and employees of local governments, consultants, and members of the general public interested in local government in Washington State. It is also intended to be used as a textbook for undergraduate and graduate level classes and seminars in public affairs, political science, history, and law school.

Many books and articles have been written about international governments and organizations, our federal government, or state governments. Considerably fewer books have been written about local governments, most of which describe a major city. This book fills a void by describing the wide variety of local governments in

[a] Unless the context clearly implies otherwise, the term “cities” includes both cities and towns.

Washington State—the governments closest to the people.

After an introductory chapter on the origins of local government in Washington, this book is divided into four parts:

- Part I discusses counties. Counties are the oldest form of local government in Washington and constitute a major category of local governments.
- Part II discusses cities. Cities are the most powerful units of local government in Washington and constitute a second major category of local governments.
- Part III discusses special purpose districts. Special purpose districts constitute a third major category of local governments. This Part is divided into three subparts, categorizing each special purpose district included in the different Part as: (1) A traditional special purpose district, with a governing body composed of directly elected officials; (2) a regional government, normally a federation of other units of local government; or (3) a subdivision of another unit of local government.
- Part IV discusses concepts, terminology, laws, and principles applying to local governments in Washington State. Separate chapters discuss a variety of general concepts, including municipal finance, eminent domain, home rule, local government elections, the local judiciary, the Growth Management Act, and transportation. The final chapter discusses the future of local government in Washington State.

Actual statutes and constitutional provisions were used as the primary source material for this book. Various books and articles, and interviews with people who have expertise in local government, were also used as source materials. The author gained insights into local governments while serving the Washington State House of Representatives nearly 30 years as a senior counsel with a primary focus on local governments.

Washington State constitutional provisions are cited using their Article and Section numbers (e.g., “Article XI, Section 11"). This avoids repeating “Washington State Constitution” after each citation to the State Constitution. State statutes are cited using the standard numbering system developed by the Washington State Code Reviser which includes three major numerical divisions separated by periods. First, a large Title of laws is cited using a single or two digit number (e.g., Title 36 RCW). Second, each Title is divided into separate chapters of law that are cited using two numbers separated by a period (e.g., Chapter 36.32 RCW). Third, each chapter is divided into separate sections that are cited using three numbers each separated by a period (e.g., RCW 36.32.120). RCW is an abbreviation standing for the Revised Code of Washington.

Both footnotes and endnotes are used. Endnotes provide references for points made in the text, such as a statute, constitutional provision, court case, or book. Footnotes provide comments or added details about points made in the text, but may also include references.

Appendix A is a glossary defining nomenclature or terminology applicable to local governments.

Chapter 1

Origins

Euro-American government in what became Washington State gradually developed during the 19th century. Counties were the primary units of local government prior to statehood.

The development of a Euro-American system of government in what became Washington State arose in four stages:

- An early formative period, eventually dominated by the Hudson Bay Company, running from the end of the 18th century until the mid-1840's;
- The Provisional Government period, running from 1843 until 1848;
- The Oregon Territorial period, running from 1848 until 1853; and
- The Washington Territorial period, running from 1853 until 1889 when Washington became a state.

This Euro-American system of government replaced traditional Native American governing structures. White settlers paid little regard to the varied Native American cultures and governing structures that had existed for thousands of years in what was called Oregon Country.[a]

Spanish, Russian, British, French Canadian, and American explorers and trappers were the earliest Euro-Americans to reach Oregon Country. British commercial settlements, Christian missionaries, and American settlers soon followed. These Euro-

[a] Oregon Country or Old Oregon was a huge area including: (1) All of the present day States of Washington, Oregon, and Idaho; (2) portions of present day States of Montana and Wyoming located west of the Continental Divide; and (3) most of the present day British Columbia, Canada.

American contacts with Native Americans brought devastating changes to Indian societies and their governing structures. Tens of thousands of Native Americans died from small pox and other diseases brought by Euro-Americans.[b] Permanent American settlements, and the resulting governing structures and military force, gradually displaced Native American settlements and governing structures.[c]

Early Formative Period

The first stage in the development of Euro-American government (in what became Washington State) was an early formative period of competition among nations over control of Oregon Country and the arrival of commercial enterprises, especially the Hudson Bay Company.[1] This period began at the end of the 18th Century, with early exploration by Euro-Americans, and ended in the mid-1840's, with the formation of the Provisional Government of Oregon Country.

Competition among Euro-Americans over control of Oregon Country occurred on two levels. First, diplomatic competition occurred in the form of international treaties and agreements between Great Britain, the United States, Russia, and Spain. Second, on the ground competition arose between British trading company employees and American settlers.

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[b] Carey, Charles Henry, *History of Oregon*, Volume I, Pioneer Historical Pub. Co., 1922, at pages 48, 51, and 410. Carey described severe epidemics in 1824, 1825, and 1831. At page 51 he stated that:

> "Competent authority estimates destruction of four-fifths of the native population in [Oregon Country during] a single summer. Whole villages were eliminated and tribes were so reduced in numbers that many lost their identity [sic.] and were absorbed by others."

[c] One of the first actions of Isaac Ingalls Stevens, as the first Governor of Washington Territory and Superintendent of Indian Affairs for the new Territory, was to negotiate treaties with many of the Indian tribes and bands in Washington Territory. The Medicine Creek Treaty was concluded on December 26, 1854, soon followed by additional treaties with other groups of tribes and bands. Among other provisions of these treaties, the tribes ceded their "title" to lands throughout Washington Territory except for certain designated reservations. (Meany, Edmond S., *History of the State of Washington*, The MacMillan Company, 1927, at pages 165-175.) Today Indian Tribes in Washington State operate under varied structures of government.

A. Diplomatic Competition

Competing claims for sovereignty over Oregon Country gradually diminished. Spanish claims were dropped by 1819 and Russian claims were dropped by 1825.[2] British and American claims to Oregon Country were settled by several treaties.[3] A Treaty of 1818 between the United States and Great Britain provided for the Joint Occupation of Oregon Country by the two nations for a ten-year period. This Joint Occupation was extended until a Treaty of 1846 established the final boundary between the United States and British territories. The border extended westward from the Rocky Mountains along the 49th parallel to salt water, then southerly down "the middle of the channel which separates the continent from Vancouver's Island," and finally westward down the Straits of Juan de Fuca to the Pacific Ocean. Several issues remained to be resolved.

A process was implemented to determine how much the United States would pay the Hudson Bay Company and its subsidiary, the Puget Sound Agricultural Company, for their properties located in the portion of Oregon Country that became American Territory. The United States eventually paid $450,000 to the Hudson Bay Company and $200,000 to the Puget Sound Agricultural Company for their properties in 1869.[4]

Controversy arose when it was realized that two channels existed between Vancouver Island and the continent.[5] A second joint occupancy then occurred on the San Juan Islands that are located between these two channels. Tensions peaked in 1852 on San Juan Island when an American settler shot a Hudson Bay Company pig that was browsing in his potato patch. A standoff between British and American interests resulted. American troops occupied part of San Juan Island and British warships appeared offshore. However, the shot that killed the pig was the only shot during this so-called "Pig War." Both sides finally agreed in 1871 to arbitrate the location of the channel. German Emperor William I was named as the arbitrator. He issued his decision on October 21, 1872, selecting the western channel (then known as the Canal de Haro but now called Haro Strait) as the boundary. The San Juan Islands formally became part of Washington Territory and the United States.

Even though Great Britain and the United States had agreed to the Joint Occupation of all of Oregon Country from 1818 until 1846, the primary dispute over locating the boundary between Canada and the United States only involved the western portion of what became Washington State. The British government had "virtually conceded" the portion of Oregon Country to the United States that was located south of a line running west of the crest of the Rocky Mountains along the 49th parallel to the Columbia River, then down the centerline of the Columbia River to its mouth at the Pacific Ocean.[6] However, British legal claims actually appear to have been superior to American legal claims for the disputed portion of Oregon Country. Significant British settlements had been located in this portion of Oregon Country for decades. Almost no American settlements existed in Oregon Country until the fall of 1843 when American settlers began arriving in the Willamette Valley of what eventually became Oregon State.[7] Even by 1846, very few Americans had settled in the disputed portion of Oregon Country in what is now western Washington State.

Securing American sovereignty over this disputed portion of Oregon Country by extending the United States/Canadian boundary along the 49th parallel west of the Columbia River to the Straits of Georgia was considered to be "a piece of pure Yankee bluster."[8] Native Americans were not consulted in the division of sovereignty in Oregon Country between the United States and Great Britain.

B. On the Ground Competition

King Charles II of Great Britain chartered the Hudson Bay Company in 1670 to pursue fur trade in Canada. The Hudson Bay Company established a number of fur trading posts throughout eastern and central Canada prior to 1821, but did not establish trading posts west of the Rocky Mountains. Both the British-owned Northwest Company, and the American-owned Pacific Fur Company, established trading settlements in Oregon Country during in the early 1800's. The Northwest Company soon acquired the Pacific Fur Company's settlements. The Hudson Bay Company and the Northwest Company merged in 1821 and the combined company operated as the Hudson Bay Company.[9]

Criminal and civil laws enacted by the British Parliament in 1821 were enforced by the Hudson Bay Company on British subjects. Most of the British subjects were employees of the Hudson Bay Company or its later formed subsidiary, the Puget Sound Agricultural Company. The Puget Sound Agricultural Company supplied food for the British settlements as well as for export, especially to Russian Alaska. Dr. John McLoughlin, the chief factor of the Hudson Bay Company for the Columbia District of Oregon Country, was known by many as a humane and charitable "virtual ruler" of Oregon Country.[10]

American settlers who arrived in Oregon Country were not subject to British or American laws.[11] This lack of civil government for American settlers became a major rationale for the creation of a formal governing structure called the Provisional Government of Oregon Country.

Native Americans viewed American settlers as more of a threat than they viewed employees of the Hudson Bay Company.[12] Employees of the Hudson Bay Company came to Oregon Country to gather furs and did not take much land from the Native Americans. They formed close relationships and bonds with the Native Americans. Many of these Hudson Bay employees, including Chief Factor McLoughlin, married Native American women. This contrasts with American settlers who came to Oregon Country as individuals who claimed land, built fences, brought their families, and established their own government. The American thirst for land is evidenced by Congress enacting the Donation Land Act on September 29, 1850, providing 320 acres of land to each American male 18 years or older, and another 320 acres to his wife, who had arrived in Oregon Territory by 1851.[13] This legislation was enacted more than four years before Washington Territorial Governor Isaac Stevens negotiated treaties with Indian tribes where the tribes ceded "title" to most of the lands in what became Washington Territory.[14]

Provisional Government Period

The second stage in the development of Euro-American government in what became Washington State involved the formation of the Provisional Government of Oregon Country in

1843. This second stage ended with the creation of Oregon Territory in 1848. American settlers and French Canadian settlers created the Provisional Government. British citizens did not participate in the creation of the Provisional Government. Competition between Britain and American citizens over the North Oregon portion of Oregon Country continued for a short while after the formation of the Provisional Government, but soon disappeared. Counties were created as the dominant form of local government during this stage.

An earlier attempt to form a Provisional Government failed in 1841. A funeral for Ewing Young was held on February 7, 1841, in Champoeg, which was the primary Willamette Valley settlement on French Prairie in what became Oregon State.[d] Ewing Young was an American settler who brought 600 head of cattle to Oregon Country but died with no known heirs.[15] British law administered by the Hudson Bay Company would have controlled the probate of Young's estate if he had been a British citizen. However, no legal system existed to probate or handle the estate of an American citizen. It was proposed at the Ewing Young funeral that a Provisional Government be formed in the portion of Oregon Country south of the Columbia River, with settlers north of the Columbia River being able to apply for "admission."[16] Proceedings to create the Provisional Government were adjourned until August 1, 1841. Efforts to create a Provisional Government at the second meeting were abandoned after being discouraged by Charles Wilkes, a United States Naval Officer who was leading what was called the United States Exploring Expedition.[17] This world-wide expedition included an exploration of the Oregon Country.

A second attempt by American settlers to form a Provisional Government succeeded in 1843.[18] The first of several so-called "Wolf Meetings" to protect livestock from wild animals was held at the Oregon Institute in Champoeg on February 2, 1843. A six-member committee was appointed to propose action. The second Wolf Meeting was held in March at the W. H. Gray residence on French Prairie in the Willamette Valley. Gray introduced resolutions to appoint a committee that would take measures to

[d] Champoeg is located on the Willamette River about 20 miles south of modern-day Portland. The early settlement is now part of an Oregon State park.

provide for civil and military protection. A third general public meeting was held on May 2, 1843, on an open field in Champoeg to perfect the organization of a Provisional Government and elect officers. Approval of a proposition creating a Provisional Government narrowly prevailed, by a 52 to 50 vote. Most Americans and most French-speaking settlers supported creation of the Provisional Government. Most of the British settlers opposed creation of the Provisional Government.[e] After this vote, "the opponents rode away, and the organization proceeded."[19] These British opponents did not participate in the next steps to form the Provisional Government of Oregon Country.

A legislative committee of nine persons was elected at this meeting and directed to develop proposed legislation. The meeting was adjourned until July 5, 1843, again to be held at an open field in Champoeg. Three opposition meetings were held. One opposition meeting was held at the Hudson Bay Company's Fort Vancouver, located north of the Columbia River. A second opposition meeting was held south of the Columbia River at the Falls, which eventually became Oregon City. A third opposition meeting was held at the Catholic Church on French Prairie. The Organic Laws of the Provisional Government of Oregon were approved by "almost the entire male population of Oregon" who assembled at the July 5th meeting.[20] A distinctly American flavor was evidenced as these laws were adopted "until such time as the United States of America extend their jurisdiction over us".[21]

The Organic Laws of Oregon Country established a Provisional Government of Oregon, divided Oregon Country into four districts, and adopted by reference all of the laws enacted by the first Legislative Assembly of Iowa Territory in 1839 as the laws of Oregon Country.[22] The four districts were the Twality District, Yamhill District, Clackamas District, and Champoeg District. What became western Washington State was included in the northern

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e Considerable support for forming a Provisional Government must have been provided by French Canadians, as about half of the males attending that meeting were noted as being "French speakers" and the other half were noted as being "English speakers" which of course would have included both American settlers and English employees of the Hudson Bay Company. (Clarke at page 665.) Etienne Lucier was one of the French Canadians who attended the meeting. A descendent of his, Phil Harju, relates that family stories credit Lucier with casting the deciding vote to create the Provisional Government. Lucier had signed a petition in 1838 requesting Congress to provide protection in Old Oregon. (Discussion with Phil Harju.)

portion of Twality District. What became eastern Washington was included in the northern portion of Clackamas District.

The new Provisional Government consisted of a three-member executive committee, a treasurer, a nine-member legislative committee, a recorder, and various judges, including two justices of the peace.[23] Executive committee members, the treasurer, and the recorder were elected on an at-large basis by the voters of Oregon Country. Members of the legislative committee were allocated to each of the four districts, in ratio with the population of each district, and were elected by voters of each district. The Organic Laws provided that the purpose of these districts was to elect members of the legislative committee and any other offices that may be created. The new officials of Oregon Country were elected at the May 2, 1843, meeting at Champoeg in anticipation of the Organic Laws being approved at the July 5th meeting.

A resolution contained in Section II of the Organic Laws adopted by reference the laws enacted by the first Legislative Assembly of Iowa Territory.[24] At least in theory, adoption of these Iowa Territorial laws established a system of local government in Oregon Country consisting of counties and school districts.[25]

However, the Iowa system of local government may have been more theoretical than real for a number of reasons, especially in the northern portion of Oregon Country in what became Washington State.

- First, for a brief period, a portion of the central government for all of Oregon Country also constituted the system of local government in Oregon Country. The Organic Laws of Oregon Country created a single Supreme Court for all of Oregon Country but granted this court both traditional judicial duties and the authorities of a board of county commissioners under Iowa Territorial laws.[26] Normally, a system of local government consists of a number of geographically smaller local governments created within a larger territory or state. These smaller local governments are subordinate to the government of the larger territory or state.

- Second, it is not clear how many of the hundreds of pages of referenced Iowa Territorial laws were implemented in the early years of the Provisional Government of Oregon Country.
- Third, presumably more attention was paid to these laws in the populated Willamette Valley area of Oregon Country, in what became Oregon State, than in the more remote portions of North Oregon Country in what became Washington State. Few whites resided north of the Columbia River in 1843 and most of those who resided there were British subjects who did not participate in this Provisional Government.[27] Evidence of the inattention to the area north of the Columbia River, in what became Washington State, is found by the temporary removal of this area from the jurisdiction of the Provisional Government in June of 1844 and then the return of this area to the jurisdiction of the Provisional Government six months later in December of 1844.[28] The Hudson Bay Company gave its assent to this system of government in 1845 and a number of Hudson Bay men were elected to the newly created Provisional Government House of Representatives.[29]
- Fourth, reference to the Iowa Territorial laws became more oblique in 1844 when amendments to the Organic Laws provided that:

  > "All the statute laws of Iowa Territory, passed at the first session of the Legislative Assembly of said Territory, ... and <u>not incompatable</u> [sic.] <u>with the condition and circumstances</u> of this Country shall be the law of this government unless otherwise modified ...."[30]

  (Emphasis added.) This is a very flexible exception, allowing the white settlers of Oregon Country to use any Iowa Territory law, on an *ad hoc* basis, without formally adopting or recognizing these provisions.

Nevertheless, counties gradually emerged as the basic unit of local

government in Oregon Country. What had originally been called "districts" became counties. Legislation used the terms "district" and "county" interchangeably until 1846, perhaps reflecting this gradual emergence of districts into county government.[f] County government became more obvious as additional county offices were established, including a three-member legislative body, and counties were granted specific powers.

The development of a governing body for each county or district followed a complicated and torturous path. Year by year, a single judge or three judges with different titles were granted the powers of a board of county commissioners for each separate county. This gradual emergence of a separate governing body for each county developed as follows:

- The original 1843 version of the Organic Laws provided for a Supreme Court, consisting of a supreme judge and two justices of the peace. These judges were elected by the legislative committee and possessed both exclusive judicial powers for all of Oregon Territory and the powers of a board of county commissioners for all of Oregon Country.[31]
- From 1844 until 1845, a single Circuit Court judge for the entire Oregon Country was elected by the legislative committee to serve as both a circuit court and a board of county commissioners for each of the districts or counties. The circuit court judge held separate sessions in each district or county.[32]
- Legislation adopted in 1845 provided that the legislative committee would elect a District Court composed of three judges to possess both judicial

f For example, legislation was enacted in late June of 1844 calling for the use of the term "county" rather than "district". This is found in Section 2, of "An Act to Create and additional County of Clatsop", at Page 32 of the handwritten journal entitled "Oregon Laws". However, legislation creating Vancouver District, entitled "An Act to Organize the District of Vancouver" approved on August 18, 1845, and found at Page 24 of "Oregon Laws 1843-1849" that was published in 1853, used the term "district" in lieu of "county". Legislation entitled "An Act in relation to Names of Counties", approved on December 22, 1845, and found at Page 35 of "Laws of a General and Local Nature Passed by the Legislative Committee and Legislative Assembly" that was published on January 26, 1853, directs that the term "county" should be inserted where the word "district" occurs in all laws. After that legislation, it was most common for the term "county" to be used rather than the term "district".

> powers and the powers of a board of county commissioners. However, commencing in 1846, the voters of each district or county would elect the three district judges.[33]

To confuse the situation, the president of the District Court was also the probate court judge for the county and each district court judge was also a justice of the peace for the county or district.[34] Several laws were also approved using the term "county court", which presumably referred to the district court that also acted as the board of county commissioners.

A law was approved in 1844 providing for "field officers" of the militia to be elected by voters of each county or district "in the same manner as they elect civil officers."[35]

Legislation was approved in 1845 establishing the office of sheriff in each district, with the first sheriffs being elected by the newly established House of Representatives. Commencing in 1846, the voters of each county or district would elect a sheriff.[36] Separate laws were also approved in 1845 establishing the offices of treasurer and coroner for each county or district who would be elected, commencing in 1846.[37]

Histories of Oregon Country include very few references to the election of county officers. These few references name different county officers. An early history of Oregon Country indicates that the elections for county offices and Provisional Government offices occurred in 1846 and 1847, but only mentions elections for Provisional Government offices occurring in 1844 and 1845.[38] Another history states that in 1843 a single sheriff was elected, presumably on an at-large basis throughout all of Oregon Country, as well as four magistrates, four constables, and three militia captains, with the possibility that these officers were elected by voters from each of the districts or counties.[39] Another historian indicates that James O'Neal was elected as a justice of the peace from Yamhill district in 1843.[40]

Counties were gradually granted specific powers in addition to all the powers possessed by counties under legislation enacted by the first session of the Legislative Assembly of Iowa Territory.

Legislation was approved by the legislative committee in 1844 requiring all male inhabitants of a county who were eligible to vote, over age 16 and under age 50, to work on pubic roads and providing for the circuit court to appoint overseers to manage the road work.[41] The system of providing road work by forced labor was altered in 1847 when each county district court was authorized to create convenient highway (road) districts with adult males being required to work on the roads located in the district in which they lived.[42]

The Organic Laws of Oregon were revised and approved by another gathering of Euro-American settlers in 1845. Significant changes were made to system of government in Oregon Country. These changes included: (1) Electing a single person as the Governor, replacing the three-member executive committee; (2) renaming the legislative committee as the House of Representatives and expanding the number of members of this body; and (3) recognizing the rights of both British and American citizens.[43] These changes, along with creating the Vancouver District (county) out of all the territory north of the Columbia River, were part of a successful effort to obtain Hudson Bay Company support for the Provisional Government.[44] Lewis County was created in December of 1845 by removing territory from Vancouver County.[45]

Oregon Territorial Period

The third stage in the development of Euro-American government in what eventually became Washington State began with the creation of Oregon Territory by the United States Congress on August 13, 1848, nearly two years after the Treaty of 1846 established the boundary between British and American territory at the 49th parallel.[46] This third stage ended on March 2, 1853 when Washington Territory was created out of territory that was removed from Oregon Territory.

Oregon Territory included all of the prior Oregon Country located in the United States and included the future states of Oregon, Washington, and Idaho, along with the portions of the future states of Montana and Wyoming, west of the Continental Divide. All the laws of the Provisional Government were effective in Oregon

Territory unless they were incompatible with the United States Constitution or the law creating Oregon Territory.[47]

Counties were the backbone of Oregon Territorial Government, much as they would be in the soon to be created Washington Territory. Oregon Territorial Laws created a uniform system of county government throughout the Territory, and retained an prior array of county officials elected in each county.[48]

The three-member court for each county, with both inferior judicial powers and the powers of a board of county commissioners, was referred to as either a district court or a probate court during the Oregon Territorial period. Individual justices also functioned as justices of the peace. A number of laws were approved during the Oregon Territorial period granting probate courts various administrative and legislative functions typically exercised by a board of county commissioners. Legislation was approved in 1849 granting these courts authority to impose property taxes and poll taxes, provide for the relief and support of the poor, provide for the construction of bridges, and license ferries.[49]

Legislation was also enacted in 1849, creating a system of common schools for Oregon Territory that included creation of school districts and county voters electing a county school commissioner.[50] Among other responsibilities, the county school commissioner was responsible for creating school districts. However the office of county school commissioner was abolished in 1852 and the responsibilities were transferred to the board of county commissioners, the successors to the county probate judges.[51]

The old system of judges exercising both inferior judicial powers and the powers of a board of county commissioners ended in 1851 when a three-member board of county commissioners was established in each county.[52] This legislation was the first comprehensive legislation approved in Oregon Territory that defined many of the powers possessed by the three-member county governing body. These powers included the authority to erect and maintain county buildings, build roads, provide poor-houses, and provide for the support of “idiots and lunatics.” All the powers of probate courts were transferred to the board of county

commissioners. Probate court judges remained in office for the remainder of their terms as county commissioners.

Boards of county commissioners were authorized to establish voting precincts and to determine the number of justices of the peace and constables to be elected in each precinct.[53]

Each new county was created as an administrative arm of the Territorial government by special legislative act of the Legislative Assembly of Oregon Territory. The Legislative Assembly of Oregon Territory created Cowlitz, Pacific, Thurston, Pierce, King, and Jefferson Counties in what would become Washington Territory and renamed what remained of Vancouver County as Clarke County.[54]

Additional county elected offices were created. An assessor and an auditor were to be elected by the voters of each county.[55] A wreck-master was to be elected in each county bordering a body of salt water.[56] Wreck-masters handled ship wrecks.

The Legislative Assembly of Oregon Territory passed special legislation incorporating the cities of Portland and Oregon City, both of which were located in present day Oregon State.[57]

The system of local government in Oregon Territory immediately before the creation of Washington Territory consisted of:

- Counties with extensive powers, including the authority to create both: (1) Road districts that were under direct county control; and (2) school districts that were somewhat under county control.
- Two newly incorporated cities located in what would become the State of Oregon.

Washington Territorial Period

The fourth and final stage in the development of Euro-American government in what became Washington State began on March 2, 1853 with the creation of Washington Territory out of a portion of Oregon Territory. This final stage ended on November 11, 1889 when President Benjamin Harrison proclaimed the admission of

Washington State as a state of the United States.

The creation of a new territory out of a portion of Northern Oregon was sought by residents of both Southern Oregon and Northern Oregon.[58] Settlers residing in what was called South Oregon favored Oregon becoming a state. It was felt that removing the sparsely populated area north of the Columbia River from Oregon Territory would enhance their quest for statehood. Settlers residing north of the Columbia River wanted their own territory and felt that they had suffered indignities at the hands of the dominant populated areas of Southern Oregon. It was a long and hard trek from the new settlements on Puget Sound to Oregon City, the capital of Oregon Territory. The few members of the Legislative Assembly who resided north of the Columbia River frequently failed to attend legislative sessions.[59]

White settlers in Northern Oregon met on several occasions to promote the formation of a new Territory of Columbia that was proposed to occupy the area north and west of the Columbia River.[60] A convention of citizens was held at Cowlitz Landing on August 29, 1851, and adopted a memorial to Congress requesting the creation of a new territory. Daniel Bigelow urged the creation of a new territory in a speech at Olympia on July 4, 1852. A second convention of citizens met at Monticello on November 25, 1852, and adopted another memorial to Congress requesting the creation of a new territory. The Legislative Assembly of Oregon Territory adopted a resolution to Congress on November 4, 1852 supporting the creation of a new territory.

Congress acted quickly and enacted the Organic Act, creating Washington Territory on March 2, 1853.[61] Washington Territory initially included all of Oregon Territory lying north of a line extending due west from the Continental Divide along the 46th Parallel to the Columbia River, and then continuing westward up the middle of the Columbia River to the mouth of the Columbia on the Pacific Ocean. Congress created the State of Oregon in 1859, by removing the eastern portions of what had remained in Oregon Territory from Oregon and adding this area to Washington Territory. As a result, Washington Territory was expanded to include all of what eventually became the States of Washington and Idaho, and the portions of what became the States of Montana and Wyoming

lying west of the Continental Divide. Congress then created Idaho Territory on March 13, 1863, by removing all the territory out of Washington Territory not located in the present day Washington State.[62]

The Organic Act creating Washington Territory contained no details about county government or any other form of local government. However, several provisions were included that clearly assumed the existence of county government in the new Territory.

- First, the Legislative Assembly of Washington Territory was mandated to provide for county officers.
- Second, several references were made to "counties and districts" from which the initial members of the Legislative Assembly of Washington Territory would be elected.
- Third, all justices of the peace, constables, sheriffs, and other administrative officers in office when the new Territory was created would remain in office and continue exercising their authorities until altered by the new Legislative Assembly of Washington Territory.
- Fourth, all Oregon Territorial laws that were not inconsistent with the Organic Act remained in effect until amended or repealed by the new Legislative Assembly of Washington Territory. This, in effect, provided that county government would remain as the dominant form of local government until altered by the Legislative Assembly of Washington Territory.

The first Legislative Assembly of Washington Territory enacted a number of detailed laws providing for county government. These laws provided for a diffusion of power among an array of county officials, with authorities that were very similar to what had existed under Oregon Territorial laws. This array of officials is quite similar to what currently is provided for under current Washington State law. Voters of each county were to elect the following officials:

- Three county commissioners to serve as a board of

county commissioners;

- A county auditor;
- A county treasurer;
- A county assessor;
- A county sheriff;
- A county coroner; and
- A county superintendent of common schools.[63]

In addition, a wreck master was to be elected in each county bordering on saltwater to handle ship wrecks in the county.[64] Any county could establish the elective office of surveyor.[65] A justice of the peace and constable were to be elected in each voting precinct that was created by a board of county commissioners.[66]

The President appointed all three members of the Territorial Supreme Court, each one of whom was required to reside in a separate judicial district designated by the Legislative Assembly.[67] Each member of the Supreme Court was required to ride circuit in his judicial district as a district court trial judge. The three judges met during the month of December in Olympia and functioned as the Supreme Court.

A prosecuting attorney was to be elected by the voters of each of these three judicial districts.[68] This election scheme for prosecuting attorneys was altered several times before Washington became a State in 1889. Legislation enacted in 1878 increased the number of prosecuting attorneys from three to six, by adding additional prosecutors to be elected from various counties within the judicial district located in eastern Washington.[69] A single prosecuting attorney was to be elected from each of the two judicial districts located in the western Washington. In addition, a prosecuting attorney was to be elected from Walla Walla County, a prosecuting attorney was to be elected from Asotin County, a prosecuting attorney was to be elected jointly from Columbia, Garfield, and Whitman Counties, and a prosecuting attorney was to be elected jointly from Spokane, Stevens, and Lincoln Counties. The number of prosecuting attorneys was expanded from six to 11 in 1883, with a prosecuting attorney being elected by the voters of either a single

county or jointly by the voters of two, three, or six counties.[70] Finally, the number of prosecuting attorneys was expanded from 11 to 14 in 1885, with a prosecuting attorney elected by the voters of a single county, or jointly by the voters of two, three, or four counties.[71] The office of prosecuting attorney became a county office with the approval of the Washington State Constitution in 1889, with a prosecuting attorney being elected by the voters of each county.[72]

The three-member board of county commissioners possessed both legislative and administrative powers, including the authority to provide for county buildings, license various activities, and to fix and impose property taxes and poll taxes.[73] County commissioners were responsible for providing care to the indigent and erecting poor houses.[74] Roads were provided and maintained by the board of county commissioners who divided the county into road districts, required adult males to work on the roads in their district, and imposed taxes throughout the county to support roads.[75] County commissioners were responsible to license ferries and to authorize and regulate the construction of wharves.[76] The new elective office of county superintendent of common schools possessed greater control over school districts than that possessed by county government in Oregon Territory, and was authorized to divide the county into school districts, test and certify teachers, administer school laws, and distribute moneys on a per student basis from countywide property taxes.[77]

A number of cities were created by special acts of the Legislative Assembly of Washington Territory. This includes Steilacoom, which was incorporated in 1854, Vancouver, which was incorporated in 1857, Olympia, which was incorporated in 1859, Port Townsend, which was incorporated in 1860, and Seattle, which was incorporated in 1865.[g] [78] Olympia and Seattle were distinguished from the other cities by being incorporated as towns. General legislation was enacted in 1871, allowing voters of an area to incorporate a town rather than the Legislative Assembly enacting special legislation creating the town.[79] Any city that was created by special charter was allowed to abandon its charter and operate under general city laws in 1877.[80] As discussed in Chapter 7, both

g As discussed in Chapter 7, the Legislative Assembly dissolved the Town of Seattle in 1867 but re-incorporated the City of Seattle in 1869.

of these general incorporation laws were repealed in 1881.[81] General incorporation laws were enacted in 1887 for the incorporation of "towns and villages".[82]

As discussed in Chapter 20, the Legislative Assembly of Washington Territory also enacted laws providing for what would become diking districts and drainage districts.

Local government organizations in Washington Territorial immediately before statehood in 1889 resembled local government organizations that existed in Oregon Territory immediately before creation of Washington Territory in 1853. However, the Washington Territorial statutes provided much greater detail than the earlier Oregon Territorial statutes. These local governments in Washington included:

- Counties as the dominant local government with extensive powers;
- Cities and towns that operated as separate municipal corporations, but primarily were created and controlled by special legislation enacted by the Legislative Assembly; and
- Four types of special purpose districts. These special purpose districts included: (1) Road districts, subject to total county control; (2) school districts, subject to partial county control; (3) what would become diking districts, subject to partial county control; and (4) drainage districts, subject to partial county control.

Congress enacted the Enabling Act on February 22, 1889, providing steps for the admission of Washington as a state of the United States.[83] These steps for admission included: (1) The voters of Washington Territory electing delegates to a constitutional convention; (2) the delegates drafting a proposed state constitution; (3) voters of Washington Territory approving the constitution; (4) submitting the constitution to the president; and (5) the president issuing a proclamation announcing the results of the election where voters approved the constitution if he determined that the State Constitution provided for a republican form of government and met the requirements of the Enabling Act. President Benjamin Harrison

issued the proclamation admitting Washington State as a state of the United States on November 11, 1889.[84]

NOTES:

1. Meany, at Page 17-39; and Carey at Page 367.
2. Meany, at Pages 92-93.
3. Meany, at Pages 87-90, 103-104, and 132-137; and Carpenter, Cecilia Svinth, *Fort Nisqually -- A Documented History of Indian and British Interaction*, Tahoma Research Service, 1986, at pages 25 and 127-128.
4. Meany, at Pages 103-104.
5. Meany, at Pages 240-254.
6. Hussey, J.A. *Champoeg: Place of Transition*, Oregon Historical Society, 1967, at page 179.
7. Meany, at Pages 118-119.
8. Meany, at Page 137.
9. Meany, at Pages 45-48, 80-86, 95, & 223; and Carpenter at Page 25-26.
10. Meany, at Page 103.
11. Carey, at Pages 367-368.
12. Carpenter, at Pages 140 & 166-167.
13. Carpenter, at Page 158.
14. Meany, at Pages 168-175.
15. Meany, at Page 139; and Clarke, S.A., *Pioneer Days of Oregon History*, Volume II, J.K. Gill Company, 1905, at pages 650- 655.
16. Memorial to the 30th Congress prepared by J. Quinn Thornton and adopted by American settlers on May 25, 1848, entitled “The establishment of a Territorial Government in Oregon, and for appropriating for various purposes.” The memorial includes a brief history of early Oregon Country.
17. Meany, at Page 140.
18. Clarke, at Page 659-662; Carey at Pages 377-385; and Meany, at Pages 141-143.
19. Meany, at Page 143.
20. Clarke, at Page 666.
21. Gray, W.H., *A History of Oregon, 1792-1849,* Harris and Holman, 1870, which in Chapter XLV, at Pages 353-359 includes the text of the Organic Laws of the Provisional Government of Oregon, July 5, 1843; and Meany at Pages 144-146.
22. Resolutions after Section II, Article 18, of the Organic Laws of the Provisional Government of Oregon, July 5, 1843, found in Gray at Page 357.

23. Section II, Articles 5, 6, 7, 8, and 9 of the Organic Laws of the Provisional Government of Oregon Country, July 5, 1843, found in Gray at Pages 354-355.

24. The Organic Laws of Oregon County are reproduced in Grey, at Pages 353-359. The resolution is found at Page 357.

25. "The Statute Laws of the Territory of Iowa" (1839), especially the acts organizing boards of county commissioners at Pages 101-107, and providing for a system of education at Pages 180-183.

26. Gray, at Page 357. Section II, Art. 13 of the Organic Law of the Provisional Government of Oregon Country, July 5, 1843, found in Gray at Page 356, provides in part that "The Supreme Court shall perform the duties required of the [board of county] commissioners, and the recorder shall perform the duties of the clerk of the county commissioners, as prescribed in said laws of Iowa..."

27. Clarke at Pages 667 & 681; and Meany at Pages 134, 143 & 147-148.

28. A law entitled "An Act to Amend the several Acts Organizing Counties" was approved on June 27, 1844, and is found on Page 59 of the handwritten "Laws and Journals 1844" of the Provisional Government of Oregon Country, struck all parts of Oregon Country north of the Columbia River from all counties. An entitled "An Act Explanatory of an Act Entitled an Act to amend the several Acts Organizing Counties" was approved on December 24, 1844, and is found on Page 114 of the handwritten "Laws and Journals 1844" of the Provisional Government of Oregon Country, revised county boundaries northward to the northern boundary of Oregon Country at 54° 40' North Latitude.

29. Clarke, at Page 676.

30. Article 3, Section 1, of "An Act Regulating the Executive Power, the Judiciary and for Other Purposes" approved on June 27, 1844, and is found at Pages 60-65 of the handwritten "Laws and Journals 1844" of the Provisional Government of Oregon Country.

31. Gray, at Page 356. Section II, Article 13 of the Organic Law of the Provisional Government of Oregon Country, July 5, 1843, found in Gray, at Page 356, provides in part that "The Supreme Court shall perform the duties required of the [board of county] commissioners, and the recorder shall perform the duties of the clerk of the county commissioners, as prescribed in said laws of Iowa..."

32. Legislation entitled "An Act Regulating the Executive Power, the Judiciary, and Other Purposes," enacted on June 27, 1844, and found on Pages 60-65 of the handwritten "Laws and Journals 1844" of the Provisional Government of Oregon County, provides in Article 2, Section 3 that the single circuit court judge for all of Oregon Country would have: (a) "Original jurisdiction" in all criminal cases; (b) "original jurisdiction" in cases in law or in equity where the amount is $150 or more; (c) appellate jurisdiction from cases before a justice of the peace; and (d) power over "all county business."

33. Legislation entitled “An Act Establishing District Courts” approved on August 19, 1845, and found on Pages 53-54 of “Oregon Acts and Laws Passed by the House of Representatives At a Meeting Held in Oregon City, August, 1845," and printed in 1921 by N. A. Phemister Co.

34. The designation of the president of the district court as the probate judge was provided in “An Act Establishing Probate Courts in the Territory [sic.] of Oregon” without a date of approval but probably approved on August 19, 1845, and found on Pages 50-51of “Oregon Acts and Laws Passed by the House of Representatives At a Meeting Held in Oregon City, August, 1845," and printed in 1921 by N. A. Phemister Co. The designation of each district court judge as a justice of the peace was provided in “An Act to Amend ‘An Act Organizing County Courts” approved on December 17, 1846, and found on Pages 7-8 of “Laws of a General and Local Nature Passed by Legislative Committee,” published on January 26, 1853.

35. Legislation entitled “An Act on Military Affairs in Oregon,” approved on June 26, 1844, and found on Pages 49-59 of the handwritten “Laws and Journals 1844" of the Provisional Government of Oregon County.

36. Legislation entitled “An Act Providing for the Election and Defining the Duties of Sheriffs” approved on August 18, 1845, and found on Page 23 of “Oregon Acts and Laws Passed by the House of Representatives At a Meeting Held in Oregon City, August, 1845," and printed in 1921 by N. A. Phemister Co.

37. Legislation entitled “An Act to Provide for the Election of a District Treasurer in each District,” approved on December 12, 1845, and found on Page 29 of “Laws of General and Local Nature Passed by the Legislative Committee,” published in 1853. Legislation entitled “An Act to Establish the Office of Coroner,” approved December 20, 1845, and found on Page 23 of “Laws of General and Local Nature Passed by the Legislative Committee,” published in 1853.

38. Lang, Herbert O., *History of the Willamette Valley*, G. H. Himes, book and job printer, 1885, at pages 281, 285, 300, and 303.

39. Clarke, at Page 662.

40. Carey, at Page 382.

41. Legislation entitled “An Act on Roads and Highways” approved on June 22, 1844, and found on Pages 22-30 of the handwritten “Laws and Journals 1844" of the Provisional Government of Oregon County.

42. Legislation entitled “An act to authorize the Judges of the several County Courts in Oregon Territory to divide their respective counties into Road Districts and appoint Supervisors,” approved on December 28, 1847, and found on Pages 17-22 of “Laws of a General and Local Nature Passed by the Legislative Committee and Legislative Assembly,” published January 26, 1853.

43. Carey, at Pages 396-402.

44. Carey, at Pages 393-395. A law entitled “An act to organize the District of

Vancouver" was approved on August 18, 1845, and is found at Page 22, Oregon Acts and Laws Passed by the House of Representatives, 1843-1849" published in 1853, created Vancouver District constituting all of Oregon Country north of the middle of the Columbia River.

45. Legislation entitled "To create and organize Lewis County," approved on December 21, 1845, and found on Pages 43-44 of "Laws of General and Local Nature Passed by the Legislative Committee," published in 1853.

46. Meany, at Page 149; and Clarke, at Page 679.

47. Section 14, of Act of Congress Organizing Oregon Territory, approved August 14, 1848, found at Pages 37-47, Statutes of A General Nature Passed by the Legislative Assembly of the Territory of Oregon: at the Second Session.

48. "Acts of the Legislative Assembly of Oregon at sessions beginning in July, 1849 and May, 1850," at Pages 11, 13, 76, and 79.

49. Legislation entitled "An Act, to provide for assessing and collecting County and Territorial Revenue," passed on September 27, 1849, and found on Pages 225-237 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850," authorized probate courts to impose taxes. Legislation entitled "An Act, to provide for the relief of the Poor", passed September 27, 1849, and found on Pages 186-187 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850," authorized probate courts responsibility to care for the poor. Legislation entitled "An Act, to provide for Bridges," passed on September 26, 1849, and found on Pages 63-65 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850," authorized probate courts to provide bridges. Legislation entitled "An Act, regulating ferries," passed September 27, 1849, and found on Pages 153-156 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850," authorized probate courts to license ferries.

50. Legislation entitled "An Act, establishing a system of Common Schools", passed on September 5, 1849, and found on Pages 66-75 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850."

51. Legislation entitled "An Act, to amend an act entitled 'An act establishing a System of Common Schools'" passed on January 17, 1852, and found on Pages 64-65 of "General Laws passed by the Legislative Assembly of the Territory of Oregon at the Third Regular Session, Begun ... December 1, 1851."

52. Legislation entitled "An Act to establish a Board of County Commissioners" passed on January 20, 1851, and found on Pages 76-79 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of

Oregon at the Second Session Begun ... December 2, 1850."

53. Legislation entitled “An Act, to amend an Act entitled ‘An Act regulating the election, powers, and duties of Justices of the Peace” passed on January 25, 1851, and found on Page 164 of “Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850."
54. Meany, at Page 149.
55. Legislation entitled “An Act, to provide for assessing and collecting County and Territorial Revenue,” passed on September 27, 1849, and found on Pages 225-237 of “Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850," created the office of county assessor in Section 3. Legislation entitled “An Act, to create and establish the office of County Auditor,” passed on January 31, 1853, and found on Pages 53-55 of “General Laws Passed by the Legislative Assembly of the Territory of Oregon at the Fourth Regular Session Begun ... December 6, 1852," created the office of county auditor.
56. Legislation entitled “An Act, to create the office of Wreck-Master and define his duties,” passed on January 29, 1853, and found on Pages 34-38 of “General Laws Passed by the Legislative Assembly of the Territory of Oregon at the Fourth Regular Session Begun ... December 6, 1852."
57. Carey, at Page 512.
58. Ficken, Robert E., *Washington Territory*, Washington State University Press, 2002, at Pages 15 - 19.
59. Meany, at Page 151.
60. Carey at Pages 518-519.
61. 10 U.S. Statutes at Large, Chapter 90, Page 172.
62. Meany, at Page 158; and Ficken, at Page 69.
63. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 420, 424, 426, 428, 433, 435, & 320.
64. Statutes of the Territory of Washington, 1854, 1st Session, at Page 439.
65. Statutes of the Territory of Washington, 1854, 2nd Session, at Pages 25.
66. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 222 & 225.
67. Section 9, of the Organic Act Creating Washington Territory, Approved March 2, 1853, 10 U.S. Statutes at Large, c 90 p 172; and Statutes of the Territory of Washington, 1854, 1st Session, at Page 448.
68. Statutes of the Territory of Washington, 1854, 1st Session, at Page 416.
69. Statutes of the Territory of Washington, 1879, 7th Biennial Session, at Pages 92-97.

70. Statutes of the Territory of Washington, 1883, 9th Biennial Session, at Pages 72-77.
71. Statutes of the Territory of Washington, 1885, 10th Biennial Session, at Pages 59-64.
72. Article XI, Section 5, Washington State Constitution.
73. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 419-423 and 330-338.
74. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 395-7.
75. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 340-352 and 358-361.
76. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 353-357.
77. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 319-328.
78. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 455-458; Statutes of the Territory of Washington, 1857, 4th Session, at Pages 69-73; Statutes of the Territory of Washington, 1859, 6th Session, at Pages 31-34; Statutes of the Territory of Washington, 1860, 7th Session, at Pages 433-436; Statutes of the Territory of Washington, 1865, 12th Session, at Pages 75-79.
79. Statutes of the Territory of Washington, 1871, 3rd Biennial Session, at Pages 51-58. This law was repealed by Statutes of the Territory of Washington, 1881, 8th Biennial Session, at Page 22.
80. Statutes of the Territory of Washington, 1877, 6th Biennial Session, at Pages 173-198. This law was repealed by Statutes of the Territory of Washington, 1881, 8th Biennial Session, at Page 23.
81. The general town incorporation law was repealed at Statutes of the Territory of Washington, 1881, 8th Biennial Session, Page 22. The general city incorporation law was repealed at Statutes of the Territory of Washington, 1881, 8th Biennial Session, Page 23.
82. Statutes of the Territory of Washington, 1887-1888, 6th Biennial Session, Chapter CXXVI, Pages 221-232.
83. 25 U.S. Statutes at Large, c 180 p 676. This legislation provided steps for the admission of the States of Washington, North Dakota, South Dakota, and Montana into Union.
84. 26 Statutes at Large, Proclamations, p. 10, November 11, 1889.

PART I

COUNTIES

Introduction

Part I of this reference book on local government in Washington State discusses county government. Counties constitute a major category of local government.

Part I includes Chapters 2 through 5. Chapter 2 discusses the general characteristics of counties. Chapter 3 describes the unique dual natures of counties. Chapter 4 discusses county powers. Chapter 5 describes county finances.

Counties are the oldest form of local government in Washington, with origins during the Oregon Provisional Government. Counties are pervasive. Every portion of the State is included within a county. Counties have dual natures and are considered to be both political subdivisions of the State and separate municipal corporations.

Modern county government is confusing and not well understood. The confusion arises from this unique dual nature of counties and a related disconnection with some of their voters. County voters include all voters residing in the county, including voters residing in cities and voters residing in unincorporated areas outside of cities. These voters elect county officials and vote on county ballot propositions.

However, counties do not exercise their powers uniformly throughout their boundaries. Counties exercise some powers countywide, primarily when they function as political subdivisions or agents of the State. However, counties also exercise more visible general governmental powers primarily in unincorporated areas outside of cities. These more visible general governmental powers exercised by counties in unincorporated areas resemble some of

the general municipal powers exercised by cities within their boundaries and include regulating activities and providing governmental services and facilities. County taxing authority is also not exercised uniformly throughout county boundaries.

Counties are the second most powerful unit of local government in Washington State. Only cities have been granted more powers.

Counties receive finances from a variety of sources, including: (1) Different types of taxes; (2) different types of non-tax fees, including special assessments and more traditional fees, rates, and charges; (3) debt proceeds; (4) intergovernmental revenues; and (5) other sources. They are authorized to impose a variety of property taxes, sales and use taxes, and a number of minor taxes. Only cities are granted more broad taxing authority.

Thirty-nine counties now exist in Washington State. County populations vary widely. The most populous county is King County, with a projected population of 2,032,019 in 2015, while Garfield County is the least populous county with a projected population of 2,980 in 2015.[1] The geographic size of counties varies widely. San Juan County is the smallest county with 174.9 square miles, while Okanogan County is the largest county with 5,268.3 square miles.[2]

Counties, like all other local governments, are subject to audits by the State Auditor. [3]

NOTES:

1. Population figures taken from "Washington State County Population Projections for Growth Management," Office of Financial Management. http://www.ofm.wa.gov/pop/gma/countypop02.pdf.
2. Square mileage figures taken from the State of Washington 2001 Data Book, published by the Office of Financial Management, at pages 186-265.
3. Article III, Section 20; and RCW 43.09.020 & 43.09.260.

Chapter 2

General County Characteristics

Counties are the oldest and most unique local governments in Washington State.

This uniqueness arises from:

- Being pervasive throughout the entire State;
- Being the only units of local government formed by special action of the State Legislature;
- The broad array of constitutional provisions relating to county government; and
- Their unique dual natures.

Counties are the basic regional governments in Washington State.[a] The role of counties as regional governments arises from their fundamental nature as political subdivisions of first Oregon Territory, then Washington Territory, and now Washington State, carrying out many responsibilities for the Territory or State. This role gradually diminished as the territorial and state governments created their own agencies and began exercising their powers directly rather than through their political subdivisions. However, the role of counties as regional governments re-emerged during the later decades of the 20th century. Much of these new regional roles involve counties functioning as local governments rather than as agents of the State.[b]

a Regional government in Washington State is more fully discussed in Chapter 24.

b The expansion and contraction of the regional powers of counties is discussed in Chapter 4.

Pervasive

County government is pervasive throughout Washington State. Every portion of the State is included in one of the State's 39 counties. This pervasiveness highlights the unique nature of counties as the political subdivisions of the State, acting as agents of the State by providing many basic services and facilities for the State.

School districts are the only other pervasive form of local government in the State.[c]

Creating New Counties and Boundary Changes

Creating new counties involves removing territory from one or more existing counties, since every portion of the State is included in a county. The State Constitution includes some details about how new counties are created, along with very minimal details about how other county boundary changes are made, e.g., how two or more counties combine and how counties transfer territory.

A. Creating New Counties

A county is created by special legislation enacted by the State Legislature. The special legislation names the county, defines its boundaries, and provides for the initial officials of the new county. This process is unique. Article XI, Section 10 requires all other types of local government to be created by local actions following procedures contained in general enabling laws enacted by the Legislature.[d] Creating counties by special legislative acts highlights the unique nature of counties as political subdivisions or agents of the State.

Thirty nine counties presently exist in Washington State. This includes the counties that existed in Washington Territory

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c The pervasiveness of school districts flows from Article IX, Section 1 providing that it is the "paramount duty" of the State to provide for the education of children. Presumably, at least all inhabited areas of the State must be included in a school district so that all children could be educated by their local school district.

d Article XI, Section 10 provides in part that "Corporations for municipal purposes shall not be created by special laws...." This phrase applies to all local governmental entities other than counties. However, the remainder of the sentence and the rest of the section only apply to cities.

immediately prior to statehood and were recognized by Article XI, Section 1, as well as counties created after statehood. Appendix B lists all of the current counties in Washington and the dates they were created.

Appendix C contains population and square mileage figures for all 39 counties. Most counties in Washington State are relatively large geographically. San Juan County is the smallest county with 174.9 square miles, while Okanogan County is the largest county with 5,268.3 square miles.[1] King County is the most populous county with a population of 2,032,019 in 2015, while Garfield County is the least populous county with a population of 2,980 in 2015.[2]

Constitutional provisions providing for the creation of new counties are somewhat incomplete and in one part include a clear error. Since statehood, a new county is created if the following two actions occur:

- The Legislature enacts special legislation creating the new county; and
- A petition proposing creation of the new county has been signed by at least a majority of the registered voters residing in each portion of a parent county from which territory is removed to create the new county.

The petition requirement is found in Article XI, Section 3. The requirement that special legislation be enacted to create a new county arises by inference. Article II, Section 28(18) prohibits the Legislature from changing county boundaries by special legislative act, except for creating new counties. This implies that new counties are created by special legislative acts. An unvarying tradition exists in Washington that every new county has been created by special legislative act. These special actions to create new counties were taken by the: (1) Legislative committee and then House of Representatives of the Provisional Government of Oregon Country; (2) Legislative Assembly of Oregon Territory; (3) Legislative Assembly of Washington Territory; or (4) Washington State Legislature.[3]

The Washington State Supreme Court recently held in *Cedar County Committee v. Munro* that counties are created by voluntary special acts of the Legislature.[4] Existence of a petition with sufficient valid signatures does not obligate the Legislature to enact special legislation creating the new county.

The two requirements to create a new county may occur in any order. Five new counties have been created since statehood. Special legislation creating Chelan County in 1899 and Benton County in 1905 provided for a brief period after the special legislation was enacted during which the signatures on the petition could be collected to create the new counties.[5] No mention of the petition was included in the special legislation creating Ferry County in 1899, Grant County in 1909, or Pend Oreille County in 1911.[6] Presumably petitions existed with sufficient valid signatures, or with signatures that the Legislature presumed to be sufficient, before special legislation was enacted creating each of these three counties.

Article XI, Section 3 includes minimum population requirements for creating a new county. This provision also requires a new county to pay the parent county or counties, from which territory was removed to create the new county, for its just proportion of each parent county's debts and liabilities. The Legislature may enact general legislation providing additional requirements for creating a new county that applies uniformly throughout the entire State. Most of the current statutes providing for the creation of new counties are old and were enacted by the Legislative Assembly of Washington Territory. A few relatively minor changes were enacted by the Washington State Legislature. The Legislature considered, but failed to enact, general legislation during the late 1990s providing additional requirements for creating new counties. This legislation was associated with unsuccessful efforts to create new counties in eastern King County and eastern Snohomish County.

A new county must have a population of at least 2,000. The remaining portion of any parent county, from which territory was removed to create the new county, must have a population of at least 4,000. These population requirements have not changed since statehood.

The constitutional requirement for payments to be made by the new county to the parent county or counties, from which territory was taken to create the new county, is very limited. First, the required payments are only to be made by the new county to the parent county or counties. The parent county or counties are under no obligation to make payments to the new county. Second, the payments are limited to the new county paying its "just portion of the debts and liabilities" of the parent county or counties. Payments for other purposes are not specified.

The Constitution provides some details about an accounting to be made for this obligation for the new county to make payments to the parent county or counties. Unfortunately the language providing for this accounting is a *non sequitur*. Article XI, Section 3 provides that under this accounting:

> "... neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county...."

(Emphasis added.) Literally, this language provides that neither the parent county or counties, nor the new county, is liable for any debts associated with the purchase or construction of property that is retained by parent county. This is nonsense, especially since the provision also provides that the creation of a new county "shall not be construed to affect the rights of creditors". Presumably, the accounting language was meant to provide that the debt and liabilities associated with the purchase or construction of property is the responsibility of the county in which the property is located, after the new county is created and that all other debts are apportioned between the counties in a just manner. Again, the Constitution is silent about a possible distribution of the parent county's assets to the new county.

Old statutes codified in Chapter 36.09 RCW include procedural details for the settlement between the new county and parent county or counties. These statutes expand what is included in the settlement beyond what is required by Article XI, Section 3. However, the State Supreme Court has held that these statutes are

not mandatory and need only be followed if the special legislation creating the new county expressly references these statutes.[7]

Chapter 36.09 RCW, if referenced in the special legislation creating the new county, provides a procedure to determine the "amount which the new county shall pay" to the parent county. The auditor of the new county, and the auditor of each parent county from which territory is removed to create the new county, meet and determine this amount. Presumably, a separate meeting of a parent county auditor and the new county auditor occurs for each county that has had territory removed to create the new county. Again, this is a one way requirement. Seemingly no provision is made for the parent county to pay anything to the new county. A disinterested third party is selected to make a binding decision on the distribution if the two auditors fail to agree on the distribution. In such a case, each auditor names a disinterested person and the third party is selected by lot. Debt arising from the erection of buildings or construction of roads or bridges is apportioned to the county in which the property is located after the new county is created, implying that ownership of this property vests in the county in which the property is located. Taxes that were levied by the parent county or counties before the new county was created, but which have not been collected, are distributed among the counties in proportion to the assessed value of property in the counties after the new county has been created. All other debts (but not property or assets) are to be distributed in a "just and equitable" manner among the counties, taking into consideration the populations of the counties and the "relative advantages" derived by the new county from once being part of the parent county.

The Supreme Court has not consistently reviewed special legislative acts creating new counties. A very loose review occurred in 1899 when the Court refused to second guess the special act creating Ferry County by refusing to inquire into whether the minimum constitutional population requirements were met.[8] The special legislation creating Ferry County did not mention the presumed population of the new county or include a finding that the minimum population requirement was met. No legislative records exist showing that the Legislature reviewed and found the requisite population to exist. Notwithstanding this lack of a record, the Court recognized a legal presumption that members of the Legislature

would only create a new county if legislators were satisfied that the requisite populations existed. This legal presumption arose from the requirement that legislators took oaths to uphold the Constitution. A very strict review occurred concerning an attempt by the Legislature to create Grays Harbor County out of the western portion of what was then Chehalis County in 1907. Legislation creating Grays Harbor County provided that the voter petition to create the new county would be filed with the Governor who would transmit the petition to the superior court judge of the "next nearest" judicial district to the judicial district in which the parent Chehalis County was located. That judge would determine whether the petition contained sufficient valid signatures. The Supreme Court voided the legislation creating Grays Harbor County since creating a new county out of the territory of another county "is an important political event, and of special interest to all of the inhabitants of that territory" and the legislation creating Grays Harbor County was "indefinite and uncertain" as to exactly which superior court judge was to determine the validity of the signatures on the petition.[9] Ironically, the Legislature renamed Chehalis County as Grays Harbor County in 1915.[10]

B. Other County Boundary Changes

Article XI, Section 3 also includes some minimal details about other county boundary changes that may be made.

This provision includes details about creating a new county and making other county boundary changes. Some of the details only apply to creating new counties. Others details apply to both creating new counties and making other boundary changes. The requirement that a petition favoring the removal of territory from a county be signed by at least a majority of the registered voters residing in the territory applies to the creation of a new county as well as to one county annexing territory from another county. This requirement probably applies to the merging or consolidating of two or more counties. The requirement for an apportioning of the "debts and liabilities" of the parent county applies to both creating new counties and counties annexing territory from other counties. However, the optional statutory provisions in Chapter 36.09 for payments to be made only apply to the creation of a new county and do not apply to the annexation of territory from one county to another.

Article II, Section 28(18) prohibits the Legislature from enacting special legislation "changing county lines" or boundaries, except for the creation of new counties. It follows that one county annexing or acquiring territory from another county would be accomplished by following procedures specified in general legislation. Two general statutes, with very limited applications, allow a county to annex or acquire territory from another county. In addition, at least four other laws were enacted changing some county boundaries since statehood.

Chapter 36.05 RCW allows lawsuits to be brought to establish the boundaries between counties if these boundaries:

> "are in dispute or have been lost by time, accident or any other cause, or have become obscure or uncertain".

Many county boundaries are described in terms of the middle of the channel of a river. Locating such a boundary would be a prime candidate for such a lawsuit, since rivers frequently meander.

Chapter 36.08 RCW allows a transfer of territory between counties in very detailed and narrowly defined circumstances. These provisions were enacted in 1891 and never have been altered.[e] A portion of the debt of the county from which the territory is removed is transferred to the county receiving the territory. These provisions are very similar to the provisions of Chapter 36.09 RCW for apportioning debt when a new county is created, but do not include a requirement that a portion of the imposed but uncollected property taxes be transferred. It appears that the boundary between King County and Pierce County was changed using this process, with the authorizing election being held in 1901.

The Legislature enacted legislation in 1891 stating that the

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e A transfer under these provisions may only be made if: (1) A portion of the boundary between two counties is a "harbor, inlet, bay, or mouth of a river"; (2) a city is located on the shore of such a body of water; (3) it is desired that the "full extent" of this shoreline be included in one of the counties, together with a strip of adjacent and contiguous territory that does not exceed three miles in width and six miles in length and that the courthouse in the county seat of the county to which the territory is proposed to be annexed is not more than 10 miles from this strip of land; (4) a petition proposing the transfer has been signed by at least a majority of the voters residing in the area proposed to be transferred; (5) the remainder of the county from which the territory will be removed has a population of at least 4,000; and (6) voters of the territory that is proposed to be transferred approve a ballot proposition authorizing the transfer.

boundaries of Island County included four islands and

> "shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined in statute."[11]

Presumably this legislation was enacted to correct an error in the boundaries that had some portion of the channel between Island County and other counties not included in any county. This appears to be special legislation and may run afoul of Article II, Section 28(18) which prohibits the Legislature enacting special legislation changing county boundaries other than when a new county is created. Somehow the codified statute (RCW 36.04.150) defining Island County's boundaries was altered to include the exact language of this 1891 legislation even though the last territorial statute defining Island County's boundaries was not directly amended.

The Legislature enacted legislation in 1925 altering the boundaries of Pacific, Grays Harbor, Jefferson, and Clallam Counties by extending their boundaries to intersect with the State's western boundary in the Pacific Ocean.[f] [12] This legislation may also run afoul of the prohibition on the Legislature enacting special legislation changing county boundaries other than when a new county is created. However, one could argue that apart from the title of the legislation specifically naming the four counties, this was "general" legislation designed to move the boundaries of all counties bordering on the Pacific Ocean westward to the State's western boundary. Somehow the codified statutes (RCW 36.04.050, 36.04.140, 36.04.160, and 36.04.250) defining the boundaries of these four counties were altered to reflect this expansion even though the last territorial statutes defining these boundaries were not directly amended.

The Legislature enacted legislation in 2006 clarifying or redefining Island Counties boundaries by adding additional islands that constitute the county.[13] Strawberry, Baby, Minor, and Kalamut

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f Several months before this legislation was enacted at an extraordinary session, the Supreme Court had held that the State Constitution set the exterior western boundary of the State three miles off shore. This holding was made even though the statutes defining these county's boundaries described the western extent of their boundaries at the visible shoreline on the Pacific Ocean. (*State ex rel. Luketa v. Pollock*, 136 Wash. 25, 31 (1925).) The issue in this case was whether state fisheries laws could be enforced by a county superior court whose boundaries literally did not include the offshore ocean area.

Islands were added to the definition, and it was clarified that Ben Ure Island was part of the county rather than Ure's Island.

The Legislature enacted general legislation in 1969 providing a procedure for territory to be removed from one county and annexed into an adjacent county if not more than 50 registered voters reside in the area that is transferred.[14] This legislation was not codified and expired on January 1, 1971. Four steps had to be taken for such an annexation to occur.[g] A small portion of Kittitas County that included an area called Cliffdell was annexed by Yakima County, and a small portion of Yakima County was annexed to Kittitas County, following this procedure. The statutes defining the boundaries of these two counties were never altered to reflect these changes.

C. Interesting County Boundary Changes before Statehood

Prior to statehood, no limitations existed on the authority of the legislative committee or House of Representatives of the Provisional Government of Oregon Country, the Legislative Assembly of Oregon Territory, or the Legislative Assembly of Washington Territory to alter county boundaries. These various legislative bodies enacted special legislation creating new counties, combining counties, adjusting county boundaries, and eliminating counties. These boundary changes included alterations of what were called districts in the very early years of the Oregon Provisional Government, as well as alterations of counties. A number of these county boundary changes are very interesting.

The earliest significant county or district boundary changes in what became Washington State involved actions of the legislative committee of the Provisional Government of Oregon Country. First, all of the territory north or west of the Columbia River was included as part of Twality District in 1843. This territory was removed from Twality District and left outside of the control of the Provisional Government in June of 1844. However, this area was soon brought

g These four steps were: (1) A petition proposing the boundary change was signed by at least a majority of the residents of the area; (2) the county legislative authority of the county that would lose the territory approved the proposal; (3) a ballot proposition authorizing the annexation was approved by at least three-fifths of the voters residing in the area who vote on the proposition; and (4) every member of the county legislative authority of the county that would annex the territory approved the proposal.

under the control of the Provisional Government in December of 1844, when legislation was adopted creating Vancouver District out of all this area.[h]

Spokane County and Stevens County have quite an interesting relationship. The Legislative Assembly of Washington Territory enacted special legislation creating Spokane County on January 29, 1858.[15] This newly created county contained all of the eastern portions of then Washington Territory east of the Cascade Mountains and north of the Snake River. Stevens County was created out of Spokane County on January 20, 1863, and included the portion of Spokane County west of the Columbia River.[16] Then Congress created Idaho Territory in 1863, removing much of what had been included in Spokane County from Washington Territory. The Legislative Assembly responded by enacting special legislation abolishing Spokane County and transferring its territory to Stevens County on January 19, 1864, retaining Colville as its county seat.[17] The Legislative Assembly then enacted special legislation in 1875 temporarily moving the county seat from Colville to Spokane Falls until county voters could determine the county seat.[18] However, the Stevens County commissioners refused to move the county seat, arguing that the legislation was not valid since the amendment was added to a law that had previously been repealed.[19] Colville remained as the county seat of Stevens County, but the Legislative Assembly enacted special legislation recreating Spokane County on October 20, 1879, with Spokane Falls as its county seat.[20]

The Legislative Assembly of Washington Territory enacted special legislation abolishing Skamania County in 1865 and transferred its territory to Clark County and Klickitat County.[21] This action was taken because Skamania County officials were “closely associated” with the Oregon Steam and Navigation Company, which had a monopoly on transportation up the Columbia River. Skamania County had blocked the granting of a right-of-way to the newly incorporated Washington Territorial Transportation Company that was created to build a rival portage railroad around the Cascade Mountains. The Oregon Steam Navigation Company sent a lobbyist to Washington, D.C., who successfully lobbied Congress to nullify this special legislation eliminating Skamania County.[22]

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h A more detailed discussion of these actions is found in Chapter 1.

The Legislative Assembly of Washington Territory also enacted special legislation creating two short lived counties. Special legislation was enacted in 1863 creating Ferguson County out of much of central Washington.[23] However, the Legislative Assembly enacted special legislation in 1865 abolishing Ferguson County, with most of its territory being included in the newly created Yakima County and a portion of its territory being added to Stevens County.[24] Special legislation was enacted in 1868 creating Quillayute County out of territory located on the Olympic Peninsula.[25] However, the Legislative Assembly enacted special legislation in 1869 abolishing Quillayute County and transferring its territory to Jefferson and Clallam Counties.[26]

Constitutional Details

The Washington State Constitution includes a number of details about county government. No other type of local government is subject to this level of constitutional detail. The level of constitutional detail about counties highlights the nature of counties as political subdivisions of the State acting as agents of the State.

Depending on how one counts, the original State Constitution included 23 major sections relating to county government, eight of which related to local governments in general, and 15 of which related exclusively to county government.[i]

Significant constitutional provisions relating to counties:

- Detail how new counties are created and how county boundaries are altered;
- Require a uniform array of county elected officials to be elected in regular counties and uniform procedures to elect these officials;[j]
- Require the Legislature to provide for a uniform

i A discussion of all the constitutional provisions relating to local governments is found under Chapter 66.

j The term "regular county" is used to describe a traditional county with a form of government specified in the State Constitution, and enabling legislation, as distinguished from a "charter county" operating with a "Home Rule" charter adopted under Article XI, Section 5 or 16.

system of county government;

- Provide procedures for counties to adopt charters;[k] and
- Specify how county seats may be removed.

A. Uniform Array of County Elected Officials and Uniform Election Procedures

Article XI, Section 5 requires the Legislature to enact "general and uniform laws" for the election of various county officials in each noncharter county. This uniform requirements apply to both: (1) The offices that are elected in each noncharter county; and (2) the procedures to elect these officials. The Legislature is directed to provide for the duties of these county offices, the terms of office for these county officials, and compensation for these county officials.

Variations from the requirement to elect a uniform array of county officials are allowed under two separate authorities. First, the Legislature may classify counties by population and combine two or more of the required offices in counties of various classes. Second, any county may adopt a "Home Rule" charter and provide for a different array of county elected officials.

Statutes at one time established formal classes of counties based upon their population. However, legislation was enacted in 1991 eliminating formal classes of counties.[27] Immediately prior to this change, eleven separate classes of counties existed (class AA, class A, and classes one through nine) based upon county populations. The new legislation replaced references to county classes with references to counties within discrete ranges of population (e.g., any county with a population of less than nine thousand), without naming a particular class or classes of counties. Provisions applying to counties within a range of population were more readily understood than provisions applying to a formal class

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k Two different types of county "Home Rule" charters may be adopted. Any county may adopt one of these charters. Seven counties now operate with charters authorized under Article XI, Section 5. These charters are referred to as "regular county charters". Regular county charters are discussed later in this Chapter. No county operates with a "combined city-county charter" authorized under Article XI, Section 16. Combined city-county charters are discussed in Chapter 65.

of classes of counties.[l]

1. Required array of elected officials in non-charter counties

Article XI, Section 5 requires voters of each county to elect a board of county commissioners, a sheriff, a county clerk, a treasurer, a prosecuting attorney, and any additional officials specified in law by the State Legislature. State statutes provide that voters of each county shall also elect an assessor, auditor, and coroner, but combines certain offices in counties of various population ranges.[28] Statutes also provide that these county offices are partisan offices. Counties operating under these provisions are called "non-charter" counties.

This broad array of county elected officials creates a fractured governing structure. In effect, the board of county commissioners in a non-charter county somewhat resembles a parliament where the board of county commissioners exercises all of the county's legislative powers and some county's executive and administrative powers, with addition elected officials exercising the remainder of the county's executive and administrative powers.

a. Changes in county elective offices since statehood

Territorial laws enacted immediately before statehood provided for a varying array of county elected officials in different counties. This

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l This legislation was enacted after the author noted to the chair of the House Local Government Committee that many state and county officials had no idea which counties were included in each formal class, although these officials had easy access to county populations. For example, one old statute provided that no county assessor was to be elected in ninth class counties and the elected treasurer would function as both the county treasurer and assessor. No ninth class counties existed when this statute was enacted many decades ago. After a number of years, several counties lost population and became ninth class counties, but continued electing persons to both elective offices for many decades. No one seemed to be aware of the requirement for combining these offices into a single office. In another example, a statute required the County Road Administration Board (CRAB) to withhold rural arterial grants to any county over a particular class if the county "diverted" its road district property taxes to non-road uses. This legislation was enacted for the benefit of Skamania County. After a number of years Skamania County grew and increased its class. Nevertheless, the County Road Administration Board continued distributing rural arterial grants to Skamania County even though the county diverted its road district property taxes to non-road related uses. No one seemed to know the class of Skamania County. The author, as the counsel for the House Local Government Committee, was aware of these and other examples where officials did not seem to be aware of the counties included in the class or classes. It seemed that a statute referring to a range of county populations would be more understandable than one referring to a class of counties. Statutes have been altered eliminating these and other potential problems. Somewhat ironically, Skamania County has grown and now has a population of more than 11,000 and RCW 36.79.140 only allows any county of less than 8,000 population to divert its road levies and still receive distributions of rural arterial grants. The Legislature should review and amend this statute.

variation was legal since no requirement for a uniform array of county officials existed prior to statehood. These laws and other territorial laws remained in force in the newly created State unless they were contrary to the State Constitution.[29] A three-member board of county commissioners, auditor, treasurer, surveyor, sheriff, coroner, and county superintendent of common schools were required to be elected in each county.[30] An assessor was required to be elected in most counties but the sheriff acted as the *ex officio* assessor in twelve counties (Clallam, Island, San Juan, Yakima, Klickitat, Jefferson, Chehalis (now Grays Harbor), Pacific, Kitsap, Mason, Snohomish, and Whatcom).[31] A wreck-master was required to be elected to handle ship wrecks in Pacific, Chehalis (now Grays Harbor), Thurston, King, Jefferson, Island, San Juan, Whatcom, Pierce, Kitsap, and Clallam Counties.[32] A clerk of each district court was appointed by the judges of the district court, with each statutorily defined district encompassing one or more counties.[33] The office of prosecuting attorney was not a county office prior to statehood. Territorial law defined a number of districts, each constituting one or more counties, from which voters elected prosecuting attorneys.[m]

The first State Legislature enacted legislation that, with one exception, implemented the requirement for a uniform array of county elected officials in each county. This legislation provided for the election of a three-member board of county commissioners, sheriff, county clerk, auditor, treasurer, assessor, coroner, surveyor, superintendent of "public [common] schools", and "county attorney".[34] The nomenclature error in providing for the election of a "county attorney" was corrected by legislation enacted in 1891 which declared each person elected as a county attorney to be the prosecuting attorney.[35] However, no change was made to the territorial law providing for the election of a wreck-master in eleven counties, seemingly in violation of the constitutional requirement for a uniform array of county officials to be elected in each county.

The statutory office of county surveyor was renamed as the county engineer in 1907.[36] Legislation was enacted in 1925 both

m Chapter 1 describes the development of the office of prosecuting attorney. The last Washington Territorial statute relating to the election of prosecuting attorneys provided for the election of 14 prosecutors from districts within the Territory, constituting a single county, two counties, three counties, or four counties. (Statutes of the Territory of Washington, 1885, 10th Session, at Pages 59-64).

abolishing the office of county engineer in class 2 through 9 counties (i.e., any county with a population of less than 125,000) and requiring the county commissioners of these counties to perform the duties of the county engineer.[37] The office of county engineer was retained as a separate elected office in every class 1 county and class A county. (Class AA counties did not exist at that time.) The elective office of county engineer that remained in more populous counties was abolished in 1937.[38] Under current law, every county is required to employ a road engineer on a permanent or part-time basis, or contract for these services with the road engineer of another county.[39]

The number of separate elected county offices with supervisory responsibilities over school districts initially expanded after statehood, but all of these offices were abolished in 1969. Legislation was enacted in 1909 providing for the election of a five-member board of education in each county to assist the county superintendent of common schools in selecting textbooks, courses, and manuals, and to adopt rules and regulations for school districts.[40] Legislation was enacted in 1955 allowing the office of county superintendent of common schools in two or more counties to be consolidated and for the office of county superintendent of common schools to be abolished in any county that had only one school district, in which case the superintendent of the single school district assumed the duties of the county superintendent.[41] It is not clear how this combining of a county elective office between two or more counties complied with the constitutional requirement for a uniform array of separate county officials to be elected in each county, but this issue was not litigated. Finally, the statutory office of county superintendent of common schools and the county boards of education were abolished in 1969.[42] Educational service districts (ESDs) now exercise the former responsibilities of the county superintendent and the county board of education.[43] The office of county superintendent of common schools, although not a constitutional office, is mentioned in Amendment 21 as a county office the election of which could not be affected by a regular county charter. Obviously, this provision of Article XI, Section 4 no longer has any significance.

Article IV, Sections 1 and 5 created superior courts and provided for the election of superior court judges. The office of superior

court judge appears to be both a state office and a county office. Article IV, Sections 1 and 10 retained justices of the peace as the basic inferior courts in the State. However, Article IV, Section 12 allows the Legislature to create additional inferior courts.[n]

b. Current array of county elected officials

As mentioned above, the array of county elected officials in each non-charter county is a three-member board of county commissioners, an assessor, an auditor, a coroner, a county clerk, a prosecuting attorney, a sheriff, and a treasurer. However, a coroner is not elected in less populous counties and the prosecuting attorney of each of these counties acts as the coroner. Statutory law provides that these offices are partisan offices.[44]

(i). Assessor

The office of assessor is a statutory office and not a constitutional office. As discussed below, each of the seven regular county charters retains the elective office of county assessor, even though each of these charters eliminates one or more constitutional county elective offices. Legislation was enacted in 1925 eliminating the office of assessor in any county with a population of 8,000 or less and providing for the treasurer to act as the assessor.[45] As mentioned above, this law combining the offices of assessor and treasurer in smaller counties was repealed in 1991.[46]

Each county assessor determines the assessed valuation of most taxable property in the county, calculates the allowable property tax rates for various taxing districts in the county, and prepares a property tax roll that is forwarded to the county treasurer.[47]

(ii). Auditor

The office of auditor is a constitutional office that must exist in every non-charter county. As discussed below, several of the regular county charters have eliminated the office of auditor as a separate office and provide for one or more appointed officials carry out the duties of the office of county auditor. Legislation was enacted in 1925 combining the office of county auditor with the office of county clerk in smaller counties.[48] Under current law, the offices of auditor

n A more detailed discussion of the local judiciary, including superior court judges, is found in Chapter 69.

and county clerk remain separate offices in each county. However, the county legislative authority of a county with a population of less than 5,000 may adopt a resolution, by unanimous vote, combining the offices of county auditor and county clerk.[49] The resolution must be adopted 30 or more days before declarations of candidacy are first allowed to be filed for the office of county auditor. The person elected as the county clerk at the following general election performs the duties of both the clerk and auditor if such a resolution is adopted. No county has exercised the option to combine these offices. The constitutionality of this statute is questionable. It does not appear that allowing smaller counties, at their option, to combine two county elective offices, as opposed to the Legislature combining these offices in all counties below a population, results in a uniform array of elected officials.

The office of county auditor has the most varied duties of all the elected county administrative officers. This includes duties relating to: (1) Keeping public records; (2) acting as the clerk of the board of county commissioners, unless the board of county commissioners appoints its own clerk; (3) conducting all elections in the county where regular franchise rights apply; and (4) performing various financial and fiscal functions.

County auditors are required to keep and maintain a wide variety of public records. They record and maintain records relating to real property, including deeds, plats, and other instruments.[50] County auditors are designated as local registrars of vital records (birth, death, fetal death, marriage, dissolution, annulment, and legal separation records), provide blank vital records forms, receive and record vital records, and transmit vital records to the Department of Health which is designated as the state registrar of vital statistics.[51]

Each county auditor is the clerk of the board of county commissioners, unless the board of county commissioners appoints its own clerk.[52] The clerk is responsible for recording the board's proceedings, recording votes taken by each county commissioner, preserving and filing petitions and applications for franchises requested of the board of county commissioners, and performing other duties required by the board of county commissioners.

As discussed in Chapter 67, each county auditor is the *ex officio*

supervisor of primaries and elections held within the county.[53] This authority extends to primaries and elections for:

- All federal offices;
- All state offices and ballot propositions;
- All county offices and ballot propositions;
- All city offices and ballot propositions; and
- Almost all special purpose district offices and ballot propositions where voters are the normal registered voters and the franchise is not limited to property owners.

Election duties include voter registration responsibilities and actually conducting elections and primaries. The Secretary of State is the chief elections officer of all these elections and adopts rules that county auditors must follow in running these elections.[54] A county canvassing board is created in each county to canvass and certify election results. This board is composed of the following three persons: (1) The county auditor; (2) the prosecuting attorney; and (3) the chair of the county legislative body.[55] The auditor and prosecuting attorney may designate a deputy to carry out these duties. The chair of the county legislative body may designate another member of the county legislative body to carry out these duties.

County auditors also possess a variety of fiscal and financial responsibilities. They preserve and file accounts acted upon by the board of county commissioners, issue and record warrants ordered by the county legislative authority, and audit claims and accounts chargeable to the county.[56] Each county auditor also issues and records warrants for special districts where the county treasurer of that county serves as the treasurer of the special district.[57] County auditors also participate in preparing the county budget by collecting estimated expenditures and non-tax revenues for each county office, department, and institution, and then combining these estimates into a proposed budget that is submitted to the county legislative authority for its consideration.[58]

(iii). Coroner

The office of coroner is a statutory office and not a constitutional office. A coroner is elected in each non-charter county with a population of 40,000 or more, but this office is combined with the office of prosecuting attorney in non-charter counties with populations of less than 40,000 and the prosecuting attorney acts both as the prosecuting attorney and *ex officio* as the coroner.[59] This combining of two offices into a single office, in all counties with a smaller population, is clearly constitutional.

Legislation enacted in 1996 allowed the board of commissioners of a non-charter county with a population of 250,000 or more to abolish the elective office of county coroner and provide for a medical examiner.[60] This statute appears to violate Article XI, Section 5 which provides for the election of a uniform array of officials in non-charter counties the constitutional requirement for a uniform array of elected officials in non-charter counties.

As discussed below, four of the seven regular county charters have eliminated the office of coroner as an elected office and the Clallam County charter combines the office of coroner with the office of prosecuting attorney. The San Juan County charter retained the powers of the prosecuting attorney acting *ex officio* as the county coroner. (San Juan County has a population of less than 40,000.) The newly approved Clark County Charter, does not refer to the office of coroner and thus appears to have eliminated this office. However, prior to adopting this charter, Clark County took advantage of the legislation allowing a county with a population of 250,000 or more to abolish the elective office of coroner and establish a medical examiner. [61] By not referring to the office of coroner, under Article XI, Section 4, the powers of this office are vested in the county legislative authority.

A coroner holds an inquest in any death that appears unnatural, violent, the result of unlawful means, or to have occurred under suspicious circumstances.[62] Inquests are conducted using juries of inquest.[63] A coroner acts as the sheriff in cases where the sheriff has an interest or is otherwise incapacitated from serving.[64] A district court judge of the county may act as the coroner if the coroner is absent or unable to attend the inquest jury, or if the office of coroner is vacant.[65]

(iv). County clerk

The office of county clerk is a constitutional office that must exist in a non-charter county. As discussed below, five of the seven regular county charters eliminate the office of county clerk as an elective office. A county clerk is the clerk of the superior court (as compared to the county auditor who is the clerk of the board of county commissioners), keeps various court records, receives court fees, and receives and invests funds held in trust for litigants.[66]

At one time the county clerk acted as the county auditor in smaller counties. This statute no longer exists. As discussed above, the county legislative authority of any county with a population of less than 5,000 may, by a unanimous vote, adopt a resolution combining these offices.[67] The person elected as the county clerk at the following general election performs the duties of both the clerk and auditor if such a resolution is adopted. No county has exercised the option to combine these offices. This statute appears to violate Article XI, Section 5 which provides for the election of a uniform array of officials in non-charter counties the constitutional requirement for a uniform array of elected officials in non-charter counties.

(v). Prosecuting attorney

The office of prosecuting attorney is a constitutional office that must exist in every non-charter county and must exist in every county operating under a regular county charter. This office became a county office with the adoption of the State Constitution. Before statehood, prosecuting attorneys were not county officials and would be classified as territorial officials who were elected from statutorily designated districts encompassing one or more counties.

The county prosecuting attorney is authorized to appear for and represent the State and the county in actions and proceedings before courts and judicial officers.[68] A prosecuting attorney also: (1) Acts as the legal advisor on the official duties of the county legislative authority and all other county officials, as well as for school directors of school districts located in the county; (2) prosecutes all criminal and civil actions in which the State or county is a party; (3) defends all suits brought against the State or county; (4) provides legal advice to grand juries; and (5) examines all official bonds of county officers.[69] The superior court of the county

may appoint someone to act as the prosecuting attorney if the prosecutor is disabled from illness or other causes and is temporarily unable to perform official duties.[70]

As discussed in Chapter 67, the prosecuting attorney, or a deputy appointed by the prosecuting attorney, is one of the three members of the county canvassing board for election purposes.[71]

(vi). Sheriff

The office of sheriff is a constitutional office that must exist in every non-charter county. As discussed below, all seven of the regular county charters now retain the office of sheriff as a separate elected office. At one time the King County Charter provided for an appointed sheriff, but the charter was amended in 1996, making this office a nonpartisan elected office. At one time the Pierce County Charter provided for an appointed sheriff, but the charter was amended in 2006, making this office a partisan elective office.

Sheriffs exercise law enforcement responsibilities and carry out various judicial responsibilities. A sheriff is the "conservator of the peace" of the county, arrests persons who break the "peace" or attempt to break the "peace," arrests persons guilty of public offenses, defends the county against persons who endanger the peace, and keeps and preserves the peace.[72] The law enforcement authority of the sheriff is countywide, extending inside cities as well as in all unincorporated areas of the county. A sheriff is also designated as the "chief executive officer" of the county.[73] The meaning of this authority is not clear. A sheriff has various judicial responsibilities, including responsibility for executing the processes and orders of courts and judicial officers, executing warrants, attending all sessions of courts of record in the county, and obeying lawful orders and directions made by courts of record in the county.[74] Sheriffs also conduct public auctions of property seized under execution by courts.[75]

The sheriff is in charge of county jails and persons confined in these jails, unless the county has created a department of corrections.[76] As discussed below, control over the county jail may be an inherent duty of the sheriff and some question may exist whether the Legislature possesses the authority to remove this control.

(vii). Treasurer

The office of treasurer is a constitutional office that must exist in every non-charter county. As discussed below, the office of treasurer is no longer a separate elective office under the King County Charter and is combined with the assessor as a single elective office under the Pierce County Charter. Legislation was enacted in 1925 providing for the treasurer to act as the assessor in any county with a population of 8,000 or less.[77] As mentioned above, this law combining the offices of treasurer and assessor was repealed in 1991.[78]

The duties of county treasurers basically involve revenue matters, including duties relating to property taxes and managing public funds. County treasurers prepare the county property tax rolls based on information certified by the county assessor, collect property taxes, distribute property tax collections, and foreclose liens on delinquent property taxes.[79] They collect real estate excise taxes, maintain financial records and accounts for bonded indebtedness, receive monies due, pay money to persons redeeming warrants issued by the county and other special districts for which the county treasurer acts as *ex officio* treasurer, and invest public monies in their possession.[80]

(viii). Board of county commissioners

The board of county commissioners is a constitutional office that must exist in every non-charter county. Each board of county commissioners has three members.[81] However, as mentioned below, legislation was enacted in 1990 allowing any non-charter county with a population of 300,000 or more to expand the number of commissioners from three to five. This statute appears to violate the requirement of Article XI, Section 5 for the election of a uniform array of officials in non-charter counties. As mentioned below, five of the seven regular county charters have created a county council composed of between five and thirteen members as the legislative authority of the county in lieu of a board of county commissioners.

Many statutes now use the term “county legislative authority” in lieu of the term “board of county commissioners”. This practice arose after the King County Charter was approved by voters in 1969 providing for a county council in lieu of a board of county commissioners. The term “county legislative authority” refers to a

board of county commissioners, a county council, or other governing body created by a regular county charter. Statutes amending legislation referring to boards of county commissioners, in almost all instances, change the term "board of county commissioners" to "county legislative authority".

A board of county commissioners possesses all of the legislative powers of a county, along with a number of executive, administrative, and quasi-judicial powers. These legislative powers include both expressly authorized powers and unspecified, broad home rule police regulatory powers granted in Article XI, Section 11, which provides that:

> "Any county ... may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

This broad grant of home rule police regulatory powers that was included in the original State Constitution dramatically altered the nature of county powers by granting counties general home rule powers of a municipal corporation. However, statutes were not amended until 1947, to reflect this broad grant of home rule authority granted to counties.[o] [82] Among other express grants of authority, boards of county commissioners are authorized to impose county taxes, incur bonded indebtedness, adopt criminal ordinances, provide for the public health, issue various licenses, and adopt comprehensive plans and zoning ordinances.[83] County taxing authority is discussed in Chapter 5.

The executive or administrative powers of a board of county commissioners include: (1) Control over the construction and maintenance of county roads; (2) providing health services (including county hospitals); (3) managing parks and recreational facilities; (4) providing and maintaining county buildings; (5) providing airports; (6) providing public libraries; (7) providing law libraries; (8) providing ferries; (9) providing solid waste disposal; (10) providing probation and parole services; (11) providing parking facilities; (12) providing emergency medical services (EMS) and ambulance services; (13) providing economic development

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o This legislation provided that county legislative authorities shall "make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law ...." The legislation is codified as part of RCW 36.32.120(7).

programs; (14) promoting tourism; (15) providing urban renewal; (16) providing potable water facilities, sanitary sewers, and drainage or storm water sewers; and (17) issuing land use permits and building permits.[84] A number of counties designate a specific county employee as a "county administrator" or other office to exercise most of the executive and administrative authorities of the board of county commissioners.

Express quasi-judicial powers of county legislative authorities include approving various land use permits or applications and hearing appeals over the granting, denial, or conditioning of various land use permits.[85]

2. Exceptions from requirement for uniform array of county officials

Constitutional amendments approved by state voters in 1924 and 1948 allow exceptions from the requirement for a uniform array of county officials to be elected in each county.

Amendments 21 and 23 were approved by state voters in 1948 allowing counties to adopt county charters and avoid the requirement for a uniform array of elected officials.[p]

Amendment 12 was approved by state voters in 1924 retaining the requirement for a uniform array of county officials to be elected in each county, but allowing the Legislature to classify counties by population and provide for one or more classes of counties where county elective offices are combined so one person exercises the authorities of the combined offices. This Amendment appears to have been in response to the Supreme Court holding in *State ex rel. Maulsby v. Fleming* where the Court recognized the literal words of Article XI, Section 5 requiring a uniform array of county officials to be elected in each county, without exception, and voided legislation abolishing the statutory office of coroner in all counties other than first class counties.[q] [86] The Legislature could abolish a statutory county office in all counties but if this office were retained

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p A discussion of regular county charters appears below and in Chapter 65. A discussion of combined city-county charters is also found in Chapter 65.

q The voided legislation provided that the duties of the coroner would be assumed by prosecuting attorneys and justices of the peace in all counties other than 1st class counties. An elected coroner would still hold office in each 1st class county. In effect, this law combined the offices of coroner and prosecuting attorney in most counties.

in any county the office had to be retained in all counties. Without Amendment 12, it appears that a provision in the legislation enacted by the first State Legislature allowing the board of county commissioners of any county to combine two or more county elected offices into a single office was not constitutional.[87] This holding also placed into question the office of wreck-master that only existed in several counties. The Legislature responded to this holding in 1915 by repealing laws providing for the election of wreck-masters in some counties.[88]

As mentioned above, state law no longer has formal classes of counties. However, current law permits four variations from the constitutional requirement for a uniform array of county elected officials in non-charter counties based upon ranges of county populations without reference to formal county classes. One of these deviations is clearly constitutional. The other three deviations are of questionable constitutionality.

RCW 36.16.030 essentially combines the offices of prosecuting attorney and coroner in a county with a population of less than 40,000 by providing that the prosecuting attorney in such a county is the *ex officio* coroner. This provision is clearly constitutional.

RCW 36.24.190, allows the county legislative authority of any county with a population of 250,000 or more the option of submitting a ballot provision to county voters authorizing the creation of an appointed medical examiner in lieu of electing a coroner. Spokane County has taken advantage of this option. Clark County also took advantage of this provision before adopting a regular county charter. This statute appears to violate Amendment 12. The statutory office of coroner may be eliminated in all counties or may be combined with another county office in certain classes of counties, but the office may not be eliminated in certain classes of counties and retained in other classes of counties. Further, the decision to combine or not to combine offices must be exercised by the Legislature and not boards of county commissioners or county voters.

As mentioned above, the county legislative authority of a county with a population of less than 5,000 may adopt a resolution combining the offices of county auditor and county clerk.[89] This

statute appears to violate Amendment 12. The county legislative authority makes the decision to combine county elected offices rather than the Legislature making the decision.

Legislation was enacted in 1990 allowing any county with a population of 300,000 or more the option of increasing the size of its board of county commissioners from three to five members.[90] Five counties currently have populations of 300,000 or more. Four of these counties (King, Pierce, Snohomish and Clark) operate under regular county charters. One of these counties (Spokane) is a non-charter county. Spokane County has not availed itself of this option. These statutes appear to violate Amendment 12. No offices are being combined and the voters make the decision rather than the Legislature. The attorney general has opined that similar legislation was unconstitutional.[91] The late Senator Bob McCaslin, a long time state senator from Spokane County and former chair of the Senate State and Local Government Committee, was the basic supporter of this legislation.

3. Inherent duties of each office

Article XI, Section 5 lists a number of county elective officers in regular counties and directs the Legislature to prescribe their duties. This provision may, or may not, establish certain inherent duties in each of the named offices.

Although this constitutional provision appears to grant the Legislature full authority to provide for any duties for these offices, the Supreme Court in *State ex rel. Johnston v. Melton* found certain inherent core duties "from time immemorial" exist in these named constitutional offices that may not be altered or diluted.[r] [92] The Court held a statute unconstitutional that granted prosecuting attorneys the authority to appoint investigators with jurisdiction concurrent with that of the sheriff to make arrests and to serve warrants and subpoenas in criminal cases.

This holding may be of somewhat limited application today. The Supreme Court, in a more recent case, failed to recognize any

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r This legislation before the Court also renamed the office of prosecuting attorney as district attorney, but the Court in *State ex rel. Hamilton v. Troy*, 190 Wash. 483, 486 (1937), held that renaming the office was also unconstitutional.

inherent or implied duties inuring in the office of the State Auditor, which is also a constitutionally established office. The Court in *Yelle v. Bishop* held that the Legislature has "the exclusive discretion" to fix, enlarge, or diminish the powers of the State Auditor "at any time" and that no "common-law duties or implied powers" attach to the office.[s] [93] Presumably, the reasoning of this newer case would be applied to legislation altering the basic powers of constitutionally mandated county elected offices.[94]

4. Terms of office and elections

All county elective offices in non-charter counties, other than judicial offices, are partisan offices.[95] A county charter may alter the nature of these partisan offices (other than perhaps the office of prosecuting attorney) to nonpartisan offices. However, a little known provision of recently enacted legislation appears to have granted charter counties the authority to change the nature of prosecuting to non-partisan offices.[96] Normal franchise rights exist for counties and all registered voters residing in the county, both inside cities and outside of cities in unincorporated areas, are county voters.[97] County elections are conducted by county auditors.[98]

The voters of the entire county vote in primary elections to select two candidates whose names will appear on the general election ballot and vote at a general elections to elect each county elective office in a non-charter county, other than members of the board of county commissioners.[t] These officials are elected to four year

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s The Court made this holding even though Article III, Section 20 provides that the State Auditor "is the auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law." This provision literally grants certain auditing powers to the State Auditor, as compared with Article XI, Section 5 that does not grant any literal powers to county offices. The issue in *Yelle v. Bishop*, 55 Wn.2d 286 (1959), was whether the Legislature could authorize some officials other than the State Auditor to perform "pre-auditing functions" that previously were performed by the State Auditor. The Court in *Bishop* at page 298 summarily dismissed the application of *State ex rel. Johnston v. Melton* to the instant case by stating that this earlier case was based upon the doctrine of separation of powers. This is a very curious statement since the Court in *Melton* at page 392 expressly dismissed the separation of powers issue as being dispositive and stated that "while we might not declare ... the act unconstitutional for this reason [separation of powers] alone, it is one of the reasons which impels us to do so."

t Some statutes still use the term "nominate" to describe the result of primary election rather than the more accurate term "select." State voters approved Initiative Measure No. 872 in 2004 instituting what is known as the "top two" primary in Washington State. As described in Chapter 67, for several years voters and political parties were at odds over the nature of primary elections. Unfortunately, the Initiative altered the nature of primary elections but did not revise most statutes that still use the term "nominate" rather than select the top two candidates whose names will

terms of office. The primaries and general elections are held in the same even-numbered year. County commissioners are elected using county commissioner districts with commissioners being elected to staggered four-year terms of office at elections held in even-numbered years.[99] Each county is divided into three commissioner districts of equal population. Candidates for a commission position must reside in the commission district. Only voters of a commission district may vote at a primary to select two candidates for county commissioner from that district whose names will appear on the general election ballot. However, all general elections to elect county commissioners are conducted on a countywide basis with voters of the entire county eligible to elect county commissioners. County commissioners are elected to four year terms of office at elections held in even-numbered years. Two commissioners are elected in one even-numbered year and one commissioner is elected at the following even-numbered year.

An exception existed to this procedure for any county that is composed entirely of islands, with a population of less than 35,000, i.e., San Juan County. The board of county commissioners in such a county was allowed to divide the county into commissioner districts without regard to population, in which case the districts would be used for only residency purposes. Voters of the entire county voted at primaries to nominate candidates for each county commissioner position to appear on the general election ballot and voters of the entire county voted at general elections to elect each commissioner.[100] However, this statute is no longer applicable since San Juan County now operates under a regular county charter. That charter was recently amended reducing the size of the county council from six to three members with three nominating districts being used in the same manner as allowed by this statute applicable to San Juan County prior to its adoption of a county charter.

Superior court judges are elected as nonpartisan officials to four-year terms of office, whether elected by the voters of a single county or more than one county at elections held in even-numbered years.[101] District court judges are also elected to four-year terms of office as nonpartisan officials at elections held in even-numbered

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appear on the general election ballot.

years.[u]

5. Compensation of county elected officials

Traditionally, compensation paid to county officials was set by either the Legislative Assembly or State Legislature. This practice commenced with the first Legislative Assembly establishing compensation in 1854 for county commissioners at three dollars per day, for each day of work performed for the county.[102] The original provisions of Article XI, Section 5 directed the Legislature to classify counties based upon their population and provide for varying levels of compensation for county officials in proportion to their duties. As many as 29 separate classes of counties were established at one time with varying levels of compensation for county officials.[103]

The tradition of the Legislature establishing compensation rates for county officials in non-charter counties was reversed in 1972 when state voters approved Amendment 57 to the State Constitution. This amendment allowed the Legislature to delegate to county legislative authorities the authority to set the salaries of its own members and other county elected officials, in lieu of the Legislature setting these salaries. RCW 36.17.020 was amended in 1973, implementing this constitutional provision.[104] County legislative authorities were granted the authority to establish compensation for all county elected officials in the county, other than superior court judges and district court judges. These old statutory salary levels were converted to minimum levels of compensation. The State Constitution precludes the compensation of local officials who set their own levels of compensation from being increased during their current terms of office.[v]

Charter counties establish the level of compensation for their elected officials, other than superior court and district court judges. This authority has always been assumed to exist as an incidence of

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u A more detailed discussion of the election of these judges is found in Chapters 67 and 69.

v This restriction arises from the interplay of several constitutional provisions. Article XI, Section 8 provides that the salary of any local official shall not be increased (or decreased) during their current terms of office, except as provided in Article XXX, Section 1. Article XXX, Section 1 provides that the compensation of local officials who do not fix their own compensation may be increased during their current terms of office if authorized by the law in effect when they performed these services.

the inherent home rule authority vested in charter counties, even before Amendment 57 was approved by state voters. This practice of a charter county setting compensation rates for its elected officials began with the first county charter that was approved by King County voters in 1969, and has been continued in other charter counties.

Legislation was enacted in 2001 allowing any county to create an independent salary commission to set salaries for members of the county legislative authority.[105] Any increase or decrease in salaries made by the commission is subject to referendum action by county voters.

> "in the same manner as a county ordinance upon filing of such petition with the county auditor within thirty days after filing of the salary schedule."[w]

It is not clear if this new method of setting compensation for members of county legislative authorities complies with the restrictions on establishing compensation for members of county legislative authorities that are contained in Amendment 57.[106]

An annual survey of salaries for county and city officials is prepared by the Association of Washington Cities, in cooperation with the Washington State Association of Counties.[107] The 2014 survey reports that, out of the 32 counties reporting, five paid more than $8,000 per month, with Kitsap County commissioners receiving the highest reported salaries of $9,337 per month and Garfield County commissioners receiving the lowest reported salaries of $1,959 per month. However, King County did not respond to this survey and pays the highest salaries for its elected officials. In 2011, King County paid its councilmembers salaries of $135,525 per year and paid its executive a salary of $203,288 per year. [108]

County elected officials generally serve on a full-time basis. This is almost unique among local government elected officials. Most elected officials of other types of local governments receive

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w This statue is flawed. The voters of most counties do not possess the powers of initiative and referendum over local matters, although procedures exist by which they may obtain these powers. This would involve voter approval of a county charter with provisions granting county the power of initiative and referendum on local matters.

relatively low compensation, or no compensation, and could be presumed to serve on only a part-time basis. The annual survey of salaries describes the officials of several counties as being paid for working on less than a 40 hour per week basis, especially some elected officials in smaller counties.[x] The only statute addressing full-time status is RCW 36.27.060(1) which requires the prosecuting attorney in every county with a population of 18,000 or more to serve on a full-time basis, clearly allowing a prosecuting attorney in any county with a population of less than 18,000 to serve on a part-time basis. Eight counties have a population of less than 18,000, ranging from Pend Oreille with an estimated 2014 population of 13,001 to Garfield with an estimated 2014 population of 2,266.[109] Section 10.41 of the Whatcom County Charter implicitly attempts to make county council positions part-time by restricting compensation for council members until January 12, 1984, to 15 percent of the compensation provided to the county executive.[110]

B. Uniform System of County Government

Article XI, Section 4 directs the Legislature to establish a uniform system of county government throughout the State, but allows an exception to this uniformity requirement. The Legislature is directed to enact general laws providing for the organization of counties into townships where the township organization of a county occurs if voters of the entire county approve a ballot proposition at a general election providing for this organization. No counties operate under a system of township organization. Legislation providing for the township organization of counties was

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x The 2001 *Salary Survey* reports that members of the county legislative authorities in several counties are paid monthly salaries based upon less than 40 hours of work per week, including Garfield County Commissioners who were commissioners paid for 20 hours per week, Whatcom County Council members who were paid for 20 hours per week, and Adams County commissioners who were paid for 22 hours per week. However, nothing precludes any official from working more hours per week. A few other county elected officials were shown as being paid for less than 40 hours per week, as follows: (1) Ten county assessors were shown as being paid for working either 35 or 37.5 hours per week; (2) nine of the elected county auditors were shown as being paid for working either 35 or 37.5 hours per week; (3) nine of the elected county clerks were shown as being paid for working either 35 or 37.5 hours per week; (4) six of the elected county coroners were shown as being paid for working 20, 23, 35, or 37.5 hours per week, but it should be remembered that the county prosecutor serves also serves *ex officio* as the coroner in smaller counties; (5) ten county prosecuting attorneys were shown as being paid for working 35 or 37.5 hours per week, including the prosecuting attorneys in King County, Pierce County, Columbia County, and Garfield County; (6) all elected sheriffs were shown as being paid for working 40 hours per week; and (7) ten of the elected county treasurers were shown as being paid for working 35 or 37.5 hours per week.

enacted in 1895 but was repealed in 1997.[y] [111]

The meaning of this requirement for a uniform system of county government is not clear. Presumably, the requirement in Article XI, Section 4, for a uniform system of county government differs from and is in addition to the requirement in Article XI, Section 5, for the election of a uniform array of county officials. The township exception to the Article XI, Section 4 requirement for a uniform system of county government presumably allows some county services and facilities to be provided by townships rather than directly by the county.

C. Option to Adopt Regular County Charter

State voters approved Amendment 21 in 1948 allowing any county to frame and adopt a "Home Rule" charter to provide for its government. The new language from this Amendment was added to Chapter XI, Section 4. It may have been more appropriate to have placed these new provisions in Article XI, Section 5, as the basic purpose of such a charter is to alter the array of county elected officials and Section 5 establishes requirements for a uniform array of county officials in counties that do not operate under a charter.

As mentioned above, this reference book refers to charters adopted under Article XI, Section 4 as "regular" county charters to distinguish this type of charter from "combined city-county" charters that may be adopted under Article XI, Section 16.[z]

A regular county charter may alter the array of county officials, but: (1) May not affect the election or terms of office of the prosecuting attorney, county superintendent of schools,[aa] judges of the superior court, or district court judges (who are called justices of the peace in the constitutional provision); (2) may not affect the powers, duties and authorities of those offices; and (3) may not affect the jurisdiction of courts. However, a recently enacted statute appears to allow a county charter to alter the office of the county prosecuting

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y A discussion of townships is found in Chapter 39.

z A discussion of combined city-county charters is found in Chapter 65.

aa As mentioned above, the Legislature has abolished the office of county superintendent of schools.

attorney from a partisan office to a nonpartisan office.[112] The powers, duties and authorities of all other county offices vest in the county legislative authority unless the charter expressly vests these powers, duties and authorities in other county officers.

A regular county charter may grant county voters the powers of initiative and referendum on county matters.[bb] [113]

The voters of seven counties (King, Pierce, Snohomish, Clark, Whatcom, Clallam, and San Juan) have approved regular county charters for their counties under Article XI, Section 4.

1. Procedure to adopt

The procedure to adopt a regular county charter may be initiated by a resolution of the county legislative authority or by a petition of county voters that has been signed by county voters equal in number to at least 10 percent of the number of county voters who voted at the last general election.[114] A board of freeholders is elected to draft or frame a proposed charter and the proposed charter is submitted to county voters for their approval or rejection.

Although the board that is elected to draft a proposed charter is called a "board of freeholders", any county voter may be elected to and serve on a board of freeholders to draft a proposed regular county charter.[cc] However, Amendment 21 requires that each person elected to a board must have resided in the county for at least five years.[dd]

A county board of freeholders is composed of from 15 to 25 members. The petition initiating the process may specify the number of freeholders within this range, but the county legislative authority determines the number of freeholders if the initiating

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bb A discussion of local powers of initiative and referendum is included in Chapter 68.

cc The term "freeholder" literally means a property owner. However, the Supreme Court held that any city voter may be elected to and serve on a "board of freeholders" under Article XI, Section 10 to draft a proposed city charter. (*Sorenson v. Bellingham*, 80 Wn.2d 547, 552-553 (1972).)

dd Article XI, Section 4 merely provides that members of the board must have been residents of the county "for a period of at least five years preceding their election and qualification". The Court of Appeals held that this five-year residency requirement was constitutional and did not violate the 14th Amendment to the United States Constitution. (*Fishnaller v. Thurston County*, 21 Wn. App. 280, 289 (1978).)

petition does not specify the number or if the procedure is initiated by resolution. The county legislative authority determines how freeholders are elected under either initiation process. Freeholders are elected from either county commissioner districts or legislative districts, with the number of freeholders elected from the districts being in proportion to the population of the districts "as nearly as may be". Freeholders may be elected at a general or special election if the procedure is initiated by resolution, but must be elected at a general election if the procedure is initiated by petition.

Freeholders are elected directly without the question whether board members should be elected if the process is initiated by resolution. However, a dual-ballot proposition is submitted to voters if the process is initiated by petition with the first part consisting of a question whether voters want to elect a board of freeholders and the second part consisting of the actual election of freeholders. The election of the board of freeholders is null and void if county voters do not approve the ballot proposition asking whether the board of freeholders should be elected.

A board of freeholders is a temporary body of voters empowered to draft a proposed charter that is submitted to county voters for their approval or rejection. It is not a government or a governing body. A board of freeholders dissolves after completing its responsibility of drafting a proposed charter. Freeholders do not receive compensation. No time limits exist for a board of freeholders to develop a proposed charter. A proposed charter prepared by a board of freeholders becomes the organic law of the county if the charter is approved by a simple majority of voters voting on the proposition.

Some flexibility exists for submitting a proposed charter to county voters for their approval or rejection. A proposed charter may be submitted with, or without, any alternative articles or provisions. Multiple questions are asked of county voters if the proposal includes alternative articles or provisions. The first question is the basic question whether or not the charter should be approved. One or more secondary questions are then asked about alternative articles or provisions within the charter. Approval of the charter is determined by the vote on the basic question. However, details

within the charter are determined by the secondary vote or votes on the alternative articles or provisions. Obviously, secondary votes have no effect if a majority of county voters voting on the basic proposition do not approve the charter.

Requirements are established for publishing the proposed charter prior to the election at which it is submitted to voters. A proposed regular charter may be submitted to voters for their approval or rejection at a special election or general election.

2. Procedures to amend

Article XI, Section 4 provides that a regular county charter may be amended by the county legislative authority submitting an amendment to county voters for their approval or rejection. An amendment is ratified by a simple majority vote of county voters voting on the proposition.

Flexibility is provided by allowing an amendment to include alternative articles or provisions in the same manner as the original charter.

No statute has been enacted providing for an alternative procedure to amend a county charter by direct voter action. As discussed below, six of the seven county charters include three procedures for amending the charter. These procedures are:

- The constitutionally authorized procedure in which an amendment is initiated by action of the county legislative authority, submitting a proposed amendment to county voters for their approval or rejection;
- A charter authorized alternative procedure of electing a new board of freeholders to review the charter and submit proposed charter amendments directly to voters for their approval or rejection; and
- A charter authorized alternative procedure where county voters may directly amend the county charter by initiative action.

This differs from the King County Charter that only provides for the

county council to submit proposed charter amendments to county voters for their approval or rejection and for the periodic election of a charter review commission that may propose charter amendments that the county council may, at its option, choose to submit to county voters for their approval or rejection. However, as discussed below, the Supreme Court, in a very creative decision, recently recognized a generic procedure whereby voters in King County in effect may directly initiate amendments to the King County Charter.

3. King County Charter

King County voters approved a regular county charter in 1969. This was the first successful effort to adopt a regular county charter.

The current King County Charter now provides for a nine-member county council as the legislative body of the county, along with an elected county executive, assessor, prosecuting attorney, and sheriff.[ee] Council districts are used in the process to elect county council members. The county is divided into council districts equal in number to the number of council members. Only voters residing within a council district may run for a council position from that district or serve as a council member from that district. Only voters of a council district may vote at a primary to select two candidates whose names will appear on the general election ballot. Only voters of a council district may vote at the general election to elect a person to that council position. The other elected officials are elected on an at-large basis throughout the county, without the use of districts. All of these county offices, other than the office of sheriff, are partisan offices. The county sheriff was appointed by the county executive under the original King County Charter, but the charter was amended in 1996 providing for an elected sheriff as a nonpartisan office. Members of the county superior court appoint a person to act as the clerk of the superior court. The county executive exercises all of the executive and administrative powers of the county that are not exercised by other county elected or appointed officials, makes appointments, and may veto ordinances.

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ee As discussed below, King County voters approved a charter amendment in 2004 reducing the number of county council members from 13 to nine. The reduction occurred at the 2005 general election.

This includes appointing a person to exercise the traditional powers of a county auditor. A central county budget office is created under the supervision of the county executive.

The charter grants county voters initiative and referendum powers on county matters. A merit-based personnel system was established.

Two different procedures are provided in the charter for submitting charter amendments to county voters for their approval or rejection. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, at least once every 10 years, the county executive appoints a citizen commission of at least 15 members. The commission may propose amendments to the county council, but the council may choose whether or not to submit the proposed amendments to county voters for their approval or rejection. However, the Supreme Court, in a creative decision, recognized a third procedure for amending the King County Charter.[ff] [115] As a result of this holding, county voters may approve an initiative requiring the county council to submit a charter amendment to voters for their approval or rejection.

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ff This holding is quite stunning when one compares the King County Charter with other county charters and the laws relating to amending city charters.

All of the other six county charters include explicit provisions providing for three methods to amend the charters: (1) Amendments initiated by the council and submitted to the voters; (2) amendments initiated by the voters and submitted directly to voters without council action; and (3) amendments initiated by a charter review commission that are submitted to voters without council action. (Sections 11.20.20, 11.20.30, and 11.20.40, Clallam County Charter; Sections 8.21, 8.22. and 8.33, Whatcom County Charter; Section 8.65, Pierce County Charter; Sections 8.60, 8.70, and 8.80, Snohomish County Charter; Section 8.30 San Juan County Charter; and Section 9.3 Clark County Charter.)

Similarly, every first class city charter may expressly be amended by amendments initiated by the council and submitted directly to voters or amendments initiated by voters and submitted directly to voters without council action. Amendments initiated by the city council are expressly provided by Article XI, Section 10, while amendments initiated by voters are expressly allowed by RCW 35.22.120. No similar statute exists allowing county voters the authority to initiate county charter amendments by initiative action.

The Court noted that the King County Charter used the term “ordinance” as the vehicle that the council would adopt to submit an amendment to voters. It was reasoned, that since other provisions of the charter granted county voters authority to initiate the adoption of ordinances by initiative, they also could initiate the adoption of charter amendments by initiative. As a result of this holding, the King County Council agreed to submit a charter amendment to voters in November of 2004 reducing the number of county council members from 13 to nine, rather than submitting the initiative to voters requiring the county to submit the charter amendment. Voters approved the charter amendment reducing the size of the King County Council. The King County Council was reduced to nine members at the 2005 general election.

4. Clallam County Charter

Clallam County voters approved a regular county charter in 1976.

The original Clallam County Charter made minimal changes to the constitutional requirement for a uniform array of county elected officials in all non-charter counties. Under the original charter, all of but one of the normal county offices were retained as partisan elective offices, including a three-member board of county commissioners, an assessor, an auditor, a treasurer, a sheriff, and a prosecuting attorney who also acts as the coroner. All these offices were elected following the same procedures by which officials in non-charter counties are elected. The clerk of the superior court is appointed by the board of county commissioners from a list of three persons submitted by the superior court judges.

However, county voters approved amendments to the charter in 2002 creating an additional elected office of the Director of Community Development and providing that all county elected offices (other than county commissioners and the prosecuting attorney) are non-partisan offices.[116] State general election law is followed, except as provided in the Clallam County Charter. All of these offices, other than the office of county commissioner, are nominated and elected at countywide primaries and elections. Only residents of a commissioner district may run for a commissioner position from that district or serve as a commissioner from that district. Only voters of a commissioner district may vote at a primary to select two candidates whose names will appear on the general election ballot. However, voters of the entire county may vote at a general election to elect each commissioner.

County voters are granted initiative and referendum powers on county matters. A merit-based personnel system is established.

Charter amendments may be submitted to voters under three different procedures. First, the board of county commissioners may submit an amendment directly to county voters for their approval or rejection. Second, seven people are elected to a charter review commission every ten years to review the charter and propose charter amendments that are submitted directly to county voters for their approval or rejection. Third, charter amendments may also be

submitted to county voters by initiative action of county voters.

5. Whatcom County Charter

Whatcom County voters approved a regular county charter in 1978.

The Whatcom County Charter provides for a seven-member county council as the legislative body of the county and an elected county executive, assessor, auditor, treasurer, sheriff, and prosecuting attorney. Six of the seven council positions are associated with council districts. One of the seven council positions is an at-large position. The county is divided into three council districts with two council members representing each council district. Candidates for each council position associated with a district are elected using council districts in a manner similar to the election of county commissioners, except that two council members are elected from each district. Only residents of a district may run for a council position from that district or serve as a council member from that district. Only voters of a district may vote at a primary to select two candidates whose names will appear on the general election ballot. However, voters of the entire county may vote at a general election to elect each council member associated with a council district. All county voters may vote at a primary to select the names of two candidates for the single at-large council position whose names will appear on the general election ballot and vote at general elections to elect the single at-large council member. The charter was amended in 1986 to provide that all county elected offices, other than prosecuting attorney, are non-partisan offices. A superior court clerk is appointed by the county executive and confirmed by the county council.

The county executive exercises general executive and administrative powers of the county, that are not exercised by other county elected or appointed officials, makes appointments, and may veto ordinances. A central budget office is created under the county executive.

County voters are granted initiative and referendum powers on county matters. A merit-based personnel system is established.

Charter amendments may be submitted to voters under three

different procedures. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, fifteen people are elected to a charter review commission every ten years to review the charter and propose charter amendments that are submitted directly to county voters for their approval or rejection. Third, charter amendments may also be submitted to county voters by initiative action of county voters.

6. Pierce County Charter

Pierce County voters approved a regular county charter in 1980.

The Pierce County Charter provides for a seven-member county council as the county legislative body and an elected county executive, assessor-treasurer, auditor, sheriff, and prosecuting attorney. The office of sheriff was an appointed office, but county voters approved an amendment in 2006 providing for the election of a sheriff. Council members, the county executive, and prosecuting attorney are partisan elective offices. The assessor-treasurer, auditor, and sheriff are nonpartisan elective offices. A single council member is elected from each of seven separate council districts. Only a resident of a council district may run for or serve as a council member from that district. Only voters of a council district may vote at a general election to elect the council member from that district. The other elected officials are elected on an at-large basis throughout the county.

A coroner and a clerk of the superior court are appointed by the county executive and confirmed by the county council. The county executive exercises all of the executive and administrative powers of the county that are not exercised by other elected or appointed county officials, makes appointments, and may veto ordinances. A central budget office is created under the county executive.

County voters are granted initiative and referendum powers on county matters. A merit-based personnel system is established.

Charter amendments may be submitted to voters under three different procedures. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, at least every ten years 21 people are elected to a charter review commission to review the county charter and either

recommend charter amendments directly to county voters for their approval or rejection or make recommendations to the county council. The county council may submit the proposed charter amendments to be submitted to county voters for their approval or rejection. Third, charter amendments may also be submitted directly to county voters by initiative action of county voters.

7. Snohomish County Charter

Snohomish County voters approved a regular county charter in 1980.

The Snohomish County Charter provides for a five-member county council as the county legislative body and an elected county executive, assessor, auditor, clerk, treasurer, sheriff, and prosecuting attorney. Each of the council members is nominated and elected from a separate council district. Only a resident of a council district may run for or serve as a council member from that district. Only voters of a council district may vote at a primary to select two candidates for that position whose names will appear on the general election ballot. Only voters of a council district may vote at a general election to elect the council member from that district. The other elected officials are nominated and elected on an at-large basis throughout the county. All of these offices are partisan elective offices. The county executive exercises general executive and administrative powers of the county that are not exercised by other county elected officials, makes appointments, and may veto ordinances. A central budget office is created under the county executive.

County voters are granted initiative and referendum powers on county matters. A merit-based personnel system is established.

Charter amendments may be submitted to voters under three different procedures. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, fifteen people are elected to a charter review commission every ten years to review the charter and propose charter amendments that are submitted directly to county voters for their approval or rejection. Third, charter amendments may also be submitted directly to county voters by initiative action of county voters.

8. San Juan County Charter

San Juan County voters approved a regular county charter in 2005.

The San Juan County Charter now provides for an elected three-member council, and an elected assessor, auditor, clerk, treasurer, sheriff, and prosecuting attorney. Each of these offices is a partisan elective office. Voters of the entire county vote at primary elections to select the names of two candidates for these offices whose names will appear on the general election ballot and vote at the general election to elect persons to each of these offices.

In November of 2012, county voters amended the charter fundamentally altering the county council, by reducing the number of members from six to three and altering the purpose for council districts. The original charter provided that a council district was used for candidate residency purposes. Only voters of the council district could vote at a primary election to select the names of two candidates whose names would appear on the general election ballot for the council position from that district. Only voters of the council district could vote at general elections to elect council members from that district. Under the new charter provisions, council districts would only be used for candidate residency purposes. Voters of the entire county could vote at primary elections to select the names of two candidates whose names will appear on the general election ballot for the council position from that district. Voters of the entire county could vote at general elections to elect council members from that district. The Court of Appeals recently upheld the constitutionality of the use of these council districts as not violating the One Person, One Vote doctrine, even though the districts had widely varying populations. The charter amendment required that a council district could not divide an island in the county.[117]

The San Juan County Charter also provides for an appointed county administer to act as the chief administrative officer of the county, exercising the prior administrative responsibilities of the board of county commissioners. The county administrator also operates a central budget office for the county.

County voters are granted initiative and referendum powers on county matters. A personnel system is adopted for county employees with details to be established by the county council. This system could develop into a merit-based personnel system.

Charter amendments may be submitted to voters under three different procedures. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, between 15 and 25 people are elected to a charter review commission every ten years to review the charter and propose charter amendments. The commission may submit amendments directly to county voters for their approval or rejection or may recommend amendments to the county council for its consideration. Third, charter amendments may also be submitted directly to county voters by initiative action of county voters.

9. Clark County Charter

Clark County voters approved a regular county charter in 2014.

The Clark County Charter provides for a five-member county council as the county legislative body and an elected assessor, auditor, clerk, treasurer, sheriff, and prosecuting attorney. A county manager is appointed by the council to act as both the chief executive of the county and chief financial officer of the county. Four of the five council positions are associated with council districts and one council position is elected on an at-large basis throughout the entire county. Only residents of a council district may run for the position associated with that position. Only voters of a council district may vote at a primary election to select the names of two candidates for that position whose names will appear on the general election ballot. Only voters of the council district may vote at a general election to elect a council member to that position. The other elected officials are nominated and elected on an at-large basis throughout the county. All of these offices are partisan elective offices.

County voters are granted initiative and referendum powers on county matters.

Charter amendments may be submitted to voters under three

different procedures. First, the county council may submit an amendment directly to county voters for their approval or rejection. Second, 15 people are elected to a charter review commission five years after the charter is adopted, and every ten years thereafter to review the charter and propose charter amendments. The commission may submit amendments directly to county voters for their approval or rejection. Third, charter amendments may also be submitted directly to county voters by initiative action of county voters.

D. County Seats and Courthouses

The county seat is the place where the county courthouse is located. Very few constitutional or statutory details exist about county seats and county courthouses. A courthouse is the building, or complex of buildings, where most county offices are located, including actual courtrooms.

1. General requirements

Many people are under the impression that a county seat must be an incorporated city, as all existing county seats are currently located in incorporated cities. However, no constitutional provision or statute requires a county seat to be located in an incorporated city. Several county seats, such as Oysterville, were at one time located in unincorporated communities. A county with its county seat in a city may contract with the city for a joint county courthouse and city hall.[118]

A county courthouse with a suitably furnished office for each county officer must be located in the county seat of each county, but the county legislative authority may provide additional county offices for county officials elsewhere.[119] The superior court meets at the county courthouse, but may also meet elsewhere in the county as designated by the superior court judge or judges, with the approval of the chief justice of the Supreme Court.[120] The county legislative authority must hold regular meetings at the county seat but may hold special meetings elsewhere in the county if the agenda is of unique interest to the residents of the portion of the county where the special meeting is held.[121] Legislation was enacted in 2015 allowing joint meetings of county legislative authorities.[122] The prosecuting attorney, county clerk, sheriff, treasurer, and county

engineer are required to have an office at the county courthouse.[123]

Several counties have built courthouse annexes outside of their county seats. For example, King County has a criminal justice center in Kent that includes several courtrooms, a secondary jail, and facilities for the sheriff. Benton County built a courthouse annex in Kennewick.

2. Selection and relocation of county seats

Article XI, Section 2 provides that a county seat may not be relocated unless a ballot proposition authorizing the relocation is approved by at least three-fifths of county voters voting on the proposition where at least three-fifths of all county voters voted at the election. A ballot proposition to relocate a county seat may not be presented to voters in the same county more frequently than once every four years. However, statutes provide that any such election may not occur more frequently than once every eight years in any county.[124] Article II, Section 28(18) prohibits that Legislature from enacting special legislation to locate or change a county seat, except when a new county is created.

Historically, bitter fights have arisen over the selection or removal of a county seat. Many people feel that locating the county seat in a community will bring jobs and economic development to the community.

The most contentious fight over a county seat appears to have occurred in Snohomish County during the mid-1890's. Snohomish City had been the county seat of Snohomish County since July of 1861 and had become the industrial, financial, social, intellectual, and political center of the county during territorial years. However, the new community of Everett had become the business center of the county by 1894. Voters in Everett attempted to remove the county seat to Everett under the new constitutional provisions requiring a super-majority vote to remove a county seat. An election to remove the county seat was held in November of 1894, with angry charges of voter fraud on both sides, followed by several lawsuits, and Everett finally prevailing as the new county seat on December 1, 1896.[125] One historian described the bitter controversy as follows:

> "No one will ever know the actual count of the honest votes cast in the county seat election of 1894. Both sides over-reached themselves and neither could go into court with clean hands, so the case was not decided upon its merits."[126]

Perhaps, the bitterness of this campaign may have echoed an earlier bitter campaign to locate the county seat of Snohomish County following its creation on January 14, 1861. The organizing legislation enacted by the Legislative Assembly named "Mucokilteo" (Mukilteo) as the initial county seat of Snohomish County, but provided that by a majority vote the citizens could locate the county seat elsewhere at the next general election then held in July of 1861. No legal records remain of this election where Snohomish City prevailed over Mukilteo apparently by a one vote margin (eleven votes cast for Snohomish City and ten votes cast for Mukilteo) and became the new county seat.[127]

A short but robust fight over the county seat of Pacific County occurred in the early 1890's. Oysterville had been the county seat since the county was created in 1851, but that community had diminished in size and importance, while South Bend had grown to be considerably larger than Oysterville by the early 1890's. A vote to remove the county seat to South Bend was held in 1892 under the new constitutional provisions for removing county seats. Oysterville prevailed but charges of voter fraud were made and a lawsuit ensued. Scores of citizens from South Bend took the matter into their own hands on Sunday, February 5, 1893, and "stole" the county records from the county courthouse. John Hudson, one of the leaders from South Bend, recounted that:

> "I swiped the County Seat from Oysterville and brought it home to South Bend where it stays."[128]

Other fights arose in Clallam County between Port Angeles and Dungeness, in Spokane County between Spokane City and Cheney, and in Lincoln County between Sprague, Davenport, and Harrington.[129]

NOTES:

1. Square mileage figures taken from the *State of Washington 2001 Data Book*, Office of Financial Management, at pages 186-265.
2. Population figures taken from Population figures taken from "Washington State County Population Projections for Growth Management," *ibid*.
3. A dissenting opinion in *State ex rel. Chehalis County v. Superior Court*, 47 Wash. 453, 467 (1907), argued that the lack of clarity in the State Constitution allowed new counties to be created either by special legislation or under general legislation. This position has never been accepted in any other Supreme Court decision.
4. 134 Wn.2d 377, 380 & 386 (1998).
5. The special legislation creating Chelan County is found in Chapter XCV, Laws of 1899. The special legislation creating Benton County is found in Chapter 89, Laws of 1905.
6. The special legislation creating Ferry County is found in Chapter XVIII, Laws of 1899. The special legislation creating Grant County is found in Chapter 17, Laws of 1909. The special legislation creating Pend Oreille County is found in Chapter 28, Laws of 1911.
7. *Douglas County v. Grant County*, 72 Wash. 324, 332 (1913).
8. *Farquharson v. Yeargin*, 24 Wash. 549, 553 (1901).
9. *State ex rel. Chehalis County v. Sup'r Ct.*, 47 Wash. 453, 464-466 (1907).
10. Chapter 77, Laws of 1915.
11. Chapter CXIX, page 217, Laws of 1891.
12. Chapter 40, Laws of 1925, ex sess.
13. Chapter 146, Laws of 2006.
14. Chapter 154, Laws of 1969, 1st ex sess.
15. Statutes of the Territory of Washington, Local Laws, 1857-1858, 5th Session, at Page 51.
16. Statutes of the Territory of Washington, Local and Private Laws, 1862-1863, 10th Session, at Page 6.
17. Statutes of the Territory of Washington, Private and Local Laws, 1863-1864, 11th Session, at Page 70.
18. Statutes of the Territory of Washington, Local and Private Laws, 1875, 5th Biennial Session, at Page 189.
19. Avery, Mary W., *Government of Washington State*, University of Washington Press, 1866, at Page 8.
20. Statutes of the Territory of Washington, Local and Private Laws, 1879, 7th Biennial Session, at Page 203.
21. Statutes of the Territory of Washington, 1864-1865, 12th Session, at Page

44.

22. Avery at pages 8-9.

23. Statutes of the Territory of Washington, Local and Private Laws, 1862-1863, 10th Session, at Pages 4-5.

24. Ferguson County was abolished at Statutes of the Territory of Washington, 1864-1865, 12th Session, at Page 47. Yakima County was created at Statutes of the Territory of Washington, 1864-1865, 12th Session, at Page 47. The boundaries of Stevens County were expanded at Statutes of the Territory of Washington, 1864-1865, 12th Session, at Page 48.

25. Statutes of the Territory of Washington, 1867-1868, 1st Biennial Session, at Page 80.

26. Statutes of the Territory of Washington, 1869, 2nd Biennial Session, at Page 291.

27. Chapter 363, Laws of 1991.

28. RCW 36.16.030 & 36.16.032.

29. Article XXVII, Section 2.

30. Laws of Washington Territory, Code of 1881, §§2663, 2707, 2738, 2758, 2766, 2775, & 3170.

31. Laws of Washington Territory, Code of 1881, §2752.

32. Laws of Washington Territory, Code of 1881, §2802. The office of wreck master was created at Statutes of the Territory of Washington Territory, 1854, 1st Session, Section 1, at Page 439. This office was eliminated in Chapter 42, Laws of 1915.

33. Statutes of the Territory of Washington, 1854, 1st Session, Section 4, at Page 366; and Laws of Washington Territory, Code of 1881, §2177.

34. Section 2, Chapter X-Counties, Page 304, Laws of 1889-1890.

35. Chapter V, Page 6, Laws of 1891.

36. Section 1, Chapter 160, Laws of 1907.

37. Section 5, Chapter 148, Laws of 1925, ex sess.

38. Section 4, Chapter 187, Laws of 1937.

39. RCW 36.80.010, which was last amended by Section 1, Chapter 9, Laws of 2002.

40. Section 1, Article XII [X], Chapter 311, page 311, Laws of 1909.

41. Sections 22 and 32, Chapter 157, Laws of 1955.

42. Section 159, Chapter 176, Laws of 1969, 1st ex sess.

43. Chapter 28A.310 RCW.

44. RCW 29A.52.111.
45. Section 4, Chapter 148, Laws of 1925, ex sess.
46. Section 46, Chapter 363, Laws of 1991.
47. Chapter 84.40 RCW, especially RCW 84.40.025, 84.40.038, 84.40.039, 84.40.040, 84.40.045, 84.40.160; Chapter 84.41 RCW; Chapter 84.48 RCW; & RCW 84.56.010.
48. Section 3, Chapter 148, Laws of 1925, ex sess., provided for the county clerk in a county with a population of 8,000 or less to act as the county auditor. Section 4, Chapter 219, Laws of 1957, retained this combined office in 9th class counties but allowed the board of county commissioners in any 8th class county to also combine these offices.
49. RCW 36.16.032.
50. RCW 36.22.010(1) and Chapters 65.04 & 65.08 RCW.
51. Chapter 70.58 RCW and RCW 43.70.150 & 43.70.160.
52. RCW 36.22.010(6) & 36.32.110.
53. RCW 29A.04.216 & 36.22.220.
54. RCW 29A.04.230.
55. RCW 29A.60.140.
56. RCW 36.22.010, 36.22.050, 36.22.060, 36.40.010, 36.40.030, & 36.40.040
57. RCW 36.22.050.
58 RCW 36.40.010 and 36.40.040.
59. RCW 36.16.030.
60. Section 2, Chapter 108, Laws of 1996, codified as RCW 36.24.190.
61. RCW 36.24.190.
62. RCW 36.24.020.
63. RCW 36.24.020-36.24.070.
64. RCW 36.24.010.
65. RCW 36.24.160.
66. RCW 36.23.030, 36.48.080, & 36.48.090.
67. RCW 36.16.032.
68. RCW 36.27.005.
69. RCW 36.27.020.
70. RCW 36.27.030.
71. RCW 29A.60.140.

72. RCW 36.28.010.
73. RCW 36.28.010(1).
74. RCW 36.28.010(3), (4), and (5).
75. Chapter 6.21 RCW.
76. RCW 70.48.090(3) and 36.28.100.
77. Section 4, Chapter 148, Laws of 1925, ex. sess.
78. Section 162, Chapter 363, Laws of 1991.
79. Chapters 84.56, 84.60, and 84.64 RCW.
80. RCW 82.45.090, 82.46.060, 36.29.010, 36.29.020, 36.29.100, & 36.29.120.
81. RCW 36.32.010.
82. Section 1, Chapter 61, Laws of 1947, codified in RCW 36.32.120(7), authorizes the legislative authorities of counties to "make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law...."
83. Boards of county commissioners are authorized to: (a) Adopt criminal ordinances in RCW 36.32.120(7); (b) provide for civil violations or infractions in RCW 36.32.120(7) and Chapter 7.80 RCW; (c) issue licenses or permits for ferries, grocery stores, hawkers, peddlers, auctioneers, massage practitioners, bartenders, and drinking houses or saloons any where in the county; and the licensing of public dances, public recreational or entertainment activities, pool halls, billiard halls, and bowling alleys in unincorporated areas under RCW 36.32.120(3), 36.32.122, 36.71.020, 36.71.080, 67.14.040, 67.14.050, 67.12.021, and 67.12.110; (d) impose taxes under RCW 36.32.120(4); (e) adopt comprehensive plans and zoning ordinances under Chapters 35.63, 36.70, and 36.70A RCW; (f) issue bonds under Chapter 36.67 RCW; and (g) regulate public health under RCW 70.05.060(3).
84. Boards of county commissioners are authorized to provide: (a) County roads under Chapters 36.75-36.88 RCW; (b) health services and the provision of county hospitals under Chapters 70.05, 70.08, 70.46, and 36.62 RCW; (c) parks and recreational facilities under RCW 36.68.010-36.68.110; (d) jails and other public buildings under RCW 36.32.120(1) & (6); (e) airports under Chapters 14.07 & 14.08 RCW; (f) public libraries under RCW 27.12.030; (g) law libraries under Chapter 27.24 RCW; (h) ferries under Chapter 36.54 RCW; (i) solid waste disposal under Chapter 36.58 RCW; (j) probation and parole services under RCW 36.01.070; (k) parking facilities under RCW 36.01.080; (l) emergency medical services under RCW 36.01.095; (m) ambulance service under RCW 36.01.100; (n) economic development programs under RCW 36.01.085; (o) tourist promotion under RCW 36.32.450; (p) urban renewal under Chapters 35.80, 35.80A, and 35.81 RCW; (q) potable water facilities under Chapter 36.94 RCW; (r) sanitary sewer facilities under Chapter 36.94 RCW; (s) drainage facilities under

RCW 36.89.080-36.89.110 and Chapter 36.94 RCW; and (t) building permits and land use permits under Chapters 19.27, 35.63, 36.70, and 58.17 RCW.

85. For example, RCW 36.70.970 & 58.17.110.

86. *State ex rel. Maulsby v. Fleming*, 88 Wash. 583, 584-585 (1915).

87. Section 2, Chapter X - Counties, Page 304, Laws of 1889-1890.

88. The office of wreck-master was originally established in Statutes of the Territory of Washington, 1854, 1st Session, Section 1, Page 439 was abolished in 1915 by Chapter 42, Laws of 1915.

89. Legislation enacted in 1925, provided for county clerks to act as county auditors, and for no separate county auditor to be elected, in counties of classes 6-B through 9th, which was any county with a population of 8000 or less. (See, Section 3, Chapter 148, Laws of 1925, ex sess.) Legislation was enacted in 1937 providing for the election of auditors in every county other than a 9th class county, where the clerk would act *ex officio* as the auditor. (See, Section 1, Chapter 197, Laws of 1937.) Legislation was enacted in 1963 allowing 8th class counties to combine these offices, but not altering the requirement that these offices are combined in 9th class counties. (Section 2, Chapter 164, Laws of 1963.) The current provisions were established by Section 48, Chapter 363, Laws of 1991.

90. Sections 2-6, Chapter 252, Laws of 1990, codified as RCW 36.32.055-36.32.0558.

91. AGO 1979 L.O. No. 8.

92. *State ex rel. Johnston v. Melton*, 192 Wash. 379, 389 (1937).

93. *Bishop*, at page 297.

94. For example, counties are authorized to create a department of corrections and have an appointed official control the county jail rather than the county sheriff. (RCW 70.48.090(3).) Ironically, the Court in dicta in *State ex rel. Johnston v. Melton*, at page 389, stated that a statute allowing prosecuting attorneys joint criminal investigative powers with those of the sheriff would be as improper as attempting to remove control over the jail from the sheriff.

95. RCW 29A.04.110(3) provides for county elective offices other than judicial offices to be partisan offices. RCW 36.16.020 provides for four-year terms of office for the offices of county assessor, auditor, clerk, coroner, sheriff, and treasurer. RCW 36.32.030 provides for four-year staggered terms of office for county commissioners.

96. RCW 29A.52.111(3) and 29A.04.110(3) provide that all county non-judicial elective offices are partisan offices unless a county charter provides otherwise. This appears to authorize a county charter to make the office of county prosecuting attorney a non-partisan elective office.

97. Chapter 29A.08 RCW.

98. RCW 29A.04.216.

99. RCW 36.32.020, 36.32.040, & 36.32.050.

100. RCW 36.32.020 & 36.32.040(2).

101. RCW 29A.04.110(3) provides for election of superior court judges on a nonpartisan basis. Article IV, Section 5 and RCW 2.08.070 provides superior court judges with four-year terms of office.

102. Statutes of the Territory of Washington, 1854, 1st Session, Section 8, Pages 420-421.

103. For example, the first State Legislature created 29 classes for the total of 34 counties in 1890. (See, Section 1, Pages 302-304, Chapter X - Counties, Laws of 1889-1890.)

104. Section 2, Chapter 88, laws of 1973 1st ex sess.

105. Section 5, Chapter 73, Laws of 2001, codified as RCW 36.17.024.

106. Article XI, Section 5, as amended by Amendment 57, provides that compensation for the officials of non-charter counties is set by action of the Legislature or may be delegated to the county legislative authorities.

107. Monthly salary figures reported in this paragraph were taken from *Washington City & County Employee 2001 Salary & Benefit Survey*, published by the Association of Washington Cities in cooperation with the Washington State Association of Counties, at pages 251-253. This document is referred to as the *2001 Salary Survey* in following notes.

108. Bob Young, "King County Council Likely to Trim Its Pay Raise," *Seattle Times*, January 8, 2012.

109. Table 3, Population Trends 2014, Office of Financial Management, http://ofm.wa.gov/pop/april1/poptrends.pdf .

110. The 2001 *Salary Survey* reports that each member of the Whatcom County Council members is paid $1,208 per month for working 20 hours per week.

111. Chapter CLXXV, Laws of 1895, provided for townships to be organized in any county. Chapter 36, Laws of 1997 repealed the statutes providing for the township organization of counties.

112. RCW 29A.04.110(3) and 29A.52.111(3) provide that all county non-judicial elective offices are partisan offices unless a county charter provides otherwise. This appears to authorize a county charter to make the office of county prosecuting attorney a non-partisan elective office.

113. See, *Paget v. Logan*, 78 Wn.2d 349, 356 (1970), *Ford v. Logan*, 79 Wn.2d 147, 152-157 (1971), and *Ruano v. Spellman*, 81 Wn.2d 820, 822-823 (1973). Each of the six county charters include provisions providing for county voters to exercise initiative and referendum on county matters.

114. Article XI, Section 4.

115. *Maleng v. King County Corrections Guild*, 150 Wn.2d 325, 333 (2003).

116. Section 4.10, Clallam County Charter.

113. *Carlson v. San Juan County*, No. 70710-8-1, Court of Appeals of Washington, Division 1, 333 P.3d 511 (014), decided September 4, 2014.

118. RCW 36.64.010-36.64.040.

119. RCW 36.32.120(1) directs the board of county commissioners to provide for the erection and repair of the county courthouse and other public buildings. RCW 36.16.090 requires boards of county commissioners to provide a "suitable furnished office" for each county officer in the county courthouse.

120. RCW 2.08.030.

121. The requirement for board of county commissioners to hold regular meetings at the county seat is found in RCW 36.32.080. Note that regular meetings are not required to be held at the county courthouse. The authority to hold special meetings elsewhere in the county is found in RCW 36.32.090.

122. Chapter 74, Laws of 2015, amending RCW 36.32.080 and 36.32.090.

123. RCW 36.23.080 requires the county clerk to keep office at the county seat. RCW 36.27.070 requires the county prosecuting attorney to keep office at the county seat. RCW 36.28.160 requires the county sheriff to keep office at the county seat. RCW 36.29.170 requires the county treasurer to keep office at the county seat. RCW 36.80.015 requires the county engineer, who is employed by the county, to keep office at the county seat

124. RCW 36.12.080 & 36.12.090.

125. Whitfield, William, supervising editor, *History of Snohomish County, Washington*, Vol. I, Pioneer Historical Publishing Company, 1926, at pages 129-141. *An Illustrated History of Skagit and Snohomish Counties, Washington*, Endorsed as Authentic by Local Committees of Pioneers, Interstate Publishing Company, 1906, at pages 290-292.

126. Whitfield at page 139.

127. Whitfield, at pages 71-74.

128. Espy, Willard R., *Skulduggery on Shoalwater Bay*, Cranberry Press, 1998, at page 88.

129. LeWarne, Charles P., *Washington State*, Third Printing, University of Washington Press, 1998, at page 403.

Chapter 3

Dual Natures of Counties

County government in Washington State is characterized by a number of dual natures. These dual natures have resulted in some confusion over county government.

The first dual nature of counties is their status as both political subdivisions of the State, acting as agents on behalf of the State, and as separate municipal corporations with general municipal powers. The second dual nature of counties relates to the exercise of county powers in a non-uniform basis -- some powers are exercised countywide while other powers are only exercised in the unincorporated areas of the county outside of cities.

Both of these dual natures are unique to counties. No other type of local government in Washington State is characterized by either of these dual natures.

First Dual Nature

The first dual nature of counties arises from their status as both political subdivisions of the State and as municipal corporations. This dual nature is recognized in the State Constitution.

A. Nature as Political Subdivisions of the State

Article XI, Section 1 recognizes counties as "legal subdivisions" or political subdivisions of the State. The Supreme Court has recognized counties as the "primary organ of local government" in the State.[1]

Washington State courts have consistently recognized counties as being political subdivisions of the State, acting as the arm or agents

of the State implementing state policies uniformly throughout the entire State. Initially, counties were created in lieu of Territorial agencies to implement Territorial policies throughout Washington territory. This practice continued during the early years of statehood when counties acted as agents of the State. However, today it is more common for state authorities to be implemented by state agencies rather than to be granted to counties.

The Supreme Court recognizes each county as "an involuntary corporation organized exclusively in the interests of the public and as an agency of the state."[2] This underscores the nature of counties as political subdivisions of the State exercising involuntary or mandatory duties, as distinguished from voluntary duties that municipal corporations may exercise at their option.[3]

Most functions exercised by county administrative and executive elected officials, other than the county legislative authority, are exercised in the name of the State as political subdivisions of the State. Examples of these county functions as political subdivisions of the State include:

- County prosecutors prosecuting felonies in the name of the State, and not in the name of the county, rather than the attorney general prosecuting state felonies;[a]
- County assessors establishing property values that are used when property taxes are imposed by all taxing districts, not just the county;
- County treasurers collecting all property taxes imposed within the county by all taxing districts, not just the county; and
- County auditors conducting elections for the federal government, State, county, cities, and most special purpose districts.

Each county provides these functions uniformly throughout its

a The dual nature of county prosecuting attorneys was recently recognized in legislation providing for the State to contribute an amount to each county for the salary of its prosecuting attorney equal to one half of the salary of a superior court judge. (Chapter 309, Laws of 2008) In an uncodified section, the office of prosecuting attorney was recognized as being both a state officer and county officer. (Section 1, Chapter 309, Laws of 2009)

entire boundaries in lieu of the State providing these functions.

B. Nature as Municipal Corporations

Article XI, Section 11 recognizes counties as municipal corporations by granting counties, along with cities and townships, broad authority to exercise general police regulatory powers.

At times, our courts have failed to recognize the nature of counties as municipal corporations possessing optional authority to provide services and facilities much like a city.[4] However, at other times our courts have recognized the nature of counties as municipal corporations.[5]

County functions that would be categorized as functions of a municipal corporation include the authority to provide sewer systems, water systems, and neighborhood park and recreational facilities.[6] The county law enforcement function or provision of county roads could be classified as either a municipal function or a subdivision of the state function. Counties basically exercise these optional services in unincorporated areas, but in theory could exercise these authorities inside cities. Most county functions of a municipal corporation were authorized years after statehood.

Second Dual Nature

The second dual nature of counties arises from counties not exercising their powers uniformly throughout their boundaries. Some powers are exercised on a countywide basis, while other powers are only exercised in unincorporated areas outside of cities.

Most, but not all, of the present-day authorities exercised by counties on a countywide basis would be classified as functions exercised as political subdivisions of the State. Most, but not all, of the present-day authorities exercised by counties in the unincorporated areas would be classified as functions of municipal corporations.

This dual nature is unique—other local governments exercise or are authorized to exercise their powers uniformly throughout their entire boundaries.

Counties exercised all of their powers countywide during the early days of Washington Territory as political subdivisions of the territorial government. Very few territorial agencies existed. The exercise of powers by counties on a countywide basis began to change when the Legislative Assembly enacted special legislation incorporating cities. Cities were granted concurrent authority with counties to exercise some functions as well as additional functions. Gradually, counties deferred to cities exercising these concurrent functions and ceased exercising the concurrent functions within cities. However, counties still retained the authority to provide many of these functions within cities. This gradual shift in exercising powers is best demonstrated by the provision of law enforcement and the provision of roads.

Each county sheriff provided law enforcement throughout the entire county during the years of Oregon Territory and the early years of Washington Territory. However, the exclusive authority of county law enforcement began to wane with the incorporation of some cities. Special legislation incorporating cities varied widely with regard to cities providing law enforcement services. Immediately before statehood, the provision of law enforcement by cities varied as follows:

- Marshals were provided in some cities but were not granted law enforcement powers.[b]
- Marshals were provided in other cities and were granted limited law enforcement powers.[c]
- Marshals were provided in other cities and were

b The special legislation creating the City of Steilacoom provided for the election of a marshal, but the only duties of the marshal specified in the charter were to execute and return processes issued by the city recorder, to receive fees for rendering services, and to carry out duties prescribed by the common council. (Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Article V, Sec. 3, and Article VI, Sec. 3, at Pages 455-458.) Steilacoom was the first city incorporated by the Legislative Assembly. The special charter creating the City of Vancouver provided for the election of a marshal with similar powers. (Statutes of the Territory of Washington, Private Laws, 1856-1857, 4th Session, Article II, Sec. 1; Article V, Section 3; and Article VI, Section 3, at Pages 69-73.) Vancouver was the second city incorporated by the Legislative Assembly.

c The special legislation creating the City of Walla Walla provided for a marshal to carry out duties prescribed by the city council and the power to arrest persons for "breach of peace and violations of city ordinances." (Statutes of the Territory of Washington, 1861-1862, 9th Session, Article III, Sec. 5, at Pages 16-26.) Walla Walla was the fifth city incorporated by the Legislative Assembly.

granted general law enforcement powers.[d]

The original state statutes creating the different classes of cities in 1890 granted all cities authority to create city police departments with general law enforcement powers.[e] Each county sheriff retained jurisdiction within cities located in the county, and so remained the chief law enforcement officer throughout the entire county, but eventually deferred the provision of general law enforcement services within cities to city law enforcement officials.

Counties provided and maintained roads throughout all of the county at one time, both inside cities and in unincorporated areas outside of cities. However, today counties basically only provide roads in the unincorporated areas of the county outside of cities. The exclusive authority of counties to provide roads countywide began to wane with the incorporation of the Town of Olympia in 1859. The special legislation providing for Olympia's charter precluded county road districts from including any of the town and authorized the new town to create a road district for the provision of roads within its boundaries.[7] By statehood, the provision of roads varied widely throughout the soon to be created State.[f] Roads were provided inside cities as follows:

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d The special legislation creating the City of Seattle provided for a marshal who was declared to be a "peace officer" with power to arrest persons for "breach of peace in commission of a crime in commission of a crime within the city limits." (See, Statutes of the Territory of Washington, Private and Local Laws, 1869, 2nd Biennial Session, Section 49, Pages 437-455.) This special legislation was amended in 1875, granting Seattle the authority to establish and maintain a "day and night police" with full powers of arrest, including for breach of peace or commission of a crime within the city. (See, Statutes of the Territory of Washington, Local and Private Laws, 1875, 5th Biennial Session, Chapter II, Sec. 20, and Chapter VIII, Section 73, Pages 139-160.)

e Interestingly, there was no reference to police departments or marshals in the original first class city statutes. (See, Pages 215-224, Laws of 1889-1890.) However, an omnibus grant of powers granted first class cities the powers of any other class of city. (See, Section 7, Page 224, Laws of 1889-1890.) Each second class city was authorized to provide a police force and a chief of police. (See, Section 89, Pages 143-178, Chapter VIII, Laws of 1889-1890.) Each third class city was authorized to have police department under the direction of a city marshal. (See, Section 136, Pages 178-198, Chapter VIII, Laws of 1889-1890.) Each town was authorized to provide for police under the direction of a town marshal. (See, Section 172, Pages 198-202, Laws of 1889-1890.)

f Article 4th, Section 4(6), of the City of Port Townsend Charter, at Statutes of the Territory of Washington, Private Laws, 1859-1860, 7th Session, Pages 433-436, granted exclusive control over roads, streets, and alleys to the city trustees, precluded the city from being within a county road district, and authorizes the city to collect road district taxes and impose an additional annual property tax for its roads, streets, and alleys. Article V, Section 3(21), of the City of Lewiston Charter, at Statutes of the Territory of Washington, Local and Private Laws, 1863, 10th Session, Pages 43-51, authorized the city to grade and repair streets, but was silent on road districts and taxes to fund streets and roads. Lewiston is now located in the State of Idaho. Article 4th, Section 4(6), of the Town of Seattle Charter, at Statutes of the Territory of Washington, 1864-

- Some city charters included provisions similar to those in the Olympia Charter granting the city exclusive control over city streets or roads and authorizing the city to create its own road districts.
- Some city charters merely granted the new city control over their roads and streets, but were silent on road districts and county road taxes.
- Some city charters contained no provisions on streets or roads, so and the county continued to provide roads within these cities in the same manner as in unincorporated areas.

Legislation was enacted in 1879 authorizing counties to impose a new countywide property tax for roads. This new tax was in addition to the normal countywide property tax for general county purposes and a separate property tax imposed in each road district to fund roads in the road district.[8] This new taxing authority recognized the regional authority of counties to finance at least major roads throughout all of the county, including inside cities. A requirement was established in 1907 that 15 percent of the collections of this tax from within cities must be used by counties to provide roads and bridges in the cities leading to the unincorporated area or for roads in the city that were designated as county roads.[9] The countywide property tax earmarked for roads was eliminated in 1933, except to retire bonds payable from the levy that had been issued before that legislation.[10]

Counties were precluded from including any city within their road districts in 1903, but this prohibition was removed from state law in

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1865, 12th Session, Pages 75-79, granted the town exclusive control over roads within its boundaries, precluded the town from being included in a county road district, and provided that the town collect the road tax. Article VI, Section 1(32), of the City of Kalama Charter, at Statutes of the Territory of Washington, Local and Private Laws, 1871, 3rd Biennial Session, Pages 142-162, provided that the city constituted a single road district and authorized the city to impose various taxes to finance its roads. Article IV, Section 5, of the Town of Tumwater Charter, provided that streets and roads within the town were under its exclusive control but did not include provisions about road districts or the county property tax for roads and bridges. However, the special legislation adopting charters for the cities of Steilacoom, Vancouver, and Walla Walla, did not authorize the cities to provide roads or streets and did not preclude city territory from being included in a county road district. (See, Statutes of the Territory of Washington, Private and Local Laws, 1854, 1st Session, Pages 455-458; Statutes of the Territory of Washington, Private Laws, 1856-1857, 4th Session, Pages 69-73; and Statutes of the Territory of Washington, 1861-1862, 9th Session, Pages 16-24.)

1907.[11] However, at least in modern days, no county includes a city within its road districts. A discussion of road districts is found in Chapter 38.

NOTES:

1. Opportunity *Township v. Kingsland*, 194 Wash. 229, 237 (1938).
2. *State, ex rel. Summerfield v. Tyler*, 14 Wash. 495, 499 (1896).
3. *Hoexter v. Judson*, 21 Wash. 646, 648-651 (1899); *State ex rel. Taylor v. Superior Court*, 2 Wn.2d 575, 579 (1940); *State ex rel. Spokane v. DeGraff*, 143 Wash. 326, 329-330 (1927); and *State v. Vantage Bridge Company*, 134 Wash. 568, 572 (1925).
4. For example, *Hoexter* at Page 648-651; *State ex rel. Taylor*, at Page 579; and *State ex rel. Board of County Commissioners v. Clausen*, 95 Wash. 214, 222 (1917).
5. For example, *Carkenen v. Williams*, 76 Wn.2d 617, 627 (1969); and *Mochizuki v. King County*, 15 Wn.App. 296, 297-298 (1976).
6. Counties are authorized to provide roads by RCW 36.75.020. Counties are authorized to provide sanitary sewers and potable water facilities in Chapter 36.94 RCW. Counties are authorized to provide park and recreational facilities in RCW 36.68.010.
7. Article 4th, Section 4(6), of the Town of Olympia's Charter, at Statutes of the Territory of Washington, Local Laws, 1858-1859, 6th Session, Pages 31-34.
8. Statutes of the Territory of Washington, 1879, 7th Biennial Session, Section 84, Pages 3-49.
9. Section 1, Chapter 76, Laws of 1907.
10. Section 6, Chapter 41, Laws of 1933.
11. Section 7, Chapter 119, Laws of 1903, precluded cities from being included in a county road district. This prohibition was eliminated by Section 1, Chapter 246, Laws of 1907.

Chapter 4

Dramatic Changes in County Powers

Counties were the dominant form of local government in Washington Territory and in the early years of statehood. They exercised virtually every aspect of governmental power that was exercised in the Territory or State at that time. Most of these responsibilities were exercised on a countywide basis both within cities and in unincorporated areas outside of cities.[a]

This dominant status of counties has diminished since statehood. Many express county powers were eliminated. Counties have fewer countywide responsibilities today than they used to possess. This loss of countywide responsibilities has resulted from both:

- A contraction of early county responsibilities by: (1) Granting cities concurrent authorities; (2) transferring one-time county responsibilities to the State; and (3) the federal government assuming new responsibilities that were once exercised by counties.
- The lost opportunity of being given new responsibilities when the State assumed new responsibilities or new special districts were authorized to be created to provide new services and facilities, in lieu of counties being authorized to provide these new services and facilities.

The trend of reducing county powers was so pervasive that a terse

a A description of the early powers of counties is found in "The Hundred Years of Washington, a Chapter in the Story of the Origin and Development of Local Government" which is contained in the 1953 Yearbook, prepared by the Washington State Association of County Commissioners and the Washington State Association of County Engineers, at pages 1-19. This Yearbook commemorated the Centennial celebration of the creation of Washington Territory.

summary of the history of local government in Washington could be described as the loss of power by county government, from both a relative sense and an absolute sense.

However, this gradual erosion of county powers seems to have been reversed the later years of the 20th century, when counties were granted new countywide powers. These new countywide powers tend to be local governmental powers exercised on a region-wide basis rather than powers exercised as agents of the State.[b]

Current County Powers

Although county powers may have diminished over time, counties still possess very broad grants of authority.

Counties exercise powers as both political subdivisions of the State and municipal corporations. Often, a bright line between these types of powers is not easy to draw.

A. Powers as Political Subdivisions of the State

Counties provide basic judicial services and facilities, such as courthouses with district courts and superior courts, superior court and district court judges, county prosecuting attorneys, coroners, and county clerks.[c] They also provide jails.[1]

Most of the functions of county administrative elective officials would be classified as services and facilities provided as political subdivisions of the State. This includes the powers of the county auditor, treasurer, and assessor.[d]

B. Powers as Municipal Corporations

Besides exercising powers as political subdivisions of the State, counties:

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b A discussion of regional governments is found in Chapter 24.

c A discussion of superior and district courts is found in Chapter 69. A discussion of prosecuting attorneys and county clerks is found in Chapter 2.

d A discussion of services provided by these officials is found in Chapter 2.

- Have broad police regulatory powers;
- Are authorized to provide a variety of governmental and proprietary services and facilities;
- May condemn property or exercise the powers of eminent domain to acquire private property for public uses;[e]
- May borrow money; and
- May impose taxes, special assessments, and rates and charges to finance their activities and facilities.[f]

Article XI, Section 11 grants counties (as well as cities and townships) broad home rule regulatory powers. This includes the authority to adopt criminal ordinances creating misdemeanors, with penalties of $1,000 or 90 days in jail, or both, as well as the authority to provide for civil violations of their ordinances.[2] County health boards, which basically are the county legislative authorities, are granted broad authority to adopt rules and regulations "necessary in order to preserve, promote, and improve the public health and provide for the enforcement" of these rules and regulations.[3] These are extremely broad health powers.

Counties (and cities) are granted broad authority to regulate land uses and development activities. General planning enabling laws authorize counties to adopt comprehensive plans and zoning ordinances.[4] Counties (and cities) are required to review and approve or reject proposed divisions of land into smaller lots.[5] These requirements involve what is called the subdivision of land as well as the short subdivision of land. As discussed in Chapter 72 all counties (and cities) must adopt local shoreline master programs and issue substantial development permits under the Shoreline Management Act.[6] As discussed in Chapter 70, most counties (and cities) are required to plan under the Growth Management Act.[7]

Counties (and cities) are required to enforce the State Building Code. The State Building Code includes an international building

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e A discussion of the powers of eminent domain is included in Chapter 64.

f A discussion of county finances is found in Chapter 5.

code and residential code, international fire code, international mechanics code, uniform plumbing code, a code for accessibility of the physically handicapped or elderly, and by reference the State Energy Code.[8] A county may modify the code, but not reduce the minimum performance standards and objectives of the State Building Code. However, no changes may be made for codes affecting single family dwellings or smaller multifamily units without the approval of the State Building Code Council.[9] The energy code portion of the State Building Code is a minimum code for nonresidential buildings but both a minimum and maximum code for residential buildings.[10]

County sheriffs provide law enforcement and county jails.[11] Counties may provide morgues and cemeteries.[12] Counties provide law libraries and may provide general public libraries, although no county provides a general library.[g] Counties provide extensive public health services. This includes collecting vital records and providing general public health services, hospitals, mental health programs, developmental disability programs, and alcohol and drug abuse programs.[13] Counties are authorized to provide public assistance, but this function has greatly diminished over the years.[14] Counties are authorized to provide park and recreation services and facilities.[15] Counties are authorized to provide historic preservation and urban renewal.[16] A county may provide low income housing by activating a housing authority or providing grants for low income housing.[17] Counties are authorized to provide tourist promotion and economic development.[18] Counties are authorized to provide roads, bridges, sidewalks, ferries, airports, and public transportation (including high capacity transportation systems).[19] Counties are authorized to provide flood control activities and improvements.[20] Counties are authorized to provide public water systems, sanitary sewer systems, drainage or storm water systems, solid waste disposal facilities, and solid waste collection systems.[21] Counties are authorized to engage in pollution control activities.[22] Counties may provide ambulance service and emergency medical services (EMS).[23]

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g Every county with a population of 8,000 or more (i.e., every county other than Garfield, Wahkiakum, and Columbia) is required to have a law library. (RCW 27.24.010.) Every county is authorized to provide general public libraries. (RCW 27.12.030.) However, no county has ever provided a public library but for a number of years before the creation of library districts a few counties apparently used this authority to give money to cities for residents of unincorporated areas to use city libraries. (Reynolds, Maryan, with Joe Davis, *The Dynamics of Change*, Washington State University Press, 2001, endnote 72, to Chapter I, at page 221.)

Express statutory grants of authority for counties are similar to express grants of authority for cities. The primary differences between express county statutory authorities and express city statutory authority are as follows:

- Counties are not granted general statutory authority to adopt ordinances promoting the public welfare.
- County authority to provide utilities is more limited than city authority and does not include authority to provide electrical, steam, natural gas, or heat utilities.
- Counties may only provide for criminal penalties for violations of their ordinances as misdemeanors, while cities may provide penalties that amount to misdemeanors or gross misdemeanors.
- Counties are only authorized to provide fire departments for county airports.[24] Cities are granted general authority to provide fire departments. However, it appears that at least King County provided rudimentary fire protection with two fire marshals, one in the northern portion of the county and another in the southern portion of the county, the provision of fire protection apparatus and the use of volunteer fire fighters.[h]
- County authority to create local improvement districts (LIDs) and impose special assessments to finance local improvements is more limited than city authority and may only be used to finance roads, water systems, sanitary sewer systems, and

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h Hoyt, Harold "Jigs," *The Fire Districts of King County*, Frontier Publishing, 1990, at page 11 stated that:

> "In 1939 ... there was no fire service in the [King] county except two county fire trucks, one in the north end taken care of by Leo McCombs and the one in the south end handled by Jay Thomas. But the runs were usually too long and when the county rig arrived they were just in time to rake the coals."

Leo McCombs, who was the North County Fire Marshal, was stationed with his fire truck at Redmond. He provided coverage north of Seattle and as far east as North Bend. (Pages 54, 123, & 152.) Jay Thomas, who was the South County Fire Marshal, covered the area south of the Seattle city limits to the Pierce County border and from the Sound to Auburn. (Pages 34 & 41.) King County provided fire service with volunteers and these two fire trucks in the 1930's and 1940's. However, there does not appear to have been any express statutory authorization for the county to provide fire protection service.

drainage or storm water systems.

- County taxing authority is more limited than city taxing authority and does not include the authority to impose business license taxes, which are commonly called utility taxes and business and occupation (B&O) taxes.[25] The authority of cities to impose business license taxes arises from their general authority to license any businesses and occupations for both regulatory and revenue generating purposes. Counties, on the other hand, may only license any business or occupation if expressly authorized and only for regulatory purposes.
- Counties are not authorized to adopt and enforce their own electrical codes, or enforce the state electrical code, while cities are granted such powers.

However, a literal comparison of express county powers with the express city powers is somewhat deceptive. Counties tend not to exercise several of their authorities, such as providing general public libraries and solid waste collection systems. This is perhaps due to the relative lack of county general fund revenues, as well as the existence of a multitude of special purpose districts in unincorporated areas that provide some of these services.

Reduction of Early Responsibilities

Counties exercised a wide variety of countywide responsibilities for decades during territorial years and the early years of statehood. However, counties no longer exercise many of these countywide powers. Some of these powers have been transferred to the State or were assumed in part by the federal government. Some of these powers have been given to cities to exercise within their boundaries, with the county only exercising these powers in unincorporated areas outside of cities.

These lost or diminished county powers involve many basic governmental powers. Counties lost responsibility, or at least no longer exercise exclusive countywide responsibility, over the following subject matters: (1) Roads; (2) public assistance; (3) public health; (4) public education; (5) law enforcement; and (6) general public libraries.

The extent of county-wide responsibilities that existed during territorial years and at statehood is even more pronounced when one considers the relatively limited role of government at that time, compared with the rather extensive role of government today. Counties exercised most of the powers of government in territorial days but exercise a more limited extent of governmental powers today.

A. Roads

The first white settlers in Washington built rudimentary "roads" by improving Indian trails to allow the passage of wagons. Commencing in the mid-1850's the federal government also constructed a series of military roads throughout Washington Territory. However, the vast majority of roads were constructed by counties using county road districts.

During early territorial years, counties constructed and maintained all roadways throughout the entire county, both in cities and in unincorporated areas outside of cities. At times these roads were referred to as county roads, Territorial roads, military roads, or highways. The board of county commissioners of each county divided the county into convenient road districts and all adult males were required to perform annual work on the roads within the road district where they lived.[i] [26]

The first Legislative Assembly of Washington Territory enacted separate statutes providing for a number of different territorial roads. Each of these statutes designated the location of the beginning and end of the road and named three road commissioners to locate or survey the road. General legislation was enacted providing that territorial roads

> "shall be opened and worked by the counties through which it may be laid out, as county roads are...."[27]

Legislation enacted in later years clarified that federal military roads were territorial roads and all territorial roads were county roads.[28]

The essential monopoly of each county building and maintaining

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i A more detailed discussion of road districts is found in Chapter 38.

roads throughout its entire boundaries was first broken in 1859 with the enactment of special legislation incorporating Olympia as a town and authorizing Olympia to create and operate its own road district apart from the county.[29] In later years, a few other, but not all, newly incorporated cities were given similar authority during the territorial years. All cities were authorized to provide streets by the first State Legislature in 1890.[30] However, counties retained the authority to provide major thoroughfares and bridges in cities, as well as the authority to provide both secondary roads and major thoroughfares in unincorporated areas, during the early days of statehood.[31] Counties no longer finance street improvements in cities, although several statutes remain in effect permitting counties to finance roads and bridges in cities. Counties may finance a city bridge if the street on which the bridge is located is "essential to the continuation of the county road system".[32] Counties may finance any street in a town with a population of less than 1,000 if the street is an extension of a county road and the county legislative authority and town council agree on the county's participation.[33]

The essential monopoly of counties constructing and maintaining roads for the Territory or State was broken in 1905 with the creation of the office of State Highway Commissioner and the State Highway Board.[j] [34] Responsibility for state highways initially became a joint responsibility between the State and counties. County commissioners directed surveys of state highways to be made and called for bids on highway work to be made if the surveys were approved by the state highway commissioner. Either the board of county commissioners or state highway commissioner could reject bids. State money was appropriated to pay for the highway construction. Counties were responsible for any repairs to the state highways after the state financed work was completed.

The State soon assumed more responsibility for state highways. Legislation was enacted in 1907 transferring the responsibility to

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j An earlier temporary state agency called the “board of state road commissioners” was created in legislation enacted in 1895 to provide for a wagon road over the northern portion of the Cascade Mountain Range. (Section 2, Chapter CLX, Laws of 1895.) Although this effort soon failed, other efforts to build a highway at this location continued until finally State Highway 20 (the North Cascade Highway) was completed in 1972. If this road had actually been built in the 1890's it would have been the first state highway. An interesting article on the North Cascades Highway, entitled “Highway History, the 1933 road survey through the Northern Cascades” is found in the *Columbia Magazine*, Summer 2004, at pages 31-33.

survey and call for bids on state highway projects from counties to the State.[35] Legislation was enacted in 1913 classifying state highways as primary or secondary highways, with the State assuming responsibility to maintain primary state highways but counties retaining responsibility to maintain secondary state highways.[36] County responsibility to finance maintenance of secondary state highways appears to have been eliminated in 1915 when legislation was enacted transferring state money to counties for this maintenance work.[37] Comprehensive legislation enacted in 1937 essentially eliminated county construction and maintenance of state highways and placed all state highways under the control of the State.[38]

B. Public Assistance

Prior to the Depression of the 1930's, counties were the exclusive provider of public assistance in the Territory or State. Statutes describing county authority to provide public assistance used terms that are found in novels written by Charles Dickens. In 1854 counties were vested with the "entire and exclusive superintendence of the poor in their respective counties".[39] In furtherance of this responsibility, counties were authorized to apprentice minors to "some respectable householder of the county by written indenture".[40] Counties were authorized to create "work houses for the accommodation and employment of such paupers".[41] The work houses also were known as county almshouses, poor houses, or poor farms.

The Legislature enacted the State Emergency Relief Act in 1933 providing for the joint provision of public assistance by the State and counties.[42] This was the beginning of a fundamental change in the provision of public assistance. The provision of public assistance was soon declared to be a joint responsibility for counties, the State, and federal government.[43] Additional legislation was enacted continuing the trend of moving the responsibility of providing public assistance from counties to the State. This included two state initiative measures that were approved by state voters in 1948 and 1950, and legislation enacted by the Legislature in 1953 eliminating most county participation in the provision of public assistance.[44]

The only express remaining county authority to provide for public

assistance is the responsibility to provide some indigent veterans' programs, bury indigent persons, and create an administrator to provide various public assistance programs that are funded by state and federal moneys.[45] As discussed in Chapter 8, cities have also been authorized to provide public assistance, but this authority has not been widely exercised.

C. Public Health

Apart from the operation of a mental hospital by the territorial government, counties provided a significant amount of the public health facilities and services during territorial years.

The first express grant of public health powers that were granted to counties was in 1856 when legislation was enacted authorizing counties to appoint "salmon inspectors" to examine salmon that was cured for export purposes to see if the salmon was fit for marketing.[46]

Legislation was enacted in 1887 designating each board of county commissioners as the board of health for the county, authorizing counties to appoint public health officers, and granting counties broad authority to adopt public health regulations.[k] [47] Counties were authorized to establish hospitals and employ visiting nurses for the care and treatment of persons suffering from tuberculosis in 1913.[48] Today county legislative authorities remain boards of health, but the State has assumed a much greater role in providing public health facilities and services, including many of the authorities exercised by the State's Department of Health.[49] Some counties now jointly exercise their public health functions by creating health districts with other counties or by creating combined city-county health departments.[50]

D. Public Education

Counties possessed broad authority over public education in

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k The board of county commissioners of Pacific County was declared to be a board of health in legislation enacted in 1881 (Statutes of the Territory of Washington, Local and Private Laws, 1881, 8th Biennial Session, Pages 168-69) but this law was repealed in 1883 (Statutes of the Territory of Washington, 1883, 9th Biennial Session, Page 397). The Pacific County board of county commissioners was designated as a board of health to quarantine ships with people who had infectious or contagious diseases.

territorial times, including administrative and regulatory controls, as well as the responsibility to finance a large portion of total education costs. County authority over education gradually diminished and they no longer possess any education powers.[l]

The first Legislative Assembly of Washington Territory provided for the election of a county superintendent of common schools in each county.[51] Among other responsibilities, the county superintendent of common schools divided the county into convenient school districts, examined teachers and issued teaching certificates, and ensured that common school laws were followed. The beginning of more direct territorial control over education, and the corresponding diminishment of county control over education, began in 1871 when the Legislative Assembly created the office of territorial superintendent of common schools.[m] Additional direct territorial control over education also occurred with the creation of the territorial board of education in 1877, which was created to establish a uniform series of textbooks and to prescribe rules for the governance of public schools.[52] The Legislature provided for the election of a board of education in 1909 in each county to assist the superintendent in selecting textbooks, courses, and manuals, and to adopt rules and regulations for school districts.[53] These elected offices were abolished in 1969 and the public education responsibilities of counties are now exercised by educational service districts that were defined in state law.[54]

The funding of common or public schools has varied widely over the history of Washington. Initially, a two-tiered system of financing common schools was established with counties funding school district operations and each school district funding its own school

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l A more detailed discussion of school district finances is found in Chapter 17.

m The office of territorial superintendent of common schools was created in Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Section 1, Pages 12-30, with the Legislative Assembly electing a superintendent for a two-year terms of office. This office has become the modern superintendent of public instruction that is elected by state voters. The office of territorial superintendent of common schools was originally created in 1861 by Statutes of the Territory of Washington, 1860-1861, 8th Session, Section 1, Pages 55-56, but was abolished the next year by Statutes of the Territory of Washington, 1861-1862, 9th Session Section 1, Page 29. B.C. Lippincott was the first Territorial Superintendent. He strongly favored elementary school and high school over higher education and criticized the creation of the University of Washington in his first and only report on schools to the Legislative Assembly. At least in partial response to this perceived effrontery, the Legislative Assembly promptly abolished the office. (Bolton, Frederick E. and Thomas W. Bibb, *History of Education in Washington*, Bulletin, 1934, No. 9, United States Department of Interior, United States Government Printing Office, 1935, at pages 106-107.)

facilities.[55] The two-tier system of funding education became a three-tier system in 1895 when the Barefoot School Boy law was enacted, adding state funding to the mix.[56] Gradually, county funding of education diminished and was finally ended in 1983.[57] Today, the funding of public education is a two-tiered system with funding from the State and local school districts, along with federal funding.

E. Law Enforcement

As mentioned above, counties at one time provided virtually all non-federal law enforcement throughout their boundaries.

Some newly incorporated cities were granted limited law enforcement responsibilities with their boundaries, but the county sheriff retained countywide law enforcement responsibilities. The first State Legislature enacted legislation granting general law enforcement powers to all cities that were exercised concurrent with the powers of the county sheriff.[58]

Initial state intrusion into the law enforcement field began in 1921 when legislation was enacted allowing the State Director of Efficiency to appoint highway police with the "power of peace officers for the purpose of enforcing all motor vehicle laws, rules, and regulations".[59] Legislation was enacted in 1933 creating the Washington State Patrol as a separate state agency and granting state patrol officers full police powers of sheriffs and peace officers.[60]

F. Public Libraries

Counties were given the implicit authority to create public libraries in 1901 and the express authority to create public libraries in 1913.[61] Although some references still exist relating to this authority, counties never have provided public libraries other than law libraries.[62] Public libraries are provided by cities and various types of library districts.[n 63]

County legislative authorities appoint the library directors of library

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n A discussion of library districts is found in Chapter 25, which includes a history of the development of library services in Washington.

districts.

Lost Opportunities to Gain New Powers

Counties lost a large number of opportunities to assume additional responsibilities when, rather than authorizing counties to provide new services and facilities, legislation was enacted that either:

- Authorized new special purpose districts to provide services and facilities, especially some of the services and facilities frequently provided by cities; or
- Created new state agencies to provide new services and facilities or the assumption of powers by the federal government.

A myriad of new special purpose districts were authorized to provide new public facilities and services during the 20th century, in lieu of granting these new powers to counties. Some of these special purpose districts, such as port districts and public utility districts, incorporated on a countywide basis, while others of these special purpose districts, such as water districts and fire protection districts, incorporated in much smaller areas within a county.

Article VII, Section 1 is perhaps the greatest impediment to granting counties additional authority to provide services and facilities in a less than countywide area if these services and facilities are financed by property tax receipts. This provision requires that all property taxes imposed by a taxing district must be imposed uniformly throughout the boundaries of the taxing district. It would not be equitable to impose property taxes countywide and use the receipts to provide facilities and service in only a limited portion of the county. The way around the uniformity clause would be for a county to adopt a township organization with townships essentially acting as subdivisions of county government or for the county to adopt a combined city-county charter. However, as discussed in Chapter 39, no county is currently organized into townships. No county has adopted a combined city-county charter.

The list of special purpose districts authorized to provide services and facilities is long.[o] Among others, these new special districts included:

- Irrigation districts that were authorized to provide irrigation facilities in 1895;[p]
- Water districts that were authorized to provide potable water facilities in 1913;[64]
- Public utility districts (PUDs) that were authorized to generate and distribute electrical energy in 1931;[65]
- Fire protection districts were authorized to provide fire suppression and protection in 1933;[66]
- Sewer districts that were authorized to provide sanitary and storm water sewer facilities in 1941;[67]
- Cemetery districts that were authorized to provide cemeteries in 1947, even though counties had been authorized to provide cemeteries in 1857;[68] and
- Metropolitan municipal corporations (metros) that were authorized to provide a variety of regional facilities (water pollution abatement, water supply, public transportation, garbage disposal, and parks and parkways) in 1957.[69]

The State assumed new responsibilities when legislation was enacted creating new state agencies or authorizing existing state agencies to exercise new responsibilities, rather than authorizing counties to provide these responsibilities. Among other new state agencies created to exercise new authorities, the office of State Fish Commissioner was established in 1915, soon followed by the creation of the Department of Fisheries and Game in 1921, and the Department of Agriculture was established in 1913.[70]

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o A list of special purpose districts that may be formed in Washington State is found in Appendix E.

p Irrigation districts, as we know them today, were first authorized to be created in legislation found in Chapter CLXV, Laws of 1895. However, legislation enacted in 1890 provided for each county to constitute an "irrigation district," with the board of county commissioners appointing a single person as a commissioner of the district. These districts were also called "water districts" with responsibility to divide water in natural streams and lakes from which ditches remove water for irrigation purposes and to control the amount of water provided to each user. (See, Sections 26-27, Pages 706-728, Laws of 1889-1890.) This early legislation was repealed in 1927. (See, Section 26, Chapter 39, Laws of 1927.)

The federal government assumed responsibility for many prior county functions, including funding federal highways and financing public assistance.

Re-emergence With Expanded Authorities

This trend of gradually diminishing county powers has been reversed in more recent times. County powers have gradually expanded since World War II, especially at the end of the 20th century.

Counties in Washington have always possessed general corporate powers, including the authority to hire personnel, enter into contracts, sue and be sued, and the authority to purchase, sell, and lease real property and personal property.[71]

Perhaps the most significant exception to the diminishing county powers is found in Article XI, Section 11. This provision of the original State Constitution grants counties, as well as cities and townships, broad home rule authority to adopt and enforce local police power regulations. Legislation was finally enacted in 1947 inserting this board home rule authority into statutory law.[72] However, it is not clear how much of this potential home rule authority has actually been implemented by counties.[q]

Other exceptions to this trend of gradually diminishing county powers occurred when the Legislature approved several constitutional amendments relating to counties in 1947 that were approved by state voters at the 1948 general election. Amendment 21 allows any county to frame and adopt a regular county charter to provide for its government. Amendment 22 repealed the provisions of Article XI, Section 7 which precluded county officials from holding their offices for more than two terms in succession. Amendment 23 required the Legislature to enact legislation providing for the formation of a combined city and county municipal corporation if the resulting corporation had a population of at least 300,000. However, the Legislature never enacted legislation implementing this latter provision. As discussed in Chapter 65, Amendment 58 was approved by state voters in 1972, amending Amendment 23

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q A more detailed discussion of home rule is found in Chapter 65.

by: (1) Removing the population threshold and allowing any county to adopt a combined city-county charter; (2) expanding the potential authority of such a charter to control every aspect of local government within the county; and (3) making the provision self activating so that enabling legislation was not required before such a charter could be adopted.

Other laws were enacted several decades later expanding county powers. This includes:

- Legislation enacted in 1967 authorizing counties to provide water systems, sanitary sewer systems, and storm sewer systems.[73] This law is sometimes referred to as the County General Services Act. These new authorities were authorized for counties even though water districts and sewer districts had been authorized to be created to provide these facilities both inside cities and in unincorporated areas and cities had been authorized to provide these facilities in unincorporated areas beyond their boundaries. The authority to provide water and sewer service now includes the authority to create municipal corporations to provide water and sewer service under the recently enacted Joint Municipal Service Act.[74]

- Legislation enacted in 1977 authorizing any county with a population of 210,000 or more to assume the powers and functions of a metropolitan municipal corporation located within its boundaries.[75] Voters in King County used this authority to assume the powers and functions of the Metropolitan Municipal Corporation of Seattle (Metro) in 1992 and assumed the water pollution abatement and public transportation functions of Metro throughout the entire county.[r]

- Legislation enacted in 1982 authorizing counties to provide alcohol and drug abuse programs and to provide community mental health programs, both financed by the State.[76] Counties were given

r A more detailed discussion of metropolitan municipal corporations is found in Chapter 27.

authority to provide developmental disability programs financed by the State in 1989.[77]

- Legislation enacted in 1991 authorizing counties planning under all the requirements of the Growth Management Act to adopt countywide planning policies providing a framework for the development of comprehensive plans by the county, as well as cities within the county.[s 78]

NOTES:

1. Chapter 70.48 RCW.
2. RCW 36.32.120(7) & 9A.20.010(2), and Chapter 7.80 RCW.
3. RCW 70.05.060(3).
4. Chapters 35.63 & 36.70 RCW.
5. Chapter 58.17 RCW.
6. Chapter 90.58 RCW.
7. Chapter 36.70A RCW.
8. The basic provisions of the State Building Code are contained in Chapter 19.27 RCW. The energy code established under Chapter 19.27A RCW is made part of the State Building Code by RCW 19.27A.020(1).
9. RCW 19.27.060.
10. RCW 19.27A.015.
11. RCW 36.28.010, 36.28.100, & 70.48.090(3).
12. RCW 68.52.010 & 68.52.030.
13. Chapters 70.05, 70.08, 70.12, 70.28, 70.30, 70.46, 70.58, 70.96A, 70.116, 71.24, & 71A.14 RCW.
14. RCW 74.04.040. However, counties only retain small vestiges of their one-time exclusive authority to provide public assistance. These vestiges include burial of indigents and programs for indigent veterans. (RCW 36.39.030 and 73.04.070 and Chapter 73.08 RCW.)
15. RCW 36.68.010-36.68.110.
16. Historic preservation authorities are found in RCW 36.32.435. Urban renewal authority is found in Chapters 35.80, 35.80A, and 35.81 RCW.
17. Counties are authorized to provide grants for low income housing in RCW

s A discussion of the Growth Management Act is found in Chapter 70.

36.32.415. Housing authorities are provided for in Chapter 35.82 RCW.

18. Counties are authorized to promote tourism by RCW 36.32.450. Counties are authorized to engage in economic development programs by RCW 36.01.085.

19. County authority to provide for roads, bridges, and sidewalks is found in Chapters 36.75 through 36.88 RCW. County authority to provide public transportation systems is found in Chapter 36.57 RCW. County authority to provide ferries is found in Chapter 36.54 RCW. County authority to provide airports is found in Chapters 14.07 and 14.08 RCW.

20. RCW 36.32.280-36.32.300 and Chapter 86.12 RCW.

21. County authority to provide water systems, sanitary sewer systems, and drainage systems is found in Chapter 36.94 RCW. County authority to provide drainage or storm water control systems is also found in RCW 36.89.080-36.89.120. County authority to provide solid waste disposal facilities is found in Chapter 36.58 RCW and authority to adopt comprehensive sold waste management plans is found in Chapter 70.95 RCW. Chapter 36.58A RCW provides counties with very limited authority to provide for solid waste collection by creating solid waste collection districts and may only be created if the Washington State Utilities and Transportation Commission find that existing solid waste collection companies are unwilling or unable to provide for solid waste collection in the area.

22. Counties create air pollution control authorities under RCW 70.94.053, may adopt solid waste management plans under Chapter 70.95 RCW, may regulate noise under RCW 70.107.060(3).

23. County authority to provide ambulance service is found in RCW 36.01.100. County authority to provide emergency medical service is found in RCW 36.01.095.

24. RCW 14.08.120(2).

25. Authority for cities to provide these utilities is found in RCW 35.22.280(15), 35.23.440(42), 35.23.515, 35.92.010, 35.92.050, and 35A.80.010. Authority for cities to provide fire departments is found in RCW 35.22.280(22), 35.23.440(21), and 35.27.370(6). Authority for cities to establish gross misdemeanors is found in RCW 35.22.280(35), 35.23.440(29), and 35.27.370(14). Authority for cities to create LIDs and impose special assessments to fund a wide variety of local improvements is found in RCW 35.43.040. Authority for cities to impose business and occupation taxes and utility taxes arises by inference from their authority to license businesses for revenue generating purposes and is found in RCW 35.22.280(32), 35.23.440(8), 35.27.370(9), and 35A.11.020.

26. Statutes of the Territory of Washington, 1854, 1st Session, Pages 340-352, which created the basic system of counties providing roads throughout all of the county. Road districts were authorized in Section 25 of that law.

27. Statutes of the Territory of Washington, 1854, 1st Session, Section 24,

Pages 340-352.

28. Federal military roads were declared to be territorial roads by Statutes of the Territory of Washington, 1862-1863, 10th Session, Section 4, Pages 520-521. Of course all territorial roads, once located, were constructed and maintained like county roads even though technically not county roads. Territorial roads, once located, were expressly declared to be county roads by Section 24, Page 347, Statutes of the Territory of Washington, 1854, 1st Session.

29. Statutes of the Territory of Washington, Local Laws, 1859, 6th Session, Article 4th, Section 2(6), Pages 31-34.

30. First class cities were granted control over their streets in Section 5(7), Pages 215-227, Laws of 1889-1890. Second class cities were granted control over their streets in Section 38, Pages 143-178, Laws of 1889-1890. Third class cities were granted control over their streets in Section 117(4), Pages 178-198, Laws of 1889-1890. Towns were granted control over their streets in Section 154(4), Pages 198-202, Laws of 1889-1890.

31. See, for example, Chapter LXIX, Laws of 1893; Chapter LXX, Laws of 1901; and Chapter 39, Laws of 1907.

32. RCW 36.75.200.

33. RCW 36.75.205.

34. Chapter 174, Laws of 1905.

35. Section 8, Chapter 149, Laws of 1907.

36. Sections 4 & 5, Chapter 65, Laws of 1913.

37. Section 18, Chapter 142, Laws of 1915.

38. Chapter 187, Laws of 1937.

39. Statutes of the Territory of Washington, 1854, 1st Session, Section 1, Pages 395-397.

40. Statutes of the Territory of Washington, 1854, 1st Session, Section 5, Pages 395-397.

41. Statutes of the Territory of Washington, 1854, 1st Session, Section 10, Pages 395-397.

42. Chapter 8, Laws of 1933.

43. Section 3, Chapter 180, Laws of 1937; and Section 5, Chapter 216, Laws of 1939.

44. Initiative Measure No. 172 was approved by state voters in 1948, which was called the Citizens' Security Act of 1948. (Chapter 6, Laws of 1949). Initiative Measure No. 178 was approved by state voters in 1950, which was called the Citizens' Public Assistance Act of 1950. (Chapter 1, Laws of 1951.) Chapter 174, Laws of 1953 essentially eliminated county responsibility for the provision of public assistance.

45. Counties are directed to provide aid to indigent veterans and their families in RCW 73.08.010 and to bury indigent veterans in RCW 73.08.070. Counties are directed to impose property taxes for these purposes by RCW 73.08.080. Counties are directed to bury other indigents in RCW 36.39.030. Counties may establish administrators to provide state and federally funded public assistance in RCW 74.04.070-74.04.210.
46. Statutes of the Territory of Washington, 1855-1856, 3rd Session, Pages 11-12. This legislation was repealed at Statutes of the Territory of Washington, 1869, 2nd Biennial Session, Page 352.
47. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter XXIV, Page 46.
48. Section 1, Chapter 172, Laws of 1913.
49. See, for example, Chapter 43.70 RCW creating the Department of Health & most of Title 70 RCW establishing a variety of state health programs and responsibilities.
50. Two or more counties may create a health district under Chapter 70.46 RCW. Stevens, Pend Oreille, and Ferry Counties created the North East Tri-county Health District under this authority. A city with a population of 100,000 or more, and the county in which it is located, may create a combined city-county health department under Chapter 70.08 RCW. The Seattle-King County Health Department and the Tacoma-Pierce County Health Department were created under this authority.
51. Statutes of the Territory of Washington, 1854, 1st Session, Chapter II, Pages 319-330.
52. The Board was created by Statutes of the Territory of Washington, 1877, 6th Biennial Session, Sections 10-16, Pages 259-283. This agency has become the State Board of Education.
53. Section 1, Article XII [X], Title III, Chapter 97, Laws of 1909.
54. Section 159, Chapter 176, Laws of 1969, 1st ex. sess.
55. Statutes of the Territory of Washington, 1st Session, 1854, Chapter I, Section 2, and Chapter III, Section 16, Pages 319-328.
56. Chapter LXVIII, Laws of 1895; and Bolton, at pages 136-137.
57. Section 15, Chapter 56, Laws of 1983, eliminated the last requirement for counties to provide part of public school finances.
58. Section 89, pages 143-178, Laws of 1889-1890; Section 136, Pages 178-198, Laws of 1889-1890; Section 172, Pages 198-202, Laws of 1889-1890; and Section 7, Page 224, Laws of 1889-1890.
59. Section 17, Chapter 108, Laws of 1921.
60. Chapter 25, Laws of 1933.
61. Section 1, Chapter CLXVI, Laws of 1901 & Section 1, Chapter 123, Laws of

1913.

62. RCW 27.12.030 & Chapter 27.24 RCW.
63. Chapter 27.12 RCW.
64. Chapter 161, Laws of 1913.
65. Chapter 1, Laws of 1931.
66. Chapter 60, Laws of 1933, ex sess.
67. Chapter 210, Laws of 1941.
68. Counties were authorized to provide cemeteries in Statutes of the Territory of Washington, 1856-1857, 4th Session, Section 3, Page 28. Cemetery districts were authorized to be created in Chapter 6, Laws of 1947.
69. Chapter 213, Laws of 1957.
70. The office of State Fish Commissioner was created in Section 4, Chapter 31, Laws of 1915. The Department of Fisheries and Game was created in Section 1, Chapter 7, Laws of 1921. The Department of Agriculture was created in Section 1, Chapter 60, Laws of 1913.
71. Statutes of the Territory of Washington, 1854, 1st Session, Section 1, Page 329, codified in RCW 36.01.010.
72. Section 1, Chapter 61, Laws of 1947, codified as RCW 36.32.120(7).
73. Chapter 72, Laws of 1967, codified in Chapter 36.94 RCW.
74. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
75. Chapter 277, Laws of 1977 ex sess., codified as Chapter 36.55 RCW.
76. Legislation providing for the drug and alcohol programs was included in Chapter 193, Laws of 1982, codified in Chapter 71A.14 RCW. Legislation providing for community mental health programs was included in Chapter 204, Laws of 1982, codified in Chapter 71.24 RCW.
77. Section 15-17, Chapter 270, Laws of 1989, codified as RCW 70.96A.300-70.96A.320.
78. Section 2, Chapter 32, Laws of 1991, spec. sess., codified as RCW 36.70A.210.-

Chapter 5

County Finances

Counties possess the second broadest financial powers of any type of local government in Washington State. Only cities possess broader financial powers.

Counties receive revenues from: (1) Taxes; (2) non-tax fees, including special assessments and traditional rates and charges; (3) debt proceeds; (4) intergovernmental revenues; and (5) other sources.[a]

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of county finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

Taxes

Counties possess the second greatest taxing authority of any type of local government in Washington State. Only cities possess broader taxing authority.

Counties impose two basic types of taxes -- property and sales and use. They are authorized to impose several different property tax levies, as well as several different sales and use taxes. Revenues from most of these basic types of taxes are general revenues that may be expended for any county purpose. Counties also impose a variety of relatively minor excise taxes.

a Information on revenues and expenditures for counties (as well as for cities, port districts, and transit authorities) is included in the Local Governmental Finance Reporting System, at the State Auditor's website. The State Auditor's website is found at <http://lgfrs.sao.wa.gov/lgfrs/>.

The basic difference between the taxing authority of counties, and the taxing authority of cities, is the ability of cities to impose a variety of business license taxes. These business license taxes are commonly called business and occupation (B & O) taxes and utility taxes. Cities obtain the authority to impose these business license taxes from their broad authority to license businesses and occupations for revenue generating purposes. Counties have very limited authority to impose license fees.

Most county tax revenue is generated by property taxes and sales and use taxes, although they are also authorized to impose a variety of other minor excise taxes. Counties are more reliant on property tax receipts than on sales and use tax receipts. In 2014, county property taxes due were $1,604 million, which included receipts due from both the general county property tax levy and road district property tax levy.[1] In fiscal year 2014 (July 1, 2013 – June 30, 2014) counties received $357 million in their general sales and use tax collections, plus the following sales and use tax collections for restricted purposes: (1) $126 million for criminal justice purposes but share these tax receipts with cities; (2) $42 million for juvenile correction facilities; (3) $35 million for public safety; and (4) $91 million for mental health and chemical dependence purposes.[2]

A. Property Taxes

Counties are authorized to impose a variety of different property tax levies, including several separate regular property tax levies and two types of excess, voter approved property tax levies. Property tax levies are the oldest source of county tax authority.

1. Regular property taxes

Counties are authorized to impose two basic regular property tax levies -- the county general levy or current expense levy that may be expended for any county purpose and the county road district levy that basically may only be expended for road related purposes. Both of these regular property tax levies are imposed without voter approval. Counties are also authorized to impose a variety of additional regular property tax levies.

The two basic county property tax levies generate the

overwhelming majority of county property tax receipts. On a statewide basis, the general county levies generate more than twice the amount of revenue than the county district road levies. The 39 counties imposed the following regular property tax levies in 2013 for collection in 2014:

County general levies	$1,084.6 million
County road levies	$ 445.7 million.[3]

However, in four rural counties (Columbia, Ferry, Garfield, and Mason) property taxes due for the road levy exceeded property taxes due for the county general levy. In addition in five other rural counties (Douglas, Island, Klickitat, Lincoln, and Stevens) property taxes due for the road levy were only somewhat less than property taxes due for the county general levy. [4]

a. <u>County current expense levy</u>

The first basic county property tax levy is current expense levy or general levy. This property tax levy is imposed countywide at an annual rate of not exceeding $1.80 per $1,000 of assessed value.[5] Receipts from this levy may be expended for any legal county purpose.

Counties are granted express authority to impose several non-voter approved regular property tax levies for specific purposes, but it is assumed that these levies are included within the annual general county levy limit of $1.80 per $1,000 of assessed value. These specific levies that are included within the limitation on the general levy include:

- Up to 50¢ per $1,000 of assessed value may be imposed for maintenance of a county hospital;
- Up to 12.5¢ per $1,000 of assessed value may be imposed for the county lands assessment fund;
- 2.5¢ per $1,000 of assessed value may be imposed for community services provided to persons with developmental disabilities or mental health services; and
- Between 1 and 1/8th cent and 27¢ per $1,000 of

assessed value may be imposed for veterans' assistance purposes.[6]

The general county levy or current expense levy is classified as senior property tax levy and is included within the annual statutory limitation of $5.90 per $1,000 of assessed value on the combined regular property tax levies imposed by most local governments.[7] This levy is subject to the 101 percent levy lid.[8]

b. County road district levy

The second basic county property tax levy is known as the county road district levy. This levy is imposed in only the unincorporated area of a county outside of cities at an annual rate of not exceeding $2.25 per $1,000 of assessed value.[9] Proceeds from this levy normally are expended for only road purposes, including traffic law enforcement.

Statutes providing for the county road district levy are confused. As discussed in Chapters 38 and 63, four statutes basically control the county road district property tax levy.[10] Parts of these statutes have not been amended since Territorial days. These statutes basically authorize county legislative authorities to impose this property tax levy either countywide or within county road districts. No county imposes this levy countywide. Instead, this levy is only imposed in county road districts. All of the unincorporated area of each county outside of cities is included within a single county road district. For purposes of conforming to the Uniformity Clause of the State Constitution, it is assumed that the authority levying this tax in each county is the governing body of the road district, which consists of the members of the county legislative authority acting in *ex officio* capacities.

Most counties budget receipts from the county road district levy only for road purposes, which may include the provision of ferries and traffic law enforcement. However, any county may budget these tax receipts for any "other proper county purposes," which probably means providing any service or purpose in the unincorporated area. The act of budgeting these tax receipts for non-road purposes is referred to as "diverting" these tax receipts. Severe consequences arise for any county with a population of 8,000 or more that diverts receipts from the county road district levy

for non-road purposes. Such a county becomes ineligible to receive rural arterial trust account monies from the State.[b]

The county district road levy is classified as senior property tax levy and is included within the annual statutory limitation of $5.90 per $1,000 of assessed value on the combined regular property tax levies imposed by most local governments.[11] This levy is also subject to the 101 percent levy lid.[12]

c. Combining limits on current expense levy and road district levy

A unique statutory provision allows any county, under certain circumstances, to increase the maximum levy rate of its general county levy and reduce the rate of its road district levy by an equal rate. This action has the effect of increasing receipts from the county general tax levy and reducing receipts from the county road district tax levy.

Any county may increase the rate of its countywide general purpose levy from the annual $1.80 per $1,000 of assessed value limitation up to an annual amount not exceeding $2.475 per $1,000 of assessed value, if both:

- No other taxing district has its levy reduced as a result of what is called levy pro-rationing; and
- The sum of this general purpose levy and the road levy does not exceed $4.05 per $1,000 of assessed value.[13]

This combined rate limitation of $4.05 per $1,000 of assessed value is the sum of the normal limitations on these two property tax levies. A few counties appear to have taken advantage of the authority to increase its general purpose tax levy under this little known provision, including Adams, Asotin, Cowlitz, Jefferson,

b The exception for small counties to divert these tax receipts for non-road purposes, without losing allocations from the rural arterial trust account, was provided for Skamania County which diverts all of its road levy to non-road purposes in the unincorporated area of the county. Skamania County receives a substantial amount of revenue from the federal government for timber harvests within the county. These receipts must be used for road purposes. Although Skamania County is a very poor county, it has a very good system of county roads, all of which are fully surfaced roads. The Legislature should consider increasing this population threshold, as Skamania County now has a population in excess of 11,000.

Kittitas, Okanagan, Pend Oreille, San Juan, Wahkiakum, and Yakima Counties.[14]

d. Other county regular property tax levies

Counties are also authorized to impose a variety of additional annual regular property tax levies.

Any county may impose an additional annual non-voter approved regular property tax on a countywide basis of not exceeding 6.25¢ per $1,000 of assessed value to purchase conservation future lands.[15] Thirteen counties (Clark, Ferry, Island, Jefferson, King, Kitsap, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, and Whatcom) imposed this tax for collections in 2014.[16] This tax is a regular property tax subject to the constitutional one percent limitation of the cumulative rate of property taxes that may be imposed by most taxing districts in any year, but is not included within the overall cumulative limitation on regular property taxes imposed by most local governments of $5.90 per $1000 of assessed value.[17] The levy is subject to the 101 percent levy lid.[18]

County voters may approve a ballot proposition authorizing the county to impose additional annual regular property tax levies for emergency medical services of not to exceed 50¢ per $1000 of assessed value for six consecutive years, ten consecutive years, or permanently.[19] It appears that only King, Skagit, Thurston, and Walla Walla, and Yakima County imposed this levy for collections in 2014.[20] Although these are regular property tax levies, the ballot proposition must be approved by a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met. The county must maintain a separate accounting of expenditures of the revenues obtained from these levies. Any county permanently authorized to impose these additional levies must provide for a special referendum procedure for voters to withdraw this permanent authorization.[c] The emergency medical service property tax levy is a regular property tax subject to the constitutional one percent limitation on most regular property taxes, but is not included under the normal limitation on the combined

c A thirty-day period is allowed for signatures to be obtained and the referendum petition must be signed by at least 15 percent of the registered voters of the county. This special referendum procedure supersedes any other referendum procedure that may be available.

rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value.[21] The levies are subject to the 101 percent levy lid.

The voters of any county may approve a ballot proposition by a simple majority vote authorizing the county to impose additional annual regular property tax levies of up to 50¢ per $1,000 of assessed value to finance affordable housing for up to 10 consecutive years.[22] No county appears to have imposed this levy for collections in 2014.[23] These levies are regular property tax levies subject to the constitutional one percent limitation on most regular property tax levies, but are not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value.[24] The levy is subject to the 101 percent levy lid.

Legislation enacted in 2004 authorized voters of any county with a population of 90,000 or less to approve a ballot proposition by a super-majority vote authorizing the county to impose additional annual regular property taxes of up to 50¢ per $1,000 of assessed value with the proceeds restricted to criminal justice purposes.[25] Approval must be by at least a three-fifths vote of voters voting on the ballot proposition and a 40 percent voter validation requirement is met. It appears that no county imposed this levy for collections in 2014.[26] These levies are regular property tax levies subject to the constitutional one percent limitation on most regular property tax levies, but are not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value. The levy is subject to the 101 percent levy lid.

2. Excess property tax levies

The voters of any county may approve ballot propositions authorizing the county to impose two different types of excess property tax levies. As discussed in Chapter 63, excess property tax levies are above, or not subject to, the constitutional one percent limitation on most property tax levies that may be imposed on any property in any year.

These two different types of excess voter approved property tax levies are:

- Single year levy excess property tax levies which may be expended for any general county purposes;[27] or
- Multi-year excess property tax levies that are used to retire general obligation bonds issued for capital purposes.[28]

The ballot proposition authorizing either type of excess levies must be approved by at least three-fifths vote of voters voting on the proposition along with a 40 percent voter validation requirement.

The authority of a county to impose a single-year excess property tax levy is more theoretical than real since voters of the entire county vote on the ballot proposition authorizing the excess levy. This includes county voters residing in cities as well as county voters residing in unincorporated areas outside of cities. No county imposes a single-year excess levy. The authority of a county to impose the multi-year excess property tax levies to retire general obligation bonds is somewhat theoretical rather than real. Very few counties impose such levies. King County is the notable exception, where voters approved a number of ballot propositions authorizing general obligation bonds to be issued and multiple-year excess property tax levies to be imposed to retire the bonds. These proposals were referred to as the "Forward Thrust" proposals.

B. Sales and Use Taxes

Counties are authorized to impose several different sales and use taxes. Except for two special sales taxes mentioned below, these sales and use taxes are imposed on the same tax base in the county as the State's sales and use taxes are imposed.

1. Two basic sales and use taxes

Counties are authorized to impose two separate sales and use taxes, both at rates of 0.5 percent or a combined total maximum rate of one percent.[d] [29]

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d The Department of Revenue distinguishes these two separate sets of taxes by referring to the first 0.5 percent sales and use taxes as the basic sales and use taxes and the second 0.5 percent sales and use taxes as the optional rate sales and use taxes. However, both separate sets of taxes are optional and basic. This reference book refers to these taxes as the first basic sales and use taxes and the second basic sales and use taxes. This terminology more accurately

Legislation was enacted in 1970 allowing every county (and city) to impose the first basic sales and use taxes at a rate of 0.5 percent.[30] These taxes are imposed without voter approval. Every county imposes the first 0.5 percent basic local option sales and use taxes.

Legislation was enacted in 1982 allowing every county (and city) to impose the second basic sales and use taxes of up to 0.5 percent. These taxes differ from the first basic sales and use taxes in that they may be imposed in 0.1 percent increments up to 0.5 percent. The second basic sales and use taxes are also imposed without voter approval, but for a short time the ordinance imposing these taxes is subject to potential referendum action by county voters.[31] All but two counties (Klickitat and Skamania) impose the full rate of the second 0.5 percent basic local option sales and use taxes and Asotin County only imposes 0.3 percent of these second basic sales and use taxes.[32]

These two basic sales and use taxes are unencumbered sales and use taxes. Receipts from both of the two basic local option sales and use taxes may be expended for any legal county purpose.

A county receives all of the collections from these two basic sales and use taxes arising from taxable events occurring in the unincorporated area. However, in most instances, a county receives 15 percent of the collections from these two basic sales and use taxes arising from taxable events occurring in incorporated areas. This sharing of the collections from taxes imposed on taxable events in cities arises from the relationships specified in statute between county sales and use taxes and city sales and use taxes. The details vary for the two sales and use taxes, but the result is the same.[e]

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reflects the significance of these taxes, the wide spread imposition, and distinguishes these taxes from the additional local sales and use taxes which are much less common.

e Any city located in a county that also imposes the first basic 0.5 percent sales and use taxes must reduce the rate of its taxes by 15 percent to a rate of 0.425 percent. The county is required to credit these city sales and use taxes. As a result, the county receives 15 percent of the tax collections within each city located within its boundaries, as well as all of the tax collections in unincorporated areas of the county.

Any county imposing the second basic 0.5 percent sales and use taxes must credit these city sales and use taxes. However, instead of reducing the rate of the city sales and use taxes, each city must give 15 percent of its receipts from these taxes to the county in which it is located. The second unrestricted 0.5 percent sales and use taxes may be imposed in one tenth percent

Receipts from this 15 percent share of the sales and use tax receipts from transactions within cities generated almost half (45.2 percent) of the total income that counties received their sales and use taxes, an increase from 40 percent in 1996 and 33 percent in 1989.[f] The increase in the reliance on sales and use taxes arising from transactions occurring in cities primarily arose from incorporations of new cities and annexations of territory by cities in King County during the early 1990's. The share of King County's total sales and use tax receipts arising from transactions within cities increased from 42 percent in 1989 to 70 percent in 1996. A number of new city incorporations in Pierce County have also increased the reliance of Pierce County on sales and use tax receipts from transactions within cities.

2. Additional sales and use taxes

Counties may also impose additional sales and use taxes.

Any county may impose additional sales and use taxes countywide at a rate of 0.1 percent to finance criminal justice purposes.[33] These taxes may be imposed without voter approval, but for a limited period are subject to potential referendum action by county voters. The taxes are imposed on the same tax base as the State's sales and use taxes. Receipts are distributed to the county and cities located in the county for criminal justice purposes. Ten percent goes to the county and the remaining 90 percent is distributed on a per capita basis between the county and cities in the county with the county's population being the population of the unincorporated area. Thirty two counties were imposing this tax in

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increments. If a county imposes a higher rate of the second sales and use taxes than a city located within its boundaries, the county receives 15 percent of the collections from the rate of these taxes imposed by the city but all of the taxes from the difference between the higher county tax rate and the lower city tax rate that is imposed within the city. Similarly, if a county imposes a lower rate of the second sales and use taxes than a city located within its boundaries imposes, the county receives 15 percent of the taxes generated from the common rates that were imposed, but the city retains all of the collections from the difference between its higher rate and the lower county rate.

f These percentages are calculated using Department of Revenue figures from collections in each tax year, as follows: (1) Total city first basic sales tax collections ÷ 0.85 = total collections from within all cities; (2) calculating the 15 percent counties receive from these collections multiplying the figure calculated in step (1) by 15 percent; and (3) calculating the percentage county reliance on the amount arising from transactions inside cities by taking the figure calculated in step (2) and dividing that figure by the total county sales and use tax receipts from the first basic sales taxes.

2013.

In addition, any county with the population of less than one million (every county other than King County) may submit a ballot proposition to county voters authorizing the county to impose additional sales and use taxes at a rate of 0.1 percent to finance juvenile detention facilities and local jails.[34] These additional taxes are also imposed on the same base as the State's sales and use taxes. Fourteen counties were imposing this tax in 2013.

Various rural counties may impose additional sales and use taxes now at a maximum rate of up to 0.09 percent without voter approval to finance public facilities in the county.[35] A rural county is defined as a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles. These additional taxes are imposed on the same tax base as the State's sales and use taxes, but are deducted from the State's sales and use taxes. As a result, imposition of these taxes does not increase the combined rates of sales and use taxes imposed within the county and receipts from these taxes essentially are withdrawn from the State's general fund. The taxes may not be imposed for more than 25 years. In 2013, all 32 eligible counties were imposing these taxes.

Any county may impose additional sales and use taxes of up to 0.3 percent.[36] These taxes may only be imposed if voters approve a ballot proposition authorizing the additional taxes submitted at a primary or general election. The ballot proposition must specify the purposes for which the tax receipts may be used, which are for any county or city purpose with the one restriction that at least one third of the receipts must be used for criminal justice purposes, fire protection purposes, or both. These additional taxes are imposed on the same tax base as the State's sales and use taxes, except for the retail sale or use of motor vehicles and the lease of motor vehicles for up to the first 36 months of the lease. A county imposing these taxes retains 60 percent of the receipts for its own uses and provides 40 percent of the receipts to the cities located within its boundaries distributed on a per capita basis. In 2013, five counties (Kittitas, Walla Walla, Spokane, Whatcom, and Yakima) had imposed these taxes.

The voters of any county may approve a ballot proposition, by a simple majority vote, authorizing the county to impose an additional sales and use tax of 0.1 percent to finance the operation of an emergency communication system and facilities.[37] These additional taxes are imposed on the same tax base as the State's sales and use taxes. By 2013, voters of twelve counties have approved these additional levies.

Legislation was enacted in 1999 allowing a very limited class of counties to impose additional, voter-approved sales and use taxes of up to 0.1 percent to finance various park and recreation activities and facilities.[38] These additional taxes are imposed on the same tax base as the State's sales and use taxes. Although this legislation is general legislation, the class of counties authorized to impose these taxes is currently limited to Pierce County and the taxes are designed to provide additional funding for the Tacoma Metropolitan Park District, as well as for other park and recreation uses in portions of Pierce County outside of the metropolitan park district. The funding for the metropolitan park district finances zoos, aquaria, and wildlife preservation and displays. Pierce County voters approved a ballot proposition authorizing these additional sales and use taxes.

Legislation was enacted in 2005 allowing a county to impose an additional sales and use tax of up to 0.1 percent to finance new or expanded mental health treatment, chemical dependency services, or therapeutic court programs.[39] These additional taxes are imposed on the same tax base as state sales and use taxes. As of 2013, thirteen counties have imposed these taxes.

Legislation was enacted in 1995 authorizing the county legislative authority of any county with a population of one million or more (King County) to impose an additional sales and use tax of 0.017 percent to help finance a baseball stadium with a retractable roof and natural turf (Safeco Field in Seattle).[40] These additional taxes are imposed on the same tax base as the State's sales and use taxes, but are deducted from the State's sales and use taxes. As a result, imposition of these taxes does not increase the combined rates of sales and use taxes imposed within the county and receipts from these taxes essentially are withdrawn from the State's general fund. King County is imposing these taxes.

State voters approved Referendum Bill No. 48 in 1997 authorizing a county that has established a public stadium authority to develop a professional football stadium and exhibition center (King County) to impose an additional sales and use tax of 0.016 percent to help finance these facilities.[41] These additional taxes are imposed on the same tax base as the State's sales and use taxes, but receipts are deducted from the State's sales and use taxes. As a result, imposition of these taxes does not increase the combined rates of sales and use taxes imposed within the county and receipts from these taxes essentially are withdrawn from the State's general fund. King County is imposing these taxes.

Any county (or city) that has created a health sciences and services authority under RCW 35.104.030 may impose sales and use taxes of up to 0.02 percent to finance its health sciences and services authority.[42] These taxes are imposed on the same tax base as the State's sales and use taxes within the county or city, but receipts are deducted from the State's sales and use taxes. Authority to impose these taxes expires on January 1, 2023. Spokane County was imposing these taxes in 2013.[43]

Any transit authority, including a county providing mass transit or public transportation systems, may also impose sales and use taxes to finance mass transit. This includes voter approved sales and use taxes of up to 1.0 percent to finance public transit and an additional voter approved sales and use taxes of up to either 0.9 or 1 percent to finance high capacity transportation.[g] These additional taxes are imposed on the same base as state sales and use taxes.

3. Special sales taxes

Counties are also authorized to impose special sales taxes on a

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g Voters of any transit authority, including a county, may approve a ballot proposition authorizing the transit authority to impose a general sales and use taxes of up to 1.0 percent to fund public transit. (RCW 82.14.045.) These taxes may be imposed at any one-tenths of a percent rate up to the maximum rate of 1.0 percent and are imposed on the same taxable events as sales and use taxes. However, the only counties operating transit systems and imposing these sales and use taxes are King County and Grays Harbor County. Further, voters of any transit authority, including a county, may approve a ballot proposition authorizing the transit authority to impose a general sales and use tax of up to 1.0 percent to fund high capacity transportation, but the maximum rate in any county that imposes the 0.1 percent sales and use taxes to fund criminal justice is reduced to 0.9 percent. (RCW 81.104.170.) These taxes are imposed on the same taxable events as state sales and use taxes. No county imposes these taxes.

limited tax base to finance various activities.

A transit authority, including a county providing mass transit or public transportation systems, may impose a special sales tax of 2.172 percent on car rentals to finance high capacity transportation systems such as high occupancy vehicle (HOV) lanes.[44]

Any county with a population of one million or more (King County) may submit a ballot proposition to county voters authorizing the county to impose a sales tax of up to 0.5 percent on the sales of food and beverages in restaurants, taverns, and bars, with the receipts earmarked to finance the construction and operation of a baseball stadium.[45] This funding was used to finance much of the costs of Safeco Field in Seattle.

C. Minor Excise Taxes

Counties are also authorized to impose the following minor excise taxes:

- Admission taxes not exceeding 5 percent may be imposed without voter approval on admission charges other than for K-12 school events.[46] These taxes may be imposed countywide, but are not imposed in any city that imposes the same taxes. This effectively means that the county provides a credit for the equivalent city taxes. Receipts from these taxes may be expended for any legal county purpose.
- Various gambling taxes not exceeding 20 percent of gross receipts from card games; 5 percent of gross receipts on punch board and pull tabs; 10 percent of gross receipts, less the value of prizes, on bingo and raffles; and 2 percent on gross receipts, less the value of prizes, on amusement games. Receipts from these taxes must be expended for law enforcement to enforce gambling laws.[47]
- An excise tax on real estate sales in the unincorporated area of up to 0.25 percent, without voter approval but subject to potential voter approval, with receipts earmarked for certain capital

purposes.[48] Any county planning under all of the requirements of the Growth Management Act may also impose an additional excise tax on real estate sales in the unincorporated area of up to 0.25 percent, without voter approval, with receipts earmarked for certain capital purposes.[49] Any county not imposing any of its second 0.5 percent sales and use taxes may impose an additional excise tax on real estate sales of up to 0.5 percent, without voter approval, with receipts expendable on any legal county legal purpose.[50] Any county may impose an additional excise tax on real estate sales any where in the county of up to 1 percent when authorized by voter approval, with receipts expendable for acquiring conservation areas.[51] These taxes are referred to as REET's or real estate excise taxes.

- A variety of excise taxes on hotel/motel room rental charges, including a basic 2 percent that is credited against state sales and use taxes, without voter approval, with receipts earmarked for a variety of capital purposes and for promoting tourism.[52] With one exception, a county must credit the same tax imposed by a city. A few other counties may impose an additional excise tax on hotel/motel room rentals without voter approval with receipts earmarked for a variety of different purposes.[53]

- A leasehold excise tax on the act or privilege of occupying or using publicly owned property under a leasehold interest at a maximum rate of 6 percent of the taxable rent.[54] The county must provide a credit to cities imposing a leasehold excise tax of 4 percent tax. This tax is imposed upon taxable entities leasing public property and is imposed in place of property taxes that are not imposed on public property. Receipts from this tax may be expended for any legal county purpose.

- An excise tax may be imposed countywide of 50¢ per month for the use of switched access line telephone service and of 50¢ per month for each

radio telephone access line. Receipts from this tax may only be expended to provide an emergency 911 communication system.[55]

- An excise tax without a rate limitation on commercial parking or parking privileges may be imposed in the unincorporated areas without voter approval, but subject to potential referendum action by voters.[56] Receipts may only be spent for county road purposes. No county imposes this tax.
- A transit authority, including a county, may impose an excise tax on employers of up to $2 per month per employee to finance high capacity transportation systems if authorized by voters.[57] By class, King County, Pierce County, and Snohomish County may also impose an additional excise tax on employers of up to $2 per month per employee countywide to finance high occupancy vehicle (HOV) lanes if authorized by voters.[58] No county imposes this tax.
- An excise tax on motor vehicle fuels of up to 10 percent of the state motor vehicle fuel tax may be imposed countywide, if authorized by voters. Receipts from this tax are distributed to the county, and cities within the county, and may only be spent on highway purposes.[59] No county imposes this tax.

Non-tax Fees

Counties are authorized to impose a wide variety of non-tax fees, including special assessments and more traditional rates and charges.

A. Special Assessments

Counties may impose two types of special assessments.

First, any county may create several different types of improvement districts and impose special assessments on benefitted property located within the improvement districts. However, counties do not create many improvement districts. These improvement districts are not separate units of government but are financial mechanisms.

One set of statutes allows counties to create road improvement districts (RIDs) and impose special assessments on benefitted property within the RIDs to finance a variety of local road improvements, including related drainage improvements.[60] A road improvement district is a type of an assessment district more commonly known as a local improvement district.

Other statutes allow counties to create local improvement districts (LIDs) or utility local improvement districts (ULIDs) and impose special assessments on benefitted property located in the LIDs or ULIDs to finance water systems, sewerage systems, and drainage systems.[61] However, counties do not provide extensive sewer or water systems.

Second, counties may create parking and business improvement areas and impose "special assessments" on businesses in those areas to finance: (1) Parking facilities; (2) public decorations; (3) promotion of public events; (4) furnishing music in public areas; (5) professional management and promotion of retail activities in the area; and (6) providing maintenance and security for common, public areas.[62] Although the term "special assessments" is used to describe these extractions, it is not clear whether these extractions are the same as those imposed within local improvement districts to finance local improvements.

B. Traditional Rates and Charges

Counties receive revenues from traditional rates and charges imposed for utility service, permits, and the provision of other goods and services.

A county may impose rates and charges on the availability of water, sewer, and drainage service, as well as connection charges for connecting to its water and sewer systems.[63] Unlike cities, counties tend to have very few water, sewer, and drainage utility systems and the utility systems that they have are normally quite small. King County is the major exception, assuming the operations of the Metropolitan Municipal Corporation of Seattle which includes extensive sewage treatment operations with cities and sewer districts including the sewage treatment cost as part of their rates and charges for sewer service.

A county may impose rates and charges for using its solid waste facilities, including dump boxes, transfer stations, and sanitary landfills.[64]

A county may operate a countywide transit system and impose fees, rates, tolls, and charges for use of this system.[65] Grays Harbor County operates a countywide bus system. King County assumed the operations of the Seattle Metropolitan Municipal Corporation and imposes rates, tolls, fares, and charges for the use of an extensive countywide public transportation system.

Counties are also authorized to impose impact fees on development activities.[66]

Counties are authorized to license various activities, but the license fees are restricted to generating only an amount of money sufficient to pay for the costs of administration and operation of the licensed activities, unless the authorizing statute provides for a specific license fee.[h] [67] This restricted licensing authority is contrasted with the broad authority of cities. Cities are authorized to license businesses and occupations for both regulatory and revenue generating purposes. The authority of cities to license businesses and occupations for revenue generating purposes is the source of their authority to impose what often are called business and occupation taxes and utility taxes. Counties may license grocery stores, ferries, peddlers, hawkers, auctioneers, barterers, and people who sell farm products or edibles.[68] They may also license public dance houses and public recreational or entertainment activities in unincorporated areas.[69]

Old territorial statutes, that remain in effect, allow any county to license:

- People who sell or “dispose of” alcoholic beverages for no less than $5 or more than $50 per year;

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h The legislation capping county fees and charges was enacted in 1985. (Chapter 91, Laws of 1985.) Clearly, this limitation does not restrict specific fee rates that are established in statute. Further, it is not clear what legal significance this legislation made since the common law would be that a fee, rate, or charge generally could not be more than the cost of the regulating activity or other service that is received. This is contrasted with city statutes enacted by the first State Legislature expressly authorizing cities to license businesses and occupations for both regulatory and revenue raising purposes. A license for revenue generating purposes is a tax.

- Keepers of "drinking establishments" for $300 per year, but may reduce the amount to no less than $100 if little business is conducted on the premises; and
- Each billiard table, pigeon-hole table, or bowling alley for up to $25 per year.[i] [70]

This old licensing authority is not widely known and could be a source of some revenue for counties with inadequate revenues. No county imposes these license fees.

Debt Proceeds

Counties also receive finances from debt proceeds. Debt proceeds consist of monies obtained from borrowing or from incurring different types of indebtedness and issuing various types of bonds evidencing this indebtedness. Traditionally, counties have not issued many bonds, although more counties have been incurring general indebtedness and issuing general obligation bonds after various statewide initiatives began reducing county taxes. King County is the major exception and has incurred debt for decades.

A county may incur general indebtedness and issue general obligation bonds without voter approval of up to one and one-half percent of the value of taxable property in the county.[71] However, with the assent of three-fifths of the voters voting on a ballot proposition, a county may incur a total general indebtedness limitation of two and one-half percent of the value of taxable

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i These laws were enacted by the Legislative Assembly of Washington Territory but remain in effect. The dollar amounts were established in 1873. It appears that the Steele Act enacted to end Prohibition attempted to limit county and city authority to tax any aspect of the liquor business, but failed to preclude this old county licensing authority. No county imposes these license fees. The Steele Act is Chapter 62, Laws of 1933 ex sess., and is the basis of our liquor control system in the State. These provisions are found in Title 66 RCW. The statute attempting to preempt local taxation of anything relating to alcohol is RCW 66.08.120. That statute provides that no local government "shall have the power to license the sale of, or impose an excise tax upon, liquor... or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof ... shall be suspended and shall be of no further effect...." Although these restrictions are quite detailed and broad, they do not expressly preclude a county from licensing the proprietor of a drinking establishment. State voters approved Initiative Measure No. 1183 in 2011 eliminating state liquor stores and allowing private entities to sell liquor. The measure was primarily supported by Costco, which now has major liquor sales.

property in the county, plus an additional amount of indebtedness of up to another two and one-half percent of the value of taxable property in the county for metropolitan functions if the county has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation.[j] [72]

General obligation bonds issued by a county may have a maximum term of 40 years.[73]

Counties may issue various types of revenue obligations that are not subject to indebtedness limitations. They may issue revenue bonds of a term not exceeding 30 years payable solely from a fund or funds created by the county that consists of operating income from any utility, facility, or building owned or operated by the county.[74] However, as mentioned above, counties tend not to provide extensive utility systems. In additional counties may issue special assessment bonds payable from special assessments imposed within a road improvement district (RID) to finance local road improvements or special assessments imposed within a local improvement district (LID) to finance sewer systems, drainage systems, or water systems.[75] The maximum term of a special assessment bond associated with a road improvement district is 22 years, while it appears that the maximum term of a special assessment bond associated with a LID would be 20 years.[76]

In addition, counties also issue a variety of short term obligations, including notes and warrants.[77]

Intergovernmental Revenues

Counties receive revenue from a variety of state and federal programs. State programs include periodic distributions of monies to counties, as well as grant monies to counties. Federal grant monies are provided directly to counties or indirectly as pass

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j King County is the only county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation. It should be noted that this statute also allows such a county to incur additional non-voter approved general indebtedness of up to three quarters of one percent of the value of taxable property within its boundaries for metropolitan functions. However, this additional amount of inside debt is meaningless, as it was authorized before the statute increased the total amount of non-voter approved general indebtedness that a county could incur up to the maximum constitutional amount of such indebtedness of one and one half percent of the value of taxable property within its boundaries.

through monies provided to the State and then distributed to counties.

A. State Programs

Periodic transfers of state money to cities include:

- Distributions on monies to fund county community mental health programs, alcohol and substance abuse programs, and development disability programs that counties have contracted with the State to provide.[78]
- Distributions of state motor vehicle fuel tax receipts under a variety of programs to finance road construction and maintenance.[k] [79]
- Distributions of monies from the Department of Health to finance various health programs.[80]
- Distributions from the county criminal justice account for criminal justice purposes.[81]
- Relief provided to counties to reimburse them for extraordinary criminal justice costs associated with aggravated murder cases.[82]
- Transfers of money from state liquor permit fees and liquor excise tax collections that may be expended for any purpose.[l] [83]
- Counties are authorized to impose a 2 percent excise tax on hotel/motel room rental charges that is

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k After various distributions are made from state motor vehicle fuel tax receipts, 22.78 percent of the remainder is distributed to counties based upon a number of factors. However, all motor vehicle fuel taxes paid by residents of counties composed entirely of islands (Island County and San Juan County) are provided to the county treasurer of such counties under what is called the CAPRON program and then distributed to the road district and to the cities in the county in direct proportion to the assessed valuations of property within those taxing districts. These monies may only be expended for highway purposes.

l Initiative Measure 1183, the liquor privatization measure approved by state voters in 2011, provides for the distribution of liquor license fee monies to counties and cities at least equal to what the distributions were in 2011, plus an additional $10 million per year for enhancing public safety programs. (RCW 66.24.065) After diversion of monies to finance municipal research and services, distributions to counties are made ratably based upon their populations. (RCW 66.08.190 and 66.08.200) After distributions to the state general fund, 20 percent of the remaining liquor tax receipts are distributed to counties ratably based upon their unincorporated area populations.

credited against state sales and use taxes, with the receipts earmarked to promote tourism and constructing a variety of facilities, including stadia, convention centers, and performing arts centers.[84] As a result, the tax rate is not increased on hotel/motel room rental charges and a portion of state sales and use tax receipts is essentially transferred to counties. With one exception, any county imposing this tax must provide a credit for a similar tax imposed by a city within its boundaries.

- Payment of half of the salaries of superior court judges.[m 85]
- Payment of part of the salary of prosecuting attorneys.[86]
- Distributions of a portion of state real estate excise tax (REET) receipts that are placed into the City-County Assistance Account.[87] This new program was created in 2005. Counties receive half of these monies based upon a formula, and cities receive the other half of these monies. These monies were obtained by diverting a portion of state REET receipts that had been placed into the Public Works Assistance Account to assist local governments with low interest loans for various public infrastructure improvements.
- Payment of a portion of the salaries of district (and municipal) court judges under a new program created by legislation enacted in 2005.[88] The program starts with the State's contribution at approximately 25 percent of these salaries. It is anticipated that this percentage will increase to 50 percent beginning in July of 2007.

The State provides grants and loans to counties to finance a variety of projects, including:

- Grants from the County Road Administration Board

m This shared responsibility to pay the salaries of superior court judges reflects the dual nature of superior court judges as being both county officials and state officials.

(CRAB) and Transportation Improvement Board (TIB) for various road projects;[89]

- Grants from the Interagency Committee on Outdoor Recreation (IAC) funding various park, recreation, and urban wildlife programs;[90]
- Grants from the Department of Commerce to finance some of the costs of complying with the Growth Management Act.[91]
- Grants and loans are available from the Centennial Clean Water Account for water systems.[92]
- Low interest or no interest loans from what is commonly known as the Public Works Assistance Account to finance various sewer, water, and road projects.[93]
- Grants from the Department of Ecology to fund hazardous waste cleanup and waste management projects.[94]
- Certain counties are also eligible for grants from the Community Economic Revitalization Board to finance various infrastructure projects in economically distressed communities.[95]

The State funds county (and city) research and services by an appropriation to the Department of Commerce, which contracts for these services from the Municipal Research and Services Center.[96] The amount of money that the State contracts for county research and services is deducted from liquor excise tax receipts that otherwise would have been distributed to counties.[97]

B. Federal Programs

Numerous federal programs provide assistance to counties with direct grants or pass through grants and in regular payments to counties in lieu of taxes or entitlements.

Figures from the State Auditor's Local Governmental Finance Reporting System indicate that the most significant federal grants to counties in 2001 were:

- Grants for health and human service purposes;
- Grants for transportation purposes, including grants from the Federal Highway Administration and Federal Transit Administration;
- Community planning and development grants from the federal Department of Department of Housing and Urban Development;
- Grants for health and social service purposes, including medical assistance, community mental health, substance abuse prevention, child support, and immunization; and
- Grants for law enforcement purposes from the United States Department of Justice.[98]

Some of these grant monies were provided directly to counties, while others were provided to a state agency that directed the monies to counties.

Counties also received federal monies in the form of entitlement programs and payments in lieu of taxes, primarily from timber harvests off of United States Forest Service lands and Bureau of Land Management lands located within their boundaries.

Other

Counties, as well as other units of local government, receive additional revenues from a wide variety of other sources, including charges imposed internally for services, interest and investment earnings, fines and forfeitures, and sales or leases of real or personal property.

NOTES:

1. Washington State Department of Revenue, Property Tax Statistics 2014, http://dor.wa.gov/docs/reports/2014/Property_Tax_Statistics_2014/2014leviesdue.pdf .
2. Washington State Department of Revenue, Tax Statistics 2014,

http://dor.wa.gov/Docs/Reports/2014/Tax_Statistics_2014/Table16.pdf .

3. Washington State Department of Revenue, Property Tax Statistics, 2014, Table 9, Property Taxes by fund According to the Tax Year Due, 2010 – 2014. http://dor.wa.gov/docs/reports/2014/property_tax_statistics_2014/proptx2014.pdf .
4. Washington State Department of Revenue, Property Tax Statistics, 2014, Table 10, Property Taxes due in 2014 by Major Taxing District and County. http://dor.wa.gov/docs/reports/2014/property_tax_statistics_2014/proptx2014.pdf .
5. RCW 84.52.043(1).
6. The levy for the county hospital is authorized by RCW 36.62.090. The levy for the county lands assessment fund is authorized by RCW 36.33.120 & 36.33.140. The levy for developmental disabilities and mental health purposes is mandated by RCW 71.20.110. The levy for veteran purposes is mandated by RCW 73.08.080. The amount of the latter two required levies may be reduced below the statutory levy rate pursuant to formula specified in these statutes.
7. RCW 84.52.043(2).
8. Chapter 84.55 RCW.
9. RCW 84.52.043(1).
10. RCW 36.75.060, 36.82.040, 36.33.220, & 36.79.140.
11. RCW 84.52.043(2).
12. Chapter 84.55 RCW.
13. RCW 84.52.043(1).
14. Washington State Department of Revenue, Property Tax Statistics, 2014, Table 30, Levy Detail, Part I Senior Taxing District Levies Due in 2014. http://dor.wa.gov/docs/reports/2014/property_tax_statistics_2014/proptx2014.pdf
15. RCW 84.34.230.
16. Washington State Department of Revenue, Property Tax Levy Detail for All Counties for Taxes Due in 2014. http://dor.wa.gov/docs/reports/2014/levy_detail_files_2014/all_county_levy_detail_2014.pdf
17. RCW 84.52.043(2).
18. Chapter 84.55 RCW.
19. RCW 84.52.069.
20. Washington State Department of Revenue, Property Tax Levy Detail for All Counties for Taxes Due in 2014, *id*.

21. RCW 84.52.043(2).
22. RCW 84.52.105.
23. Washington State Department of Revenue, Property Tax Levy Detail for All Counties for Taxes Due in 2014, *id*.
24. RCW 84.52.043(2).
25. Section 1, Chapter 80, Laws of 2004, codified as RCW 84.52.135.
26. Washington State Department of Revenue, Property Tax Levy Detail for All Counties for Taxes Due in 2014, *id*.
27. Article VII, Section 2(a); and RCW 84.52.052.
28. Article VII, Section 2(b); and RCW 84.52.056.
29. RCW 82.14.030.
30. Section 4, Chapter 94, Laws of 1970 ex. sess., codified as RCW 82.14.030(1).
31. Sections 17, Chapter 49, Laws of 1982, 1st ex. sess., codified as RCW 82.14.030(2); and Section 2, Chapter 99, Laws of 1983, codified as RCW 82.14.036.
32. Washington Department of Revenue, Local Sales and Use Taxes RCW 82.14 and RCW 82.104.170. http://dor.wa.gov/docs/reports/2010/tax_reference_2010/09localsales.pdf
33. RCW 82.14.340.
34. RCW 82.14.350.
35. RCW 82.14.370.
36. Section 2, Chapter 24, Laws of 2003 1st sp. sess., codified as RCW 82.14.450.
37. RCW 84.52.420.
38. RCW 82.14.400. This statute has an interesting twist. The Department of Revenue collects the local sales and use tax and remits the collections to the county. However, in lieu of charging a standard fee for administering the tax collections, a small amount of the collections are remitted to the Department of Community, Trade, and Economic Development to maintain community-based housing for mentally ill persons for a twelve-year period.
39. RCW 82.14.460.
40. RCW 82.14.0485.
41. RCW 82.14.0494.
42. RCW 82.14.480.
43. Tax Statistics 2014, *id*.

44. RCW 81.104.160(2).
45. RCW 82.14.360.
46. RCW 36.38.010.
47. RCW 9.46.110 & 9.46.113.
48. RCW 82.46.010(2).
49. RCW 82.46.035.
50. RCW 82.46.010(2).
51. RCW 82.46.070. Only San Juan County imposes this tax. This tax, unlike the other local real estate excise taxes is imposed on the buyer rather than the seller of the real estate.
52. RCW 67.28.180.
53. RCW 67.28.181.
54. RCW 82.29A.040. Counties are authorized to impose this tax at a 6 percent rate, but must provide a credit for city leasehold excise taxes.
55. Chapter 82.14B RCW.
56. RCW 82.80.030.
57. RCW 81.104.150.
58. RCW 81.100.030.
59. RCW 82.80.010.
60. Chapter 36.88 RCW.
61. RCW 36.94.220 - 36.94.300.
62. Chapter 35.87A RCW.
63. RCW 36.94.140.
64. RCW 36.58A.040.
65. RCW 36.57.040.
66. RCW 82.02.050-82.02.100, 36.73.120, 39.92.040, 58.17.110, 43.21C.060, & 43.21C.065.
67. RCW 36.32.120(3).
68. RCW 36.32.120(3) and Chapter 36.71 RCW.
69. RCW 67.12.021 and 67.12.110.
70. Chapter 67.14 RCW.
71. RCW 39.36.020(2)(a)(ii).
72. RCW 39.36.020(2)(a) & (b).

73. RCW 39.46.110.
74. RCW 36.67.510-36.67.560.
75. RCW 36.88.190-36.88.250 & 36.94.220.
76. RCW 36.88.200 & 36.94.220.
77. Chapter 39.50 RCW.
78. RCW 71.24.030, 71.24.155, 70.96A.040, 70.96A.047, 70.96A.320(2), 71A.16.030, 71A.16.060, & 71A.14.080 - 71A.14.100.
79. RCW 46.68.120-46.68.124 & 46.68.080.
80. RCW 70.12.015.
81. RCW 82.14.310.
82. RCW 43.330.190.
83. RCW 66.08.190(1) & 82.08.170.
84. RCW 67.28.180.
85. Article IV, Section 13.
86. RCW 36.17.020(11).
87. Section 4, Chapter 450, Laws of 2005, codified as RCW 82.45.210.
88. Section 8, Chapter 457, Laws of 2005, codified as RCW 43.08.250; and Ron Ward, President WSBA, "Court Funding Glad Tidings and the Long Legislative Road Ahead", Washington State Bar News, June 2005, at pages 13 - 16.
89. Chapters 36.78 & 47.26 RCW.
90. RCW 79A.25.120, 79A.15.040, 79A.15.050, & 78A.15.060.
91. RCW 43.330.120(2).
92. RCW 70.146.070.
93. RCW 43.155.050. This account is more commonly known as the Public Works Trust Fund.
94. RCW 70.105.235.
95. RCW 43.160.060.
96. RCW 43.110.030.
97. RCW 82.08.170.
98. Details may be found on the Local Government Finance Reporting System portion of the Washington State Auditor's home page. The address for this information is "http://sao.wa.gov/lgfrs/."

PART II

CITIES

Introduction

Part II of this reference book on local government in Washington State discusses cities.[a] Cities constitute a second major category of local government.

Part II includes Chapters 6 through 9. Chapter 6 discusses the varied structures of city government and arrays of officials that are available for cities. Chapter 7 describes how cities are incorporated as well as a variety of possible city boundary changes. Chapter 8 describes the general powers of cities. Chapter 9 discusses city finances.

Cities are the most powerful units of local government in Washington State. They possess broader authority to adopt regulations and provide a wider array of services and facilities than any other type of local governments. They receive finances from a variety of sources, including: (1) Different types of taxes; (2) non-tax fees, including special assessments and normal rates and charges; (3) debt proceeds; (4) intergovernmental revenues; and (5) other sources. Cities possess the broadest powers of taxation of any unit of local government and may impose a variety of property tax levies, sales and use taxes, business license taxes (business and occupation taxes and utility taxes), and a number of minor taxes.

Cities are municipalities or general purpose units of local government. They generally provide a higher level of municipal services and facilities within their boundaries than is typically provided by the county and special purpose districts in unincorporated areas. Unincorporated areas are those parts of a

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a Unless the context clearly implies otherwise, the term “cities” includes both cities and towns.

county lying outside of a city. The more densely populated parts of the State tend to be located within cities.

The basic structure of city law in Washington Territory was altered in 1886 when Congress enacted legislation prohibiting Territories from enacting "local or special laws … incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village."[1] Prior to this legislation, Washington Territory created most cities or towns by enacting private or local law incorporating the city or town and providing a charter for the city or town that described its boundaries, described its structure of government or array of elected and appointed officials, and detailed its powers. The new state constitution creating the State of Washington in 1889 continued this new practice of the Legislature controlling cities and towns with general legislation rather than special legislation. Cities were subject to general laws, applicable to all cities or classes of cities.

Cities have varied structures of government and classes. Three general forms of city government are provided—mayor/council, council manager, and commission. Cities are classified as: (1) Classified cities, including first class cities operating under charters, second class cities, and towns; (2) code cities; or (3) unclassified cities. Most other types of local governments are not allowed to vary their structures of government.

Two hundred and eighty one cities exist in Washington State as of 2015. These cities are quite varied. Perhaps the dramatic difference involves the wide range of city populations.[2] A large number of cities have quite small populations, including Krupp with an estimated population of 50. Forty-six cities, or 16 percent of all cities in the State, have populations of less than 500. Seventy-nine cities, or 28 percent of all cities in the State, have populations of less than 1,000. One hundred and twenty cities, or 43 percent of all cities and towns in the State, have populations of less than 2,000. A few relatively large cities exist in the State, including Seattle with a population 640,500, Spokane with a population of 212,300, and Tacoma with a population of 200,900.

Cities, like all other local governments, are subject to audits by the State Auditor. [3]

NOTES:

1. Chapter 818, Public Laws of the United States of America, Forty Ninth Congress, approved July 30, 1886.

2. Population figures taken from Table 6, Rank of Cities and Towns by April 1, 2014, Population Size, State of Washington, 2014 Population Trends, the Office of Financial Management, at pages 18-23. http://www.ofm.wa.gov/pop/april1/poptrends.pdf

3. Article III, Section 20; and RCW 43.09.020 & 43.09.260.

Chapter 6

Varied City Structures of Government

Cities possess broad flexibility to vary their structures of government and arrays of local officials.[a] Most other types of local governments are not given the flexibility to vary their structure of government.

This flexibility for cities arises from the statutory authorization of different classes of cities and different plans of government that each type of city may adopt. Appendix D provides details about each of the 281 cities in the State, including their class, year of incorporation, and plan of government.

Classification

Cities in Washington State are now divided into the following three broad classes or groups:

- Classified cities. Classified cities are the various types of cities authorized by the first State Legislature in 1890. This classification now includes first class cities, second class cities, and towns. These cities operate under the provisions of Title 35 RCW.
- Code cities. Code cities were first authorized by legislation enacted in 1967. They operate under the Optional Municipal Code of Title 35A RCW.
- Unclassified cities. Unclassified cities are cities created by special acts of the Legislative Assembly of Washington Territory that still operate under their

a Unless the context clearly implies otherwise, the term "cities" includes both cities and towns and the term "classified cities" includes first class cities, second class cities, and towns.

Territorial charters. The few statutes providing for unclassified cities are codified in Chapter 35.30 RCW.

Current law provides flexibility for cities to change their classifications. An unclassified city may reorganize as a code city, without regard to its population. A classified city may reorganize as a code city, without regard to its population. Any code city may reorganize as a classified city, based upon its population. Voters of any city with a population of 10,000 or more may approve a charter providing for the government of that city.

A. Classified Cities

Article XI, Section 10 is the basic constitutional provision relating to cities. The first State Legislature enacted laws in 1890 implementing this provision. This legislation:

- Established four classes of cities (first class, second class, third class, and towns). Each city's class was determined by its population when it organized or reorganized; and
- Allowed any city operating under a territorial charter to reorganize under these laws as a classified city.

Separate laws were enacted providing for each of these four classes of cities.[1] Some details were provided about first class cities. A first class city was a more populous city, with a population of at least 20,000, operating under a charter approved by city voters. This minimum population is now 10,000. The laws for second class cities and third class cities were quite similar, but differed in detail. The laws providing for towns somewhat resembled statutes providing for second class cities and third class cities, but granted towns less flexibility. Each of these four separate sets of laws provided for a mayor/council plan of government and other elected officials, as well as long lists of powers the city could exercise. As discussed below, legislation was enacted in 1911 and 1943 providing flexibility for cities to change their plans of government.

1. First class cities

A first class city is now defined in statute as a city with a population of 10,000 or more at the time the city adopted a charter for its own government under the provisions of Article XI, Section 10.[b] Ten first class cities existed in 2015, including Seattle, Tacoma, and Spokane.[2]

a. Procedure to adopt a charter

The process for a city to adopt a charter is detailed in both Article XI, Section 10 and various statutes.

Article XI, Section 10 now provides that the governing body of a city with a population of 10,000 or more initiates the process to adopt a city charter by causing an election to be held to elect a fifteen-member board of freeholders to draft a proposed city charter.[c] Each member of a board of freeholders must have been a resident of the city for at least two years at any time preceding his or her election to that position.[d]

A board of freeholders is a temporary body of voters empowered to draft a proposed charter that is submitted to city voters for their approval or rejection. It is not a government or a governing body. A board of freeholders dissolves after completing its duties of drafting a proposed city charter. Freeholders do not receive compensation. No time limits exist for a board of freeholders to develop a proposed charter. A proposed charter prepared by a board of freeholders becomes the organic law of the city if a ballot

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b Article XI, Section 10 currently allows any city with a population of 10,000 or more to adopt a charter "for its own government" but does not classify these cities as first class cities. The first State Legislature enacted legislation naming these cities as first class cities. RCW 35.01.010 now defines these cities as first class cities. The original provisions of Article XI, Section 10 allowed any city with a population of 20,000 or more to adopt a charter, but Amendment 40 was approved by state voters in 1964 reducing the minimum population to 10,000.

c Although the term "freeholder" literally means a property owner, the Supreme Court has held that members of the board need only be registered voters residing in the city rather than property owners. (*Sorenson v. Bellingham*, 80 Wn.2d 547, 553-555 (1972).)

d Article XI, Section 10 merely provides that members of the board must have been residents of the city "for a period of at least two years preceding their election and qualification." The State Court of Appeals held that the residential requirement for a county freeholder, that was worded using the same language but was for five years, established a requirement that the person have lived in the county at any time for a total of five years prior to being elected as a freeholder. (See, *Fishnaller v. Thurston County*, 21 Wn. App. 280, 289 (1978).)

proposition submitting the charter to city voters is approved by a simple majority of voters voting on the proposition.

An old state statute provides that whenever the population of a city is 10,000 or more, the city legislative authority shall provide for the election of a board of freeholders to frame a proposed charter for the city.[3] This statute has not been followed for decades. As of 2015, at least 68 cities in Washington have populations of 10,000 or more that have not held such an election, along with ten cities that adopted charters under this provision.[e]

Some flexibility exists for submitting a proposed charter to voters for their approval or rejection. A proposed charter may be submitted with, or without, alternative articles or provisions. Multiple questions are asked of city voters if the proposal includes alternative articles or provisions. The basic question is whether or not the charter should be approved. One or more secondary questions are then asked about alternative articles or provisions within the charter. Approval of the charter is determined by the vote on the basic question. However, some details within the charter may be determined by the secondary vote or votes on the alternative articles or provisions. Obviously, secondary votes have no effect if a majority of city voters voting on the basic proposition do not approve the charter.

Requirements are established for publishing the proposed charter prior to the election at which it is submitted to voters. The election of a board of freeholders and the submission of a proposed charter to voters may be held at either regular or special elections.

b. Procedures to amend a charter

Article XI, Section 10 provides that the city legislative authority initiates amendments to a city charter by submitting the amendments to city voters for their approval or rejection. An amendment is adopted if the ballot proposition asking if voters approve the proposed amendment is approved by a simple majority vote of voters voting on the proposition. As with the submission of the original charter, an amendment may include alternative articles or provisions.

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e The Legislature should consider amending or repealing this statute.

An alternative procedure to amend a city charter is provided in state statute.[4] City voters initiate this alternative procedure by filing a petition containing a proposed amendment that has been signed by city voters equal in number to at least 25 percent of the number of city voters who voted in the last preceding city election. As with the submission of the original charter, an amendment may include alternative articles or provisions. This alternative procedure to amend a city charter includes some very interesting language allowing the amendment to address "any matter within the realm of local affairs, or municipal business." As discussed below, the Supreme Court construed this phrase in an old case as granting city voters authority to initiate charter amendments relating to subject matters that may not be included in charter amendments initiated by action of the city governing body or presumably included in the original city charter. It is not clear whether this distinction between amendments initiated by city voters or the city governing body still has any validity as the Court has never again cited this provision as a source of fundamental power for first class or charter cities.

2. Second class cities

The first State Legislature enacted legislation providing for four classes of cities -- first class cities, second class cities, third class cities, and towns. Legislation was enacted in 1994, eliminating third class cities. This was accomplished by reclassifying then third class cities as second class cities.[5] No second class cities existed at that time, as all of the prior second class cities had reorganized as code cities.

A second class city is now defined as a city with a population of at least 1,500 at the time of its organization or reorganization that does not operate under either a charter adopted under Article XI, Section 10 or under the Optional Municipal Code in Title 35A RCW.[6] There were nine second class cities in 2015, including Colfax, Port Orchard, and Wapato.[7]

3. Towns

The first State Legislature enacted legislation providing for towns. As perhaps implicit from this term, towns have been granted

somewhat lesser powers than any class of cities, although they still possess very broad powers. Some old statutes used to refer to towns as fourth class municipal corporations.

A town is defined as a municipal corporation with a population of less than 1,500 when it organized or reorganized and does not operate under the Optional Municipal Code in Title 35A RCW.[8] There were 69 towns in 2015, including Coupeville, Krupp, Metaline, Steilacoom, and Winthrop.[9] As discussed in Chapter 7, an unincorporated area may no longer incorporate as a town.

B. Unclassified Cities

Article XI, Section 10 recognizes all cities that existed in Washington Territory at statehood. These cities were allowed to continue operating under their territorial charters or reorganize as classified cities. Legislation was enacted in 1899 referring to cities that retained their prior status and continued to operate under their territorial charters as "unclassified" cities.[10]

Statutes no longer provide for a procedure for an unclassified city to reorganize as a classified city. However, an unclassified city may reorganize as a code city following the procedures provided in Chapter 35A.02 RCW.

Waitsburg is the only remaining unclassified city operating under its territorial charter.[11] Union Gap recently reorganized from an unclassified city into a code city.

Legislation enacted in 2003 allowed an unclassified city (Waitsburg) to exercise any of the powers of a code city, and to change its election procedures and elect a mayor and council members to four-year terms of office at elections held in odd-numbered years.[12] Two major consequences arose from the enactment of this legislation. First, the legislation effectively eliminated the significance of operating under a territorial charter but retained the charter as an interesting historical document with little meaning. Second, the legislation was quite revolutionary in that it granted the one remaining unclassified city (Waitsburg) broader powers than are possessed by second class cities and towns.[f]

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f This second consequence is quite profound. Prior to the enactment of this legislation each

C. Code Cities

Legislation was enacted in 1967 allowing an unincorporated area to incorporate as a code city operating under the Optional Municipal Code and for any existing city to reorganize as a code city operating under the Optional Municipal Code.[13] This legislation provided for a new class of cities with strong home rule powers.

The effort to reform local government, by providing optional plans of government for cities and more clearly extend home rule powers to cities and counties, began in 1957 with a report by the Subcommittee on Cities, Towns and Counties of the Legislative Council entitled "Municipal Home Rule in Washington: Preliminary Report."[g] This report criticized the Supreme Court's analysis of city powers and recommended the State Constitution be amended to provide greater flexibility for noncharter cities to adopt different plans of government and expressly grant charter cities all the powers that have been conferred upon other municipal corporations.

Two subsequent legislative committees were created in the 1960's to study city government and make recommendations for statutory changes. Recommendations by these two committees were in partial conflict.

The Citizens Advisory Committee to the Joint Committee on Urban Government, of the State Legislature, issued a number of recommendations in June of 1962.[h] These recommendations

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conversion of an unclassified city to a classified city was accomplished by voter approval. However, in this instance Waitsburg essentially was converted to a code city without local voter approval. It is the author's impression that, traditionally, legislators have been unwilling to consider legislation converting classified cities to code cities with very broad home rule authorities. It is not clear if legislators were aware of the profound significance of this legislation essentially converting an unclassified city to a code city without local voter approval.

g The State Legislative Council was established in 1947 to study issues and make recommendations to the Legislature. (Chapter 36, Laws of 1947.) Members of both the Senate and House of Representatives served on the Legislature Council, which basically only met during interim periods between legislative sessions to study issues and make recommendations to the full Legislature. The Legislative Council was abolished in June of 1973 when the House of Representatives created the Office of Program Research, and the Senate created Senate Committee Services, to provide professional, non-partisan committee services for each house of the Legislature. The author worked as an intern for the old Legislative Council in the first half of 1973 before the Office of Program Research was created.

h The Joint Committee on Urban Area Government was a ten-member committee composed of five state senators and five state representatives that was created by Chapter 308, Laws of 1961. A

included a proposal that a fundamental distinction be made between the powers of cities with populations of 10,000 or more and cities with populations of less than 10,000. It was proposed that these more populous cities should be granted the power to conduct their affairs in any manner not inconsistent with state law, while the less populous cities should continue exercising only those powers expressly granted to them by state law.[14] These recommendations were not enacted into law.

The Legislature created the Municipal Code Committee in 1965, directing the committee to prepare legislation granting "a form of statutory home rule" to cities that could take the form of amending existing laws or providing an alternative code of laws that any city could adopt.[15] Legislation implementing the recommendations of the Municipal Code Committee was enacted in 1967 providing for the Optional Municipal Code which is codified in Title 35 RCW.[16] Every city operating under the Optional Municipal Code, without regard to its population, is granted very broad home rule powers, including an omnibus grant of powers similar to that of first class cities.[17] Any existing city or town could reorganize as a code city without regard to its population and any area with sufficient population could incorporate as a code city.[18]

The code city classification has proven to be very popular, as 192 cities (68 percent of all cities in the State) operated as code cities in 2015.[19] Each new city incorporating after the effective date of this legislation incorporated as a code city. Many cities have reorganized as code cities. Perhaps the greatest achievement of code city laws has been the creation of a sense of self confidence for city officials to overcome decades of cities being construed to have limited powers.

Two types of code cities are authorized to be formed – charter code

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large citizens advisory committee was created to advise the Joint Committee, with members from the Seattle metropolitan area, Tacoma metropolitan area, and Spokane metropolitan area. Many leading citizens of the metropolitan areas were members of the advisory committee, including James R. Ellis, Reverend Samuel McKinney, George Mack, Richard Haley, and Donald Neraas. The Joint Committee was directed to study the "laws, facts, trends of urban development and other maters relating to the welfare and government of urban area of the state" and to make recommendations to the Governor and Legislature concerning any changes in laws that it finds necessary. ("City and Suburban Community or Chaos," Report of the Citizens Advisory Committee to the Joint Committee on Urban Area Government to the Legislature of the State of Washington, June, 1962.)

cities and non-charter code cities.

1. Non-charter code cities

Any city (or town), without regard to its population, may become a non-charter code city. Every code city other than Kelso is a non-charter code city. Bellevue is the most populous non-charter code city with an estimated population of 134,000 in 2014.

Any city reorganizing as a non-charter code city may operate with one of three different plans of government. A new code city may:

- Retain its prior plan of government and operate under the statutes in Title 35 RCW controlling that plan of government;[i]
- Adopt the mayor/council plan of government under code city statutes and operate under Chapter 35A.12 RCW; or
- Adopt the council manager plan of government under code city statutes and operate under Chapter 35A.13 RCW.[20]

Retaining its prior plan of government means that the new code city operates with a mayor/council, council manager, or commission plan of government as specified in the statutes of Title 35 RCW under which the city operated prior to becoming a non-charter code city. Retaining its prior plan of government could also mean an unclassified city reorganizing as a code city and retaining the plan of government specified in special territorial legislation that created the city prior to statehood.

Legislation enacted in 2001 appears to permit any non-charter code city to adopt a plan of government other than the three prior options described above.[21] However, this other plan of government is not described and no procedure is specified for a code city to adopt this alternative plan of government.

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i The old second class city laws, before the elimination of third class cities and reclassification of these cities as second class cities, provided for an elected mayor, clerk, treasurer, and twelve council members. One city (Hoquiam) retained this array of elected officials when it reorganized as a code city. RCW 35.23.800-35.23.850 recognizes this fact and retains these old second class city statutes for such a code city.

A classified or unclassified city (or town) may reorganize as a non-charter code city, and operate under any of these plans of government, following any of the four following procedures:

- A direct petition procedure may be used where a petition proposing the reorganization is filed with the city.[22] The petition must be signed by city voters equal in number to at least 50 percent of the number of "votes cast" at the last general municipal election. The city governing body must provide for the reorganization. However, a ballot proposition asking if voters want this reorganization is submitted to voters for their approval or rejection if a timely petition opposing the reorganization is filed. This second petition need only be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A direct resolution procedure may be used where the city governing body adopts a resolution providing for the reorganization.[23] However, a ballot proposition asking if voters want this reorganization is submitted to voters for their approval or rejection if a timely referendum petition against the reorganization is filed. The referendum petition must be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A petition for election procedure may be used where a ballot proposition asking if voters support the reorganization is submitted directly to city voters for their approval or rejection.[24] The petition calling for an election on the reorganization must be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A resolution for election procedure may be used where the city governing body places a ballot proposition directly on the ballot asking if voters want this reorganization.[25]

Although the signature requirements in these statutes are based upon a percentage of the number of "votes cast" in the city at the last preceding general municipal election, it is presumed that this requirement would be interpreted to be a percentage of the number of voters who voted at that election.

2. Charter code cities

A charter code city is a code city with a population of at least 10,000 that adopts a charter under Title 35A RCW. Any first class city with a population of 10,000 or more operating under a charter adopted under Article XI, Section 10 may reorganize as a code city and retain its old city charter.[j] Any non-charter code city with a population of 10,000 or more may elect a 15-member charter commission to frame a proposed city charter "to provide for its own government" that is submitted to city voters for their approval or rejection.[26]

Kelso is the only charter code city in the State. That city operated as a non-charter code city prior to reorganizing as a charter code city.

The benefits of a charter for a code city are quite limited. Although the purpose of the charter is for the city to "provide for its own government," a charter that provides for either a mayor/council plan of government or a council manager plan of government is restricted to providing for an odd-number of council members not exceeding eleven.[k] Presumably, a code city charter could provide for any other plan of government, such as a commission plan of government, along with the election of an array of administrative officials. However, the primary purpose for voters of a non-code city with a population of 10,000 or more to adopt a charter may be to end the terms of office of city officials under the prior plan of

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j Chapter 35A.07 RCW allows any city with a population of 10,000 or more that is governed by a charter (i.e., the city is a first class city or operates under a Territorial charter) to become a charter code city. This chapter of law may have no utility. It is not clear why a first class city would take this step, or even if this step would be constitutional since first class city charters are authorized and controlled by Article XI, Section 10. No unclassified city had a population of 10,000 or more when this legislation was enacted. Further legislation enacted in 2003 allows any unclassified city (i.e., Waitsburg) to exercise any of the powers of a code city. (RCW 35.30.070.)

k RCW 35A.08.010 provides for a non-charter code city adopting a charter for its own government, but RCW 35A.12.010 and 35A.13.010 limit the number of council members to an odd-number not exceeding eleven if either a mayor/council or council manager plan of government is adopted.

government and require the election of a new array of officials, even where the charter provides for the same plan of government with the same number of council members.[l]

Presumably, a charter code city could also grant city voters initiative and referendum powers on city matters differing from the provisions that non-charter code cities may use.

Plans of Government

Cities have been authorized to choose different plans of government.[m] This flexibility is somewhat restricted based upon the class and population of the city. With a few exceptions, this flexibility to select a plan of government is unique among local governments in Washington.

The most common plan of government for cities is the mayor/council plan. The next most common plan of government for cities is the council manager plan. Only one city (Shelton) presently operates with a commission plan. Any city with a population of 10,000 or more has additional flexibility to adopt a charter providing for its own plan of government.

An unclassified city operating under a territorial charter has the plan of government specified in its charter. Waitsburg is the only unclassified city and its territorial charter provides for a mayor/council plan of government. However, as mentioned above, legislation was enacted in 2003 altering the nature of an unclassified city. An unclassified city now possesses the powers of a code city and may elect its officials following general municipal election laws where the mayor and council members are elected to four-year terms of office at elections held in odd-numbered years, notwithstanding the provisions of its Territorial charter to the contrary.

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l C. LeRoy Borders, longtime city attorney for Kelso, indicated in a conversation on April 25, 2002, that this statement described the effect of Kelso adopting a charter and becoming the only charter code city in the State. The new charter terminated the terms of office of all prior city elected officials, and provided for new elections of city officials, but retained the council manager plan of government for the city.

m Classified city statutes use the term “plan of government” referring to the structure of the city governing body and its array of elected officials, while code city statutes use the term “forms of government” referring to the structure of the city government and its array of elected officials.

All city elected offices are non-partisan offices, without regard to the plan of government of the city and officials are elected at general municipal elections held in odd-numbered years.[27] However, at least in theory, a first class city charter could provide for partisan offices and provide for officials to be elected at elections held at other times. The county auditor now conducts all primaries and elections for cities, including primaries and elections involving the election of city officials and the submission of ballot propositions to city voters.[n 28]

A. Mayor/council

The mayor/council plan of government separates city government into a legislative branch and an executive branch. The mayor is not a member of the city council, but is a separately elected official, exercising executive and administrative powers for the city, with the power to make appointments and to veto ordinances adopted by the council. The council is the legislative branch of government with authority to adopt ordinances and take other legislative actions.

The mayor/council plan of government is by far the most popular plan of government, with 227 out of 281 cities in the State (over 80 percent of all the cities) operating under this plan of government.[29]

The first State Legislature provided for first class cities, second class cities, third class cities, and towns to operate with mayor/council plans of government. No alternative was allowed. Legislation was subsequently enacted providing for alternative plans of government.

Most city councils consist of either five or seven members. The number of council members in a city is as follows:

- The council is composed of five members in a town,

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n Some statutes still use the term "nominate" to describe the result of primary election rather than the more accurate term "select." State voters approved Initiative Measure No. 872 in 2004 instituting what is known as the "top two" primary in Washington State. As described in Chapter 67, for several years voters and political parties were at odds over the nature of primary elections. Unfortunately, the Initiative altered the nature of primary elections but did not revise most statutes that still use the term "nominate" rather than select the top two candidates whose names will appear on the general election ballot.

without regard to its population, and in a code city with a population of less than 2,500 that operates under the code city plan of government statutes.[30]

- The council is composed of seven members in a second class city, without regard to its population, and in a code city with a population of 2,500 or more that operates under the code city plan of government statutes.[31]
- The council of a non-charter code city, retaining its prior plan of government when it reorganized as a code city, is composed of the number of council members specified under the prior statutes that controlled the city government.[32] With one exception, every non-charter code city with a mayor/council plan of government has either five or seven council members. Hoquiam retained its plan of government under the old second class city statutes that existed before third class cities were converted to second class cities and retains a mayor and a council with 12 members.[o] [33]
- The charter of a charter code city may provide for a mayor/council plan of government with a mayor and a council composed of an odd number of members not exceeding eleven.[34]
- A first class city operating with a mayor/council plan of government has a mayor and a council composed of any number of members as specified in the city charter.[35]

It is ironic that a few months after the State Constitution was approved by voters creating Washington State, the first State Legislature enacted legislation severely limiting the flexibility of a city adopting a charter under Article XI, Section 10. Cities operating under such a charter were classified as first class cities. The restriction on the authority of a first class city to provide for "its own government" took the form of requiring a first class city to have

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o Ironically, this unique provision affords a non-charter city (Hoquiam) authority to adopt a plan of government that a charter code city may not adopt since the maximum number of council members in a charter code city is eleven.

a mayor/council plan of government with the charter specifying the number of council members.[36] That statute remains as part of the State's statutes, but may have been muted by subsequent legislation:

- Legislation was enacted in 1903 allowing the voters of any first class city to initiate a charter amendment on "any matter within the realm of local affairs, or municipal business ...."[37] The Supreme Court interpreted this statute as granting city voters the authority to initiate charter amendments concerning much broader subjects than may be included in an amendment initiated by the city council.[38] This additional authority included the power to initiate amendments providing for a plan of government other than the mayor/council plan.
- Legislation was enacted in 1911 providing that "the form of the organization and the manner and mode in which cities of the first class shall exercise" their powers shall be as provided in their charters.[39] Presumably this statute, by inference, negates the prior statute requiring first class cities to have a mayor/council plan of government and allows a city charter to provide for any plan of government.

The omnibus grant of powers grants all first class cities any power authorized to any other class of cities.[40] It follows that a first class city could adopt a charter specifying a plan of government any other class of city may adopt. This now includes a council manager plan of government under Chapter 35.18 RCW and a commission plan of government under Chapter 35.17 RCW.

Cities operating under a mayor/council plan of government may also elect various administrative officers. Voters of a second class city elect a city attorney, clerk, and treasurer, unless the city council adopts a resolution providing for the appointment of these officers.[41] Voters of a town elect a treasurer, unless the council adopts an ordinance combining the office of treasurer into the appointed office of clerk.[42] The charter of a first class city may provide for any administrative officers to be elected.[43] Presumably a charter of a charter code city could provide for any administrative

officers to be elected.

Allowing additional administrative officers to be elected in cities continued a tradition from Washington Territory of electing a myriad of administrative officers along with an executive and members of the legislative branch of city government. Most territorial charters provided for a number of elected administrative officials, such as a police chief or marshal, clerk, treasurer, and attorney.[p]

B. Commission

Legislation was enacted in 1911 allowing any city with a population of from 2,000 to less than 30,000 to adopt a commission plan of government.[q] A city operating with a commission plan of government may reorganize as a code city and retain its old commission plan of government.[44] Shelton is the only city in the State operating with a commission plan of government by retaining this plan of government when it reorganized as a code city.

A commission plan of government consists of three commissioners and somewhat resembles a parliamentary form of government. The commissioners jointly constitute the legislative branch of government and each commissioner exercises part of the executive powers of government.[45] One commissioner is referred to as the mayor, who is the president of the commission and is designated as the superintendent of the public safety department. A second commissioner is referred to as the commissioner of finance and accounting, who is the vice president of the commission and is designated as the superintendent of department of finance and accounting. The third commissioner is referred to as the commissioner of streets and public improvement and is designated as the superintendent of the department of streets and public improvement. The assignment of duties to each of these departments is made by city ordinance, although presumably some

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p For example, the first territorial charter creating the City of Steilacoom provided for an elected recorder, treasurer, marshal, and assessor. (Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Pages 455-458).

q Statutes providing for a commission plan of government are found in Chapter 35.17 RCW. RCW 35.17.370 provides that only a city with a population of from 2,000 to less than 30,000 may reorganize under a commission plan of government. Presumably, a city that legally organized as a commission city could retain that plan of government if it lost population below 2,000 or increased its population to 30,000 or more.

degree of responsibility inures in these commission positions based upon the name of each superintendency.[46] For example, presumably, the mayor or commissioner of public safety would appoint and supervise a police chief while the superintendent of streets and public improvements would direct streets and other public improvements.

Obviously, veto powers do not exist in a city operating under a commission plan of government.

The commission plan of government was part of the Progressive Era reforms that were promoted to reduce or eliminate corruption and mismanagement of city government.[47] These statutes included a number of unique Progressive Era features.

First, no staggering of terms of office was provided under the original provisions and all three of the commissioners were elected to four-year terms of office at the same municipal election. This was unique. Almost all other local government elected officials of multi-member governing bodies are elected to staggered terms of office. Apparently, it was felt that having all three of the commissioners elected at the same election allowed voters to make a "clean sweep" of commissioners in a single election rather than waiting for two or more election sequences. However, legislation was enacted in 1994 providing for a staggering of these terms of office commencing at the 1995 and 1997 municipal elections.[48]

Second, city commissioners were elected as nonpartisan officials. As discussed in Chapter 67, the 1911 legislation allowing certain cities to operate under a commission plan of government provided for the election of these officials without mentioning partisanship. This was unique. At that time all other city officials were elected as partisan officials. This Progressive Era feature now applies to all city elected officials in any plan of government.

Third, voters in a city with a commission plan of government were granted the powers of initiative and referendum on city matters by state statute.[r] [49] This is unique. Voters of other cities do not automatically possess the powers of initiative and referendum on

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r A more detailed discussion of local initiative and referendum powers is found in Chapter 68.

city matters. Voters in first class cities only possess the powers of initiative and referendum on city matters if authorized in the city charter.[50] Voters in code cities only possess the powers of initiative and referendum on city matters if the city council grants them these powers or city voters petition for these powers and approve a ballot proposition granting themselves these powers.[51] Automatic provision of the powers of initiative and referendum on city matters to city voters is an example of the progressive nature of the commission plan of government.

Fourth, elected or appointed officers of a city operating with a commission plan of government were prohibited from accepting free tickets or services, or service more favorable than that offered to the general public, from any enterprise operating under a public franchise.[52]

C. Council Manager

Legislation was enacted in 1943 allowing cities to adopt a council manager plan of government.[53] The council manager plan of government is one of the expressly authorized options that any code city could select when incorporating or reorganizing.[54]

As mentioned above, the charter of a first class city may provide for any plan of government, which would include a council manager plan of government with any number of council members.

Fifty-three cities operated with a council manager plan of government in 2015, but no town operated with a council-manager plan of government.[55]

A council in a city operating under a council manager plan of government is the legislative branch of city government, and appoints a manager who is the chief executive officer of the city.[56] The manager has general supervision over the administrative affairs of the city, appoints all department heads, attends council meetings, sees that ordinances are executed, recommends ordinances to the council, and prepares a proposed budget for the council to consider.[57] This basic feature of the council manager plan of government deviates from the progressive features of the commission plan of government where elected officials exercise both legislative and executive or administrative powers. The goal

of the council manager plan of government is to provide a city with an appointed, professional manager who would run the day by day operations of the city.

A city manager is granted a degree of protection from the council. Neither the council nor individual council members may interfere with the manager by requesting or directing any appointments be made or give orders or deal with administrative personnel except through the manager.[58] Further protection provided to a manager is found in statutes detailing how a manager may be removed by the council.[59] This process is commenced by the council providing notice to the manager, provision for a reply by the manager, and the holding of a public hearing on the removal that becomes effective 30 or more days after the notice is provided. However, the council may suspend the manager with pay until the removal is final. It is very rare that any hired or appointed governmental position is afforded this protection.

Voters of a city operating under a council manager plan of government do not elect a mayor with executive and administrative powers. However, a member of the council is designated as the "mayor" with the authority to chair council meetings and engage in ceremonial duties. The council in a classified city operating with a council manager plan of government elects a member of the council biennially to serve as the "mayor".[60] More flexibility exists for non-charter code cities operating under the council manager provisions of code city law. Either the council selects a council member biennially to serve as the "mayor", or the voters may approve a ballot proposition authorizing the person elected to council position number one also serves as the "mayor" of the city.[61] The "mayor" does not exercise executive or administrative duties and may not veto ordinances adopted by the council.[62]

A classified city operating with a council manager plan of government under Chapter 35.18 RCW has a five-member council if it has a population of 2,000 or less or a seven-member council if it has a population of more than 2,000.[63] A code city operating with a council manager plan of government under Chapter 35A.13 RCW with a population of less than 2,500 has a five-member council or with a population of 2,500 or more has a seven-member council.[64] A charter code city that adopted its charter under Title 35A RCW

providing for a council manager plan of government may have a council composed of any odd number of members not exceeding eleven. A first class city adopting a council manager plan of government could have any number of members. Four first class cities (Richland, Tacoma, Vancouver, and Yakima) have charters providing for a council manager plan of government.

Compensation of Elected City Officials

Compensation for city officials has been set by different authorities over the history of Washington. Mayors and members of city governing bodies served without compensation during early territorial years. However, gradually the governing bodies of different classes of cities were authorized to set their own salaries.

Special legislation incorporating cities during territorial years included many varied provisions. The mayor and council members of Steilacoom, which was the first city incorporated by the Legislative Assembly of Washington Territory, were not authorized to receive any compensation, but the council was authorized to provide compensation when the city reached a population of 3,000.[65] A similar provision was provided for Vancouver when it was incorporated as the second city in 1857, but the city only needed to grow to a population of 2,500 before the council could provide for compensation.[66] Special legislation incorporating Olympia in 1859 and Port Townsend in 1860 did not provide any compensation for members of the board of trustees and the boards of trustees were not authorized to provide for compensation when the municipality reached a particular population.[67]

Legislation enacted by the first State Legislature created four classes of cities and began the process of granting authority to city governing bodies to provide compensation for the mayor and council members. First class city councils and second class city councils were authorized to establish compensation for their elected officials, but no compensation was allowed for mayors and council members of third class cities or towns.[68] Compensation was first paid to the mayors and council members of third class cities and towns in 1941.[69] Mayors and council members of third class cities would be paid compensation at a rate of $5 per meeting while mayors and council members of towns would be paid

compensation at a rate of $3 per meeting. This statute was amended in 1961, allowing the council of a third class city to provide for compensation for council members and the mayor.[70] The legislation providing for code cities that was enacted in 1967 allowed the council of a code city operating under the plan of government statutes provided in Title 35A RCW to provide for compensation for its elected officials.[71] Legislation was enacted in 1973 allowing town councils to set compensation levels for officials.[72]

Another option to set levels of compensation was established by legislation enacted in 2001.[73] This legislation authorizes any city to create an independent salary commission to set salaries for the officials of that city. Any increase or decrease in salaries made by the salary commission is subject to referendum action by city voters "governed by the provisions of the State Constitution, or city charter, or laws generally applicable to referendum measures".[s]

The State Constitution precludes the compensation of local officials who set their own levels of compensation from being increased during their current terms of office.[t]

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s This language is vague. The voters of most cities do not possess the powers of initiative and referendum over local matters, although procedures exist by which they may obtain these powers. This could involve reclassifying as a code city and following procedures in Title 35A RCW to grant code city voters the powers of initiative and referendum on local matters. If these powers have not already been acquired, this language presumably means that the requirements in the State Constitution for state referenda would apply. Presumably, this means that a 90-day period would exist to obtain signatures on a referendum petition and the number of signatures would be equal to 4 percent of the number of votes cast for Governor by the voters of the city at the last election when that office was on the ballot.

t This restriction arises from the interplay of several constitutional provisions. Article XI, Section 8 provides that the salaries of local officers shall not be increased (or decreased) during their current terms of office, except as provided in Article XXX, Section 1. Article XXX, Section 1 provides that the compensation of local officials who do not fix their own compensation may be increased during their current terms of office in accordance with the law in effect when the services were rendered.

NOTES:

1. First class city statutes are found in Pages 215-224, Laws of 1889-1890. Second class city statutes are found in Pages 143-178, Laws of 1889-1890. Third class city statutes are found in Pages 178-198, Laws of 1889-1890. Town statutes are found in Pages 198-215, Laws of 1889-1890.
2. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org.
3. RCW 35.22.050.
4. RCW 35.22.120-35.22.160.
5 Chapter 81, Laws of 1994.
6. RCW 35.01.020.
7. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
8. RCW 35.01.040.
9. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
10. Chapter LXIX, Laws of 1899, codified in Chapter 35.30 RCW.
11. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
12. Chapter 42, Laws of 2003, codified as RCW 35.30.070.
13. Chapter 119, Laws of 1965 ex sess.
14. "City and Suburb -- Community or Chaos," Report of the Citizens Advisory Committee to the Joint Committee on Urban Area Government, June, 1962, Recommendation 2, at page 16.
15. Chapter 115, Laws of 1965 ex sess. The direction to the committee was contained in Section 2 of that statute.
16. Chapter 119, Laws of 1967, ex sess.
17. RCW 35A.01.010, 35A.11.020, & 35A.11.050.
18. Chapter 35A.02 RCW details the procedures for any city to reorganize as a code city. RCW 35A.03.005 provides that a new code city incorporates under the same procedures as a regular city or town in Chapter 35.02 RCW.
19. Washington Cities by Classification and Form of Government, found at the

Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .

20. RCW 35A.02.010, 35A.02.020, 35A.02.030, & 35A.02.130.
21. Section 3, Chapter 33, Laws of 2001, amending RCW 35A.06.030.
22. RCW 35A.02.020 & 35A.02.025.
23. RCW 35A.02.030 & 35A.02.035.
24. RCW 35A.02.060.
25. RCW 35A.02.070.
26. Chapter 35A.08 RCW provides a procedure for a code city with a population of 10,000 or more to adopt a charter.
27. RCW 29A.52.231 & 29A.04.330.
28. RCW 29A.04.216.
29. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
30. The town council is established under RCW 35.27.070. The council of a non-charter code city operating under the code city plan of government statutes is established under RCW 35A.12.010.
31. The second class city council is established under RCW 35.23.021. The council of a non-charter code city operating under the code city plan of government statutes is established under RCW 35A.12.010.
32. RCW 35A.02.130.
33. RCW 35.23.800-35.23.850.
34. RCW 35A.12.010.
35. RCW 35.22.200.
36. Section 6, Page 223, Laws of 1889-1890, codified as RCW 35.22.200.
37. Section 1, Chapter 186, Laws of 1903, codified as RCW 35.22.120.
38. *Walker v. Spokane*, 62 Wash. 312 (1911).
39. Section 1, Chapter 17, laws of 1911, codified as RCW 35.22.020.
40. RCW 35.22.570.
41. RCW 35.23.021.
42. RCW 35.27.070, 35.27.180 & 35.27.190.
43. RCW 35.22.200.
44. RCW 35A.02.020 & 35A.02.030.
45. RCW 35.17.010.

46. RCW 35.17.090.
47. Broder, David S., Democracy Derailed, Initiative Campaigns and the Power of Money, Harcourt, Inc., (2000), at page 28, quoting Richard Hofstadter, Age of Reform, 1955.
48. Section 1, Chapter 119, Laws of 1994, codified as RCW 35.17.020.
49. RCW 35.17.220-35.17.360.
50. RCW 35.22.200.
51. RCW 35A.11.080-35A.11.100.
52. RCW 35.17.150.
53. Chapter 271, Laws of 1943, codified in Chapter 35.18 RCW.
54. Chapter 35A.13 RCW and RCW 35A.02.020, 35A.02.030, 35A.02.060, & 35A.02.070.
55. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
56. RCW 35.18.010 & 35A.13.010.
57. RCW 35.18.060 & 35A.13.080.
58. RCW 35.18.110 & 35A.13.120.
59. RCW 35.18.120, 35.18.130, 35A.13.130, & 35A.13.140.
60. RCW 35.18.190.
61. RCW 35A.13.030 & 35A.13.033.
62. RCW 35.18.200 & 35A.13.030.
63. RCW 35.18.020.
64. RCW 35A.13.010.
65. Statutes of the Territory of Washington, Private and Local Laws, 1854, 1st Session, Article V, Section 1, Pages 455-458.
66. Statutes of the Territory of Washington, 1856-1857, 4th Session, Article V, Section 1, Pages 69-73.
67. For Olympia see, Statutes of the Territory of Washington, Local Laws, 1858-1859, 6th Session, Article 5th, Section 1, Pages 31-34. For Port Townsend see, Statutes of the Territory of Washington, Private Laws 1859-1860, 7th Session, Article Fifth, Section 1, Pages 433-436.
68. For first class cities see Section 6, Page 223, Laws of 1889-1890. For second class cities see Section 32, Page 146, Laws of 1889-1890. For third class cities see Section 109, Page 180, Laws of 1889-1890. For towns see Section 147, Page 200, Laws of 1889-1890. Council members in third class cities and towns could receive compensation when acting as a board of

equalization.

69. Sections 1 and 2, Chapter 115, Laws of 1941.
70. Section 1, Chapter 89, Laws of 1961.
71. Sections 35A.12.070 & 35A.13.040, Chapter 119, Laws of 1967 ex sess.
72. Section 2, Chapter 87, Laws of 1973 1st ex sess.
73. Section 4, Chapter 73, Laws of 2001, codified as RCW 35.21.015.

Chapter 7

City Incorporations and Boundary Changes

Statutes specify how an unincorporated area may incorporate as a new city and for city boundaries to be altered. Procedures for altering city boundaries include annexing territory to a city, two or more cities combining into a single city, removing territory from a city, and disincorporating or dissolving a city.[a]

Three different types of boundary review organizations are provided for in state law that relate to city boundary changes.

Boundary review boards are the most important of these organizations.[b] Normally, a boundary review board's jurisdiction may only be invoked by an outside party or parties and a boundary review board may not invoke its own jurisdiction. When its jurisdiction has been invoked, a boundary review board may review and approve, modify and approve, or reject most city boundary changes, including annexations under any method of annexation and disincorporations. However, the jurisdiction of a boundary review board is invoked automatically whenever the incorporation of a new city is proposed, but the board may take only limited action on the proposed incorporation.

A code city annexation review board is created in every county in which a code city is located, if a boundary review board has not been created in the county.[1] Code city annexation review boards review and approve proposed annexations by a code city, but only

a Unless the context clearly implies otherwise, the term "cities" includes both cities and towns and the term "classified cities" includes first class cities, second class cities, and towns.

b A discussion of boundary review boards is found in Chapter 72.

if annexations use an election method of annexation.[2] The board may approve, modify and approve, or reject a proposed annexation under an election method of annexation.[3] Annexations under the direct property owner petition method may not be reviewed by a code city annexation review board.

The third type of a boundary review board is called an *ad hoc* annexation review board.[4] A new *ad hoc* annexation review board is created every time a classified or unclassified city proposes to annex territory in a county without a boundary review board. The *ad hoc* annexation review board reviews the proposed annexation and may approve or reject the proposed annexation. Annexations by code cities are not subject to review by *ad hoc* annexation review boards.

Incorporating a New City

A new city is created or incorporated by local voters following incorporation procedures specified in general state law. Article XI, Section 10 provides that:

> "[c]orporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation ... of cities and towns...."

A. Current, Multi-step Procedure

Chapter 35.02 RCW provides a multi-step procedure for an unincorporated area to incorporate as a new city, including a new code city. This incorporation procedure includes a notice of intent, public meeting, incorporation petition, public hearing, three separate elections, and an interim transition period. Legislation detailing this incorporation procedure was enacted in 1986 and 1994.[c]

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c The procedure for a city to incorporate prior to 1986 involved fewer steps and resembled the existing procedures to incorporate most types of special purpose districts. This old procedure only involved a petition, public hearing, and single election involving two separate elements. The first election element was a ballot proposition authorizing the incorporation of the new city and the second election element was the election of the initial city officials. Obviously, the election of new officials was null and void if voters failed to approve the incorporation. The new city incorporated immediately upon certification of the election results that voters approved the ballot proposition authorizing the incorporation.

Two different minimum population requirements exist for an unincorporated area to incorporate into a city.[5] First, legislation was enacted in 1994, providing that an unincorporated area may only incorporate if it has a population of at least 1,500.[6] The prior minimum population for an area to incorporate was established as 300 in general incorporation legislation enacted in 1890.[d] As a result of this 1994 change, and legislation enacted in 1997 slightly changing the definition of a town, it is no longer possible for an unincorporated area to incorporate as a town.[e] Second, an unincorporated area must have a population of at least 3,000 if the proposed city is located within five air miles of a city with a population of 15,000 or more. This 3,000 population requirement was established by legislation enacted in 1963.[7] It appears that this 1963 legislation was enacted in response to the incorporation of a number of very small towns near Bellevue and recommendations made by a citizen's advisory committee in 1962.[f]

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d It appears that a number of towns may have incorporated after statehood without the requisite minimum population of 300. Twenty-nine towns that incorporated after statehood had populations of less than 300 at the first federal census after the incorporation, some with substantially less than 300 population. For example, Hattan incorporated in 1907 but only had a population of 161 at the 1910 federal census; Kahotus incorporated in 1907 but only had a population of 132 at the 1910 federal census; Krupp incorporated in 1911 but only had a population of 106 at the 1920 federal census; Lamont incorporated in 1910 but only had a population of 165 in the 1920 federal census; Metaline Falls incorporated in 1911 but only had a population of 153 in the 1920 census; Riverside incorporated in 1913 but only had a population of 209 in the 1920 federal census; Rockford incorporated in 1930 but only had a population of 130 at the 1940 federal census; Warden incorporated in 1910 but only had a population of 173 in the 1920 federal census; and Westport incorporated in 1914 but only had a population of 114 in the 1920 federal census. (Population figures taken from a table entitled "Population by City and County: 1890 to 2000," included in the *2001 Data Book*, Office of Financial Management, at Pages 270-283.)

e The 1994 legislation increased the minimum population for an unincorporated area to incorporate from 300 to 1,500. The 1997 legislation altered the definition of a town when it incorporates or reorganizes from a municipality with a population of 1,500 or less to a municipality with a population of less than 1,500. (Section 10, Chapter 361, Laws of 1997.) Although it is no longer possible for an area to incorporate as a town, a number of the provisions in the city incorporation law (Chapter 35.02 RCW) still refer to incorporating as a city or town.

f Medina incorporated in 1955. Clyde Hill incorporated in 1953. Yarrow Point incorporated in 1959. Hunts Point incorporated in 1955. Beaux Arts Village incorporated in 1954. (*2001 Data Book*, Pages 270-282.) The Joint Committee on Urban Area Government was a ten-member committee of five state senators and five state representatives that was created by Chapter 308, Laws of 1961. A large citizens' advisory committee was created to advise the Joint Committee, with members from the Seattle metropolitan area, Tacoma metropolitan area, and Spokane metropolitan area. Many leading citizens of these metropolitan areas were members of the advisory committee, including James R. Ellis, the Reverend Samuel McKinney, George Mack, Richard Haley, and Donald Neraas. The Joint Committee was directed to study the "laws, facts, trends of urban development and other matters relating to the welfare and government of urban area of the state" and to make recommendations to the Governor and Legislature concerning any changes in laws that it finds necessary. The citizens' advisory committee made a number of recommendations, including Recommendation 7, to increase the minimum population of a new

An unincorporated area located in a county designating urban growth areas under the Growth Management Act may only incorporate as a city if it is located in an urban growth area.[8]

The multiple steps to incorporate a city are as follows:

- A notice of intent to incorporate the city is filed with the county legislative authority of the county in which the proposed city is located.
- A public meeting on the proposal is held by the county boundary review board, if one exists in the county, or otherwise by the county legislative authority.
- A petition proposing the incorporation is circulated for signatures of registered voters residing in the area proposed to incorporate. The petition may describe an area for proposed incorporation that differs from the description contained in the notice of intent to incorporate.
- An incorporation petition, signed by at least 10 percent of the registered voters residing in the proposed city, must be filed with the county auditor within 180 days of the date the public meeting was held.
- A public hearing on the proposed incorporation is held if the petition has sufficient valid signatures. The county boundary review board holds the public hearing, if one exists in the county, or otherwise the county legislative authority holds the public hearing. As discussed below, the entity holding the hearing has some authority to alter the boundaries of the proposed city and may deny the proposed incorporation in certain circumstances.

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city in a more populous county to 5,000. (Page 18, "City and Suburban Community or Chaos," the Report of the Citizens Advisory Committee to the Joint Committee on Urban Area Government, June, 1962.)

- If the incorporation is not denied, a ballot proposition authorizing the incorporation is submitted to voters at a special election.
- If the ballot proposition authorizing the city incorporation is approved by a simple majority vote of voters voting on the proposition, a second special election is held at a later date to select two candidates for each office whose names will appear on the third special election.
- A third special election is held at an even later date to elect the initial city elected officials.
- The initial elected officials take office immediately and provide for a transition of the area into a city during an interim transition period.
- The new city officially incorporates at the end of the interim transition period and the initially elected officials assume full powers of city officials.

The purpose of the initial public meeting on the proposed incorporation is to provide public notice that an incorporation effort is about to commence, and to hear public comments on the proposal. This affords the proponents an opportunity to alter the boundaries of the proposed city before the formal petition step begins. This also affords existing cities located near the area that is proposed to be incorporated an opportunity to annex any of this area before the incorporation occurs.

An incorporation petition must specify certain details, including the name of the proposed city, its proposed boundaries, whether the new city will operate as a classified or regular city or a code city, the plan of government, and its estimated population.[9] Two defaults exist if the petition fails to specify certain details. The proposal will be to incorporate as a code city, if the petition fails to specify the class of the proposed city. The proposal will be for the new city to operate as a mayor/council plan of government, if the petition fails to specify the plan of government. An incorporation petition may retain the proposed boundaries, type of city, and plan of government detailed in the notice of intent, or may change these matters.[10]

A public hearing on the proposal is held by the county boundary review board, if one exists in the county, or otherwise by the county legislative authority. The county boundary review board, or the county legislative authority, may:

- Approve the incorporation with boundaries as presented;
- Modify the proposed boundaries and approve the proposed incorporation as modified; or
- Disapprove the proposed incorporation in certain circumstances.

Certain actions must be taken by the county boundary review board or county legislative authority before it considers a proposed city incorporation. Any territory located outside of an urban growth area must be removed from the proposed incorporation, if the new city is located in a county designating urban growth areas under the Growth Management Act.[11] Any territory may be removed from the proposed incorporation if another city proposes to annex that territory within a 90 day period after the incorporation petition was filed.[12] After these actions have been taken, the authority of the boundary review board or county legislative authority to modify or disapprove a proposed incorporation varies depending on whether the population of the proposed city is less than 7,500 or is 7,500 or more.[13] No limitations exist on the modification or disapproval of a proposed city incorporation, if the estimated population is less than 7,500. However, the boundaries of a proposed city with a population of 7,500 or more may not be altered to reduce the population below 7,500 and may not be modified to add or reduce territory constituting 10 percent or more of the total original proposed boundaries. Further, the boundary review board or county legislative authority may not disapprove a proposed incorporation of a city with a population of 7,500 or more but may "recommend against" the proposed incorporation.

The authority of the newly elected city officials during the interim transition period is limited to providing for a transition of the area into a city. They may hire staff, borrow money in anticipation of tax receipts, acquire facilities, and adopt ordinances that become effective immediately upon the formal date of incorporation. The

interim transition period ends with the official date of incorporation, which is 360 days after the date of the special election when the ballot proposition authorizing the incorporation was approved. However, the initial elected officials may adopt a resolution providing for an earlier official date of incorporation, but not less than 180 days after the date of the special election when the ballot proposition authorizing the incorporation was approved.

Federal Way, SeaTac, Shoreline, Lakewood, Liberty Lake, and Sammamish and a number of other cities have incorporated following these new incorporation procedures.

B. Creating Cities in the Territorial Years

Prior to 1886, most cities in Washington Territory were incorporated by special legislative acts of the Legislative Assembly.[g] A special act incorporating a city named the city, adopted a charter for the city, listing its array of elected officials, described its boundaries, and detailed its powers.

Powers granted to different cities varied widely. Any change in the powers granted to a city, or change in its boundaries, was made by the Legislative Assembly amending the prior special law creating and providing for the city. Paying this level of attention to the intricacies of each city involved many hours of effort on the part of the Legislative Assembly. Twenty-seven cities were incorporated by special legislative acts of the Legislative Assembly, including Steilacoom, Vancouver, Olympia, Port Townsend, Walla Walla, and Seattle.

For a few short periods prior to 1886, the Legislative Assembly enacted general city incorporation laws, but it is not clear if any cities incorporated using these general procedures. The first general incorporation law was enacted in 1871 providing for the incorporation of "towns" by action of the local citizenry.[h] [14] This was followed by general incorporation legislation enacted in 1877

g Most of these municipalities were referred to as "cities" in the special legislation creating the municipality. A few of these municipalities were referred to as "towns" in the special legislation creating the municipality. No general statute distinguished a city from a town.

h This legislation only provided procedures for incorporating towns. Cities were not allowed to incorporate under these general procedures, even though there was no statutory distinction between cities and towns.

providing for the incorporation of "cities" by action of the local citizenry.[15] Both of these general incorporation laws were repealed in 1881.[16]

Federal legislation was enacted in 1886 prohibiting a Territory from incorporating a city or town by special or private legislation.[17] The Legislative Assembly complied with this law by enacting general legislation detailing how a town or village could incorporate, but ironically not a city.[18] This legislation remained in effect until general incorporation laws were enacted by the first State Legislature in 1890.[19] Records on the use of these general incorporation procedures in territorial years are somewhat scant. However, it appears that at least several towns incorporated using the 1888 statute, including Farmington, Nooksack, and Waterville.

The new State Constitution creating Washington State followed this precedence of precluding the incorporation of a city by special legislation. Article XI, Section 10 precluded the Legislature from enacting special legislation creating or providing for a new city. Instead, general enabling laws must be enacted allowing for the incorporation of cities.

The Legislative Assembly also enacted special laws dissolving several cities that it had created by special laws, including Tumwater, Kalama, and La Connor.[i] Clearly the legislative action to dissolve a city (as well as the legislative action to create a city) was taken in response to local pressures.

Perhaps the most interesting dissolution involves little known incidents about Seattle.[20] The Legislative Assembly enacted

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i Tumwater was incorporated in 1869, disincorporated in 1877, and then reincorporated in 1883. (Statutes of the Territory of Washington, Private and Local Laws, 1869, 2nd Biennial Session, Pages 481-484; Statutes of the Territory of Washington, Local and Private Laws, 1877, 6th Biennial Session, Pages 361-362; Statutes of the Territory of Washington, Local and Private Laws, 1883, 9th Biennial Session, Pages 134-155.) Kalama was incorporated in 1871, disincorporated in 1877, and reincorporated in 1890 under the new general incorporation statutes in 1890. (Statutes of the Territory of Washington, Local and Private Laws, 1871, 3rd Biennial Session, Pages 142-152; Statutes of the Territory of Washington, Local and Private Laws, 1877, 6th Biennial Session, Pages 360-361; & *2001 Data Book*, footnote #11, at Page 282.) La Connor was incorporated in 1883, disincorporated in 1886, and then reincorporated under the new general incorporation statutes in 1890. (Statutes of the Territory of Washington, Local and Private Laws, 1883, 9th Biennial Session, Pages 288-295; Statutes of the Territory of Washington, Local and Private Laws, 1885, 10th Biennial Session, Page 449; & *2001 Data Book*, footnote #14, at Page 283.)

special legislation incorporating Seattle as a "town" on January 14, 1865.[21] A five-member board of trustees was named for Seattle consisting of Charles C. Terry, Henry L. Yesler, Hiram Burnett, David T. Denny, and Charles Plummer. These men were also elected as trustees at the first municipal election held shortly after Seattle was incorporated. Seattle immediately imposed taxes and started a program of constructing public improvements, including street improvements, sidewalks, and a jail. The Legislative Assembly also enacted special legislation in 1865 incorporating a private corporation, controlled by Terry and Yesler, with the exclusive authority to provide Seattle with water.[22] This private corporation conveyed spring water from First Hill into the town using pipes made by boring out logs. Conservative opponents, led by Arthur A. Denny, were very upset and unsuccessfully challenged the election of Terry. Arthur Denny was the Territorial Delegate to Congress and resided in what is now called Washington DC at the time this legislation was enacted incorporating the Town of Seattle. The opponents finally prevailed by "going around the backs" of the Seattle board of trustees and pressuring the Legislative Assembly to dissolve Seattle in 1867.[23] Terry and Plummer soon died. However, the Legislative Assembly enacted special legislation re-incorporating Seattle as a "city" in 1869.[24] None of the new city council members had been members of the prior board of trustees.

A clue to the venom between the opposing factions in Seattle may lie in the strong partisan feelings that existed between the Democrats and Republicans during the Civil War.[j] Republicans referred to Democrats as Copperheads or Southern sympathizers. The Denny family, at least the Arthur Denny family and not his younger brother David Denny, and others including the Reverend Daniel Bagley, were leaders of the Republicans. Town Trustees Yesler, Terry, and Plummer were leaders of the Democrats. Republicans were described as being "decidedly opposed politically" to the Copperheads. The tension was described as being so acute that members of these two political parties "almost refused to trade with one another."

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j The partisan antagonism is described by: (1) Warren, James R., *King County and Its Emerald City: Seattle*, American Historical Press, 1997, at Page 58; and (2) Watt, Roberta Frye, *The Story of Seattle*, Lowman and Hanford Co., 1932, at Page 290. Ms. Watt was a granddaughter of Arthur A. Denny. She mentions the tension between the two sides, and that the Legislative Assembly incorporated Seattle as a town in 1865 and then made Seattle a city in 1869 after much growth, but fails to mention the disincorporation of the town led by the efforts of her grandfather. Warren also does not mention the disincorporation of the town.

Annexing Unincorporated Territory

Any city may expand its boundaries by annexing unincorporated territory under a variety of different procedures. Two separate sets of annexation laws exist, one for classified cities and the other for code cities. These procedures are similar, but differ in detail.

A. Restrictions on Annexations

A variety of restrictions exist on city annexations.

First, a city located in a county designating urban growth areas under the Growth Management Act may only annex territory located in the urban growth area in which it is located.[25]

Second, restrictions exist on the geographic area that a town may occupy as well as annexations that a town may make.[26] A newly incorporated town may not occupy more than one square mile.[k] However, this limitation no longer has any significance since it is no longer possible for an area to incorporate as a town. Convoluted restrictions on annexations by a town are as follows:

- A town with a population of 1,500 or less may not annex territory if the annexation increases the area of the town to more than two square miles.
- A town of any population located in a county with a population of one million or more may not annex territory if the annexation increases the area of the town to more than two square miles.
- A town with a population of more than 1,500 located in a county with a population of less than one million may not annex territory if the annexation increases the area of the town to more than three square miles.

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k This restriction on the maximum area of a proposed town was noted in a 1965 case before the State Supreme Court. The Court held that the proposed incorporation of the Town of East Redmond, which had a population of "about four hundred" and included 4.3 square miles, did not meet statutory requirements, and was not incorporated, even though the Legislature had also enacted a statute validating any attempted incorporation of a town with more than one square mile since no single square mile portion of the entire town had a population of 300 or more. (*State ex rel. Carroll v. Bastian*, 66 Wn.2d 546, 548 (1965).)

- An "unplatted" area of more than 20 acres may not be "taken within the corporate limits of a town" without the consent of the owner of the unplatted land, which presumably would apply to the original incorporation or any annexation. This restriction has existed since the 1890 general incorporation laws were enacted. As discussed below, strong arguments may be made that this restriction is unconstitutional.

Clearly, any town could avoid these restrictions by reclassifying as a code city.

B. Election Method

Separate sets of statutes detail procedures for classified cities and for code cities to annex property using an election method.[27] These procedures are similar, but vary in detail. Requirements for annexations by code cities under this method are somewhat less rigorous than requirements for annexations by classified cities.

Annexations under the election method may be initiated by either resolution of the city governing body or petition of voters residing in the area proposed to be annexed.[28] Initiation of an annexation by petition was originally authorized in 1890.[l] [29] Initiation of an annexation by resolution was first authorized in 1961.[30] An annexation petition for annexation to a classified city must be signed by at least 20 percent of the registered voters residing within the area proposed to be annexed.[31] However, an annexation petition to a code city need only be signed by at least 10 percent of the registered voters residing in the area proposed to be annexed.[32]

Review of the proposed annexation by an independent body is possible from one of three different boards, whether initiated by resolution or petition.

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l The original annexation statutes required voters of both the annexing city and the area proposed to be annexed approve ballot propositions authorizing the annexation. Code cities were authorized in 1967 and those statutes included the election method of annexation initiated by petition of the city governing body.

A proposed annexation under the election method is potentially subject to review by a boundary review board, if one exists in the county. The boundary review board, if its jurisdiction is invoked, may approve the annexation, modify and approve the annexation, or reject the annexation.[33] If the board's jurisdiction is not invoked, or if its jurisdiction is invoked and the board approves or modifies and approves the proposed annexation, a ballot proposition authorizing the annexation is submitted to voters residing in the area proposed to be annexed for their approval or rejection.

A proposed annexation by a code city under the election method is subject to review by a code city annexation review board, if a boundary review board does not exist in the county.[m] The code city annexation review board may approve the annexation as submitted, modify and approve the annexation, or reject the annexation. If the board approves the annexation or modifies and approves the annexation, a ballot proposition authorizing the annexation is submitted to voters residing in the area proposed to be annexed for their approval or rejection.

A proposed annexation by a classified city under the election method is subject to review by an *ad hoc* review board that is created to review the annexation, if no boundary review board exists in the county.[n] The *ad hoc* annexation review board may approve the annexation as submitted or may reject the annexation. It does not have the authority to modify and approve the proposed annexation. If the board approves the annexation, a ballot proposition authorizing the annexation is submitted to voters residing in the area proposed to be annexed for their approval or rejection.

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m Mandatory review of an annexation using the election method may be dispensed with if the area proposed to be annexed is less than 50 acres or less than $2 million in assessed value. (RCW 35A.14.220.)

n A new *ad hoc* annexation review board is created whenever a proposal is made for a classified city to annex territory under either the election method of annexation or the direct property owner petition method of annexation if a boundary review board does not exists in the county. (RCW 35.13.171-35.13.174.) Mandatory review of an annexation using the election method may be dispensed with if the area proposed to be annexed is less than 10 acres and less than $800,000 in assessed value.

The proposed annexation is authorized if the ballot proposition is approved by a simple majority vote of voters voting on the proposal.[34]

A city may require that all or a portion of the outstanding general indebtedness of the city be assumed by the annexed area as a condition of the annexation.[35] The issue of assuming this indebtedness may be submitted to voters in a separate ballot proposition apart from the ballot proposition on approving the annexation or may be combined into the same ballot proposition on approving the annexation. Any ballot proposition that includes the issue of assuming this indebtedness is approved if at least three-fifths of the voters voting on the proposition approve the ballot proposition together with a 40 percent validation requirement. If assumption of this indebtedness is approved, the newly annexed area becomes subject to multi-year excess property tax levies to retire the indebtedness.

A classified city may adopt a comprehensive plan, and a code city may adopt a zoning regulation, for the area proposed to be annexed that becomes effective if the annexation occurs.[36] The issue of accepting the comprehensive plan or zoning regulation is combined with the issue of approving the annexation in the same ballot proposition.

A community municipal corporation may be created by voters when they consider the proposed annexation.[37] The issue of approving the creation of a community municipal corporation may be submitted to voters in a separate ballot proposition, apart from the ballot proposition on approving the annexation, or may be combined into the same ballot proposition on approving the annexation. A community municipal corporation is “governed” by a community council of five members who are elected to those positions.[38] A community municipal corporation may disapprove the adoption or amendment of various land use ordinances or development proposals for the area for which the corporation was created, including:

- Comprehensive plans;
- Zoning ordinances;

- Conditional use permits, special use permits, or variances;
- Subdivision ordinances;
- Subdivision plats; and
- Planned unit developments.

Legislation enacted in 1981 placed some restrictions on the election method of annexation by any city with a population of 400,000 or more (i.e., Seattle) but the Supreme Court voided most of these restrictions.[o]

The modern election method of annexations by cities differs from the first systems of annexation originally authorized in 1890. Three different annexation procedures were authorized in 1890 which essentially were election methods of annexation. First, a majority of the voters living in an area adjacent to a city could petition to annex to the city and the city could accept the annexation without actually holding an election.[39] Second, separate ballot propositions authorizing the annexation of an area to a city were submitted to voters residing in a city and to voters residing in the area proposed to be annexed by action of the city governing body, if the city had a population of 2,000 or less or in a larger city if 25 or more resident freeholders of the area petitioned to annex to the city. The annexation was authorized if both ballot propositions were approved by voters.[40] Third, if at least one fifth of the voters residing in an area adjacent to a city petitioned for annexation, then a single ballot proposition authorizing the annexation was submitted to voters residing in that area.[41]

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o The restrictions, supported by lobbyists representing the Boeing Corporation, were amended onto annexation legislation that was sought by city interests and are found in Chapter 332, Laws of 1981. Boeing sought to establish restrictions on Seattle annexing its main facilities south of Seattle. The amendment provided that an annexation by a city with a population of 400,000 or more (i.e., Seattle) under an election method of annexation could be terminated if "declarations of termination" were signed by either: (1) The owners of at least 60 percent of the assessed valuation in the area sought to be annexed; or (2) 60 percent or more of the owners of real property in the area proposed to be annexed. These restrictions were voided by the State Supreme Court as violating the federal Equal Protection Clause and the State Freedom of Elections Provision of Article I, Section 19. (*Seattle v. State*, 103 Wn.2d 663, 673 (1985).)

C. Direct Property Owner Petition Method

Separate sets of statutes detail procedures for classified cities and for code cities to annex property using a direct property owner petition method.[42] These procedures are similar, but vary in detail. Requirements for annexations by code cities under this method are somewhat less rigorous than those for annexations by classified cities.

A crisis arose in 2002 over the direct property owner petition method of annexation. The Supreme Court held that this method of annexation was unconstitutional, and violated the state Privileges and Immunities Clause in Article I, Section 12. However, after a rehearing on the matter, the Court reversed its original holding in 2004 and upheld the constitutionality of this method of annexation.[p] It is quite rare for the Supreme Court to reverse itself in such a fashion. The direct property owner petition method of annexation is again a valid method of annexation.

Annexations under the direct property owner petition method were first authorized in 1945.[43] Direct property owner annexations have been referred to as "developer annexations" and have become the most common method of annexation.

An annexation under this method is initiated by a notice filed with the city governing body signed by the owner or owners of at least 10 percent of the assessed valuation of the area proposed to be annexed.[44] As an alternative, this method of annexing to a classified city, but not a code city, may be initiated by a notice filed with the city governing body that has been signed by at least 10 percent of the residents of the area.

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p The Court held this method of annexation unconstitutional in *Grant County Fire Protection District No. 5 v. City of Moses Lake* (*Grant County I)*, 145 Wn.2d 702, 735 (2002). Considerable turmoil arose over this decision. This decision was not clearly written. The Court appeared to hold that this method of annexation violated the State's Privileges and Immunities Clause (Article I, Section 12) by both: (i) Favoring the owners of high valued property over the interests of the owners of less valuable properties; and (ii) favoring property owners over voters. Motions for reconsideration were filed. The Court reviewed the matter, granted the motions, and held a rehearing on the matter. Finally, almost 22 months after rendering its first decision, the Court reversed itself and upheld the constitutionality of the direct property owner petition method of annexation in *Grant County Fire Protection District No. 5 v. City of Moses Lake (Grant County II)*, 150 Wn.2d 791, 813-816 (2004).

The annexation process stops at this point, unless the city governing body approves the proposed annexation. The decision of the city governing body is final and not subject to appeal. An annexation petition is circulated among property owners in the area proposed to be annexed, if the city governing body approves the proposed annexation. Requirements for signatures on the annexation petition vary. An annexation petition must be signed in most instances by the owner or owners of at least 75 percent of the assessed valuation of the area proposed to be annexed if annexation is sought to be a classified city.[q] [45] However, if annexation is sought to be a code city, the annexation petition in most instances must be signed by the owner or owners of at least 60 percent of the assessed valuation of the area proposed to be annexed.[r] [46] If a petition with sufficient signatures is filed, the city governing body has a second opportunity to decide whether it will accept the annexation. Again, the decision of the city governing body is final and not subject to appeal.

Review of the proposed annexation by an independent body is possible from two of the three different review boards. The potential review may occur whether the annexation was initiated by resolution or petition. A boundary review board may review a proposed annexation under this method if one exists in the county and its jurisdiction is invoked. An *ad hoc* annexation review board automatically reviews a proposed annexation to be a classified city if a boundary review board does not exist in the county. However, a code city annexation review board does not have jurisdiction to review an annexation under the direct property owner petition method.[47]

A city may require that all or a portion of the outstanding general indebtedness of the city be assumed by the annexed area as a condition of the annexation.[s] [48]

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q A unique exception is provided for any city with a population of 160,000 that is located east of the crest of the Cascade Mountains (Spokane), where the petition need only be signed by the owner or owners of at least 60 percent of the assessed valuation of the area proposed to be annexed.

r A unique exception is provided where the owner or owners of only 50 percent of the assessed valuation of the area proposed to be annexed need sign the petition if at least 80 percent of the boundaries of the area proposed to be annexed are contiguous with the code city, not including any portion of the boundary area that is coterminous with the boundaries of a county.

s Potential constitutional questions arise from these provisions. Article VIII, Section 6 expressly provides that only voters may authorize certain types of general indebtedness. Article VII, Section 2(b) expressly provides that only voters may authorize excess property tax levies used to

A classified city may adopt a comprehensive plan, and a code city may adopt zoning regulations, for the area proposed to be annexed that become effective if the annexation is approved.[49]

Many cities have adopted a policy of only extending water or sewer service beyond their boundaries if the owners of the property served signed "no protest" agreements where the property owners agree not to protest an annexation under the direct property owner petition method of annexation.[t] This agreement essentially is a power of attorney for a city official to sign an annexation petition for the property under the direct property owner petition method of annexation. The annexation occurs when the city desires the annexation and has sufficient signatures to meet the property owner signature threshold to authorize an annexation under the direct property owner petition method of annexation.

D. New Dual Signature Petition Procedure

Legislation was enacted in 2003 creating a new annexation procedure involving dual signature requirements.[50] This legislation was enacted in response to the 2002 decision of the Supreme Court holding the traditional direct property owner petition method of annexation unconstitutional. However, as mentioned above, the Court subsequently reversed itself and the traditional direct property owner petition method may be used. It is quite probable that this new dual signature petition method of annexation will never be used.

Again, separate sets of statutes for classified cities and for code cities provide for this new annexation procedure. The procedures are identical, except that greater flexibility exists for this new process to be initiated if the proposed annexation is to a classified city.

An annexation under this new procedure involves the following steps:

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retire general indebtedness. Voter action is not taken to approve an annexation under the direct property owner method of annexation.

t The State Court of Appeals upheld the constitutionality of these agreements in *People v. Spokane*, 51 Wn.App. 816, 820-826. (1988).

- A notice of intent to annex an area contiguous to the city is filed with the city governing body that has been signed by the owner or owners of at least 10 percent of the acreage in the area proposed to be annexed. As an alternative, the notice of intent may be signed by at least 10 percent of the residents of the area proposed to be annexed if the proposed annexation is to a classified city.
- The city governing body holds a meeting with the initiating parties to notify them if the city will accept, reject, or modify and accept the proposed annexation. It may require that the area accept all or a portion of the city's indebtedness and the simultaneous adoption of a proposed zoning ordinance or comprehensive plan for the area. The decision of the city governing body is final and not subject to appeal.
- A petition for annexation has dual signature requirements. The petition must be signed by at least the owners of a majority of the acreage in the area as well as at least a majority of the registered voters residing in the area. If no residents (rather than no registered voters) reside in the area, then the petition need only be signed by the required owners of acreage. If all of the area sought to be annexed is owned by a school district, the petition need only be signed by the board of directors of the school district.
- The city governing body holds a public hearing on the proposed annexation and may annex all or any portion of the area proposed to be annexed by adopting an ordinance providing for the annexation.

This new method of annexation also allows the city to require all or a percentage of its indebtedness to be assumed by the area if it is annexed.[u]

u As with the direct property owner petition method of annexation, questions arise as to the constitutionality of indebtedness, and associated excess property tax levies, being assumed by the annexed area where registered voters do not approve the indebtedness by a three-fifths majority vote together with a 40 percent validation requirement.

Review of the proposed annexation by an independent body is possible. A boundary review board may review a proposed annexation if one exists in the county and its jurisdiction is invoked under the same conditions discussed above for annexations under the election method. A code city annexation review board reviews a proposed annexation under this method if the annexation involves a code city and a boundary review board does not exist in the county. However, an annexation under this new process is not subject to potential review and approval by an *ad hoc* annexation review board.

E. Other Annexation Procedures

A number of other annexation procedures have been authorized for both classified cities and for code cities. Again, these procedures vary, depending on whether the annexation is to a classified city or to a code city. All annexations under these provisions are subject to potential review by a boundary review board if one exists in the county and its jurisdiction is invoked.

Special procedures exist for cities to annex:

- Territory for municipal purposes;
- Areas that are surrounded or nearly surrounded by the annexing city; and
- Federally owned property.

1. Annexations for municipal purposes

A classified city may annex unincorporated territory for "municipal purposes" whether the property is contiguous to or not contiguous to the city.[v] [51] Municipal purposes include park, cemetery, and others. An annexation under this special procedure occurs if the city requests the annexation and the property owner consents.

A code city may also annex territory that for "municipal purposes" whether the territory is contiguous or not contiguous to the city.[52]

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v This statute only allows second class cities and towns to make such annexations, but presumably a first class city could annex territory under this provision as a result of the omnibus grant of power provided to first class cities in RCW 35.22.570.

However, the property may only be annexed under this special procedure if it is owned by the code city. The code city merely provides for the annexation.

2. Annexations of surrounded or nearly surrounded areas

Special annexation procedures exist for a city to annex unincorporated areas that are surrounded or nearly surrounded by the city. This type of an annexation is referred to an annexation of an "island" or "peninsula" of unincorporated area.

A code city may adopt an ordinance annexing an unincorporated area that is all or substantially surrounded by the city's boundaries under certain circumstances.[53] An area of less than 175 acres may be annexed under this procedure if it is totally surrounded by the code city. An area of any size that contains residential property owners may be annexed under this procedure if at least 80 percent of the boundaries of the area are contiguous with boundaries of the code city, the area is located within the same county as the code city and the area is located within the same urban growth area as the code city, designated under the Growth Management Act.

The annexing code city holds a public hearing on the proposed annexation, notice of which has been published in a newspaper in general circulation in the area proposed to be annexed. Residents of the area and the owners of property in the area must be heard at the public hearing. The code city may then adopt an ordinance providing for the annexation of the area, but a petition forcing a public vote on the annexation may be filed within 45 days of the passage of the ordinance that has been signed by voters residing in the area equal to at least 10 percent of the votes cast in the area in the last general election.

A classified city may follow a similar special procedure to annex an unincorporated area "containing residential property owners" if: (1) At least 80 percent of the area's boundaries are contiguous to the boundaries of the city and the area is less than 100 acres; or (2) the area is any size and at least 80 percent of the area's boundaries were coterminous with a portion of the city's boundaries before June 30, 1994.[54]

3. Annexations of federally owned property

A first class city may annex federally owned property by ordinance if it is contiguous to the city, located in an unincorporated area, and the federal government allows the jurisdiction of the city over the area.[55]

Other types of cities (second class cities, towns, and code cities) may annex federally owned areas by ordinance, but only if the federal government gives or leases the area to the city for commercial, manufacturing, or industrial purposes.[56]

Combining Cities

Two or more adjacently located cities may combine together under either consolidation procedures or annexation procedures.

A. Annexing All or Part of Another City [w]

Three separate procedures exist for a classified city to annex all or part of another city.[57] Although code city laws do not expressly reference these annexation procedures, a code city may annex territory using these procedures since code cities are granted all the authorities of any other class of type of city.

The first procedure is an election procedure.[58] An annexation under this procedure allows a classified city to annex territory using the election procedure initiated by petition. However, the annexation only proceeds if the city from which the territory will be removed approves the annexation of this territory to the other city. Such an annexation would be subject to review by either a boundary review board or a code city annexation review board, but not an *ad hoc* annexation review board.

The second procedure is a dual resolution procedure.[59] An annexation under this procedure occurs as follows:

- The annexing city adopts a resolution proposing the annexation; and

w Clearly one city annexing all of another city results in combining the two cities. However, one city annexing part of another city does not result in combining the two cities, but in transferring part of the territory of one city to another city.

- The city from which the area is proposed to be removed adopts a resolution approving the annexation.

However, the annexation stops if a petition protesting the annexation is filed with the annexing city within 30 days of the adoption of the second resolution that has been signed by the owner or owners of at least 60 percent of the assessed valuation in the area proposed to be annexed. An annexation under this procedure is subject to a potential review by either a boundary review board or a code city annexation review board, but not an *ad hoc* annexation review board.

The third procedure is a direct property owner petition procedure.[60] An annexation under this procedure follows the procedures by which a classified city annexes unincorporated areas under the direct property owner petition method of annexation. However, the annexation only proceeds if the city from which the territory will be removed approves the annexation of this territory to the other city. Such an annexation would be subject to potential review by a boundary review board or an *ad hoc* annexation review board, but not a code city annexation review board.

B. Consolidating Two or More Cities

Two or more contiguous cities may consolidate or join together and become a single non-charter code city.

The consolidation procedure is initiated by either a joint resolution proposing the consolidation that has been adopted by the governing body of each city or by a petition proposing the consolidation that has been signed by voters of each of the cities equal in number to at least 10 percent of the number of voters of each of the cities who voted at the last general municipal election.[61] The resolution or petition specifies the desired plan of government for the proposed consolidated city, which may be a mayor/council, council manager, or commission plan of government.[62]

At least one public meeting on the proposed consolidation is held by the county legislative authority or authorities in which the cities are located.[63] The county legislative authority may designate

members of the boundary review board to hold the public meeting if one exists in the county and all of the cities are located in a single county. However, the boundary review board may not take formal jurisdiction over a proposed consolidation.[64]

The consolidation occurs if a majority of the voters of each of the cities approve a ballot proposition authorizing the consolidation.[65] Elections follow to nominate and elect the initial elected officials of the consolidated city. The newly elected officials assume office immediately upon certification of their election results and the effective date of the consolidation is when a majority of the newly elected members of the governing body assume office.[66]

Removing Territory

Separate, but substantively identical, procedures exist for removing territory from classified cities and from code cities.[67] The actual words used to describe removing territory are a "reduction of city limits". Territory removed from a city becomes an unincorporated area.

Removing territory from a city is initiated when either:

- A petition proposing the removal is filed with the city that is signed by voters of the city equal in number to at least 10 percent of the number of city voters who voted at the last general municipal election; or
- The city governing body adopts a resolution proposing the removal.

The removal of territory from a city is subject to potential review and approval, modification and approval, or rejection by a boundary review board if one exists in the county and its jurisdiction is invoked.[68]

A ballot proposition authorizing the removal is submitted to voters of the entire city. The removal is authorized if the ballot proposition is approved by at least three-fifths vote of the voters voting on the proposition.

Legislation was enacted in 2005 providing an additional procedure for removing "agricultural land" from a code city.[69] Presumably this new procedure would also allow the removal of agricultural land from a first class city since the omnibus grant of powers to first class cities grants them all the powers of any other class of city.[70] A petition proposing the withdrawal must be signed by the owners of all of the agricultural land proposed to be withdrawn and by at least a majority of the registered voters who reside on the agricultural land. The city governing body holds a public hearing on the proposal and may adopt an ordinance removing all or part of the agricultural land proposed to be withdrawn. No definition of "agricultural land" is provided in this legislation.

Disincorporating

Several different procedures exist for cities to disincorporate or dissolve. Separate disincorporation procedures exist for classified cities and for code cities. The area within a city that disincorporates becomes unincorporated territory.

The disincorporation of a city is subject to potential review and approval or rejection by a boundary review board if one exists in the county and its jurisdiction is invoked.[x] [71]

The disincorporation of a city does not affect the bonded indebtedness of the city and the area remains subject to voter approved, excess property taxes imposed to pay this indebtedness. A disincorporation of a city does not affect franchises that the city granted in the area that is removed.

A. Basic Classified City Procedure

Procedures to disincorporate a third class city or town were enacted in 1897.[72] This procedure was extended to all cities in 1994.[73] Basically, these procedures remain as they were enacted in 1897.

A disincorporation is initiated by filing a petition for disincorporating with the city council that has been signed by at least a majority of

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x The general authority of a boundary review board to modify and approve a proposed action clearly would not apply to the disincorporation of a city.

the registered voters residing in the city. The council must call an election at which a ballot proposition authorizing the dissolution is submitted to voters of the city for their approval or rejection. A receiver is elected at that election if the city has any indebtedness or outstanding liabilities. The city is dissolved if a majority of the voters voting on the ballot proposition approve the proposition and the city "surrenders" its powers and privileges to the State or its own inhabitants. All city offices cease to exist immediately unless a receiver is elected, in which case, the city officials remain in office only until the receiver assumes office.

Contractual obligations are not impaired by a disincorporation and any franchise that had been granted by the city remains in effect for its duration as if the city remained in existence. All city streets pass to the control of the State and the prior territory is included into a county road district.[y] [74]

A receiver who is elected must file a bond with the county auditor that is equal to the audited indebtedness of the city. The city council must petition the county superior court to appoint a receiver if the person elected as the receiver fails to file a sufficient bond within ten days of being declared elected. An interested person may petition the superior court to appoint a receiver if after the dissolution election it arises that the city actually has indebtedness or outstanding liabilities. The receiver takes possession of all the property, money, records, and books of the former city, may pay all outstanding warrants and bonds and lawful claims, and may sue and be sued. A receiver may also sell city property and may levy property taxes on all taxable property within the prior city and use the proceeds to extinguish its obligations. The receiver may not impose property taxes in excess of 50¢ per $1000 of assessed valuation after all lawful claims against the city have been paid, except for levies necessary to retire outstanding bonds.

Any money remaining after all debts and liabilities have been paid is deposited with the county treasurer for the use of the school district in which the former city was located.

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y Although this statute provides for the streets to pass to the State, presumably the streets would become county roads.

B. Involuntary Procedure to Dissolve a Town

Legislation was enacted in 1925 providing for the involuntary dissolution of a town if either:

- The town fails to hold its regular municipal election; or
- Officers who are elected at two successive regular town elections fail to qualify and the town ceases to function as a result of these officers not qualifying.[75]

Presumably, this special procedure was enacted in response to the creation of one or more new towns that essentially disappeared when all or almost all of the residents moved away. One of these "towns" that seemed to disappear may be an area called Ravensdale which is located east of Maple Valley in eastern King County.

The State Auditor files a petition with the superior court initiating a dissolution under this procedure. Any person owning property in the town or who is qualified to vote in the town may appear at the hearing and file written objections to the granting of the petition. The court must order the disincorporation if it finds either of the two grounds for dissolving the town occurred.

Town indebtedness and bonds are paid from the town's assets, including proceeds from the sale of its property. The court orders the county legislative authority to impose property taxes within the former town to pay obligations if these assets are not sufficient. Any town assets remaining after the town's obligations have been paid are paid into the county treasury and placed to the credit of the school district in which the town was located.

C. Code City Procedures

A code city may disincorporate under a procedure initiated by either a resolution of the city governing body or a petition filed with the county auditor that has been signed by at least a majority of the registered voters residing in the code city. A ballot proposition providing for the dissolution is submitted to code city voters for their approval or rejection and a receiver is elected at the same election.

The dissolution then follows the provisions for disincorporating a classified city.[76]

A code city may also be "involuntarily dissolved" in the same manner as a town.[77]

NOTES:

1. RCW 35A.14.160-35A.14.190.
2. RCW 35A.14.200.
3. RCW 35A.14.050.
4. RCW 35.13.171-35.13.174.
5. RCW 35.02.010.
6. Section 12, Chapter 216, Laws of 1994.
7. Section 1, Chapter 57, Laws of 1963.
8. RCW 36.93.150(2).
9. RCW 35.02.030.
10. RCW 35.02.017.
11. RCW 36.93.150(2).
12. *Id*.
13. RCW 36.93.150(2) & (5).
14. Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Pages 51-58.
15. Statutes of the Territory of Washington, 1877, 6th Biennial Session, Pages 173-198.
16. The general town incorporation law was repealed at Statutes of the Territory of Washington, 1881, 8th Biennial Session, Page 22. The general city incorporation law was repealed at Statutes of the Territory of Washington, 1881, 8th Biennial Session, Page 23.
17. Chapter 818, Public Laws of the United States of America, Forty Ninth Congress, Approved July 30, 1886.
18. Statutes of the Territory of Washington, 1887-1888, 6th Biennial Session, Chapter CXXVI, Pages 221-232.
19. Page 131-133, Laws of 1889-1890.
20. The story is found in Speidel, William C., *Sons of the Profits, or There's No Business Like Growth Business, The Seattle Story*, 1851-1901, Nettle Creek Publishing Company, 1967, at Pages 49-50.

21. Statutes of the Territory of Washington, Private and Local Laws, 1864-1865, 12th Session, Pages 75-79.
22. Statutes of the Territory of Washington, Private and Local Laws, 1864-1865, 12th Session, Pages 146-148.
23. Statutes of the Territory of Washington, Private and Local Laws, 1866-1867, 14th Session, Page 181.
24. Statutes of the Territory of Washington, 1869, 2nd Biennial Session, Pages 437-455.
25. RCW 35.13.005 & 35A.14.005.
26. RCW 35.21.010.
27. Regular city and town election method annexation procedures are found in Chapter 35.15 RCW. Code city election method annexation procedures are found in Chapter 35A.14 RCW.
28. RCW 35.13.015, 35.13.020, 35A.14.015, & 35A.14.020.
29. Pages 136-138, Laws of 1889-1890.
30. Section 1, Chapter 282, Laws of 1961. Code cities were authorized in 1967 and those statutes included the election method of annexation initiated by resolution of the city governing body.
31. RCW 35.13.020.
32. RCW 35A.14.020.
33. RCW 36.93.150.
34. RCW 35.13.090(1) & 35A.14.080.
35. RCW 35.13.015, 35.13.020, 35.13.080, 35.13.090, 35.13.095, 35A.14.015, 35A.14.020, 35A.14.080, & 35A.14.085.
36. RCW 35.13.015, 35.13.020, 35.13.080, 35.13.090, 35A.14.015, 35A.14.020, & 35A.14.070.
37. RCW 35.13.015, 35.13.020, 35.13.080, 35.13.090, 35A.14.025, & 35A.14.070.
38. Chapter 35.14 RCW, especially RCW 35.14.020 & 35.14.040.
39. Sections 1 & 2, Pages 227-232, Laws of 1889-1890.
40. Sections 5 & 11, Pages 227-232, Laws of 1889-1890.
41. Section 9, Pages 131- 215, Laws of 1889-1890.
42. RCW 35.13.125-35.13.170 & 35A.14.120-35A.14.150.
43. Chapter 128, Laws of 1945. Code cities were authorized in 1967 and those statutes included the direct property owner petition method of annexation.
44. RCW 35.13.125 & 35A.14.120.

45. RCW 35.13.130.
46. RCW 35A.14.120.
47. RCW 35A.14.220.
48. RCW 35.13.130 & 35A.14.120.
49. *Id*.
50. Chapter 331, Laws of 2003, codified as RCW 35.13.410-35.13.460 & 35A.14.420-35A.14.450.
51. RCW 35.13.180.
52. RCW 35A.14.300.
53. RCW 35A.14.295-35A.14.299.
54. RCW 35.13.182-35.13.1822.
55. RCW 35.13.185.
56. RCW 35.13.190-35.13.210, & 35A.14.310-35A.14.340.
57. RCW 35.10.217.
58. RCW 35.10.217(1).
59. RCW 35.10.217(2).
60. RCW 35.10.217(3).
61. RCW 35.10.410 & 35.10.420.
62. RCW 35.10.430.
63. RCW 35.10.450.
64. RCW 35.10.450 & 36.93.090(1).
65. RCW 35.10.470.
66. RCW 35.10.480.
67. Chapters 35.16 & 35A.16 RCW.
68. RCW 36.93.090(1)(c) & 36.93.150.
69. Chapter 77, Laws of 2005, which is codified as RCW 35A.16.080.
70. RCW 35.22.570.
71. RCW 36.93.090(1)(c) and 36.93.150.
72. Chapter LXIX, Laws of 1897 codified as RCW 35.07.010-35.07.220.
73. Section 10, Chapter 81, Laws of 1994.
74. RCW 35.07.110.
75. Chapter 76, Laws of 1925 ex sess., codified as RCW 35.07.230-35.07.260.

76. RCW 35A.15.010-35A.15.100.
77. RCW 35A.15.110.

Chapter 8

Powers of Cities

Cities are the most powerful units of local government in Washington State.[a] They are general purpose municipal corporations or municipalities.

Cities are authorized to:

- Provide a greater array of governmental and proprietary services and facilities than any other type of local government;
- Exercise a broader range of police regulatory powers than any other type of local government; and
- Impose a broader array of taxes of any other type of local government.

They are also granted general corporate powers, including the authority to hire personnel, enter into contracts, sue and be sued, and the authority to purchase, sell, and lease real property and personal property.[1]

Statutes for each class of city include a list of powers granted to that particular class of city, as well as a few general powers. It is ironic that the list of express powers granted to first class cities is somewhat abbreviated and does not include as many specific grants of authority as is provided for second class cities and towns. The list of express powers for code cities is even more abbreviated. However, first class cities and code cities are authorized to exercise any power granted to any other class or type of city.[2]

a Unless the context clearly implies otherwise, the term "cities" includes both cities and towns.

Cities exercise most of their powers within their boundaries. This includes the provision of a wide variety of services and facilities, as well as the authority to regulate a wide variety of activities. However, cities are also granted limited extraterritorial powers that they may exercise beyond their boundaries. Most of these extraterritorial powers involve the provision of public facilities and services, such as parks, various utility facilities and services, hospitals, and cemeteries.[3] However, statutes enacted by the first State Legislature in 1890 also granted cities some extraterritorial regulatory powers that could be exercised for specified distances beyond their boundaries. This includes authority to control of pollution entering streams that flow into the city and the burial of the dead.[4]

Existing Broad Powers

Cities are granted the express authority to provide a wide array of governmental and proprietary services and facilities and to regulate a wide variety of activities. They are also granted broad authority to promote the general welfare. Code cities are granted extremely broad home rule authorities. First class city statutes include an omnibus grant of authority allowing a first class city to exercise any power granted to any other class of city.

Article XI, Section 11 grants all cities (as well as counties and townships) broad home rule authority to adopt police power regulations.

Article XI, Section 10 grants any city with a population of 10,000 or more the authority to adopt a charter to provide for its government. The Supreme Court has held that this authority includes broad home rule powers.

Cities may also condemn property for their purposes, as can virtually all other types of local government.

A. Provision of Services and Facilities

Cities are granted express authority to provide a wide variety of services and facilities, as well as the general authority to provide public services and facilities. A city may provide these services or

facilities itself or may contract for the provision of these services and facilities.[b]

Law enforcement services may be provided by a city police department or town marshal's office.[c] [5] City police officers (and town marshals) possess general peace officer powers, including the powers of arrest. Cities may provide facilities for their law enforcement officers and may construct and operate jails.[6] First class cities are also granted express authority to provide reform schools for juvenile offenders.[7] Some less populous cities contract for law enforcement services from another city or the county in which they are located. A newly incorporated city tends to contract with the county for law enforcement services, at least until the new city establishes its own police department several years after incorporating.

Fire protection services may be provided by a city fire department.[8] Fire departments normally provide emergency medical services and emergency response services. A city may provide facilities that another city or a fire protection district uses to provide fire protection services within the city. In addition, many cities receive fire protection services from a fire protection district that has annexed the city. Legislation was enacted in 1979, first allowing a fire protection district to annex all of any city with a population of 100,000 or less at the date of the annexation, but this population was increased to 300,000 in 2010.[9] The property tax levy of a city that is annexed by a fire protection district is reduced to provide capacity for the fire protection district to impose its property taxes within the city.[10]

Legislation was enacted in 2009, allowing a fire protection district to annex only a portion of a city under very limited circumstances. A city located in two counties, with at least eighty percent of its territory located in one of these counties, may have that larger geographic area annexed by a fire protection district if, at the time of the annexation the area to be annexed lies adjacent to the fire protection district and the population of this area if greater than 5,000 but less than 10,000.[11]

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b The Interlocal Cooperation Act and Joint Municipal Services Act are discussed in Chapter 72.

c Town law enforcement officers are called marshals.

Cities are authorized to provide a wide variety of transportation services and facilities. Streets, alleys, bridges, tunnels, street lighting, and sidewalks are the most common type of transportation facilities provided by cities.[12] Cities are authorized to provide off-street parking facilities, ferries, airports, wharves, moorage and harbor facilities, and a variety of public transportation or mass transit facilities and services, including high capacity transportation systems.[13]

Cities may provide a variety of public health services and facilities, including public hospitals, ambulance services, and general health services.[14] Towns are not granted many express health care authorities, but may provide ambulance services. Legislation was enacted in 2005, allowing cities to operate their ambulance services as a public utility and impose charges for providing these services.[15]

Cities may provide park and recreation services and facilities both inside and outside of their boundaries, including public areas, squares, commons, marinas, museums, and auditoriums.[16] Any city may own and operate a professional sports franchise.[17] Cities are authorized to provide public markets.[18]

Cities are authorized to provide a variety of utility services and facilities, including drinking water systems, irrigation water systems, sanitary sewer systems, drainage and storm water systems, garbage collection and disposal systems, electrical utilities, natural gas utilities, and steam and heating utilities.[19]

The authority to provide water and sewer service includes the authority to create municipal corporations to provide water and sewer service under the recently enacted Joint Municipal Service Act.[20]

Cities are also granted general authority to provide for other municipal buildings, facilities, and improvements.[21]

A city may provide its own library system.[22] However, many cities receive library services from library districts. Legislation was enacted in 1977 allowing a library district to annex all of any city with a population of 100,000 or less at the date of the annexation.[23]

This population was increased to 300,000 or less in 2009.[24] The property tax levy of a city that is annexed by a library district is reduced to provide capacity for the library district to impose its property taxes within the city.[25] A number of cities contract with library districts for the provision of library services rather than being annexed by the library district.

Cities are also authorized to provide a variety of other services and facilities, including:

- Cemeteries and funeral facilities, both within and outside of their boundaries.[26]
- Public assistance.[27] However, this function is not exercised to any great extent.
- Animal control services and pounds for stray animals.[28]
- Historic preservation and urban renewal.[29] The urban renewal powers are very broad and include authority to demolish, construct, and reconstruct buildings and improvements and generally rehabilitate and restore blighted areas.
- Tourist promotion programs.[30]
- Economic development programs.[31]
- Low income housing by activating housing authorities to provide low-income housing and advancing money to housing authorities.[32]
- Flood control facilities, including dikes, levees, and embankments, both within and outside of the city.[33] Cities may deepen, widen, clean, and change course of waterways.[34]

Finally, cities are granted broad home rule authority to adopt any ordinance not in conflict with the State Constitution and to provide for the general welfare.[35] Appellate courts have not fully analyzed the meaning of the authority of cities to provide for the general welfare. However, this authority could include the authority to provide any governmental service or facility, and perhaps almost any proprietary facility, as well as the authority to adopt regulations.

B. Regulatory Powers

Cities are granted very broad regulatory powers. This includes authority to regulate specific activities as well as general authority to adopt police power regulations.

Article XI, Section 11 grants every city (as well as county and township) the authority to make and enforce within its boundaries

> "local police, sanitary and other regulations as are not in conflict with general laws".

Legislation enacted by the first State Legislature granted each class of city general authority to regulate businesses, trades, and occupations.[36] In addition, each class of city was expressly authorized to regulate a wide variety of activities, including authority to regulate markets, burial of the dead, the location and construction of buildings, anchorage, hotels, restaurants, manufacturing businesses, peddlers, dance houses, cabs, occupations, trades, businesses, and combustibles.[37]

Cities are authorized to adopt ordinances creating crimes punishable by fines up to $5,000 and imprisonment for up to one year, or both, and providing for civil penalties of violations of their ordinances.[38]

First class cities, second class cities, and towns are granted general authority to adopt regulations for the purpose of protecting the public health.[39] Cities are also granted express authority to adopt regulations protecting specific aspects of the public health, including express extraterritorial powers to prevent the pollution of waters running through their boundaries. Cities may exercise these extraterritorial powers up to five miles beyond their boundaries, while towns may only exercise these extraterritorial powers up to two miles beyond their boundaries.[40]

A substantial body of statutes authorize cities to regulate land uses and development activities. General planning enabling laws authorize cities, at their option, to regulate land uses by adopting comprehensive plans and zoning ordinances.[41] Cities (and counties) are required to review and approve or reject proposed divisions of land into smaller lots.[42] These requirements involve what is called the subdivision of land as well as the short

subdivision of land. As discussed in Chapter 72, all cities (and counties) must adopt local shoreline master programs and issue substantial development permits under the Shoreline Management Act.[43] As discussed in Chapter 70, most cities (and counties) are required to plan under the Growth Management Act.[44]

Cities are required to enforce the State Building Code. The State Building Code includes an international building code and residential code, international fire code, international mechanics code, uniform plumbing code, a code for accessibility of the physically handicapped or elderly, and by reference the state energy code.[45] A city may modify the code, but not reduce the minimum performance standards and objectives of the State Building Code. However, no changes may be made for codes affecting single family dwellings or smaller multifamily units without the approval of the State Building Code Council.[46] The energy code portion of the State Building Code is a minimum code for nonresidential buildings but both a minimum and maximum code for residential buildings.[47] In addition, any city may adopt its own electrical code with equal or higher standards than the state electrical code or may enforce the state electrical code.[48] Old laws also grant cities the authority to establish building standards.[49]

C. Eminent Domain

Cities, as virtually all other types of local government, are granted powers of eminent domain and may condemn property for public uses.[d] [50]

Historical Development of City Powers

Prior to statehood, most cities were created by separate special acts of the Legislative Assembly. The special legislation creating each city detailed the powers of that city. Cities created in the earlier territorial years tended to be granted very limited powers. In many instances, special legislation was enacted expanding the powers of individual cities. The special legislation creating cities in the later territorial years tended to grant the cities more powers than had been granted to older cities.

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d A discussion of eminent domain is found in Chapter 64.

Prior to statehood the powers of individual cities varied greatly. Some possessed very limited powers, while others were granted many of the powers of modern cities. For example, immediately before statehood the powers of cities varied as follows:

- Some cities were authorized to establish police departments with full police powers, others were not authorized to create police departments.
- Some cities were authorized to establish fire departments, others were not authorized to create fire departments.
- Some cities were authorized to provide for their own streets, others were not authorized to provide their own streets and had to rely on the county to provide roads within the city.
- Some cities were authorized to provide water systems and sewer systems, others were not granted these authorities.

However, general legislation enacted in 1887 by the Legislative Assembly of Washington Territory, in response to new federal laws prohibiting Territories from enacting special or private laws granting or amending city charters, granted all cities somewhat broad authority to adopt regulations maintaining the peace, good government and welfare, "not inconsistent with the laws of the United States or of this Territory."[e]

The new State Constitution creating Washington State followed this lead by granting broad police regulatory powers to all cities (counties and townships).

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e Statutes of the Territory of Washington, 1887-1888, 6th Biennial Session, Chapter CXXVI, Pages 221-232. The enactment of this legislation in 1887 was in response to federal legislation enacted in 1886 precluding territories in the United States from enacting "local or special laws … incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village." (Chapter 818, United States Statutes at Large, Public Laws of the United States of America, Forty Ninth Congress, Approved July 30, 1888.)

A. Gradual Development of City Powers in Territorial Years

Steilacoom was the first city created by the Legislative Assembly of Washington Territory.[f] Vancouver was the second city created by the Legislative Assembly.[51] The powers granted to these cities were quite similar. They were authorized to implement the statute creating the city, levy property taxes, provide health regulations preventing contagious diseases and securing the health of the city, prevent and restrain any disturbance or disorderly conduct or indecent and immoral practices in the city, and acquire property beyond the limits of the city for burial purposes and to establish a hospital.[52] Steilacoom was also authorized to provide a water system.[53]

The first grant of somewhat broad powers resembling modern city powers occurred when the special legislation creating the City of Vancouver was amended in 1858. Vancouver was allowed to license a variety of occupations and businesses, provide support and employment for paupers, prevent fires and create a fire department, establish a police department or "police, night-watch and patrol", incur and retire debt, provide a work house or city prison, and provide a judiciary since the city recorder was designated an *ex officio* justice of the peace.[54]

Olympia was created in 1859 as the first town in Washington Territory and was the first municipality authorized to provide its own streets rather than relying on the county to provide roads within the city.[55]

The City of Walla Walla was created in 1862 and was granted the broadest array of authorities for any city in Washington Territory up to that time. In addition to being granted authorities similar to those granted to the City of Vancouver, Walla Walla was authorized to:

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f Steilacoom was incorporated as a city. (Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Pages 455-458.) However, Steilacoom is now classified as a town rather than a city. This means that the City of Steilacoom, which operated under a Territorial Charter, reorganized as a town under legislation enacted by the first State Legislature in 1890. Ironically, Steilacoom holds itself out as being the first incorporated town in Washington. This historical claim is not accurate. Olympia was the first town in Washington Territory and was incorporated as a town by the Legislative Assembly in 1859. (Statutes of the Territorial Assembly of Washington, Local Laws, 1858-1859, 6th Session, Pages 31-34.) Steilacoom was the first city in Washington Territory, and perhaps was the only city to reorganize under as a town after Washington became a state.

- Make ordinances not inconsistent with federal or Territorial laws;
- Prevent nuisances;
- Erect market houses and market places;
- Provide sewers and drainage systems;
- Regulate partition walls and fences; and
- Remove obstructions from any mill creek.[56]

Vancouver was the first city authorized to generate and distribute electrical energy and gas by special legislation enacted in 1868.[57]

Seattle was the first city authorized to provide parks by special legislation enacted in 1875.[58]

General incorporation legislation was enacted in 1871, 1877, and 1887 authorizing cities to incorporate. Each of these laws granted fairly broad authorities to the cities incorporating under these laws.[g] As mentioned above, this 1887 legislation also granted broad powers to all existing cities. It is not clear if any cities incorporated under the 1871 or 1877 legislation. However, it appears that a number of towns incorporated under the 1887 legislation immediately before statehood, including Farmington, Nooksack,

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g The general 1871 town incorporation law allowed towns to prevent nuisances, prohibit disorderly conduct, provide markets, provide drinking water, provide their own streets, regulate various specified occupations, prevent the introduction of contagious diseases, protect persons and property, provide for the good order of the town, and provide natural gas and electricity. (Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Section 6, Pages 51-58.) The general 1877 city incorporation law granted cities broader powers, including the authority to provide fire departments, police departments, supply drinking water, provide parks, provide cemeteries, provide natural gas and electricity, provide their own streets, impose special assessments to finance improvements, condemn property, control contagious diseases, prevent domestic animals from running at large, license various occupations, abate nuisances, provide markets, and regulate the burial of the dead. (Statutes of the Territory of Washington, 1877, 6th Biennial Session, Chapter III, Sections 12-36, Pages 173-198.) The general 1887 town and village incorporation law granted towns and villages somewhat broad powers, including the power to prevent nuisances, provide for a night watch but not a police department, regulate or prevent the firing of fire-arms, license various occupations, provide a fire department, establish fire limits, erect wharves, require the planting of shade trees, provide their own streets, regulate the running at large of animals, provide pounds, regulate the cleaning of fireplaces and stoves, regulate the storage of explosives, prevent the carrying of concealed weapons, provide water systems, and provide libraries. This legislation also authorized any existing city broad authority to adopt regulations maintaining the peace, good government and welfare, not inconsistent with federal and territorial laws. (Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Section 7, Chapter CXXVI, Pages 221-232.)

Orting, Palouse, Spangle, Tekoa, and Waterville.[h]

This 1887 general legislation authorizing towns and villages included the first grant of authority for the provision of public libraries.[i] [59] This statute was replaced by the general legislation classifying cities that was enacted by the first State Legislature. Ironically, only first class cities and third class cities were authorized to provide libraries by that legislation and general authority for all classes of cities to provide libraries was not enacted until 1901.[j] [60]

B. Dramatic Changes Since Statehood

The State Constitution continued the new relationship between cities and the Territory, prohibiting special legislation, by including two provisions prohibiting special legislation relating to cities. Article XI, Section 10 prohibited cities from being created by special laws and required the State Legislature to enact general laws classifying and organizing cities by population. Article II, Section 28(6) prohibited the Legislature from enacting special laws granting powers to cities.

The State Constitution (Article XI, Section 11) also granted all cities (along with counties and townships) broad police regulatory home rule powers.

The first State Legislature enacted legislation classifying cities on the basis of their populations. Three classes of cities and a single class of towns were created, each with a specific list of powers, as well as the general authority to make and enforce ordinances not in conflict with general state law.[61] Statutory provisions authorizing cities to make and enforce ordinances not in conflict with general state law included the broad police regulatory powers granted by Article XI, Section 11, as well as additional home rule power beyond police regulatory powers. An omnibus grant of authority to

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h These towns were not created by special legislation enacted by the Legislative Assembly, but are shown as having 1888 or 1889 as the original dates of incorporation in the 2001 Data Book, at a table on pages 270-283.

i This was the first law providing for the creation of a public library to serve the general public.

j A discussion of the provision of library services in Washington is found in Chapter 25.

first class cities also authorized these cities to exercise any power granted to any other class of city.

The authorities granted to the different classes of cities in the laws enacted by the first State Legislature include basically all of the modern powers exercised by cities. However, the authorities granted to towns in laws enacted by the first State Legislature were not as broad, and did not include the following authorities granted to the various classes of cities:

- The power of eminent domain;
- Authority to impose special assessments to finance sewer or water systems;
- The authority to provide parks;
- The authority to establish fire limits, which were the first nuances of zoning authority; and
- The authority to provide hospitals.

Towns were granted the powers of eminent domain in 1893.[62] Towns were granted authority to establish fire limits and to provide parks in 1899.[63] The authority of towns to impose special assessments to finance sewer and water systems, along with other local improvements as enacted in 1911.[64]

NOTES:

1. RCW 35.21.010, 35.23.010, 35.27.010, & 35A.11.010.
2. This broad grant of power to first class cities is contained in RCW 35.22.195, 35.22.570, & 35.22.900. The broad grant of power to code cities is contained in RCW 35A.01.010, 35A.11.020, 35A.11.050, & 35A.21.160.
3. For example, RCW 35.22.280(11) & (14); 25.23.440(25), (45), & (48); 35.23.456; 35.27.370(2) & (15); 35.27.400; 35.92.010, 35.92.020; 35.92.050; & 35.92.060.
4. For example, RCW 35.22.280(20) & (29); 35.23.440(50); & 35.27.370(10).
5. RCW 35.23.440(30) & 35.27.240.
6. RCW 70.48.190.
7. RCW 35.22.280(18).

8. RCW 35.22.280(22), 35.23.440(21), & 35.27.370(6).
9. Chapter 179, Laws of 1979 ex. sess., codified as RCW 52.04.061-52.04.131. The increase in population was provided in 2010 c 136 § 2.
10. RCW 52.04.081.
11. Section 1, Chapter 15, Laws of 2009, amending RCW 52.04.061.
12. RCW 35.22.280(7) & (8), 35.23.440(33), (44) & (52), & 35.27.370(4); and Chapters 35.68 through 35.79 RCW.
13. Cities are authorized to provide off street parking facilities by RCW 35.27.550-35.27.600, and Chapters 35.86 through 35.87A RCW; ferries by RCW 35.21.110; airports by Chapters 14.07 & 14.08 RCW; wharves, moorage, and harbor facilities by RCW 35.22.280(7) & (25), 35.23.440(26), 35.23.455, & 35A.88.020; and public transportation systems by RCW 35.22.340, 35.92.060, & Chapter 35.95 RCW.
14. RCW 35.21.766, 35.22.280(17) & (29), 35.23.440(25), (40) & (50), 35.23.456, 35.27.370(15), 35A.70.070, & 71.12.550; and Chapters 70.08 & 70.58 RCW.
15. Section 2, Chapter 482, Laws of 2005, which added this substantive authority as subsection (2) to RCW 35.21.766.
16. RCW 35.21.020, 35.22.280(7) & (11), 35.22.290, 35.23.440(17), (36) & (43), 35.23.455, 35.27.370(4), 35.27.400, & 35A.67.010.
17. RCW 35.21.695.
18. RCW 35.22.280(16) & 35.23.440(15).
19. Cities are authorized to provide drinking water and irrigation systems in RCW 35.21.210, 35.22.280(14), 35.23.440(22) & (41), 35.27.370(3), 35.92.010; sanitary sewer systems in 35.21.210, 35.23.440(35), 35.27.370(5), 35.92.020, and Chapter 35.67 RCW; drainage and storm water systems in 35.21.210, 35.23.440(23) & (35), 35.27.370(5), 35.92.020, and Chapter 35.67 RCW; solid waste collection, recycling, and disposal systems in RCW 35.21.120-35.21.158, 35.67.020; electrical utilities in 35.22.280(15), 35.23.440(42), 35.92.010, 35.92.050; natural gas utilities in 35.22.280(15), and 35.92.050; and heating and steam utilities in Chapter 35.97 RCW.
20. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
21. RCW 35.22.280(6), 35.23.440(20), (36) & (45), & 35.27.370(2) & (11).
22. RCW 35.22.280(19) & 27.12.030.
23. Chapter 353, Laws of 1977 ex. sess., codified as RCW 27.12.360-27.12.395.
23. Section 1, Chapter 40, 2009, amending RCW 27.12.395.
25. RCW 27.12.390.

26. RCW 35.22.280(20), 35.23.440(48), 35.27.370(2), & 68.52.040.
27. RCW 74.04.040.
28. Second class cities are granted this authority in RCW 35.23.440(11). First class cities possess this authority by inference through their omnibus grant of powers in RCW 35.22.570. Code cities also possess this authority by inference through RCW 35A.01.010 & 35A.11.020.
29. RCW 35.21.395 and Chapters 35.80 through 35.81 RCW.
30. RCW 35.21.700.
31. RCW 35.21.703.
32. RCW 35.21.685 and Chapters 35.82 & 35.83 RCW.
33. RCW 35.21.090 & 35.22.280(25).
34. RCW 35.22.280(25) & (29), 35.23.440(26) & (34), & 35.27.370(10).
35. These broad home rule powers are found: (1) For first class cities in Section 5(36), Pages 215-224, Laws of 1889-1890, codified as RCW 35.22.280(35); and Section 7, Pages 215 - 224, Laws of 1889-1890, codified as RCW 35.22.570; (2) for second class cities in Section 38, Pages 143-178, Laws of 1889-1890, codified as RCW 35.23.440(1)&(50); (3) for third class cities in Section 117(1) & (20), Pages 178-198, Laws of 1889-1890, which no longer exists; (4) for towns in Section 154(1) & (16), Pages 198-215, Laws of 1889-1890, codified as RCW 35.27.370(1) & (16); and (5) for code cities in RCW 35A.01.010, 35A.11.020, & 35A.11.050.
36. RCW 35.22.280(32), 35.23.440(8), & 35.27.370(9).
37. RCW 35.22.280(16), (20), (26), (28) & (33) and 35.23.440(3), (4), (5), (12), (39) & (48).
38. RCW 35.22.280(35), 35.23.440(29), & 35.27.370(14).
39. RCW 35.22.280(35), 35.23.440(50), & 35.27.370(16).
40. RCW 35.22.280(29), 35.23.440(50), & 35.27.370(10).
41. Chapters 35.63, 35A.63, & 36.70A RCW.
42. Chapter 58.17 RCW.
43. Chapter 90.58 RCW.
44. Chapter 36.70A RCW.
45. The basic provisions of the State Building Code are contained in Chapter 19.27 RCW. The energy code established under Chapter 19.27A RCW is made part of the State Building Code by RCW 19.27A.020(1).
46. RCW 19.27.060.
47. RCW 19.27A.015.
48. RCW 19.28.010(3).

49. RCW 35.22.280(23), (24) & (29) and 35.23.440(49) & (50).

50. Chapter 8.12 RCW.

51. Statutes of the Territory of Washington, Private Laws, 1856-1857, 4th Session, Pages 69-73.

52. These powers were granted to the City of Steilacoom in Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Article I, Section 2, and Article IV, Section 4, Pages 455-458. These powers were granted to the City of Vancouver in Statutes of the Territory of Washington, Private Laws, 1856-1857, 4th Session, Article I, Section 2, and Article IV, Section 3, Pages 69-73.

53. Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Article I, Section 2, Pages 455-458.

54. Statutes of the Territory of Washington, Local Laws, 1857-1858, 5th Session, Pages 49-50.

55. Statutes of the Territory of Washington, 1858-1859, 6th Session, Article Fourth, Section 4(6), Pages 31-34.

56. Statutes of the Territory of Washington, 1861-1862, 9th Session, Article V, Section 3, Pages 16-24.

57. Statutes of the Territory of Washington, Special and Private Laws, 1867-1868, 1st Biennial Session, Chapter V, Section 32(7th), Pages 109-136.

58. Statutes of the Territory of Washington, Local and Private Laws, 1875, 5th Biennial Session, Chapter II, Section 5, Pages 139-166.

59. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Section 7(34), Chapter CXXVI, Pages 221-232.

60. First class cities were allowed to provide libraries by Section 5(20), Page 218, Laws of 1889-1890. Third class cities were allowed to provide libraries by Section 117(19), Pages 178-198, Laws of 1889-1890. All cities were authorized to provide libraries by Section 1, Chapter CLXVI, Laws of 1901.

61. The express grant of powers to first class cities is found in Section 5, Pages 215-224, Laws of 1889-1890. The express grant of powers to second class cities is found in Section 38, Pages 143-178, Laws of 1889-1890. The express grant of powers to third class cities is found in Section 116, Pages 178-198, Laws of 1889-1890. The express grant of powers to towns is found in Section 154, Pages 198-215, Laws of 1889-1890.

62. Chapter LXII, Pages 135-136, Laws of 1893.

63. Section 1, Chapter CIII, Laws of 1899.

64. Chapter 98, Laws of 1911. However, towns were originally authorized to impose special assessments to finance roads by Section 161, Pages 198-202, Laws of 1889-1890. (This section is misnumbered as Section 191.)

Chapter 9

City Finances

Cities possess the greatest financial powers of any type of local government in Washington State.[a]

They receive revenues from a wide variety of sources, including: (1) Taxes; (2) non-tax fees, including special assessments and traditional rates or charges; (3) debt proceeds; (4) intergovernmental revenues; and (5) other sources.[b]

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of city finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

Taxes

Cities possess the broadest taxing authority of any type of local government in Washington State. This includes authority to impose the widest variety of different types of taxes. This often includes authority to impose a specific tax at a higher rate than other local governments are authorized to impose.

Cities are authorized to impose three basic taxes:

- Property taxes;
- Sales and use taxes; and

a Unless the context clearly implies otherwise, the term "cities" includes both cities and towns.

b The *State Auditor's website includes the Local Governmental Finance Reporting System, which provides financial details on the revenues and expenditures of individual counties, cities, port districts, and transit authorities. It may be found at <http://sao.wa.gov/lgfrs/>.*

- Business license taxes.

They are authorized to impose several different property tax levies, several different sales and use taxes, and several different business license taxes. Revenues from most of these three basic types of taxes are general revenues that may be expended for any city purpose. Cities also impose a variety of relatively minor excise taxes.

Statewide, each of the three basic city taxes generates roughly the same amount of revenue each year. It was estimated that for calendar year 2003, basic city taxes would yield the following amounts:

Taxes:	Est. collections:
Regular property, excluding excess levies	$785 million
Sales and use, excluding county crim. just. taxes	$648 million
Business license:	
Business & occupation ($243 million)	
Utility taxes & franchise ($505 million)	
	$748 million[1]

The exact dollar figures are not important, but these figures show the relative statewide equivalence of these three tax sources. However, the percentage of receipts from each of the three basic taxes varies widely among different cities. First, most cities do not impose all of their general taxes. Although all cities impose property taxes and sale and use taxes, only 37 cities imposed business license taxes on non-utility businesses in 2003. Most cities imposed utility taxes, but some did not impose utility taxes on all utility services. Second, the tax base is not evenly distributed among cities, especially taxable retail activity subject to sales and use taxes.

A. Property Taxes

Cities are authorized to impose regular property taxes and excess property tax levies. Property taxes are the oldest source of city

taxing authority.

1. Regular property tax levies

Cities are authorized to impose a variety of separate regular property tax levies. This includes basic regular property tax levies and additional regular property tax levies.

a. Basic or most common regular property tax levies

Every city is authorized to impose an annual regular property tax levy of up to $3.375 per $1,000 of assessed value.[2] This is the most common or basic city property tax levy. The tax levy is imposed without voter approval. Receipts from this property tax are general revenues that may be expended for any city purpose.

However, the maximum rate of the basic annual city regular property tax levy may be reduced below $3.375 per $1,000 of assessed value if the city has been annexed by a fire protection district or library district. If a city has been annexed by a fire protection district, the maximum basic annual city regular property tax levy is reduced to an amount equal to $3.60 per $1,000 of assessed value minus the rate of regular property taxes imposed by the fire protection district.[3] A similar reduction occurs if the city is annexed by a library district.[4] Some cities have been annexed by both a fire protection district and a library district, with the maximum basic annual city regular property tax levy being reduced to an amount equal to $3.60 per $1,000 of assessed value minus the sum of the regular property tax levies of both the fire protection district and library district. As discussed in Chapter 63, it was necessary to reduce the city's maximum regular property tax levy rate to accommodate the annexing special purpose district's regular levy under what is called the $5.90 per $1,000 of assessed value limitation on most the combined rate of most regular property tax levies. Obviously, a city ceases providing fire protection service if it is annexed by a fire protection district and ceases providing library service if it is annexed by a library district. In most instances the combined rate of regular property taxes levied by taxing districts in a city annexed by a fire protection district or library district increases after the annexation. This occurs because the city's maximum basic regular property tax rate is calculated by subtracting the levy rate of the annexing special purpose district

from $3.60 per $1,000 of assessed value rather than $3.375 per $1,000 of assessed value.

Two unique regular property tax provisions exist for the 45 cities that operated full time, paid fire departments in 1969.[5] The Law Enforcement Officers and Fire Fighters (LEOFF) retirement system was established in 1969 creating a new retirement system for full time, paid local government fire fighters and law enforcement officers. This new LEOFF retirement system replaced a prior retirement system for full time city fire fighters. Each city that operated a full time, paid fire department as of 1969 financed this prior city fire fighter retirement system as follows:

- Unless an actuarial report established that these funds were <u>not</u> necessary to maintain the soundness of its pre-LEOFF fire fighter retirement system, a city was required to divert up to 22.5¢ per $1,000 of assessed value from its basic annual property tax levy of $3.375 per $1,000 of assessed value and place these tax receipts into a special fund to finance this pre-LEOFF fire fighter retirement system. However, these tax receipts could be retained as general funds and expended for any city purpose if they were not necessary to maintain the actuarial soundness of the pre-LEOFF fire fighter retirement system.
- Each of these cities was authorized to impose an additional annual regular property tax levy of up to 22.5¢ per $1,000 of assessed value. This additional regular property tax is imposed without voter approval. Receipts from this additional property tax must be placed into the special fund financing its pre-LEOFF fire fighter retirement system, unless a report by a qualified actuary establishes that these receipts are <u>not</u> necessary "to meet the estimated demands on the fund ... for the <u>ensuing budget year</u>". (Emphasis added.) If the funds are not necessary for the ensuing budget year, then the city may treat these receipts as general funds and expend them for any city purpose. The authority to impose this additional property tax levy continues,

> and does not lapse, after all retirement system obligations have been paid.

As a result of this additional annual property tax levy, the maximum basic annual regular property tax levy for each of the 45 cities with pre-LEOFF fire fighter retirement systems in effect increased from $3.375 per $1,000 of assessed value to $3.60 per $1,000 of assessed value. This additional annual regular property tax levy of 22.5¢ per $1,000 of assessed value remains even if the city has been annexed by a fire protection district or library district or no longer has any remaining obligation to finance a pre-LEOFF fire fighter retirement system. Clearly, as years go by, fewer of these older, pre-LEOFF firefighters, will be alive and the obligations of these cities to fund these old pensioners will diminish and eventually end.

Both the basic annual city regular property tax levy, and the additional annual regular property tax levy associated with the pre-LEOFF paid fire departments, are subject to the 101 percent levy lid.[6] Both of these regular property tax levies are classified as senior property tax levies and are included within the statutory limitation of $5.90 per $1,000 of assessed value on the combined regular property tax levies imposed by most local governments.[7]

b. Other regular property tax levies

Any city creating a local improvement district (LID) is required to impose an additional regular property tax levy to fund a LID bond guaranty fund.[8] As discussed in Chapter 63, a local improvement district is a mechanism used to finance local improvements. This tax levy is imposed without voter approval. It is not subject to the statutory limitation of $5.90 per $1,000 of assessed value on the combined rates of most regular property tax levies, even though this tax levy is a regular property tax levy subject to the constitutional One Percent Limitation. This property tax levy is not subject to the 101 percent levy lid. The statute authorizing this property tax levy does not establish a maximum tax rate. Instead, a city creating a LID is required to impose an additional regular property tax that is sufficient, together with other monies already in the guaranty fund, to provide a certain level of security for the LID

bonds.[c] Very few, if any, cities impose this tax, as they already have sufficient money in their guaranty funds.

City voters may approve a ballot proposition authorizing the city to impose additional annual regular property tax levies for emergency medical services of not exceeding 50¢ per $1000 of assessed value for up to six consecutive years, ten consecutive years, or permanently.[9] Although these are regular property tax levies, the ballot proposition must be approved by a three-fifths vote and a 40 percent voter validation requirement is met. The city must maintain a separate accounting of expenditures of the revenues obtain from these levies. Any city permanently authorized to impose these additional levies must provide for a special referendum procedure for voters to withdraw this permanent authorization.[d] The emergency medical service property tax levy is a regular property tax subject to the constitutional One Percent Limitation on most regular property taxes, but is not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value.[10] The levies are subject to the 101 percent levy lid after they are first imposed.

The voters of any city may approve a ballot proposition by a simple majority vote authorizing the city to impose additional regular property tax levies of up to 50¢ per $1,000 of assessed value to finance affordable housing for up to 10 consecutive years.[11] These levies are regular property tax levies subject to the constitutional One Percent Limitation on most regular property tax levies, but are not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000.[12] The levies are subject to the 101 percent levy lid after they are first imposed.

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c The total amount of money in the guaranty fund must equal the greater of either: (1) 12 percent of the outstanding amount of LID bonds guaranteed by the fund; or (2) the total amount of delinquent assessments and interest accumulated on the delinquent assessments as of the first day of September before the levy is imposed.

d A thirty-day period is allowed for signatures to be obtained and the referendum petition must be signed by at least 15 percent of the registered voters of the city. This special referendum procedure supersedes any other referendum procedure that may be available.

2. Excess property tax levies

The voters of any city may approve ballot propositions authorizing the city to impose two different types of excess property tax levies. As discussed in Chapter 63, excess property tax levies are above, or not subject to, the constitutional One Percent Limitation on most property tax levies that may be imposed on any property in any year.

Two different types of excess voter approved property tax levies that may be authorized by city voters:

- Single year excess property tax levies that may be used for general city purposes; and
- Multi-year excess property tax levies that are used to make principle and interest payments on general obligation bonds issued for capital purposes.

The ballot proposition authorizing the imposition of either of these excess property tax levies must be approved by at least three-fifths of voters voting on the proposition and a 40 percent voter validation requirement is met.

B. Sales and Use Taxes

Cities are authorized to impose several different types of sales and use taxes. Except for one unique sales tax mentioned below, these sales and use taxes are imposed on the same tax base in the city as the State's sales and use taxes are imposed.

1. Two basic sales and use taxes

Cities are authorized to impose two separate sales and use taxes, both at rates of 0.5 percent or a combined total maximum rate of 1.0 percent.[e] [13] These are the two basic city sales and use taxes and are imposed on the same tax base in the city as the State's

e The Department of Revenue distinguishes these two separate sets of taxes by referring to the first 0.5 percent sales and use taxes as the basic sales and use taxes and the second 0.5 percent sales and use taxes as the optional rate sales and use taxes. However, both taxes are optional and basic. This reference book refers to these taxes as the first basic sales and use taxes and the second basic sales and use taxes, which more accurately reflects their significance, almost wide spread imposition, and distinguishes these sales and use taxes from the additional local sales and use taxes which are much less common.

sales and use taxes are imposed. The two sales and use taxes are unencumbered and receipts from these two basic local option sales and use taxes may be expended for any legal city purpose.

Legislation was enacted in 1970 allowing every city (and county) to impose the first basic sales and use taxes at rates of 0.5 percent.[14] These taxes are imposed without voter approval. Every city imposes the first 0.5 percent basic local option sales and use taxes.

Legislation was enacted in 1982 allowing every city (and county) to impose the second basic sales and use taxes at rates of up to 0.5 percent. These taxes differ from the first basic sales and use taxes in that they may be imposed in one tenth percent (0.1 percent) increments up to 0.5 percent. The second basic sales and use taxes are also imposed without voter approval, but for a short time the ordinance imposing these taxes is subject to potential referendum action by city voters.[15] Almost every city imposes the full rate of the second 0.5 percent basic local option sales and use taxes at the full rates.

In most instances, a city imposing these sales and use taxes only receives 85 percent of the receipts from these sales and use taxes and the county in which the city is located receives the remaining 15 percent of the receipts from these sales and use taxes. This 15 percent reduction in receipts a city receives from its two basic, unrestricted sales and use taxes arises from the relationship specified in statute between county sales and use taxes and city sales and use taxes. The details vary for the two sales and use taxes, but the result is the same.[f]

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f Any city located in a county that also imposes the first basic 0.5 percent sales and use taxes must reduce the rate of its taxes by 15 percent to a rate of 0.425 percent. The county is required to credit these city sales and use taxes. As a result, the county receives 15 percent of the tax collections within each city located within its boundaries, as well as 100 percent the tax collections in unincorporated areas of the county.

Any county imposing the second basic 0.5 percent sales and use taxes must also credit these city sales and use taxes. However, instead of reducing the rate of the city sales and use taxes, each city must give 15 percent of its receipts from these taxes to the county in which it is located. The second unrestricted 0.5 percent sales and use taxes may be imposed in one tenth percent increments. If a county imposes a higher rate of the second sales and use taxes than a city located within its boundaries, the county receives 15 percent of the collections from the rate of these taxes imposed by the city but all of the taxes from the difference between the higher county tax rate and the lower city tax rate that is imposed within the city. Similarly, if a county imposes a lower rate of the second sales and use taxes than a city located within its boundaries imposes, the county receives 15 percent of the taxes generated from the common rates that were imposed, but the city retains all of the collections from the difference between its higher rate and the lower

In tracing the rational for this 15 percent sharing of revenue with counties, it appears that this percentage was adopted following an earlier California law providing for this sharing of revenue. No analysis was made in Washington about the sufficiency or insufficiency of this percentage. Once this percentage was established for the first 0.5 percent sales and use taxes, it was merely applied to the second 0.5 percent sales and use taxes.

2. Other sales and use taxes

As transit authorities, cities providing mass transit or public transportation systems may also impose additional sales and use taxes to finance these services and facilities. These taxes include a voter approved general sales and use tax of up to 1.0 percent to finance public transit, an additional voter approved general sales and use tax of either 0.9 or 1.0 percent to finance high capacity transportation, and a sales tax of 2.172 percent on car rentals to finance high capacity transportation.[g] [16] The general sales and use taxes are imposed on the same tax base in the city as the State's sales and use taxes are imposed.

Any city (or county) that has created a health sciences and services authority under RCW 35.104.030 may impose sales and use taxes of up to 0.02 percent to finance its health sciences and services authority.[17] These taxes are imposed on the same tax base as the State's sales and use taxes within the county or city, but receipts are deducted from the State's sales and use taxes. Authority to impose these taxes expires on January 1, 2023.

Any city located in a county with a population of 600,000 or more (King, Pierce, and Snohomish) that annexes territory with a population of 10,000 or more may impose additional sales and use taxes, at varying rates if the city determines that the cost of providing municipal services in the annexed area will exceed the

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county rate.

g Only two cities (Everett and Yakima) operate public transit systems and impose these sales and use taxes. Both cities impose a portion of the 1.0 percent sales and use taxes for public transportation, but do not impose the sales and use taxes for high capacity transportation or the sales tax on car rentals for public transportation. The first two sales and use taxes are imposed on the same taxable events as state sales and use taxes. However, as is implicit from its description, the third sales tax would only be imposed on car rentals.

additional revenue the city would otherwise receive from the newly annexed area.[18] A city with a population between 115,000 and 140,000 in such a county (Bellevue) may impose these additional taxes if the population of the newly annexed area is 4,000 or more. Depending on various factors the rates of these taxes may not exceed 0.1, 0.2, 0.3, or 0.85 percent. These sales and use taxes are imposed on the same tax base as the State's sales and use taxes are imposed, but are credited against the State's sales and use taxes. Revenues from these taxes may not exceed the difference between the city's costs of providing these municipal services in the annexed area and the other additional revenues the city would receive from annexing this area. Auburn and Renton began imposing these taxes in 2008.[19]

A city may impose additional sales and use taxes of up to 0.1 percent.[20] These taxes may only be imposed if voters approve a ballot proposition authorizing the additional taxes submitted at a primary or general election. The ballot proposition must specify the purposes for which the tax receipts may be used, which are for any city purpose with the one restriction that at least one third of the receipts must be used for criminal justice purposes, fire protection purposes, or both. These additional taxes are imposed on the same tax base as State's sales and use taxes, except for the retail sale or use of motor vehicles and the lease of motor vehicles for up to the first 36 months of the lease.

3. Distribution of special county sales and use tax receipts to cities

A portion of the receipts from various special county sales and use taxes is distributed to cities. Cities receive a portion of the receipts from a 0.1 percent additional sales and use taxes imposed by counties for criminal justice purposes.[21] Cities receive 40 percent of the receipts from voter-approved 0.3 percent sales and use taxes that counties were authorized to impose in 2003 for criminal justice and other purposes.[22] Receipts from these county taxes may only be expended for the purpose or purposes specified in the ballot proposition.

Although counties impose these taxes, and cities do not impose these taxes, many total city sales and use tax figures include the amounts distributed from these taxes along with collections from the sales and use taxes imposed by cities.

C. Business License Taxes

Cities may impose excise taxes on businesses and occupations in the form of license taxes. These business license taxes are unrestricted taxes and the receipts may be expended for any city purpose. The authority of cities to impose business license taxes constitutes the primary difference between city taxing authority and county taxing authority.

1. General discussion

The first State Legislature enacted legislation authorizing cities to impose license taxes on businesses and occupations.[23] This legislation allowed cities to license businesses and occupations for both regulatory and revenue raising purposes. A business license issued for revenue raising purposes is an excise tax. Statutes authorizing cities to impose business license taxes were unique in that they contained no details about this taxing authority. This allowed cities broad flexibility to define both the tax base and tax rate of these taxes.

Traditionally, business license taxes are imposed as a percentage of the gross income or gross receipts of a business. Business license taxes imposed on a utility business that are measured by the gross income of the utility business are called utility taxes. Business license taxes imposed on non-utility businesses and occupations that are measured by the gross income or receipts of the business are called business and occupation (B & O) taxes. Some cities impose business license taxes on non-utility businesses measured by other factors, such as the number of employees or square footage of the business.[24]

Cities are authorized to impose what is called a use tax on the users of natural gas or manufactured gas, in lieu of imposing a utility tax on the business providing the natural gas or manufactured gas.[25] The tax is imposed at the rate in effect for a utility tax on a natural gas business. Although technically the brokered natural gas use tax is not a business license tax, but a type of a user tax, receipts from this tax normally are included as part of a city's utility tax receipts.

Restrictions on the authority of cities to impose business license

taxes have been enacted since the 1980's.

Legislation was enacted in 1982[h] and 1983 restricting the authority of cities to impose business license taxes, including:

- The maximum B & O tax rate that a city may impose is 0.2 percent, if the tax is measured by gross receipts. However, this limitation does not apply to city business license taxes imposed on businesses subject to the State's utility taxes. Any city with higher rates at the date the law set this maximum rate may keep the higher rate and increase this rate by up to 10 percent.[26] City voters may approve ballot propositions authorizing rates above these maximums.[i] [27]
- Action of a city initially imposing a B & O tax is subject to potential referendum action by city voters.[28] The requirement for potential referendum action by city voters on a B & O tax does not apply to increases on the rate of tax unless the tax rate exceeds the statutory ceiling.
- The maximum utility tax rate that a city may impose is 6 percent for electrical, telephone, natural gas, or steam utility businesses, but city voters may approve ballot propositions authorizing higher rates on these utility businesses.[j] [29]

These restrictions on the maximum rates of city business license taxes do not apply to city utility taxes imposed on water, sewer, or cable TV businesses since these types of utility businesses are subject to the State's utility taxes and no rate limitation was specified for city business license taxes imposed on these businesses. It is not clear if the 0.2 percent rate limitation on city

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h The 1982 restrictions were part of a compromise authorizing counties and cities authority to impose the second 0.5 percent sales and use taxes.

i Voters of Seattle have approved a higher B & O tax rate. ("Municipal Tax Rates & Fees", AWC 1998 Tax & User Fee Survey, Part I, the Association of Washington Cities, at page 39.)

j Voters in four eastern Washington cities (Kennewick, Pasco, Pullman, and Richland) have approved ballot propositions authorizing higher utility tax rates. ("Utility Tax Rates & Franchise Fees", AWC 1998 Tax & User Fee Survey, Part I, the Association of Washington Cities, at pages 56-89.)

general B & O taxes, or no rate limitation, applies to city business license taxes imposed on solid waste collection businesses.[k]

Other restrictions have been established on city business license taxes imposed on telephone business, trucking firms, and financial institutions.[30]

Legislation was enacted by the Legislature in 2003 further restricting city B & O taxes.[31] This legislation requires the Association of Washington Cities to develop a model ordinance imposing B & O taxes measured by gross receipts. Among other requirements, cities imposing B & O taxes measured by gross receipts must eventually provide a system of credits apportioning business income among jurisdictions to avoid different cities taxing the same income.

Cities are expressly prohibited from imposing franchise fees on companies providing electricity, telephone, or natural gas, running their lines and pipes in city rights of way or property.[32] This prohibition does not apply to franchise fees imposed by a city on a cable company running its lines on the city's rights of way or property. Receipts from franchise fees imposed on cable companies frequently are included as part of a city's utility tax receipts.

2. Imposition of business license taxes

The Association of Washington Cities conducts an annual survey of cities about whether they impose various taxes and user fees. In 2014, 228 out of 281 cities in the state responded to this survey.[33]

Most of the responding cities reported that they imposed one or more utility taxes:

- 157 cities (69 percent of the respondents) imposed

k The confusion over this issue arises from the two rate limitations on city business license taxes that were enacted in 1982 and legislation enacted in 1986 applying to the State's taxation of solid waste collection businesses. Solid waste collection businesses were subject to the State's utility taxes in 1982 when these rate limitations on city business license taxes were established. As a result, no limitation was established on the rate of city business license taxes that could be imposed on solid waste collection businesses. However, legislation was enacted in 1986 removing solid waste collection businesses from the State's utility taxes and subjecting these businesses to another excise tax imposed in another chapter of law. (Chapter 282, Laws of 1986, codified as Chapter 82.18 RCW.)

utility taxes on cable TV businesses.

- 191 cities (84 percent of the respondents) imposed utility taxes on electricity businesses. Cities do not impose their utility taxes on utility service provided by other governmental entities such as public utility districts.
- 199 cities (87 percent of the respondents) imposed utility taxes on telephone businesses.
- 201 cities (88 percent of the respondents) imposed utility taxes on natural gas businesses. It is quite possible that natural gas is not supplied in some of the respondent cities.
- 187 cities (82 percent of the respondents) imposed utility taxes on water. Cities do not impose their utility taxes on utility service provided by other governmental entities such as water districts, except where the city is assuming jurisdiction over the facilities.[34]
- 167 cities (74 percent of the respondents) imposed utility taxes on sewers. Cities do not impose their utility taxes on utility service provided by other governmental entities such as sewer districts, except where the city is assuming jurisdiction over the facilities.[35]
- 176 cities (77 percent of the respondents) imposed utility taxes on solid waste collection businesses. It is possible that solid waste collection is not provided in a number of respondent cities.
- 121 cities (53 percent of the respondents) imposed utility taxes on stormwater utilities. It is probable that stormwater utilities do not exist in many of the cities not imposing these utility taxes.

Only 33 of the 228 cities responding to the survey reported that they impose B & O taxes. All but one of these cities reported imposing these taxes on gross business income and all of these cities are located in western Washington. This includes Seattle, Tacoma, Bellevue, and Ocean Shores. Kittitas, located in central

Washington, was the only city reporting that it imposed B & O taxes based upon the number of employees a business has, and reported that the rate was $35 per employee.

In addition to Kittitas, 24 other cities reported that they imposed license fees on business measured by the number of employees. A number of these self-described "license fees" appear to be taxes, as Kittitas described its tax. This includes Kirkland that imposed annual "license fees" of $100 per employee; Leavenworth that imposed annual "license fees" of $115 per employee, generating $46,637; Milton that imposed annual "license fees" of $33 per employee, generating $18,660; Pateras that imposed annual "license fees" of $25 per employee; Redmond that imposed annual "license fees" of $92 per employee; Renton that annual imposed "license fees" of $65 per employee; Mountlake Terrace that imposed annual "license fees" of $40 per employee; Toppenish that imposed annual "license fees" of 50 per employee; and Wenatchee that imposed annual "license fees" of $70 per employee." Some cities appear to impose "license fees" measured on the square footage of the business. Although these "license fees" are so self-described, it appears that these charges would more properly be classified as business license taxes.

Any transit authority, including a city, may impose a voter approved B & O tax and an excise tax on housing units to finance public transportation in lieu of voter approved sales and use taxes.[l] [36] However, every transit authority in the State currently imposes all or a portion of the sales and use taxes and none currently impose the alternative B & O taxes and housing unit tax.

D. Minor Excise Taxes

Cities are also authorized to impose the following minor excise taxes:

- Admission taxes not exceeding 5 percent may be imposed without voter approval on admission charges other than for K-12 school events.[37] Receipts from these taxes may be expended for any

l The B & O tax must be imposed on the gross proceeds or income of a business and has no rate limitation. The excise tax on housing units may not exceed $1 per housing unit per month.

legal city purpose.

- Gambling taxes not exceeding: (a) 20 percent of gross receipts from card games; (b) 5 percent of gross receipts on punch board and pull tabs; (c) 10 percent of gross receipts, less the value of prizes, on bingo and raffles; and (d) 2 percent on gross receipts, less the value of prizes, on amusement games. Receipts from these taxes must be expended for law enforcement to enforce gambling laws.[38]

- An excise tax on real estate sales of up to 0.25 percent may be imposed without voter approval, with receipts earmarked for certain capital purposes.[39] Any city planning under all of the requirements of the Growth Management Act may also impose an additional excise tax on real estate sales of up to 0.25 percent, without voter approval, with receipts earmarked for certain capital purposes.[40] In addition, a city not imposing any of its second 0.5 percent sales and use taxes may impose an additional excise tax on real estate sales of up to 0.5 percent, without voter approval, with receipts expendable on any legal city purpose.[41] This tax is subject to potential referendum action by city voters.[42] These taxes are referred to as REETs or real estate excise taxes.

- A variety of excise taxes may be imposed on hotel/motel room rental charges, including a basic 2 percent that is credited against the State's sales and use taxes, without voter approval, with receipts earmarked for a variety of capital purposes and for promoting tourism.[43] A few cities may impose an additional excise tax on hotel/motel room rentals without voter approval with receipts earmarked for a variety of different purposes.[44]

- A leasehold excise tax may be imposed without voter approval on the act or privilege of occupying or using publicly owned property under a leasehold interest at a maximum rate of 4 percent of the

taxable rent.[m] [45] This tax is imposed upon taxable entities leasing public property and is imposed in place of property taxes that are not imposed on public property. Receipts from this tax may be expended for any legal city purpose.

- An excise tax without a rate limitation on commercial parking or parking privileges may be imposed without voter approval, but subject to potential referendum action by voters. Receipts may only be spent for street purposes.[46]
- A transit authority, including a city, may impose an excise tax on employers of up to $2 per month per employee to finance high capacity transportation systems if authorized by voters.[47]

These minor taxes generate a relatively small portion of total city tax revenues.

Non-tax Fees

Cities are authorized to impose a variety of non-tax fees, including special assessments and traditional rates and charges.

A. Special Assessments

Cities impose two types of special assessments.

First, any city may create a local improvement district (LID) or utility local improvement district (ULID) and impose special assessments on benefited property within the LID or ULID to finance local improvements.[48] LIDs and ULIDs are mechanisms used to finance local improvements, including streets, bridges, sidewalks, water systems, dikes, drains, sewers, street lighting systems (including the cost of electrical energy), and railways, as well as programs of aquatic plant control, lake or river restoration, and water enhancement.[49] Legislation was enacted in 2011 authorizing cities to create a LID and impose special assessments on benefited property within the LID to finance research laboratories, testing

m Counties are also authorized to impose this tax at a 6 percent rate, but must provide a credit for city leasehold excise taxes.

facilities and training centers built in a designated innovation partnership zone created under RCW 43.330.270.[50]

Second, any city may create financing devices called parking and business improvement areas and impose "special assessments" on businesses located within these areas to finance: (1) Parking facilities; (2) public decorations; (3) the promotion of public events; (4) the furnishing music in public areas; (5) professional management and promotion of retail activities in the area; and (6) providing maintenance and security for common, public areas.[51] Although the term "special assessments" is used to describe these charges, the Supreme Court has not applied a number of common law restrictions to these special assessments that it has applied to special assessments imposed within local improvement districts to finance local improvements.

B. Traditional Rates and Charges

Cities also receive revenues from traditional rates and charges imposed for utility services, issuing permits, and providing various goods and services.

Revenues from utility operations generate the largest proportion of this revenue category. The amount of utility revenues depends upon the types of utility service, if any, that are provided by the city and the extent of this utility service. Utility services that a city may provide include electrical, water, sanitary sewer, storm sewer, solid waste collection and disposal, cable TV, natural gas service, and steam utilities. Many cities provide one or more of these utilities.

Cities also receive revenues from a variety of other fees, rates, and charges, including admission charges to zoos and museums, vehicle parking charges, permit fees, and the sale of concession items.

As discussed in Chapter 63, traditional rates and charges are distinguished from taxes by a number of factors. One primary restriction is that income from traditional rates and charges must be expended on the general activities from which the income was derived. For example, water utility income is not general income and must be expended on the utility. However, cities may create joint utilities by combining water systems, sewer systems (sanitary

and storm water), and garbage and refuse collection and disposal systems into a jointly operated utility system.[52] Such a combination would allow operating income from what otherwise would have been a separate utility system to be expended for the benefit of any of the other utilities included in the joint utility system.

A little know statute allows towns to deviate from the general rule limiting the purposes for which operating income may be expended to purposes associated with the undertaking, improvement, or service generating the income and transfer net earnings from a public utility department to its current expense fund.[n] [53] First class cities and code cities would possess this authority under their omnibus grant of powers.

Cites are authorized to impose impact fees.[54]

C. Benefit Charges

Legislation was enacted in 2012 authorizing cities to impose benefit charges on personal property and improvements to real property for up to a six-year period in all, or part of, an area that was located in a fire protection district that the city had annexed.[55] A ballot proposition authorizing the benefit charges must be approved by a 60 percent vote of voters in the area subject to the benefit charges who vote on the proposition.

Debt Proceeds

Cities also receive finances from debt proceeds. Debt proceeds consist of monies obtained from borrowing or from incurring different types of indebtedness and issuing various types of bonds evidencing this indebtedness.

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n Such a transfer may only be made under the following extremely limited circumstances: (1) The utility department operates on a cash basis with all related bond and warrant indebtedness having been retired; (2) a reserve or depreciation fund has been created that the State Auditor finds satisfactory; (3) the town receives the water, electricity, or other commodity sold by the town utility under contract from an outside source; (4) the rates or charges are “the lowest possible”; (5) The town council and mayor unanimously agree to the transfer; and (6) no more than 50 percent of the amount in excess of the net earnings of the utility is transferred. One would surmise that, given these extremely precise restrictions, this law was enacted for the benefit of only one town.

A. General Indebtedness

Cities may incur general indebtedness and issue general obligation bonds.

A city may incur general indebtedness without voter approval of up to one and one-half percent of the value of taxable property in the city.[56] However, with the assent of three-fifths of the voters voting on a ballot proposition, a city may incur a total general indebtedness limitation of two and one-half percent of the value of taxable property in the city.[57] A city may also incur additional general indebtedness, with the assent of three-fifths of the voters voting on a ballot proposition, as follows:

- An additional two and one-half percent of the value of property in the city for supplying the city with water, electricity, and sewers;[58] and
- An additional two and one-half percent of the value of taxable property in the city for acquiring or developing open space and park facilities.[59]

General obligation bonds may have a maximum term of 40 years.[60]

In addition, cities may issue a variety of short term obligations, including notes and warrants that are considered general indebtedness.[61]

B. Revenue Obligations

Cities are authorized to issue and sell different types of revenue obligations that are not subject to indebtedness limitations.

A city may issue revenue bonds for a term of not exceeding 40 years payable solely from a fund or funds created by the city that consists of operating income from any utility, facility, or building owned or operated by the city.[62] Revenue bonds may be also be issued payable, first from special assessments imposed within a utility local improvement district financing local utility improvements, and second from the revenues of the utility system.[63]

A city may issue special assessment bonds for a term of not exceeding 30 years to finance local improvements within a local

improvement district payable from special assessments imposed on benefited property located within the local improvement district.[64]

In addition, cities may issue a variety of short term obligations, including notes and warrants that are not considered general indebtedness.[65]

Intergovernmental Revenues

Cities receive revenue from a variety of state and federal programs. State programs include periodic distributions of monies to cities, as well as grant monies to cities. Federal grant monies are provided directly to cities or indirectly as pass though monies provided to the State and then distributed to cities.

A. State Programs

Periodic transfers of state money to cities include:

- Distributions from the municipal criminal justice account for criminal justice purposes.[66]
- Distributions of state motor vehicle fuel tax receipts for street construction and maintenance purposes.[o] [67]
- Transfers of money from state liquor license fees and liquor excise tax collections that may be expended for any purpose.[p] [68]
- Cities may impose a 2 percent excise tax on hotel/motel room rental charges that is credited against the State's sales and use taxes, with the receipts earmarked to promote tourism and constructing a variety of facilities, including stadium,

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o After various distributions are made from the State's motor vehicle fuel tax receipts, 10.6961 percent of the remainder is distributed to cities ratably based upon their population and 7.5597 percent is distributed to cities in the form of grants from the Urban Arterial Trust Fund.

p Initiative Measure 1183, the liquor privatization measure approved by state voters in 2011, provides for the distribution of liquor license fee monies to counties and cities at least equal to what the distributions were in 2011, plus an additional $10 million per year for enhancing public safety programs. (RCW 66.24.065) After diversion of monies to finance municipal research and services, distributions to cities are made ratably based upon their populations. (RCW 66.08.190 and 66.08.210) After distributions to the state general fund, 80 percent of the remaining liquor tax receipts are distributed to cities ratably based upon their populations.

convention centers, and performing arts centers.[69] As a result, the tax rate is not increased on hotel/motel room rental charges and a portion of the State's sales and use tax receipts essentially is transferred to cities.

- A city with a paid fire department before the creation of the Law Enforcement Officers and Fire Fighters (LEOFF) retirement system receives an annual distribution of state money to finance its pre-LEOFF fire fighter retirement system.[70] Annually, 45 percent of the collections from the state excise tax on fire insurance premiums are distributed to eligible cities under this program.
- Distributions of a portion of the State's real estate excise tax (REET) receipts that are placed into the City-County Assistance Account.[71] This new program was created in 2005. Cities receive half of these monies based upon a formula and counties receive the other half of these monies. These monies were obtained by diverting a portion of the state REET receipts that had been placed into the Public Works Assistance Account to assist local governments with low interest loans for various public infrastructure improvements.
- Payment of a portion of the salaries of municipal (and district) court judges under a new program created by legislation enacted in 2005. The program starts with the State's contribution at approximately 25 percent of these salaries. It is anticipated that this percentage will increase to 50 percent beginning in July of 2007.[72]

The State provides <u>grants and loans</u> to cities to finance a variety of projects, including:

- Grants from the Transportation Improvement Board (TIB) to fund various street projects.[73]
- Grants or loans from the Centennial Clean Water Account to finance sewer facilities and lake restoration projects. [74]

- Grants from the Community Economic Revitalization Board to finance various infrastructure projects in economically distressed communities.[75]
- Low or zero interest loans from what is commonly known as the Public Works Assistance Account to finance various sewer, water, and street projects.[q] [76]
- Grants from the Department of Ecology funding hazardous waste cleanup and waste management projects.[77]
- Grants and loans from the Department of Commerce for the development of affordable housing projects.[78]
- Grants from the Interagency Committee on Outdoor Recreation (IAC) funding park, recreation, and urban wildlife programs.[79]
- Grants from the Department of Commerce to finance some of the costs of complying with the Growth Management Act.[80]

The State funds city (and county) research and services by an appropriation to the Department of Commerce, which contracts for these services from the Municipal Research and Services Center.[81] The amount of money that the State contracts for city research and services is deducted from a liquor revolving fund that otherwise would have been distributed to cities.[82]

B. Federal Programs

Numerous federal programs also provide assistance to cities, either directly to cities or in the form of pass through monies that are provided to the State for distribution to cities.

Figures from the State Auditor's Local Governmental Finance Reporting System indicate that the most significant direct and pass through federal grants to cities in 2001 were:

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q This account is more commonly known as the Public Works Trust Fund.

- Grants for transportation purposes, including grants from the Federal Highway Administration and the Federal Transit Administration;
- Grants for law enforcement purposes from the United States Department of Justice;
- Community and planning development grants from the Department of Housing and Urban Development;
- Grants for health and social service purposes, including medical assistance and aging programs; and
- Grants for environmental purposes passing through the Department of Ecology.[r]

Other

Cities receive additional revenues from a wide variety of different sources. These other sources of revenue include charges imposed internally for services, interest and investment earnings, fines and forfeitures, and sales or leases of real or personal property.

NOTES:

1. These estimates were included in a paper entitled "Municipal Government Revenues – 2003" that was prepared by the Association of Washington Cities, January, 2003.
2. RCW 84.52.043.
3. RCW 52.04.081.
4. RCW 27.12.390.
5. RCW 41.16.060.
6. Chapter 84.55 RCW.
7. RCW 84.52.043 & 84.52.010.
8. RCW 35.54.060.
9. RCW 84.52.069.

r Details may be found on the Local Government Finance Reporting System portion of the State Auditor's home page. The address for this information is "http://sao.wa.gov/lgfrs/".

10. RCW 84.52.043(2).
11. RCW 84.52.105.
12. RCW 84.52.043(2).
13. RCW 82.14.030.
14. Section 4, Chapter 94, Laws of 1970 ex. sess., codified as RCW 82.14.030(1).
15. Sections 17 & 19, Chapter 49, Laws of 1982, 1st ex. sess., codified as RCW 82.14.030(2) and another section of law that is has been repealed; and Section 2, Chapter 99, Laws of 1983, codified as RCW 82.14.036.
16. RCW 82.14.415.
17. RCW 82.14.480.
18. RCW 82.14.045, 81.104.170, & 81.104.160.
19. Tax Statistics 2014, *id*.
20. Section 2, Chapter 24, Laws of 2003 1st sp. sess., codified as RCW 82.14.450.
21. RCW 82.14.340.
22. Section 2, Chapter 24, Laws of 2003 1st sp. sess., codified as RCW 82.14.450.
23. These authorizations were codified in RCW 35.22.280(32), 35.23.440(8), & 35.24.290(7).
24. "Municipal Business Taxes, Chapter 35.102 RCW", Tax Reference Manual, January, 2010, at page 123. http://dor.wa.gov/content/aboutus/statisticsandreports/2010/tax_reference_2010/default.aspx .
25. RCW 82.14.230.
26. RCW 35.21.710.
27. RCW 35.21.711.
28. RCW 35.21.706.
29. RCW 35.21.870.
30. RCW 35.21.712-35.21.715 & 35.21.840-35.21.850.
31. Chapter 79, Laws of 2003, codified as Chapter 35.102 RCW.
32. RCW 35.21.860.
33. "2014 Municipal Tax Rates and Fees", AWC 2014 Tax & User Fee Survey, Part I, the Association of Washington Cities. Survey results are available on the Association of Washington Cities website, https://www.awcnet.org/
34. Chapter 17, Laws of 2015.

35. *Id*.
36. RCW 35.95.040.
37. RCW 35.21.280.
38. RCW 9.46.110 & 9.46.113.
39. RCW 82.46.010(2).
40. RCW 82.46.035.
41. RCW 82.46.010(3).
42. RCW 82.46.021.
43. RCW 67.28.180.
44. RCW 67.28.181.
45. RCW 82.29A.040.
46. RCW 82.80.030, 82.80.070, & 82.80.070.
47. RCW 81.104.150.
48. Chapters 35.43-35.54 RCW.
49. RCW 35.43.040.
50. Chapter 85, Laws of 2011, amending RCW 35.43.040.
51. Chapter 35.87A RCW.
52. RCW 35.67.331.
53. RCW 35.27.510.
54. RCW 82.02.050-82.02.100, 39.92.040, 58.17.110, 43.21C.060, & 43.21C.065.
52. Chapter 47, Laws of 2012, codified in RCW 35.15.256.
56. RCW 39.36.020(2)(a)(ii).
57. RCW 39.36.020(2)(b).
58. RCW 39.36.020(4).
59. *Id*.
60. RCW 39.46.110.
61. Chapter 39.50 RCW.
62. RCW 35.41.010, 35.41.030, 35.67.120-35.67.180, 35.81.100, 35.92.100, & 39.46.150.

63. RCW 35.43.043.
64. Chapter 35.45 RCW.
65. Chapter 39.50 RCW.
66. RCW 82.14.320 & 82.14.330.
67. RCW 46.68.090(2).
68. RCW 66.08.190(1).
69. RCW 67.28.180.
70. RCW 41.16.050.
71. Chapter 450, Laws of 2005. See, especially, RCW 43.08.290.
72. Chapter 457, Laws of 2005, see especially RCW 43.08.250; and Ward, Ron, President WSBA, "Court Funding Glad Tidings and the Long Legislative Road Ahead", Washington State Bar News, June 2005, at pages 13-16.
73. Chapter 47.26 RCW.
74. **Error! Main Document Only.**RCW 70.146.070.
75. RCW 43.160.060.
76. RCW 43.155.050.
77. RCW 70.105.235.
78. RCW 43.185A.050.
79. RCW 79A.25.120, 79A.15.040, 79A.15.050, & 79A.15.060.
80. RCW 43.330.120(2).
81. RCW 43.110.030.
82. RCW 66.08.190.

PART III

SPECIAL PURPOSE DISTRICTS

Introduction

Part III of this reference book on local government in Washington State discusses special purpose districts. Special purpose districts constitute a separate category of local government.

As implied by this term, a special purpose district is created to provide a limited number of public facilities or services. In most instances, the name of each different type of special purpose district describes the type of facilities and services provided by that type of special purpose district. For example, a fire protection district provides fire protection services and a library district provides library services. Special purpose districts are created by action of local voters or by elected officials of other local governments following general incorporation procedures specified in general state law. Some special purpose districts are very large geographically and provide what can be described as regional services and facilities. However, most special purpose districts are much smaller and provide more local types of facilities.

Special purpose districts are the most common type of local government in Washington State. More than 60 different types of special purpose districts may be created, including school districts, port districts, public utility districts, library districts, fire protection districts, water districts, and public hospital districts. About 1,700 special purpose districts now exist in Washington State. The complexity of these special purpose districts arises, in part, from the extreme variety and large number of different types of special purpose districts that have been authorized.

Regular franchise rights exist for most types of special purpose districts, with the electorate consisting of registered voters who reside within the district. However, the franchise or voting rights in

some types of special purpose districts are restricted to persons and corporations owning real property located within the district. These unique special purpose districts include irrigation districts and diking districts.

All special purpose districts are subject to the plenary power of the State. They are also subject to some regulatory control by the county or city in whose boundaries they are located. These regulatory controls arise from building codes, zoning ordinances, and similar types of regulations. However, the parent units of local government creating a federation possess additional direct control over the federation and a parent unit of government creating a subdivision exercises additional direct control over the subdivision. This additional direct control arises from the composition of the governing body of the federation or subdivision.

Special purpose districts may be classified into the following three groups:

- Traditional special purpose districts. These special purpose districts are basically independent units of local government with governing bodies composed of officials who are elected directly to those positions. This includes school districts, fire protection districts, water districts, port districts, irrigation districts, and public utility districts (PUDs).
- Regional special purpose districts. These special purpose districts are relatively large geographically, are superimposed over other units of local government, and provide services or facilities in this larger area in lieu of smaller units of local government providing these services and facilities. Some traditional special purpose districts, with governing bodies composed of officials who are directly elected to those positions, function as regional governments. However, most of the newer types of regional special purpose districts are federations with governing bodies composed of persons who are either: (1) Appointed to those positions; or (2) are elected officials of other local governments serving in *ex offico* capacities as

members of the special district governing body.

- Subdivisions of general purpose local governments. These special purpose districts are relatively small geographically and are created by a county (or in some instances by a city) to finance or provide a limited type of services or facilities within this relatively small area. Normally, members of the governing body of the parent local government serve *ex officio* as members of the governing body of the subdivision.

Placing special purpose districts into these categories provides a framework for analyzing special purpose districts and emphasizes two recent trends for special purpose districts in Washington State. The first trend involves the enactment of legislation allowing federations of other local governments to be formed to provide regional facilities and services, rather than providing for traditional special purpose districts to be formed with governing bodies composed of separately elected officials. This trend has emerged since World War II. The second trend involves the enactment of legislation allowing special purpose districts to be formed that function as subdivisions of a general purpose government to provide and finance greater levels of service and facilities within a portion of the larger parent unit of local government. This is a more recent trend that has arisen in the later years of the 20th century.

Part III uses this classification system. Each type of special purpose district that may be created in the state is described in a separate chapter or is described with similar special purpose districts in a separate chapter. Chapter 10 discusses special purpose districts in general. Part III-A discusses traditional special purpose districts and includes a brief introduction as well as Chapters 11 through 23. A different type of traditional special purpose district is discussed in these chapters, including fire protection districts, school districts, and water districts. Part III-B discusses special purpose districts that function as regional governments and includes a brief introduction as well as Chapters 24 through 36. A different type of regional special purpose district is discussed in these chapters, including metropolitan municipal corporations and regional transit authorities. Part III-C discusses special purpose districts that are subdivisions of other units of local

government and includes a brief introduction as well as Chapters 37 through 63. A different type of subdivision of other units of local government are discussed in these chapters, including flood control zone districts and library capital facility areas.

Special purpose districts, like all other local governments, are subject to audits by the State Auditor.[1]

NOTES:

[1] Article III, Section 20; and RCW 43.09.020 & 43.09.260.

Chapter 10

Special Purpose Districts
General Nature

Special purpose districts constitute a separate category of local governments in Washington State. Counties and cities are the other two categories of local government.

Special purpose districts are the most common type of local government in Washington State. More than 60 different types of special purpose districts have been authorized to be formed in this State. Approximately 1,700 different special purpose districts now exist in Washington State.[a] King County has more special purpose districts within its boundaries than any other county in the State.

Apart from the varying types of facilities and services that different types of special purpose districts are authorized to perform, special purpose districts may be distinguished by the following characteristics:

- Method of selecting governing body members. Members of special purpose district governing body members are usually selected by: (1) Being elected directly to office; (2) being appointed to office; or (3)

a An exact count of special purpose districts is not available. There are accurate counts for each of the more significant types of special purpose districts (e.g., school districts, fire protection districts, and port districts). However, there are not accurate counts for a few of other types of special purpose districts, such as drainage improvement districts. The website for the Municipal Research and Services Center indicates that there were 1670 special purpose districts in Washington State in 2012. However, some of these entities are financial mechanisms rather than separate units of government. This list does not include the 39 road districts that exist in the State.

This website may be found at <http://www.mrsc.org/Subjects/governance/spd/spdmain.aspx >. Information about special purpose districts at this website may be found by selecting “subjects”, then selecting “governance”, then selecting “special purpose districts”.

serving in *ex officio* capacities as the result of holding other offices.

- Franchise or voting rights. There are two types of franchise: (1) Normal or regular voting rights with the district electorate being composed of registered voters residing within the district; and (2) limited or restricted voting rights, with district voters being restricted to people and entities that own real property located in the special purpose district.
- The geographic extent or size of the special purpose district. Special purpose districts are either: (1) Relatively large geographically and constitute regional governments with the authority to provide facilities and services over a very large area; or (2) are of a more traditional medium or small geographic size and provide facilities and services in a community or neighborhood.
- Relationships with other units of local government or the level of independence afforded to the special purpose district. A special purpose district could be: (1) An independent unit of government free to exercise its powers without much control by another government; (2) subject to some control by another unit or units of local government, with the special purpose district being either a partial subdivision of this other local government or a federation of two or more other local governments; or (3) subject to substantial control by a parent unit of local government, with the special purpose district being a subdivision of this other parent local government.

Most special purpose districts in Washington State are traditional special purpose districts with governing bodies composed of directly elected officials, have normal franchise rights and are of a traditional small or medium geographic size.

Although special purpose districts may be classified on the basis of various different factors, this reference book classifies special purpose districts as: (1) Traditional special purpose districts; (2) regional special purpose districts; or (3) subdivisions of general

purpose units of local governments. This classification system is not specified in law but is used to provide a framework for analyzing special purpose districts. Traditional special purpose districts have governing bodies composed of officials who are directly elected to those positions. These special purpose districts are created to provide a higher level of facilities and services usually within relatively small or medium sized geographic areas. Regional special purpose districts are superimposed over existing units of local government and provide facilities and services over much larger geographic areas. Some traditional special purpose districts (e.g., some port districts and all public utility districts) act as regional governments. However, most newly authorized regional special purpose districts are federations of existing units of local government. Other special purpose districts are subdivisions of general purpose units of local government, normally counties. These special purpose districts are subject to control by the parent local government.

This classification system also emphasizes two modern trends in special purpose districts in Washington State:

- The creation of special purpose districts as federations of other units of local government to provide regional governmental services and facilities. This trend arose after World War II.
- The use of special purpose districts as subdivisions of other units of local government to finance and provide greater levels of service and facilities within the larger parent unit of local government. This trend reemerged in the last decade of the 20th century.

Sponsoring, or parent units of local government exercise direct control over a federation. This control arises from the nature of the federated governing body, which is composed of either officials of the parent local governments who serve *ex officio* as members of the federated governing body or persons who are appointed by the parent units of local government. The parent local government of a subdivision of that government exercises direct control over its subdivision, which has a governing body composed of some or all of the members of the parent local government's governing body

who serve *ex officio* as members of the governing body of the subdivision.

What Is A Special Purpose District?

Special purpose districts are also called limited purpose local governments. They provide a more limited range of governmental services and facilities than general purpose units of local government (counties and cities). Normally, the services and facilities provided by a type of special purpose district are implicit from the name of the type of special purpose district. For example, school districts provide schools and educate children, library districts provide libraries and library services, public hospital districts provide hospitals, and fire protection districts provide fire protection services. A few types of special purpose districts (port districts and irrigation districts) have been authorized to provide a fairly wide range of different services and facilities.

Townships are discussed in Chapter 39, which is included within Part IIIC of this reference book discussing special purpose districts that function as subdivisions of a parent local government. However, townships are difficult to classify. No townships currently exist in Washington State, although original provisions of the State Constitution provide for townships as a fundamental aspect of local government. The Legislature repealed all township laws in 1997. Townships, as they would have existed under these old laws, could have been classified as either multiple purpose special purpose districts or somewhat limited general purpose units of local government. However, each township would clearly be a partial subdivision of the county that created the township.

Each special purpose district has:

- Boundaries;
- Its own governing body;
- A limited number of authorized functions or duties, normally reflected in its name;
- Independent authority to carry out its limited functions or duties; and

- Permanent existence until it is dissolved or altered by certain actions.

The Legislature has authorized a number of different entities or devices to be created that have some, but not all, of these attributes of a unit of government. These types of entities or devices include: (1) Financial mechanisms, such as local improvement districts (LIDs) and parking and business improvement areas that are used by units of local government to finance public improvements; (2) administrative departments of a local government, such as a city library board or utility department; (3) public corporations, public commissions, or public authorities created by a local government to carry out a designated function of the local government; and (4) contractual entities, such as entities created by two or more local governments to administer a joint undertaking under an interlocal agreement.

It is difficult to distinguish some special purpose districts from these other types of entities or devices, especially when special relationships exist between the special purpose district and its parent local government. The distinction between special purpose districts and these other types of entities sometimes blurs, especially if one of these other entities is provided with some sort of panel or body to guide its actions. An example of an entity resembling a unit of local government, but not classified as a unit of local government in this reference book, is a city library that is managed by a library board appointed by the city council. Another example would be an entity created by an interlocal agreement to provide services or facilities for the local governments entering into the interlocal agreement. However, the more recently enacted Joint Municipal Utility Services Act provides an alternative structure for the joint provision of certain utility services where an authority is created by two or more local governments that is expressly declared to be a municipal corporation. Road districts are difficult to classify given the extreme lack of statutory detail about these special purpose districts.

History of Special Purpose Districts

Special purpose districts have undergone two opposite trends in Washington:

- First, school districts and road districts gradually proliferated during territorial years and the early years of statehood. However, the numbers of school districts and road districts lessened significantly as travel became easier with the advent of improved roads and widespread availability of motor vehicles. The number of school districts was also reduced in response to federal laws providing monies to states to distribute to public schools on the condition that most small school districts be eliminated.
- Second, other types of special purpose districts began to proliferate, especially in unincorporated areas outside of cities, while the numbers of school districts and road districts were being reduced significantly. Legislation was enacted allowing many more types of special purpose districts to be formed. Hundreds of special purpose districts were created under these new statutes. As a result, layer upon layer of special purpose districts have been created throughout the State.

Although the total number of special purpose districts in Washington State during the early decades of the 20th century greatly exceeded the current number of special purpose districts in the State, many hundreds of special purpose districts still exist today. Special purpose districts remain a dominant form of local government in Washington State.

A. Before Statehood

Only a few different types of special purpose districts were authorized prior to statehood. These special purpose districts were created by counties. Each special purpose district was subject to considerable control by the county that created it.

The first Legislative Assembly of Washington Territory enacted legislation requiring counties to create school districts and road districts throughout their boundaries.[b] Neither school districts nor

b A discussion of school districts is found in Chapter 17. A discussion of road districts is found in Chapter 38.

road districts were independent units of government during territorial years. Both were subject to direct supervision or control by the county, especially road districts. Both could be seen as being subdivisions of county government, particularly road districts. Each county created many school districts and road districts as rural areas became more populated with Euro-Americans. The need for so many of these districts arose from the spread of settlers throughout the county and the difficulty of travel. Travel was by horseback or horse drawn wagons, over primitive roads that followed old trails first used by native peoples. Travel was also by boat, if settlers lived near waterways. As many as 2,875 separate school districts may have existed in Washington State prior to World War II.[1] The greatest number of special purpose districts probably existed in the early 1920's before very small school districts began to consolidate.

Only two other entities existed during territorial years that resembled special purpose districts. These were basically financial devices or mechanisms rather than special purpose districts, but legislation gradually transformed these financial devices into special purpose districts.

Legislation was enacted in 1858 allowing drainage ditches to be constructed and financed using a financial mechanism somewhat resembling what later became known as local improvement districts. This law was revised a number of times by the Legislative Assembly to provide a continuing mechanism for financing the construction and ongoing maintenance of drainage ditches and the construction of dikes. Eventually this financing mechanism was converted in 1875 into an entity resembling a subdivision of counties. Legislation was enacted in 1895 converting these organizations into independent drainage districts, each with a board of directors composed of three separately elected members.[2]

Legislation was enacted in 1888 allowing counties to create diking districts and appoint a supervisor to manage each district somewhat similar to how counties created and managed road districts.[3] This legislation was amended in 1895 converting these organizations into independent diking districts, each with a board of directors composed of three separately elected members.[4]

B. After Statehood

The scheme of local government at statehood consisted of counties, cities, and a few different types of special districts. Large numbers of school districts and road districts existed in each county and perhaps a few special districts providing diking or drainage improvements existed. Each of these special purpose districts was under varying degrees of direct control by the county that created it.

The new State Constitution included provisions relating to school districts and road districts, but also required the Legislature to enact legislation providing for the organization of counties into townships. As discussed in Chapter 39, the Legislature did not enact legislation authorizing the organization of counties into townships until 1895. Although voters of the entire county had to approve a ballot proposition allowing the organization of a county into townships, townships were only created in unincorporated areas of a county outside of cities. Townships were a very unique type of special purpose district. They were authorized to provide a wide variety of governmental services and facilities, and were granted broad regulatory powers. Townships functioned as political subdivisions of counties in unincorporated areas and assumed the operations of road districts as well as provided a myriad of other services and facilities. However, only two counties (Spokane and Whatcom) ever organized into townships. These townships were dissolved.

The special purpose districts that existed in the early years of statehood were relatively small geographically, and provided local services and facilities on a community-wide basis.

Legislation was periodically enacted after statehood allowing new types of special purpose districts to be formed. It is doubtful whether anyone could have foreseen this dramatic proliferation of different types of special purpose districts when Washington became a state. Wittingly or not, successive Legislatures essentially chose to follow a fork in the road leading to the proliferation of many different types of special purpose districts, rather than a fork in the road leading to the use of townships, to provide local governmental services and facilities. As discussed in Chapter 4, the use of special purpose districts to provide many

services and facilities probably occurred because:

- Counties were unable to provide the services and facilities that special purpose districts have been authorized to provide because of state constitutional provisions providing for uniformity of taxation and limitations on indebtedness.
- The rigid structure of county government established by the State Constitution.
- The dual natures of county government and the equity and practical difficulty of obtaining countywide voter approval authorizing the county to impose taxes countywide and use the tax receipts to provide services and facilities only in the unincorporated areas.
- The general failure of counties to organize into townships to provide additional services and facilities.

Most types of special purpose districts were granted a very limited array of related functions. Most special districts would be geographically small or medium sized, community based entities. Other special purpose districts would be larger, regional entities. Most of these special purpose districts would be independent local governments rather than controlled by the county. However, the concept of subdivisions of local government has re-emerged at the end of the 20th century, and a number of newly authorized special purpose districts were subject to control by the county or city creating the special purpose district.

Special purpose districts gradually became a preferred government to provide many services and facilities, especially in unincorporated areas outside of cities. Soon after statehood, new types of special purpose districts were authorized to provide irrigation, drainage, diking, and flood control improvements. Other special purpose districts were authorized to provide additional agricultural services. Gradually, new special purpose districts were authorized to provide more urban services and facilities such as parks, drinking water, and maritime port facilities. The State Legislature enacted Initiative to the Legislature No. 1 in 1933, authorizing public utility districts

(PUDs) to be formed. This Initiative was primarily sponsored by the Washington State Grange. Other special purpose districts were soon authorized to provide fire protection, public libraries, sanitary sewers, cemeteries, public hospitals, and other services and facilities. More recent special purpose districts have been authorized to provide various transportation services or to provide public stadia, convention facilities, or other public buildings designed to encourage economic development.

Appendix E summarizes details about each of the different types of special purpose districts that may be formed in Washington State. This includes:

- The year legislation was enacted authorizing the type of special purpose district;
- Where statutes relating to the special purpose district are codified;
- The type of voting or franchise rights provided for the type of special purpose district;
- The nature of the special purpose district as being independent, a partial subdivision of another government, a subdivision of another government, or a federation;
- How the special purpose district is created;
- Details about the special purpose district governing body, including the number of members and how they obtain office;
- General powers of the special purpose district; and
- Financial powers of the special purpose district.

Some concern has been raised over the proliferation of special purpose districts in Washington State. It can be argued that this proliferation of special purpose districts fragments local government, results in layers of hidden government, and increases the costs of government by essentially precluding economies of scale. Although voters are very aware of a special purpose district if they vote on a ballot proposition to create the special purpose district, in many instances the awareness and interest fade after a

number of years. Most special purpose districts remain static once they have been created. Occasionally a special purpose district will expand its boundaries by annexing territory that is not located in the same type of special purpose district. Special purpose district consolidations are somewhat rare, although since the mid-1990's a few water districts have consolidated and a few fire protection districts have consolidated. The Legislature has tended to provide for the creation of a new type of special purpose district whenever the desire arises for the provision of additional services and facilities, rather than granting additional powers to counties or an existing type of special purpose district.

However, others argue that special purpose districts are the best form of government since they tend to be geographically small and provide a single service or facility. It is often stated that the best government is the government closest to the people. Clearly, small special purpose districts are governments close to the people. They are able to respond most directly and informally with their constituents.

Special District Features

It is difficult to generalize about special purpose districts, given the large number of different types of special purpose districts that may be created. Details about each type of special purpose district are included in the statutes relating to that type of special purpose district rather than being included in more general provisions applying to all or most types of special purpose districts. However, these many sets of different statutes providing for special purpose districts have some similarities.

A. Creation

Special purpose districts, like cities, may not be created by special legislation enacted by the Legislature. They may only be created following incorporation procedures detailed in general legislation authorizing the particular type of special purpose district to be formed. The first phrase of Article XI, Section 10 prohibits the Legislature from creating “municipal corporations” by enacting special legislation. It follows that special purpose districts, as well as cities, may only be created by local citizens or governments

taking actions prescribed in general enabling legislation enacted by the Legislature.

The procedure for creating each type of special purpose district is specified in legislation authorizing that type of special purpose district. A few types of authorized special purpose districts have not been created. For example, legislation was enacted in 1927 allowing reclamation districts of one million or more acres to be formed, but no such district has been formed.[5] Enabling legislation for a number of different types of special purpose districts has been repealed, including legislation for sanitary districts.[6]

1. Voter approval

The most common method to create a special purpose district is by voter approval of a ballot proposition authorizing creation of the special purpose district. This procedure is initiated by either:

- The filing of a petition proposing the district that has been signed by a certain percentage of voters residing in the proposed district; or
- By resolution of the county legislative authority proposing the district.

For example, the creation of a PUD may be initiated either by the filing of a petition proposing the PUD, that has been signed by a certain percentage of resident voters, or by action of the county legislative authority without the filing of a petition. The ballot proposition authorizing creation of the PUD is then submitted to voters for their approval or rejection.[7]

A few types of special purpose districts may only be created if they are approved by both another entity, normally the county legislative authority of the county in which the district is located, and by voters approving a ballot proposition authorizing the district. For example, a fire protection district may only be created if the county legislative authority finds that the creation of the district is conducive to the public safety, welfare, and convenience, and if voters approve a ballot proposition authorizing creation of the fire protection district.[8] The additional requirement for approval of the creation of some special purpose districts may also be made by a boundary review board, if one exists in the county in which the proposed special

purpose district is located.[c]

Normally, the governing body of the new special purpose district is elected at the same election as the ballot proposition authorizing creation of the special purpose district is submitted to local voters for their approval or rejection. Obviously, the election of the initial members of the governing body is null and void if voters fail to approve the creation of the special purpose district.

2. Other methods

Some special purpose districts are created by action of an existing local government, typically the county legislative authority of the county in which the special purpose district is located. An election is not held to authorize creation of these special purpose districts. For example, a flood control zone district is created by resolution of the county legislative authority and a ballot proposition authorizing the district is not submitted to voters for their approval or rejection.[9]

Other special purpose districts are created by action of two or more existing local governments, normally two or more counties or cities. An election is not held to authorize creation of these special purpose districts. For example, a public transportation benefit area (PTBA) is created by action of a conference consisting of the county legislative authority and one representative of each city located within the proposed boundaries of the PTBA.[10] Similarly, a joint operating agency (JOA) is created by agreement of the sponsoring public utility districts and cities.[11]

Enabling legislation for a few types of special purpose districts creates an inactive district in every city and county and provides that the special purpose district may be activated by action of the city or county governing body. For example, an inactive housing authority is created in each city and county that may be activated by the city or county governing body.[12]

B. Franchise Rights

Two basic types of franchise or voting rights may be provided for a type of special purpose district.

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c A discussion of boundary review boards is found in Chapter 73.

1. Normal or regular voting rights

The voters or electorate of most special purpose districts are registered voters residing within the boundaries of the special purpose district. Each voter must be a United States citizen, at least 18 years of age, be registered to vote, and reside within the boundaries of the special purpose district. These are the same eligibility requirements to vote at federal or state elections, as well as at elections of general purpose local governments. In almost every instance, elections for these special purpose districts are conducted by the county auditor.

Normal or regular voting rights are the default franchise for local governments, i.e., they apply unless a statute expressly provides for limited or restricted voting rights.

Regular or normal franchise rights exist in most types of special purpose districts, including school districts, port districts, fire protection districts, water districts, library districts, PUDs, and public hospital districts.

2. Limited or restricted voting rights

The franchise in a few types of special purpose districts is limited or restricted to people and entities owning real property within the special purpose district. Eligibility details vary depending on the type of special purpose district. Most special purpose districts with limited or restricted franchise rights conduct their own elections.

Limited or restricted voting rights may only be provided for a special purpose district if the district: (a) Only exercises functions that are uniquely associated with the land, such as providing irrigation, diking improvements, or drainage improvements; (b) is not authorized to perform general governmental functions; and (c) imposes assessments rather than taxes to support its activities. These requirements arise from the court-created One Person, One Vote Doctrine, a discussion of which is found in Chapter 73.

Limited or restricted franchise rights apply in irrigation districts, diking districts, drainage districts, and flood control districts.

It is interesting to note that normal voting rights originally existed in

most of these special purpose districts. Over the years these voting rights were removed from regular voters and given to property owners, including corporations and other business entities as well as people owning real property located in the special purpose district. Voting rights developed in these special purpose districts as follows:

- Voting rights in irrigation districts were given to regular voters when these districts were authorized in 1890, but these rights were taken from regular voters and given to property owners in 1915.[13]
- Voting rights in diking districts were given to regular voters when these districts were authorized in 1895, but these rights were taken from regular voters and given to property owners in 1915.[14]
- Voting rights in drainage districts were given to regular voters when these districts were authorized in 1895, but these rights were taken from regular voters and given to property owners in 1941.[15]
- Voting rights in drainage improvement districts were given to regular voters who owned property in the districts when these districts were authorized in 1913. This legislation was expanded to provide for diking improvement districts in 1917, with the same restriction on voting rights. However, legislation was enacted in 1985 altering franchise rights to property owners.[16]
- Voting rights in flood control districts were restricted to property owners when these districts were first authorized in 1937.[17]

Washington State is somewhat unique in that the State Supreme Court held in *Foster v. Sunnyside Valley Irrigation District* that fundamental fairness requirements apply to voting schemes where the franchise is limited to property owners.[d] [18] A further discussion

d The Court held that, although the One Person, One Vote Doctrine does not apply to irrigation districts, the Freedom of Elections Clause of the State Constitution (Article I, Section 19) applies to voting rights in special purpose districts with the franchise restricted to property owners. Irrigation district voting schemes that only gave franchise rights to the owners of lots that were five acres or more, and did not give voting rights to the owners of smaller lots, violated the Freedom of Elections Clause if the smaller lots were subject to irrigation district assessments. A

of voting rights in irrigation districts is found in Chapter 12. Chapter 20 includes a discussion of voting rights in diking districts; drainage districts; diking, drainage or sewerage improvement districts; and flood control districts.

C. Governing Bodies

The governing body of a special purpose district is usually called a board of commissioners or a board of directors. No name is provided for the governing body in a few, obscure, special purpose districts.

Members of special purpose district governing bodies are normally selected by:

- Being elected directly to office;
- Being appointed to office; or
- Serving *ex officio* as a result of holding other offices.[e]

Most special purpose district governing body members are elected

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compelling state interest must be established to justify such a voting scheme and the irrigation district failed to meet this standard. The Court noted that the One Person, One Vote Doctrine does not apply to the Sunnyside Valley Irrigation district since that district is "not empowered to impose ad valorem property taxes or sales taxes, enact laws governing the conduct of citizens or administer the normal functions of government." (*Foster* at page 410.) It was noted that irrigation districts in Washington State are authorized to supply irrigation water and generate electricity, but the Court did not take note of other significant powers of irrigation districts. Further, the Court indicated that under the Freedom of Elections Clause, it would have required normal voting rights in a situation similar to that in *Ball v. James*, 45 U.S. 355 (1981), where the U.S. Supreme Court upheld limited voting rights. The special purpose district in *Ball v. James* obtained 99% of its revenues from distributing electricity and only 1% of its revenues from irrigation. Distributing electricity was considered by our State Supreme Court to have been a general governmental function. As a result, our State Supreme Court established a test to determine voting rights based upon degree and not kind, where the actual functions exercised by the particular special purpose district are considered, but not the potential authority of that special purpose district. A general discussion of the One Person, One Vote Doctrine is found in Chapter 73.

e Some members of the board of directors of the Seattle Popular Monorail Authority, which was a city transportation authority, were not selected by any of these procedures. The interim board of directors of the Seattle Popular Monorail Authority consisted of members of the council of a public authority that the City of Seattle had created. These interim board members appointed nine persons as members of the board of directors of the Seattle Popular Monorail Authority. This nine-member board of directors was somewhat self-perpetuating in that the board was involved in appointing its successors. Some successors were nominated by the board, and appointed by the city, or were nominated by the city, and appointed by the board. Some were elected directly to office. The author is not aware of any other local government in the nation with a somewhat self-perpetuating governing body such as the Seattle Popular Monorail Authority. The Seattle Popular Monorail Authority was dissolved. City Transportation authorities are discussed in Chapter 44.

directly to office. This includes port commissioners, fire commissioners, school directors, and irrigation directors.[19] Members of directly elected governing bodies normally are composed of three or five members who are elected to staggered terms of office.

Some special purpose district governing body members are appointed to office. For example, the county legislative authority appoints library trustees of a county rural library district, and the county legislative authority and governing bodies of cities included within a public transportation benefit area (PTBA) appoint members of a PTBA governing body.[20]

The governing bodies of a few special purpose districts are composed of officials of other local governments serving *ex officio* as officials of the special purpose district. They serve as officials of the special purpose district as a result of holding other offices. For example, members of the county legislative authority serve in *ex officio* capacities as the governing body of a county rail district or a park and recreation service area.[21]

Recent enabling legislation providing for the creation of new types of special purpose districts (city transportation authorities and fire protection service authorities) fails to specify how members of the local governing body are selected. Instead, this enabling legislation specifies that the ballot proposition authorizing the creation of the special purpose districts describes the method by which members of the governing body are to be selected if the new special purpose district is approved.[22] This flexibility safeguards the enabling legislation if a court finds that the particular method of selecting members of the governing body to be unconstitutional. The method that was selected would be unconstitutional, not the underlying enabling legislation. Although one could assume that the ballot proposition would provide for a standard method of selecting members of the governing body, this has not proven to be the case. As discussed in Chapter 44, the Seattle Popular Monorail Authority had a governing body that appointed some of its successor members.

Most members of a special purpose district governing body serve on a part-time basis, although nothing in state law addresses this

issue.

Compensation, if any, provided for members of special purpose district governing bodies normally is quite limited. Some, such as library district trustees, receive no compensation. Others receive compensation in the form of a per day rate of compensation for attending official district meetings and performing other services for the district. For example, fire commissioners and water district commissioners are allowed compensation at a rate of $104 per day or portion of a day for attending official district meetings and performing other services for the district, not to exceed $9,984 per year, but starting in 2008 these dollar levels were adjusted based upon the consumer price index.[23] PUD commissioners receive both a per diem rate of compensation and a limited annual salary.[f] [24] Port commissioners of larger port districts also receive both a per diem rate of compensation and a monthly salary, but the board of commissioners of any port district may set any rate of compensation for its members.[g] [25] It does not appear that any port commission has established a compensation rate apart from the standard per day rate of compensation and monthly salary specified in statute.

D. Functions

Special purpose districts have limited authorities. Statutes providing for each different type of special purpose district authorize that type of special purpose district to provide specific types of facilities and services. This contrasts with the broad authorities of general purpose units of local government (counties and cities) to provide a wide range of different types of facilities and services and

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f PUD commissioners receive a per diem rate of compensation of $90 per day not to exceed $12,600 per year, and salaries as follows: (1) In districts with total gross revenue of over $15 million, commissioners receive monthly salaries of $1,800; (2) in districts with total gross revenue of from $2 million to less than $15 million, commissioners receive monthly salaries of $1,300; and (3) in all other districts commissioners receive monthly salaries of $600. These per diem rates of compensation and monthly salaries are adjusted for inflation using the consumer price index.

g Port commissioners receive per diem compensation at a rate of $90 per day, not to exceed $10,800 per year in ports with gross operating revenues of $25 million or more and not to exceed $8,640 per year in other ports, and salaries as follows: (1) In ports with gross operating revenues of $25 million or more in the preceding calendar year, commissioners receive a monthly salary of $500; and (2) in ports with gross operating revenues of from $1 million to less than $25 million in the preceding calendar year, commissioners receive a monthly salary of $200. These per diem rates of compensation and monthly salaries are adjusted for inflation using the consumer price index. However, in lieu of any of this compensation, any board of port commissioners may set compensation for its members.

to adopt regulations. General purpose units of local government also possess at least some degree of inherent home rule powers. Special purpose districts do not possess inherent home rule powers and only possess those powers that have been granted to them by statutes.[h]

The name of a type of special purpose district normally describes its basic or primary function. For example, school districts are directed to provide public schools and to educate school children, cemetery districts are authorized to provide cemeteries, and public hospital districts are authorized to provide hospitals.

However, at least two types of special purpose districts have been authorized to perform somewhat broad ranges of diverse facilities and services, including those reflected in their names as well as other functions not reflected in their names. Port districts are the most conspicuous of these special purpose districts with broad powers and functions, which include authority to provide maritime port facilities, airports, industrial development, commercial development, parks, railroads, passenger ships, bridges, subways, fire suppression, and law enforcement. Although irrigation districts basically provide for irrigation, they also have been authorized to perform a wide variety of non-irrigation functions, including the provision of drinking water, sewers, drainage systems, fire hydrants, street lighting, and the generation of electrical energy.

Special purpose district finances vary widely depending on the type of district. Some special purpose districts finance their activities and facilities by imposing rates and charges, others by imposing taxes, and others by imposing assessments. Other special purpose districts finance their activities and services by imposing a combination of rates and charges, taxes, and special assessments. Some special purpose districts finance their capital facilities by borrowing money and issuing bonds payable from rates and charges, taxes, or from special assessments.[i]

Most types of special purpose districts have been authorized to

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h A discussion of home rule is found in Chapter 66.

i A general discussion of local government finances is found in Chapter 64.

condemn property for their purposes.[j]

Most types of special purpose districts may only exercise their powers within their boundaries and are not granted express extraterritorial powers. However, a few special purpose districts, such as water districts, are expressly authorized to provide services and facilities beyond their boundaries. Additionally, all special purpose districts (along with counties and cities) may enter into contracts and agreements under the Interlocal Cooperation Act, which could involve extraterritorial actions on behalf of at least one party to the contract or agreement.[k]

E. Geographic Size

Most special purpose districts are relatively small or medium-sized geographically. However, some special purpose districts are relatively large geographically and are regional governments.

Statutes authorizing most types of special purpose districts do not include requirements on the area to be included in that type of special purpose district. The petition proposing the creation of the special purpose district describes its proposed boundaries. Most types of special purpose districts may expand their boundaries by annexing territory or consolidating with other of the same type of special purpose districts. A few special purpose districts (such as fire protection districts, county rural library districts, and intercounty rural library districts) may initially only be created in unincorporated areas outside of cities.[l] The flexibility for the petition proposing the creation of a special purpose district to describe any boundaries potentially allows a wide range in the geographic area for the same type of special purpose district. However, most special purpose districts are smaller or medium in size and occupy a community or neighborhood area. A few types of special districts are required to be large geographically and are intended to be regional in nature.

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j A discussion of eminent domain is found in Chapter 65.

k A discussion of the Interlocal Cooperation Act is found in Chapter 73.

l Although these special purpose districts may not include incorporated areas when they are formed, each of these three types of special purpose districts may annex a city with a population of 300,000 or less at the time of the annexation. The prohibition on including incorporated areas was established because of limitations on the cumulative rate of regular property taxes that may be imposed, the Uniformity Clause, and lack of available capacity for these special purpose districts to impose taxes if they included incorporated areas.

A small or medium-sized special purpose district is created to provide services or facilities in a community or neighborhood area. Cemetery districts, water districts, and irrigation districts are examples of special purpose districts that tend to be of medium or small geographical size.

However, some of the same type of a special purpose district have a broad range in geographic size. Most fire protection districts are smaller, community or neighborhood in size, but a few are rather large geographically. For example, Garfield Fire Protection District No. 1 occupies almost all of the unincorporated area of Garfield County, Asotin Fire Protection District No. 1 occupies almost all of the unincorporated area of Asotin County, and Yakima Fire Protection District No. 5 occupies more than 700 square miles of Yakima County surrounding the cities of Sunnyside, Harrah, Zillah, Wapato, and Mabton. Port districts may also have a wide range in geographic size. A port district may encompass all or part of a single county.[26] Major port districts are countywide, including the Port of Seattle, the Port of Tacoma, and the Port of Bellingham. However, many port districts are very small, including thirteen small port districts occupying most of Kitsap County and ten port districts occupying most of Grant County.

A few types of special purpose districts are very large geographically and are created to provide service or facilities on a regional basis. Public utility districts (PUD's), like port districts, are either countywide or less than countywide.[m] [27] However, unlike port districts, all but two of our PUD's are countywide and the other two PUD's together occupy an entire county.[n] Statutes require each rural county library district to occupy all of the unincorporated area of a county and allow the district to annex any city within that county with a population of 300,000 or less at the time of the annexation.[28] Similarly, statutes require each intercounty rural library district to occupy all of the unincorporated area of two or

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m Legislation was enacted in 1983 allowing a PUD to annex territory located in another county if the territory is contiguous with the PUD and the PUD supplies electricity to the territory. (Section 1, Chapter 101, Laws of 1983, codified as RCW 54.04.035.) This legislation was enacted so that Snohomish County PUD could annex Camano Island, which is located in Skagit County. Snohomish County PUD followed the special annexation procedures to annex Camano Island.

n Two PUD's occupy all of Mason County.

more counties and allow the district to annex any city in those counties with populations of 300,000 or less at the time of the annexation.[29]

F. Boundary Changes

Most types of special purpose districts are allowed to alter their boundaries. Each type of special purpose district has its own statutes providing for these boundary changes, many of which are similar to the procedures allowed for city boundary changes. In addition, some unique special purpose district boundary change procedures exist.

Most types of special purpose districts may annex territory, but only if the territory is not included within the boundaries of another of the same type of special purpose district. For example, a fire protection district may annex territory using either a voter approval method or direct property owner petition method as long as the territory is not included within another fire protection district.[30]

Statutes for many types of special purpose districts allow two or more of the same type of special purpose district to join together into a single district. For example, one or more fire protection districts may merge into another fire protection district.[31] The fire protection district into which the other district or districts have merged increases its boundaries to include all of the territory of the other districts.

A few statutes allow two or more different types of special purpose districts to merge. Ambiguous statutes allow a drainage improvement district to merge with an irrigation district.[32] Legislation enacted in 1977 allows a sewer district to merge with an irrigation district following this same ambiguous procedure.[33] Other statutes allow one or more water districts to join together with one or more sewer districts and form a water district occupying all of the territory of the former districts.[o] On its face, this appears to allow

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o As discussed in Chapter 18, statutes for water districts and for sewer districts were merged into a single Title of law. This resulted in identical provisions of law for water districts and for sewer districts, even though they technically are different units of government. These statutes at times use the term “water-sewer district” or “district” to apply to both water districts and sewer districts. These districts may consolidate under Chapter 57.32 RCW. These districts may merge under Chapter 57.36 RCW.

two entirely different types of special purpose districts to join together. However, as discussed in Chapter 18, sewer district and water district statutes have been merged into a single set of statutes. This essentially makes sewer districts and water districts identical entities.

Procedures exist for territory to be removed or withdrawn from a number of special purpose districts, including water districts, sewer districts, and fire protection districts.[p]

Absent special circumstances, territory is automatically withdrawn from a library district or fire protection district if the territory is annexed by a city or is included within the boundaries of a newly incorporated city.[34] The necessity for such an automatic removal of territory arises from various restrictions on the cumulative rates of regular property taxes and the uniformity of taxes provision of Article VII, Section 1.[q] However, a number of special circumstances exist when the automatic withdrawal does not occur and the territory remains part of the annexing fire protection district or library district. The territory is not withdrawn if the fire protection district or library district has already annexed the annexing city. A newly incorporated city may opt to remain part of a fire protection district or library district by being annexed by the library district or fire protection district during the interim transition period.[35] Finally, territory located in a fire protection district is removed from that district, and automatically included in another fire protection district, if the city that annexes the area was already included within the other fire protection district.[36]

Procedures exist to dissolve or disincorporate special purpose districts. First, a general procedure exists for dissolving most types of special purpose districts.[37] Under this procedure, the special purpose district governing body petitions the superior court to dissolve the district, the court holds a hearing on the dissolution, and the court dissolves the district if it finds that "the best interests

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p Territory may be removed from a water district or a sewer district under Chapter 57.28 RCW. Territory may be removed from a fire protection district under RCW 52.08.011 following the same procedure for territory to be removed from a water-sewer district. Such actions are subject to potential review and approval, modification and approval, or disapproval by a boundary review board if one exists in the county in which the territory is located.

q A discussion of taxes is found under Chapter 64.

of all persons concerned will be served" by the dissolution. Second, another general procedure exists for the county legislative authority to dissolve most types of special purpose districts if the county legislative authority determines the special purpose district is inactive.[38] Separate procedures exist for dissolving many different types of special purpose districts, including port districts, school districts, fire protection districts, irrigation districts, and water districts.[39]

Procedures exist for a city to "assume jurisdiction over" all or a part of a water district or a sewer district when a city incorporates or a city annexes territory, which could lead to a dissolution of the district.[40] Separate procedures exist for a city to acquire ownership of a fire protection district's assets and under certain circumstances for the city to

> "assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the entire district."[41]

Legislation enacted in 1977 allowed a county to assume the "rights, powers, functions, and obligations" of a metropolitan municipal corporation (metro).[42] King County used this procedure to assume the Metropolitan Municipal Corporation of Seattle (Seattle Metro) in 1992.

G. Relationships with Other Governments

Two general types of relationships exist between special purpose districts and other governments. The first type of relationship is one of being subject to direct control of another government. The second type of relationship is being subject to indirect control in the form of general regulations applicable to private entities as well as special purpose districts.

1. Direct control

All local governments, including special purpose districts, are subject to direct control by the State. This direct control is referred to as being subject to the plenary, or total, power of the State. Direct controls arise from general legislation enacted by the Legislature authorizing the type of special purpose district to be

formed and detailing their powers and form of government.

Some types of special purpose districts are also subject to direct control by another unit of government. These special purpose districts would be classified as subdivisions, or partial subdivisions, of the other unit of government. This control arises primarily from the relationship between the governing body of the subdivision or partial subdivision and the governing body of the other unit of government. Frequently, officials of a parent local government serve *ex officio* as members of the governing body of a subdivision of the parent local government. For example, an emergency medical service district is a subdivision of the county that creates the district and members of the county legislative authority serve *ex officio* as members of the governing body of the emergency medical service district.[43] This status clearly allows the parent government to control the subdivision. Frequently, officials of a parent local government appoint persons who serve as the governing body of a partial subdivision of the parent local government. For example, a public facilities district is a partial subdivision of the county or city that creates the district and the county or city governing body appoints people to serve as members of the public facility district governing body.[44] This status allows for less direct, but substantial control by the parent local government.

Special purpose districts that are federations of other local governments are also subject to direct control by the parent local governments creating the federation and controlling its governing body. This control is a shared control also arising from the composition of the federation's governing body. Officials of the parent local governments either appoint persons to serve on the governing body of the federation or some of the members of the parent local governments' governing bodies serve *ex officio* as members of the governing body of the federation. For example, the board of trustees of an intercounty rural library district is composed of persons appointed by the county legislative authorities of the counties included in the library district.[45]

Unique relations also exist between counties and water districts or sewer districts. As discussed in Chapter 18, counties make certain findings when a water district or sewer district is proposed to be created and may deny the creation of the district.[46] In addition, the

county legislative authority must approve a general comprehensive plan of water or sewer facilities for a water district or sewer district before the district may provide water or sewer facilities.[47]

2. Indirect control

Every special purpose district is subject to indirect control by the general purpose governments (counties and cities) within whose boundaries the special purpose district is located.

The county or city exercises this indirect regulatory control by adopting and enforcing building codes, zoning ordinances, and similar types of regulations. The Supreme Court held in *Olympic View v. Snohomish County* that a water district is subject to county zoning controls, although the zoning controls may not include "impenetrable barriers against the projects" of the water district.[48] This holding probably applies to other special purpose districts.

County treasurers serve, *ex offico*, as the treasurers for many special purpose districts, and as such, exercise very limited and indirect control over these special purpose districts. For example, county treasurers provide financial services for fire protection districts.[49]

Constitutional Provisions

Not many constitutional provisions apply to special purpose districts.[r] This lack of constitutional provisions naming specific special purpose districts probably arises from:

- The fact that only a few different types of special purpose districts were allowed before statehood; and
- The apparent scheme of local government in the Constitution involved the use of townships rather than more limited types of special purpose districts.

A few constitutional provisions apply to local governments generally, including at least all special purpose districts with regular

r A discussion of constitutional provisions applying to local governments is found in Chapter 67.

franchise rights. These constitutional provisions are drafted using a list of different types of local governments that ends with a general provision referring to all local governments. For example, Article VIII, Section 6 establishes indebtedness limitations for "counties, cities, towns, school districts, or other municipal corporations".

A few constitutional provisions apply to only a very limited number of different types of special purpose districts. This type of constitutional provision names a specific special purpose district or districts subject to its terms. For example, Article VIII, Section 8 (Amendment 45 approved by state voters in 1966), allows port districts to lend their credit for industrial development and promotional hosting purposes.

NOTES:

1. This figure is found at page 6, "Serving On Your Local School Board: A Guide to Effective Leadership", a publication prepared by the Washington State School Directors Association, which may be found on the home page of the Association. The Association's home page address is http://www.wssda.org .

2 The financing of drainage improvements was first authorized at Statutes of the Territory of Washington, 1857-1858, 5th Session, Page 30. Changes were made at Statutes of the Territory of Washington, 1863, 10th Session, Page 485 and then at Statutes of the Territory of Washington, 1864-1865, 12th Session, Pages 29-30. Major changes were made at Statutes of the Territory of Washington, 1875, 5th Biennial Session, Pages 92-96, by allowing drains to be constructed and for the appointment of three viewers in each district. This law was amended at Statutes of the Territory of Washington, 1883, 9th Biennial Session, Pages 77-82. Drainage districts were authorized as separate special purpose districts by Chapter CXV, Laws of 1895.

3. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Page 90.

4. Chapter CXVII, Page 304, Laws of 1895.

5. Some irrigation districts use the term "reclamation" as part of their names, but they are not reclamation districts operating under Chapter 89.30 RCW.

6. Sanitary districts were authorized in 1933 by Chapter 155, Laws of 1933. These laws were repealed in 1971 by Chapter 293, Laws of 1971 ex sess.

7. RCW 54.08.010.

8. RCW 52.02.070.
9. RCW 86.15.020.
10. RCW 36.57A.030.
11. RCW 43.52.360.
12. RCW 35.82.030.
13. Regular voting rights were provided for irrigation districts at Section 3, Page 671-706, Laws of 1889-1890, when irrigation districts were first authorized. These voting rights were altered to property owners at Section 2, Chapter 165, Laws of 1913.
14. Regular voting rights were provided for diking districts at Section 5, Chapter CXVII, Laws of 1895, when the more modern diking district laws were enacted. These voting rights were altered to property owners at Section 1, Chapter 84, Laws of 1915.
15. Regular voting rights were provided for drainage districts at Section 5, Chapter CXV, Laws of 1895, when the more modern drainage district laws were enacted. These voting rights were altered to property owners at Section 1, Chapter 183, Laws of 1941.
16. Section 19, Chapter 176, Laws of 1913; Chapter 130, Laws of 1917; and Sections 2 & 87, Chapter 396, Laws of 1985.
17. Section 122, Chapter 72, Laws of 1937.
18. *Foster v. Sunnyside Valley Irrigation District*, 102 Wn.2d 395, 409-411 (1984).
19. RCW 53.12.172, 52.14.060, 28A.343.340, & 87.03.080.
20. RCW 27.12.190 & 36.57A.050.
21. RCW 36.60.010 & 36.68.400.
22. City transportation authorities were authorized to be created in legislation in 2002. (Chapter 35.95A RCW.) Fire protection service authorities were authorized to be created in legislation enacted in 2004. (Chapter 52.26 RCW.)
23. RCW 27.12.190 provides that library district trustees receive no compensation. RCW 57.12.010 provides for compensation for water district commissioners.
24. RCW 54.12.080.
25. RCW 53.12.260.
26. RCW 53.04.020 & 53.04.023.
27. RCW 54.08.010.
28. The requirement that a rural county library district occupy all of the unincorporated area of a county is found in RCW 27.12.010(5). The

authority to annex a city is found in RCW 27.12.360-27.12.395.

29. The requirement that an intercounty rural library district occupy all of the unincorporated area of a county is found in RCW 27.12.010(6). The authority to annex a city is found in RCW 27.12.360-27.12.395.
30. Chapter 52.04 RCW.
31. Chapter 52.06 RCW.
32. These statutes are found in RCW 87.03.720-87.03.745 & RCW 85.08.850-85.08.890.
33. Chapter 208, Laws of 1977 ex sess., with the basic provision now codified in RCW 57.02.080.
34. The automatic removal of fire protection district territory occurs under RCW 35.02.180, 52.08.021, and 52.08.025. The automatic removal of library district territory occurs under RCW 35.02.180 & 27.12.010(5)-(8).
35. RCW 35.02.130.
36. RCW 52.04.091.
37. Chapter 53.48 RCW.
38. Chapter 36.96 RCW. Being "inactive" basically means that the special purpose district has not exercised any of its functions for which it was formed for at least five consecutive years or that no member of the special district governing body has been elected or appointed for at least seven consecutive years.
39. Inactive port districts may be dissolved under Chapter 53.47 RCW. Depopulated school districts may be dissolved under RCW 28A.315.225. Fire protection districts may be dissolved under RCW 52.10.010. Irrigation districts may be dissolved under Chapters 87.52, 87.53, and 87.56 RCW. Water districts and sewer districts may be dissolved under RCW 57.08.100.
40. Chapter 35.13A RCW.
41. RCW 35.02.190-35.02.205.
42. Chapter 36.56 RCW.
43. RCW 36.32.480.
44. RCW 36.100.010 & 36.100.020.
45. RCW 27.12.190.
46. RCW 57.02.040.
47. RCW 57.16.010.
48. *Olympic View v. Snohomish County*, 112 Wn.2d 445, 449 (1989).
49. RCW 52.16.010.

PART III-A

TRADITIONAL SPECIAL PURPOSE DISTRICTS

Introduction

Part III-A of this reference book on local government in Washington State discusses traditional special purpose districts.

Most special purpose districts in this State are traditional special purpose districts. Traditional special purpose districts are usually characterized by:

- Having governing bodies composed of officials who are elected directly to office;
- Having normal franchise rights;
- Being independent units of government; and
- Being either small or medium-sized on a geographical basis.

However, some traditional special purpose districts, such as irrigation districts, are traditional special purpose districts with restricted franchise rights limited to property owners. Other traditional special purpose districts (e.g., all public utility districts) are in effect regional governments with relatively large geographic boundaries and are superimposed over other units of local government to provide certain services or facilities in this larger area in lieu of smaller units of local government providing these services and facilities.

Statutory details about traditional special purpose districts are quite varied, although many similarities exist.

Part III-A includes Chapters 11 through 23 describing traditional special purpose districts, including fire protection districts, port districts, public hospital districts, public utility districts (PUDs), school districts, water districts, sewer districts, and cemetery districts.

Chapter 11

Fire Protection Districts

(Regional Fire Protection Service Authorities)

Fire protection districts provide fire protection and emergency medical services primarily in unincorporated areas outside of cities. However, a fire protection district may annex any city with a population of less than 300,000 (any city other than Seattle) and provide these services within the city.

Legislation enacted in 1933 authorized the creation of fire protection districts.[1] Initially, these districts were only allowed to incorporate in the unincorporated area of the most populous counties, class A and first class counties. A major revision of fire protection district laws was enacted in 1939, allowing fire protection districts to incorporate in the unincorporated area of any county.[2]

The Municipal Research and Service Center (MRSC) reports that 400 fire protection districts existed in the state.[3] Fire protection districts are the most numerous type of special purpose district in the State. Most fire protection districts are small or medium in geographic size and serve a neighborhood or community area. However, some fire protection districts are much larger geographically and serve quite large areas. A number of fire protection districts have merged in recent years. This includes the 1995 merger of three fire protection districts (South Hill, Parkland, and Spanaway) in Pierce County creating what is known as the Central Pierce Fire and Rescue District.

Fire protection districts would be classified as independent special

purpose districts.

Creation

The process to create a fire protection district is initiated by the filing of a petition proposing creation of the district.[4] The petition is filed with the county auditor of the county in which all or the largest portion of the proposed district is located. At least 10 percent of the voters residing in the area proposed to be included in the district who voted at the last municipal (odd-year) general election must sign the petition.

The county legislative authority holds a public hearing on the creation of the proposed fire protection district, unless a boundary review board exists in the county and the boundary review board's jurisdiction has been invoked.[a] However, the county legislative authority assumes jurisdiction over the proposed creation of a fire protection district if the boundary review board fails to take timely action on the proposal. The county legislative authority may deny the petition, approve the petition as is, or modify the area proposed to be included and approve the modified boundaries. However, lands may be added only if a petition proposing the additional area has been signed by all persons having a record interest in these lands. Land may only be included if the county legislative authority finds it will benefit from inclusion.[5]

A boundary review board considers the proposed creation of a fire protection district under its own statutes and may approve the creation of the district as proposed, modify and approve the creation of the district, or deny the creation of the district based upon a number of factors.[6]

Newly created fire protection districts may not include any area located within a city. If such an area were included within the proposed boundaries of a fire protection district, the county legislative authority or boundary review board would remove this area before considering the creation of the district.[7]

A ballot proposition authoring the creation of a proposed fire

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a A more detailed discussion of boundary review boards is found in Chapter 72.

protection district is submitted to voters residing in the proposed district for their approval or rejection, if the county legislative authority or boundary review board approves creation of the district. The district is created if the ballot proposition is approved by at least three-fifths of the voters voting on the proposition.[8] This super-majority voting requirement is somewhat unique. Most special purpose districts are created if the ballot proposition authorizing the district is approved by a simple majority vote.

Boundary Changes

The boundaries of a fire protection district may be altered by annexing territory, merging with another fire protection district, having territory withdrawn or removed, or dissolving the district. Fire protection district boundary changes are subject to potential review and approval, modification and approval, or rejection by a boundary review board, if the board's jurisdiction has been invoked.[9]

A. Annexations

Basic fire protection district annexation statutes allow a fire protection district to annex unincorporated territory that is contiguous to the district and not located in another fire protection district using either two separate annexation procedures. Newer legislation establishes a procedure for a fire protection district to annex an adjacently located city with a population of 300,000 or less at the time of the annexation (any city other than Seattle).

Fire protection districts may annex adjacently located unincorporated areas that are not included in another fire protection district using a petition/election procedure.[10] A petition proposing the annexation must be signed by at least 15 percent of the registered voters residing in the area proposed to be annexed, and is filed with the board of fire commissioners. Territory may only be annexed if the annexation is approved by the county legislative authority or boundary review board in the same manner as the incorporation of a fire protection district. The county legislative authority or boundary review board determines the amount of the fire protection district's obligations, if any, to be assumed by the area proposed to be annexed. These obligations are paid to the

district in the form of yearly benefit charges imposed on the annexed area, not to exceed a rate of 50¢ per $1,000 of assessed valuation. The annexation occurs without a ballot proposition being submitted to voters for their approval or rejection if the annexation petition was signed by at least 60 percent of the registered voters residing in the area proposed to be annexed. In all other circumstances, a ballot proposition authorizing the annexation is submitted to voters residing in the area proposed to be annexed. No provision specifies the level of vote necessary to approve the annexation, so presumably an annexation is authorized if approved by a simple majority vote of voters voting on the proposition.

Fire protection districts may annex adjacently located unincorporated areas that are not included in another fire protection district using a direct property owner petition procedure.[11] This procedure is initiated by the filing of a petition with the board of fire commissioners calling for the annexation. The petition must be signed by the owners of at least 60 percent of the area proposed to be annexed. An annexation under this method is also subject to being approved by the county legislative authority or county boundary review board in the same manner as the incorporation of a fire protection district. The newly annexed area assumes the amount of district's financial obligation as specified in the petition that is determined in the same manner as under the petition/election method of annexation.

Legislation was enacted in 1979 allowing a fire protection district to annex all of any but the three most populous cities in the state, and beginning in 2010, any city with a population of less than 300,000 (any city other than Seattle).[12] In 2009, a narrow exception was made to the requirement that only an entire city could be annexed by a fire protection district. If a city has territory located in two counties, and the area located in one of the counties includes at least 80 percent of the city's population and has a population of between 5,000 and 10,000, a fire protection district may annex that portion of the city. [13]

The legislation authorizing a fire protection district to annex a city was a radical change in fire protection district law. The steps required to authorize the annexation are as follows:

- The city governing body adopts an ordinance

proposing the annexation;

- The board of fire commissioners approves the annexation; and
- Separate ballot propositions authorizing the annexation are approved by the voters of both the city and the fire protection district.

After the annexation, the annual property tax levy of the city is reduced to accommodate the regular property tax levies imposed by the fire protection district.[b] Whenever a city that has been so annexed by a fire protection district annexes unincorporated territory, the newly annexed territory is automatically annexed to the fire protection district. The newly annexed territory would also be removed from another fire protection district, if the territory was included in another fire protection district.

B. Withdrawals of Territory

Territory may be withdrawn from a fire protection district under a number of different procedures.

First, territory may be withdrawn following the same procedure by which territory is withdrawn from a water district or sewer district.[14]

Second, territory is automatically removed from a fire protection district if the territory is annexed by a city that was not already included in the fire protection district or if the territory is included in a newly incorporated city.[15] However, a newly incorporated city may remain within a fire protection district if procedures are followed for the fire protection district to annex the new city.

Third, an entire city that was annexed by a fire protection district may be removed from the fire protection district, if voters of the city approve a ballot proposition authorizing the withdrawal.[16] The

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b The maximum city regular property rate becomes an amount equal to $3.60 per $1,000 of assessed valuation, minus the regular levy rate imposed by the fire protection district. In effect, this could result in an increase in property taxes imposed in the city since the maximum property tax rate allowed for most cities is $3.375 per $1,000 of assessed valuation. However, a city that had a full time fire department prior to the creation of the Law Enforcement Officer and Fire Fighters' (LEOFF) retirement system in 1967 may impose an additional 22.5¢ per $1,000 of assessed valuation of regular property taxes, thus increasing the maximum regular property tax levy rate to $3.60 per $1,000 of assessed valuation for the city. ($3.375 + 22.5¢ = $3.60)

ballot proposition is presented to city voters by action of the city governing body.

Fourth, special provisions exist for an area to be withdrawn from and re-annexed by a fire protection district to avoid a reduction of the fire protection district's regular property tax levies.[17] Such a special withdrawal occurs if requested by the board of fire commissioners and approved by the city council, if the area is located within a city, or by the county legislative authority, if the area is not located in a city. A re-annexation of such an area is accomplished in the same manner.

C. Mergers

All or part of one or more fire protection districts may merge into an adjacently located fire protection district.[18] A "merging" district is a fire protection district that is proposed to merge into another district or is a district that includes the territory that is proposed to be withdrawn and merged into another district. The "merger" district is the fire protection district into which the merging district or districts are proposed to merge or the district into which the territory is proposed to be merged.

A merger is initiated by either: (1) A petition proposing the merger that has been signed by voters residing in the merging district equal in number to at least 10 percent of the number of voters in that district voting at the last general municipal (odd-year) election; or (2) resolution of the board of fire commissioners of the merging district. The petition must state proposed conditions of the merger. The merger district notifies the merging district about its decision on the proposed merger, which includes:

- Rejecting the proposal;
- Approving the proposal; or
- Modifying the terms and conditions of the proposal and approving the proposal as modified.

A special election is held to authorize the merger, if the merger district approves the merger as presented or as modified. However, the merger occurs without an election if the proposal to merge was initiated by petition signed by at least three-fifths of

voters of the merging district.

After a merger, the board of fire commissioners of the merger fire protection district is expanded to include all the commissioners of the merging districts and the merger district. Gradually, the number of commissioners is reduced to either five or three as terms expire and new commissioners are elected.

D. Dissolutions

A fire protection district may be dissolved or disincorporated under several procedures. First, the board of fire commissioners may submit a ballot proposition to district voters providing for the dissolution of the district.[19] Second, the board of fire commissioners of the district may petition the superior court to dissolve the district and the district may be dissolved if the court finds that the dissolution will serve the "best interests of all persons concerned".[20] Third, the county legislative authority may dissolve an inactive fire protection district.[21]

E. Regional Fire Protection Service Authorities

Legislation was enacted in 2004 allowing regional fire protection service authorities to be formed.[22]

This legislation is somewhat vague.[c] Although a regional fire protection service authority has the attributes of being a separate municipal corporation, in effect this legislation appears to provide an alternative process for merging two or more fire protection districts occurring over a number of years.

If approved by voters, a regional fire protection district service authority is created to finance all of the services and facilities of a fire protection district within a regional area composed of all the "participating fire protection jurisdictions." The participating fire protection jurisdictions remain in existence and continue providing these services and facilities. A "participating fire protection jurisdiction" is defined as a fire protection district, city, port district, municipal airport, or Indian tribe.[23] Presumably, after a regional fire

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c The Legislature should consider enacting legislation clarifying the nature of regional fire protection service authorities.

protection district service authority is created, the participating fire protection jurisdictions no longer finance these services and facilities.

Any two or more adjacent fire protection jurisdictions may convene a regional fire protection service authority planning committee composed of three elected officials appointed by each participating fire protection authority.[24] The planning committee prepares a regional fire protection authority plan for the region and submits a ballot proposition to voters of the region authorizing both the creation of a fire protection service authority and the imposition of taxes and benefit charges by the new authority. The plan also details how the board of the new fire protection service authority is composed.[25] The only requirement is that each member of this board must be an elected official of the participating fire protection jurisdictions, presumably serving in *ex officio* capacities, or separately elected commissioners of the regional fire protection service authority. The separately elected commissioners may be elected on an at large basis or use commissioner districts with "approximately equal" populations. If authorized, commissioner districts are used for two purposes:

- Only a registered voter residing in the commissioner district may run for or hold office as a commissioner of that district; and
- Only registered voters residing in the commissioner district may vote at a primary, if one is held, to select no more than two candidates for that commissioner position, whose names will appear on the general election ballot.

Voters of the entire fire protection district vote at general elections to elect the commissioner from each commissioner district. Commissioners are elected to staggered six year terms of office.

Although the participating fire protection authorities remain in existence and continue providing fire protection district services and facilities once an authority is created, regional fire protection service authority are granted all of the powers of fire protection districts and could also provide these services and facilities.

Provisions are made for a fire protection district included within a regional fire protection service authority to dissolve by a simple majority vote of the voters of that fire protection district.[26] All of the assets and liabilities of a dissolving fire protection district are transferred to the newly created regional fire protection service authority.

The MRSC reports that seven regional fire protection service authorities have been created.[27] The first regional fire protection authority was authorized by voters in Auburn, Algona, and Pacific at the 2006 general election.

Governing Body and Elections

The governing body of a fire protection district is normally composed of three fire commissioners who are directly elected to six-year staggered terms of office.[28] However, the board of fire commissioners consists of five members if the fire protection district has full-time, fully-paid personnel, or in other districts if district voters have approved a ballot proposition expanding the number of commissioners to five.[29] In addition, voters of a fire protection district may approve a ballot proposition expanding the size of a board of fire commissioners from three to five or seven commissioners or from five to seven commissioners.

Fire commissioners are elected as nonpartisan officials in elections held in odd-numbered years.[30] Normal franchise rights exist in fire protection districts and the voters of a fire protection district consist of all registered voters residing in the district.[31] County auditors conduct fire protection district elections.[32]

The initial fire commissioners of a new district are elected to staggered terms of office at the same election when the ballot proposition is submitted to voters for their approval or rejection of the creation of the district.[33] No primary is held. Election of these new commissioners is null and void if voters fail to authorize creation of the district.

Fire commissioners are elected on an at-large basis, unless voters approve a ballot proposition providing for the use of commissioner

districts.[34] When authorized, commissioner districts are used for two purposes:

- Only a registered voter residing in the commissioner district may run for or hold office as a commissioner of that district; and
- Only registered voters residing in the commissioner district may vote at a primary, if one is held, to select no more than two candidates for that commissioner position whose names will appear on the general election ballot.

Voters of the entire fire protection district vote at general elections to elect the commissioner from each commissioner district.

Fire commissioners receive compensation at a rate of $104 per day or portion of a day for attending board meetings and performance of other work for the district, not to exceed $9,984 per year.[35] Beginning July 1, 2008, these two dollar amounts were adjusted for inflation using the consumer price index.

Powers

Fire protection districts are authorized to protect life and property and to provide fire prevention services, fire suppression services, and emergency medical services.[36] They are authorized to acquire equipment and facilities necessary for these purposes, inspect property and buildings for compliance with applicable fire codes, and determine the origins of fires.[37] Fire protection districts may also issue and enforce burning permits and provide hazardous materials response teams.[38]

Legislation was enacted in 2003, allowing a fire protection district to establish and provide health clinic services if it has a common border with Canada and is surrounded by water on at least three sides.[39] The legislation was drafted for Whatcom County Fire Protection District No. 5 that is located on Point Roberts. However, the legislation also seems to apply to the Orcas Island Fire Protection District and San Juan Island Fire Protection District that are located in San Juan County.

Fire protection districts are required to adopt annual or biennial budgets.[40]

Fire protection districts, like virtually all other types of local government, may condemn property to carry out their purposes.[41]

Finances

Fire protection districts receive income from a variety of sources, including: (1) Property taxes; (2) benefit charges; (3) debt proceeds; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of fire protection district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

Property tax levies are the basic source of fire protection district revenues.

Every fire protection district may impose regular property tax levies of up to $1 per $1,000 of assessed value. This taxing authority consists of two separate regular property tax levies, each not to exceed a rate of 50¢ per $1,000 of assessed value.[42] In addition, a fire protection district may impose a third regular property tax levy of up to 50¢ per $1,000 of assessed value if the fire protection district either:

- Has one or more full time, paid employees; or
- Contracts with another fire protection district, or a city, for the services of one or more full time, paid employees.[43]

All three of these regular property tax levies may be imposed without voter approval, but are subject to the 101 percent levy lid. The first 50¢ levy has the highest status of junior taxing district levies, while the second and third 50¢ levies have the second highest status of junior taxing district levies.[44]

Legislation was enacted in 2005, allowing fire protection districts to protect a portion of their regular property tax levies, of up to 25¢ per $1,000 of assessed value, from being prorated under the cumulative rate limitation of $5.90 per $1,000 of assessed value on most regular property tax levies by taxing districts other than the State.[45]

Voters of a fire protection district may approve a ballot proposition authorizing the district to impose additional annual regular property tax levies for emergency medical services of not exceeding 50¢ per $1000 of assessed value for six consecutive years, ten consecutive years, or permanently.[46] Although these are regular property tax levies, the ballot proposition must be approved by a three-fifths vote and a 40 percent voter validation requirement is met. The fire protection district must maintain a separate accounting of expenditures of the revenues obtained from these levies. Any fire protection district permanently authorized to impose these additional levies must provide for a special referendum procedure for voters to withdraw this permanent authorization. A thirty-day period is allowed for signatures to be obtained and the referendum petition must be signed by at least 15 percent of the registered voters of the fire protection district. The emergency medical service property tax levy is a regular property tax subject to the constitutional One Percent Limitation on most regular property taxes, but is not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value.[47] The levies are subject to the 101 percent levy lid.

Fire protection districts may impose voter approved excess property tax levies, including:

- Excess levies for general purposes that may be authorized for a up to four years for general fire protection district purposes;
- Excess levies for up to six years for capital purposes not associated with voter approved general obligation bonds; and
- Multi-year levies to retire general obligation bonds issued for capital purposes.[48]

A ballot proposition authorizing these excess property tax levies must be approved by a three-fifths vote and a 40 percent voter validation requirement is met.

B. Benefit Charges

A fire protection district may also impose benefit charges on property within the district to finance its activities.[49]

Benefit charges may only be imposed for a period of up to six years if voters of the fire protection district approve a ballot proposition authorizing the imposition of these benefit charges by at least a 60 percent majority vote of voters voting on the proposition. However, a subsequent ballot proposition authorizing the district to continue imposing benefit charges for another period of up to six years, need only be approved by a simple majority vote of voters voting on the proposition. A district loses the authority to impose the third 50¢ property tax levy if it imposes benefit charges and the benefit charges may not generate more than one half of the districts total income. This, in effect, allows a fire protection district imposing its first two regular property tax levies and the maximum amount of benefit charges to receive 25 percent more revenue than if it imposed all three property tax levies at the maximum allowed rates.

Only a few fire protection districts impose benefit charges.[50]

C. Debt Proceeds

Fire protection districts may obtain revenue from debt proceeds.

A fire protection district may incur general indebtedness and issue general obligation bonds not exceeding an amount equal to three-eighths of one percent of the value of taxable property in the district without voter approval and a total not exceeding three-fourths of one percent of the value of taxable property in the district if authorized by a three-fifths vote of district voters voting on a ballot proposition and a 40 percent voter validation requirement is met.[51] General obligation bonds have a maximum term of 20 years.

A fire protection district may finance local improvements by issuing local improvement district (LID) bonds payable from special

assessments imposed on land benefiting from the local improvements that is located within a local improvement district.[52] LID bonds are a form of revenue obligations and are not subject to indebtedness limitations. It is presumed that the maximum term of these bonds is 20 years.[d]

Fire protection districts may also issue a variety of short term obligations, including notes and warrants.[53]

A unique limitation exists on the amount of expenses or other financial obligations that a fire protection district may have outstanding, apart from general obligation bonds and LID bonds. These expenses and other financial obligations in any year may not exceed the amount of property taxes levied for that year, revenues derived from all other sources, and cash balances.[54]

D. Other

Fire protection districts may create local improvement districts (LIDs) and impose special assessments on benefited property located in the LID to finance their facilities.[55]

Fire protection districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

History

The history of fire protection district laws has been a search for increased revenues to finance the costs of fire protection. Year after year, the Legislature has enacted legislation expanding the authority of fire protection districts to generate revenues.

Legislation was enacted in 1933, allowing fire protection districts to be created in any class A county or first class county.[56] This only included King, Pierce, and Spokane Counties at that time. A fire protection district could only be created in unincorporated areas

d This presumption arises since a fire protection district may only impose special assessments for 20 years.

outside of cities. The governing body of a fire protection district was a board of fire commissioners composed of three members who were elected to those positions. A fire protection district was authorized to impose assessments of not to exceed 2 mills on the assessed value of all property within its boundaries to pay for the cost of fire protection.[57] Presumably these assessments related to the benefits received by property in the district, although the concept of benefit was not mentioned in the statute and the maximum rate for these assessments was described in terms of property taxes.

King County Fire Protection District No. 1, also know as the Duwamish Fire Protection District, was formed on July 21, 1935, as the first fire protection district in the State.[58]

Prior to the creation of a fire protection district, fire protection often was provided by a non-governmental volunteer fire brigade or by a fire department created by a water district under powers authorized in 1937.[59] It also appears that rudimentary fire protection service was provided by King County with the use of volunteer fire fighters who were supervised by two fire marshals.[e] [60]

Legislation was enacted in 1939, fundamentally altering fire protection districts.[61] This legislation:

- Repealed the 1933 legislation authorizing fire protection districts.
- Authorized fire protection districts to be created in any county.
- Altered fire protection district finances by: (1) Eliminating their authority to impose assessments; (2) authorizing fire protection districts to impose regular property taxes of not exceeding 2 mills without voter approval; and (3) authorizing fire protection districts to create LIDs and impose special assessments within the LIDs to finance the acquisition, maintenance, and operation of fire

e Leo McComb was the county fire marshal for northern King County and Jay Thomas was the county fire marshal for southern King County. It appears that they at least provided this service during the 1930's and 1940's. However, there does not appear to have been any express statutory authorization for the county to provide fire protection service.

protection equipment and apparatus that benefit property within the LID for a period of up to five years.

- Authorized fire protection districts to provide fire services beyond their boundaries. A fire protection district could enter into an agreement with a city to provide these services in the city. A fire protection district could provide these services in another fire protection district without charge. A fire protection district could provide these services in unincorporated areas not included in a fire protection district, if the county paid for the cost of this fire service.

Legislation enacted in 1941 increased the maximum rate of fire protection district property taxes to 4 mills in all counties other than King County, where fire protection districts were still limited to property taxes not exceeding 2 mills, and extending the maximum term of a LID from five to six years.[62] Other legislation was enacted in 1941 requiring state agencies to pay for fire protection provided by fire protection districts.[63]

A number of changes were made to fire protection district laws in 1951. First, legislation was enacted eliminating the authority of fire protection districts to impose nonvoter approved regular property tax levies and granting them the authority to impose assessments on property within their boundaries in proportion to the benefits the property received from the district activities.[64] This legislation was never implemented, as other legislation was soon enacted repealing this earlier law and authorizing all fire protection districts to impose two separate property tax levies each not exceeding 2 mills.[65] This taxing authority applied to all fire protection districts, including those located in King County.

Legislation enacted in 1961 granted fire protection districts that were located in a county where townships were disbanded a third 2 mill property tax levy.[66] This third levy was the old levy imposed by the townships that was repealed. Spokane and Whatcom Counties were the only counties that had organized into townships, so only the fire protection districts in those two counties could impose this third levy upon the disorganization of their townships.

Legislation enacted in 1973 changed property tax nomenclature from mills to dollars per thousand dollars of assessed value and changing the assessed value of property for taxation purposes from 50 percent of its true and fair value to 100 percent of its true and fair value.[f] [67] The three separate 2 mill fire protection district property tax levies each became levies of 50¢ per $1,000 of assessed valuation. Other legislation was enacted in 1973 requiring all local governments to pay for fire protection services provided by fire protection districts.[68]

Fire protection districts were authorized to impose "service charges" on property within their boundaries in legislation enacted in 1974.[69]

Legislation enacted in 1979 allowed fire protection districts to impose voter approved regular property taxes of up to 25¢ per $1,000 of assessed value for six years to finance emergency medical services.[70] Other legislation was also enacted in 1979 allowing fire protection districts to annex a contiguous city with a population of 100,000 or less.[71] This was a dramatic change in law essentially removing the prior prohibition on a fire protection district including any city areas within its boundaries. As mentioned above, this change was accomplished by reducing the city regular property tax levy by the amount of the regular property tax levy imposed by the fire protection district.

Legislation enacted in 1985 authorized any fire protection district with at least one full time, paid employee the authority to levy the third 50¢ per $1,000 of assessed value levy.[72]

Legislation enacted in 1987 protected fire protection district regular property tax levies from being prorated or reduced as a result of the cumulative rate of regular property taxes on any property exceeding a statutory maximum rate.[73]

The laws permitting fire protection districts to impose service charges were altered in 1987 to provide for the imposition of "benefit charges".[74] As mentioned above, only a few fire protection

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f Property in many counties was assessed substantially below this 50 percent figure.

districts have taken advantage of this new authority.

State voters approved Amendment 95 in 2002, amending Article VII, Section 2 expanding the authority of fire protection districts to impose excess levies in a manner similar to school districts. Voters of a fire protection district could approve a ballot proposition authorizing the district to impose excess levies: (1) For up to four years for general fire protection district purposes; or (2) for up to six years to support the construction, modernization, or remodeling of fire facilities.

Legislation enacted in 2002 revised the third 50¢ per $1,000 of assessed value fire protection district regular property tax to allow a district to impose this levy if it contracted with another "municipal corporation" for the services of at least one full-time, paid employee.[75]

Legislation enacted in 2002 slightly expanded the fire protection districts authorized to impose the third levy 50¢ per $1,000 of assessed regular property tax levy and subordinating the levies of any newly created metropolitan park district to all levies imposed by a fire protection district if the prorating of property tax levies were to occur.[76]

Legislation enacted in 2004 allowed regional fire protection service authorities to be formed.[77]

Legislation enacted in 2005 allowed fire protection districts to protect a portion of their regular property tax levies, of up to 25¢ per $1,000 of assessed value, from being prorated under the cumulative rate limitation of $5.90 per $1,000 of assessed value on most regular property tax levies by taxing districts other than the State.[78]

Legislation enacted in 2010 amended the city annexation legislation to allow a fire protection district to annex any city with a population of less than 300,000 (any city other than Seattle).[79]

NOTES:

1. Chapter 60, Laws of 1933, ex. sess. Fire protection district laws are codified in Title 52 RCW.
2. Chapter 34, Laws of 1939.
3. "Washington Special Purpose District Overview," Dec. 2012, Municipal Research and Services Center. http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/ArtDocMisc/spdchart0112.pdf
4. The procedure to create a fire protection district is found in Chapter 52.02 RCW.
5. RCW 52.02.060 & 52.02.070.
6. Chapter 36.93 RCW.
7. RCW 52.08.025.
8. RCW 52.02.110.
9. Chapter 36.93 RCW.
10. RCW 52.04.011.
11. RCW 52.04.021-52.04.051.
12. Chapter 179, Laws of 1997, ex sess., codified in RCW 52.04.061-52.04.131. Legislation increasing the maximum population to less than 300,000 was enacted in Chapter 126, Laws of 2010.
13. Section 1, Chapter 115, Laws of 2009, codified as part of RCW 52.04.061.
14. RCW 52.08.011.
15. RCW 52.08.021 & 52.08.025.
16. RCW 52.04.101.
17. RCW 52.04.056.
18. Chapter 52.06 RCW.
19. RCW 52.10.010.
20. Chapter 53.48 RCW.
21. Chapter 36.96 RCW.
22. Chapter 129, Laws of 2004 which is codified in Chapter 52.26 RCW.
23. RCW 52.26.020.
24. RCW 52.26.030.
25. RCW 52.26.080(2).

26. RCW 52.26.120.
27. "Washington Special Purpose District Overview," Dec. 2012, Municipal Research and Services Center, *id.*
28. RCW 52.14.010 & 52.14.060.
29. RCW 52.14.020 & 52.14.015.
30. RCW 29A.52.231 & 52.14.060.
31. Article VI, Section 1.
32. RCW 29A.04.216.
33. RCW 52.14.060.
34. RCW 52.14.013.
35. RCW 52.14.010.
36. RCW 52.02.020.
37. RCW 52.12.031.
38. RCW 52.14.101-52.14.108 & 52.14.140.
39. Section 1, Chapter 309, Laws of 2003, codified as part of RCW 52.02.020.
40. RCW 52.16.030, as amended in Chapter 40, Laws of 2015.
41. RCW 52.12.041 & 52.12.051.
42. RCW 52.16.130 & 52.16.140.
43. RCW 52.16.160.
44. RCW 84.52.010(2).
45. Chapter 122, Laws of 2005, which in part is codified as RCW 84.52.125.
46. RCW 84.52.069.
47. RCW 84.52.043(2).
48. Article VII, Section 2 (Amendment 90).
49. Chapter 52.18 RCW.
50. Conversation with Pete Spiller, former executive director of the Washington Fire Commissioners Association.
51. RCW 52.16.061 & 52.16.080.
52. Chapter 52.20 RCW.
53. Chapter 39.50 RCW.
54. RCW 52.16.070.
55. Chapter 52.20 RCW.

56. Chapter 60, Laws of 1933.
57. Section 4, Chapter 60, Laws of 1933.
58. Hoyt, Harold "Jiggs," *The Fire Districts of King County*, Frontier Publishing, 1990, at page 1.
59. Hoyt, Introduction at page III, and page 5.
60. Hoyt, at pages 11, 34, 41, 54, 123, & 152.
61. Chapter 34, Laws of 1939.
62. Sections 5 & 6, Chapter 70, Laws of 1941.
63. Section 1, Chapter 139, Laws of 1941.
64. Section 3, Chapter 107, Laws of 1951.
65. Chapter 24, Laws of 1951, 2nd ex. sess.
66. Section 9, Chapter 53, Laws of 1961.
67. Chapter 195, Laws of 1973, 1st ex. sess.
68. Section 1, Chapter 64, 1973, 1st ex. sess.
69. Chapter 126, Laws of 1974, ex. sess.
70. Chapter 200, Laws of 1979, ex. sess.
71. Chapter 179, Laws of 1979, ex. sess.
72. Section 112, Chapter 167, Laws of 1985.
73. Chapter 255, Laws of 1987.
74. Chapter 325, Laws of 1987.
75. Section 1, Chapter 84, Laws of 2002, which amended RCW 52.04.160.
76. Section 7, Chapters 88, Laws of 2002.
77. Chapter 129, Laws of 2004, which is codified in Chapter 52.26 RCW.
78. Section 1, Chapter 122, Laws of 2005, which in part is codified as RCW 84.52.125.

78. Section 2, Chapter 126, Laws of 2010, amending RCW 52.04.061.

Chapter 12

Irrigation Districts

**(Board of Joint Control and
Irrigation and Rehabilitation Districts)**

Irrigation districts primarily provide irrigation facilities and services, but are also authorized to provide a wide variety of other types of facilities and services.

They are one of the oldest types of special purpose districts in Washington, being authorized to be formed by the first State Legislature in 1890.[1] The Municipal Research and Services Center (MRSC) reported that 95 irrigation districts exist in Washington State.[2] Most irrigation districts are located in eastern Washington. Irrigation districts tend to be small or medium sized, geographically.

Restricted or limited franchise rights exist in irrigation districts and only property owners are allowed to vote at irrigation district elections.[3]

Irrigation districts would be classified as independent special purpose districts with governing bodies composed of officials who are directly elected to office.

The Legislature should review and potentially amend irrigation district statutes. Many of these statutes are old and include archaic provisions. Particular attention should be paid to the “last faithful acre” doctrine discussed below.

Nature

The State Supreme Court has had difficulty analyzing irrigation district laws and the nature of irrigation districts. At times, the Court has classified irrigation districts as municipal corporations. However, at other times, the Court has classified irrigation districts as quasi-municipal corporations. This distinction is important when analyzing constitutional provisions.

The Supreme Court has classified irrigation districts as quasi-municipal corporations, and not municipal corporations, in cases concerning the following subject matters:

- Constitutional indebtedness limitations.[4] As a result, irrigation districts may incur general indebtedness without limitation with all land in the irrigation district being subjected to assessments to redeem this indebtedness.
- The common law prohibition against two of the same type of municipal corporations occupying the common territory.[5] As a result, the same land may be included in two or more irrigation districts.
- The constitutional exemption of the property of municipal corporations from being subject to property taxes.[a] [6] As a result, irrigation district property is subject to property taxes. However, RCW 87.03.260 exempts irrigation district lands from "general state and county taxes," but not property taxes imposed by other government.
- A statute providing that municipal corporations were subject to garnishment only after judgement.[7] As a result, irrigation district property may be subject to garnishment prior to judgement.

However, the Supreme Court has classified irrigation districts as municipal corporations, and not quasi-municipal corporations, in cases concerning the following subject matters:

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a Ironically, legislation was enacted in 1939 providing relief to "taxing districts" by readjusting their debts that expressly included irrigation districts as a form of "taxing district". (Chapter 143, Laws of 1935, codified as Chapter 39.64 RCW.)

- Liability for failing to post a bond for persons providing or furnishing labor or supplies.[8] As a result, persons or businesses entering into contracts with an irrigation district must post a bond.
- The ability to be sued.[9] As a result, irrigation districts may be sued.
- The constitutional provision precluding the Legislature from enacting special legislation granting "corporations" powers or privileges.[10] As a result, grants of power or privilege to irrigation districts may only be made in general legislation.
- The exemption of municipal corporations from the constitutional prohibition against the enactment of laws granting special privileges and immunities.[11] As a result, irrigation districts may be granted special privileges and immunities not provided to private corporations.
- The obligation of conforming to contractual provisions.[12]

The distinction between a government being a municipal corporation, or not being a municipal corporation is very important. Many provisions of the State Constitution apply to all municipal corporations and some common law concepts apply to municipal corporations but do not apply to entities that are not classified as municipal corporations. As discussed below, this difficulty in classifying irrigation districts has arisen in the later decades of the 20th Century in lawsuits questioning the constitutionality of somewhat archaic irrigation statutes.

Creation

The process to create an irrigation district is initiated by the filing of a petition proposing the creation of the district with the county legislative authority of the county in which the district or the greatest portion of the lands proposed to be included in the district is located. The petition must be signed by either 50 or a majority of the owners of land within the proposed district that is susceptible to being irrigated.[13]

A bond in double the amount of the probable cost of organizing the district, as approved by the county legislative authority, must accompany the organization petition.[14] Notice of the meeting when the county legislative authority considers the petition, is published in a newspaper of general circulation in the county in which the proposed district is located. Notice is also published in a newspaper published at Olympia and a copy of the notice along with a map of the proposed district is served on the director of the Department of Ecology. The director investigates the sufficiency of the source of water supply for the district and reports the findings to the county legislative authority. The county legislative authority considers the petition and the report by the director at a hearing and establishes the boundaries of the proposed district. Lands may not be included that "in the judgement of" the county legislative authority will not be benefited from the proposed district.

The county legislative authority establishes convenient election precincts and polling places and conducts the election to determine if the irrigation district shall be organized and to elect the initial irrigation district directors.[15] Restricted irrigation franchise rights apply to voters voting at incorporation elections. The district is organized if the ballot proposition is approved by at least two-thirds of all votes cast on the proposition. Obviously, election of the initial directors is null and void if the district is not created.

The proposed creation of an irrigation district is subject to potential review by a boundary review board, if the board's jurisdiction has been invoked.[16]

Special proceedings may be commenced before the local superior court to confirm the organization of an irrigation district.[17]

Boundary Changes

Irrigation district boundaries may be changed by consolidating or merging irrigation districts, adding or annexing lands to an irrigation district, excluding or removing lands from an irrigation district, dissolving an irrigation district, and providing for the joint control of irrigation districts.[18]

An irrigation district may also merge with a drainage improvement district, water district, or sewer district.[19] No appellate court has reviewed the constitutionality of the legislation allowing an irrigation district to consolidate with a water district or sewer district. Such a merger may present some difficult issues since normal franchise rights exist in water districts and sewer districts but franchise rights are limited to property owners in irrigation districts.

A proposed boundary change by an irrigation district is subject to potential review by a boundary review board, if the board's jurisdiction has been invoked.[20]

Governing Body and Elections

An irrigation district is governed by a board of directors composed of three, five, or seven members who are elected to staggered three-year terms of office.[21] Irrigation district directors are non-partisan offices.[22] An irrigation district must be divided into director divisions or districts if the irrigation district comprises 200,000 or more acres and the voters of any smaller irrigation district may approve a ballot proposition authorizing the district to be divided into director divisions, equal in number to the number of directors in the irrigation district.[23] An irrigation district director is elected from each of the director divisions by the voters of that division, if director divisions are used. Qualified voters of the entire irrigation district elect every director, if director divisions are not used.

Irrigation district directors receive compensation at a rate of $90 per day or portion of a day for attending board meetings and performance of other work for the district, not to exceed $8,640 per year.[24] Beginning July 1, 2008, these dollar amounts were adjusted for inflation using the consumer price index.

Restricted or limited franchise rights exist in irrigation districts, with the electorate limited to persons or entities owning real property in the district. Irrigation districts are placed into three classes and details about these franchise rights vary in each of the three classes as follows:

- In districts with 200,000 or more acres, an eligible voter is: (1) Any person owning land in the district who is at least 18 years old, a U.S. citizen, and a

resident of the State; or (2) any corporation owning property in the district.[25] Literally, this means that a partnership, or other legal non-natural entity other than a corporation, owning property in such an irrigation district is not allowed to vote in elections for the district. Each eligible voter receives one vote for the first 10 acres of land, or fraction thereof, owned in the district and an additional vote if the voter owns more than 10 acres of land in the district. If land in the district is community property, both the husband and wife may vote if otherwise qualified to vote. Literally, this means that a husband and wife owning 10 acres would each receive one vote, for a total of two votes arising from the ownership, but that a single person also owning 10 acres would only receive one vote.

- In districts with less than 200,000 acres, a qualified voter is: (1) Any person owning land in the district who is at least 18 years old, a U.S. citizen, and a resident of the State; or (2) any corporation, partnership, or other legal entity formed under the laws of the State or qualified to do business in the State owning property in the district.[26] Each eligible voter receives two votes for each five acres of assessable land or fraction thereof owned in the district. However, a single eligible voter may not accumulate more than 49 percent of the votes in the district. If land in the district is community property, voting rights are divided equally among the husband and wife.

- In districts where more than 50 percent of the total acreage is owned in individual ownerships of less than 5 acres, a qualified voter is: (1) Any person owning land in the district who is at least 18 years old, a U.S. citizen, and a resident of the State; or (2) any corporation owning property in the district.[27] Literally, this means that a partnership, or other legal non-natural entity other than a corporation, owning property in the irrigation district is not allowed to vote in elections for the district. Each eligible voter

> receives two votes regardless of the extent of ownership. If land in the district is community property, both the husband and wife may vote if otherwise qualified to vote.

Legislation creating these classes of irrigation districts and varied voting rights was enacted in 1985, in response to a Supreme Court decision holding the then existing statutory irrigation district voting scheme violated the Free and Equal Elections Clause (Article I, Section 19).[28] At that time the voting scheme was limited to the owners of property located within the district, but the owners of small parcels of land were not allowed to vote even though their land was subject to irrigation district assessments. The Court recognized that state law may restrict the franchise in certain special purpose districts to property owners and deviate from the One Person, One Vote Doctrine, if the special purpose district is not authorized to impose taxes or "administer the normal functions of government."[b] [29] However, even where such a deviation from the One Person, One Vote Doctrine is allowed, certain basic fairness requirements are still applicable from the Free and Equal Elections Clause. A compelling state interest must be shown justifying any deviation from the Free and Equal Elections Clause and the Court would strictly construe any voting scheme. There were not sufficient justifications to deprive these property owners of their voting rights. All property owners, or at least those whose property is subject to irrigation district assessments, must be allowed to vote in irrigation district elections. Presumably this means any property owner, notwithstanding the details of the franchise statutes. This

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b It should be noted that the Court recognized the authority of irrigation districts to supply irrigation water and generate electricity, but failed to note the many additional powers of an irrigation district discussed below in this chapter. Further, the Court noted that it would not have allowed a deviation from the One Person, One Vote Doctrine as the United States Supreme Court did in *Ball v. James*, 451 U.S. 355 (1985) if it were presented with the same facts on the *Ball* case where the district received 99 percent of its revenue from the distribution of electricity and 1 percent of its revenues from supplying irrigation water. Thus, our State Supreme Court established a test of degree, rather than a test of kind, to determine if voting rights may deviate from the One Person, One Vote Doctrine. It is not clear what percentage reliance on non-irrigation revenues will require the One Person, One Vote Doctrine to be applied by the Court. This imprecision could place an irrigation district in significant jeopardy if a substantial percentage of its revenues were derived from non-irrigation activities. A 1978 Idaho Supreme Court case held that voting rights could not be restricted to property owners, and violated the One Person, One Vote doctrine, where an irrigation district received almost two thirds of its revenues from domestic water charges rather than charges for irrigation water. (*Johnson v. Lewiston Orchards Irrigation District*, No. 12523, Idaho Supreme Court, September 29, 1978.) A discussion of the One Person, One Vote Doctrine is found in Chapter 72.

possibly would include non-citizens owning property in an irrigation district.

The current voting scheme for irrigation districts has not been scrutinized by an appellate court to determine if sufficient justification exists to allow the varied voting rights in each of these three classes of irrigation districts.

As discussed in Chapter 67, the initial 1890 irrigation district laws provided for normal franchise rights. However, legislation was enacted in 1915 eliminating normal voting rights and restricting franchise rights to the owners of property located in the district.[30]

After an irrigation district is formed, the district conducts its own elections.[31] Directors are elected to office without primaries being held. Poll sites are designated and qualified voters may vote at these sites or vote by absentee ballot. However, an irrigation district's principal business office may be designated as the polling site for one or more election precincts even if the office is located outside of the district.

Powers

Irrigation districts were authorized in 1890 to provide irrigation water financed by the imposition of assessments on property within the district. Step by step, irrigation district authorities have been expanded since then. Currently, irrigation districts possess the second broadest array of powers of any type of special purpose district. Only port districts possess a greater range of powers. Many of these additional powers that irrigation districts have been granted include the authority to provide what probably would be classified as general municipal services and facilities, potentially placing restricted voting rights into question.

Irrigation districts were authorized to provide the services and facilities as follows:

- Irrigation facilities and services in 1890;[32]
- Drainage systems in 1917;[33]
- Domestic water in 1923;[34]

- Electrical energy purchasing and distribution in 1923;[35]
- Electrical energy generation in 1933;[36]
- Fire hydrants in 1941;[37]
- Sewerage systems in 1965;[38]
- Residential energy conservation program assistance in 1981;[39]
- Heating systems in 1983;[40] and
- Street lighting in 1984.[41]

This broad array of powers is somewhat deceptive and more potential than real. Most irrigation districts only provide irrigation water and those irrigation districts that provide other services and facilities provide only one or two additional services and facilities.

Irrigation districts may join with other local governments that provide domestic water or sewer service and create a municipal corporation under the Joint Municipal Utility Services Act to provide domestic water or sewer service.[42]

Irrigation districts, as virtually all other types of local government, are authorized to condemn property for their purposes.[43]

Finances

Irrigation districts receive income from a variety of sources, including: (1) Imposing a variety of different types of non-tax fees, including assessments and traditional rates, tolls, and charges on persons to whom service is made available; (2) debt proceeds; and (3) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of irrigation district finances. Some details about indebtedness that are included in Chapter 63 are not repeated below.

A. Non-tax fees

Irrigation districts are authorized to impose a variety of non-tax fees.

1. Assessments

Irrigation districts finance their facilities and services primarily by imposing assessments on real property located within their boundaries.

Assessments may be imposed for:

- Paying principal and interest on bonds issued by the district;
- A current expense fund for maintenance and operation expenses of the district;
- An additional amount sufficient to pay for probable delinquencies on assessments imposed that year and to cover any deficit resulting from delinquent assessments from previous years;
- Payment of district assessments imposed on land owned by the district; and
- A surplus fund of up to an additional 25 percent of all other assessments imposed.[44]

The original irrigation district laws only allowed an irrigation district to impose assessments if a ballot proposition authorizing the district to impose assessments was approved by at least a two-thirds vote of district voters voting on the proposition.[45] However, modern statutes authorize irrigation districts to levy assessments without voter approval.

Irrigation district assessments are to be imposed in proportion to the "benefits accruing to the lands assessed".[46] However, irrigation district assessments differ markedly from what is known as special assessments imposed under Article VII, Section 9.[c] The

c Normal special assessments are subject to the following requirements: (1) Special assessments may only be imposed on property specially benefitted from the local improvements finance by the special assessments; (2) special assessments imposed on any property may not exceed the benefit the property receives from the local improvements; and (3) special assessments must be

differences arise from: (1) The authority of irrigation districts to impose assessments to pay for probable delinquencies and to maintain a reserve fund; and (2) old State Supreme Court cases recognizing what is known as the "last faithful acre" doctrine.

Old State Supreme Court decisions recognize a conclusive assumption that all property included in an irrigation district benefits from the provision of irrigation waters and is liable for paying assessments used to redeem bonds issued by the irrigation district.[47] However, it appears that property in an irrigation district that is not capable of irrigation and cultivation may not be subject to irrigation district assessments imposed for maintenance and operation purposes.[48] A more recent Supreme Court decision found that irrigation district assessments may only be imposed on benefitted land, noting that:

- If actions of the landowner rendered the land not capable of being irrigated, the lands are still subject to irrigation district assessments; but
- If actions by someone other than the landowner rendered the land not capable of being irrigated, the lands are not subject to irrigation district assessments.[49]

Other old Supreme Court decisions distinguish irrigation district assessments, at least those imposed to pay principal and interest on bonds, from normal special assessments. The Court developed a concept described as the "last faithful acre" doctrine where all lands in an irrigation district are subject to payment of assessments to retire bonds issued by the district as follows:

- The primary obligation is distributed on lands within the irrigation district in proportion to benefit received from the facilities financed by the bonds; but
- A secondary obligation exists on all lands within the district to pay additional assessments sufficient to retire the bonds if the primary obligation is not

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distributed on benefitted property proportionately to the same relative extent of benefit. (Trautman, Philip A., "Assessments in Washington", 40 Wash. Law Review 100-132, at pages 117-118 (1965).) In effect, the Court has assumed that the Legislature possesses the authority to authorize irrigation districts to impose "assessments" differing from "special assessments" authorized by Article VII, Section 9.

sufficient.[50]

When an irrigation district forecloses the lien it possesses on delinquent irrigation district assessments, the district obtains ownership of this land if the minimum required bid is not made.[51] However, the district does not pay assessments on lands it owns, so the obligation for these assessments is spread or passed onto other lands within the district.[52] As more and more liens are foreclosed, and the irrigation district acquires the land on which the liens were foreclosed, liability for the unpaid assessments continues to be transferred to the remaining property in the district. At least in theory, this liability eventually could exceed the value of the remaining property – in a sense creating a death spiral for the irrigation district. The Supreme Court has not reviewed the "last faithful acre" doctrine to determine if this essentially unlimited liability of land to pay assessments constitutes an unconstitutional taking of property under Article I, Section 16.[d]

Although the Supreme Court has consistently distinguished irrigation district assessments from normal special assessments, this distinction is somewhat interesting. The original irrigation district laws authorized irrigation districts to impose "special assessments" rather than just "assessments". However, current irrigation district statutes, with the exception of at least one statute, authorize irrigation districts to impose "assessments" rather than "special assessments".[e]

Perhaps the underlying hardship on irrigation districts that would arise from a holding that their assessments must comply with normal court-created requirements for special assessments is the actual basis for distinguishing irrigation district voting rights from

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d HB 348 was introduced in the House of Representatives in 1987, but this legislation did not receive much consideration. Among other changes, HB 348 replaced the "last faithful acre" doctrine by limiting the liability of any land in an irrigation district to no more than 125 percent of the amount of assessments normally applied to that land if all other assessments were paid. This legislation referred to the "last faithful acre" doctrine as the "last acre" doctrine.

e The original irrigation district laws authorized districts to impose "special assessments". (Section 41, pages 671-706, Laws of 1889-1890.) Most modern irrigation district laws authorize irrigation districts to impose assessments rather than special assessments. (RCW 87.03.260.) However, at least one current statute refers to "special assessments" being imposed for any purposes provided in Chapter 87.03 RCW. (RCW 87.03.470.) The Legislature should consider enacting legislation changing the term "special assessment" to "assessment" to lessen the chance that a court would construe irrigation district assessments to be subject to the much more rigorous restrictions it has imposed on special assessments.

voting rights in other special purpose districts. The Court has noted the importance of irrigation districts in taming and developing the vast arid waste areas of the State.[53] Further, the Court has noted that such an adverse holding on irrigation district assessments

> "could easily result in practically destroying the powers of the district of accomplishing the purpose for which it was organized."[54]

2. Assessments imposed in local improvement districts

Irrigation districts finance local improvements by creating local improvement districts (LIDs) and imposing "assessments" on lands located in the LID benefitting from the local improvements.[55] Although the term "assessment" is used to describe these extractions, these assessments appear to be the standard "special assessments" that many different types of local governments are authorized to impose within LIDs. Land within an irrigation district LID is "especially assessed ... in proportion to the benefits accruing" to the land.[56] Legislation was enacted in 2013 allowing irrigation districts to follow city LID laws in lieu of irrigation district LID laws.[57]

3. Traditional rates, tolls, and charges

Irrigation districts are authorized to impose traditional rates, tolls, and charges on persons to whom service is available for irrigation water, domestic water, electricity, drainage, or sewer facilities.[58]

B. Debt Proceeds

Irrigation districts also obtain money from debt proceeds and issue bonds under three separate authorities.

First, an irrigation district may issue bonds and notes payable from assessments if district voters approve a ballot proposition authorizing the district to issue the bonds and notes by a simple majority vote of voters voting on the proposition.[59] However, an irrigation district may issue bonds without voter approval as follows:

- To pay for the limited purpose of preparing plans for irrigation works if the assessments do not exceed 50¢ per acre;

- To continue operation of an irrigation system during an emergency; or
- To pay for the ordinary administrative affairs of the district before the first levy of assessments is made.[60]

Although these bonds and notes constitute "general obligations" of the irrigation district, they are not subject to the constitutional indebtedness limitations on general indebtedness.[61]

Second, irrigation districts may issue revenue bonds payable from traditional rates, tolls, and charges on persons to whom service is available. Revenue bonds do not constitute a general indebtedness of the irrigation district.[62]

Third, irrigation districts may issue LID bonds to finance local improvements located within a LID.[63] Irrigation district LID bonds are no longer constitute a general indebtedness of the irrigation district and are now only considered to be an obligation of the LID.[64]

Irrigation districts also may issue short term obligations, including notes and warrants.[65]

C. Other

Irrigation districts, as other types of special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Board of Joint Control

Legislation was enacted in 1949 providing for a board of joint control to be created to administer the operations, facilities and activities of two or more "irrigation entities" which were defined to be irrigation districts and operating entities for a division within a federal reclamation project.[66]

A board of joint control acts as the governing body of the combined operations and facilities of the member entities over which the

board acts, but each of these separate or member entities retains in existence. Statutes do not expressly provide that a board of joint control constitutes a separate unit of government. However, a board of joint control functions as a governing body and boundaries exist for such an entity, essentially functioning as a subdivision of the member entities.

A petition proposing the creation of a board of joint control is signed by "two or more entities" that own or have ownership interests in water rights that are part of irrigation water supplies.[67] The petition is filed with the county legislative authority of the county in which the greater part of the irrigated lands is located. A petition describes the relationship between the irrigation entities and states the names of the irrigation entities, proposes a formula for the apportionment of costs between the irrigation entities and proposes membership on the joint board and a voting structure, and includes a map of the water supply and distribution facilities.[68] Any irrigation entity or entities other than irrigation district or operating entity diverting water within a federal reclamation project, must have less than 50 percent of the total number of votes. The petition must also describe the reasons for creating the joint board and allege that creation of the joint board is in the public interest.

The county legislative authority holds a hearing on the proposal and adopts a resolution creating the join board if it finds this action is in the public interest, benefits the irrigation entities and individual water users, and determines that it will not be detrimental to other water right interests.[69] The county legislative authority appoints the initial board based upon the board composition described in the initiating petition.

Board members serve one year terms and subsequent board members are named by the irrigation entities pursuant to the board composition described in the initiating petition.[70] Board members receive compensation following irrigation district statutes.[71]

A joint board may construct, operate and maintain irrigation facilities and works held in common by the member irrigation entities and may engage in programs promoting effective and efficient water management benefitting member irrigation entities.[72] The joint board adopts an annual budget that includes each

member irrigation entity's proportionate share of the total budget.[73] Each member irrigation entity must include this amount in its assessments.[74]

The MRSC does not report any boards of joint control in the State.[75]

Irrigation and Rehabilitation Districts

Legislation was enacted in 1961 allowing certain irrigation districts to become irrigation and rehabilitation districts.[76] An irrigation and rehabilitation district possesses the authority of an irrigation district, plus expanded authority to enhance the safety and leisure time activities on larger lakes, further the recreational potential of the area, and rehabilitate or improve lakes and shorelines.[77] Irrigation and rehabilitation district statutes are deficient and raise constitutional issues that should be addressed by the Legislature.

The MRSC does not report any irrigation and rehabilitation districts in the State.[78]

Any irrigation district having "the major portion of an inland navigable body of water within its exterior boundaries" may become an irrigation and rehabilitation district if the district holds a water right certificate from the Department of Ecology to remove 50,000 acre feet or more of water from the body of navigable of water.[79]

Statutes providing for the conversion of an irrigation district into an irrigation and rehabilitation district are vague and do not include many specifics. The process to convert an irrigation district into an irrigation and rehabilitation district is initiated by a petition proposing the conversion that has been signed by at least 50 property owners in the district and presumably filed with the county legislative authority.[80] A hearing on the proposal is held, presumably by the county legislative authority, and an election on converting the irrigation district into an irrigation and rehabilitation district is held.[81] Presumably, the conversion is authorized if a majority of the irrigation district voters voting on the ballot proposition approve the proposition.

No provisions are made for a governing body, franchise rights or elections in an irrigation and rehabilitation district. The Legislature should address these issues. Presumably, an irrigation and rehabilitation district would follow regular irrigation district statutes concerning these issues.

By inference an irrigation and rehabilitation district possesses the same powers as a regular irrigation district, in addition to the new powers granted to an irrigation and rehabilitation district. This inference arises from one phrase – "In addition to the purposes for which irrigation districts may be organized ...."[82] Presumably, an irrigation and reclamation district would follow procedures delineated in irrigation district statutes.

The directors of an irrigation and rehabilitation district are granted broad authority to rehabilitate and improve any inland body of water and adjacent shorelines located within the district and to modify and improve existing or planned water control structures to further the health, recreation and welfare of the residents of the district.[83] More specifically, these additional powers include the power to control and regulate:

- Recreational and other uses of the lake.
- Mosquitoes and other harmful insects.
- The construction of buildings and structures or placing of loathsome materials on adjacent lands.
- The taking of carp and other "rough fish", if the Department of Fish and Wildlife approves these regulations.
- The deposit of human, animal or industrial waste, sewage, or by-products into the lake, if the Department of Ecology approves these regulations.
- The placement of roads, buildings, docks and other transportation facilities other than state highways. [84]

An irrigation and rehabilitation district may adopt regulations establishing misdemeanors, with violations punishable up to $500 and jail terms of up to six months.[85] These regulations are subject to review by the county legislative authority, which may nullify the

regulations. The local sheriff's office is directed to enforce irrigation and rehabilitation district regulations, but no provision is made to reimburse the sheriff's office for these efforts.[86] An irrigation and rehabilitation district possesses "all the usual powers of a municipal corporation and shall have the authority to sue and enforce its rules and regulations."[87]

This grant of regulatory and police powers to a special district is unprecedented. At least, regulations that do not create misdemeanors would appear to preempt much regulation by a county or city. The granting of such broad regulatory powers poses a substantial risk to an irrigation and rehabilitation district, including general police powers to establish misdemeanors, if it is desired that such a special district retain restricted voting rights where only people and business entities owning property within the district are allowed to vote. It appears that under the One Person, One Vote doctrine, a government possessing such general regulatory power would be required to have general voting rights. The Legislature should carefully review these broad regulatory powers and either change voting rights for irrigation and rehabilitation districts to general voting rights or eliminate these broad regulatory powers. The Legislature should also address the issue of potential conflicts between regulations adopted by such a special district and general purpose governments (counties and cities). It is absolutely unprecedented that special purpose district regulations may preempt county and city regulations, including regulations under the Shoreline Management Act and Growth Management Act.

Irrigation and rehabilitation districts are authorized to impose special assessments on benefitted lands, presumably to finance their additional powers as an irrigation and rehabilitation district, using regular assessed valuations for property tax purposes.[88] A district may impose these special assessments without voter approval, if the special assessments do not exceed 25¢ per $1000 of assessed valuation, but district voters may approve a ballot proposition authorizing greater special assessments. Irrigation and rehabilitation district special assessments are declared to be inferior to special assessments imposed by a city within a local improvement district.[89] This infers that irrigation and rehabilitation district special assessments would have the same relative status as

special assessments imposed by any other unit of local government.

The Legislature should carefully review this mixing of special assessments with property taxes administration. If it is desired to retain restricted voting rights for irrigation and rehabilitation districts, presumably many of their powers would have to be eliminated. If it is desired to provide for regular voting rights, fewer issues would arise, but a major problem probably would arise over the mixing of special assessments with taxing provisions.

NOTES:

1. Pages 671-706, Laws of 1889-1890. Irrigation district statutes are codified in Title 87 RCW.
2. "Washington Special Purpose District Overview," *id*.
3. RCW 87.03.045 and 87.03.051. Pages 671-706, Laws of 1889-1890. Irrigation district statutes are codified in Title 87 RCW.
4. *Board of Directors v. Peterson*, 4 Wash. 147, 150-153 (1892).
5. *In re Riverside Irrigation District*, 129 Wash. 627, 634 (1924).
6. *Columbia Irritation District v. Benton* 149 Wash. 234, 240 (1928).
7. *Doty v. Saddler* 151 Wash. 542, 544-545 (1929).
8. *Brown Brothers v. Columbia Irrigation District*, 82 Wash. 274, 283 (1914).
9. *Peters v. Union Gap Irrigation District*, 98 Wash. 412, 414 (1917).
10. *Outlook Irrigation District v. Fels*, 176 Wash. 211, 219 (1934).
11. *Washington Etc. Co. v. Grandview Irrigation District*, 175 Wash. 644, 648 (1933).
12. *Barker v. Sunnyside Valley Irrigation District*, 37 Wn.2d 115, 123 (1950).
13. RCW 87.03.005.
14. RCW 87.03.020.
15. RCW 87.03.035 & 87.03.040.
16. Chapter 36.93 RCW.
17. RCW 87.03.780-87.03.805.
18. RCW 87.03.530-87.03.551; 87.03.560-87.03.640; 87.03.645-87.03.695; 87.03.720-87.03.745; & 87.03.750-87.03.770; and Chapters 87.52, 87.53,

87.56, & 87.80 RCW.

19. RCW 87.03.720-87.03.745.
20. Chapter 36.93 RCW.
21. RCW 87.03.080.
22. RCW 29A.040.330.
23. Chapter 87.04 RCW.
24. RCW 87.03.460.
25. RCW 87.03.045.
26. RCW 87.03.051.
27. RCW 87.03.071.
28. *Foster v. Sunnyside Valley Irrigation District*, 102 Wn.2d 395, 409-411 (1984).
29. *Foster*, at page 410.
30. Regular voting rights were provided for irrigation districts at Section 3, pages 671-706, Laws of 1889-1890, when irrigation districts were first authorized. Voting rights were taken from regular voters and given to property owners at Section 2, Chapter 165, Laws of 1913.
31. RCW 87.03.085-87.03.110.
32. Section 12, pages 671-706, Laws of 1989-1890. See, RCW 87.03.010.
33. Section 10, Chapter 162, laws of 1917. See, RCW 87.03.015(3).
34. Section 2, Chapter 138, Laws of 1923. See, RCW 87.03.015(2).
35. *Id*. See, RCW 97.03.015(1).
36. Section 1, Chapter 31, Laws of 1933. See, RCW 87.03.015(1).
37. Section 1, Chapter 143, Laws of 1941. See, RCW 87.03.015(6).
38. Section 1, Chapter 141, Laws of 1965. See, RCW 87.03.015(3).
39. Section 3, Chapter 345, Laws of 1981. See, RCW 87.03.017.
40. Sections 1 & 3, Chapter 216, Laws of 1983. See, RCW 35.97.020.
41. Section 1, Chapter 168, Laws of 1984. See, RCW 87.03.016.
42. Chapter 39.106 RCW.
43. RCW 87.03.140, 87.03.145, & 87.03.150.
44. RCW 87.03.260.
45. Section 41, Pages 671-706, Laws of 1889-1890.
46. RCW 87.03.240.
47. *State ex rel. Clancy v. Columbia Irrigation District*, 121 Wash. 79, 87-88 (1922); and *State ex rel. Wells v. Hartung*, 150 Wash. 590, 600-601 (1929).

48. *Northern Pacific Railway Co. v. Walla Walla County*, 116 Wash. 684, 689 (1921); and *Lesamiz v. Whitestone Reclamation Dist.*, 188 Wash. 145, 148 (1936).
49. *Foster*, at pages 402-403.
50. *Hartung*, at page 598; *Roberts v. Richland Irrigation District*, 169 Wash. 156, 160 (1932); and *In re. Horse Heaven Irrigation District*, 11 Wn.2d 218, 228 (1941).
51. RCW 87.06.100.
52. RCW 87.03.260.
53. *Caruthers v. Sunnyside Etc. District*, 29 Wn.2d 530, 548-549 (1947).
54. *Otis Orch. Co. V. Otis Orch. Irrigation District*, 124 Wash. 510, 514 (1923).
55. RCW 87.03.480-87.03.527.
56. RCW 87.03.495.
57. Section 6, Chapter 177, Laws of 2013, amending RCW 87.03.495.
58. RCW 87.03.445 & Chapter 87.28 RCW.
59. RCW 87.03.200 & 87.03.470.
60. RCW 87.03.475.
61. *Peterson*, at page 153.
62. Chapter 87.28 RCW.
63. RCW 87.03.490.
64. RCW 87.03.485 & 87.03.490, as amended by Chapter 177, Laws of 2013.
65. Chapter 39.50 RCW.
66. Chapter 56, Laws of 1949, codified as Chapter 87.80 RCW.
67. RCW 87.80.020.
68. RCW 87.80.030.
69. RCW 87.80.070 & 87.80.090.
70. RCW 87.80.100.
71. RCW 87.80.120.
72. RCW 87.80.010.
73. RCW 87.80.140 & 87.80.150.
74. RCW 87.80.160.
75. "Washington Special Purpose District Overview," *id*.
76. Chapter 226, Laws of 1961, codified as Chapter 87.84 RCW.
77. RCW 87.84.005 and 87.84.050.
78. "Washington Special Purpose District Overview," *id*.

79. RCW 87.84.010.
80. RCW 87.84.020.
81. RCW 87.84.030 & 87.84.040.
82. RCW 87.84.050.
83. RCW 87.84.060.
84. RCW 87.84.061.
85. RCW 87.84.090.
86. RCW 87.84.100.
87. RCW 87.84.110.
88. RCW 87.84.070.
89. RCW 87.84.071.

Chapter 13

Metropolitan Park Districts

Metropolitan park districts are the oldest, and by far the most powerful, special purpose districts in Washington State, with the primary responsibility of providing parks and park and recreational facilities.[1]

This power arises from the authority of metropolitan park districts to impose nonvoter approved, regular property taxes to finance their facilities and activities.[2] The other two types of park districts may only impose regular property tax levies for up to a six-year period, if voters approve a ballot proposition authorizing these taxes to be imposed.[a]

The original metropolitan park district statutes were enacted in 1907. These statutes provided for a traditional special purpose district with a governing body composed of directly elected officials. However, a core relationship was also established between the metropolitan park district and what could be termed the central city that was required to be included within the district. However, as discussed below, legislation enacted in 2002 fundamentally altered metropolitan park district statutes and allowed metropolitan park districts to have varied natures and taxing authorities, depending on the composition of their board of park commissioners.[3] As a result

a Park and recreation districts were authorized to be created in 1957. (Chapter 58, Laws of 1957, codified as Chapter 36.69 RCW.) A discussion of park and recreation districts is found in Chapter 23. Park and recreation districts are traditional, independent special districts each with a governing body composed of separately elected officials. Park and recreation service areas were authorized to be created in 1963. (Chapter 218, Laws of 1963, codified as part of Chapter 36.68 RCW.) A discussion of park and recreation service areas is found in Chapter 41. Park and recreation service areas are subdivisions of county government with members of the county legislative authority serving *ex officio* as the governing body of the service area. The authority of these special purpose districts to impose voter approved, regular property tax levies is found in RCW 36.68.525 and 36.69.145.

of these changes, metropolitan park district statutes have become quite complicated.

A metropolitan park district may now be classified as:

- An independent special purpose district with a board of park commissioners composed of directly elected officials; or
- A subdivision of a city with city council members serving *ex officio* as members of the board of park commissioners; or
- A subdivision of a county with members of the county legislative authority serving *ex officio* as members of the board of park commissioners; or
- A partial subdivision of the cities and county in which it is located with members of the board of park commissioners composed as provided under an interlocal agreement between the county and cities.

This is a very unique situation where the nature of the same type of special purpose district may vary. Normally, a special purpose district has only a single nature and governing body is composed in only one manner. Public facility districts are the only other type of special purpose district with varied natures and powers.

The Municipal Research and Services Council (MRSC) reports that there are now 17 metropolitan park districts in the State.[4] The Tacoma Metropolitan Park District was incorporated shortly after the metropolitan park district legislation was enacted in 1907. In 1945, the Yakima Metropolitan Park District existed, but that district dissolved in 1969. The 16 newly incorporated metropolitan park district are located in Pierce, Whitman, King, Kitsap, Douglas, Clark, Clallam, Mason and Whatcom Counties. At least two of these new metropolitan park districts appear to be replacements for prior existing park and recreation districts that did not really function.

An anomaly exists in metropolitan park district statutes as a result of various changes made to these statutes over the years. The term “city” is used in these statutes rather than “city or town” and

the term "city" is not defined to include either a city or a town. As discussed below, some peculiar situations arise from this situation. The Legislature should correct this anomaly.

Creation

Legislation enacted in 2002 provided a new process to incorporate metropolitan park districts.[5] A metropolitan park district could incorporate in any area, including territory located in more than one county and territory located in all or part of one or more cities.

The new incorporation procedure may be initiated by either:

- A petition signed by at least 15 percent of the registered voters residing in the proposed district; or
- A resolution adopted by the governing body of each city with territory included in the proposed district and by the county legislative authority of each county with unincorporated territory included in the proposed district.[b] [6]

A ballot proposition authorizing the creation of the metropolitan park district is submitted to voters residing in the proposed district for their approval or rejection. The district is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition.

Incorporation of a metropolitan park district is subject to potential review by a boundary review board, if one exist in the county in which it is proposed to be located and the board's jurisdiction is invoked.[7] However, a boundary review board may not review the proposed incorporation of a metropolitan park district if boundaries of the proposed district only includes one or more cities.

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b By only using the term "city" rather than "city or town," these statutes present an anomaly. As a result, it appears that the creation of a metropolitan park district may not be initiated by resolution of the town council, while it could be initiated by resolution of a city council.

Boundary Changes

A variety of boundary changes may be made to a metropolitan park district, including annexations, withdrawing territory, and dissolving the district.

These boundary changes are subject to potential review by a boundary review board, if one exists in the county in which the metropolitan park district is located and its jurisdiction is invoked.[8]

A. Annexations

Metropolitan park districts may annex territory using several different procedures.

First, territory adjoining a metropolitan park district may be annexed to the district under a petition/election procedure.[9] The annexation petition must be signed by:

- At least 25 registered voters residing in the area proposed to be annexed, if the area proposed to be annexed does not include territory located in a city;[c] or
- At least 20 percent of the registered voters residing within the area proposed to be annexed, if the area proposed to be annexed includes territory within a city.

A ballot proposition is submitted to voters in the area proposed to be annexed if the park commissioners concur on the annexation.

Second, territory that is annexed by a city included within a metropolitan park district is automatically annexed into the park district.[d] [10] This is an old feature of metropolitan park district law that was part of a unique relationship between the metropolitan

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c By only using the term "city" rather than "city or town", these statutes present an anomaly. As a result, it appears that the petition proposing annexation of all or part of a town would have to be signed by 25 resident voters rather than 20 percent of the voters residing in the area proposed to be annexed.

d By only using the term "city" rather than "city or town", these statutes present an anomaly. As a result, this automatic annexation provision would not apply to annexations by a town in which a metropolitan park district is located.

park district and the large, core central city that at one time was required to be located in each metropolitan park district. However, this old provision could create a peculiar situation if, under the new laws, a metropolitan park district only included part of a city and the city annexed other areas that were not already included in the park district. Literally, this newly annexed area would automatically be included in the metropolitan park district, even if it were not contiguous with the boundaries of the park district. An automatic annexation of such an area is not subject to potential review and action by a boundary review board, although the annexation by the city would be subject to potential review by a boundary review board.

Third, as discussed below, territory that has been withdrawn from a metropolitan park district may reannex into the district under a special procedure.

B. Withdrawing Territory

Legislation was enacted in 1987 allowing territory to be withdrawn from a metropolitan park district, and to be reannexed back into the park district.[11] By withdrawing certain territory, a metropolitan park district could avoid a reduction (or prorationing) of its regular property tax levy if the aggregate of all regular property tax levy rates exceeded the statutory maximum aggregate rate.

Territory located in a "city or town" is withdrawn under this special provision if both:

- The board of park commissioners adopts a resolution providing for the withdrawal, finding that inclusion of the area will result in a reduction of the district's property tax levy; and
- The "city or town" governing body adopts a resolution approving the withdrawal.[e]

e Note that this 1987 provision is drafted using the terms "city or town" in lieu of only using the term "city". Most of the other provisions of metropolitan park district laws only refer to cities and do not define "cities" to include both cities and towns. Legislation was enacted in 1959 removing all towns from a metropolitan park district. (Chapter 45, Laws of 1959.) This legislation was enacted to remove the Town of Fircrest from the Tacoma Metropolitan Park District.

The area may reannex back into the metropolitan park district if both the board of park commissioners and "city or town" governing body adopt resolutions providing for the re-annexation.

C. Dissolution

A metropolitan park district may be dissolved under several different procedures.

First, general dissolution procedures apply to metropolitan park districts, including a procedure for the county legislative authority to dissolve an inactive special purpose district and another procedure where the governing body of the special district petitions the local superior court requesting that the district be dissolved.[12]

Second, legislation was enacted in 1953 providing a special procedure for metropolitan park districts to dissolve.[13] The board of park commissioners may dissolve the district by majority vote and transfer its assets to a city, or a city and county, if both:

- The city or county receiving the assets agrees to the dissolution and petitions for the dissolution;[f] and
- A petition requesting the dissolution is signed by park district voters equal in number to at least 10 percent of the number of such voters who voted at the last general election.

This special dissolution procedure probably was enacted to allow the then Yakima Metropolitan Park District to dissolve.

Governing Body and Elections

A metropolitan park district is governed by a board of park commissioners.

As mentioned above, legislation was enacted in 2002, altering the potential composition of a board of park commissioners. A board of park commissioners now may be composed of officials as follows:

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f By only using the term "city" rather than "city or town", these statutes present an anomaly. As a result, a town would not be involved in this procedure.

- Five commissioners elected to six-year staggered terms of office. An existing district retains this option unless district voters approve a ballot proposition providing for one of the other options. If this option is selected for a new district, the initial commissioners are elected at the same election when the ballot proposition authorizing creation of the district is submitted to voters for their approval or rejection. No primary is held. Obviously, election of the commissioners is null and void if the ballot proposition is not approved by voters.
- Members of the governing body of a city serving *ex officio* as the board of park commissioners, if the district is located wholly within the city. This option may only be used if approved by the city governing body.[g]
- Members of the county legislative authority serving *ex officio* as the board of park commissioners, if the district is wholly located in the unincorporated area of the county. This option may only be used if approved by the county legislative authority.
- A board of park commissioners composed as provided in an interlocal agreement between cities and counties within the district if the district is included in more than one city or county. Prior to the approval of this interlocal agreement, a temporary board of park commissioners exists composed of all of the members of the governing bodies of each city and county with territory included in the district.[h] [14]

The ballot proposition authorizing creation of the metropolitan park district specifies which of these options will be followed. A ballot proposition, altering the composition of a board of park commissioners from separately elected officials to the second,

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g By only using the term "city" rather than "city or town," these statutes present an anomaly. As a result, the unique provisions of this statute relating to cities would not apply to a town.

h By only using the term "city" rather than "city or town," these statutes present an anomaly. As a result, the unique provisions of this statute relating to cities would not apply to a town.

third, or fourth alternative listed above, may be submitted to district voters if authorized by the existing board of park commissioners, the district meets the geographic requirements for the alternative, and the city or county governing body or bodies approve the change.

The nature of a metropolitan park district varies depending on which of these options is used. If the park commissioners are elected directly to office as park commissioners, the district would be classified as an independent special purpose district. If members of a city or county governing body serve *ex officio* as members of the board of park commissioners, the district would be classified as a subdivision of the city or county. If the park commissioners are appointed under an interlocal agreement, the district would be classified as a partial subdivision of the appointing governments.

Directly elected park commissioners are elected as nonpartisan officials at elections held in odd-numbered years.[15] Normal franchise rights exist in metropolitan park districts and the registered voters residing within a metropolitan park district are the electorate of the district.[16] County auditors conduct all elections for metropolitan park districts.[17]

Each directly elected park commissioner receives compensation of up to $90 per day for each day, or portion of a day, devoted to the business of the district, not to exceed $8,640 per year.[18] Beginning July 1, 2008, these two dollar amounts were adjusted for inflation using the consumer price index.

Powers

A metropolitan park district may: (1) Provide public parks, recreational facilities, and playgrounds inside and outside of the district; (2) let boats and other amusement apparatus; (3) operate bath houses; (4) provide concerts and entertainment; and (5) sell foodstuffs and merchandise.[19] As discussed below, the basic rationale for metropolitan park districts may have been to provide an entity that would generate additional funding for the greater Tacoma area to finance a zoo. Ironically, metropolitan park districts are not expressly authorized to provide zoos, although such

facilities could be provided under the general authority to provide for parks and recreational facilities. Metropolitan park districts are authorized to provide various transportation facilities, including parkways, boulevards, aviation landings, and altering streets and avenues. A metropolitan park district may provide for a park police.

Metropolitan park districts may also provide for a civil service system of employment for their employees.[20]

A metropolitan park district, as virtually any other type of local government, may condemn property for its purposes.[21]

Finances

Metropolitan park districts receive income from a variety of sources, including: (1) Property taxes; (2) rates and charges for services; (3) debt proceeds; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of metropolitan park district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

Metropolitan park districts are authorized to impose both regular property tax levies and excess property tax levies.

1. Regular levies

The authority of metropolitan park districts to impose regular property taxes is somewhat complicated. This complication arises from recent changes to their taxing authority. First, the authority of a metropolitan park district to impose regular property taxes was divided into two separate tax levies in 1990.[i] [22] Second, legislation

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i This legislation:

- Separated the then statutory cumulative limitation on the rate of regular property tax levies that may be imposed on any property in any year from $9.15 per $1,000 of assessed value, into one limitation on the State's levy to support common schools and a separate $5.90 per $1,000 of assessed value limitation on the cumulative rate of most regular property taxes imposed by most other taxing districts. The overall

was enacted in 2002, reducing this level of security for the first portion of a metropolitan park district's regular property tax levy for metropolitan park districts that incorporate on or after January 1, 2002.[23] This latter change was made to reduce potential opposition by other junior taxing districts over the proposed creation of a new metropolitan park district. No change was made to the tax status of the Tacoma Metropolitan Park District, which was the only metropolitan park district in existence at that time. All other metropolitan park districts are subject to this change.

As a result, metropolitan park district regular property tax levies are divided into two separate parts – one levy of up to 50¢ per $1,000 of assessed value and a second levy of up to 25¢ per $1,000 of assessed value.[24]

The status level or security of the 50¢ per $1,000 of assessed value levy from being prorated or reduced varies, depending on the date the metropolitan park district incorporated. This tax levy is accorded the highest level of status or security of a junior taxing district regular property tax levy from being prorated or reduced if the metropolitan park district incorporated before January 1, 2002, *i.e.*, the Tacoma Metropolitan Park District. However, this levy is accorded the third highest level of status or security of a junior taxing district regular property tax levy from being prorated or reduced if the metropolitan park district incorporated on or after January 1, 2002, i.e., all of the other metropolitan park districts.

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limitation for these other taxing districts was increased.

- The regular property tax levies of two junior taxing districts (metropolitan park districts and public hospital districts) were divided into two different levies, with the first part being accorded the highest status of a levy for a junior taxing district and the second part being accorded the third highest status.
- The status level accorded to cemetery district regular property tax levies was reduced from the highest level for a junior taxing district to a lower status level.

These changes had a number of results. First, the State's levy for the common schools was afforded the highest protection from prorationing or reduction. Second, regular property tax levies by the other senior taxing districts (counties, cities, towns, and road districts) were not affected. Third, regular property tax levies by fire protection districts, metropolitan park districts, and public hospital districts were accorded greater levels of protection from being prorated or reduced. Fourth, cemetery districts were the big losers, with a reduced protection for their regular property tax levies being prorated or reduced. At the request of Representative Mary Margaret Haugen, who was chair of the House Local Government Committee at that time, the author devised this complicated legislation to protect the regular property tax levies of most taxing districts from being prorated or reduced.

The 25¢ per $1,000 of assessed value levy is accorded the fourth highest level of status or security of a junior taxing district regular property tax levy from being prorated or reduced in all instances.

Special provisions are made for a metropolitan park district with a population of 150,000 or more, or any metropolitan park district located in a county with a population of 1,500,000 or more, to submit a ballot proposition to voters providing additional security for the lower status 25¢ per $1000 of assessed value regular levy. At present, districts are eligible to use this provision -- the Tacoma Metropolitan Park District, Seattle Metropolitan Park District, Tukwila Pool Metropolitan Park District, Fall City metropolitan Park District, Des Moines Metropolitan Park District, Normandy Park Metropolitan Park District, and Si View Metropolitan Park District. This added security arises from allowing any portion of the 25¢ levy to be imposed above the statutory ceiling of $5.90 on the aggregate rate of most regular property tax levies imposed by counties, cities, and special purpose districts, but remains subject to the constitutional ceiling of one percent of the value of the taxable property within the taxing district.[25]

These regular property tax levies are subject to the so-called 101 percent levy lid.

2. Excess levies

Metropolitan park districts, as other taxing districts, may also impose voter approved excess property tax levies, including single year excess levies for general district purposes at any rate and multiple-year excess levies at any rates to retire general obligation bonds issued for capital purposes.[26]

The ballot proposition authorizing these levies must be approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

B. Rates and Charges

A metropolitan park district may impose rates and charges for use of its facilities and sales of foodstuffs and other merchandise.[27]

C. Debt Proceeds

Metropolitan park districts also receive monies from debt proceeds.

A metropolitan park district may incur general indebtedness and issue general obligation bonds of a total amount not exceeding one quarter of one percent of the value of taxable property in the district, without voter approval, and of a total amount not exceeding two and one-half percent of the value of taxable property in the district, if a ballot proposition authorizing the indebtedness is approved by at least a three-fifths vote of voters voting on the proposition.[28] The maximum term of these bonds is 20 years.

Metropolitan park districts may also issue revenue bonds payable from their operating revenues.[29] These revenue bonds are a form of revenue obligations that are not subject to indebtedness limitations. The maximum term of these bonds is 40 years.[30] It is somewhat peculiar that the maximum term of metropolitan park district revenue bonds is twice the maximum term of metropolitan park district general obligation bonds. The legislation authorizing metropolitan park districts to issue general obligation bonds, and the 20 year maximum term, is found in quite old statutes. However, the legislation authorizing metropolitan park districts to issue revenue bonds was only enacted in 1989 and references a general local government statute providing for a maximum term on revenue bonds of 40 years unless another statute for the particular type of local government provides another maximum term.

Metropolitan park districts may also issue a variety of short term obligations, including notes and warrants.[31]

D. Other

Metropolitan park districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Legislation was enacted in 1999, allowing a very limited class of counties to impose additional, voter-approved sales and use taxes of up to 0.1 percent to finance various park and recreation activities

and facilities.[j] [32] Although this legislation is general legislation, the class of counties authorized to impose these taxes is limited to Pierce County and the taxes are designed to provide additional funding for the Tacoma Metropolitan Park District, as well as for other park and recreation uses in portions of Pierce County outside of the metropolitan park district. The tax receipts may only be used to finance zoos, aquaria, and wildlife preservation and displays. Pierce County voters approved a ballot proposition authorizing these additional sales and use taxes.

Cities are granted express authority to give metropolitan park districts any parks, playgrounds, boulevards, and parkways and to give and loan money to metropolitan park districts.[33] Counties are granted express authority to give park and recreation lands and equipment to metropolitan park districts.

A metropolitan park district is not authorized to create a local improvement district (LID) and impose special assessments on property located within a LID, but may petition a city to create such a LID financing the district's parkways and boulevards.[34]

History

The history of metropolitan park districts and metropolitan park district legislation is quite interesting.[35]

Legislation was enacted in 1907 allowing metropolitan park districts to be formed. Metropolitan park districts were the first type of special purpose districts in Washington that were independent units of local government providing general governmental services and facilities. The clear purpose of this legislation was to provide additional taxing authority to finance a new zoo in Tacoma. An intense rivalry existed at that time between Tacoma and Seattle, which had recently acquired the Woodland Park Zoo. The legislation included an emergency clause and became effective immediately, upon approval by the governor. The Tacoma

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j This statute has an interesting twist. The Department of Revenue collects the local sales and use tax and remits the collections to the county. However, in lieu of charging a standard fee for administering the tax collections, a small amount of the collections are remitted to the Department of Commerce to maintain community-based housing for mentally ill persons for a twelve-year period.

Metropolitan Park District was created one month later, assuming operation of the City of Tacoma's prior park system, which included a zoo (the Point Defiance Zoo) that had opened in 1905.

The clear purpose of the 1907 legislation authorizing metropolitan park districts was to provide for a regional government to fund additional levels of park and recreational facilities and services in an area that included at least what could be called a central city. A metropolitan park district had to be created with boundaries coincidental with those of a first class city, which at that time meant a city with a population of at least 20,000 operating under a charter adopted under Article XI, Section 10. The district then could annex adjacent areas. The Tacoma Metropolitan Park District used this authority to annex areas outside of Tacoma. Expanded financing for park and recreational facilities and services in a region arises from combining the independent taxing authority of the metropolitan park district with the resources that cities included within the district's boundaries normally would provide park and recreation services and facilities.

The governing body of a metropolitan park district consisted of a five-member board of park commissioners who were elected directly to those positions.

It appears that Seattle voters failed to approve a ballot proposition to create a metropolitan park district in 1926.[36]

Metropolitan park district laws were reenacted in 1943 after the original metropolitan park district legislation was accidently repealed in legislation dealing with state highways.[37]

A second metropolitan park district was created in Yakima in 1945, but this district was disincorporated in 1969.

Legislation was enacted in 1959, removing any town from a metropolitan park district.[38] This had the effect of removing the Town of Fircrest from the Tacoma Metropolitan Park District. However, this express prohibition on including a town in a metropolitan park district was eliminated by legislation enacted in 1994.[39]

Legislation enacted in 2002 fundamentally altered metropolitan park district statutes and the potential nature of a metropolitan park district.[k] [40] The core relationship between a metropolitan park district and a central city was eliminated. A metropolitan park district could be created in any area, including only part of a city or only in territory located in unincorporated areas outside of a city.

As discussed above, this 2002 legislation also altered the potential nature of a metropolitan park district to provide for a board of park commissioners composed in different ways. This could include commissioners, all of whom are elected directly to office, all of whom serve *ex officio* as a result of holding other elective offices, or all of whom are appointed to office.

The 2002 legislation altered the geographic extent of a metropolitan park district's boundaries and the district could be:

- A traditional special purpose district occupying a relatively small or medium-sized area; or
- A regional government occupying a relatively large area and providing park and recreation facilities and services to this large area in lieu of cities and the county providing these facilities and services.

The 2002 legislation also reduced the security of the regular nonvoter approved tax levy of a metropolitan park district that was created on or after January 1, 2002. The clear purpose of reducing this status of a new metropolitan park district's authority to impose non-voter approved regular property taxes was to avoid opposition from several different types of junior taxing districts that otherwise would compete with the new metropolitan park district for scarce taxing capacity.[l]

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[k] These new changes in metropolitan park district laws have resulted in a peculiar situation that probably should be addressed by the Legislature. As mentioned above, the old prohibition on a metropolitan park district including a town was repealed in 1994, but the 2002 changes only refer to "cities", not to both "cities and towns", and do not define "city" to include both a "city or town". For example, annexations by a town that is included in a metropolitan park district do not automatically result in the territory being added to a metropolitan park district. Further, the option of having the governing body of a city act, *ex officio*, as the board of park commissioners, if the boundaries of the district are coterminous with those of the district, does not apply to a town. Either, "or town" should be added immediately after "city" in the metropolitan park district statutes or the term "city" should be defined as a "city or town".

[l] These other junior taxing districts are fire protection districts, library districts, and public hospital districts.

As of 2014, 16 new metropolitan park districts have incorporated under these new provisions.

NOTES:

1. Chapter 98, Laws of 1907. Most metropolitan park district statutes are codified in Chapter 35.61 RCW.
2. RCW 35.61.210.
3. Chapter 88, Laws of 2002.
4. http://mrsc.org/Home/Explore-Topics/Parks-and-Recreation/Park-and-Recreation-Special-Districts/Metropolitan-Park-Districts-(MPD).aspx
5. Chapter 88, Laws of 2002.
6. RCW 35.61.010-35.61.040.
7. Chapter 36.93 RCW. A discussion of boundary review boards is found in Chapter 43.
8. *Id.*
9. RCW 35.61.250-35.61.280.
10. RCW 35.61.020.
11. RCW 35.61.360.
12. Chapters 36.96 & 53.48 RCW.
13. RCW 35.61.310.
14. RCW 35.61.050.
15. RCW 29A.52.231 & 29A.04.330.
16. Article VI, Section 1.
17. RCW 29A.04.216.
18. RCW 35.61.150.
19. RCW 35.61.130.
20. RCW 35.61.140.
21. RCW 35.61.130.
22. Chapter 234, Laws of 1990.
23. Section 7, Chapter 88, Laws of 2002, amending RCW 84.52.010.
24. RCW 35.61.210.

25. RCW 84.52.120.
26. RCW 35.61.210, 84.52.052, & 84.52.056.
27. RCW 35.61.130.
28. RCW 35.61.100 & 35.61.110.
29. RCW 35.61.115.
30. RCW 39.46.150(1).
31. Chapter 39.50 RCW.
32. RCW 82.14.400.
33. RCW 35.61.290.
34. RCW 35.61.220.
35. Much of this history is included in the home page of the Municipal Research and Services Center of Washington (MRSC) whose web address is http://www.msrc.org.
36. Page 1 of an historical sketch of Carkeek Park, which is included in the Don Sherwood Seattle Park History files at the Seattle Archives, and may be found at http://www.pan.ci.seattle.wa.us/seattle/parks/history/sherwood.htm.
37. Chapter 264, Laws of 1943.
38. Chapter 45, Laws of 1959.
39. Section 60, Chapter 81, Laws of 1994.
40. Chapter 88, Laws of 2002.

Chapter 14

Port Districts

Port districts provide maritime shipping facilities, airports, and other facilities and engage in economic development activities. They are traditional, independent special purpose districts, with governing bodies composed of officials who are elected directly to office.

Port districts are one of the oldest types of special purpose districts in Washington State, being authorized in legislation enacted in 1911.[1] Legislation has been enacted over the years greatly expanding the types of facilities and services that port districts may provide. Now, port districts are the most powerful special purpose districts in the State, authorized to provide a broader range of different types of facilities and services than any other type of special purpose district.

Several constitutional provisions grant port districts unique powers. One constitutional provision authorizes port districts to expend public funds for industrial development or trade promotion and promotional hosting that otherwise would violate any other constitutional provision that prohibits local governments from lending their credit or providing gifts to people or private entities. Another constitutional provision exempts port district (and public utility district) property tax levies from the One Percent Limitation.

Public maritime port facilities in Washington State are unique. Port districts that provide these facilities in this State impose property taxes and use receipts from these taxes to support their maritime port facilities. The use of tax moneys to support maritime port facilities is unique to Washington State. No other public maritime ports are authorized to impose taxes to support their activities.

The Municipal Research and Services Center (MRSC) reports that there were 76 port districts in the State.[2] These port districts are quite diverse. On one hand, major port districts (such as the Port of Seattle and Port of Tacoma) are regional governments occupying an entire county, provide a wide variety of services and facilities, and have very large annual budgets of more than one hundred million dollars. On the other hand, very small port districts (such as the Port of Eglon located in Kitsap County or the Port of Grapeview in Mason County) occupy only a small portion of a county, have very limited operations, and have annual budgets of only a few thousand dollars.

Some controversy has surrounded port districts over the years.

Creation

Port districts may be formed on either a countywide or less than countywide basis. Less than countywide port districts were not allowed to be created in the 1970's and 1980's, but were allowed to be created before that period and may presently be created.[3] Port districts could only be created in maritime areas until 1959 when legislation was enacted allowing port districts to be created elsewhere.

The process to initiate the creation of a port district varies depending on whether the proposed port district is countywide or less than countywide.

A ballot proposition authorizing the creation of a countywide port district is submitted directly to county voters for their approval or rejection if either:

- The county legislative authority adopts a resolution causing the ballot proposition to be submitted; or
- County voters sign a petition providing for the submission of the ballot proposition. The petition must be signed by voters of the county equal in number to at least 10 percent of the number of county voters who voted at the last general county election.[4]

The port district is created if the ballot proposition authorizing the creation of the port district is approved by a simple majority vote of the voters voting on the proposition. A countywide port district is named after the "principal seaport city" within the port district, or by the county legislative authority, if more than one seaport city exists in the port district. Presumably, the county legislative authority would choose a name for a countywide port district if there is no seaport in the county.

The process to create a less than countywide port district may only be initiated if a petition proposing creation of the port district has been signed by voters of the area proposed to be included in the district equal to at least 10 percent of the number of voters in the area who voted at the last county general election.[5] The petition is filed with the county auditor of the county in which the proposed port district is located. A less than countywide port district must have an assessed valuation of at least $150 million and may only be incorporated in a county that already has a less than countywide port district. However, legislation was enacted in 2014 allowing a less than countywide port district to incorporate in a county without a less than countywide port district, but this authority terminates on December 31, 2020.[6] The petition describes the proposed boundaries, names the proposed district, and specifies whether the district shall have three or five commissioners and whether commissioner districts shall be used in their election. A public hearing on the proposed creation of the port district is then held by the county legislative authority. The county legislative authority may alter the boundaries of the proposed district if it finds that such a change is in the public interest. However, additional territory may only be added if a subsequent public hearing is held on the matter. A ballot proposition is submitted to the voters of this area if the county legislative authority finds that creation of the district is in the public interest. The port district is created if the ballot proposition is approved by a simple majority of voters voting on the proposition.

The proposed creation of a port district is not subject to potential review by a boundary review board.[7]

Boundary Changes

Some boundary changes are authorized for port districts. However, the authority of port districts to alter their boundaries is more limited than for other types of special purpose districts.

These proposed boundary changes are not subject to potential review by a boundary review board.

Countywide port districts may not annex territory. However, a less than countywide port district may annex portions of the county where no other port district is located. The annexation proposal may be initiated by action of the port commission or by petition of voters residing in the area proposed to be annexed. A ballot proposition authorizing the annexation is submitted to voters residing in the area proposed to be annexed.[8]

Port districts may be dissolved under various procedures. The prosecuting attorney of the county in which a port district is located may petition the local superior court to dissolve an inactive port district and the court dissolves the port district if it finds the district is inactive.[9] Any assets remaining after all debts have been paid are transferred to local school districts. A generic procedure exists for the county legislative authority to dissolve inactive special purpose districts, including inactive port districts, located within the county's boundaries.[10] Finally, another generic procedure exists for dissolving a number of different special districts, including port districts, where the governing body of the special district petitions the local superior court to dissolve the district and the court dissolves the district if it finds the dissolution to be "in the best interests of all persons concerned".[11] A number of port districts have been dissolved over the years, including the Port of Kittitas in Kittitas County and the Port of Sheridan in Kitsap County.

Governing Bodies and Elections

Port districts are governed by boards of commissioners who are elected directly to office. A board of commissioners is composed of three members, unless district voters have approved a ballot proposition expanding the number of commissioners to five.[12] Most port commissioners are elected to staggered six-year terms of

office. However, port commissioners are elected to staggered four-year terms of office in any countywide port district with a population of 100,000 or more and in any other port district if its voters approve a ballot proposition reducing port commissioner terms of office to four years.[13]

Port commissioners are elected as non-partisan officials at general elections held in odd-numbered years.[14] Normal franchise rights exist in port districts and the voters of a port district consist of all registered voters residing in the district.[15] County auditors conduct all elections for port districts.[16]

The initial port commissioners are elected at the same election when the ballot proposition on the creation of the district is submitted to voters for their approval or rejection. No primary is held. Obviously, election of these commissioners is null and void if voters defeat the ballot proposition providing for the creation of the district.[17]

Most port commissioners are elected using commissioner districts.[18] However, port commissioners of any port district with a population of 500,000 or more (the Port of Seattle and Port of Tacoma) are elected without using commissioner districts. In addition, the voters of any less than countywide port district may approve a ballot proposition eliminating the use of commissioner districts to elect their port commissioners. Commissioner districts are used for two purposes:

- Only registered voters residing in the commissioner district may run for or hold office as a commissioner of that district; and
- Only registered voters residing in the commissioner district may vote at a primary, if one is held, to select no more than two candidates for that commissioner position whose names will appear on the general election ballot.

Voters of the entire port district vote at general elections to elect the commissioner from each commissioner district.[19] Legislation enacted in 2001 allows a port district with five commissioners, and a population of less than 500,000, to elect two commissioners on

an at-large basis and the other three commissioners using commissioner districts.[20]

All port commissioners are paid a per diem rate of compensation and many port commissioners are also paid monthly salaries.[21] The per diem rate of compensation is $90 per day, or portion of a day, spent in attendance of official commission meetings and in the performance of other service for the port. Total per diem compensation for a port commissioner may not exceed $8,640 per year in most port districts. However, total per diem compensation for a port commissioner may not exceed $10,800 per year in a port district that had gross operating income of $25 million or more in the preceding calendar year. Commissioners of port districts with gross operating revenues of $25 million or more in the preceding calendar year also receive monthly salaries of $500. Commissioners of port districts with gross operating revenues of from $1 million and less than $25 million in the preceding calendar year also receive monthly salaries of $200. Beginning on July 1, 2008, the per diem rate of compensation, and its annual caps, as well as the monthly salaries, and their annual caps, were adjusted for inflation using the consumer price index.

In lieu of these per diem and monthly salary rates of compensation, the commission of any port district (which would include the smallest port district in the state or the port district with the lowest gross operating revenues) may establish <u>any</u> rate of compensation for its members.

Powers

Port districts possess the broadest array of powers of any type of special purpose district. Step by step, port district powers have been expanded from their initial authority to provide and operate maritime shipping facilities, including harbor improvements and associated rail and terminal facilities. This gradual expansion of port district powers is somewhat unique. It is more common for the Legislature to enact legislation authorizing a new type of special purpose district to provide a new service or facility in response to constituent desires rather than expanding the authorities of an existing type of special purpose district to provide the new service or facilities.

Port districts are now authorized to:

- Provide a wide variety of transportation facilities and services, including: (1) Maritime shipping facilities, harbor improvements, warehouses, elevators, icing plants, and water, rail and motor transfer facilities; (2) airports and associated terminal facilities; (3) a variety of rail facilities, including belt railways, transfer facilities, terminals, and general rail service and facilities both inside and outside of the district; (4) ferries and other water craft; (5) boat landings and other recreational marina facilities; (6) roads, tunnels, canals, and toll bridges; and (7) upgrading highways, streets, and roads serving their facilities.[22]
- Provide general industrial facilities.[23]
- Provide general commercial facilities.[24]
- Engage in economic development activities and services, including the authority to provide and operate tourism-related facilities, to provide trade centers, foreign trade zones, exporting companies, and act as community renewal agencies, and to provide job training and replacement programs.[25]
- Provide pollution control facilities.[26]
- Provide sewer and water utilities.[27] This would include authority to create municipal corporations to provide water or sewer service under the recently enacted Joint Municipal Services Act.[28]
- Provide heating systems.[29]
- Provide telecommunication systems.[30]
- Provide cooperative watershed management for water supply, water quality, and water resource and habitat protection and management.[31]
- Salvage and dispose abandoned vessels.[32]
- Provide park and recreation facilities, which are necessary to more fully utilize other port facilities.[33]

- Provide pilotage services.[a] [34]
- Establish a police department exercising full police powers on port owned or operated properties, if the port operates an airport, or is designated as a port of entry by the federal government.[35]
- Establish a fire department to protect an airport operated by the port district.[36]

This is an extraordinary list of diverse public facilities and services. No other special purpose districts possess such broad powers. No other local governments are granted general authority to provide industrial or commercial facilities. The breadth of these functions approaches the powers of a town, apart from not having the regulatory powers of a town.

However, it appears that individual port districts have been created to provide a more limited range of facilities or services rather than the board array of their potential powers. The earliest port districts were created during the period of 1911 to 1918 to provide maritime shipping facilities. This includes the Port of Seattle, Port of Grays Harbor, and the Port of Tacoma. Many of the port districts created during the 1920's were created to provide docks for smaller boats, such as inland boat service on Puget Sound and Hood Canal or for fishing fleets. This includes the Port of Brownsville, the Port of Silverdale, and the Port of Tahuya. Some of the port districts created in the 1940's were created to provide airports. This includes the Port of Pasco and the Port of Shelton. Many of the port districts created during the 1950's and 1960's were created to provide shipping facilities in freshwater areas, basically the Columbia River and its tributaries. This includes the Port of Walla Walla, the Port of Benton, and the Port of Ephrata. The Port of Pend Oreille was created in the late 1970's to provide rail service into the county after the private railroad company abandoned this service. Many of the newest port districts were created in the 1980's and 1990's to provide for industrial development.

Many of these port districts have expanded the types of facilities they have traditionally provided and are now redeveloping

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a Only the Grays Harbor Port District is allowed to perform this function.

waterfront areas by providing mixed use commercial and residential developments.[37] This includes the Ports of Bellingham, Port Townsend, La Conner, Coupeville, Tacoma, Bremerton, Seattle, and Olympia.[b]

Most capital facilities may only be provided if the port district adopts a comprehensive scheme or plan of these improvements.[c] [38]

Legislation was enacted in 2015 authorizing one or more port districts to create a port development authority to manage its or their maritime activities.[39]

Port districts, as virtually all other types of local government, are authorized to condemn property to carry out their purposes.[40]

Finances

Port districts receive income from a variety of sources, including: (1) Operating revenues and service charges; (2) a variety of different property tax levies; (3) debt proceeds; and (4) various other revenues. Virtually all port districts impose at least some of their authorized property tax levies.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of port district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Operating Revenues

Port districts are authorized to impose fees and charges for the use of their facilities and services.[41] This includes wharfage and

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b The executive director of the Washington Public Ports Association describes these redevelopment activities as the "next chapter" where port districts are "trying to adapt to modern economic conditions." (*The Seattle Times*, Sunday, May 1, 2005, Pacific Northwest Magazine, at page 22.)

c A plan of harbor improvements must be adopted before these facilities may be provided. A scheme of industrial improvements must be adopted before these facilities may be provided. Park and recreation improvements must be part of the port district's comprehensive plan of harbor improvements and industrial development.

dockage charges and fees for using airport facilities, as well as rental income for leasing their facilities.

Operating revenues provide the largest portion of revenues for many port districts, particularly port districts with major operations.

B. Property Taxes

Port districts are authorized to impose a variety of different excess property tax levies. Their authority to impose excess property tax levies is unique. Only port districts and public utility districts may impose excess property tax levies without super-majority voter approval.[d] Virtually every port district imposes a portion of its property tax levies. Very few public utility districts impose property tax levies.

Property tax receipts account for a substantial proportion of the total revenues of most port districts, especially smaller port districts with limited operations.

All port district property tax levies are subject to the 101 percent levy lid.

1. Basic property tax levy

The basic port district property tax is an annual nonvoter approved excess levy of up to 45¢ per $1,000 of assessed valuation.[42] Virtually every port district imposes this property tax levy.

2. Industrial development levies

Port districts may also impose additional annual excess property tax levies for industrial development and harbor improvement purposes.[43] These additional excess levies may be imposed as follows:

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d Article VII, Section 2 establishes the One Percent Limitation on the cumulative rate of property tax levies that may be imposed on any property in any year. Port district and public utility district (PUD) property tax levies are not restricted by this limitation. Levies imposed by all other taxing districts are restricted by this limitation, unless voters approve a ballot proposition authorizing the taxing district to impose levies in excess on this limitation by a super-majority vote. The ballot proposition must be approved by at least three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met. This voting requirement is a constitutional requirement. Statutes could authorize port districts or PUD's to impose their property tax levies without voter approval or with voter approval by any margin.

- Any port district may impose annual excess property tax levies of up to 45¢ per $1,000 of assessed valuation for these purposes for a six-year period. These levies may be imposed without voter approval.
- Any port district may also impose annual property tax levies of up to 45¢ per $1,000 of assessed valuation for these purposes for a second six-year period. The authority to impose these levies is subject to potential voter referendum action for a limited period.
- Any port district located in a county bordering on the Pacific Ocean may also impose annual property tax levies of up to 45¢ per $1,000 of assessed valuation for these purposes for a third six-year period if voters approve a ballot proposition authorizing these levies by a simple majority vote.

Legislation was enacted in 2015 somewhat altering these industrial development levies.[44] Among other changes, the first two sets of levies do not have to be imposed in consecutive years, but must be imposed within a 20 year period, and allowing port districts in certain circumstances to impose the first two sets of levies after 2016 under certain circumstances.

3. Levy for dredging and related purposes

The voters of any port district may approve a ballot proposition by a simple majority vote authorizing the port district to levy an additional annual excess property tax levy of up to 45¢ per $1,000 of assessed valuation with the proceeds to be used to dredging, canal construction, or land leveling and filling purposes.[45]

4. Possible additional levy authority

It is possible that every port district may also impose additional non-voter approved excess property tax levies to make payments of principal and interest on general bonded indebtedness incurred by the district. If this authority exists, these additional levies may be imposed at any rate sufficient to make required bond redemption

payments. The only limitation applies to the amount of general indebtedness that may be incurred by the port district, which varies as described below. The amount required to make redemption payments is a function of the amount of the debt, the term of the debt, and the interest rate payable on the debt.

The authority to impose these additional levies, if it exists, arises by inference in the provision authorizing the basic port district property tax levy. This statute provides that:

> "...any levy for the payment of the principal and interest of the general bonded indebtedness of the port district shall be in excess of any levy made by the port district under the forty-five cents per thousand dollars of assessed value limitation."[e] [46]

C. Debt Proceeds

Port districts receive income from debt proceeds and may issue various types of bonds, including general obligation bonds, revenue bonds, and special assessment bonds.

They may incur general indebtedness and issue general obligation bonds. Most port district general obligation bonds have a maximum term of 50 years, but some have a maximum term of 25 years.[47] The total dollar amount of outstanding general indebtedness that most port districts may incur without voter approval is limited to one-fourth of one percent of the value of taxable property in the district. However, with the assent of three-fifths of the voters voting on a proposition to authorize indebtedness, most port districts may incur a total indebtedness limitation not exceeding three-quarters of one percent of the value of taxable property in the district. In addition, legislation has been enacted granting various limited

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e The original port district law authorized any port district to impose nonvoter approved property taxes of up to 2 mills but could only issue bonds if voters approved a ballot proposition authorizing the indebtedness by at least a three-fifths vote and the total indebtedness could not exceed 2.5 percent of the value of taxable property in the port. (Section 4, Chapter 92, Laws of 1911.) Legislation was enacted in 1921, allowing port districts to incur some general indebtedness (up to 1 percent of the value of taxable property in the district) without voter approval and additional general indebtedness with voter approval, and adding the language cited above which appears to provide that port district levies to redeem general indebtedness are in addition to the basic port property tax levy that was 2 mills at that time. (Section 1, Chapter 183, Laws of 1921.)

classes of port districts authority to incur additional levels of general indebtedness.[48]

Port districts may issue two types of revenue obligations that are not subject to indebtedness limitations. They may issue revenue bonds payable from operating income.[49] The maximum term of a revenue bond is 40 years.[50] They may also finance local improvements by issuing local improvement district bonds payable from special assessments imposed on land benefitting from the local improvements that is located within a local improvement district.[51] Presumably the maximum term on a LID bond would be 10 years, since a port district may only impose special assessments for a ten-year period.

Port districts may issue a variety of short term obligations, including notes and warrants.[52]

D. Other

Port districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

They may also finance local improvements by creating local improvement districts and imposing special assessments on lands benefitting from the local improvements that is located in the local improvement district.[53] The special assessments may only be imposed for up to 10 years.

Unique Constitutional Provisions

Two constitutional provisions grant port districts unique authorities.

Article VII, Section 2 exempts port district property tax levies from the one percent constitutional limitation on the cumulative amount of property taxes that may normally be imposed on any property in any year. Public utility district property tax levies are similarly exempted from the one percent limitation.

Port districts have a unique exemption from the general prohibition in Article VIII, Section 7 on local governments lending their credit to or giving moneys to any individual or company, except for the necessary support of the poor and infirm. State voters approved Amendment 45 (Article VIII, Section 8) in 1965 authorizing the Legislature to enact legislation allowing port districts to expend public funds for "industrial development or trade promotion and promotional hosting" purposes which is not considered to be a gift of public funds in violation of Article VIII, Section 7.

Elimination of Populist Controls

Legislation authorizing port districts to be created was enacted at the end of the populist movement in Washington State. Populists were strong supporters of government owned maritime shipping facilities that would operate for the public good rather than an array of privately owned maritime shipping facilities. The 1911 legislation authorizing port districts to be formed included a number of populist controls or limitations on port district actions. Most of these controls involved the requirement that a port district seek voter approval before it could take various actions. Gradually, the Legislature eliminated these populist controls over port districts.

Legislation authorizing other early types of special purpose districts, such as irrigation districts, also included some similar populist controls. As discussed in Chapter 12, these populist controls or limitations on irrigation districts have also been eliminated.

Some people view these populist restrictions negatively, as severely limiting the ability of a unit of government to provide its facilities and services. These people tend to support a more representative form of government rather than direct democratic forms of government. Others view these populist restrictions positively as requiring periodic voter review and approval of a government's activities. These people tend to support a more directly democratic form of government.

The populist controls or limitations over port district operations that have been removed or altered include:

- The requirement that voters approve major port district improvements before port districts expend

money on the improvement. This requirement was included in the original 1911 port district laws, but was eliminated in 1913.[54]

- The restriction that a port district may not incur any general indebtedness or issue any general obligation bonds unless a ballot proposition authorizing the indebtedness is approved by at least a 60 percent vote of port district voters voting on the proposition. This requirement was included in the original 1911 port district laws, but was altered in 1921 when port districts were allowed to incur some general indebtedness without voter approval.[55]
- The requirement that voters approve port district comprehensive scheme of harbor improvements, or any amendment to a comprehensive scheme, before money could be expended on capital facilities. This voter approval requirement was included in the original 1911 port district laws, but was eliminated in 1943.[56]
- The regulation of rates and charges imposed by a port district by the Public Service Commission. This requirement was included in the original 1911 port district laws but was eliminated in 1995. However, it appears that the Utilities and Transportation Commission (UTC), which is the successor to the old public service commission, had not regulated port district rates and charges for decades before the requirement was eliminated.[57]
- Use of commissioner districts to elect port commissioners in some port districts. The original port district laws provided that all port commissioners were elected using commissioner districts. However, legislation was enacted in 1965 prohibiting the use of commissioner districts in any port district with a population of 500,000 or more (at that time only the Port of Seattle).[f] [58] This change

f The history behind prohibiting the use of commissioner districts in larger port districts is quite interesting. Some of the early opposition to the Port of Seattle by "downtown business interests" sought to expand the number of commissioners on the commission from three to five and elect the additional commissioners on a countywide basis without the use of commissioner districts.

provided the reverse of what is most common. It is more common that, when commissioner districts are used, they are used in larger and more populated units of government and not in smaller and less populated units of governments.

Controversy

During their history, port districts have been somewhat controversial governments.

The primary controversy over port districts arose in battles to enact legislation allowing public port districts to be formed, and in the creation of the Port of Seattle, which was created as the first port district in the fall of 1911. At that time the opposition to the port district came from the "downtown business establishment" that felt port districts were socialistic enterprises competing with private enterprise.[59]

These downtown business interests instituted a lawsuit challenging the constitutionality of port district statutes, but the Supreme Court upheld the constitutionality of these statutes.[60] Two major issues were decided by the Court in that case:

- The Court held that the Legislature possesses the authority to provide for the creation of municipal corporations or special districts that are not expressly named in the State Constitution.
- The Court held that a unit of government (a port district) could be layered on top of other local governments (cities and a county) even though the port district possessed some of the powers of the cities and counties. The general common law restriction precluding common territory from being

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(Burke, Padraic, *A History of the Port of Seattle*, Port of Seattle, 1976, at pages 44-46.) Although Chapter 62, Laws of 1913 was enacted allowing for any port district with a population of 80,000 or more (i.e., the Port of Seattle) to expand the number of port commissioners, the voters of the Port of Seattle rejected the expansion. However, Port of Seattle voters finally approved the expansion of the port commission from three to five members in 1960. Then legislation was enacted in 1965 providing for the election of port commissioners in any port district with a population of 500,000 or more (only the Port of Seattle at that time) on an at-large basis without using commissioner districts. (Chapter 51, Laws of 1965.) This 1965 legislation was enacted at the behest of major business interests.

> included within the boundaries of two of the same kind of a municipal corporation did not apply.

Opposition to the Port of Seattle by downtown business interests ended by 1918 and these business interests became allies of the Port of Seattle.[61]

Some controversy still surrounds the Port of Seattle.[62] A few civic activists have opposed specific projects, such as providing a third runway for at SeaTac airport. Other civic activists oppose the use of public money to compete with private enterprise, especially private marinas.

NOTES:

1. Chapter 92, Laws of 1911.
2. "Washington Special Purpose Districts Overview," *id*.
3. The authority to create either a countywide port district or a less than countywide port district s is found in Section 2, Chapter 92, Laws of 1911, codified in RCW 53.04.020. However, the authority to create less than countywide port districts was eliminated in Chapter 157, Laws of 1971 ex sess. Temporary procedures to create less than countywide port districts was authorized by Chapter 262, Laws of 1986 and Chapter 147, Laws of 1992. This legislation was amended in 1997 by again providing a permanent procedure for less than countywide port districts to be created. (Section 1, Chapter 256, Laws of 1997, codified as RCW 53.04.023.)
4. RCW 53.04.020.
5. RCW 53.04.023.
6. Section 2, Chapter 15, Laws of 2014, codified as RCW 53.04.025.
7. RCW 36.93.020.
8. RCW 53.04.080-53.04.100.
9. Chapter 53.47 RCW.
10. Chapter 36.96 RCW.
11. Chapter 53.48 RCW.
12. RCW 53.12.010, 53.12.115, & 53.12.120.
13. RCW 53.12.172 & 53.12.221.
14. RCW 29A.52.231 & 29A.04.330.

15. Article VII, Section 1.
16. RCW 29A.04.216.
17. RCW 53.12.172.
18. RCW 53.12.010(1) & 53.12.021.
19. RCW 53.12.010(1).
20. RCW 53.12.010(2).
21. RCW 53.12.260.
22. RCW 53.08.020, 53.08.060, 53.08.295, 53.08.310, & 53.08.330; and Chapters 14.07, 14.08, 53.20, & 53.34 RCW.
23. RCW 53.08.040 & Chapter 53.25 RCW.
24. RCW 53.08.040.
25. RCW 53.08.030, 53.08.160, 53.08.245, 53.08.255, & 53.08.400; and Chapters 53.29 & 53.31 RCW.
26. RCW 53.08.040 & 53.08.041.
27. RCW 53.08.040 & 53.08.043.
28. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
29. Chapter 35.97 RCW.
30. RCW 53.08.370 & 53.08.380.
31. RCW 53.08.420.
32. RCW 53.08.410.
33. RCW 53.08.260.
34. RCW 53.08.390.
35. RCW 53.08.280 & 14.08.120(2).
36. RCW 14.08.120(2).
37. Dietrich, William, "Port Reform", The Seattle Times, Sunday, May 1, 2005, Pacific Northwest Magazine, at pages 14-28.
38 RCW 53.20.010, 53.20.020, 53.20.090, & 53.20.260.
39. Chapter 35, Laws of 2015.
40. RCW 53.08.010 & 14.07.020.
41. RCW 53.08.070.
42. RCW 53.36.020.
43. RCW 53.36.100. Authority to impose these three six-year sets of additional property tax levies was enacted in separate years. The first authority was enacted in Section 1, Chapter 265, Laws of 1957. The second authority

was enacted in Section 1, Chapter 3, Laws of 1982 1st ex sess. The third authority was enacted in Section 1, Chapter 278, Laws of 1994.

44. Chapter 135, Laws of 2015.
45. Section 1, Chapter 29, Laws of 1925, codified as RCW 53.36.070.
46. RCW 53.36.020.
47. RCW 53.36.030(4).
48. RCW 53.36.030 & 39.28.030.
49. Chapter 53.40 RCW.
50. RCW 39.46.150.
51. RCW 53.08.050.
52. Chapter 39.50 RCW.
53. RCW 53.08.050.
54. Sections 6 & 9, Chapter 92, Laws of 1911 and Sections 6 & 9, Chapter 62, Laws of 1913.
55. Section 4, Chapter 92, Laws of 1911 and Section 1, Chapter 183, Laws of 1921.
56. Section 6, Chapter 92, Laws of 1911 and Section 3, Chapter 166, Laws of 1943.
57. Section 4, Chapter 62, Laws of 1913 and Section 1, Chapter 146, Laws of 1995. Joe Keafe, the Transportation Division Director of the UTC, in a telephone conversation with the author in 1992, stated that in his more than 20 years of experience he could not remember the UTC ever regulating these charges.
58. Chapter 51, Laws of 1965.
59. Burke, at page 41.
60. *Paine v. Port of Seattle*, 70 Wash. 294, 299-300 & 305-306 (1912).
61. Burke, at pages 54-55.
62. Burke, at pages 126-130.

Chapter 15

Public Hospital Districts

Public hospital districts provide hospitals and other health care facilities and services, including emergency medical care services. They would be classified as traditional, independent special purpose districts with governing bodies composed of officials who are elected directly to office.

Legislation enacted in 1945 authorized the formation of public hospital districts.[1] This legislation proved to be a boon for constructing hospitals throughout the State, especially in rural areas, when used in conjunction with the so-called Hill-Burton Act that Congress enacted in 1946.[2] The Hill-Burton Act encouraged the construction and modernization of public and nonprofit community hospitals and clinics throughout the nation. Federal funding was provided for one half of the cost of hospitals and clinics in return for an agreement to provide service to everyone needing care.

Public hospital districts are authorized to impose regular, non-voter approved property tax levies to finance their facilities and services. This taxing authority provides an additional source of revenue to finance hospitals and other health care facilities and services that, when combined with normal charges for using facilities and services, allows the funding of more adequate health care facilities and services, especially in rural or sparsely populated areas.

The Municipal Research and Services Council (MRSC) reports that 56 public hospital districts exist in Washington State.[3] Most of public hospital districts are located in rural areas, but a few are located in urban areas. Examples of public hospital districts located in urbanized areas include:

- King County Public Hospital District No. 1 (that operates Valley Medical Center), located in Renton and Auburn; and
- King County Public Hospital District No. 2 (that operates Evergreen Health Care), located in Kirkland and Bellevue.

Examples of public hospital districts located in sparsely populated and rural areas include:

- Garfield County Public Hospital District; and
- Ferry County Public Hospital District No. 1 (that operates Ferry County Memorial Hospital), located in Republic.

The Douglas, Grant, Lincoln, Okanogan Public Hospital District No. 6 operates the Coulee Community Hospital serving parts of these four counties.

At least in theory, public hospital district legislation authorizes the creation of very large geographic public hospital districts that would be regional governments. However, most public hospital districts are less than countywide and function on a community level. Three countywide public hospital districts exist – Mason County Public Hospital District, Columbia County Public Hospital District, and Skamania County Public Hospital District. Garfield County Public Hospital District includes almost all of Garfield County.

Creation

A public hospital district may be created following two different procedures.

The proposed creation of a public hospital district is <u>not</u> subject to potential review by a county boundary review board.[4]

A. Resolution Initiating Creation of Countywide District

The county legislative authority of a county may adopt a resolution proposing creation of a countywide public hospital district.[5] A ballot proposition authorizing creation of the district is submitted to county

voters at a general or special election. The district is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition and the total vote cast upon the proposition exceeds 40 percent of the number of votes cast in the proposed district at the preceding general election.[6] This 40 percent voter validation requirement is unique.

B. Initiation by Petition

Creation of a public hospital district may also be initiated by resident voters signing a petition proposing the creation of the district.[7] This procedure may be used to initiate creation of a public hospital district that is less than countywide, countywide, or includes territory located in more than one county. The petition must be signed by voters residing in the area of each different county proposed to included in the district equal to at least 10 percent of the number of voters in each of these areas who voted in that area at the last county general election.

A public hearing on the proposed district is held by the county legislative authority of the county or jointly by the county legislative authorities of the counties in which the proposed district is located, if the proposed district includes territory in more than one county. The county legislative authority may remove territory located within its boundaries from the proposed hospital district, if it finds that the territory was unjustly or improperly included. However, the county legislative may add territory within its boundaries to the proposed hospital district only if a petition has been filed requesting the inclusion of the territory that has been signed by the owners of this additional territory. After the hearing and possible boundary adjustments, a ballot proposition authorizing creation of the hospital district is submitted to the voters of the proposed district at a special or general election.

However, a public hearing is not held if the petition proposes the creation of a countywide public hospital district.

A ballot proposition authorizing creation of the hospital district is submitted to the voters of the proposed district at a special or general election. The district is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition and the total vote cast upon the proposition exceeds 40

percent of the number of votes cast in the proposed district at the preceding general election.[8] Again, this 40 percent voter validation requirement is unique.

C. Legal Challenges

A lawsuit challenging the creation of a public hospital district must be commenced within 30 days of the filing of the certificate of the canvass of the election when the district creation the district was approved by voters.[9]

Legislation was enacted in 1955 and 1982, validating the prior attempted creation of public hospital districts.[10] Presumably, some questions had arisen over the prior creation of several public hospital districts.

Boundary Changes

Public hospital district boundaries may be altered by annexing territory, withdrawing territory, adjusting the boundary separating two contiguous districts, consolidating districts, dividing a district into two separate districts, and dissolving or disincorporating a district.

These proposed boundary changes are not subject to potential review by a boundary review board.[11]

A. Annexations

Public hospital districts may annex contiguous territory using a resolution/election method or direct property owner petition method.

A petition proposing an annexation under the direct property owner petition method of annexation must be signed by the owner or owners of not less than 60 percent of the area proposed to be annexed.[12] The commissioners of the district may adopt a resolution annexing all or any portion of the area after holding a public hearing on the annexation. Additional territory may not be added to the annexation unless a new annexation procedure is commenced. The newly annexed area is subject to the district's existing indebtedness if the commissioners required this assumption as a condition of annexation, the petition provides for

this assumption, and the petition is signed by the owners of all the property so annexed. An appellate court has not reviewed the constitutionality of property owners authorizing the assumption of indebtedness, which would involve imposition of excess property tax levies to redeem the indebtedness. That sort of indebtedness may only be authorized by a supermajority vote of voters voting on a ballot proposition authorizing the indebtedness.

The board of commissioners of a public hospital district may initiate the annexation of adjacent territory by adopting a resolution proposing this annexation.[13] A hearing on the proposed annexation is held. Changes may be made in the area proposed to be annexed, but an additional hearing must be held if the proposed annexation is expanded to include additional areas. At the next meeting following the hearing, the board of commissioners may cause an election to be held on the proposed annexation if it finds that the annexation is conducive to the welfare and benefits of the persons and property proposed to be annexed. The annexation occurs if voters residing in the area proposed to be annexed approve a ballot proposition authorizing the annexation by a simple majority vote.

B. Withdrawing Territory

Two procedures exist for territory to be withdrawn from a public hospital district.

1. Water district procedure

Territory may be withdrawn from a public hospital district following the same procedure by which territory is removed from water districts and sewer districts.[14]

This procedure may be initiated by:

- Petition of at least 25 percent of the registered voters residing in the area proposed to be withdrawn; or
- Petition of the owners of at least a majority of the acreage proposed to be withdrawn if no registered voters reside in the area; or

- Resolution of the board of commissioners of the public hospital district.

A city may stop the procedure to withdraw any of its territory from a district, if the procedure is initiated by resolution of the public hospital district board of commissioners.

The board of commissioners of the public hospital district holds a hearing on the proposed withdrawal and may approve the withdrawal after adopting findings as to the benefit to the territory proposed to be withdrawn and whether the withdrawal will be conducive to the welfare of the balance of the district. Any area that was proposed to be withdrawn may be removed from the proposed withdrawal. However, an area that was not included in the proposed withdrawal may not be added to the proposal if the proposal was initiated by petition.

Then, the county legislative authority holds a hearing on the proposed withdrawal and makes findings on the same issues addressed in the findings made by the board of commissioners of the district. The withdrawal occurs, without a ballot proposition being submitted to the registered voters residing in the area proposed to be withdrawn, if the county legislative authority makes affirmative findings on each of these issues and the findings are the same as those made by the board of commissioners of the district. A ballot proposition authorizing the withdrawal is submitted to voters residing in the area proposed to be withdrawn if any of the findings by the county legislative authority on these issues is negative or if any findings are not the same as the findings made by the board of commissioners of the district.

2. Newer procedure

Territory may be withdrawn from a public hospital district, and possibly reannexed into the district, under another procedure.[15] These statutes were enacted to avoid the prorationing or reduction of the property tax levy of the public hospital district and are similar to procedures provided for metropolitan park districts and fire protection districts.

Territory may be withdrawn from a public hospital district upon:

- Adoption of a resolution by the district commissioners requesting the withdrawal and finding that, in the opinion of the board, inclusion of that area within the district's boundaries will result in a levy prorationing; and
- Adoption of a resolution by the city governing body approving the withdrawal, if the area is located in that city, or adoption of a resolution by the county legislative authority approving the withdrawal, if the area is located outside of a city.

This territory may be reannexed by the public hospital district upon adoption of a resolution by the district providing for the reannexation and adoption of a resolution by either the city governing body, or county legislative authority, approving the reannexation.

C. Adjusting Boundaries Separating Two Public Hospital Districts

The boundary between two contiguous public hospital districts may be adjusted, if the boundary bisects an irrigation block unit or farm unit.[16] An adjustment may only be made if requested by the owner of the farm unit and approved by the county auditor after holding a public hearing on the adjustment.

D. Consolidating

Two or more contiguous public hospital districts may consolidate into a single district following the procedures by which cities consolidate.[17] Under these procedures either all or part of another public hospital district may be combined with another contiguous public hospital district.

E. Dividing a District into Two Separate Districts

A public hospital district may be divided into two separate districts under legislation enacted in 1982.[18]

This procedure involves the board of commissioners of the district adopting of a resolution proposing the division, the superior court

approving a plan for the division of the district after holding a hearing on the matter, and the voters of each of the proposed districts approving a ballot proposition authorizing the division. New commissioners for each of the new districts are elected at the same election.

F. Dissolving

A public hospital district may be dissolved or disincorporated following two different general procedures for the dissolution or disincorporation of special purpose districts. First, the board of commissioners of the district may petition the superior court to dissolve the district and the court may dissolve the district if it finds that the dissolution will serve the "best interests of all persons concerned".[19] Second, the county legislative authority may dissolve an inactive district.[20]

Governing Body and Elections

The governing body of a public hospital district is a board of hospital commissioners composed of three, five, or seven members who are elected directly to office for six-year staggered terms of office at general elections held in odd-numbered years.[21] Commissioners may be elected from commissioner districts, on an at-large basis, or using any combination of commissioner districts and at-large elections.

Public hospital district commissioners are elected as nonpartisan officials in elections held in odd numbered years.[22] Normal franchise rights exist in public hospital districts and the electorate of a public hospital district is composed of all registered voters residing within the district.[23] County auditors conduct all elections for public hospital districts.[24]

The initial public hospital district commissioners are elected to staggered terms of office at the same election when the ballot proposition is submitted to voters authorizing the creation of the district. The county legislative authority determines the number of commissioners to be elected (three, five, or seven) and whether commissioner districts shall be used to elect any commissioners. No primary is held. Obviously, election of commissioners is null

and void if the ballot proposition creating the district is not approved by voters. It appears that the use of commissioner districts in a public hospital district continues after the district is created, as provided by the county legislative authority for the election of the initial board of hospital commissioners.

However, a board of hospital commissioners may, by resolution, abolish the use of commissioner districts.[25] Hospital district voters may approve a ballot proposition authorizing the reestablishment of commissioner districts. The ballot proposition is submitted to voters by resolution of the board of hospital commissioners or by petition of district voters equal to at least 10 percent of the number of district voters voting at the last district (odd-year) general election.

Commissioner districts are only used for residency purposes of people running for the commissioner position or serving in that position. Voters of the entire public hospital district vote at primary, if one is held, to select two candidates whose names will appear on the general election ballot and vote at general elections to elect the commissioners.[a] [26]

A ballot proposition to increase board commissioners to five or seven members may be submitted to voters for their approval or rejection.[27] The ballot proposition is submitted to voters by resolution of the board of commissioners or by a petition signed by district voters equal in number to 10 percent of the number of district voters who voted at the last district general election. If authorized, these additional positions are considered vacant and the board of commissioners appoints people to serve until qualified people are elected at the next district general election. Provisions are made to stagger their terms of office.

Hospital district commissioners are paid compensation at a rate of $90 per day or portion of a day for attending meetings of the board of commissioners or devoted to the business of the district, not to exceed $8,640 per year.[28] Beginning July 1, 2008, the per diem

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a Apparently, Grant County Public Hospital District has used its commissioner districts in a more traditional manner where only voters residing in a commissioner district may vote at a primary to nominate candidates from the commissioner district. (Discussion with Jeff Mero, Director, Association of Public Hospital Districts, June 21, 2004.) It is advisable that express statutory authority be sought authorizing this alternative use of commissioner districts.

rate of compensation, and its annual caps, were adjusted for inflation using the consumer price index.

Powers

Public hospital districts are authorized to construct, acquire, and operate hospitals and other health care facilities and equipment, and are authorized to provide health care services, including emergency medical services (EMS).[29] Most districts operate a hospital and provide extensive health care services, but eight districts only provide more limited heath care such as operating a clinic or nursing home or providing ambulance service.[30]

A public hospital district is required to appoint either a single superintendent for the entire district or a superintendent for each hospital operated by the district.[31] The superintendent is the chief administrative officer of the district or hospital.

Public hospital districts may hire chaplains for their hospitals, health care facilities, and hospice programs.[32]

A public hospital district must adopt a plan before it acquires or constructs a hospital or other health care facilities.[33]

Public hospital districts, as virtually all other types of local government, may condemn property following the procedures by which cities condemn property.[34]

Finances

Public hospital districts receive income from a variety of sources, including: (1) Imposing rates and charges for use of their facilities and services; (2) property taxes; (3) debt proceeds; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of public hospital district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Rates and Charges

Public hospital districts may impose rates and charges for use of their facilities and services.[35] These revenues constitute the overwhelming majority of revenue for public hospital districts.

B. Property Taxes

Public hospital districts may levy both regular property taxes and excess property taxes.

Two basic annual non-voter approved, regular property tax levies may be imposed by public hospital districts to finance their activities.[36] The first levy has a maximum rate of 50¢ per $1000 of assessed value and has the highest status of junior taxing district levies.[37] The second levy is an additional levy with a maximum rate of 25¢ per $1000 of assessed value and has the fourth highest status of junior taxing district levies.[38]

Public hospital district voters may approve a ballot proposition authorizing the district to impose additional annual regular property tax levies for EMS of not exceeding 50¢ per $1000 of assessed value for six consecutive years, ten consecutive years, or permanently.[39] Although these are regular property tax levies, the ballot proposition must be approved by a three-fifths vote and a 40 percent voter validation requirement is met. The public hospital district must maintain a separate accounting of expenditures of the revenues obtain from these levies. Any public hospital district permanently authorized to impose these additional levies must provide for a special referendum procedure for voters to withdraw this permanent authorization. A thirty-day period is allowed for signatures to be obtained and the referendum petition must be signed by at least 15 percent of the registered voters of the public hospital district. The emergency medical service property tax levy is a regular property tax subject to the constitutional One Percent Limitation on most regular property taxes, but is not included under the normal limitation on the combined rates of regular property tax rates imposed by local governments of $5.90 per $1,000 of assessed value.[40]

All of these regular property tax levies are subject to the so-called 101 percent levy lid.

Regular property tax levies generate an average of 4 percent of the maintenance and operating revenues for public hospital districts, with the highest reliance on regular property tax levies for these purposes being 7 percent.[41]

Voters of a public hospital district may also approve ballot propositions authorizing the district to impose a single year excess property tax levy for general district purposes at any amount or multiple-year excess levies to retire general obligation bonds issued for capital purposes.[42] The ballot proposition must be approved by a three-fifths vote and a 40 percent voter validation requirement is met.

C. Debt Proceeds

Public hospital districts may incur debt and issue a variety of different types of bonds.

They may incur general indebtedness and issue general obligation bonds without voter approval of a total amount not exceeding three-fourths of one percent of the value of taxable property in the district and of a total amount not exceeding two and one-half percent of the value of taxable property in the district if authorized by a three-fifths vote of district voters.[43] The maximum term of a general obligation bond is 40 years.[44]

Public hospital districts may issue revenue bonds payable from their operating revenues.[45] The maximum term of a revenue bond is 40 years.[46]

Public hospital districts may issue a variety of short term obligations, including notes and warrants.[47]

D. Other

Public hospital districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and

investment earnings, and receive income from sales or leases of real or personal property.

NOTES:

1. Chapter 264, Laws of 1945. Most public hospital district laws are codified in Chapter 70.44 RCW.
2. The Hospital Survey and Construction Act is more commonly known as the Hill-Burton Act (Public Law 79-725, Aug. 13, 1946, Chap. 958) after Senators Lister Hill and Harold Burton who were the prime sponsors of the legislation.
3. "Washington Special Purpose Districts Overview," *id*.
4. RCW 36.93.020.
5. RCW 70.44.020.
6. RCW 70.44.040(1).
7. RCW 70.44.020, 70.44.030, & 70.44.035.
8. RCW 70.44.040(1).
9. RCW 70.44.028.
10. RCW 70.44.015 & 70.44.016.
11. RCW 36.93.020.
12. RCW 70.44.200. This procedure was authorized in legislation enacted in 1953.
13. RCW 70.44.210-70.44.230. This procedure was authorized in legislation enacted in 1967.
14. RCW 70.44.400. This procedure was authorized in legislation enacted in 1984. The procedure for water districts and sewer districts to withdraw territory is found in Chapter 57.28 RCW.
15. RCW 70.44.235. This procedure was authorized in legislation enacted in 1987.
16. RCW 70.44.185.
17. RCW 70.44.190.
18. RCW 70.44.350-70.44.380.
19. Chapter 53.48 RCW.
20. Chapter 36.96 RCW.
21. RCW 70.44.040 & 29A.04.330.

22. RCW 29A.52.231 and 29A.04.330.
23. Article VII, Section 1.
24. RCW 29A.04.216.
25. RCW 70.44.042.
26. RCW 77.44.041(2).
27. RCW 70.44.053-70.44.056.
28. RCW 70.44.050.
29. RCW 70.44.060 & 84.52.069.
30. Discussion with Jeff Mero, Director, Association of Washington Public Hospital Districts, January 23, 2003.
31. RCW 70.44.070-70.44.090.
32. RCW 70.44.059.
33. RCW 70.44.110.
34. RCW 70.44.060.
35. RCW 70.44.060(3) & (5).
36. RCW 84.52.010.
37. RCW 84.52.010(2)(f).
38. RCW 84.52.010(2)(c).
39. RCW 84.52.069.
40. RCW 84.52.043(2).
41. Discussion with Jeff Mero, Director, Association of Washington Public Hospital Districts, June 21, 2004.
42. RCW 70.44.060(5) & (6), 84.52.052, & 84.52.056.
43. RCW 39.36.020(2).
44. RCW 39.46.110.
45. RCW 70.44.060(5).
46. RCW 39.46.150.
47. Chapter 39.50 RCW.

Chapter 16

Public Utility Districts

Public utility districts (PUDs) are authorized to generate and distribute electrical energy, as well as provide water service and sewer service. They would be classified as independent special purpose districts with governing bodies composed of officials who are elected directly to office.

Most PUDs are countywide in extent and function as regional governments. Snohomish County PUD includes all of Snohomish County as well Camano Island, which is located in Island County. Two separate PUDs occupy all of Mason County. This relatively large geographic size essentially makes PUDs regional governments, at least if they provide utility service throughout their boundaries. PUDs that distribute electrical energy tend to distribute the energy throughout their entire boundaries and sometimes outside of their boundaries. However, a PUD that provides water service or sewer service tends to provide this service in only small, isolated parts of the PUD.

The Municipal Research and Services Center (MRSC) reports that 28 PUDs exist in Washington State.[1] Twenty-three of the operating PUDs provide electrical service, 14 of which also provide either water or both water and sewer service. Five of the operating PUDs provide only water service or provide only water and sewer service. The remaining PUD does not provide any utility service. A PUD in Yakima County was dissolved in 1998.

At times, PUDs have generated considerable controversy.

Creation

Procedures for creating a PUD are similar to procedures for creating a port district and provide for creating either a countywide PUD or a less than countywide PUD.[2]

The creation of a PUD is not subject to review by a boundary review board.[a]

The process to create a countywide PUD may be initiated either by resolution of the county legislative authority or by the petition of county voters that has been signed by at least 10 percent of the number of county voters voting at the last county general election held in an even-numbered year. A ballot proposition authorizing creation of the PUD is then submitted to voters for their approval or rejection. The PUD is created if the ballot proposition is approved by a simple majority vote of county voters voting on the proposition.

The process to create a less than countywide PUD may only be initiated by a petition signed by voters residing in the proposed boundaries equal in number to at least 10 percent of the voters residing in that area who voted at the last county general election held in an even-numbered year. A hearing is held on the proposal by the county legislative authority. The county legislative authority may adjust the proposed boundaries to only include areas that will benefit from inclusion. However, no area may be added to the proposed boundaries except by petition of voters residing in the area proposed to be added. A ballot proposition authorizing creation of the PUD is then submitted to voters residing in the area for their approval or rejection. The PUD is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition.

Restrictions exist on a PUD "invading" the territory of another local government.[3] A PUD may not include a "municipal corporation" within its boundaries that "already owns or operates all of the utilities" that a PUD is authorized to provide. A PUD may not

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a Although one could make an argument that the creation of a PUD is subject to potential review by a boundary review board, this actually could not occur since a boundary review board only has potential authority to review PUD boundary changes if the PUD is "engaged in water distribution". Obviously, only an existing PUD could be engaged in water distribution and a yet to be created PUD could not be engaged in water distribution. (RCW 36.93.020(2).)

duplicate utility service within another "municipal corporation" that provides the particular utility service. A PUD may only provide electrical energy in a city if authorized by the city governing body.[4]

Boundary Changes

Very few statutes provide for PUD boundary changes.

At least in theory, boundary changes of a PUD that is "engaged in water distribution" are subject to potential review by a boundary review board if one exists in the county and its jurisdiction is invoked.[5]

A. Old Statutes

An old statute authorizes two or more contiguous PUDs to consolidate and a PUD to annex all or part of another PUD.[6] However, this statute no longer appears to be effective since it references consolidation and annexation procedures in statutes that have been repealed.

The old PUD incorporation laws literally provided that any area within a county could be included within a new PUD and did not expressly preclude a PUD from including all or part of another PUD. However, a 1979 statute prohibited a PUD that was created after September 1, 1979, from including all or part of another PUD.[7] It appears that at least one small PUD in 1936 was consumed by a larger PUD, presumably using this old law.[8]

B. Annexations

Legislation was enacted in the 1980's allowing a PUD to annex territory within its "service area".[9] The area proposed to be annexed could be located in another county than the annexing PUD and could be located in another PUD. "Service area" was defined very narrowly to mean an area contiguous to the annexing PUD that was "generally served with electrical energy" by the annexing PUD on January 1, 1987. The authority provided by this legislation was used by Snohomish County PUD to annex Camano Island, which is located in Island County.

C. Dissolutions

Legislation was enacted in 1969 allowing a PUD to be dissolved.[10] This was part of the compromise legislation between public and private power interests increasing compensation for PUD commissioners in return for placing certain restrictions on PUDs. The process to dissolve a PUD may be initiated by resolution of the PUD commissioners or by a petition signed by PUD voters equal in number to at least 10 percent of the number of PUD voters who voted at the last general election in an even numbered year. A ballot proposition providing for the dissolution of the PUD is then submitted to PUD voters and the PUD is dissolved if the proposition is approved by a simple majority vote.

Governing Body and Elections

The governing body of most PUDs is a board of commissioners composed of three members who are elected to staggered six-year terms of office using commissioner districts in elections held in even-numbered years.[11] This is unique. Officials of all other special purpose districts with regular franchise rights are elected in elections held in odd-numbered years.

PUD commissioners are elected as nonpartisan officials.[12] Normal franchise rights exist in a PUD and the electorate of a PUD is composed of all registered voters residing within the PUD.[13] County auditors conduct all elections for PUDs.[14]

PUD commissioners are elected using commissioner districts.[15] Commissioner districts are used for the following purposes: (1) Only a registered voter residing in a commissioner district may run for or hold office as a commissioner of that district; and (2) only registered voters residing in the commissioner district may vote at a primary to select no more than two candidates from that commissioner district. However, voters of the entire PUD vote at general elections to elect all commissioners.

The initial commissioners of a PUD are elected at the same election when the ballot proposition authorizing creation of the PUD is submitted to voters.[16] No primary is held and commissioner

districts are not used. Obviously, election of the initial PUD commissioners is null and void if voters fail to approve the ballot proposition creating the PUD.

Voters of the following PUDs may authorize its board of commissioners to be increased to five members:

- A PUD with a license from the Federal Power Commission to construct a hydroelectric project with an estimated cost of $250 million or more; or
- A PUD with a population of 500,000 or more.[17]

Such a PUD is referred to as a "five commissioner district" PUD. The two additional commissioners are elected to staggered four year-terms office, using two new commissioner districts of equal population in the PUD that are superimposed over the existing three commissioner districts from which the other three commissioners are elected to staggered six year-terms of office.

Each PUD commissioner receives a per diem rate of compensation at a rate not exceeding $90 for each day or major part of a day devoted to district business or attending meetings, not to exceed $12,600 per year. In addition, each PUD commissioner receives a salary as follows:

- $1,800 per month, if the PUD has received a total gross operating income of over $15 million in the preceding fiscal year; or
- $1,300 per month, if the PUD has received a total gross operating income of from $2 million to $15 million in the preceding fiscal year. However, the board of commissioners may increase the salary up to $900 per month; or
- $600 per month, for all other PUDs.[18]

Beginning July 1, 2008, the per diem rate of compensation, the cap on the annual amount of per diem compensation, and the monthly salary amounts were adjusted for inflation using the consumer price index.

As discussed below, legislation first providing monthly salaries for some PUD commissioners was enacted in 1969 as part of a compromise between public and private power interests.

Powers

PUDs may provide electrical utilities, water utilities, and sewer utilities, but are prohibited from providing duplicate utility service within another "municipal corporation" providing that particular utility service.

The original PUD laws authorized a PUD to generate and distribute hydroelectric power as well as electrical energy generated by any other means, and provide domestic water systems and irrigation water systems.[19] A PUD could locate electrical generating facilities and water works (both potable and irrigation) inside or outside of its boundaries and distribute electricity or water inside or outside of its boundaries.

Legislation was enacted in 1951 authorizing a PUD to provide street lighting as part of a "local utility district", which is a type of local improvement district (LID).[20]

The authority of a PUD to provide or distribute electrical energy is somewhat restricted. First, a PUD may only provide electrical energy in a city if authorized by the city governing body.[21] Second, legislation was enacted in 1969 as part of a compromise between public and private power interests restricting the authority of some PUDs to construct or acquire electrical generating, transmission, or distribution facilities.[22] Any PUD that did not own or operate electrical generating, transmission, or distribution facilities on March 25, 1969, could only construct or acquire such electrical facilities if the voters of the PUD approved a ballot proposition authorizing the acquisition or construction of these facilities. Any PUD created after that date that did not construct or acquire such electrical facilities within 10 years after it was created could only construct or acquire such electrical facilities if the voters of the PUD approved a ballot proposition authorizing the acquisition or construction of these facilities.

Legislation was enacted in 1963, authorizing any PUD located in a county with a population of 12,000 to less than 18,000, bordering on the Columbia River, to provide sewer service.[23] This legislation was enacted to allow Klickitat PUD to provide sewer service.[24] However, all other PUDs have restricted authority to provide sewer service. Legislation was enacted in 1975, allowing any other PUD to provide sewer service if voters of the PUD approve a ballot proposition authorizing provision of this service.[25]

The authority to provide water and sewer service includes the authority to create municipal corporations to provide water and sewer service under the recently enacted Joint Municipal Service Act.[26]

Legislation was enacted in 1989, allowing a PUD that provides a water system to assist its customers in financing the acquisition of water conservation equipment.[27]

The county board of health (basically, the county legislative authority) may authorize a PUD to operate and maintain on-site sewage disposal facilities, septic tanks, and other wastewater facilities, as well as inspections of these systems, and charge the owners of private systems with these costs.[28]

PUDs are authorized to engage in planning activities under the county and city general planning enabling laws. This authority was clarified in 1985 not to include the authority to adopt, regulate, or enforce comprehensive plans, zoning codes, land use codes, or building codes.[29]

PUDs, as virtually all other types of local government, are authorized to condemn property to carry out their purposes, but may not condemn city owned public utilities.[30]

Finances

PUDs receive income from a variety of sources, including: (1) Rates and charges for use of their utility services; (2) debt proceeds; (3) property taxes; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of PUD finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Rates and Charges

PUDs are authorized to impose rates and charges for providing utility service.[31] Rate and charge income constitutes by far the greatest source of revenue for PUDs.

B. Debt Proceeds

PUDs may incur debt and issue different types of bonds.

A PUD may incur general indebtedness and issue general obligation bonds. General indebtedness may be incurred without voter approval of an amount not exceeding three-quarters of one percent of the value of all taxable property in the PUD, but voters may authorize voter approved general indebtedness, with the total general indebtedness not exceeding one and one quarter of one percent of the value of all taxable property in the PUD.[32] Approval of the voter approved indebtedness is must be by a three-fifth vote of voters voting on the ballot proposition. PUD laws contain unique provisions relating to general obligation bonds. Utility revenues are the primary source of monies a PUD uses to make payments of principal and interest to redeem general obligation bonds, after deducting costs of maintenance, operation, and PUD expenses. If these monies are not sufficient to make the bond redemption payments, the PUD is required to impose property taxes sufficient to make any remaining payments of principal and interest to redeem general obligation bonds.[33] This requirement to impose sufficient property taxes may place the required property taxes outside of the so-called 101 percent levy lid. The maximum term of a general obligation bond is 40 years.[34]

PUDs may issue a variety of revenue obligations that are not subject to indebtedness limitations. They may issue revenue bonds payable from its operating income consisting of rates and charges imposed for providing utility service.[35] The maximum term of a revenue bond is 40 years.[36] PUDs may also finance local

improvements by issuing local improvement district bonds payable from special assessments imposed on land benefitting from the local improvements located within a local improvement district.[37] These bonds appear to have a maximum maturity of 30 years.

PUDs may issue a variety of short term obligations, including notes and warrants.[38]

C. Property Taxes

PUDs may impose non-voter approved, excess property tax levies.[39]

PUD property taxes, like port district property taxes, are above, or in excess of, the constitutional One Percent Limitation on the cumulative rate of property taxes that may be imposed on any property in any year. A PUD may impose these property taxes at a rate of 45¢ per $1000 of assessed value in any year. However, vague statutory language may also authorize PUDs to impose additional unlimited property taxes above the 45¢ per $1,000 of assessed value tax if the additional taxes are used to make interest and redemption payments on general obligation bonds. This ambiguous language is somewhat similar to language that appears to authorize port districts unlimited property taxes for these purposes.

PUD property taxes (or at least property taxes imposed under the basic property tax of 45¢ per $1,000 of assessed value) are subject to the so-called 101 percent levy lid.

Unlike port districts, very few PUDs impose property taxes and the few PUDs imposing property taxes have very small operations. Only four PUDs imposed property taxes in 2013 for collection in 2014.[40] Jefferson County PUD, Kitsap County PUD, and Thurston County PUD imposed somewhat smaller property tax levies, but these PUDs do not operate electrical utilities and only provide very limited water or sewer service. Skamania County PUD imposed almost its full regular property tax levy but distributes electrical energy throughout its boundaries and provides limited water service.

D. Other

PUDs may also receive financing from a variety of other sources.

They may finance work or local improvements by creating "local utility districts", which is another name for local improvement districts (LIDs), and imposing assessments on benefitted property within the local utility district.[41] The board of commissioners adopts a resolution providing for the specific procedures to create such an entity and impose assessments, but these procedures are governed by city LID laws "as nearly as may be".

PUDs, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Joint Powers

Legislation was enacted in 1949, expressly authorizing any two or more PUDs to jointly exercise all of their powers.[b] [42]

Then, legislation was enacted in 1953, allowing two or more PUDs or cities to create an operating agency (later renamed as a joint operating agency) to generate electrical energy.[43] The primary joint operating agency (JOA) that was formed is the infamous Washington Public Supply System (WPPSS) that had the largest default on municipal bonds in the United States.[c]

All local governments (including PUDs) in Washington State are authorized to enter into interlocal contracts and interlocal agreements.[d] PUDs are also authorized to create municipal corporations to provide water and sewer service under the recently enacted Joint Municipal Service Act.[e] [44]

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b This legislation also created the Washington State Power Commission as a "corporate municipal instrumentality of the State" to generate and distribute electrical energy on a wholesale basis. The Washington Public Power Commission no longer exists.

c A more detailed discussion of JOA's is included in Chapter 26.

d Interlocal agreements are discussed in Chapter 72.

e The Joint Municipal Service Act is discussed in Chapter 72.

Public and Private Power Controversies

The history of public utility districts has been dominated by controversy between public power interests and private power interests.

Controversy between these interests arose after statehood and continued until at least the late 1960's. This controversy somewhat resembled the fight between public port interests and private port interests. However, controversy over PUDs continued for decades, rather than ending after a few years, as in the case of port districts.

The Legislative Assembly enacted special legislation in 1868 authorizing the City of Vancouver to generate and distribute electrical energy and gas in 1868.[45] However, it does not appear that Vancouver took advantage of this authorization. The first State Legislature enacted legislation in 1890, authorizing cities to generate and distribute electrical energy, but they initially were only allowed to distribute electricity within their own boundaries.[46] The first city electrical utility was established by Ellensburg in 1891. Tacoma purchased a private power system in 1893 and Seattle established its public power system in 1902.

After years of fighting with private power interests, the Washington State Grange sponsored Initiative to the Legislature No. 1 allowing PUDs to be created to generate and distribute electrical energy on a countywide or less than countywide basis.[47] As an Initiative to the Legislature, the measure was submitted to the Legislature for its consideration at the 1929 legislative session. The Legislature failed to act on the Initiative, so the measure was submitted to state voters for their approval or rejection at the 1930 regular election. State voters approved Initiative to the Legislature No. 1 by a 54 percent margin.

PUDs were soon created by local voter action.[48] Voters approved three less than countywide PUDs in 1932. Voters approved two countywide PUDs and two additional less than countywide PUDs in 1934. Three other PUDs were approved by voters in 1934 but were blocked by court injunctions. Voters approved 15 out of 26 ballot propositions in 1936 to create PUDs. One of these new PUDs absorbed a smaller PUD, so 21 PUDs existed by 1936.

Thirty-one PUDs existed in 30 counties by 1942, but some of these PUDs were not activated, i.e., did not provide any utility service. Twenty-seven out of 32 PUDs were activated by 1984.

The State Supreme Court upheld the constitutionality of the PUD enabling legislation in 1936, relying on an earlier case upholding the constitutionality of port district enabling legislation.[49]

Private power interests did not take this success sitting still. They pushed legislation and initiatives curbing public power and supported PUD commissioner candidates who did not favor public power.[50]

A slight turning point in the public-private power battles occurred in 1953 when public and private power interests agreed to the joint provision of dams on the Columbia River.[51] These joint agreements arose after a standoff between these two sides. An attempt by the Washington Water Power Company to acquire the Puget Power Company (Puget Energy Company) had been defeated. An attempt by PUDs to purchase the Puget Power Company had been rejected by voters. Under the joint agreements, private power interests dropped their opposition to public power interests constructing electrical generating projects, if private power interests could purchase a specified amount of the electrical output from the new facility. Eventually, the primary joint participation agreement involved the Washington Public Power Supply System.[f]

However, "torrid fights" between public power and private power interests erupted during the 1961 and 1963 legislative sessions.[52] HB 197 was the primary focus of these fights. This legislation, promoted by private power interests during the 1961 legislative session, would have required a PUD to obtain voter approval before it could condemn private power company property. The House of Representatives was under what is called a "Call of the House" motion for four consecutive daily sessions. All members of the house must be present, the chamber doors are locked, and no member is allowed to leave during a "Call of the House" motion.

f Joint operating agencies and the Washington Public Power Supply System are discussed in Chapter 26.

Every Republican member, and a few "private power" Democratic members, supported HB 197. The remaining Democratic members, including the late Speaker John O'Brien, opposed HB 197. HB 197 finally died when it was referred to the House Rules Committee after four days of battling on the house floor.

The fight between public and private power interests resumed in the 1963 legislative session. A coalition controlled the House of Representatives with all Republican members, and six Democratic members who favored private power, electing the late Bill Day, Sr. (D-Spokane) as the Speaker of the House, even though the Democrats had a 51 to 49 majority. However, legislation favoring private power interests was not enacted at the 1963 session.

Relative peace between public and private power interests finally occurred during the 1969 legislative session with the enactment of HB 140. This compromise legislation provided monthly salaries for many PUD commissioners, in return for making changes to PUD laws favored by private power interests. These changes included providing procedures for a PUD to be dissolved and adding a requirement that a PUD that had not begun generating or distributing electrical energy (i.e., had not become electrified) within ten years of its creation could not become electrified without voters of the PUD approving a ballot proposition authorizing the PUD to electrify.[g] [53]

Although the intensity of the disputes between public and private power interests abated, echoes of the unrest were still reverberating when this author began his career in the House of Representatives in 1973.

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g Ken Billington was the head of the PUD Association from the late 1940's until the late 1970's and participated in the agreement leading to the enactment of this legislation. He was quite defensive in describing this legislation as follows:

> "There will be some who will say that the public utility districts sold out to the private power companies, trading the requirement to vote to activate a district [i.e., to electrify a PUD that had not electrified within ten years of its creation] and a dissolution statute for a bigger per diem and specific salary for public utility district commissioners. Nothing could be farther from the truth...."

(Billington, at page 290.) However, Billington told the author in the late 1980's that agreeing to this compromise bill was the biggest mistake he had made during his 30 years of lobbying for PUDs.

NOTES:

1. "Washington Special Purpose Districts Overview," *id*.; & the Washington Public Utility District Association website, http://www.wpuda.org/puds.cfm .
2. RCW 54.08.010.
3. RCW 54.04.030.
4. RCW 54.04.040.
5. Chapter 36.93 RCW.
6. RCW 54.32.010.
7. RCW 54.08.010 was amended by Section 1, Chapter 240, Laws of 1979 ex sess. to add this restriction.
8. Billington, Ken, *People, Politics, and Public Power*, Washington PUD Association, 1988, at page 15.
9. RCW 54.04.035.
10. Section 4, Chapter 106, Laws of 1969, codified as RCW 54.08.080.
11. RCW 54.08.060 & 29A.04.330.
12. RCW 29A.52.231.
13. Article VI, Section 1.
14. RCW 29A.04.216.
15. RCW 54.12.010.
16. RCW 54.08.060.
17. Chapter 54.40 RCW.
18. RCW 54.12.080.
19. Section 6, Chapter 1, Laws of 1931, partly codified in RCW 54.16.030 & 54.16.040.
20. Section 1, Chapter 209, Laws of 1951, codified as RCW 54.16.120.
21. RCW 54.04.040.
22. Section 3, Chapter 106, Laws of 1969, codified as RCW 54.08.070.
23. Section 1, Chapter 196, Laws of 1963, codified as part of RCW 54.16.180.
24. Billington, at page 200.
25. RCW 54.16.230-54.13.270.
26. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
27. RCW 54.16.032.

28. RCW 54.16.310.
29. RCW 54.04.120, as amended by Section 1, Chapter 95, Laws of 1985.
30. RCW 54.16.020, 54.16.030, 54.16.040, & 54.16.050.
31. RCW 54.16.030, 54.16.040, & 54.16.230.
32. RCW 54.24.018 & 39.36.020(1).
33. RCW 54.24.018(1).
34. RCW 39.46.110.
35. RCW 54.24.030.
36. RCW 39.46.150.
37. RCW 54.16.120.
38. Chapter 39.50 RCW.
39. RCW 54.16.080 and Article VII, Section 2.
40. State of Washington, Department of Revenue website, "Local Property Tax Levy Detail for all Counties for Taxes Due in 2014," http://dor.wa.gov/docs/reports/2014/levy_detail_files_2014/all_county_levy_detail_2014.pdf .
41. RCW 54.16.130-54.16.170.
42. Section 2, Chapter 227, Laws of 1949, codified as RCW 54.16.200.
43. Chapter 281, Laws of 1953, codified in Chapter 43.52 RCW.
44. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
45. Statutes of the Territory of Washington, 1867-1868, 1st Biennial Session, Chapter V, Section 32(7th), pages 109-136.
46. Billington, at pages 6-8. General authority for first class cities to generate and distribute electrical energy was authorized by the first State Legislature in 1890. (Sec. 5, pages 215-224, Laws of 1889-1890.) General authority for all cities to provide electricity was also authorized in 1890. (Sec. 1, page 520, Laws of 1889-1890.)
47. Chapter 1, Laws of 1931. Billington, at pages 1-13.
48. Billington, at pages 15-16.
49. *Royer v. Public Utility District No. 1*, 186 Wash. 142, 148 (1936).
50. Billington, at pages 16-30.
51. Billington, at pages 102-103.
52. Billington, at pages 174-193.
53. Billington, at pages 278-292.

Chapter 17

School Districts

School districts are the most important special purpose districts in Washington State. They are responsible for implementing the State's "paramount duty" to educate children.[1]

A new era of responsibility for the State to fund education began in 1977 with the Thurston County Superior Court's declaratory judgement finding that the State had failed to adequately fund basic education, its paramount responsibility.[a] As discussed below, the Legislature has grappled with this responsibility since then.

School districts are unique special purpose districts. They are pervasive throughout the State – every portion of the State is included within a school district. The Municipal Research and Services Center (MRSC) reports that 295 school districts exist in the State.[2] Most of these school districts are relatively small, on a geographic basis.

Along with road districts that today have very few functions, school districts are the oldest types of special purpose districts in the State. The origins of laws relating to school districts are found in the first Legislative Assembly of Oregon Territory.[3] These laws were greatly expanded and enhanced over more than one hundred years by Oregon Territory, Washington Territory, and the State of Washington.

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a This decision is known as Doran Decision I after Thurston County Superior Court Judge Robert J. Doran who issued the declaratory judgement in January of 1977. On appeal, the State Supreme upheld Judge Doran's decision that the State had failed to meet this paramount responsibility. *Seattle School District No. 1, et al. v. State of Washington*, 90 Wn.2d 476 (1978). Judge Doran issued two subsequent decisions on the State's responsibility to fund basic education, known as Doran Decision II and Doran Decision III.

School districts are also unique in that they have dual natures, being subject to direct supervision or control by the State, as well as being fairly autonomous local units of government. Conservation districts are the only other special purpose districts subject to similar direct state control.

School districts would be classified both as traditional special purpose districts and partial subdivisions of the State.

The nature of school districts as partial subdivisions of the State, arises as a result of:

- The statement in Article IX, Section 1 that providing for the education of children is the "paramount duty of the state". (Emphasis added.)
- Direct supervision by four state institutions – the elective office of State Superintendent of Public Instruction (OSPI), the State Board of Education, the Washington Charter School Commission, and regional state agencies called education service districts (ESDs).[b]
- The State financing of most school district operations, including what is called "basic education," as well as some of the costs of constructing school facilities.

As discussed in Chapter 29, the Legislature enacted somewhat startling legislation in 2015 providing that if a regional transit authority (i.e., Sound Transit) obtains voter approval to finance additional high capacity transportation systems by imposing new taxing authority authorized in the legislation, the RTA is required to fiancé $518 million of education within its boundaries and $20 million of affordable housing within its boundaries.

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b ESDs are discussed below under the History of School Districts. RCW 28A.315.005 provides that the "governance structure" for the State's public common schools is comprised of these four state institutions and local school district boards of directors. The OSPI and ESDs are discussed below, under the History of School Districts. Initiative Measure No. 1240 was approved by state voters at the 2012 general election providing for charter schools and the Washington Charter School Commission, but the State Supreme Court recently held I-1240 unconstitutional, so this Commission no longer exits. (*League of Women Voters v. State*, case #89714-0, filed September 4, 2015, at page 21.)

The nature of school districts as separate units of local government basically arises from their boards of school directors who are directly elected by local voters. This, at least semi-local control over school districts, has existed since the beginnings of school district laws.

Creation

Current state laws no longer provide for the creation of school districts, and instead include detailed provisions relating to the "organization" of school districts, which means the alteration of school district boundaries.[4]

Presumably, over the decades legislators felt that there was no longer a need for statutes providing for the creation of new school districts, since all parts of the State were already included in a school district and statutes provided for the transfer of territory between school districts, the annexation of territory in one school district by another school district, and the consolidation of school districts.

Boundary Changes

Statutes describe procedures for altering school district boundaries by:

- Transferring territory from one or more school districts to another school district;
- Dissolving a school district and transferring its territory to one or more other school districts;
- Annexing territory that is not located in a school district to an adjacent school district; or
- Creating a "new" school district by consolidating two or more school districts.

Another statute allows the creation of a "new" school district out of part of the territory of two or more school districts that is removed to

form the new school district, but no procedure is provided detailing how this action is taken.[5]

These statutes have undergone considerable change in recent years and lack clarity.

Proposed school district boundary changes are not subject to potential review by a county boundary review board.[6]

A regional committee on school district organization is created in each ESD composed of from seven to nine members, with one member being appointed by each ESD board member.[7] Each appointee must be a registered voter and reside within the ESD board member district of the ESD board member who appoints the member. Regional committee members serve for four year terms of office. Regional committees are involved in some procedures for organizing school districts.

A. Voluntary Transfer of Territory

The procedure to transfer territory from one school district to another school district is initiated by a petition signed by either: (1) At least a majority of the "active" registered voters residing in the territory proposed to be transferred; or (2) a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory.[c] [8]

A transfer of territory within which more than 10 percent of students in that school district reside may only occur if voters of that district approve a ballot proposition authorizing the transfer.[9]

The two school boards meet and attempt to reach an agreement on the proposed transfer of territory. A mediator may be requested. If no agreement is reached, a hearing may be held before the regional committee. The regional committee issues written findings

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c Some of statutes providing for the voluntary transfer of territory from one school district to another district were amended in 2012 in legislation with a bill title "AN ACT Relating to school district insolvency." This legislation primarily provided for the dissolution of insolvent school districts and the transfer of their territory to other districts. It appears that the changes to the voluntary transfer of territory from one school district to another, that were amended in this legislation, may be beyond the scope and object of this bill title. The Legislature should review this issue and consider making these changes to voluntary transfers of territory in legislation with an appropriate bill title.

and either approves or disapproves the proposed transfer of territory.[10] A decision by the regional committee is based upon its best judgement and a number of factors described in rules adopted by the OSPI.

An agreement, or order, transferring territory must provide for an equitable adjustment of assets and liabilities between the school districts following a number of statutorily prescribed actions.[11] This could include a transfer of bonded indebtedness between the school districts. A ballot proposition authorizing a transfer of bonded indebtedness is submitted to the voters of the receiving district at a special election.[12] The transfer is authorized if the ballot proposition is approved by at least three fifths of the voters voting on the proposition and a forty percent validation requirement.[13]

B. Mandatory Dissolutions and Transfers of Territory

State law provides for some automatic or mandatory changes in school district boundaries, where a school district is dissolved and its territory transferred to one or more adjacently located school districts.

1. Financially Insolvent Districts

Legislation enacted in 2012 provides for the mandatory dissolution of financially insolvent school districts.[14]

A “financially insolvent district” is defined as a school district that either: (a) Has binding conditions imposed on it for two successive years by the Superintendent of Public Instruction and is unable to prepare a satisfactory financial plan; or (2) it is reasonably foreseeable and likely that the school district will have a general fund deficit within three years and is unable to prepare a satisfactory financial plan. A satisfactory financial plan is a plan for the school district that is approved by the Superintendent of Public Instruction and the local ESD that will have an adequate fund balance at the end of the plan ending period.

A financial oversight committee is composed of two representatives of OSPI, one representative of an ESD other than the ESD in which the insolvent district is located, and a non-voting representative of

the ESD in which the district is located.[15] The committee makes recommendations to the Superintendent of Public Instruction to either dissolve the district or place it under enhanced financial monitoring. A financially insolvent district may only file for bankruptcy if authorized by the financial oversight committee.

Provisions are made for the voters of the "new" school district that will result from the transfer of territory from a financially insolvent district into an adjacent school district to approve the combined level of indebtedness from both districts and replacement or supplemental excess property tax levies.[16]

The superintendent of the local ESD causes the territory to be transferred pursuant to the agreement or order by the regional committee, and if any required voter approval is obtained. A limited period exists for parties to appeal a determination of an equitable adjustment of assets and liabilities to the local superior court.[17]

2. Non-high School Districts

The regional committee of an ESD may initiate the dissolution of a non-high school district and its annexation to other high school districts, if voters of the non-high school district fail to approve general obligation bonds and excess levies sufficient to make the district's required capital payments to the high school district where its students are sent.[d] [18]

The regional committee holds a public hearing on the matter and submits its proposal to the Superintendent of Public Instruction. If the Superintendent approves the proposal, the ESD superintendent makes an order effectuating the dissolution and annexation.[19] The annexation occurs without a ballot proposition authorizing the change being submitted to voters for their approval or rejection.

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d The boundary change may only be made by the regional committee if the failure to make the payment occurs because either: (1) District voters have not approved a ballot proposition authorizing bonds to be issued and multi-year excess property tax levies to be imposed to retire the bonds; or (2) the district failed to call the special election for submission of this ballot proposition within required times.

3. Low Population Districts

Legislation was enacted in 1985, requiring the dissolution of a school district with an average enrollment of less than five kindergarten through grade eight pupils for three consecutive years and annexation of its territory into another school district.[e] [20] The regional committee is required to dissolve a school district that drops below this level of average enrollment and annex the district's territory to one or more school districts.

C. Annexing Territory Not Included in another School District

The superintendent of an ESD is required to present a proposal to the regional committee for the annexation of territory that is not included in a school district to a contiguous school district or districts.[21] Presumably, the regional committee orders the annexation of the area without a ballot proposition authorizing the annexation being submitted to voters for their approval or rejection. However, it does not appear that any area exists in Washington State that is not included in a school district.

D. Consolidating

A "new" school district may be formed by consolidating all or parts of two or more school districts into a new school district.[22]

A petition proposing the consolidation is initiated by signatures of either:

- Ten or more registered voters residing in one or more of the areas affected by the proposal, together with the approval of the boards of directors of all of the affected school districts;

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e This legislation was designed to abolish the Lester School District that was located in the northeast portion of King County. Lester School District combined with the Index School District after this legislation was enacted. This legislation was referred to the Local Government Committee in the House of Representatives, rather than the Education Committee where such legislation normally would have been referred. The author staffed the Local Government Committee at that time and has vivid memories of every resident of the Lester School District appearing at a public hearing to oppose this legislation. Presumably, the legislation was referred to the Local Government Committee to avoid members of the Education Committee from having to take political "heat" for the legislation. The Hazelmere School District combined with the Inchelium School District in 1985, so this legislation may also have applied to that school district. At the hearing on the legislation, the members of the Local Government Committee were told that the Lester School District was the only school district in the state with less than five pupils.

- Ten percent or more registered voters residing in each of the affected areas, without the approval of the boards of directors of the affected school districts.

An equitable adjustment of assets and liabilities that is contained in an agreement on the proposed consolidation is reached, presumably following the procedure by which an agreement and equitable adjustment are made under the procedure to transfer territory. The consolidation becomes effective if a ballot proposition authorizing the consolidation is approved by a simple majority vote of the voters of the affected areas, and the superintendent of the local ESD orders the consolidation.

Governing Bodies and Elections

The governing body of a school district is board of directors composed of officials who are elected directly to office.[23] Each school board "elects" or hires a superintendent to manage the school district.[24] The county treasurer serves *ex officio* as the treasurer of a school district located within its boundaries.[f] [25]

A myriad of different statutes provide for the election of school district directors. These varying election procedures are fairly complex.[g] School directors are elected as nonpartisan officials at general elections held in odd-numbered years.[26] Normal franchise rights exist in school districts and the electorate of a school district consists of all registered voters residing within the school district.[27] County auditors conduct all elections for school districts.[28]

School districts are basically divided into two classes.[29] First class districts are school districts with enrollments of 2,000 or more pupils. Second class districts with enrollments of less than 2,000

f The county treasurer receives and disburses school district monies and invests school district monies. The county auditor issues warrants for school districts located within the county.

g The author remembers being telephoned by a newly elected county auditor asking how the elections were to be run in the different school districts in the county, given the wide variety of options that were available for most school districts. All of the election staff from that county had been replaced by staff who were not familiar with how each school district had chosen at some time to have its elections conducted.

pupils. The consequences of being classified as a first class district or second class district are somewhat limited.[h]

A school district providing a high school is called a high school district, while a school district that does not provide a high school is called a non-high school district.[30]

A joint school district is a district that includes territory located in more than one county.[31]

The board of directors of a first or second class school district is composed of five members, except that the board of directors of a first class school district having a city with a population of 400,000 or more in its boundaries (the Seattle School District) is composed of seven members.[32]

School directors are elected to staggered four-year terms of office.[33] They may be elected using director districts or not using director districts. Statutes provide that director districts in any school district, other than the Seattle School District, are used for residency purposes of candidates for the director position from that director district.[34] Statutes are silent about whether only voters residing in a director district, or voters of the entire school district, may vote at a primary or general election for director candidates from a director district. However, the practice is that voters of the entire school district vote at both primaries and general elections, whether or not director districts are used, for director candidates from every director district. A first class school district (other than the Seattle School District) that uses director districts must be divided into five director districts, but a second class school district that uses director districts may be divided into three, four, or five director districts, with any remaining director or directors being elected at-large without use of director districts.[35]

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h For example: (1) A second class district has a few more options regarding how its board of directors are elected than a first class district; (2) the local ESD reviews the budget of a second class district before it is submitted to the OSPI, while the budget of a first class district is submitted directly to the OSPI without review by the local ESD; and (3) a second class district may provide housing for its teacher or superintendent in certain circumstances. Prior to the abolishment of an elected county superintendent of public instruction in each county, a second class school district did not have its own superintendent and the county superintendent served as the superintendent of every second class school district in the county.

Separate provisions are made for any first class school district having a city in its boundaries with a population of 400,000 or more (the Seattle School District), where seven directors are elected.[36] Each director is elected using a director district. Only a voter residing within a director district may become a candidate for a director from that district. Only voters residing in a director district may vote at a primary to select no more than two candidates whose names will appear on the general election ballot for that position. However, voters of the entire school district vote at general elections to elect all directors.

The board of directors of a school district may adopt a resolution providing for members of the board to receive a per diem rate of compensation of $50 per day, or portion of a day, for attending board meetings and performing other services for the district, but not exceeding $4,800 per year.[37] This rate of per diem compensation is substantially lower than rates of compensation provided for the elected officials of most special purpose districts and does not include periodic adjustments for inflation.

The governance structure of the State's common schools is described in statute as:

> "The legislature, the governor, the superintendent of public instruction, the Washington Charter School Commission, the educational service district boards of directors, and local school district boards of directors."[i] [38]

This statement reflects the very close connection of the State with its school districts.

Powers

School districts are responsible for implementing the "paramount duty" of the State to educate children. Hundreds of different statutes include a myriad of details for school district operations.

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i As mentioned above, the Supreme Court recently held that the Initiative Measure providing for charter schools was unconstitutional, so the Washington Charter School Commission no longer exists.

School districts are granted "broad discretionary power" to adopt policies providing for programs, activities, services, and practices that promote the education of kindergarten through twelfth grade students in public schools.[39]

Beginning in the 1970s, the Legislature expanded its direct control over school districts, primarily in response to a State Supreme Court decision finding that the State violated its paramount duty to provide for basic education.[j] [40] The enhanced State role involved both greatly expanded State financing of local school districts and enactment of legislation defining educational requirements and State monitoring of school district implementation of these requirements.

Details of the increased State involvement in basic education have varied but now include: (1) A minimum number of school days per year with minimum requirements for "program hour offerings" in different grade levels; (2) minimum ratios of certified staff to students; (3) a required instructional program of basic education; (4) a statewide academic assessment system of tests administered to students; and (5) additional money provided to school districts by the State.

Second class school districts are granted some very obscure powers in old statutes. They are authorized to provide teachers' cottages.[41] In addition, a second class school district with an enrollment of fewer than 300 students may also provide for housing for the superintendent.[42]

Initiative Measure No. 1240 was approved by state voters in 2012 authorizing public charter schools to be created by any school district or by a new state agency called the Washington Charter School Commission.[k] [43]

School districts, as virtually all other types of local government, may condemn property for their authorized purposes.[44]

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j A discussion of the development of these requirements is discussed below, under the History of School Districts.

k As mentioned above, the Supreme Court recently held that the Initiative Measure providing for charter schools was unconstitutional, so the Washington Charter School Commission no longer exists.

School District Finances

School district finances have never been the exclusive responsibility of local school districts.

At all times, school districts have been funded at least in part with funds generated by other units of government. This type of funding involves an attempt to equalize funding among school districts. School districts with poor tax bases would not be saddled with low finances. Instead, geographically larger governments with better tax bases impose taxes and distribute the tax receipts to all school districts within their boundaries, including school districts with poor tax bases. This outside funding was provided first by counties, then by a combination of counties and the State, and finally by only the State.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of school district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

1. State and federal grants and distributions

Grants and other distributions of money from the State provide by far the greatest portion of school district revenues. The State distributes these funds based upon apportionment formulas that are primarily a function of student enrollment figures. These funds accounted for 66.4 percent of public school expenditures in the state for the 2011-2012 school year.[45] This includes monies provided to fund basic education, as well as for other specified purposes, including grants for construction of school facilities.

School districts also receive grants and other distributions of money from the federal government. These funds accounted for 9.6 percent of public school expenditures in the State for the 2011-2012 school year.[46]

2. Excess property tax levies

School districts may impose voter-approved excess property tax levies for maintenance and operation, transportation vehicles, and capital purposes.

State voters have approved three constitutional amendments relating to school district excess levies for purposes other than retiring general obligation bonds. Amendment 90 was approved in 1997. Amendment 95 was approved in 2002. Amendment 101 was approved in 2007. As a result of these amendments: (a) Voters may approve school district excess levies for purposes other than retiring bonds by a simple majority vote of voters voting on the ballot proposition, rather than the normal supermajority vote; (2) excess levies to support the common schools may be approved for one to four years; and (3) excess levies to support the construction, modernization or remodeling of school facilities that are not used to retire bonds may be approved for one to six years.

The normal voter approval requirement remains for school district bond retirement levies where the ballot proposition authorizing excess levies for those purposes to retire bonds remains and these ballot measures must be approved by at least three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met.

Statutes further restrict the authority of school districts to impose excess property tax levies.

Most school district excess levies for maintenance and operation (M&O) purposes are limited to generating no more than 28 percent of school district's state and federal funding from the prior year.[47] However, a number of exceptions are made to this maximum percentage, allowing some school districts to impose M&O levies at a higher percentage. The OSPI reported that for the 2011-2012 school year, these exceptions allowed 91 of the State's 295, or nearly one third, of the State's school districts to impose M&O levies at varying greater percentages up to 38 percent of the school district's state and federal funding from the prior year.[48]

Levies for transportation vehicle funds may be for either one or two years.[49]

The OSPI reports that, for the 2011-2012 school year excess levies imposed by school districts generated 23.1 percent of public school expenditures in the state.[50]

3. Debt proceeds

School districts obtain monies from debt proceeds. They may incur general indebtedness and issue general obligation bonds like other taxing districts. However, the authority of school districts to incur debt is limited as follows:

- A school district may incur general indebtedness up to three-eighths of one percent of the value of taxable property within the district, subject to the following restrictions: (a) No voter approval is needed if the indebtedness is used to purchase real or personal property; but (b) voters must approve a ballot proposition authorizing this indebtedness by a simple majority vote, if the indebtedness is used for any other legal purpose of the school district.[l] [51]
- A school district may incur a total amount of general indebtedness for any legal school district purpose not exceeding 5 percent of the value of taxable property in the district, if voters approve a ballot proposition authorizing this higher amount by a three-fifths vote.[52] Normally, the ballot proposition authorizing this type of debt would also authorize the school district to impose multi-year excess levies to retire the debt, so the ballot proposition would have to be approved by a three-fifths vote and a 40 percent voter validation requirement is met.

A school district may issue general obligation bonds with a maximum term of 40 years.[53]

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l The requirement for a simple majority vote of voters authorizing certain types of what otherwise would be councilmanic or inside general indebtedness is not widely known. This is a statutory requirement and not a constitutional requirement. No other taxing district is subject to a similar statutory requirement. The Legislature should review this provision and consider modifying or eliminating it.

School districts may issue short term obligations, including notes and warrants.[54]

4. Other

School districts, as other special purpose districts, are eligible to receive income from interest and investment earnings, as well as from sales of leases of real or personal property.

History of School Districts

The origin of school districts in Washington State arises from the first years of Oregon Territory, when legislation was enacted directing counties to divide their territories into school districts.

The first Legislative Assembly of Washington Territory enacted the 1854 Common School Law that directed each county to create school districts throughout its boundaries.[m] [55] School laws have

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m Chapter 1 also discusses early school district law and the early relationships between school districts and counties.

The original State Constitution described the "public school system" as including "common schools, and such high schools, normal schools, and technical schools" as may be established. (Article IX, Section 2) This language clearly excluded the University of Washington from being considered part of the public school system. Literally, this statement provides that high schools, normal schools (teacher training institutions), and technical schools are not part of the common schools but are part of the larger public school system. The original State Constitution also created the office of State Superintendent of Public Instruction and granted this official control over public schools. (Article III, Section 22.) Literally this would include schools run by school districts, technical schools, and normal schools.

The Legislative Assembly of Washington Territory founded the University of Washington in 1861. (Page 43, General Laws, 9th Regular Session, Laws of the Territory of Washington, 1861-2.)

The Legislature created the Washington Agricultural College, Experimental Station, and School of Science in 1891. (Chapter CXLV, Laws of 1891.) This institution was treated as a separate institution of higher education, like the University of Washington. It later became known as the State College of Washington, or Washington State College, and then Washington State University in 1959. (Chapter 77, Laws of 1959.)

The Legislature created normal schools at Ellensburg, Cheney, and Bellingham. (Pages 279-281, Laws of 1889-1890; Pages 281-286, Laws of 1889-1890; and Chapter XXXIII, Pages 50-51, Laws of 1893.) These institutions were renamed as Eastern Washington State College, Central Washington State College, and Western Washington State College, and finally were designated as regional universities in 1977. (Chapter 169, Laws of 1977 ex. sess.)

School districts provided technical schools until this authority was removed from school districts, and control by the Superintendent of Public Instruction and the State Board of Education, in 1967. (Chapter 8, Laws of 1967 ex sess.) Community college districts were authorized to provide community colleges in 1967. (Chapter 103, Laws of 1967.)

The Evergreen State College was authorized in 1969. (Chapter 223, Laws of 1969 ex sess.) This institution is designated as an institution of higher education, along with the University of Washington, Washington State University, and the three regional universities (Eastern

undergone substantial change since then. Nevertheless, the following basic features of school district law have been constant since school districts were authorized by the first Legislative Assembly:

- The basic purpose of each school district is to educate children who reside within its boundaries.
- School districts have never possessed complete control over their affairs. At all times, school districts have been directly regulated and controlled by other units of government, essentially making them partial subdivisions of these other units of government.
- Although school districts are not independent units of local government, each school district is still a separate unit of government managed by a separately elected board of directors.
- School districts have always received part of their funding from other governments. The varying schemes of outside funding for school districts have been attempts to provide adequate and equitable funding for schools by equalizing funding among school districts.
- Except for the very earliest years of the Territory, every portion of the Territory or State has been included in a school district.

The nature of school districts as partial subdivisions of other governments has changed over time. Initially, a school district would have been classified as both an independent special purpose district and a partial subdivision of counties in which it was located. By statehood, a school district would have been classified as both an independent special purpose district and a partial subdivision of both the county in which it was located, and the State. Now a

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Washington State University, Central Washington State University, and Western Washington State University), and community colleges and technical colleges. (RCW 28B.10.016(4).)

Modern statutes define the terms “public schools” and “common schools” as essentially the same thing and these terms only apply to the schools provided by school districts. Community colleges, technical schools, and the regional universities (the old normal schools) are no longer defined as being part of the public schools.

school district would be classified as both an independent special purpose district and a partial subdivision of the State.

A. Territorial School Laws

The 1854 Common School Law directed the county superintendent of common schools in each county to create school districts for the purpose of educating children residing within its boundaries.[56] These school districts functioned as semi-independent special purpose districts under the control of the county in which they were located.

Voters of each school district held annual meetings to elect school board members, take care of school business, and provide for school facilities.[57] These meetings resembled the New England township meetings.

The 1854 Common School Law also provided for a county superintendent of common schools elected by the voters of each county. A county superintendent divided the "inhabited portions" of the county into suitable school districts, defined school district boundaries, ensured that common school laws were followed in the county, examined and annually certified qualified teachers, distributed county tax monies to each school district in the county, and prepared annual reports on school districts in the county.

The 1854 Common School Law also provided for a two-tiered system of school finance as follows:

- Counties were the first tier of school finances. Each county was responsible for financing the operations of the school districts located within its boundaries. Funds for this purpose were obtained from a separate county property tax levy earmarked for school purposes and from fines the county imposed for "breach of any penal laws". Some additional money for common schools was transferred from the territorial common school fund to counties for distribution to school districts whenever receipts were obtained from the sale of the so-called school lands. Federal law creating Washington Territory gave two sections of land in each township in the

Territory to the territorial government for the support of common schools.[58]

- Individual school districts were the second tier of school finances. Each separate school district was responsible for providing its own school facilities. Local voters in each school district met at the annual school district meeting to approve property taxes imposed by the school district to finance its facilities. The use of these property tax levies imposed by school districts were soon expanded to include additional purposes. Expenses to "support" or house teachers were allowed to be paid out of proceeds from local school district property taxes in 1857.[59] By 1858, taxpayers were formally allowed to perform labor on the schoolhouse in lieu of paying taxes.[60] This pay-or-work system of providing for school facilities somewhat resembled the work-or-pay system of providing roads in road districts that is described in Chapter 38. By 1877, local voters approved property tax levies to support schoolhouses, and to buy supplies such as maps and globes, at annual elections rather than at annual school meetings.[61]

This two tiered funding system recognized a responsibility for an even level of financing education beyond the ability of many local school districts. The concept of the need for monies beyond those that could be generated by an individual school district to fund "basic education" underlies Doran Decision I and subsequent judicial holdings.

The office of Territorial Superintendent of Common Schools was first created in 1861, but was abolished in 1862.[62] B.C. Lippincott was the first Superintendent. He strongly favored elementary and high school education over higher education, and criticized the creation of the University of Washington in his first and only report on schools delivered to the Legislative Assembly in 1862. Higher education was considered part of the system of common schools in territorial years. At least in partial response to this perceived effrontery, the Legislative Assembly abolished the office of Territorial Superintendent of Common Schools. However, the office

was re-established by the Legislative Assembly in 1871.[63] The office has existed in one form or another since that time and is now called the Superintendent of Public Instruction.[64]

A Territorial Board of Education was created by the Legislative Assembly in 1877.[65] Among other authorities, the Territorial Board of Education approved a uniform series of textbooks for use in all common schools and prescribed rules for the "general government" of public schools. This agency has existed since that time and is now called the State Board of Education.[n]

B. Pre-Doran Decision State School Laws

After statehood, county control over school districts was even further reduced and eventually eliminated. These gradual changes included both:

- Reducing and finally eliminating county financing of school districts; and
- Eliminating county offices regulating school districts.

County offices regulating school districts were finally eliminated in 1969, and transferred to newly created regional organizations called intermediate school districts that were renamed as educational service districts (ESDs) in 1975.[66] Although ESDs have the appearance of being units of local government, each ESD is a unique state agency created by direct action of the State Legislature as an arm of the State, regulating and providing services to school districts located within its boundaries. The last vestige of county financing of school districts ended in 1980, when the requirement for counties to partially fund school libraries was eliminated.[67]

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n Prior to 1947, the State Board of Education was composed of educational professionals, including: (1) The president of the University of Washington; (2) the president of Washington State College; (3) a president of one of the state normal schools, who was appointed by the Governor; and (4) three persons engaged in education work, who were appointed by the Governor. However, legislation was enacted in 1947 providing for lay members on the State Board of Education. (Chapter 258, Laws of 1947.) The Board now is composed of eleven members as follows: (1) Nine members, with one member being elected from each congressional district by the members of the boards of directors of school districts within the congressional district; (2) the Superintendent of Public Instruction, who is the chief executive of the Board, and only votes to break tie votes among the other board members; and (3) a member at large elected by members of the boards of directors of private schools who only votes on matters affecting private schools. (Chapter 28A.305 RCW.)

As a result of these changes, school districts ceased being partial subdivisions of both county governments and the State. Instead, school districts became the partial subdivisions of only the State.

The financing of common schools began to change after statehood in 1889, with school districts assuming increased responsibility to fund their own operations, the emergence of funding for common schools, and the gradual reduction and final elimination of county funding of the common schools.

The new State Constitution included key provisions emphasizing public education. Article IX, Section 1 provides that:

> "it is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."

(Emphasis added.) Article IX, Section 2 provides that:

> "The legislature shall provide for a general and uniform system of public schools … and such … normal and technical schools as may hereafter be established …."

Increased local school district responsibility for funding their own operations arose with the enactment of several laws. Two fundamental changes were made to school district property tax levies in 1891.[68] First, local school levies were divided into two separate parts, with a school district being able to impose up to 5 mills of property taxes without voter approval and an additional 5 mills of property taxes, if voters approved a ballot proposition authorizing the additional taxes by a simple majority vote of voters voting on the proposition. Second, the uses of local school district property tax levies were expanded from capital and equipment purposes to include general school district operations. In general, prior to 1891, local school district property tax levies could only be expended for capital purposes, housing school teachers, and the purchase of teaching aids such as maps and globes.[o]

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o Prior to 1891, most school district property tax levies were restricted to capital purposes and acquiring equipment. The exceptions were:

- For two years, from 1871 through 1873, any school district could expend its

These 1891 changes began a gradual increase on reliance of the local tax base, and in particular, voter approved levies, to fund public schools. A major change in the provision of textbooks occurred in 1897, when the Legislature enacted legislation allowing the voters of each school district to approve an additional school district property tax levy for purchasing text books and supplies that would be provided to all students. The prior system of providing text books continued, if voters of a school district did not approve this additional property tax levy. Under this prior system, a school district provided text books for the children of indigent parents but the parents of other children were required to purchase text books for their children.[69]

A more revolutionary change in financing public schools occurred with the enactment of the so-called Barefoot School Boy law in 1895.[p 70] This legislation provided for a new statewide property tax, with the receipts placed into the Common School Fund and distributed to county superintendents of common schools for distribution to school districts on a per student basis. The two-tiered system of funding common schools became a three-tiered system.

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property tax levies "for any purpose whatsoever, connected with and for the benefit of schools and the promotion of education in the district," (Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Pages 12-30, Sec. 4, Chap. V; and amended to remove this language in Statutes of the Territory of Washington, 1873, 4th Biennial Session, Pages 419-436, Sec. 4, Chap. V.)

- Union or graded schools were allowed to levy taxes for purposes of "paying teachers." (Statutes of the Territory of Washington, 1877, 6th Biennial Session, Sec. 63, Pages 259-283.) This authority no longer appeared in the 1881 codification of Territorial statutes. (See, Sections 3213-3215, Code of Washington, 1881).
- City graded school districts were allowed to impose their taxes for "tuition purposes" which probably meant paying for teachers' salaries from 1881 until 1890, (Sec. 3220, Code of Washington, 1881, and amended to remove this language in Sections 64-68, Pages 348-385, Laws of 1889-1890.)
- Voters of a school district in any county other than Columbia County could approve taxes "for the support of common schools" not exceeding 2 mills per year. (Statutes of the Territory of Washington, 1875, 5th Biennial Session, Page 118; and Section 3233, Code of Washington, 1881.)

p The so-called Barefoot School Boy law guaranteed every school aged child a free public education. This law was sponsored by then Representative John Rankin Rogers, who later became the second governor of the State of Washington.

The share of school district funding by counties was gradually reduced and finally eliminated. Funding provided by the State and each county to school districts was equal in 1909, with each school district receiving annual allotments of $10 per student from the county and additional annual allotments of $10 per student from the State.[71] By 1933, the State provided five times the level of financing for each school district as counties, with each county being required to provide 5¢ per day per student and the State being required to provide 25¢ per day per student.[72] The county responsibility was reduced to 1.7¢ per day per student in 1943.[73] Finally, the requirement for counties to impose a county property tax to fund the common schools was eliminated in 1951.[74] However, each county was required to provide 17¢ per student per day to each school district within its boundaries from a newly authorized real estate excise tax on the sale or transfer of real property in the county.[75] This requirement was eliminated in 1980.[76] The last vestige of county funding of schools was eliminated in 1983, when the requirement for counties to support school libraries with an earmarked property tax levy of one-tenth (0.1) of a mill was eliminated.[77]

The percentage of total support provided by the State for public schools in Washington eventually shrank, and school districts became more dependent on voter-approved excess property tax levies for their finances. School district reliance on voter-approved excess levies to finance their maintenance and operations had increased by a factor of almost four times, from 6.8 percent of districts' budgets in 1960 to 25.6 percent of districts' budgets in the 1974-75 school year.[78]

C. Doran Era State Laws

Public education has been in a state of transformation in Washington State since the beginning of the 1970s. Major changes were made to the substance of public education and the method of funding public education.

Perhaps anticipating Doran Decision I, the Legislature enacted legislation in 1973 eliminating the authority of school districts to impose non-voter approved regular property taxes to fund their operations and transferring this taxing authority to the State, that

began imposing a statewide regular property tax levy and distributing these monies to local school districts.[79] This legislation essentially transferred the responsibility of funding most school district activities and programs from the school districts to the State. School districts were left the option of seeking voter-approved excess levies to provide additional monies for their finances. This legislation had the effect of transferring tax receipts the State obtained from wealthier areas, especially King County, to school districts located in other counties.

Voters throughout the State in 1975 failed to approve many school district excess levy requests. In response to these failures, the Legislature contracted with Wally Miller, the former State Budget Director, to study education reform and finance. Miller completed his report in September, concluding that the system of financing education was the primary cause of unequal educational opportunities in the State, recommending that the State define basic education and allocate state education monies to school districts using a certified staff per student basis.[80]

This massive levy failure in 1975 also encouraged the filing of lawsuits challenging the constitutionality of the system of funding public education. In January of 1977, Thurston County Superior Court Judge Robert Doran issued a declaratory judgement (Doran Decision I) holding that: (1) The use of excess property tax levies to finance basic public education, other than enrichment programs, did not meet the State's responsibility to fund basic education and violated Article IX, Sections 1 and 2 of the State Constitution; (2) the State has a duty to define basic education; and (3) the State had failed its mandatory duty to provide for basic education in the 1975-1976 school year.[81] Judge Doran retained jurisdiction over this matter and ordered that the Legislature must implement its responsibilities by July 1, 1979.

The State Supreme Court upheld the Doran Decision I in 1978, holding the use of excess property tax levies to fund basic education unconstitutional, affirmed the trial court's determination that, although basic education goes beyond mere reading, writing and arithmetic, the Legislature has a duty to define basic education, and to fund basic education using regular and dependable tax sources.[82] However, the Court terminated the trial court's retention

of jurisdiction over this issue and determined that the Legislature had until July 1, 1981 to comply with its responsibility. The Court noted that in 1960, the State's school districts had used excess levies to finance 6.8 percent of their maintenance and operations, but that by school year 1974-1975, the State's school districts had used excess levies to finance 25.6 percent of their maintenance and operations.

In direct response to Judge Doran's January 1977 decision, the Legislature enacted the Basic Education Act of 1977, defining basic education, increasing state financial assistance to school districts to finance basic education, limiting school district voter approved excess levies to finance only those school activities beyond what was defined as basic education, establishing a minimum number of annual school days for different sets of grade levels, specifying instructional content for each set of grade levels, and establishing a minimum ratios of certified staff to students.[83] State funds to local school districts were distributed using a statewide per child formula. Excess property tax levies for each school district were limited to generating no more than 10 percent of the district's "prior year basic education allocation" consisting of state and federal monies provided to the district.[84] However, some exceptions were made allowing 50 school districts to gradually reduce their excess levies over up to a four-year period down to the 10 percent figure.[85]

In April 1983, the Thurston County Superior Court, in Doran Decision II, expanded the definition of "basic education" to include state financing of bilingual education, special education, remediation assistance, and some student transportation.[86]

In 1992, the Legislature enacted further reform legislation creating performance-based education and establishing the Commission on Student Learning that was directed to develop education reform measures and administer these reforms.[87] These efforts led to the development of the Washington Assessment of Student Learning (WASL) standards to measure student learning.

The WASL tests have been replaced with other tests. At present, a number of different tests are administered.[88] In grades 5 through 8, students are tested using Smarter Balance tests for math and language arts and the Measurements for Student Progress (MSP)

tests for science. In grade 10, an End of Course (EOC) test is administered in biology. For school year 2014-2015, High School Proficiency Exams (HSPE) are available for eleventh and twelfth grade high school students who have not passed the prior tests and to twelfth grade high school students in the spring and summer of 2016.

In 1993, the Legislature enacted legislation attempting to improve student achievement.[89] The goals of the Education Reform Act were rewritten to reflect new student learning standards and programs were created to assist teachers in helping students meet these standards.

In 2000, the Better Schools program was established to fund the reduction of class sizes in grades K-4 and provide competitive awards to assist students in reading and mathematics.[90]

At the 2000 general election, state voters approved Initiative Measure No. 728 reducing class size, extending learning opportunities, and providing for additional school facilities.

At the 2000 general election, state voters also approved Initiative Measure No. 732 providing annual cost of living salary increases for teachers.

Major federal legislation also impacted public education in Washington State, including the No Child Left Behind Act of 2001 and the Individuals with Disabilities Act of 2004.[91]

In 2009, the State's basic education program was redefined, with an implementation schedule ending in 2018, and the Quality Education Council was established to make recommendations and report on the implementation of this legislation, beginning a phased-in process of state funding for school districts.[92] The first phase involved full state funding of transportation, maintenance, supplies and operating costs, full-day kindergarten, and lower class sizes in grades K through 3. The second phase involved full state funding of the salaries of educational staff. The third phase involved state funding of enhanced levels of educational staff and enhanced salaries.

In 2010, legislation was enacted establishing a new formula to fund public education with three levels of funding – school level, district level, and other funding.[93] Enhanced class sizes for grades K-3 were to be funded in the 2011-2013 biennial budget.

In January of 2012, the State Supreme Court issued its decision in *McCleary et al. v. State of Washington*, holding that the State had not met its responsibility to fund basic education in an adequate manner and had consistently provided school districts with resources that were insufficient to finance the actual costs of meeting this responsibility.[94] Recognizing the State's attempt to phase in the full financing of basic education by 2018, the Court retained jurisdiction to monitor these efforts.

The Court, in *McCleary*, noted that the Legislature had greatly expanded the amount of funds school districts could acquire from imposing excess property tax levies. In 1977, the limitation allowed a school district to generate no more than 10 percent of the district's "prior year basic education allowance" with some school districts allowed a higher percentage but required to gradually reduce this percentage. By 2010, the limitation had been increased to no more than 28 percent of the district's "prior year basic education allowance," with some school districts allowed to generate up to a higher percentage but not exceeding 38 percent of their "prior year basic education allowance."

The Supreme Court monitored State funding of basic education with its stated goal of step by step increasing State funding of basic education and achieving full funding by 2018. On September 11, 2014, the Supreme Court held the State (i.e., the Legislature) in contempt for failing to obey a court order that the State fund basic education.[95] However, the Court held off imposing any punishment until after the 2015 regular legislative session.

As mentioned above, state voters approved Initiative Measure No. 1240 at the 2012 general election providing for public charter schools, but the State Supreme Court recently held this legislation unconstitutional since charter schools are not part of the "common schools" and monies were diverted from the general fund to finance charter schools.[96]

At the 2014 general election, state voters approved Initiative Measure No. 1351 providing for a reduction of class sizes. The Legislature amended I-1351 in 2015 delaying its implementation for four years.[97]

In addition to providing basic education, school districts are authorized to provide a wide variety of supplemental programs and facilities. These include day care, breakfast and lunch programs, free textbooks and supplies, libraries and library service, parks and recreation, preschools, adult education programs, skill centers, special education programs, employment of physicians, student transportation, night school, summer school, and athletics.[98]

As discussed in Chapter 29, the Legislature enacted peculiar legislation in 2015 to help fund education (including K-12 education) provided within the boundaries of Sound Transit in the central Puget Sound region from new tax receipts deposited into the Puget Sound taxpayer accountability account. $518 million is placed into this account from Sound Transit tax receipts, if voters in Sound Transit authorize additional high capacity transportation systems funded by newly authorized taxing authority.

Given the necessity of the Legislature addressing the *McCleary* decision and the State's "paramount duty to make adequate provision for the education of all children," school district funding and statutes will be in a state of flux for several years.

Geographic Size of School Districts

The geographic size of school districts has varied widely in Washington over three distinct phases:

- First, one or more very geographically large school districts was created by each county in early territorial years, serving all of the children residing within its boundaries. This scarcity of school districts reflected the extremely sparse settlement by newly arriving white settlers in early territorial years.
- Second, these very large school districts were gradually divided into numerous geographically smaller school districts, as more and more white

settlers arrived and settlements were scattered throughout each county. The small geographic size of these school districts was necessitated by the extreme difficulty of traveling on rudimentary paths and roads.

- Third, these very numerous, geographically small school districts gradually consolidated into medium-sized school districts. Consolidations began in the 1920's in response to improved transportation, the expense of providing high schools, economies of scale in running larger school districts with fewer schoolhouses, and strong encouragement from the State. The federal government encouraged school district consolidations as a part of federal aid to education commencing in the late 1950's.

There were 2,875 school districts prior to World War II, but the number had diminished to 295 school districts by 2005.[99]

Special Meetings of Voters

School district laws still retain provisions for special meetings of voters.[100] These obscure statutes are what remains of the old annual school district meeting of voters held in each school district when school directors were elected, taxes approved, and other business transacted at these meetings.

A special meeting of district voters may be called by the board of directors of any school district or by petition of a majority of the voters of the district. The special meeting may be called to determine:

- How many days shall be added to the district's school year in excess of the required minimum number of days for a school year;
- Whether the district should purchase a schoolhouse site and the location of such a new site;
- Whether the district should build a new schoolhouse or school facilities; or

- Whether the district should sell real or personal property, borrow money or establish and maintain a school district library.

Notice of a special meeting must be made by the school district superintendent. Only the business specified in the notice may be transacted at a special meeting. The special meeting is chaired by the "senior" school director, if he or she is present, or by a voter who is elected at the meeting, if this school director is not present. Records are made of the meeting. It is the duty of each school board director to carry out the directions made by school district voters at the meeting.

NOTES:

1. Article IX, Section 1.
2. "Washington Special Purpose Districts Overview," *id*.
3. Legislation entitled "An Act, establishing a system of Common Schools," passed on September 5, 1849, and found on Pages 66-75 of "Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850."
4. Chapter 28A.315 RCW.
5. RCW 28A.315.045(1)(b).
6. RCW 36.93.020.
7. RCW 28A.315.040 & 28A.315.060.
8. 28A.315.195-28A.315.215.
9. 28A.315.195.
10. RCW 28A.315.205.
11. RCW 28A.315.245-28A.315.255.
12. RCW 28A.315.265.
13. RCW 28A.315.285.
14. Chapter 186, Laws of 2012, most of the provisions of which are found in Chapter 28A.315 RCW.
15. RCW 28A.315.221.
16. RCW 28A.315.095 and 28A.315.215.
17. RCW 28A.315.315.

18. RCW 28A.540.070 & 28A.540.080.
19. RCW 28A.540.070.
20. Section 24, Chapter 385, Laws of 1985, codified as RCW 28A.315.320. This legislation was repealed and replaced by RCW 28A.315.225.
21. RCW 28A.315.225(6).
22. RCW 28A.315.235.
23. Chapter 28A.315 RCW.
24. RCW 28A.400.010.
25. RCW 28A.510.270, 28A.320.300, & 28A.350.010.
26. RCW 29A.52.111 & 29A.04.330.
27. Article VI, Section 1; and RCW 28A.320.400.
28. RCW 29A.04.216.
29. RCW 28A.300.065.
30. RCW 28A.545.010.
31. RCW 28A.323.010.
32. RCW 28A.343.300.
33. RCW 28A.343.300 & 28A.343.610.
34. RCW 28A.343.020 & 28A.343.340.
35. RCW 28A.343.020.
36. RCW 28A.343.650-28A.343.670.
37. RCW 28A.343.400.
38. RCW 28A.315.005(1).
39. RCW 28A.320.015.
40. *Seattle School District No. 1, et al. v. State*, 90 Wn.2d 476 (1978).
41. RCW 29A.335.240.
42. RCW 28A.335.290.
43. Chapter 2, Laws of 2013, primarily codified as Chapter 28A.710 RCW.
44. Chapter 8.16 RCW and RCW 28A.335.220.
45. Office of the Superintendent of Public Instruction, “Organization and Financing of Washington Public Schools – 2013 Edition,” Executive Summary, page 4. http://www.k12.wa.us/safs/PUB/ORG/13/Final%20Edition%202013.pdf
46. *Id.*

47. RCW 84.52.053 & 84.52.0531.
48. "Organization and Financing of Washington Public Schools," *id*., at page 5.
49. RCW 84.52.053.
50. *Id.*
51. RCW 28A.530.010, 28A.530.020, 28A.530.080, & 39.36.020(3).
52. RCW 39.36.030(3) & (4).
53. RCW 39.46.110(1).
54. Chapter 39.50 RCW.
55. Statutes of the Territory of Washington, 1854, 1st Session, Pages 319-328.
56. Statutes of the Territory of Washington, 1854, 1st Session, Pages 319-328.
57. Statutes of the Territory of Washington, 1st Session, 1854, Chapter III, Sections 1-16, Pages 319-330.
58. Bolton and Bibb, at Pages 85-86.
59. Statutes of the Territory of Washington, 1856-1857, 4th Session, Section 2, Pages 33-34.
60. Statutes of the Territory of Washington, 1857-1858, 5th Session, Section 27, Pages 19-23.
61. Statutes of the Territory of Washington, 1877, 6th Biennial Session, Section 81, Pages 259-283.
62. The office was first created at Statutes of the Territory of Washington, 1860-1861, 8th Session, Section 1, Pages 55-56. The office was abolished at Statutes of the Territory of Washington, 1861-1862, 9th Session, Section 1, Page 29.
63. Bolton and Bibb, at Pages 106-107. Also, Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Section 1, Chapter I, Pages 12-30.
64. Article III, Section 22.
65. Statutes of the Territory of Washington, 1877, 6th Biennial Session, Sections 10-16, Pages 259-283.
66. Chapter 176, Laws of 1969 ex. sess. & Chapter 275, Laws of 1975 1st ex. sess.
67. Section 7, Chapter 154, Laws of 1980.
68. See, Section 17, Chapter CXXVII, Laws of 1891.
69. Sections 40, 106, & 107, Chapter CXVIII, Laws of 1897, which included these changes, and the prior law codified in Section 3191(8), Chapter CCXLV, Code of Washington Territory, 1881.
70. Chapter LXVIII, Laws of 1895.

71. Sections 3 and 5, Chapter 9, Title III, Chapter 97, Laws of 1909.
72. Section 12, Chapter 28, Laws of 1933.
73. Section 1, Chapter 203, Laws of 1943.
74. Section 4, Chapter 11, Laws of 1951, 1st ex sess.
75. Section 1, Chapter 11, Laws of 1951, 1st ex sess.
76. Section 7, Chapter 154. Laws of 1980.
77. Section 15, Chapter 56, Laws of 1983.
78. *Seattle School District v. State*, 90 Wn.2d 476, 524 (1978).
79. *Seattle School District,* at page 530; and Chapter 195, Laws of 1973, 1st ex. sess.
80. Miller and Associates, "Common School Financing and Reform: A Report to the Select Educational Study Coordinating Committee of the State of Washington Legislature," (Sept. 1975), iii.
81. *Seattle School District No. 1 v. State*, The Superior Court for Thurston County, No. 53950, January 14, 1977.
82. *Seattle School District v. State*, 90 Wn.2d 476, 522 (1978).
83. Chapters 325 & 359, Laws of 1977, ex. sess.
84. Section 4, Chapter 325, Laws of 1977, codified as RCW 84.52.0531. This statute has been amended many times altering the limitation.
85. Chipollone, Diane W, "Defining Basic Education": Equity and Adequacy Litigation in the State of Washington," Campaign for Fiscal Equity, Inc., Studies in Judicial Remedies Public Engagement, 13.
86. "Organization and Financing of Washington Public Schools," *id*., page 8; and Brodie, Calvin W., "Overview of K-12 funding in Washington State," Office of the Superintendent of Public Instruction, 10. http://www.k12.wa.us/safs/TT/K12%20Funding_June%202008%20%20(V07).pdf
87. Chapter 141, Laws of 1992.
88. http://www.k12.wa.us/assessment/StateTesting/default.aspx.
89. Chapter 336, Laws of 1993.
90. "Washington Special Purpose Districts Overview," at page 15.
91. Public Law 107-110 and Public Law 108-446.
92. Chapter 548, Laws of 2009.
93. Chapter 236, Laws of 2010.
94. *McCleary et al. v. State of Washington*, 173 Wn.2d 477 (2012).
95. The Supreme Court of Washington State, Order, Supreme Court No.

84362-7, filed September 11, 2014.

96. *League of Women Voters v. State*, *id*.

96. Chapter 35, Laws of 2015 3rd Sp. Sess.

98. RCW 28A.235.140, 28A.235.155, 28A.215.050, 28A.330.100, 28A.320.240, 27.12.180, 28A.235.120, 67.20.010, 28A.215.010, 28B.50.250, & 28A.210.300; Chapters 28A.155 & 28A.160 RCW; and RCW 28A.320.500 & 28A.320.510.

99. "Washington Special Purpose Districts Overview," *id*., and Washington Digital Archives, "*Serving Your Local School Board, A Guide to Effective Leadership*," Part 2, Statewide System, Local Governance (2005), at pages 5 & 6, http://digitalarchives.wa.gov/WA.Media/do/99497F548BD1DE5095B6250FDA258456.pdf .

100. RCW 28A.320.420-28A.320.440.

Chapter 18

Water Districts and Sewer Districts

Water districts and sewer districts are authorized to provide both water service and sewer service.

Statutes providing for water districts and sewer districts are unique. These are separate types of special purpose districts that at one time operated under separate, but very similar, statutes. However, the statutes for these two different types of special purpose districts were combined into a single set of statutes by legislation enacted in 1996 and 1997. The terms “district” and “water-sewer district” are used in these statutes, referring to either water districts or sewer districts. However, water districts and sewer districts, at least technically, remain different types of special purpose districts.

Water districts and sewer districts would be classified as independent special purpose districts, as they have governing bodies composed of officials who are elected directly to office. However, these special purpose districts could also be classified as partial subdivisions of the county in which they are located, as evidenced by the following:

- Counties control water district and sewer district boundaries by reviewing the proposed creation of a water district or sewer district, as well as other proposed boundary changes for water districts and sewer districts, and approving, modifying and approving, or rejecting these proposals.
- Counties review and approve or reject a proposed comprehensive plan of improvements that each water district or sewer district prepares, as well as any changes to these plans. A water district or

sewer district may only provide a water system or sewer system as detailed in its approved comprehensive plan of improvements.

- Recently enacted legislation allows counties to create new water districts and sewer districts and appoint their initial commissioners if no voter resides in the new district.

The Municipal Research and Services Center (MRSC) reports that 188 water and sewer districts exist in the State.[1] About 20 percent of these districts are sewer districts, and about 80 percent of these districts are water districts.[2] These special purpose districts tend to be either geographically medium or small-sized entities, providing utility service throughout one or more neighborhoods or communities. Most water districts provide only water service, but some provide both water and sewer service. Sewer districts only provide sewer service, although they are authorized to provide water service. Several water districts and sewer districts have very significant operations and budgets.

Water districts and sewer districts are experiencing the following three trends.

- A gradual consolidation or merger of these districts, resulting in larger districts with greater operations.
- An assumption by water districts of the operations of failing private water systems and management of these systems using what is called satellite management.
- A deterioration of relations between a water district or sewer district and the city that is included in the water district or sewer district. This tension arises when the city attempts to assume jurisdiction over the district.[3]

Creation

The procedure to create a water district or sewer district is initiated by either petition of registered voters residing in the area proposed to be included in the district or by resolution of the county legislative

authority.[4] A petition proposing creation of a district is filed with the county legislative authority in which the proposed district is located that is signed by registered voters residing in the area proposed to be included in the district equal in number to at least 10 percent of the number of voters in the area who voted at the last municipal general election, i.e., a general election held in an odd-numbered year. The resolution must declare that the district is a "public health and safety necessity", and follows the opinion of the county health officer stating that the existing water, sewer, or drainage facilities are inadequate and that creation of the district is necessary for public health and safety.

A meeting or hearing on the proposed creation of the district is conducted by the county legislative authority. Testimony is taken and the county legislative authority may modify the proposed boundaries and make a finding whether or not the creation of the district is "conducive to the public health, welfare, and convenience" and is of special benefit to lands included in the proposed boundaries. No area may be added to the proposed boundaries unless requested by petition of owners of the area. The county legislative authority considers the following items when making this determination:

- The county's comprehensive plan, or when applicable, a city's comprehensive plan;
- A basin-wide water or sewage plan approved by the State; and
- Policies expressed in the county plan for water and sewer facilities.[5]

Creation of a water district or sewer district is also subject to potential review by a boundary review board, if the board's jurisdiction is invoked.[a 6] Approval or rejection of the district by the county legislative authority is forwarded to the boundary review board. The boundary review board holds a hearing on the matter if its jurisdiction is invoked and it may approve the creation of the district, reject the creation of the district, or modify the proposed boundaries and approve the creation of the district with modified boundaries.

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a A discussion of boundary review boards is found in Chapter 72.

A ballot proposition authorizing creation of the district is submitted to the voters of the proposed district, if the county legislative authority makes the required findings.[7] The district is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition. A second ballot proposition may also be submitted to voters of the proposed district authorizing the district, if created, to impose a single year excess property tax levy of up to $1.25 per $1000 of assessed value to finance the initial operations of the district. The excess levy is authorized if the ballot proposition is approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

Legislation was enacted in 1997, providing an alternative method of forming a water district or sewer district to serve a new development.[8] The county legislative authority may create a new district under this alternative procedure if no one resides in the area included within the proposed district and if creation of the district is requested by at least 60 percent of the owners of the area. The county legislative authority considers the same factors when it creates a water or sewer district under this alternative procedure as it does under the regular procedure. The creation of the district is subject to the same potential review by the county boundary review board as under the regular procedure to create a district. Initial commissioners are appointed by the county legislative authority who serve until 75 percent of the new development is sold or whenever specified by the county legislative authority. New commissioners are then elected. An appellate court has not reviewed the constitutionality of this new procedure.[b]

Errors may have been made when a number of water districts or sewer districts were attempted to be created. As a result, the Legislature enacted legislation in 1927, 1931, 1943, 1945, 1953, 1959, 1975, and 1988 validating the creation of water districts and in 1959, 1981, and 1988 validating the creation of sewer districts.[9] These were somewhat unique actions taken by the Legislature.

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b This is a very peculiar procedure to create a unit of government with regular franchise rights, where no voter resides in the special purpose district. Presumably, this new procedure was enacted for developers to create a water district or sewer district that is responsible for providing this utility service in their development, rather than the more common procedure where the developer provides this utility service.

Boundary Changes

A number of different types of boundary changes may occur for water districts and sewer districts, including: (1) A district may annex territory; (2) territory may be withdrawn or removed from a district; (3) two or more districts may consolidate or merge; and (4) a district may dissolve or disincorporate.

Water district and sewer district boundary changes are subject to potential review by a boundary review board, if the board's jurisdiction has been invoked.[10] Potential action by a boundary review board would occur after action has been taken by the county legislative authority on the proposed boundary changes.

A. Annexations

Several different procedures exist for water districts and sewer districts to annex territory.

Annexations may occur under a petition/election procedure where a petition requesting annexation is filed with the district that is signed by at least 10 percent of the registered voters residing in the area proposed to be annexed, or by the owners of a majority of the acreage included in the area, if no registered voters reside in the area.[11] Territory adjoining a district may be annexed by the district, whether or not it is located in the same county as the district. However, territory that is not adjoining a district may also be annexed under this procedure if the territory is "in close proximity" to the district and also located in the same county as the district. This is a unique provision. Normally, only contiguous territory may be included in a special purpose district. If the board of commissioners of the district concurs in the petition, the sufficiency of the signatures is determined, and the petition is submitted to the county legislative authority for a hearing on the matter. The county legislative authority considers the proposal, using the same criteria it considers for creating a district.

An election is held on the proposed annexation if all necessary approvals are made, with a ballot proposition authorizing the annexation to be submitted to registered voters residing in the area, or to the owners of property in the area, if no registered voters

reside in the area.[c] Approval of the annexation is by a simple majority vote of the voters or property owners voting on the proposition.

Annexations may also proceed under a direct property owner petition method.[12] A petition requesting annexation is filed with the district that is signed by the owners of not less than 60 percent of the area proposed to be annexed. The board of commissioners of the district holds a public hearing on the proposal and determines whether it approves the annexation. If approved, the proposal is submitted to the county legislative authority for consideration using the same criteria it considers for creating a district.

Annexations of unincorporated territory of less than 100 acres having at least 80 percent of its boundaries contiguous to a district may be annexed to the district under a resolution procedure.[13] The board of commissioners of the district may hold a hearing on annexing such an area and adopt a resolution providing for the annexation. Again, the annexation is submitted to the county legislative authority for its review and potential approval, using the criteria it considers for creating a district. The proposed annexation occurs unless a referendum petition requesting a vote on the annexation is submitted in a timely way by registered voters residing in the territory equal in number to at least 10 percent of the voters who voted in that area in the last municipal (odd-year) general election. Literally, this petition must be filed within 45 days of the hearing by the board of commissioners of the district, but it is probable that this 45-day period would not commence until after the action by the county legislative authority or boundary review board on the proposal. If the petition is filed timely, a ballot proposition authorizing the annexation is submitted to the voters residing in the area proposed to be annexed.

A new annexation procedure was authorized in 2007.[14] A district that acquires water or sewer facilities from a city may enter into an agreement with the city to annex territory within the city. The county legislative authority of the county in which the territory is

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c This is a unique provision allowing nonresident property owners to "vote" on the annexation. It is not clear who would conduct this election or how this election would be conducted. Normally, action by property owners authorizing an annexation of property to a local government is accomplished using a direct property owner petition procedure.

located holds a hearing on the proposed. A ballot proposition authorizing the annexation is submitted to the voters of the area proposed to be annexed if the county legislative authority finds the annexation to be conducive to public health, welfare and convenience and is of of special benefit to the area. The annexation is approved by a simple majority vote of voters voting on the proposal.

B. Removing Territory

The process to remove or withdraw territory from a water district or sewer district is initiated by:

- A petition filed with the district that is signed by at least 25 percent of the registered voters residing in the area proposed to be withdrawn; or
- A petition filed with the district that is signed by the owners of at least a majority of the acreage proposed to be withdrawn if no registered voters reside in the area; or
- A resolution adopted by the board of commissioners of the district.[15]

A city may stop the procedure to withdraw any of its territory from a district, if the procedure is initiated by resolution of the district board of commissioners.

The board of commissioners of the district holds a hearing on the proposed withdrawal, and may approve the withdrawal after adopting findings on certain issues relating to the benefit to the territory proposed to be withdrawn and whether the withdrawal will be conducive to the welfare of the balance of the district. Territory may not be withdrawn that is furnished with water or sewer service by the district or which is included in the distribution or collection system that is being financed by a local improvement district. The board of commissioners may remove areas proposed to be withdrawn but may not add areas that are not described in the petition if the proposed withdrawal is initiated by petition.

The county legislative authority then holds a hearing on the proposed withdrawal and makes findings on the same issues that

the board of commissioners addressed. The withdrawal occurs, without a ballot proposition being submitted to the registered voters residing in the area proposed to be withdrawn, if the county legislative authority makes affirmative findings as to these issues, and the findings are the same as those made by the board of directors of the district. A ballot proposition authorizing the withdrawal is submitted to voters residing in the area proposed to be withdrawn if any of the findings by the county legislative authority on the issues is negative, or if any finding is not the same as a finding made by the board of commissioners of the district.

C. Joining Districts

Different statutes allow two or more districts to join together into a single district by either merging or consolidating. Two or more water districts may be joined; two or more sewer districts may be joined; and one or more water districts may be joined with one or more sewer districts. Two basic differences between these two different procedures to join districts exist:

- A new district is created when two or more districts consolidate. However, what is called the "merger" district is retained as an enlarged district when districts merge, and what is called the "merging district or districts" no longer exist after a merger.
- A consolidation is authorized if the voters of each of the involved districts approves a ballot proposition authorizing the consolidation. However, a merger is authorized only if voters of what is called the "merging" districts approve ballot propositions authorizing the merger. A ballot proposition authorizing the merger is not submitted to voters of what is called the "merger" district.

Presumably, the merger procedure would be used when a large district is joined with one or more smaller districts, allowing the large district to retain its identity. Presumably, the consolidation procedure would be used in other instances.

1. Consolidations

Two or more districts may join together into a new consolidated district.[16]

This action is initiated by either:

- Ten percent of the voters residing in each district petitioning the board of commissioners of their respective districts;[d] or
- The boards of commissioners of each district adopting a resolution finding that the consolidation is conducive to the public health, welfare, and convenience and is of special benefit to the lands in the districts.

The boards of commissioners of the districts must enter into an agreement for consolidating the districts, which includes the method and manner of consolidating, a comprehensive plan or scheme of water supply, sewers, and drainage, and whether revenue bonds to finance any improvements will be necessary.

As with other boundary changes, the county legislative authority holds a hearing on the proposal and determines whether the districts should be consolidated, making certain findings, and approving or not approving the consolidation.[17]

A ballot proposition authorizing the consolidation is submitted to the voters of each district proposed to be consolidated and the consolidation is authorized if the voters of each district approve the ballot proposition.[18] The commissioners of all the consolidating districts become the commissioners of the new district and the number of commissioners is reduced gradually to either three or five, as terms of office expire.[19]

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d An alternative petitioning procedure exists, if no voters reside in one or more of the districts, in which case the petition must be signed by the owners of at least a majority of the acreage of the district or districts. However, no special provision is made for property owners to vote, as was made for annexing territory under the petition/election method, so it does not appear that this is a viable alternative.

2. Mergers

One or more districts may merge into another district.[20]

The district or districts proposing to merge into another district are called the "merging" district or districts. The district into which the other district or districts are proposing to merge is called the "merger" district. A merger is initiated when either:

- The board of commissioners of each of the districts determines by resolution that the merger will be conducive to the public health, welfare, and convenience and of special benefits to the lands in the districts; or
- Ten percent of the voters residing in the merging district or districts sign a petition proposing the merger and the board of commissioners of the merger district determines by resolution that the merger will be conducive to the public health, welfare, and convenience and of special benefits to the lands in the districts.

An agreement providing for the merger must be entered into within 90 days of the last act initiating the merger.

As with other boundary changes, the county legislative authority holds a hearing on the proposal and determines whether the districts should be consolidated, making certain findings, and approving or not approving the consolidation.[21]

A ballot proposition authorizing the merger is submitted to the voters of each merging district and the merger occurs if the ballot proposition is approved by a simple majority vote of voters of each merging district who vote on the proposition. A ballot proposition is not submitted to the voters of the merger district. If approved, all of the funds and property of the merging districts become the property of the merger district, the boundaries of the merger district are expanded to include the territory of the merging districts, the merging districts dissolve, and the commissioners of all the merging districts join with the commissioners of the merger district to become the commissioners of the merger district. The number of

commissioners is gradually reduced to either three or five, as terms of office expire.[22]

D. Assumption of Jurisdiction by a City

Legislation enacted in 1971 allows a city to "assume the operations" of a water district or sewer district under certain circumstances.[23] An assumption of jurisdiction may occur under three separate circumstances.

First, a city may assume jurisdiction over a water district or sewer district, if all of the district is located within the city.[24] This action essentially dissolves the district.

Second, a city may assume jurisdiction over all of a water district or sewer district, if at least 60 percent of the area of the district, or at least 60 percent of the assessed valuation of the district, is located in the city and none of the remainder of the district lies within another city.[25] The water district or sewer district is dissolved in such circumstances and the city assumes all of the rights, assets, and liabilities of the district, including the authority to impose property taxes within the boundaries of the prior district to retire general indebtedness.

Third, a city may assume jurisdiction over the portion of a water district or sewer district located within its boundaries, essentially acquiring all the district's property, facilities, and equipment in the city as well as all related responsibilities.[26] This action effectively removes the portion of the district located in the city from the water district or sewer district. However, some liability may exist for either the city to continue providing service outside of the city or for the district to continue providing some service in the city. The service obligation arises if the district's facilities located in the city still provide some service outside of the city or if facilities located in what remains of the district outside of the city still provide service inside the city. This obligation to provide service remains "for the economically useful life" of these facilities. The remaining portion of the water district or sewer district may, by a favorable vote of the district voters, require the city to assume responsibility to operate and maintain the district's property, facilities, and equipment outside of the city if the district pays a "reasonable" amount for this service.

Legislation was enacted in 2015 subjecting an assumption of jurisdiction by a city over a water or sewer district to potential referendum approval by voters of the district or portion of the district proposed to be assumed by the city, unless the assumption is made through a contract or interlocal agreement between the city and district.[27]

If a city imposes a utility tax on a district's sewer or water facilities located within the city, the city may only assume jurisdiction over the portion of the district located in the city if the assumption is authorized by a simple majority vote of the voters of the entire district.[28]

E. Dissolution

A water district or a sewer district may be dissolved or disincorporated under several procedures. First, the dissolution may follow the procedures for disincorporating a city, except that the petition must be signed by at least 25 percent of the voters residing in the district.[29] Second, the board of commissioners of the district may petition the superior court to dissolve the district. The district may be dissolved if the court finds that the dissolution will serve the "best interests of all persons concerned".[30] Third, the county legislative authority may dissolve an inactive district.[31] Fourth, a city may dissolve a district with boundaries identical with those of a city or that is located entirely within a city, if the commissioners by unanimous vote agree to the dissolution and transfer of the district's assets to the city and the governing body of the city by unanimous vote agrees to accept the dissolution and transfer of assets.[32]

As with other boundary changes, the county legislative authority holds a hearing on the proposed dissolution or dis-incorporation authorized under Title 57 RCW and determines whether the districts should be dissolved, making certain findings, and approving or not approving the dissolution.[33]

Governing Body and Elections

The governing body of a water district or sewer district consists of a board of commissioners who are elected directly to office for six-year staggered terms of office.[34] Normally, the board of commissioners is composed of three members. However, voters may approve a ballot proposition increasing the number of commissioners to five or seven members, who are elected to staggered six-year terms of office.[35]

Water district and sewer district commissioners are elected as nonpartisan officials at elections held in odd-numbered years.[36] Normal franchise rights exist in these districts and the voters of a water district or sewer district consist of all registered voters residing within the district.[37] County auditors conduct all elections for water districts and sewer districts.[38]

The initial members of a board of commissioners are elected to staggered terms of office at the same election when the ballot proposition is submitted to voters for their approval or rejection of the creation of the district.[39] No primary is held. Election of the new commissioners is null and void if voters fail to authorize creation of the district.

Commissioners are elected on an at-large basis without using commissioner districts. However, the board of commissioners may provide for the election of commissioners using commissioner districts to elect commissioners. When authorized, commissioner districts are used for two purposes:

- Only a registered voter residing in a commissioner district may be a candidate for or serve as a commissioner from the district; and
- Only voters of the commissioner district may vote at a primary to select no more than two candidates whose names will appear on the general election ballot for that position.

All commissioners are elected at general elections by all the voters of the water district or sewer district, even if the district is divided into commissioner districts.[40]

A unique provision relating to candidates for commissioner was enacted in 2007.[41] If the candidate filing time is reopened in a district because no one had filed his or her candidacy, in a district with less than 100 residents, a qualified elector of the state who owns real property in the district may file his or her candidacy and serve as a commissioner of the district.

Commissioners receive compensation at a rate of $90 per day, or portion thereof, devoted to the business of the district, not to exceed $8,640 per year.[42] Beginning July 1, 2008, the per diem rate of compensation and the cap on the annual amount of per diem compensation were adjusted for inflation using the consumer price index.

As mentioned above, the initial commissioners of a water district or sewer district are appointed by the county legislative authority if the district is created by the county legislative authority under the alternative procedure to create a water district or a sewer district. Presumably, these commissioners would also be eligible for this compensation.

Powers

Water districts and sewer districts are authorized to:

- Provide water systems for all purposes (i.e., potable or irrigation) inside and outside of the district;[43]
- Provide sanitary sewer systems, including on-site disposal systems, inside and outside of the district, with the authority to compel property owners within the district to connect their private drains and sewer systems to the district's system;[44]
- Provide drainage systems or storm and surface water sewers inside and outside of the district;[45]

- Provide for the reduction, minimization, or elimination of pollutants from any lake, stream, or waterway in or abutting the district;[46]
- Generate electrical energy from its waterworks, if the generation of electricity is a byproduct of the water supply system;[47]
- Provide street lighting;[48]
- Assist customers with acquiring water conservation equipment;[49]
- Operate and maintain park and recreational facilities on its real property;[50] and
- Generate methane from its sewer facilities and sell the gas.[51]

The authority to provide water and sewer service includes the authority to create municipal corporations to provide water and sewer service under the recently enacted Joint Municipal Service Act.[52]

Water districts and sewer districts, as virtually all other types of local government, may condemn property to carry out their purposes.[53]

Comprehensive Plan of Improvements

A water district or a sewer district may only provide water, sewer, drainage, or street lighting improvements and facilities that are detailed in a general comprehensive plan of improvements.[54] Each plan must be reviewed and approved by the county in which the district is located. "Comprehensive plans of improvements" should not be confused with comprehensive land use plans adopted by counties and cities that are basically land use planning documents.

A general comprehensive plan of improvements is prepared by the district. Separate plans are provided for each type of facility a district provides – water, sewer, drainage, or street lighting. The plan for water, sewer, or drainage improvements is submitted to an engineer designated by the county legislative authority, and to the county director of health, both of whom who review the plan and

approve, conditionally approve, or reject the plan. A general comprehensive plan for street lighting is only submitted to an engineer designated by the county for review. The plan is submitted to the county legislative authority for its review and to any city for its review, if the plan provides for facilities inside a city. A plan only becomes effective if approved by the county legislative authority, and where applicable, the city governing body. Additionally, a plan must be approved by any state agency whose approval is required by state law.

Expenditures to carry out any part of the general comprehensive plan, other than for preparing the plan, may only be made if the plan is adopted by the board of commissioners of the district and approved, as described above.

Requirements for the approval of water district and sewer district comprehensive plans of improvements has varied over the years. Initially, a water district's comprehensive plan of improvements could only be implemented if voters of the water district approved a ballot proposition providing for the plan.[e] [55] The voter approval requirement was eliminated in 1959.[56] Gradually, incidences of county and city officials approving water district comprehensive plans were added, with the requirement for the approval by a county or city governing body finally being added to water district laws in 1977.[57] Initially, a sewer district's comprehensive plan of improvements had to be approved by the county engineer and county director of health, but not by voters or the county legislative authority.[58] The requirement for a city council approving a sewer district's plan if the district proposed sewer facilities in the city was added in 1959.[59] Finally, the requirement for approval by the county legislative authority was added in 1977.[60]

Finances

Water districts and sewer districts receive income from a variety of sources, including: (1) Rates and charges; (2) debt proceeds; (3) special assessments imposed within local improvement districts; (4)

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e This old requirement resembled a requirement that a port district could only provide port improvements if voters approved a comprehensive plan of these improvements. However, this requirement for port districts was soon eliminated. A discussion of port districts is found in Chapter 14.

excess, voter approved property tax levies; and (5) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of water district and sewer district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Rates and Charges

Water districts and sewer districts receive most of their revenues from rates and charges. Two types of rates and charges may be imposed.

First, basic district revenues are obtained from imposing rates and charges for utility service that is furnished or available to property. Water districts and sewer districts possess broad authority to classify customers for this service, but the rates imposed on each class of customers must be calculated on a uniform basis.[61]

Second, connection charges may be imposed on property connecting to a district's utility system. The authority to measure connection charges is more restricted than regular rates and charges. Statutes prescribe how connection charges are calculated so that property connecting to the district's water or sewer lines pays its "equitable share" of the utility system.[62] Revenues from connection charges may only be used for capital purposes.

B. Debt Proceeds

Water districts and sewer districts may issue different types of bonds, including revenue obligations and general indebtedness.

A water district or sewer district may issue a variety of revenue obligations that are not subject to indebtedness limitations. Revenue bonds are the most common type of indebtedness issued by a water district or sewer district.[63] Revenue bonds are payable from rates and charges imposed by the district and may be issued for a maximum term of 40 years.[64] Water districts and sewer

districts may finance local improvements by issuing local improvement district bonds payable from special assessments imposed on land benefitting from the local improvements that is located within a local improvement district (LID).[65] Presumably, the maximum term of a LID bond is 20 years since the special assessments used to retire the bonds may only be imposed for a maximum of 20 years.

A water district or a sewer district may incur general indebtedness and issue general obligation bonds without voter approval not exceeding one-half of one percent of the value of taxable property in the district and a total not exceeding two and one-half percent with voter approval.[66] However, the non-voter approved debt limit is more theoretical than real, since a district may only impose voter approved excess property tax levies. General obligation bonds may be issued with a maximum term of 40 years.[67]

Water districts and sewer districts also may issue a variety of short term obligations, including notes and warrants.[68]

C. Special Assessments

Water districts and sewer districts may create local improvement districts (LIDs) and impose special assessments on property located within the LID to finance these local improvements.[69]

D. Excess Property Tax Levies

Water districts and sewer districts may impose voter-approved excess property tax levies, including single year excess levies for general district purposes and multiple-year levies used to make principal and interest payments on general obligation bonds.[70] These levies may only be imposed if voters approve a ballot proposition authorizing the levies by at least three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met.

Express statutory authority exists permitting a district to submit a ballot proposition at any election authorizing multi-year excess levies to retire voter approved general obligation bonds.[71] Express statutory authority also exists permitting a ballot proposition to be submitted to voters at the same election when voters vote to create

the district authorizing a single year excess property tax levy for general district purposes of not exceeding $1.25 per $1,000 of assessed value.[72] Authority to submit ballot propositions for single year excess levies in other elections arises from general tax law, which authorizes any taxing district (including a water district or sewer district) to submit a ballot proposition at any election authorizing the taxing district to impose single year excess levies for general purposes.[73]

E. Other

Water districts and sewer districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Development of Laws

Separate water district statutes and separate sewer district statutes existed for decades. However, legislation enacted in 1996 and 1997 combined these separate sets of laws into a single set of laws. As a result, water districts and sewer districts statutes are identical, even though they technically remain different types of special purpose districts.

A. Water Districts

Water districts are one of the oldest types of special purpose districts allowed to be created in the State. Legislation enacted in 1913 authorized water districts to be created to provide water service.[74] Each water district was a municipal corporation governed by a separately elected board of commissioners. Most water district laws have been codified in Title 57 RCW.

Property tax levies appear to have been the basic source of revenue for these early water districts. The original laws authorized water districts to:

- Levy non-voter approved property taxes;
- Issue general obligation bonds payable from property tax levies;

- Create local improvement districts (LIDs) and impose special assessments on benefitted property located within the LIDs to finance local water systems. LID bonds could be issued payable from special assessments; and
- Impose charges for the use of water.

At one time water districts were authorized to provide fire protection facilities and services. In 1929, water districts were authorized to provide fire hydrants.[75] In 1929, water districts were authorized to provide firefighting equipment and apparatus, as well as to house this equipment in 1937.[76] Their authority to provide fire fighting equipment and apparatus was eliminated in 1996.[77] A history of fire protection districts in King County notes that at least three water districts either funded fire departments, or purchased fire fighting equipment for volunteer fire brigades, prior to the creation of fire protection districts.[f] [78] However, it appears that no water district was still providing fire fighting services in 1973.

Water districts were authorized to issue revenue bonds payable from charges imposed for water service in 1939, but these bonds could only be issued if district voters approved a ballot proposition authorizing the bonds by at least a three-fifths margin.[79]

Legislation enacted in 1941 authorized water districts to provide street lighting.[80]

Ken Billington, in a book on public power in Washington State, indicates that legislation was enacted in the early 1950's, making water districts “effective” water purveyors.[81] This legislation was supported by private power interests as an alternative to creating a PUD in King County to provide water service outside of Seattle. It appears that this improvement in water district laws occurred in 1951, when the requirement was eliminated that revenue bonds for additions and betterment to a water system could only be issued if voters approved a ballot proposition authorizing the bonds.[82]

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f The water districts were King County Water District No. 25 in the Bryn Mawr and Skyway area, King County Water District No. 49 in the Burien area, and a water district in the Federal Way area.

Other changes were made to water district finances in 1951, as the Legislature searched for ways to finance water district operations. Legislation was enacted prohibiting water districts from imposing property taxes for general district operations, except to pay for outstanding bonds for which taxes were pledged.[83] Then, legislation was enacted authorizing water districts to impose assessments to finance general district operations.[84] However, the authority to impose these assessments was repealed before any assessments could be imposed, and water districts were authorized to impose nonvoter approved, regular property taxes to maintain a fire department.[85]

Legislation was enacted in 1963, authorizing water districts to provide sewer service following sewer district laws.[86]

The authority of a water district to impose nonvoter approved regular property taxes to finance a fire department was eliminated in 1996.[87]

B. Sewer Districts

Legislation enacted in 1941 authorized sewer districts to be formed to provide sewer service, including both sanitary sewers and storm sewers or drainage systems.[88] Each sewer district was a municipal corporation governed by a separately elected board of commissioners. Most sewer district laws were codified in Title 56 RCW.

The 1941 legislation providing for sewer districts basically mirrored water district statutes, except as follows:

- Sewer districts were not authorized to provide for fire departments or to impose nonvoter approved property taxes, as water districts were authorized at that time; and
- Sewer districts were not authorized to provide street lighting, as water districts were authorized at that time.

C. Common Legislation

A tradition developed after 1941, where legislation was enacted eliminating the few differences between water district laws and sewer district laws and making common changes to already almost identical laws. These common changes were initially made in separate legislation. After a few years these changes for both types of districts were made in the same legislation.

Legislation was enacted in 1971, allowing water districts and sewer districts to merge together and become a water district that provided both water and sewer service.[89]

D. Legislation Combining Their Laws

Legislation was enacted in 1996, combining the then separate laws for water districts and sewer districts into a single set of laws.[90] Most statutes that referred to either water districts or sewer districts were amended to refer to either "districts" or "water-sewer districts". As a result, water district and sewer district statutes are identical, even though technically, water districts and sewer districts are distinct entities.

This action combining statutes for different types of special purpose districts into a common set of statutes is quite rare in Washington State. The only similar actions occurred in 1985, 1986, 1991, and 1993, when some common procedures were enacted for diking districts, drainage districts, diking improvement districts, drainage improvement districts, and flood control districts.[91]

Legislation was enacted in 1996 somewhat limiting the provision of services by a water district and sewer district occupying a common area. Except when approved by resolution of both governing bodies, a water district or a sewer district may not provide a service within an area where the service is available from the other district, or where the other district's comprehensive plan indicates that it will provide the service.[92] This statute is a clear attempt to avoid a potentially vexing issue that arises from common law doctrine holding that common territory may not be included in two of the same type of municipal corporations. Although this common law doctrine has been recognized by the State Supreme Court, the

Court has somewhat muted the doctrine. Beginning with a holding allowing a port district to include territory located in a city or county, the Supreme Court has allowed the layering of different types of municipal corporations over each other, even when one or more common powers are shared by the two different types of municipal corporations. However, the Court has never addressed the issue of whether two municipal corporations with absolutely identical powers may occupy common territory. In each instance where the Court has allowed layering, the special purpose district had powers that were identical or very similar to a portion of the vast array of powers of the city or county that was included in the special purpose district.

Most water district and sewer district statutes are now codified in Title 57 RCW, the old Title of laws for water districts.

NOTES:

1. "Washington Special Purpose Districts Overview," *id.*
2. Discussion with Harold Schlomann, Executive Director, Washington Association of Sewer and Water Districts.
3. *Id*.
4. RCW 57.04.030.
5. RCW 57.02.040(3).
6. RCW 57.02.045 & 57.04.001 and Chapter 36.93 RCW.
7. RCW 57.04.050.
8. Section 4, Chapter 447, Laws of 1997, codified as RCW 57.04.140.
9. Chapter 57.06 RCW.
10. Chapter 36.93 RCW.
11. RCW 57.24.010-57.24.050.
12. RCW 57.24.060-57.24.100.
13. RCW 57.24.170-57.24.210.
14. Sections 1–4, Chapter 31, Laws of 2007, codified as RCW 57.24.230-57.24.260.

15. Chapter 57.28 RCW.
16. Chapter 57.32 RCW.
17. RCW 57.02.040.
18. RCW 57.32.023.
19. RCW 57.32.130.
20. Chapter 57.36 RCW.
21. RCW 57.02.040.
22. RCW 57.36.040.
23. Chapter 95, Laws of 1971 ex. sess., codified in Chapter 35.13A RCW.
24. RCW 35.13A.020.
25. RCW 35.13A.030.
26. RCW 35.13A.050.
27. Chapter 17, Laws of 2015.
28. RCW 35.13B.030.
29. RCW 57.04.100.
30. Chapter 53.48 RCW.
31. Chapter 36.96 RCW.
32. RCW 57.04.110.
33. RCW 57.02.040.
34. RCW 57.12.010 & 57.12.030.
35. RCW 57.12.015.
36. RCW 29A.52.231 & 57.12.030.
37. Article VI, Section 1.
38. RCW 29A.04.216.
39. RCW 57.12.030.
40. RCW 57.12.020, 57.12.030, & 57.12.039.
41. Section 1, Chapter 382, Laws of 2007, codified as RCW 57.12.035.
42. RCW 57.12.010.
43. RCW 57.08.005(1) & (3).
44. RCW 57.08.005(5).
45. RCW 57.08.005(6).
46. RCW 57.08.005(9).

47. RCW 57.08.005(3).
48. RCW 57.08.060.
49. RCW 57.08.160.
50. RCW 57.08.009.
51. RCW 57.08.005(5).
52. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
53. RCW 57.08.005(1).
54. RCW 57.16.010-57.16.045.
55. Section 10, Chapter 161, Laws of 1913.
56. Section 6, Chapter 18, Laws of 1959.
57. Section 3, Chapter 299, Laws of 1977, ex. sess.
58. Section 11, Chapter 210, Laws of 1941.
59. Section 2, Chapter 103, Laws of 1959.
60. Section 1, Chapter 300, Laws of 1977, ex. sess.
61. RCW 57.08.081(1) & (2).
62. RCW 57.08.081(3) & (4).
63. RCW 57.20.018-57.20.027.
64. RCW 39.46.150.
65. RCW 57.16.050.
66. RCW 57.20.110 & 57.20.120.
67. RCW 39.46.110.
68. Chapter 39.50 RCW.
69. RCW 57.16.050-57.16.150 and 57.20.030-57.20.090.
70. RCW 57.04.050, 57.20.010, 57.20.105, 84.52.052, & 84.52.056.
71. RCW 57.20.010.
72. RCW 57.04.050.
73. RCW 84.52.052.
74. Chapter 161, Laws of 1913.
75. Section 10, Chapter 114, Laws of 1929.
76. Section 1, Chapter 177, Laws of 1937.
77. Section 501, Chapter 230, Laws of 1996.
78. Hoyt, at pages 5, 64, and 73.

79. Section 1, Chapter 128, Laws of 1939.
80. Section 1, Chapter 68, Laws of 1941.
81. Billington, at page 50.
82. Section 2, Chapter 112, Laws of 1951.
83. Section 4, Chapter 107, Laws of 1951.
84. Section 4, Chapter 6, Laws of 1951 ex. sess.
85. Sections 4 & 6, Chapter 25, Laws of 1951, 2nd ex. sess.
86. Section 1, Chapter 111, Laws of 1963.
87. Section 1703, Chapter 230, Laws of 1996.
88. Chapter 210, Laws of 1941.
89. Chapter 146, Laws of 1971, ex. sess.
90. Chapter 230, Laws of 1996.
91. Chapter 396, Laws of 1985; Chapter 278, Laws of 1986; Chapter 349, Laws of 1991; and Chapters 464, Laws of 1993; which are codified in Chapters 85.36 and 85.38 RCW.
92. RCW 57.08.007.

Chapter 19

Cemetery Districts

Cemetery districts provide cemeteries and conduct cemetery business.

Legislation enacted in 1947 authorized the creation of cemetery districts.[1] For some reason, these statutes were not codified as a separate chapter of law, and instead were codified in Chapter 68.52 RCW, providing for county and city cemeteries. Ironically, statutes enacted in 1969 that provided for cemetery districts to annex territory and merge together were codified in a separate chapter of law (Chapter 68.54 RCW).

A cemetery district would be classified as an independent special purpose district.

The Municipal Research and Services Center (MRSC) reports that 104 cemetery districts exist in the State.[2]

Creation

A petition proposing the creation of a cemetery district, signed by at least 15 percent of the registered voters residing in the proposed district, is filed with the county auditor of the county in which the district is proposed to be located.[3] However, if only one city exists in the county, the signature requirement on the petition need only be signed by registered voters residing in the proposed district equal to at least 10 percent of the resident registered voters. The petition specifies the proposed boundaries and states that the establishment of the district is "conducive to the public welfare and convenience." The auditor examines the signatures, certifies the sufficiency of the

signatures, and transmits a certificate of sufficiency to the county legislative authority.

If the auditor certifies that the signatures are sufficient, the county legislative authority holds a hearing on the proposed creation of the district and receives evidence in favor or opposed to the formation, and the inclusion or exclusion of lands within the proposed district.[4] The county legislative authority places a ballot proposition authorizing creation on the ballot, if it finds that formation of the district will be "conducive to the public welfare and convenience."[5] The district is created if the ballot proposition is approved by at least two-thirds of the voters voting on the proposition.[6] This is an unusually high voter approval requirement to create a unit of local government.

The proposed creation of a cemetery district is not subject to review by a boundary review board.[7]

Boundary Changes

Cemetery district statutes allow a district to annex territory, and for two or more districts to merge.[8] They may also be dissolved.[9] These actions are not subject to review by a boundary review board.[10]

Governing Body and Elections

A cemetery district is governed by a three-member board of commissioners, each of whom is elected to a staggered six-year term of office.[11] Uniquely, primaries are not held to select two candidates for the general election ballot, even if more than two persons file for a commission position.[12]

The initial cemetery district commissioners are elected at the same election when the ballot proposition on the creation of the district is submitted to voters for their approval or rejection.[13] Obviously, election of these commissioners is null and void if voters defeat the ballot proposition providing for the creation of the district.[14]

The cemetery district board of commissioners may provide for each commissioner to be paid compensation at a rate of up to $90 per day, or portion of a day, spent attending official commission meetings or

in performing other official duties and services for the district.[15] Total per diem compensation for a commissioner may not exceed $8,640 per year. These dollar thresholds were adjusted for inflation by the office of financial management every five years, commencing July 1, 2008, based upon the consumer price index. A commissioner may waive this compensation. Commissions are reimbursed for their expenses "necessarily incurred" in attending meetings and engaging in other district business.

The office of cemetery district commissioner is a nonpartisan office and elections are held in odd numbered years to elect commissioners.[16] Regular franchise rights exist in cemetery districts and the voters of a cemetery district consist of all registered voters residing in the district.[17] County auditors conduct elections for cemetery districts.[17]

Powers

Cemetery districts may provide cemeteries and "conduct any and all of the business of a cemetery as defined in" Title 68 RCW.[18] A cemetery district may jointly operate cemetery facilities and services with other public or private entities, for terms not exceeding five years, but may have these facilities and services provided for it without any limitation as to the term of the agreement.[19]

Cemetery districts possess the power of eminent domain and may condemn property for their public purposes.[20]

As is true for other units of local government, a cemetery district possesses the usual powers of a public corporation, which includes the authority to carry out its objectives, enter into contracts, and to employ agents and employees.[21]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of cemetery district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A cemetery district may impose annual, regular property taxes of not exceeding 11¼¢ per $1000 of assessed valuation.[22] As is true for other regular property tax levies, this levy is subject to prorating or lowering if the combined rates of regular property tax levies exceed statutory levels.[23] Cemetery district regular property tax levies would be classified as moderately secure property tax levies imposed by junior taxing districts. The status level, or security, of these levies was lessened or reduced in 1987.[24] Legislators asked the author to draft legislation lessening the chance of regular property tax levies imposed by fire protection districts from being reduced or prorated. As part of this legislation, the status level of the second and third 50¢ per $1000 of assessed value property taxes of fire protection districts was raised and the status level of cemetery districts was lowered.

A cemetery district, as a taxing district, may also impose voter approved, excess property tax levies, including single-year levies for their general purposes and multiple-year levies to retire general obligation indebtedness.[25] The ballot proposition authorizing the imposition of these excess property tax levies must be approved by a supermajority vote of voters voting on the proposition.

A cemetery district may incur general indebtedness and issue general obligation bonds. However, the authority to incur this indebtedness may not be “in excess of the aggregate amount of the currently levied taxes”.[26] Presumably, this limitation restricts councilmanic or inside debt that a cemetery district may incur without voter approval, and does not restrict voter approved debt that is retired by multi-year, voter approved excess property tax levies. General legislation provides that most taxing districts, which would include cemetery districts, may incur voter approved indebtedness not exceeding 1¼ percent of the value of taxable property within the local government’s boundaries.[27] In almost every instance, a ballot proposition authorizing voter-approved general indebtedness would also authorize multi-year excess property tax levies to retire the indebtedness. A ballot proposition authorizing both the indebtedness and excess levies to retire the indebtedness must be approved by at least three-fifths of district voters voting on the proposition and a 40 percent voter validation requirement.

As part of their general authority to conduct a cemetery business, a cemetery district may impose rates and charges for burial plots and providing various services.

NOTES:

1. RCW 68.52.090-68.52.330.
2. "Washington Special Purposes District Overview," *id*.
3. RCW 68.52.100.
4. RCW 68.52.130
5. RCW 68.52.140.
6. RCW 68.52.170.
7. RCW 36.93.020.
8. Chapter 68.54 RCW.
9. RCW 68.52.320.
10. RCW 36.93.020.
11. RCW 68.52.220.
12. RCW 68.52.155.
13. RCW 68.52.140 & 68.52.220.
14. RCW 53.12.172.
15. RCW 68.52.220.
16. RCW 29A.52.231 & 29A.04.330.
17. RCW 29A.04.216.
18. RCW 68.52.210.
19. RCW 68.52.192.
20. RCW 68.52.200.
21. RCW 68.52.190.
22. RCW 68.52.310.
23. RCW 84.52.010(2).

24. Chapter 255, Laws of 1987.
25. RCW 84.52.052 & 84.52.056.
26. RCW 68.52.310.
27. RCW 39.36.020.

Chapter 20

Drainage Districts; Diking Districts; Diking, Drainage and Sewerage Improvement Districts; and Flood Control Districts

A variety of different types of special purpose districts exist in Washington State that are authorized to provide drainage, diking, and flood control improvements. With the exception of flood control zone districts, which are discussed in Chapter 40, current law provides for restricted voting rights limited to the owners of property in these special purpose districts. Regular franchise rights exist in flood control zone districts.

The special purpose districts with restricted voting rights that are authorized to provide diking, drainage, and flood control facilities are:

- Drainage districts;
- Diking districts;
- Diking, drainage, and/or sewerage improvement districts; and
- Flood control districts.

Apart from school districts and road districts, special purpose districts authorized to provide drainage or diking improvements are the oldest forms of special purpose districts in Washington. The origins of these entities arose in Washington Territory when counties were authorized to finance drainage systems by imposing assessments. Gradually, legislation was enacted transforming this financial device into special purpose districts.

Wave after wave of legislation has been enacted over the years altering statutes for these special purpose districts. Basically, these changes altered or improved the system by which assessments were measured and imposed. Frequently, older provisions for imposing assessments were retained when newer, improved procedures were enacted. After a few decades, legislation was enacted authorizing different types of special purpose districts to provide essentially the same type of facilities, with somewhat modernized and improved procedures for imposing assessments.

This array of statutes culminated in:

- Legislation being enacted in 1961 authorizing a new type of special purpose district (flood control zone districts) to be created with the authority to finance these improvements by imposing rates and charges and property taxes, as well as assessments. Regular voting rights exist in flood control zone districts. Flood control zone districts are political subdivisions of the county that created them, rather than independent special purpose districts. At least until 1985, these statutes gave flood control zone districts the most modern and flexible financing powers, as well as the most legally justifiable method of measuring and imposing assessments.
- Beginning in 1985, legislation was enacted modernizing statutes for these older types of special purpose districts with restricted voting rights. Common procedures were provided to create these districts, alter their boundaries, and for holding elections to elect members of their governing bodies. A more modern and legally secure method of measuring and imposing assessments was provided as an alternative to the older procedures and these special purpose districts were allowed to impose rates and charges for the use of their facilities. These changes in finances were primarily based upon flood control zone district laws. Then Representative Mary Margaret Haugen, chair of the local government committee, was the prime sponsor of these laws and

the author drafted this legislation for Representative Haugen.

As with irrigation districts, a little known historical fact exists about franchise rights in these special purpose districts. Statutes for each of these types of special purpose districts authorized before 1915, provided for regular or normal voting rights rather than restricted voting rights. However, beginning in 1915, legislation was enacted over the ensuing decades, altering voting rights for these different special districts to the current system of limited or restricted voting rights, where only property owners (whether natural people, or artificial entities such as corporations or partnerships) owning property in the district are allowed to vote. The initial legislation authorizing flood control districts in 1937 provided for limited or restricted voting rights where only property owners (whether natural people, or artificial entities such as corporations or partnerships) could vote.

Most drainage, diking, or flood control districts are geographically small. More than 20 of these special purpose districts are strung along the Skagit River and provide varying levels of flood protection, sometimes on only one side of the river. During the mid-20th century, the State flood engineer indirectly coordinated flood protection along the Skagit River by requiring coordinated levels of flood protection as a condition of receiving state grants.[1]

At times, a few of these special purpose districts (especially those providing diking improvements) ceased functioning and essentially disappeared. No procedure was followed to dissolve these districts. The author recalls reading news articles in Thurston County after flooding in the 1970s, recounting the surprise of staff at the county engineer's office, discovering an old, abandoned system of dikes. Research revealed that a diking district had been incorporated in the early 1900s and constructed these dikes, but ceased existing after several decades.

The Municipal Research and Services Center (MRSC) reports that 99 diking districts, drainage districts, or diking and drainage improvement districts exist in the State, and 13 flood control districts exist in the State.[2]

Although a number of statutes for these special districts have been reformed since 1985, other statutes include provisions that need to be addressed and could cause substantial angst for these special districts if they were litigated. If the idea is to retain limited or restricted voting rights in these districts, these provisions should be repealed. This is an example of archaic statutes containing provisions that could cause problems if modern jurisprudence is applied to them.

A. Common Statutes

Beginning in 1985, provisions of Chapter 85.38 RCW were enacted providing for a number of common provisions for these special purpose districts.

1. Creation

A new and common procedure to create one of these special purpose districts is initiated by petition signed by at least ten owners of land within the proposed district or by resolution of the county legislative authority.[3] The county engineer investigates the proposed boundaries and feasibility of the proposed projects and reports to the county legislative authority.

The county legislative authority holds a public hearing on the proposal, may alter the proposed boundaries, and may cause a ballot proposition authorizing the creation of the district to be submitted to voters within the proposed district if the county legislative authority finds that: (a) Creation of the district is conducive to the public health, convenience and welfare; (b) creation of the district is of special benefit to a majority of the included lands; and (c) the proposed improvements are feasible and economical, and benefits from the improvements exceed costs. The district is created if voters of the proposed district approve a ballot proposition authorizing the district by a simple majority vote. Any district created after July 28, 1985, may only impose assessments following the new procedures contained in Chapter 85.38 RCW and may not follow older procedures.

Provisions were made for creating a district with territory located in more than one county.

Creation of such a drainage district, drainage improvement district, or drainage and diking improvement district may be subject to review by a boundary review board if its jurisdiction is invoked.[4] However, creation of a diking district, diking improvement district, or flood control district is not subject to review by a boundary review board.

2. Boundary changes

Provisions are made for such a special purpose district to annex contiguous territory, consolidate with a contiguous district, transfer territory to another district, and have territory withdrawn that is located in a city.[5] A special purpose district may also dissolve, suspend its operations, or reactivate its operations.[6] In addition, an inactive district may be dissolved under Chapter 36.96 RCW.

Boundary changes by such a drainage district, drainage improvement district, or drainage and diking improvement district may be subject to review by a boundary review board if its jurisdiction is invoked.[7] However, boundary changes by a diking district, diking improvement district or flood control district are not subject to review by a boundary review board.

3. Governing bodies and elections

Franchise rights in these special purpose districts are limited or restricted to natural persons or artificial entities owning property located in the special purpose district.[8] Each qualified voter receives two votes without regard to the extent of land ownership or the number of parcels owned. Each member of a marital community owning community property in the district receives one vote. However, qualified voters in some of these special purpose districts may receive additional votes as follows:

- A qualified voter owning more than 10 acres in a diking improvement district or drainage improvement district is given two additional votes for each 10 acres or major portion thereof owned in the district, but no exceeding a total of 20 votes.[9]
- A qualified voter owning more than 10 acres in a flood control district is given two additional votes for each

> 10 acres or major portion thereof owned in the district, but not exceeding a total of 40 votes.[10]

Each special purpose district conducts its own elections but may be assisted by the county auditor and the elections are subject to some control by the county auditor.[11] The Secretary of State does not provide any assistance or supervision in these elections. Each special purpose district creates a list of presumed eligible voters and provides the list to the county auditor. Elections for these special purpose districts are held on the first Tuesday after the first Monday in February in each even-numbered year. Primaries are not held as part of the process to elect the officials of these special purpose districts. Elections are either conducted at polling sites selected by the special purpose district or by the county auditor using mailed ballots. These are nonpartisan offices.

A unique provision relating to voting rights for "special flood control districts" was enacted in 2009.[12] Under this provision, voting rights in a flood control district "consisting of three or more counties" are regular voting rights and are not restricted to property owners. This legislation was enacted as part of a political settlement to address flooding along a portion of the Chehalis River basin within parts of Lewis, Thurston, and Mason Counties.[13] Election dates for a special flood control district do not follow standard election dates for all other governments with regular voting rights but probably conform to election dates for all other flood control districts.[14] Such a special flood control district has not been created. If it is desired to retain this concept of regular voting rights, it would be advisable to amend these laws to provide these voting rights in a flood control district with territory located in at least three counties, rather than containing all of three or more counties.

In most instances, each of these different types of special purpose district is governed by a three-member governing body elected to staggered six-year terms of office. However, if five or more of these special purpose districts consolidate, the resulting district may be governed by a five-member governing body.[15] A flood control district with territory in three or more counties may have a larger governing body.[16]

The initial governing body in a newly created special purpose district is appointed by the legislative authority or authorities of the county or counties in which the district is located and the appointed members retain their offices until replaced by members elected at the next special purpose district election held 90 or more days after the district is established.[17]

A special purpose district governing body may provide for compensation to be paid to its members at a rate of up to $90 per day or portion thereof attending meetings or engaging in other official duties or services for the district.[18] Total compensation may not exceed $8,640 in any year. These dollar thresholds were adjusted for inflation by the office of financial management every five years, commencing July 1, 2008, based upon the consumer price index. A commissioner may waive this compensation. Individual members may waive compensation. Governing body members are eligible for reimbursement for reasonable expenses incurred while engaged in district business.

4. Basic powers

The 1985 legislation included a provision authorizing these special districts to engage in a variety of activities and provide a variety of facilities.[19] These special districts are authorized to engage in flood control activities, which includes providing a variety of facilities, such as dikes, levees, dams, banks, revetments, channels, canals, drainage ditches, tide gates, and flood gates. These special districts were also authorized to engage in drainage control, storm water control, and surface water control activities, which includes providing drains, non-sanitary sewers, pumps and other works. In 1991, this statute was amended authorizing these special district to engage in lake or river restoration, aquatic plant control, and water quality enhancement activities.

The 1985 reform legislation clarified that a sewerage improvement district was authorized to provide these facilities, including both on-site and off-site sewer facilities.[20]

5. Financial provisions

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of finances for these special purpose districts.

The reform provisions enacted in 1985 also provided for an alternative set of procedures for these special purpose districts to impose assessments and adopt budgets.[21] These provisions are optional for any special purpose district created before July 28, 1985, and these older special purpose districts may opt to follow these provisions by adopting a resolution indicating this intentsion. However, any of these special purpose districts created after that date, or any prior districts adopting such a resolution, must conform to these provisions.

This new system of imposing assessments allows a district to measure and impose assessments based upon both the use of the district's facilities and benefit arising from the district's facilities, in lieu of just being measured by benefit. This adds flexibility and a greater likelihood that a court would find assessments being validly imposed upon property. Imposition of assessments involves a combination of the dollar value of use or benefit by the property as well as the assessment zone in which the property is located, with property located in zone 1 being assigned a value of 100 percent, property located in zone 2 being assigned a lesser percentage, property located in zone 3 being assigned an even lower percentage, *etc*. Assessments imposed on improvements to real property are distinguished from assessments imposed upon acreage. Varying criteria may be used to measure degrees or ratios of benefit or use, including proximity to the facilities, height above or below a dike or levee, easier accessibility, facility of drainage, minimization of flood or inundation damage, and use of the district's facilities.

These special districts are authorized to issue special assessments bonds or notes in lieu of the more traditional warrants or vouchers.

These reform provisions allow these special districts to adopt budgets. The reform provisions also allowed any of these special purpose districts, without altering its procedures for imposing

assessments, to impose rates and charges to finance its operations and facilities.[22]

B. Drainage Districts

The Legislative Assembly of Washington Territory enacted legislation in 1858 allowing drainage ditches to be constructed and financed using a financial mechanism somewhat resembling what later became known as special assessments imposed within local improvement districts.[23] This law was revised a number of times by the Legislative Assembly to provide a continuing mechanism for financing the construction and ongoing maintenance of drainage ditches and the construction of drainage systems, rather than a one-time imposition of assessments to fund a particular set of improvements.[24] In 1875, legislation was enacted by the Legislative Assembly converting this continuing financing mechanism into a separate unit of government within the county resembling a subdivision of the county.[25]

The Washington State Legislature enacted legislation in 1895 converting these organizations into independent drainage districts, each with a board of commissioners composed of three separately elected members.[26]

Layer upon layer of statutes have been enacted authorizing drainage districts to impose assessments to finance the construction and maintenance of drainage facilities.

The oldest provisions involve petitioning the local superior court to approve the assessments.[27] The petition includes an estimate of the benefits, increased value, and damages arising from a proposed system of drainage facilities. Summonses are issued to property owners who may appear as "defendants" and contest the assessments or "allegations" in the petition. A jury of 12 qualified persons is impaneled to assess the damages and benefits if the judge finds "satisfactory proof" that all of the defendants have been duly served, and the judge is satisfied by "competent proof" that the improvements are practicable, and are conducive to the public health, welfare and convenience, and will increase the value of the lands "for the purpose of public revenue". The jury considers evidence and assesses the damages, if any, resulting to any person

and finds the "maximum amount of benefits, per acre" that will be derived from construction of the improvements. The court issues a decree establishing the assessments. A transcript of the benefits is provided to the county auditor who places the assessments onto regular property tax rolls and collects the assessments along with property taxes. The same procedure may be followed to establish additional or new assessments. Warrants may be issued by the county treasurer based upon the assessments.

A drainage district may make "radical changes" to its plan of improvements and notify the local superior court about the changes.[28] Summons are served on property owners. The court considers the matter and may empanel another jury to alter the prior findings of damages and benefits, allowing the altered facilities to be constructed.

Additional systems of drainage or improvements to existing systems may be financed with assessments imposed following the same procedure as the original assessments were imposed.[29]

Other statutes provide for an alternative method to pay for outstanding warrants or other evidences of indebtedness.[30] These provisions initially provided for the imposition of assessments within the district to pay for these evidences of indebtedness, but then described the imposition of "taxes" to pay for these evidences of indebtedness. Presumably, a court would interpret these statutes as being poorly drafted and would consider the "taxes" to be "assessments". The Legislature should review these statutes and delete the term "taxes." Under these provisions, the county legislative authority of a county in which a drainage district is located is directed to impose assessments within the district to pay for the system of drainage facilities whenever payments for work done by the district have not been made within "a reasonable time." A holder of the district's unpaid evidences of indebtedness may petition the superior court asking the court to order the county to assess land within the district to pay for these evidences of indebtedness.

A drainage district may order additional improvements, and impose assessments to finance the construction of improvements and maintenance of these improvements by imposing additional assessments.[31] Again, it is unfortunate that these provisions refer to

"levies" being imposed to redeem bonds issued to finance these improvements. Presumably a court would interpret this language as being poorly drafted and would consider the levies to be "assessments" rather than "taxes". However, the Legislature should review these statutes and remove language relating to taxes. The district publishes notices of a hearing on the proposal that the board of drainage district commissioners holds. Any affected property owner may appear and file written protests. The district may not take final action ordering the improvements and imposing assessments if protests are filed by owners of more than 40 percent of the property in the district. If the district proceeds with the project, any person who filed a protest may appeal the action of the district to the local superior court on the grounds of fraud, unfair dealings, that the district acted arbitrarily, or acted unreasonably.

Legislation was enacted in 1961 providing for yet another alternative method of financing drainage districts.[32] Unfortunately, this financial system of imposing "levies" appears to be property taxes rather than assessments. Again, if it is desired to retain restricted voting rights in these districts, this alternative method should be avoided and the Legislature should consider repealing these provisions.

A drainage district created since January 1, 1921, which is unable to complete its original improvements without expending more funds than the original estimate of benefit accruing to property within the district, may petition the superior court to empanel a new jury to determine benefits and authorize additional assessments to compete the work.[33]

A drainage district may impose additional assessments to finance the construction of an additional drainage system, or for maintenance of its drainage system, in the same manner as assessments for the initial drainage system were established.[34]

Drainage districts may issue bonds to fund its outstanding warrants and impose assessments sufficient to redeem these bonds.[35]

Drainage districts may exercise the power of eminent domain and condemn property for their purposes.[36]

Drainage districts, as currently constituted, would be classified as independent special purpose districts.

C. Diking Districts

The Legislative Assembly of Washington Territory enacted legislation in 1888 allowing counties to create diking districts and appoint a supervisor to manage each district somewhat similar to how counties created and managed road districts.[37]

The Washington State Legislature enacted legislation in 1895 amending these statutes by converting these organizations into independent special purpose districts, each with a board of commissioners composed of three elected members.[38] These diking district statutes, and other legislation enacted by the Legislature, provide for systems of finance closely resembling drainage district statutes. However, a few differences exist.

The oldest provisions authorizing diking districts to impose assessments involve petitioning the local superior court to approve the assessments, basically following the same procedure petitioning the local superior court to approve the assessments to fund a drainage system in a drainage district.[39] The petition includes an estimate of the benefits, increased value, and damages arising from a proposed system of dikes. Summonses are issued to property owners who may appear as "defendants" and contest the assessments and "allegations" in the petition. A jury of 12 qualified persons is impaneled to assess the damages and benefits, if the judge finds "satisfactory proof" that all of the defendants have been duly served, and the judge is satisfied by "competent proof" that the improvements are practicable, the improvements are conducive to the public health, welfare and convenience, and the improvements will increase the value of the lands "for the purpose of public revenue". The jury considers evidence and assesses the damages, if any, resulting to any person and finds the "maximum amount of benefits, per acre" that will be derived from construction of the improvements. The court issues a decree establishing the assessments. A transcript of the benefits is provided to the county auditor who places the assessments onto regular property tax rolls and collects the assessments along with property taxes.

A unique, and very troublesome provision is included in diking district law if the proceedings to establish the assessments are dismissed. The diking district is mandated to "levy" property taxes upon all of the real estate in the district, based upon the last equalized assessments, to pay all costs of the district incurred in attempting to improve assessments.[40] Again, if it is desired to retain limited or restricted voting rights in diking districts, the Legislature should repeal this provision.

A diking district may make "radical changes" to its plan of improvements and notify the local superior court about the changes.[41] Summons are served on property owners and the court considers the matter and another jury may be empaneled to alter the prior findings of damages and benefits, allowing the altered facilities to be constructed.

Property that is purchased by a diking district through a foreclosure procedure for delinquent assessments, is exempt from "general state and county taxes".[42] Presumably this statute should be amended to also exempt the property from property taxes imposed by other units of government, such as cities, fire protection districts, and library districts.

A diking district may impose additional assessments to finance the construction of additional dikes, or for maintenance of its system of dikes, in the same manner as assessments for the initial dikes were established.[43]

Diking districts are authorized to construct drainage systems within their boundaries and to impose assessments to finance these systems.[44]

Diking districts may exercise the power of eminent domain and condemn property for their purposes.[45]

Diking districts, as currently constituted, would be classified as independent special purpose districts.

D. Diking, Drainage, and Sewerage Improvement Districts

The Legislation enacted legislation in 1913 that provided for the creation of drainage improvement districts to provide drainage systems.[46] A drainage improvement district would have been classified as a subdivision of the county in which it was created. The county legislative authority created a drainage improvement district by its own action, if a petition signed by one or more property owners within the proposed district had been submitted and a report from the county engineer found that property in the district would benefit from the drainage system. The county engineer was involved in constructing the improvements. The governing body of the district was a board of supervisors consisting of two "qualified electors of the county owning land in the district" and the county engineer.

Legislation enacted in 1917 amended the 1913 law to provide for the creation of diking improvement districts to provide a systems of dikes or drains.[47] Provisions relating to the governing body were altered for both drainage improvement districts and diking improvement districts. The county engineer acted as the sole supervisor if the improvement district contained no more than 500 acres, or upon petition of the owners of at least 50 percent of the acreage in any other district requesting such a change. This change underscored the nature of improvement districts as subdivisions of county government.

The 1917 law was amended in 1923 amended providing for the creation of a diking, drainage, or a new type of district called a sewerage improvement district authorized to provide sewers.[48]

The system for imposing assessments to finance drainage, diking or sewerage facilities was an improvement over the procedures provided for drainage districts and diking districts.

Levies were imposed for preliminary expenses of the district based upon the benefits estimated by the county engineer.[49] These assessments were levied and collected in the same manner as "final" assessments.

The procedure for measuring and imposing assessments involved the district filing an itemized statement of its costs and expenses with

the county legislative authority that revised and corrected the statement and added a percentage to cover "possible errors" and appointed a board of appraisers that consists of two "competent persons" and the county engineer.[50] The board of appraisers apportioned the assessments on property within the district, taking into consideration different rates of apportionment that it applied to different lands. The county legislative authority held a hearing on the schedule of assessments and made corrections or modifications as "appear[ed] just and equitable". Assessments were also made for maintenance. The apportionments could be appealed to the local superior court. Assessments were levied based upon the approved assessment roll and collected by the county treasurer. Supplemental assessments were authorized.[51]

1949 legislation provided for an alternative method of imposing assessments to finance the maintenance of the improvement district's system of improvements.[52] Under this procedure, a district determined its estimate for monies needed to maintain its system or systems of improvements and filed the estimate with the county legislative authority that levied assessments to pay for these expenses "in the same proportion" as the original assessments in the district. However, a new determination of special benefits, upon which assessments were based, could be established by a three-member board of appraisal appointed by the county legislative authority. The board of appraisal examined the district's system of improvements and property within the district to "fairly, justly and equitably determine and apportion the special benefits which will accrue from the maintenance of the district's system of improvements to each piece or parcel of land" and buildings and other permanent improvements.[53] The board of appraisers "shall carefully consider and take into account all factors, situations and conditions which lawfully may be taken into consideration" when determining these special benefits.[54] This procedure allowed the greatest flexibility and legally justified factors to be used in measuring special benefits. It was the preferred method to follow prior to enactment of newer provisions in 1985 that apply to all of the special districts providing diking, drainage or sewerage improvements.

1967 legislation mixed the concept of assessments with assessed values of property used for levying property taxes.[55] Language at times appears to have the districts imposing property taxes and at

other times imposing assessments using the normal assessed valuation of property for property tax purposes. In either event, the Legislature should carefully review these provisions and remove these references to property taxes, if it intends to retain limited or restricted franchise rights for improvement districts.

In the late 1970s, it became known to the author that only one sewerage improvement district existed in the State. This district was located in Grays Harbor County. After operating for years as a sewerage improvement district, it began operating as a sewer district in the 1950s. No statutes authorized this change in status. The district changed how it operated, including the composition of its governing body, franchise rights, and the conducting of elections for the district by the auditor of Grays Harbor County. Legislation was enacted in 1979, converting this sewerage improvement district to a sewer district.[56]

The nature of diking, drainage or sewerage improvement districts has changed as the result of new legislation. Initially, they would have been classified as subdivisions or partial subdivisions of the county. It is difficult to categorize their nature under existing laws, but they could be classified somewhere between partial subdivisions of the county and independent special purpose districts.

E. Flood Control Districts

Legislation was enacted in 1937 that provided for the creation of flood control districts to provide flood protection facilities.[57] These provisions included the detailed and perfected procedures to measure and impose assessments to finance these facilities.

A flood control district is governed by an elected three-member board of directors.[58]

Two alternative methods are provided to determine the relative benefit ratios of property within the district. Under either method, a three-member board of appraisers is appointed to establish these ratio of benefits. The first method should be the preferred method to follow, as care was taken to design an equitable method to establish these benefit ratios. The board of appraisers segregates acreage into different classes based upon the lands' "manifest degrees of

benefits, including benefits from better sanitation, easier accessibility, facility of drainage, promotion of land development as well as from minimization of flood damages and from actual flood protection."[59] Lands receiving the greatest level of benefit are placed into class No. 1 and receive a 100 percent benefit. Lands receiving the next greatest level of benefit are placed into class No. 2 and are assigned a lesser percentage of benefit. Additional classes are established and assigned lesser percentages of benefit. Lands receiving no benefit are designated as "nonbenefited" lands.[60]

As an alternative, the ratio of benefits may be "determined in their relation to the relative values of the respective benefitted lands, including the improvements thereon, and the same shall be expressed on a relative percentage basis".[61] The assessed values for general tax purposes is deemed "to be prima facie correct" for this purpose.[62] As discussed earlier, some danger arises from mixing the concepts of benefit that is the basis for measuring and imposing assessments, and assessed valuation that is the basis for imposing property taxes. If it is desired to retain restricted voting rights in flood control districts, these statutes should be repealed.

Provisions allow the county legislative authority to hold hearings on the system of assessments and may modify or confirm the system.[63]

The assessments are used to finance the construction of the facilities and to maintain the facilities. A flood control district may create a general bond fund and issue "general obligation bonds of the district" payable from this fund, or may create a utility bond fund and issue district utility bonds.[64] A district may also issue utility revenue bonds "payable from a fixed proportion of the gross income" of the district.[65]

The nature of flood control districts is difficult to categorize. They could be classified as partial subdivisions of the county or independent special purpose districts.

NOTES:

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[1] Discussions with the late Greg Hastings, the State's last flood engineer. The office of flood engineer no longer exists.

[2] "Washington Special Purpose District Overview," *id.*

[3] The procedure to create one of these special purpose districts is found in RCW 85.38.020-85.38.060.

[4] RCW 36.93.020.

[5] RCW 85.38.200-85.38.217.

[6] RCW 85.38.220-85.38.225.

[7] RCW 36.93.020.

[8] RCW 85.38.105.

[9] RCW 85.08.025.

[10] RCW 86.09.377.

[11] RCW 85.38.110-85.38.130.

[12] Chapter 144, Laws of 2009, especially Section 2, which was codified as RCW 85.38.127.

[13] SSB 5705, House Bill Report, April 8, 2009.

[14] RCW 29A.04.330.

[15] RCW 85.38.090.

[16] RCW 85.38.290.

[17] RCW 85.38.070(3).

[18] RCW 85.38.075.

[19] RCW 85.38.180.

[20] RCW 85.08.905.

[21] RCW 85.38.140-85.38.170.

[22] RCW 85.38.145.

[23] The financing of drainage improvements was first authorized at Statutes of the Territory of Washington, 1857-1858, 5th Session, Page 30.

[24] Changes were made at Statutes of the Territory of Washington, 1863, 10th Session, Page 485; and then at Statutes of the Territory of Washington, 1864-1865, 12th Session, Pages 29-30.

[25] Major changes were made at Statutes of the Territory of Washington, 1875,5th Biennial Session, Pages 92-96, by allowing dikes to be constructed and for the appointment of three viewers in each district. This law was amended at Statutes of the Territory of Washington, 1883, 9th Biennial Session, Pages 77-82.

[26] Chapter CXV, Laws of 1895.

[27] RCW 85.06.690-85.06.160.

[28] RCW 85.06.190.

[29] RCW 85.06.500.

[30] RCW 85.06.550-85.06.630.

[31] RCW 85.06.640-85.06.690.

[32] Chapter 85.32 RCW.

[33] RCW 85.06.710-85.06.750.

[34] RCW 85.07.050.

[35] RCW 85.07.060-85.07.120.

[36] RCW 85.06.070.

[37] Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Page 90.

[38] Chapter CXVII, Page 304, Laws of 1895.

[39] RCW 85.05.090-85.05.120.

[40] RCW 85.05.170.

[41] RCW 85.05.190.

[42] RCW 85.05.367.

[43] RCW 85.07.050.

[44] RCW 85.05.071-85.05.079.

[45] RCW 85.05.070.

[46] Chapter 176, Laws of 1913.

[47] Chapter 170, Laws of 1917.

[48] Chapter 46, Laws of 1923.

[49] RCW 85.08.230.

[50] RCW 85.08.360-85.08.450.

[51] RCW 85.08.520.

[52] Chapter 85.15 RCW.

[53] RCW 85.16.080.

[54] RCW 85.16.090.

[55] Chapter 85.15 RCW.

[56] RCW 57.08.910 & 57.08.920.

[57] Chapter 86.09 RCW.

[58] RCW 86.09.259.

[59] RCW 86.09.394.

[60] RCW 86.09.397 & 86.09.400.

[61] RCW 86.09.409.

[62] RCW 86.09.415.

[63] RCW 86.09.433.

[64] RCW 86.09.544 & 86.09.547.

[65] RCW 86.09.592.

Chapter 21

Reclamation Districts

Reclamation districts are authorized to reclaim and improve arid and semiarid lands within the State.

Legislation enacted in 1927 authorized the creation of reclamation districts.[1]

Reclamation districts would be classified as independent special purpose districts.

The Municipal Research and Services Center (MRSC) does not report any reclamation district existing in the State.[2] However, at least five special districts use "reclamation district" as part of their names – the Kittitas Reclamation District, the Lake Chelan Reclamation District, the Wenatchee Reclamation District, the Wenatchee Heights Reclamation District, and the Whitestone Reclamation District.[3] It appears that these special districts are traditional irrigation districts that happen to include the term "reclamation" as parts of their names.[4]

A number of reclamation districts statutes are not clear and raise some potentially difficult issues if a reclamation district were to be created. The Legislature should review reclamation district statutes, clarify them and address issues arising from the one person, one vote doctrine.

Creation

The creation of a reclamation district is initiated by the filing of a petition proposing the district with the county legislative authority of the county in which all or a majority of the lands are located, that has

been signed by either 50 of these property owners or the owners of a majority of the acreage in such an area whose lands are susceptible of being irrigated.[5] Presumably, the lesser of either of these signature requirements would apply. The petition describes the area proposed for inclusion, which must include at least one million acres.[6]

A hearing on the proposed creation of the reclamation district is held by a commission composed of the chair of the county legislative authority of each county in which territory is proposed to be included in the reclamation district and the director of the state Department of Ecology.[7] The commission may adjust the proposed boundaries, gives a name for the proposed district, and calls for an election at which a ballot proposition authorizing creation of the proposed district is submitted to voters of the proposed district. The county legislative authority of the county within which all or the largest portion of the area proposed to be included in the district counts the ballots and the district is created if a majority of voters voting on the proposition approve the creation of the district.[8]

Only persons with the same qualifications to vote at a reclamation district election may vote on the ballot proposition, which appears to be the regular voters residing within the proposed district.[9]

The creation of a reclamation district is not subject to review by a boundary review board.

Boundary Changes

No provisions of reclamation district law provide for boundary changes to be made for a reclamation district.

However, an inactive reclamation district would be subject to dissolution under two general statutes. First, the board of directors of a reclamation district may petition the superior court of the county in which the district is located to dissolve the district.[10] Second, the county legislative authority may dissolve an inactive special purpose.[11]

The dissolution of a reclamation district is not subject to review by a boundary review board.

Governing Body and Elections

A reclamation district is governed by a board of directors. Each portion of a reclamation district that is located in a different county constitutes a separate director district and, after the initial board of directors has been appointed, one director is elected from each director district.[12] This could result in a reclamation district with a single director district if only territory from a single county were included in the reclamation district. This could also result in an even number of directors if the reclamation district included territory located in an even number of counties. This requirement appears to be a clear violation of the One Person, One Vote doctrine.

The initial board of directors is composed of one director appointed by the county legislative authority of each county in which the reclamation district is located.[13] This law presumes that the reclamation district contains territory located in three counties, but no requirement exists that this be the case. Staggering terms of office, assuming that more than one director district and director exists, is based upon the relative assessed value of property in each elector district. The director from the elector district with the greatest level of assessed valuation is appointed to a six year term of office, the director from the elector district with the next greatest level of assessed valuation is appointed to a four year term of office, and the director appointed from the elector district with the lowest level of assessed valuation is appointed to a two year term of office.[14]

Directors are elected to six-year terms of office after the initial directors have been appointed.[15]

Directors of a reclamation district may receive per diem compensation of not exceeding $5 per day for attending meetings and for rendering services to the district, as determined by the board, and also receive necessary expenses for attending meetings and engaging in other district business.[16]

Although no statute literally details the electorate of a reclamation district, it appears that regular franchise rights exist in reclamation districts.[17]

Powers

Reclamation districts are declared to be both "political subdivisions of the state" and "municipal corporations within" state constitutional provisions relating to tax exemptions and debt limits, but these provisions may not be construed to limit a reclamation district "to contract obligations."[18] Reclamation district statutes are to be "liberally construed with a view to effect [*sic.*] their objects."[19]

Reclamation districts are authorized to construct and operate dams, power works, transmission lines, reservoirs, and other facilities to irrigate lands and sell electrical power, and install drainage systems.[20]

Reclamation districts are granted eminent domain powers and may condemn property for their purposes.[21]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of reclamation district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

Reclamation districts are authorized to impose unlimited, regular property taxes.[22] These levies are not set into a relative status level among regular property tax levies imposed by other special purpose districts, so it is not clear the extent to which reclamation district property tax levies would or would not be reduced or eliminated under RCW 84.52.010, if the combined levy rates of governments subject to the constitutional One Percent Limitation, exceeded limitations on the combined rates of taxing district levies. The Legislature should clarify the status level of reclamation district tax levies and also consider placing a maximum levy rate that may be imposed in any year.

Reclamation districts are also authorized to create "general improvement districts" within the reclamation district, as well as "divisional districts" within general improvement districts, and to impose special assessments within general improvement districts

and divisional districts based upon special benefits to land arising from the reclamation district's facilities and activities.[23]

Reclamation districts may also impose rates and charges for the use of their drainage system, following irrigation district laws.[24] They may also sell power generated from their facilities and water provided by their facilities.[25]

Reclamation districts may issue "negotiable bonds" payable from special assessments imposed with a general improvement district or divisional district, if authorized by voters of the general improvement district or divisional district.[26] They are also authorized to contract general indebtedness of the reclamation district, and sell general obligation bonds of not exceeding 0.75 percent of the value of taxable property within the reclamation district, without voter approval, and with a super majority vote of district voters of an amount not exceeding 2.5 percent of the value of taxable property in the reclamation district.[27] Since reclamation districts are granted the powers of an irrigation district relating to drainage system, it appears that a reclamation district could issue revenue bonds payable from drainage rates and charges.[28]

NOTES:

1. Chapter 254, Laws of 1927, codified as Chapter 89.30 RCW.

2. "Washington Special Purpose District Overview," *id*.

3. Washington State Water Resources Association, a "coordinating agency for the irrigation districts of Washington," website. http://www.wswra.org/irrigation_district_members.html

4. Email from Mike Schwisow, government relations consultant, Washington State Water Resources Association, the nonprofit corporation representing irrigation districts in Washington State.

5. RCW 89.30.010.

6. RCW 89.30.013 & 89.30.001.

7. RCW 89.30.043-89.30.088.
8. RCW 89.30.094-89.30.103.
9. RCW 89.30.094.
10. Chapter 53.48 RCW.
11. Chapter 36.96 RCW.
12. RCW 89.30.232, 89.30.235, & 89.30.226.
13. RCW 89.30.238.
14. RCW 89.30.250.
15. RCW 89.30.253.
16. RCW 89.30.298.
17. RCW 89.30.340, 89.30.352, & 89.30.379.
18. RCW 89.30.121.
19. RCW 89.30.832.
20. RCW 89.30.007, 89.30.175 & 89.30.178.
21. RCW 89.30.184-89.30.208.
22. RCW 89.30.391-89.30.397.
23. RCW 89.30.436-89.30.496.
24. RCW 89.30.178.
25. RCW 89.30.007(1) & 89.30.136.
26. RCW 89.30.517-89.30.568.
27. RCW 89.30.400-89.30.412.
28. RCW 89.30.178.

Chapter 22

Weed Districts and Intercounty Weed Districts

Weed districts and intercounty weed districts are authorized to destroy, prevent and exterminate noxious weeds and plants detrimental or destructive to agricultural crops, plants and trees.

Legislation enacted in 1921 authorized the creation of weed districts.[1] Legislation enacted in 1959 authorized the creation of intercounty weed districts with similar powers.[2]

Both weed districts and intercounty weed districts would be classified as independent special purpose districts.

The Municipal Research and Service Center (MRSC) reports that 11 weed districts exist in the State.[3]

Statutes providing for weed district and intercounty weed districts should be reviewed and clarified by the Legislature.

Creation

A petition proposing the creation of a weed district or intercounty weed district, signed by one or more property owners owning at least half of the acreage in the proposed district, is submitted to the county legislative authority or authorities of the county or counties in which the district is located.[4] The petition describes the boundaries of the proposed district and names the weed or weeds sought to be controlled. A hearing on the creation of the district is held by the

county legislative authority or jointly by the county legislative authorities, and the county legislative authority or authorities may adopt a resolution creating the district and determining its boundaries.[5]

Creation of a weed district or intercounty weed district is not subject to review by a boundary review board.

Boundary Changes

The county legislative authority possesses the authority to remove territory from a weed district or combine and consolidate two or more weed districts, but no provision details the procedure for such action, such as whether a petition of property owners is required, or such action needs to be requested by the weed district or districts. Presumably, the county legislative authority could take such actions on its own motion.[6] No provisions in intercounty weed district laws are made for removing territory or combining and consolidating two or more weed districts occupying territory in more than a single county.

Inactive weed districts and inactive intercounty weed districts would be subject to dissolution under two general statutes. First, the members of the board of directors of a weed district or intercounty weed district may petition the superior court to dissolve the district.[7] Second, the county legislative authority may dissolve an inactive weed district or inactive intercounty weed district.[8]

No provision are made for the annexation of territory by a weed district or intercounty weed district.

Boundary changes for a weed district or intercounty weed district a weed district are not subject to review by a boundary review board.

Governing Body and Elections

A weed district or an intercounty weed district is governed by a three member board of directors who are elected by district voters.[9] The initial election of three weed district directors occurs at a meeting called for that purpose that is chaired by the member of the county

legislative authority in whose electoral district the weed district is located, or by an elector of the district if the member of the county legislative authority is not present. Attending members of the weed district electorate vote using secret, paper ballots. Weed directors are elected to staggered three year terms of office. The office of weed director is a nonpartisan office.

Directors are elected to staggered three year terms of office and the district holds an annual meeting where a person is elected to the director position where the term is expiring.

Each director must post a $1000 bond.

Voting rights in weed districts are restricted and the electorate consists of only persons owning property within the district who are registered to vote in the State of Washington.

The member of the county legislative authority, in whose electoral district the weed district is located, appoints a voter of the district to fill a vacancy on the board.[10] However, the board of an intercounty weed districts appoints a voter of the district to fill a vacancy on the board.[11]

Powers

The board of directors of a weed district or intercounty weed district may adopt rules and regulations for the destruction, prevention and extermination of the weed or weeds specified in the petition to create the district, as well as the authority to enforce these rules and regulations and hire a weed inspector.[12] A weed inspector carries out directions from the board and posts and mails the rules and regulations to persons in the district.[13]

A weed district or intercounty weed district provides written notice to property owners or occupants of the property if the district's rules and regulations are not being carried out and the specified noxious weeds have not been eradicated, informing the owner or occupants to eradicate the weeds.[14] Notices may also be posted on the property. The district eradicates the weeds if the weeds are not otherwise destroyed. If the costs of this eradication are not paid, the district may impose a "tax" on the lands and the county treasurer

collects the taxes together with other taxes levied on the land.[15] If it is the desire of the Legislature to retain restricted voting rights for weed districts and intercounty weed districts, references to taxes should be deleted and replaced with "assessments" or "charges."

A district, at its annual meeting may expand the weed or weeds the district eradicates, if the voters of the district approve this expansion by a two-thirds vote of voters present.[16]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of weed district and intercounty weed district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

Weed districts and intercounty weed districts may impose assessments on property within the district based upon benefits derived from the operations of the district.[17]

A weed district and an intercounty weed district may incur indebtedness in any year not

> "in excess of the total of the funds which will be available during the current year from the **tax levy** [emphasis added] made in the preceding year and funds received in the current year from services rendered and from any other lawful source, and funds accumulated from previous years."[18]

As can be seen from this quoted language, some statutes provide for, or infer, that these districts impose property taxes. This language is very troublesome and should be reviewed by the Legislature, since limited franchise rights exist in weed districts and, under the One Person, One Vote rulings, only governments with general voting rights may impose property taxes. If it is the desire to retain limited franchise rights for these districts, a number of statutes need to be amended to delete inferences or direct statements that weed districts may impose property taxes.

NOTES:

1. Chapter 150, Laws of 1921, now codified as Chapter 17.04 RCW.
2. Chapter 205, Laws of 1959, codified as Chapter 17.06 RCW.
3. "Washington Special District Overview," *id*.
4. RCW 17.04.030 & 17.06.030.
5. RCW 17.04.050 & 17.06.040.
6. RCW 17.04.010.
7. Chapter 53.48 RCW.
8. Chapter 36.96 RCW.
9. RCW 17.04.070 & 17.06.050.
10. RCW 17.04.050.
11. RCW 17.06.050.
12. RCW 17.04.150 & 17.06.060.
13. RCW 17.04.190 & 17.06.060.
14. RCW 17.04.200 & 17.06.060.
15. RCW 17.04.210-17.04.220, & 17.06.060.
16. RCW 17.04.070 & 17.06.060.
17. RCW 17.04.240 & 17.06.060.
18. RCW 17.04.260 & 17.06.060.

Chapter 23

Park and Recreation Districts

(Joint Park and Recreation Districts)

Park and Recreation Districts provide park and recreation services and facilities.

Legislation enacted in 1957 authorized creation of park and recreation districts.[1] The Municipal Research and Services Center (MRSC) reports that 42 park and recreation districts existed in the State.[2] Two other types of park districts exist in the State — metropolitan park districts and park and recreation service areas.[a]

Park and recreation districts would be classified as independent special purpose districts.

Creation

The process to create a park and recreation district is initiated by the filing of a petition proposing creation of the district, with the auditor of the county in which the district is proposed to be located, that has been signed by at least 15 percent of the registered voters residing within the proposed district.[3] If any area proposed to be included in the district is located within a city, the petition must be accompanied with a certified copy of a resolution of the city council approving inclusion of the city area within the district.[4] Two or more of the petitioners must agree to pay for publication costs associated with the process to create the district. The auditor examines the signatures and certifies their sufficiency.

If the county auditor certifies that the petition contains sufficient valid signatures, the county legislative authority holds a public hearing on

a Metropolitan park districts are discussed in Chapter 13. Park and recreation service areas are discussed in Chapter 41.

the proposal.[5] Notice of the public hearing is published three times, at intervals of not less than one week, in a newspaper in general circulation in the county. After the public hearing, the county legislative authority provides a name for the district and sets its boundaries.[6] Territory may be added to the proposed district, but only with the written consent of the owners of the newly included area. The county legislative authority may eliminate any lands from the proposed district that it finds do not benefit from inclusion.

A ballot proposition authorizing creation of the park and recreation district is submitted to the voters of the proposed district and the district is created if a majority of the voters voting on the ballot approve creation of the district.[7]

The proposed incorporation of a park and recreation district is not subject to potential review by a boundary review board.[8]

Boundary Changes

The boundaries of a park and recreation district may be expanded (*i.e.*, territory may be annexed) using the same procedure for creating a district, except that a single ballot proposition authorize the expansion is submitted to both the voters of the district and the voters of the area proposed to be included in the district.[9] This is a very unique procedure. Normally, a ballot proposition authorizing the annexation of an area to a local government is only submitted to the voters residing in the area proposed to be annexed.

A park and recreation district may be dissolved following provisions for the dissolution of a port district under Chapter 53.48 RCW.[10] A park and recreation district located in a county with a population of 210,000 or more may disincorporate, under general procedures, if it has been inactive for five or more years.[11]

Proposed boundary changes by a park and recreation district are not subject to potential review by a boundary review board.[12]

Governing Body and Elections

The governing body of a park and recreation district is a five member board of commissioners who are elected to staggered four-year terms of office at general elections held in odd-numbered years.[13] Candidates runs for specific positions. As with other special purpose districts, these positions are nonpartisan elective offices.

The initial commissioners of a new park and recreation district are

elected to staggered terms of office at the same election when the ballot proposition is submitted to voters for their approval or rejection of the creation of the district.[14] No primary is held. The staggering of terms of office occurs with the three winning candidates who receive the greatest numbers of votes being elected to four year terms, if the election is held in an odd-numbered year, or three year terms, if the election is held in an even-numbered year. The two winning candidates for the other positions are elected to two year terms, if the election is held in an odd-numbered year, or one year terms, if the election is held in an even numbered year. The length of the terms of the initial commissioners are computed from the first day of January in the year following the election. The newly elected commissioners take office immediately upon their election. Election of these new commissioners is null and void if voters fail to authorize creation of the district.

Vacancies are filled following general vacancy provisions.[15] A vacancy is filled by action of the remaining commissioners. If only one commissioner remains in office, the county legislative authority of the county in which all or the largest portion of the district is located fills the vacancies until two commissioners exist on the board and the remaining commissioners fill any remaining vacancies. If a vacancy is not filled within 90 days of its occurrence, the county legislative authority fills the vacancy. If the county legislative authority vacancy authority fails to fill the vacancy within 180 days of its occurrence, governor may fill the vacancy.

Commissioners receive no compensation, but receive necessary expenses in attending meetings of the board or when otherwise engaged on district business.[16]

The office of park commissioner is a nonpartisan office and elections are held in odd numbered years to elect commissioners. Regular or normal franchise rights exist in park and recreation districts and the voters of a park and recreation district consist of all registered voters residing in the district. County auditors conduct elections for park and recreation districts.

Powers

Park and recreation districts are authorized to provide leisure time activities and facilities, and recreational facilities, including parks, playgrounds, gymnasiums, swimming pools, field houses, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums for the display of spectator sports, public

campgrounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, senior citizen centers, community centers, and other recreational facilities.[17]

Finances

Park and recreation districts receive income from a variety of sources, including: (1) Property taxes; (2) rates and charges; (3) special assessments imposed in local improvement districts; (4) debt proceeds; and (5) various other sources authorized to impose fees or charges for use of its facilities.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of park and recreation service area finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

Park and recreation districts may impose both regular property tax levies and excess property tax levies.

A park and recreation district may impose annual regular property taxes for general purposes at an annual rate of up to 60¢ per $1,000 of assessed valuation for up to a six-year period, if voters of the district approve a ballot proposition authorizing the taxes by a three-fifths vote and a 40 percent voter validation requirement is met.[18] These are regular property tax levies, but may only be imposed if voters approve a ballot proposition by the same vote required to authorize excess, voter approved property tax levies. The property taxes are very low status levies and are subject to being reduced or eliminated if the combined rate of property taxes on any property in the service area exceeds one percent in any year.

Park and recreation districts may also impose voter-approved, excess property tax levies, including single-year levies for their general purposes and multiple-year levies to retire general obligation bonds issued for capital purposes only.[19] These levies may only be imposed if voters approve a ballot proposition authorizing the taxes by a three-fifths vote and a 40 percent voter validation requirement is met**.**

B. Fees and Charges

Park and recreation districts may impose admission fees and other charges for use of their facilities and services.[20]

C. Special Assessments

A park and recreation district may create local improvement districts (LIDs) and impose special assessments within the LIDs to finance capital improvements.[21] Installment payments of the special assessments may not exceed 20 years.

D. Debt Proceeds

A park and recreation district may incur general indebtedness and issue general obligation bonds of an amount equal to three-eighths of one percent of the value of taxable property in the service area without voter approval and a total amount up to 2.5 percent of the value of taxable property in the service area if approved by a three-fifths vote of voters voting on the ballot proposition.[22] The bonds may have a maximum maturity of 40 years.[23]

A park and recreation district may issue revenue bonds with a maximum maturity of 30 years payable from its revenue generating facilities.[24]

A park and recreation district may issue LID bonds payable from special assessments imposed within an LID.[25]

A park and recreation district may issue a variety of short term obligations, including warrants and notes.[26]

E. Other

Park and recreation district are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property, as are other special purpose districts.

Joint Park and Recreation Districts

Legislation was enacted in 1979 authorizing the creation of joint park and recreation districts occupying portions of two or more counties and possessing the powers of park and recreation districts. (Chapter 11, Laws of 1979 ex. sess.)

NOTES:

1. Chapter 58, Laws of 1957, codified in Chapter 36.69 RCW.
2. "Washington Special Purpose District Overview," *id.*
3. RCW 36.69.020.
4. RCW 36.69.030.
5. RCW 36.69.040.
6. RCW 36.69.050.
7. RCW 36.69.070 & 36.69.080.
8. RCW 36.93.020.
9. RCW 36.69.190.
10. RCW 36.69.310.
11. Chapter 57.90 RCW.
12. RCW 36.93.020.
13. RCW 36.69.090.
14. RCW 36.69.070.
15. RCW 36.69.100, referencing Chapter 42.12 RCW.
16. RCW 36.69.110.
17. RCW 36.69.130.
18. RCW 36.69.145.
19. RCW 36.69.140.
20. RCW 36.69.130.
21. RCW 36.69.200-36.69.305.
22. RCW 36.69.140.
23. RCW 39.69.110.
24. RCW 36.69.360–36.69.370.
25. RCW 36.69.200.
26. Chapter 39.50 RCW.

PART III-B

REGIONAL GOVERNMENT

Introduction

Part III-B of this reference book on local government in Washington State discusses regional government.

One of the most significant changes for local governments in Washington State since World War II has been the gradual re-emergence of regional governments.

Counties were the original regional governments in Washington, but lost many of their regional authorities as the territorial and state governments developed. Some traditional special purpose districts (e.g., public utility districts and larger port districts) began functioning as regional governments during the first half of the twentieth century. After World War II, the gradual focus on regional government has been characterized by:

- The creation of new mechanisms allowing existing units of local government to join together and provide regional facilities and services. These mechanisms are not units of local government but are procedures by which existing local governments provide regional facilities and services. They include regional health organizations, regional planning authorities, the Interlocal Cooperation Act, and most recently the Joint Municipal Services Act.
- The gradual re-emergence of counties as regional governments. This includes King County's assumption of the operations of the Metropolitan Municipal Corporation of Seattle and the granting of new regional authorities to counties, such as authority to adopt countywide planning policies under the Growth Management Act.

- The creation of new special purpose districts functioning as federations of other units of local government to provide regional services and facilities. These special purpose districts include metropolitan municipal corporations (metros), public transit benefit areas, and regional transit authorities.

Federations have become the most common vehicle for providing regional services and facilities since World War II. A federation is a type of local government with direct ties to other parent units of local government, essentially acting for these parent local governments. The parent units of local government maintain some control over the federation by either appointing members of the federation governing body or by having one or more of the members of their own governing bodies serve *ex officio* as members of the governing body of the federation. A federation, in essence, is a partial subdivision of a number of different local governments rather than an independent special purpose district.

Part III-B includes Chapters 24 through 36. Chapter 24 provides a general discussion of regional government in Washington State. Chapters 25 through 36 provide details about regional special purpose districts that function as federations, including metropolitan municipal corporations (metros), public transit benefit areas, regional transit authorities, and regional transportation improvement districts.

Chapter 24

Regional Government
General Discussion

Regional government has had a long history in Washington. Counties have always functioned as regional governments in Washington. Other regional governments have been authorized since statehood. The gradual re-emergence of regional governments has been one of the most dominant themes of local government since the 1990's.

A regional government is a separate unit of government that:

- Occupies a relatively large geographic area; and
- Provides services and facilities within this large area in lieu of a number of geographically smaller units of local government separately providing these services and facilities.

Some argue that the provision of services and facilities by a regional government over a relatively large geographic area results in a more integrated and less costly provision of services and facilities. These benefits arise from: (1) Having a more adequate tax base to finance the facilities and services; (2) creating a new regional unit of local government with its own indebtedness limitation that avoids using the debt limitations of existing units of local government to provide regional facilities; (3) achieving economies of scale; and (4) avoiding the inherent difficulties of attempting to coordinate the activities and facilities of multiple smaller, independent units of local government.

Others argue that the provision of services and facilities, even over a large region, should be provided by many small and independent

governments. Each separate unit of local government should experiment to find the most cost effective ways to provide these services and facilities. Competition is the key. Integration is not as important.

Brief History of Regional Government in Washington

Regional government has had a very long history in Washington, beginning in 1853, with the creation of counties as the political subdivisions of the newly created Washington Territory. This long history of regional government falls into three phases.

A. First Phase

The first phase of regional government in Washington began with the creation of Washington Territory and ended during the early years of the 20th century. Counties served as regional governments during this phase, dominating the scheme of government. However, counties gradually lost many of their regional powers and authorities, especially as new territorial and state agencies were created. Some types of special purpose districts were also authorized to provide regional services and facilities.

A more detailed discussion of counties acting as regional governments is found in Chapter 1.

B. Second Phase

The second phase of regional government in Washington began in the early decades of the 20th century and ended with the close of World War II. This was a period of diminished regional government when counties continued to lose many of their regional powers as a result of:

- The transfer of many traditional county regional responsibilities to the State; and
- Lost opportunities to obtain new regional responsibilities that were granted to newly authorized special purpose districts or were assumed by the State or the federal government.

During the second phase, a large number of new cities incorporated, and legislation was enacted authorizing the creation of many different types of special purpose districts to provide services and facilities. These were traditional, independent special purpose districts with governing bodies composed of officials who were elected directly to those positions. Some of these new, independent special purpose districts were geographically large enough to act as regional governments, but most were geographically small.

Even though some of these special purpose districts were large enough to function as regional governments, the dominant focus of local government during this phase was the creation of numerous relatively small special purpose districts and the incorporation of new cities.

Port districts and public utility districts (PUDs) were the prime examples of independent special purpose districts authorized to provide regional services and facilities during the second phase of regional government. However, not all port districts or PUDs functioned as regional governments. A number of port districts have countywide boundaries and function as regional governments, while other port districts occupy very limited geographic areas, and only provide limited facilities and services on a neighborhood or community basis. The larger port districts functioning as regional governments include the Port of Seattle, which has boundaries coterminous with King County, and the Port of Tacoma, which has boundaries coterminous with Pierce County. However, countywide port districts tend to provide their services and facilities in relatively small areas within their boundaries, such as deepwater port areas and airports. All but two existing PUDs occupy at least a countywide area. However, a number of these countywide PUDs are inactive, while some do not function as regional governments and have very limited operations within only a small portion their boundaries.

A more detailed discussion of port districts is found in Chapter 14. A more detailed discussion of PUDs is found in Chapter 16.

C. Third Phase

The third phase of regional government in Washington began after World War II and continues today. Regional governments gradually re-emerged during this phase.

Society became much more mobile after World War II with urban and suburban development sprawling beyond the boundaries of older cities. A large number of cities incorporated. Older cities annexed much of the growing areas. However, much of the new suburban growth occurred in unincorporated areas that did not incorporate into new cities and were not annexed by cities. As discussed in Chapter 4, counties were either unwilling or unable to provide enhanced levels of governmental services and facilities during most of this period.

Regional government gradually re-emerged during this phase as an attempt to provide a more coherent system of services and facilities within these expanding urban and suburban areas. The emergence of regional government was accomplished by:

- The creation of mechanisms for existing local governments to provide regional services and facilities. These mechanisms included legislation: (1) Allowing combined city-county health departments to be formed; (2) allowing regional planning organizations to be formed; (3) authorizing interlocal contracts and interlocal agreements among units of local government; and (4) authorizing municipal corporations to provide various utility service under the Joint Municipal Utility Services Act.
- The gradual re-emergence of counties as regional governments. Legislation was enacted toward the end of the 20th century granting a few new regional governmental powers to counties.
- Legislation authorizing the formation of new types of special purpose districts, primarily in the form of federations that function as regional governments.

Although the third phase of regional government is characterized by all three of these features, the use of federations became the preferred method of providing regional services and facilities.

1. Mechanisms to provide regional services or facilities

Legislation was enacted during this third phase of regional government authorizing mechanisms for existing local governments to provide regional services and facilities. These mechanisms are not units of government. They are legal arrangements facilitating the provision of regional services and facilities by existing units of local government.

a. Combined city-county health departments

Legislation was enacted in 1949 allowing the creation of a combined city-county health department by any city with a population of 100,000 or more and the county in which it is located.[1] A combined city-county health department provides for the joint exercise of county public health powers by the county and the city with a population of 100,000 or more. The Seattle-King County Health Department and the Tacoma-Pierce County Health Department were formed under this legislation.

This arrangement allows more populous cities to participate directly in the provision of health services, rather than relying on the county to provide these services. A city-county health department is not a separate unit of government, although it has some features of a separate unit of government. It more closely resembles a department of a government, such as a city parks department, with the unique feature that a city-county health department serves as a department of both the large city and the county.

b. Regional planning organizations

Legislation was enacted in 1959, permitting regional planning organizations to be formed by agreement among a county and one or more cities, other counties, and various special purpose districts.[2] A regional planning organization is not a unit of government, but an organization formed to provide planning services as an advisory body for the member agencies and to

assist coordinating the actions of member agencies. Member counties, cities, and special purpose districts retain their authorities to take actions after receiving advisory services from the regional planning organization. This legislation has been used to create regional organizations providing general land use planning services and more focused planning efforts, such as transportation planning services.

Federal law required the formation of metropolitan planning organizations (MPOs) in urbanized areas to function as regional transportation planning organizations.[3] Legislation was enacted as part of the Growth Management Act in 1990 providing a process to form regional transportation planning organizations.[4]

At least in theory, some uniformity of planning efforts might arise from these varied regional planning organizations. Potential uniformity arises from either having common planning staff or generating a common planning document for member governments. However, this potential uniformity may be more theoretical than real.

c. Interlocal Cooperation Act

The Interlocal Cooperation Act was enacted in 1967 authorizing counties, cities, port districts, public utility districts, and metropolitan municipal corporations (metros) to enter into both interlocal contracts and interlocal agreements with each other, state agencies, agencies of other states, and federal agencies.[a 5] This law was amended a number of times by authorizing other types of special purpose districts to use these provisions. Finally, legislation was enacted in 1985 allowing virtually any local unit of government to enter into interlocal contracts and interlocal agreements.

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a The concept of the Interlocal Cooperation Act appears to have arisen from the "City and Suburban Community or Chaos," Report of the Citizens Advisory Committee to the Joint Committee on Urban Government, of the Washington State Legislature, in June of 1962. The joint committee was created in Chapter 308, Laws of 1961, and directed to study and make recommendations to the Legislature on urban areas and possible changes to state laws. Although the report did not expressly recommend legislation similar to the Interlocal Cooperation Act, it found that "cooperation of counties, cities, and metropolitan governments [should be] enabled and encouraged within and between metropolitan areas." (Page 13, of the Report.) It appears that, apart from proposing new forms of local government, granting local governments the express authority to enter into contracts and agreements would foster this cooperation.

The Interlocal Cooperation Act authorizes the following two types of arrangements:

- Two or more local governments may enter into an interlocal contract where one of the parties to the contract performs a service, activity, or undertaking for the other party or parties to the contract. The fundamental requirement for an interlocal contract is that each party to the contract must be authorized to perform the service, activity, or undertaking that is subject to the contract.
- Two or more local governments may enter into an interlocal agreement for the joint or cooperative performance of a service, activity, or undertaking. Again, the fundamental requirement for an interlocal agreement is that each party to the agreement must be authorized to perform the service, activity, or undertaking that is subject to the agreement. A separate legal entity or administrative entity must be created under an interlocal agreement to provide for the joint or cooperative action. Although this legal entity may resemble a unit of government, it is not a government.

As discussed in Chapter 72, hundreds of interlocal contracts and interlocal agreements have been established by local governments in Washington State. A number of statutes misuse the term "interlocal agreement", rather than the correct term "interlocal contract", when referring to an arrangement when one entity does something for another entity.

Creation of interlocal agreements or interlocal contracts may result in somewhat of a "hidden" scheme of local government. It is not readily clear to citizens which government provides what service or facility.

2. Re-emergence of counties as regional governments

Counties were granted a few new regional responsibilities during the third phase of regional government, especially in the later decades of the 20th century. This includes the authority of counties

to adopt countywide planning policies found in the Growth Management Act.[b]

3. Federations

Legislation was enacted during the third phase of regional government authorizing a variety of federated special purpose districts to provide regional facilities and services. This was the most important method of providing regional governmental facilities and services during the third phase of regional government.

These regional, federated special purpose districts include:

- Rural county library districts, authorized in 1941;
- Health districts, authorized in 1945;
- Intercounty rural library districts, authorized in 1947;
- Joint operating agencies (JOAs), authorized in 1949;
- Metropolitan municipal corporations (metros), authorized in 1957;
- Public transportation benefit areas (PTBAs), authorized in 1975;
- Regional transportation authorities (RTAs), authorized in 1992;
- Regional transportation investment districts (RTIDs) authorized in 2002; and
- Altering the nature of transportation benefit districts (TBDs) in legislation enacted in 2005.[c]

Legislation was also enacted in 1945, authorizing the creation of public hospital districts that could function as regional governments. These traditional, independent special purpose districts have governing bodies composed of officials who are elected directly to office. Although public hospital districts could function as regional governments, very few of these districts occupy large geographic

b A more detailed discussion of counties functioning as regional governments in modern times is found in Chapter 4.

c A discussion of library districts, JOAs, metros, PTBAs, RTAs, RTIDs, and TBDs follows in Chapters 25 through 31. Other regional governments are discussed in Chapters 32 through 36.

areas which could be termed regional governments. Three countywide public hospital districts exist – Mason County Public Hospital District, Columbia County Public Hospital District, and Skamania County Public Hospital District. Garfield County Public Hospital District occupies almost all of Garfield County.[d]

Health districts are regional special purpose districts that may be created by two or more counties for the joint provision of public health services within the multi-county area.[6] A board of health functions as the governing body of a health district. It is composed of at least five members if the district comprises two counties, or at least seven members, if the district comprises three or more counties. The county legislative authority of each member county appoints at least two of its members to serve on the board of health, but the county legislative authorities may also allow city officials and other persons to serve on the board of health. However, at least a majority of the members must be members of county legislative authorities. A health district exercises the powers of the county board of health within its boundaries.

The most recent focus of regional special purpose districts involves the provision of transportation facilities and services. Transportation needs have also been a focus of modern subdivisions of local governments.[e]

The Legislature enacted the Joint Municipal Utility Services Act in 2011 authorizing counties, cities, public utility districts, port districts, water districts, sewer districts, and irrigation districts to create separate municipal corporations to provide water and sewer utility services for the municipal corporations creating the new entity.[7] By definition, such an entity would be a regional government providing the utility service for two or more entities.

The governing bodies of these new regional special purpose districts are not composed of officials directly elected to those positions, but instead are composed of either:

- Persons appointed to office by the governing bodies of the "parent" or "sponsoring" local governments; or

d A discussion of public hospital districts is found in Chapter 15.

e A discussion of the general subject of transportation is found in Chapter 71.

- Elected officials of the "parent" or "sponsoring" local governments serving *ex officio* as members of the governing bodies of the new special purpose districts.

Each of these types of special purpose districts is a federation of other local governments included within its boundaries, except for rural county library districts which is a partial subdivision of the county in which it is located. A federation of a number of local governments essentially is a partial subdivision of a number of different local governments. Parent units of local government maintain a degree of authority over the federation by either appointing members of the federation governing body or having one or more of the members of their own governing bodies serving *ex officio* as members of the governing body of the federation.

In some instances, a new federation becomes the sole provider of a particular service or facility within the area, and the parent local governments within the federation cease providing the service or facility. In other instances, a new federation provides an increased level of the service or facility and the parent local governments within the federation continue providing some level of this service or facility. Creation of a federation adds a new government to provide the service or facility in the region. All existing units of local government remain in existence.

The trend of using federations of other local governments as regional metropolitan governments reflects a desire to include these other governments in forging regional compromises and the political power of officials from these other local governments who frequently oppose legislation authorizing independent regional governments. Many local officials do not want their powers usurped and want to retain some control over the regional service or facilities. Some critics note that the lack of independence on the part of a federation delays the provision of these regional facilities and services and may result in increased costs by including officials on the regional governing body who owe their primary allegiances to other governments where they serve as directly elected officials.

Very few new regional metropolitan governments exist in the nation as independent governments rather than federations. Perhaps the

most widely known independent metropolitan governments involve a few consolidations of a central city with the county in which central city is located, including Nashville/Davidson County in Tennessee and Miami/Dade County in Florida.

The most powerful and unique form of metropolitan government in the nation may be a metropolitan service district (known as Metro) that was created in the three county area of greater Portland, Oregon, in 1992.[8] This Metro is a multiple purpose regional government with directly elected officials that usurps county, city, and special district powers whenever it assumes a regional power. Apart from a few combined county/cities which tend to occupy smaller geographic areas, Metro is the only regional government in the nation with a governing body composed of persons who are directly elected to those positions. The Metro governing body is a seven-member council with six councilors, each elected from a separate district and a council president elected region-wide. A Metro auditor is also elected region-wide.

The basic Metro authority is to perform many of the planning and zoning powers for the region. However, Metro also: (1) Operates a solid waste disposal system; (2) operates the Oregon Zoo and Oregon Convention Center; (3) acquires and operates a regional park and open space system; (4) plans and coordinates natural disaster responses; and (5) implements a marketing system for the three county region. Additional responsibilities of "metropolitan concern" may also be assumed by Metro. Metro may impose what are referred to as "niche taxes", without voter approval, to finance its general government, planning, and open space operations. Voters may approve ballot propositions authorizing Metro to impose ongoing sales taxes and income taxes, as well as either ongoing or limited-term property tax levies, to finance capital acquisitions and facilities.

Restrictions on Legislature Providing Regional Government

A number of constitutional provisions and doctrines limit the flexibility of the Legislature to create regional governments, unless these regional governments are state agencies or are counties.[f]

f A discussion of provisions in the State Constitutional relating to local governments is found in Chapter 66.

These restrictions on the Legislature include:

- Article XI, Section 10, which prohibits the Legislature from enacting special legislation incorporating a local government other than a county. As a result, a new regional government other than a county may only be created by local action following incorporation procedures detailed in general state law. However, the Legislature may create a state agency to act as a regional government or may create a new county.
- Article II, Section 28(6), which prohibits the Legislature from enacting special legislation granting powers to a particular local government. As a result, regional governments must receive their powers from general legislation applicable to all of the same type of local government or to a legitimate class of the same type of local government. Again, this restriction would not apply to a state agency that is created as a regional government.
- Article XI, Section 4, which requires the Legislature to provide for a "uniform system" of county government throughout the State, except for counties that are organized into townships. As discussed in Chapter 2, the authority of any county to adopt a regular county charter basically allows the county to alter its uniform array of elected officials so it is very possible that this uniform system provision restricts the authority of the Legislature to grant different arrays of powers to different counties. However, this restriction on the Legislature's power has not been examined in any detail by the Supreme Court. Perhaps the major exception to this uniform system provision may be what is called a "combined city-county charter" that is discussed below.
- The One Person, One Vote Doctrine in part requires a fair scheme of representation on the governing body of a local government exercising general

> governmental powers.[g] [9] This doctrine could pose potential problems for a federation. For example, the United States District Court, Western District of Washington, applied the One Person, One Vote Doctrine to the scheme of representation on the metropolitan council of the Metropolitan Municipal Corporation of Seattle, and held that this scheme of representation violated this doctrine.[10]

Any system of regional government must be authorized in general legislation and implemented by local action. However, it is clear that some legislation is designed for a limited area of the State although technically general in application. For example, legislation allowing the creation of metropolitan municipal corporations (metros) was designed for the King County area and, for all practical purposes, has only been implemented in King County. However, this is general legislation applicable to the entire State. Legislation authorizing regional transit authorities (RTAs) is designed for the greater-Seattle area but is general legislation technically applicable to the entire State.

Unused Procedures to Provide Regional Government

Two flexible procedures exist in state law for the revision of local governments. These two laws could be used to create a regional government.

A. Combined City/county Charters

State voters approved the 58th Amendment to the State Constitution (Article XI, Section 16) in 1972.[h] [11] This Amendment

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g This was a significant expansion of the One Person, One Vote Doctrine. The basic issue was whether the functions of the federated government were sufficiently "general" in nature to subject the scheme of representation on its governing body to the One Person, One Vote Doctrine. The One Person, One Vote Doctrine is discussed in Chapters 27 and 72.

h Amendment 58 altered the prior Amendment 23, which was approved by state voters in 1948 directing the Legislature to enact legislation creating a process for the adoption of a combined city and county charter for a city with a population of 300,000 or more (Seattle) and the county in which it was located (King). The Legislature never enacted the enabling legislation. Amendment 58 altered Amendment 23 by: (1) Providing a new procedure in the Constitution itself, rather than relying on the Legislature to enact legislation implementing the provision; (2) extending the application of the provision to all counties, rather than just King County; (3) providing for indebtedness limitations for combined city-counties; and (4) expanding the subject matters that could be addressed in such a charter to include every aspect of local government within the county, rather than just combining all or part of a city and the county.

allows the voters of any county to adopt what is called a "combined city/county charter."

The term “combined city/county charter” is somewhat of a misnomer. A more accurate description of such a charter would be a local government home rule charter. Such a charter may control virtually every aspect of local government within a county, including: (1) The existence of each local government other than the county; (2) the boundaries of each local government other than the county; (3) the powers of each local government, including the county; and (4) details about elected and appointed officials of each government, including the county, which includes the size of the governing body of each local government and whether persons are elected to those offices, appointed to those offices, or serve *ex officio* as members of the governing bodies.

Potentially, Amendment 58 allows the crafting of a system of local government that addresses local needs without interference or direction from the State, including the provision of regional services and facilities within the county.

A combined city/county charter is adopted as follows:

- A petition proposing the election of a board of freeholders to draft a proposed combined city/county charter is filed with the county auditor. The petition must be signed by county voters equal in number to at least 10 percent of the number of county voters who voted at the last preceding general election.
- If the petition has sufficient valid signatures, a dual ballot provision is submitted to county voters at a general election. First, a ballot proposition asks if county voters want to elect a board of freeholders to draft a proposed combined city/county charter. Second, freeholders are elected. Obviously, the election of freeholders is null and void, if the ballot proposition authorizing election of the freeholders is not approved.
- If the ballot proposition authorizing the board of freeholders to draft a proposed charter is approved, the persons elected as members of the board of

freeholders meet and draft a proposed combined city/county charter.

- The proposed charter is then submitted to county voters for their approval or rejection. If voters approve the proposed charter by a simple majority vote, the charter becomes the basic law defining local government within the county.

No county has ever adopted a combined city/county charter. However, a number of unsuccessful efforts were made in various counties to adopt such charters. A more detailed discussion of combined city/county charters is found in Chapter 65.

B. Local Governance Study Commission Proposals

Even more flexible procedures to revise local governments or the provision of governmental services and facilities were proposed by the Local Government Study Commission in 1988.[i] [12]

The basic Local Government Study Commission recommendation consisted of two separate procedures to alter local government. This included a proposed constitutional amendment authorizing the Legislature to provide for these two separate procedures and two accompanying bills, each providing for one of the two separate procedures.[j]

The first procedure was referred to as the Local Governmental Service Agreement (LGSA). This procedure allowed local government officials to meet and adopt binding agreements for the

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i This commission was created in 1985 by Chapter 388, Laws of 1985, to study local governance in Washington State and make recommendations for changes it felt appropriate. The commission was composed of a number of local government officials and state legislators and was chaired first by Dick Thompson, Directory, Washington State Department of Community Development, and then by his successor, Chuck Clarke. Primary staffing was provided by Ken Dolbeare and Edie Harding. Eugene Green (who staffed the senate Government Operations Committee) and the author assisted the commission in its efforts. The commission issued a final, two volume report in January of 1988. Volume I was a history of local government in Washington State. This Volume was the most detailed description of the development of local government in Washington State until this book was written. Volume II recommended procedures to alter local government within the State.

j The three measures were introduced in both the House of Representatives and the Senate in 1988. In the House of Representatives, the constitutional amendment was introduced as HJR 4227, the LGSA procedure was introduced as HB 1631, and the CRP was introduced as HB 1632.

provision of local governmental services and facilities, including agreements to transfer revenues among local governments. The new procedure was initiated by a representative of a county meeting with a representative of each city and special purpose district within the county to develop a process to formally adopt these agreements. An agreement became effective if approved by: (1) The county representative; (2) the representatives of the cities within the county with at least 50 percent of the incorporated population of the county; and (3) representatives of at least 20 percent of the special districts participating in the process.

Provisions were made for this procedure to be used in a multi-county area.

The basic differences between the LGSA procedure, and an Interlocal Agreement, are that not all parties subject to the agreement need approve a LGSA and the LGSA could potentially involve a transfer of tax revenue from a jurisdiction without the approval of that local government.

The second procedure was referred to as the Citizens' Review Process (CRP). This procedure involved the election of a temporary group of citizens to review local governments within the county. The temporary citizen group would develop one or more proposals to alter local governments and submit the proposals to voters for their approval or rejection. This process somewhat resembles a combined city/county charter procedure, but was more flexible. Proposals for changing local governments could be presented to the voters of less than an entire county, an entire county, or in any area located in more than one county. Permanent structural changes to the system of local government could be made under this process.

The proposed constitutional amendment and implementing legislation for the LGSA and CRP were introduced during the 1988 legislative session but were not approved. It appeared to the author that little momentum existed for these proposals to be enacted. They involved too much potential change that, once authorized, would be out of the control of legislators and statewide interest groups.

However, legislation was enacted in 1994 resembling the LGSA procedure.[13] Under this procedure a service agreement among local governments could be adopted that: (1) Defines the governmental service or services subject to the agreement; (2) defines the geographic area subject to the agreement; (3) details which service or services are to be provided by which local government or governments; and (4) specifies the duration of the agreement. To become effective, a service agreement must be approved by:

- The county legislative authority of each county that includes territory within the geographic area of the agreement.
- The governing bodies of at least a simple majority of the cities within the geographic area that have at least 75 percent of the incorporated population of this geographic area.
- At least a simple majority of the special purpose districts providing the particular governmental service within the geographic area that is the subject of the service agreement.

Again, the basic difference between such an agreement and an interlocal agreement is that not all parties subject to the agreement need to approve the agreement. Such an agreement could include a shift of tax revenue from any affected local government to the designated local government providing the service or facilities. This procedure has never been used by any local governments. Although this procedure is very similar to the CRP proposed by the Local Governance Study Commission, some limitations may exist on its use without a constitutional amendment authorizing a shifting of tax revenues without providing adequate consideration.

NOTES:

1. Chapter 46, Laws of 1949, now codified as Chapter 70.08 RCW.
2. Section 6, Chapter 201, Laws of 1959, now codified as RCW 36.70.060.
3. 23 U.S.C. § 134.

4. Sections 53-57, Chapter 17, Laws of 1990 1st spec. sess., which are codified as Chapter 47.80 RCW.
5. Chapter 239, Laws of 1967, codified in Chapter 39.34 RCW.
6. Chapter 70.46 RCW.
7. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
8. Information about Metro was taken from its website "www.metro-region.org".
9. *Board of Estimate v. Morris*, 489 U.S. 688, 109 S.Ct 1433, 1441 (1989).
10. *Cunningham v. Municipality of Metropolitan Seattle*, No. C89-158WD, Sept. 6, 1990.
11. Amendment 58 is codified as Article XI, Section 16.
12. Chapter 388, Laws of 1985.
13. Chapter 266, Laws of 1994, codified as Chapter 36.115 RCW.

Chapter 25

Library Districts

State law provides for the creation of four different types of special purpose districts to provide library service and facilities: (1) Rural county library districts; (2) intercounty rural library districts; (3) island library districts; and (4) rural-partial county library districts.[a]

Each of these special purpose districts is governed by an appointed library board but is a separate unit of local government and would be considered to be a partial subdivision of a county or a regional federation.

Legislation enacted in the 1940's authorized the creation of both rural county library districts and intercounty rural library districts.[1] Both types of these library districts occupy significant geographic areas and would be considered regional governments.

Legislation enacted in 1982 authorized the creation of island library districts, and legislation enacted in 1993 authorized the creation of partial rural partial-county library districts.[2] Both types of newer library districts occupy relatively small geographic areas and are dissolved if a rural county library district or intercounty rural library district is created occupying the unincorporated area of the county in which they are located. These two smaller library districts would be classified as subdivisions of a county.

Apart from their geographic size, all four of these types of library districts are quite similar and function in the same manner and is governed by a board of trustees appointed by a county legislative authorities or two or more county legislative authorities.

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a A fifth type of special purpose district (library capital facility areas) dealing with the financing of library facilities but not the operation of library facilities is discussed in Chapter 43.

The Municipal Research and Services Center (MRSC) does not tally the number of different types of library districts, but includes a county by county list of library districts. From this list, it appears that five intercounty rural library districts, 13 county rural library districts, seven rural partial-county rural library district, and three island library districts exist in the State.

Creation

Different statutes provide for the incorporation of each of these four types of library districts. Only unincorporated areas outside of a city may be included in each of these library districts when it incorporates, but a library district may annex an adjacent city other than Seattle.

A single procedure exists to create a rural county library district.[3] This procedure is initiated by a petition proposing the library district that is signed by voters residing throughout all of the unincorporated area of a county equal in number to at least 10 percent of the voters in that area who voted at the last general election. A ballot proposition authorizing creation of the library district is then submitted to voters residing in the unincorporated area of the county. The library district is created if the ballot proposition is approved by a simple majority vote of these voters voting on the proposition.

Two separate procedures exist to create an intercounty rural library district in all of the unincorporated areas of two or more counties.[4] Under the first procedure, a petition proposing creation of the district must be signed by at least 10 percent of the voters residing in the unincorporated area outside of cities in each of the counties proposed to be included in the district.[b] A ballot proposition authorizing creation of the library district is then submitted to voters residing in the unincorporated area of each of the counties. The library district is created if the ballot proposition is approved by a simple majority vote of the voters voting on the proposition in each

b This is a much greater signature requirement than to initiate the creation of a rural county library district since the number of required signatures is based upon the number of registered voters residing in the area rather than the number of registered voters residing in the area who voted at the last general election.

of the counties proposed to be included in the library district. Under the second procedure, a majority of the members the county legislative authority of each county proposed to be included in the library district may adopt an order creating the library district. The library district is created without voter approval under this second procedure.

A petition proposing creation of an island library district, signed by at least 10 percent of the registered voters residing in the unincorporated area of an island is filed with the county legislative authority.[5] If the petition contains sufficient valid signatures, a ballot proposition authorizing creation of the district is submitted to the voters of the unincorporated area and the district is created if the ballot measure is approved by a simple majority vote of voters voting on the measure.

A petition proposing creation of a rural partial-county library district, signed by at least 10 percent of the registered voters residing within a portion of the unincorporated area of a county is filed with the county auditor.[6] If the petition contains sufficient valid signatures, the county legislative authority holds a public hearing on the matter, may adjust the proposed boundaries, and causes a ballot proposition authorizing creation of the district to be submitted to the voters of the area if it finds that creation of the district is in the public interest. The district is created if the ballot measure is approved by a simple majority vote of voters voting on the measure.

The creation of a library district is not subject to potential review by a boundary review board.[7]

Boundary Changes

Library districts may expand their boundaries and dissolve. A procedure also exists allowing limited areas to withdraw from a library district other than a rural partial-county library district.

These proposed boundary changes are not subject to potential review by a boundary review board.

A. Expanding into All of the Unincorporated Area of another County

Rural county library districts and intercounty rural library districts may expand into all of the unincorporated area of another county.[8] A rural county library district becomes an intercounty rural library district if it expands into the unincorporated area of another county.

The statute authorizing the expansion into another county references the procedure to create a new intercounty rural library district, i.e., either the petition/election procedure or the county order procedure.[c] This appears to mean that, in effect, a proposed expansion more resembles a proposal to re-incorporate the library district as a new library district with expanded boundaries, rather than the library district annexing this area. However, if an intercounty rural library district proposes to expand into another county under the petition/election method, then all of the counties in the existing intercounty library district are considered to be a single county for purposes of both the petition requirement and voting requirement. The expansion ballot proposition would only be approved if voters of the existing library district and the voters of the unincorporated area of the other county both approve the ballot proposition. Similarly, if an intercounty rural library district proposes to expand into another county using the county order procedure, then the members of the county legislative authorities of the counties already included in the library district vote as a unit rather than separately. However, a county may not be included in the new expanded intercounty rural library district if a majority of the members of its county legislative authority vote against inclusion in the larger library district.

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c The annexation or expansion statute (RCW 27.12.110) expressly references the incorporation statute (RCW 27.12.100) for the procedure to use to expand a library district. RCW 27.12.100(1) includes language addressing the issue of the expansion of a library district, along with the incorporation of a library district. This language raises an important issue by expressly restricting the voters who are allowed to sign a petition proposing an expansion or vote on an expansion. Only voters in the effected counties who reside outside of cities are allowed to sign the petition or vote. However, as discussed below, laws subsequently enacted allow library districts to annex cities with populations of 300,000 or less. Many library districts have used this procedure to annex cities. Such an annexation expands the electorate of a library district to include voters of the applicable county or counties who reside outside cities, as well as voters who reside in all cities that the library district has annexed. These new voters of the library district are expressly precluded from signing a petition proposing the library district expand into another county or from voting on the ballot proposition authorizing the expansion. Legislation should be enacted clarify that all of the voters of the library district may sign the petition and vote on the ballot proposition authorizing the expansion.

B. Annexing Unincorporated Area in the Same County

A rural partial-county library district may annex adjacent unincorporated areas in the same county following water-sewer district annexation procedures.[9]

C. Annexing and Withdrawing from an Entire City

A rural county library district, intercounty rural library district, or island library district may annex any contiguous city with a population of 300,000 or less at the time of the annexation.[10]

An annexation may only be initiated by ordinance of the city governing body. A ballot proposition authorizing the annexation is submitted to voters of that city if the board of trustees of the library district approves the proposed annexation. The annexation occurs if the ballot proposition is approved by majority vote of the city voters voting on the proposition.[d]

Capacity for the library district to impose its regular property tax levy inside of the annexed city is obtained by reducing the maximum amount of the general purpose, regular property tax levy that the city may impose. The new maximum amount becomes $3.60 per $1000 of assessed value minus the regular levy imposed by the library district. This reduction may actually result in a combined higher rate of regular property taxes being levied within the annexed city, since the maximum general purpose, regular property taxes that most cities may levy is $3.375 per $1000 of assessed value. Only 45 cities that had a paid fire department before the Law Enforcement Officers and Fire Fighters retirement system was created are authorized to impose an additional regular nonvoter approved property tax of up to 22.5¢ per $1000 of assessed value, which creates a maximum regular, nonvoter approved property tax rate for those 45 cities of $3.60 per $1000 of assessed value.[e] Such a city that is annexed by a library district

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d Note, that the only geographic requirement for the city is that is be contiguous to the library district. As a result, the city could be located all or in part in a county that did not already include territory located in the library district.

e These 45 cities within these populations, ranging from Sumner to Seattle.

may continue imposing this additional 22.5¢ per $1,000 property tax levy.

A city that was annexed by a library district may withdraw from the library district if the city voters approve a ballot proposition to withdraw that was submitted to them by action of the city governing body.[11] The withdrawal occurs without the approval of the library board of trustees. Provision is also made for the library district to re-annex a city that has been withdrawn.[12] However, a re-annexation is authorized by adoption of resolutions providing for the re-annexation by both the library board of trustees and the city governing body.

D. Dissolving

Library districts may be dissolved under a number of different procedures.

First, a rural county library district, intercounty rural library district or island library district that has operated for three or more years may be dissolved under a special procedure included in library district laws.[13] This dissolution procedure is initiated by petition of at least 10 percent of the voters of the district residing in the unincorporated areas of the district outside of cities. A ballot proposition providing for the dissolution is submitted to the registered voters of the library district residing outside of cities. The district is dissolved if the ballot proposition is approved by a simple majority vote of these voters voting on the proposition.[f]

Second, the board of trustees of any library district may petition the superior court to dissolve the district. The court dissolves the district if it finds that the dissolution will serve the "best interests of all persons concerned".[14]

Third, the county legislative authority may dissolve an inactive library district.[15]

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f Note that these provisions were enacted before cities were allowed to annex into library districts and do not reflect the likelihood that one or more cities have been annexed by the library district. Presumably, these statutes should be amended to allow any registered voter residing in the library district to sign the petition and vote on the dissolution of the library district.

Fourth, an island library district and a rural partial-county library district is dissolved if a rural county library district is created in the unincorporated area of the county in which the district is located.[g] [16] Presumably, these statutes should be amended to provide for such a dissolution if an intercounty rural library district were created that included such an area.

Governing Body and Elections

A library district is governed by a board of trustees appointed by the county legislative authority or authorities of the county or counties in which it is located.[17] The board of trustees for a rural county library district, island library district, or rural partial-county library district is composed of five members. The board of trustees for an intercounty rural library district is composed of either five or seven members. Library trustees on a five-member board are appointed to staggered five-year terms of office. Library trustees on a seven-member board are appointed to staggered seven-year terms of office. Appointment of trustees in an intercounty rural library district is made by joint action of the county legislative authorities of the counties in which the district is located.

Library trustees serve without compensation.[18]

Regular or normal franchise rights exist in library districts and the voters of a library district consist of all registered voters residing in the district.[19] County auditors conduct library district elections.[20]

Powers

Library districts statutes do not include much detail about library district powers and authorities. This lack of detail may be viewed from a perspective of allowing library districts maximum flexibility to provide library facilities or services or from a more narrow perspective of limiting library district authorities.[h]

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g Presumably, these statutes should be amended to also provide for such a dissolution if an intercounty rural library district were created including such an area.

h For example, no statutes provide express procedures for library districts to award contracts for constructing their facilities, while statutes exist for most of the more significant types of special purpose districts detailing procedures for these special purpose districts to award construction contracts. These other special purpose districts are required to use formal, competitive bidding procedures to award larger valued construction contracts but may choose to use a more flexible

Library districts are authorized to provide free library service, maintain libraries serving residents of the area included in their boundaries, and exercise the powers necessary to carry out these duties.[21] Clearly, this includes the authority to provide library facilities and services.

Library districts are granted all of the powers of a public corporation that are necessary to carry out their functions.[22]

A library district may contract with another government authorized to provide libraries and to receive or provide library service to or for that other government.[23] A library district may contract with another government authorized to provide libraries to establish and maintain a "regional library", which is managed by a five or seven-member board of trustees appointed by the joint action of these governments, but technically, a regional library is not a unit of government.[24]

A library district may spend money to recruit job candidates, including payment of reasonable and necessary travel expenses consisting of transportation, subsistence, and lodging.[25]

Library districts are one of the few local governments not authorized to condemn property. Presumably, if it becomes necessary for property to be condemned, the county or city in which the library district is located would condemn the property for the library district.

Finances

Library districts obtain their revenues from: (1) Property taxes; (2) debt proceeds; and (3) other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the

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small works roster procedure for awarding small and medium valued projects. If one chooses to view library district powers in a flexible fashion, they could use any procedure for awarding construction contracts. However, if one chooses to view library district powers more restrictively, it would be argued that library districts could only award these contracts using formal, competitive bidding procedures and could not establish a small works roster procedure to award these contracts.

following discussion of library district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

By far, property tax receipts constitute the greatest portion of library district revenues.

The basic finances of a library district is obtained from an annual regular, non-voter approved, property tax of up to 50¢ per $1000 of assessed value.[26] These regular property tax levies are subject to the so-called 101 percent levy lid.

Library districts may also impose voter approved, excess property tax levies, including single-year levies for their general purposes and multiple-year levies to retire general obligation indebtedness.[27] The ballot proposition authorizing the imposition of these excess property tax levies must be approved by at least three-fifths of voters voting on the proposition and a 40 percent voter validation requirement is met.

B. Debt Proceeds

A library district may incur general indebtedness and issue general obligation bonds not to exceed a total amount of one-tenth of one percent of the value of taxable property in the district, and with voter approval, a total amount not exceeding one-half of a percent of the value of taxable property in the district.[28] The maximum term of the non-voter approved bonds is six years, while the maximum term of the voter approved bonds is 40 years.[29] This six year maximum term for non-voter approved general indebtedness is the shortest maximum term provided for any local government.

Library districts may also issue a variety of short term obligations, including notes and warrants.[30]

C. Other

Library districts, as other types of special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of

real or personal property. They are also granted all the powers of a public corporation necessary to function, which presumably includes the authority to impose charges for overdue books and photocopying charges.[31]

Development of Library Service in Washington

Library service developed gradually in Washington from the early days of white settlement. Initial library service was provided by private entities. The Territorial Library was designed to provide library service for the use of public officials but was soon expanded to serve the general public. Gradually, general library service was provided throughout much of Washington, first by private library associations and then by public entities.

A. Earliest Libraries

The first library providing library serve in what is now Washington State was created in 1833, by the Puget Sound Agricultural Company and Hudson Bay Company.[32] This was a privately-owned subscription library where the user had to pay a subscription fee to use the library. A local library exchange was operated at Fort Vancouver.

Early settlers brought their own private collections of books to Oregon country. It is theorized that an early American settler in the Willamette valley obtained a copy of the laws enacted by the first Legislative Assembly of Iowa Territory in 1839 on his way to Oregon. As discussed in Chapter 1, the Legislative Committee of the Provisional Government of Oregon Country adopted these early Iowa laws by reference as part of the laws of Oregon country.

American settlers established a private circulating library and debating society in Oregon country in 1841.[33] This library served settlers in the Willamette river valley in what is now Oregon State. Although technically this private library would have served settlers in what became Washington State, almost all of the Americans in Oregon country lived in the Willamette river valley at that time.

B. Specialized Libraries

Congress enacted legislation creating Oregon Territory in 1848.[34] This law required the Territory to create a Territorial Library, and appropriated $5,000 for the acquisition of library materials. The library was located at the territorial capital in Oregon City.

Congress enacted legislation creating Washington Territory in 1853. This law required the Territory to create a Territorial Library, and appropriated $5,000 for the acquisition of library materials.[35] The new library was

> "to be kept at the seat of government for the use of the Governor, legislative assembly, Judges of the Supreme Court, secretary, marshal, and Attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law."

Newly appointed Territorial Governor Isaac I. Stevens selected the first books for the library and shipped the books around the Horn to Olympia.[36] The library collection of about 1,850 volumes was shipped from the east coast and arrived in Olympia in February of 1854. By 1855, the number of volumes had increased to 2,852, of which 1,625 were of general interest and the remainder were law books and government documents.

The first Legislative Assembly enacted school laws in 1854 directing each school district to appoint a librarian when it purchased a library.[37]

The Legislative Assembly enacted legislation in 1862 authorizing the University of Washington to appoint a librarian.[38]

Express mention of the use of the Territorial Library by lawyers was added to legislation enacted in 1867.[39] However, it was not until 1919 that legislation was enacted requiring some counties (any county with a population of 300,000 or more) to provide a law library for the use of lawyers practicing in the county.[40] Today, each county with a population of 8,000 or more (i.e., every county other than Garfield, Wahkiakum, Columbia, and Ferry) is required to have a law library for the use of lawyers in the county.[41]

Legislation was enacted in 1903, allowing any county to establish a circulating library for the use of pupils of common schools in the county.[42] This law has been repealed.

Legislation was enacted in 1959, formally separating the State Law Library from the State Library and placing the State Law Library under the exclusive control of the Supreme Court.[43] Today, the State Library is housed within the office of the Secretary of State.[44]

C. Early Libraries Serving the General Public

Although Congress had required the Territorial Library to serve the needs of public officials in the new Territory, the first Legislative Assembly of Washington Territory expanded the use of the library by enacting legislation providing that "all persons shall have access to the library."[45] The Territorial Library was heavily used by members of the general public.[46]

Additional libraries were soon created to provide service to the general public. Initially, libraries were provided by private associations but eventually libraries were provided by public entities.

The Legislative Assembly of Washington Territory enacted a number of special laws incorporating private library associations to provide general library services to the public. Special legislation was enacted in 1858, incorporating a private library association in Steilacoom.[47] This was the first local library primarily designed to serve the general public in what became Washington State. Special legislation was enacted in 1860, incorporating a private library association in Seattle.[48] This was the second local library primarily designed to serve the general public in what became Washington State. Special legislation was enacted in 1861, incorporating a private library association in Vancouver. This was the third local library primarily designed to serve the general public in what became Washington State.[49] Other private library associations were also incorporated.

General legislation was enacted in 1887, allowing towns and villages to incorporate, rather than being incorporated by special legislation enacted by the Legislative Assembly.[50] Towns and villages incorporating under this law were authorized to create

public reading rooms and libraries. As discussed in Chapter 6, only a few towns incorporated under this law. It is not clear if any of these towns created a public library. This was the first law in Washington allowing local public libraries serving the general public. However, this law was soon replaced by the general legislation authorizing the incorporation of four different classes of cities that was enacted by the first State Legislature in 1890. Ironically, the new legislation only authorized first class cities and third class cities to provide public libraries and did not authorize second class cities or towns to provide public library service.[51] The City of Tacoma created a public library under this statute in 1890, soon followed by the City of Seattle creating a public library in 1891, and the City of Spokane creating a public library in 1893.[52]

General legislation was enacted in 1901, allowing any county or city to provide public library service.[53] Counties did not use this authority to create public libraries but many cities created public libraries under this authority.

Legislation was enacted in 1907, providing for a traveling library as part of the State Library.[54]

Legislation was enacted in 1911 authorizing townships to provide public libraries.[55]

D. Library Districts

Library advocates searched for a better mechanism to provide library service in unincorporated areas, even though counties were authorized to provide general library service by the 1901 legislation. However, this legislation did not provide a new revenue source to fund library service but required counties to expend a certain amount on library service. No county provided general library service under this law, although a few counties used this authority to make "token payments" to cities for rural county residents to patronize city libraries.[56]

More detailed legislation was enacted in 1935, allowing any county, city, or school district (other than a union high school district) to establish and maintain a free public library by itself or to join with another of these entities and jointly establish and operate a free public library.[57] A free library created by two or more counties was

called a regional library under this legislation. The legislation did not provide additional taxing authority for counties to support public libraries but included a requirement that any county, city, or school district creating a public library must "appropriate money annually" to support the library.[58] Voters in both Pierce County and Spokane County followed this 1935 legislation and approved ballot propositions establishing county public libraries. However, the counties apparently did not appropriate money to support the libraries.

A "bright new chapter for the State's libraries" occurred in the 1940's, when more "workable" legislation was enacted providing for public libraries in rural areas.[59] Legislation was enacted in 1941 allowing rural county library districts to be formed, occupying all of the unincorporated area of any county.[60] Legislation was enacted in 1947 allowing an intercounty rural library district to be formed, occupying all of the unincorporated area of two or more counties.[61] Both types of library districts were granted independent authority to impose their own nonvoter approved, regular property taxes to support the provision of library services. The first rural county library district was formed in Clark County in September of 1942, soon followed by the creation of rural county library districts in Grays Harbor, King, Pacific, Spokane, and Thurston Counties at the November general election of that year.[62] Thurston and Mason Counties created the first intercounty rural library district on August 16, 1947.[i] [63]

These new statutes provided for the creation of library districts that included all of the unincorporated area of one or more counties, hence the term "rural" that is part of their names. Territory located in one of these library districts that was incorporated into a new city, or annexed by a city, was removed from the library district. This feature of only including unincorporated areas, and not including incorporated areas, in a library district was necessary to avoid what is called a prorationing or reduction of the library districts regular property tax levies.[j]

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i These two counties are now included in the Timberland Regional Library, which is an intercounty rural library district that includes Grays Harbor, Lewis, Mason, Pacific, and Thurston Counties.

j A discussion of property tax levy prorationing is discussed in Chapter 63, including what is called the prorationing or reduction of property tax levies.

Legislation was enacted in 1977, allowing any library district to annex all of a city that had a population of 100,000 or less at the time of the annexation.[k] [64] Under current law, a library district may annex a city with a population of less than 300,000, which means any city other than Seattle. Allowing a library district to include incorporated territory was a major change in the concept of library districts. Taxing capacity for the library district to impose its property taxes inside cities was obtained by reducing the city property tax levy. Many rural county library districts and intercounty rural library districts annexed cities under this new authority. Some of these library districts now occupy one or more entire counties. However, the term "rural" has never been removed from these library districts to reflect their new ability to include cities within their boundaries.

The 1935 legislation relating to the provision of library service by counties also authorized counties, cities, and school districts to enter into contracts for the provision of library services.[65] This statute was amended in 1941, to call these contractual relationships "regional libraries".[66] Although a separate board of trustees is appointed to run the joint library service, a "regional library" does not appear to be an actual governmental unit since a "regional library" is not granted any powers. Some confusion has arisen over using the term "regional library" to describe a contract between two or more entities for the provision of library service and the names of several intercounty rural library districts that include the term "regional". The only library currently operating under these provisions as a "regional" library is the Yakima Regional Library, which is a contract between the City of Yakima Library and the Yakima Rural County Library District. However, some intercounty rural libraries (such as the Timberland Regional Library) include the term "regional" in their names, but are not technically "regional" libraries under this statute.

Legislation was enacted in 1982 and 1993, allowing the creation of library districts in a portion of the unincorporated area of a single

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k The author staffed the House Local Government Committee when this legislation was enacted and recalls that the restriction on a library district annexing a city with a population of more than 100,000 was designed to keep the cities of Seattle, Tacoma, and Spokane from being annexed by a library district.

county.[l] This allowed a new concept for library districts occupying a relatively small geographic area, rather than being in essence regional governments. Any of these smaller library districts serving a portion of the unincorporated area of a single county is dissolved if a rural county library district or intercounty rural library district is created that includes the area served by the smaller district.

Legislation was enacted in 1995, allowing the creation of library capital facility areas to finance library facilities for library districts. As discussed in Chapter 43, this new type of special purpose district provides financing for library capital improvements.

NOTES

1. Rural county library districts were authorized to be created in Chapter 65, Laws of 1941, codified as part of Chapter 27.12 RCW. Intercounty rural library districts were authorized to be created in Chapter 75, Laws of 1947, also codified as part of Chapter 27.12 RCW.
2. Island library districts were authorized to be created in Chapter 123, Laws of 1982, codified as part of Chapter 27.12 RCW. Partial-rural county library districts were authorized to be created in Chapter 284, Laws of 1993, also codified as part of Chapter 27.12 RCW.
3. RCW 27.12.030.
4. RCW 27.12.100.
5. RCW 27.12.400.
6. RCW 27.12.470.
7. RCW 36.93.020.
8. RCW 27.12.110.
9. RCW 27.12.470.
10. RCW 27.12.355-27.12.395.
11. RCW 27.12.355(2).

l An island library district was allowed to be created occupying all of the unincorporated area of a single island in a county composed entirely of islands, if this area was not already included in a rural county library district or intercounty rural library district. (Chapter 123, Laws of 1982, codified as RCW 27.12.400 - 27.12.450.) A rural partial county library district was allowed to be created occupying a portion of the unincorporated area of a county, if this area was not already included in a rural county library district or intercounty rural library district. (Chapter 284, Laws of 1993, codified as RCW 27.12.470.)

12. RCW 27.12.355(3).
13. RCW 27.12.320.
14. Chapter 53.48 RCW.
15. Chapter 36.96 RCW.
16. RCW 27.12.450 & 27.12.470.
17. RCW 27.12.190.
18. *Id.*
19. Article VI, Section 1.
20. RCW 29A.04.216.
21. RCW 27.12.010, 27.12.025, & 27.12.060.
22. RCW 27.12.060.
23. RCW 27.12.180.
24. RCW 27.12.080 & 27.12.190.
25. RCW 27.12.215.
26. RCW 27.12.050 & 27.12.150.
27. RCW 27.12.222, 84.52.052, & 84.52.056.
28. RCW 27.12.222.
29. RCW 27.12.222 & 39.46.110.
30. Chapter 39.50 RCW.
31. RCW 27.12.060.
32. Reynolds, at pages 1-2.
33. Carey, at page 373.
34. Section 19, Chapter CLXXVII, 9 U.S. Statutes at Large, at Page 323, approved August 14, 1848.
35. Section 17, Chapter 172, 10 U.S. Statutes at Large, at page 172, approved March 2, 1853.
36. Mills, Hazel E., “The Washington Territorial Library”, Library News Bulletin, Volume 27, Number 1, Washington State Library, at page 17 (1960).
37. Statutes of the Territory of Washington, 1854, 1st Session, Section 13, Chapter IV, Pages 319-328.
38. Statutes of the Territory of Washington, 1861-1862, 9th Session, Section 8, Pages 43-46.
39. Statutes of the Territory of Washington, 1867, 14th Session, Section 5, Pages 122-129.

40. Chapter 84, Laws of 1919.
41. RCW 27.24.010.
42. Section 27, Chapter 104, Laws of 1903.
43. Chapter 188, Laws of 1959, codified as Chapter 27.20 RCW.
44. RCW 27.04.010.
45. Statutes of the Territory of Washington, 1854-1855, 1st Session, Section 4, Page 415.
46. Reynolds, at pages 2 & 3.
47. Statutes of the Territory of Washington, Local Laws, 1857-1858, 5th Session, Section 1, Pages 47-48.
48. Statutes of the Territory of Washington, Private Laws, 1859-1860, 7th Session, Section 1, Page 427.
49. Statutes of the Territory of Washington, Local Laws, 1860-1861, 8th Session, Section 1, Pages 106-107.
50. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Section 7(34), Chapter CXXVI, Pages 221-232.
51. First class cities were authorized to provide libraries by Section 5(20), Pages 215-227, Laws of 1889-1890. Third class cities were authorized to provide libraries by Section 117(19), Pages 178-198, Laws of 1889-1890.
52. Reynolds, at page 9.
53. Section 1, Chapter CLXVI, Laws of 1901.
54. Section 1, Chapter 164, Laws of 1907.
55. Section 1(10), Chapter 34, Laws of 1911.
56. Reynolds, endnote #72, to Chapter I, at page 221.
57. Chapter 119, Laws of 1935.
58. Section 10, Chapter 119, Laws of 1935.
59. Reynolds, at page 27.
60. Chapter 65, Laws of 1941, codified as part of Chapter 27.12. RCW.
61. Chapter 75, Laws of 1947, also codified as part of Chapter 27.12 RCW.
62. Reynolds, at page 29.
63. Reynolds, at page 37.
64. Chapter 353, Laws of 1977 ex. sess., codified in Chapter 27.12 RCW.
65. Section 5, Chapter 119, Laws of 1935.
66. Section 5, Chapter 65, Laws of 1941.

Chapter 26

Joint Operating Agencies

A joint operating agency (JOA) is a federated special purpose district designed primarily to generate electrical energy that is sold to the so-called "member" entities of the JOA.

Two or more public utility districts (PUDs) or cities enter into an agreement to create a JOA. The so-called "member" entities of a JOA are those local governments agreeing to create the JOA, as well as other PUDs or cities that are later added as "member" entities. The federated nature of a JOA arises from:

- The method of creating the JOA;
- Its governing body that is composed of persons appointed by the "member" entities; and
- The primary purpose of a JOA, which is to generate and sell electrical energy to its "member" entities.

Statutes expressly declare JOAs to be municipal corporations. However, JOAs are very unique municipal corporations. JOAs do not appear to have boundaries. Voters have no role concerning JOAs.[a] They do not approve a ballot proposition authorizing a JOA to be created. They do not elect members of the governing bodies of a JOA. They do not approve ballot propositions authorizing a JOA to exercise any powers. Every other type of federation in Washington State has clearly defined boundaries and voters have a role in approving ballot propositions either authorizing the creation

a However, state voters approved Initiative Measure No. 394 in 1981 requiring any public entity proposing to construct a major electrical power generating facility (one capable of generating 350 or more megawatts of power) to obtain voter approval of the project. (Codified as Chapter 80.52 RCW.) This restriction applies to joint operating agencies, as well as other municipal corporations.

of the federation or authorizing the federation the authority to impose taxes.

Only a single active JOA exists in the state, the former Washington Public Power Supply System (known by its acronym, WPPSS) but now called Energy Northwest.

JOA statutes are not clearly drafted. The legislature should review these statutes and make clarifications.

Creation

The process to create a JOA involves a number of steps.[1]

Two or more PUDs or cities enter into an agreement to form a JOA and submit an application to the director of the Department of Ecology (DOE). Details concerning this application appear to only allow a JOA to be created to generate electricity, but presumably a JOA may be created to exercise any of its authorized powers, including the provision of water and sewer facilities and services. A description of the project that is proposed for the JOA must be included on the application, along with the market for electrical power and the proposed method of financing the project. The director of the DOE publishes notice of the application, holds a hearing on the matter, and makes findings on the matter, which may include an order creating the JOA and authorizing the specific project described in the application. Inaction on the part of the director within specified periods is deemed to constitute approval of the JOA and authorization of its project or projects. The only way a proposed JOA is not created is if the director of the DOE holds the hearing within the time requirements and makes findings against creation of the JOA.

An appeal of the action of the director of the DOE must be made by an interested party to the Thurston County superior court within 30 days of the date the director's order is filed.[2] The ability to appeal the creation of a JOA seemingly would also apply where the director fails to take action and the JOA is "deemed" approved but no order is made. Presumably, the 30-day appeal period would commence on the last day by which the director was required to

have acted on the creation of the JOA when failure to act results in the "deemed" approval of the JOA.

Any other lawsuit questioning the validity of a JOA must be commenced within six months of the creation of the JOA.[3]

The PUDs or cities creating a JOA are known as the sponsoring "members" of the JOA, connoting the nature of a JOA as a federation of these governments.

Alteration

JOAs may be altered by a number of different actions.[4]

Additional "member" PUDs or cities may be added by a majority vote of the existing "members." A "member" may withdraw from the JOA.

A JOA may be dissolved by the unanimous agreement of its "members."

A JOA may undertake projects or activities beyond those for which it was formed, if the additional projects or activities are approved by a majority of the governing bodies of its "members." If the expansion includes acquisition of new energy sources, an acquisition plan must be prepared and presented to the energy and utilities committees of both the House of Representatives and Senate. If the expansion involves a hydroelectric project at a site where any publicly or privately owned public utility has a license or permit, or has a prior application for a license or permit with any agency, the JOA must notify the director of the DOE like any other applicant and is subject to the normal Department's procedures concerning such projects.

Governing Body and Elections

Several variations exist for a JOA governing body. No provisions are made for an electorate or elections to be held relating to a JOA.

The governing body of a JOA varies depending on whether the JOA is involved with a nuclear power plant. These differences

arose as part of the Legislature's attempts to "control" WPPSS when difficulties with WPPSS became apparent and WPPSS defaulted on its bonds.

A. JOA Not Involved with a Nuclear Power Plant

The governing body of a JOA is a board of directors composed of one person appointed by each member of the JOA, if the JOA is not constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement.[5] An appointee may be an officer or employee of the member entity. The board of directors manages and controls the JOA. A director serves at the pleasure of the member PUD or city that appointed the director. Each director receives one vote, plus an additional vote for each "block of electrical energy equal to ten percent of the total energy generated by the JOA during the preceding year" that is purchased by the PUD or city that the director represents.

Directors receive compensation paid at a rate of $50 per day for each day or major part of a day devoted to business of the JOA, not to exceed $5,000 per year.[6]

The board of directors appoints a treasurer and auditor for issuing warrants. [7]

B. JOA Involved with a Nuclear Power Plant

The governing body of a JOA constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement consists of two separate bodies – a board of directors and a separate executive board. This dual governing body structure is unique among local governments in Washington State.

The board of directors is constituted in the same manner as a board of directors for a JOA that is not involved with a nuclear power plant, but its authority is limited to:

- Making final decisions on acquiring, constructing, terminating, or decommissioning any facility. Once such a decision has been made concerning a nuclear power plant, all subsequent decisions about

the plant and its components revert to the executive board.

- Electing "inside" members of the executive board, removing these members, and setting the salaries for these members. Inside members are members of the board of directors who are elected to serve as members of the executive board.
- Selecting and appointing three of the "outside" directors of the executive board. Outside members are persons other than members of the board of directors who are appointed to serve as members of the executive board.[8]

A separate executive board consists of 11 members.[9] Five are "inside" members elected to four-year terms by the board of directors of the JOA from among its own members. Six are other persons known as "outside" members who are appointed to staggered four-year terms of office. Three of the "outside" members who are other persons are appointed by the board of directors of the JOA. Three of the "outside" members are appointed by the Governor and confirmed by the Senate. The Governor may remove any "outside" member, whether appointed by the board of directors or by the Governor, for incompetency, misconduct, or malfeasance in office. "Inside" executive board members may be removed by action of the board of directors pursuant to rules adopted by the board of directors.

The executive board manages and controls the construction, operation, termination, and decommissioning of a nuclear power plant under a site certificate agreement, but is required to hire a managing director of the JOA and delegate management and control authority to the managing director.

"Inside" members of the executive board receive compensation as established by the board of directors, which is in addition to any compensation they receive as a member of the board of directors.[10] "Outside" members of the executive board, whether appointed by the board of directors or Governor, receive compensation as determined by the Governor.[11]

The executive board appoints a treasurer and auditor for issuing warrants.[12] The executive board also appoints an administrative auditor to conduct performance audits.[13]

Powers

The basic authority of a JOA relates to electrical energy, and includes authority to:

- Generate electrical energy by water power, steam power, nuclear power, conservation, or any other means;
- Transmit electrical energy;
- Sell electrical energy;
- Purchase wholesale electrical energy for any PUD or city at its request; and
- Acquire land bearing coal, uranium, geothermal, or other energy resources either inside or outside of the State to supply its needs.[14]

A JOA may also construct and operate fishways, fish protection devices and facilities, and hatcheries to preserve or compensate for its projects. In addition, a JOA may construct and operate channels, locks, canals and other navigational, reclamation, flood control and fisheries incident to its electrical generation facilities. A JOA may sell steam and water that it does not require to generate power.[15]

The “members” of a JOA have a preference right to purchase the electrical energy generated by the JOA, but any surplus electrical energy may sold to any publicly or privately owned public utility.[16]

Legislation was enacted in 1957 granting a JOA <u>all</u> of the powers of a PUD, except the authority to levy taxes, issue general obligation bonds, and limiting its authority to acquire certain electrical generating facilities owned by a PUD or city.[17] As a result, a JOA may provide energy conservation programs, may create a water utility, and the county board of health (basically, the county legislative authority) may authorize a JOA to operate and maintain on-site sewage disposal facilities, septic tanks, and other

wastewater facilities, as well as the authority to inspect privately owned on-site sewage disposal systems and charge the owners of private systems for these costs. In theory a JOA could also create a sewer utility, but since a JOA does not have boundaries and presumably does not have voters, it is not clear how a JOA would obtain this authority following the provisions of law applicable to a PUD. As discussed in Chapter 16, with one exception, a PUD may only operate a sewer utility if voters of the PUD approve a ballot proposition authorizing the PUD to provide these facilities.

Since a JOA possesses the power of a PUD to provide water and sewer service, it follows that a JOA could create a municipal corporation to provide water and sewer service under the recently enacted Joint Municipal Service Act.[18]

A JOA constructing or operating a nuclear power plant may establish a security force to protect and secure the plant and may adopt and enforce rules controlling the speed, operation, and location of vehicles on its property.[19]

JOAs, as virtually all other types of local government, may condemn property for their purposes.[20]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of JOA finances.

A JOA receives its finances from:

- Rates or charges for selling or transmitting electrical energy or providing other utility services;
- Advances or contributions from “member” PUDs and cities;
- Debt proceeds from issuing revenue bonds with maximum terms of 40 years, as well as short term obligations such as notes and warrants.[21]

JOAs, as other types of special purpose districts, are eligible to receive grants and gifts, receive income from interest and

investment earnings, and receive income from sales or leases of real or personal property.

History

JOAs have a very interesting and controversial history. The nature of JOAs has changed over the years as successive legislation has been enacted.

Legislation enacted in 1949 allowed two or more PUDs to join together by mutual agreement for the purpose of jointly exercising their powers.[22] Although this legislation did not provide for JOAs, the concept of joint action by two or more PUDs is the central concept behind what became JOAs.

Legislation enacted in 1953 created the Washington State Power Commission as a state agency authorized to:

- Study regional power needs;
- Approve the formation of "operating agencies" to generate electricity that two or more cities or PUDs propose to create; and
- Construct or acquire electrical generating and transmitting facilities under certain limited circumstances.[b] [23]

Each authorized operating agency was expressly declared to be a "division" of the State Power Commission.[c] [24]

Legislation was enacted in 1955, fundamentally altering the nature of operating agencies.[25] Each operating agency was declared to be a municipal corporation as well as an "operating agency of the state". The authority to approve the creation of an operating

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b The State Power Commission was composed of five members appointed by the Governor. Although the State Power Commission appears to have been a state agency, it was declared to be a "political subdivision" of the State. (Sec. 2, Chapter 281, Laws of 1953.) As discussed in Chapter 67, the Legislature is prohibited from enacting legislation creating a municipal corporation, but may enact general legislation with procedures for voters or other entities to create different types of municipal corporations.

c Perhaps recognizing this nature of an operating agency as part of a state agency, statutes providing for the Power Commission and operating agencies were codified in Title 43 RCW, the Title of laws providing for state executive agencies.

agency was transferred from the Power Commission to the director of the Department of Conservation and Development.[d] This approval authority now resides with the director of the Department of Ecology, which is the successor agency of the old Department of Conservation and Development.

Finally, legislation was enacted in 1957, dissolving the state Power Commission, renaming operating agencies as "joint operating agencies", and greatly expanding the authorities of JOAs.[e] [26] This legislation also eliminated language providing that each JOA was an "operating agency of the state."[27] JOAs were granted all the authorities of a PUD, other than the authority to impose property taxes and to issue general obligation bonds. The authority of JOAs to acquire certain electrical generating or transmitting facilities owned by PUDs or cities was limited.

The Washington Public Power Supply System was created as the first JOA in January of 1957. This JOA became known by its acronym – WPPSS – which prophetically was pronounced as "whoops." As discussed in Chapter 16, the use of JOAs to provide power for "member" entities, as well as to sell surplus power to private entities, was part of the beginning of a compromise between public and private power interests in the state. WPPSS eventually constructed a hydroelectric dam on Packwood Lake that commenced operation in 1964, then built and operated a co-generation facility that generated electrical energy from the N-reactor at Hanford that the federal government used to produce plutonium. The N-reactor no longer operates.

Then, WPPSS began an ambitious program to construct five nuclear power plants in the 1970's. This ambitious program unraveled with huge cost overruns and an overestimation of the need for electrical energy. Construction on plants #4 and 5 was halted and WPPSS defaulted on the revenue bonds it had issued to finance these two projects. This was the largest municipal bond

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d JOA statutes remain codified in Chapter 43.52 RCW, as part of Title 43 RCW concerning executive agencies of the State, even though JOAs are expressly designated as "municipal corporations."

e This legislation included an emergency clause and validated any operating agency that was created before its effective date. The Washington Public Power Supply System was created as the first operating agency in January of 1957, a few months before this legislation was enacted.

default in the nation. Only one of the three remaining plants was completed and is now operating. The other two remaining plants also were terminated. However, the funding used to secure revenue bonds issued to finance these projects remained viable and is being used to retire the revenue bonds issued to finance these other plants.

WPPSS has undergone several name changes, perhaps to avoid the adverse publicity surrounding this collapse and the acronym WPPSS. The JOA soon began calling itself the "Supply System". Then in 1999, the JOA renamed itself Energy Northwest. Energy Northwest now operates four electrical generating projects – the sole surviving nuclear plant, the hydroelectric dam located at Packwood Lake, a solar generating facility, and a wind generating facility.

Several other less notable JOAs were also created but no longer function.

Current Statutes

JOA statutes are not clearly drafted.

In part this lack of clarity arose from a failure to amend numerous JOA statutes to reflect changes made in other JOA statutes. This failure was particularly conspicuous in 1957, when the fundamental nature of these entities was altered.[f] Although this legislation changed the name of these units of local government from "operating agencies" to "joint operating agencies," only a few of the statutes were revised to reflect this change. Although this legislation expanded the nature of the facilities that JOAs could provide from electrical generating facilities to all of the different types of facilities that a PUD could provide, the basic JOA statutes were not altered to reflect this expansion and still only reference electrical facilities.

The failure to thoroughly revise JOA statutes, by clearly changing the nature of a JOA from a state agency to an independent

f This legislation was enacted at a time when the Legislature did not have profession staff, who presumably would have at least suggested that the remaining JOA statutes be amended to reflect the changes made in a few isolated statutes.

municipal corporation, provided grounds for lawsuits claiming that WPPSS was a type of state agency and that the State was ultimately liable for WPPSS's bond defaults. These claims were not successful. The remaining features of JOA statutes with strong state involvement include:

- JOA statutes remain codified as part of Title 43 RCW, which is entitled "State Government – Executive" and is the Title of law where statutes relating to state agencies are codified.
- The director of the Department of Ecology authorizes the creation of each proposed JOA and approves each of its proposed initial projects.
- The Governor appoints, and the Washington State Senate confirms, some of the members of the governing body of a JOA involved with a nuclear project.
- The Governor establishes compensation that a JOA having relationships with a nuclear power plant must pay some of members of its executive board.
- Under certain circumstances, a JOA that proposes to acquire new energy sources must submit a plan for the project to the State Legislature.

In part, this lack of clarity may have arisen from the Legislature's responses to the extreme controversy surrounding WPPSS in the 1980's and WPPSS's eventual default on billions of dollars of municipal bonds. It appeared to this author, who was directly involved in much of this legislation, that the normal tendency of the Legislature to perfect legislation as it advances from introduction to final passage did not occur with this JOA legislation. The controversy over WPPSS was very acute and the level of mistrust among competing interests was very high. Lines were drawn in the sand over specific wording. Well-meaning and very competent people representing different interests at times refused to consider perfecting or clarifying changes to the legislation. The failure to clarify these laws may also have arisen from the traditional opposition between private power interests and public power interests. Professional legislative staff, such as the author, were

not allowed to perform their normal role helping legislators perfect legislation.

Controversy still surrounds WPPSS and probably mitigates any attempt to clarify these statutes.

NOTES:

1. RCW 43.52.360.
2. RCW 43.52.430.
3. RCW 43.52.470.
4. RCW 43.52.360.
5. RCW 43.52.370(1).
6. RCW 43.52.290 & 43.52.370.
7. RCW 43.52.375.
8. RCW 43.52.370(2).
9. RCW 43.52.374.
10. RCW 43.52.374(1)(a) & 43.52.290.
11. RCW 43.52.374(1)(b)(ii).
12. RCW 43.52.375.
13. RCW 43.52.378.
14. RCW 43.52.260 & 43.52.300.
15. RCW 43.52.391.
16. RCW 43.52.380.
17. RCW 43.52.391.
18. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
19. RCW 43.52.520-43.52.535.
20. RCW 43.52.300 & 43.52.391.
21. RCW 43.52.300, 43.52.380, 43.52.391, 43.52.3411, & 39.46.150, & Chapter 39.50 RCW.
22. Section 2, Chapter 227, Laws of 1949, codified as RCW 54.16.200.
23. Chapter 281, Laws of 1953.

24. Section 12, Chapter 281, Laws of 1953.
25. Chapter 258, Laws of 1955.
26. Chapter 295, Laws of 1957.
27. Section 1, Chapter 295, Laws of 1957.

Chapter 27

Metropolitan Municipal Corporations

A metropolitan municipal corporation (metro) is a federated special purpose district authorized to perform a variety of "municipal" services and facilities.

The federated nature of a metro arises from the procedure to form a metro and how members of its governing body or metropolitan council are selected. Membership on the metropolitan council is determined by an agreement among the so called "component" counties and cities. However, the nature of a metro may be altered if the metro is "assumed" by the component county in which it is located, which essentially means the metro merges into the county.

Only two metros have been created in the State. The Metropolitan Municipality of Seattle (Seattle Metro), with boundaries coterminous with King County, provided sewage treatment services and public transportation services was the first metro, but no longer exists, as it was "assumed" by King County. The only other metro was created in Snohomish County, but does not operate.

Creation

The process to create a metro is initiated by either the adoption of a resolution or resolutions proposing creation of the metro or by a petition of voters calling for the creation of a metro.[1] If initiated by resolution, the resolution must be adopted by:

- The council of the largest city in the proposed metro; or
- The county legislative authority of the largest county in the proposed metro; or

- The councils of two or more cities in the proposed metro other than the largest city.

If initiated by petition, the petition must be signed by at least 4 percent of the registered voters residing in the proposed metro. The initiating resolution or petition names the initial function or functions of the proposed metro.

The county legislative authority holds a public hearing on the creation of the proposed metro and submits a ballot proposition to voters of the proposed metro authorizing the metro to be created.[2] The metro is created and authorized to perform the function or functions listed on the ballot proposition if approved by a dual majority requirement – the ballot proposition must be approved by the voters of both the largest city in the proposed metro and voters of the remainder of the proposed metro.[3]

A metro must include at least two cities, one of which has a population of 10,000 or more.[4]

The proposed creation of a metro is not subject to potential review by a boundary review board.[5]

Boundary Changes

Territory may be annexed to a metro or in limited circumstances may be removed from a metro. Under general legislation, a metro could be disincorporated or dissolved. Although literally, not a dissolution, a metro may also be assumed by the county in which it is located, and essentially no longer exists as a separate unit of local government.

These proposed boundary changes are not subject to review by a boundary review board.

Several procedures exist for a metro to annex territory that is located within a "component" county (i.e., a county in which the metro is located).[6] First, whenever a "component" city (i.e., a city that is already located within a metro) annexes territory in a component county that is not already located within the metro, the

newly annexed territory is annexed automatically into the metro. Second, territory contiguous to a metro is annexed into the metro if:

- A city that is not a component city, but located within a component county, adopts an ordinance providing for the annexation; and
- The metro council adopts a resolution concurring in the annexation.

Third, voters of unincorporated territory located in a component county that is adjacent to a metro may approve a ballot proposition annexing the territory into the metro. The ballot proposition is submitted to voters if either: (1) A petition calling for the annexation is signed by at least 4 percent of the voters residing in the territory proposed to be annexed; or (2) the metro council adopts a resolution proposing the annexation. Approval is by a simple majority vote of voters voting on the proposition.

Whenever unincorporated territory located within a metro is annexed by a city that is not a component city, the following occurs:

- The city is annexed to the metro, and becomes a component city, if the city adopts a resolution requesting to be annexed and the metro council adopts a resolution concurring with the annexation; or
- The newly annexed area is withdrawn from the metro, if the annexing city adopts an ordinance requesting the withdrawal, and the metro council adopts a resolution concurring with the withdrawal; or
- The annexed area remains in the metro, but the remainder of the annexing city stays outside of the metro in all other circumstances.

As discussed below, unique legislation was enacted in 1971, expanding the boundaries of any metro located in a class AA or A county to be countywide without a vote of the voters of the newly included area.[7]

Although no provision literally provides for the dissolution of a metro, an inactive metro could be dissolved under two general statutes. First, the members of the governing body of a metro may petition the superior court to dissolve the metro.[8] Second, the county legislative authority may dissolve an inactive special purpose district.[9]

As discussed below, provisions also allow for a metro to be "assumed" by the county in which it is located.

Governing Body and Elections

Two different governing bodies could exist for a metro.

First, the governing body of a metro is a federated metropolitan council, composed of elected officials of the component counties, component cities, and possibly other persons, as specified in an agreement of the component counties and cities.[10] The agreement must be approved by each component county and at least 25 percent of the component cities having at least 75 percent of the combined populations of all component cities. The agreement may be altered if approved in the same manner. Legislation providing for this flexible composition of a metropolitan council was enacted in 1993, after King County assumed Seattle Metro.[11] As discussed above, this new flexible composition replaced a complicated formula that had resulted in 40 members of the metropolitan council of Seattle Metro.

Second, the county legislative authority is the governing body of a metro if the county has assumed the operations of the metro.[12]

Normal franchise rights exist for a metro and the voters of a metro consist of all registered voters residing in the metro.[13] County auditors conduct all elections for metros.[14]

Powers

Voters of a metro may authorize the metro to perform any of the following functions:

- Metropolitan water pollution abatement, i.e., the treatment and disposal of sewage and storm water;
- Metropolitan water supply;
- Metropolitan public transportation inside and outside of its boundaries;
- Metropolitan garbage disposal;
- Metropolitan parks and parkways; and
- Metropolitan comprehensive planning, which is basically an advisory function and not a substantive function.[15]

This requirement for voters to approve each potential function of a special purpose district is unique. Normally, once a special district is formed, it may provide any of its authorized services and facilities and does not need to seek additional voter approval to exercise any function beyond those listed in the ballot proposition authorizing the district to incorporate.

The functions that a metro is authorized to perform are those listed on the ballot proposition creating the metro that is approved by voters.[16] An additional function or functions may be authorized by either: (1) Voters of the metro approving a ballot proposition authorizing the additional function or functions; or (2) resolutions authorizing the additional function or functions that have been approved by the county legislative authority of each county included in the metro, the governing body of each first class city included in the metro, and the governing bodies of at least two-thirds of the remaining cities included in the metro.[17] However, the public transportation function may only be authorized by election and not by resolution.[18]

Metros are also authorized to provide commuter rail service.[19] It appears that a metro could provide commuter rail service even if voters of the metro had not approved a ballot proposition authorizing the metro to provide public transportation.

In addition, any metro may provide heating systems without authorization by voters or county and city governing bodies.[20]

As a provider of water and sewer service, it follows that a metro could create a municipal corporation to provide water and sewer service under the recently enacted Joint Municipal Service Act.[21]

Metros, as virtually all other types of local government, may condemn property for their purposes.[22]

Finances

Metros receive income from a variety of sources, including: (1) Rates and charges for use of its facilities and services; (2) tax receipts; (3) debt proceeds; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of metro finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Rates and Charges

Metros may impose rates and charges for the use of their facilities and services.[23]

Rates and charges would generate the majority of income for a metro's water pollution abatement, water supply, and garbage disposal functions. This includes the authority to impose "capacity charges" on the connection to a sewer line that eventually discharges sewage into a metro's water pollution abatement facilities.[24] Capacity charges are more commonly known as connection charges.

A metro providing public transportation would also generate moneys by charging rates and charges for use of its facilities and services.

B. Taxes

Metros have been authorized to impose both voter-approved excess property tax levies to finance any metro function and a

variety of different voter-approved excise taxes to finance public transportation functions.

Voters of a metro may approve ballot propositions authorizing the metro to impose excess property tax levies, both single year levies and multi-year levies to retire general obligation bonds issued for capital purposes.[25] A ballot proposition authorizing the imposition of these excess levies must be approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met. Income from these property taxes could be used to finance any of a metro's authorized functions.

Voters of a metro authorized to provide public transportation may approve ballot propositions authorizing the metro to impose a variety of excise taxes to finance its public transportation functions, including:

- Basic, general sales and use taxes of up to 1.0 percent, if the metro is located in a county with a population of one million or more;
- Additional general sales and use taxes of up to 1.0 percent to finance high capacity transit;
- An excise tax of up to $2 per month per employee on all employers located within the agency's jurisdiction, and an additional special sales tax on car rentals of up to 2.172 percent, to finance high capacity transit.[26]

In lieu of imposing the basic, general sales and use taxes, a metro may impose voter approved business and occupation (B & O) taxes and excise taxes on housing units.[a] [27]

C. Debt Proceeds

Metros also receive monies from debt proceeds.

A metro may incur general indebtedness and issue general obligation bonds without voter approval, not to exceed a total

a The B & O tax must be imposed on the gross proceeds or income of a business and has no rate limitation. The excise tax on housing units may not exceed $1 per housing unit per month.

amount equal to three-quarters of one percent of the value of taxable property within its boundaries, and a total amount not exceeding five percent of the value of taxable property in the metro, if authorized by a three-fifths vote of metro voters voting on the proposition, and a 40 percent voter validation requirement is met.[28] General obligation bonds may have a maximum term of 40 years.[29]

Metros may also issue a variety of revenue obligations that are not subject to indebtedness limitations. A metro may also issue revenue bonds payable from its rates and charges, with a maximum term of 40 years.[30] A metro may also finance local improvements by issuing local improvement district bonds, payable from special assessments imposed on land within a local improvement district that benefits from the local improvements financed by these special assessments.[31] Presumably, these bonds have a maximum term of 20 years.[b]

Metros may issue a variety of short term obligations, including notes and warrants.[32]

D. Other

Metros may finance local improvements by creating a local improvement district (LID) and imposing special assessments within the LID on property benefiting from the local improvements.[33]

Metros, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

History

Legislation was enacted in 1957, authorizing metros to be created as regional governments to provide a variety of different municipal services and facilities over a relatively large geographic area, in lieu of counties or cities providing these services and facilities.[34]

b This presumption arises from 20-year limitation on the number of years that a metro may impose special assessments.

This enabling legislation was general legislation, applicable to most of the State. However, the clear purpose of this enabling legislation was to authorize creation of a metro in King County. The legislation grew out of unsuccessful efforts to restructure King County government in the early 1950's.[35] Civic leaders in King County worked to consolidate various municipal services in the county after voters rejected a proposed regular county charter in 1952. Jim Ellis and the Municipal League of Seattle led these efforts. They reviewed the possibility of a city-county consolidation and other options before deciding upon a federated form of regional government that would be superimposed over existing local governments. The Legislature enacted legislation authorizing metros to be created in 1957.

Voters rejected a ballot proposition to create a metro in the greater Seattle area in March of 1958. The proposed metro would have been authorized to provide: (1) Sewage treatment and disposal; (2) public transportation; and (3) comprehensive planning. However, voters approved ballot propositions in September of 1958 creating the Municipality of Metropolitan Seattle (Seattle Metro). Seattle Metro was authorized by voters to provide sewage treatment and disposal to greater Seattle, but included less territory than the initial metro voters had previously rejected.[c]

A friendly lawsuit was instituted, testing the constitutionality of the metro laws.[36] The State Supreme Court upheld the constitutionality of the metro legislation and settled the following issues relating to regional governments:

- Legislation allowing a regional municipal corporation to be formed did not violate Article XI, Section 12 prohibiting the State from imposing taxes for local governmental purposes.[37]

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c The author has vivid memories of this second election authorizing Metro to be created. The summer of 1958 was warm and massive sewage blooms grew in Lake Washington where much of the untreated sewage in King County was dumped. Swimming was not allowed in Lake Washington bathing beaches. The successful campaign creating Metro later in the fall used a poster showing a young girl and her younger brother holding hands looking at a sign closing beaches for swimming due to the pollution. The photo was shot from behind the children who were looking at the sign. Although older than the children in the poster, the author was similarly aggrieved.

- A regional government may be created by the "democratic process" of voters approving a ballot proposition to create the government rather than by approval of each municipal corporation that will be subject to the regional government.[38]
- Superimposing a regional government over other types of municipal corporations, authorized to provide the same types of powers concurrently with the regional government in the same area, did not violate the common law doctrine that two of the same type of local government may not occupy common territory.[39]

A second metro was created in Snohomish County and authorized to engage in comprehensive planning. However, this metro never functioned and appears to have been created as a defensive effort to keep Seattle Metro from annexing this portion of Snohomish County. No other metros have been created.

Legislation was periodically enacted altering metro laws in response to the needs of Seattle Metro. Unique legislation was enacted in 1971, altering the boundaries of any metro created in a class AA or A county to be countywide without a vote of the voters of the newly included area.[d] [40] Prior to enactment of this legislation, Seattle Metro basically occupied the central and northern portions of western King County. Then, voters of the newly expanded Seattle Metro approved a ballot proposition in 1972, authorizing Seattle Metro to provide public transportation.

Legislation enacted in 1977 authorized a county with a population of 210,000 or more to assume the operation of a metro with boundaries that were coterminous with the county's boundaries.[41]

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d This basically meant King County, Pierce County, Snohomish County, or Spokane County. As discussed in Chapter 2, county classes are no longer used. Subsequently, this statute was amended to only apply to a county with a population of one million or more, i.e., King County. A lawsuit was not initiated questioning the constitutionality of this statute from the perspective that the Legislature may not create, or alter, the boundaries of a local government (other than a county) by special laws. The State Supreme Court, held that Article XI, Section 10, eliminated the plenary authority of the Legislature to set the boundaries of a city that is proposed to incorporate, but may enact legislation delegating the authority to determine these boundaries. (*Port of Tacoma v. Parosa*, 52 Wn.2d 181, 187 (1958).) It could be argued that the 1972 vote of King County voters authorizing Seattle Metro to provide public transportation effectively approved the expansion of Seattle Metro's boundaries to include all of King County.

An assumption of a metro is authorized upon a dual majority approval of a ballot proposition providing for the assumption – the ballot proposition must be approved by the voters of both the largest city in the proposed metro and voters of the remainder of the proposed metro. The old metropolitan council is dissolved once the assumption is approved, and the county legislative authority essentially acts as the metropolitan council.

The original metro legislation included a formula for allocating membership on the governing body or metropolitan council.[42] This statute was amended at least six times, altering the formula providing for the federated composition of a metropolitan council. By 1990, the latest formula resulted in more than 40 members on the metropolitan council of Seattle Metro. These members included:

- Members of the county legislative authority who served *ex officio*;
- A number of mayors or council members of cities who served either *ex officio* or were appointed;
- One member selected by other council members to serve as the chair of the metropolitan council; and
- Two sewer district commissioners who were appointed by sewer districts located in the metro.

A lawsuit filed in federal district court challenged the constitutionality of the distribution of membership on Seattle Metro's federated metropolitan council. Judge Jim Dwyer, United States District Court, Western District of Washington, held in September of 1990, that the scheme of representation on the federated metropolitan council of Seattle Metro violated the One Person, One Vote Doctrine.[43] Voters of King County then approved two ballot propositions in the fall of 1992, allowing King County to assume the operations of Seattle Metro and expanding the size of the King County Council to 13 members.[e] As a result, Seattle Metro was merged into King County and the county assumed the authority to provide public transportation and sewage treatment and disposal.

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e As discussed in Chapter 2, King County voters approved a charter amendment in 2004 reducing the size of the King County Council to nine members.

The statute providing for the complicated formula determining membership on a metropolitan council was amended in 1993 to allow the membership to be determined by an agreement among the component counties and cities.[44]

NOTES:

1. RCW 35.58.070.
2. RCW 35.58.080.
3. RCW 35.58.090.
4. RCW 35.58.030.
5. RCW 36.93.020.
6. RCW 35.58.530.
7. RCW 35.58.040.
8. Chapter 53.48 RCW.
9. Chapter 36.96 RCW.
10. RCW 35.58.120.
11. Section 4, Chapter 240, Laws of 1993.
12. RCW 35.58.120 and Chapter 36.56 RCW.
13. Article VI, Section 1.
14. RCW 29A.04.216.
15. RCW 35.58.050, 35.58.200, 35.58.220, 35.58.240, 35.58.280, 35.58.290, & 35.58.310.
16. RCW 35.58.070.
17. RCW 35.58.100 & 35.58.110.
18. RCW 35.58.245.
19. RCW 81.104.120(1).
20. Chapter 35.97 RCW.
21. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
22. RCW 35.58.200(2), 35.58.220(2), 35.58.240(2), 35.58.280(2), 35.58.290(2), & 35.58.320.
23. RCW 35.58.200(4), 35.58.220(3), 35.58.240(3), 35.58.280(3), & 35.58.290(3).
24. RCW 35.58.570.

25. RCW 35.58.116.
26. RCW 82.14.045, 81.104.150, & 81.104.170.
27. RCW 35.95.040.
28. RCW 35.58.450.
29. RCW 39.46.110
30. RCW 35.58.460 & 39.46.150.
31. RCW 35.58.500.
32. Chapter 39.50 RCW.
33. RCW 35.58.500.
34. Chapter 213, Laws of 1957, codified in Chapter 35.58 RCW.
35. "Metro's Federated Governance Structure" prepared by the Municipality of Metropolitan Seattle, Government Relations Division, September, 1986.
36. *Municipality of Metropolitan Seattle v. Seattle*, 57 Wn.2d 446 (1960).
37. *Id.*, at page 453.
38. *Id.*, at page 454.
39. *Id.*, at pages 455-456.
40. Section 3, Chapter 303, Laws of 1971, ex. sess., which amended RCW 35.58.040.
41. Chapter 277, Laws of 1977, ex. sess., codified as Chapter 36.56 RCW.
42. Section 12, Chapter 213, Laws of 1957, codified as RCW 35.58.120.
43. *Cunningham v. Metropolitan Seattle*, No. C89-1587WD, September 6, 1990.
44. Section 4, Chapter 240, Laws of 1993, which amended RCW 35.58.120.

Chapter 28

Public Transportation Benefit Areas

A public transportation benefit area (PTBA) is a federated special purpose district authorized to provide public transit services and facilities. PTBAs are the most common type of local government providing public transit service in Washington State.

A PTBA is a special purpose district that is a federation of two or more counties or cities that is created as a regional government to provide public transit service. The federated nature of a PTBA arises from the procedure to form a PTBA and how members of its governing body are selected.

Legislation enacted in 1975 authorized the creation of PTBAs.[1] This was during a time of heightened interest in the provision of public transit service in a regional area beyond the boundaries of a single city. The Municipal Research and Services Center (MRSC) reports that 20 PTBAs exist in the State.[2]

PTBA statutes are not very complete and could use a general revision.

Creation

The creation of a PTBA is initiated by the calling of a public transportation improvement conference to evaluate the need for creating a PTBA within an area that includes both incorporated and unincorporated areas of the county.[3] Each county legislative authority of a county with a population of 40,000 or more was required to call such a conference, and any other county legislative authority may call such a conference. The county legislative authorities of two or more neighboring counties may call a multi-

county conference. A countywide conference may also be called by resolution of two or more cities in a county, or upon the petition of county voters that has been signed by at least 10 percent of the registered voters in the county at the last general election. Subsequent conferences may also be called.

Every city located in the county is invited to the conference.

The conference holds a public hearing on the creation of a PTBA upon action of the conference or by action of the governing bodies of two or more of the component cities and counties.[4] Boundaries of the proposed PTBA are delineated by the county legislative authority, with each city in the county being entirely included or excluded at the wish of the city governing body. The conference considers the delineated boundaries at the public hearing. After the public hearing, the conference may adopt a resolution fixing the boundaries of the PTBA and declaring its formation. The conference may delete territory when fixing these boundaries, but the deletion shall not create an "island" of deleted territory that is surrounded by included territory. A city must be wholly included in or excluded from a PTBA. A new public hearing must be held if additional territory is proposed to be added to the PTBA, and the conference may adopt a resolution fixing the enlarged boundaries and declaring the formation of the PTBA.

The PTBA is created, unless the county legislative authority vetoes or terminates formation of the PTBA within 30 days of the date the conference adopts the resolution forming the PTBA. This action terminating the creation of a PTBA may only be taken upon a finding that either territory has been included that will not benefit from being included, or that territory has not been included that would benefit from inclusion.

Any city included within the PTBA may withdraw itself from the PTBA during a 60-day period after the PTBA is created. The county legislative authority and any remaining city may disapprove of the creation of the authority if a city withdraws, in which case the PTBA could not function since it would be without a governing body.

The proposed creation of a PTBA is not subject to potential review by a boundary review board.[5]

Boundary Changes

Provisions exist for a variety of PTBA boundary changes, including removing territory, adding or annexing territory, and dissolving a PTBA.

These proposed boundary changes are not subject to potential review by a boundary review board.[6]

Territory may be removed or added to an existing PTBA following the same procedure as creating a PTBA.[7]

A PTBA may also annex an area that is contiguous with the PTBA, if voters residing in the area approve a ballot proposition authorizing the annexation.[8] The ballot proposition is submitted to voters upon resolution of the governing body of the PTBA or by a petition signed by at least four percent of the voters residing in the area. If the area proposed to be annexed is located in another county, the area may only be annexed if the county legislative authority of that other county approves annexation of any unincorporated area and the governing body of a city included within the area proposed to be annexed approves inclusion of the city.

A PTBA may not include part of a city within its boundaries. If a city is included in a PTBA, then all of the city must be included in the PTBA. Any territory not already included within a PTBA that is added to a city already included in the PTBA, as the result of the city annexing the territory, or merging with another city that is not already included in the PTBA, is automatically added to the PTBA.[9] The taxes that a PTBA imposes are extended to any area that is added to the PTBA. Any unincorporated area included in a PTBA that is annexed by a city not included in the PTBA is automatically removed from the PTBA. However, if a city located in another county annexes an unincorporated area in another county included in a PTBA, the newly annexed area remains in the PTBA.

A PTBA may be dissolved following various procedures. First, the governing body of a PTBA may petition the county superior court to dissolve the PTBA, and the PTBA is dissolved if the court finds that the dissolution will serve the "best interests of all persons concerned".[10] Second, voters of a PTBA may approve a ballot proposition authorizing the dissolution of a PTBA. A ballot proposition providing for the dissolution is submitted to voters by: (1) Resolution of the governing body of the PTBA; (2) resolution of the county legislative authority, with the concurrence of the governing body of a city that is included in the PTBA; or (3) a petition calling for dissolution that has been signed by at least 10 percent of the voters residing within the PTBA.[11] The superior court of the county proceeds with the dissolution and sale of assets following the first described procedure. Third, the county legislative authority may dissolve an inactive PTBA.[12]

Governing Body and Elections

The governing body of a PTBA is called the public transportation benefit area authority.[13] An authority is composed of no more than nine persons if the PTBA is located in a single county. An authority is composed of no more than 15 persons if the PTBA is located in more than one county.

Within 60 days of the creation of a PTBA, the county legislative authority and one elected representative of each city included in the PTBA, meet and provide for the number of members on the authority and how the members of the authority are selected. Each member must be an elected official of the county or of a city included in the PTBA. The cities included in the PTBA without a direct member on the authority jointly select one member on the authority. However, "citizen" positions may be provided to the authority, if the PTBA assumes public transportation functions that were previously exercised under an interlocal agreement with a governing body consisting of "citizen" positions.[a] Each authority has a nonvoting member recommended by the labor organization representing the public transportation employees. Presumably, the nonvoting member is in addition to the voting members.

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a This special provision allowing "citizen" members apparently only applies to the PTBA in Thurston County (Intercity Transit).

The authority may authorize members of the authority to receive a per diem compensation paid at a rate of from $44 to $90 per day for attending meetings or performing other work for the authority, for no more than 75 days a year, but the chair may receive this compensation for no more than 100 days a year. This per diem cap was adjusted for inflation using the consumer price index beginning July 1, 2008.

Normal franchise rights exist in PTBAs and the voters of a PTBA consist of all registered voters residing in the PTBA.[14] County auditors conduct all elections for PTBAs.[15]

Powers

PTBAs are authorized to provide public transportation services, which basically are public bus services, but may also provide surface or underground transportation facilities, overhead railways, tramways, related passenger terminal and parking facilities, escalators, and movable sidewalks.[16] A PTBA that is located in a county with a population of 175,000 or more outside of the central Puget Sound area may operate or contract for the provision of commuter rail service or provide high capacity transportation services.[b] [17]

Service may be provided both inside and outside of the PTBA.

A PTBA, as virtually all any other type of local government, may purchase or condemn property for its purposes.

Finances

PTBAs receive financing from a variety of sources, including: (1) Tax receipts; (2) rates, tolls, fares, and other charges; and (3) debt proceeds; and (4) various other sources.

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b A high capacity transportation system is defined as "a system of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways." (RCW 81.104.015(1).)

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of PTBA finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Taxes

Voters of a PTBA may approve a ballot proposition authorizing the PTBA to impose sales and use taxes of up to 1.0 percent imposed within the PTBA on the same tax base as the State's sales and use taxes.[18] Every PTBA imposes sales and use taxes, which are the primary source of revenue for PTBAs. In lieu of these sales and use taxes, voters may approve a ballot proposition imposing an excise tax for the privilege of living in a PTBA, of not exceeding one dollar per household unit per month, and/or business and occupation taxes of any authorized rate.[19] No PTBA imposes these in lieu of taxes.

Voters of a PTBA located outside of central Puget Sound that provides a high capacity transportation system may approve ballot propositions authorizing the PTBA to impose the following additional excise taxes to finance these systems: (1) An excise tax on employers of not exceeding $2 per full-time equivalent employees;[20] and (2) an additional sales and use tax of not exceeding 1 percent, or 0.9 percent if the county is imposing its sales and use tax of 0.1 percent to finance criminal justice functions.[21] In addition, a PTBA located outside of central Puget Sound that provides a high capacity transportation system may impose a sales tax on retail car rentals of not exceeding 2.172 percent without voter approval.[22]

PTBAs probably possess the authority to impose voter approved, multi-year, excess levies to retire any general obligation bonds they issue. The ballot proposition authorizing these levies must be approved by a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met. This authority arises from general statutes.[23]

B. Rates and Charges

PTBAs receive income from rates, tolls, fares, and charges imposed for the use of its facilities and services.[24]

C. Debt Proceeds

PTBA statutes do not authorize PTBAs to incur indebtedness and issue bonds.

However, general statutes authorize all local transit authorities (including PTBAs) the power to incur general indebtedness and issue general obligation bonds.[25] The maximum term on these bonds is 40 years.[26] A PTBA may incur general indebtedness not exceeding three-eights of one percent of the value of taxable property within its boundaries, without voter approval, and a total amount of debt not exceeding one and one-fourth percent of the value of taxable property within its boundaries, if a ballot proposition authorizing this debt is approved by a three-fifths vote of voters voting on the proposition.[27]

PTBAs may issue a variety of short term obligations, including notes and warrants.[28]

D. Other

PTBAs, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

NOTES:

1. Chapter 270, Laws of 1975 1st ex. sess., codified in Chapter 36.57A RCW.
2. "Washington Special Purpose Districts Overview," *id*.
3. RCW 36.57A.020.
4. RCW 36.57A.030.
5. RCW 36.93.020.
6. *Id*.

7. RCW 36.57A.030.
8. RCW 36.57A.140.
9. RCW 36.57A.040.
10. Chapter 53.48 RCW.
11. RCW 36.57A.160.
12. Chapter 36.96 RCW.
13. RCW 36.57A.050.
14. Article VI, Section 1.
15. RCW 29A.04.216.
16. RCW 36.57A.020 & 36.57A.090.
17. RCW 81.104.120(1), 81.104.030, & 81.104.040.
18. RCW 82.14.045.
19. RCW 35.95.040.
20. RCW 81.104.150.
21. RCW 81.104.170.
22 RCW 81.104.160
23. RCW 84.52.056.
24. RCW 36.57A.090(3).
25. RCW 35.58.2721.
26. RCW 39.46.110.
27. RCW 39.36.020(1).
28. Chapter 39.50 RCW.

Chapter 29

Regional Transit Authorities

A regional transit authority (RTA) is a federated special purpose district authorized to provide high capacity transportation systems in the central Puget Sound area (Snohomish, King, and Pierce counties). In addition, as discussed below, if the RTA receives voter approval to finance additional facilities using newly authorized taxing authority, the RTA is required to provide $518 million of educational expenditures for education within its boundaries and $20 million of affordable housing within its boundaries.

RTAs are one of several new types of special purpose districts that have been authorized to address the varied transportation needs, especially in greater Seattle, and potentially require financing of education and affordable housing within its boundaries.[a]

A RTA is a regional government that is a federation primarily composed of the counties included within its boundaries, but also of the cities included within its boundaries. The federated nature of a RTA arises from: (1) The process by which it is created; (2) the authority appointing members of its governing body; and (3) requirements for the composition of the governing body. As discussed below, extreme care was taken in drafting RTA legislation, providing for a federated governing body to avoid violating the One Person, One Vote Doctrine.

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a A general discussion of transportation issues is found in Chapter 71. Discussions of the authority of other types of local government to provide transportation facilities and services are found in: (1) Chapters 1 and 4, concerning counties; (2) Chapter 8, concerning cities; (3) Chapter 13, concerning metropolitan park districts; (4) Chapter 14, concerning port districts; (5) Chapter 27, concerning metropolitan municipal corporations (metros); (6) Chapter 28, concerning public transportation benefit areas (PTBAs); (7) Chapter 30, concerning regional transportation improvement districts (RTIDs); (8) Chapter 31, concerning transportation benefit districts (TBDs); (9) Chapter 38, concerning road districts; (10) Chapter 42, concerning service districts; and (11) Chapter 44 concerning city transportation authorities.

The Central Puget Sound Regional Transit Authority (Sound Transit) is the only RTA in the State. Over several stages, Sound Transit has been installing a major light rail system, and operating express bus and heavy rail commuter trains in the greater Seattle area.

Creation

Two or more contiguous counties, each with a population of 400,000 or more (i.e., King, Snohomish, and Pierce Counties), may enter into an agreement to establish a RTA by following a multi-stepped process.[1] The steps are as follows:

- A joint regional policy committee is created by agreement among transit authorities in the central Puget Sound region to develop a plan for high capacity transportation. The plan defines a service area, describes projects, and includes a financing plan, using some or all of the various excise taxes authorized to finance a high capacity transportation system. A preliminary plan was required to be completed by September 1, 1992. A final plan was required to be completed by June 30, 1993.
- Both the preliminary and final plans are submitted to the county legislative authorities of the counties with territory included within the proposed service area.
- The county legislative authorities decide by resolution whether to participate in the RTA, after receiving the preliminary plan.
- Each participating county then appoints board members to the governing body of the RTA. Appointments are made by the county executive and confirmed by the county council. The number of members are apportioned to the three county areas, based upon the populations of the included areas.
- The governing body of the RTA meets and begins taking steps to implement the plan prepared by the joint regional policy committee. The RTA is formally constituted at its first meeting and the joint regional policy committee is dissolved.

The governing body of the RTA may modify the final plan prepared by the joint regional policy committee. Any modifications are returned to the county legislative authorities of the participating counties for their review. A county legislative authority may confirm or rescind its participation within 45 days of the date the revised plan was submitted. If any county rescinds its participation, the plan is modified to reflect this action.

Although the RTA exists as a unit of local government, it does not have any substantive powers, unless voters of the RTA approve a ballot proposition authorizing both the high capacity transportation system and the financing plan, with various taxes to finance the high capacity transportation system.

Prior to submitting a ballot proposition to voters authorizing a high capacity transportation system, and the taxes to finance the system, an expert review panel is appointed to review and comment on the proposal.[b] [2] The expert review panel consists of unpaid experts appointed by joint action of the Governor, secretary of the Washington State Department of Transportation, chair of the House Transportation Committee, and chair of the Senate Transportation Committee.

Voter approval of the ballot proposition is by a simple majority vote. If voters reject the ballot proposition, the governing body of the RTA may alter the proposal, including making changes in the boundaries of the RTA that could result in altering the composition of the governing body. The altered proposal may be submitted to voters.

The proposed creation of a RTA is <u>not</u> subject to potential review by a boundary review board.[3]

Alteration

A RTA may be altered in a number of ways.

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b The author served as one of the members of the expert review panel to review Sound Transit's second phase of a high capacity transportation system (called ST2) and is currently serving on the expert review panel to review Sound Transit's third phase of a high capacity transportation system (called ST3).

As mentioned above, a RTA may be altered by action of the governing body and county legislative authorities of counties participating in the RTA before a ballot proposition is submitted to voters, authorizing both the high capacity transportation system and the financing plan. In addition, if voters fail to approve the initial ballot proposition, the governing body of the RTA may alter the boundaries of the RTA before submitting a revised ballot proposition to voters.

Once voters have approved a ballot proposition authorizing the RTA to impose the excise taxes to finance the high capacity transportation system, the governing body of the RTA may submit other ballot propositions imposing additional excise taxes to finance additional phases of the plan.[4]

Areas adjacent to a RTA that would benefit from the RTA's services may be annexed by a RTA under a three-step process.[5] First, the governing body of the RTA adopts a resolution proposing the annexation. Second, the annexation must be approved by the governing body of any city proposed to be annexed, or by the county legislative authority, if the area proposed to be annexed is unincorporated territory. Third, voters residing in the area proposed to be annexed must approve a ballot proposition authorizing the annexation and imposition of the taxes already imposed by the RTA.

A RTA is dissolved upon a two-thirds vote of the entire membership of its governing body.[6]

These proposed boundary changes are <u>not</u> subject to potential review by a boundary review board.[7]

Governing Body and Elections

The governing body of a RTA is a board composed of persons appointed by the county executive of each county with territory included within the RTA, as well as the secretary of the State Department of Transportation or a designee of the secretary.[8] The secretary of the Department of Transportation, or the secretary's designee, is a non-voting member, unless a majority of the other members of the governing body vote to authorize the secretary or designee voting rights.

General statutory requirements are provided for persons being appointed to the board, along with specific requirements for the composition of the initial board and requirements for periodically changing the composition of the board. Certain "major" actions of the board may only be taken by a two-thirds majority vote of the members of the board.[9]

Members of the governing body of a RTA serve without pay, but are eligible to be reimbursed for their travel expenses.

Regular or normal voting rights exist in RTAs and the voters of a RTA consist of all registered voters residing in the RTA.[10] County auditors conduct all elections for RTAs.[11]

A. General Requirements

General requirements are provided for appointing persons to the board, in lieu of specifying a precise number of officials who serve on the board. These requirements are not specific, but are designed to ensure fair representation among county officials and city officials.

The Legislature took extreme care in crafting these requirements to avoid possible problems with the One Person, One Vote Doctrine. These statutes do not prescribe a precise scheme of representation on the board, unlike the old metro statutes that the federal district court found to violate the One Person, One Vote Doctrine.[c] [12] Instead, the distribution of members of the board is required to be made fairly and proportionally based upon population. Seemingly, if a court were to find the particular apportionment scheme of the board to violate the One Person, One Vote Doctrine, the particular scheme would be unconstitutional, but the general statute providing for the composition of the board would not be unconstitutional.

Two basic fairness requirements are established for distributing membership on the board:

- A general requirement exists to apportion appointees from each participating county in proportion to the

c A discussion of this case is found in Chapter 27. The One Person, One Vote Doctrine is discussed in Chapter 72.

population of the area of the county that is included in the RTA, relative to the total population of the RTA.

- A general requirement exists that appointees from a county be made proportionately and fairly among city officials and county officials to ensure the "proportional representation" of both cities included in the RTA and the unincorporated areas of the county included in the RTA.

The latter requirement assumes that members of a county legislative authority only "represent" unincorporated areas, even though both incorporated and unincorporated areas would be included within the council districts from which they are elected. Each county executive must consult with the cities within its boundaries that are included in the RTA when making these appointments.

Only elected county or city officials may be appointed. A member of the county council shall be appointed if at least half of the population of his or her council district is included in the RTA. The county executive of each county participating in the RTA must appoint him or herself to the governing body. An elected official from the largest city in a county that is included in the RTA must be appointed to the governing body of the RTA.

At least one-half of the appointees from each county must serve on the "governing authority" of a public transportation system. This means the King County Council, which is the governing body of Seattle Metro, or the Pierce County Public Transit Benefit Area, or the Snohomish County Public Transit Benefit Area, or the mayor or a council member of Everett, which operates a city transit system.

Appointed members are appointed to staggered four-year terms of office.

B. Initial Composition of the Board

Each county executive appoints a number of county and city officials from that county to the initial board, equal to one official per 145,000 population within the county that is included within the RTA.

This resulted in 17 members for the initial Sound Transit board, ten from King County, four from Pierce County, and three from Snohomish County, along with the secretary of the Department of Transportation or the secretary's designee.

C. Periodically Adjusting Membership on the Board

Membership on the board must be reviewed and adjusted five years after its initial formation, and at a minimum, following each official federal decennial census, by redistributing the number of appointees from each county in proportion to the population of the area of each county that is included in the RTA. The initial requirement of one member be appointed from each county per 145,000 population of the area included from that county is not applicable. Adjustments may reduce, maintain, or increase the number of members on the governing body, but this number may not exceed 25.

D. Super-majority Votes

"Major" actions taken by the board of a RTA must be approved by at least a two-thirds favorable vote of the entire membership of voting members. These major actions include adopting or amending a system plan, system phasing decisions, adopting annual budgets, authorizing annexations, modifying the composition of the RTA governing body, and employing an executive director. Other decisions need only be approved by a simple majority vote.

The requirement for a super-majority vote on "major" decisions and the populations of the areas from each of the three counties included in Sound Transit ensured at the time of the formation of Sound Transit that members from King County could not make "major" decisions on their own. At least one favorable vote by a member from either Pierce or Snohomish County would be necessary to approve a "major" action.

Powers

A RTA is authorized to construct and operate a high capacity transportation system, which is defined as

> "a system of public transportation services within an urbanized region operating principally on exclusive

> rights of way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequently than traditional public transportation systems operating principally in general purpose roadways."[13]

This includes regional commuter bus facilities and service, high occupancy vehicle (HOV) improvements, commuter rail service and facilities, light rail (including monorail) facilities and services, surface, underground, or overhead railways, tramways, busways, ferries, escalators, moving sidewalks, personal rapid transit systems, high occupancy vehicle (HOV) improvements, and associated facilities such as passenger terminal and parking facilities.[14] RTAs may operate or contract for commuter rail service.[15]

A RTA may provide service beyond its borders, if authorized by interlocal agreement with other transit agencies.[16]

A RTA may also establish fines and penalties for various statutorily declared civil infractions, including the failure to pay a required fare. [17]

As discussed below, a RTA receiving voter approval for newly authorized taxing authority to finance high capacity transportation systems is required to expend $518 million to fund education within its boundaries and $20 to fund affordable housing within its boundaries.

RTAs, as virtually all other types of local government, may condemn property for their purposes.[18]

Finances

RTAs receive financing from a number of sources, including: (1) Taxes; (2) rates, tolls, and fares; (3) debt proceeds; (4) special assessments; (5) and various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of RTA finances. Some details about indebtedness that are included in Chapter 63 are not repeated below.

A. Taxes

The Legislature enacted legislation in 2015 authorizing an RTA that includes a county with a population of more than 1.5 million (Sound Transit) additional taxing authority to finance a new set of proposed high capacity transportation system improvements, along with placing certain restrictions on Sound Transit.[19] RTAs now are authorized to impose the following taxes:

- An excise tax on employers of not exceeding $2 per full-time equivalent employee per month may be imposed.[20] This tax may only be imposed if voter-approved.
- A sales tax on retail car rentals of not exceeding 2.172 percent.[21] This tax may be imposed without voter approval.
- A sales and use tax of not exceeding 1.0 percent, or 0.9 percent if the county is imposing its sales and use tax of 0.1 percent to finance criminal justice functions. However, a RTA that includes a county with a population of more than 1.5 million (Sound Transit) may impose sales and use taxes of not exceeding 1.4 percent.[22] These taxes may only be imposed if voter-approved.
- A RTA that includes a county with a population of more than 1.5 million (Sound Transit) may impose an excise tax on motor vehicles of not exceeding 0.8 percent of the value of each motor vehicle owned by a resident of RTA.[d] [23] These taxes may only be imposed if voter-approved.
- A RTA that includes a county with a population of more than 1.5 million (Sound Transit) may impose regular property taxes of not exceeding 25¢ per $1000

d This new taxing authority is in addition to a prior excise tax on motor vehicles of not exceeding 0.81 percent that state law initially had authorized. Sound Transit received voter approval to impose a portion of this taxing authority. However, after Sound Transit had issued general obligation bonds secured, in part, with tax receipts from these motor vehicle excise taxes, state voters approved Initiative Measure No. 776 repealed this taxing authority. The State Supreme Court in *Pierce County et al. v. State*, 159 Wn.2d 16, 49 (2006) held that repealing this taxing authority, as it applied to the Sound Transit bond issue, was an unconstitutional impairment of a contract, and allowed the voter approved taxes to be imposed until the bonds are retired.

of assessed value.[24] These taxes are above the statutory $9.50 limit and are quite secure from being subject to prorationing. These taxes may only be imposed if voter-approved.

RTAs were also authorized to impose voter-approved motor vehicle excise taxes (MVETs) of not exceeding 0.81 percent of the value of each motor vehicle owned by a resident of the RTA. However, as discussed below, MVETs are no longer available to be imposed.

B. Rates, Tolls, and Fares

RTAs are authorized to impose rates, tolls, fares and other charges for the use of its facilities or services.[25]

C. Debt Proceeds

RTAs are authorized to incur debt and issue a variety of different types of bonds.

They may incur general indebtedness and issue general obligation bonds without voter approval of an amount not exceeding one and one-half percent of the value of taxable property in the RTA, and with the assent of 60 percent of the voters voting on a ballot proposition authorizing indebtedness not exceeding five percent of the value of taxable property in the RTA.[26] The maximum term of a general obligation bond is 40 years.[27]

RTAs may also issue a variety of revenue obligations that are not subject to indebtedness limitations. They may issue revenue bonds payable from the rates, tolls, fares, and other charges imposed by the RTA for use of its facilities.[28] The maximum term of a revenue bond is 40 years.[29] They may also issue LID bonds payable from special assessments imposed within a LID.[30] The maximum term of a LID bond appears to be 30 years.[e]

RTAs may issue a variety of short term obligations, including notes and warrants.[31]

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e Although RTA statutes fail to reference the statutes by which cities issue LID bonds, which includes a maximum term of 30 years on these bonds, this omission appears to be inadvertent. Chapter 35.45 RCW, relating to cities issuing LID bonds, probably applies to RTAs. This issue should be clarified by the Legislature.

D. Special Assessments

RTAs may finance local improvements by creating a local improvement district (LID) and imposing special assessments on benefitted property located within the LID.[32]

E. Other

RTAs, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Interim financing is available to a RTA by borrowing from the State's High Capacity Transportation Account and from the Central Puget Sound Account.[33]

History

Legislation was enacted in the early 1990's providing for the financing of high capacity transportation systems. This authority was authorized in two steps. First, legislation was enacted in 1990, granting the existing transit authorities additional voter approved taxing authority to finance high capacity transportation systems.[34] Second, legislation was enacted in 1992, allowing a RTA to be established in the highly populated central Puget Sound area (within Snohomish, King, and Pierce Counties) to provide high capacity transportation systems.[f] [35] This legislation amended the 1990 legislation allowing RTAs to use its taxing provisions. A RTA would possess the exclusive authority to provide high capacity transportation systems in this area and other transit authorities could not provide high capacity transportation in this area.

These laws were crafted by the late State Representative Ruth Fisher from Tacoma, who chaired the House Transportation Committee, and worked with State Senator "Pat" Patterson from Pullman, who chaired the Senate Transportation Committee, to enact legislation addressing transportation needs, especially in the central Puget Sound region. Representative Fisher noted that the central Puget Sound region generated most of the State's tax revenues, had the greatest

f The author assisted other legislative staff who drafted the legislation authorizing the creation of RTAs.

transportation needs, and a substantial proportion of the State's population resided in this area. Further, she noted that for decades state tax revenues collected from the central Puget Sound region essentially had been diverted to other parts of the State to finance their transportation needs. She argued that if the Legislature did not respond to the transportation needs of the central Puget Sound region, eventually legislators from this area would join together and enact legislation refocusing state transportation expenditures on this region. It would be prudent to avoid this situation and enact legislation providing the central Puget Sound region with the means to finance their transportation needs with local tax monies supplemented with state monies. Senator Patterson recognized this possibility and worked with Representative Fisher on enacting this legislation.

The Central Puget Sound Regional Transportation Authority (Sound Transit) was created on September 17, 1993, following the process detailed below to provide a high capacity transportation system for the urbanized parts of Snohomish, King, and Pierce Counties. However, voters rejected an initial ballot proposition by Sound Transit to finance a $6.7 billion system of high capacity transportation within this area at an election held in March of 1995. This 1995 ballot proposition focused on providing a regional light rail system.

Sound Transit altered this proposal and presented voters with a second ballot proposition to provide and finance a more limited first phase of high capacity transportation (called Sound Move) at an election held in November of 1996. Voters approved this proposal with a 57 percent affirmative vote. Sound Move was less focused on a regional light rail system than the 1995 proposal, included a subarea equity concept, and included provisions for heightened public accountability.[36] Three different types of high capacity transportation projects were authorized:

- High occupancy vehicle (HOV) expressway investments and a regional express bus network.
- Commuter rail service from Lakewood (south of Tacoma) to Seattle and from Everett to Seattle; and
- A light rail system in part of Tacoma and from SeaTac airport into downtown Seattle and north to the University of Washington, with a further extension to Northgate if other funding is secured.

The so-called subarea equity provision included in the first phase that was approved by voters in 1996 attempts to balance the regional needs of a high capacity transportation system with projects and services in five defined subareas that are proportionate to the revenue generated in each of the five subareas. Equity is defined as using locally generated tax revenues, and related indebtedness, to finance projects and services that "benefit the subareas generally in proportion to the level of revenues each subarea generates."[37] Subarea equity was established to address concerns by some voters that funds generated in suburban areas would be used to finance facilities and services in Seattle. The Sound Transit governing body makes the final determination of subarea equity.

Taxes used to finance the Sound Move projects included: (1) 0.4 percent sales and use taxes; (2) 0.3 percent annual MVETs; and (3) 0.8 percent excise tax on car rentals.

At least in part responding to the MVET, state voters approved Initiative No. 776 in 2003, eliminating the state MVET and the authority of local governments to impose local voter approved MVETs. However, the Supreme Court held that eliminating the Sound Transit MVET that was part of the taxes pledged to redeem its bonds issued to finance Sound Move was an unconstitutional violation of the contracts clause and allowed Sound Transit to continue imposing these MVETs as long as the bonds for which these taxes are pledged remain outstanding.[38]

After some initial difficulties, Sound Transit hired Joni Earl as its new executive director. Earl "turned around" Sound Transit and led the agency on a successful program of building high capacity transportation projects and services.

Success Breeds Strange "Partners"

Sound Transit's successes led to two instances when legislators have attempted to ride the coattails of the apparent wide popularity of light rail in the greater Seattle area to secure major funding for non-high capacity transportation purposes. Both of these unprecedented efforts originated in the State Senate.

Over a four year period, Sound Transit developed a second set of high capacity transportation projects called ST2 that was proposed to be submitted to voters in 2007. These projects included extending its light rail system north from the University of Washington to Lynnwood, south from SeaTac airport to the Kent/Des Moines area, and east from the King Street Station across Lake Washington to the Overlake area. Funding was to be provided in part by continuing the Sound Move 0.4 percent sales and use taxes and the auto rental taxes, and imposing an additional 0.5 percent sales and use tax.

A. First Instance

The first instance of legislators attempting to use the popularity of light rail to fund non-high capacity transportation purposes occurred in 2006 with the enactment of legislation relating to regional transportation in the central Puget Sound area.[g] [39] The ability of both a RTA and a regional transportation investment district (RTID) to submit ballot measures to voters was temporarily restricted while these entities worked to coordinate their ballot measures.[h] Neither type of local government was allowed to submit a ballot measure to voters until the 2007 general election.

Senators supporting highway improvements spoke openly on the floor of the Senate in favor of the legislation requiring a combined ballot proposal that would have both: (1) Authorized Sound Transit's ST2 projects and funding proposal; and (2) authorized creation of the RTID, approved the RTID plan for regional highway improvements, and imposed additional taxes to finance these highway improvements. Taxes to fund the less popular highway improvements would be "piggybacked" on top of taxes to finance more popular light rail.

Voters in the greater Seattle area failed to follow this hope, and decisively rejected the combined measure at the 2007 general election, with 44 percent approving the measure and 56 percent opposing the measure.

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g This 2006 legislation and other transportation issues are discussed in Chapter 71.

h As discussed in Chapter 30, a RTID is a unique special purpose district designed for the greater Seattle region that would generate regional tax dollars and add these dollars to the normal mix of federal and state dollars that are used to finance major freeway-type of highways in this State.

In 2008, Sound Transit submitted a ballot measure to voters authoring an almost identical set of ST2 projects and taxes that were part of the 2007 combined measure that voters rejected. Voters approved this 2008 ballot measure, with 57 percent of votes supporting the measure and 43 percent of votes opposing the measure.

This first effort of legislators to use the popularity of light rail in the greater Seattle area to finance non-high capacity transportation purposes failed.

B. Second Instance

Sound Transit has busied itself completing its Sound Move projects and beginning its ST2 projects.

In December 2012, Sound Transit embarked on planning for its next phase of high capacity transportation projects, called ST3. Sound Transit required additional voter-approved taxing authority to finance these improvements.

The Legislature's response also included its second effort at attempting to use the popularity of light rail to fund non-high capacity transportation purposes arose with the enactment of SESSB 5987 in 2015.[40] This legislation authorized a RTA that includes a county with a population of more than $1.5 million (Sound Transit) additional voter-approved taxing authority to finance Sound Transit's third set of high capacity transportation improvements, but also included new restrictions on Sound Transit:

- Precluding a RTA that imposes any of these additional taxes from receiving any state grant funds provided in the omnibus State transportation budget of 2015.[i]
- Requiring Sound Transit to implement a "regional equitable transit-oriented development strategy" and contribute at least $4 million for each of five consecutive years, i.e., at least $20 million, to support

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i Language precluding Sound Transit from being eligible for these state grants appeared as what is called "poison pill" provisions in legislative jargon. Each section of law granting additional taxing authority also included the "poison pill" provision precluding Sound Transit from being eligible for these grant funds. This left the restrictive language beyond the section veto power of the Governor.

affordable housing opportunities related to equitable transit-oriented development.

- Transferring $518 million of its new sales and use tax receipts to a newly created state Puget Sound taxpayer accountability account from which monies are transferred to counties within Sound Transit, to be used for "educational services to improve educational outcomes in early learning, K-12, and higher education." These monies must be used for the benefit of youths who are low-income, homeless, in foster care, or for other vulnerable populations.

The restrictions and requirements were demanded by the Senate as a condition of authorizing increased voter-approved taxing authority for Sound Transit. It was projected that the increased taxing authorities, if imposed at their maximum allowed rates, would generate about $15 billion over 15 years. Requiring Sound Transit to transfer these monies effectively reduces this projected revenue by 3.59 percent and thereby limits the scope of the projects that Sound Transit will be able to finance under ST3.

These legislative efforts to use the popularity of one unit of government to help finance purposes not related to that unit of governments purposes is unprecedented. In more than 40 years of observing the Legislature, the author has never witnessed similar actions against another local government.

A news article in the Seattle Weekly News describing these restrictions was entitled "Lawmakers Just Put Sound Transit Into The Education Business."[41]

NOTES:

1. RCW 81.112.030.
2. RCW 81.104.110.
3. RCW 36.93.020.
4. RCW 81.112.030(9).

5. RCW 81.112.050.
6. RCW 81.112.030(9).
7. RCW 36.93.020.
8. RCW 81.112.040(1).
9. RCW 81.112.040(2).
10. Article VI, Section 1.
11. RCW 29A.04.216.
12. *Cunningham v. Metropolitan Seattle*, No. C89-1587WD, September 6, 1990.
13. RCW 81.104.015(1).
14. RCW 81.112.080.
15. RCW 81.104.120.
16. RCW 81.104.050.
17. RCW 81.112.210 & 81.112.220.
18. RCW 81.112.080.
19. Sections 318-330, 422, & 423, and Chapter 44, Laws of 2015 3rd sp. sess.
20. RCW 81.104.150.
21. RCW 81.104.160.
22. RCW 81.104.170.
23. RCW 81.104.160.
24. Section 321, Chapter 44, Laws of 2015 3rd sp. sess.
25. RCW 81.112.080(4).
26. RCW 81.112.130.
27. RCW 39.46.110.
28. RCW 81.112.140.
29. RCW 39.46.150.
30. RCW 81.112.150.
31. Chapter 39.50 RCW.
32. RCW 81.112.150.
33. RCW 81.112.170.
34. Chapter 43, Laws of 1990, codified in Chapter 81.104 RCW.
35. Chapter 101, Laws of 1992, codified in Chapter 81.112 RCW.
36. Citizen Oversight Panel Report, “Sound Move, Year 8 – Review of Progress

Toward Achieving a Regional High Capacity Transportation System", April 7, 2005, at pages 1, 10-12, and Appendix Attachment A.

37. Sound Move, Appendix B, Financial Policies, May 31, 1996, page B-3.
38. *Pierce County v. State of Washington*, Docket No. 76534-1, December 7, 2006.
39. Chapter 311, Laws of 2006.
40. Chapter 44, Laws of 2015 3rd sp. sess.
41. Cornfield, Jerry, "Sound Transit got more than it asked for and more that it wanted," Bothell/Kenmore Reporter, July 31, 2015.

    http://www.bothell-reporter.com/opinion/319502361.html#

Chapter 30

Regional Transportation Investment Districts

A regional transportation investment district (RTID) is a federated special purpose district authorized to finance a variety of regional transportation projects in the urbanized portions of King, Pierce, and Snohomish Counties.

Legislation providing for a RTID was enacted in 2002.[1] The clear intention behind this legislation was to add new, regional funding sources to the normal federal and state funding sources used to finance major highway improvements in the greater Seattle area of central Puget Sound. This new funding source was unique. No other area in the state had ever been asked to contribute regional funding to finance highway improvements.

As discussed in Chapter 29, the Legislature enacted further legislation in 2006 relating to regional transportation in the central Puget Sound region.[2] In part, this legislation precluded a RTA (Sound Transit) from placing a ballot proposition before voters prior to the 2007 general election. This legislation required a unique, combined ballot proposition for Sound Transit and a proposed RTID, with new taxes to finance an array of highway improvements, to be presented to voters at the 2007 general election.[3]

Voters in the greater Seattle area failed to follow this hope and decisively rejected the combined measure at the 2007 general election, with 44 percent approving the measure and 56 percent opposing the measure. Interestingly, voters in this area overwhelmingly approved Sound Transit's ST2 ballot measure in 2008 to finance these same light rail improvements, with 57 percent approving the measure and 43 percent opposing the measure.

The Municipal Research and Services Center (MRSC) reports that no RTID exists in the State.[4]

Creation

The creation of a RTID involves a number of steps resembling steps taken to create a regional transit authority.

First, a county with a population of 1.5 half million or more (King County), and adjoining counties with populations of 500,000 or more (Pierce and Snohomish Counties), are required to create a Transportation Investment District Planning Committee.[5] The planning committee is an advisory body composed of members of the county legislative authorities of these counties, along with the secretary of the State Department of Transportation, or the appropriate regional administrator of the department, who is a non-voting member.

Second, the planning committee prepares a regional transportation investment plan for developing, constructing, and financing major transportation projects in the region.[6] These transportation improvements are basically improvements to highways of statewide significance, but also include related street and road projects.[7] The plan proposes creation of a regional transportation investment district within all or parts of the affected counties, identifies regional transportation projects to be financed by the RTID, and proposes an array of taxes that the RTID will impose to finance these projects. These boundaries must include at least all of the contiguous areas of these counties that are located within Sound Transit. Decisions by the planning committee may only be made by a "sixty percent weighted majority vote of the total membership" of the planning committee, with each committee member receiving a vote that is weighted in proportion to the population of the district from which he or she is elected as a county council member.[a 8]

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a For example, if each council district in one county had a population of 150,000, each council district in the second county had a population of 100,000, and each council district in the third county had a population of 50,000, then the weighted vote of each member of the governing body would be as follows: (1) Council members from the first county would have a weighted vote of 3; (2) council members from the second county would have a weighted vote of 2; and (3) council members from the third county would have a weighted vote of 1.

Third, the proposed regional transportation investment plan was submitted to the county legislative authorities of these counties for their review and either approval or rejection. If a county legislative authority rejects the plan, the planning committee may alter the plan by removing projects located in the rejecting county, redefining the proposed RTID to only include those counties that approved the plan, and resubmit the revised plan to the county legislative authorities of the remaining counties.

Fourth, the county legislative authorities that approve a plan, or a revised plan, submits a single ballot proposition to voters of the area proposed to be included in the RTID, authorizing creation of the RTID, approval of the plan, and imposition of taxes described in the plan.[9] Approval is by a simple majority vote of district voters voting on the ballot proposition.

The planning committee may revise the plan for submission to voters again if voters reject the proposal.[10]

The 2006 legislation authorized any of the three counties to create a RTID within its boundaries following this procedure, if a multi-county RTID is not created by December 1, 2007.[11]

The proposed creation of a RTID is not subject to potential review by a boundary review board.[12]

Boundary Changes

The governing body of a RTID may submit a ballot proposition to voters of an area that authorizes adding the area to the RTID, approves the plan, and approves the revenues or taxes imposed by the RTID.[13]

A RTID is dissolved within thirty days of completing the construction of its authorized construction projects.[14]

These boundary changes are not subject to potential review by a boundary review board.

Governing Body and Elections

The governing body of a RTID consists of the members of the county legislative authorities of the counties included in a RTID, serving in *ex officio* capacities, and the Secretary of the Department of Transportation (or applicable regional administrator of the department) who serves a non-voting member.[15] A modification of the plan may be placed before the voters by at least a 60 percent majority of the weighted vote of the total members of the RTID governing body, or by majority action of each county legislative authority.[16]

Normal franchise rights exist in RTIDs and the voters of a RTID consist of all registered voters residing in the RTID.[17] County auditors conduct all elections for RTIDs.[18]

Powers

A RTID is authorized to construct regional transportation projects included in the plan approved by voters. The definition of eligible projects is quite narrow and complicated. Eligible projects include:

- Expanding the capacity of existing state or federal highways that are designated as highways of statewide significance by the State Transportation Commission or the Legislature. Most of the major highways in the State have been designated as highways of statewide significance. Expansions include adding new lanes, extensions, approaches, high-occupancy vehicle lanes, flyover ramps, park and ride lots, bus pullouts, signalization and other means of transportation management.
- Repairing or replacing lanes on an existing state or federal highway that was damaged by an event declared by the governor as an emergency prior to January 1, 2002. This is the Alaskan Way viaduct portion of Highway 99 running along the waterfront in Seattle.
- Making capital improvements to city streets, county roads, and highways intersecting with a state or federal highway that has been designated as a

highway of statewide significance by the State Transportation Commission or the Legislature. This type of project is subject to a number of limitations, including a restriction that they may not exceed 10 percent of the total revenues of the RTID and may not exceed $1 billion.

- Acquiring buses, as well as vans to be used for van pools, for use on state or federal highways designated as highways of statewide significance by the State Transportation Commission or the Legislature.
- Operating expenses for tolled facilities backed by bond contracts.
- Operating expenses for traffic mitigation relating to construction mitigation arising from specific RTID projects.[19]

The plan must include a proposal for the full funding of a replacement bridge for State Route 520 that high occupancy vehicle lanes.[20] This is the northern floating bridge over Lake Washington.

A RTID may not own real property and may hire no more than 10 employees.[21]

The governing body of a RTID may alter its plan and the county legislative authorities of the counties included in the RTID may submit the revised plan to voters of the counties for their approval or rejection.[22]

Finances

RTIDs may receive financing from a variety of sources, including: (1) A wide variety of voter-approved excise taxes; (2) debt; (3) tolls; and (4) various other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of RTID finances. Some details about

indebtedness that are included in Chapter 63 are not repeated below.

A. Excise Taxes

A RTID may impose any of the following taxes, if specified in a regional transportation investment plan that provides for the taxes approved by voters:

- A sales and use tax up to 0.1 percent;[23]
- An annual vehicle license tax up to $100 per vehicle;[24]
- A commercial parking tax with no limitation on the maximum rate of this tax;[25]
- An annual excise tax on motor vehicles from 0.3 percent to 0.8 percent of the value of the vehicle;[26]
- A motor vehicle fuel tax equal to 10 percent of the State's motor vehicle fuel tax;[b] [27] and
- An excise tax on employers not exceeding $2 per employee per month.[28]

An equity requirement exists.[29] Tax revenues generated in a county included in the regional transportation investment district must be expended for projects generally benefiting that county in proportion to the general level of tax revenues generated within that county. This is similar to an equity requirement for a RTA. The 2006 legislation allows the RTID to enter into an agreement with the RTA in which it is located (Sound Transit), for the equity agreements of both agencies to apply to the combined revenues of both agencies.

B. Debt Proceeds

RTIDs may receive monies from debt proceeds.

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b Counties may also impose a voter approved motor vehicle fuel tax equal to 10 percent of the State's motor vehicle fuel tax. (RCW 82.80.010 and 82.80.110). However, a regional transportation improvement district may not impose this tax if it is located in a county that imposes this tax.

A RTID may incur general indebtedness and issue general obligation bonds without voter approval, not to exceed a total amount equal to 1.5 percent of the value of taxable property within its boundaries, and a total amount not exceeding five percent of the value of taxable property in the RTID if authorized by a three-fifths vote of metro voters voting on the proposition.[30] General obligation bonds may have a maximum term of 40 years.[31]

A RTID may also issue revenue bonds payable from its tolls with a maximum term of 40 years.[32] Revenue bonds are a type of revenue obligation that are not subject to indebtedness limitations.

A RTID may issue a variety of short term obligations, including notes and warrants.[33]

C. Tolls

A regional transportation investment plan may also authorize the RTID to impose tolls on state highways, local arteries, or regional arteries constructed or reconstructed with funds provided by a RTID, as well as on either Lake Washington floating bridges.[34]

D. Other

RTIDs, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

NOTES:

1. Chapter 56, Laws of 2002, codified in Chapter 36.120 RCW.
2. Chapter 311, Laws of 2006.
3. Section 12, Chapter 311, Laws of 2006, which amended RCW 81.112.030.
4. "Washington Special Purpose Districts Overview," *id*.
5. RCW 36.120.030.
6. RCW 36.120.040.
7. RCW 36.120.020(8).

8. RCW 36.120.030(6) & 36.120.020(9).
9. RCW 36.120.040(3).
10. RCW 36.120.040(8).
11. Section 5(8), Chapter 311, Laws of 2006, which added subsection (8) to RCW 36.120.030.
12. RCW 36.93.020.
13. Section 5, Chapter 311, Laws of 2006, which added subsection (1)(b) to RCW 36.120.030.
14. RCW 36.120.170.
15. RCW 36.120.090(1).
16. RCW 36.120.090(2).
17. Article VI, Section 1.
18. RCW 29A.04.216.
19. RCW 36.120.020(3) & (8).
20. Section 7, Chapter 311, Laws of 2006.
21. RCW 36.120.110(1)(f).
22. RCW 36.120.090(2).
23. RCW 36.120.050(1)(a).
24. RCW 36.120.050(1)(b).
25. RCW 36.120.050(1)(c)
26. RCW 36.120.050(1)(d).
27. RCW 36.120.050(1)(e)
28. RCW 36.120.050(1)(f).
29. RCW 36.120.040(4).
30. RCW 36.120.130.
31. RCW 39.46.110
32. RCW 36.120.130(2) & 39.46.150.
33. Chapter 39.50 RCW.
34. RCW 36.120.050(1)(g) & Section 20, Chapter 311, Laws of 2006.

Chapter 31

Transportation Benefit Districts

A transportation benefit district (TBD) is a special purpose district authorized to finance the construction and operation of transportation projects that are of statewide or regional significance.

Legislation enacted in 1987 authorized creation of TBDs.[a] [1] However, these laws were fundamentally altered by legislation enacted in 2005.[2] This 2005 legislation:

- Altered the geographic size of TBDs. Under the 1987 law, a TBD would have relatively small geographic boundaries and would be smaller than the sponsoring or creating county or city. Under the 2005 law, a TBD would be much larger and is coterminous with the boundaries of the entity or entities that create it. A TBD could be created by a single city or a single county, or could be created by two or more cities or counties.[b]
- Altered the nature of TBDs. Under the 1987 law, a TBD would be a subdivision of the county or city that

a Under this legislation, any county or city was allowed to create one or more TBDs to finance street, road, or highway improvements. A TBD was a subdivision of the county or city that created it and members of the creating or sponsoring county or city governing body acted *ex officio* as members of the TBD's governing body. The clear purpose of this 1987 legislation was to provide a unit of government capable of financing street, road, or highway improvements in a relatively small geographic area, in lieu of having a county or city fund these improvements throughout its boundaries. Creating a separate unit of government to impose property taxes for this purpose avoided a violation of the Uniformity Clause, if the geographically larger county or city were to impose property taxes within a portion of its boundaries. This 1987 legislation authorizing TBDs closely resembled legislation enacted in 1983 allowing service districts to be formed to finance street, road, and highway improvements. (Chapter 130, Laws of 1983, codified in Chapter 36.83 RCW. That legislation was altered by Chapter 292, Laws of 1996.) A discussion of service districts is found in Chapter 42.

b These new provisions may have voided at least one TBD that was created under the 1987 laws. Prior to enactment of this 2005 legislation, Whatcom County had created a TBD in a small portion of the county known as the Port Roberts peninsula. The Legislature should clarify this situation.

created it. Under the 2005 law, a TBD would be either a subdivision of the entity that created it or a federation of the entities that created it.

- Altered the purpose of TBDs. Under the 1987 law, a TBD basically financed the construction of local streets and roads. Under the 2005 law, a TBD basically finances the construction and operation of transportation facilities of statewide or regional significance, including highways and public transportation facilities.
- Precluded the creation of a TBD in King, Pierce, or Snohomish Counties.
- Expanded the voter approved taxes that a TBD could impose to include sales and use taxes and annual vehicle fees.

The 2005 amendments altered TBDs to become somewhat similar entities to a regional transportation investment district (RTID) that is allowed to be formed in the central Puget Sound area.[c] Legislation was enacted in 2006 that, in part, authorized King, Pierce, and Snohomish Counties to create TBDs after November 30, 2007.[3]

The Municipal Research and Services Center (MRSC) reports that 47 transportation benefit districts exist in the State.[4]

Creation

A sponsoring county or city legislative authority may create a TBD by ordinance if, after holding a public hearing on the matter, the legislative body finds that it is in the public interest to create the TBD.[5] As discussed below, a TBD has boundaries coterminous with the boundaries of the sponsoring county or city. A TBD may also be created occupying an area composed of two or more sponsoring counties or cities, as well as one or more port districts,

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c RTIDs are discussed in Chapter 30. Basically, a RTID differs from a TBD, by: (1) Being required to be a regional federation, rather than having the flexibility to be formed as either a subdivision of a county or city to finance transportation within the city or county or a regional federation to finance transportation improvements throughout the region; and (2) only being authorized to finance a major highway improvements, along with buses and vans used in corridors of highways of statewide significance.

transportation authorities, or public transportation benefit areas, if the legislative authorities of the participating jurisdictions agree to inclusion under an interlocal agreement.[6] Such a TBD would occupy the combined area of these jurisdictions.

The ordinance creating the TBD specifies the boundaries of the transportation benefit district and the transportation improvements it proposes to make, which are referred to as the "functions or activities to be exercised or funded".[7]

The proposed creation of a transportation benefit district is not subject to potential review by a boundary review board.[8]

Boundary Changes

The legislative authority or authorities creating a transportation benefit district may dissolve the TBD or may modify the boundaries of the TBD by adding another jurisdiction or removing a jurisdiction from its boundaries.[9] These actions are taken following the same procedure by which a TBD is created.

The 2005 legislation provided that a TBD automatically dissolves itself within 30 days after all the debt service is paid or the transportation projects are completed and all are costs paid.[10]

These proposed boundary changes are not subject to potential review by a boundary review board.[11]

Governing Body and Elections

The members of the county or city legislative authority or authorities creating a TBD serve *ex officio* as members of the governing body of the TBD.[12]

Normal franchise rights exist in TBDs and the voters of a TBD consist of all registered voters residing in the TBD.[13] County auditors conduct all TBD elections.[14]

Powers

As the result of changes in the 2005 legislation, the basic purpose of a TBD is to finance the cost of constructing and maintaining transportation projects and facilities that are of statewide or regional significance, as detailed in the transportation plan of a state or regional transportation planning organization.[15] This includes the construction and operation of major highways, streets or roads of statewide or regional significance, high capacity transportation, and public transportation. No more than 40 percent of a TBD's revenues may be expended on either: (1) Highways, streets, or roads that are only of regional significance, as distinguished from being of statewide significance; or (2) new highways that intersect with a highway of statewide significance.

The transportation improvements that a TBD may construct or operate are detailed in the ordinance or ordinances adopted by the sponsoring legislative authority or authorities creating or modifying the TBD.[16] In selecting these transportation improvements, the sponsoring legislative authority or authorities must consider a variety of factors, including:

- Improved safety and reducing the risk of transportation facility failure;
- Improved travel time;
- Improved air quality;
- Increased daily and peak period trip capacity;
- Improved "modal connectivity";
- Improved freight mobility;
- Cost-effectiveness; and
- Optimal performance of the system over time.[d] [17]

A TBD does not own the improvements it finances but instead these improvements are owned by the State, the sponsoring county or city, or participating port district or transit district.[18]

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d Literally, this statutory language requires the governing body of a TBD to consider these factors. However, a TBD does not select the projects that it finances. These projects are specified by the sponsoring legislative authority or authorities in the ordinance creating the TBD.

The sponsoring legislative authority or authorities creating a TBD may expand or otherwise modify the transportation improvements the TBD finances by following the same procedure used to create the TBD.[19]

TBDs, as other local governments, may condemn property for their purposes.[20]

Finances

TBDs receive financing from a variety of sources, including: (1) Voter-approved excess property tax levies; (2) voter-approved sales and use taxes; (3) voter-approved annual vehicle license fees; (4) voter-approved impact fees; (5) special assessments; (6) vehicle tolls; (7) debt proceeds; and (8) various other sources.

The 2005 legislation provides that TBDs must prepare annual reports describing the status of their transportation improvement costs, expenditures, revenues, and construction schedules.[21] They must also develop a "material change policy" to address major plan changes affecting project delivery or the ability to finance its projects. A TBD must hold a public hearing to solicit public comment if a transportation improvement cost exceeds its original finance plan by more than 20 percent.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of transportation benefit district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Excess Property Tax Levies

A TBD may impose voter-approved, excess property tax levies, including both single year levies for its general purposes and multi-year levies to retire general obligation bonds issued for capital purposes.[22] The ballot proposition authorizing either type of excess levy must be approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

B. Sales and Use Taxes

A TBD may impose voter-approved sales and use taxes of up to 0.2 percent of the value of the selling price in the case of a sales tax and up to 0.2 percent of the value of the article used in the case of a use tax.[23] Sales and use taxes may only be imposed for a ten year period, but voters may approve a ballot proposition extending the taxes for an additional ten year-period. However, voter approved sales and use taxes initially imposed after July 1, 2010, may be extended for ten additional years without voter approval if the tax receipts are dedicated to repaying indebtedness. These sales and use taxes are in addition to other sales and use taxes and are imposed on the same taxable occurrences within the TBD's boundaries as sales and use taxes imposed by the State.

C. Annual Vehicle Fees

A TBD may impose voter-approved annual vehicle fees of up to $100 per vehicle registered within the TBD that is subject to license tabs and gross weight fees with unladen weights of 6,000 pounds or less.[24] Various vehicles are exempt from these fees, including snowmobiles, farm tractors, off-road and nonhighway vehicles, and commercial vehicles registered under an international registration plan. The fees may not be collected until at least six months after voters approve the ballot proposition authorizing the fees. However, a TBD that includes all of the territory of a county or city may impose such annual vehicle fees of up to $20 per vehicle by a simple majority vote of its governing body.[25] These nonvoter approved fees are the most common funding source imposed by TBDs.

D. Impact Fees

A TBD may impose voter-approved impact fees or charges on the construction or reconstruction of commercial or industrial buildings or the development, subdivision, classification, or reclassification of land for commercial purposes within its boundaries.[26] However, a TBD that includes all of the territory of a county or city may impose these fees by a simple majority vote of its governing body.[27] Impact fees must be reasonably necessary as a result of impacts arising from the development, construction, or classification or reclassification of the land on identified transportation needs.

E. Special Assessments

A transportation benefit district may finance local bridge and road improvements by creating a local improvement district (LID) and imposing special assessments on benefitted property located within the LID.[28] City statutes are followed to create LIDs and impose special assessments.

F. Vehicle Tolls

A TBD may impose voter-approved vehicle tolls on state routes, city streets, or county roads within its boundaries.[29] Tolls on state routes may only be imposed if authorized by the Legislature. The tolls may only be sufficient to finance the functions and activities that the TBD is authorized to provide or fund in the ordinance creating or modifying the TBD.

G. Debt Proceeds

A TBD may incur general indebtedness and issue general obligation (G.O.) bonds up to 1.5 percent of the value of taxable property within its boundaries without voter approval and a total of five percent of the value of taxable property within its boundaries, if voters approve a ballot proposition authorizing the indebtedness by at least a three-fifths vote of voters voting on the proposition.[30] The maximum term of G.O. bonds is 40 years.

A TBD may also issue LID bonds payable from special assessments imposed within a LID.[31] City statutes are followed to issue these bonds. LID bonds are a type of revenue obligation that are not subject to indebtedness limitations.

A TBD may also issue revenue bonds with maturities of up to 40 years.[32] The revenue bonds would be payable from the tools, impact fees, or vehicle fees imposed by the TBD.

Transportation benefit districts may also issue a variety of short term obligations, including notes and warrants.[33]

H. Other

Transportation benefit districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.[34]

NOTES:

1. Chapter 327, Laws of 1987, which was codified as Chapter 36.73 RCW.
2. Chapter 336, Laws of 2005.
3. Section 25, Chapter 311, Laws of 2006, amending RCW 36.73.020.
4. "Washington Special Purpose Districts Overview," *id*.
5. RCW 36.73.020 & 36.73.050.
6. RCW 36.73.020(2).
7. RCW 36.73.050(2).
8. RCW 36.93.020.
9. RCW 36.73.050(2).
10. Section 19, Chapter 336, Laws of 2005, codified as RCW 36.73.170.
11. RCW 36.93.020.
12. RCW 36.73.020 & 35.21.225.
13. Article VI, Section 1.
14. Chapter 29A.04.216.
15. Section 1(3), Chapter 336, Laws of 2005, which is codified as RCW 36.73.015(3); and RCW 36.73.020.
16. RCW 36.73.050.
17. RCW 36.73.020(2).
18. RCW 36.73.020(1).
19. RCW 36.73.050.
20. RCW 36.73.130.
21. Section 18(2), Chapter 336, Laws of 2005, which is codified as RCW 36.73.160(2).
22. RCW 36.73.060.

23. Section 15, Chapter 336, Laws of 2005, which is codified as RCW 82.14.0455.
24. RCW 82.80.140.
25. RCW 36.73.065.
26. RCW 36.73.120.
27. RCW 36.73.065.
28. RCW 36.73.080.
29. RCW 36.73.040(3)(d) & 36.73.065.
30. RCW 36.73.070.
31. RCW 36.73.080.
32. RCW 36.73.070(4) & 39.46.150.
33. Chapter 39.50 RCW.
34. RCW 36.73.040(2).

Chapter 32

Air Pollution Control Authorities

Air pollution control authorities regulate air pollution.

The Washington Clean Air Act, enacted in 1967, provides a coordinated, two-level system of regulating air pollution with state direction and local implementation, through newly authorized air pollution control authorities.[1] Under this legislation, an inactivated air pollution control authority is created by law in each county that may be activated by action of the county legislative authority. The Department of Ecology (DOE) adopts statewide air quality standards and emission standards that an activated local air pollution control authority enforces in the county. DOE enforces these standards in the county if the county air pollution control authority has not activated or, if activated, is not adequately enforcing these standards.

This novel county/state relationship somewhat resembles the system of governance in Territorial years when no territory agencies existed and counties functioned as subdivisions of the territory implementing territorial policy, with the modern twist that a state agency would enforce the standards if the local authority is not activated.

The State provides funding for local air pollution control authorities through grants from the state Air Pollution Control Account and it also provides technical assistance to local air pollution control authorities as well.[3] DOE enforces air quality standards and emission standards, except when a local air pollution control authority enforces the state standards or more stringent standards.[4] However, DOE may declare local air pollution control regulations null and void and become the sole agency to make and enforce air

pollution control regulations within an area, after issuing a report on the inadequacy of local regulations and enforcement.[5]

An air pollution control authority would be classified as a regional government that is a partial subdivision of the State and the county and cities within which the authority is located. Multicounty air pollution control authorities may be created that would be classified as regional governments that are partial subdivisions of the State and the counties and the cities within the counties in which the authorities are located. Express statutory language declares that an air pollution control authority "shall not be deemed to be a state agency."[6]

The Municipal Research and Services Center (MRSC) reports that seven air pollution control authorities have been activated in the State.[7] Three single county air pollution control authorities were activated (in Spokane, Yakima and Benton counties) and four intercounty air pollution control authorities were created (Northwest Clean Air Agency, Puget Sound Clean Air Agency, Southwest Clean Air Agency, and the Olympic Region Clean Air Agency). DOE regulates air pollution in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, and Whitman counties.[8]

Creation

State law creates an inactive air pollution control authority in each of the State's 39 counties.[9] A county legislative authority may activate its air pollution control authority after holding a public hearing on this issue. This device of creating an inactive special purpose district, that may be activated by local action, resembles laws providing for housing authorities.

Activation of an air pollution control authority is initiated by action of the county legislative authority on its own motion or upon the filing of a petition calling for the activation that has been signed by 100 property owners in the county. The local authority is activated if the county legislative authority determines that: (1) Air pollution exists in the county or is likely to occur; and (2) county or city ordinances or resolutions, or their enforcement, are not adequate to prevent or control air pollution.[10] An air pollution control authority is a

countywide entity, including both the unincorporated area of the county and all incorporated areas within the county.

As an alternative, two or more adjacently located counties may adopt a joint resolution creating a multicounty air pollution control authority, after holding hearings on the issue and making the findings required to activate an air pollution control authority.[11]

DOE, after holding a public hearing on air pollution in a local area, may recommend activation of an air pollution control authority or may exercise the powers of an authority within the area.[12]

Creation of an air pollution control authority is not subject to review by a boundary review board.

Boundary Changes

An air pollution control authority may be deactivated.[13] In addition, a county may withdraw from a multicounty air pollution control authority if the county wishes "to provide for air pollution quality protection and regulation by an alternative air quality authority."[14]

Boundary changes by an air pollution control authority are not subject to review by a boundary review board.

Governing Body and Elections

The governing body of an air pollution control authority is a board of directors composed of a varying number of directors as follows:

- In a county with a population of less than 400,000, the board of directors is composed of five directors: two appointed by the county legislative authority; two appointed by the city selection committee, at least one of whom represents the city with the most population; and one selected by the other four directors who is a member of a governing body of the county or one of the cities in the county, or a private citizen residing in the county.
- In a county with a population of 400,000 or more, the board of directors is composed of five directors: one

appointed by each of the two cities with the greatest populations; one appointed by the city selection committee to represent the other cities; one appointed by the county legislative authority; and one selected by the other four directors who is a resident of the county with a demonstrated significant professional experience in public health, air quality protection, or meteorology.

- In a multicounty air pollution control authority occupying from two to five counties, the board of directors is composed as follows: one member is appointed by the county legislative authority of each county and one member is designated by the mayor and council of the city with the most population in each county. These directors select an additional director who is a member of a governing body of the county or one of the cities in the county, or a private citizen residing in the county.
- In a multicounty air pollution control authority occupying six or more counties, the board of directors is composed as follows: one member is appointed by the county legislative authority of each county and one member is appointed by the mayor and council of each of the three largest cities within the authority's jurisdiction. If this results in an even-number of directors, the board members select an additional director who is a member of a governing body of the county or one of the cities in the county, or a private citizen residing in the county.[15]

The city selection committee in each county within an activated authority is composed of the mayor of each city within the county, but not including the mayor of a city in that county with a designated appointee on the board.[16]

Board members serve four year terms. If an appointee is unable to serve a full term, a successor is appointed by the same method as the vacant position.

No provision is made for compensation to be paid to board members or for board members to be reimbursed for their expenses incurred on behalf of the authority.

No express provision is made for an electorate, but regular franchise rights exist in an air pollution control authority, or multicounty air pollution control authority, since voters of the authority may authorize the authority to impose excess property tax levies. County auditors conduct these elections.

Powers

Activated air pollution control authorities, and multicounty air pollution control authorities that have been created, are declared to be municipal corporations.[17]

They are authorized to adopt comprehensive plans to: (1) Prevent, abate and control air pollution within their boundaries; (2) conduct studies; (3) require access to books of entities relating to the control, recovery or release of air contaminants causing air pollution; and (4) collect and disseminate information and conduct training programs on air pollution.[18] An air pollution control authority may issue subpoenas.[19]

An authority may require that it be provided with a notice of the establishment of any proposed new source of air pollution, other than a single family dwelling, duplex or *de minimis* source, and require the party pay a fee with the notice.[20] The authority issues an order approving the new source or sources, if the new source or sources meet applicable rules and regulations, or may issue an order denying permission, if the new source or sources do not meet applicable rules and regulations. Prior to issuing an order of approval, a review must be made by a professional engineer or staff supervised by a professional engineer who is employed by the authority. An authority may petition DOE for the power to issue renewable permits “for the operation of air contaminant sources”.[21]

DOE may hold a hearing to determine if an air pollution control authority or multicounty air pollution control authority has adopted an effective air pollution control program and if DOE determines that a local program is not adequate, it shall issue a report with its

recommendations and guidelines.[22] In addition, DOE may nullify any local rules or ordinances relating to controlling or preventing air pollution, at which time the Department becomes the sole entity with the authority to make and enforce air pollution regulations within the geographical area of the authority or multicounty authority and exercises all of a local authority's powers within that area.[23]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of air pollution control authority finances. Some details about property tax levies that are included in Chapter 63 are not repeated below.

An authority adopts an annual budget, which includes an estimate of revenues that will be collected in the budget year (including grants from the State and federal government) as well as supplemental income it requires that will be paid to it by its component county, or counties, and component cities.[24] The local board determines the portion of its required supplemental income that must be paid by the component entities based upon either or both of: (1) The proportional assessed valuation of each component entity, with a county's assessed valuation being the assessed valuation of its unincorporated area for this purpose; or (2) the proportional population of each component entity, with a county's population being the population of its unincorporated area for this purpose.[25]

An authority imposes fees for new sources of air pollution and, if authorized by DOE, imposes fees for continuing air pollution permits.[26] Cost reimbursement agreements may be made with applicants for permits.[27]

An authority may also impose single year excess property tax levies, not exceeding a rate of 25¢ per $1000 of assessed valuation within its boundaries, if a ballot proposition authorizing the levy is approved by at least a three fifths vote of voters voting on the proposition.[28]

An authority may also borrow money from its component county or counties and cities.[29]

Authorities also receive grants from the state Air Pollution Control Account and federal government for its purposes.[30]

NOTES:

1. Chapter 238, Laws of 1967, which are codified as Chapter 70.94 RCW.

3. RCW 70.94.015 & 70.94.035.

4. RCW 70.94.331.

5. RCW 70.94.410.

6. RCW 70.94.141.

7. "Washington Special Purpose Districts Overview," *id.*

8. http://www.ecy.wa.gov/programs/air/local.html

9. RCW 70.94.053.

10. RCW 70.94.055.

11. RCW 70.94.057 & 70.94.055.

12. RCW 70.94.390.

13. RCW 70.94.260.

14. RCW 70.94.262.

15. RCW 70.94.100.

16. RCW 70.94.110.

17. RCW 70.94.081.

18. RCW 70.94.141.

19. RCW 70.94.142.

20. RCW 70.94.152.
21. RCW 70.94.161.
22. RCW 70.94.405.
23. RCW 70.94.410.
24. RCW 70.94.092.
25. RCW 70.94.093.
26. RCW 70.94.152 & 70.94.161.
27. RCW 70.94.085.
28. RCW 70.94.091.
29. RCW 70.94.096.
30. RCW 70.94.015, 70.94.081, & 70.94.143.

Chapter 33

County Transportation Authorities

County transportation authorities are authorized to provide public transportation, which would include rail or bus service, but not chartered buses or sightseeing buses.

Legislation enacted in 1974 authorized the creation of county transportation authorities.[a] [1] A county transportation authority would be classified as a regional government or federation of a county and the cities within the county.

The Legislature should review county transportation authority statutes and, among other issues, define "city" to include both a city and a town, and consider whether or not a county transportation authority should be authorized to borrow money and issue bonds.

The Municipal Research and Services Center (MRSC) reports that two county transportation authorities exist in the State.[2]

Creation

The county legislative authority of any county may adopt a resolution creating a county transportation authority if, as of May 5, 1974, a metropolitan municipal corporation providing public transportation did not exist in the county.[3] King County was only county with such

a Although statutes providing for these special purpose districts refer to "county transportation authorities," the Code Reviser entitled the chapter of law providing for these entities as "county public transportation authorities."

a metropolitan municipal corporation on that date that provided public transportation.

Creation of a county transportation authority is not subject to review by a boundary review board.

Boundary Changes

No provision is made for altering the boundaries of a county transportation authority.

However, an inactive county transportation authority would be subject to dissolution under two general statutes. First, the members of the governing body of a county transportation authority may petition the superior court to dissolve the authority.[4] Second, the county legislative authority may dissolve an inactive special purpose.[5]

Dissolution of a county transportation authority is not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a county transportation authority is composed of seven members as follows: (1) Three members of the county legislative authority, selected by the county legislative authority; (2) the mayor of the most populous city in the county; (3) the mayor of a city in the county with a population of less than five thousand, selected by the mayors of all such cities in the county; (4) the mayor of a city in the county with a population of greater than five thousand, selected by the mayors of such cities, but if no such city exists in the county, then a mayor any city in the county selected by the mayors of all the cities in the county; and (5) a nonvoting member recommended by the labor organization or organizations representing employees of the county transportation authority, who is appointed by majority vote of the other members of the governing body.[6]

The member representing organized labor is excluded from any executive session where negotiations with labor organizations are discussed.

Members of the governing body do not receive compensation, other than a mayor whose office is not a full time position, who receives $100 for each day attending official meetings of the authority.

Powers

A county transportation authority may provide public transportation, which is defined as the transportation of passengers and their incidental baggage by means other than by chartered bus or sightseeing bus, along with terminals, parking facilities and equipment necessary to provide such service.[7] This includes authority to provide a "rail fixed guideway system," as well as transportation of "persons with special needs."[8] An authority may also contract for the provision of ambulance services for transporting sick or injured persons.

A county transportation authority, along with other transit authorities, may provide high capacity transportation systems under Chapter 81.104 RCW.

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of county transportation authority finances. Some details about indebtedness that are included in Chapter 63 are not repeated below.

A county transportation authority may impose rates, tolls, fares and charges for providing service.[9]

In addition, a county transportation authority may impose any or all of the following excise taxes, if voters of the authority approve a ballot proposition authorizing the taxes:

- Sales and use taxes of up to 1.0 percent;
- Excise taxes on persons within its jurisdiction not exceeding one dollar per month per housing unit;
- Business and occupation tax for the privilege of doing

> business within the authority, with no limitation on the rate of such taxes.[10]

A county transportation authority may impose taxes under Chapter 81.101 RCW if the authority is providing high capacity transportation systems. These taxes include additional sale and use taxes, an employer tax, and a sales tax on automobile rentals.

No express provisions are made for a county transportation authority to issue bonds or borrow money. However, general provisions relating to the provision of public transportation systems authorize a variety of local governments (including county transportation authorities) the power to "issue general obligation bonds" for "public mass transportation capital purposes."[11] No express statute provides for indebtedness limitations for county transportation authorities. However, general law provides that local governmental taxing authorities without express indebtedness limitations, may incur non-voter approved, councilmanic, general indebtedness in an amount not exceeding 3/8ths of one percent of the value of taxable property within its boundaries, and a total of 1.25 percent of the value of taxable property within its boundaries, when authorized by a supermajority vote of voters voting no a ballot proposition authorizing such indebtedness.[12]

NOTES:

1. Chapter 167, Laws of 1974, ex. sess., codified as Chapter 36.57 RCW.

2. "Washington Special Purpose District Overview," *id*. MRSC, following the lead of the Code Reviser in entitling the chapter of law providing for these special purpose districts, lists these entities as county public transportation authorities.

3. RCW 36.57.020 & 36.57.030.

4. Chapter 53.48 RCW.

5. Chapter 36.96 RCW.

6. RCW 36.57.030.

7. RCW 36.57.040 & 36.57.010.

8. RCW 36.57.120 & 36.57.130.

9. RCW 36.57.040.

10. RCW 35.95.040 & 82.14.045.

11. RCW 35.58.2721.

12. RCW 39.36.020.

Chapter 34

Cultural Arts, Stadium and Convention Districts

Cultural arts, stadium and convention districts are authorized to attract and encourage economic growth by providing cultural arts facilities, stadiums, and convention centers.

Legislation enacted in 1982 authorized the creation of these special purpose districts.[1]

A cultural arts, stadium and convention district would be classified as a subdivision of the county, if the district only includes unincorporated territory, or would be classified as a regional government that is a federation of the county or counties and cities, with territory included in the district.

The Municipal Research and Services Center (MRSC) does not report any cultural arts, stadium and convention districts as existing in the State.[2]

Creation

The process to create a cultural arts, stadium and convention district is initiated by:

- A county legislative authority adopting a resolution proposing creation of the district and describing the proposed boundaries; or

- The governing bodies of two or more cities, located in the same county, adopting resolutions proposing creation of the district and describing its proposed boundaries; or
- The filing of a petition with a county legislative authority that calls for the creation of the district, describes the proposed boundaries, and has been signed by at least 10 percent of the registered voters residing in the proposed district at the last general election.[3]

A hearing on the proposal is held by the county legislative authority, even if the process to create the district is initiated by resolutions of two or more cities. The county legislative authority must delete a city from the proposed district, if the city files a petition requesting its deletion, or may otherwise delete territory on its own authority. Additional areas may be included in the proposed district, but only if a subsequent hearing is held on creating the district with expanded boundaries. Only an entire city may be included in the district and the boundaries of the district must follow school district or community college boundaries as far as is practical.

A ballot proposition authorizing the proposed district is submitted to the voters of the proposed district for their approval or rejection. It appears that the county legislative authority possesses the authority to deny the petition, since the ballot proposition is submitted to voters after the county legislative authority adopts a resolution describing the proposed boundaries of the district and finding that creation of the district is both in the public interest, and the area included in the proposed district "can reasonably be expected to benefit from its creation."

The district is created if the ballot measure is approved by a simple majority vote of voters voting on the proposition.

A district may also be formed that includes territory located in more than one county, but the process to initiate creation of such a district may only be initiated by joint action of the county legislative authorities.[4]

Creation of a district is not subject to review by a boundary review board.

Boundary Changes

Territory contiguously located to a district may be annexed into the district if, after the governing body of the district adopts a resolution calling for the annexation, a ballot proposition authorizing the annexation is approved by a simple majority vote of voters of the area proposed to be annexed who vote on the proposition.[5]

A district may be dissolved and its affairs liquidated, if voters of the district approve a ballot proposition to dissolve the district that has been placed on the ballot by: (1) Resolution of the district's governing body; (2) resolution of the county legislative authority or authorities of the county or counties in with territory in the district, and a resolution of the council of a component city within the district; or (3) a petition calling for the election, signed by at least ten percent of the registered voters residing in the district, is filed with the county auditor of the county in which the largest portion of the district is located.[6] No provision details the vote required to dissolve a district, so presumably a simple majority vote of voters voting on the proposition favoring the dissolution would dissolve the district.

A district may also be dissolved if a petition calling for the dissolution signed by at least two-thirds of the governing bodies with representatives on the district's governing body is filed with the superior court of any the county with territory in the district. Procedures for dissolving a port district under RCW 53.48.030 through 53.48.120 are followed under this method of dissolution, except that any assets remaining after all costs and expenses have been paid are divided among the county or counties, and component cities within the district "on a per capita basis." Presumably, the population of a county would be the population of the unincorporated area within the county that is included in the district.

Boundary changes of a district are not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a cultural arts, stadium and convention district is composed of up to nine members who are selected as detailed in the resolution, placing the ballot measure authoring creation of the district on the ballot.[7] Members of the governing body must be a council member or mayor of a city included in the district, a member of a county legislative authority with territory included in the district, or a county executive of such a county operating under a home rule charter. Additional, nonvoting, members may be included on the governing body consisting of elected officials and appointed officials of counties, cities, port districts, public school districts and community college districts with territory in the district.

Members of the governing body do not receive compensation. However, the governing body may provide for its members who are not full-time elected officials to be reimbursed for attending meetings of the district or engaging in other district business.

Regular franchise rights exist in a cultural arts, stadium and convention district and elections are run by county auditors.

Powers

A cultural arts, stadium and convention district is authorized to provide, construct and operate the types of facilities included in its name – cultural arts facilities, stadiums and convention facilities, including portable and mobile facilities and parking facilities necessary for passenger and vehicular access to these facilities.[8]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of cultural arts, stadium, and convention center district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A cultural arts, stadium and convention district may impose rates and charges for use of its facilities and may accept gifts and grants.[9]

It may issue revenue bonds payable from its operating revenues.[10]

A cultural arts, stadium and convention district may also issue councilmanic, non-voter approved general obligation bonds for capital purposes only, not exceeding an amount equal to three-eighths of one percent of the value of taxable property within its boundaries.[11] These councilmanic general obligation bonds would not be as secure as councilmanic general obligation bonds issued by most local governments, which are authorized to impose taxes. However, such a district is authorized to issue voter approved general obligation bonds for capital purposes not exceeding 0.75 percent of the value of taxable property within its boundaries, and impose voter approved excess property tax levies to retire these bonds, if a ballot proposition authorizing the indebtedness and excess levies is approved by a supermajority vote of voters voting on the ballot proposition.[12]

NOTES:

1. Chapter 22, Laws of 1982, 1st ex. sess., codified as Chapter 67.38 RCW.
2. "Washington Special Purpose District Overview," *id*.
3. RCW 67.38.030.
4. RCW 67.38.040.
5. RCW 67.38.080.
6. RCW 67.38.160.
7. RCW 67.38.050.
8. RCW 67.38.010 & 67.38.100.
9. RCW 67.38.100 & 67.38.090.
10. RCW 67.38.120.
11. RCW 67.38.110.

12. *Id*.

Chapter 35

Joint Municipal Utility Authorities

Joint municipal utility authorities are authorized to provide water service, sewage disposal service, stormwater and drainage services, and flood control services.

The Joint Municipal Utilities Services Act was enacted in 2011 authorizing the creation of joint municipal utility authorities.[1]

A joint municipal utility authority is expressly declared to be a separate municipal corporation.[2] This legislation was enacted to provide an alternative for two or more local governments entering into an agreement under the Interlocal Cooperation Act for the joint provision of these authorized utility services.[3] By creating a separate unit of local government, rather than merely operating under an agreement, the participating entities avoid potential legal and financial obligations that could arise. This legislation is a significant improvement over provisions of law authorizing agreements made under the Interlocal Cooperation Act.

As a municipal corporation, a joint municipal utility authority would be classified as a regional government that is a federation of the local governments creating the authority.

The Municipal Research and Services Center (MRSC) does not include joint municipal utility authorities in its list of special purpose districts.[4] However, the Secretary of State's office reports that, as of March 3, 2015, two joint municipal utility authorities had been filed with that office:

- The Cascade Water Alliance comprised of the city of Bellevue, the city of Issaquah, the city of Kirkland, the city of Redmond, the city of Tukwila, Sammamish

Plateau Water and Sewer District, and Skyway Water and Sewer District; and

- The Discovery Clean Water Alliance comprised of Clark County, the Clark Regional Wastewater District, the city of Battle Ground, and the city of Ridgefield.

Creation

A joint municipal utility authority is created by agreement between two or more local governments authorized to provide the utility service that is subject to the agreement.[5] This includes cities, counties, water-sewer districts, port districts, public utility districts, irrigation districts, and a variety of different special purpose districts authorized to provide flood control services. No election is held regarding creation of the authority, which is created merely by the act of entering into this agreement.

A variety of details must be included in an agreement creating a joint municipal utility authority, including:

- The name of the authority;
- The members or entities creating the authority;
- The utility service to be provided by the authority;
- The number of directors on the entity's governing body and how they are appointed;
- How votes of creating member entities are weighted;
- How the agreement may be amended;
- The circumstances when the authority may be dissolved and how it will terminate its operations;
- The public works and procurement laws under which it will operate, which must be laws applicable to a member entity;
- How rates are imposed; and
- The statutes under which notes, bonds and other financial obligations are issued, which must be applicable to a member entity.[6]

An agreement must be approved by the governing body of each participating local government and is filed with the Secretary of State.[7]

An agreement to create a joint municipal utility authority is not subject to review by a boundary review board, even though creation of many of the different types of local governments authorized to use this law would be subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of a joint municipal utility authority, apart from the circumstances under which such an authority may be dissolved and how it terminates its operations.[8]

The dissolution of a joint municipal utility authority is not subject to review by a boundary review board, even though boundary changes for many of the local governments that may create a joint municipal utility authority would be subject to potential review by a boundary review board.

Governing Body and Elections

A joint municipal utility authority is governed by a board specified in the agreement creating the authority. The agreement must designate the number of board members, specify how they are appointed, and specify how votes of the creating entities are weighted on the board. Apart from the requirement that board members be appointed and each board member must be an elected official of a member entity, no other requirements exist.[9]

No provisions are made for elections to be held for a joint municipal utility authority or specifying any voting rights in an authority.

Powers

A joint municipal utility authority possesses the authority to provide one or more utility services (water services, sewage disposal services, stormwater or drainage facilities, and/or flood water facilities) specified in the agreement creating the authority and may

follow any statutes applicable to one of the member entities in providing these services, as specified in the agreement creating the authority.[10]

Joint municipal utility authorities possess the power of eminent domain and may condemn property for their purposes.[12]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of joint municipal utility authority finances. Some details about indebtedness that are included in Chapter 63 are not repeated below.

Joint municipal utility authorities basically obtain financing from the fees, rates and charges they impose for providing utility services, and they may accept public or private grants, loans and assistance for these purposes.[13]

An authority may incur liabilities and issue bonds, notes and other obligations payable from its revenues, as well as create local improvement districts (LIDs) or utility local improvement districts (ULIDs) and impose special assessments within the LIDs or ULIDs to finance capital facilities following statutes applicable to any of their member entities.

Authorities may compel property owners to connect to their wastewater collection system, with the consent of the member entity within whose boundaries the service is provided. In addition, an authority holds a lien for delinquent and unpaid rates and charges.

An authority may not impose taxes.

NOTES:

1. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.

2. RCW 39.106.030 & 39.106.040.

3. SHB 1332, Bill Report, House of Representatives, January 28, 2011.
4. "Washington Special Purpose District Overview," *id*.
5. RCW 39.106.030 & 39.106.020.
6. RCW 39.106.050.
7. RCW 39.106.030.
8. *Id.*
9. RCW 39.106.050.
10. RCW 39.106.020, 39.106.030, 39.106.040 & 39.106.050.
12. RCW 39.106.040.
13. *Id*.

Chapter 36

Separate Legal Authorities

Separate legal authorities are authorized to provide a variety of services that irrigation districts are authorized to provide.

Two separate sets of laws authorize irrigation districts to create "separate legal authorities" to provide these services. Under legislation enacted in 1981, two or more irrigation districts may create a separate legal authority to carry out most of the powers of an irrigation district, which would include providing irrigation water, domestic water, sanitary sewers, storm sewers, and electricity.[1] Under separate legislation enacted in 1983, one or more irrigation districts, together with one or more city or public utility district, may create a "separate legal authority" to generate electrical energy.[2]

Public facility districts are the only other type of special purpose district two separate sets of enabling legislation.

The Municipal Research and Services Center (MRSC) reports that only one separate legal authority exists in the State.[3]

Very little detail is provided under either set of statutes authorizing separate legal authorities to be created. The nature of a separate legal authority is not clear. A separate legal authority may be seen as either a unique department, or division, of two or more local governments creating the entity or a separate unit of local government. Use of the term "separate" as part of the name of these entities infers that a separate legal authority would be a separate unit

of government. If a separate legal authority were classified as a separate unit of local government, it would be classified as a regional government that is a federation of multiple entities.

The Legislature should review and clarify these statutes.

Creation

Presumably, a separate legal authority created under the 1981 enabling legislation would be created by an agreement between two or more irrigation districts. However, a separate legal authority created under the 1983 legislation is created by "contract" under the Interlocal Cooperation Act between the irrigation district and other entities. The latter provision is somewhat peculiar, since a contract under the Interlocal Cooperation Act is used for one entity to provide a service or facilities for another entity, while an agreement under the Interlocal Cooperation Act is used by two or more entities jointly providing a service or facility.[4] The separate legal authority statutes does not provide any more details about the creation of such an entity.

Creation of a separate legal authority is not subject to review by a boundary review board.

Boundary Changes

Statutes do not describe the boundaries of a separate legal authority, including how any boundaries could be changed.

However, an inactive separate legal authority would be subject to dissolution under two general statutes. First, the governing body (which is not provided for in law) of a separate legal authority may petition the superior court to dissolve the district.[5] Second, the county legislative authority may dissolve an inactive special purpose.[6]

Such a dissolution would not be subject to review by a boundary review board.

Governing Body and Elections

No provision is made for a governing body of a separate legal authority under either sets of statutes. Presumably, the agreement creating a separate legal authority would include provisions detailing how the separate legal authority functions and the person or entity controlling this entity.

A majority of the entities creating a separate legal authority under the 1983 legislation may "demand" that actions (but seemingly not the creation) of the separate legal authority be subject "to ratification and approval by the voters" of the entities creating the separate legal authority.[7] Presumably, this would necessitate ballot measures being submitted to the voters of the irrigation district or districts and other member local governments creating the separate legal authority. Limited voting rights exist in irrigation districts but regular voting rights exist in cities and public utility districts.

Powers

A separate legal authority created by two or more irrigation districts under the 1981 law possesses all of the authorities of an irrigation district to provide irrigation waters, domestic water, electricity, sanitary sewers, and storm sewers.[8] However, a separate legal authority created under the 1983 legislation only possesses the authority to provide and operate electrical water power facilities.[9]

Finances

A separate legal authority created under the 1981 legislation may impose rates, tolls or contract charges for providing water, sewers or electricity, and may sell obligations secured by these revenues, but may not impose assessments or taxes.[10] It is somewhat peculiar that this legislation expressly precludes a separate legal authority from imposing taxes, since irrigation districts are not authorized to impose taxes.

A separate legal authority created under the 1983 legislation may generate and sell electrical energy generated from its water systems, which would include the authority to impose rates, tolls and charges for such service and to sell electrical energy, and may sell bonds or

other evidences of indebtedness payable from these revenues, but may not impose assessments or taxes.[11]

NOTES:

1. Section 1, Chapter 62, Laws of 1981, codified as RCW 87.03.018.
2. Chapter 47, Laws of 1983, codified as RCW 87.03.825-87.03.840.
3. "Washington Special Purpose District Overview," *id.*
4. RCW 39.34.030 & 39.34.080.
5. Chapter 53.48 RCW.
6. Chapter 36.96 RCW.
7. RCW 87.03.834.
8. RCW 87.03.018.
9. RCW 87.03.828.
10. RCW 87.03.018.
11. RCW 87.03.837.

PART III-C

Subdivisions of Local Government

Introduction

Part III-C of this reference book on local government in Washington State discusses subdivisions of local government.

A subdivision of a local government is a separate unit of local government that is created by a larger "parent" or "sponsoring" unit of government to provide or finance governmental facilities or services within a portion of the boundaries of the parent unit of government. The parent unit of government retains varying degrees of control over a subdivision. Normally, this control arises from the composition of the governing body of the subdivision. Members of a subdivision's governing body are typically either:

- Appointed by the governing body of the parent government; or
- Consist of members of the governing body of the parent government who serve *ex offico* in these capacities.

The first Legislative Assembly of Washington Territory enacted legislation directing counties to create school districts and road districts. These governments were subdivisions of county government. The extent of county control over these special purpose districts varied. Counties exercised almost total control over road districts and appointed a person to serve as the official for each road district. Although counties exercised substantial control over school districts, this control was much less than the control they exercised over road districts. Each school district was governed by separately elected officials. Use of this subordinate system of local government eventually went out of favor. Special purpose districts authorized after statehood were independent units of government rather than subdivisions of counties.

However, the concept of subdivisions of local government began re-emerging at the end of the 20th century, when legislation was enacted authorizing different subdivisions of local governments to be formed. Most of these newly authorized subdivisions of a local government were subdivisions of a county.

Today, more different types of special purpose districts have been authorized as subdivisions, primarily of counties, than have been authorized as independent units of local government. However, by far, more special purpose districts have been created as independent units of local government than have been created as subdivisions of other governments.

Part III-C includes Chapters 37 through 62. Chapter 36 describes subdivisions of local government in general, including a brief discussion of various funding mechanisms that local governments have used historically to finance local facilities in lieu of creating subdivisions to provide these local facilities. Chapters 37 through 62 describe different types of subdivisions of local government, including road districts, townships, flood control zone districts, park and recreation service areas, service districts, library capital facility areas, and city transportation authorities.

School districts are no longer partial subdivisions of counties, but have become partial subdivisions of the State and are discussed in Chapter 17.

Chapter 37

Subdivisions of Local Government General Discussion

A subdivision of a local government is a separate unit of local government that is created by a larger “parent” or “sponsoring” unit of government to provide or finance governmental facilities or services within a portion of the boundaries of the parent or sponsoring unit of government. Normally, a subdivision of a local government is geographically smaller than its parent or sponsoring unit of local government.

Subdivisions of local government are subject to varying degrees of control by the parent or sponsoring unit of local government. This reference book further distinguishes these governmental entities as being either subdivisions or partial subdivisions of a parent or sponsoring government. A subdivision is subject to greater control by a parent or sponsoring government than a partial subdivision. The extent of control by the parent local government manifests itself in by the composition or nature of the governing body of the subdivision and the direct supervision control that the parent government exercises over the subdivision.

Most frequently, the governing body of a subdivision of a local government is composed of either:

- Persons appointed by the governing body of the parent or sponsoring local government; or
- Members of the governing body of the parent local government serving *ex officio* as members of the governing body of the subdivision.

Direct supervision by a parent unit of government arises from requirements that the parent local government approve certain actions taken by the subdivision or the authority of the parent local government to create and control the boundaries of its subdivision.

Legislation has also been enacted authorizing local governments to create mechanisms to fund or provide governmental services and facilities on a neighborhood level. However, these other mechanisms are not separate units of government.

History of Subdivisions of Local Government

The oldest form of special purpose districts in Washington are special purpose districts functioning as subdivisions or partial subdivisions of the parent or sponsoring county that created them. Legislation was enacted by the first Legislative Assembly of Washington Territory requiring each county to create school districts and road districts throughout its boundaries.

As discussed in Chapter 17, a school district originally would have been classified as a partial subdivision of the county that created, financed, and supervised the school district. School districts were quasi-independent units of local government with governing bodies composed of separately elected officials, but were still subject to considerable control by the county.

However, this special relationship between the county and its school districts soon began to change. Washington Territory soon began exercising direct control over school districts. Essentially, each school district became a partial subdivision of the Territory as well as the county that created it. This nature as a "dual subdivision" continued after statehood with the State gradually supplanting county control over school districts. After statehood, the State also started to provide direct funding for school districts. Eventually, all county funding of school districts ended. Today, counties no longer exercise control over school districts and school districts now would be classified as partial subdivisions of the State.

As discussed in Chapter 38, the nature of road districts as subdivisions of county government has not changed since their inception. Road districts have always been subdivisions of county

government and counties have always exercised direct control over their road districts. Although road districts remain as the basic units of local government financing roads in unincorporated areas of the State, few road district statutes remain. Remaining road district statutes are very sparse and are scattered throughout different chapters of law in the Revised Code of Washington.

As discussed in Chapter 10, the Legislative Assembly of Washington Territory enacted legislation providing for the construction and maintenance of dikes and drainage systems. These laws initially provided for a mechanism to finance drainage improvements somewhat like a local improvement district is used to finance local improvements. This mechanism was converted to something more akin to a subdivision of county government in later territorial years. Early territorial legislation also provided for the counties to finance dikes by creating diking districts as subdivisions of county government.

The original State Constitution required the Legislature to provide for the optional organization of counties into townships. Legislation implementing this constitutional mandate was finally enacted in 1895. Townships were partial subdivisions of county government and exercised some degree of local autonomy. Today, township statutes have been repealed and no townships exist in Washington.

Almost immediately after statehood, it appears that the concept of special purpose districts, functioning as subdivisions of county government, fell out of favor. Legislation was enacted authorizing different types of special purpose districts to be created that were independent units of local government with governing bodies composed of separately elected officials. The county exercised little or no direct control over these new special purpose districts. As discussed in Chapter 12, legislation was enacted in 1890, allowing irrigation districts to be formed as independent special purpose districts. As discussed in Chapter 20, legislation was enacted in 1895, altering the nature of diking districts and drainage districts, from subdivisions of county government to independent special purpose districts, with governing bodies composed of separately elected officials.

Subsequently, other legislation was enacted authorizing other types of special purpose districts to be created that were independent special purpose districts, with governing bodies composed of officials who are elected directly to office. This included metropolitan park districts, port districts, water districts, public utility districts, and fire protection districts.

However, in the later years of the 20th century, the use of subdivisions of local government has re-emerged, with the enactment of legislation providing for the creation of a large variety of different types of subdivisions of county government to provide different services or facilities. Members of the county legislative authority serve *ex officio* as members of the governing body of these subdivisions, which include:

- Flood control zone districts;
- Park and recreation service areas; and
- Library capital facility areas.

The re-emergence of subdivisions of other units of government may foreshadow a major change in the structure of local government.[a] Subdivisions of local governments (especially subdivisions of counties) may become a more common method of providing or financing facilities within neighborhoods or smaller communities, rather than incorporating independent special purpose districts to provide and finance these facilities. Although the greatest number of different types of special purpose districts that may be formed in the State are subdivisions of other unit of local government, far more independent special purpose districts have been created than subdivisions of other local governments.

Other Mechanisms

Legislation has been enacted authorizing local governments to create other mechanisms to fund or provide services or facilities in

a As discussed in Chapters 41 & 42, the author drafted the modern legislation providing for special purpose districts functioning as subdivisions of county government. Legislation providing for other subdivisions of local governments soon followed. Although this type of special purpose district has not been widely used, it appears that much of the future of local governments may use this concept of subdivisions of other local governments to finance improvements and services within relatively geographically small areas.

a small geographic area. These alternative mechanisms are not units of government, but are legal devices used by local governments to finance the construction of various facilities, or to manage certain services or facilities.

A. Local Improvement Districts

Local improvement districts (LIDs) and other similar temporary financing mechanisms are the most common type of these alternative mechanisms.[b]

LIDs are not units of local government but are temporary mechanisms created by a local government to finance the construction of local improvements. Many different local governments have been authorized to form LIDs or similar financial mechanisms, including counties, cities, water districts, sewer districts, port districts, and public utility districts.

The concept of a LID had its origin in territorial times, but the use of LIDs became more common after statehood. Special assessments are imposed on the "benefitted" property located within the LID to finance the construction of a local improvement. "Benefit" means that the market value of the property increases as a result of its proximity to the local improvement. A LID is a temporary funding device that vanishes once financing for the local improvement has been completed.

B. Parking and Business Improvement Areas

Legislation was enacted in 1971, providing for the creation of parking and business improvement areas by counties and cities to finance various improvements and activities.[c]

A parking and business improvement area is not a unit of government but is a continuing mechanism used to finance certain improvements and activities. Under this financing mechanism, the county or city imposes special assessments on businesses located

b Chapter 63 includes a more detailed discussion of LIDs.

c Chapter 63 also includes a more detailed discussion of parking and business improvement areas.

within the improvement area to finance certain improvements and activities.

C. Tax Increment Financing

Legislation was enacted in 1982, authorizing counties and cities to use community redevelopment financing to finance various public improvements. Community redevelopment financing is not a unit of government, but is a temporary financing mechanism used to finance certain public facilities.

This financing mechanism is more commonly known as tax increment financing (TIF).[d] Under this financing mechanism, an area or district is designated around a public improvement. A portion of the regular property taxes imposed by all or most taxing districts, within this designated area or district, is diverted from the taxing districts imposing these taxes, and is used to finance the public improvement. Legislation enacted in 1982, authorizing what was called community redevelopment financing, a type of TIF, and the Legislature submitted a constitutional amendment (SJR 143) to state voters authorizing TIF. Voters rejected the constitutional amendment. The enabling legislation authorizing community redevelopment financing was not made expressly dependent on approval of the constitutional amendment and remained in statute. However, the Supreme Court held the legislation unconstitutional on narrow grounds.[1] State property taxes that were imposed for the support of the common schools were diverted under this legislation, rather than being placed into the common school fund. The Court chose not to address the fundamental issue of whether a tax increment financing scheme violated the Uniformity Clause.

Somewhat similar legislation was enacted in 2001, providing for TIF. The TIF scheme authorized under this new legislation did not divert the State's property tax that is imposed to support the common schools. Appellate courts have not reviewed this new legislation. The new legislation has been used to finance public facilities in Spokane County.

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d Chapter 63 also includes a more detailed discussion of tax increment financing.

D. Public Authorities

Legislation was enacted in 1974, and amended in 1985, allowing counties and cities to create public corporations, commissions, or authorities to "perform any lawful public purpose or public function" that the county or city may perform.[2]

A public authority or corporation is not a unit of government but is an administrative device or legal mechanism used by counties and cities to perform certain functions. For example, the City of Seattle created a public corporation to manage its Pike Place Market. Use of a public corporation or public authority allows the employment of people who are not subject to local civil service requirements and compensation plans. This mechanism has been used in other states to avoid indebtedness limitations by creating another entity that is authorized to incur debt and issue bonds. However, it does not appear that this type of public corporation or public authority has ever attempted to issue general obligation bonds in Washington State.

E. Street Utilities

Legislation was enacted in 1991, allowing cities to create "street utilities" as a continuing mechanism to finance street improvements by the imposition of "periodic charges" for the use or availability of streets within a street utility.[3] However, the State Supreme Court held this legislation unconstitutional as a violation of Uniformity Clause.[4]

NOTES:

1. *Leonard v. Spokane*, 127 Wn.2d 194 (1995).
2. RCW 35.21.730. The legislation providing for these public authorities was originally enacted as Chapter 37, Laws of 1974 ex. sess. and is codified as RCW 35.21.730-35.21.757.
3. Sections 209 & 210, Chapter 42, Laws of 1990, codified as RCW 82.80.040 & 82.80.050.
4. *Covell v. Seattle*, 127 Wn.2d 874, 878, & 889-891 (1995).

Chapter 38

Road Districts

A road district is a special purpose district that functions as a subdivision of a county to finance the construction and maintenance of county roads in unincorporated areas outside of cities. Along with school districts, road districts are the oldest special purpose districts authorized in Washington.

Currently, each county has a single road district occupying all of its unincorporated area to finance the construction and maintenance of county roads. However, during territorial years and the early years of statehood, each county created and controlled scores of separate road districts. Prior to statehood, many cities were included in county road districts.

Road district statutes are incomplete as the result of legislation enacted in 1937.[1] Literally, each road district only appears to have boundaries and remains in existence until abolished or altered by the county legislative authority. No governing body or officials are provided for a road district. Statutes no longer grant road districts any powers.

The Legislature should enact legislation providing details for road districts. Without these needed details, it is possible that a court could find road district property tax levies violate the Uniformity Clause. However, given the critical importance of road districts, a court reviewing these few statutes could find that by inference:

- Members of the county legislative authority of each county serve *ex officio* as members of the governing body of the road district in that county.
- The governing body of a road district actually imposes road district property taxes, even though

statutes literally authorize the board of county commissioners as the governing body of the county to impose these taxes on either a countywide basis or in road districts.

- Road districts are authorized to use these tax receipts to finance the construction and maintenance of county roads by giving these tax receipts to the county for these purposes.
- Voters of a road district are the registered voters residing in the road district.

The grand and creative flexibility required to make these assumptions resembles the flexibility the Supreme Court has exercised in analyzing irrigation district statutes. As discussed in Chapter 12, the Supreme Court has refused at times to apply state constitutional standards to irrigation district statutes that it has applied to the statutes of other types of local government. The Court has mentioned the critical nature of irrigation districts in developing the arid areas of the State as a justification for this flexibility. Road districts play a much more significant and important role throughout the State.

The Legislature enacted a number of relatively trivial amendments to some statutes in the later decades of the Twentieth Century providing some credence to the argument that road districts are separate taxing districts.[a] However, more fundamental changes need to be made clarifying the basic nature of road districts,

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a These minor changes included amendments made to RCW 84.52.043 and 84.52.052.

Prior to being amended, RCW 84.52.043 provided that regular property taxes imposed "by" the State, counties, cities, and towns, as well as regular property taxes imposed "for" road districts, were subject to the statutory limitation on the cumulative rate of regular property taxes on property that may be imposed on any property in any year. The amendment reworded the statute to provide that the regular property tax levy "by", rather than "for", road districts was subject to this limitation. As a result, the levies for all of these senior taxing districts were treated in the same manner. However, the basic statute (RCW 36.82.040) authorizing road district annual regular property taxes to be imposed has not been amended and still expressly authorizes the board of county commissioners (i.e., the county legislative authority) to impose these taxes countywide or in road districts.

RCW 84.52.052 authorizes taxing districts to impose voter approved single-year excess property tax levies. Prior to being amended varying lists of different taxing districts were included in various parts of this statute. The amendment eliminated these varying lists of taxing districts, defined the term taxing district, and use the term taxing district in lieu of the varying list of different taxing districts. Road districts were added to this definition, although RCW 84.04.080 already defined the term "taxing district" as including road districts.

including an express statement that members of the county legislative authority in *ex officio* capacities serve as the governing body of each road district and that the governing body of the road district imposes the annual road district property tax levy.[b]

Given the importance of road districts funding roads, it is beyond comprehension why the Legislature has not enacted legislation addressing the myriad of issues arising from the paucity of details included in road district statutes. Why run the risk of jeopardizing this financing?

Modern Road District Laws

Very few provisions relating to road statutes remain in current state statutes. Legislation enacted in 1937 eliminated most road district statutes.[2] Most of the details about road districts were eliminated by this legislation. The few remaining road district statutes are now codified in different chapters of law.

These basic remaining road districts statutes:

- Require each county to create up to nine road districts throughout the entire county or "in any part thereof" for the efficient administration of county roads and require that all portions of the unincorporated area must be included in a road district.[3]
- Require that area included in a newly incorporated city be removed from a road district.[4]
- Authorize the county legislative authority to impose regular property taxes of up to $2.25 per $1000 of assessed valuation "throughout the entire county, or any road district thereof" to finance county roads, ferry wharves, bridges, and "other proper county purposes". Receipts are placed into the county road

b The author drafted legislation making these and other clarifications in the late 1970's for then Representative Helen Sommers, but this legislation was never considered by the Legislature. Sommers, who worked as a fiscal analyst of the King County Council, became concerned over the paucity of road district statutes.

fund unless the receipts are diverted to other purposes.[5]

- Authorize the county legislative authority to budget and expend any portion of the road district property taxes for "any service to be provided in the unincorporated area of the county".[6]
- Preclude the distribution of state monies from the rural arterial trust fund to any county with a population of 8,000 or more, if the county has diverted road district property taxes to uses other than road purposes or traffic law enforcement in the preceding 12 months. [c] [7]
- Provide that property taxes imposed by road districts are subject to the general cumulative limitation of $5.90 per $1,000 of assessed valuation on regular property taxes that may be imposed in any year by taxing districts other than the State.[8]

At present, each county has only one road district occupying all of the unincorporated area of the county. The county legislative authority redraws road district boundaries to remove any territory that has been annexed by a city or included in a newly incorporated city.

Road districts have no governing body or official, have no responsibilities apart from being created for the "efficient administration of the county roads", and are merely created by the county legislative authority and used for purposes of imposing property taxes to finance county roads. Literally, counties (and not road districts) provide county roads in unincorporated areas.

Early Road District Laws

The first Legislative Assembly of Washington Territory enacted legislation in 1854, providing for the construction and maintenance of roads throughout the Territory using a system of road districts

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c As discussed in Chapter 2, this exception was provided for Skamania County, but that county's population has increased and now is in excess of 11,000. The Legislature should consider amending this statute to retain the exception for Skamania County.

that were created by the board of county commissioners of each county.[9] As discussed in Chapter 1, road districts were used to construct and maintain all roads in the Territory, whether called county roads, territorial roads, or military roads. Each board of county commissioners created and controlled road districts throughout the entire county, including within cities and in unincorporated areas outside of cities. The first cities created by the Legislative Assembly were not authorized to provide roads or streets.

Early road district laws somewhat resembled early school district laws. However, counties exercised more direct supervision over road districts than over school districts. Road districts would be classified as subdivisions of county government.

The 1854 legislation providing for road districts stated that all county roads were under the supervision of the county legislative authority.[10] This early feature of road district law remains in effect today.

A. Governance

The system of governance for road districts has changed since 1854:

- From 1854 until 1937, a road supervisor was either appointed by the county legislative authority for each road district in the county or elected by the voters of each road district in the county. The road supervisor was in charge of all road construction and maintenance in the road district, but was under the direct control of the county legislative authority. This office was primarily an elective office until 1903, when the office became an appointive office.[d] [11]
- At the inception of statehood in 1889, each county commissioner was declared to be *ex officio* the road commissioner of each road district within the county

d From 1889 to 1893, the office of road supervisor was temporarily renamed as road overseer and each overseer was appointed to a two-year term of office. The 1925 legislation replaced the express requirement that a road supervisor be appointed for each road district with a requirement that a "sufficient number of" road supervisors be appointed.

commissioner's commissioner district. This concept of a member of the county legislative authority being *ex officio* the road commissioner of all road districts located within his or her commissioner district remained in effect until 1937.[12]

- In 1903, an additional layer of supervision over road districts was added by placing the county surveyor in direct control over all county road construction and maintenance. However, the county legislative authority still appointed a road district supervisor for each road district in the county. The office of county surveyor became the office of county engineer in 1907 and remained an elected office until 1925 in most counties and 1937 in the most populous counties.[13]
- A major and comprehensive revision of laws relating to county roads was enacted in 1937. This legislation eliminated many important details about road districts. The office of road engineer in the more populous counties became an appointive office as had been in less populous counties for some time. The office of road supervisor for each road district was abolished. The authority of road districts to provide roads was abolished. The provision was repealed that named each county commissioner *ex officio* the road commissioner of each road district in his or her road district.[14]

B. Area Included in Road Districts

The area that could be included in a road district has varied throughout history.

All portions of a county, including each city, were included in a road district from 1854 until 1859. However, the Legislative Assembly enacted special legislation in 1859, incorporating the Town of Olympia that removed the new town from any county road district and authorized Olympia to create its own road district to provide for roads, streets, and alleys.[15] As discussed in Chapter 1, some cities were authorized to provide streets prior to statehood in 1889, but many cities were still included in county road districts.

Although legislation enacted by the first State Legislature in 1890 authorized all cities to provide for their own streets, counties were not prohibited from including cities in their road districts until 1903.[16] This prohibition was eliminated in 1907, and to this day a county legislative authority could include cities within a road district.[17] However, it is probable that no city has been included in a county road district after the 40 mill limit was established by initiative action in 1932.

C. Financing Roads

The system for providing or financing roads has varied widely.

Legislation was enacted in 1854, providing for a system of forced labor in each road district.[e] [18] Every adult male was required to perform three days labor each year on county roads in the road district in which he lived. In addition, every owner of real property in a road district was required to provide one day of labor each year on county roads for each $1000 of this real property.

This system of providing roads was soon changed to a pay or work system. First, legislation was enacted in 1855, eliminating the forced labor requirement for property owners and authorizing each road district to impose property taxes, with the option of a property owner either paying the tax or working on county roads.[19] Second, legislation was enacted in 1857, removing the forced labor requirement on adult males and substituting what amounted to a road poll tax being imposed on all adult males in each road district, with the option of an adult male either paying the tax or working on county roads.[20]

This pay or work system of financing roads in road districts remained in effect until statehood. The ability to work in lieu of paying property taxes was eliminated by the first State Legislature in 1890.[21] However, the ability to work in lieu of paying road poll taxes remained after statehood until legislation was enacted in 1907, eliminating the authority of counties to impose road poll

e This statute used the term “day labor” as the amount of labor each male was required to perform on county roads. That term now refers to work performed on county roads by county employees rather than by the general male citizenry.

taxes.[22]

The concept of funding roads on a countywide basis began in 1881, when legislation was enacted allowing county legislative authorities to appropriate money from the county general fund to pay for roads.[23] Legislation was enacted by the first State Legislature in 1890 altering the distribution of road district levies.[24] This legislation was the beginning of potential difficulties with road district tax laws possibly violating the Uniformity Clause. It is somewhat surprising that the members of early State Legislatures failed to grasp the consequences of the new Constitution and this Uniformity Clause. The county itself imposed property taxes for road districts, rather than each road district imposing its own property taxes, and the county was allowed to apportion these tax receipts to the road districts. However, the county could "set apart" these tax receipts as follows:

- Up to 20 percent could be placed into the county general road fund. These monies could be expended on road projects that all of the road district inhabitants are "more or less interested" in or to "assist weak or impoverished" road districts; and
- Up to an additional 25 percent could be placed into the bridge fund and expended on county bridges located anywhere in the county.

Similarly, up to 25 percent of the county road poll tax could be placed into the county general road fund, with the remainder apportioned to the road districts in which it was collected.

Counties were authorized to impose a new countywide property tax in 1893 to finance roads and bridges throughout the entire county.[25] This county road tax was in addition to the road district property taxes. The countywide tax for roads was repealed in 1927.[26]

NOTES:

1. Chapter 187, Laws of 1937.
2. *Id.*

3. RCW 36.75.060.
4. RCW 35.02.180.
5. RCW 36.82.040.
6. RCW 36.33.220.
7. RCW 36.79.140.
8. RCW 84.52.043.
9. Statutes of the Territory of Washington, 1854, 1st Session, Pages 340-352.
10. This original authority is found in Statutes of the Territory of Washington, 1854, 1st Session, Sections 1 and 25, Pages 340-352. The current authority is found in RCW 36.75.020-36.75.060.
11. Statutes of the Territory of Washington, 1854, 1st Session, Section 26, Pages 340-352; Statutes of the Territory of Washington, 1854-1855, 2nd Session, Section 14, Pages 44-47; Statutes of the Territory of Washington, 1869, 2nd Biennial Session, Section 19, Pages 266-290; Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Section 19, Pages 30-35; Section 2, Pages 617-624, Laws of 1889-1890; Section 2, Chapter LXIX, Laws of 1893; Section 1,Chapter XXVIII, Laws of 1899; Section 2, Chapter 246, Laws of 1907; Section 3, Chapter 184,Laws of 1925; and Section 70, Chapter 187, Laws of 1937.
12. Section 1, Pages 617-624, Laws of 1889-1890; Section 70, Chapter 187, Laws of 1937.
13. Section 15(4), Chapter 119, Laws of 1903; Section 1, Chapter 160, Laws of 1907; Section 1, Chapter 167, Laws of 1925 ex sess.; Section 4, Chapter 187, Laws of 1937.
14. Section 1, Pages 617-624, Laws of 1889-1890; Section 1, Chapter 154, Laws of 1921; Section 1, Chapter 184, Laws of 1925; and Section 70, Chapter 187, Laws of 1937.
15. Statutes of the Territory of Washington, Local Laws 1858-1859, 6th Session, Article 4th, Section 6, Pages 31-34.
16. First class cities were authorized to construct and repair streets, alleys, sidewalks, and bridges at Section 5, pages 215-224, Laws of 1989-1890,; second class cities were authorized to construct and repair streets, alleys, sidewalks, and bridges at Section 38, pages 143-178, Laws of 1989-1890; third class cities were authorized to construct and repair streets, alleys, sidewalks, and bridges at Section 117(4), pages 178-198, Laws of 1989-1890; and towns were authorized to construct and repair streets, alleys, sidewalks, and bridges at Section 154(4), pages 198-215, Laws of 1989-1890. Counties were precluded from including cities or towns within their road districts by Section 7, Chapter 119, Laws of 1903.
17. Section 1, Chapter 246, Laws of 1907. It should be noted that this provision included an error in citing the session law that was being amended, by

referencing Section 1, Chapter 119, Laws of 1905 rather than Section 7 of that session law. Nevertheless, RCW 36.75.060, which is the current statute authorizing the creation of road districts does not include the old restriction that precluded inclusion of a city or town in a road district.

18. Statutes of the Territory of Washington, 1854, 1st Session, Section 28, Pages 340-352.
19. Statutes of the Territory of Washington, 1854-1855, 2nd Session, Section 15, Pages 44-47.
20. Statutes of the Territory of Washington, 1856-1857, 4th Session, Sections 21, 22, & 31, Pages 35-45.
21. Section 3, Pages 617-624, Laws of 1889-1890.
22. The authority to impose road poll taxes appears to have been eliminated when the Section 1, Chapter 119, Laws of 1903, that included this authority, was amended by Section 1, Chapter 246, Laws of 1907.
23. Statutes of the Territory of Washington, 1881, 8th Biennial Session, Section 1, Page 17.
24. Sections 6, 7, & 14, Pages 617-624, Laws of 1889-1890.
25. Section 5, Chapter LXIX, Laws of 1893.
26. Section 1, Chapter 21, Laws of 1927.

Chapter 39

Townships

Townships are a basic form of local government authorized in the State Constitution, designed to be political subdivisions of the county that created them.

Township governance in Washington State is an enigma. The original State Constitution required the Legislature to enact legislation providing for township organization of counties. However, the township form of local government was not widely used. Currently, no county is organized into townships in Washington State and the Legislature has repealed township laws.

The Unused Form of Local Government

Article XI, Section 4 requires the Legislature to enact legislation providing for the organization of counties into townships. Townships were a new concept for Washington. Townships were not authorized to be created during the period of Washington Territory. At least in theory, this new constitutional requirement envisioned by members of the constitutional convention fundamentally changed the scheme of local government for the new State.

The apparent prominence of townships in the new scheme of local government for Washington State arises directly from the State Constitution. Townships are one of the few types of local governments mentioned in the State Constitution, especially in the original provisions of the Constitution. Constitutional provisions mentioning townships include:

- Article XI, Section 4, which directs the Legislature to enact legislation providing for the "township

organization" of a county. This is one of the few constitutional mandates directing the Legislature to take certain actions relating to local government.[a] The township organization of a county occurs if voters of the entire county approve a ballot proposition providing for this organization. Any county adopting a township organization is exempt from the requirement of having a uniform system of county government.

- Article XI, Section 5, which requires the Legislature to enact general and uniform laws for the election of township officers, along with county officers, prescribe their duties, and fix their terms of office.
- Article XI, Section 11, which grants townships (along with counties and cities) broad home rule police regulatory powers.

Legislation implementing the requirement to provide for the township organization of counties was not enacted until 1895.[1] This legislation only provided for the creation of townships in unincorporated areas outside of cities, although this feature was not a requirement of the State Constitution. Although townships were granted broad powers to provide a range of services and facilities, their powers were more circumscribed than those of a city.

Each township was a partial subdivision of the county that created it.[b] Although townships could be viewed as a multiple purpose

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a The State Constitution at one time included six mandates relating to local governments, but now only includes five mandates. Besides the mandate to enact legislation providing for the organizing counties into townships, the Constitution now includes the following mandates: (1) Article IX, Section 2 directs the Legislature to provide for a general and uniform system of public schools; (2) Article XI, Section 4 directs the Legislature to establish a uniform system of county government; (3) Article XI, Section 5 directs the Legislature to enact general and uniform laws providing for the same array of county officials in each county and for the procedures to elect these officials; (4); Article XI, Section 10 directs the Legislature to enact general laws for the incorporation of cities. At one time, Article XI, Section 16 (Amendment 23) directed the Legislature to enact legislation providing for the creation of a combined city-county in larger cities and counties, but the Legislature never enacted this legislation. As discussed in Chapter 65, this requirement was dropped by Amendment 58, which expanded the application of that provision to all counties, expanded the nature of the combined city-county to control all aspects of local government within the county, and made the provision self executing without enabling legislation.

b The Supreme Court described townships as being territorial subdivisions of a county that become "an integral part of the plan for county government in counties voting to adopt it." Opportunity *Township v. Kingsland*, 194 Wash. 229, 237 (1938).

special purpose district, they differed from special purpose districts, as follows:

- Townships were to be created *en mass* at the same time throughout all of the unincorporated area of a county by action of the county legislative authority. Each special purpose district is created one at a time, normally by action of local voters.
- Townships possessed a wide range of diverse powers. Special purpose districts (with the exception of port districts and irrigation districts) are granted a limited number of related powers.
- Townships were authorized to provide many of the same types of services normally provided by a county. Most types of special purpose districts have been granted powers related to limited subject matters.
- Townships were subject to direct control by the county legislative authority. Most types of special purpose districts are subject to significantly less control by a county.
- Townships were an archaic form of democratic government. Virtually all governing decisions were made by township voters at an annual township meetings. Special purpose districts operate as a representative form of government where decisions are made by officials elected to represent voters. Voters at annual township meetings could authorize their township to: (1) Exercise certain powers; (2) impose taxes; (3) adopt township bylaws and rules; (4) elect township administrative officials to implement voter decisions; and (5) set compensation levels for these administrative officials.

Spokane County and Whatcom County were the only counties in Washington State that were ever organized into townships. Legislation was enacted in 1961, providing a procedure for a county to abandon its township organization. Both counties followed this procedure and abandoned their organization into townships.

Legislation was enacted in 1997, repealing township statutes, notwithstanding the constitutional requirement that legislation exist providing for organizing townships.[c] [2]

Old Township Laws

The following discussion describes township laws as they existed over the years. Citations are made to the old statutes that now have been repealed, some of which were not very clear.

A. Creation

The process to organize a county into townships was initiated by the filing of a petition calling for the creation of townships that was signed by at least 100 county voters.[3] Any county voters could sign the petition, including those who resided in cities and those who resided in unincorporated areas outside of cities.

A ballot proposition authorizing the organization of the county into townships was submitted to county voters throughout the entire county, even though by statute townships would only exist in unincorporated areas outside of cities. If voters approved the ballot proposition authorizing the division of the county into townships by a simple majority vote of voters voting on the proposition, the county legislative authority was required to divide every "surveyed portion" of the unincorporated area into townships.[4] At least 25 voters were required to reside in a township.

In theory, county voters residing in cities could initiate the process to organize the county into townships, and approve the ballot proposition authorizing the township organization of the county, even if county voters residing in unincorporated areas where the townships would be formed opposed the township organization.

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c The basic argument in favor of this legislation was that no county was currently organized into townships and repeal of township laws would reduce the number of pages of state statutes. The concept of repealing a considerable number of unused statutes appeared to have great appeal to legislators. This legislation eliminating township laws was enacted, notwithstanding the constitutional requirement that the Legislature enact legislation providing for the township organization of counties.

B. Boundary Changes

A county legislative authority could reorganize the county's townships at its pleasure, but whenever an unsurveyed area was surveyed, the newly surveyed area was required to be established as a new township or added to an existing township.[5] Most areas of the State, apart from some high mountain peaks, were surveyed by the early 1900's, so virtually every portion of the unincorporated area of a county organized into townships would have been included in a township.[6]

The voters of a township with two or more "villages," each containing at least two hundred inhabitants, could petition the county legislative authority to form a new township and the county legislative authority could form a new township at its pleasure.[d 7]

Legislation was enacted in 1951, allowing an individual township to disorganize in a county that was organized into townships.[8] As a result, it was possible that the unincorporated area of a county organized into townships could become a checkerboard of townships and no townships. This would have resulted in a confusing array of jurisdictions in the unincorporated area with:

- Some areas being included in a township that provided a range of services and facilities, conducted elections for other jurisdictions in its own voting precincts, and provided for the election of a justice of the peace in the township; and
- Other areas not being included in a township with the county providing some services and facilities in these areas, the county auditor conducting elections in voting precincts created by the county legislative authority, and justices of the peace being elected in districts designated by the county legislative authority.

Legislation was enacted in 1961 providing for an entire county to abandon its township organization and disband the township organization of the county.[9] Presumably, this legislation was

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d Ironically, no statute after statehood provided for the creation of villages.

enacted in response to the desire to disorganize townships in Spokane and Whatcom Counties. The county legislative authority was authorized to submit a ballot proposition to voters of the county authorizing the disbandment of the township organization of the county. All the townships were disbanded on the last day of the year in which the ballot proposition providing for the disbandment was approved. The chair of the county legislative authority acted as the receiver to wind up the affairs of the townships.

C. Annual Meeting and Voters

Each township was required to hold an annual meeting of its voters on the second Tuesday of each January.[10] These annual township meetings resembled New England annual town meetings, early school district annual meetings, and early road district annual meetings. The basic business of a township was conducted directly by township voters at annual meetings, rather than being conducted by a governing body elected to represent township voters. Direct voter actions at the annual meetings included:

- Electing township officials;
- Approving various matters, including compensation for township officials and authorizing the township to take various actions and perform various functions;
- Authorizing township taxes to be imposed; and
- Adopting bylaws, rules, and regulations similar to ordinances adopted by the governing bodies of counties and cities.[11]

The election of township officials was conducted using paper ballots, but all other votes were cast on a “yeas or nays” basis or by a division.[12] Township voters were the regular voters residing in the township.[13] The name of each voter present at the annual meeting between 9:00 A.M. and 10:00 A.M. was recorded on a poll list and only those voters were allowed to vote at the meeting.[14] A moderator would be selected to conduct the annual meeting and state the order of business to be transacted.[15]

Special meetings could be called if a written statement requesting the meeting was filed and signed by at least two of the three supervisors, the clerk, and a justice of the peace, along with at least

12 other "freeholders" of the township.[16] The requirement that only a freeholder could sign the petition was somewhat peculiar, in that a freeholder is a property owner who may or may not reside in the township and may or may not be a voter. A special meeting was conducted in the same manner as the annual meeting.

D. Township Officials

A myriad of township officials were elected at annual township meetings. However, two of these township offices could be filled by appointment or by election.

The "governing body" of a township consisted of a three-member board of supervisors serving staggered three-year terms of office.[17] This staggering of terms of office was accomplished by electing three supervisors at the first annual township, one to a one-year term of office, a second to a two-year term of office, and a third to a three-year term of office. Thereafter, a single supervisor was elected at each subsequent annual meeting to a three-year term of office. The supervisors were the primary administrative officials of the township, but also exercised some substantive power. They had charge over affairs of the township that were not vested in other officers.[18] In addition, a board of supervisors:

- Appointed highway overseers and poundmasters, if they were not elected by voters at the annual township meeting;
- Drew orders on the township treasury to disburse money necessary to defray the incidental expenses of the township.
- Organized flood control activities taken by the township;
- Audited township accounts;
- Prosecuted actions in the name of the township;
- Divided the township into voting precincts and acted as judges of elections;
- Acted as the board of health and suppressed public nuisances;

- Acted as fence "viewers" to inspect fences and settle disputes over livestock that escaped enclosure; and
- Divided the township into road districts and had "charge of" all roads and bridges in the township.[e] [19]

Compensation for township supervisors was established by voters at the annual township meeting, but a supervisor could not receive an annual salary exceeding $75.[20]

All other elected township officials were elected to two-year terms of office at the annual township meeting held in odd-numbered years.[21]

A township clerk preserved all accounts audited by the supervisors and maintained a book of records that included minutes of the annual meeting and rules and regulations of the township meeting.[22] Clerks administered oaths, acknowledged instruments, and posted township bylaws. The clerk also served as one of the election clerks of each precinct within the township. Compensation for a clerk was established by voters at the annual township meeting, not to exceed either: (1) An annual salary of not more than $100; or (2) a per diem rate of compensation not exceeding $2 for each day devoted to the business of the township, plus various amounts for copying documents and certifying records.[23]

A township treasurer received and kept all monies belonging to the township, maintained a book accounting for all monies received and disbursed, drew money from the county treasurer for the use of the township, and prepared an annual financial statement.[24] Compensation for a treasurer was established by voters at the annual township meeting at an annual salary not exceeding $75.[25]

A township justice of the peace was elected from each precinct located in the township and functioned under general statutes providing for justices of the peace as inferior court judges, somewhat in the manner that district court judges currently function. A township constable was elected for each justice of the peace and functioned under general statutes serving warrants, processes, and

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e Powers over roads were removed after the Supreme Court in *Great Northern Railway Co. v. Glover*, 194 Wash. 146, 160 (1938), held that 1937 legislation impliedly repealed these powers.

orders directed by the justice of the peace, superior court, or county coroner.

A township assessor performed the same duties as the county assessor.[26] Assessor compensation was established by voters at the annual township meeting, not to exceed a rate of $3 for each day of work conducted on behalf of the township.[27] The office of township assessor appears to have been eliminated when legislation was enacted in 1937, stating that this office was eliminated, even though the legislation did not expressly repeal the statute providing for township assessors.[28]

An overseer of highways for each road district in the township was in charge of the road district, under the control of the board of supervisors.[29] Overseers were either elected at the annual township meeting held in an odd-numbered year or were appointed by the board of supervisors.[30] Some statutes referred to these officials as road overseers rather than highway overseers. Compensation for road overseers was fixed by the board of supervisors and statutes did not establish a maximum amount of this compensation.[31] This office was abolished, and the authority of townships to provide roads was eliminated, when the State Supreme Court held that a comprehensive revision of county road laws enacted in 1937 inferentially repealed provisions of law providing for the office of township overseers of highways and township control over roads.[32]

A poundmaster to run each animal pound established by a township was either “chosen” by township voters or was appointed by the board or supervisors.[33] Compensation for a poundmaster was in the form of receiving fees for impounding animals and 2 percent of the price of impounded animals that were sold.[34]

E. Township Powers

Townships essentially became the arms of the county in the unincorporated area. They exercised many of the powers that a county normally would exercise in the unincorporated area, as well as providing some additional services that counties normally would not provide. Most township powers were authorized or directed by voters at the annual township meeting.

At one time townships, or the voters of townships, were granted powers on the following matters:

- Animals – Townships could provide animal pounds, appoint or elect poundmasters, and make rules and regulations for "ascertaining the sufficiency of fences" and impounding animals. They also could determine whether domestic animals would be permitted to be at large.
- Assess property – The township assessor assessed property for tax purposes in the same manner as the county assessor assessed property, but this authority was abolished and transferred back to the county assessor in 1937.
- Board of health – The board of supervisors were designated to be the board of health for the township. Presumably the county legislative authority no longer served in this function in unincorporated areas but continued exercising these powers in cities.
- Cemeteries – Townships could provide cemeteries.
- Elections – The board of supervisors created election precincts and appointed election officers for the precincts, in lieu of the county creating these precincts and appointing precinct officers. It appears that the board of supervisors actually conducted general elections in the township for all purposes, in lieu of the county auditor conducting these elections.
- Flood control – Townships could provide flood control improvements.
- Garbage dumps – Townships could provide garbage dumps.
- Highway lighting – Townships could provide highway or street lighting, but this authority was removed in 1969.
- Licenses and regulations – Townships could license, tax, regulate, and control dogs, hawkers, peddlers,

shows, theatricals, circuses, lawful games, merry-go-rounds, Ferris wheels, and other amusements.

- Nuisances – Townships could prevent and suppress nuisances.
- Penalties – Townships could establish and impose penalties on people violating township rules and regulations.
- Prosecution – Township boards of supervisors could prosecute violations of township rules and regulations and trespass upon any public property.
- River improvements – Townships could establish a river improvement fund and cooperate with the county in providing river improvements.
- Roads and bridges – Townships were the basic arm of government providing roads in lieu of road districts created by the county legislative authority. A township could create road districts, appoint or elect highway overseers, construct and maintain roads and bridges, impose taxes to finance road construction and maintenance, and provide road signs. The authority over bridges eventually was first limited to bridges costing less than $300 dollars. However, township authority over roads and bridges was removed entirely after the Supreme Court held in 1938 that general legislation enacted in 1937 implicitly repealed this grant of authority.[35]
- Libraries – Legislation was enacted in 1911 authorizing townships to provide public libraries.[36]

Article XI, Section 11 granted townships (as well as counties and cities) broad home rule powers to make and enforce any local police power regulations within their boundaries that were not in conflict with state laws. However, the 1895 legislation authoring the township organization of counties reversed this broad grant of home rule authority by restricting townships to exercising only those powers expressly enumerated in state statutes.[37] However, the Legislature enacted legislation in 1923, granting voters of the annual township meeting authority to adopt any bylaws and

regulations "as may be deemed conducive to the peace, good order and welfare" of the township.[38] This legislation seems to have granted broad home rule authority to townships over police power regulations and other matters, similar to the broad statutory authority granted to cities. However, the 1923 legislation did not amend the prior statute limiting township police regulatory powers. Presumably this prior statute was repealed by implication.

Townships were not authorized to condemn property for their purposes. Presumably the county would condemn property needed for use by a township.

F. Township Finances

Townships received revenue from a variety of sources, as follows:

- The county provided $100 annually to each township.[39]
- Townships were authorized to impose property taxes of not exceeding 2 mills per year and expend these monies for any legal township purpose.[40] Legislation was enacted in 1961 allowing fire protection districts located in any county that at one time had been organized into townships to impose this additional property tax.[41] The actual authority of townships to impose these property taxes was repealed in 1969.[42]
- Townships received money for their roads and bridges from a variety of sources, but the authority of townships to provide roads was eliminated by legislation enacted in 1937. The prior sources of township revenue for roads and bridges included: (1) One-quarter of the collections from the countywide property tax for roads and bridges, but this source of revenue was eliminated in 1927; (2) imposing road poll taxes; (3) imposing property taxes throughout the township of up to 8 mills to be used for road purposes throughout the township; and (4) imposing property taxes of up to 5 mills in each road district to finance roads in that road district.[43]

- After the Legislature removed the power of townships to impose property taxes in 1969, townships were authorized to impose special assessments to fund their services and facilities following the procedures by which fire protection districts imposed special assessments.[44]
- Townships were authorized to issue general obligation bonds. Without voter approval, a township could only issue general obligation bonds with a term of one year, of an amount not exceeding the annual amount of taxes that it would impose.[45] A township could issue additional general obligation bonds with a maximum term of 10 years, and retire these bonds by imposing additional property taxes, if authorized by township voters. However, the statutes authorizing these bonds were contradictory in the sense that one statute required a "majority of township voters" to approve the bonds, while another statute required a two-thirds vote of township voters at the annual township meeting to approve the bonds.[f]

NOTES:

1. Chapter CLXXV, Laws of 1895. Township laws were codified as Title 45 RCW.
2. Chapter 36, Laws of 1997.
3. RCW 45.04.010.
4. RCW 45.08.010
5. RCW 45.08.010 & 45.08.090.
6. Telephone conversation with David Steele, Engineering Division, Department of Natural Resources, on March 28, 2003.
7. RCW 45.08.020.
8. Chapter 173, Laws of 1951, which was codified as Chapter 45.76 RCW.

f Townships were authorized to issue general obligation bonds, and impose additional property tax levies to retire these bonds, in Chapter 45.60 RCW. RCW 45.56.040 required a majority of township voters to approve the issuance of bonds. RCW 45.60.010 required a two-thirds vote of township voters attending the annual township meeting to approve the issuance of bonds.

9. Chapter 53, Laws of 1961, which was codified as Chapter 45.80 RCW.
10. RCW 45.12.070.
11. RCW 45.12.100.
12. RCW 45.12.180.
13. RCW 45.12.060.
14. RCW 45.12.140.
15. RCW 45.12.150.
16. RCW 45.12.110.
17. RCW 45.12.080.
18. RCW 45.24.010.
19. Chapter 45.24 RCW and RCW 45.12.080, 45.12.090, 45.16.040, 45.40.010, & 45.40.030.
20. RCW 45.44.010.
21. RCW 45.12.080.
22. Chapter 45.28 RCW.
23. RCW 45.44.010.
24. Chapter 45.32 RCW.
25. RCW 45.32.030.
26. Pierce's Code 1929, §§ 7100-79 & 7100-80.
27. RCW 45.44.010.
28. Section 1, Chapter 81, Laws of 1931, which was codified as RCW 45.54.010.
29. Remington Revised Statutes §11407, which was codified as RCW 45.24.020.
30. RCW 45.16.040.
31. RCW 45.44.010.
32. *Great Northern Railway Co. v. Glover*, 194 Wash. 146, 160 (1938).
33. RCW 45.36.010.
34. RCW 45.36.030.
35. RCW 45.12.100, 45.24.010, 45.24.040, 45.36.030, 45.40.010, 45.40.030, 45.12.020, & 45.12.090; and Sections 50, 105, & 116 Chapter CLXXV, Laws of 1895.
36. Section 1(10), Chapter 34, Laws of 1911.
37. RCW 45.12.030.

38. Section 4, Chapter 13, Laws of 1923, which was codified as RCW 45.12.100(11) prior to township laws being repealed. However, the 1923 legislation did not repeal the reversal of broad home rule that was included in the original 1895 township laws which was codified as RCW 45.12.030 prior to township laws being repealed.
39. RCW 45.56.050
40. RCW 45.56.030.
41. Section 9, Chapter 53, Laws of 1961, codified as RCW 52.16.160.
42. Section 7, Chapter 243, Laws of 1969 ex. sess.
43. RCW 45.56.050 & 45.56.070; and Remington Revised Statutes §§ 11445 and 11481.
44. RCW 45.82.010.
45. RCW 45.56.040.

Chapter 40

Flood Control Zone Districts

A flood control zone district is a special purpose district that functions as a subdivision of a county to provide flood control and drainage services and facilities.

Legislation, enacted in 1961, authorized counties to create flood control zone districts.[1] This legislation provided for the first modern subdivisions of a local government authorized by the Legislature after World War II.

Flood control zone districts are the most powerful units of local government primarily designed to provide flood and drainage control facilities and services. Chapter 20 discusses these other types of special purpose districts authorized to provide diking, drainage and flood control services and facilities. These other special purpose districts finance their facilities and services by imposing assessments or rates and charges. Flood control zone districts may impose property taxes, as well as assessments and rates or charges to finance their facilities and services. Franchise rights in these other types of special purpose districts are restricted or limited to persons and entities owning property within their boundaries, while regular or normal franchise rights exist in flood control zone districts where the electorate consists of registered voters residing in the district. As discussed in Chapter 72, the One Person, One Vote Doctrine precludes governments with limited franchise rights from imposing taxes.

Legislation providing for flood control zone districts appears to be the culmination of almost 100 years of effort expended by the Legislative Assembly of Washington Territory, and then the Washington State Legislature, to develop a type of special purpose district best able to finance flood and drainage control

improvements and activities.[a] The improvements found in the flood control zone district legislation include: (1) Providing for countywide flood control zone districts to be formed; (2) providing for a governing body composed of members of the county legislative authority who serve *ex officio* in that capacity but legislation enacted in 2003 allowed an elected board of supervisors in some flood control zone districts;[2] (3) providing flood control zone districts as subdivisions of county government; and (4) allowing flood

a These efforts include:

- Legislation authorizing drainage districts in 1875 and diking districts in 1888. (Statutes of the Territory of Washington, 1875, 5th Biennial Session, Pages 92-96; and Statutes of the Territorial Assembly of Washington, 1887-1888, 11th Biennial Session, Chapter XLIX, Page 90.) Improvements were funded by the imposition of special assessments.
- Legislation enacted in 1895, revising territorial statutes providing for diking districts and drainage districts. (Chapters CXV & CXVII, Laws of 1895.) These districts became independent special purpose districts with governing bodies composed of separately elected officials and imposed special assessments to finance these improvements.
- Legislation enacted in the early 1900's, perfecting the process by which diking districts and drainage districts imposed special assessments to finance these improvements and activities. (Chapters LXXXVI & CXI, Laws of 1901; Chapters 87 & 175, Laws of 1905; Chapters 120 & 242, Laws of 1907; Chapter 143, Laws of 1909; Chapter 13, Laws of 1909 ex. sess.; Chapter 86, Laws of 1913; Chapter 153, Laws of 1915.)
- Legislation enacted in 1913, providing for drainage improvement districts, with different procedures to impose assessments to finance drainage improvements. Each drainage improvement district had a governing body composed of two elected directors and the county engineer acting *ex officio*. (Chapter 176, Laws of 1913.)
- Legislation enacted in 1923, authorizing diking improvement districts basically using diking improvement district statutes. (Chapter 46, Laws of 1923.)
- Legislation enacted in 1935, authorizing flood control districts with vastly improved procedures to impose special assessments to finance flood control improvements and activities. (Chapter 160, Laws of 1935.)
- Legislation enacted in 1937, providing new statutes for the creation of flood control districts after the 1935 legislation was held unconstitutional by the Supreme Court. These statutes provided the most comprehensive procedures for imposing assessments to finance flood control improvements and activities. (Chapter 72, Laws of 1937.)
- Legislation enacted in 1951, providing other improvements to diking district laws. (Chapter 45, Laws of 1951.)
- Legislation enacted in 1961, authorizing flood control zone district to be created. (Chapter 153, Laws of 1961, which was codified in Chapter 86.15 RCW.) These districts were authorized to finance improvements by imposing special assessments, rates, and charges, as well as levying regular property taxes. Members of the county legislative authority acted ex officio as members of the governing body of a flood control zone district. Flood control zone districts were authorized to impose property taxes, as well as assessments, rates, and charges.

control zone districts to impose property taxes, as well as special assessments and rates or charges, to finance their facilities and operations.

The Municipal Research and Services Center (MRSC) reports that 11 flood control zone districts exist in the State.[3]

Creation

The procedure to create a flood control zone district is initiated by either:

- Resolution of the county legislative authority; or
- The filing of a petition with the county auditor proposing the district that has been signed by registered voters residing in the proposed district equal in number to at least 25 percent of the number of such voters who voted at the last county general election.[4]

The county legislative authority holds a public hearing on the creation of the proposed district. It must take action on the proposed creation of the flood control zone district within 10 days of its final hearing on the matter and may: (1) Reject the proposal; (2) order creation of the district; or (3) modify the proposed boundaries and order creation of the district.[5] An additional public hearing must be held if any new territory is added to the boundaries proposed in the initiating resolution or petition. A flood control zone district is created by action of the county legislative authority, without voter approval.

The proposed creation of a flood control zone district may be subject to potential review by a boundary review board.[6]

Two different types of flood control zone districts may be created. Geographically small flood control zones districts may be created to serve local flood control and drainage needs. A “countywide” flood control district may be created encompassing all of the county or all of one or more watersheds in the county.[7] Subzones may be created within a “countywide” flood control zone district. All of these different types of flood control zone districts are created,

operated, and administered in the same manner, and possess the same powers.

Boundary Changes

The county legislative authority may consolidate two or more flood control zone districts or dissolve a flood control zone district.[8] A public hearing on the consolidation or dissolution must be held before the county legislative authority adopts a resolution taking such action. The consolidation of flood control zone districts, or the dissolution of a flood control zone district, occurs by action of the county legislative authority, without voter approval. No provisions are provided for a flood control zone district to annex territory.

These proposed boundary changes may be subject to potential review by a boundary review board.[9]

Governing Body and Elections

The governing body of a flood control zone district, or a subzone of a flood control zone district, consists of a board of supervisors.[10] Members of the county legislative authority serve *ex officio* as the supervisors of each flood control zone district in the county and each flood control subzone in the county. This facet of flood control district law was one of the major differences between flood control zone districts and other special purpose districts designed to provide flood and drainage control improvements.

However, legislation was enacted in 2003, allowing an alternative governing body for some flood control zone districts.[11] Voters of a flood control zone district with at least 2,000 residents may approve a ballot proposition altering the nature of its board of supervisors. Three persons may be elected directly to those offices, in lieu of members of the county legislative authority servicing *ex officio* as members of the board of supervisors. The office of elected supervisor is a nonpartisan office and elections are held in odd numbered years to elect these officials.[12] Elected supervisors may receive compensation at a rate of up to $70 per day for attending district meetings and engaging in other district business, not to exceed $6,720 per year. Unlike compensation provided for most

other members of special purpose district governing bodies, these caps are not adjusted for inflation.

The county engineer manages each flood control zone district or subzone in the county.[13] However, a flood control zone district with elected supervisors may hire a manager for the district.

The county legislative authority may appoint a countywide advisory committee, or a separate advisory committee for one or two flood control zone districts, to advise it on flood control and drainage matters.[14] A county-wide advisory committee may have no more than 15 members. A separate advisory committee for one or two districts may have no more than five members.

Normal franchise rights exist in flood control zone districts and the voters of a flood control district consist of all registered voters residing in the district.[b] [15] County auditors conduct flood control district elections.[16]

Powers

Flood control zone districts may exercise all of the powers of a county relating to flood control and storm water control.[17] This includes general county authorities under Chapters 36.89 and 36.94 RCW to create a storm water utility. In addition, a flood control zone district may:

- Remove debris and logs that impede the orderly flow of streams and water courses;
- Straighten and widen streams and water courses;
- Construct and maintain dikes, levees, drains and drainage systems, dams, and reservoirs;

b Flood control zone district statutes do not expressly define franchise rights, like statutes for many other types of special purpose districts. However, normal franchise rights exist in these special purpose districts. This is inferred from Article VI, Section 1 and the fact that flood control zone district are authorized to impose property taxes and issue general obligation bonds, and the United States Supreme Court has held under the One Person, One Vote Doctrine that the electorate of a local government authorized to impose property taxes and issue general obligation bonds must be the normal electorate. (*Cipriano v. City of Houma*, 395 U.S. 701 (1969); & *City of Phoenix v Kolodziejski*, 399 U.S. 204 (1970).)

- Dispose of flood and storm waters for beneficial uses; and
- Engage in cooperative watershed management actions for the purpose of water supply, water quality, and water resource and habitat protection and management.[18]

Flood control zone districts possess extraterritorial powers and may exercise these powers outside of their boundaries.[19]

A flood control zone district may initiate lawsuits in superior court to abate nuisances and require the removal of structures, improvements, facilities, of accumulations of debris or materials contributing to the dangers of loss of life or property.[20]

Flood control zone districts, as virtually all other types of local government, are authorized to condemn property for their purposes.[21]

Finances

Flood control zone districts receive financing from a variety of sources, including: (1) Property tax receipts; (2) non-tax fees, including assessments and traditional rates and charges; (3) debt proceeds; and (4) other sources. They possess the broadest authorities to finance flood and drainage control improvements and activities of any special purpose district authorized to perform those functions.[22]

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of flood control zone district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

Flood control zone districts may impose both nonvoter-approved regular property tax levies and voter-approved excess property tax levies.[23] No other special purpose district designed to provide flood control and drainage improvements is authorized to impose taxes.

Flood control zone districts may impose annual, nonvoter-approved regular property tax levies of up to 50¢ per $1,000 of assessed valuation. These regular property tax levies are subject to the so-called 101 percent levy lid.

Flood control zone districts may also impose voter-approved excess property tax levies, including both single year excess levies for general purposes and multi-year levies to retire general obligation bonds issued for capital purposes. These excess levies may only be imposed if a ballot proposition authorizing the levy or levies is approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

B. Non-tax fees

Flood control zone districts are authorized to impose a variety of non-tax fees.

1. Traditional rates and charges

Flood control zone districts may impose traditional rates and charges for furnishing flood control services using the procedures by which counties impose rates and charges.[24] They may also impose rates and charges for furnishing service or receiving benefits from their facilities or services.[25]

2. Assessments

Flood control zone districts may also impose assessments under three separate authorities. First, a flood control zone district may impose assessments in the same manner as a flood control district.[26] Second, a flood control zone district may create a local improvement district (LID) and impose special assessments on benefitted property in the LID to finance local improvements.[c] [27] Third, a flood control zone district may impose what are called "voluntary" assessments, with annual installments payable for up to 15 years.[28] Voluntary assessments need not be imposed uniformly

c The procedure to create LID's and impose special assessments is the same as a county under Chapter 36.94 RCW.

throughout the district or in proportion to benefits that property receives.

C. Debt Proceeds

Flood control zone district statutes authorize these districts to incur general indebtedness and issue general obligation bonds with voter approval not exceeding three-quarters of one percent of the value of taxable property in the district.[29] They are authorized to incur general indebtedness and issue general obligation bonds under general law that authorizes any taxing district to incur general indebtedness without voter approval of up to three-eighths of one percent of the value of taxable property in the district.[30] General obligation bonds may be issued with a maximum term of 40 years.

Flood control zone districts may also issue a variety of revenue obligations. A flood control district may issue revenue bonds payable from rates and charges they impose.[31] The maximum term of these bonds is 30 years. A flood control zone district may also issue LID bonds following county procedures.[32] Counties may only impose special assessments in a LID for 20 years, with a maximum term of the LID bonds for 20 years.

Flood control zone districts also may issue a variety of short term obligations, including notes and warrants.[33]

D. Other

Flood control zone districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

NOTES:

1. Chapter 153, Laws of 1961, codified as Chapter 86.15 RCW.
2. Section 1, Chapter 304, Laws of 2003, amending RCW 86.15.050.
3. "Washington Special Purpose Districts Overview," *id*.
4. RCW 86.15.020.

5. RCW 86.15.030.
6. RCW 36.93.020.
7. RCW 86.15.025.
8. RCW 86.15.200.
9. RCW 36.93.020.
10. RCW 86.15.050.
11. Section 1, Chapter 304, Laws of 2003, which amended RCW 86.15.050.
12. RCW 29A.52.231 and 29A.04.330.
13. RCW 86.15.060.
14. RCW 86.15.070.
15. Article VI, Section 1.
16. RCW 29A.04.216.
17. RCW 86.15.080(1).
18. RCW 86.15.080 86.15.100, & 86.15.035.
19. RCW 86.15.090.
20. RCW 86.15.190.
21. RCW 86.15.080(5).
22. RCW 86.15.160, 86.15.165, 86.16.170, 86.15.176, 68.15.178, 39.36.020(1), 39.46.110, 39.46.150, 84.52.052, & 84.52.056; and Chapter 39.50 RCW.
23. RCW 86.15.160(1) & (3) and 86.15.170.
24. RCW 86.15.160(4). Counties impose these rates and charges under RCW 36.89.080.
25. RCW 86.15.176.
26. RCW 86.15.160(2). Flood control districts impose assessments under RCW 86.09.380-86.09.517, as well as RCW 85.38.150-85.38.170.
27. RCW 86.15.160(6).
28. RCW 86.15.165.
29. RCW 86.15.170.
30. RCW 39.36.020(1).
31. RCW 86.15.178. These revenue bonds are issued in the same manner as a county issues revenue bonds under RCW 36.67.500-36.67.570.
32. RCW 86.15.160(6).
33. Chapter 39.50 RCW.

Chapter 41

Park and Recreation Service Areas

A park and recreation service area is a special purpose district authorized to provide parks and recreational facilities and services. Legislation enacted in 1963 authorized park and recreation districts to be formed.[1]

Park and recreation service areas would be classified as a subdivision of a county, or in certain instances a federation of a county and a city.

As discussed below, park and recreation service areas were the first type of special purpose district with a governing body consisting of members of the county legislative authority, acting in *ex officio* capacity, as its governing body of the district that was authorized to be created in modern times. The other special purpose districts primarily authorized to provide park and recreation services and facilities are metropolitan park districts and park and recreation districts.[a]

The Municipal Research and Services Center (MRSC) reports that seven park and recreation service areas exist in the State.[2]

Creation

The creation of a park and recreation service area is initiated by either: (1) Resolution of the county legislative authority; or (2) filing

a Metropolitan park districts are discussed in Chapter 13. Park and recreation districts are discussed in Chapter 23.

a petition with the county auditor proposing creation of the service area signed by at least 10 percent of the registered voters residing within the proposed service area.[3] A feasibility study is conducted and the county legislative authority holds a public hearing on the proposal.[4] The county legislative authority makes findings and determines whether the resolution or petition should be dismissed, or a ballot proposition authorizing creation of the service area should be submitted to voters of the proposed service area.[5] The park and recreation service area is created, if the ballot proposition is approved by a simple majority of the voters voting on the proposition.[6]

A proposed park and recreation service area may only include territory located in a city if the governing body of the city adopts a resolution approving inclusion of the area.[7]

Additional ballot propositions to provide finances for the service area may also be submitted to voters of the proposed park and recreation service area at the same election.[8] The additional ballot proposition may authorize the service area, if created, to:

- Impose annual regular property taxes for general purposes at an annual rate of up to 60¢ per $1,000 of assessed valuation for six years;
- Impose a single year excess property tax levy for general purposes; or
- Issue general obligation bonds for capital purposes and impose multi-year excess property tax levies to retire the bonds.

Each of these additional ballot propositions must be approved by at least a three-fifths vote of the voters voting on the proposition and a 40 percent voter validation requirement is met. This super-majority voter requirement applies to the regular property tax levies, as well as the excess property tax levies.

The proposed creation of a park and recreation service area is <u>not</u> subject to potential review by a boundary review board.[9]

Boundary Changes

The boundaries of a park and recreation service area may be expanded using the same procedure for creating a service area, but the ballot proposition on the boundary extension is submitted to the voters of both the service area and the area proposed to be included in the service area.[10] This is a somewhat unique procedure. Normally, a ballot proposition authorizing the annexation of an area to a local government is only submitted to the voters residing in the area proposed to be annexed.

An inactive park and recreation service area may be dissolved following two different general procedures for the dissolution or disincorporation of special purpose districts. First, the governing body of the service area may petition the superior court to dissolve the district and the court may dissolve the district if it finds that the dissolution will serve the "best interests of all persons concerned".[11] Second, the county legislative authority may dissolve an inactive district.[12]

These proposed boundary changes are <u>not</u> subject to potential review by a boundary review board.[13]

Governing Body and Elections

The governing body of a park and recreation service area consists of members of the county legislative authority in which it is located, acting *ex officio* and independently.[14]

However, a recently enacted law allows the governing body of a park and recreation service area that includes a city to be composed as provided in an "interlocal agreement" between the city and park and recreation service area.[15] No restrictions are provided on the reconstituted governing body of such a park and recreation service area. If members of these governing bodies are elected officials, the offices are nonpartisan and elections are held in odd numbered years to elect these officials.[16]

Normal franchise rights exist in park and recreation service areas and the voters of a park and recreation service area consists of all

registered voters residing in the area.[17] County auditors conduct elections for park and recreation service areas.[18]

Powers

Park and recreation service areas may provide parks and recreational facilities, including zoos, aquariums, senior citizen centers, playgrounds, gymnasiums, swimming pools, field houses, community centers, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums, public camp grounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, storage and moorage facilities, ski lifts, picnic areas, and parking lots used in conjunction with its other facilities.[19] They may also provide athletic equipment and recreational programs, along with concessions.

A park and recreation service area may own its own facilities or lease facilities from the county or a city. It may hire its own employees or pay for county or city employees to work for the service area.[20]

A park and recreation service area, as virtually any other type of local government, may condemn property for its purposes.[21]

Finances

Park and recreation service areas obtain their finances from a variety of sources, including: (1) Property taxes; (2) rates and charges; (3) debt proceeds; and (4) other sources.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of park and recreation service area finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A. Property Taxes

Park and recreation service areas may impose both regular property tax levies and excess property tax levies.

A service area may impose annual regular property taxes for general purposes at an annual rate of up to 60¢ per $1,000 of assessed valuation for up to a six-year period, if voters of the service area approve a ballot proposition authorizing the taxes by a three-fifths vote and a 40 percent voter validation requirement is met.[22] These are regular property tax levies, but may only be imposed if voters approve a ballot proposition by the same vote required to authorize excess, voter approved property tax levies. The property taxes are very low status levies and are subject to being reduced or eliminated if the combined rate of property taxes on any property in the service area exceeds one percent in any year.

Park and recreation service areas may also impose voter-approved, excess property tax levies, including single-year levies for their general purposes and multiple-year levies to retire general obligation bonds issued for capital purposes only.[23] These levies may only be imposed if voters approve a ballot proposition authorizing the taxes by a three-fifths vote and a 40 percent voter validation requirement is met.

B. Fees and Charges

Park and recreation service areas may impose admission fees and other charges for use of their facilities and services.[24]

C. Debt Proceeds

A park and recreation service area may incur general indebtedness and issue general obligation bonds of an amount equal to three-eighths of one percent of the value of taxable property in the service area without voter approval and a total amount up to 2.5 percent of the value of taxable property in the service area if approved by a three-fifths vote of voters voting on the ballot proposition.[25] The bonds may have a maximum maturity of 40 years.[26]

Park and recreation service areas may issue a variety of short term obligations, including warrants and notes.[27]

D. Other

Park and recreation service areas, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

History

The 1963 legislation providing for park and recreation service areas was drafted poorly. Park and recreation service areas were not provided with a governing body by this legislation. The county legislative authority was granted authority to provide parks and recreational facilities by this legislation, rather than the park and recreation service area or the governing body of the park and recreation service area being granted this authority.

Pierce County used this legislation to submit two ballot propositions to voters south of Tacoma. One ballot proposition authorized the creation of a park and recreation area and the other ballot proposition authorized the issuance of general obligation bonds and the imposition of excess property tax levies to retire the bonds. However, it apparently was intended that the park and recreation service area use receipts obtained from the sale of these bonds for both maintenance and operating purposes and capital purposes. A lawsuit followed, challenging the park and recreation service area on two grounds:

- Imposition of the property taxes violated the Uniformity Clause (Article VII, Section 1) which requires that property taxes be imposed uniformly "within the territorial limits of the authority imposing the tax". It was argued that the county imposed the taxes rather than the service area.
- Receipts from the bonds were intended to be used in part for maintenance and operating purposes in violation of Article VII, Section 2(b). This constitutional provision allows multi-year excess property tax levies to be imposed to retire general obligation bonds issued "solely for capital purposes".

The Supreme Court only analyzed the second issue and held that the bond receipts could be expended for only capital purposes.[28] Although the Court did not address the first issue, it commented in *dicta* that:

> "serious questions are raised concerning the constitutionality of the entire Park and Recreation Service Area statute".

It appeared that the county was imposing the property taxes, rather than the park and recreation service area, in violation of the Uniformity Clause since the tax was not imposed uniformly within the county's boundaries.[29] This *dicta* sent shock waves through the bond counsels in the State and more or less precluded the use of a subdivision of a local government with members of the county legislative authority acting *ex officio* as members of the governing body of the subdivision.

However, park and recreation service area laws were extensively revised in the 1980's in an attempt to cure the clear imperfections of the early law.[b] [30] Most references to the county legislative authority were removed from these statutes. A governing body was provided for each park and recreation service area composed of the members of the county legislative authority, acting *ex officio* and independently. Statutory grants of authority were revised so that the governing body of the service area was authorized to take the action rather than the county legislative authority. Park and recreation service areas were expressly declared to be quasi-municipal corporations, as well as independent taxing authorities and taxing districts, within the meaning of the State Constitution.

The Supreme Court later upheld the constitutionality of other similar statutes providing for the creation of library capital facility areas, each with a governing body composed of members of the governing body of another local government acting *ex officio*.[c] [31]

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b The author drafted this legislation. It was his view that a total revision of the park and recreation service area law was needed in an attempt to re-invigorate the concept of a subdivision of local government where members of the governing body of the local government that created the subdivision, acting in *ex officio* and independent capacities, constituted the governing body of the political subdivision. It appeared to the author that most bond counsels were still weary of this legislation without a Supreme Court holding recognizing the validity of this concept.

c Library capital facility areas are discussed in Chapter 43.

As a result, park and recreation service areas again became viable special purpose districts.

NOTES:

1. Chapter 218, Laws of 1963, codified as part of Chapter 36.68 RCW.
2. "Washington Special Purpose Districts Overview," *id*.
3. RCW 36.68.410.
4. RCW 36.68.440.
5. RCW 36.68.460.
6. RCW 36.68.470.
7. RCW 36.68.610.
8. RCW 36.68.480.
9. RCW 36.93.020.
10. RCW 36.68.620.
11. Chapter 53.48 RCW.
12. Chapter 36.96 RCW.
13. RCW 36.93.020.
14. RCW 36.68.400.
15. Section 1, Chapter 253, Laws of 1985, which amended RCW 36.68.400.
16. RCW 29A.52.231 and 29A.04.330.
17. Article VI, Section 1.
18. RCW 36.68.400 & 29A.04.216.
19. RCW 36.68.400 & 36.68.550.
20. RCW 36.68.541.
21. RCW 36.68.555.
22. RCW 36.68.525.
23. RCW 36.68.490.
24. RCW 36.68.550.
25. RCW 36.68.520.

26. RCW 39.46.110.
27. Chapter 39.50 RCW.
28. *Pierce County v. Taxpayers of Lakes District*, 70 Wn.2d 375, 381 (1967).
29. *Taxpayers of Lakes District*, at page 382.
30. These changes were made by Chapter 210, Laws of 1981. An additional change was made by Section 1, Chapter 253, Laws of 1985.
31. *Granite Falls Library v. Taxpayers*, 134 Wn.2d 825, 839 (1998).

Chapter 42

Service Districts

A service district is authorized to finance the costs of capital and maintenance costs for bridges and roads.

Legislation enacted in 1983 authorized counties to create one or more service districts within their boundaries.[1] Two statutes relating to service districts, that were enacted after the original service district statutes were enacted, refer to service districts as "road and bridge service districts."[2]

A service district would be classified as a subdivision of the county that created it.

The Municipal Research and Services Center (MRSC) does not include service districts in its list special purpose districts in Washington State.[3]

Service district statutes are somewhat vague and the Legislature should review and clarify these statutes.

Creation

After holding a hearing on the matter, a county legislative authority may adopt an ordinance or resolution creating a service district if it finds creation of the district is in the public interest.[4] The ordinance or resolution specifies the functions or activities to be funded and establishes the boundaries of the district. With the approval of the county legislative authority, the governing body of a service district may expand the functions or activities it provides.

Proceedings to create a service district are terminated if a petition, signed by a majority of registered voters residing within the proposed service district, is filed declaring that the creation should be terminated.

The creation of a service district is not subject to review by a boundary review board.

Boundary Changes

The governing body of a service district may adopt a resolution modifying its boundaries, or dissolving itself, if the governing body finds that such actions are in the public interest and the county legislative authority that created the service district approves of this action.

Boundary changes by a service district are not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a service district is a three member board of commissioners appointed by the county legislative authority.[5] Commissioners serve staggered three-year terms of office. A member of the county legislative authority may not be appointed as a commissioner of a service district unless the boundaries of the service district are coterminous with the boundaries of the commission or council district associated with that member of the county legislative authority.

A petition, signed by at least 25 percent of the registered voters of a service district, may be filed to retain a service district commissioner in office beyond his or her initial term of office.[6] The petition must be filed at least one year prior to the end of the commissioner's term of office. If voters approve the referendum at a special election, the commissioner is retained. No term of office is specified, but presumably the commissioner is retained for another three-year term of office.

After holding a hearing on the matter, the county legislative authority may remove a commissioner from office for neglect of duty or misconduct in office.[7]

Commissioners do not receive compensation, but may be reimbursed for reasonable and necessary expenses, including travel expenses they incur in discharging their duties.[8]

Normal or regular franchise rights exist in service districts and the voters of a service district are the registered voters residing within the district.[9] County auditors conduct elections for service districts.

Powers

A service district may build and maintain bridge and road improvements, as well as any state highway that a county or road district is authorized to provide.[10]

Service districts possess the powers of eminent domain and may condemn property for their purposes following county statutes.[11]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of service district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

Voters of a service district may, by a super-majority vote, approve a ballot proposition authorizing the service district to impose a single year excess property tax levy for the district's general purposes or multi-year excess levies to retire general obligation bonds issued for capital purposes.[12]

A service district may issue non-voter approved, councilmanic, general obligation bonds of not exceeding three eighths of one percent of the value of taxable property within the district, and with supermajority voter approval issue general obligation bonds for capital purposes, together with other outstanding bonds, of not exceeding 1.25 percent of the value of taxable property within the

district.[13] The authority of a service district to issue councilmanic general obligation bonds is probably illusory since a service district does not have any tax authority that would be used to provide security for these bonds.

A service district may create local improvement districts (LIDs) and utility local improvement districts (ULIDs) within its boundaries and impose special assessments within these improvement districts.[14] City laws are followed when these districts are created and special assessments imposed. The statute is silent about what types of improvements may be financed by these special assessments, but presumably these would be road or bridge improvements. The authority of a service district to create an ULID makes no sense since service districts are not authorized to provide utility improvements.

A service district may also receive and expend gifts, grants and donations.[15]

NOTES:

1. Chapter 130, Laws of 1983, codified as Chapter 36.83 RCW.
2. RCW 36.83.100 and 36.83.110.
3. "Washington Special Purpose Districts Overview," *id*.
4. RCW 36.83.020.
5. RCW 36.83.010 & 36.83.100.
6. RCW 36.83.110.
7. RCW 36.83.120.
8. RCW 36.83.100.
9. RCW 36.83.010.
10. RCW 36.83.010.
11. RCW 36.83.090.
12. RCW 36.83.030.

13. RCW 36.83.040.

14. RCW 36.83.050.

15. RCW 36.83.080.

Chapter 43

Library Capital Facility Areas

A library capital facility area is a special purpose district that functions as a subdivision of a county to finance library facilities for various different types of library districts.

Legislation enacted in 1995 authorized the creation of library capital facility areas.[a] [1] The clear purpose of this legislation was to provide a unit of government capable of financing library facilities in a relatively small geographic area, in lieu of having a county rural library district or intercounty rural library district fund these improvements. Creating a separate unit of government to impose property taxes for this purpose avoids a violation of the Uniformity Clause if the geographically larger library district were to impose property taxes within a portion of its boundaries.

County rural library districts and intercounty rural library districts are quite large, geographically. Traditionally, library districts acquired library facilities from cities and did not build their own facilities. The large geographic size of these library districts created a political dilemma when the library district proposed constructing new facilities in rural areas or in smaller cities without library facilities. It was perceived that voters in the larger cities located in the library district, which already had library facilities, would oppose ballot

a Former Senator Mary Margaret Haugen was the prime sponsor of this legislation. She was the chair of the Senate Government Operations Committee at that time and the former chair of the House Local Government Committee when she served as a member of the House of Representatives. The author was privileged to work very closely with her, especially when she was the chair of the House Local Government Committee. Haugen has been responsible for much of the modern legislation relating to local governments, including many innovations and reforms of these laws, as well as proposed legislation from the Local Governance Study Commission. She also was one of the major forces behind enactment of the Growth Management Act. More recently, she has led much of the effort to modernize the State's transportation laws while serving as the chair of the Senate Transportation Committee.

propositions authorizing the library district to issue general obligation bonds to finance new library facilities and impose excess property tax levies to retire the bonds.

The solution was to enact legislation allowing library capital facility areas, as separate units of local government, to be created in parts of a large library district that do not already have library facilities, or that are in need of improved library facilities. A ballot proposition authorizing general obligation bonds to be issued, and excess property tax levies to be imposed to retire the bonds, is submitted to the voters of the new library capital facility area rather than the entire library district.

Voters in a small portion of rural Snohomish County approved a ballot proposition creating a library capital facility area, and a second ballot proposition authorizing the library capital facility area both to issue general obligation bonds to finance a library and impose excess property tax levies to retire the bonds. A friendly lawsuit challenged the constitutionality of the new legislation. The State Supreme Court held that a library capital facility area was a separate unit of local government, although the governing body of the library capital facility area was composed of three of the five members of the Snohomish County Council, and was sufficiently independent of the county to impose property taxes without violating the Uniformity Clause.[2] It recognized that members of a county legislative authority serve *ex officio* as members of another governing body, although literally these three members of the county legislative authority are appointed to serve as members of the library capital facility area governing body. This was a very significant decision validating the concept of subdivisions of parent local governments. The Court upheld the constitutionality of subdivisions of a larger government being used to finance local improvements with the use of general obligation bonds retired by property tax levies.

The Municipal Research and Services Council (MRSC) reports that 11 library capital facility areas exist in the State.[3]

Creation

The creation of a library capital facility area is initiated by a written

request to form such an entity being submitted to the county legislative authority that has been approved by a majority of the board of trustees of a library district or of a city library.[4]

The county legislative authority is required to submit two separate ballot propositions to the voters of the proposed library capital facility area when it receives the written request. One ballot proposition authorizes creation of the library capital facility area. The other ballot proposition authorizes the library capital facility area to issue general obligation bonds to finance a library and impose excess property tax levies to retire the bonds. Obviously, the second ballot proposition is null and void if the first ballot proposition authorizing creation of the library capital facility area is not approved. The library capital facility area is created if the first ballot proposition is approved by a simple majority vote of voters voting on the proposition. The second ballot proposition must be approved by a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

A library capital facility area may also be created in a multi-county area.

The proposed creation of a library capital facility area is not subject to potential review by a boundary review board.[5]

Dissolution

A library capital facility area may be dissolved using several different methods.

First, a library capital facility area may be dissolved by a majority vote of its governing body when all general obligation bonds issued by the special purpose district have been discharged and any other obligations have been discharged or assumed by another government.[6] Second, a library capital facility is automatically dissolved if voters defeat two ballot propositions authorizing the special purpose district to issue general obligation bonds and impose excess property tax levies to retire the bonds.[7]

In addition, an inactive library capital facility area may be dissolved following two different general procedures for the dissolution or

disincorporation of special purpose districts. First, the governing body of the library capital facility area may petition the superior court to dissolve the district and the court may dissolve the district if it finds that the dissolution will serve the "best interests of all persons concerned".[8] Second, the county legislative authority may dissolve an inactive special purpose district.[9]

The proposed dissolution of a library capital facility area is not subject to potential review by a boundary review board.[10]

Governing Body and Elections

The governing body of a library capital facility area is composed of three members of the county legislative authority of the parent county in which the special purpose district is located.[11] Although the statute does not expressly state this, the members of the county legislative authority serve in *ex officio* capacities as members of the governing body of the library capital facility area.

If the county legislative authority consists of three officials, as is the case in all non-charter counties and two charter counties, all of the members of the county legislative authority serve as members of the governing body of the library capital facility area. If the county legislative authority consists of more than three officials, the county legislative authority appoints three of its members as the governing body of the library capital facility area. If a library capital facility area is located in more than one county, the county legislative authorities of those counties by mutual agreement appoint three of their members as the governing body of the library capital facility area.

Regular or normal franchise rights exist in library capital facility areas and the voters of a library capital facility area consist of all registered voters residing in the area.[12] County auditors conduct elections for library capital facility areas.[13]

Powers

Library capital facility areas may construct, acquire, maintain, and remodel library capital facilities.[14]

A library capital facility area may enter into interlocal agreements or otherwise contract with a county, city, or library district to design, administer the construction of the library facility, or operate and maintain the library facility. The library capital facility area may retain the library or may transfer legal title for the library to a county, city, or library district.

Finances

Library capital facility area finances are quite limited and basically consist of only excess voter approved property tax levies and debt proceeds.

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of library capital facility area finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A library capital facility area may incur general indebtedness and issue general obligation bonds to finance library facilities, and impose multi-year excess property tax levies to retire the bonds, if voters approve a ballot proposition authorizing the bonds and taxes by a three-fifths vote and a 40 percent voter validation requirement is met.[15] The amount of general indebtedness may not exceed 1.25 percent of the value of taxable property within the library capital facilities district. General obligation bonds with terms of up to 40 years may be issued.[16]

Library capital facility districts are taxing districts, so general law authorizes them to: (1) Submit ballot propositions to voters authorizing the special district to impose single-year excess levies for its general purposes;[17] and (2) issue general obligation bonds of up to three-eighths of one percent of the value of taxable property in its boundaries without voter approval, but there would be no market for these bonds since the special purpose district would have no taxing authority to redeem these bonds.[18]

A library capital facility district may also issue short-term obligations, including warrants and notes.[19]

Library capital facility districts, as other special purpose districts, are eligible to receive grants and gifts, receive income from interest and investment earnings, and receive income from sales or leases of real or personal property.

Library capital facility areas do not possess the powers of eminent domain.

NOTES:

1. Chapter 368, Laws of 1995, codified in Chapter 27.15 RCW.
2. *Granite Falls Library v. Taxpayers*, 134 Wn.2d 825, 839 (1998).
3. "Washington Special Purpose Districts Overview," *id*.
4. RCW 27.15.020.
5. RCW 36.93.020.
6. RCW 27.15.060(1).
7. RCW 27.15.060(2).
8. Chapter 53.48 RCW.
9. Chapter 36.96 RCW.
10. RCW 36.93.020.
11. RCW 27.15.030.
12. Article VI, Section 1.
13. RCW 29A.04.216.
14. RCW 27.15.040.
15. RCW 27.15.050.
16. RCW 39.46.110.
17. Article VIII, Section 6 & RCW 84.52.052.
18. RCW 39.36.020(1).
19. Chapter 39.50 RCW.

Chapter 44

City Transportation Authorities

A city transportation authority is authorized to construct and operate a monorail system.[1]

Legislation enacted in 2002 authorized the creation of city transportation authorities.[a] A city transportation authority probably would be classified as a partial subdivision of the city in which it is created. This type of special purpose district is one of several new types of special purpose districts that have been authorized to address the varied transportation needs of greater Seattle.[b]

City transportation authorities are very unique special purpose districts. First, as discussed below, the method of selecting members of its governing body is unique. Second, the basic nature of an authority is not entirely clear. An authority is perhaps most appropriately classified as a partial subdivision of the city in which it is located, but an authority also appears to be an independent special purpose district. The nature of a city transportation authority as a partial subdivision of a city arise from:

- The territory included in the authority, which consists of all territory of the city in which it is created.[2]
- One of the two methods of initiating creation of an authority, is by the city council adopting an

a This legislation was enacted at the request of supporters of a new monorail system in Seattle.

b A general discussion of transportation issues is found in Chapter 71. Discussions of the authority of other types of local government to provide transportation facilities and services are found in: (1) Chapters 1 and 4, concerning counties; (2) Chapter 8, concerning cities; (3) Chapter 13, concerning metropolitan park districts; (4) Chapter 14, concerning port districts; (5) Chapter 27, concerning metropolitan municipal corporations (metros); (6) Chapter 28, concerning to public transit benefit areas (PTBA's); (7) Chapter 29, concerning regional transit authorities (RTA's); (8) Chapter 30, concerning regional transportation investment districts (RTID's); (9) Chapter 38, concerning road districts; and (10) Chapter 31, concerning transportation benefit districts (TBD's).

ordinance placing a ballot proposition before voters which, if approved authorizes creation of the authority.[3]

- One of the possible methods of selecting members of the governing body of an authority, which is appointment by the city council.[4] Normally, members of a governing body who are appointed to office are appointed by a county or city governing body, which is an option for a city transportation authority. However, as discussed below, some of the members of the board of directors of the Seattle Monorail Project were appointed by the board of directors itself.
- Codification of city transportation authority statutes in Title 35 RCW along with statutes relating to cities.

The independent nature of a city transportation authority arises from the possibility that some the members of the city transportation authority governing body could be elected directly to those positions, as well as its authority to proceed with its voter approved projects without control by the city. City transportation authority statutes expressly declare authorities to be municipal corporations, independent taxing authorities, and taxing districts.[c] [5]

The Legislature should review the statutes relating to city transit authorities and consider amending them to make clarifications or repealing these statutes.

Creation

A city transportation authority may only be created in a city with a population of 300,000 or more, i.e., Seattle.[6] If created, the authority must occupy all of the territory of the city.

The creation of a city transportation authority is initiated by either the city council adopting an ordinance proposing the authority, or by

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c This is standard language developed by the author in the 1980's and used in a number of statutes authorizing different types of subdivisions of local governments to be created. Similar language was first used in statutes relating to park and recreation service areas as part of an attempt to distinguish these service areas, which are a subdivision of a county, from the county itself. A discussion of park and recreation service areas is found in Chapter 41.

a petition proposing the authority that has been signed by at least 1 percent of the registered voters residing within the city.[7] This is a relatively low signature requirement for a petition initiating the creation of a unit of local government.

The initiating ordinance or petition proposes creation of the authority, provides for the size and composition of the governing body for the authority, proposes a plan for a monorail transportation, and proposes an initial array of taxes for the authority to impose.

A ballot proposition is submitted to city voters for their approval or rejection authorizing creation of the authority, the plan for monorail transportation, and imposition of an array of taxes.[8] The authority is created and authorized to implement the plan for monorail transportation and impose these taxes, if the ballot proposition is approved by a simple majority of voters voting on the proposition.

The proposed creation of a city transportation authority is not subject to potential review by a boundary review board.

Boundary Changes

An authority must embrace all of the territory of the city in which it is located.[9] As a result, any changes in the boundaries of the city automatically result in the boundaries of the authority being changed. This would include the city annexing territory, consolidating with another city, and having territory withdrawn. Presumably, the authority would dissolve if the city were to disincorporate.

An authority may also be dissolved by a vote of the people residing within its boundaries “if the authority is faced with significant problems”.[10] In addition, it appears that the county legislative authority could dissolve an inactive city transportation authority under general laws.[11]

These proposed boundary changes are <u>not</u> subject to potential review, and approval, modification and approval, or rejection, by a boundary review board if one exists in the county in which the city transportation authority is located.[12]

Governing Body and Elections

The governing body of a city transportation authority is composed as provided in the resolution by the city council or voter petition that places the ballot measure before city voters authorizing creation of the city transportation authority.[13] The only statutory restriction is that members of the governing body must be appointed or directly elected. If these offices are elected positions, they are nonpartisan positions and elections are held to elect these officials in odd numbered years.[14] No details are provided about how appointments are to be made. City employees or officials may not constitute a majority of the members of the governing body of an authority. An interim governing body must also be designated to govern the authority, until the actual governing body is selected.

This lack of statutory detail about the governing body of a city transportation authority is somewhat unique. Normally, statutes providing for appointed members of special purpose district governing body specify the terms of office and the appointing authority, which would be the governing body of the parent city or county.

Regular or normal franchise rights exist in city transportation authorities and county auditors conduct their elections.[15]

Powers

An authority may construct and operate a passenger monorail system, including passenger stations, terminals, and parking facilities within and outside of its boundaries.[16] An authority may condemn property for its purposes.[17]

An authority may award contracts using:

- A traditional competitive bidding procedure for contracts over $200,000;
- A special design/build/operate procedure; and
- Alternative public works contracting procedures, which include another design-build contracting procedure, a general contractor/construction

manager contracting procedure, and a job order contracting procedure.[d] [18]

The special design/build/operate procedure involves publishing requests for qualifications or proposals, specifying criteria that will be used to qualify vendors, designating a representative to evaluate venders based upon these criteria, the representative recommending a vendor, the governing body selecting a vendor, and the governing body negotiating directly with the selected vendor.

Prior to expending any monies obtained from excise taxes to acquire a right of way or construct a monorail facility, a city transportation authority must hold public hearings on both the corridors that are chosen to be used and the design of the monorail system.[19]

City transportation authorities, as virtually all other types of local government, may condemn property for their purposes.[20]

Finances

An authority obtains finances from a variety of sources, including: (1) Voter-approved taxes; (2) voter-approved vehicle license fees; (3) rates, tolls, fares, and charges for use of its facilities; (4) special assessments; (5) debt proceeds; and (6) other sources.

A general discussion of local government finances is found in Chapter 63. That chapter provides a general overview of local government finances in Washington State, especially details about taxing authority and restrictions on incurring debt, and should be reviewed before reading the following discussion of city transportation authority finances.

A. Taxes

City transportation authorities may impose voter-approved regular and excess property tax levies and a variety of voter-approved excise taxes.

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d A description of these alternative public works contracting procedures is found in Chapter 72.

1. Property taxes

A city transportation authority may impose annual regular property taxes of up to $1.50 per $1,000 of assessed value, if voters of the authority approve a ballot proposition authorizing these taxes by a simple majority vote.[21] These tax levies have a very low status and are subject to being prorated (reduced or eliminated) if the combined rate of regular property tax levies by taxing districts in any year exceeds the statutory or constitutional limitation on such levies. City transportation authority regular property taxes are subject to the 101 percent levy lid.

A city transportation authority may impose voter-approved excess property tax levies, including both single year excess levies for its general purposes and multi-year levies to retire general obligation bonds issued for capital purposes.[22] The ballot proposition authorizing these levies must be approved by at least a three-fifths vote of voters voting on the proposition and a 40 percent voter validation requirement is met.

2. Excise taxes

A city transportation authority may impose the following excise taxes, if voters approve a ballot proposition authorizing the taxes by a simple majority vote:

- Special motor vehicle excise taxes of not exceeding 2.5 percent of the value of every motor vehicle owned by a resident of the authority; and
- A sales tax on retail car rentals of not exceeding 1.944 percent of the rental value.[23]

B. Vehicle License Fees

A city transportation authority may also impose annual vehicle license fees of not exceeding $100 per vehicle for each vehicle subject to the State's motor vehicle license fee that is registered in the authority's boundaries.[24] These fees may only be imposed if a ballot proposition authorizing the fees is approved by a simple majority vote of voters voting on the proposition.

C. Rates, Tolls, Fares, and Charges

A city transportation authority may impose rates, tolls, fares, and charges for the use of its facilities.[25]

D. Special Assessments

A city transportation authority may create local improvement districts (LIDs) and impose special assessments on benefitted property in the LID to finance local improvements.[26] City statutes relating to LIDs are followed for this purpose.

E. Debt Proceeds

City transportation authorities also obtain revenues from debt proceeds.

A city transportation authority may incur general indebtedness and issue general obligation bonds not exceeding an amount equal to 1.5 percent of the value of taxable property in the authority without voter approval and a total of 2.5 percent of the value of taxable property in the authority if authorized by a three-fifths vote of district voters voting on a ballot proposition.[27] The maximum term of the bonds is 40 years.[28]

City transportation authorities may issue a variety of different types of revenue obligations that are not subject to indebtedness limitations. A city transportation authority may issue revenue bonds payable from its operating income.[29] The maximum term of these bonds is 40 years.[30] A city transportation authority may also issue local improvement district bonds payable from special assessments imposed on land benefitting from the local improvements that is located within a local improvement district.[31] The maximum term of these bonds is 30 years.[32]

A city transportation authority may issue a variety of short term obligations, including notes and warrants.[33]

F. Other

A city transportation authority, as any other special purpose district, is eligible to receive grants and gifts, receive income from interest

and investment earnings, and receive income from sales of real or personal property.

Seattle Popular Monorail Authority

Seattle voters authorized the creation of the Seattle Popular Monorail Authority in 2002.[e] However, the Seattle Popular Monorail Authority became quite controversial with large cost overruns and was dissolved.

A number of ballot propositions have been associated with the Seattle Popular Monorail Authority.

A. Seattle Initiative No. 41

Seattle voters approved Seattle Initiative No. 41 by a wide margin in 1997, creating the Elevated Transit Company to study the potential for a monorail system in Seattle. The Elevated Transit Company was a public corporation with a governing body composed of people appointed by the Seattle City Council. This governing body was called the Interim Monorail Board.

B. Seattle Initiative No. 53

By a wide margin, Seattle voters approved a second ballot proposition (Seattle Initiative No. 53) in 2000 providing $6 million for the Elevated Transit Company to develop a plan for a citywide monorail system.

C. Seattle Citizen Petition No. 1

The newly enacted legislation providing for city transportation authorities was followed, and Seattle voters approved a ballot proposition in 2002, actually creating the Seattle Popular Monorail Authority, authorizing an initial 14-mile long monorail, and imposing motor vehicle excise taxes to finance the project. This third ballot proposition was initiated by voter petition and was called the Seattle Citizen Petition No. 1. The 14-mile long route authorized in this ballot proposition is called the Green Line. Voters approved this ballot proposition by only an 800 vote margin.

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e The Seattle Popular Monorail Authority is also called the Seattle Monorail Project.

Seattle Citizen Petition No. 1 included a number of restrictions. Among the restrictions, the Seattle Popular Monorail Authority was limited to borrowing no more than $1.5 billion for this project. The governing body of the Seattle Popular Monorail Authority had a unique composition. A non-traditional contracting method was authorized to award a contract for the design of the project, building of the project, and operation of the project.

Seattle Citizen Petition No. 1 provided two steps to establish the governing body for the Seattle Popular Monorail Authority. Members of the Interim Monorail Board that had been created by the first ballot proposition constituted the interim governing body of the Seattle Popular Monorail Authority. The permanent governing body was a nine-member board of directors. Initial directors were composed of five persons who were nominated by the interim board and appointed by the Seattle City Council and four persons who were nominated by either the City Council or Mayor and appointed by the interim board. Subsequent directors were composed as follows:

- Three persons would be nominated by the board of directors and appointed by the City Council;
- Four persons would be nominated by either the mayor or city council, and appointed by the board of directors; and
- Two persons would be directly elected by the voters of Seattle.[34]

State Senator Jeanne Kohl-Welles also sat on the board in an *ex officio*, non-voting capacity.[35] Seattle Citizen Petition No. 1 also included a provision restricting city officials and employees serving on the board of directors to a greater degree than the statutory restriction discussed above. The additional restriction provided that no city official or employee may serve on the board of directors.[36]

It is a very odd feature of the Seattle Popular Monorail Authority's governing body that the board of directors itself would be involved in either nominating or appointing seven of the nine voting members as the governing body. An appellate court has not

reviewed the constitutionality of this method of selecting members of the board of directors.[f]

The initial 14-mile long Green Line was designed to run from Ballard to the downtown area of Seattle, and then out to West Seattle. Plans were made to submit additional ballot propositions to Seattle voters to authorize other monorail lines throughout the city. Receipts from the voter approved motor vehicle excise tax were substantially under-estimated.

D. Seattle Initiative No. 83

In 2004, Seattle voters defeated a ballot measure (Seattle Initiative No. 83) that attempted to end the Seattle Popular Monorail Authority, by precluding city rights of way and other properties from being used for monorail facilities. Initiative No. 83 was defeated by 63 percent to 37 percent vote of Seattle voters.

E. Seattle Popular Monorail Authority Proposition No. 1

The Seattle Popular Monorail Authority used its special design, build, and operate contracting procedure to award a contract for the Green Line. Only one contractor, the Cascadia Monorail Company, submitted a proposal for this project in August of 2004. The bid exceeded the amount of money the Seattle Popular Monorail Authority was authorized to borrow.

Negotiations between the Seattle Popular Monorail Authority and the contractor were held to pare the project back and reduce costs to stay within the authorized amount that may be borrowed. The resulting agreement provided for fewer and less developed stations, fewer trains, and higher expenses. A complicated proposal was developed to finance the project by deferring interest payments to later years, using bond proceeds to finance operating and maintenance costs for the first 10 years, and issuing bonds

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f This is a novel method of appointing members of a governing body of a municipal corporation. Constitutional provisions and doctrines that may have to be addressed concerning this structure include: (1) The requirement of the United States Constitution (Article IV, Section 4) that each state, and by inference each local government, have a republican form of government; (2) the requirement of the State Constitution (Article I, Section 1) that "governments derive their just powers from the consent of the governed"; and (3) the requirement of the State Constitution (Article I, Section 19) for freedom of elections where no power may prevent the "exercise of the right of suffrage".

with up to 40 or 45 years duration. Seattle Popular Monorail Authority staff noted that voters approved a cap on the amount that could be borrowed, not the cost of the project. Interest would be deferred during the construction period, and a variety of different types of bonds would be issued, including what were called "junk bonds," which have higher interest rates. The total construction and debt costs would amount to $11 billion.[g] This proposal was strongly criticized by the State Auditor, State Treasurer, and a number of Seattle residents.[37]

Both the chair of the Seattle Popular Monorail Authority and the executive director of the Seattle Popular Monorail Authority resigned.[38]

Then, Seattle Mayor Greg Nickels told the Seattle Popular Monorail Authority to pair down its project and present another proposal to Seattle voters at the November, 2005 general election. The Seattle Popular Monorail Authority submitted a ballot measure (Seattle Popular Monorail Authority Proposition No. 1) to voters at that election which would have authorized the construction of a 10-mile line between West Seattle and Interbay. This measure was defeated by Seattle voters, ending the new monorail project. The Seattle Popular Monorail Authority was dissolved.

NOTES:

1. Chapter 248, Laws of 2002, codified in Chapter 35.95A RCW.
2. RCW 35.95A.020(1).
3. RCW 35.95A.030(1).
4. *Id*.
5. RCW 35.95A.020.
6. *Id*.
7. RCW 35.95A.030.

g This is roughly three times the total construction and debt costs Sound Transit experienced constructing a 14-mile light rail line from downtown Seattle to SeaTac airport. (Hadley, Jane, "Monorail's Building, Debt Costs Balloon to $11 Billion", Seattle P-I, June 22, 2005.)

8. RCW 35.95A.020(2) & 35.95A.030(3).
9. RCW 35.95A.020(1).
10. RCW 35.95A.120.
11. Chapters 36.96 & 53.48 RCW.
12. RCW 36.93.020.
13. RCW 35.95A.030.
14. RCW 29A.52.231 & 29A.04.330.
15. Article VI, Section 1; and RCW 29A.04.216 & 35.95A.010(6).
16. RCW 35.95A.050(1).
17. *Id*.
18. RCW 35.95A.050(3).
19. RCW 35.95A.080.
20. RCW 35.95A.050(1).
21. RCW 35.95A.100.
22. RCW 35.95A.070.
23. RCW 35.95A.080.
24. RCW 35.95A.090.
25. RCW 35.95A.050(2).
26. RCW 35.95A.050(7).
27. RCW 35.95A.070(2).
28. RCW 39.46.110(1).
29. RCW 35.95A.070(3).
30. RCW 39.46.150(1).
31. RCW 35.95A.050(7).
32. RCW 35.45.020.
33. Chapter 39.50 RCW.
34. The by-laws are found in the Seattle Popular Monorail Authority's web site at < http://www.elevated.org/board/bylaws/ >.
35. Seattle Popular Monorail Authority website.
36. Article 2, Section 2.2 of the by-laws.
37. Lindblom, Mike, "Monorail Price Tag Exceeds $2 Billion", Seattle Times, June 9, 2005; Hadley, Jane, "Monorail Project Within Cost Limits, Delivering What Voters Sought", Seattle Post-Intelligencer, June 21, 2005; Mulady,

Kathy, “New Monorail Tab Hits Hard”, Seattle Post-Intelligencer, June 23, 2005; and Hadley, Jane, “Monorail Agency Speaks Up for Itself”, Seattle Post-Intelligencer, June 29, 2005.

38. Lange, Larry, and Kathy Mulady, “2 Top Monorail Executives Quit, Weeks, Horn Say Their Resignations in the’ Best Interests’ of Troubled Project”, Seattle Post Intelligencer, July 5, 2005.

Chapter 45

County Airport Districts

County airport districts provide and operate airports and other air navigation facilities.

Legislation enacted in 1945 authorized creation of county airport districts.[1] Counties and cities were authorized to acquire, operate and maintain sites and facilities for the landing, care and housing of airplanes and seaplanes by legislation enacted in 1919. Port districts were authorized to provide these facilities by legislation enacted in 1929.[2]

Depending on the makeup of its governing body, an airport district would be classified as either a subdivision of the county in which it is located or an independent special purpose district.

The Municipal Research and Services Center (MRSC) reports that there are only two airport districts in the state.[3] King County Airport District No. 1 is located on Vashon Island and has separately elected airport commissioners. Grant County Airport District No. 1 is located in Mattawa and the Grant county legislative authority serves as the governing body of the district.

Creation

An application to form a county airport district, signed by at least 100 registered voters residing within the proposed airport district, is submitted to the county legislative authority of the county in which

the proposed district is located.[4] If the application contains sufficient valid signatures, the county legislative authority places a ballot proposition before voters to authorize creation of the county airport district. Added time is allowed to secure additional signatures on the application, if sufficient valid signatures are not found. The county legislative authority may alter the boundaries of the proposed district before the ballot proposition is submitted to voters.

The county airport district is created if the ballot proposition authorizing the district is approved by a simple majority of voters voting on measure.

Creation of a county airport district is not subject to review by a boundary review board.

Boundary Changes

No provisions are provided to alter the boundaries of a county airport district or to dissolve a county airport district.

However, an inactive county airport district would be subject to dissolution under two general statutes. First, the members of the governing body of a county airport district may petition the superior court to dissolve the district.[5] Second, the county legislative authority may dissolve an inactive special purpose.[6]

The dissolution of a county airport district is not subject to review by a boundary review board.

Governing Body and Elections

Two alternatives exist for the governing body of a county airport district.

Under the original provisions, the county legislative authority acted as the governing body of an airport district.[7]

Legislation enacted in 1951 allowed voters of a county airport district to approve a ballot measure providing for a separately elected, three member, board of county airport commissioners.[8] A petition proposing an elected board of airport commissioners, signed by at

least 100 registered voters residing within the district, may be filed with the county legislative authority. The county legislative authority holds a public hearing on the issue and may provide for the district to be governed by a three-member board of airport commissioners, if it "appears" to the county legislative authority that a majority of voters within the district support this change. The first airport commissioners are appointed by the county legislative authority.[9] An election to elect commissioners is held at the next general election held in an odd-numbered year and three commissioners are elected to two year terms of office at this election. The elective office of airport district commissioner is a nonpartisan office. Presumably, candidates run for specific commissioner positions, although no provision details how commissioners are elected. Unlike the elected officials of most other local governments, no staggering of terms of office is provided.

Elected commissioners do not receive compensation but are reimbursed for "actual necessary traveling and sustenance expenses incurred while engaged on official business."[10]

Vacancies on a separately elected board of county airport commissioners are filed by action of the remaining commissioners.[11] However, if less than two commissioners remain in office, the county legislative authority appoints a commissioner or commissioners until two commissioners exist for the airport district and these commissioners appoint a person to the third vacant position.

Regular or normal franchise rights exist for airport districts and elections are conducted by the county auditor.[12]

Powers

A county airport district may acquire, construct, and operate airports and other air navigation facilities and structures within or outside of its boundaries.[13] This includes authority to provide for unobstructed air space for aircraft to land and take off from the airport, and an airport district may acquire easements for this purpose.

County airport districts possess the powers of eminent domain and may condemn property for their purposes.[14]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of county airport district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A county airport district may impose fees and charges for use of its facilities.[15]

Voters of a county airport district may approve a ballot proposition authorizing the district to impose annual regular property tax levies of not exceeding 75¢ per $1000 of assessed value.[16] In addition, as a taxing district, voters of a county airport district may approve a ballot proposition by a supermajority vote authorizing the district to impose a single year excess property tax levy, or may approve a ballot proposition authorizing the district to impose multi-year excess property tax levies to retire general obligation bonds issued by the district for capital purposes.[17]

A county airport district, as a taxing district, may incur general indebtedness and issue general obligation bonds to finance its operations and facilities.[18] Councilmanic, nonvoter approved, general indebtedness may be incurred of an amount not in excess of 3/8's of one percent of the value of taxable property within the district, and with supermajority voter approval a total outstanding indebtedness of not exceeding 1.25 percent of the value of taxable property in the district.

NOTES:

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1. Chapter 182, Laws of 1945, codified as part of Chapter 14.08 RCW.

2. Section 1, Chapter 48, Laws of 1919, which is now codified as RCW 14.07.010; & Section 1, Chapter 93, Laws of 1929, amending the prior 1919 statute.

3. "Washington Special Purpose District Overview," *id*.

4. RCW 14.08.290.
5. Chapter 53.48 RCW.
6. Chapter 36.96 RCW.
7. RCW 14.08.300.
8. RCW 14.08.302.
9. RCW 14.08.304.
10. *Id*.
11. RCW 42.12.070.
12. RCW 14.08.290.
14. RCW 14.08.030(2).
15. RCW 14.08.100.
16. RCW 14.08.290.
17. Article VII, Section 2, Washington State Constitution.
18. Article VIII, Section 6, Washington State Constitution and RCW 39.36.020.

Chapter 46

Community Facilities Districts

Community facilities districts are authorized to provide and operate a wide variety of public facilities.

Legislation enacted in 2010 authorized the creation of community facilities districts to facilitate the voluntary financing of infrastructure and community facilities by landowners.[1]

Although the findings section of this legislation refers to a community facilities district as being a flexible "financial mechanism," these statutes also provide that community facilities districts are "independently governed, special purpose districts."[2] As discussed in Chapter 20, the conversion of a financial mechanism used to pay for drainage ditches into a special purpose district in 1875, during Washington's territorial period somewhat resembles this dual nature.

A community facilities district would be classified as a subdivision of the county, city, or counties and cities creating it, if the district is determined to be a special purpose district and not a financial mechanism.

The Municipal Research and Services Center reports that no community facilities district exists in the State.[3]

The Legislature should review and clarify statutes relating to community facilities districts.

Creation

The creation of a community facilities district is initiated by the filing of a petition proposing the creation of the district that has been signed by all of the owners of private property located within the proposed district.[4] Only areas located within an urban growth area, designated by the county legislative authority under the Growth Management Act, may be included in a community facilities district.

One provision provides that the petition is filed with the county auditor or auditors of the counties in which the area included in the district is located, but another provision provides that the petition is submitted to the applicable "legislative authority."[5] The applicable legislative authority is defined as the city governing body if the area proposed to be included in a district is located entirely within that city, the city governing body and county legislative authority if the area is located in an unincorporated area entirely surrounded by a single city, or the county legislative authority if the area is entirely located within the unincorporated area of a county.

A public hearing on the proposal is held by the applicable "legislative authority."[6] The proposed community facilities district may be authorized only if:

> "the applicable legislative authority determines, in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the interest of the county, city or town, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act."[7]

Approval of the petition amounts to authorizing the creation of the district. The creation of a community facilities district is not subject to review by a boundary review board.

Boundary Changes

No provisions of community facilities district law provide for boundary changes to be made for a community facilities district.

However, an inactive community facilities district would be subject to dissolution under two general statutes, if the district is determined to be a special purpose district and not a financial mechanism. First, the board of supervisors of a community facilities district may petition the superior court to dissolve the district.[8] Second, the county legislative authority may dissolve an inactive special purpose.[9]

The dissolution of a community facilities district is not subject to review by a boundary review board.

Governing Body and Elections

A community facilities district governing body is an odd-numbered board of supervisors consisting of five or more members as follows:

- If the district is located entirely within a single jurisdiction, the applicable jurisdiction appoints three of its own members and two persons from a list of "eligible supervisors";
- If the district only includes unincorporated areas entirely surrounded by a city, the city governing body appoints two of its own members, the county legislative authority appoints two of its own members, and one supervisor is appointed (presumably jointly by the city governing body and county legislative authority) from a list of "eligible supervisors;" or
- If the district includes both unincorporated and incorporated areas, three members are appointed (presumably jointly) by the applicable jurisdictions from among their own members and two persons are appointed (presumably jointly) by the applicable jurisdiction from a list of "eligible supervisors."[10]

In addition, the "applicable jurisdiction" may appoint one or more qualified professionals to serve on the board of supervisors, but the number of supervisors must be an odd number.

Only natural persons may be appointed. The property owner petition proposing creation of the district must include "a list of petitioners or representatives" who are willing to serve on the board of supervisors, which presumably constitutes the list of "eligible supervisors."

Vacancies on a board of supervisors are filled by action of the applicable authority. Supervisors do not receive compensation, but are entitled to expenses, including travel expenses incurred in the discharge of their duties.

No provisions are made for elections or franchise rights in a community facilities district, but given the broad nature of the types of public facilities community facilities districts are authorized to provide, regular franchise rights would exist in such a district if any elections were to occur.

Powers

A community facilities district may finance, acquire, and manage a wide variety of public facilities, including: (1) Sanitary sewers; (2) drainage and flood control systems; (3) water systems; (4) streets, roads and parking facilities; (5) natural gas facilities; (6) street lighting; (7) railways; (8) parks and recreational facilities; (9) libraries; (10) educational facilities; (11) cultural facilities, and (11) other public or community facilities.[11] These facilities may be located either within or outside of the district. A community facilities district may not finance residential units, nonprofit facilities, health care facilities, higher education facilities, or economic development activities.

As discussed below, it is highly doubtful that some of these facilities could be financed by a community facilities district.

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of community facility district finances.

The basic source of a community facilities district financing for the construction, acquisition, and management of its facilities is the imposition of special assessments on benefitted property located in a local improvement district (LID).[12] City LID statutes are followed.

However, it is highly questionable if a community facilities district could finance some of the different types of facilities that a community facilities district is authorized to provide, since special assessments in LIDs may only be imposed to finance local improvements that uniquely confer "peculiar or special benefits" on real property, as distinguished from general governmental facilities that benefit the whole community. The State Supreme Court held that a library is the type of a facility of general benefit to the community, rather than of a unique or special benefit to nearby property, and could not be financed from special assessments imposed within a LID.[13] It would appear that educational facilities would also be construed as being facilities of general benefit and not unique or special benefit and would not be capable of being financed by special assessments imposed in a LID.

Although community facilities districts are not expressly authorized to impose fees, rates or charges for the use of it facilities, such authority would arise inferentially from the mere fact of being authorized to provide various facilities that would generate fees, rates or charges, such as sewer systems or water systems. However, community facilities districts are expressly authorized to issue revenue bonds and revenue bonds are payable from the imposition of rates, charges and fees.[14]

NOTES:

1. Chapter 7, Laws of 2010, codified in Chapter 36.145 RCW.
2. See, RCW 36.145.001(3) & (5).
3. "Washington Special Purpose District Overview," *id*.
4. RCW 36.145.020.
5. Compare RCW 36.145.010(4) with 36.145.020.
6. RCW 36.145.030-36.145.050.
7. RCW 36.145.060.
8. Chapter 53.48 RCW.

9. Chapter 36.96 RCW.
10. RCW 36.145.080.
11. RCW 36.145.100.
12. RCW 36.145.110.
13. *Havens v. King County Rural Library District*, 66 Wn.2d 558, 563-567 (1965).
14. RCW 36.145.090.

Chapter 47

Conservation Districts

Conservation districts are unique special purpose districts authorized to conserve renewable resources, control and prevent soil erosion, and engage in other preservation activities.

Legislation enacted in 1939 authored creation of soil conservation districts.[1] At least in part, this legislation was enacted in response to the federal Soil Conservation Act of 1935 and model soil conservation district legislation for the creation of soil conservation districts that President Franklin D. Roosevelt sent to each state in 1937.[2]

The original state law has undergone significant changes since being enacted, changing the nature of these entities, dropping “soil” from their names to become conservation districts, and greatly expanding their authorities.

Conservation districts are a unique form of special purpose district. Each conservation district is declared to be a “governmental subdivision of this State, and a public body corporate and politic exercising public powers.”[3] Close relations between the State and conservation districts, and some degree of direct control over conservation districts, is exercised through the 10-member State Conservation Commission, composed of five *ex officio* members, two members appointed by the governor to four year terms of office, and three members who are elected serving three-year staggered

terms of office.[4] The supervisors of the conservation districts elect these members of the State Conservation Commission, one of whom must reside in eastern Washington, one of whom must reside in central Washington, and one of whom must reside in western Washington. The five *ex officio* members of the State Conservation Commission are the director of the Department of Ecology, director of the Department of Agriculture, Commissioner of Public Lands, president of the Washington Association of Conservation Districts, and dean of the Washington State University's College of Agriculture.

As discussed in Chapter 17, school districts are the only other special purpose districts over which the State exercises similar control, exercised by the Superintendent of Public Instruction, State Board of Education, and regional state entities called education service districts.

Conservation districts would be classified as partial subdivisions of the State.

Conservation district statutes are somewhat vague and disjointed. The Legislature should review and potentially amend these statutes.

The Municipal Research and Services Center (MRSC) reports that 48 conservation districts exist in the State.[5]

Creation

The current process to create a conservation district involves the following steps:

- A petition proposing the creation of a conservation district is filed with the State Conservation Commission, providing a general description of the area proposed to be included in the district, and stating that the district is needed in the interest of the public health, safety, and welfare. At least 20 percent of the registered voters residing within the area proposed to be included in the district must sign the petition.[6]

- The State Conservation Commission holds a public hearing on the proposed creation of the conservation district. Additional lands may be added to the area within the proposed district, by action of the State Conservation Commission, and the hearing is adjourned and continued unless a waiver of the continuation notice is filed by owners of the additional lands proposed to be included. If the State Conservation Commission finds "there is no need for the district," it denies the petition. If the State Conservation Commission finds that "the public health, safety, and welfare" warrants creation of the district, it makes an order to this effect.[7]
- An election to authorize creation of the district is held if the State Conservation Commission finds the district is "needed". Rather than actually authorizing the creation of the conservation district, this election is designed to "assist" the Commission in determining whether the district is "practicable." The Commission sets the date and hours of the election, designates polling places, and appoints election officials. The State Conservation Commission denies the petition to create the district, if a majority of the votes are cast in opposition to the creation of the district. The Commission determines the "practicability" of the project proposed to be implemented by the district, if a majority of the votes are cast in favor of the creation of the district. In making this determination, the Commission considers the "attitude of the voters", number of eligible voters who voted, size of the majority vote, "wealth and income" of the land occupiers in the district, and other economic factors. If the Commission finds the project impracticable, it denies the petition to create the district. If the Commission finds the project practicable, it provides for the creation of the district by appointing two of the five district supervisors.[8]

The original legislation providing for soil conservation districts did not allow territory located in a city to be included in a district, but these laws were amended in 1973, allowing the inclusion of city areas.[9]

Creation of a conservation district is not subject to review by a boundary review board.

Boundary Changes

Conservation districts may annex territory and two or more conservation districts may combine.[10] A city may withdraw from a conservation district.[11] A conservation district may be dissolved five or more years after its creation.[12]

Boundary changes by a conservation district are not subject to review by a boundary review board.

Governing Body and Elections

A conservation district is governed by a five-member board of supervisors, two of whom are appointed by the State Conservation Commission to staggered two-year terms of office, and three of whom are elected by voters of the district to staggered three-year terms of office.[13] At least one appointee must be a "landowner or operator of a farm" and both appointees must "be qualified by training and experience to perform the specialized skilled services required of them."[14]

The Commission sets the election date for all conservation districts and provides for the election of the three initially elected supervisors in a newly created district.[15] After this initial election, the board of supervisors conducts annual elections and sets the date for the elections, which must be held in the first quarter of each year. The State Conservation Commission sets procedures for conducting the annual elections. Newly elected supervisors take office at the first board meeting after their election. At least two of the three elected supervisors must be "landowners or operators of a farm."[16] The elective office of conservation district supervisor is a nonpartisan office. Nomination of a candidate for an elected supervisor position is made by a petition signed by at least 25 district voters.

Legislation was enacted in 1973, providing normal or regular franchise rights in conservation districts, with the registered voters who reside in a district constituting the voters of that district.[17]

Although this change to regular voting rights was made, conservation district elections are unique among governments with regular voting rights in that: (1) Elections are held at dates other than normal election dates; (2) county auditors and the Secretary of State are not involved in district elections; (3) candidates are nominated by petition rather candidates filing for office; and (4) all but one of the supervisors must be land owners in the district.

An anomaly exists in conservation laws. Land occupiers or owners are defined to include corporations, as well as natural people, and requirements exist for most members of the board of supervisors of a conservation district to be owners of property within the district, which could be a corporation. However, only natural people are allowed to vote at district elections. Presumably, this anomaly arose in 1973, when fundamental but incomplete changes were made to conservation district laws providing for regular voting rights that failed to remove the possibility of a corporation being a member of the board of supervisors. This mixture of general or regular voting requirements with more restrictive property ownership requirements is unique. No other statutes providing for another unit of local government includes a similar mixture. The constitutionality of this mixture has not been reviewed by an appellate court.

Supervisors serve without compensation, but receive expenses for discharging their duties.[18]

After providing notice and conducting a hearing, the State Conservation Commission may remove a supervisor "for neglect of duty or malfeasance in office."[19] Presumably, the elected supervisors would also be subject to being recalled under Article I, Sections 33 and 34, of the State Constitution.

Powers

Conservation district statutes are somewhat peculiar in that they do not specify the basic authorities of the districts. Instead, these authorities are found in the preamble for conservation district laws.[20] The Legislature should review these laws and consider a more direct authorization of powers for conservation districts.

The inferred responsibilities of conservation districts are to conserve renewable resources, control and prevent soil erosion, prevent flood water and sediment damage, preserve natural resources, control floods, assist in the maintenance of river and harbor navigability, preserve wildlife, "protect the tax base", protect public lands, and to protect and promote the health, safety and general welfare.

Conservation districts may also develop farm plans for conserving natural resources and may participate in watershed restoration projects.[21]

A conservation district may hire private attorneys or may "call upon the attorney general for legal services."[22]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of flood control zone district finances.

Conservation districts may impose special assessments to finance their activities.[23] State law authorizing the imposition of special assessments includes a finding that the "activities and programs to conserve natural resources, including soil and water," specially benefit land and may be used as the basis upon which special assessments are imposed. A board of supervisors submits a proposed system of assessments to the county legislative authority which holds a public hearing on the proposal and may reject, approve or alter and approve the system of special assessments. A system of special assessments classifies lands within the district, based upon benefits that will be conferred upon them by the activities of the district, and provides for a per acre rate of assessment for lands within each classification. Lands that are not benefitted are placed into a separate classification and are not subject to assessment. The maximum annual special assessment rate may not exceed 10¢ per acre. In addition, an annual per parcel assessment may be made, not exceeding $5 per parcel, except that: (1) In any county with a population in excess of from 480,000 to less than 1,500,000, the maximum annual per parcel assessment may not exceed $10; and (2) in any county with a population of 1,500,000 or more, the maximum annual per parcel assessment may not exceed $15.

Notice is provided to property owners. Public lands are subject to these assessments. Forest lands are subject to lower special assessment rates. A system of special assessments may not be imposed for a period exceeding ten years. The special assessments are spread on the property tax rolls and collected by the county treasurer. Most conservation districts only impose the per parcel assessment and do not impose assessment rates on an acreage basis.[a]

As an alternative, legislation was enacted in 2012, authorizing conservation districts to impose rates and charges to finance their activities in lieu of imposing special assessments.[24] The provisions for imposing rates and charges are similar to imposing special assessments, but do not include a limitation on the duration for which they may be imposed. In addition, the following factors may be considered when a conservation district imposes rates and charges: (1) Services furnished or made available; (2) benefits received or available; (3) land character and use; (4) nonprofit status; (5) income levels of persons served, including senior citizens and disabled persons; and (6) any other matters presenting "a reasonable difference as a ground for distinction." In general, the State Supreme Court has recognized far fewer constitutional restrictions on imposing rates and charges than on imposing special assessments, but has not been presented with the issue of whether soil and water conservation services could be financed by imposing rates and charges on a generalized per parcel basis as distinguished from a fee for actually providing direct service such as providing water or sewer service.

The State Conservation Commission operates a program for making grants to conservation districts.[25] In addition, monies in the conservation assistance revolving account may be loaned directly to landowners for conservation reserve enhancement programs.[26]

The county treasurer of the county in which a conservation district is located is the *ex officio* treasurer of the district, or the district may

[a] The author drafted the legislation providing for the imposition of these special assessments, following modern, more legally secure procedures and standards, and including the finding that conservation district programs and activities constitute a special benefit to land.

designate another person, with experience in financial or fiscal matters, as it treasurer.[27]

NOTES:

1. Chapter 187, Laws of 1939, which were codified as Chapter 89.08 RCW.
2. Public Law No. 74-46, 49 Stat. 163, enacted April 27, 1935.
3. RCW 89.08.220.
4. RCW 89.08.030-89.08.150.
5. "Washington Special Purpose District Overview," *id*.
6. RCW 89.08.080.
7. RCW 89.08.090 & 89.08.100.
8. RCW 89.08.110-889.08.170.
9. Section 2, Chapter 184, Laws of 1973 1st ex. sess., amending RCW 89.08.010.
10. RCW 89.08.180.
11. RCW 89.08.185.
12. RCW 89.08.350.
13. RCW 89.08.160 & 89.08.200.
14. RCW 89.08.160.
15. RCW 89.08.190.
16. RCW 89.08.160.
17. Section 3, Chapter 184, Laws of 1973 1st ex. sess., amending RCW 89.08.020.
18. RCW 89.08.200.
19. *Id.*
20. RCW 89.08.020.
21. RCW 89.08.450-89.08.510.

22. RCW 89.08.560 & 89.08.210.
23. RCW 89.08.400.
24. RCW 89.08.405.
25. RCW 89.08.410.
26. RCW 89.08.550.
27. RCW 89.08.215.

Chapter 48

County Rail Districts

County rail districts are authorized to provide rail facilities.

Legislation enacted in 1983 provided for the creation of county rail districts.[1] A county rail district would be classified as a subdivision of the county that creates it.

The Municipal Research and Services Center (MRSC) reports that only one county rail district exists in the state.[2] Voters in Kittitas County approved a ballot proposition in 2007 authorizing creation of a countywide, county rail district with the intent to help return passenger rail service to the county.[3] However, this district is inactive.

Statutes providing for county rail districts are vague and, in part, include contradictory provisions.

Creation

Two different procedures exist for creating a county rail district.

Under one procedure, the county legislative authority, on its own motion, may hold a public hearing on the proposed creation of a county rail district within all or part of the boundaries of a county, and cause a ballot proposition to create the county rail district to be submitted to voters of the proposed district for their approval or

rejection, if it finds that creation of the district is in the public interest.[4] The ballot proposition is submitted to voters at the next general election, held 60 or more days after the county legislative authority takes this action. The county rail district is created if the ballot proposition is approved by a simple majority vote of voters voting on the proposition.

Under the second procedure, a petition proposing the creation of a county rail district is submitted to the county legislative authority that has been signed by the owners of at least 75 percent of the assessed value within the proposed district.[5] The county legislative authority holds a hearing on the proposal and may create the county rail district by resolution.[6] It is somewhat peculiar that property owners may, in effect, create a special purpose district that may impose property tax levies. Under modern jurisprudence, only governments with regular voting rights may impose property taxes.

More than one county rail district may be created in the same county.

It appears that authority of a county rail district to provide rail passenger service was added during the legislative process as an afterthought, without much consideration given to the original provisions in the legislation. Literally, a county rail district may only be created in areas "within which agricultural or other goods could be shipped" and an area may not be included if the area

> "does not ... or is not expected to produce goods which can be shipped by rail, or property substantially devoted to fruit crops or producing goods that are shipped in a direction away from the district."[7]

However, a county rail district may be created to provide either, or both, "improved rail freight or passenger service."[8] If it is permissible to create a county rail district to provide only passenger rail service, this restrictive language about what areas may or may not be included in such a district should be altered or deleted.

Creation of a county rail district is <u>not</u> subject to review by a boundary review board.

Boundary Changes

The procedure to modify the boundaries of a county rail district, or to dissolve the district, follows either of the two different procedures by which a district may be created.[9]

Under the first procedure, a ballot proposition authorizing modification of the boundaries or dissolving a county rail district is submitted to the "affected voters," which presumably means voters residing in the area proposed to be added or withdrawn from a district or voters of the entire district in the case of the proposed dissolution of a district. The action is authorized by a simple majority vote of voters voting on the proposal.

Under the second procedure, a petition proposing to modify the boundaries of a county rail district, or to dissolve the district is proposed by petition of the owners of at least 75 percent of the assessed value within the area, and the county approves the proposal after holding a public hearing.

Boundary changes for a county rail district are <u>not</u> subject to review by a boundary review board.

Governing Body and Elections

The county legislative authority is the governing body of a county rail district.[10] Although no express provision provides for franchise rights in rail districts, regular franchise rights would exist since county rail districts are authorized to impose voter approved excess property tax levies. The county auditor would conduct elections for a county rail district.

Powers

Although a county rail district is created for the purpose of "providing and funding improved rail freight or passenger service, or both"[11] the express powers granted to the district appear much more restricted. Literally, a county rail district is only authorized to provide rail facilities within the district and to contract for the provision of rail service "along a light-density essential-service rail line for the purpose of

carrying commodities."[12] Again, the Legislature should review and modify these anomalies.

A county rail district may provide these services outside of its boundaries, but only if the county legislative authority finds that provision of these extraterritorial authorities are "reasonably necessary to link the rail services, equipment, and rail services within the rail district to an interstate railroad system".[13]

Finances

Chapter 63 provides a general discussion of local government finances. That chapter should be reviewed before reading the following discussion of county rail district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

By inference, a county rail district may impose charges or user fees for use of its facilities.[14] It would be desirable to grant this authority expressly to county rail districts.

A county rail district may impose voter approved, single year excess property tax levies for its general purposes and multiple-year excess levies to retire general obligation bonds issued by the district for capital purposes.[15] The ballot proposition authorizing the levy or levies must be approved by a supermajority vote of voters voting on the measure.

A county rail district may issue councilmanic general obligation bonds not exceeding three eighths of one percent of the value of taxable property within the district and may also issue general obligation bonds for capital purposes, not to exceed an amount equal to 1.25 percent of the value of taxable property within the district, if a ballot proposition authorizing the indebtedness is approved by a super-majority vote of voters voting on the proposition.[16]

In addition, a county rail district may issue revenue bonds payable from the gross revenues it receives from the operation of its facilities.[17]

NOTES:

1. Sections 8-14, Chapter 303, Laws of 1983, codified as Chapter 36.60 RCW.
2. "Washington Special Purpose District Overview," *id*.
3. Johnston, Mike, "Kittitas County Rail District Meets Thursday," *Daily Record*, Sept. 18, 2013, http://www.dailyrecordnews.com/members/kittitas-county-rail-district-meets-thursday/article_579e172a-208c-11e3-82df-001a4bcf887a.html
4. RCW 36.60.020.
5. RCW 36.60.110.
6. RCW 36.60.120 & 36.60.130.
7. RCW 36.60.010.
8. *Id.*
9. *RCW 36.60.020 & RCW 36.60.110-36.60.130.*
10. RCW 36.60.010.
11. *Id.*
12. RCW 36.60.030.
13. RCW 36.60.010.
14. RCW 36.60.050(3).
15. RCW 36.60.040.
16. RCW 36.60.050(1).
17. RCW 36.60.060.

Chapter 49

Emergency Medical Service Districts

(Urban Emergency Medical Service Districts)

Emergency medical service (EMS) districts are authorized to provide emergency medical care and services.

Legislation enacted in 1979 authorized EMS districts to be created.[1] Very few statutes relating to EMS service districts exist.

An EMS district would be classified as a subdivision of the county in which it is located, or a regional government that is a federation of the county and any cities included within the district.

The Municipal Research and Services Center (MRSC) reports that seven EMS districts exist in the State.[2]

Creation

After holding a public hearing on the matter and finding that the creation of an EMS district is in the public interest, a county legislative authority may adopt an ordinance creating the emergency medical service district.[3] The district includes all or any portion of the unincorporated area of the county and, if the governing body of a city approves inclusion of all or a portion of the city, the district may also include that area.

The creation of an EMS district is not subject to review by a boundary review board.

Boundary Changes

No provisions are provided for making boundary changes to an EMS district.

However, an inactive EMS district would be subject to dissolution under two general statutes. First, the members of the governing body of an EMS district may petition the superior court to dissolve the district.[4] Second, the county legislative authority may dissolve an inactive special purpose.[5]

The dissolution of an EMS district is not subject to review by a boundary review board.

Governing Body and Elections

Members of the county legislative authority compose the governing body of the EMS district, or if all or a portion of the district includes any area within a city, the governing body of the district is constituted pursuant to an interlocal agreement between the county and the city.[6]

Normal or regular franchise rights exist for an EMS district and voters of the district are the registered voters residing within the district.[7] County auditors conduct elections for EMS districts.

Powers

An EMS district is authorized to provide emergency medical care and emergency medical services.[8] This includes personnel costs, training, equipment, vehicles, equipment, supplies and structures.

EMS districts are declared to be quasi-municipal corporations.[9]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the

following discussion of EMS district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

An EMS district may impose voter approved, regular property tax levies of up to 50¢ per $1000 of assessed value in the district for each of six consecutive years.[10] Although these are regular property tax levies, the levies may only be imposed if a ballot proposition authorizing these regular property tax levies is approved by the same super-majority voting requirement as for multi-year excess levies used to retire general obligation bonds issued for capital purposes, i.e., at least three fifths of the voters voting must approve the ballot proposition, along with a 40 percent validation requirement. This is an unusually high voter approval requirement, as most supermajority voter approval requirements for regular property tax levies, when they exist, do not include the 40 percent validation requirement.[a]

As a taxing district, it appears EMS districts may impose a voter approved single year excess property tax levy, if the ballot proposition authorizing the levy is approved by a super majority vote of voters voting on the proposition.[11]

Urban Emergency Medical Service Districts

Legislation enacted in 1994 authorized creation of an urban emergency medical service districts in a very rare circumstance.[12] This rare circumstance arises if a city has territory located in two counties and only one of these counties has an emergency medical service district that includes the portion of that city located in the emergency medical service district. In this circumstance, the city may create an urban EMS district in the portion of its boundaries located in the county in which an emergency medical service district has not been created. As a result, the whole city is provided with EMS services rather than only part of the city.

The single section of law for urban EMS districts more or less parallels the single section of law for EMS districts, except the city council acts in place of the county legislative authority to create the

a Counties, cities, public hospital districts, regional fire protection service authorities, and fire protection districts may also impose these regular property tax levies if voters approve a ballot proposition authorizing the levies by this supermajority vote.

urban EMS district, serving as the governing body, etc. An urban medical service district possesses the same powers and financial authorities as an EMS district.

An urban EMS district would be classified as a subdivision of the city creating the districts.

The MRSC reports that only one urban EMS district exists in the State.[13] Bothell created an urban EMS district in 2005 within the portion of the city located in Snohomish County.[14]

NOTES:

1. Section 2, Chapter 200, Laws of 1979 ex. sess., codified as RCW 36.32.480.
2. "Washington Special Purpose District Overview," *id*.
3. *Id.*
4. Chapter 53.48 RCW.
5. Chapter 36.96 RCW.
6. *Id.*
7. *Id*.
8. RCW 36.32.480 & 84.52.069.
9. RCW 36.32.480.
10. RCW 84.52.069.
11. RCW 36.32.480 & Article VII, Section 2, Washington State Constitution.
12. Section 1, Chapter 79, Laws of 1994, codified as RCW 35.21.762.
13. "Washington Special Purpose District Overview," *id*.
14. Bothell City Ordinance list. http://www.ci.bothell.wa.us/Site/Content/City%20Council/Council%20Business/OrdinanceResolutionIndexes/Ord-index1.pdf

Chapter 50

Ferry Districts

A ferry district is authorized to provide and operate passenger-only ferry service within the district, and on bodies of water bordering the district.

Legislation enacted in 2003 authorized ferry districts to be created.[1]

Prior legislation enacted in 1947 authorized ferry districts to be created, but no ferry district was created under this legislation and the legislation was repealed in 1994.[2] These prior statutes authorized a ferry district to finance the provision of ferry service by imposing annual, nonvoter approved, regular property tax levies at a rate of 5 mills, which was later altered to a levy rate of $1.25 per $1000 of assessed value. This levying authority was, by far, the highest property tax rate provided for any special purpose district at that time.[3] It appears that this 1947 legislation was enacted to provide an alternative for ferry service being provided by the then struggling Black Ball Line, a private operator. Eventually, in 1951, the State purchased the Black Ball Line and created the Washington State Ferries.

A ferry district would be classified as a subdivision of the county creating the district.

The Municipal Research and Services Center (MRSC) reports that only one ferry district exists in the State.[4] In 2007, the King County Ferry District was created that owns and operates the King County Water Taxi, providing passenger ferry service from Vashon Island to downtown Seattle and from Alki Point to downtown Seattle.

Creation

A ferry district is created by a county legislative authority adopting an ordinance creating the district, after holding a public hearing on the proposal and making a finding that it is in the public interest to create the district.[5] The ordinance specifies the boundaries of the ferry district, which may be countywide or a lesser area within the county.

Prior to adopting this ordinance, a county with a population of more than 1 million, with a boundary on Puget Sound, or a county "to the west of Puget Sound with a population of greater than two hundred thirty thousand but less than three hundred thousand persons", is required to submit a business plan for the proposed ferry district to the Governor and Legislature, if it was proposed that the ferry district assume a passenger-only ferry route between Seattle and Vashon Island, or an expansion of that route to include Southworth.

Creation of a ferry district is not subject to review by a boundary review board.

Boundary Changes

No provisions are made for boundary changes to a ferry district.

However, an inactive ferry district would be subject to dissolution under two general statutes. First, the members of the governing body of a ferry district may petition the superior court to dissolve the district.[6] Second, the county legislative authority may dissolve an inactive special purpose.[7]

The dissolution of a ferry district is not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a ferry district is composed of the members of the county legislative authority, acting *ex officio* and independently.[8]

Normal or regular franchise rights exist for a ferry district and voters of the district are registered voters residing within the boundaries of

the district. Although no provision provides for ferry district elections, such elections would be conducted by the county auditor of the county in which the ferry district is located.

Powers

A ferry district is authorized to provide and operate passenger-only ferry service within the district and on bodies of water bordering the district, as well as wharves and landings and other facilities associated with this ferry service.[9]

In addition, a ferry district may provide shuttle service between its ferry terminal and passenger parking facilities.[10]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of ferry district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A ferry district may impose tolls or fees for the use of its facilities or may provide service for no charge.[11]

The governing body of a ferry district may impose annual regular property tax levies, without voter approval, of not exceeding 75¢ per $1000 of assessed value, but not exceeding 7½¢ per $1000 if the ferry district is located in a county with a population of 1,500,000 or more.[12] Voters of a ferry district may approve ballot propositions by super-majority votes authorizing the ferry district to impose single-year excess property taxes.[13]

A ferry district may issue general obligation bonds if the ordinance creating the ferry district indicates the intent that the district would issue these bonds and the maximum amount of the contemplated indebtedness.[14]

RCW 39.36.020 authorizes taxing districts to incur councilmanic, non-voter approved, general indebtedness of an amount not exceeding three eighths of one percent of the value of taxable

property within the district and, with voter approval, to incur general indebtedness of not exceeding 1.25 percent of the value of taxable property within the district. RCW 84.52.052 authorizes taxing districts to impose voter-approved excess property tax levies to retire general obligation bonds issued for capital purposes.

Ferry districts are required to prepare annual budgets.[15]

The county treasurer acts as the treasurer of a ferry district located within the boundaries of the county.[16]

Assumption by County

Legislation was enacted in 2014, authorizing a county with a population of one million or more (King County) to adopt an ordinance or resolution assuming the "rights, powers, functions, and obligations" of a county ferry district with boundaries that are coterminous with those of the county.[17]

The county legislative authority holds a hearing on the proposed assumption at which any interested person may appear and be heard.[18] If, after the hearing, the county legislative authority determines that "the public interest or welfare would be satisfied" by assumption, the county legislative authority may adopt an ordinance or resolution providing for the assumption and abolishing of the prior governing body of the district. Essentially, this action would allow the county legislative authority, acting in this capacity, to exercise the powers of the county ferry district rather than acting in an *ex officio* capacity as the governing body of the district. The county executive exercises executive responsibilities for this newly acquired authority.[19]

A county assuming a ferry district obtains the authority to impose the property taxes granted to the county ferry district, which are in addition to those property taxes otherwise granted to counties.[20]

Presumably, the base level of taxes that such a county may impose under the 101 percent limitation is adjusted upward to accommodate this newly acquired taxing authority.

NOTES:

1. Sections 301-309, Chapter 83, Laws of 2003, codified as RCW 36.54.110 - 36.54.190.

2. Chapter 272, Laws of 1947, which had been codified as RCW 36.54.080-36.54.100. This legislation was repealed by Section 92, Chapter 223, Laws of 1994.

3. Section 36, Chapter 195, Laws of 1973, ex. sess.

4. "Washington Special Purpose District Overview," *id*.

5. RCW 36.54.110.

6. Chapter 53.48 RCW.

7. Chapter 36.96 RCW.

8. *Id.*

9. RCW 36.54.120.

10. RCW 36.54.130.

11. RCW 36.54.120.

12. RCW 36.54.130.

13. RCW 36.54.140.

14. RCW 36.54.135.

15. RCW 36.54.150.

16. RCW 36.54.170.

17. Chapter 51, Laws of 2014, codified as Chapter 36.150 RCW.

18. RCW 36.150.020.

19. RCW 36.150.040.

20. RCW 36.150.060.

Chapter 51

Health Districts

A health district is authorized to exercise all of the powers of a county board of health (the county legislative authority), which would include both enforcing public health laws and rules adopted by the state's Department of Health, and adopting and enforcing local rules to improve public health.

Legislation enacted in 1945 authorized the creation of health districts in lieu of the county legislative authority or authorities functioning as the local board or boards of health.[1] A health district may be formed throughout all of a single county, or all of two or more counties.

A health district would be classified as a subdivision of the county in which it is located, or a regional government that is a federation of the counties in which it is located.

The Municipal Research and Services Center (MRSC) reports that eleven health districts exist in the State.[2]

Statutes providing for health districts should be reviewed and amended by the Legislature to provide greater clarity.

Creation

A health district is created by ordinance or resolution adopted by a county legislative authority of a single county or by resolutions adopted by the county legislative authorities of two or more counties.[3]

Any health district in the county that existed prior to the enactment of these statutes remains in existence, unless or until altered by the county legislative authority or authorities.[4]

Creation of a health district is not subject to review by a boundary review board.

Boundary Changes

A county may adopt a resolution withdrawing the county from a health district or multicounty health district if the health district has existed for at least two years before the withdrawal.[5] Withdrawals occur at the end of a calendar year. Notice of a withdrawal must be given at least six months before the date of the withdrawal. A county withdrawing from a health district must establish a health department or provide health services itself.

Presumably, an inactive health district would be subject to dissolution under two general statutes. First, the members of the governing body of a health district may petition the superior court to dissolve the district.[6] Second, the county legislative authority may dissolve an inactive special purpose.[7]

Boundary changes by a health district are not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a health district is a district board of health.

Statutory language providing for membership on a district board for a single county is quite vague.[8] It appears that members of the county legislative authority would constitute the district board of health, which could also include additional people, as specified in the ordinance or resolution creating the health district. These additional members may include city elected officials and other persons who are appointed by the county legislative authority, but these additional members of the board of health may not constitute a majority of the board.

Statutory language providing for a multi-county health district has greater clarity.[9] Such a board must include at least five members for a health district that includes two counties, or at least seven members for a health district that includes more than two counties. At least two members of each county legislative authority must be members of the board of health who are appointed by the respective county legislative authorities. Elected officials from cities and other persons may also be appointed to serve on the board of health, as authorized by resolutions or ordinances of the county legislative authority, but these other members may not constitute a majority of the board of health.

The resolution or ordinance creating a multi-county health district specifies membership on the board of health, how appointments are made, compensation and reimbursement of expenses.[10] The resolution or ordinance creating a single county health district specifies membership on the board of health and "other matters relative to the formation or operation of the health district."[11]

No provisions are made for elections or franchise rights.

Powers

A health district possesses all of the powers of a county board of health (the county legislative authority) of a county that is not included in a health district.[12] These powers include enforcing state public health laws and rules; maintaining health and sanitary measures; adopting local rules and regulations "as are necessary to preserve, promote and improve public health and provide for the enforcement" of these rules and regulations; controlling and preventing dangerous, contagious or infectious diseases; and preventing, controlling and abating nuisances detrimental to the public health.[13]

A health district may purchase, lease, and dispose of real and personal property and charge fees for licenses or other permits.[14]

Finances

The county creating a single county health district is responsible for financing its health district. Counties creating a multi-county health

district are responsible for financing their health district, as agreed upon by the county and the health district under guidelines established by the State Board of Health.[15]

The treasurer of the county, or most populous county within a multi-county health district, is the "custodian" of the district's funds and the auditor of that county keeps records of the district's disbursements and receipts.

A health district may impose fees for issuing licenses and permits.[16]

NOTES:

1. Chapter 183, Laws of 1945, codified as Chapter 70.46 RCW.
2. "Washington Special Purpose District Overview," *id*.
3. RCW 70.46.031 & 70.46.020.
4. *Id.*
5. RCW 70.46.090.
6. Chapter 53.48 RCW.
7. Chapter 36.96 RCW.
8. RCW 70.46.031.
9. RCW 70.46.020.
10. *Id.*
11. RCW 70.46.031.
12. RCW 70.46.060.
13. RCW 70.05.060.
14. RCW 70.46.100 & 70.46.120.
15. RCW 70.46.080.
16. RCW 70.64.120.

Chapter 52

High Capacity Transportation Corridor Areas

A high capacity transportation corridor area is authorized to finance and provide systems of public transportation services that provide a "substantially higher level of passenger capacity, speed and service" than is normally provided by traditional public transportation systems operating primarily on general purpose roadways.

Legislation enacted in 2009 allowed various transit agencies to create high capacity transportation corridor areas.[1] A high capacity transportation corridor area would be classified as a subdivision of the transit agency creating it.

The Municipal Research and Services Center (MRSC) does not include high capacity transportation corridor areas in its list of special purpose districts in Washington State.[2]

Very little detail is included in the legislation providing for high capacity transportation corridor areas. The Legislature should review this legislation and add details.

Creation

A transit agency (i.e., a city owned transit system, county transportation authority, metropolitan municipal corporation, or public transportation benefit area) located in a county with a population of 400,000 or more that "adjoins a state boundary" may create a high capacity transportation corridor area.[3] At present, only Spokane county and Clark county meet these requirements. Presumably, the

action taken by a high capacity transportation corridor area would be by adopting a resolution creating the agency and specifying its boundaries.

The creation of a high capacity transportation corridor area is not subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of a high capacity transportation corridor area, other than the governing body of such an entity may provide for its dissolution by a majority vote, if all general obligation bonds issued by the high capacity transportation corridor area and all other contractual obligations have been discharged or assumed by another governmental entity.[4]

The dissolution of a high capacity transportation corridor area is not subject to review by a boundary review board.

Governing Body and Elections

The governing body of a high capacity transportation corridor area is the members of the governing body of the transit agency that created it, acting *ex officio* and independently.

No express provision provides for the electorate of a high capacity transportation corridor area, but normal or regular franchise rights would exist in the entity since it is authorized to impose taxes. The county auditor would conduct elections for a high capacity transportation corridor area.

Powers

A high capacity transportation corridor area may provide a “high capacity transportation system” within its boundaries.[5] This system is defined to be public transportation services principally operating on exclusive rights-of-ways, which may include interim express service and high occupancy vehicle lanes, that basically provide a “substantially higher level of passenger capacity, speed, and service frequency” than is found on traditional public transportation systems.

Finances

A general discussion of local government finances is found in Chapter 64. That chapter should be reviewed before reading the following discussion of flood control zone district finances. Some details about taxes that are included in Chapter 63 are not repeated below.

A high capacity transportation corridor area may impose a variety of voter approved taxes to finance its high capacity transportation system. This includes:

- An employer tax of not exceeding $2 per month per employee;
- A sales and use tax on retail car rentals of not exceeding 2.172 percent; and
- A sales and use tax of not exceeding 1.0 percent.[6]

Unlike other transit agencies that may impose these taxes, unique limitations are placed on a high capacity transportation corridor area imposing these taxes. First, a ballot proposition authorizing any of these taxes may not submitted to voters before July 1, 2012. Second, a high capacity transportation corridor area may not submit an additional ballot proposition to voters authorizing taxes to be imposed once the first ballot proposition has been approved.

NOTES:

1. Chapter 280, Laws of 2009, mostly codified as RCW 81.104.200 and 81.104.210.

2. "Washington Special Purpose District Overview," *id*.

3. RCW 81.104.200.

4. *Id.*

5. RCW 81.104.200 & 81.104.015.

6. RCW 81.104.200, 81.104.150, 81.104.160, & 81.104.170.

Chapter 53

Housing Authorities

(Joint Housing Authorities)

A housing authority or joint housing authority is authorized to provide, lease and operate housing projects for low income persons and for senior citizens.

Legislation enacted in 1939 authorized the creation of housing authorities to provide low income housing.[1] At least in part, this legislation was enacted in response to the enactment of the Housing Act of 1937, sometimes called the Wagner-Steagall Act.[2] Among other provisions, this federal law provided $500 million in loans for low cost housing in urban and rural areas across the country, and acted as a loan granting agency to state and local housing authorities.

A housing authority would be classified as a subdivision of the county or city that activated the authority. A joint housing authority would be classified as a federation of the county and cities creating the authority.

The Municipal Research and Services Center (MRSC) reports that 41 housing authorities exist in the State.[3]

Creation

An inactive housing authority is created by law in every county and city in the State that may be activated by the county or city governing body, adopting a resolution declaring a need for the housing

authority.[4] This concept of creating an inactive special purpose district in every jurisdiction, that may be activated, was later provided for air pollution control authorities.

In making this declaration of a need for the housing authority, the county or city governing body determines whether "insanitary or unsafe" dwellings exist within its jurisdiction, there is a shortage of "safe or sanitary" dwellings available to low income persons at rental rates they can afford, or there is a shortage of safe or sanitary living accommodations available for seniors, including apartments and mobile homes.

The declaration is made by an action of the governing body on its own motion or must be made if a petition asserting the need is filed with the governing body signed by 25 or more residents of the county or city. This is an exceeding low petition requirement.

The "area of operation" for an activated county housing authority is only within the unincorporated area of the county.[5] However, the "area of operation" for an activated city housing authority is within the boundaries of the city, and within five air miles of these boundaries but not including a portion of any other city. It is somewhat uncommon for local governments to be granted extra territorial powers. This oddity is especially peculiar since a county housing authority may not provide facilities within a city located within its boundaries.

Activation of a housing authority is <u>not</u> subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of an activated housing authority, apart from deactivating a housing authority by action of the county or city governing body.[6] However, upon such a deactivation, the county or city assumes the powers of a housing authority and may take any action that a housing authority may take.

Deactivation of a housing authority is <u>not</u> subject to review by a boundary review board.

Governing Body and Elections

A housing authority is governed by a five-member board of commissioners appointed by the county legislative authority when it activates the authority, or by the mayor when the city council activates the housing authority.[7] Commissioners serve staggered five year terms of office. A commissioner may not be an employee or official of the county or city activating the housing authority, except that an employee of a separately elected county official may be appointed to the commission in a county with a population of less than 175,000 as of the 1990 federal decennial census and the appointee's county employment "exceeds forty percent of total employment."

Commissioners do not receive compensation, but are reimbursed for their "necessary expenses" incurred in discharging their duties, including travel expenses.[8]

The appointing authority may remove a commissioner from office for "inefficiency or neglect of duty or misconduct."[9] Prior to being removed, a commissioner who is proposed to be removed must receive a copy of the charges leading to his or her removal at least 10 days prior to a hearing on the removal, at which time the commissioner must be given an opportunity to be heard "in person or by counsel."

Statutes do not provide for housing authority elections, so no electorate exists for a housing authority.

Powers

Housing authorities are authorized to provide, lease and operate "housing projects" for low income persons, including low income farm workers, as well as providing housing projects for senior citizens, within their boundaries or authorized area of operation.[10] Persons of low income are defined to be

> "persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them,

> without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding."[11]

These income requirements that are used to establish eligibility for low income units do not apply to senior citizens.[12] A senior citizen is defined as a person 62 years old or older, who the authority determines is either "poor or infirm" but who is otherwise able to provide the housing authority with income or assets that are sufficient to provide the housing authority with revenues to pay debt obligations associated with the housing, maintenance, and a reserve.[13]

Housing units may take the form of apartments, houses, mobile homes or other residential units, including both urban and rural housing.[14] Rural housing may include farm worker housing.

Although the focus of the housing is for low income persons, dwelling units may be leased to persons other than low income persons, but at least half of the total units or half of the interior space in a development must be provided for low income persons.[15] Commercial space may be leased or sold within housing authority projects. A housing authority may also provide facilities for parks, gardening, administrative, community, recreational and other related purposes. Housing authorities may sell dwelling units to low income persons.

Housing authorities possess the powers of eminent domain and may condemn property for their purposes following provisions for the state to condemn property, and may evict persons from their properties.[16]

Finances

Housing authorities have a limited source of revenues. Basically, they receive revenue from grants and fees or rental charges for use of their properties.

In addition, a housing authority may issue revenue bonds payable from its revenues.[17] These bonds do not constitute general indebtedness of a housing authority.

Joint Housing Authorities

Legislation authorizing joint housing authorities was enacted in 1980, allowing a county and a city or multiple counties and cities to create a joint housing authority and provide services and facilities within these multiple jurisdictional areas.[18] Presumably, such joint action creating a joint housing authority would result in the deactivation of an activated housing authority in any participating county or city.

A joint housing authority may be dissolved.[19] The dissolution of a joint housing authority is not subject to review by a boundary review board.

NOTES:

1. Chapter 23, Laws of 1939, codified as Chapter 35.82 RCW.
2. Public Law 75-412, 50 Stat. 888, enacted September 1, 1937.
3. "Washington Special Purposes Districts Overview," *id*.
4. RCW 35.82.030.
5. RCW 35.82.020.
6. RCW 35.82.320.
7. RCW 35.82.040.
8. *Id.*
9. RCW 35.82.060.
10. RCW 35.82.070 & 35.82.240-35.82.260.
11. RCW 35.82.020.
12. RCW 35.82.090.
13. RCW 35.82.020.
14. *Id.*
15. RCW 35.82.070.

16. RCW 35.82.110.
17. RCW 35.82.130.
18. Section 1, Chapter 25, Laws of 1980, codified in RCW 35.82.300.
19. RCW 35.82.310.

Chapter 54

Mosquito Control Districts

A mosquito control district is authorized to exterminate mosquitoes and abate or remove breeding grounds for mosquitoes.

Legislation enacted in 1957 authorized the creation of mosquito control districts.[1] A mosquito control district would be classified as a partial subdivision of the county or counties in which the district is located.

The Municipal Research and Services Center (MRSC) reports that 18 mosquito control districts exist in the State.[2]

Mosquito control district statutes are somewhat vague and the Legislature should review and clarify these statutes.

Creation

The process to create a mosquito control district may be initiated by following either a petition procedure or a resolution procedure. A petition proposing formation of a mosquito control district, signed by voters residing within the proposed district equal in number to at least 10 percent of the votes case for the office of governor at the last gubernatorial election, is filed with the county legislative authority of the county in which the district is proposed to be located.[3] As an alternative, the county legislative authority may adopt a resolution proposing formation of a district.[4] The petition or resolution describes the boundaries of the proposed mosquito control district.

A hearing on the proposal is held by the county legislative authority that may alter the proposed boundaries as it deems advisable.[5] The county legislative authority calls a special election to be held, at which a ballot proposition authorizing formation of the district is submitted to voters within the proposed district if, after the hearing, the county legislative authority determines that the "public necessity or welfare requires formation of the district."[6] The district is created if a majority of voters voting on the ballot proposition approve the proposition.[7]

Creation of a mosquito control district is not subject to review by a boundary review board.

Boundary Changes

A mosquito control district may annex territory that is contiguous to the district.[8] An annexation is initiated by a petition, signed by voters residing in the area proposed to be annexed equal in number to at least 10 percent of the number of voters in that area who voted for the office of governor at the last gubernatorial election. If the area proposed to be annexed is located in a city, the city council must consent to the annexation before it may proceed. The board of trustees of the mosquito control district holds a hearing on the proposed annexation, may make changes in the boundaries of the area proposed to be annexed, and may cause a ballot proposition authorizing the annexation to be submitted to voters residing in the area, if it finds that the proposed annexation is "desirable and to the interests" of both the district and the area proposed to be annexed. The annexation is authorized by a simple majority vote of voters voting on the proposition.

Two or more mosquito control districts may also consolidate.[9] No express requirement exists for the consolidating districts to be contiguously located. A ballot proposition authorizing the consolidation is submitted to the voters of each district, if the proposed consolidation is approved by a two-thirds vote of the boards of trustees of each district. The consolidation is authorized if a ballot proposition authorizing the consolidation is approved by the vote of at least two thirds of the voters of each district. This is an unusually high voter approval requirement.

A mosquito control district may be dissolved.[10] The dissolution is authorized if voters of the district approve a ballot proposition providing for the dissolution by at least a two-thirds vote of voters voting on the proposition. Presumably the board of trustees takes action causing the ballot proposition to be submitted to voters.

Boundary changes for a mosquito control district are not subject to review by a boundary review board.

Governing Body and Elections

A mosquito control district is governed by an appointed board of trustees which includes five or more members, as follows:

- If the district is located in a single county and includes only unincorporated territory, the county legislative authority appoints five trustees.
- If the district is located in a single county and includes both unincorporated and incorporated territory, the county legislative authority appoints one member from each county legislative authority district, all or any part of which is located in the mosquito control district, and the council of each city with territory included in the mosquito control district appoints one member to the board. This could result in a board with an even number of members. If this formula results in less than five members, the county legislative authority appoints one or more members-at-large to board to make a five member board.
- If the district is located in more than one county and includes only unincorporated territory, the county legislative authority of each county that includes territory within the mosquito control district appoints one member for each county legislative authority district, all or any part of which is located in the mosquito control district. This could result in a board with an even number of members. If this formula results in less than five members, the county legislative authority of the county in which the greatest area of the district is located appoints one or

more members-at-large to make a five-member board.

- If the district is located in more than one county and includes both incorporated and unincorporated territory, the county legislative authority of each county that includes territory within the mosquito control district, appoints one member for each county legislative authority district, all or any part of which is located in the mosquito control district, and the council and each city with territory included in the mosquito control district appoints one member. This could result in a board with an even number of members. If this results in less than five members, the county legislative authority of the county in which the greatest area of the district is located appoints one or more members-at-large to make a five member board.[11]

A trustee appointed "from a county or portion of a county" must be an elector of the county and a resident of that portion of the county included in the district. Each trustee appointed by a city governing body must be an elector of the city and a resident of that portion of the city included in the district. A trustee appointed at large must be an elector of the county and a resident of the district.[12] Trustees serve two year staggered terms of office.[13] Trustees serve without compensation, except that the trustee who is chosen to be secretary of the board receives compensation fixed by the board, but the district may pay trustees for their necessary expenses "for actual traveling in connection with meetings or business of the board."[14]

Normal or regular franchise rights exist in mosquito control districts, and the voters of a mosquito control district are the registered voters residing within the district. County auditors conduct elections for mosquito control districts.

Powers

A mosquito control district may: (1) Exterminate mosquitoes; (2) abate stagnant pools of water and other breeding grounds for mosquitoes, subject to the paramount control of the county or city; (3) construct ditches and other facilities; (4) purchase or condemn

property; (5) inspect lands inside and outside of the district, and abate the breeding of mosquitoes, using integrated pest management techniques; and (6) "subject to management considerations during consultation with the landowner, remove shrubbery and undergrowth" as part of its actions to exterminate mosquitoes.[15]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of mosquito control district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

The primary source of revenue for a mosquito control district comes from annual assessments that the district imposes.[16] Assessments are based upon the benefit property receives from the district's operations, but any assessments imposed on agricultural land, forest land, or open space land "must use the assessed value applicable to" such land. The mixing of assessed valuations associated with property taxes with the imposition of assessments based upon benefit runs the potential of having the assessments classified as property taxes. The Legislature should review this provision and consider altering this basis. Assessments on other property are measured and imposed following procedures by which special assessments are imposed by counties in road improvement districts.

Mosquito control districts may impose property taxes if authorized by voters. At the same election when the ballot proposition is submitted to voters authorizing the creation of a mosquito control district, a second ballot proposition may also be submitted, authorizing the district, if created, to impose a single year excess property tax levy of not exceeding 25¢ per $1000 of assessed value, if authorized by three fifths of the voters voting on the proposition.[17]

Additional authority exists for mosquito control districts to impose excess property tax levies, both single year levies for any district purpose and multi-year levies to retire general obligation bonds issued for capital purposes, when authorized by a super majority vote of voters voting on the ballot proposition authorizing the levies.[18] A

single year excess levy may not exceed 50¢ per $1000 of assessed value.

A mosquito control district may issue tax anticipatory notes, but this authority is limited since a district is not authorized to impose regular property taxes, and may only impose voter approved excess levies.[19] Although this statute does not describe the nature of this debt, which presumably is general indebtedness, or set a maximum amount of this debt, it appears this tax anticipation debt would be subject to the maximum councilmanic indebtedness limitation set in general law of three eighths of one percent of the value of taxable property within the district.[20] Mosquito control district statutes authorize a mosquito control district to issue voter approved general indebtedness for capital purposes not exceeding 1.25 percent of the value of taxable property in the district, and retire this debt with multi-year voter approved excess property tax levies.[21] These general obligation bonds may have a maximum maturity of only 10 years.

No provision is authorized for mosquito control districts to issue revenue bonds payable from its operational revenues, including its assessments. The Legislature should review this and consider enacting legislation authorizing such authority.

NOTES:

1. Chapter 153, Laws of 1957, codified as Chapter 17.28 RCW.
2. "Washington Special Purposes District Overview," *id*.
3. RCW 17.28.020.
4. RCW 17.28.050.
5. RCW 17.28.060.
6. RCW 17.28.090.
7. *Id.*
8. Sections 32-35, Chapter 153, Laws or 1957, codified as RCW 17.28.320-17.28.350.

9. Sections 36-41, Chapter 153, Laws of 1957, codified as RCW 17.28.360-17.28.410.

10. Sections 42-45, Chapter 153, Laws of 1957, codified as RCW 17.28.420-17.28.450.

11. RCW 17.28.110.

12. RCW 17.28.120.

13. RCW 17.28.130.

14. RCW 17.28.140.

15. RCW 17.28.160.

16. RCW 17.28.255-17.28.257, & 17.28.310.

17. RCW 17.28.100.

18. RCW 17.28.252 & 17.28.260.

19. RCW 17.28.251.

20. RCW 39.36.020.

21. RCW 17.28.260.

Chapter 55

Pest Districts

A pest district is authorized to destroy or exterminate rodents and other predatory animals that destroy agricultural plants and products.

Legislation enacted in 1919 authorized the creation of pest districts.[1]

The Municipal Research and Services Center (MRSC) does not report any pest districts existing in the State.[2] However, at least one pest district existed in Spokane County in 1920.[3]

Pest district statues are quite old and are in extreme need of clarification. In part, these statues include provisions appearing to create separate units of local government, yet in other part, these statutes include provisions appearing to provide for creation of a financing mechanism somewhat similar to a local improvement district.

Pest district statutes are incomplete and need revision and clarification. The Legislature should review these statutes and make these clarifications.

If a pest district is a unit of local government, it would be classified as a subdivision of a county, and in part, a subdivision of Washington State University.

Creation

Ten or more property owners in a county may petition the county legislative authority to create a pest district on their land in the county.[4] The county legislative authority holds a hearing on the

proposal and may create the pest district if the county legislative authority deems creation of the district to be in the interest of the county or area within the county, and notes in its minutes that such action has been taken. Presumably the county legislative authority adopts a resolution creating the pest district.

The creation of a pest district is not subject to review by a boundary review board.

Boundary Changes

The same procedure to create a pest district is followed to enlarge a pest district, or create a new district or districts out of existing pest districts.[5] Presumably, territory included in an existing pest district that is included in a new pest district would be withdrawn from the prior district.

An inactive pest district would be subject to dissolution under two different statutes. First, the "agricultural expert" of the county who is under the supervision of Washington State University (presumably the extension agent of the county), or if there is no such person, then the member of the county legislative authority within whose commissioner or council district the pest district is located, may petition the superior court to dissolve the district.[6] Second, the county legislative authority may dissolve inactive special purpose.[7]

Boundary changes for a pest district are not subject to review by a boundary review board.

Governing Body and Elections

No provisions are made for a pest district governing body. Instead, a pest district appears to be run by the "agricultural expert" of the county who is under the supervision of Washington State University (presumably the extension agent of the county), or if there is no such person, then the member of the county legislative authority within whose commissioner or council district the pest district is located.

No provisions are made relating to elections or ballot measures relating to a pest district.

Powers

Pest districts are authorized to destroy or exterminate agricultural pests, which include squirrels, prairie dogs, gophers, moles and other rodents, or rabbits, or any "predatory animals that destroy or interfere with crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products," as well as any other pest that is injurious to agricultural plants or products.[8] They may also prevent the introduction, propagation, growth or increase in these animals.

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of flood control zone district finances.

The county treasurer acts as the treasurer of a pest district, which may impose assessments or tax levies to finance its activities.[9] Presumably, the Legislature should clarify these provisions and delete references to tax levies.

A pest district may "contract obligations" or become indebted up to an amount that is less than its estimated revenues for the next two following years.[10] No additional details are provided for this debt. The Legislature should clarify these provisions.

By inference, the county legislative authority approves payment of any bills for a pest district.[11]

NOTES:

1. Chapter 152, Laws of 1919, codified as Chapter 17.12 RCW.
2. "Washington Special Purpose District Overview," *id*.
3. *State ex rel. Stanger v. Bartlett*, 112 Wash. 299, (1920).
4. RCW 17.12.020-27.12.040.

5. RCW 17.12.020.
6. Chapter 53.48 RCW.
7. Chapter 36.96 RCW.
8. RCW 17.12.010.
9. RCW 17.12.050 & 17.12.080.
10. RCW 17.12.100.
11. *Id.*

Chapter 56

Public Facilities Districts

A public facilities district (PFD) is authorized to provide and operate sports facilities, entertainment facilities, convention facilities, conference centers, special events centers, and related parking facilities.

PFD laws are unique and complicated. Most unique is that two different sets of statutes have been enacted authorizing PFDs. Each of these separate sets of statutes is complete. The initial legislation authorizing the creation of PFDs was enacted in 1988.[1] A second set of complete statutes were enacted in 1999, authorizing PFDs to be created.[2] Separate legal authorities also have two different sets of statutes enabling them to be formed.

Wave after wave of legislation has been enacted amending these statutes providing for PFDs with intricate provisions that appear to be efforts by the Legislature to craft a unique PFD for a specific place in the State that would provide a particular type of public facility, and have a unique array of persons appointed to the board of directors for the district, in response to local interests. In essence, the Legislature appears to have crafted these extremely detailed classifications as part of general laws to avoid the apparent constitutional requirement in Article XI, Section 10, that local governments other than counties may only be created pursuant to general laws, and may not be created using special legislation.

The Legislature should review and change these laws to avoid potential adverse lawsuits.

First, the authority for two or more PFDs to occupy the same geographic area is unique and could result in legal difficulties. This situation would not be allowed in most other states, where state supreme courts have essentially created common law of constitutional status, precluding two or more of the same type of local government from occupying common territory. Although our Supreme Court has used general language rejecting this concept, the laws before the court in each instance did not allow two of the same type of local governments to occupy common territory, but instead, allowed different types of local governments authorized to provide one or more common type of facility or service, to occupy common territory.[3] Almost by definition, creation of a special purpose district that includes a city within its boundaries would create a situation where two different types of local governments possess at least some common authorities. Similarly, since all portions of the State are included within a county, by definition, any city, and probably any special district created, in the State would create a situation where two or more local governments occupy common territory, possessing at least some common authorities.

Second, it is very odd to have separate sets of somewhat similar laws providing for the creation of entities that are called the same thing. To avoid confusion, it would be advisable to change the name of the type of entities created under one set of these laws, or to merge these two sets of laws into a single chapter of law.

No other statutes providing for a special purpose district includes such wide variations.

Clearly, the concept of using PFDs to provide a variety of different types of facilities has been a very popular “go to” concept for more than two decades.

A PFD would be classified as a subdivision of the county or city creating it, or a regional government that is a federation of the counties and cities creating it. A PFD was created by King County to run the State Convention Center, a federation of both the county and State.

The Municipal Research and Services Center (MRSC) reports that 25 public facilities districts exist in the State.[4]

Creation

A PFD is created by a resolution adopted by the county legislative authority if created under Chapter 36.100 RCW, or by the sponsoring cities and county if created under Chapter 35.57 RCW.[5] A joint sponsorship of a PFD under Chapter 35.57 RCW occurs by action of these entities, making an agreement to create the PFD under the Interlocal Cooperation Act, Chapter 39.34 RCW.

A PFD created under Chapter 36.100 RCW is coextensive with the county creating the district. A PFD created under Chapter 35.57 RCW is coextensive with the sponsoring cities and county creating the PFD, but for this purpose only, the unincorporated area of a county is included if the county is a co-sponsor.

No express requirement exists for the county legislative authority, or sponsoring cities or county, to hold a public hearing, or take any testimony on the proposed creation of a PFD.

As a result of legislation enacted by the Legislature after the default of the Wenatchee Regional Events Public Facilities District on bond anticipation notes, a feasibility study must be conducted before a public facilities district is created.[6]

Creation of a PFD is not subject to review by a boundary review board.[7]

Boundary Changes

No provisions are made for altering the boundaries of a public facilities district.

However, an inactive public facilities district would be subject to dissolution under two general statutes. First, the members of the board of directors of a public facilities district may petition the superior court to dissolve the district.[8] Second, the county legislative authority may dissolve an inactive special purpose.[9]

Such a dissolution would not be subject to review by a boundary review board.[10]

Governing Body and Elections

A public facilities district is governed by a five, seven or nine member board of directors who are appointed to office.[11] Directors serve staggered four year terms of office.

Details for the size and appointing power vary depending on a variety of factors, presumably designed to apply to specific areas in the state where a public facilities district is created and the unique political situation in those areas. This extreme variation in detail differs from most laws providing for other types of special purpose district which provide for uniform standards throughout the State.

Board members are reimbursed for expenses incurred on behalf of the PFD, and the board may provide a per diem rate of compensation for its members.[12] No limits are placed on the level of this per diem rate of compensation, which differs from per diem rates of compensation paid to any other members of the governing body of any other special purpose district, that are specified in statute.

A. Board of directors if created under Chapter 36.100 RCW

A number of variations occur under these laws.[13]

First, if the largest city in the county has a population of at least 40 percent of the total county population, the board of directors consists of five members, two of whom are appointed by the county legislative authority, two of whom are appointed by the council of the largest city in the county, and one is selected by the four appointed directors.

Second, if the largest city in the county has a population of less than 40 percent of the total county population, the county resolution creating the district specifies whether the board of directors consists of either five or seven members. The county legislative authority appoints all board members "to reflect the interests of cities in the county, as well as the unincorporated area of the county."

Third, notwithstanding the second set of factors, if the county has a population of 1,500,000 or more, with the largest city in the county having a population of less than 40 percent of the total county

population, and the county operates under a county charter, then the following applies:

- If the district is created to construct a baseball stadium, then three members are appointed by the Governor and the remainder are appointed by the county executive, subject to confirmation by the county legislative authority. Both the Speaker of the House of Representatives and the Majority Leader of the Senate recommend a person to be appointed by the Governor.
- If the district is created to provide a convention and trade center, the initial board consists of the nine members of a public nonprofit corporation that transferred the convention and trade center to the public facilities district. Subsequently, the board continues to have nine members appointed as follows: (1) Three members are appointed by the Governor, one of whom must be "representative of the lodging industry" within the county; (2) three members who are nominated by the county executive and confirmed by the county legislative authority, one of whom must be "representative of the lodging industry" within the county; and (3) three members appointed by the mayor of the city in which the convention center is located and confirmed by the city council, one of whom is a representative of organized labor.

If a PFD created under Chapter 36.100 RCW imposes an excise tax on hotel/motel room rental charges under RCW 36.100.040, at least one member of the board of directors must be "representative of the lodging industry" within the district.

A vacancy on a board of directors is filled in the same manner as the original appointment and the appointee serves the remainder of the unexpired term.

A director appointed by the Governor may be removed from office by the Governor "for any reason or for no reason." A director who was confirmed by a county or city legislative authority may be removed

from office "for any reason or for no reason" by a vote of at least two-thirds of the legislative authority. No provision is made for the removal of a director appointed directly by the county legislative authority or city governing body.

B. Board of directors if created under Chapter 35.57 RCW

A number of variations also exist under these laws.[14]

First, if the PFD were created by the governing body of a single city, the board of directors consists of five members, two of whom are appointed by the city governing body on their own authority and the other three of whom are appointed by the city governing body "based upon recommendations from local organizations," which are defined to be the local chamber of commerce, local economic development council, and the local labor council.

Second, if the PFD were created by the governing bodies of contiguous cities, the board of directors is composed of seven members, three of whom are appointed jointly by the city governing bodies and four of whom are appointed by the city governing bodies "based upon recommendations from local organizations," which is defined as the same entities as above, plus a neighborhood organization "directly affected by the location of the regional center proposed to be constructed." Appointments are made pursuant to the interlocal agreement creating the PFD.

Third, if the PFD were created by joint action of one or more cities, and a contiguous county, the board of directors is composed of seven members, three of whom are appointed by action of the city and county governing bodies and four of whom are appointed by city and county governing bodies "based upon recommendations from local organizations," which is defined exactly as under the second variation above. Appointments are made pursuant to the interlocal agreement creating the PFD.

Fourth, if the PFD were created by joint action of at least three contiguous cities, with a combined population of at least 160,000, and each of these cities had already created another PFD, the board of directors is composed of an odd number, not exceeding nine, who are also members of the governing bodies of the creating cities or

serve on a board of directors of one of these prior PFDs. Each city must be represented by the same number of members on the board of directors, but if after these equal appointments, unfilled positions remain, the members of the board of directors appoint persons to these unfilled positions.

Powers

A PFD created under Chapter 36.100 RCW may acquire, construct and operate sports facilities, entertainment facilities, convention facilities, conference center, or special events center, and related parking facilities.[15] In addition, a such a PFD formed after January 1, 2000, may provide recreational facilities "other than ski areas". A PFD created under Chapter 35.57 RCW may acquire, construct and operate essentially the same type of facilities.[16]

PFDs are authorized to engage in promotional hosting activities following written rules adopted by their boards of directors.[17] Extreme care should be exercised over this authority, which may run afoul of Article VIII, Section 7, which prohibits local governments from giving or loaning money to any person, except for the necessary support of the poor and infirm. Port districts were successful in having the State Constitution amended in 1966, allowing them to engage in promotional hosting activities.

PFDs created under either set of enabling laws possess the usual powers of a public corporation, including the authority to hire employees and services, enter into contracts, and to sue and be sued.[18]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of PFD district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A PFD may impose charges and fees for the use of its facilities.[19]

A PFD created under Chapter 35.57 RCW may impose excise taxes on admissions to its facilities and for parking at its facilities, without voter approval.[20] No rate limitations are place upon these taxes. A PFD created under Chapter 36.100 RCW may impose excise taxes on admissions to its facilities and for parking at its facilities, but taxes imposed on admissions may not exceed 5 percent, taxes on parking fees may not exceed 10 percent, and these taxes may only be imposed if a ballot proposition authorizing these taxes has been approved by voters.[21]

Most PFDs may also impose sales and use taxes, of not exceeding 0.033 percent, that are credited against the state sales and use taxes, to finance their facilities.[22] This is the primary source of tax receipts for most PFDs, essentially a direct transfer of monies from the state general fund to these special districts. These taxes may be imposed for no longer than the shorter of 25 years or the term of the bonds issued for the construction of the facilities that are paid from these taxes. A PFD may not impose these taxes if it is located in a county: (1) With a population of more than one million that imposes sales and use taxes to finance a baseball stadium; or (2) of any population that imposes sales and use taxes to finance a stadium and exhibition center. A ballot proposition authorizing the imposition of these taxes is not required to be submitted to voters for their approval or rejection if the PFD was created under Chapter 35.57 RCW. However, a ballot proposition authorizing the imposition of these taxes must be approved by district voters if the PFD was created under Chapter 36.100 RCW.[23]

A PFD created under Chapter 36.100 RCW may impose sales and use tax of not exceeding 2.0 percent on charges for lodging in hotels and motels with 40 or more units.[24] To avoid potential defaults on general indebtedness payable from these taxes, a PFD imposing these taxes that does not generate sufficient monies to redeem its bonds, will receive additional money from the State sufficient to make these payments, but this additional money will be considered to be a loan to the PFD.

A PFD may impose voter approved, excess property tax levies to finance any of its purposes for a single year, or multi-year excess

property tax levies to retire general obligation bonds issued for capital purposes.[25]

A PFD may issue councilmanic, non-voter approved, general indebtedness not exceeding 0.5 percent of the value of taxable property within the district, and may issue general indebtedness of 1.25 percent of the value of taxable property, when authorized by voters.[26] General obligation bonds may be issued for a term not exceeding 30 years and a PFD may pledge its operating revenues, in addition to tax revenues, to redeem its general obligation bonds.

A PFD may issue revenue bonds payable from its operating revenues.[27]

The county treasurer of the county in which a PFD is located is the *ex officio* treasurer of the district.[28]

History

The first set of enabling legislation was enacted in 1988, authorizing the creation of a PFD to finance the construction and operation of "convention, sports, entertainment, trade" facilities in a county with a population of 300,000 or more that is located more than 100 miles from a state convention center.[29] This legislation authorized the creation of a PFD in Spokane County. Gradually, these laws were amended to allow for the creation of countywide public facilities districts in any county, and for more than one PFD to be created in the same county.[30]

The second set of enabling legislation was enacted in 1999, authorizing cities located in any county with a population of less than one million to create a PFD to finance the construction and operation of "regional centers" by imposing a variety of excise taxes.[31] Regional centers are defined to be convention, conference or special events centers. These laws were amended to allow additional PFD's to be formed in the following locations:

- Within the entire boundaries of any city located in a county with a population of less than one million (i.e., every county other than King County).

- Within the entire boundaries of two or more contiguous cities located in a county or contiguous counties each with a population of less than one million (again in any county other than King County).
- Within the entire boundaries of any city, or contiguous cities, located in a county or counties with populations of less than one million (any county other than King County), and the unincorporated area of the county in which they are located or the unincorporated area of any contiguous county. No population limitation is provided for such a contiguous county, so in theory all of the unincorporated area of King County could be included in a public facilities district created under these provisions.
- Within the entire boundaries of a city located in a county with a population of one million or more, if the city has a population of less than 115,000 and more than 80,000 and the public facilities district started constructing a regional center on July 1, 2008. This would be Federal Way, Kirkland, and Renton.
- Within the boundaries of three or more contiguous cities with a population of at least 160,000 if each of these cities had previously created a public facilities district within its boundaries.[32]

Legislation expressly authorized separate PFDs to provide different major public facilities districts in King County. In 1995, legislation was enacted authorizing an additional, voter-approved, excise tax to finance the construction of a stadium used by professional sports teams and for King County to create a PFD to provide a "baseball stadium with a retractable roof or canopy and natural turf."[33] King County created the Washington State Major League Baseball Public Facilities District to construct and operate a baseball stadium in the SoDo district of Seattle and voters approved this additional excise tax to fund the stadium. Then in 2010, legislation was enacted allowing the State to transfer ownership of the Washington State Convention and Trade Center in Seattle to a public facilities district.[34] King County created the Washington State Convention Center Public Facilities District in 2010 to acquire this facility.

In December of 2011, the Wenatchee Regional Events Center Public Facilities District defaulted on $2 million of bond anticipation notes that it had issued. The Legislature enacted legislation in response to this situation requiring an "independent financial feasibility" study to be prepared before a public facilities district is created and authorizing the "anchor jurisdiction" of a distressed public facilities district (i.e., the city or cities that created a public facilities district under Chapter 35.63 RCW) to impose an additional sales and use tax at a rate of 0.2 percent to repay the obligations of the PFD.[35]

NOTES:

1. Chapter 1, Laws of 1988, 1st Ex. Sess., codified in Chapter 36.100 RCW.
2. Chapter 165, Laws of 1999, codified as Chapter 35.57 RCW.
3. This issue is discussed in Chapter 14, relating to port districts, Chapter 16, relating to public utility districts; and Chapter 27, relating to metropolitan municipal corporations. The cases are *Paine v. Port of Seattle*, *id.*; *Royer v. Public Utility District No. 1*, *id*.; and *Municipality of Metropolitan Seattle v. Seattle*, *id*.
4. "Washington Special Purpose Districts Overview," *id*.
5. RCW 36.100.010(2) & 35.57.010.
6. RCW 35.57.025 & 36.100.025.
7. RCW 36.93.020.
8. Chapter 53.48 RCW.
9. Chapter 36.96 RCW.
10. RCW 36.93.020.
11. RCW 36.100.020.
12. RCW 35.57.050 & 36.100.110.
13. RCW 36.100.020.
14. RCW 35.57.010.
15. RCW 36.100.030.

16. RCW 35.57.020.
17. RCW 35.57.060 & 36.100.160.
18. RCW 35.57.010 & 36.100.010.
19. RCW 35.57.020 & 36.100.030.
20. RCW 35.57.100 & 35.57.110.
21. RCW 36.100.210, 36.100.220, & 36.100.010(4).
22. RCW 82.14.390.
23. RCW 36.100.010(4).
24. RCW 36.100.040.
25. RCW 35.57.010(4) & 36.100.050.
26. RCW 35.57.030 & 36.100.060.
27. RCW 35.57.090 & 36.100.200.
28. RCW 36.100.100.
29. Chapter 1, Laws of 1988, 1st Ex. Sess.
30. Chapter 165, Laws of 1999, codified as Chapter 35.57 RCW.
31. Chapter 165, Laws of 1999, codified as Chapter 35.57 RCW.
32. Chapters 218 and 363, Laws of 2002..
33. Chapter 14, Laws of 1995, 1st Sp. Sess.
34. Chapter 15, Laws of 2010, 1st Sp. Sess.
35. Chapter 4, Laws of 2012.

Chapter 57

Public Hospital Capital Facility Areas

A public hospital capital facility area is authorized to construct and acquire public hospital capital facilities and other health care facilities.

Legislation was enacted in 2009, authorizing the creation of public hospital capital facility areas.[1] A public hospital capital facility area would be classified as a partial subdivision of a county.

The Municipal Research and Services Center (MRSC) does not include public hospital capital facility areas in its list of special purpose districts in the State.[2]

Creation

Creation of a public hospital capital facility area is initiated by the filing of a petition with the county legislative authority of the county in which the proposed entity is located that both proposes: (1) Creation of the entity; and (2) submission of a ballot proposition to voters of the proposed public hospital capital facility area authorizing the entity to issue general obligation bonds to finance public hospital capital facilities and other health care facilities and impose multi-year excess property taxes to retire these bonds.[3] The petition must be signed by registered voters residing within the proposed public hospital capital facility area equal in number to at least 10 percent of the number of voters in that area who voted at the last general election.

The petition must include a copy of a resolution in support of the creation of the entity that has been adopted by each city and public hospital district with territory in the proposed entity and an agreement between these entities on how election costs will be paid.[4] This

requirement that a public hospital with territory located in the proposed public hospital capital facility area makes no sense since a public hospital capital facility area may only be created in a county composed entirely of islands that receives medical services from a public hospital district, but is not located within the boundaries of the public hospital district.[5]

The county legislative authority is obligated to submit the two ballot propositions to voters of the proposed public hospital capital facility area if the proposed boundaries are countywide.[6]

However, the county legislative authority holds a hearing on the proposal if the proposal is to form a public hospital capital facility area that is less than countywide.[7] The county legislative authority may adjust the proposed boundaries by: (1) Removing territory that it deems has been "unjustly or improperly included"; or (2) adding additional territory, but only if requested by the owners of this additional area.[8] However, the authority of the county legislative authority is limited to adjusting the boundaries and the dual ballot propositions (to authorize creation of the entity and the issuance of general obligation bonds retired by multi-year excess levies) are submitted to voters of the area without a determination that creation of the entity is in the public interest.

Presumably, the public hospital capital facility area is created if the ballot proposition authorizing the entity is approved by a simple majority vote of voters voting on that proposition. However, the second ballot proposition authorizing the bonds to be issued, and excess property tax levies to be imposed to retire the bonds, must be approved by a supermajority vote of voters voting on the proposition.

The creation of a public hospital capital facility area is <u>not</u> subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of a public hospital capital facility area, apart from dissolving such an entity.[9]

A public hospital capital facility area may be dissolved by a majority vote of its governing body, but only after any general obligation bonds it issued have been discharged, and any other contractual obligations have been discharged, or assumed by another governmental entity. In addition, a public hospital capital facility area must be dissolved if two attempts to obtain voter approval of ballot propositions authorizing the entity to issue general obligation bonds and excess property tax levies to retire the bonds are not approved by voters.

The dissolution of a public hospital capital facility area is not subject to review by a boundary review board.

Governing Body and Elections

The three members of the county legislative authority in which a public hospital capital facility area is located are the governing body of the entity.[10] If the county legislative authority has more than three members, the county legislative authority selects three of its members to serve on the governing body.

No provision is made for compensation or expenses to be paid for members of the governing body.

Normal or regular franchise rights exist in public hospital capital facility areas and the voters of a public hospital capital facility area are the registered voters residing within the area. County auditors conduct elections for public hospital capital facility areas.

Powers

A public hospital capital facilities area is declared to be a quasi-municipal corporation and an independent taxing unit.[11]

A public hospital capital facilities area is authorized to construct, acquire, maintain, add to and remodel its public hospital capital facilities, and presumably its other capital health care facilities, which include could include nursing homes, extended care facilities, outpatient and rehabilitative facilities, and facilities for ambulances.[12] No authority is granted for a public hospital capital facilities area to operate these facilities, so presumably any operations would be

performed by contract with the public hospital district that provides medical services in the area.

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of public hospital facility capital area finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A public hospital capital facilities area may issue general obligation bonds and retire these bonds with multi-year excess levies, if voters approve a ballot proposition authorizing the bonds and levies by a supermajority vote.[13] The total outstanding general indebtedness may not exceed 1.25 percent of the value of taxable property within its boundaries. A public hospital capital facilities area may also accept gifts and grants.

NOTES:

1. Chapter 481, Laws of 2009, codified as Chapter 70.265 RCW.
2. "Washington Special Purpose Districts Overview," *id*.
3. RCW 70.265.030 & 70.265.040.
4. RCW 70.265.030.
5. RCW 70.265.010.
6. RCW 70.265.030.
7. RCW 70.265.040.
8. *Id*.
9. RCW 70.265.080.
10. RCW 70.265.050.
11. RCW 70.265.010.

12. RCW 70.265.060, 70.265.010 & 70.265.020.

13. RCW 70.265.070.

Chapter 58

Public Stadium Authorities

A public stadium authority is authorized to construct and operate stadiums and exhibition centers.

In 1997, the Legislature enacted legislation authorizing the creation of public stadium authorities, but submitted this legislation to state voters for their approval or rejection at a special election held in June of 1997. State voters approved the legislation (Referendum Bill No. 48) at this special election.[1]

This legislation was narrowly crafted to provide a mechanism for a new pro football stadium and associated exhibition center to be constructed in Seattle, replacing the old Kingdome stadium, and included finances to tear down the old Kingdome multipurpose stadium that the new stadium would replace.[2] The exhibition center was required to be at least 325,000 square feet and to be constructed before the old Kingdom was torn down.

A public stadium authority is a mechanism with features of a unique agency or subdivision of the State, subject to indirect control by both the Governor and Legislature, but also has features of a separate unit of local government. If seen as a unit of local government, a public stadium authority would be classified as a partial subdivision of the State, and probably a partial subdivision of the county creating the public stadium authority.

The Washington State Public Stadium Authority was created in 1997, presumably by action of the King County Council, to construct and

operate a stadium for pro football and an exhibition center, although the website for the entity inaccurately describes the act of creating the authority as being made by state voters approving Referendum 48.[3]

Creation

The county legislative authority of any county may adopt a resolution creating a public stadium authority if the county has entered into a letter of intent with a professional football team affiliate, or an entity with a contractual right to become a professional football team, relating to the development of a stadium and exhibition center under this legislation.[4]

The creation of a public stadium authority is not subject to review by a boundary review board.

Boundary Changes

No provisions are made for boundary changes to a public stadium authority.

Presumably, under general laws, an inactive public stadium authority would be subject to dissolution under two different statutes. First, the board of directors of the authority may petition the superior court to dissolve the district.[5] Second, the county legislative authority may dissolve inactive special purpose.[6]

Such a dissolution would not be subject to review by a boundary review board.

Governing Body and Franchise Rights

A public stadium authority is governed by a seven member board of directors appointed by the Governor.[7] The Speaker and Minority Leader of the House of Representatives, and the Majority and Minority leaders of the Senate, each recommend a person to the Governor to be appointed to the board of directors. Appointees serve staggered four-year terms of office. The Governor appoints a person to fill a vacancy, who serves for the remainder of the term of office of

the person whose seat was vacated. The Governor may remove any appointee from office.

Each board member receives per diem compensation at a rate of $50 for attending meetings or conferences on behalf of the public stadium authority, not to exceed $3,000 per year.[8] In addition, board members are reimbursed for travel and other business expenses incurred on behalf of the public stadium authority.[9]

A five member advisory committee is created for a public stadium authority consisting of the director of the state office of financial management, one member appointed by the Speaker of the House of Representatives, one member appointed by the Minority Leader of the House of Representatives, one member appointed by the Senate Majority Leader, and one member appointed by the Senate Minority Leader.[10] The only responsibility of the advisory committee is to review and make comments on a proposed lease of the facility by the public stadium authority or any sale of stadium naming rights by the public stadium authority.

No provisions are made relating to elections or ballot measures relating to a public stadium authority, other than the original referendum that was submitted to state voters to approve or reject this legislation. However, in all probability, normal or regular franchise rights would exist for a public stadium authority if a law were ever enacted providing for an election relating to such an entity.

Powers

A public stadium authority is authorized to: (1) Acquire, construct, and operate a stadium for professional football, along with an exhibition center, parking facilities and ancillary facilities; (2) enter into agreements under the Interlocal Cooperation Act for the joint operation of such facilities; (3) contract with a public or private entity to operate these facilities; and (4) use the alternative public works contracting procedures to construct these facilities that are authorized under Chapter 39.10 RCW.[11] These alternative contracting procedures include the general contractor/construction manager (GC/CM) procedure, and the design build procedure, and the job order procedure.

A public stadium authority may also enter into a development agreement with a professional football team to control the project and to enter into a long-term agreement for the team to operate and maintain the facilities.[12]

Finances

A public facilities district may impose fees and charges for the use of its facilities, enter into long-term lease agreements with a professional football team, sell naming rights, and accept gifts, grants and donations.[13] The county in which the public facilities district is located imposes the special sales tax on hotel/motel room rentals to finance construction of the stadium and exhibition facilities and issues bonds payable from these tax receipts.[14]

Untold Story

Legislation authorizing the construction of a new public stadium for professional football in Seattle was quite controversial. In 1997, Clyde Ballard, a republican from eastern Washington who was the Speaker of the House of Representatives, made an unequivocal public statement before the upcoming session that legislation would not be enacted increasing taxes to finance a new professional football stadium in Seattle.

As introduced, the legislation provided that financing for the new stadium would primarily be financed with the imposition of a new, statewide, special sales tax on sports memorabilia.[15] Paul Allen, the new owner of the Seattle Seahawks, hired Bud Coffey, the recently retired head lobbyist for the Boeing Company, as the primary lobbyist to promote this legislation. During the last week of the session, Coffee publically announced that effort to secure legislation was over, as the measure could not pass the House of Representatives. Speaker Ballard would not allow the legislation to be brought to the floor of the House.

The author, as one of the few people in the State with detailed knowledge of the obscure tax provisions used to finance both the original Kingdome and its subsequent roof repairs on the Kingdome, suggested that these provisions could be used to finance the new

stadium and exhibition center without imposing any tax additional taxes, keeping within Speaker Ballard's requirement.

The original legislation authorizing what became the Kingdome, allowed only King County to impose a special countywide sales tax at a rate of 2.0 percent on hotel/motel room rentals that was credited against the State's sales tax on general sales, including the rental of hotel/motel rooms.[16] Legislation was subsequently enacted allowing any city, as well as any other county, to impose this special tax with a credit against the general state sales tax to finance tourism promotional activities, as well as a variety of public facilities.[17] Any county imposing the tax was required to include a credit for the similar tax imposed by a city, which resulted in the county only receiving tax receipts from unincorporated areas of the county and from any city in the county that did not impose the tax. However, any city located in a county with outstanding bonds, payable from this special sales tax on hotel/motel room rentals, was precluded from imposing this tax. As a result, King County would retain all of the receipts from this tax imposed throughout the entire county, and use these receipts to retire bonds issued to finance the Kingdome. The prohibition on a city imposing this tax in King County was later extended until January 1, 2013, allowing King County to issue additional general obligation bonds, payable from this tax, that were used to finance roof repairs on the Kingdome.[18]

The key point to remembre is that after January 1, 2013, cities in King County could begin imposing this tax for their own purposes, with all of these tax receipts being credited against both the State's general sales tax, and the special county sales tax on hotel/motel room rentals.

It was the author's suggestion that the concept of delaying the authority of cities in King County from imposing this tax could be applied to financing the new football stadium in Seattle, and eliminating the proposed new sales tax on sports memorabilia, without violating Speaker Ballard's opposition to new taxes or increasing rates of existing taxes being used for such purposes. This proposed change was made to the legislation and the legislation was enacted. As a result, the prohibition on any city imposing this tax in King County was extended to January 1, 2021, allowing King County to retain all of the tax receipts from this tax throughout the entire

county during this additional period, that was projected to be sufficient to finance much of the new football stadium and exhibition center. The only change under this legislation would be which local governments in King County would receive these tax receipts for the eight year period from January 1, 2013, through January 1, 2021.

Given the sensitivity of this legislation, and the hesitation of many House Republicans to support this legislation, the following statements were included in the legislation:

> "The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not."[19]

This was a unique statement to be included codified law.

Mr. Allen paid the State's expenses arising from submitting this proposed referendum to state voters at a special election when state voters approved the legislation.

NOTES:

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[1] Chapter 220, Laws of 1997, codified as Chapter 36.102 RCW. This measure is known as Referendum Bill No. 48.

[2] RCW 36.102.100.

[3] Washington State Public Stadium Authority website. http://www.stadium.org/meetFAQ.asp

[4] RCW 36.102.020 & 36.102.010.

[5] Chapter 53.48 RCW.

[6] Chapter 36.96 RCW.

[7] RCW 36.102.030.

[8] RCW 36.102.140.

[9] RCW 36.102.120.

[10] RCW 36.102.040.

[11] RCW 36.102.050.

[12] RCW 36.102.060.

[13] RCW 36.102.040, 36.102.050 & 36.102.060.

[14] RCW 67.28.180, 67.28.150 & 67.28.160.

[15] HB 2192, 1997 Legislative Session.

[16] Chapter 236, Laws of 1967, codified as Chapter 67.28 RCW.

[17] See, especially, Chapter 34, laws of 1973, 1st ex. sess., and RCW 67.28.180.

[18] Section 1, Chapter 336, Laws of 1991, amending RCW 67.27.180.

[19] RCW 36.102.801.

Chapter 59

Shellfish Protection Districts

A shellfish protection district is authorized to adopt and implement shellfish protection programs dealing with nonpoint pollution threatening water qualify over shellfish tidelands.

Legislation enacted in 1985 authorized counties to create shellfish protection districts.[1] A shellfish protection district would be classified as a subdivision of the county creating the district.

The Municipal Research and Services Center (MRSC) does not report any shellfish protection districts existing in the State.[2] However, 13 shellfish protection districts have been created in different parts of Puget Sound.[3]

Statutes providing for shellfish protection districts are somewhat ambiguous. In many instances, various shellfish protection district statutes use the term “county legislative authority” as subjects when it would appear more appropriate to use the term “governing body of a shellfish protection district.” The Legislature should review shellfish protection district statutes and consider legislation clarifying these statutes, especially with regard to the governing body of a shellfish protection district.

Creation

The county legislative authority of a county in which shellfish tidelands are located may adopt an ordinance creating a shellfish protection district or submit a ballot proposition to voters of the proposed district authorizing creation of the district.[4] Approval is by

a simple majority vote of voters voting on the ballot proposition. Areas may only be included in a district where nonpoint pollution threatens water quality adversely, impacting the continuation or restoration of shellfish farming or harvesting.

If a district includes territory within a city, the "county shall develop procedures for the participation of the city" in determining the boundaries of the district. By agreement, the county legislative authorities of two counties may provide for the creation of a district including territory in the counties.

If a county creates a shellfish protection district on its own motion, a petition signed by at least 25 percent of the registered voters in the district may file a referendum petition to repeal the ordinance creating the district. This process is initiated by a registered voter residing within the district, filing a referendum petition with the county auditor within seven days of the passage of the ordinance. After the auditor develops a ballot title, the petitioner has thirty days to secure the requisite number of signatures. The ballot proposition must be worded so that an affirmative vote is a vote in favor of creating the district, and a negative vote is a vote against creating the district. If sufficient valid signatures are included on a timely filed petition, the ballot proposition is submitted to voters within 120 days after the signed petition was filed.

A county legislative authority is required to establish a shellfish protection district, and shellfish protection program, within 180 days after the Department of Health closes or downgrades a recreational or commercial shellfish growing area within the county, and must implement a shellfish protection program within sixty days after the district is established.[5] It is not clear if potential referendum action against the creation of a shellfish protection district would apply in this instance, since state law requires the county to create the district.

The creation of a shellfish protection district is <u>not</u> subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of a shellfish protection district.

However, an inactive shellfish protection district would be subject to dissolution under two general statutes. First, the members of the governing body of a shellfish protection district may petition the superior court to dissolve the district.[6] Second, the county legislative authority may dissolve an inactive special purpose.[7]

The dissolution of a shellfish protection district is not subject to review by a boundary review board.

Governing Body and Elections

The county legislative authority "constitutes" the governing body of a shellfish protection district.[8] No other provisions are provided for a shellfish protection district governing body.

Normal or regular voting rights exist in a shellfish protection district and the voters of a shellfish protection district consist of registered voters residing within the district.[9] The county auditor conducts elections for a shellfish protection district.

Powers

The county legislative authority, presumably acting as the governing body of a shellfish protection district, adopts a shellfish protection plan that includes elements and activities to "deal with" the nonpoint pollution threatening water quality over the shellfish tidelands.[10] This program may include: (1) Mandates to eliminate or decrease storm water runoff contaminants; (2) monitoring; (3) inspections; (4) "repair elements" for the adequate maintenance and working of on-site sewage disposal systems, assuring grazing and manure management practices are consistent with best management practices; and (5) providing educational and public involvement programs informing persons about threatening nonpoint pollution, and actions they may take to decrease this pollution.

The county legislative authority, presumably acting as the governing body of a shellfish protection district, may appoint an advisory council to assist preparing the shellfish protection plan.

The county legislative authority, presumably acting as the governing body of a shellfish protection district, has full authority "to manage and control" programs that fix, alter, regulate and control fees, rates and charges for services provided under these programs.

Finances

The county legislative authority may finance a shellfish protection program using county tax revenues, "reasonable" inspection fees and similar fees for services, "reasonable" charges or rates specified in the program, and federal, state or private grants.[11] Fees, rates, and charges imposed under a shellfish protection program are subject to the following limitations:

- A dairy animal feeding program operating under a certified dairy nutrient management plan, and other commercial agricultural operation on agricultural lands designated under the Growth Management Act, may not be subject to fees, rates or charges in excess of $500 per year.
- Facilities that are assessed wastewater discharge fees, under the national pollution discharge elimination system, are not subject to shellfish protection district fees, rates or charges.
- Lands classified as forest lands under the state's forest land valuation system, or timber lands under the open space program, are not subject to shellfish protection district fees, rates or charges.[12]

Counties with shellfish protection districts receive "high priority" for state water quality financial assistance, to implement shellfish protection programs.[13]

NOTES:

1. Chapter 417, Laws of 1985, codified in Chapter 90.72 RCW.

2. "Washington Special Purpose Districts Overview," *id*.

3. http://www.mypugetsound.net/index.php?option=com_docman&task=doc_view&gid=6&Itemid=238

4. RCW 90.72.040.

5. RCW 90.72.045.

6. Chapter 53.48 RCW.

7. Chapter 36.96 RCW.

8. RCW 90.12.030.

9. RCW 90.12.040.

10. RCW 90.12.030.

11. RCW 90.72.070.

12. *Id.*

13. RCW 90.72.080.

Chapter 60

Solid Waste Disposal Districts

A solid waste disposal district is authorized to provide “all aspects” of disposing solid wastes.

Legislation enacted in 1982 authorized solid waste disposal districts to be formed.[1] A solid waste disposal district would be classified as a subdivision of the county that creates the district.

The Municipal Research and Service Center (MRSC) reports that four solid waste disposal districts exist in the State.[2]

Creation

The county legislative authority of any county with a population of less than one million (every county other than King County) may adopt an ordinance creating one or more solid waste collection districts within its boundaries if, after holding a hearing on the matter, the legislative authority determines that it is in the public interest to form the district.[3] No area located within a city may be included in a district unless the city governing body approves inclusion of the area.

Creation of a solid waste collection district is not subject to review by a boundary review board.

Boundary Changes

The boundaries of a solid waste disposal district may be modified or the district dissolved, by action of the county legislative authority after holding a hearing on the matter and determining that the modification or dissolution is in the public interest.[4]

The modification of a solid waste disposal district's boundaries and the dissolution of a solid waste disposal district are not subject to review by a boundary review board.

Governing Body and Elections

The county legislative authority, presumably acting in an *ex officio* capacity, serves as the governing body of a solid waste disposal district and regular franchise rights exist in a solid waste disposal district.[5]

Normal or regular voting rights exist in solid waste disposal districts and the electorate of a solid waste disposal district consist of registered voters residing within the district. County auditors conduct elections for solid waste disposal districts.

Powers

A solid waste disposal district may provide all aspects of disposing solid waste, other than collecting solid waste.[6] This would include providing solid waste disposal sites, including transfer stations, plants and other facilities, as well as processing, converting and selling products and materials from these facilities.

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of solid waste disposal zone district finances. Some details about property tax levies and indebtedness that are included in Chapter 63 are not repeated below.

A solid waste disposal district may impose fees for the disposal of solid waste based upon weight or volume.[7]

In addition, a solid waste disposal district may impose excise taxes on the privilege of living in or operating a business within its boundaries, that are sufficient to fund its solid waste disposal activities.[8] The district may impose this tax on its own authority

without the requirement of receiving voter approval. No maximum rate is provide for such an excise tax.

A solid waste disposal district may impose voter approved excess property tax levies for a single year for any of its purposes, as well as multi-year excess levies to retire general obligation bonds issued for capital purposes.[9]

Councilmanic, nonvoter approved, general obligation bonds may be issued by a solid waste disposal district up to an amount not exceeding three eighths of one percent of the value of taxable property within the district.[10] In addition, with super-majority approval, a solid waste disposal district may issue general obligation bonds with a total indebtedness of not exceeding 1.25 percent of the value of taxable property within the district.

Solid waste disposal districts may also issue revenue bonds payable from the fees they charge for providing services and the sale of any products or materials from their facilities.

NOTES:

1. Chapter 182, Laws of 1982, codified in Chapter 36.58 RCW.
2. "Washington Special Purpose Districts Overview," *id*.
3. RCW 36.58.110-36.58.120.
4. *Id*.
5. RCW 36.58.100.
6. RCW 36.58.130.
7. *Id.*
8. RCW 36.58.140.
9. RCW 36.58.150.
10. *Id.*

Chapter 61

Television Reception Improvement Districts

A television (TV) reception improvement district is authorized to provide television and FM radio translator facilities.

Legislation enacted in 1971 authorized television (TV) reception improvement districts to be formed.[1] The prime sponsor of this legislation was Representative Joe Haussler, who represented a geographically huge legislative district in the north central and northeastern portion of the state running from the crest of the northeastern Cascade Mountains eastward to the state's boundary with Idaho. Many of his constituents resided in mountainous valleys with no television reception, years before the advent of satellite television broadcasts. Haussler was the first committee chair for whom the author worked in 1973.

A TV reception improvement district would be classified as a subdivision of the county in which it is created.

The Municipal Research and Service Center (MRSC) reports that seven TV reception improvement districts exist in the State.[2]

Creation

A petition to form a TV reception improvement district, signed by at least 50 percent of the registered voters residing within its proposed boundaries, is filed with the county legislative authority.[3]

The petition describes the boundaries of the proposed district. A TV reception improvement district could include any incorporated or unincorporated area within a county that, on or before the creation of

the district was not served by a cable TV system.[4] Such a district may not "be formed to operate and maintain any translator station presently or previously owned, operated or maintained by a television broadcaster."[5]

If the signatures on the petition are determined to be sufficient, a notice of a "public meeting" on the proposal is published.[6] The county legislative authority adopts a resolution creating the district if it finds the proposed district would serve the public interest.[7]

The proposed creation of a TV reception improvement district is not subject to review by a boundary review board.[8]

Boundary Changes

No provisions are made for altering the boundaries of a TV reception improvement district, apart from dissolving such a district. The county legislative authority, after holding a public hearing on the matter, may adopt a resolution dissolving a TV reception improvement district if it finds that "the continued existence of a district would no longer serve the purposes" of the chapter of laws authorizing TV reception improvement districts.[9]

The proposed dissolution of a TV reception improvement district is not subject to review by a boundary review board.[10]

Governing Body and Elections

A TV reception improvement district is governed by a board consisting of three, five, or seven members, as specified in the resolution creating the district.[11] The county legislative authority appoints persons to both the initial and subsequent boards, who serve staggered three year terms of office. Any vacancy on the board is filed by action of the county legislative authority. However, if a countywide TV reception improvement district is created, the county legislative authority constitutes the board of the district.

Board members do not receive compensation but are reimbursed for performing their official duties.[12]

Normal or regular voting rights exist in TV reception improvement districts and the electorate of a TV reception improvement district consists of registered voters residing within the district. County auditors conduct elections for a TV reception improvement district.

Powers

A TV reception improvement district is authorized to provide "television and FM radio translator stations" but may not provide cable TV systems.[13] These translator facilities consist of large aerial facilities located at the top of very high hills above the valley where the voters of the district resided, that receive broadcast signals and rebroadcast these signals into the valley areas.

Annually, the board prepares a list of persons residing within the district who are believed "to own TV sets" and delivers a copy of the list to the county auditor.[14]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of TV reception improvement district finances.

The board of a TV reception improvement district imposes an excise tax to finance its budget.[15] The tax may not exceed $60 per TV set per year within the district, but a person may not be taxed for more than one TV set unless the person owns more than five TV sets. A person owning more than five TV sets, and a hotel or motel, "must pay at a rate of one-fifth of the annual tax rate imposed for each of the first five television sets and one-tenth of the annual tax rate imposed for each additional television set." The tax is not imposed on any person owning FM radio sets who do not also own a TV set.

Newer provisions provide that the owner of a TV set is not subject to the excise tax if the TV set does not receive "at least a class grade B contour signal retransmitted" by the district, or if the owner subscribes to and receives services from a community antenna system, or if the owner subscribes and receives service from a satellite carrier.

The county treasurer serves as the treasurer of a TV reception improvement district within the county and collects the excise taxes imposed by the district.[16] The treasurer makes payments for the district on warrants issued by the county auditor.

A budget for a TV reception improvement district is made under the provisions of the county budgeting law.

No express provision authorizes a TV reception improvement district to incur debt and issue bonds evidencing the debt. However, Article VIII, Section 7 sets indebtedness debt limitations for counties, cities, school districts, and "other municipal corporations." RCW 39.36.020 provides for a statutory indebtedness limitation for a broad range of "taxing districts", which is defined as a county, city, township, port district, metropolitan park district, or other municipal corporation.[17] Arguably, these provisions authorize a TV reception improvement district to incur debt. However, almost every other type of local government has statutes granting the type of local government express authority to incur debt.

NOTES:

1. Chapter 155, Laws of 1971 ex. sess., codified as Chapter 36.95 RCW.
2. "Washington Special Districts Overview," *id*.
3. RCW 36.95.030.
4. RCW 36.95.020.
5. RCW 36.95.210.
6. RCW 36.95.040.
7. RCW 36.95.050.
8. RCW 36.93.020.
9. RCW 36.95.200.
10. RCW 36.93.020.
11. RCW 36.95.060.

12. RCW 36.95.070.
13. RCW 36.95.010 & 36.95.130.
14. RCW 36.95.080.
15. RCW 36.95.090 & 36.95.100.
16. RCW 36.95.160.
17. RCW 39.36.010.

Chapter 62

Unincorporated Transportation Benefit Areas

An unincorporated transportation benefit area is authorized to provide various types of public transportation services.

Legislation enacted in 1975 authorized unincorporated transportation benefit areas to be formed.[1] An unincorporated transportation benefit area would be classified as a subdivision of a county.

Legislation providing for unincorporated transportation benefit areas is poorly drafted and the Legislature should review and amend this legislation. The two sections providing for unincorporated transportation benefit areas include almost no detail, and fail to provide a governing body for such special purpose districts. Presumably, it was the intent of the Legislature to provide for the governing body of such a special purpose district to be composed of the members of the county legislative authority, acting independently and in *ex officio* capacities. This lack of attention to detail is most apparent in general statutes authorizing various local governments several different taxing authorities to finance public transportation services. Unfortunately, these general statutes do not literally authorize the governing body of a unincorporated transportation benefit area to impose the taxes, or the unincorporated transportation benefit area itself this authority, but instead authorizes the county legislative authority power to impose these taxes. This raises serious constitutional questions. When drafting legislation, especially legislation relating to taxing authority and debt authority, it is imperative to be precise and avoid potential constitutional issues. The governing body of a special purpose district imposes the taxes

and incurs debt, not the county legislative authority, which only acts for the county.

The remainder of this chapter describes authorities of unincorporated transportation benefit areas, and their governing bodies, as if these statutory changes were made. Presumably, it was the intent of the Legislature to apply general provisions relating to the powers of county transportation authorities to unincorporated transportation benefit areas.

The Municipal Research and Services Center (MRSC) reports that only one unincorporated transportation benefit area exists in the State.[2]

Creation

The county legislative authority of any county, other than a county in which a metropolitan municipal corporation was providing public transportation as of July 1, 1995, (i.e., other than King County), "is authorized to create and define" the boundaries of an unincorporated transportation benefit area outside of cities.[3] Only those areas that could reasonably be assumed to benefit from the provision of public transportation services may be included in the benefit area. As far as practicable, these boundaries should follow school district or election precinct boundary lines. Presumably, the county legislative authority adopts a resolution creating the unincorporated transportation benefit area.

The creation of an unincorporated area transportation benefit area is <u>not</u> subject to review by a boundary review board.

Boundary Changes

No provisions are made for altering the boundaries of an unincorporated transportation benefit area.

However, an inactive unincorporated transportation benefit area would be subject to dissolution under two general statutes. First, the members of the governing body of an unincorporated transportation benefit area may petition the superior court to dissolve the special

purpose district.[4] Second, the county legislative authority may dissolve an inactive special purpose.[5]

Dissolution of an unincorporated transportation benefit area is not subject to review by a boundary review board.

Governing Body and Elections

Presumably, the members of the county legislative authority acting independently and in *ex officio* capacities, serve as the governing body of an unincorporated transportation benefit area.

No provision is made for franchise rights in an unincorporated transportation benefit area. However, since these special purpose districts are authorized to impose various excise taxes, normal or regular franchise rights would exist in these special purpose districts. County auditors would conduct elections for unincorporated transportation benefit areas.

Powers

Unincorporated transportation benefit areas are authorized to provide public transportation services, which are defined to include the "transportation of passengers and their incidental baggage by means other than by chartered bus, sightseeing bus," along with terminals, parking facilities and equipment necessary to provide such service.[6]

Finances

A general discussion of local government finances is found in Chapter 63. That chapter should be reviewed before reading the following discussion of flood control zone district finances.

No express authorization exists, but presumably, unincorporated transportation benefit areas may impose rates, tolls, fares and charges for providing service.[7]

Presumably, unincorporated transportation benefit areas are authorized to impose any or all of the following excise taxes, if voters

of the special purpose district approve a ballot proposition authorizing the taxes:

- Sales and use taxes of up to 1.0 percent;
- Excise taxes on persons within its jurisdiction of not exceeding one dollar per month per housing unit; and
- Business and occupation tax for the privilege of doing business within the authority, with no limitation on the rate of such taxes.[8]

No express provisions are made for a county transportation authority to issue bonds or borrow money. It appears the intent of the Legislature was to authorize unincorporated transportation benefit areas the authority to issue general obligation bonds, but this authority is granted to the county legislative authority rather than the special purpose district or the governing body of the special purpose district. Assuming that this authority exists, then an unincorporated transportation benefit area may "issue general obligation bonds" for "public mass transportation capital purposes."[9]

No express provisions provide for indebtedness limitations for unincorporated transportation benefit areas, but general law provides that local governmental taxing authorities without express indebtedness limitations, may incur non-voter approved, councilmanic, general indebtedness in an amount not exceeding three eighths of one percent of the value of taxable property within its boundaries, and a total of 1.25 percent of the value of taxable property within its boundaries, when authorized by a supermajority vote of voters voting no a ballot proposition authorizing such indebtedness.[10]

NOTES:

1. Sections 9 and 10, Chapter 270, Laws of 1975, 1st ex. sess., codified as RCW 36.57.100 and 36.57.110.

2. "Washington Special Purpose District Overview," *id*.

3. RCW 36.57.110.

4. Chapter 53.48 RCW.

5. Chapter 36.96 RCW.

6. RCW 36.57.110 & 36.57.010.

7. See, RCW 36.57.040, which authorizes county transportation authorities to impose such charges.

8. RCW 35.95.040 & 82.14.045.

9. RCW 35.58.2721.

10. RCW 39.36.020.

PART IV

CONCEPTS, TERMINOLOGY, LAWS, AND PRINCIPLES

Introduction

Part IV of this reference book on local governments in Washington State discusses general concepts, terminology, laws, and principles relating to local governments in Washington State.

Part IV includes chapters 63 through 73.

Chapter 63 discusses local government finances. This chapter describes: (1) Taxes; (2) non-fee taxes, including special assessments and traditional rates and charges; (3) debt proceeds; and (4) intergovernmental revenues. The many restrictions on property taxes are discussed. The different types of bonds that local governments may issue are discussed.

Chapter 64 discusses the powers of eminent domain or the authority of local governments to condemn property for their public purposes.

Chapter 65 discusses the concept of home rule. This includes: (1) An analysis of police regulatory powers granted to all counties and cities by Article XI, Section 11; (2) a discussion of the home rule powers of charter cities under Article XI, Section 10; (3) a discussion of the home rule powers of charter counties under Article XI, Section 4; (4) a discussion of statutory grants of home rule power; and (5) a discussion of the unused home rule powers authorized under Article XI, Section 16 where any county may adopt what is called a combined city/county charter.

Chapter 66 discusses basic provisions of the State Constitution relating to local governments.

Chapter 67 discusses local government elections. Two basic electoral systems are discussed. The basic electoral system involves elections held for local governments where normal or regular franchise rights apply. A second electoral system has been established for the few types of special purpose districts where normal franchise rights do not apply and only property owners are allowed to vote.

Chapter 68 discusses local initiative and referendum procedures. This includes a description of required referendum votes that are necessary to authorize some taxes to be imposed or indebtedness to be incurred. This also includes a description of the ability of voters in some counties and cities to obtain general initiative and referendum powers over county and city matters.

Chapter 69 discusses the local judiciary. County superior courts serve as the basic trial courts in the state. District courts and municipal courts serve as inferior courts.

Chapter 70 describes the Growth Management Act. This major legislation was enacted in 1990 and 1991, establishing mandatory requirements for most counties and cities to regulate development.

Chapter 71 discusses local government transportation issues. Transportation has been a major focus of local governments since their inception, and remains a primary focus.

Chapter 72 discusses a variety of general concepts and laws relating to local governments. These include: (1) The Appearance of Fairness Doctrine; (2) boundary review boards; (3) budgeting and accounting requirements; (4) civil service requirements; (5) collective bargaining requirements; (6) contracting procedures; (7) day labor requirements; (8) the Division of Governmental Studies and Services; (9) ethics; (10) the Incompatibility of Public Offices Doctrine; (11) the Interlocal Cooperation Act; (12) Joint Municipal Utility Services; (13) lending of credit and gift of public fund restrictions; (14) the Local Governance Study Commission; (15) the Municipal Research and Services Center; (16) the One Person, One Vote Doctrine; (17) the Open Public Meetings Act; (18) the Public Disclosure Act; (19) public record requirements; (20) the

Public Water System Coordination Act of 1977; (21) publishing requirements; (22) recall procedures; (23) the Shoreline Management Act; (24) the State Environmental Policy Act; (25) unfunded mandates; and (26) the Whistle Blower law.

Chapter 73 discusses the future of local government in Washington State. This includes a discussion of likely piecemeal changes, as well as the less likely opportunity for moderate reform of local governments and more fundamental structural reform of local governments.

Chapter 63

Local Government Finances

Local governments in Washington State receive financing from a variety of sources.[a] These revenue sources may be classified as:

- Taxes;
- A variety of different non-tax fees;
- Debt proceeds;
- Intergovernmental revenues (e.g., grants); and
- Other sources.

Not all local governments receive finances from each of these different revenue sources.[b]

Taxes

Taxes are exactions or pecuniary burdens imposed by governments to support their activities, operations, and facilities.

Local governments in Washington State do not possess inherent taxing authority and obtain the authority to impose taxes from grants of authority found in state statutes.[1] Inherent taxing authority is referred to as fiscal home rule. This lack of local

a Local government finances are discussed in *Washington Municipal Financing Deskbook*, Lawyers Cooperative Publishing, 1993, by Roy Koegen. Information on local government taxes may be found in "Report of the Washington State Tax Structure Study Committee in 2003", which may be obtained from the Washington State Department of Revenue's website at <http://dor.wa.gov/content/statistics/>.

b County finances are discussed in Chapter 5. City finances are discussed in Chapter 9. A discussion of the finances for different types of special purpose districts is found in the separate chapters devoted to these special purpose districts, Chapters 10 through 62.

government fiscal home rule contrasts with the inherent authority of the State to impose taxes subject to constitutional restrictions.[2]

Two distinctive features of taxes are:

- General use. Governments impose taxes for their general uses, including their operations, activities, services, and facilities.
- Nexus. A relationship or nexus does not need to exist among the taxpayer, the amount of taxes paid, and the uses to which the tax receipts are put.[3]

However, the State Constitution or statutes may restrict the use of particular tax receipts to a specified purpose, or establish a nexus between who pays and the uses of the tax receipts. For example, Article II, Section 40 provides that receipts from motor vehicle fuel taxes that the State collects must be expended exclusively for highway purposes.

The Washington State Supreme Court recognizes two broad classes or types of taxes – property taxes and excise taxes.[c] Property taxes (*ad valorem* taxes) are imposed based upon the value of the taxable property. These taxes are the most common type of taxes and the oldest type of taxes in Washington. Excise taxes are the broadest category of taxes and include all taxes other than property taxes.

Many local governments receive the greatest portion of their revenues from tax receipts. Property taxes are the most common type of taxes imposed by local governments in Washington State. Counties, cities and many types of special purpose districts have been authorized to impose property taxes. General purpose local

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c Many scholars recognize three separate categories of taxes: (1) Ad valorem or property taxes; (2) income taxes; and (3) a variety of different excise taxes. The Washington State Supreme Court does not appear to recognize income taxes, or taxes on net income, as a distinct class of taxes. Instead, the Court has classified net income as a single class of property and has held that any tax on a class of property is a property tax. All property taxes are subject to constitutional limitations, including the Uniformity Clause. Thus, a variable income tax would not be constitutional since net income constitutes a single class of property. (*Culliton v. Chase*, 174 Wash. 363, 378 (1933); and *Jensen v. Henneford*, 185 Wash. 209, 222 (1936).) Many legal and tax scholars have severely criticized the Court's holding in *Culliton*. Among other critics, Hugh Spitzer has noted that all of the prior case law relied upon by the Court in *Culliton* has been reversed.

governments and a few special districts (notably transit agencies) have also been authorized to impose different types of excise taxes. Sales and use taxes are the most common type of excise taxes imposed in this State. Cities have also been authorized to impose business license taxes, which are often referred to as business and occupation (B&O) taxes and utility taxes. Both counties and cities have also been authorized to impose a variety of minor excise taxes.

A. History of Local Government Taxing Power

The history of local government taxing powers in Washington involves the gradual broadening of the tax base from an almost total dominance by property taxes.[4]

Property taxes were the first and foremost type of taxation in Washington. Property taxes supported the territorial government and the few different types of local governments (counties, cities, school districts, and road districts) that existed when Washington was a territory. The dominance of property taxes continued until the early 1930's, when major changes were made to the taxes imposed by the State. These changes impacted the imposition of property taxes by local governments. Other significant changes were made to county and city taxing powers in the 1970's and 1980's, when those governments were authorized to impose a variety of sales and use taxes.

Property taxes have always generated the majority of county tax revenues. However, as discussed in Chapter 1, counties also imposed two other taxes when Washington was a territory. Counties imposed poll taxes on adult males to finance roads for most of the territorial years, and imposed excise taxes on liquor and gaming to support public schools in the later territorial years.

Some territorial city charters authorized individual cities to license different types of businesses, but cities in territorial years still relied on property taxes as their primary source of tax revenue.[d]

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d Vancouver was the first city authorized to issue license and tax various types of businesses. Legislation enacted in 1858 authorized Vancouver to license and tax auctioneers, taverns, hawkers, brokers, pawn-brokers, porters, hackney carriages, wagons, carts, drays, omnibuses, bar rooms, drinking shops, exhibitions, billiards, and bowling alleys. (Statutes of the Territory of Washington, Local Laws, 1857-1858, 5th Session, Section 1, Page 49.)

The first State Legislature enacted legislation in 1890, creating four classes of cities. This legislation authorized all four classes of cities to impose business license taxes.[5] The statutory language granting this taxing authority is somewhat obtuse. Cities were granted the authority to license businesses and occupations for both regulatory and revenue raising purposes. These old statutory provisions did not include any details about this taxing authority and included no restrictions on this taxing authority, providing cities broad authority to define both the tax base and tax rate. At least by 1899, Tacoma and Walla Walla were imposing license fees under this authority.[6] By 1932, Seattle was levying an "occupation" tax under this authority, which may have been the first instance of a city imposing what we now would call a business and occupation tax.[7] However, property taxes still generated the bulk of city tax revenues until cities were authorized to impose sales and use taxes.

As discussed in Part III-A, Chapters 11 through 23, legislation authorizing new types of special purpose districts frequently permitted these special purpose districts to impose property taxes. This included port districts, water districts, public utility districts (PUDs), and metropolitan park districts.

Significant changes were made to the array of taxes imposed in Washington State during the Great Depression of the 1930's. These changes affected the levying of property taxes by local governments. First, limitations were placed on the cumulative rate of property taxes that could be levied by all governments on any property in any year. Second, the State reduced its reliance on property taxes and began imposing a wide array of excise taxes. As a result, most of the authority to levy property taxes was left to local governments.

State voters approved Initiative Measure No. 64 in 1932, establishing a 40 mill limitation on the cumulative amount of most property taxes that all governments could impose on any property in any year.[e] The 40 mill limitation was re-adopted by either

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e Initiative Measure No. 64: (1) Established the so-called 40 mill limitation on the aggregate rate of property tax levies that may be imposed on any property in any year; (2) provided that property would be assessed for tax purposes at 50 percent of its true and fair value; (3) established the concept of non-voter approved regular property levies and voter-approved excess property tax levies; and (4) restricted the state property tax levy to a specific amount and left the remaining regular property tax capacity for local governments.

initiative or referendum action of state voters every two years until 1940.[f] This voter action precluded the Legislature from amending the 40 mill limitation because at that time the Legislature could not amend an initiative or referendum until two years after its adoption.[g] State voters approved the 17th Amendment to the State Constitution in 1944, placing the 40 mill limitation into the State Constitution.[h] The 40 mill limitation dramatically altered the property tax scheme in the State and reduced the cumulative rate of property taxes by almost half. Much of this reduction was accomplished by reducing the State's property tax levy rate.

Legislation was enacted authorizing the State to impose a variety of excise taxes to replace its reduced property tax receipts. The most significant legislation was the Revenue Act of 1935, which ushered in the modern era of taxation for the State by imposing a variety of different excise taxes, including a retail sales tax and new business taxes that were called business and occupation taxes.[i]

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f After the 40 mill limitation was established by Initiative Measure No. 64 in 1932, state voters re-adopted the 40 mill limit in: (1) Initiative Measure No. 94 in 1934; (2) Initiative Measure No. 114 in 1936; (3) Initiative Measure No. 129 in 1938; and (4) Referendum Bill No. 5 in 1940.

g This restriction was included in the provisions of Amendment 7 (approved by state voters in 1912) that originally granted state voters the powers of initiative and referendum on state matters. However, Amendment 26 (approved by state voters in 1952) eliminated this restriction but only allows the Legislature to amend an initiative or referendum within two years of its adoption by a two-thirds vote of both the House of Representatives and Senate.

h Subsequent constitutional amendments have altered the 40 mill limitation. The most significant change was included in Amendment 55 that state voters approved in 1972. Amendment 55 altered the 40 mill limitation to the One Percent Limitation where, with certain exceptions, the cumulative rate of property taxes imposed on any property in any year may not exceed one percent of the "true and fair value" of the property in money. In theory, this resulted in a 50 percent reduction in property taxes. However, for years most property had been assessed far below the constitutionally required 50 percent level, so the actual reduction in taxes would not have been that large. At least in part, Amendment 55 was proposed in response to a ruling by the State Supreme Court requiring property to be assessed at the then constitutionally required 50 percent level. (*State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 489 (1967); & *Carkonen*, at page 625.) Two basic arguments in favor of Amendment 55 were presented in the 1972 state Voters Pamphlet. First, establishing an annual ceiling on the cumulative rate of most property taxes at one percent of the true and fair value of the property slightly reduced the then prevailing statutory annual ceiling on the cumulative rate of most property taxes of 22 mills with property assessed at 50 percent of true and fair value. Second, establishing the one percent constitutional ceiling essentially cut in half the constitutional ceiling of 40 mills with property assessed at 50 percent of true and fair market value and preclude the Legislature from statutorily increasing the then statutory 22 mill limitation by a mere simple majority vote. The remainder of these other constitutional amendments expanded the flexibility of local taxing districts to impose voter-approved excess levies.

i The Revenue Act of 1935: (1) Replaced a 1933 business tax with what was called the business and income tax; (2) imposed a retail sales tax; (3) imposed a public utility tax; (4) imposed higher liquor taxes; (5) imposed a real estate conveyance tax; and (6) imposed an admission tax.

County and city taxing authorities were dramatically altered in 1970 when legislation was enacted authorizing them to impose sales and use taxes for their general purposes at a rate of 0.5 percent.[8] Legislation enacted in 1982 allowed counties and cities to double the rate of their sales and use taxes to one percent.[9] The 1982 legislation also placed restrictions on the authority of cities to impose business and occupation taxes and utility taxes.[10] Other legislation has been enacted authorizing counties and cities to impose additional sales and use taxes for specified purposes.

A number of additional restrictions have been placed on the authority of the State and local governments to impose property taxes. The so-called statutory "106 percent levy lid" on property tax increases from one year to the next year was enacted in 1971.[11] State voters approved Initiative Measure No. 747 in 2001, reducing this limitation to a statutory 101 percent levy lid on property tax increases from one year to the next.[12]

Property taxes remain the most common type of taxes imposed by local governments. Property taxes generate by far the greatest percentage of county tax revenues, but on the average, account for about one-third of city tax revenues. Most special purpose districts that have been authorized to impose taxes only are authorized to impose property taxes. The State still imposes property taxes with the proceeds earmarked to fund common schools, but revenue from this tax source constitutes a diminishing proportion of total state tax revenues.

B. Constitutional Provisions

The Washington State Constitution includes a number of provisions relating to taxation.[j] [13] Most of these provisions only apply to property taxes. A few of these provisions affect all types of taxes.

1. Article VII, Section 1

This basic tax provision includes a number of restrictions. First, the power of taxation may not be suspended, surrendered, or contracted away. Second, taxes may be imposed for "public purposes" only. Third, property taxes are subject to a uniformity

j Constitutional provisions relating to local governments are discussed in Chapter 66.

requirement. Property taxes must be imposed uniformly on the same class of property throughout the territorial limits of the taxing district imposing each tax. Real estate constitutes a single class of property. Fourth, federal, state, and local government property is exempt from property taxes. Fifth, the Legislature may enact general laws exempting other property from property taxes.

2. Article VII, Section 2

This provision establishes the so-called constitutional One Percent Limitation on property taxes. The total of all property taxes that may be imposed on any property in any year may not exceed one percent of the "true and fair value of such property in money". As discussed above, the One Percent Limitation replaced the old 40 Mill Limitation. Exceptions are provided to the constitutional One Percent Limitation. First, property taxes imposed by port districts and PUDs are not subject to the constitutional One Percent Limitation. Second, this limitation does not apply to the following three types of excess levies:

- The constitutional One Percent Limitation does not apply to the following voter-approved excess levies that may be imposed by taxing districts (other than the State, a port district, or a PUD): (a) A single year excess levy may be imposed by a taxing district for any lawful purpose; (b) excess levies may be imposed for up to four years to support the common schools or fire protection districts; and (c) excess levies may be imposed for up to six years to support the construction, modernization, or remodeling of school facilities or fire district facilities.
- The constitutional One Percent Limitation does not apply to voter-approved, multi-year excess levies imposed by taxing districts (other than the State, a port district, or a PUD) to retire general obligation bonds issued for capital purposes "other than the replacement of equipment".
- The constitutional One Percent Limitation does not apply to property taxes imposed to prevent the "impairment of the obligation of any contract when ordered so to do by a court of last resort."

A ballot proposition authorizing these voter-approved excess levies must be approved by a super-majority vote of voters voting on the ballot proposition. The super-majority vote is at least three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met.[k] However, excess levies authorizing school districts to support common schools' maintenance and operations and capital purposes not associated with redeeming general obligation bonds, need only be approved by a simple majority vote of voters voting on the proposition.

3. Article VII, Section 9

This provision is a single sentence composed of two phrases. The first phrase relates to special assessments and is discussed below. The second phrase allows the Legislature to vest local governments with the authority to impose taxes that must be "uniform with respect to persons and property within the jurisdiction" imposing the taxes.

4. Article XI, Section 12

This provision is also a single sentence composed of two separate phrases. The first phrase precludes the Legislature from imposing taxes on local governments or residents of local governments for "municipal purposes". However, it should be noted that the Legislature may impose taxes for either state purposes or joint state-local government purposes. The second phrase permits the

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k Under this 40 percent voter validation requirement, the number of persons voting on the proposition must equal at least 40 percent of the number of persons voting in the taxing district at the last general election. However, additional flexibility is provided for validating the first category of voter-approved excess levies, where the levy may be authorized if the 40 percent voter validation requirement is not met, but the vote authorizing the excess levy is equal to at least 60 percent of 40 percent of the number of voters voting at the last general election in the taxing district. In effect, this more flexible requirement increases the required "yes" vote above 60 percent, if the basic 40 percent voter validation requirement is not met. It should be noted that Article VII, Section 2, has a number of technical flaws that literally appear to make the voter validation requirement impossible. The basic voter validation requirement actually is that the total number of persons voting on the ballot proposition be equal to "at least forty percent of the total of votes cast" in the taxing district at the last general election. (Emphasis added.) Since each voter casts votes for a large number of offices and ballot propositions at a general election, this requirement could not be met. Clearly, a court would read "votes cast" as "voters voting" or the portion of the provision where voters may authorize excess levies would be meaningless. A number of other drafting "errors" or "imperfections" were removed from this provision by recent constitutional amendments adopted to make substantive changes to the provision.

Legislature to enact general laws authorizing the governing bodies of local governments to impose taxes for "municipal purposes".

C. Property Taxes

Property taxes are the oldest and most common type of taxes imposed by local governments in Washington State.

The modern scheme of property taxes in Washington State is characterized by:

- Complexity – Property taxes are subject to a broad array of statutory and constitutional provisions. Layer upon layer of laws control property taxes. A few aspects of property tax laws are vague and subject to different interpretations.
- Exceptions – Exceptions exist to almost every general rule describing our property tax system.
- Sense – Any particular feature of the scheme of property taxes probably makes sense in isolation. However, taken as a whole the scheme of property taxes makes less sense.
- Basic reality – At times, too many different types of taxing districts compete for the limited property tax base that is available. When this occurs state law provides for reducing and possibly eliminating some property tax levies to keep the cumulative tax rate within the maximum available tax base. As a result, there are losers and winners.

Property taxes are imposed in a different manner than excise taxes. Property tax levies must be imposed each year. However, once an excise tax is imposed, it remains in effect and applies to all taxable events that occur in the future.

Two categories of property tax levies exist. The first category is called regular property tax levies. This category includes most property tax levies. All property taxes that are subject to the constitutional One Percent Limitation on the cumulative rate of property taxes that may be imposed on any property in any year are classified as regular property tax levies. In addition, all property

tax levies imposed by port districts and PUDs are classified as regular property tax levies. Most of these regular property tax levies are imposed without voter approval. The second category is called excess property tax levies. An excess property tax levy may be imposed only if voters approve a ballot proposition authorizing the levy or levies by at least a three-fifths vote and a 40 percent voter validation requirement is met. However, taxes ordered by a court of last resort to avoid the impairment of a contract would also be classified as excess levies but are imposed without voter approval. However, as described above excess levies imposed by school districts, for purposes other than retiring general obligation bonds, need only be approved by a simple majority vote of voters voting on the ballot proposition. The term "excess property taxes" connotes that these taxes are in excess of, or not subject to, the constitutional One Percent Limitation. However, a statute defines port district and PUD property tax levies as regular property tax levies, even though these property tax levies are in excess of, or not subject to, the constitutional One Percent Limitation.[l]

1. Restrictions on property taxes

Property taxes are subject to a variety of different restrictions. These varied restrictions have resulted in confusion over property taxes.

a. Statutory rate limitations

Almost every statute authorizing a taxing district (including the State, port districts, and PUDs) to impose regular property tax levies establishes a maximum rate of property taxes that the taxing district may impose. For example, all fire protection districts are authorized to impose two separate annual property tax levies, each with a maximum rate of 50¢ per $1,000 of assessed value, and any fire protection district with one or more full time employees may impose an additional annual property tax levy with a maximum rate of 50¢ per $1,000 of assessed value.[14]

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l This seeming anomaly arises from the fact that port district property tax levies and PUD property tax levies are imposed like all other regular property tax levies. The only fundamental difference between port district and PUD property tax levies, and other regular property tax levies, is that port district and PUD property tax levies are not subject to the constitutional One Percent Limitation.

However, a few statues authorizing property tax levies do not include a maximum rate limitation.

Among other property tax levies, every city is directed to impose an additional property tax to maintain a local improvement district (LID) guaranty fund securing its LID bonds. As discussed in Chapter 9, any city creating a LID and issuing LID bonds secured by a guaranty fund is required to impose additional regular property taxes to secure these bonds. The amount of additional regular property taxes must, together with other monies already in the guaranty fund, be sufficient to provide a specified level of security for the value of LID bonds guaranteed by the fund. This tax levy is not subject to a rate limitation or other limitations, but is a regular property tax levy subject to the constitutional One Percent Limitation on the cumulative rate of regular property taxes imposed on any property in any year. Very few cities impose this property tax levy, as they already have sufficient money in their guaranty funds.

As discussed in Chapters 14 and 16, vague legislation appears to allow port districts and PUDs to impose property taxes without a rate limitation sufficient to make principal and interest payments on general obligation bonds that they issue. If this levy authority exists, it is in addition to port district and PUD authority to impose other property tax levies. However, the statutory 101 percent levy lid applies to their property tax levies. As a result, the practical ability of a port district or PUD to increase its tax levies dramatically, by imposing this additional property tax without voter approval, is limited.

Almost no rate limitations are placed on voter-approved excess levies imposed by local governments. Several exceptions exist to this general rule. First, as discussed in Chapter 17, the amount of excess levies for maintenance and operation that voters may authorize a school district to impose is generally limited to from 28 to 38 percent of the total funds used for maintenance and operation purposes.[m 15] Second, as discussed in Chapter 18, the maximum rate of a single year excess levy that voters may authorize a water

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m School districts imposing levies that generated a higher percentage of their overall revenues were allowed to continue imposing levies generating this greater percentage.

district or sewer district to impose at the same election when the district is created may not exceed $1.25 per $1,000 of assessed value.[16]

b. Constitutional One Percent Limitation

Article VII, Section 2 establishes the constitutional One Percent Limitation on the cumulative rate of most property tax levies. The aggregate (or total) of most property taxes imposed on any property in any year may not exceed one percent of the "true and fair" value of the property in money. As discussed above, these taxes are referred to as "regular property taxes". However, property taxes imposed by port districts and PUDs are also referred to as regular property taxes, but are not subject to the constitutional One Percent Limitation.

Taxing districts (other than the State, port districts, and PUDs) that are authorized to impose regular property taxes may impose voter-approved excess levies above the constitutional One Percent Limitation. Article VII, Section 2 authorizes taxing districts (other than the State, port districts, and PUDs) to impose excess property tax levies, if authorized by a three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met.

The constitutional One Percent Limitation should not be confused with the statutory 101 percent levy lid discussed below.

c. Statutory cumulative rate limitations

Statutory cumulative rate limitations on property taxes further restrict the cumulative rate of most property taxes that may be imposed by taxing districts (other than port districts or PUDs) on any property in any year.[17] Regular property taxes (except those imposed by port districts and PUDs) are placed into three categories, as follows:

Category	Annual cumulative rate ceiling
State levy for	$3.60 per $1,000 A.V.[n] adjusted

n "A.V." stands for accessed value.

common schools	by the Department of Revenue
Most regular levies	$5.90 per $1,000 A.V.
Other regular levies	No literal cumulative rate ceiling, but, in effect a cumulative limitation on levies is what remains under the constitutional One Percent Limitation.

The first category only includes the State regular property tax levy dedicated to fund the common schools. This annual levy is limited to no more than $3.60 per $1,000 of assessed valuation adjusted by the Department of Revenue.[o] Other legislation has been enacted reducing the State's levy for common schools below this rate.[18]

The second category places a ceiling on the cumulative rate of annual regular property taxes that are imposed by most local governments. This annual ceiling is $5.90 per $1,000 of assessed valuation. Most county, city, and special purpose district tax levies are subject to this cumulative limitation.

The third category is whatever remains under the constitutional One Percent Limitation after levies in the first and second categories are imposed. Only a few other regular property tax levies are included under this category.[p] The Legislature has been

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o The actual adjustment of the assessed valuation for purposes of imposing the state property tax is referred to as being adjusted to the "state equalized value in accordance with the indicated ratio fixed by the department of revenue". This "state equalized value" is calculated by the Department of Revenue, essentially adjusting the assessed valuation of property in each county as established by the county assessor to the actual "true and fair" value. Each adjustment is made using an "indicated ratio". Although the state property taxes are calculated using this adjustment, property tax statements do not mention this factor and recalculate the state tax rate in terms of the assessed valuation determined by the county assessor. As a result, the rate of taxes imposed by the State for common schools could be stated as being greater than $3.60 per $1000 of assessed valuation, since the assessed valuation in most counties is below the actual "true and fair" value of the taxable property. However, some recent state initiatives measures approved by voters have reduced the amount of property taxes the State may impose to fund the common schools.

p The regular property taxes that are not subject to this $5.90 per $1,000 limitation and are included in this other category of regular property taxes: (1) A county levy of up to 6¼¢ per $1,000 of assessed valuation to acquire conservation futures; (2) voter-approved emergency medical service levies of up to 50¢ per $1,000 of assessed valuation; (3) voter-approved levies of up to 50¢ per $1,000 of assessed valuation to finance affordable housing for very low-income households; (4) voter-approved security provided for levies of metropolitan park district with a population of 50,000 or more, i.e., the Tacoma Metropolitan Park District; (5) ferry district property tax levies; (6) criminal justice levies by any county with a population of 90,000 or less; (7) up to

enacting legislation allowing more and more regular property tax levies within this category.

d. 101 percent levy lid

The so-called statutory 101 percent levy lid restricts the total amount of regular property taxes that any taxing district (including the State, port districts, and PUDs) may impose in any year.[q] [19] This limitation used to be a statutory 106 percent levy lid, but state voters approved Initiative Measure No. 747 in 2001, tightening this limitation to a 101 percent levy lid.

The statutory 101 percent levy lid should not be confused with the constitutional One Percent Limitation discussed above.

Under the statutory 101 percent levy lid, regular property taxes imposed by a taxing district in any year may not exceed 101 percent of the highest amount of regular property taxes imposed by that taxing district in any of the most recent three years, but not including regular property taxes imposed on increases in assessed valuation arising from new construction. The statutory 101 percent levy lid normally reduces the rate of regular taxes imposed by a taxing district since property values, not including increases from new construction, tend to increase by more than one percent each year.

Voters may approve a ballot proposition by a simple majority vote waiving the statutory 101 percent levy lid. A waiver may be a full waiver, allowing the taxing district to impose its property taxes at the maximum allowed rate, or a limited or partial waiver.[20] Voters may approve a limited or partial waiver based upon any or all of the following factors:

- Limited duration. For example, the statutory 101 percent levy lid could be waived for a two year period, after which the limitation on property taxes

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25¢ per $1,000 of assessed value of regular property tax levies imposed by fire protection districts; (8) levies imposed by counties for transit related purposes; and (9) levies imposed by a flood control zone district in a county with a population of 775,000 or more.

q Any one reading these provisions will be struck by how poorly they are drafted, rendering the precise meaning quite vague.

would revert as if the limited waiver had not been approved;

- Specific amount. For example, the statutory 101 percent levy lid could be waived, allowing a taxing district to increase the rate of its regular property taxes to a portion of the total amount its regular property taxes had been reduced, rather than allowing the taxing district to impose its taxes at the highest statutory rate;
- Specific purpose. For example, the statutory 101 percent levy lid could be waived to allow the taxing district to impose a higher rate of regular property taxes for a specified purpose, rather than for all legal purposes for which the taxing may expend its tax receipts.

The effect of a full or limited waiver is to establish a new higher tax amount in the year in which the additional taxes are imposed, which is used as the base to calculate the statutory 101 percent levy lid in the following year.

Taxing districts other than the State may also opt to reduce their property tax rates below the maximum level allowed under the statutory 101 percent levy lid, without being penalized and losing the taxing capacity that they voluntarily choose to forego. A taxing district exercising this option retains the authority of returning to levying property taxes at rates as if it had not opted to levy the lower amount of property taxes. The statutory 101 percent levy lid is calculated as if the taxing district had imposed its property taxes at the maximum allowed under the statutory 101 percent levy lid. The purpose of this provision was:

> "to protect the future levy capacity of a taxing district that reduces its tax levy below the level that it otherwise could impose under this chapter [i.e., the statutory 101 percent levy lid], by removing the adverse consequences to future levy capacities resulting from such levy reductions."[21]

A few port districts have taken advantage of this provision by restricting their property tax levies below the amount allowed under the statutory 101 percent levy lid.

e. Uniformity Clause

Article VII, Section 1 includes a Uniformity Clause requiring that all property taxes imposed by a taxing district (including the State, a port district, or a PUD) must be "uniform upon the same class of property within the territorial limits" of the taxing district imposing the taxes. All real estate constitutes a single class of property. A taxing district may not impose property taxes at varying rates within its boundaries. As discussed in Chapter 66, a combined city-county is not subject to the Uniformity Clause.

2. Imposition of property taxes

Property tax administration is complicated and involves overlapping multi-year cycles. Among other events, each property tax cycle involves:

- The valuing or assessing of property for tax purposes;
- Notifying taxpayers of their assessed values and the opportunity for property owners to challenge or appeal their assessed values;
- Each taxing district notifying the county of the dollar amount of property taxes it wants imposed;
- Calculating the tax rate of these requested tax levies, determining if the requested amount may be levied, and possibly reducing the requested levies to keep these taxes within the applicable limitations;
- Imposing property tax levies;
- Notifying each taxpayer of the amount of property taxes that are due on the taxpayer's property;
- Taxpayers paying their property taxes, normally with one-half of the total annual amount paid twice a year;

- Distributing property tax collections to the taxing districts imposing the taxes; and
- Actions to foreclose the lien on property if taxes are not paid.

Property tax cycles overlap like chain links, with each tax cycle being considered a separate link. At a given time, the end of one tax cycle could be occurring, along with the middle of newer tax cycle and the beginning of yet an even newer tax cycle.

County assessors assess most property for property tax purposes and prepare a tax roll each year. The county legislative authority adopts an ordinance imposing property taxes within the county. The county treasurer collects property taxes and distributes the collections to the taxing districts imposing the taxes.

Thousands of these separate "tax code" areas exist throughout the State. A tax code area consists of all of the real property included within the boundaries of the same group of taxing districts. The cumulative rate of regular property taxes imposed within a single tax code area is identical.

Two separate complicated processes are used to reduce or eliminate some regular property taxes, if the cumulative rate of property taxes proposed to be imposed on any property in a year exceeds either: (1) The constitutional One Percent Limitation; or (2) the statutory $5.90 per $1,000 of assessed valuation cumulative rate limitation on regular levies by most local taxing districts.[22] These reductions are referred to as the prorationing of levies to reduce or eliminate sufficient tax rates to keep the cumulative rate of property taxes on any property from exceeding these limitations.

Taxing districts are placed into various categories for this purpose, with the levies of the least senior taxing districts being subject to the greatest potential of being reduced or eliminated. The State, counties, cities, road districts, and recently regional transit agencies (RTAs) are classified as senior taxing districts, with the State's levy for common schools taking precedence over all other levies. All special purpose districts (other than port districts, PUDs, and RTAs) authorized to impose regular property taxes are classified as junior taxing districts. Voter-approved excess levies, as well as levies by

port districts and PUDs, are not subject to this exercise, since these levies are not subject to the One Percent Limitation or the statutory $5.90 per $1,000 limitation.

Two separate reduction procedures may occur.

First, if the cumulative rate of regular property taxes exceeds the constitutional One Percent Limitation, the regular levies that are not subject to the statutory $5.90 limitation or the statutory $3.60 limitation, but not the new levy authorized for RTAs, are reduced or eliminated following a complicated formula to keep the cumulative rate of property tax levies within the constitutional One Percent Limitation.[23] These levies are placed into categories, if the combined rates of regular property tax levies exceeds the constitutional One Percent Limitation, the levy in the first category is reduced or eliminated to keep the combined levy rates from exceeding the constitutional One Percent Limitation. If the remaining regular property tax levies still exceed the constitutional One Percent Limitation, the levy in the second category is reduced or eliminated to keep the combined levy rates from exceeding the constitutional One Percent Limitation. This process is continued until the combined levy rates do not exceed the constitutional One Percent Limitation.

Second, if the cumulative rate of regular property taxes imposed that are subject to the statutory $5.90 limitation exceeds this statutory limitation, then a series of steps are taken to reduce or eliminate junior taxing district levies to keep the cumulative rate of property tax levies imposed by most local taxing districts within the statutory $5.90 limitation.[24] Regular property tax levies imposed by junior taxing districts are placed into categories. The levies in the lowest category are reduced on a *pro rata* basis, or eliminated, to keep levies within the $5.90 limitation. If the remaining cumulative rate of regular property tax levies imposed by most local taxing districts still exceeds the $5.90 limitation, then the levies of the next lowest category of junior taxing districts are reduced on a *pro rata* basis, or eliminated, to keep the cumulative rate of regular property taxes within the $5.90 limitation. This process continues in each succeeding higher category of junior taxing district levies until the cumulative rate of regular property taxes is within the $5.90 cumulative limitation.

3. Tax increment financing

Tax increment financing (TIF) is a fairly new method of financing public facilities or improvements where some property tax receipts are temporarily diverted from taxing districts and are used to finance the construction of public facilities or improvements. This mode of financing public facilities is also known as community redevelopment financing, community revitalization financing, and tax allocation financing.

A taxing district authorized to engage in TIF designates an area surrounding the site of the proposed public facilities or improvements. Only property benefiting from the new public facilities or improvements is included in the TIF area. The diversion of a portion of the property tax receipts to finance the public facilities or improvements is accomplished by separating the assessed value of property in the TIF area into two parts. The first part is the total assessed value at the time of the creation of the TIF program, and possibly a portion of the increased value in this area arising after creation of the TIF program. The second part is all or the remaining portion of the increased assessed value arising after creation of the TIF program. Each year the regular property tax rates are applied to both of the parts. Receipts from the first part are distributed among the taxing districts imposing the regular property taxes. Receipts from the second part are diverted to pay for the bonds financing the public facilities or improvements. The diversion of property tax collections within a TIF area continues until bonds issued to finance the public facilities or improvements have been retired.

The rate of property taxes imposed within the designated area does not increase when TIF program is established. However, it is assumed that the total amount of property taxes generated from the property located in the TIF area increases as a result of property values in the TIF rea increasing as a result of their proximate location to the new public facilities or improvements that are financed by the TIF program. It is also hoped that these new public facilities or improvements will stimulate development or growth within a designated area to a greater extent than would otherwise occur.

TIF has had a tortured history in Washington State. Three unsuccessful attempts were made to obtain voter approval of constitutional amendments authorizing the use of tax increment financing.[25] It was assumed by tax experts when these constitutional amendments were proposed that TIF would violate the Uniformity Clause of the State Constitution and an amendment was necessary to allow TIF. Enabling legislation was enacted in 1982, along with a proposed constitutional amendment that state voters eventually defeated. However, the enabling legislation became law since it did not include a standard clause conditioning its effectiveness on state voters approving the associated constitutional amendment.[26]

Under this 1982 law, any county or city may create a TIF program to finance any type of public facility or improvement it was authorized to provide. Taxing districts with territory included in the benefit area were not required to approve the TIF program before it was created. However, a taxing district could challenge the propriety of the TIF program by filing an appeal with the State Board of Tax Appeals within 30 days of being notified of the program. The decision of the Board of Tax Appeals was final.

The City of Spokane attempted to finance public improvements using the 1982 TIF statutes. However, the State Supreme Court found this law defective in a narrowly crafted decision.[27] The TIF program included a temporary diversion of a portion of the State's property tax levy imposed to support common schools. This diversion violated Article IX, Section 2, which requires that all revenues in the state common school fund must be applied to the support of the common schools. However, the Court did not address the TIF program's potential violation of the Uniformity Clause, which was thought by most tax experts to be the most critical issue.

Legislation authorizing a new TIF program was enacted in 2002.[28] Under this legislation, a county, city or port district may create a TIF program to finance:

- The construction of traditional public infrastructure improvements, such as roads, streets, water and sewer facilities, parking facilities, terminals, docks,

park and ride facilities, and park and recreation facilities;

- The maintenance of these traditional public improvements; and
- Certain programs conducted in the designated area, including professional management, promotion, maintenance and security for common areas, and historical preservation.[29]

This new system of TIF differs from traditional TIF systems. Normally, TIF is only used to finance the capital costs of constructing public facilities or improvements. If a TIF program were used to finance maintenance or operational programs, it appears that the TIF program would continue indefinitely, rather than ending when the final payments for public facilities or improvements were made.

This 2002 legislation attempted to avoid two constitutional issues by: (1) Not subjecting the State's property tax levy to support the common schools to the diversion, and thus avoiding the issue addressed by the Court in the Spokane case; and (2) only allowing the TIF program to proceed if the taxing districts imposing at least 75 percent of the remaining regular property taxes in the TIF area, as well as any fire protection district imposing regular property taxes in the TIF area, approve the TIF program.[r] A new section of law was added to each regular taxing district's statutes authorizing the district to engage in these activities. For example, library districts were only allowed to provide library facilities and services, but now are authorized to participate in a program to provide the types of facilities and improvements, and activities that could be financed under a TIF program. A decision by a taxing district to participate in the TIF program is a totally volitional act. However, if the concerns of tax experts that a TIF program could violate the Uniformity Clause were accepted by the Court, it would appear that approval by <u>all</u> of the taxing districts would be necessary and not

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r The author devised this two-part strategy to avoid constitutional issues that was the basis of this legislation. Unfortunately, this strategy was not fully implemented. Under the second part of this strategy, <u>all</u> of the taxing districts imposing regular property taxes in the TIF area that were subject to the diversion were required to approve their participation in the TIF program, rather than just those taxing districts imposing at least 75 percent of the regular property taxes within the TIF area that were subject to the diversion.

merely the taxing districts imposing a majority of regular property taxes in the TIF area.

D. Excise Taxes

The Washington State Supreme Court classifies all taxes, other than property taxes, as excise taxes.[30] Fewer laws control excise tax administration than property tax administration.

As discussed in Chapter 9, the first State Legislature enacted legislation in 1890 allowing cities to impose business license taxes. These business license taxes generally take the form of utility taxes or business and occupation (B & O) taxes measured by gross receipts.

The most significant change in modern county and city taxing authority occurred in 1970, when legislation was enacted authorizing them to impose sales and use taxes at a rate of 0.5 percent for their general purposes.[31] Counties and cities were authorized to impose additional sales and use taxes, also at a rate of 0.5 percent, for their general purposes in legislation enacted in 1982.[32] The combined rate of these two basic county and city sales and use taxes is 1.0 percent. Counties and cities have also been authorized to impose other sales and use taxes, normally earmarked for specific purposes (e.g., to finance mass transit) as well as a number of sales taxes on a limited type tax base or type of sales (e.g., on auto rentals) with receipts earmarked to finance specific purposes. The Department of Revenue administers sales and use tax collections and distributes local sales tax receipts to the local governments imposing the taxes. Most local government sales and use taxes are imposed on the same base as the State's sales and use taxes.

Cities administer their own business license taxes. As discussed in Chapter 9, the original authorizations for cities to impose business license taxes did not include restrictions on the base or rate of the taxes. However, legislation imposing restrictions on this taxing authority was enacted during the last third of the 20th century. The most significant restrictions were included in legislation enacted in 1982 that expanded the maximum rate of county and city general sales and use taxes to 1.0 percent. This 1982 legislation restricted city business license taxes by capping the maximum rate of city

business taxes, including both B & O taxes and many utility taxes.[33] Legislation was enacted by the Legislature in 2003 further restricting city B & O taxes.[34] This legislation requires the Association of Washington Cities to develop a model ordinance imposing B & O taxes measured by gross receipts that includes an apportionment of business income among different jurisdictions. Eventually, every city imposing B & O taxes based on gross income must include the features of the model ordinance in its ordinances imposing B & O taxes.

Non-tax Fees

Many local governments obtain revenue by imposing a variety of different non-tax fees. These non-tax fees include traditional rates and charges for providing goods or services, as well as special assessments. Special assessments, at least special assessments imposed within LIDs to finance local improvements, are distinctly different from traditional rates and charges.

It is important to distinguish non-tax fees from taxes. Local governments may impose taxes only if expressly authorized by statutes, while the authority to impose rates, fees, and charges may arise by inference from the authority of the local government to regulate or provide goods or services. Further, if the Court classifies a fee, rate, or charge as a "property tax", then the panoply of constitutional restrictions discussed above apply to the fee, rate, or charge, particularly uniformity restrictions.

The State Supreme Court has had little difficulty in distinguishing special assessments from taxes. It is also easy to distinguish traditional rates, fees, and charges from taxes. This is especially true of utility rates and charges where property is physically connected to a utility system and receives a service that is easily metered. The Supreme Court held that storm water utility charges are not taxes, although property is not physically connected to a utility system and measuring storm water utility service is not as clear as the normal metering of most utility services.[35]

The Court has had some difficultly in distinguishing police power regulatory charges from taxes, and employs the following not too

clear three-pronged test to distinguish regulatory charges from taxes:

- Primary purpose – The primary purpose of a tax is to generate money or revenue to finance desired public benefits costing money, while the primary purpose of a regulatory charge is to regulate.
- Use of the revenue – Money collected from a regulatory charge may only be used to finance the regulatory purpose.
- Relationship – Regulatory charges have a direct relationship with either the service received or burdens produced by the fee payer, while there need be no relationship among the amount of a tax, who pays the tax, and the uses to which the tax receipts are put.[36]

A. Special Assessments

Special assessments are a unique class of non-tax fees that are imposed by some types of local governments. Historically, special assessments were called "special taxes" but that term has not been used for decades.

Different types of special assessments, or assessments, may be imposed in Washington State. A variety of different types of local governments are authorized to create LIDs and impose special assessments on benefitted property within the LID to finance local public improvements. The Supreme Court has applied a number of common law restrictions to these special assessments. Other assessments or special assessments have also been authorized to be imposed, including:

- Special assessments that counties and cities may impose in what are called business and parking improvement areas, to finance a variety of activities and improvements.
- Assessments or special assessments that a number of special purpose districts, with franchise rights restricted to property owners, may impose to finance their activities and public facilities.

As discussed below, the Supreme Court has not applied most of the common law restrictions to these special assessments or assessments.

Article VII, Section 9 authorizes the Legislature to enact legislation vesting the corporate authorities of "cities, towns, and villages" with the authority to finance the construction of local public improvements by special assessment, or special taxation, of benefitted property. The Court held that this provision does not preclude the Legislature from enacting legislation authorizing other types of local government to finance the construction of local public improvements by special assessment.[37]

In 1965, University of Washington Law School Professor Philip A. Trautman authored a seminal article on special assessments in Washington State.[38] This law review article is still considered to be the basic description of special assessments in Washington State.

1. Imposed in local improvement districts

A number of local governments are authorized to create LIDs and impose special assessments on benefit property within the LID to finance local public improvements.[s] LIDs are financing mechanisms or devices and are not units of local government.

Some local governments are authorized to create utility local improvement districts (ULIDs), road improvement districts (RIDs), or local utility districts (LUDs), but these financing mechanisms basically operate in the same manner as a LID.[t]

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s For example: (1) Cities are authorized to create LIDs, impose special assessments within LIDs, and issue LID bonds in Chapters 35.43 through 35.54 RCW; (2) counties are authorized to create LIDs, impose special assessments within LIDs, and issue LID bonds in Chapter 36.94 RCW; and (3) water districts and sewer districts are authorized to create LIDs, impose special assessments within LIDs, and issue LID bonds in Chapter 57.16 RCW.

t Local governments that are authorized to finance utility improvements using special assessments are authorized to create ULIDs, which are the same thing as LIDs except that revenue bonds are issued payable first from the special assessments and second from the revenues of the utility system. LID bonds are payable from only the special assessments imposed in the LID. (For example: (1) RCW 35.43.042 authorizes cities to create ULIDs to finance utility improvements; (2) RCW 36.94.230 authorizes counties to create ULIDs to finance water and sewer utility improvements; and (3) RCW 57.16.050 authorizes water districts and sewer districts to create ULIDs to finance water and sewer utility improvements.)

The Supreme Court has closely scrutinized legislation authorizing special assessments imposed within LIDs and has established the following principles:

- A local public improvement financed by a LID must be a public improvement conferring special benefit on real property upon which the special assessments are imposed.
- Special assessments are not general taxes. General taxes are imposed on all classes of property, based on the assessed value of the property, to finance the general and necessary purposes of government. Special assessments are only imposed on real property located in a LID that specially benefits from the local public improvements financed by the LID.
- Only property that is specially benefitted from the local public improvement may be included within a LID, and subject to the special assessments imposed within the LID. However, not all the specially benefitted real property need be included within the LID.
- Only public improvements that are of a local nature may be financed by the imposition of special assessments in a LID. Special assessments may not be used to finance general public improvements, such as a public library, that do not increase the market value of nearby real property.
- A direct relationship must exist between the special assessments and real property subject to the special assessments. Special assessments imposed on real property located in a LID may not substantially exceed the special benefit the real property receives from the local public improvement. However, a precise measure of this special benefit is not always attainable.
- Special assessments must be imposed on a roughly proportionate basis. For example, special assessments may not be imposed on one parcel at

roughly 100 percent of the increase in its fair market value, while special assessments are imposed on another parcel at roughly 50 percent of its increase in fair market value. However, a precise measure of this special benefit is not always attainable.

- The special benefit that real property receives from a local public improvement is determined by the increase in its fair market value as a result of its proximate location to the local public improvement. The special benefit is the difference in fair market value of the real property after the local public improvement is constructed minus the fair market value of the real property, before the local public improvement was constructed. The fair market value is the amount of money that a willing purchaser would pay for the real property from a willing seller of the real property.
- Measuring the special assessments may consider both the actual use of the real property at present and future uses to which the real property may reasonably be adaptable in the future. Among other factors, the possibility of re-zoning the real property within a reasonable foreseeable period of time to permit expanded uses provided by the local public improvement, may be considered when measuring the special assessment.
- The local government creating the LID has considerable flexibility in choosing the method or methods of calculating the special assessments that are imposed upon benefitted real property. For example, the amount of front footage, acreage, and distance from the local public improvement may be considered.
- Local governments are given broad discretion and their decisions are final and conclusive in the absence of fraud or arbitrary action. Appeal to a court must be made within a very limited time period after a decision has been made. The burden is on the property owner to show that the local

> government acted fraudulently or in an arbitrary fashion, or that the decision was fundamentally wrong.[39]

City LID statutes are the most complete LID laws in Washington State law.[40] Many statutes authorizing other types of local government to create LIDs reference all or part of these detailed city statutes.

Although statutory detail may differ, the process to create a LID normally involves the same general steps. First, the LID is created. Creation of a LID normally may be initiated by either the petition of property owners or by the resolution of the governing body. Protests by affected property owners may be timely filed if the LID is initiated by resolution. In most instances the timely filing of sufficient protests stops the creation of the LID. A public hearing is held on the proposal, after which the local government may create the LID. Lawsuits challenging the inclusion of real property in the LID must be initiated in a timely fashion. Second, a preliminary assessment roll is prepared, indicating the estimated special assessments to be imposed on real property included in the LID. Third, interim financing for the local improvement is obtained. Fourth, the local public improvement is built. Fifth, the final assessment roll is prepared. A public hearing on the final assessment roll is held. Written protests to the special assessments imposed on any real property must be filed in a timely fashion, normally before the public hearing is opened. The final assessment roll is confirmed, which may involve adjusting the special assessments. Lawsuits challenging the special assessments must be instituted in a timely fashion. Sixth, property owners are notified of the special assessments and allowed to pay the full amount, normally within a 30 day period. Failure to pay the full amount results in an obligation to make installment payments on the special assessments. Seventh, LID bonds are issued and sold to obtain the necessary funding that was not paid in full. Eighth, property owners who have not paid the full amount of their special assessments make installment payments which are used to make principal and interest payments on the LID bonds.

2. Other assessments or special assessments

Other statutes allow "special assessments" or "assessments" to be imposed without creating a LID. The Supreme Court has not applied the same level of scrutiny to these assessments or special assessments that it has to special assessments imposed within a LID, even though these fees are also based upon benefit. Although statutes use the term "special assessments" or "assessments" to describe these fees, and these fees are based upon the concept benefit, it is possible that the Court would classify these assessments as a type of fee similar to a utility charge.

a. Parking and business improvement areas

Counties and cities are authorized to create parking and business improvement areas and impose special assessments on businesses and multifamily residential or mixed use projects located in these areas to finance a variety of activities and improvements.[41] The special assessments are imposed on businesses and certain multifamily residential or mixed use projects, rather than being imposed on real property. These businesses and residences must be "specially benefitted" from the activities or improvements financed by the special assessments.

The activities and improvements that may be financed by these special assessments are:

- Parking facilities;
- Decorating public places;
- Promoting public events;
- Furnishing music in public places;
- Providing professional management for the area; and
- Providing security for common, public areas.

Most of the authorized uses are not capital improvements but operations, and the special assessments appear to be imposed permanently rather than for a limited period of time. These statutes provide at least a vague semblance of the requirements mandated by the Supreme Court for special assessments in LIDs, unlike

provisions authorizing the imposition of assessments or special assessments by special purpose districts with the franchise limited to property owners. The Court unanimously upheld the constitutionality of these statutes in a recent case, but did not apply the high level of scrutiny that it has applied in other recent cases concerning the imposition of special assessments in LIDs.[42]

b. Special purpose districts with franchise rights limited to property owners

Irrigation districts and other special purpose districts with the franchise rights restricted to property owners, primarily finance their operations and facilities by imposing what are called assessments or special assessments throughout their boundaries.[u] These exactions essentially function as general taxes and are imposed each year to provide general funding for these special purpose districts, as well as to finance public improvements.

The Washington State Supreme Court has upheld the constitutionality of these assessments or special assessments since the early decades of statehood. However, the Court has not applied the high level of scrutiny to these assessments or special assessments that it has applied to special assessments imposed within LIDs. Perhaps the most efficacious arguments about the constitutionality of these exactions are that:

- These exactions are not special assessments mentioned in the State Constitution;
- Instead, these exactions are a unique type of exactions called assessments (even if enabling legislation uses the term "special assessment") that somehow, only special purpose districts with the franchise limited to property owners may impose; and
- These exactions are of significant historical import for agricultural areas and elimination of these

u For example: (1) Irrigation districts are authorized to impose assessments in RCW 87.03.240-87.03.260; (2) diking districts, drainage districts, diking improvement districts, drainage improvement districts, and flood control districts are authorized to impose special assessments by RCW 85.38.140 and 85.38.150-85.38.170; (3) diking districts are also authorized to impose assessments in RCW 85.05.090-85.05.130; and (4) flood control districts are also authorized to impose assessments by RCW 86.09.382-86.09.489.

exactions would cause considerable difficulties in these areas.[v]

B. Traditional Rates and Charges

Governments impose traditional rates and charges for providing goods or services that are susceptible to being priced, much like a private corporation would impose rates, fees, or charges. Typically, these services are proprietary services, such as providing utility service, but may be governmental services. However, it is not easy to price most governmental services, such as the provision of police protection or fire protection. Some fees are imposed as part of the police regulatory powers of government, including development fees.

As discussed above, the Supreme Court has had some difficulty distinguishing between taxes and police power regulatory charges. Many constitutional restrictions apply to taxes (and especially property taxes) that do not apply to rates, charges, and fees. It is easy to distinguish taxes from most traditional rates and charges imposed for providing water service or electricity. Property is physically connected to the utility system and receives a service that is easily metered. However, it is not easy to distinguish other rates, fees, and charges from taxes. The most difficult fees to distinguish from taxes have been what are called "impact fees", or development fees.

A general law restricts local governments from imposing impact fees on the development or division of land.[43] However, specified exceptions are made to this general restriction. Local governments may establish "voluntary agreements" with developers where the developer agrees to make payments to the local government for mitigating the direct impacts that arise from the development or division of land. In addition, local governments are authorized to impose impact fees in a number of different statutes. First, the Growth Management Act expressly authorizes counties and cities to impose impact fees.[44] Any county or city planning under all of the requirements of the Growth Management Act may impose impact fees on development activities to finance: (1) Road and

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v A more detailed discussion of assessments imposed by irrigation districts is found in Chapter 12.

street improvements; (2) schools; (3) parks and open space; and (4) city fire fighting facilities. Impact fees imposed under the Growth Management Act are subject to a number of restrictions.[w] Second, all counties and cities have the implicit authority to impose impact fees under the State Environmental Policy Act.[45] Third, voters may approve a ballot proposition authorizing transportation benefit districts to impose transportation impact fees on major development activities.[46] Fourth, counties, cities, and transportation benefit districts may impose transportation impact fees on development activities under a local transportation act.[47]

Debt Proceeds

Most types of local governments are authorized to borrow money and evidence this obligation by issuing different types of securities.

Debt obligations are classified by the nature of their security and by their term or length of maturity. When classified by the length of maturity, securities with longer terms are called "bonds" and securities with shorter terms are called "notes" or "warrants." When classified on the basis of the security for the obligations, two broad categories of debt obligations exist – general indebtedness and revenue obligations.

Article VIII, Section 6 is the basic constitutional provision relating to local government borrowing authority. This provision includes very broad language limiting the authority of counties, cities, school districts, and other municipal corporations from becoming indebted "in any manner" beyond certain amounts. Although this limitation appears to be very pervasive and applies to any type of borrowing, the Supreme Court has limited the application of this provision as follows:

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w These impact fees: (1) May only be imposed to finance "system improvements", which are public facilities included in a capital facilities plan designed to provide service to a service area within the community at large, in contrast with more limited project improvements; (2) may not exceed the proportionate share of the costs of the system improvements that are reasonably related to the new development; (3) must be used for system improvements that will reasonably benefit the new development; (4) may not be imposed for system improvements if impact fees to finance the same system improvements were imposed under the State Environmental Policy Act; and (5) must be expended within six years of being imposed unless an extraordinary and compelling reason exists. (RCW 82.02.050(3), 82.02.070(3), and 82.02.080(1).)

- Article VIII, Section 6 only restricts what is called general indebtedness and does not restrict revenue obligations. A revenue obligation is treated solely as an obligation of a "special fund" of the government issuing the debt rather than an obligation of the government itself.[x] Although this distinction could be described as mere sophistry, the so-called "special fund" doctrine has spread throughout the nation and has become a major exception to constitutional indebtedness limitations.
- Article VIII, Section 6 does not restrict special purpose districts with the franchise limited to property owners, since these types of special purpose districts are "quasi-municipal corporations" and this provision only restricts the authority of municipal corporations to incur indebtedness.[y] [48]

A. General Indebtedness

Local governments may incur general indebtedness and issue general obligation (G.O.) bonds if they are authorized to impose property taxes.[z] In addition, some other local governments may

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x The Washington State Supreme Court was the first state appellate court in the nation to make this distinction and create a major exception from constitutional provisions limiting the authority of governments to incur debt. (*Winston v. Spokane*, 12 Wash. 524, 528 (1895); and Fowler, John F., *Revenue Bonds, The Nature, Uses, and Distribution of Fully Self-Liquidating Public Loans*, Harper and Brothers Publishers, 1938, at page 20.) Spokane actually issued this new type of debt three years before legislation was enacted authorizing the issuance of revenue bonds. (Fowler, at page 44.)

y Irrigation districts are authorized to issue three types of bonds. First, irrigation districts may issue bonds that are described as being "bonds of the district" and a "general obligation of the district", without the distinction of a fund being created from which these bonds are payable. (RCW 87.03.210 & 87.03.475.) Second, irrigation districts may issue normal revenue bonds that are payable from a fund of the district. (RCW 87.28.030). Third, irrigation districts may issue special assessment bonds that no longer are described as a "general obligation of the district." (RCW 87.03.490.) Legislation was enacted in 2013 removing the nature of irrigation district special assessment bonds being general obligations of the district. (Section 5, Chapter 177, Laws of 2013.) None of these obligations are subject to the limitations contained in Article VIII, Section 6 since irrigation districts are "quasi-municipal corporations" and not "municipal corporations." However, as discussed in Chapter 12, the Court has found irrigation districts to be "municipal corporations" for purposes of several other constitutional provisions.

z Article VIII, Section 6 allows municipal corporations to incur general indebtedness. RCW 39.36.020 allows any "taxing district" to incur general indebtedness. RCW 39.36.010 defines a "taxing district" as any county, city, township, port district, school district, metropolitan park district, or other "municipal corporation" that may exist. That definition was made in 1917 before most special purpose districts were authorized to incorporate. RCW 84.04.120 defines a taxing district as any municipal corporation authorized to impose property taxes.

incur general indebtedness and issue general obligation bonds if they are authorized to impose excise taxes, but are not authorized to impose property taxes.[aa]

Two types of general indebtedness may be issued – limited tax general obligations (LTGOs) and unlimited tax general obligations (UTGOs). Both types of general indebtedness are "full faith and credit" obligations subject to the constitutional and statutory indebtedness limitations.

The distinction between LTGOs and UTGOs arises from the interplay between two constitutional provisions – Article VIII, Section 6 and Article VII, Section 2.

Article VIII, Section 6 establishes two restrictions on the amount of general indebtedness that a local government may incur, based upon the value of taxable property within the local government, as follows:

- A local government may incur general indebtedness without voter-approval up to an amount equal to one and one-half percent of the value of taxable property within its boundaries. The local government incurring this type of general indebtedness pledges its full faith and credit to secure the indebtedness, including the normal taxes it imposes. This type of an obligation is referred to as a limited tax general obligation (LTGO) and is also called the "inside debt" or "councilmanic debt".[bb]
- However, a local government may incur a total amount of general indebtedness of up to five percent of the value of taxable property in its boundaries, if a ballot proposition authorizing this indebtedness is approved by at least three-fifths of the voters voting on a ballot proposition. This limitation restricts the

aa For example, regional transit authorities (RTAs) were authorized to impose excise taxes and incur general indebtedness when they were only authorized to impose various excise taxes before being authorized to impose voter approved regular property tax levies in legislation enacted in 2015. (Chapter 81.112 RCW and Sec. 321, Chapter 44, Laws of 2015 3rd Special Session.)

bb Although this type of general indebtedness is referred to as "limited tax general obligations," a provision of Article VII, Section 2 allows a "court of last resort" to authorize excess property tax levies "for the purpose of preventing the impairment of an obligation."

> total amount of general indebtedness – both non-voter-approved and voter-approved indebtedness.

As discussed above, Article VII, Section 2 limits the cumulative rate of most property tax levies that may be imposed by taxing districts in any year to no more than one percent of the "true and fair value" of property within any area. Among other exceptions to this One Percent Limitation, voters may approve a ballot proposition authorizing multi-year excess levies to make required payments of principal and interest on general obligation bonds issued for only capital purposes. The ballot proposition authorizing these excess property tax levies must be approved by at least three-fifths of the voters voting on the proposition and a 40 percent voter validation requirement is met.

Local governments desiring to issue voter-approved general indebtedness combine the voter-approval requirements of Article VIII, Section 6 with those of Article VII, Section 2 into a single ballot proposition. The ballot proposition combining these matters must be approved by the greater voter-approval requirements – a three-fifths vote of voters voting on the ballot proposition and a 40 percent voter validation requirement is met. General indebtedness authorized by such a combined ballot proposition is referred to as unlimited tax general obligations (UTGO). This type of indebtedness is secured by the full faith and credit of the local government incurring the debt, but also the unlimited, multi-year excess property tax levies voters approved to make these principal and interest payments. No rate limitation is placed on the excess levy in any year that is required to generate sufficient funds to make these payments of principal and interest. For example, if a fire or other natural disaster destroyed half of the value of taxable property within the local government, the rate of the excess levies necessary to generate funds to make these payments would double.

Article VIII, Section 6 also allows additional voter-approved general indebtedness. Voters of a city may authorize the city to incur additional general indebtedness of up to five percent of the value of taxable property in the city for supplying the city with water, sewer, or electricity, if a ballot proposition authorizing the additional indebtedness is approved by at least a three-fifths vote of voters voting on the ballot proposition authorizing the indebtedness.

Voters of a school district may authorize the school district to incur additional indebtedness of up to five percent of the value of taxable property within the school district for "additional capital outlays", if a ballot proposition authorizing the additional indebtedness is approved by at least a three-fifths vote of voters voting on the proposition. A city or school district seeking approval of this additional level of indebtedness would combine this matter with the multi-year excess, property tax measure authorized in Article VII, Section 2 and place a single ballot proposition before voters.

Various statutes reduce the general indebtedness limitations for most local governments below the indebtedness limitations specified in the State Constitution.[49]

Legislation authorizing local governments to incur general indebtedness and issue general obligation bonds establishes the maximum term of such bonds, which normally is 30 or 40 years. Local governments are also authorized to issue short-term obligations evidencing this indebtedness.[50]

Local government may pledge non-tax revenues to secure general obligation bonds. These bonds are referred to as "double barreled" bonds. Payments of principal and interest on the so-called double barreled bonds are paid from the pledged non-tax revenues (the first barrel), but then are paid from the full faith and credit of the local government (the second barrel) if the non-tax revenues are not sufficient to make the payments.

B. Revenue Obligations

Many local governments have been authorized to issue a variety of different types of revenue obligations. Revenue obligations are payable from a fund that is created by the local government issuing the obligations and are not subject to constitutional or statutory debt limitations.

Statutes authorize local governments to issue three basic types of revenue obligations:

- Many local governments are authorized to issue revenue bonds payable from virtually any stream of non-tax revenues.[51] Perhaps the most common

stream of these dedicated revenues would be revenues arising from the operation of a utility.

- Many local governments are authorized to issue special assessment bonds payable specifically from special assessments imposed within a LID to finance local improvements.[52]
- Some local governments are authorized to issue a variety of bonds called industrial revenue bonds or nonrecourse revenue bonds issued to finance facilities that are owned or used by a private business.[53] These bonds are characterized as private activity bonds under federal law and interest payments on these bonds is not taxable income under federal income tax laws. Limitations are placed on the total value of these bonds that may be issued in any state in any year. Bonds issued for these purposes are payable from only revenues of the industrial development facility or by the person or entity receiving the loan. The government acts as a conduit for these bonds to finance what otherwise would be privately financed.

Most local governments authorized to create LIDs that are used to finance utility improvements may also create ULIDs and issue revenue bonds to finance these improvements. The revenue bonds are so-called “double-barreled” revenue bonds payable from the special assessments imposed in the ULID (the first barrel) and then from utility revenues derived from the utility improvements (the second barrel) if the special assessments are not sufficient to make the payments.

Legislation authorizing local governments to issue revenue indebtedness establishes a maximum term of this indebtedness, which frequently is 30 years. Local governments authorized to issue either revenue bonds or special assessment bonds may also issue short-term obligations with the same security.[54]

Intergovernmental Revenues

Local governments receive money from grants, loans, and aid provided by the State and federal government. In some instances a local government provides monies to another local government. Money provided by one government to another government is referred to as intergovernmental revenues.

Intergovernmental revenues include both:

- Regular, on-going, distributions of money to the recipient; and
- One time distributions of money to a recipient for a specific purpose.

Counties, cities, and special purpose districts providing mass transit facilities and services receive the bulk of the intergovernmental revenues, although special purpose districts also receive some intergovernmental revenues.

Washington State has a number of programs to aid local governments where monies are regularly distributed to counties and cities. Some of these programs provide monies that is unrestricted and may be expended for any legal purpose. Some of these programs provide monies that is restricted and may be expended for only a specific purpose, such as law enforcement, streets and roads, or mass transit. The federal government provides some regular aid to counties for roads and to school districts for schools that is financed by income from the harvesting of trees on federal property located in the county or school district. Regular funding is provided by the federal government to school districts to assist in financing the costs of educating children of military forces who live in the school district. The federal government provides additional monies to school districts under a variety of programs, including the "No Child Left Behind" program.

Legislation enacted in 2005 established the City-County Assistance Account providing periodic distributions of state money to counties and cities.[cc] [55] A portion of the State's real estate excise tax

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cc The City-County Assistance Account replaced distributions that were made to counties and cities from state appropriations over the prior three biennia. These biennial appropriations of monies to assist counties and cities were provided after state voters approved Initiative Measure No. 695 in

(REET) receipts that otherwise would have been placed into the Public Works Assistance Account to assist local governments with low interest loans for various public infrastructure improvements is diverted and placed into the City-County Assistance Account. Half of these monies is distributed to counties on the basis of a formula and the other half of these monies is distributed to many cities on the basis of another formula.

Counties, cities, and special purpose districts are eligible for grants and low interest loans from the State and federal government to finance specific public facilities. The State provides grants and low interest loans to counties, cities, and different types of special purpose districts to assist in financing specific public facilities, including schools, streets and roads, park and recreation facilities, and various public utilities. Among others, these state grant and loan programs include the Public Works Trust Fund, the Water Quality Account, and the LOCAL Program.[dd] Grants from the Department of Ecology funding public sewer facilities and nonpoint pollution projects from the Water Quality Account.[56] The federal government provides grants to local governments to finance various public facilities, including airport facilities, harbor improvements, and streets and roads.

Other

Local governments also receive revenues from a variety of other sources.

They earn income from the investment of their money. However the types of investments that may be made are restricted. Article VIII, Section 7 prohibits counties, cities, and other municipal corporations from giving any money or property, or loaning its

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1999, eliminating the State's motor vehicle excise tax (MVET). A portion of these MVET receipts had been used to finance periodic distributions to counties, cities, and public health districts for purposes of criminal justice assistance, fire and police protection, sales tax equalization, and public health.

dd The Public Works Trust Fund is the common name for the Public Works Assistance Account that is use to make loan interest and no interest loans to local governments to finance various sewer, water, and street projects. (RCW 43.155.050.) Grants are made from the Water Quality Account by the Department of Ecology to local governments funding public sewer facilities and non-point pollution projects. (RCW 70.146.030.) The LOCAL program was initiated in 1998 and involves the State issuing what are called financing contracts on behalf of local governments to acquire real and personal property. (Chapter 39.94 RCW.)

money or credit, to or in aid of any person or company, except for the necessary support of the poor and infirm. Statutes allow local government monies to be invested in financial institutions that are public depositories, certificates of deposit, federal bonds and notes, state bonds and notes, and local government bonds and notes.[57]

Counties, cities, and some types of special purpose districts may invest their own funds. However, county treasurers act as the treasurers for most special purpose districts and invest these special purpose districts' money.

Local governments also obtain money on a temporary basis from inter-fund loans or internal loans of money from one fund to another fund. They also obtain monies from the sale of real and personal property.

NOTES:

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1. *Great Northern Railroad Co. v. Stevens County*, 108 Wash. 238, 242-243 (1919); *Carkonen*, at page 627; *Hillis Homes v. Snohomish County*, 97 Wn.2d 804, 809 (1982), which is commonly known as *Hillis I*; & *Tacoma v. Taxpayers*, 108 Wn.2d 679, 694 footnote #8 (1987).

2. *Clausen*, at page 223; *Commercial Waterway District No. 1 v. King County*, 197 Wash. 441, 444 (1938).

3. *Gruen v. State Tax Commission*, 35 Wn2d 1, 33-34 (1949); and Spitzer, Hugh, "Taxes vs. Fees: A Curious Confusion", 38 Gonzaga Law Review (2002/03) No. 2, 335-365, at pages 337-340, citing David N. Hyman, *Public Finance: A Contemporary Application of Theory to Policy*, 3d ed. 1990, at page 23.

4. Unless otherwise noted, information about the history of taxes in Washington was obtained from: (a) Taylor, Don C., Washington State Department of Revenue, Research Report #88-8, *Development of Washington's Tax System*, April 15, 1988; (b) Burrows, Donald R., Washington State Department of Revenue, *Washington's Property Taxes*, October, 1974; and (c) Burrows, Donald R., "How Washington's Tax Limit Laws Came About", Washington State Department of Revenue, a paper presented at the Washington State Association of County Assessors Convention, September 12, 1979.

5. First class cities were granted this authority by Section 5(33), Page 223, Laws of 1889-1890, which is codified as RCW 35.22.280(32). Second class cities were granted this authority by Section 38, Page 148, Laws of 1889-1890, which is codified as RCW 35.23.440(8). Third class cities were

granted this authority by Section 117, Page 183, Laws of 1889-1890 but this statute no longer exists. Towns were granted this authority by Section 154(10), Page 201, Laws of 1889-1890, which is codified as RCW 35.27.370(7).

6. *Fleetwood v. Read*, 21 Wash. 547, 552-553 (1899); and *Walla Walla v, Ferdon*, 21 Wash. 308, 313 (1899).
7. *Pacific Tel. & Tel. Co. v. Seattle*, 172 Wash. 649, 656-567 (1933).
8. Chapter 94, Laws of 1970 ex. sess., codified as Chapter 82.14 RCW.
9. Section 17, Chapter 49, Laws of 1982 1st ex. sess., amending RCW 82.14.030.
10. Sections 4 & 7, Chapter 49, Laws of 1982 1st ex. sess., codified as RCW 35.21.870 & 35.21.710.
11. Sections 20-23, Chapter 288, Laws of 1971, codified as Chapter 84.55 RCW.
12. Chapter 1, Laws of 2002, codified in Chapter 84.55 RCW.
13. Utter, Robert F., and Hugh D. Spitzer, *The Washington State Constitution, A Reference Guide*, Greenwood Press, 2002, is an authoritative reference book on the State Constitution and includes a discussion of each provision of the State Constitution, including the revenue provisions.
14. RCW 52.16.130, 52.16.140, & 52.16.160.
15. RCW 84.52.053 & 84.52.0531.
16. RCW 57.04.050.
17. RCW 84.52.043.
18. RCW 84.55.012 and 84.55.0121 require these reductions.
19. Chapter 84.55 RCW.
20. RCW 84.55.050.
21. RCW 84.55.092.
22. RCW 84.52.010.
23. RCW 84.52.010(3)(a).
24. RCW 84.52.010(3)(b).
25. HJR 22 was defeated by state voters in 1973. SJR 143 was defeated by state voters in 1982. HJR 23 was defeated by state voters in 1985.
26. Chapter 42, Laws of 1982 1st ex. sess., codified as Chapter 39.88 RCW.
27. *Leonard*, at pages 201-202.
28. Chapter 212, Laws of 2001, codified as Chapter 39.89 RCW.

29. RCW 39.89.020(4).
30. *Gruen*, at pages 31-34.
31. Section 4, Chapter 94, Laws of 1970 ex. sess., codified as RCW 82.14.030.
32. Section 17, Chapter 49, Laws of 1982 1st ex. sess., adding subsection (2) to RCW 82.14.030.
33. RCW 35.21.710 & 35.21.870.
34. Chapter 79, Laws of 2003, codified in Chapter 35.102 RCW.
35. *Teter v. Clark County*, 104 Wn.2d. 227, 234 (1985); Spitzer, 38 Gonzaga Law Review at pages 351-354.
36. *Covell*, at page 879.
37. *Hansen v. Hammer*, 15 Wash. 315, 319 (1896); *Foster v. Commissioners of Cowlitz County*, 100 Wash. 502, 510 (1918).
38. Trautman, Philip A., "Assessments in Washington", 40 Wash. Law Rev. 100-132 (1965).
39. These fundamental principles are obtained from a variety of sources, including: (a) Trautman, *id*.; (b) McQuillin, Eugene, *The Law of Municipal Corporations*, 3rd Edition, 1997 revised, West Group, Volume 14, at §§ 38.01-38.338; and (c) Rhyne, Charles S., *Municipal Law*, National Institute of Municipal Law Offices, 1957, at §§ 29.1-29.11. In addition, these fundamental principles were gleaned from various decisions of the Washington State Supreme Court and Washington State Court of Appeals, including *Doolittle v. Everett*, 114 Wn.2d 88 (1990); *Heavens v. King Cy. Rural Libr. Dist.*, 66 Wn.2d 558 (1965); *Seattle v. Rogers Clothing*, 114 Wn.2d 213 (1990); *Berglund v. Tacoma*, 70 Wn.2d 475 (1967); *Ankeny v. Spokane*, 92 Wash. 549 (1916); and *Cammack v. Port Angeles*, 15 Wn.App. 188 (1976).
40. Chapters 35.43 though 35.54 RCW.
41. Chapter 35.87A RCW.
42 *Seattle v. Rogers Clothing*, 114 Wn.2d 213 (1990)
43. RCW 82.02.020.
44. RCW 82.02.050-82.02.100.
45. RCW 43.21C.060 & 43.21C.065.
46. RCW 36.73.120.
47. RCW 39.92.040.
48. *Board of Directors v. Peterson*, at pages 150-155.
49. RCW 39.36.020 establishes indebtedness limitations for most local governments, but a few other statutes establish indebtedness limitations for individual local governments.

50. Chapter 39.50 RCW.

51. For example, cities are authorized to issue revenue bonds in Chapter 35.41 RCW, counties are authorized to issue revenue bonds in Chapter 36.94 RCW, and water districts are authorized to issue revenue bonds in Chapter 57.20 RCW.

52. For example, cities are authorized to issue special assessment bonds in Chapter 35.45 RCW, counties are authorized to issue special assessment bonds in Chapters 36.88 and 36.94 RCW, and PUDs are authorized to issue special assessment bonds in RCW 54.16.120.

53. Chapter 39.84 RCW.

54. Chapter 39.50 RCW.

55. Section 1, Chapter 450, Laws of 2005, codified as RCW 43.08.290.

56. RCW 70.146.030.

57. Chapter 39.59 RCW.

Chapter 64

Eminent Domain

The power of eminent domain is used by governments to acquire property for public use without the consent of the owner. However, government must pay adequate or due compensation to the owner for property that is acquired by eminent domain.

The power of eminent domain is a fundamental or inherent attribute of the State's sovereignty.[1] The State possesses the power of eminent domain, even without express authorization from the State Constitution. Washington's constitutional provisions relating to eminent domain serve only to limit the State's inherent power of eminent domain. Local governments in Washington, on the other hand, do not possess inherent powers of eminent domain, but must obtain these powers through statutory grants of authority.

The act of acquiring property through the power of eminent domain is also known as "taking" property, "condemning" property, or "appropriating" property.

Background

Restrictions on the authority of a government to take or condemn property for its own use arose early in the development of Anglo-American law.[2]

King John of England was forced by rebellious barons to sign the Magna Carta on June 15, 1215. Article 39 of the Magna Carta provided, in part, that a freeman could not be deprived of his freehold except by "the lawful judgement of his peers and by the law of the land".[3] Although this provision, along with others in the Magna Carta only applied to the forty noblemen who forced King

John to sign the document, this provision established the first feature of modern eminent domain law, namely that private property may be taken only by due process of law.

The 5th Amendment to the United States Constitution added a second feature of modern eminent domain law by providing that "just compensation" must be paid if private property is taken for public use. This provision also repeats the first feature of modern eminent domain law that property may not be taken without due process of law.

The Washington State Constitution (Article I, Section 16) includes more detailed language concerning the power of eminent domain than is found in the 5th Amendment to the United States Constitution. This added detail is as follows:

- The State Constitution refers to both the taking and damaging of private property, while the Federal Constitution refers only to the taking of private property. However, the State Supreme Court has held that this difference is not significant and that the State Constitutional provision affords private property owners the same protections as the Federal Constitutional provision.[4]
- The Federal Constitution is silent on the use of the power of eminent domain to obtain private property for private uses, while the State Constitution expressly precludes the power of eminent domain from being used to acquire private property for private uses, except for the very limited purposes. These limited private purposes are for: (1) Obtaining access to property, if reasonable access to the property does not already exist; or (2) providing "drains, flumes, or ditches" to property for agricultural, domestic, or sanitary purposes. However, as discussed below, the United States Supreme Court interprets the concept of a public use more broadly than the Washington State Supreme Court interprets the concept of a public use, and allows the power of eminent domain to be

used for purposes that would not be allowed under the State Constitution.

- The State Constitution expressly provides that the question of whether a use of property acquired under the power of eminent domain constitutes a public use is a judicial question, while the Federal Constitution is silent on this issue. The judicial decision is made "without regard to any legislative assertion that the use is public". However, courts accord "great weight" to legislation declarations that a particular purpose constitutes a sufficient public use.[5]
- The State Constitution expressly declares that taking property for "land reclamation and settlement purposes" constitutes a public use, while the Federal Constitution is silent on this issue.
- The State Constitution provides that a jury determines the amount the government pays for property acquired by eminent domain, unless the right to a jury is waived, while the Federal Constitution is silent on this issue.

Public Use Requirement

Restricting the exercise of the power of eminent domain to acquiring property for a "public use" is a fundamental concept. The issue of what constitutes a legitimate public use for which property may be taken by eminent domain has vexed courts for decades.

The United State Supreme Court construes the term "public use" under the Fifth Amendment more broadly than the Washington State Supreme Court construes this term under Article I, Section 16. As a result, Washington State and its local governments may not acquire property by eminent domain for some public purposes that would be allowed under the Federal Constitution.

A recent decision by the United States Supreme Court, concerning the extent to which the Federal Constitution limits the purposes for which property may be taken using the power of eminent domain, has generated considerable controversy. The Court held that

potential increased tax revenue arising from a private economic development project constituted a sufficient public use to allow a city to acquire private property on behalf of the private developer under the power of eminent domain without violating the Fifth Amendment to the Federal Constitution.[6] Essentially, the Court broadened the concept of a "public use" for which property may be taken using the power of eminent domain under the Federal Constitution to include purposes that are perceived to "benefit" the public.

The Washington State Supreme Court has held that the proposed use for which private property may be condemned must be a public use, as distinguished from a use that is merely in the public interest or that will merely benefit the public.[7] Three vague factors have been used in recent years to determine if a use is public in nature:

- Whether the use is truly a public use;
- Whether the public interest requires the action; and
- Whether the property that is sought to be condemned is necessary for the public purpose.[8]

Private property may be condemned if it is part of a project including both public and private components. Although the primary purpose of the condemned property must be a public use, an incidental private use of the property does not "corrupt" the public nature of the proposed project.[a] [9] Thus, a local government may condemn property for a clear public use even when this public use is part of an overall development scheme that includes both public and private development. The key factor allowing the use of condemnation in a combined public and private development project, is a clear segregation of the public uses from the private uses and only allowing private property to be condemned for what amounts to a clear public use. It is sufficient to segregate public uses from private uses, in a combined public and private project, by locating the private uses on separate stories of a single building from the stories where the public uses are located.[10]

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a Earlier case law appeared to preclude the condemnation of private property in situations where the project combines both private uses and public uses unless the private use was clearly separated from the public use. (*State ex rel. Puget Sound Power & Light Co. v. Superior Court*, 133 Wash. 308, 315 (1925); and *In re Seattle*, at page 627.)

This modern case law enunciated by the Washington State Supreme Court appears to conflict with earlier case law, where the Court upheld the constitutionality of an urban renewal law allowing private property to be condemned by a city and resold to private entities.[11] The Court would scrutinize the particular application of the urban renewal law to determine if the blight being eradicated actually constituted a menace to society, and whether the condemnation of private property and resale of the property to private entities constituted only a mere incident to the overall "public purpose". However, more recent case law seems to require a stricter adherence to the idea that property may only be condemned for a "public use", but allows private benefit from the condemnation to arise if private uses are segregated from public uses and are incidental, or at least by some measure, less significant than the public use.[12]

Authorizing Legislation

Although the power of eminent domain is a fundamental attribute of state power that is not derived from the Constitution, the power of eminent domain is not a fundamental attribute of local government power. A local government only possesses the power of eminent domain if this power is granted by the State Constitution or by statute.[13]

The Washington State Constitution does not grant local governments the power of eminent domain. However, considerable legislation has been enacted authorizing most types of local governments the authority to condemn private property for their public uses. Appendix F lists statutes granting the powers of eminent domain to different types of local governments.

Most eminent domain statutes are codified in Title 8 RCW. Separate chapters of law are provided for the State, counties, cities, and school districts detailing the procedures for these governments to condemn property.[14] Basically, these statutes establish a procedure for the State or a local government to condemn property that involves the filing of a petition with the superior court seeking authority to condemn private property and the division of the lawsuit into the two separate parts:

- First, the judge determines whether the proposed condemnation is for a public use; and
- Second, a jury is empaneled to determine the amount of damages the government must pay to the owner of the property that is being condemned. A property owner may waive the jury trial and rely on the judge to determine the amount of damages.

Some individual authorizing statutes include provisions peculiar to a particular governmental entity. For example, RCW 8.12.090 provides that proceedings by cities to condemn property "shall have precedence of all cases in court except criminal cases." At least theoretically, this provision allows a city to appear before the superior court more rapidly than other governments and finalize its condemnation of private property. Similarly, RCW 79.36.320 provides that proceedings by the State, for the limited purpose of condemning property to gain access to the State's timber and other valuable materials, take precedence over other civil lawsuits. No other governments enjoy this privileged position. However, dozens of other statutes use similar language to give certain lawsuits preference over other lawsuits, so it is not clear if these provisions have much effect.[15] The State is given unique authority under RCW 8.04.090. This statute allows the State to take possession of the property it seeks to condemn immediately after the judge determines that the purpose for which the property is being condemned is a public purpose but before a jury determines the amount of compensation the State must pay to the property owner. No other government enjoys this privilege.

A local government may condemn property only for purposes that are both:

- Authorized by statutes; and
- Determined by the courts to constitute a legitimate public use.

Statutes authorizing local governments to condemn property usually enumerate specific uses for which property may be condemned.[16] However, some statutes authorize local governments to condemn property for very broad purposes. Counties are authorized to condemn property for "any county

purpose" that is "directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof."[17] Cities are authorized to condemn property for any "public building".[18]

A myriad of statutes authorize most special purpose districts to condemn property for specific purposes.[19] Many of these statutes reference the procedures by which cities condemn property. However, a few statutes are silent as to the procedure that is to be followed. Library districts and park and recreation districts are not granted general power to condemn property. Presumably, a county or city could condemn property for a library district or park and recreation district and either lease or sell the property to the special purpose district. However, park and recreation districts are granted powers of eminent domain associated with the creation of a local improvement district.[20] These restricted powers of eminent domain for park and recreation districts are probably illusory. The State Supreme Court held that library facilities may not be financed using a LID, since library facilities are of general benefit to a community, while LID financing requires specific benefit to the assessed properties.[21] It is quite likely that park and recreation facilities would be treated like library facilities and would not be eligible to be financed using a LID.

NOTES:

1. See, for example, *City of Tacoma v. Welcker*, 65 Wn.2d 677, 683 (1965).
2. Bosselman, Fred, David Calles, and John Banta, *The Taking Issue: An Analysis of the Constitutional Limits of Land Use Control*, prepared for the Council on Environmental Quality, United States Printing Office, 1972, at pages 53 *et seq*.
3. Bosselman, at page 56. The provision is also referred to as "Chapter 39".
4. *Manufactured Housing v. State*, 90 Wn.App. 257, 262-266 (1998), citing *Highline School District No. 401 v. Port of Seattle*, 87 Wn.2d 6, 11 (1976).
5. *Welcker*, at page 684.
6. *Kelo v City of New London*, 545 U.S. 162 L.Ed.2nd 439, 125 S.Ct. 2655 (2005).
7. *In re Seattle*, 96 Wn.2d 616, 627 (1981).

8. *State ex rel. WSCTC v Evans*, 136 Wn.2d 811, 817 (1998). See also, *In re Seattle*, at page 625; and *King County v. Theilman*, 59 Wn.2d 586, 593 (1962).
9. *State v Evans*, at page 817.
10. *State v. Evans*, at page 820.
11. *Miller v. Tacoma*, 61 Wn.2d 374, 387-388 (1963).
12. *In re. Seattle* and *State v. Evans*.
13. *City of Tacoma v. State*, 4 Wash. 64, 66 (1892).
14. General procedures for counties to condemn property are codified in Chapter 8.08 RCW. General procedures for cities to condemn property are codified in Chapter 8.12 RCW. General procedures for school districts to condemn property are codified in Chapter 8.16 RCW.
15. For example, preference in civil lawsuits is found in RCW 4.44.025, 7.43.050, 7.48.070, 7.48A.130, 29A.72.180, 43.01.215, 47.12.044, & 59.12.130.
16. For example, RCW 8.12.030 lists many of the purposes for which cities may condemn property, including a variety of street purposes, ditches and drains, public squares, public markets, town halls, jails, parks, hospitals, sewers, landfills, water systems, and draining swamps, marshes, tidelands, and ponds.
17. RCW 8.08.020.
18. RCW 8.12.030.
19. For example: (a) Fire protection districts are authorized to condemn property in RCW 52.12.041 following the procedures for private corporations to condemn property; (b) port districts are authorized to condemn property in RCW 53.08.010 following first class city procedures; (c) public utility districts are authorized to condemn property in RCW 54.20.010 which includes procedures; and (d) water districts and sewer districts are authorized to condemn property in RCW 57.08.005(1) following city condemnation procedures.
20. RCW 36.69.270.
21. *Heavens*, *id*. The statutes (Chapter 27.14 RCW) authorizing county rural library districts to create library district local improvement districts were repealed in 1995. (Section 9, Chapter 368, Laws of 1995.)

Chapter 65

Home Rule

"Home rule" is the right of local self-government, or the authority of a local government to control its local affairs without interference from the state.[1] A local government with home rule powers may exercise, within its boundaries, the normal powers that the state may exercise except for those powers denied to the local government by law.

Home rule in Washington State only applies to counties and cities. Although port districts and irrigation districts are granted fairly broad powers, special purpose districts are not granted home rule powers.

Confusion exists over the extent of home rule powers that counties and cities possess in Washington State.[a] In part, this confusion arises from inconsistent appellate court decisions. Washington courts have somewhat consistently recognized county and city home rule powers relating to police regulatory powers. However, Washington courts have been very inconsistent in recognizing whether county and city home rule powers include any powers other than police regulatory powers. In part, this confusion also arises from inconsistent legislation. A few statutes recognize or grant broad home rule authority, especially for cities. Other statutes fail to recognize home rule and even appear to nullify home rule.

Since the early years of statehood, a number of legal commentators have expressed frustration with the Washington State Supreme

a Hugh Spitzer, an expert on municipal law in Washington, discusses this confusion in a law review article entitled "Municipal Police Power in Washington State", 75 Wash. L. Rev. 495-518, 2000. Spitzer argues that much of this confusion arises from the Supreme Court's failure to analyze local government powers by classifying these powers into four subject matters: (1) Police powers; (2) the provision of governmental services such as schools, parks, and fire protection; (3) the provision of proprietary powers mostly involving the provision of utility services; or (4) corporate powers or procedures to implement their powers.

Court's analysis of county and city home rule powers.[b] Almost one century later, Hugh Spitzer, in a recent law review article, noted that the inconsistent analysis of home rule by the State Supreme Court puzzles practitioners.[2] Spitzer criticizes the "zombie-like" reappearance of an old, restrictive line of reasoning (called the Dillon Rule) that fails to recognize home rule powers. He notes how the State Supreme Court seems to alternate between recognizing home rule and then not recognizing home rule as constituting a "ping pong" approach of judicial analysis.[3]

This frustration is especially acute with the failure of the Washington State Supreme Court to adopt the rule of construing charter city powers that was adopted by the supreme courts of other states with local government constitutional provisions similar to those in Washington. As discussed below, this frustration may be somewhat abating, as the Supreme Court in recent decades has, at least on some occasions, adopted the majority rule for construing the powers

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b One legal commentator noted in 1916 that "in practice as well as in law home rule in Washington has been and is more largely a matter of legislative grace than of constitutional right." (McBain, at page 455.) McBain further commented that an early holding of the Supreme Court, if followed, would make the constitutional grant of the right to frame a charter "a ridiculous farce". (McBain, at page 427.)

Robert Brachtenbach, who later became a member of the Supreme Court, described home rule in Washington as follows:

"The cases are legion, and from an early case in 1891 to the present, the rule has been clear and oft stated: a general statute enacted by the legislature supersedes or modifies provisions of a city charter to the extent that they are in conflict."

"It is essential to note that neither of the above decisions, nor indeed, any decision in Washington, attempts to analyze the particular power or function in question to ascertain whether it concerned and affected only a local matter or whether it was properly of state-wide concern."

(Brachtenbach, Robert, "Home Rule in Washington - At the Whim of the Legislature," 29 Wash.L.Rev. 295, 297 (1954).)

Philip Trautman authored "Legislative Control of Municipal Corporations in Washington", 38 Wash.L.Rev. 743 (1963). This is the most authoritative article that has been written on home rule in Washington State. Trautman was critical of the Supreme Court's analysis of home rule powers. This article basically focused on the home rule powers of first class cities arising from Article XI, Section 10. Trautman described home rule in Washington as follows:

"... Washington parts company from most home rule states."

"Why provide for home rule in cities in the constitution if they have no more power in relation to their local affairs than do non-home rule cities in those instances in which the legislature decides to act?"

"A major purpose of the home rule doctrine is to free the locality from legislative control over local affairs. That objective has not been achieved in Washington, as discussed."

"The conclusion to be drawn is that in Washington a home rule city is subordinate to the legislature as to any matter upon which the legislature has acted, whether it be regarded as of state, local, or joint concern."

(Trautman, 38 Wash L. Rev. at pages 767, 768-769, 770-771, & 772.)

of charter counties concerning very limited subject matters. However, this frustration may be continuing as the Supreme Court appears to be departing from its traditional view of analyzing police regulatory powers.

Given the seesaw nature of the Court's decisions on home rule, it can be argued that, to a great extent, home rule in Washington State is a state of mind. Many counties and cities, especially smaller jurisdictions, tend to act as if they do not possess home rule powers. These jurisdictions limit their actions to subjects that have been expressly granted to them by statute. Lawsuits challenging their actions are avoided by not attempting to exercise their home rule authority to take actions on subjects that have not been expressly granted by statute. More populous and wealthier counties and cities are more apt to recognize their home rule powers and adopt ordinances on subject matters that have not been expressly granted to them by statute and take actions that have not been expressly granted to them by statute. These jurisdictions risk potential lawsuits questioning their authority to act on these matters.

Although the extent of home rule is not clear in Washington State, what is clear is that local government home rule powers do not include the powers of taxation or eminent domain. Article XI, Section 12 authorizes the Legislature to grant taxing powers to local governments. The Supreme Court has held that local governments, even charter cities, do not possess fiscal home rule or the authority to impose taxes unless expressly authorized by state statute.[c 4] No constitutional provision grants local governments the power of eminent domain and local governments only obtain this power if authorized by statute.[d 5]

Traditionally, two possible aspects of home rule could exist. A local government with home rule authority could possess the authority to:

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c Local government finances are discussed in Chapter 63. Even though local governments in Washington State do not possess fiscal home rule powers, statutes grant cities very flexible taxing authority. All classes of cities have been authorized flexible authority to impose business license taxes. In addition, the last sentence of RCW 35A.11.020 appears to grant almost unlimited taxing authority to code cities, but this grant of power has never been analyzed by the Supreme Court. Presumably, the omnibus grant of powers to first class cities (RCW 35.22.570) extends this broad taxing authority to first class cities.

d A discussion of eminent domain is found in Chapter 64.

- Act on its own without express authorization from the Legislature; or
- Act contrary to state statutes concerning certain matters of "local" concern.

The first aspect of home rule is positive grant of authority to a local government. This aspect of home rule could arise from constitutional provisions or statutes. The second aspect of home rule is negative in nature and restrains the State from interfering with the local affairs of a local government. The second aspect of home rule is only effective if the home rule powers arise from constitutional provisions.

Two general theories of local government authority or power exist in the United States – Dillon's Rule and the Cooley Doctrine.

Dillon's Rule is the dominant theory of municipal power and is accepted by most state appellate courts. This rule is named after John F. Dillon, a former chief justice of the Iowa State Supreme Court, who authored an early treatise on municipal corporations. Dillon's Rule is a narrow rule strictly construing municipal powers. Cities have no inherent powers. Their existence and powers are derived from the sovereign state government. The essence of Dillon's Rule is as follows:

> "It is a general and undisputed proposition of law that a *municipal corporation possesses and can exercise the following powers, and no others*: First, those granted in *express words*; second those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation, — not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."[6]

(Emphasis in original. Citations omitted.) Dillon's Rule rejects both the first and second aspects of home rule power.

This statement of Dillon's Rule is often quoted by legal scholars and appellate courts, including the Washington State Supreme Court.[7]

However, Dillon also included a number of exceptions to his rule that our Court has failed to note. These exceptions include:

- The rule of strict construction does not apply to the mode or method by which the municipality chooses to implement its expressly or plainly granted powers.[8]
- Municipalities possess especially broad authority to implement proprietary or business powers that are expressly granted to them and the rule of strict construction does not apply to how these powers are exercised.[9]
- The rule of strict construction does not apply to charter cities in states like Washington.[10]

Dillon's treatise actually cites the Washington State Constitution as establishing powers for charter cities reversing the normal rule of strict construction. Amendment 21, authorizing county charters, had not been approved by Washington State voters when this treatise was written. However, this exception clearly applies to charter counties in Washington State. According to Dillon, the inherent powers of a charter city extend to all subjects and matters properly belonging to the government of municipalities. Further, city charter provisions that are "purely municipal in their character" are superior to and supersede inconsistent state statutes.[11] It is more than casually ironic that the Washington State Supreme Court cites Dillon's Rule, but fails to note exceptions to Dillon's Rule, including the exception that expressly reject Dillon's Rule for charter cities. At times, the Court seems bound and determined to reject home rule and fails to note its prior cases recognizing home rule and the exceptions to Dillon's Rule that Dillon himself provided.

Both aspects of home rule exist for charter cities under the exceptions that Dillon expressly established for his general rule.

A lesser known theory of municipal power is called the **Cooley Doctrine**. The Cooley Doctrine recognizes some degree of inherent power in municipalities, but this doctrine is not well accepted.[e] The first aspect of home rule power exists under the Cooley Doctrine.

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e The Cooley Doctrine is named after Thomas M. Cooley. Cooley was a former university professor and judge from Michigan. Among other things, Cooley authored an early treatise on local governments. The Cooley Doctrine is not widely accepted as the basis of municipal power. This Doctrine basically

Article XI, Section 11

Article XI, Section 11 is the basic provision of the Washington State Constitution relating to home rule powers. It provides that:

> "Any county, city, town, or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws."

This is a direct grant of home rule authority that exists on its own. Enabling legislation is not required to implement its provisions.

Most of the following discussion only refers to counties and cities and does not discuss townships. As discussed in Chapter 39, no townships now exist in Washington State and the Legislature has repealed statutes authorizing townships to be formed.

A. General Nature

Article XI, Section 11 is a clear grant of authority to all counties and cities. Counties and cities are authorized to adopt and enforce a wide variety of police power regulations, subject to the three following limitations:

- The types of regulations that may be adopted must be local in nature.[12] Unfortunately the Washington State Supreme Court rarely distinguishes "local" regulations from other types of regulations. When this distinction is made, no substantive discussion or clear test is provided to determine what is a "local" regulation. The dichotomy between "local' and "non-local" nature also

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recognizes some degree of inherent autonomy in cities, since many cities existed prior to the creation of the state in which they are located. Under this doctrine, a city may act without a grant of authority from the state, although a city may not act contrary to state statutes or constitutional provisions. The most succinct statement of this inherent power is found in a 1871 opinion authored by Cooley, where he stated:

> "The state may mould [*sic*.] local institutions according to its views of policy and expediency; but local government is a matter of absolute right; and the state cannot take it away."

(*People ex rel. Leroy v. Hurlburt*, 24 Mich. 44, 108 (1871).) However, this clear statement of inherent power is not found in Cooley's earlier treatise on local government (Cooley, Thomas M., *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union*., Little, Brown, and Company, 1927). Cooley emphasized in this treatise that legislatures have total power over municipal corporations.

arises under an analysis of Article XI, Sections 4 and 10.

- The regulations may only be enforced within the boundaries or territorial limits of the county or city adopting the regulations. This restriction is clear on its face. Extraterritorial grants of authority are narrowly construed and only exist if expressly granted by statute.[13]
- The regulations may not conflict with general or state laws.[14] However, as discussed below, it is not always clear whether a state statute conflicts with a local ordinance. The issue of conflict with state laws also arises under an analysis of Article XI, Sections 4 and 10.

Statutes also grant counties and cities the general authority to adopt local police power regulations, without the necessity of being expressly authorized by statute to adopt regulations on a particular subject matter.[15]

B. Analysis

Appellate courts in Washington State have somewhat consistently recognized Article XI, Section 11 as granting all counties and cities the authority to adopt police power regulations without the necessity of statues granting them express authority to regulate the matter.

Traditionally, the Court finds that a county or city police power regulation of a subject area is valid, even if a state statute also regulates the same subject area, unless either:

- The state statute expressly precludes local regulation of the subject area.; or
- The state regulations are so complete as to effectively preclude any concurrent local action. If a statute appears to preempt local regulation, then the authority of the county or city to regulate the subject area and this statute should be read together and harmonized, if at all possible. [16]

A succinct statement of this broad police power regulatory authority of a non-charter county is in found in *Schillberg v. Everett District Justice Court*. The Court held that the existence of a statute requiring the safe operation of motor boats did not preclude a non-charter county from adopting a concurrent ordinance banning the operation of all motor boats on small lakes.[17] It should be noted that Snohomish County was a non-charter county when the Court rendered its decision, but now is a charter county. The Court noted that Article XI, Section 11 grants this broad police power regulatory authority to all counties and cities, even though most of the cases in which the Court had recognized this authority involved charter cities. Another succinct statement of this broad police power regulatory authority of a non-charter county is found in *Weden v. San Juan County*.[18] San Juan County was also a noncharter county when it adopted an ordinance banning the use of Jet Ski watercraft in the county. The Court upheld this regulation even though state regulations regulated the use of Jet Ski watercraft.

However, some confusion appears to have arisen in recent decisions by the Supreme Court over the extent of the state regulations that are necessary to preclude or preempt a county or city from regulating a subject matter. First, the Court recently held that the existence of a statute allowing a water district to fluoridate its water supply, by action of the board of water commissioners or by voter approval of a ballot proposition providing for the fluoridation, directly conflicted with the authority of a county board of health's police power authority to order fluoridation.[19] The majority opinion failed to discuss the traditional attempt of the Court to harmonize the authority of a county or city to regulate a subject matter and a potentially conflicting statute if at all possible.[f] Second, the Court recently held that the existence of state statutes providing that people may not smoke in restaurants and other public places except in designated smoking places preempts the authority of a county board of health to preclude smoking anywhere in

f It should be disclosed that the author drafted this statute and staffed the committee through which this legislation passed on its way to being enacted. As mentioned in the dissenting opinion, the purpose of this legislation was to clarify that a water district could fluoridate its water supply. The Attorney General had opined that, absent express statutory authority, a water district could only fluoridate its water supply if voters of the water district approved a ballot proposition authorizing the water district to take such action. This was a somewhat peculiar analysis, since water districts were granted general authority to manage their water systems and the only water district statutes providing for ballot propositions to be submitted to voters related to boundary changes, excess property tax levies, and authorization of general indebtedness.

a restaurant.[g] [20] Again, the Court failed to discuss its traditional attempt to harmonize the authority of a county or city to regulate a subject matter and a potentially conflicting statute if at all possible.

Additional confusion has arisen over the home rule authority granted by Article XI, Section 11. This confusion has arisen as a result of the Court: (1) Gradually expanding the concept of the home rule powers granted by Article XI, Section 11; and (2) citing Article XI, Section 11 as the source of broad authorities granted to charter cities.

1. Expansion of the concept of police power regulations

The Court's gradual expansion of the concept of police power regulations under Article XI, Section 11 to include non-regulatory matters is described by Hugh Spitzer in another law review article.[21]

Initially, the Court recognized Article XI, Section 11 as granting traditional police regulatory powers to protect the physical health and safety of the public or to control public rights of way. For example, in two cases the Court upheld the City of Spokane regulating garbage collection and requiring grade separation when city streets and railways cross.[22] However, the Court failed to recognize Article XI, Section 11 as granting counties and cities authority to regulate businesses if the public safety or health was not directly threatened. For example, the Court overturned ordinances restricting the hours when meat packing plants or barbershops could operate.[23] The Court used what is called the substantive due process doctrine to restrict most labor and economic regulations.[h]

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g State voters approved Initiative Measure No. 901 at the 2005 general election. This measure prohibits smoking in public places and places of employment.

h Substantive due process is a concept developed by the United States Supreme Court during the 19th century to protect basic substantive rights. Federal due process jurisprudence is applicable to states and local governments by the 19th Amendment to the United States Constitution. The Court used the substantive due process doctrine during the 19th and early 20th centuries to protect the liberty of contract and void much economic and labor relations, including a New York statute regulating the number of hours that bakery employees could be required to work. (*Lockner v. New York*, 198 U.S. 45, 57 (1905).) However, use of substantive due process to void economic and labor regulations gradually receded as courts expanded the concept of police powers to include these and other regulations. A discussion of the flexible and expanding nature of police powers is found in *State v. Mountain Timber Co.*, 75 Wash. 581, 584-589 (1913). A discussion of the decline in substantive due process and the expansion of police powers is found in *Petstel, Inc. v. King County*, 77 Wn.2d 144, 147-151 (1969).

However, the Court gradually recognized Article XI, Section 11 as authorizing cities to regulate matters more fully by protecting and promoting the general public welfare where the physical public health or public safety was not directly involved. For example, Article XI, Section 11 was interpreted as authorizing cities to license plumbers and regulate the baking industry.[24] This expansion of legitimate police power regulations under Article XI, Section 11 coincided with the Court's expansion of the State's general police powers and the abandonment of the substantive due process doctrine.

Finally, the Court expanded the police power regulatory authority granted by Article XI, Section 11 to include non-regulatory matters that protect and promote the general public welfare. For example, this constitutional provision is now interpreted as authorizing cities to fluoridate their public water supplies.[25]

Although legitimate police power regulations have been expanded beyond measures addressing clear dangers to public health or safety, the Court applies different levels of scrutiny when analyzing the constitutionality of these regulations.[26] Little scrutiny is applied to the more traditional or "compelling" regulations addressing clear dangers to the public safety or health. However, greater scrutiny is applied to other types of regulations, especially land use regulations, where the Court balances benefits arising from the regulation with the protection of individual rights. The Court has restored the use of substantive due process to void some local land use regulations without finding that these regulations constitute a "taking" of property rights under Article I, Section 16.[27]

The Court has also altered the terminology it uses in describing the powers granted to counties and cities under Article XI, Section 11. On occasion, the Court describes Article XI, Section 11 as granting "police powers" rather than "police regulatory powers".[i] This change in terminology generally coincides with the Court's gradual expansion of Article XI, Section 11 to include non-regulatory matters. Virtually all

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i For example, the Court in *Lenci v. Seattle*, 63 Wn.2d 664, 667 (1964), citing *Hindley*, at page 326, stated that Article XI, Section 11 "is a direct delegation of the police power as ample within its limits as that possessed by the legislature itself." (Emphasis added.) The Court also described Article XI, Section 11 as granting "police powers" in *County Health District v. Brockett*, 120 Wn.2d 140, 148 (1992), where a needle exchange program was classified as being part of the "police power" and the Court held that Article XI, Section 11 granted counties sufficiently broad authority to establish a needle exchange program even though this authority was not provided by statute.

scholars consider police powers as including both police regulatory powers, as well as the authority to provide at least some general governmental services and facilities.[j] [28]

This expansion of police regulatory powers into the broader category of police powers may have been the result of careless writing, or the failure to cite other sources that may have granted this expanded authority. The Court could have recognized these expanded authorities on:

- Statutes granting second class cities and towns the authority to adopt ordinances promoting the public welfare.[29] Very little case law exists analyzing these provisions. However, the Court has described the State's police power as including the promotion of the public welfare by, for example, constructing a public stadium.[30]
- Statutes granting extraordinary home rule authority to code cities.[31] These provisions have been cited as a source of power in a number of cases.[32]
- Article XI, Section 10 which authorizes cities with a population of 10,000 or more to frame a charter providing for its own government. This provision has been cited as a source of power in a number of cases.[33]

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j Courts and legal scholars have had difficulty defining "police powers" with any precision. Frequently, police powers are described as governmental powers promoting the public health, safety, morals, education, good order, and general welfare. These powers are not restricted to a precise list but are flexible and expand over time as needs change. Police powers clearly include regulatory powers but also include the authority to provide some basic governmental services necessary to protect the public health and safety, particularly those services that are difficult to be priced. Governmental services normally are considered to be functions that historically have been provided by local governments and that are uniformly provided. This would include law enforcement, fire protection, public welfare programs, libraries, garbage collection, and parks. The Washington State Supreme Court has classified the provision of various governmental services as being part of the police power – including: (1) Providing sewer service (*Morris v. Wise*, 37 Wn.2d 806, 810-811 (1951)); (2) providing garbage collection (*Smith v. Spokane*, 55 Wash. 219, 221 (1909)); (3) requiring hospitals to connect to sanitary sewers (*Shepard v. Seattle*, 59 Wash. 363, 373 (1910);and (4) fluoridating a water supply system (*Wilson v. Mountlake Terrace*, 69 Wn.2d 148, 150-153 (1965).

George Mack, an expert on municipal law in Washington State, wrote a short paper on local government law in which he hints at this possible expansion of the powers granted by Article XI, Section 11 by implying that this provision authorizes counties and cities to provide limited general governmental services that are associated with the protection of the public health and safety. (See, Mack, George, "Basic Local Government Law, Including Sources of Local Power", © 1999 Foster, Pepper & Shefelman PLLC, at page 7.)

- Article XI, Section 4 authorizing any county to adopt a "Home Rule" charter providing for its government. This provision has been cited as a source of power in a few cases.[34]

An example of the possible expansion of this Article XI, Section 11 occurred in *Hudson v. City of Wenatchee*, where the Court of Appeals recognized this provision as the source of general police power for cities, which includes the authority to preserve and promote the public welfare.[35] The Court failed to note that statutes enacted by the first State Legislature also granted second class cities, third class cities, and towns broad authority to promote the public welfare. Wenatchee had a commission form of government and operated with the powers of a second class city at the time of this case, but has subsequently become a code city. The Court held that allowing police officers to open locked vehicle doors in non-emergency situations promoted a fundamental purpose of government by engaging in a community care taking function. An easier way to allow city police forces to engage in these activities would have been to recognize that the broad statutory grant of authority for cities to promote the general welfare includes the authority for their police departments to provide general non-emergency assistance to the community. This would include opening locked auto doors.

2. Citing Article XI, Section 11 as the source of charter city powers

The confusion over the nature of the powers by Article XI, Section 11 may have arisen from the Court citing this provision as the source of broad home rule powers granted to charter cities.[36]

Article XI, Section 11 clearly grants powers to all counties and cities, whether or not they have adopted a charter. Citing this provision as the source of the broad authorities granted for charter counties and charter cities, rather than Article XI, Section 4 or 10, creates the implication that non-charter counties and cities are not granted broad powers by Article XI, Section 11. This implication may have been inadvertent but, as mentioned above, was noted by the Court in *State ex rel. Schillberg v. Everett District Justice Court*.[37]

C. Statutory Grants of Specific Authority

State statutes grant counties and cities express authority to regulate various activities and to provide various services and facilities.

As discussed in Chapter 4, much of this authority for counties was included in territorial statutes that became laws of the State upon statehood. Territorial statutes that did not conflict with the new State Constitution remained in effect after statehood. As a consequence, most of new county legislation enacted by the first State Legislature provided for new county officers required by the constitution and did not grant counties additional powers.

However, the first State Legislature enacted detailed legislation providing for cities.[38] Four classes of cities were created that included provisions describing their forms of government and powers. It is somewhat ironic that only a few months after the State Constitution was ratified by voters, this new city legislation expressly authorized cities to regulate various activities even though Article XI, Section 11 already granted all cities broad home rule regulatory authority. For example, the prior third class cities (which now are second class cities) were authorized in 1890 to:

- Prevent and restrain riots;
- Declare and abate nuisances;
- Control slaughterhouses and other offensive trades;
- Regulate markets;
- Regulate the speed of railroad cars;
- Regulate the storage of gunpowder and explosives;
- Prevent the spread of diseases;
- Regulate the sale of coal;
- Regulate cemeteries; and
- Establish fire limits or fireproofing standards for buildings.[39]

Each of these express regulatory powers seems to be included within the general authority contained in Article XI, Section 11 authorizing

counties and cities authority to adopt and enforce police power regulations. One wonders why the Legislature chose to enact legislation including such a detailed list of regulatory powers since Article XI, Section 11 granted broad regulator powers to all classes of cities. Hugh Spitzer took note, in a recent law review article, that this anomaly was noted in 1915 by a government expert.[40]

This 1890 legislation may be seen as the start of a long tradition of the Legislature enacting legislation acting as if home rule does not exist in Washington State. Robert Brachtenbach, in a law review article written before he became a Supreme Court justice, described this tendency of the Legislature as follows:

> "[i]n each session the Washington legislature has shown an inclination to legislate in the area of purely local affairs of the municipalities...."[41]

Article XI, Sections 4 and 10

The Washington State Constitution allows any populous city to adopt a charter providing for its government and a county of any population to adopt a charter providing for its government.

Article XI, Section 10 now authorizes any city with a population of at least 10,000 to adopt a charter providing for its own government. Ten out of the 78 cities in the State eligible to adopt a charter under this provision have adopted such a charter.[42]

Article XI, Section 4 authorizes any county to adopt a "Home Rule" charter providing for its own government. Seven of the 39 counties in the State have adopted a charter under this provision.[43] The term "regular county charter" often is used to distinguish a county charter adopted under this provision from a "combined city-county charter" authorized under Article XI, Section 16.

A. Effect of Adopting a City or County Charter

Article XI, Sections 4 and 10 do not include much detail about the nature of the home rule powers arising from the adoption of a charter. These constitutional provisions specify that a county or city provides "for its own government" by adopting such a charter.

In addition, Article XI, Section 4 requires that a regular county charter provide for a county legislative authority. No other county officials are mandated for such a county, except that the charter may not affect the election or duties of the prosecuting attorney, superior court judges, and district court judges.[k] All powers granted by statute to county officials, except for the prosecuting attorney and judicial officers, are vested in the county legislative authority, unless the charter creates other county officers and expressly vests duties in these other officers. These other county officers may be elected or appointed or the duties of these offices granted to other officials.

A charter becomes the "organic law" of the county or city adopting the charter. The city or county provides "for its own government" by adopting such a charter. However, these charters are subject to the State Constitution and statutes. Different language is used to establish this subordinate status. Article XI, Section 10 provides that a city charter must be both "consistent with and subject to the Constitution and laws of this state". (Emphasis added.) However, Article XI, Section 4 only provides that a county charter must only be "subject to the Constitution and laws of this state". (Emphasis added.) It is not clear if this different wording has any substantive effect.

Presumably, a charter grants the city or county additional home rule authority beyond that granted to all counties and cities by Article XI, Section 11. Why adopt a charter if adoption of a charter does not grant the city or county additional home rule authority? At least in theory, this additional home rule authority could include the following aspects:

- The authority to adopt ordinances or take actions without express statutory authorization concerning subjects that are in addition to the authority to adopt local police regulations granted to all counties and cities by Article XI, Section 11. In all instances, a state statute would be superior to and supersede a conflicting charter provision or ordinance under this aspect of additional home rule.

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k Article XI, Section 4 actually provides that a county charter may not affect the election or duties of justices of the peace, but the office of justice of the peace was abolished and replaced with district courts. The constitutional provision also provides that a county charter may not affect the election or duties of the county superintendent of instruction, but that office was abolished by the Legislature.

- The authority to act contrary to state statutes concerning matters of "local" concern. Under this aspect of home rule authority, a charter provision or ordinance or action concerning a matter of "local" concern is superior to and supersedes conflicting state statutes.

1. First aspect of additional home rule

The Supreme Court generally recognizes the first aspect of additional home rule authority for both charter cities and charter counties. Charter cities and charter counties possess the inherent authority to adopt charter provisions or ordinances, or to take actions, concerning matters beyond the broad police regulatory powers granted to all counties and cities by Article XI, Section 11. However, in all instances, a state statute controls a conflicting charter provision, ordinance, or local action under this first aspect of additional home rule authority.

This grant of home rule authority for charter cities and charter counties is restricted to a broad class of matters that are of "local" concern. A charter county or city may not take actions concerning matters of "state" concern, or possibly matters of joint "state and local" concern, unless expressly authorized by state statutes. The distinction between matters of "local" concern and matters of either "state" concern or joint "state and local" concern is not clear. However, matters of "local" concern are broader than, and include more subject matters than, the concept of "local" police regulations.[44]

The concept of matters of local concern is used by courts to describe powers under both the first aspect of additional home rule and the second aspect of additional home rule. However, this term has very different meanings when used by the Supreme Court under these different aspects of home rule. Matters of local concern under the first aspect of additional home rule in Washington State include a much broader range of matters than under the second aspect of additional home rule. The Court has used this term in a very narrow sense to describe the very limited range of subjects where a charter county under Article XI, Section 4 may act contrary to state law. As discussed below, appellate courts of other states also use the matters

of local concern to describe a broader range of subjects where a charter city may act contrary to state statutes.

Perhaps the most noteworthy case where the Supreme Court recognizes the first aspect of additional home rule powers of a charter city, beyond local police regulatory powers, was *Winkenwerder v. Yakima*.[45] The Court allowed Yakima, as a charter city, to sell advertising space on its parking meters even though this authority was not authorized in statute. Clearly, selling advertising space is not a police power regulation. Although the issue of matters of "local" concern was not discussed, the Court quoted an earlier case holding that:

> "the only limitation on the power of cities of the first class is that their action cannot contravene any constitutional provision or any legislative enactment.... [A] city of the first class has as broad legislative powers as the state, except when restricted by enactments of the state legislature."[46]

The Supreme Court recognized this first aspect of additional home rule powers of a charter county, beyond local police regulatory powers, in *King County Council v. Public Disclosure Commission*.[47] Quoting this language from *Winkenwerder*, the Court held that charter counties possess the same broad home rule authorities as charter cities. The issue in the King County case was whether King County could hold a public meeting at which the County Council endorsed an initiative measure. Clearly this action was not a police power regulation.

Although most case law addressing the first aspect of home rule authority concerns charter cities, the holdings in these cases should be applicable to charter counties. The relative lack of case law addressing the powers of charter counties arises from the fact that the first charter city was established in 1890, while the first charter county was established in 1967, and that ten cities have adopted charters under Article XI, Section 10, while only seven counties have adopted regular county charters under Article XI, Section 4. This first aspect of additional home authority accorded to charter cities and charter counties applies to code cities, by virtue of statutory provisions that the Court has cited in a number of cases recognizing broad home rule authorities in code cities. It may be argued that other statutory

provisions also extend this aspect of home rule authority to second class cities and towns, but no case law analyzes the statutes that may grant this additional authority.[l]

The Supreme Court has recognized that a county charter may grant county voters the power of initiative and referendum on county matters.[48] Although RCW 35.22.200 expressly authorizes a city charter to grant the powers of initiative and referendum on city matters to city voters, the Supreme Court has recognized that a city charter may grant city voters the powers of initiative and referendum on city matters.[m] [49] The Court recognized these initiative and referendum powers without much discussion, but presumably these powers would be classified as matters of local concern. Although the Court has limited the initiative and referendum powers of county and city voters in many instances, the Court recently recognized the authority of King County voters to use this initiative power to force the presentation of a charter amendment before county voters.

The Supreme Court has recognized that charter cities possess greater authority to establish controls over their officials and employees, and to provide benefits for their officials and employees, than other types of cities. A charter city may establish minimum qualifications or requirements for police matrons.[50] A charter city may determine the right of a city civil service commissioner to hold office.[51] A charter city may establish requirements for persons to hold city offices that are in addition to requirements established by state law.[52] A charter city may establish a pension system for employees.[53] A charter city may provide insurance benefits to the domestic partners of city employees and officials.[54]

The Court of Appeals has recognized that a charter city may establish a hearing examiner system to hear land use matters on its own authority differing from provisions of a statute authorizing counties and cities to establish a hearing examiner system.[55]

The Supreme Court has recognized that charter cities and charter counties possess broad authority to control their contracting procedures without being expressly delegated this authority. A

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l The statutory home rule authority of code cities, second class cities, and towns is discussed below.

m A discussion of local powers of initiative and referendum is found in Chapter 68.

charter city may require bidders on public works contracts to pay higher wages than the prevailing rate of wages.[56] A charter county may define "responsible bidder" for purposes of awarding public works contracts by requiring compliance with affirmative action goals.[n 57]

However, the Supreme Court has held that a charter city does not possess the authority to take certain actions or adopt ordinances concerning a wide range of subjects without express statutory authorization. Although the Court did not make this distinction in every instance, these subject matters could be classified as matters of "state" concern or matters of joint "state and local" concern. The areas where a charter city may not act without express statutory authorization include:

- Virtually anything concerning the city judiciary.[58]
- Exercising the powers of eminent domain.[59]
- Annexing territory.[60]
- Imposing taxes.[61]
- Granting franchises.[62]
- Borrowing money.[63]

Although the modern trend has been for the Supreme Court to recognize home rule in Washington State, the Court failed to recognize home rule in several recent cases – *Massie v. Brown* and both *Chemical Bank I* and *Chemical Bank II*. These cases are distinguishable from the modern mainstream of Washington case law.

The Court in *Massie* held that even a charter city like Seattle could not include warrant servers within its civil service system without express statutory authorization since the State's interest in the judiciary was either paramount to or joint with the city's interest.[64]

The Court in both *Chemical Bank I* and *Chemical Bank II* addressed the legality of contracts financing two nuclear power plants constructed by the Washington Public Power Supply System

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n Initiative to the Legislature No. 200, which was approved by state voters in 1998, prohibits the State and local governments from discriminating or granting preferential treatment based on race, sex, color, ethnicity, or national origin in public employment, education, and contracting. However, an affirmative action "goal" as compared to a "requirement" may not literally conflict with this Initiative.

(WPPSS).[65] Numerous participants agreed to finance these two nuclear power plants, even though they did not have ownership interests in the plants but were obligated to secure financing for the projects with the income from their own electrical utilities. The Court held that the contracts were not standard contracts and were invalid since the participants (including charter cities) did not have express statutory authority to enter into this type of contract.[66] Apparently a contract to participate in the projects, where an ownership interest was not obtained, did not constitute a "mode" of acquiring electrical power. These cases may be viewed as anomalies where the Court was delicately addressing an issue of major political and economic consequences involving the largest default of municipal bonds in the nation.

The Court attempted to explain its earlier holdings relating to WPPSS in a later case.[67] This effort defined these unique contracts as "guaranteed contracts" or "project capability contracts" for purchasing potential output of yet to be built plants and classified the contracts as exercises of "governmental powers" where implied powers are narrowly construed rather than a mode of implementing a proprietary power. On the other hand, operating a utility, purchasing power, or even participating in a project where an ownership interest is obtained, differs from these contracts and would be classified as exercises of "proprietary power," where liberal implied powers are recognized and a local government may choose how it implements the power. Although the Court has generally accorded greater flexibility for municipalities to implement their expressly authorized proprietary powers than their expressly authorized governmental powers, this does not seem to be an adequate explanation for the Chemical Bank holdings.[o] It seems rather obvious that entering into "guaranteed contracts" or "project capability contracts" normally would be considered a mode or method by which a municipality implements its authority to provide an electric utility rather than being an end in itself. No discussion was included about the broad home rule powers of cities, and especially charter cities such as Tacoma, to exercise

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o The Court recognizes greater flexibility for municipalities to implement expressly authorized proprietary powers than it recognizes municipalities to implement expressly authorized governmental powers. (See, for example, *State ex rel. PUD 1 v. Schwab*, 40 Wn.2d 814, 829-831 (1952).) However, even the narrow Dillon's Rule provides that the rule of strict construction does not apply to the mode or method by which a government implements its governmental powers even though an even more flexible rule of construction is applied to proprietary powers. This also fails to adequately address the broader authority normally accorded to charter cities by Article XI, Section 10. This also fails to consider the rule of broadly construing charter city powers that is provided in RCW 35.22.900.

governmental powers without express authorization and the statutory provision adopting the rule of broadly construing the powers of first class or charter cities.[68]

Spitzer notes that in these and other appellate court decisions refusing to recognize city home rule powers over the last 50 years, the statements against these home rule powers were "not necessary to reach the case's outcome." [69] He blames this inconsistency, and the failure to recognize home rule powers in some cases as arising from: (a) Confusion over the narrow interpretation of special purpose district powers and at times applying this reasoning to city powers; (b) "result oriented judicial holdings" where judges pick legal rationales to justify desired results; and (c) America's common law judges tendency to make law.[70]

The most recent case addressing the extent of county and city regulatory powers involved the ability of SeaTac to enforce regulations on SeaTac airport, a facility owned and operated by the Port of Seattle in the City of SeaTac, where the State Supreme Court held that the city could enforce its minimum wage ordinance within the airport.[71] City voters had recently approved a city initiative measure increasing minimum wages to $15 per hour and the Port of Seattle challenged the application of this regulation within the airport. The port district argued that an obscure provision of state airport law exempted the airport from any police power regulation by the city over "**any matter**" occurring on the airport. (Emphasis in court decision.) The city argued that this obscure provision only exempted the city from regulating "airport operations" and not every matter.

RCW 14.08.330 provides that:

> "Every airport … controlled and operated by any municipality…shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it….No other municipality in which the airport …is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which

> an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries."

In a narrow 5 to 4 decision, the Court held that this unique exemption of airports from restriction by the city or county in which it is located did not extend to minimum wage regulations and only restricts the authority of a city (or county) from regulating the actual operations of the airport.[72] The majority opinion made note of the fundamental nature of city (and county) regulatory control over subordinate special purpose districts and their limited powers.[73]

2. Second aspect of additional home rule

The Supreme Court has recognized the second aspect of additional home rule authority to a very limited extent for charter counties.[74] However, the Court has not recognized the second aspect of additional home rule authority for charter cities.[75]

Charter counties possess the inherent authority to adopt charter provisions or ordinances, or to take actions, concerning very limited matters of "local" concern that supersede and control conflicting state statutes. The Court has consistently followed this second aspect of additional home rule authority for charter counties. However, the subject matters of this added home rule authority relating to matters of "local" concern only involve the structure of county government. It is not clear if the Court is ready to expand this concept to subjects beyond structural county government issues.

The Court in *State ex rel. Charles Carroll v. King County* held that a county charter could provide for the election of the county assessor at general elections held in odd-numbered years even though state statutes provided for the election of county officials, including the county assessor, at general elections held in even-numbered years.[76] It was argued that a county charter could provide for the appointment or election of an official to carry out the functions of a county assessor, but state law must be followed if the office was retained as an elected office. The Court rejected this argument and held that

providing for county officials was a "local" matter where the county charter was superior to and controlled conflicting state statutes. This finally was the holding desired by many expert legal commentators. Washington had finally adopted the majority rule, although this was a very narrow and non-substantive subject matter.

The Court in *Henry v. Thorne* slightly expanded this concept and held that a county charter could provide for a process to fill vacancies in county offices differing from the process dictated in state law.[p] [77] Again, this was a local matter and the county charter was superior to and controlled conflicting state law. The Court also failed to note that another constitutional provision (Article II, Section 15) provides a procedure for filling vacancies in the Legislature as well as in partisan county offices. By allowing a charter county to follow a different procedure to fill a vacancy in a partisan county office than is provided under Article II, Section 15, the Court essentially authorized a charter county to violate a constitutional provision and not merely a statue relating to a "local matter."

A number of other states possess constitutional provisions relating to counties and cities similar to those in Washington State, i.e.:

- A general provision like Article XI, Section 11 authorizing at least all cities the authority to adopt local police power regulations; and
- Another provision like Article XI, Section 10 authorizing at least larger cities to adopt charters.

These other states with similar constitutional provisions include California, Oklahoma, Arizona, Ohio, Missouri, and Oregon. The supreme courts of these other states uniformly recognized the

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p It is possible that this aspect of additional home rule authority for charter counties no longer exists. Amendment 96 was approved by state voters in 2003 amending Article II, Section 15. This amendment basically was designed to address situations where a vacancy in the Legislature, or a partisan county office, occurs in the short period after the general election in which the office is filled and before the new term of the successor commences. If the successor is of the same political party as the incumbent, the successor's term of office is extended to include this short period before his or her term would normally commence. A "technical" clarification was included in this constitutional amendment by adding the term "council districts" after "commissioner districts". This seeming "inadvertent" change appears to extend this constitutional provision to filling vacancies on the governing body of a charter county. There was no discussion of this potential elimination of county home rule powers in the Legislature. There was no discussion of this potential elimination of county home rule in the debate over this issue before voters. Failure to recognize this potential change is perhaps reflective of the obscure nature of this aspect of county home rule powers.

additional authority granted to charter cities as constituting the authority to act contrary to state statutes concerning matters of "local" concern.[78] They all agreed on the test to construe this additional level of home rule authority, but frequently disagreed on the results of this test, i.e., what subjects were of "local" concern.

These two seminal holdings by the Washington State Supreme Court on the inherent home rule authority of a regular county charter underscore the basic purpose of adopting a charter – to provide a system of government for the county. What would the purpose of a charter be, other than to provide for a form of government differing from the standard form of county government required for all non-charter counties? Presumably, the requirement that a charter provide for the government authorizes the charter to stipulate the structure of government or details about its governing body and other elected or appointed officials. Details about a governing body would include:

- The type of governing body (e.g., a council, commission, or board of trustees);
- The number of members on the governing body;
- How governing body members are selected, including when any elections are held to elect officials;
- Terms of office for the members of the governing body;
- Whether the governing body possesses administrative or executive powers in addition to legislative powers; and
- Whether the legislative power is shared with the people through the powers of initiative and referendum on "county" matters.

Details about each county elective office would include the name of the office, the duties granted to the office, and how officials for these offices are selected.

However, when faced with a similar issue relating to the structure of government in charter cities, the Washington State Supreme Court in 1911 did not adopt the majority rule, and rejected the concept of inherent home rule authority for charter cities.[79] Instead, the Court

found new statutory authority allowing charter cities to vary their schemes of government from what appeared to be required by other statutes. The first State Legislature enacted legislation providing that the legislative authority of a charter city consisted of a mayor and council with a number of members as specified in the city charter. At least on the surface, it appears that charter cities were required to have a mayor-council form of government. However, this legislation did not specify any powers that the mayor would exercise, whether legislative or executive in nature. Then the Legislature enacted legislation in 1903 allowing voters of a charter city the direct authority to initiate and adopt charter amendments "providing for any matter within the realm of local affairs."[80] Voters in the City of Spokane used this new authority to amend their charter directly and adopted an amendment providing for a commission form of government with five commissioners. A lawsuit challenged the authority of the charter to provide for a commission form of government. The Court held that a voter initiated amendment to a city charter could alter the form of government for the city from a traditional mayor-council form to a commission form because:

- The original state statute requiring charter cities to have a mayor and council was somewhat vague and did not specify any executive duties of the mayor;
- The newer 1903 state statute allowed city voters authority to initiate and approve their own charter amendments "providing for any matter within the realm of local affairs"; and
- The form of government for a city was a "local" affair.[81]

This holding allowed charter cities to choose their own form of government, but recognized the ultimate authority of the Legislature to control any aspect of government for a charter city. The Court has not cited this relatively unknown statutory provision in subsequent opinions. If this statute and limited holding were literally followed, only amendments initiated by city voters would be granted this broad authority, while the original charter and any amendment referred to city voters by action of the city governing body would not possess this broad home rule authority. However, the Legislature enacted legislation in 1911 stating that the "form of the organization and manner and mode" by which first class cities exercise their powers and duties "shall be as provided in the charters thereof".[82] This

statute seems to allow a first class city to avoid the requirement that it adopt a scheme of government consisting of a mayor and council.

The logic of the modern case law concerning the inherent power of a county charter seems applicable to city charters. However, it may be difficult for the Court to reverse its century-long tradition of not recognizing this inherent home rule authority in charter cities. A legal scholar stated that:

> "[i]t is now too late to alter the home rule status of cities without a constitutional amendment."[83]

This statement was written by Professor Philip Trautman in 1963, referring to decades of the Court not recognizing the inherent home rule authority in charter cities. The Court first considered and recognized the inherent home rule power of a county charter in 1970.[84]

B. City Charters

Article XI, Section 10 authorizes any city with a population of at least 10,000 to:

> "frame a charter for its own government, consistent with and subject to the Constitution and laws of this state...."

The charter becomes the organic law of the city and supersedes any existing charter and any special laws inconsistent with the charter. This provision was included in the original State Constitution approved by voters in 1889. The original provision in the State Constitution granted this authority to any city with the population of at least 20,000, but state voters approved Amendment 40 in 1964 reducing the minimum population to 10,000. Ten of the 78 eligible cities have adopted charters under this provision.

Although there is no case law on this point, it is possible that a charter adopted by a code city under Title 35A RCW may not be a charter adopted under Article XI, Section 10. The provisions of Title 35A RCW providing for a code city to adopt such a charter differ from the provisions of Article XI, Section 10 although both require the city to have a minimum population of 10,000. As discussed in Chapter 7, the only flexibility afforded to a code city adopting a charter is to increase the number of council members up to 11. In addition, a new code city charter could end the terms of office of all sitting members

of the governing body and provide for elections of new officials. Kelso is the only code city that has adopted a charter.

The term "charter city" and "first class city" are generally used interchangeably, even though Kelso now exists as a charter code city.

The procedure to adopt and amend a first class city charter is discussed in Chapter 7.

A long and fairly continuous tradition exists in Washington State of the Legislature acting as if home rule does not exist. This tradition includes enacting legislation granting detailed powers to charter cities as well as statutes appearing to actually preempt the inherent power of a charter city to provide for the government of the city.

The first State Legislature enacted detailed enabling legislation in 1890, enumerating some 38 powers to be exercised by first class or charter cities.[85] First class cities were authorized to regulate specific matters and to provide a variety of specified public facilities and services. In addition, first class cities were authorized to exercise any power granted to any other class of cities. Why include a detailed list of specific subjects a first class city could regulate if charter cities possessed broad police regulatory powers granted to all counties and cities by Article XI, Section 11 and additional home rule power granted by Article XI, Section 10? The Supreme Court even included a wry comment on this legislation in an early holding when it described the Legislature's actions as treating Article XI, Section 10 "as not self-executing".[q 86]

The Legislature has enacted a large number of other statutes effectively overriding city charter provisions and altering the organization of their governments, including:

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q This is one of the cases immediately after statehood where the Court essentially emasculated home rule. The Court held that first class or charter cities do not possess the authority to create a municipal or police court because no statute granted them that authority, even though a statute granted second class cities, third class cities, and towns the authority to create a municipal or police court. Tacoma had relied on the omnibus grant of authority granted to first class or charter cities in the initial laws enacted by the first State Legislature, and the statute allowing other cities to create these courts, as its authority to create municipal or police courts. (RCW 35.22.570.) Tacoma could also have argued that another part of the initial laws creating first class or charter cities which applies a rule of liberal construction to statutes relating to these cities also should have applied. (RCW 35.22.900.) "Whether by oversight, or mistake" the Legislature failed to enact legislation expressly authorizing first class or charter cities the authority to create municipal or police courts. (*In re. Cloherty*, at page 146.)

- Legislation enacted in 1903 providing that, notwithstanding the provisions of a city charter to the contrary, a first class city may re-divide its wards at any time.[87]
- Legislation enacted in 1925 authorizing any first class city, with a population of less than 100,000 and a charter providing that each council member was the commissioner of a different administrative department of the city, to adopt an ordinance changing the title of each council member to the commissioner of a particular department and use this designation when elections are held.[88]
- Legislation enacted in 1957 altering the terms of office of council members and other elected officials in Aberdeen.[89] This statute has been amended twice and now provides that these officials shall have four-year terms of office rather than two-year terms of office.
- Legislation enacted in 1957 altering the terms of office for some council members and other elected officials in Bellingham.[90] This statute has been amended twice and now provides that the council members elected from wards shall have four-year terms of office rather than two-year terms of office, the at-large council members shall retain two-year terms of office, and other elected officials shall have four-year terms of office, rather than two-year terms of office.
- Legislation enacted in 1963 overriding Bremerton's charter concerning details about the election of its city commissioners.[91] This statute has been amended twice and now provides that the commissioners shall be elected to four-year terms of office rather than three-year terms of office at an election held every four years rather than every three years. However, the Bremerton city charter now provides for a mayor/council form of government, so this statute no longer has any effect.

The last three of these examples are quite interesting, as they appear to be clear violations of Article XI, Section 8, which prohibits the extension of the term of office of any city official beyond the term for which he or she was elected.

C. County Charters

Article XI, Section 4 allows any county to:

> "frame a 'Home Rule' charter for its own government subject to the Constitution and laws of this state ...."

This provision further provides that a charter becomes the "organic law" of the county and supersedes any existing charter, any existing form of county government, and any special laws inconsistent with the charter. Unlike city charters which were authorized in the original State Constitution, the authority of counties to adopt charters was not authorized until 1948, when state voters approved Amendment 21. Adoption of such a charter removes the county from the requirement contained in Article XI, Section 5 that the Legislature provide for both a uniform array of county elected officials and uniform procedures to elect these officials. All powers granted by statute to county officials, except to the prosecuting attorney and judicial officers, are vested in the county legislative authority unless the charter creates other county officers and expressly vests duties in these other officers. These other county officers may be elected or appointed or the powers of these county officers granted to other officials.

Seven of the 39 counties Washington State have adopted charters under this provision.

The procedure to adopt and amend a regular county charter is discussed in Chapter 2.

The Legislature has enacted a few statutes attempting to control or preempt county charters.[r] This lack of a tradition of the Legislature

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r Legislation was enacted in 1985 attempted to preempt provisions of the King County Charter concerning the appointment and qualifications of the director of public health in the combined Seattle-King County Health Department. (Sections 3 & 4, Chapter 124, Laws of 1985, codified as RCW 70.08.030 and 70.08.040.) This author has vivid memories of the lobbyist for King County, in testimony before the House Local Government Committee, admitting that this legislation was sought because it was easier to obtain needed changes in statute than amending the King County Charter, and that requesting preemptive state legislation was inconsistent with the concept of home rule. As discussed below in this Chapter, strong questions arise as to whether the Legislature possesses the authority to preempt a county charter regarding such a "local" matter. The unfortunate reality of this

attempting to preempt county charters varies markedly from the tradition of the Legislature enacting legislation pre-empting city charters.

Statutory Home Rule

The Legislature has enacted general legislation granting various degrees of home rule authority to counties and cities. Prior to being repealed in 1997, statutes also granted varying degrees of home rule authority to townships. Apart from cases dealing with charter cities and with code cities, these statutory provisions have not been mentioned or interpreted by Washington courts when analyzing the local government powers.

Constitutional grants of authority are more permanent and may only be altered or eliminated by constitutional amendment. Statutory grants of authority are more temporary and may be altered or eliminated by other statutes. However, the Legislature in general has not chosen to repeal or restrict the statutes granting home rule powers.

A. Cities

The first State Legislature enacted detailed legislation providing for four different classes of cities with separate sets of statutes. Each separate set of statutes granted the governing body of the particular class of city broad general home rule authority that appears to extend beyond the home rule regulatory authority granted by Article XI, Section 11.[92]

The governing bodies of second class cities, third class cities, and towns were granted the authority to adopt virtually any ordinance that was not "repugnant to the constitution", as well as the authority to adopt ordinances providing for the "general welfare". Ironically, the statutory language granting broad home rule powers to first class cities was more limited and only granted the governing bodies of first class broad regulatory powers closely following the grant of authority contained in Article XI, Section 11. However, first class city statutes

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episode may be that officials of a charter, home rule, county may choose to pursue legislation that fails to recognize the inherent home rule powers of a charter county.

also included an omnibus grant of authority giving first class cities all the powers that are granted to any other class of city.[93]

The Legislature enacted legislation in 1967, providing for the creation of code cities with extraordinarily broad statutory home rule powers. This statutory language is the broadest grant of home rule powers contained in any Washington statutes. Code cities, without regard to their population, are granted:

- The "broadest powers of local self-government consistent with the Constitution of this state";[94]
- The authority to adopt and enforce "ordinances of all kinds relating to and regulating local or municipal affairs and appropriate to the good government of the city";[95]
- All powers "possible for a city or town to have under the constitution of this state, and not specifically denied to code cities by law";[96]
- The "greatest power of local self-government consistent with the Constitution of this state" and these powers "shall be construed liberally in favor" of the code city.[97]
- "[A]ll powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120 [licensing or taxing liquor], 82.36.440 [motor vehicle fuel], 48.14.020 [insurers or insurance agents other than title insurers], and 48.14.080 [insurers other than title insurers]."[98]

This extraordinary grant of taxing authority is unique. No other unit of local government has been granted similar express home rule taxing authority. However, the extent of this taxing authority is not clear, as the Supreme Court has not analyzed this provision. Presumably, this provision also applies to charter cities under the omnibus grant of powers given to charter cities.[s]

Although this issue has not been expressly addressed by the Supreme Court, presumably, this additional authority would include

s A more detailed discussion of taxing authority is found in Chapter 63.

the power to provide services and facilities without express statutory authority, including so-called "governmental" services and facilities and possibly so-called "proprietary" services and facilities. This additional authority could not include the authority to act contrary to state statutes, as that authority could only be granted by constitution provisions.

One extraordinary holding of the Supreme Court may shed light on the expansive nature of code city home rule authority. The Court in *Issaquah v. Telepromptor Corp.* recognized that a code city could provide cable TV service within its boundaries, even though this authority was not expressly authorized by statute.[99] No analysis was provided as to whether the provision of cable TV service was a governmental service or a proprietary service. However, the Court characterized cable TV service as a "luxury service" and not a standard public utility. The Court held that the broad home rule authority of a code city related to "matters of local concern" where the State did not possess a paramount or joint interest, and held that a code city could provide cable TV service within its boundaries as an incidence of this home rule power without express statutory authorization.[100] The import of this holding is dramatic since, presumably, cable TV service would be a proprietary service and not a mere governmental service. Presumably, this case also applies to first class cities as a result of the omnibus grant of powers given to first class cities.[101]

B. Townships

Legislation was enacted in 1895 providing for the organization of counties into townships.[t] [102]

This 1895 legislation granted townships a few specific powers but also included a provision reversing the grant of home rule police regulatory authority for townships that is included in Article XI, Section 11. Townships were authorized to exercise only those powers expressly enumerated by state statute.[103] Presumably, any township bylaw or action involving a subject matter that was not expressly granted by statute to a township would be contrary to this general statute limiting township powers.

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t A more detailed discussion of townships is found in Chapter 39.

However, the Legislature enacted legislation in 1923 conflicting with the narrow 1895 grant of authority for townships. Township voters at annual township meetings were authorized to adopt any bylaws or regulations "as may be deemed conducive to the peace, good order and welfare" of the township.[104] This grant of home rule authority is literally beyond the home rule regulatory authority granted by Article XI, Section 11 and is more akin to the broad grant of statutory home rule authority provided to second class cities, third class cities, and towns. Unfortunately, this 1923 legislation did not directly amend or repeal the 1895 statute limiting township powers to only those expressly granted to townships.

As discussed in Chapter 39, this contradiction is academic since no townships currently exist in Washington State and the Legislature enacted legislation in 1997 repealing township laws.

C. Counties

As discussed above, significant territorial laws already existed detailing county powers that remained in effect after statehood. The first State Legislature did not enact legislation detailing county powers that are similar to legislation detailing the powers of the newly authorized four classes of cities.

Although Article XI, Section 11 dramatically expanded county police regulatory powers in 1889, the Legislature did not enact legislation recognizing these expanded county powers until 1947.[105] This 1947 legislation essentially repeated the grant of authority contained in Article XI, Section 11 and differed from the 1890 legislation granting cities broad home rule powers beyond police regulatory powers that is discussed above. Appellate courts have not analyzed this 1947 statutory grant of police regulatory authority provided to counties. However, this is not surprising because that authority seems to be identical with that granted to counties by Article XI, Section 11, which has been analyzed by the Court in a number of cases.

The most significant statutory grant of home rule powers to counties is the authority of county legislative authorities, acting as local boards of health, to enact and enforce rules and regulations "as are necessary in order to preserve, promote and improve the public health".[106]

However, as discussed above, the State Supreme Court recently held that this broad authority did not allow a county to adopt restrictions on smoking in public places beyond those detailed in state statutes.

Article XI, Section 16

The Washington State Constitution includes a unique provision granting very broad home rule powers to a county adopting what is called a "combined city-county charter".

Article XI, Section 16 authorizes any county to frame and adopt a "Home Rule" charter called a "combined city-county" charter. This constitutional provision is potentially the most significant provision in the Washington State Constitution providing for home rule. It essentially allows a combined city-county charter to control virtually every aspect of local government within the county. The Legislature is expressly limited in its authority to interfere with such a charter.

No county has adopted a combined city-county charter. However, a number of unsuccessful efforts have been made to adopt such a charter, including efforts in Thurston, Spokane, and Skamania Counties.[u]

No case law exists on combined city-county charters. However, the office of the Washington State Attorney General issued an opinion in 1975 analyzing Article XI, Section 16.[v] [107]

State voters approved Amendment 23 in 1948, requiring the Legislature to enact legislation providing for the formation of a combined city and county municipal corporation with a population of at least 300,000. This provision was designed to allow the combination of Seattle and King County.[w] However, the Legislature

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u The author has written a number of articles on combined city-counties. He also volunteered as the unpaid legal counsel for the Thurston County Board of Freeholders in 1989 and 1990 and drafted the proposed Thurston County Combined City-County Charter that voters defeated in 1990.

v Although this analysis is generally well reasoned, it is this author's opinion that several points made in the opinion are in error. As mentioned below, the existence of this opinion led proponents of efforts to adopt combined city-county charters to push the enactment of legislation in 1984 addressing several of the issues raised in the opinion.

w The 1950 federal census shows King County with a population of 732,992. The next two most populous counties were Pierce with a population of 275,876 and Spokane with a population of 221,561. These population figures are available from the Office of Financial Management's homepage that may be found at <http//:www.ofm.wa.gov> .

failed to enact the required implementing legislation. Then, state voters approved Amendment 58 in 1972, amending Amendment 23 to:

- Remove the population threshold and allow any county to adopt a combined city-county charter;
- Expand the potential authority of such a charter to control every aspect of local government within the county;
- Make the provision self-activating so that enabling legislation was not required before such a charter could be adopted; and
- Provide for additional debt capacity.

A. Procedures to Adopt and Amend

The procedure to adopt a combined city-county charter is identical to the petition procedure to adopt a regular county charter under Article XI, Section 4 that is discussed in Chapter 2.

A petition calling for the election of a board of freeholders consisting of from 15 to 25 members, to draft a proposed combined city-county charter must be signed by county voters equal in number to at least ten percent of the number of county voters who voted in the last general election. A dual-ballot proposition is submitted to voters. First, voters are asked whether they want to elect a board of freeholders. Second, voters elect a board of freeholders. The election of the board of freeholders is null and void if county voters do not approve the first ballot proposition.

A board of freeholders is a temporary body of voters empowered to draft a proposed charter that is submitted to county voters for their approval or rejection. It is not a government or a governing body. A board of freeholders dissolves after completing its duties of drafting a proposed combined city-county charter. Freeholders do not receive compensation. No time limits exist for a board of freeholders to develop a proposed charter. A proposed combined city-county charter is approved, and becomes the organic law of the county and all other local governments within the county, if approved by a simple

majority vote of county voters voting on the charter. Flexibility is provided by allowing the board to submit a charter to voters that includes alternative articles or provisions in the same manner as for adopting a regular county charter.

The provisions of Article XI, Section 4 apply to amendments that are made to a combined city-county charter. This involves the county legislative authority approving a proposed amendment and submitting the amendment to county voters for their approval or rejection. Flexibility is provided by allowing the amendment to include alternative provisions in the same manner as for amendments to a regular county charter.

B. Powers of a Combined City-County Charter

A combined city-county charter may control every aspect of local government within the county. The charter may retain or otherwise provide for municipal corporations. Presumably, this includes the ability to control:

- The existence of each city and special purpose district within the county;
- The location or boundaries of each city and special purpose district within the county;
- How cities and special purpose district are created;
- The powers and duties of each city and special purpose district;
- The array of officials for each city and special purpose district, and how these officials are selected;
- The powers retained by the county or combined city-county, which include all powers or rights asserted in the charter, along with all rights, powers, and privileges granted to it or granted to any city or county, or class of city or county; and
- The structure of government for the county, or the array of county offices, the powers and duties of each office, and how these officials are selected.

This is a breathtaking array of potential power for a combined city-county charter.[x]

A combined city-county is granted all the "rights, powers, and privileges asserted in its charter", including all the rights, powers, and privileges granted to any county or city or class of county or city. The Legislature is expressly restricted from interfering with the provisions of a combined city-county charter as follows:

> "No legislative enactment which is a prohibition or restriction shall apply to the rights, powers and privileges of a city-county unless such prohibition or restriction shall apply equally to every other city, county, or city-county."

A combined city-county is not restricted by the uniformity of taxes provision of Article VII, Section 1. This means that a combined city-county may impose property taxes at varying rates in different parts of the county.

A combined city-county may incur general indebtedness as follows:

- A maximum of non-voter approved general indebtedness of up to three percent of the value of taxable property in the county;
- A total amount of general indebtedness of up to ten percent of the value of taxable property in the county if authorized by at least a three-fifths vote of county voters voting on a ballot proposition authorizing the indebtedness; and
- Additional general indebtedness of up to five percent of the value of taxable property in the county that may be used for supplying water, sewer, or electricity if authorized by at least a three-fifths vote of county voters voting on a ballot proposition authorizing the indebtedness.

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x Thurston County was the first county in the State where a proposed combined city-county charter was submitted to voters. Given the plethora of issues that a combined city-county charter could address, the drafting technique used in this charter basically stated that all local governments in the county functioned under the laws of the State, except as expressly provided in the charter. This avoided the necessity of repeating the details of hundreds of pages of laws and reduced the basic text of the proposed charter to the changes that would arise if the charter were approved by county voters.

The first two limitations are twice the amount of general indebtedness limitations authorized for a traditional county or city. The third limitation for supplying water, sewer, or electricity is the same as provided for a city for that purpose.

Each municipal corporation (city and special purpose district) retained by a combined city-county charter may incur: (1) Non-voter indebtedness of up to one and one-half percent of the value of taxable property within its boundaries; (2) a total amount of general indebtedness of up to five percent of the value of taxable property within its boundaries when authorized by a three-fifths vote of voters voting on the ballot proposition authorizing the indebtedness; and (3) additional general indebtedness of up to five percent of the value of taxable property in the county that may be used for supplying water, sewer, or electricity, if authorized by at least a three-fifths vote of county voters voting on a ballot proposition authorizing the indebtedness.[y] This latter provision seems to allow a combined city-county charter to permit any type of municipal corporation, not just cities, the added authority to incur additional voter approved indebtedness for supplying water, sewer, or electricity. However, it is possible that the existing statutory indebtedness limitations, which in most cases are less than these constitutional limits, would apply to these other municipal corporations.

A combined city-county charter designates "the officers of the combined city-county who perform the duties imposed by law upon county officers." This language is similar to language contained in Article XI, Section 4 concerning regular county charters. However, Article XI, Section 16 does not include language from Article XI, Section 4, precluding a charter from affecting the election, terms of office, or "powers, authority and duties" of, the prosecuting attorney, superior court judges, or district court judges.[z] Presumably, this

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y The indebtedness limitations could have been drafted with a little more care. The first two limitations on indebtedness are identical with the indebtedness limitations included for all municipal corporations in Article VIII, Section 6. However, Article VIII, Section 6 only includes the additional third limitation for cities. Article XI, Section 16 clearly extends this additional third limitation to all "municipal corporations" which would include cities and special purpose districts that provide water, sewer, or electrical utility service. Article VIII, Section 6 also includes an additional voter approved indebtedness limitation for school districts of up to five percent of the value of taxable property within the school district that may be used for "capital outlays". That language was not included in Article XI, Section 16. However, this additional voter approved indebtedness limitation presumably would still apply to school districts.

z Article XI, Section 16 applies the provisions of Article XI, Section 4 (concerning the "framing and

means that a combined city-county charter could control these matters. However, a general provision in Article XI, Section 16 applies the provisions of Article XI, Section 4 concerning regular county charters to a combined city-county charter. Judges searching for constitutional language to restrict the authority of a combined city-county charter from addressing these matters could easily read this general provision as applying the express restriction on regular county charters to combined city-county charters.

C. Statutes

The Legislature enacted legislation in 1985 relating to combined city-county charters that addressed some of the issues raised by the Attorney General in the 1975 Attorney's General Opinion on combined city-county charters.[aa]

This legislation was enacted as an attempt to preclude a number of issues from being raised, questioning a combined city-county charter.[bb] [108] Many of these issues were quite technical and were in response to issues raised in the 1975 Attorney General Opinion on combined city-county charters, as follows:

- A combined city-county was prohibited from imposing a net income tax.[cc]
- Every combined city-county charter must retain school districts as separate political subdivisions.[dd]

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adoption" of a regular county charter) to a combined city-county charter. Although it may be argued that this reference includes the prohibition on affecting the election, terms, "powers, authority and duties" of the county prosecuting attorney, superior court judges, and district court judges, the stronger argument would be that this language is not referenced by Article XI, Section 16. Why include any language concerning county offices if this language was already referenced?

aa The proponents of this legislation considered a number of the points raised by the opinion as merely "red herrings" providing potential opponents of any combined city-county charter with arguments to oppose the charter. Perhaps the most interesting point raised in the opinion was that a combined city-county could possibly impose a net income tax since it was exempted from the uniformity of taxation clause of Article VII, Section 1. The proponents of this legislation perhaps were prescient. Even though the proposed 1990 Thurston County combined city-county charter included two provisions expressly restricting the taxing authority of the county to the taxing powers possessed by any other county, charter opponents purchased radio advertisements raising the issue that the county would impose a net income tax if the charter were approved.

bb The author drafted this legislation at the request of the sponsoring Representatives.

cc The Supreme Court in a highly criticized 5 to 4 decision in 1933 (*Culliton*, at page 379) held that the legislation imposing a net income tax was unconstitutional since net income was property and the net income tax violated the provisions of Article VII, Section 1 requiring uniformity of property taxes.

dd As the person who drafted this legislation for the sponsoring representatives, it is the author's opinion that the constitutionality of this provision is highly suspect.

- State revenues that are allocated to local governments remain in effect for one year from the date the initial officers of the combined city-county assume office.
- A fire protection unit or law enforcement unit of a combined city-county remains subject to a binding arbitration in collective bargaining provision of state law.
- The formation of a combined city-county shall not reduce, restrict, or limit retirement or disability benefits of any person employed by or retired from a municipal corporation, or who has vested rights in a state or local retirement system.

D. Likelihood of Adoption

Some chance exists that a combined city/county charter will be adopted in a county in the state with a small population. Is there a need for multiple layers of local government in such a county? This would include Garfield County (with an estimated population of 2,260 in 2015), Columbia County (with an estimated population of 4,090 in 2015), Skamania County (with an estimated population of 11,430 in 2015), and Wahkiakum County (with an estimated population of 3,980 in 2015).

It is entirely possible that several politicians in each of these counties actually know every registered voter in the county. Having known politicians communicate directly with each voter about potential changes in a combined city/county charter should enhance the chance of such a charter being approved.

NOTES:

1. Antieau, Chester Michael, *Municipal Corporation Law*, 1989 revision, Matthew Bender, Vol. 1, Chapter III, §§ 3.0 & 3.1, at pages 5-11; McBain, Howard Lee, *The Law and the Practice of Municipal Home Rule*, Columbia University Press, 1916, Preface at page v; and 56 Am Jur 2d Municipal Corporations, Etc., § 125, at pages 180-182.
2. Spitzer, Hugh, "'Home Rule' vs. 'Dillon's Rule' for Washington," Sea. U. Law J., 80:809 (2015).
3. *Id.*, 809 and 855.

4. G*reat Northern Railroad Co.*, at pages 242-243; *Carkonen,* at page 627; & *Hillis Homes,* at page 809.

5. *City of Tacoma v. State*, at page 66.

6. Dillon, John F., *Commentaries on the Law of Municipal Corporations*; Little, Brown, and Company; Fifth Revised Edition, 1911; Vol. I, § 237, at pages 448-450.

7. For example, the Supreme Court included this famous quotation of Dillon's Rule in *State, ex rel. Winsor v. Mayor and Council*, 10 Wash. 4, 7 (1894).

8. Dillon, § 239 & 239, Vol. I, at pages 452-453.

9. Dillon, §109, Vol. I, at page 182.

10. Dillon, § 63, Vol. I, at pages 110-118.

11. Dillon, § 63, Vol. I, at page 116.

12. *Petstel*, at page 159.

13. *Brown v. Cle Elum*, 145 Wash. 588, 590 (1927).

14. *Petstel*, *id.*

15. Counties are granted broad regulatory authority by RCW 36.32.120(7). Cities are granted broad regulatory authority by RCW 35.22.280(35), 35.23.440(1) & (50), and 35.27.370(1) & (16). Code cities are granted all the authorities of classified cities by RCW 35A.11.020.

16. See, for example, *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 108 (1979); *Brown v. Yakima*, 116 Wn.2d 556, 560-563 (1991); *Weden v. San Juan County*, 135 Wn.2d 678, 693-695 (1998); & *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477 (2002).

17. *Schillberg*, *id*.

18. *Weden*, at page 690.

19. *Water Company v. Board of Health*, 151 Wn.2d 428, 433-434 (2004).

20. *Entertainment Industry Coalition v. Health Department*, 153 Wn.2d 657, 663-664 (2004).

21. Spitzer, 75 Wash. L. Rev., *id.*

22. The Court upheld Spokane's regulation of garbage collection in *Smith v. Spokane*, at pages 220-221. The Court upheld Spokane's grade separation requirements in *Detemore v. Hindley*, 83 Wash. 322, 327-328 (1915).

23. The Court overturned an ordinance regulating the hours meat packing plants could operate in *Brown v. City of Seattle*, 150 Wash. 203, 216 (1928). The Court overturned an ordinance regulating the hours barbershops could operate in *Patton v. City of Bellingham*, 179 Wash. 566, 576 (1934).

24. The Court recognized Article XI, Section 11 as authorizing cities to license plumbers in *City of Tacoma v. Fox*, 158 Wash. 325, 332-334 (1930). The Court

recognized Article XI, Section 11 as authorizing cities to regulate the baking industry in *Continental Baking Company v. City of Mount Vernon*, 182 Wash. 68, 72-73 (1935).

25. *Kaul v. City of Chehalis*, 45 Wn.2d 616, 620 (1954).
26. Spitzer, 75 Wash. L. Rev., at pages 511-517.
27. See, for example, *Orion Corporation v. State*, 109 Wn.2d 621 (1987); and *Presbytery of Seattle v. King County*, 114 Wn.2d 320 (1990).
28. McQuillin, Vol. 6A, §§ 24.01-24.04; and Antieau, Chester James, *Local Government Law*, Matthew Bender, 1991 revision, Volume 4, § 35.02.
29. RCW 35.23.440(1) & (53), and 35.27.370(1) & (16).
30. *Clean v. State*, 130 Wn.2d 782, 805 (1996).
31. RCW 35A.01.010, 35A.11.020, and 35A.11.050.
32. See, for example, *Issaquah v. Teleprompter*, 93 Wn.2d 567, 572-573 & 575 (1980).
33. For example, *Malette v. Spokane*, 77 Wash. 205, 224 (1913).
34. For example, *King County Council v. Public Disclosure Commission*, 93 Wn.2d. 559, 562 (1980).
35. *Hudson v. City of Wenatchee*, 94 Wash. App. 990, 995-996 (1999).
36. See, for example, *Nelson v. Seattle*, 64 Wn.2d 862, 866 (1964); and *Seattle v. Wright*, 72 Wn.2d 556, 559 (1967).
37. *Schillberg*, at page 108.
38. Express statutory authority to regulate various activities, as well as to provide various services and facilities, is found: (a) For first class cities in Section 5, Pages 215-224, Laws of 1889-1890, which is now codified as RCW 35.22.280; (b) for second class cities in Section 38, Pages 143-178, Laws of 1889-1890, which is codified as RCW 35.23.440; (c) for third class cities in Section 117, Pages 178-198, Laws of 1889-1890, which has been repealed; and (d) for towns in Section 154, Pages 198-215, Laws of 1889-1890, which is now codified as RCW 35.27.370.
39. Section 38, Page 148, Laws of 1889-1890, which now are codified as part of RCW 35.23.440.
40. Spitzer, Sea. U. Law J., 833, citing Leo Jones, University of Washington Bureau of Debate and Discussion, Washington Extension, 1-4, 1915.
41. Brachtenbach, at page 299.
42. The number of cities with populations of 10,000 or more was obtained from 2004 city population figures provided by the Office of Financial Management, which may be obtained from the home page of the Municipal and Research Services Center of Washington at <http://www.mrsc.org> . The number of first

class cities or charter cities was also obtained from the home page of the Municipal Research Services Center.

43. This number is also obtained from the home page of the Municipal Research and Services Center of Washington at <http://www.mrsc.org> .

44. *Hindley*, at pages 326-327; *Spokane v. J-R Distributors*, 90 Wn.2d 722, 727 (1978); & *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 560 (2001).

45. *Winkenwerder v. Yakima*, 52 Wn.2d 617(1958).

46. *Winkenwerder*, at page 622.

47. *King County Council v. Public Disclosure Commission*, at pages 562-563.

48. *Ford v. Logan*, at pages 152-153.

49. The Court in *Benton v. Seattle Electric Company*, 50 Wash. 156, 163 (1908) recognized that a city charter could grant city voters initiative and referendum powers on city matters, but restricted the initiative and referendum powers to legislative subject matters as distinguished from non-legislative subject matters.

50. *State ex rel. Isham v. Spokane*, 2 Wn.2d 392, 398 (1940).

51. *State ex rel. Ennis v. Superior Court*, 153 Wash. 139, 153-154 (1929).

52. *State ex rel. Griffiths v. Superior Court*, 177 Wash. 619, 624 (1934).

53. *Ayers v. Tacoma*, 6 Wn.2d 545, 554 (1940).

54. *Heinsma*, at pages 566-567.

55. *Saldin Securities, Inc. v. Snohomish County*, 80 Wash. App. 522, 533-534 (1996).

56. *Malette*, at pages 224-225.

57. *Electrical Contractors v. Pierce County*, 100 Wn.2d 109, 115-116 (1983).

58. *In re. Cloherty*, 2 Wash. 137, 146 (1891); and *Massie v. Brown*, 84 Wn.2d 490, 492-493 (1974).

59. *Tacoma v. State*, at pages 66-67; *Miller v. City of Tacoma*, at pages 382-383; and *Welcker*, at page 683.

60. *State ex rel. Snell v. Warner*, 4 Wash. 773, 776 (1892); and *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676 (1965).

61. *Great Northern Railroad Co.*, at pages 242-243; *Carkonen*, at page 627; *Hillis Homes*, at page 809; & *Tacoma v. Taxpayers*, at page 694, footnote #8.

62. *Neils v. Seattle*, 185 Wash. 269, 274-275 (1936).

63. *Edwards v. Newton*, 67 Wn.2d 598, 601-602 (1965).

64. *Massie, id*.

65. *Chemical Bank v. WPPSS (Chemical Bank I)*, 99 Wn.2d 772 (1983); & *Chemical Bank v. WPPSS (Chemical Bank II)*, 102 Wn.2d 874 (1984).

66. *Chemical Bank I*, at pages 798-799 and *Chemical Bank II*, at pages 892-894.
67. *Tacoma v. Taxpayers*, at pages 698-699.
68. RCW 35.22.900.
69. Spitzer, Sea. U. Law J., at 855.
70. Spitzer, Sea. U. Law J., at 812-813.
71. *Filo Foods, LLC, et al. v. City of SeaTac, et al.*, Washington State Supreme Court Case No. 89723-9, filed August 20, 2015.
72. *Id.,* at page 41.
73. *Id.,* at pages 14-15.
74. *State ex rel. Carroll v. King County*, 78 Wn.2d 452, 457-458 (1970); and *Henry v. Thorne*, 92 Wn. 2d 878, 881 (1979).
75. *Hindman v. Boyd*, 42 Wash. 17, 29 (1906); *Ewing v. Seattle*, 55 Wash. 229, 237-238 (1909); *Walker v. Spokane*, at page 318; & *State ex rel. Ennis*, at page 149.
76. *Carroll*, *Id*.
77. *Thorne*, at page 881.
78. Brachtenbach, at pages 297-298; & Trautman, 38 Wash L. Rev. 743, at pages 765-766.
79. *Walker v. Spokane*, 62 Wash. 312 (1911).
80. Chapter 186, Laws of 1903, codified as RCW 35.22.120 & 35.22.130.
81. *Walker*, at page 317.
82. Section 1, Chapter 17, Laws of 1911, codified as RCW 35.22.020.
83. Trautman, 38 Wash L. Rev. 743, at page 782.
84. *Carroll*, *id*.
85. This grant of powers was found in Section 5, Pages 215-224, Laws of 1889-1890, codified as RCW 35.22.280.
86. *In re. Cloherty*, at page 144.
87. Section 1, Chapter 141, Laws of 1903, codified as RCW 35.22.370.
88. Sections 1 & 2, Chapter 61, Laws of 1925, ex sess., codified as RCW 35.22.210 & 35.22.220.
89. Section 1, Chapter 168, Laws of 1957, codified as RCW 35.22.235.
90. Section 2, Chapter 168, Laws of 1957, codified as RCW 35.22.245.
91. Section 4, Chapter 200, Laws of 1963, was codified as RCW 29.13.021. However, this statute was repealed by Section 2404, Chapter 111, Laws of 2003.

92. The broad grant of authority for first class cities is found in Section 5(36), Pages 215-224, and Laws of 1889-1890, codified as RCW 35.22.280 (35). The board grant of authority for second class cities is found in Section 38, Pages 143-178, Laws of 1889-1890, codified as RCW 35.23.440(1) & (50). The broad grant of authority for third class cities is found in Section 117(1) & (20), Pages 178-198, Laws of 1889-1890, which has been repealed. The broad grant of authority for towns was found in Section 154(1) & (16), Pages 198-215, Laws of 1889-1890, codified as RCW 35.27.370(10) & (16).
93. Section 7, Pages 215 - 227, Laws of 1889-1890, codified as RCW 35.22.570. A newer statute, RCW 35.22.195, grants 1st class cities "all such powers as are usually exercised by municipal corporations of like character and degree."
94. RCW 35A.01.010.
95. RCW 35A.11.020.
96. *Id*.
97. RCW 35A.11.050.
98. RCW 35A.11.020.
99. *Issaquah v. Telepromptor,* at pages 574-575.
100. *Issaquah v. Telepromptor*, at pages 572-573.
101. RCW 35.22.570.
102. Chapter CLXXV, Laws of 1895. These laws were codified as Title 45 RCW, but now have been repealed.
103. RCW 45.12.030. This statute has been repealed.
104. Section 4, Chapter 13, Laws of 1923, which was codified as RCW 45.12.090(11) prior to township laws being repealed.
105. Section 1, Chapter 61, Laws of 1947, provides that the legislative authorities of counties shall "make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law...." This statutory recitation of Article XI, Section 11 remains in statute and is codified as RCW 36.32.120(7).
106. RCW 70.05.060(3).
107. AGO 1975 No. 2.
108. Chapter 36.65 RCW.

Chapter 66

Constitutional Provisions

The Washington State Constitution contains a number of provisions relating to local governments.[a] Many of the original provisions were copied piecemeal from other state constitutions. This selective copying of provisions from different sources may explain some of the seeming lack of completeness in several provisions dealing with local government and the inconsistent wording in these provisions. These provisions may also have been of secondary importance to members of the constitutional convention and not given much consideration.

Most constitutional provisions relating to local governments are found in Title XI. Some detail is provided about county government. However, very little detail is provided about any other type of local government. This reflects the dominance of county government at the time the Constitution was approved in 1889.

Article II, Section 15—Vacancies in Partisan County Elective Offices

This provision provides for the filling of vacancies in both state legislative offices and partisan county offices.[b] Article II, Section 15

a Robert F. Utter and Hugh D. Spitzer authored *The Washington State Constitution, A Reference Guide*, Greenwood Press, 2002. This is an excellent study of the Washington State Constitution and is part of a series of reference guides to state constitutions. A summary of the history of the State Constitution is included, along with the text and an explanation of each constitutional provision. The late Robert Utter retired as a justice on the Washington State Supreme Court and for a number of years taught a class on state constitutional law at the University of Puget Sound Law School, which now is Seattle University Law School. Mr. Spitzer is an attorney in private practice specializing in public finance and state and local government law. He is an affiliate professor of law at the University of Washington's School of Law where he teaches classes on local government law and state constitutional law.

b A more detailed discussion of county elective offices is found in Chapter 2.

does not require county offices to be partisan, but if legislation provides for partisan county offices, then a vacancy in those offices is filled under this provision. However, as discussed in Chapter 65, these provisions do not apply partisan offices in a county operating under a regular county charter unless the charter references these provisions.

A vacancy in a partisan county office is filled by a majority vote of the county legislative authority of the county in which the vacancy occurs. The county legislative authority appoints one of three persons who are nominated by the county central committee of the political party of the official whose position is vacant, subject to the following requirements:

- Where commissioner districts, or council districts, are used in the election of an official whose position is vacant, the person who is appointed to fill the vacancy must be a resident of the same county commissioner district or council district as the person whose vacancy is being filled. In all other instances, the person who is appointed to fill the vacancy must be a resident of the county.
- The person who is appointed must be from the same political party as the official whose position is vacant.

The authority to make the appointment is removed from the county legislative authority, and vests in the Governor, if the county legislative authority fails to make the appointment within 60 days after the vacancy occurs. Article II, Section 15 does not address the situation where the county official whose position is vacant was elected as a minor party candidate or independent candidate. Minor parties do not have county central committees. No statutes have been enacted providing for the filling of vacancies in county offices. Presumably, the county legislative authority would appoint any person to the vacant office who is eligible to serve in that office.

To confound this situation, election law for partisan offices has undergone significant change and a single candidate from each major political party for “partisan” offices is no longer “nominated” from the political party by voters at a primary election. As discussed in Chapter 67, the following changes were made:

- Rather than designating their party affiliation when they file their candidacies for a "partisan" office, candidates indicate their "party preference," if any, which may or may not indicate actual party affiliation.
- The nature of a primary election is altered, so that rather than "nominating" one candidate from each major political party with candidates for the office, along with minor party candidates and independent candidates, voters select the two candidates for the general election ballot who receive the two greatest number of votes, without regard any party affiliation. The names of two candidates with the same "party affiliation" could be placed on the general election ballot.

State voters approved Amendment 96 to the State Constitution in 2003, making a common sense change for filling vacancies in a legislative office or partisan county office in the rare event that: (1) A vacancy occurs after the general election at which the position would normally be filled and before the date the newly elected official would take office; and (2) the person who is elected to that position is of the same political party as the person whose position is vacant. The newly elected official takes office automatically after his or her election in this event, and serves in that capacity for the remainder of the unexpired term of office, plus the term of office for which he or she was elected.

Amendment 96 also includes what appears to be a "technical" correction by adding "council districts" after "commissioner districts". However, as discussed in Chapter 65, it is possible that this "technical" correction may have eliminated an arcane aspect of home rule authority for charter counties by applying this provision to members of county legislative authorities in charter counties.

Article II, Section 28—Restrictions on Special Legislation

This provision prohibits the Legislature from enacting special or private legislation concerning a number of different subjects, some of which relate to local governments.

The Legislature is prohibited from enacting special or private legislation that:

- Grants "corporate powers or privileges". (Subsection 6.) The Supreme Court has held that this subsection does not apply to special legislation granting powers to separate state agencies, but does apply to granting powers to private corporations or local governments.[1]
- Incorporates "any town or village" or amends the charter of "any town or village". (Subsection 8.) This subsection does not appear to be complete, as nothing is mentioned about incorporating a city or amending a city's charter by special legislation. However, as discussed below, Article XI, Section 10, prohibits the Legislature from creating any corporation for municipal purposes.
- Extinguishes any indebtedness, including the indebtedness of "any municipal corporation". (Subsection 10.)
- Provides for common school management. (Subsection 15.) Common schools are defined by statute to mean the kindergarten through grade 12 public school system.[2]
- Changes county boundaries, or locates or changes a county seat. (Subsection 18.) However, this prohibition does not apply to legislation creating a new county. As discussed below, Article XI, Section 3, includes other restrictions on creating new counties and changing county boundaries.

Special legislation affects a single person or entity, while general legislation affects all persons or entities of a class that rationally relates to the object of the legislation.[3] However, the Supreme Court has held that these prohibitions on enacting special legislation are not violated by "general" legislation relating to a class of local governments that only includes a single local government, if the class bears a reasonable relation to the purpose and subject of the legislation. For example, Chapter 35.32A RCW establishes a procedure for any city with a population of three hundred thousand

or more to adopt its budget. Seattle is the only city currently fitting into that class. However, this is an open class and the population of any city could increase to this level.

Article II, Section 28, altered the relationship between local governments and the State that had existed between local governments and the Territorial Assembly during all but the last few years of Washington Territory. During all but the last few years of Washington Territory, much of the legislation enacted by the Legislative Assembly was special legislation relating to a single local government that was named in the legislation. Most cities were created by special acts of the Legislative Assembly naming the city, describing its boundaries, listing its powers, and specifying a plan or system of government. Any changes were made by subsequent special legislation. Although many county statutes were general legislation applying to all counties, a number of special statutes were enacted relating to individual counties. Constantly amending the many private or special statutes relating to a single local government took an inordinate amount of time for the Legislative Assembly. However, as discussed in Chapter 7, Congress enacted legislation in 1886 precluding any territory from enacting local or special laws incorporating cities or changing or amending the charter of any city. Washington Territory soon enacted general legislation providing for the incorporation of a town or village and ceased enacting special legislation relating to cities.

Article IV, Section 5—Superior Courts

This provision provides for superior courts.[c]

Superior courts are the basic trial courts in the State. They exist in each county. A separate superior court may exist for each county, with voters of the county electing one or more superior court judges to the superior court. However, a single superior court may be established for two or more counties, with the voters of these counties electing one or more superior court judges to the superior court. Statutes refer to these superior courts as multi-county judicial districts.

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c A more detailed discussion of the local judiciary is found in Chapter 69.

The Legislature designates the number of judges for each superior court. Superior court judges are elected to four-year terms of office. The Governor appoints a person to serve as a superior court judge if a vacancy occurs and the appointee serves until a judge is elected at the next state general election to serve for the remainder of the unexpired term of office.

Other constitutional provisions provide more details about superior courts and superior court judges.[d]

Article IV, Section 29—Election of Superior Court Judges

This provision specifies how superior court judges are elected.[e] State voters approved Amendment 41 in 1966, creating this constitutional provision and making two unique changes in the process by which superior court judges are elected.

First, if there is only one candidate for a superior court judge position in a county with a population of 100,000 or more after the last day when candidates may withdraw their candidacy, that single

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d Article IV, Section 6, details the jurisdiction of county superior courts. Article IV, Section 11 provides that superior courts are "courts of record". Article IV, Section 14 provides for salaries of superior court judges and allows the Legislature to increase these salaries. Article IV, Section 17 provides that only persons admitted to the practice of law in courts of record in this State are eligible to serve as a superior court judge.

Action to discipline, remove, or impeach superior court judges is provide in several separate constitutional provisions, as follows:

(1) Article IV, Section 9 provides for the that various judicial officials, including superior court judges, may be "removed from office" for "in competency, corruption, malfeasance, delinquency in office, or" other sufficient cause". Removal is taken by joint resolution of the Legislature where at least three quarters of the members "elected" to each house concur. This provision is part of the original State Constitution.

(2) Article V, Sections 1, 2, and 3, provide for the impeachment and conviction of state officials and various judges, including superior court judges, for high crimes or misdemeanors or for malfeasance in office. The House of Representatives may vote to impeach an official by a simple majority vote and the Senate may convict the official and remove the official from office by a vote of two-thirds of the "senators elected". These provisions are part of the original State Constitution.

(3) Article IV, Section 31 creates a commission on judicial conduct to investigate complaints about judges and make recommendations to the Supreme Court for disciplinary action. The Supreme Court may suspend, remove, or retire the judge. State voters approved Amendment 71 in 1980 creating this commission. The provision has been altered by Amendment 77 and Amendment 85.

It is not clear why the original State Constitution included two methods of removing judges from office on essentially the same grounds with different voting requirements.

e A more detailed discussion of the local judiciary is found in Chapter 69.

candidate becomes the superior court judge. No primary is held. No general election is held.

Second, a very peculiar provision is included relating to the election of superior court judges in a contested primary. That provision is no longer applicable, but the Legislature should ensure the inapplicability of this constitutional provision by passing legislation clarifying a statute (RCW 29A.36.170) that was inconsistently amended twice in separate legislation in 2011.

Article VII, Section 1—Taxation Generally

This provision is the basic tax provision in the State Constitution.[f]

A number of separate concepts are included in this provision, including:

- The power of taxation may not be "suspended, surrendered or contracted away".
- All taxes must be uniform on the same class of property within the territorial limits of the jurisdiction imposing the taxes. All real estate constitutes a single class of property. This provision is known as the Uniformity Clause.
- The Legislature may tax mines and mineral resources, and lands devoted to reforestation, with a yield tax or an *ad valorem* tax, or both types of taxes.
- The Legislature may enact general laws exempting property from taxation.
- Federal, State, and local government property is not subject to taxation.

This provision was included in the original State Constitution, but has been amended a number of times.

f A more detailed discussion of local government taxes is found in Chapter 63.

Article VII, Section 2—Property Tax One Percent Limitation

This provision establishes the so-called One Percent Limitation on the cumulative rate of most property tax levies that may be imposed on any property in any year.[g]

The aggregate or total rate of property taxes that may be imposed by the State and most taxing districts on any property in any year may not exceed one percent of the "true and fair value of such property in money". A number of exceptions are provided to this One Percent Limitation. First, property tax levies imposed by port districts and public utility districts are not subject to the One Percent Limitation. Second, so called excess property tax levies, or property tax levies above this One Percent Limitation, may be imposed as follows:

- Voters of a taxing district (other than the State, a port district, or a public utility district) may authorize the taxing district to impose a single-year excess levy for any legal purpose of the taxing district, if the ballot proposition authorizing the levy is approved by at least three-fifths of the voters voting on the ballot proposition and a 40 percent voter validation requirement is met.
- School districts and fire protection districts are granted greater flexibility under this provision. Voters of a school district or a fire protection district may authorize the special purpose district to impose excess levies for up to four years for any of their legal purposes. In addition, voters of a school district or a fire protection district may authorize the special purpose district to impose excess levies for up to six years to support the "construction, modernization, or remodeling" of their facilities. A ballot proposition authorizing these excess levies for a fire protection district must be approved by at least three-fifths of the voters voting on the ballot proposition and a 40 percent voter validation requirement is met. However, a ballot proposition

g A more detailed discussion of local government taxes is found in Chapter 63. This constitutional provision is also discussed in Chapter 66.

authorizing these excess levies for a school district need only be approved by a simple majority vote of voters voting on the proposition.

- Voters of taxing districts (other than the State, a port district, or a public utility district) may authorize the taxing district to impose multiple-year excess property tax levies to retire general indebtedness issued for capital purposes only, not including the replacement of equipment. The ballot proposition authorizing these levies must be approved by at least three-fifths of the voters voting on the ballot proposition and a 40 percent voter validation requirement is met. No limit exists on the number of years these multiple-year excess levies may be imposed. However, statutes limit the maximum term of general obligation bonds that local governments may issue.
- A "court of last resort" may order the State or any taxing district (other than a port district or public utility district) to impose excess levies without voter authorization to prevent "the impairment of the obligation of a contract".

This provision was not included in the original State Constitution but was added, first by Amendment 17 in 1944, and then altered by six later amendments. Amendment 17 established the so-called 40 mill limitation on most property tax levies, but this limitation was changed to the One Percent Limitation by Amendment 55 in 1972. Amendment 79 in 1986, Amendment 90 in 1997, Amendment 92 in 2002, and Amendment 101 in 2007 modified excess levy provisions for fire protection districts and school districts.

Article VII, Section 9—Local Government Taxes and Special Assessments

This provision includes separate concepts relating to local government finances.[h]

h A more detailed discussion of local government finances is found in Chapter 63.

First, the Legislature may authorize "the corporate authorities of cities, towns and villages" to impose special assessments (or special taxes) on benefitted property to pay for local improvements.[i] The Supreme Court has held that this provision does not restrict the Legislature's authority to grant this power to other local governments.[4] Statutes have authorized counties and different types of special purpose districts with the authority to impose special assessments on benefited property to pay for local improvements.

Second, municipal corporations or local governments may be vested with the authority to impose taxes "for corporate purposes" but these taxes must be "uniform in respect to persons and property within the jurisdiction of the body levying" the taxes. This uniformity clause for local governments is in addition to the Uniformity Clause for property taxes that is found in Article VII, Section 1. Although this additional uniformity restriction appears to apply to all local taxes, including property taxes and excise taxes, this issue has not been addressed by an appellate court.

Article VIII, Section 6—Local Government Indebtedness Limitations

This provision establishes indebtedness limitations for most local governments.[j]

Two limitations are established on the amount of indebtedness that may be incurred by most local governments. First, a local government may incur general indebtedness without voter approval up to an amount equal to one half of one percent of the value of taxable property within its boundaries. This debt limit is also called the "inside" debt limit or "councilmanic" debt limit. Second, a local government may incur additional indebtedness with voter approval, if a ballot proposition authorizing the indebtedness is approved by at least three-fifths of the voters voting on the proposition. The total

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i Inclusion of villages in this provision, when villages have never been created in Washington State or Territory, presumably reflects that wording in this provision was copied from anther state constitution and the inattention of members of the Washington constitutional Convention to details about local government.

j A more detailed discussion of local government indebtedness is found in Chapter 63. This constitutional provision is also discussed in Chapter 66.

amount of all general indebtedness (both non-voter approved and voter approved indebtedness) may not exceed an amount equal to five percent of the value of taxable property within the jurisdiction's boundaries. Statutes restrict most local governments to indebtedness limitations below these constitutional limitations.

This provision also allows some local governments to incur additional general indebtedness. Voters of a city may authorize the city to incur additional general indebtedness of up to five percent of the value of taxable property in the city for supplying the city with water, sewer, or electricity, if a ballot proposition authorizing the additional indebtedness is approved by at least three-fifths of the voters voting on the proposition. Voters of a school district may authorize the school district to incur additional indebtedness of up to five percent of the value of taxable property in its boundaries for "additional capital outlays," if a ballot proposition authorizing the additional indebtedness is approved by at least three-fifths of the voters voting on the proposition.

This constitutional provision appears to be pervasive by restricting the amount of indebtedness that a local government may incur "in any manner". However, the Supreme Court has recognized or created two major exceptions:

- The restriction only applies to "general indebtedness" and does not apply to what is referred to as "revenue indebtedness" payable from non-tax revenues that are placed into a special fund.[k 5] This exception is known as the "special fund doctrine".
- The restriction does not apply to certain special purpose districts with the franchise limited to property owners, even where statutes refer to indebtedness of these special purpose districts as constituting "general indebtedness". These special purpose districts are classified as "quasi-municipal" corporations, as distinguished from "municipal" corporations. Irrigation districts are the most important of these "quasi-municipal" corporations.[6]

k The Washington State Supreme Court was the first state appellate court in the nation to recognize the concept of obligations of a fund, rather than a government, are not subject to constitutional indebtedness limitations.

This constitutional provision only requires the ballot proposition authorizing voter approved general indebtedness to be approved by at least three-fifths of the voters voting on the ballot proposition. An additional 40 percent voter validation requirement is not included. Most statutes authorizing voter-approved indebtedness also do not include a 40 percent voter validation requirement. However, a ballot proposition authorizing voter-approved general indebtedness almost always includes authorization for excess property tax levies to retire the indebtedness, so the 40 percent voter validation requirement that is included under Article VII, Section 2 applies to the combined authorization.

Article VIII, Section 7—Prohibition on Local Governments Lending Their Credit

This provision precludes local governments from lending their credit or providing gifts of public funds.[l]

A county, city, or other municipal corporation may not give any money or property, or loan its money or credit, to any person or private entity except for the necessary support of the poor and infirm. Voters have approved several constitutional amendments providing exceptions to the prohibition on lending credit or providing gifts of funds. These changes include Article VIII, Section 8 (Amendment 45) and Section 10 (Amendments 70, 82, 86, and 91).

Article IX—Public Schools

This Article provides for public schools.[m]

Section 1 contains the famous language that it is the

> "paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."

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l A more detailed discussion of restrictions on lending the credit and gifts of public funds is found in Chapter 72.

m A more detailed discussion of school districts is found in Chapters 1 and 17.

Although codifications of the State Constitution since 1897 have included the word "preamble" as a heading for this section, the Supreme Court held that this section is substantive and was the basis of its holding in decisions on the State's responsibility for the adequate funding of basic education that is discussed in Chapter 17.

Section 2 requires the Legislature to provide for a "general and uniform system of public schools". Interestingly, a public school system is defined to include common schools, high schools, normal schools, and technical schools. Montes in the State's common school fund and the state tax for common schools may only be used to support common schools. Notwithstanding the distinctions in terminology made in this constitutional provision, current understanding and statutory definitions include "high schools" as part of the "common schools".[7] Technical schools are now institutions of higher education and are part of the system of community and technical colleges.[8] The prior normal schools are now regional universities.[9]

Section 3 recognizes two state funds created to support public schools. The common school fund is used for the general support of common schools. The common school construction fund is used to finance the construction of common school facilities.

Section 4 provides that all schools "maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."

Article XI, Section 1—Territorial Counties Recognized

This provision recognizes the counties that existed in Washington Territory immediately before statehood.[n]

Counties in Washington Territory, as they existed in 1889 when the State Constitution was approved, are recognized as "legal subdivisions" of the State. Presumably, a newly created county would also be a legal subdivision of the State.

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n A more detailed discussion of counties is found in Chapter 2.

Article XI, Section 2—County Seats

This provision provides for county seats.[o]

A county seat may only be removed or relocated if a ballot proposition providing for the change is approved by at least three-fifths of the county voters voting on the proposition. The proposed removal or relocation of a county seat may not be submitted to voters of a county more frequently than once every four years. No provision is made for the initial designation of a county seat for a new county. Article II, Section 28(18), prohibits the Legislature from locating or changing county seats by special legislation, except when a new county is created.

Article XI, Section 3—Creating and Altering Counties

This provision provides for the creation of new counties and altering of county boundaries.[p]

Restrictions are placed on creating a new county and on alerting a county's boundaries. A new county must have a population of at least 2,000. The population of a parent county, from which territory was removed to create a new county, may not be reduced below 4,000. Territory may not be removed from a county unless a majority of the voters living in the removed territory petition for the removal. The Legislature may provide additional conditions to remove territory in general law applicable to all new counties.

Article II, Section 28(18), prohibits the Legislature from enacting special legislation changing county boundaries, or locating or changing county seats, except when a new county is created.

Article XI, Section 4—Uniform System of County government and Creation of Townships

This provision provides for county government and organizing counties into townships.

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o A more detailed discussion of county seats is found in Chapter 2.

p A more detailed discussion of the creation of new counties is found in Chapter 2.

The Legislature is required to establish a uniform system of county government. This uniformity requirement is in addition to a requirement in Article XI, Section 5, which provides for a uniform array of elected officials in all counties.

The Legislature is also required to enact legislation allowing for a county to deviate from this uniform system of county government by organizing into townships.[q] No details are provided about the township organization of a county, apart from a requirement that county voters may approve a ballot proposition at a general election organizing the county into townships.

State voters approved Amendment 21 in 1948, allowing any county to adopt a "Home Rule" charter providing for its own government. This amendment added new provisions to Article XI, Section 4, but it might have been more appropriate to add this language to Section 5 of Article XI. The amendment is self executing and does not require enabling legislation. Any county may adopt a charter providing for its government or altering the array of elected officials serving the county. Seven counties have adopted charters under this provision.[r]

Article XI, Section 5—County Officials

This provision requires the Legislature to enact legislation providing for a uniform system of electing county officials, as well as a uniform array of county elected officials, and provides for compensation of county officials.[s]

The Legislature is required to enact "general and uniform laws" providing for the election of various officials in every county, including a board of commissioners, sheriff, county clerk, treasurer, prosecuting attorney, and other offices specified in statute. Clearly, the requirement for a uniform array of county elected officials does not apply to a county that has provided for its own government by adopting a "Home Rule" charter under Article XI, Section 4.

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q A more detailed discussion of townships are found in Chapter 39.

r A more detailed discussion of regular county charters is found in Chapters 2 and 65.

s A more detailed discussion of county officials is found in Chapter 2.

State voters approved Amendment 12 in 1924, allowing the Legislature to classify counties by population and combine two or more offices into a single elective office. State voters approved Amendment 57 in 1972 authorizing the Legislature to delegate to counties the authority to set salaries for county officers. However, the Legislature still retains its prior authority to set compensation for county officers and to classify counties by population and provide different levels of compensation for county officials based upon these classifications if it chooses to exercise this authority.

Article XI, Section 8—Limitations on Changing Salaries

This provision limits changes in salaries of local government officials and precludes the extension of the term of office of a local government official beyond that for which the official was elected or appointed.[t]

The salary of local elected officials may not be increased (or decreased) during their current terms of office, except as provided in Article XXX, Section 1. Article XXX, Section 1 provides that the compensation of local officials who do not fix their own compensation may be increased during their current terms of office if authorized by statutes.

Article XI, Section 10—Cities, Generally

This is the basic constitutional provision relating to cities.[u]

Four separate concepts are included in this provision:

- A municipal corporation may not be created by special laws. This language applies to cities and special purpose districts.
- The Legislature is directed to enact general laws providing for areas to incorporate into cities and for the organization and classification of cities based upon their population.

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t A discussion of compensation for county elected officials is found in Chapter 2. A discussion of compensation for city elected officials is found in Chapter 6.

u A more detailed discussion of this provision is found in Chapters 6, 7, and 8.

- Cities existing prior to statehood are recognized and allowed to continue operating under their territorial charters, or these cities may reorganize under the new laws classifying cities.
- Any city with a population of 10,000 or more may adopt a charter providing for its government. Prior to the approval of Amendment 58 by state voters in 1972, only a city with a population of 20,000 or more could adopt a charter for its government.

Article XI, Section 11—Home Rule Police Regulatory Powers

This provision is a basic home rule provision for all counties and cities.[v]

Every county, city, town, and township is authorized to adopt "local" police power regulations that are not in conflict with state laws and to enforce these regulations within its boundaries.

Article XI, Section 12—Taxes for Local Purposes

This provision relates to taxation.[w]

Two concepts are included in this provision. First, the State is prohibited from imposing taxes for local governmental purposes. The literal language of this prohibition is that the Legislature is prohibited from imposing taxes on local governments, or the inhabitants or property of local governments, for local government purposes. Second, the Legislature is authorized to enact general laws granting the governing bodies of local governments the authority to impose taxes for local purposes.

Article XI, Section 16—Combined City-County Charters

This provision allows any county to adopt a unique "Home Rule" charter called a combined city-county charter.[x]

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v A more detailed discussion of this provision is found in Chapter 65.

w A more detailed discussion of local taxing authority is found in Chapter 63.

x A more detailed discussion of such a charter is found in Chapter 65.

State voters approved Amendment 23 in 1948, adding Section 16 to Article XI. This section directed the Legislature to enact legislation allowing the creation of a combined city and county charter in any county with a population of 300,000 or more. The Legislature never enacted enabling legislation.

State voters approved Amendment 58 in 1972, fundamentally altering this provision. The new provision is self executing, does not require enabling legislation, and expands the nature of a combined city-county charter by:

- Allowing such a charter to be adopted in any county;
- Expanding the nature of the charter to control every aspect of local government within the county; and
- Providing an indebtedness limitation for a combined city-county.

No county has adopted a combined city-county charter.

NOTES:

1. *Robison v. Dwyer*, 58 Wn.2d 576, 583 (1961).
2. RCW 28A.150.020.
3. *Y.M.C.A. v. Parish*, 89 Wash. 495, 497-498 (1916); *Seattle v. State*, at page 674; *CLEAN*, at page 802; & *Island County v. State*, 135 Wn.2d 141, 151-152 (1998). Utter and Spitzer, at pages 65-67.
4. *Hanson v. Hammer*, at page 319.
5. *Winston v. Spokane*, at pages 527-528.
6. *Board of Directors v. Peterson*, at pages 151-152 & 155.
7. RCW 28A.150.020.
8. Chapter 28B.50 RCW.
9. Chapter 28B.35 RCW.

Chapter 67

Local Government Elections

Two different types of election procedures exist in Washington State.

The first set of election procedures is used to conduct elections for the federal government, the State, counties, and cities, as well as all but one type of special purpose district with normal or regular franchise rights. These are the basic and commonly known election procedures.

The second set of election procedures is used to conduct elections for special purpose districts with limited franchise rights restricted to property owners.

The most significant differences between the first set of election procedures used for elections held by most governments, and the second set of election procedures used for elections in special purpose districts with franchise rights restricted to property owners, are:

- Franchise rights. United States citizens, at least 18 years of age, who reside within the boundaries of the unit of government are eligible to vote at elections for governments operating under the first set of election procedures. Only persons or entities owning property located within the boundaries of a special purpose district with restricted franchise rights are eligible to vote at elections for such a special purpose district.
- Conducting elections. County auditors conduct virtually all elections under the first set of election procedures. This includes elections conducted for

the federal government, the State, counties, cities, and all but one type of special purpose district with regular franchise rights. Each of the special purpose districts with franchise rights restricted to property owners conducts its own elections.

- State supervision. The Secretary of State adopts rules for county auditors to conduct elections under the first set of election procedures. State supervision is not provided for elections held under the second set of election procedures.

Details in the first set of election procedures have been changing for a number of years, and are still in a state of flux. Beginning in 1990, the Legislature has enacted legislation reforming general election laws. This included responses to difficulties that Florida experienced during the 2000 presidential election. This also included responses to the 2004 gubernatorial election where Christine Gregoire was elected Governor of Washington State by 134 votes, after a second recount of votes, and an unsuccessful effort by the losing Republican candidate to overturn this result in a judicial contesting of the election. General election laws have also been altered, and are still being altered, as a result of lawsuits by major political parties challenging the constitutionality of primary elections for partisan offices, and the popular will of state voters opposing these changes. These disputes between major political parties and the voters is discussed below.

Basic Local Government Elections

The basic election laws are codified in Title 29A RCW.

County auditors conduct elections for the federal government, the State, counties, cities, and all but one type of special purpose districts with normal franchise rights.[a] Each county auditor is designated as the *ex offico* supervisor of primaries and elections held within that county.[1]

a As discussed in Chapter 47, regular franchise rights exist for conservation districts, but elections for each conservation district is conducted by the board of supervisors of that district.

The Secretary of State is the chief elections officer for the State and is authorized to adopt rules that county auditors must follow in running elections, and to review election-related policies and procedures of each county.[2] County auditors conduct elections using these procedures at: (1) Primary elections where no more than two candidates for an office are chosen, whose names appear on the general election ballot for that office; and (2) general elections when officials for these offices are elected. County auditors also conduct special elections for these governments where ballot propositions for these governments are submitted to the voters for their approval or rejection. Special elections may be held in conjunction with a primary or general election, or at one of several special election dates throughout the year.

A. Eligibility to Vote

Article VI, Section 1 details regular or normal franchise rights in Washington State for elections held under the first set of election procedures, as follows:

> "All persons of age eighteen years or over who are citizens of the United States and who have lived in the State, county, and precinct thirty days immediately preceding the election at which they offer to vote, except those disqualified by Article VI, section 3 of this Constitution, shall be entitled to vote at all elections."

Article VI, Section 3 provides that citizens are disqualified from voting if they have been: (1) Convicted of an "infamous crime" and have not had their civil rights restored; or (2) declared by a court to be mentally incompetent. An infamous crime is generally recognized as a felony that would require incarceration in a state correctional facility. Procedures exist for some felons to petition and have their franchise rights restored.[3]

A system of voter registration is maintained by county auditors, with supervision by the Secretary of State.[4] Eligible voters may register by mail or at a wide variety of public offices, including the office of any county auditor, city offices, public schools, fire stations, public libraries, and various state offices. An eligible voter may also be registered by a person designated as a registration assistant or voter registrar at any location. An eligible voter may also register

by downloading a voter registration form, completing the form, and mailing the form into the county auditor. An eligible voter may also register to vote when applying for or renewing a driver's license. Unlike voter registration in a number of states, voters in Washington State do not indicate their political party preferences or affiliations when they register to vote.[5]

A large number of separate procedures are used to keep voter registration records current.[b]

B. Partisan vs. Nonpartisan Offices

Both partisan offices and nonpartisan offices exist in Washington State. Most local elective offices are nonpartisan offices. State elective offices are a mixture of partisan and nonpartisan offices.

The term "partisan office" is defined in state law as a public office for which the political party preference of candidates may be indicated on their declarations of candidacy and appear beside their names on primary and general election ballots.[6] Partisan offices are declared to be:

- United States senator and United States representative;
- All state offices (including legislative offices) other than judicial offices and the office of Superintendent of Public Instruction; and

b These procedures include: (1) Case-by-case maintenance of voter registration lists. (RCW 29A.08.620 & 29A.08.630) A voter is placed into an inactive status if the voter changes his or her address and fails to respond to a mailed notice requesting a response about the change in address. If a voter on inactive status fails to vote at a number of consecutive federal elections, a notice is sent to the voter removing the voter from voter registration lists unless the voter responds to this notice; (2) Removing the name of persons from voter registration lists if a death certificate has been issued for that person and county auditors reviewing obituary articles. (RCW 29A.08.510); (3) Removing the names of registered voters who have been convicted of felonies. (RCW 29A.08.520); (4) The Secretary of State conducting an ongoing voter registration maintenance program. (RCW 29A.08.610); (5) A program where the auditor of a county where a voter reregisters to vote is required to notify the auditor of the prior county where the voter was registered about the new registration. (RCW 29A.08.420); (6) Examining new voter registration records to determine if the applicant's driver's license number, state identification card number, or last four digits of his or her social security number match information held by the state Department of Licenses or the Social Security Administration. (RCW 29A.08.107); and (7) creation of a statewide electronic voter registration data base and the Secretary of State "coordinating" this data base with other agencies and states. (RCW 29A.08.125)

- All county offices other than judicial offices or any offices designated by a county charter as nonpartisan offices.[c]

No definition of "nonpartisan office" exists in state law, but a statute declares all judicial offices, the office of Superintendent of Public Instruction, all city offices, and all special purpose district offices to be nonpartisan offices.[7] A county charter may designate county non-judicial elective offices as nonpartisan or partisan offices. As discussed below, a major trend in state election law over many decades has converted partisan offices into nonpartisan offices.

Statutes dealing with the use of primary elections as part of the process to elect persons to partisan offices were in a state of flux for a number of years. In part, this state of flux resulted from the interaction between lawsuits by political parties challenging the constitutionality of state primary election laws and voter initiative action altering primary election laws.

1. Filing for office

Candidates for both partisan offices and non-partisan offices file declarations of candidacy in the same manner.[8] Filling a declaration of candidacy is more commonly known as filing for office. Most declarations of candidacy are filed with county auditors, but declarations of candidacy for some offices may be filed at the office of the Secretary of State.[9]

The basic difference between how candidates file for partisan and nonpartisan offices is that each candidate for a partisan office may designate a political party preference, or independent status, on his or her declaration of candidacy. Candidates for a nonpartisan

c The actual statute defining the term partisan office was part of Initiative Measure No. 872, which was found to be unconstitutional by the federal district court. (*Washington State Republican Party, et al. v. Dean Logan, et al.*, U.S.D.C. No. CVO5-0927-TSZ (W.D. Wash. 2005).) However, this language was taken from the old RCW 29.18.010 which was repealed by the Initiative but returns to be the law as a result of the federal district court's holding. Both the old statute, and new statute, recognize that a county charter may provide for any county non-judicial office as a nonpartisan office. Presumably this includes the office of county prosecuting attorney. However, Article XI, Section 4 precludes a regular county charter from affecting "the election of the prosecuting attorney...." Since statutory law (rather than constitutional law) declares the office of prosecuting attorney to be a partisan office, it may be argued that these statutes actually authorize a regular county charter to affect the election of the office of county prosecutor by making that office a nonpartisan office.

office do not designate their party preference or independent status when they file their declarations of candidacy.

2. Indication of party preference on the ballot

The political party preference, or "independent" status, of each candidate for a partisan office is indicated on primary and general election ballots.[10] No political party preference, or "independent" status, of a candidate for a nonpartisan office is indicated on the primary or general election ballot.

3. Primary elections

Washington State now operates under what is called a "top two system" of primary elections. Under this system, voters select or winnow the number of candidates whose names will appear on the following general election ballot for an office to no more than two.[11] The name of the candidate receiving the greatest number of votes for an office in the primary appears on the general election ballot for that office. The name of the candidate receiving the second greatest number of votes at the primary for an office also appears on the general election ballot, but only if this candidate received at least one percent of the total number of votes cast for that office in the primary.

Any eligible voter, without regard to his or her party membership, affiliation or preference, if any, may vote at a primary election to select the names of not more than two candidates that will appear on the general election ballot, without regard to the candidates' party memberships, preferences or affiliations, if any.[12] Voters may "cross party lines" and vote for any candidate of their choosing for a partisan office. This right to vote applies to primaries for both partisan offices and nonpartisan offices.

Legislation enacted in 2011 moved the date of primary elections to the first Tuesday in August preceding the general election.[13]

A primary election is always conducted for a partisan office, even where only one person files for that office.[14] A primary for a non-partisan office normally is held only if three or more candidates file for the same nonpartisan office.[15] However, a primary is never held for the offices of cemetery district commissioner or park and

recreation district commissioner, no matter how many candidates have filed for that office.

As discussed below, a constitutional provision provides for unique procedures for electing superior court judges.

4. General elections

All elected officials, except for superior court judges in certain instances, are elected at general elections where a voter may vote for any candidate of his or her choice, without regard to any possible party membership, affiliation, or preference (if any) on part of either the voter or a candidate. Voters may "cross party lines" and vote for any candidate of their choosing for a partisan office. The candidate for any office who receives the greatest number of votes for that office at a general election is elected to the office.

C. Unique Procedures for Electing Superior Court Judges

State voters approved Amendment 41 (Article IV, Section 29) in 1966, providing for a unique procedure for electing superior court judges in populous counties.

Under this constitutional provision, if only one candidate for "the superior court judge in any county with a population of one hundred thousand or more" has filed for that office after the last day when candidates may withdraw their candidacies, that candidate becomes the superior court judge. No primary is held. No election is held. The candidate essentially is "elected" to office merely by filing his or her declaration of candidacy for the office.[d] Thirteen counties had populations of 100,000 or more in 2015: Benton, Clark, Cowlitz, Grant, King, Kitsap, Pierce, Skagit, Snohomish, Spokane, Thurston, Whatcom, and Yakima. Island and Lewis Counties are projected to grow to this population level within a year or two.

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d Amendment 41 appears to assume that each county with a population of 100,000 or more has its own superior court and is not included in a multi-county superior court district. However, Benton County has a population of more than 100,000 and is included in a multi-county superior court district with Franklin County. RCW 2.08.064 creates Benton and Franklin Counties as a joint multi-county superior court district. Benton County had a population of 195,296 in 2015.

Amendment 41 includes another very peculiar provision relating to the election of superior court judges in a contested primary that was dependent on a particular statutory detail. This dependent constitutional provision is no longer applicable, since the particular statutory detail no longer exists. RCW 29A.36.170 contained this particular statutory detail, but was amended twice in the same legislative session. The Legislature should reenact this statute to insure that the old statutory detail no longer exists.

D. Election Dates

State law designates the times for holding elections, including a November date when general elections are held, a date when primaries are held before general elections, and various dates when special elections may be held.[16]

General elections are held on the first Tuesday after the first Monday in November. Primary elections, when needed, are held on the first Tuesday of August preceding the November general election. A special election may be held at a primary or general election, or at other designated dates, for voters to consider ballot propositions.

State elected officials, judicial officials (other than municipal court judges), and county elected officials in non-charter counties are elected at general elections held in even-numbered years.[17] A county charter may provide for county officials to be elected general elections held in either even-numbered or odd-numbered years. City officials and the elected officials of most special purpose districts with regular or normal voting rights are elected at general elections held in odd-numbered years.[18] However, public utility district (PUD) commissioners are elected at general elections held in even-numbered years. As discussed in Chapter 47, conservation district elections are held on other dates.

E. Election Details

County legislative authorities still create election precincts throughout the county, with a minimum of 1,500 voters per precinct, although polling places are no longer provided at these precincts.[19] The designation of precincts may no longer be needed with Washington's new system of all mail voting, but it is doubtful that

the Legislature will eliminate precincts, as political parties, candidates and others engaged in elections obtain useful data for general election campaigns from voting patterns detailed by geographically small voting precincts rather than by much larger governmental boundaries.

Under Washington's new, all mail voting system, all elections are conducted using mail ballots. Each active registered voter is "automatically" provided with a mail ballot for an election.[20] The mail ballot is accompanied with a "security envelope" in which the ballot is placed after the voter indicates his or her choices on the ballot, and a larger return envelope into which the security envelope including the ballot is placed and either mailed or otherwise returned to the county auditor.[21] Replacement ballots are available to voters whose ballot is destroyed, lost, spoiled or not received.[22]

A voter may mail his or her ballot to the county auditor or may drop his or her ballot off at election offices before the close of normal voting hours on the day of the primary or election. A mail ballot or absentee ballot that is post marked on or before the day of the primary or election will only be counted if received before the date the election or primary results are certified.[23] Ballots may also be deposited in secure drop boxes located throughout the county. Each county auditor is also required to open a voting center in the county for each general, primary, or special election and is open during the "voting period" which from 18 days before the date of the election through 8 pm of the day of the election.[24] A voting center must be accessible to persons with disabilities and has access to blind or visually impaired voters "enabling them to vote with privacy and independence."

Elections may only be conducted using voting systems that have been approved by the Secretary of State.[25] Each electronic voting device must produce an individual paper record of each vote that is cast using the device.[26] The office of the Secretary of State tests the programming for each vote tallying system at least three days before the system is used at a primary or general election.[27] County auditors perform system testing prior to all other elections.

Provisional ballots are distinguished from other ballots and are used for a variety of reasons, including the name of the voter not

appearing in registration books.[28] A provisional ballot, if determined to be a valid ballot, is tabulated at county election offices.

"Write-in" voting is allowed in Washington State where a voter may write the name of a person on the ballot for an elective office and vote for that person in lieu of a person whose name is printed on the ballot.[29]

The processing and tabulating of ballots is open to the public.[30] This observation is primarily achieved by observers designated by major political parties.

A three-member canvassing board in each county canvasses primary and election results and certifies election results in each county.[31] The canvassing board consists of the county auditor, the prosecuting attorney, and the chair of the county legislative body, or the designee of any of these officials.[32] An abstract of election results is prepared and sent to the Secretary of State, who certifies election results for primaries and elections held for federal offices, state offices, and other offices with districts extending beyond the boundaries of a single county, as well as statewide ballot measures. County auditors certify primary and election results for other offices and ballot measures.

Provisions are made for recounting election results and for contesting election results.[33]

Unique Special Purpose District Elections

The second set of election procedures in Washington State is used by special purpose districts where the franchise is limited or restricted to property owners. This includes irrigation districts, diking districts, drainage districts, diking improvement districts, drainage improvement districts, and flood control districts. These special purpose districts conduct their own elections.

Two different sets of election procedures exist for these special purpose districts. One set of election laws is provided for irrigation districts. Another set of election laws is provided for all of these other special purpose districts.

These election procedures are basically used to elect members of the special purpose district governing bodies. All of these elective offices would be classified as nonpartisan offices, although obviously, these officials are elected using election procedures differing from normal election procedures. Ballot propositions occasionally are submitted to voters using these election procedures.

A. Irrigation Districts

The franchise in irrigation districts is limited to property owners. Three different classes of irrigation districts are established with varying voting rights as follows:

- In a district with 200,000 or more acres, a qualified voter is either: (1) Any person owning land in the district who is at least 18 years old, a U.S. citizen, and a resident of the State owning land in the district; or (2) any "corporation" owning land in the district. A qualified voter receives one vote for the first 10 acres owned in the district and one additional vote if the voter owns more than 10 acres of land in the district.[34]
- In a district with less than 200,000 acres, a qualified voter is either: (1) Any person owning property in the district who is at least 18 years old, a U.S. citizen, and a resident of the State owning land in the district; or (2) any "entity" owning land in the district. A qualified voter receives two votes for each five acres of assessable land, or fraction thereof, owned in the district, but a single qualified voter may not accumulate more than 49 percent of the votes in the district.[35]
- In a district of any geographic size where more than 50 percent of the total acreage is owned in individual ownerships of less than 5 acres, a qualified voter is either: (1) Any person owning land in the district who is at least 18 years old, a U.S. citizen, and a resident of the State owning land in the district; or (2) any "corporation" owning land in the district. A qualified

voter receives two votes regardless of the extent of ownership. Where community property exists, each spouse receives one vote.[36]

Each irrigation district conducts its own elections without assistance or supervision by the county auditor or the Secretary of State.[37] Elections to elect irrigation district commissioners are held on the second Tuesday of each December.[38] Primaries are not held as part of the process to elect irrigation district directors. Poll sites are designated by the irrigation district where voters may cast their ballots, but votes may also be cast by absentee ballot.

B. Other Special Purpose Districts

Elections for all of the other types of special purpose districts with restricted franchise rights limited to property owners are conducted using another set of election procedures.[39] The special purpose districts using this set of election procedures include diking districts, drainage districts, diking improvement districts, drainage improvement districts, and flood control districts.

Legislation was enacted in 1985 and 1991, providing for common franchise rights and election procedures for these special purpose districts.[e] [40]

As discussed in Chapter 20, franchise rights in these special purpose districts are limited to persons or entities owning property located in the special purpose district.[41] Each qualified voter receives two votes without regard to the extent of land ownership or the number of parcels owned. Each member of a marital community owning community property in the district receives one vote. However, qualified voters in some of these special purpose districts may receive additional votes as follows:

- Each qualified voter in a diking improvement district or drainage improvement district who owns more than 10 acres in the district is given two additional

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e This and other legislation codified in Chapter 85.38 RCW also provides for: (1) Alternative financial provisions for these special purpose districts, including methods to impose special assessments, as well as and rates and charges, to finance their operations and for issuing bonds; (2) common methods to annex territory; (3) common methods to consolidate; (4) common methods to suspend their operations; and (5) common methods to dissolve.

votes for each 10 acres or major portion thereof owned in the district, but not to exceed a total of 20 votes.[42]

- Each qualified voter in a flood control district who owns more than 10 acres in the district is given two additional votes for each 10 acres or major portion thereof owned in the district, but not to exceed a total of 40 votes.[43]

Each special purpose district conducts its own elections but may be assisted by the county auditor and is subject to some control by the county auditor.[44] The Secretary of State does not provide any assistance or supervision in these elections. A special purpose district creates a list of presumed eligible voters and provides the list to the county auditor. Elections for these special purpose districts are held on the first Tuesday after the first Monday in February in each even-numbered year. Primaries are not held as part of the process to elect the officials of these special purpose districts. Elections are either conducted at polling sites by the special purpose district or by the county auditor using mail ballots.

Major Changes in Election Law

Washington election laws have undergone considerable change since the creation of Washington Territory and especially since statehood.

These changes include: (1) Expanding general franchise rights; (2) changing the franchise in certain special purpose districts from regular or normal voters to restricted or limited voting rights where only property owners are allowed to vote; (3) creating and expanding non-partisan offices; (4) providing for voter registration; (5) providing for primaries as part of the process to elect public officials; (6) providing for county auditors to conduct elections for cities; (7) providing a common November general election date for most local governments; (8) moving the date of a primary election from a date in September to the first Tuesday in August; and (9) conducting all elections for governments with regular franchise rights using mail ballots.

Historically, many efforts to reform election laws arose from tensions between political parties and the Populist tendencies of voters in Washington State. Voter opposition to electoral provisions supported by political parties continues to this day. Reform efforts pushed by Washington voters that can be seen as opposing positions taken by political parties include:

- Establishing primary elections as part of the process by which candidates for elective office are selected, rather than nominating candidates at party conventions.
- Opposing efforts by political parties to require designation of political party membership when voters register to vote.
- Altering the nature of primary elections to provide for blanket primaries and then for qualifying primaries or the top two system of primaries where the two candidates receiving the two greatest number of votes advance to the general election ballot regardless of political party affiliation.
- Providing for non-partisan offices in lieu of partisan offices as the most common type of elective office in Washington.

A. Expanding Franchise Rights

Franchise or voting rights have been expanded since Washington Territory was created in 1853. Many of the details discussed below are not found in any other book or publication, especially concerning the three different types of elections under Washington Territorial laws where, at times, women were allowed to vote. Anyone interested in women's franchise rights should review this discussion and the table provided below.

The Organic Act creating Washington Territory specified franchise rights for the first election in the Territory.[45] Each "white male inhabitant above the age of twenty-one years" who resided in the Territory when the Organic Act was enacted and who was a citizen of the United States, or had declared his intention to become a citizen, was eligible to vote. The Legislative Assembly was allowed to establish alternative voter qualifications for subsequent elections,

subject to the restriction that only "citizens of the United States" who were over 21, and others who were over 21 who had declared their intention of becoming citizens, could be allowed to vote.

1. Black and other minority male citizens

The rights of black male citizens and other minority male citizens to vote was secured by the so-called Civil War Amendments to the United States Constitution. Amendment XIII, ratified in 1865, abolished slavery. Amendment XIV, ratified in 1868, precluded any state from abridging the rights of citizens. Amendment XV, ratified in 1870, prohibited any state from abridging the right of citizens to vote on account of race, color, or previous condition of servitude.

2. Women

Women's suffrage rights had a more tortured history in Washington. During Territorial years, and the early years after statehood, differing requirements existed for franchise rights in general elections (for the Territory, counties, and cities), annual school district meetings, and annual road district meetings.

The following table summarizes laws allowing women to vote at general elections, annual school district meetings, and annual road district meetings. "No" indicates that laws did not allow women to vote at a particular type of election. "Yes" indicates that laws allowed women to vote. Note that "school" elections were held at annual school district meetings and "road district" elections were held at annual road district meetings. Again, no other reference or publication includes details about women being able to vote, at times, at school district elections and road district elections.

Year	Gen. elections	School dist. meetings	Road dist. meetings
1854, early	no	yes if taxpayer[f] [46]	N.A.
1854, late	no	yes if taxpayer	yes if taxpayer[g] [47]

f Legal voters at a school district meeting were "every inhabitant" over age 21 who has resided in the district for at least 3 months and who is a taxpayer.

g Legal voters at a road district meeting included "all persons in the district" who were required to

Year	Gen. elections	School dist. meetings	Road dist. meetings
1860	no	no[h] [48]	yes if taxpayer
1867	yes[i] [49]	no	yes if taxpayer
1868	yes	no	no[j] [50]
1871	no[k] [51]	yes[l] [52]	no
1877	no	yes[m] [53]	no
1879	no	yes	yes if taxpayer[n] [54]
1881	no	yes	no[o] [55]
1883	yes[p] [56]	yes	no
1887	no[q] [57]	yes	no
1888, early	yes[r] [58]	yes	no

work on the roads and any property owner in the district.

h Legal voters at a school district meeting were "every white male" over age 21 who resided in the district for at least 3 months or who is a taxpayer in the district.

i Legal voters at general elections were: (1) All "white American citizens above the age of twenty-one years"; (2) all American half-breeds over that age who can read and write and have adopted the habits of the whites"; and (3) "all other white male inhabitants of this Territory above that age who shall have declared on oath their intention to become citizens at least six months previous to the day of the election". (Emphasis added.)

j Legal voters at road district meetings were "all male persons" in the district who were required to work on the roads or have road taxes to pay.

k A private law was enacted stating that women were not allowed to vote unless Congress enacted legislation allowing women to vote. It is not clear how a private law could amend a general law.

l Legal voters at school district meetings were "every inhabitant" over age 21 who resided in the district for at least 3 months or is a taxpayer.

m Legal voters at school district meetings were "every inhabitant male or female" over age 21 who resided in the district for at least 3 months or who is a taxpayer. (Emphasis added.)

n Legal voters at road district meetings were "all persons" in the district who are required to labor on the roads or pay road taxes.

o Legal voters at road district meetings were "all male persons" in the district who are required to labor on the roads or pay road taxes.

p Legal voters at general elections were: (1) all "white American citizens" above the age of 21; (2) all "half-breeds" of the same age who can read and write and have adopted the habits of whites; and (3) all other "white inhabitants" of that age who have declared on oath their intention to become citizens. No reference was made to the 1871 private law prohibiting women from voting.

q The Territorial Supreme Court voided this legislation on the grounds that the Organic Act creating Washington Territory required each statute enacted by the Legislative Assembly to embrace one subject and that subject be expressed in the title of the legislation.

r This legislation again expressly granted women the right to vote under the same conditions that a man could vote.

Year	Gen. elections	School dist. meetings	Road dist. meetings
1888, late	no[s] [59]	yes	no
1889, statehood	no[t] [60]	yes[u] [61]	no
1910	yes[v] [62]	N.A.	N.A.

Arthur A. Denny introduced legislation at the first Legislative Assembly of Washington Territory in 1854 granting women the right of suffrage. This legislation was defeated by an eight to nine vote in the lower house.[63]

The Legislative Assembly enacted legislation in 1867, authorizing white women citizens the right to vote.[w] [64] However, the Legislative Assembly reversed itself by enacting a private law in 1871, stating that females could not vote unless Congress allowed them to vote.[65] This law was codified among local and private laws, did not expressly amend the prior statute granting women the right to vote, and did not include general language stating that any conflicting law is amended by this private law. Nevertheless, it appears that women were not allowed to vote in Washington Territory after this private law was enacted. Then, legislation was enacted in 1883, again allowing women to vote.[x] [66] This legislation was amended in

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s The Territorial Supreme Court voided this legislation on the grounds that it violated the Organic Act creating Washington Territory. The Court held that the requirement that only citizens should be allowed to vote should read "male citizens".

t Legal voters were defined as "all male persons" over age 21 who are U.S. citizens and met various residency requirements.

u Legal voters at school district elections were "every person, male or female," over age 21 who met a residency requirement.

v Legal voters at all elections included "all persons" over age 21 who meet various residency requirements.

w This legislation granted the right of franchise to the following persons, if they met certain residency requirements: (1) All "white American citizens above the age of twenty-one years"; (2) "all American half-breeds over that age who can read and write and have adopted the habits of the whites"; and (3) "all other white male inhabitants of this Territory above that age who shall have declared on oath their intention to become citizens at least six months previous to the day of the election". (Emphasis added.)

x This legislation repeated the language from the 1866 statute, but dropped its single reference to the sex of the eligible voters. Three groups were allowed to vote: (1) all "white American citizens" above the age of 21; (2) all "half-breeds" of the same age who can read and write and have adopted the habits of whites; and (3) all other "white inhabitants" of that age who have declared on oath their intention to become citizens. No reference was made to the 1871 private law prohibiting women from voting. This new law clearly allowed women to vote in Washington

1885 by inserting "male and female" into each of the groups of persons allowed to vote.[67] However, the Territorial Supreme Court voided this legislation in 1887, on the grounds that the Organic Act creating Washington Territory required each statute enacted by the Legislative Assembly to embrace one subject, and that subject be expressed in the title of the legislation.[68] The title of the legislation granting franchise rights to women referred to the section of law that was being amended, rather than describing the subject matter of that section of law. This type of bill title was actually quite common for legislation enacted by the Territorial Assembly, but these laws were not challenged on this ground.

A proposed state constitution that was adopted by all male delegates at a constitutional convention held in Walla Walla, in June of 1878, rejected a provision granting women the right to vote.[69] Although voters approved this proposed constitution, Congress refused to enact legislation creating Washington as a state at that time.

The Legislative Assembly enacted legislation in 1888, again granting full franchise rights to women.[70] However, later in the same year, the Territorial Supreme Court voided this legislation as violating the Organic Act creating Washington Territory.[y] [71] The Court held that the requirement that only citizens should be allowed to vote should read "male citizens".

The original State Constitution was approved by voters in 1889, creating Washington State. These voters consisted of only adult male citizens. Article VI, Section 1 provided that only males over age 21 who were citizens of the United States could vote if they had lived in the State for one year, the county for 90 days, and the city, ward, or precinct for 30 days immediately preceding the election. Native Americans who were not taxed were not allowed to

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Territory under the same conditions that men could vote.

y The Court held that although the Organic Act expressly authorized the Legislative Assembly to prescribe the qualifications of voters, voters had to be "citizens of the United States" and that the word "citizens" should be read as "male citizens". This holding strains credulity. The Organic Act express limited the franchise at the first election in the Territory to white males who were aged 21 and either American citizens or have declared their intention of becoming American citizens. However, the Organic Act allowed the Legislative Assembly to establish franchise rights for subsequent elections, with the only limitation that only persons who were at least 21 years old and either American citizens or persons taking an oath that they will become citizens could be allowed to vote. References to males and whites were not included.

vote. Basically, this meant that Native Americans living on a reservation were not allowed to vote. The adult male voters voting on approval of the new constitution in 1889 also rejected an alternative constitutional provision that would have granted women the right to vote.[72] However, the original State Constitution also included Article VI, Section 2, which allowed the Legislature to grant franchise rights to women at school district elections. Legislation was enacted by the first State Legislature continuing the authorization for women to vote at school district elections, which actually were annual school district meetings.[73]

State voters approved Amendment 5 in 1910, extending general franchise rights to women at all elections. This was ten years before the United States Constitution was amended by Amendment XIX to extend the suffrage to women.

3. Age 18

The United States Constitution was amended in 1971 by Amendment XXVI reducing the minimum age when citizens could vote from 21 to 18. State voters approved Amendment 63 in 1974, making a similar change to the State Constitution. This amendment also eliminated language precluding untaxed Indians from voting.

B. Franchise Rights in Certain Special Purpose Districts

Franchise rights in certain types of special purpose districts were dramatically altered in the 20th century. This includes irrigation districts, diking districts, drainage districts, diking or drainage improvement districts, and flood control districts.

Prior to 1913, regular voting rights existed in these special purpose districts. However, commencing in 1913, legislation was enacted changing franchise rights in these special purpose districts from regular voters to restricted franchise rights where only property owners were allowed to vote.[z]

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z Regular voting rights were provided for irrigation districts at Section 3, page 671-706, Laws of 1889-1890, when irrigation districts were first authorized. Voting rights were altered to property owners by Section 2, Chapter 165, Laws of 1913.

Regular voting rights were provided for diking districts at Section 5, Chapter CXVII, Laws of 1895, when the more modern diking district laws were enacted. Voting rights were altered to property

The United States Supreme Court recognizes the authority of a state to restrict voting rights in certain special purpose districts if the state demonstrates a "compelling state interest" in restricting these voting rights.[74] Voting rights may only be restricted if the special purpose district does not exercise normal governmental functions and only exercises very specialized and narrow powers with disproportionate impacts on property owners. This is an exception to what is known as the One Person, One Vote Doctrine.[aa]

C. Nonpartisan Elective Offices

All elective offices in Washington were partisan offices during territorial years, and the early years of statehood. However, commencing in 1907, legislation has been enacted, changing partisan offices to nonpartisan offices.

Although the term "partisan" office was not used in early election laws, all elective offices would be classified as partisan offices since names were placed on the general election ballot by action of party organizations and a candidate's party affiliation was designated on the general election ballot.[75] Primaries were not held to nominate candidates at that time.

The move to create and expand nonpartisan offices occurred as follows:

- Legislation was enacted in 1907, designating the offices of Supreme Court justice and superior court

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owners by Section 1, Chapter 84, Laws of 1915.

Voting rights in drainage improvement districts were given to regular voters who owned property in the districts when these districts were authorized at Section 19, Chapter 176, Laws of 1913. This legislation was expanded to provide for diking improvement districts in 1917, with the same restriction on voting rights by Chapter 130, Laws of 1917. However, legislation was enacted in 1985 altering franchise rights to property owners in Sections 2 & 87, Chapter 396, Laws of 1985.

Voting rights in flood control districts were restricted to property owners when these districts were first authorized by Section 122, Chapter 72, Laws of 1937.

Regular voting rights were provided for drainage districts by Section 5, Chapter CXV, Laws of 1895, when the more modern drainage district laws were enacted. Voting rights were altered to property owners at Section 1, Chapter 183, laws of 1941.

aa A discussion of the One Person, One Vote doctrine is found in Chapter 72.

judge as nonpartisan offices.[bb] [76] These were the first nonpartisan offices in Washington State.

- Legislation was enacted in 1911, recognizing that the charter of a first class city could designate offices as nonpartisan.[77] Presumably, at least one city charter so designated offices, or this provision probably would not have been enacted.

- Legislation was enacted in 1911, allowing certain cities to change from a mayor/council form of government to a commission form of government. This legislation essentially provided for nonpartisan offices, since a candidate for city commission is nominated by a petition signed by at least 100 city voters, rather than using the normal partisan procedure.[78]

- Legislation was enacted in 1933, providing that the office of justice of the peace was a nonpartisan office.[79] The office of justice of the peace is now the office of district court judge.

- State voters approved Initiative Measure No. 126 at the 1938 general election making the offices of Superintendent of Public Instruction, county superintendents of public instruction, and school district director nonpartisan offices.[cc] [80]

- Legislation was enacted in 1949, providing that all city elective offices were nonpartisan in first class, second class, and third class cities, unless the charter of a first class city provided otherwise.[81] No

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bb Superior court judges and Supreme Court justices were elected without partisan affiliation in 1908, but the Republican controlled Legislature reinstated the use of partisan affiliations for the 1910 election to elect a slate of Republican candidates for the Supreme Court. Legislation was enacted in 1911 again eliminating partisan affiliation for these judicial offices. (Sheldon, Charles H., *The Washington High Bench, A Biographical History of the State Supreme Court, 1889-1991*, Washington State University Press, 1992, endnote 23, at page 45.)

cc The language in this initiative is not precise. Section 2, of this Initiative expressly provided that the offices of Superintendent of Public Instruction and county superintendents of public instruction were nonpartisan offices. However, the office of school director was made nonpartisan by a general intent statement in Section 1 of this Initiative, which provided that "[t]he best interests of the school children of this State will be served by removing the administration of the schools from partisan politics." This lack of clarity was corrected by Section 29.21.080, Chapter 9, Laws of 1965. An explanation of this "correction" at page 939 of the Session Laws states that "This restores substantive content of 1939, c 1, s 1."

primaries were to be held in towns and candidates for town offices were nominated by party caucuses.[82]

- Legislation was enacted in 1950, providing that all offices in first class cities were nonpartisan offices, notwithstanding the provisions of a city charter to the contrary.[83]
- Legislation was enacted in 1969, creating the Courts of Appeals.[84] It was clarified in legislation enacted in 1971 that the office of Court of Appeals judge was a nonpartisan office.[85]
- Legislation was enacted in 1976, providing that all town offices were nonpartisan offices, as well as all special purpose district offices, other than public utility district commissioners.[86]
- Legislation was enacted in 1977, making public utility district commissioners nonpartisan offices.[87]

This last change in 1977 established the current extent of elective offices that are designated as nonpartisan offices in statute. At present, all city offices, all special purpose district offices, all judicial offices, and the office of Superintendent of Public Instruction are nonpartisan offices.[88] Legislation has been introduced, but not enacted, converting the offices of county auditor and county sheriff to nonpartisan offices. Legislation has also been introduced, but not enacted, converting the office of Secretary of Washington State to a nonpartisan office.

As discussed above, a county charter may designate any county elective office (other than prosecuting attorney or a judge) as a nonpartisan office.

D. Voter Registration

Voter registration requirements were gradually instituted in Washington after statehood.

The original State Constitution (Article VI, Section 7) required the Legislature to establish a system of voter registration, but only required the registration system in any city with a population of 500

or more. However, the first State Legislature enacted legislation requiring all cities to register voters, as well as any county to register voters in any county voting precinct with a "voting population" of 250 or more.[dd] [89] This allowed a county to avoid voter registration by creating voting precincts with voting populations of less than 250.

Legislation was enacted in 1909, stating that voters indicate their party when they register to vote, if they reside in a precinct with voter registration.[90] The Legislature enacted legislation in 1921, creating statewide voter registration requirements that included a voter to designate his or her "political faith" when registering.[91] However, state voters by referendum action defeated the portion of this legislation providing for designation of political faith at the 1922 general election.[92]

E. Primary Elections

The procedure for placing candidates on general election ballots has changed dramatically since statehood. These laws have been in a state of flux for a number of years, as the result of lawsuits by political parties and voter initiative action.

Legislation was enacted by the first State Legislature providing two separate procedures for candidates to have their names placed on general election ballots:

- An assemblage of voters or delegates representing a political party or a principle could meet and select their candidate for an office. The meeting or process used by the assemblage to nominate its candidate for an office was called a convention, primary meeting, or primary election that was conducted by the party itself.
- Electors could sign a certificate of nomination placing a candidate on the ballot. The certificate had to be signed by at least: (1) 100 voters for a statewide office; (2) 50 voters for a county, district,

dd The term "voting population" was defined as people entitled to vote "as shown by the number of votes cast at the preceding general election". (Section 2, Chapter CXXXV, Laws of 1901) This probably meant the number of persons who voted in the precinct at the last general election.

> or other division less than the State; or (3) 10 voters for a township, precinct, or ward office.[ee] [93]

The system of placing candidates on general election ballots changed dramatically in 1907, when legislation was enacted first establishing September nominating primaries for all offices other than town offices, school district offices, diking district offices, and irrigation district offices.[94] A voter was provided with the ballot of the party he requested and could only vote for candidates from that party. The move to nominate candidates at primary elections conducted by public officials, rather than using conventions or petitions to nominate candidates, was part of the Populist agenda.

The Legislature enacted legislation in 1915 allowing any political party to conduct its own primary if any of its candidates had received ten percent or more of the vote for an office at the last general election.[95] However, voters took referendum action (Referendum Measure No. 5) against this legislation, and the legislation was defeated by state voters in 1916.

The Legislature enacted similar legislation in 1921.[96] Voters again took referendum action (Referendum 15) against this legislation and the legislation was defeated by state voters in 1922.

The blanket primary was established when the Legislature enacted Initiative Measure to the Legislature No. 2 in 1935.[97] This legislation provided that:

> "[a]ll properly registered voters may vote for their choice at any primary held under this title, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter."[98]

Voters were allowed to "cross party lines" at a primary and vote for any candidate without regard to the voter's or the candidate's party affiliation, preference, or membership, if any.

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ee It is somewhat peculiar that these provisions mentioned "township" offices. Township offices did not exist at that time. Legislation allowing for the creation of townships was not enacted until 1895. (Chapter CLXXV, Laws of 1895.)

The blanket primary election law remained in effect for decades. However, in 2000 the United States Supreme Court held that a similar blanket primary system used in California to nominate candidates for partisan offices was an unconstitutional violation of the political parties' rights of free association.[99] A lawsuit by the three major political parties in this State was soon filed challenging Washington State's blanket primary system. Initially, the State was successful defending its version of the blanket primary in the federal district court. This allowed the 2002 elections to be conducted using the blanket primary. However, on appeal, the Ninth Circuit Court of Appeals held that Washington State's blanket primary violated the major political parties' rights of free association.[100]

The Legislature responded by enacting legislation providing for a new basic primary system and an alternative system if a court held the basic primary system unconstitutional.[101] This new basic primary system was called a qualifying primary system and somewhat resembled the prior blanket primary system. The purpose of the primary for a partisan office was to qualify the two candidates for a partisan office to the general election ballot who received the two highest number of votes, without regard to the party affiliation, preference, or membership, if any, of the voters or candidates. The purpose of the primary was no longer to select the nominees of the major political parties. Voters at the primary could "cross party lines" and vote for any candidates they wanted for partisan offices, without regard to party affiliation. An alternative primary system was provided if the qualifying primary system was held unconstitutional. This alternative primary was a form of open primary with private or confidential choice that is called the "Montana system". Under this alternative system, the purpose of the primary is to select a nominee from each major political party for a partisan office who advances to the general election ballot. A voter could only vote for candidates from a major political party if he or she selected that party's ballot. Minor party candidates and independent candidates for partisan offices would not appear on the primary ballot and would be placed directly on the general election ballot if a nominating petition for the candidate was submitted with sufficient valid signatures. A voter's selection of a partisan ballot is private and a record is not made of this choice.

Governor Gary Locke exercised his section veto power to veto sections providing for the new, qualifying primary system. This left the alternative "Montana system" as the State's new primary system. The 2004 primary was conducted using this "Montana system".

The Washington State Grange drafted and promoted Initiative Measure No. 872 for the 2004 general election to replace the so-called "Montana system" of primaries with a primary system resembling the qualifying primary that Governor Locke had vetoed. State voters approved Initiative Measure No. 872 at the 2004 general election.

The major political parties challenged the constitutionality of this new qualifying primary. Officials of these political parties claimed that each political party has the right to determine who may use their "name" on election ballots. Judge Thomas S. Zilly, United States District Court, Western District of Washington at Seattle, ruled that Initiative Measure No. 872 was unconstitutional as violating the First Amendment rights of free association of political parties to select their own nominees at primary elections for partisan offices who advance to the general election ballot.[102] However, in 2008, the United States Supreme Court upheld the constitutionality of Initiative Measure No. 872's new qualifying primary or top two system.[103]

F. County Auditors Conducting City Elections

Cities conducted their own elections until legislation was enacted in 1947, and in 1963, transferring the authority to conduct these elections from cities to county auditors.[ff]

G. Common November General Election Date

General elections to elect federal, State, and county officials are specified in the State Constitution as occurring on the Tuesday following the first Monday in November in even-numbered years.[104] This is consistent with federal requirements.

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ff Legislation was enacted in 1947 transferring the authority to conduct most city elections in larger counties from cities to the county auditor by Section 1, Chapter 182, Laws of 1947. Finally, legislation was enacted in 1963 transferring the authority to conduct all remaining city elections from cities to the county auditory by Section 1, Chapter 200, Laws of 1963.

At one time, general elections for cities and most special purpose districts were held in March, May, or December.[105] However, legislation was enacted in 1963, providing for a common November general date for cities and all special purpose districts with regular franchise rights.[gg] [106]

Legislation was enacted in 1973, providing for annual state and county general elections to be held at that November date each year.[107] This allowed ballot measures, and elections to fill vacancies, to be held in odd-numbered years for these governments.

H. Primary Election Dates

Legislation was enacted in 2006, moving the date of primary elections from a day in September to the third Tuesday in August.[108] This change took effect in 2007. Legislation was enacted in 2011 moving the date of primary elections back another two weeks to the first Tuesday in August.[109]

NOTES:

1. RCW 29A.04.216 & 36.22.220.
2. RCW 29A.04.230, 29A.04.610, 29A.04.530, 29A.04.570, 29A.04.590, 29A.12.140, & 29A.40.150.
3. RCW 9.92.066, 9.94A.637, 9.94A.885, & 9.95.260; and Chapter 9.96 RCW.
4. Chapter 29A.08 RCW. These statutes include provisions adopted in compliance with the so called federal Motor Voter Law, which is actually the National Voter Registration Act of 1993, Public Law 103-31, 107 Stat. 77, 42 U.S.C.S. §§ 1973gg et seq.
5. RCW 29A.08.210.
6. RCW 29A.04.110.
7. RCW 29A.52.231.

gg Irrigation districts now hold their general elections on the second Tuesday of December of each year (RCW 87.03.080), and all other special purpose districts with the franchise limited to property owners hold their general elections on the first Tuesday after the first Monday in February of every even-numbered year (RCW 85.38.100).

8. RCW 29A.24.031.
9. RCW 29A.24.070.
10. RCW 29A.36.121.
11. RCW 29A.04.127 & 29A.36.170.
12. RCW 29A.04.127.
13. RCW 29A.04.311.
14. RCW 29A.52.116.
15. RCW 29A.52.220.
16. RCW 29A.04.321 & 29A.04.330.
17. RCW 29A.04.321(1).
18. RCW 29A.04.330(1).
19. RCW 29A.16.040.
22. RCW 29A.40.010.
23. RCW 29A.40.091.
24. RCW 29A.40.070.
23. RCW 29A.40.110.
25. RCW 29A.40.160.
25. RCW 29A.12.020 & 29A.12.050.
26. RCW 29A.12.085.
27. RCW 28A.12.130.
28. RCW 29A.04.008(5) & 29A.60.195.
29. RCW 29A.24.311 & 29A.24.320.
30. RCW 29A.60.170.
31. RCW 29A.60.140, 29A.60.010, 29A.60.070, & 29A.60.190.
32. RCW 29A.60.140.
33. Chapters 29A.64 & 29A.68 RCW.
34. RCW 87.03.045.
35. RCW 87.03.051.
36. RCW 87.03.071.
37. RCW 87.03.085-87.03.110.
38. RCW 87.03.080.

39. RCW 85.38.105.
40. Chapter 396, Laws of 1985 and Chapter 349, Laws of 1991, codified in Chapter 85.38 RCW.
41. RCW 85.38.105.
42. RCW 85.08.025.
43. RCW 86.09.377.
44. RCW 85.38.110-85.38.130.
45. Section 5, 10 U.S. Statutes at Large, c. 90, p. 172, approved March 2, 1853.
46. Statutes of the Territory of Washington, 1854, 1st Session, Chapter III, Section 14, Pages 319-330.
47. Statutes of the Territory of Washington, 1854, 2nd Session, Section 14, Pages 44-47.
48. Statutes of the Territory of Washington, 1859-1860, 7th Session, Chapter III, Section 26, Pages 304-322.
49. Statutes of the Territory of Washington, 1866-1867, 14th Session, Section 8, Pages 5-9.
50. Statutes of the Territory of Washington, 1867-1868, 1st Biennial Session, Section 12, Pages 3-17.
51. Statutes of the Territory of Washington, Local and Private laws, 1871, 3rd Biennial Session, Section 1, Page 175.
52. Statutes of the Territory of Washington, 1871, 3rd Biennial Session, Chapter V, Section 20, Pages 12-30.
53. Statutes of the Territory of Washington, 1877, 6th Biennial Session, Title V, Section 35, Pages 259-283.
54. Statutes of the Territory of Washington, 1879, 7th Biennial Session, Section 19, Pages 46-69.
55. Statutes of the Territory of Washington, 1881, 8th Biennial Session, Section 1, Pages 9-10.
56. Statutes of the Territory of Washington, 1883, 9th Biennial Session, Section 1, Pages 39-40.
57. *Harland v. Territory of Washington*, 3 Wash. Territory 131, 152 (1887).
58. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter LI, Page 93.
59. *Bloomer v. Todd et al.*, 3 Wash. Terr. 599, 605 (1888).
60. Article VI, Section 1, Washington State Constitution.
61. Article VI, Section 2, Washington State Constitution & Chapter XII-Educational, Section 58, Pages 348-385, Laws of 1889-1890.

62. Amendment 5, altering Article VI, Section 1, Washington State Constitution.
63. Larson, T.A., "The Woman Suffrage Movement in Washington", 67 Pacific Northwest Quarterly 49, at page 49 (1976) and; Caplan, Aaron H., "The History of Women's Jury Service in Washington", Washington State Bar News, Volume 59, Number 3, March 2005, pages 12-21, at endnote 3.
64. Statutes of the Territory of Washington, 1866-1867, 14th Session, Section 8, Pages 5-9.
65. Statutes of the Territory of Washington, Local and Private laws, 1871, 3rd Biennial Session, Section 1, Page 175.
66. Statutes of the Territory of Washington, 1883, 9th Biennial Session, Section 1, Pages 39-40.
67. Statutes of the Territory of Washington, 1885-1886, 10th Biennial Session, Section 1, Pages 113-114.
68. *Harland v. Territory of Washington*, 3 Wash. Territory 131, 152 (1887).
69. Ficken, at page 142.
70. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter LI, Page 93.
71. *Bloomer v. Todd et al.*, 3 Wash. Terr. 599, 605 (1888).
72. Ficken, at pages 209 & 212.
73. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter LI, Page 93.
74. *Ball v. James*, at pages 364-365.
75. Sections 2 & 5, Chapter XIII - Election Laws, Page 400, Laws of 1889-1890.
76. Section 8, Chapter 209, Laws of 1907.
77. Section 2, Chapter 102, Laws of 1911.
78. Section 7, Chapter 116, Laws of 1911.
79. Section 1, Chapter 85, Laws of 1933.
80. Initiative Measure No. 126, Chapter 1, Laws of 1939.
81. Section 3, Chapter 161, Laws of 1949.
82. Section 4, Chapter 161, Laws of 1949.
83. Section 7, Chapter 257, Laws of 1950.
84. Chapter 221, Laws of 1969 ex. sess., which is codified as Chapter 2.06 RCW.
85. Section 75, Chapter 81, Laws of 1971, which has been repealed and is replaced by RCW 29A.52.231.
86. Section 1, Chapter 120, Laws of 1975-1976 2nd ex. sess.

87. Section 3, Chapter 53, Laws of 1977.
88. RCW 29A.52.231.
89. Section 2, Page 414, Laws of 1889-1890.
90. Section 4, Chapter 82, Laws of 1909.
91. Sections 2 & 6, Chapter 177, Laws of 1921.
92. Referendum Measure No. 14B.
93. Page 400, Laws of 1889-1890.
94. Sections 2 & 3, Chapter 209, Laws of 1907.
95. Section 3, Chapter 52, Laws of 1915.
96. Chapter 176, Laws of 1921.
97. Chapter 26, Laws of 1935.
98. RCW 29A.52.130.
99. *California Democratic Party, et al. v. Jones*, 530 U.S. 567 (2000).
100. *Democratic Party of Washington State v. Reed*, 343 F.3rd 1198 (2003).
101. Chapter 271, Laws of 2004.
102. *Washington State Republican Party, et al. v. Dean Logan, et al.*, U.S.D.C. No. CVO5-0927-TSZ (W.D. Wash. 2005).
103. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 444 (2008).
104. Article II, Section 5; Article III, Section 1; Article IV, Sections 3 & 5; and Article VI, Section 8.
105. Remington Revised Statutes §§4791, 4812, 4824, 5144, & 5150.
106. Section 1, Chapter 200, Laws of 1963.
107. Section 1, Chapter 4, Laws of 1973.
108. Section 1, Chapter 344, Laws of 2006, which amended RCW 29A.04.311.
111. Section 2, Chapter 349, Laws of 2011, amending RCW 29A.04.311.

Chapter 68

Local Initiative and Referendum Powers

State voters approved Amendment 7 in 1912, amending Article II, Section 1 and granting state voters general initiative and referendum powers on state matters.

The State Constitution does not grant local voters general powers of initiative and referendum on local matters. However, several constitutional provisions require voter approval before local governments may impose most excess property tax levies or incur certain levels of general indebtedness. In addition, legislation has been enacted requiring either voter approval before various local governments may impose certain taxes, or permitting local voters to take special referendum action within a limited time period against a local government attempting to impose certain taxes.

Although the State Constitution does not grant local voters general powers of initiative and referendum on local matters, procedures exist by which county and city voters may obtain these powers. No procedures exist for voters of special purpose districts to obtain general initiative and referendum powers on special district matters.

The State Supreme Court has recognized or established a number of restrictions on county and city voters exercising general initiative and referendum powers on local matters. Most of these restrictions have not been applied to state initiatives and referenda.

Voter Approval Required

Several constitutional provisions and statutes require voter approval before local governments may impose certain taxes, incur certain indebtedness, or before most types of local government may be created.[a]

A. Excess Property Tax Levies

Article VII, Section 2 authorizes taxing districts (other than the State, port districts, or public utility districts) to impose excess property tax levies, if a ballot proposition authorizing the taxes is approved by a super-majority vote of voters voting on the proposition. Two basic types of excess property tax levies may be authorized by local voters:

- Voters may authorize taxing districts to impose single-year excess levies for general purposes. However, voters may authorize a school district or fire protection district to impose: (1) Excess levies for up to four years for general purposes; or (2) excess levies for up to six years to finance construction projects;
- Voters may authorize taxing districts to impose multiple-year excess levies to retire general indebtedness issued for capital purposes.

A ballot proposition authorizing the excess levy or levies must be approve by at least three-fifths of the voters voting on the proposition together with a forty percent voter validation requirement. However, voters may approve some school district excess levies by a simple majority vote.

B. Some General Indebtedness

Article VIII, Section 6 authorizes most local governments to incur a certain level of general indebtedness without voter approval, and greater total levels of general indebtedness with voter approval.

A ballot proposition authorizing this higher level of indebtedness must be approved by at least three-fifths of the voters voting on the

[a] A more detailed discussion of taxes and indebtedness is found in Chapter 63.

proposition. Some statutes for different types of local governments add a forty percent voter validation requirement to this constitutional requirement. This additional requirement is academic since virtually every ballot proposition requesting voter approval of general indebtedness also includes authority to impose multiple year excess property tax levies to retire the indebtedness, and Article VII, Section 2 requires this type of excess property tax levy to be approved by a three-fifths voter approval together with a forty percent voter validation requirement.

C. Requirements to Create Most Local Governments

Statutory requirements provide that local voters approve a ballot proposition authorizing the incorporation or creation of a new city or most types of special purpose districts. A few types of special purpose districts are created by action of the county legislative authority without voter approval of a ballot proposition authorizing the special purpose districts. A new county is created by the Legislature enacting special legislation and a petition signed by voters requesting the new county.

D. Statutory Requirements for Voter Approval to Impose Taxes

Various statutes authorize local governments to impose certain taxes or charges if local voters approve a ballot proposition authorizing the local government to impose the taxes or charges. Most of these statutory requirements have been enacted since 1970. Among others, mandatory voter approval is required for:

- Various transit authorities (e.g., public transit benefit areas and metropolitan municipal corporations) to impose sales taxes of up to 1.0 percent to finance mass transit.[1]
- A few port districts to impose additional property taxes of up to 45¢ per $1000 of assessed valuation for six years to finance industrial development.[2]
- Cities to impose business and occupation (B&O) taxes in excess of 0.2 percent and certain utility taxes in excess of six percent.[3]
- Fire protection districts and regional fire protection service authorities to impose benefit charges.[4]

- Counties, cities, fire protection districts, regional fire protection service authorities, public hospital districts, and emergency medical service districts to impose regular property taxes, in addition to their other regular property taxes, of up to 50¢ per $1000 of assessed valuation to finance emergency medical services.[b] [5]
- Counties to impose an additional excise tax on real estate transfers of up to one percent to finance the acquisition and maintenance of conservation areas.[6]
- Any local taxing district to impose regular property taxes above the amount allowed to be imposed by operation of the 101 percent levy lid, but not exceeding its maximum authorized property tax rate.[7]

Perhaps the most interesting previous voter referendum approval requirements, that no longer are in effect, were requirements that a port district receive voter approval of: (1) Plans for improvements before the port district could construct the improvements; (2) any general indebtedness that the port district proposed to incur; and (3) certain types of improvements.[8] These requirements were part of the original port district laws and have been repealed.

E. Potential One-time Referendum Action

Some statutes provide for potential one-time referendum action that may be taken by local voters to stop a local government from imposing certain taxes. All of these statutory requirements have been established since 1970. Among others, potential one-time local voter referendum action may be taken on the following local governments causing a ballot proposition to be submitted to voters authorizing various taxes to be imposed:

- A county or city imposing the second 0.5 percent local option sales and use taxes.[9]

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[b] Voters may authorize these levies for six consecutive years, ten consecutive years, or permanently. If permanently authorized, voters may take special referendum action to remove the authority to impose the levies.

- A port district imposing the additional property tax of 45¢ per $1000 for industrial development purposes, imposed for a second six-year period.[10]
- A county or city imposing the second 0.25 percent excise tax on real estate transfers.[11]
- A city initially imposing a business and occupation (B&O) tax, or increasing the rate of its existing B&O tax, after April 22, 1983.[12]

Under these provisions, the potential referendum action proceeds like a normal referendum action. An ordinance or resolution is adopted imposing the tax or tax increase, but a referendum petition against the ordinance or resolution may be filed within a specified time period that has been signed by a specified percentage of local voters. A ballot proposition is submitted to local voters to authorize or reject the tax or tax increase, if a special referendum petition is timely filed with sufficient valid signatures. This is a one-time potential voter referendum. Referendum action against the imposition of the taxes may not be taken after the specified time period has elapsed. As discussed in prior chapters, some of these referendum provisions lack detail and are not clear how they would be implemented.

General Initiative and Referendum Powers

Local government voters do not possess inherent general initiative and referendum powers on local matters. However, several procedures exist for county and city voters to obtain general initiative and referendum powers on local matters.

A. Regular County Charters

Article XI, Section 4 authorizes any county to adopt a regular "Home Rule" charter. [c] This constitutional provision does not expressly authorize county voters to obtain initiative or referendum powers on local matters. However, the Supreme Court has recognized that a regular county charter may include provisions granting county voters these powers on local matters.[13]

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c A more detailed discussion of regular county charters is found in Chapter 2.

Seven of the 39 counties operate under regular county charters. Each of these charters includes provisions granting county voters general initiative and referendum powers on county matters. This includes the charters for King, Pierce, Snohomish, Whatcom, Clallam, San Juan, and Clark Counties.

B. First Class City Charters

Article XI, Section 10 allows any city with a population of 10,000 or more to adopt a charter.[d] A city adopting a charter under this provision is classified by statutes as a first class city. This constitutional provision does not expressly authorize city voters to obtain initiative or referendum powers on local matters. However, legislation has been enacted authorizing a first class city charter to grant city voters these powers.[14] It is probable, but not certain, that a first class city charter could include provisions granting city voters general powers of initiative and referendum on city matters without this statute.

Ten cities (Seattle, Tacoma, Spokane, Everett, Yakima, Bellingham, Vancouver, Bremerton, Richland, and Aberdeen) have used this provision to adopt city charters and become first class cities. Each of these charters includes provisions granting city voters general initiative and referendum powers on city matters.[15]

C. Cities with a Commission Plan of Government

Voters of a non-code city with a commission plan of government automatically possess general powers of initiative and referendum on city matters.[e] [16]

This is the only type of a local government where voters automatically possess general powers of initiative and referendum on local matters. No action is required on the part of voters of such a city to obtain these powers, other than approving the commission plan of government.

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d A more detailed discussion of first class city charters is found in Chapter 7.

e A discussion of the procedure by which a city changes its plan of government or forms of government and operate with a commission is found in Chapter 6.

A number of matters are expressly precluded from being subjected to referendum action in a city operating with a commission plan of government, including an ordinance: (1) Adopted by initiative action; (2) that is declared to be emergency ordinance and was approved by a unanimous vote of the commission; or (3) providing for local improvement districts.[17]

Shelton is the only city in the state operating with a commission form of government, but that city changed its classification to a code city and retained its prior commission form of government. Voters of Shelton appear to have retained the powers of initiative and referendum on city matters when Shelton changed its classification to a code city.[18]

D. Code Cities

Several different procedures exist for voters of a code city to obtain the powers of initiative and referendum on city matters.[f]

The same procedures by which a classified city may reclassify as a code city may be used to grant code city voters general powers of initiative and referendum on city matters.[19] As discussed in Chapter 6, four following separate procedures may be followed to reclassify a classified city as a code city:

- A direct petition procedure;
- A petition for election procedure;
- A direct resolution procedure; and
- A resolution for election procedure.

A number of matters are expressly precluded from being subjected to referendum action by code city voters, including an ordinance that: (1) Was adopted by initiative action; (2) is declared to be emergency ordinance and was approved by a unanimous vote of the council; (3) provides for a local improvement district; (4) appropriates money; (5) provides for or approves collective bargaining; (6) provides for the

f A discussion of these procedures is found in Chapter 6.

compensation or working conditions of city employees; or (7) imposes or repeals the imposition of taxes.[20]

Presumably, the charter of a charter code city could include provisions granting city voters the powers of initiative and referendum on city matters.

The Municipal Research and Services Center of Washington reports that voters in 51 of the total of 192 code cities (including Shelton) in the State possess the powers of initiative and referendum on city matters.[21] This includes Bellevue, Bothell, Camas, Des Moines, Edmonds, Ellensburg, Kelso, Kent, Mercer Island, Olympia, Redmond, Renton, SeaTac, and Walla Walla.

E. Combined City/County Charters

Voters of any county may adopt a combined city/county charter under the provisions of Article XI, Section 16.[g] Presumably, a combined city/county charter could grant voters of the county, as well as the voters of any city or special purpose district in the county, general powers of initiative and referendum on local matters.

No county has adopted a combined city/county charter.

Restrictions on Local Initiative and Referendum Powers

The State Supreme Court has a long tradition of restricting local initiative and referendum powers, where voters possess these powers.[h] These restrictions first arose in early cases addressing the initiative and referendum powers granted to voters by first class city charters but have been extended to the initiative and referendum powers of voters in code cities and charter counties.

Where local voters possess general local initiative and referendum powers, the Court has restricted these powers as follows:

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g A more detailed discussion of such a charter is found in Chapter 65.

h An excellent discussion of initiative and referendum powers in Washington State is found in Trautman, Philip A., "Initiative and Referendum in Washington: A Survey" 49 Wash. L. Rev. 55 (1973).

- A local initiative may only address a subject matter that is within the general authority of the county or city government.
- A local initiative or referendum may only address a subject matter that is legislative in nature but not address a subject matter that is non-legislative in nature.
- A local ordinance implementing state mandated action is not subject to being "vetoed" or nullified by local referendum action.
- A local initiative or referendum may only address a subject matter if statutes relating to the type of local government grant the local government the authority to act on the subject matter, and may not address a subject matter if statutes grant the local governing body the authority to act on the subject matter.
- A sort of "prior restraint" against local initiatives and referenda is allowed where courts determine the validity of the proposed initiative or referendum before it is submitted to voters for their approval or rejection.

The Supreme Court has limited the powers of local initiative and referendum powers by developing these restrictions over the years as part of common law. These restrictions are not detailed in state statutes.

However, as discussed below, the Supreme Court in a recent case appears to have greatly expanded the authority of the initiative powers of King County voters.

A. Within the Powers of the City or County

The first restriction is that the subject matter contained in an initiative to city or county voters must be within the powers of the city or county.

This restriction seems rather obvious. It is axiomatic that a local government may only do what it is authorized to do. This would apply to the governing body of the local government or the electorate

exercising the powers of initiative. For example, city voters may not create a felony by initiative action since cites and city governing bodies are not authorized to create felonies.

B. Legislative Subject Matters

The second restriction is local initiative and referendum powers may only be exercised on subject matters that are legislative in nature and may not be exercised on subject matters that are non-legislative in nature, e.g., actions that are executive, quasi-judicial, or administrative in nature.[22]

County and city governing bodies, unlike the State Legislature, frequently take non-legislative actions such as executive actions, quasi-judicial actions, and administrative actions. Categorizing subject matters as being legislative or non-legislative is not always easy. Some subject matters are clearly legislative in nature. Other subject matters are clearly non-legislative in nature. However, some subject matters may appear to be both legislative and non-legislative in nature or a statute may include a mix of both legislative and non-legislative subjects.

The Supreme Court employs two tests to determine whether a subject matter is legislative or non-legislative, as follows:

- A legislative matter is of a permanent and general character, as compared to a temporary or special character; and
- A legislative matter is new law, policy, or plan, as compared to executing a law that already is in existence or pursuing a plan that has already been adopted by the body or a superior power.[23]

This distinction between legislative matters being subject to potential local initiative and referendum, and non-legislative matters not being subject to potential local initiative and referendum, is widely accepted in other states.[24]

The Supreme Court has cited McQuillin, various law review articles, and decisions by other state supreme courts to justify its adoption of this limitation to restrict local initiative and referendum powers in cities.[25] However, the Court has also cited Article II, Section 1

(Amendment 72) as the source of this legislative/non-legislative distinction for initiative and referendum powers in counties.[i] [26]

C. State Mandated Actions

The third restriction precludes local referendum action that "vetoes" or nullifies a local ordinance adopted in response to state mandated action.[27] This is a relatively new restriction that the Court has not developed fully.

Voters in King County attempted to repeal an ordinance that the King County Council adopted as part of its response to requirements under the Growth Management Act. The Supreme Court held this referendum action to be unlawful even though the King County Charter grants county voters initiative and referendum powers over local ordinances. It was reasoned that allowing King County voters to nullify the King County Council's attempt to implement this mandate would frustrate the will of the people of the State (as expressed in the state statute). State sovereignty must prevail.

Supreme courts in other states have adopted a similar restriction on local initiative and referendum action and use a legislative/non-legislative test to preclude local initiative and referendum action on matters where state statutes require a city or county to take certain actions, such as the requirement to adopt a budget or zoning ordinance.[28] Essentially, it is reasoned that a local ordinance implementing a state mandate becomes a non-legislative action, rather than a legislative action, since the local government does not have discretion whether it will take the action.

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i This is a very peculiar source for local initiative and referendum powers in counties. In clear and precise language, Article II, Section 1 only addresses initiative and referendum powers on state matters. No mention is made of local initiative and referendum powers. Further, if Article II, Section 1 were the source of county initiative and referendum powers, then the voters of any county would possess these powers, not just voters in counties with charters granting these powers that were adopted under Article XI, Section 4.

D. Powers Granted to the Government vs. Governing Body

The fourth restriction on local initiative and referendum powers arises by inference from the sentence structure found in statutes granting powers to local governments.[29] Subject matters contained in powers granted by statute to the local government may be subjected to potential local initiative or referendum action. However, subject matters contained in powers granted by statute to local governing bodies may not be subjected to potential local initiative or referendum action.

The Supreme Court first adopted this restriction in 1908.[30] It was reasoned that the words used in a statute granting a specific authority determine whether or not the Legislature intended that an ordinance on that subject matter may or may not be subjected to potential initiative and referendum action by voters possessing the powers of initiative and referendum on local matters. Local initiative or referendum action, where those powers exist, may only be taken if a statute grants the local government the authority to take the action. Local initiative or referendum action, where those powers exist, may not be taken if the statute grants the local governing body authority to take the action. The Court assumes that the Legislature made an affirmative decision to allow or not to allow potential local initiative or referendum action when enacting the legislation, by its wording choice.

Legislation was enacted in 1911, expressly authorizing first class city charters to grant voters the powers of initiative and referendum on "any matter within the scope of the powers, functions, or duties of the city."[31] Although this language appears to describe the potential first class city voter initiative and referendum powers in very broad terms, the Supreme Court held that this language did not alter the prohibition relating to local initiative and referendum action on powers granted to the city council.[32]

The Court has continued to apply this restriction on the local initiative and referendum powers of first class city voters, but has also extended this restriction to restrict local initiative and referendum powers in charter counties and code cities.[33]

This restriction is not accepted by the supreme courts of many other states. The supreme courts in most states, where local initiative and referendum powers exist, broadly construe these powers in favor of the local electorate. Local initiative or referendum action is allowed unless the limitations are clear or compelling.[34]

This restriction on local initiative and referendum action has been subject to strong criticism.[j] Phil Trautman, now a professor emeritus

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j A myriad of arguments may be made against this distinction that has been recognized by the Washington State Supreme Court.

First, ordinances are adopted by local government governing bodies. Granting powers to the governing body, rather than the government itself, is meaningless since the government only acts through its governing body.

Second, this distinction has not applied to state initiative and referendum powers where the constitution grants express powers to the Legislature (i.e., the governing body) as compared to the State (i.e., the government). The Supreme Court, in *Yelle v. Kramer*, 83 Wn.2d 464, 473-474 (1974), allowed compensation for state officials to be set by an initiative, even though the Constitution at that time provided that the Legislature would establish the compensation.

Third, most of the statutes relating to counties were enacted before voters of counties were allowed to adopt charters. County voters may only obtain initiative and referendum powers on local matters if they reside in a county operating under a county charter that includes provisions granting voters these powers. The authority of county voters to adopt charters was authorized in Amendment 21 that was approved by state voters in 1948 and the first county charter was approved by King County voters in 1969. It seems to be quite a stretch to argue that the drafting style found in legislation granting powers to counties prior to 1948 anticipated the potential that county voters would be able to obtain local initiative and referendum powers some time in the future. Some of these county laws were enacted by the Legislative Assembly of Washington Territory before the concept of initiative and referendum had first been developed in Switzerland at the end of the 19th century.

Fourth, almost all code city powers were included in legislation enacted prior to the time voters of code cities were allowed to obtain the powers of initiative and referendum on local matters. These statutes were drafted using a style where virtually all powers were granted to the governing bodies of code cities and not to code cities themselves. As with county statutes, it is more than a little stretch to argue that this drafting style anticipated the potential that local initiative and referendum powers would be granted at some time in the future. In addition, RCW 35A.11.020 grants all powers that are possessed by other types of cities to the governing body of a code city. The distinction made no difference when that provision was enacted in 1967 since code city voters could not obtain the powers of initiative and referendum on city matters at that time. Then in 1973, legislation (Chapter 81, Laws of 1973, 1st ex. sess.) was enacted granting code city voters powers of initiative and referendum on local matters. If the distinction between the powers of the governing body and powers of the city were rigorously applied to code cities virtually no initiative or referendum action would be

at the University of Washington Law School, provided what is perhaps the most succinct criticism of this distinction:

> "One wonders whether the state legislature in delegating certain powers to local government is very often thinking of the initiative and referendum when it authorizes the "city council" or the "legislative body" rather than the "city" to do something, or whether the particular choice of words is happenstance." [k] [35]

E. Prior Restraint

The Washington State Supreme Court has allowed what essentially amounts to "prior restraint" to be applied against local initiatives and referenda. This "prior restraint" has not been allowed against state initiatives and referenda.

In many instances, cities or counties refuse to place an initiative or referendum measure with sufficient signatures on the ballot, arguing that the measure may not be placed on the ballot because of one of these restrictions on local initiative and referendum powers. Supporters of the initiative or referendum must institute a lawsuit attempting to force the initiative or referendum on the ballot. The superior court then determines whether the measure may be subject to initiative or referendum action based upon the three tests described above. Professor Trautman describes these

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possible. Why would the Legislature enact meaningless legislation when code city voters were permitted to obtain general initiative and referendum powers on city matters?

Fifth, RCW 35A.11.090 prohibits code city voters from taking referendum action on a number of matters, including ordinances creating local improvement districts (LIDs). However, RCW 35.43.040 authorizes city governing bodies rather than code cities to create LIDs. Why enact the express restriction on code city voters exercising referendum powers over these matters if code city voters never could have exercised these powers in the first place?

k The author strongly concurs with this comment by Professor Trautman. The author drafted most of the legislation relating to counties and cities that was enacted from 1973 until the late 1990's. It is very evident to the author that this distinction is mere sophistry. Legislators are not aware of this distinction. The adoption of this restriction by the Court simply reflects an almost total ignorance of the legislative process by the justices or carelessness and using *stare decisis* to retain this restriction.

determinations as being “prior-to-enactment” determinations that are not applied to state initiatives and referenda.[36]

Normally, courts will not entertain questions of whether proposed legislation is valid since the issue is not justiciable, i.e., it is not known if the measure will be adopted. The Washington State Supreme Court states that its general policy is

> "to refrain from inquiring into the validity of a proposed law, including an initiative or referendum, before it has been enacted." [37]

It appears that the only instance where the Supreme Court intervened on a state initiative measure in a manner somewhat similar to the common interference with local initiative measures was in 1916, when the Court removed a section from a proposed state initiative dealing with workers' compensation that the Court considered "argumentative and should not be placed in the proposed law." [38] The remainder of the initiative was submitted to voters for their approval or rejection.[l]

Although Washington courts restrain local initiative measures using these tests, the courts do not restrain local initiatives by determining the constitutionality of the measure before it is presented to voters.[39]

F. Extraordinary Recent Case

As discussed in Chapter 2, a recent State Supreme Court decision allows the voters of King County to force county charter amendments to be placed before voters by using the normal initiative procedures.[m] [40] This decision was reached notwithstanding the fact that no express authorization for this procedure to amend the county charter exists in the State Constitution, King County Charter, or

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l The Court eliminated what would be termed as an intent section that often extols the virtues of the proposal. Many, if not most, modern initiative measures include intent sections extolling the virtues of the measure. These intent sections have not been challenged and remain in the initiative measures.

m The key factor seems to be that the King County Charter referred to the measure that the county council adopts submitting a charter amendment before voters as an “ordinance.” It was reasoned that other provisions of the county charter authorize county voters to use the initiative process to adopt ordinances, so a new and unstated two step procedure now exists to place county charter amendments before voters.

statutory law. A proposed initiative measure requiring the county council to submit a proposed charter amendment to voters for their consideration was allowed to be placed before voters. Essentially two ballot propositions at succeeding elections would be placed before county voters. The first measure would be the initiative to require the county council to submit the charter amendment. If approved, the second measure would be the charter amendment.

Although this case expanded initiative powers of King County voters, it has little application to other city or county charters. Current law already expressly provides that all first class city charters are subject to amendment under two separate procedures:

- Article XI, Section 10 provides that a first class city charter may be amended if the city governing body adopts an amendment and then city voters approve the amendment that has been referred to them by action of the city governing body; and
- Legislation that was enacted in 1903 provides that voters of first class cities may initiate an amendment to the city charter on their own authority without having the amendment being referred to city voters by action of the city governing body.[41]

Current law already expressly provides that all of the other six county charters are subject to amendment under at least two separate procedures:

- Article XI, Section 4 provides that a county charter may be amended if the county legislative authority adopts an amendment and then county voters approve the amendment that was referred to them by action of the county legislative authority; and
- Provisions of each of these other six county charters expressly provide for an additional method to amend the county charter where county voters may initiate an amendment to the county charter on their own authority without having the amendment being referred to county voters by action of the county legislative authority.

This express granting of authority of voters to initiate amendments to other county and city charters differs from the King County Charter which very clearly provides that the only procedure to amend the charter is by the constitutionally dictated method where the county legislative authority first adopts the amendment and then refers the amendment to county voters for their approval or rejection.[n] Separate provisions provide for initiative and referendum powers of county voters relating to "ordinances" rather than granting county voters the full legislative powers of the county legislative authority.

NOTES:

1. RCW 82.14.045.
2. RCW 53.36.100(1).
3. RCW 35.21.710 & 35.21.870.
4. RCW 52.18.050 & 52.26.220.
5. RCW 84.52.069.
6. RCW 82.46.070.
7. RCW 84.55.050.
8. Sections 6, 4, & 9, Chapter 92, Laws of 1911.
9. RCW 82.14.036.
10. RCW 53.36.100.
11. RCW 82.46.021.
12. RCW 35.21.706.
13. *Paget v. Logan*, at page 356.
14. RCW 35.22.200.
15 "2002-03 Directory of Washington City and Town Officials", Municipal Research and Services Center of Washington, at pages 89-92.

n The King County Charter is divided into separate Articles. Article 8 provides for "General Provisions" including a procedure for amending the charter under Section 800. Article 2 provides for the Legislative Branch but also includes provisions for referendum and initiative powers of county voters in Sections 230.40-230.60.

16. RCW 35.17.230-35.17.360.
17. RCW 35.17.230.
18. "2002-03 Directory of Washington City and Town Officials", at page 96.
19. RCW 35A.11.080.
20. RCW 35A.11.090.
21. "Initiative and Referendum Powers," Municipal Research and Services Center of Washington. http://mrsc.org/Home/Explore-Topics/Governance/Special-Topics/Cities-and-Counties-That-Have-Powers-of-Initiative.aspx
22. See, for example, *State ex rel. Harlin v. Superior Court*, 139 Wash. 282, 288-289 (1926); & *Durocher v. King County*, 80 Wn.2d 139, 154-155 (1972).
23. *Durocher*, at pages 152 -153.
24. McQuillin, at Sec. 16.54; & Antieau, at Sec. 4.31.
25. See, for example, *State ex rel. Harlin*, at pages 288-299; and *Durocher*, at pages 154-155.
26. See, for example, *Ford v. Logan*, at page 154.
27 *1000 Friends v. McFarland*, No. 76581-2, filed December 21, 2006.
28. McQuillin, *id*.
29. *State ex rel. Guthrie v. Richland*, 80 Wn.2d 382, 387 (1972); *Paget v. Logan*, at page 355; & *Leonard v. City of Bothell*, 87 Wn.2d 847, 852-853 (1976).
30. *Benton v. Seattle Electric Co*., at page 163.
31. Section 2, Chapter 17, Laws of 1911, codified as part of RCW 35.22.200.
32. *Dolan v. Puget Sound T.L. & P. Co*., 72 Wash. 343, 348-349 (1913).
33. *Paget*, *id*.; & *Leonard v. City of Bothell*, *id*.
34. McQuillin, *id*.; & Antieau, Sec. 4.29.
35. Trautman, 49 Wash. L. Rev. 55, at page 83.
36. Trautman, 49 Wash. L. Rev. 55, at page 79. Examples of this "prior restraint" are found in *Seattle Building Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980); & *Save Our State Park v. County Commissioners*, 74 Wn.App. 637, 644 (1994).
37. *Seattle Building Council*, at page 745.
38. *State ex rel. Griffiths v. Superior Court*, 92 Wash. 44, 46 (1916).
39. *Seattle Building Council*, *id*.
40. *Corrections Guild*, at page 333.
41. Section 1, Chapter 186, Laws of 1903, codified as RCW 35.22.120.

Chapter 69

Local Judiciary

The judiciary for Washington State is established by the State Constitution (Article IV) and implementing legislation (mostly codified in Titles 2 and 3 RCW).

Although the term “local judiciary” is not included in the Constitution or these statutes, “local judiciary” is used in this chapter to include all courts in Washington State other than the Supreme Court and the Court of Appeals. The local judiciary now includes superior courts, district courts, and municipal courts.

Current System of Local Judiciary

Article IV and implementing legislation establish four levels of the courts in Washington State, as follows:

- The Washington State Supreme Court, which is the State’s highest appellate court. This Court has original jurisdiction over a few matters and at its discretion hears appeals from the Court of Appeals.
- The Washington State Court of Appeals, which was established when state voters approved Amendment 50 (Article IV, Section 30) in 1968. This is an intermediate Court of Appeals consisting of three separate divisions. Each division has exclusive appellate jurisdiction in all cases within its region except for those matters which may be appealed directly to the Supreme Court.

- Superior courts, that function as the basic trial courts in the State.
- Inferior courts or courts of limited jurisdiction. These courts now consist of district courts and municipal courts. Old constitutional provisions refer to justices of the peace. Statutes replaced the old justice of the peace system of inferior courts with county district courts. The Legislature may create additional inferior courts, such as municipal courts.

Constitutional and statutory provisions creating the local judiciary are somewhat unclear. Voters narrowly defeated a constitutional amendment in 1975 that would have revised the entire Judicial Article (IV) and eliminated much of this lack of clarity.[1]

A. Superior Courts

Article IV creates a system of superior courts throughout the State as the basic trial courts with general criminal, civil, and equitable jurisdiction.

This system of superior courts remains as it was established at statehood, but with a few changes. First, the original jurisdiction of superior courts has been altered by statutory and constitutional changes. Amendments 28, 65, and 87, and enabling legislation, have somewhat altered the jurisdiction of superior courts by granting inferior courts concurrent jurisdiction with superior courts over equitable matters and some minor civil and criminal matters. Second, the structure of superior courts has been somewhat altered. This was accomplished by the Legislature expanding the number of superior court judges elected in different superior courts and reducing the number of what effectively amount to multi-county superior court districts.

1. Organization

Superior courts are established by Article IV, Section 5 and various statutes. Each county is included in a superior court by having its own separate superior court or by being included with one or more other counties in what effectively constitutes a multi-county superior court district.

A separate county superior court is created in each of the 27 following counties: Adams, Clallam, Clark, Cowlitz, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Lincoln, Mason, Okanogan, Pacific, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima.[2] Voters in each of these counties elect one or more judges to the county superior court.

Five multi-county superior court districts are created by statute, each including two or more adjacently located counties. Statutes creating these superior courts do not use the term multi-county superior court district, but instead provide that a superior court is created in two or more counties, "jointly". The following six separate multi-county superior court districts exist in the following sets of counties: (a) Benton and Franklin Counties; (b) Asotin, Columbia, and Garfield Counties; (c) Klickitat and Skamania Counties; (d) Ferry, Pend Oreille, and Stevens Counties; and (e) Chelan and Douglas Counties.[3] Voters in each of these separate multi-county judicial districts elect one or more judges to the multi-county superior court.

2. State courts and state officials

Superior courts are considered to be state courts and superior court judges are considered to be state officials.[a] However, superior courts also have direct relationships with one or more counties and superior court judges may also be seen as county officials.[b] This

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a The nature of superior courts as state courts is evidenced by: (1) Article IV, Section 1 which provides that "[t]he judicial power of the state shall be vested in the supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." (Emphasis added); and (2) RCW 2.08.060 which provides for superior courts by stating that "[t]here shall be in each of the counties a superior court." This language refers to the physical location of a superior court rather than providing for a county superior court in each county or group of two or more counties.

The nature of superior court judges as state officials is evidenced by: (1) Article IV, Section 5, which provides that in the event of a vacancy in the office of superior court judge, the Governor appoints someone to fill the vacancy; (2) Article IV, Section 13 which provides that the State pays one half of the salary of each superior court judge; and (3) Article XXVIII, Section 1 (Amendment 78) which provides for a salary commission to set the salaries for state officials, legislators, and all judges of the State's courts (including the Supreme Court, Courts of Appeals, superior courts, and district courts).

b The direct relationship between a superior court and one or more counties is evidenced by: (1) Article IV, Section 5 which provides that a superior court is organized in each of the counties of the State; (2) RCW 2.28.139 which requires counties to furnish a courthouse and provide for the expenses of the court; and (3) RCW 2.08.050 which provides that the "seals of the superior

relationship between a superior court and a county or counties underscores the inherent nature of counties as the political subdivisions or arms of the State providing many state services on the local level.

3. Jurisdiction

Superior courts are the basic trial courts in the State with general jurisdiction over criminal, civil, and equitable matters.

They are granted jurisdiction over:

- Crimes that are felonies and any other crimes (misdemeanors or gross misdemeanors) if jurisdiction is not placed elsewhere.[4]
- A few civil matters without regard to any dollar value of controversy or property.[5] This includes questions involving the title or possession of real property, actions of forcible entry and detainer, proceedings in insolvency, actions to prevent or abate a nuisance, all probate actions, divorce or annulment of marriage, and the power of naturalization.
- Most other civil matters depending on the amount of the controversy or value of the property as follows: (a) Concurrent jurisdiction with inferior courts if the amount or value is more than $300 but not exceeding $70,000; and (b) exclusive if the amount or value exceeds $75,000.[c]

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courts of the several counties of the state shall be ...." This wording implies that superior courts are actually county courts.

The appearance of superior court judges as being county officials arises from: (1) Article IV, Section 13 which provides that the other half of the salary of each superior court judge is paid by the county or counties from which the judge is elected; and (2) Article XI, Section 4 (Amendment 21) which allows any county to adopt a "Home Rule" charter that may provide for county officers, but precludes a county charter from affecting the election of prosecuting attorneys, superior court judges, and justices of the peace, or the jurisdiction of courts. Why name superior courts unless they are county courts and why name superior court judges unless they are county officials?

c Constitutional provisions and statutes providing for jurisdiction over these civil matters are confusing:

- Article IV, Section 6, grants superior courts jurisdiction over most civil matters where the demand or value of property in the case is: (1) $3,000; or (2) as otherwise provided by law; or (c) a lesser sum that is greater than the original jurisdiction granted to inferior courts.

Superior courts are granted concurrent jurisdiction with inferior courts over equitable matters.[d]

A superior court hears appeals from inferior courts located within its boundaries.[6] Appeals are heard using the record established by the inferior court rather than being held *de novo*, i.e., rather than a new trial being conducted.[7]

4. Courts of record

Article IV, Section 11 provides that superior courts are courts of record. As discussed below, the distinction between a court of record, and a court that is not of record, appears to have little relevance today.

5. Superior court judges

The office of superior court judge is now a nonpartisan elective office.[8] Superior court judges are elected to four-year terms of office at elections held in the same even-numbered years when the presidential elections are held.[9] The Governor appoints a person to serve as a superior court judge if a vacancy occurs and the appointee serves until a judge is elected at the next state general election to serve for the remainder of the unexpired term of office. A superior court judge must be a lawyer who "has been admitted to practice in the courts of record" of Washington State.[10] This means an attorney who is a member of the Washington State Bar Association.

- Article IV, Section 10, provides justices of the peace (i.e. inferior courts) with original jurisdiction over most civil matters where the demand or value of the property is: (1) less than $300; or (2) not in excess of $3,000; or (3) as prescribed by the Legislature.
- RCW 2.08.010, grants superior courts "original jurisdiction" over cases where the amount of the controversy or value of the property is $300 or more.
- RCW 3.66.020, grants inferior courts jurisdiction over most civil matters where the value of the claim or amount of the issue does not exceed $50,000.

d Amendment 87 altered Article IV, Section 6 in 1995 to provide for this concurrent jurisdiction. However, statutes have not been amended to reflect this change. RCW 2.08.010 still provides that superior courts have original jurisdiction in all cases in equity. This statute should be amended to reflect Amendment 87.

State voters approved Amendment 41 (Article IV, Section 29) in 1966 providing for two unique procedures to elect superior court judges, only one of which remains in effect.[e]

Superior court judges are subject to:

- Removal from office by joint resolution of the Legislature, approved by at least three-quarters of the members elected to each house, for "incompetency, corruption, malfeasance, or delinquency in office".[11]
- Impeachment by simple majority of all the members of the House of Representatives and conviction by two-thirds of the elected Senators for "high crimes or misdemeanors, or malfeasance in office".[12]
- Suspension, removal, or mandatory retirement as determined by the Supreme Court under a newly authorized procedure where the Judicial Conduct Commission hears complaints over judicial conduct or disability and makes recommendations to the Supreme Court.[13]

Salaries of superior court judges are set the Washington Citizens' Commission on Salaries for Elected Officials.[14] The State pays half of the salary of each superior court judge, reflecting their dual natures of both state officials and county officials.

B. Inferior Courts

Inferior courts, or courts of limited jurisdiction, in Washington State consist of district courts and municipal courts.

1. District courts

Statutes create district courts as the basic inferior courts, or courts of limited jurisdiction, in Washington State.[15]

Although these courts are called district courts, they appear to be the justice of the peace courts that are established by the State

e These election procedures are discussed in Chapter 67.

Constitution.[f] However, an argument exists that the modern district courts are actually an alternative form of inferior court created by the Legislature under its authority to create inferior courts other than justices of the peace.[g]

Some degree of confusion exists over district courts. This confusion appears to have arisen from an interplay between:

- Constitutional provisions creating justices of the peace as the basic inferior courts that include both details and restrictions on these courts; and
- The desire to create a modern system of inferior courts (now called district courts) with more professional judges that is not encumbered by these constitutional restrictions.[h]

A separate district court exists in each of the 39 counties in the state, but some of the more populous counties have separate district courts located in separate district court districts or subdistricts within the county.

District courts are inferior courts of limited jurisdiction over criminal, civil, and equitable matters. They are granted original jurisdiction over most civil matters if the amount of the demand or property is $300 or less and concurrent jurisdiction with superior courts over most civil matters if the amount of the demand or property is more than $300 but not exceeding $75,000.[i] District courts do not have

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f RCW 3.30.030 provides that the "judges of each district court district shall be the justices of the peace of the district ...." RCW 3.30.015 provides that all references to justices of the peace in Washington statutes "shall be construed as meaning district judges" and that all references to justice of the peace courts "shall be construed as meaning district courts."

g This argument would be clearer if the statutes cited above in footnote d were amended to provide that district courts and district court judges possess the powers of justices of the peace and justice of the peace courts. Although statutes could refer to these judges by using another title, it appears that Article IV, Sections 1 and 10 require the existence of justices of the peace. However, the Supreme Court reads the Judicial Article as a whole and could infer that as long as the Legislature provided for another type of inferior court to act with the powers of justice of the peace courts, these seeming constitutional requirements to have justice of the peace courts are met even if these inferior courts are not justice of the peace courts.

h What has been missing is the will to amend the Constitution and remove this confusion by eliminating justices of the peace and providing for a more modern system of inferior courts. The Constitution could provide some detail about a modern system of inferior courts or could leave the details to be established in statutes.

i Article IV, Section 10 provides that the original jurisdiction of justices of the peace over most civil matters is: (1) Cases where the demand or value of property is less than $300; (2) a greater sum,

jurisdiction over various civil matters without regard to the amount of the demand or property, over which superior courts are granted exclusive jurisdiction.[j] District courts are granted concurrent jurisdiction with superior courts on equitable matters.[16] They are also granted limited criminal jurisdiction.[17] This includes concurrent jurisdiction with the superior court on: (a) Misdemeanors and gross misdemeanors committed in their counties, as well as violations of city ordinances, but they may not impose greater punishment than a fine of $5,000 or imprisonment in a jail for more than one year, or both; (b) proceedings to keep the peace in their county; and (c) violations of the food and shellfish laws. District courts are also granted jurisdiction over infractions of the State's motor vehicle laws, with the authority to suspend or revoke operator licenses. Finally, district courts may sit as "committing magistrates" and conduct preliminary hearings in some criminal cases.

Inferior courts are not courts of record. Article IV, Section 11 prohibits the Legislature from making justice of the peace courts into courts of record. The meaning of a court of record, in the constitutional sense, is not clear.[k] Even though district courts are not courts of record, they are required to keep records of their proceedings, appeals from their decisions may be made "on the record", and legislation was enacted in 1961 granting them "all the

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not to exceed $3,000 if established by statutory law; or (3) any other amount as established by statutory law. This language more or less provides for the inverse of the original jurisdiction of superior courts found in Article IV, Section 6. RCW 3.66.020 follows the third option and sets this original jurisdiction of district courts in most civil matters if the amount at issue does not exceed $75,000. Since RCW 2.08.010 provides that the original jurisdiction for superior courts in most civil matters if the demand or value of the property is $300 or more, it appears superior courts and district courts have concurrent jurisdiction in most civil matters if the demand or value is from $300 to $75,000.

j RCW 3.66.030 provides that district courts do not have jurisdiction over actions: (1) Involving title to real property; (2) foreclosure of a mortgage or enforcement of a lien on real estate; (3) for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction; or (4) against an executor or administrator.

k The Supreme Court in *State ex rel. Brockway v. Whitehead*, 88 Wash. 549, 551 (1915) noted that:

> "The only differences between courts of record and courts not of record are that the record of the one speaks verity until reversed or set aside on appeal, while the other is subject to inquiry in a collateral proceeding, and a court of record has an inherent power to correct its own records, while a court not of record has only such powers in this respect as are given by statute."

necessary powers which are possessed by courts of record of this state."[18] It appears that the greatest distinction between courts of record and courts not of record are that: (a) Courts not of record may have juries in criminal cases with less than 12 members (Article 1, Section 21); and (b) judges of courts not of record are subject to potential recall by voters, while judges of courts of record are not subject to recall by voters (Article I, Section 33).

District courts are state courts but also have direct relationships with counties.[l] This relationship between a district court and a county underscores the inherent nature of counties as the political subdivisions or arms of the State providing many state services on the local level.

The number of district court judges to be elected in each county is specified in statute.[19] However, the Legislature enacted legislation restricting the procedure by which the number of district court judges may be increased after January 1, 1992.[m] [20] An increase may be provided after "recommendation" by the Supreme Court, following a weighted caseload analysis and agreement of the

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l The nature of district courts as state courts and the appearance of district court judges as state officials arises from: (1) Article IV, Section 1 which provides that "[t]he judicial power of the state shall be vested in the supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." (Emphasis added); (2) Article XXVIII, Section 1 (Amendment 78) which provides for a salary commission to set the salaries for state officials, legislators, and all judges of the state's courts (including the Supreme Court, Court of Appeals, superior courts, and district courts); (3) Chapter 3.34 RCW which designates the number of district court judges to be elected in each county rather than creating county district courts and designating the number of judges for each county district court; and (4) legislation enacted in 2005 initiating a program where the State will pay a portion of the salaries of district (and municipal) court judges. The program starts state payments at 25 percent of these salaries. It is anticipated that this amount will increase to 50 percent of the salaries commencing in July of 2007. (Chapter 457, Laws of 2005, and especially RCW 43.08.250(2)(b); Ward, Ron, WSBA President, "Court Funding Glad Tidings and the Long Legislative Road Ahead", Washington State Bar News, June 2005, at pages 13-16.)

The appearance of district courts as county courts and district court judges as being county officials arises from: (1) Article XI, Section 4 (Amendment 21) which allows any county to adopt a "Home Rule" charter that may provide for county officers, but precludes a county charter from affecting the election of prosecuting attorneys, superior court judges, and justices of the peace, or the jurisdiction of courts. Why name justices of the peace (district court judges) unless they are county officials?; (2) RCW 3.58.030 which provides that the compensation of district court judges and officials are paid by the county; (3) RCW 3.62.050 which provides that the expenditures of district courts is payable from the county current expense fund; and (4) RCW 3.34.100 which provides that the county legislative authority of the county in which a vacancy in a district court judicial position arises appoints a qualified person to fill a vacancy. The appointee serves until the next general election when a successor is elected to fill the remaining term of office.

m These restrictions have no real meaning as the Legislature could easily avoid them by merely amending or repealing the restrictions when additional district court positions are added.

county in which the additional judgeships will be provided to pay for these positions without remuneration by the State.

The office of district court judge is a nonpartisan elective office.[21] District court judges serve four-year terms of office and are elected at elections held in even-numbered years on a county-wide basis, or from district court districts or subdistricts.[22] A district court districting committee is created in each county composed of local judges, a practicing attorney, and county and city elected officials.[23] The committee recommends a plan to create district court districts in the county and presents the plan to the county legislative authority. Various requirements are specified for designating these districts – every part of the county must be in a district, the whole county may constitute one district, there shall not be more districts than district court judges, a city may only be included in a single district. In addition, a single district court district may be subdivided into separate electoral districts for electing individual judges, if more than one judge serves the district. The county legislative authority may adopt this plan or amend the plan and adopt a modified plan. Salaries for district court judges are established by the Washington Citizens' Commission on Salaries for Elected Officials.[24]

A district court judge must be a registered voter of the electoral district from which he or she is elected and either: (a) Be a lawyer admitted to practice law in Washington State; or (b) in a district with a population of less than five thousand persons, have passed a qualifying examination provided by rule of the Supreme Court for this position by January 1, 2003.[25]

2. Municipal courts

Three sets of statutes provide for municipal courts.[n] A municipal court is an inferior court of limited jurisdiction that is created by a city.

Restrictions exist on the authority of a city with a municipal court to terminate its court or to repeal its criminal code.[26] These restrictions were enacted to keep cities from effectively transferring criminal costs to county district courts. A city taking such action is

n Unfortunately, these statutes appear to be somewhat muddled.

required to enter into an agreement with the county in which it is located and is required to pay a reasonable amount to the county for the costs associated with prosecution, adjudication, and sentencing in criminal cases filed with the district court as a result of this termination. Provision is made to arbitrate any differences if the county and city do not reach agreement.

Municipal court judges may be either elected or appointed to office. If elected, municipal court judges are elected along with other nonpartisan officials at elections held in odd-numbered years, except in the City of Seattle where the elections are held in even-numbered years.[27]

Chapter 3.46 RCW allows any city to establish what is called a "municipal department". Judges of municipal departments are expressly declared to be judges of the district court in which the department is situated.[o] [28] They are granted exclusive jurisdiction over matters arising from city ordinances and as district court judges would also have jurisdiction over any matters granted to district court judges.[29] Full time judges of a municipal department may be elected or appointed to office, as provided by the city, presumably to four-year terms of office.[30] A judge of a municipal department is subject to being disciplined or removed from office like other district court judges, except that an appointed judge would not be subject to recall. Their salaries are set by the Washington Citizens' Commission on Salaries for Elected Officials.[31]

Statutes providing for municipal departments under Chapter 3.46 RCW include a number of troubling provisions. The basic difficulty is that municipal departments are expressly defined as being district courts, and district courts essentially are modern versions of justices of the peace, subject to a number of constitutional restrictions. Article IV, Section 10 provides that these judges are to be elected to office and that the Legislature determines the number of these judges. However, statutes authorizing municipal departments allow the city creating the municipal department

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o Although these departments technically are district courts, and not distinct municipal courts, they are included in this portion of the Chapter of law dealing with municipal courts to highlight their unique status as a different type of district court operating in cities.

authority to determine whether the judges are elected or appointed as well as the number of judges in the city.[p] [32]

Chapter 3.50 RCW allows any city with a population of less than 400,000 to establish a municipal court. These provisions are an alternative to those provided by Chapter 3.46 RCW.[33] Although these courts are not expressly declared to be district courts, other statutes appear to recognize these courts as district courts subject to the constitutional restrictions on justices of the peace.[q] [34] These municipal courts are granted jurisdiction over city traffic infractions and crimes established by city ordinance, as well as other matters "conferred by statute" which presumably includes the jurisdiction of district courts.[35] The city may appoint a district court judge as its municipal judge, if the judge is not required to serve full time, or provide for municipal court judges who are either appointed or elected to four year terms of office.[36] A unique statute was enacted in 1993, allowing a judge of such a municipal court to reside outside of the city in which the court is created.[r] [37] Municipal court judges are subject to being disciplined and removed from office like other district court judges, except that an appointed judge would not be subject to recall. Their salaries are set by the Washington Citizens' Commission on Salaries for Elected Officials.[38]

Chapter 35.20 RCW creates a municipal court in each city with the population of 400,000 or more (Seattle).[s] This municipal court is an alternative inferior court established by the Legislature under Article IV, Section 12 and the municipal judges of this court are not district court judges or justices of the peace.[t] It is granted jurisdiction over

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p If it is the desire to retain these provisions, Chapter 3.46 RCW should be amended to eliminate the definition of these courts as district courts and specify that they are being created as an alternative form of inferior court under Article IV, Section 12.

q Although municipal judges under Chapter 3.50 RCW are not expressly referred to as district court judges, any question about this possible status should be eliminated to avoid the restrictions on justices of the peace under Article IV, Section 10.

r The author remembers that this statute was enacted to allow a municipal judge in a city located in Kitsap County to reside outside of the city and remain as an elected judge of the municipal court.

s At least for clarity purposes it would be helpful to expressly state in statute that a municipal court created under Chapter 35.20 RCW is not a district court and is created as an alternative form of inferior court under Article IV, Section 12. Further, legislation should be enacted clarifying that, although not a district court, this municipal court has same authorities and is subject to the same provisions as district courts except as conflicting statutes expressly provide to the contrary.

t Chapter 35.20 RCW is silent on this point, although the Supreme Court held that this municipal court is not a district court. *(In re. Eng*, 113 Wn.2d 178, 186 (1989).)

violations of city ordinances, with the authority to impose punishments of fines not exceeding $5,000 or imprisonment in the jail not to exceed one year, or both.[39] Presumably, this court also possesses the jurisdiction of a district court. Three separate "departments" or judges are elected by city voters to this municipal court, although the city council may create additional "departments" or judgeships.[40] Judges are elected to four-year terms of office at elections held in even-numbered years.[41] Their salaries are set by the Washington Citizens' Commission on Salaries for Elected Officials.[42]

Historical Development of Local Judiciary

The system of local courts in Washington gradually developed over decades.[43]

A. Prior to Statehood

As discussed in Chapter 1, an elementary system of local government gradually developed during the years of the Provisional Government of Oregon County. This elementary system basically consisted of a single judge and then a three-member district court in each separate district or county.[44] District courts had varied powers, functioning both as judicial bodies with typical criminal and civil jurisdiction but also functioning as boards of county commissioners with elementary legislative and executive powers. These judges also functioned as justices of the peace. This system of local government clearly existed in the Willamette River Valley, in the western portion of what now is the State of Oregon, where most of the American settlers lived. Although in theory this system of local government existed throughout all of Oregon Country, it may not have actually been implemented in the more remote portions of Oregon Country, that are now Washington State, during the early years of the Provisional Government of Oregon County.

The express non-judicial powers of the county courts gradually increased after Oregon Territory was formed, including the area that is now Washington State. Legislation was enacted in 1851, renaming the county courts as boards of county commissioners and authorizing them to exercise the more common legislative and

executive functions normally associated with a board of county commissioners, as well as their judicial powers.[45]

The first Legislative Assembly of Washington Territory enacted legislation in 1854, dramatically altering the judiciary and county government in the new Territory. Boards of county commissioners lost their judicial powers.[46] A separate judiciary was created consisting of a mix of appointed higher court judges and elected lower court judges.[47] The new judiciary was created as follows:

- A Supreme Court.[48] The President of the United States appointed three judges, subject to confirmation by the United States Senate, to serve as members of the Supreme Court. The Supreme Court sat at the Territorial capital in Olympia during the month of December and heard appeals from lower level courts.
- Three district courts.[49] The Legislative Assembly was directed to divide the Territory into three judicial districts and assign each of the three members of the Supreme Court to a different judicial district. Each judge was required to reside within the district to which he was assigned, and rode circuit within this district, acting as a trial court judge with original jurisdiction on criminal matters and civil matters other than probate matters. District court sessions were to be held in each county twice a year.
- Probate courts.[50] The Legislative Assembly was directed to create a probate court in each county with the voters of each county electing a person to serve as the probate judge for that county. Probate courts had original jurisdiction over: (a) The probate of wills and testaments; (b) appointing guardians of orphans, minors, and persons of unsound mind; (c) binding apprentices; and (d) claims against estates of deceased persons.
- Justices of the peace.[51] The voters of each voting precinct that was created by a board of county commissioners elected a justice of the peace and a constable to serve the precinct. Justices of the

> peace had original jurisdiction over civil cases where the debt or damages claimed did not exceed $100, but could not hear actions concerning title of land. They were granted limited criminal jurisdiction over several minor crimes in 1860, and allowed to impose fines of up to $100.[52] Legislation was enacted in 1888, providing that each city shall be considered to be a single precinct for purposes of electing justices of the peace.[53]

A prosecuting attorney was elected from each of the three judicial districts that were created for Supreme Court judges.[54] However, in 1879, the Legislative Assembly enacted legislation increasing the number of prosecuting attorneys and creating separate prosecuting attorney districts with each prosecuting attorney being elected from a separate district.[55] Additional prosecuting attorney positions and new prosecuting attorney districts were gradually added. The last expansion was in 1885, when 14 prosecuting attorneys were provided with a prosecuting attorney being elected by the voters of a single county or jointly by the voters of two, three, or four counties.[56]

The Supreme Court and district courts were altered a few years prior to statehood. Congress enacted legislation in 1884, providing for a fourth Supreme Court judge to be appointed, and authorizing the Legislative Assembly to create an additional judicial district where the additional justice would reside and ride a circuit, acting as a district court judge.[57] Only three of the four judges sat as the Supreme Court to hear an appeal from any case decided at the district court by fourth judge. The judge who sat as a district court judge on a case that was appealed to the Supreme Court would no longer sit as a member of the Supreme Court to hear the appeal.

B. After Statehood

Washington voters approved the State Constitution in 1889, creating Washington State.

The original Article IV of the State Constitution created the judicial branch of government for the State composed of a Supreme Court, superior courts, justices of the peace, and other inferior courts that

the Legislature may provide. All of the judges were elected officials, replacing the mixture of appointed and elected judges during the Washington Territorial period. State voters approved Amendment 50 (Article IV, Section 30) in 1968, providing for a Court of Appeals as an intermediate level court, with jurisdiction to hear many appeals from county superior courts. These judges are also elected to office. Parties may seek review by the Supreme Court over decisions of the Court of Appeals.

1. Superior courts

Superior courts were established in the original State Constitution as the basic trial courts in the State. Their jurisdiction essentially combined the prior jurisdictions of the Territorial district courts and probate courts.

As discussed above, this system of superior courts remains in place today, essentially as created in 1889 by the State Constitution, with a few exceptions.

Legislation was enacted changing the office of superior court judge, as well as Supreme Court justice, from a partisan office to a nonpartisan office in 1907.[58] Superior court judges were elected without partisan affiliation in 1908, but the Republican-controlled Legislature reinstated the use of partisan affiliations for the 1910 election to elect a slate of Republican candidates for the Supreme Court. Legislation was enacted in 1911, again eliminating partisan affiliation for these judicial offices.[59]

2. Inferior courts

Inferior courts were established in the original State Constitution. These courts were the justices of the peace but the Legislature was also authorized to create other types of inferior courts. Territorial statutes providing for justices of the peace were retained and remained fairly intact until the 1960's. This included separate provisions for justices of the peace in cities.

The first State Legislature authorized police courts to be created by second and third class cities and in towns.[u] Ironically, these

u These provisions were part of the original laws creating different classes of cities. Second class

provisions did not authorize first class cities to create police courts. However, the Tacoma City Charter, which was the first charter adopted for a first class city in the State, authorized a police court to be established. The legality of this court was challenged, and the Supreme Court held that first class cities could not create courts unless expressly authorized.[60] Legislation was soon enacted allowing first class cities (i.e., cities with populations of 20,000 or more, at that time operating under a city charter) to create police courts.[v] [61]

Legislation was enacted in 1933, changing the office of justice of the peace from a partisan office to a nonpartisan office.[62] This had the effect of causing what we now know as district court judges and municipal court judges being elected as nonpartisan officials.

Legislation was enacted in 1955, creating a municipal court in each city with a population of 500,000 or more (Seattle).[63] This was a separate municipal court with elected municipal court judges who were not justices of the peace. A number of changes were made to these statutes in 1975, including a reduction in the population of the city from 500,000 to 400,000, when Seattle was losing population, and was in danger of no longer having a population of 500,000.[64]

A series of laws were enacted in an attempt to modernize justices of the peace and provide more professional inferior court judges. This basically involved:

- Replacing justices of the peace with district courts and municipal courts;

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cities were authorized to provide a police court and elect a police judge to hear crimes established by city ordinance. (Sections 92 & 26, Pages 143-178, Laws of 1889-1890.) This appears to have been a municipal court that was independent of the justices of the peace. The authority of third class cities and towns to create police courts was quite different from the authority granted to second class cities. Each third class city or town was authorized to create a police court, by the mayor selecting one of the justices of the peace who was elected by voters of the city or town, to act as a police judge to hear crimes established by city or town ordinance. This police judge also retained the normal jurisdiction of a justice of the peace. (Section 138, Pages 178-198, Laws of 1889-1890; and Section 174, Pages 198-215, Laws of 1889-1890.)

v First class city authority to create a police court resembled the authority granted to third class cities and towns, rather than the seemingly broader authority granted to second class cities. The mayor of a first class city could designate one of the justices of the peace elected in the city as a police judge with jurisdiction over city criminal ordinances as well as the normal jurisdiction of a justice of the peace.

- Establishing qualifications for persons to serve as inferior court judges; and
- Transforming inferior courts effectively into courts of record, without actually calling them courts of record.

These changes were made in legislation enacted in 1951,[w] [65] 1961,[x] [66] and the Court Improvement Act of 1984.[y] [67] The relative ease in transforming an old fashioned system of justices of the peace to a more modern and professional system of district courts, that occurred in Washington State, has not occurred in other states.[z]

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w This legislation established requirements for persons to serve as justices of the peace and began the transition to naming justices of the peace as justice courts. A justice court district committee was created in each county to designate justice districts from which justices of the peace were elected. Justices of the peace elected in any city with a population of 5,000 or more were required to be attorneys. All other justices of the peace were required to be attorneys, or be approved by this committee as being qualified, based upon various factors including their legal experience and education.

x This legislation included a wide variety of changes for inferior courts. Justice courts were created in larger counties (Class AA and A) consisting of justices of the peace elected or appointed to office. These courts were required to keep records. New qualifications were established for justices of the peace where a justice had to: (1) Be an attorney; (2) have been previously elected as a justice of the peace, police judge, or municipal judge; or (3) have passed a qualifying examination provided by the Supreme Court if the justice district has a population of less than 10,000. Justices of the peace were granted "all the necessary powers which are possessed by courts of record in this state". A city could create a "municipal department" with justices of the peace being elected or appointed. Criminal and civil jurisdictions of justices of the peace were expanded. Cities of over 20,000 population were allowed to create separate municipal courts with either elected or appointed municipal judges.

y This legislation made major changes to inferior courts. Terminology for the basic inferior courts was changed from either justices of the peace or justice courts to district courts, although district court judges were in effect justices of the peace. All justice of the peace statutes were repealed, along with a large number of municipal court statutes. Civil and criminal jurisdictions were increased for the new district courts. Laws allowing cities with a population of 20,000 or more to create municipal courts were altered and the population was increased to 500,000. Cities were precluded from dissolving their municipal courts or repealing their criminal ordinances unless they entered into an agreement with the county to pay the county for handling these matters in county district courts. The maximum criminal penalties that a city could provide were increased.

z The New York Times ran a three-part series about New York's system of town courts on September 25-27, 2005. Attempts have been made to reform this old fashioned system of inferior courts in New York since the early years of the 20th century, but none were successful.

NOTES:

1. ESJR 101 was defeated by state voters at the 1975 general election. See, Knab, Karen Markle, editor, *Courts of Limited Jurisdiction: A National Survey*, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration (LEAA), U.S. Department of Justice, 1977, at page 382.
2. CW 2.08.061, 2.08.062, 2.08.063, 2.08.064, & 2.08.065.
3. .RCW 2.08.064 & 2.08.065.
4. Article IV, Section 6; and RCW 2.08.010.
5. *Id*.
6. Article IV, Section 6; and RCW 2.08.020.
7. RCW 3.02.020 & 3.02.030; and Titles 5 & 6, Washington State Court Rules: Rules for Appeal of Decision of Courts of Limited Jurisdiction.
8. RCW 29A.52.231.
9. RCW 2.08.060.
10. Article IV, Section 17.
11. Article IV, Section 9.
12. Article V.
13. Article IV, Section 31 (Amendment 85).
14. Article XXVIII, Section 1 (Amendment 78) and RCW 43.03.305.
15. Justices of the peace are established by Article IV, Sections 1 and 10. The status of district courts as justices of the peace is found in RCW 3.30.015 and 3.30.030.
16. Article IV, Section 6.
17 RCW 3.66.070.
18. *Seattle v. Filson*, 98 Wn.2d 66, 70-71 (1982), RCW 3.66.010 & 3.02.020; and Administrative Rules for Courts of Limited Jurisdiction (ARLJ) 13.
19. RCW 3.34.010.
20. RCW 3.34.020 & 3.34.025.
21. RCW 29A.52.231.
22. RCW 3.34.050, 3.34.070, & 29A.04.321.
23. Chapter 3.38 RCW.
24. Article XXVIII, Section 1 (Amendment 78) and RCW 43.03.305.
25. RCW 3.34.060.

26. RCW 3.46.150, 3.50.800, 3.50.805, 35.22.425, 35.23.555, 35.27.515, & 35A.11.200.
27. RCW 3.46.070, 3.50.050, 29A.04.330, & 35.20.150.
28. RCW 3.46.020.
29. RCW 3.46.030.
30. RCW 3.46.050.
31. Article XXVIII, Section 1 (Amendment 78) and RCW 43.03.305.
32. RCW 3.46.050 & 3.46.040.
33. RCW 3.50.007.
34. RCW 3.66.010 & 3.30.015.
35. RCW 3.50.020.
36. RCW 3.50.040 & 3.50.050.
37. RCW 3.50.057.
38. Article XXVIII, Section 1 (Amendment 78) and RCW 43.03.305.
39. RCW 35.20.030.
40. RCW 35.20.100 & 35.20.190.
41. RCW 35.20.150.
42. Article XXVIII, Section 1 (Amendment 78) and RCW 43.03.305.
43. Chief Justice Gerry L. Alexander has written a number of articles about the history of courts in Washington, including “The Courts of the Washington Territory: 1853-1889", which appeared in the November 2003 edition of the Bar News, which is the official publication of the Washington State Bar Association.
44. Gray, at Page 356. References to these judicial powers is found in: (a) Legislation entitled “An Act Regulating the Executive Power, the Judiciary and for Other Purposes” approved on June 27, 1844, and is found at Pages 60-65 of the handwritten “Laws and Journals 1844" of the Provisional Government of Oregon Country, provides in its second Article that the single circuit court judge for all of Oregon Country would have original jurisdiction in all criminal cases, in cases in law or in equity where the amount is $150 or more, appellate jurisdiction from cases before a justice of the peace, and power over “all county business”; (b) legislation entitled “An Act Establishing District Courts” approved on August 19, 1845, and found on Pages 53-54 of “Oregon Acts and Laws Passed by the House of Representatives At a Meeting Held in Oregon City, August, 1845", and printed in 1921 by N. A. Phemister Co.; and (c) legislation entitled “An Act to Amend ‘An Act organizing County Courts” approved on December 17, 1846, and found on Pages 7-8 of “Laws of a General and Local Nature Passed by Legislative Committee”, published on January 26, 1853.

45. Legislation entitled “An Act to establish a Board of County Commissioners” passed on January 20, 1851, and found on pages 76-79 of “Statutes of General Nature Passed by the Legislative Assembly of the Territory of Oregon at the Second Session Begun ... December 2, 1850".

46. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 420, 424, 426, 428, 434, 436, & 420.

47. A short discussion of the judiciary during Washington Territory is found in Sheldon, Charles H., *A Century of Judging: A Political History of the Washington Supreme Court*, University of Washington Press, 1988, at pages 15-23.

48. Sections 9 & 11, An Act to Establish the Territorial of Washington, approved March 2, 1853, 10 U.S. Statutes at Large, Chapter 90, Page 172; and Statutes of the Territory of Washington, 1854, 1st Session, at Pages 448-449.

49. *Id.*

50. Section 9, An Act to Establish the Territorial of Washington, approved March 2, 1853, 10 U.S. Statutes at Large, Chapter 90, page 172; Statutes of the Territory of Washington, 1854, 1st Session, at Pages 309-311; and Sheldon, at Pages 15-16.

51. Section 9, An Act to Establish the Territorial of Washington, approved March 2, 1853, 10 U.S. Statutes at Large, Chapter 90, page 172; and Statutes of the Territory of Washington, 1854, 1st Session, at Pages 222 & 225.

52. Statutes of the Territory of Washington, 1859-1860, 7th Session, Section 171, Pages 279-285.

53. Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter LXVIII, Section 3, Page 120.

54. Statutes of the Territory of Washington, 1854, 1st Session, at Pages 416-419 & 448.

55. Statutes of the Territory of Washington, 1879, 7th Biennial Session, at Pages 92-97.

56. Statutes of the Territory of Washington, 1885, 10th Biennial Session, at Pages 59-64.

57. Sections 9-13, Chapter 182, Laws of 1884, enacted on July 4, 1884, by the 48th Congress. The Legislative Assembly of Washington Territory adopted a Memorial to Congress requesting these changes in 1881. (Statutes of the Washington Legislative Assembly, Memorials, 1881, 8th Biennial Session, at Pages 232-233.)

58. Section 38, Chapter 209, Laws of 1907.

59. Sheldon, Charles H., *The Washington High Bench, A Biographical History of the State Supreme Court, 1889-1991*, endnote 23, at Page 45.

60. *In re. Cloherty*, at page 146.

61. Chapter LXXXV, Laws of 1899.
62. Section 1, Chapter 85, Laws of 1933.
63. Chapter 290, Laws of 1955, codified as Chapter 35.20 RCW.
64. Chapter 33, Laws of 1975.
65. Chapter 156, Laws of 1951.
66. Chapter 299, Laws of 1961.
67. Chapter 258, Laws of 1984.

Chapter 70

Growth Management Act

The Washington State Legislature enacted the Growth Management Act (GMA) in 1990 and 1991, establishing a comprehensive system of managing growth and development throughout most of the State.[1]

This legislation has had a profound impact on Washington State, and local governments in the State, by:

- Establishing a more organized and integrated approach for counties and cities to regulate growth and provide governmental facilities, with some oversight provided by the State.
- Requiring counties and cities to anticipate and plan for future growth.
- Encouraging relatively dense growth to be located within urbanized areas and discouraging development from sprawling out into areas far beyond the city boundaries.
- Encouraging a realignment of the structure of local government. Cities are recognized as the primary provider of urban services. Counties are recognized as regional governments and are encouraged to focus on regional issues, rather than providing urban services in unincorporated areas. This has encouraged urbanized areas that were not located in a city to either annex into an adjacent city or incorporate as a new city.

Very few states have comprehensive growth management laws. Other states with comprehensive growth management laws include Oregon, Florida, and Hawaii.

Development of the GMA

Joe King, former Speaker of the Washington State House of Representatives, was the prime force behind enacting the GMA. This effort followed a number of earlier unsuccessful attempts to enact comprehensive growth management legislation over the preceding twenty years.

Governor Dan Evans first proposed the enactment of comprehensive growth management legislation in 1970. The Legislature responded by enacting legislation in 1971 creating the State Land Planning Commission and directing the commission to prepare comprehensive growth management legislation.[2] Legislation implementing the State Land Planning Commission's recommendations was introduced in the House of Representatives as HB 791 in 1973, sponsored by then Representative Alan Bluechel and others. This legislation was considered by the House of Representatives in 1973 and 1974, but was not enacted.

The next effort to enact comprehensive growth management legislation was led by the late Representative Joe Haussler. Haussler was a long-time legislator who lived in Okanogan County and served as the chair of the House Local Government Committee. These efforts led to the introduction of HB 168 in the 1975 Legislative Session.[a] This legislation was somewhat similar to the recently enacted Oregon growth management legislation. HB 168 was not enacted. The Haussler legislation was perfected and introduced as HB 65 in the 1977 Legislative Session, sponsored by then Representative Alan Thompson, the next chair of House Local Government Committee. HB 65 was not enacted. The proposal was further revised for then Representative Donn Charnley, who succeeded Representative Thompson as chair of the House Local Government Committee during the 1979-80 session, but this revision was not introduced.

Interest in comprehensive growth management legislation arose again in the late 1980's.[b] Language was attached to the 1989 state

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a The author staffed the House Local Government Committee and was one of the primary drafters of this legislation, as well as subsequent versions of this legislation.

b A discussion of the political environment when the Growth Management Act was enacted, as well as a discussion of the provisions of the Growth Management Act, is found in a law review article by Richard

operating budget creating a Growth Studies Commission to study growth and propose legislation for the 1991 Legislative Session. Governor Booth Gardner vetoed this budget proviso but created the Growth Studies Commission by executive order and appointed the late Dick Ford as the chair of this commission.[c] In the 1989 primary election, two Republican candidates for county council positions in King and Snohomish Counties, who advocated greater land use regulation, defeated incumbent Republican county councilmembers who generally opposed these measures. Shockwaves reverberated through the political establishment after these two defeats. The two nominees who favored increased land use regulation were elected at the 1989 general election.

Several weeks after the 1989 primary election, Speaker Joe King requested the author to prepare several memos describing possible subjects that could be included in growth management legislation and then to prepare draft legislation. Economic development provisions were added to this proposal and the expanded legislation was introduced as HB 2929 in the 1990 Legislative Session. Dick Ford and members of the Growth Studies Commission were consulted about many of the provisions in this proposed legislation, but were not integral participants in this 1990 effort.

Speaker King devised a unique strategy for the House of Representatives to consider this legislation. The complete GMA proposal (HB 2929) was introduced and referred to the House Appropriations Committee, chaired by then Representative Gary Locke. Five other bills were also introduced, each including a portion of HB 2929 relating to the subject matter jurisdiction of a policy committee, along with the same intent and definition sections included in HB 2929. Each of these bills was referred to the policy committee with jurisdiction over the particular subject area. For example, the bill

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Settle and Charles Gavigan, entitled "The Growth Management Revolution in Washington: Past, Present, and Future, 16 Puget Sound Law Review 867 (1993). Richard Settle is a well known land use expert and former professor at the University of Puget Sound Law School, which is now the Seattle University Law School. Charles Gavigan is a long time staff member of the Office of Program Research of the Washington State House of Representatives and was also one of the primary legislative staff members who worked on the GMA.

c The late Richard "Dick" Ford was a well-known and respected attorney. He was a counsel for the Washington State Association of County Commissioners (now called the Washington State Association of Counties); the executive director of the Port of Seattle; and member of the Washington State Transportation Commission. Prior to his recent passing, Mr. Ford was a senior counsel with Preston Gates & Ellis LLP.

relating to transportation issues was referred to the House Transportation Committee and the bill relating to the general planning and zoning requirements was referred to the House Local Government Committee.[d] Substitute versions of these bills were approved by each of the five policy committees and were referred to the Appropriations Committee rather than the Rules Committee. A proposed substitute version of HB 2929 was prepared that included the changes made by each policy committee to its legislation. This unique strategy allowed five powerful legislators to participate in the creation of the GMA. The Appropriations Committee approved SHB 2929. The House of Representatives amended this measure and approved ESHB 2929. The measure advanced to the Senate. An informal committee composed of representatives and senators, led by Speaker King and Senate Majority Leader Janette Hayner, negotiated the final details in this legislation which was enacted during a Special Session of the Legislature in the spring of 1990.[e] (Chapter 17, Laws of 1990, 1st ex. sess.) This was the first portion of the basic GMA.

The environmental community pushed Initiative Measure No. 547 in 1990 as an alternative to the 1990 GMA legislation. This initiative included stronger land use requirements than the 1990 GMA legislation, including greater state control over county and city planning efforts. Speaker King was a leader in opposing this measure, which was defeated by state voters at the 1990 general election.

The second portion of the basic GMA was prepared during the interim after the 1990 Legislative Session, and was introduced as HB 1025 in the 1991 Legislative Session. HB 1025 proceeded through the Legislature and again an informal committee was selected to work out details. This informal committee was composed of legislators with

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d These five committees were chaired by female legislators. Informally, these five committee chairs were called the "Steel Magnolias" after a popular movie. They included: (1) Maria Cantwell, who chaired the Trade and Economic Development Committee and now is a United States Senator; (2) Mary Margaret Haugen, who chaired the Local Government Committee and subsequently was a state senator who chaired the Senate Transportation Committee; (3) Jennifer Belcher, who chaired the Natural Resources and Parks Committee and later was elected as the Commissioner of Public Lands; (4) Busse Nutley, who chaired the Housing Committee and later was the director of the Department of Community Development; and (5) the late Ruth Fisher, who chaired the Transportation Committee. Representative Nancy Rust, who chaired the House Environmental Affairs Committee, was also a member of the Steel Magnolias and was a major participant in pushing the GMA, although a portion of the GMA was not referred to her committee.

e The author was the principal drafter of the basic planning provisions of this legislation that was enacted in 1990 and the second part of the GMA that was enacted in 1991.

certain interest groups that were allowed to participate in these deliberations. Speaker King and Majority Leader Hayner again played dominant roles in this effort. Dick Ford and members of the Growth Studies Commission were directly involved in this process. This legislation was enacted in 1991 as the second part of the basic provisions of the GMA. (Chapter 32, Laws of 1991, sp. sess.)

The GMA has been amended each year after it was enacted. Significant changes were enacted in 1995.[3] These included:

- Integrating the GMA with the Shoreline Management Act.
- Integrating the GMA with the State Environmental Policy Act.
- Requiring "best available science" to be used when counties and cities designate and protect critical areas.
- Providing new procedures for local governments to review project applications. These procedures involve a single "open record hearing" on a project permit application and an administrative appeal of the decision on the application that is a "closed record appeal".
- Providing a new procedure for courts to review development project applications.
- Allowing the then three separate Growth Management Hearings Boards, and now single Growth Management Hearings Board, to invalidate comprehensive plans and development regulations under certain circumstances.

These changes were recommended by the Governor's Regulatory Reform Task Force.

State voters rejected a major challenge to land use regulation by defeating Initiative to the Legislature No. 164 at the 1995 general election.[f] This measure would have required governments to pay for

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f Initiative to the Legislature No. 164 was submitted to the Legislature for its consideration at the 1995 session. The Legislature enacted the measure as Chapter 98, Laws of 1995. However, this measure

any diminution in the value of land arising from land use regulations, effectively eliminating the GMA and other land use regulations. A somewhat similar initiative (Initiative Measure No. 933) was defeated by state voters at the 2006 general election.

Strong efforts have been made by some interests to repeal the GMA. Recent legislation was enacted allowing a few counties, the cities in those counties, to opt out of planning under all of the requirements of the GMA. Apart from the legislation allowing a few small counties to opt out of planning under all of the GMA requirements, none of the efforts to repeal or significantly reduce the GMA have been successful.

Interesting perspectives on the development and enactment of the Growth Management Act are found in oral interviews of several legislators, staff, and other experts who were deeply involved in the GMA.[g]

Basic GMA Requirements

The GMA establishes a comprehensive system of growth management for Washington State.

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was submitted to state voters for their approval or rejection by Referendum Measure No. 48. Voters defeated the underlying Initiative to the Legislature No. 164 at the 1995 general election. The Legislature has three options it may take if an initiative to the Legislature has sufficient valid signatures. First, the Legislature may enact the measure as it was presented, which is not subject to potential veto by the Governor but is subject to potential referendum action by state voters. (This occurred with Initiative to the Legislature No. 164.) Second, the Legislature may adopt alternative measures, which together with the original measure are presented to voters at the ensuing state general election. Third, the Legislature may do nothing, in which case the measure is presented to state voters at the ensuring general election.

g The interviews were conducted as a joint project by the then Department of Community, Trade, and Economic Development (now the Department of Commerce) and the Secretary of State's Oral History Program. Interviewees were: 1) Ex-Speaker Joe King; 2) ex-Representative Mary Margaret Haugen; 3) ex-Representative Busse Nutley; 4) ex-Representative Jennifer Belcher; 5) Tom Campbell (a prior chief aide to Speaker King); 6) the author; 7) the late ex-Governor Booth Gardner; 8) ex-Representative Wayne Elhers (a chief aide for Governor Gardner); 9) Steve Hoddes (an aide to Governor Gardner); 10) Michael McCormick (a planner involved in the development of the GMA); 11) the late Dick Ford, chair of the Growth Studies Commission; 12) Nan Hendrickson, member of the Washington State Growth Strategies Commission and a prior member of the Western Washington Growth Management Hearings Board; 13) Mary McCumber, executive director of the Washington Growth Strategies Commission; 14) Lucy Steers, prior president of the League of Women Voters of Seattle, and member of the Growth Strategies Commission; and 15) David Bricklin, a Seattle-area land use attorney.

https://www.sos.wa.gov/legacyproject/timeline_event.aspx?e=60

A balance, or partnership with shared responsibilities, is established between the State and local governments (counties and cities) to manage growth in a comprehensive manner. Emphasis is given to accommodating growth by focusing limited governmental resources on providing infrastructure within designated urban growth areas, while protecting critical areas, conserving natural resource lands, and maintaining the rural nature of areas outside urban growth areas.

Land use regulation under the GMA is a "bottom up approach" with significant direction from the State. A balance is struck between the responsibilities of local governments (counties and cities) and the responsibilities of the State. Actions by counties and cities taken under the GMA must be harmonized with a number of goals that, in part, may be seen in conflict.

State responsibilities under the GMA include:

- Establishing the basic growth management requirements, which include goals and detailed requirements.
- Providing some direction on how counties and cities implement these requirements.
- Providing grant monies and technical assistance to counties and cities to assist them in meeting their new responsibilities under the GMA.
- Reviewing comprehensive plans and development regulations for compliance with requirements. The Department of Commerce must be notified of a comprehensive plan or development regulations, or changes to these regulations, at least 60 days before the regulations are adopted. This provides time for the agency to review and comment upon these proposals.
- Enforcing compliance with these requirements.

State enforcement of the GMA requirements involves the creation of a Growth Management Hearings Board, with the authority to hear appeals over whether a county or city has complied with the GMA

requirements.[h] The State is one of the parties that may appeal local government actions to a Hearings Board. The Hearings Board may invalidate all or parts of a comprehensive plan or development regulations, or may recommend that the Governor impose sanctions on a county or city that the Board finds is not in compliance with GMA requirements. These sanctions could lead to withholding state monies that otherwise would be distributed to a county or city.

County and city responsibility under the GMA is to take the required actions in an integrated manner, with broad flexibility to tailor their actions to suit local conditions.

Until 2014, two categories of counties and cities existed under the GMA. The first category included counties and cities required to plan under virtually all of the GMA requirements. The second category included the remaining counties and cities required to plan under only a few GMA requirements. However, legislation was enacted in 2014 creating a potential third category of counties and cities subject to a midlevel of GMA planning requirements between full compliance and the limited requirements of the prior second category of counties and cities. The resolution by a county moving itself, and the cities in the county, into this new, in between, category is called a "resolution of partial planning."[4]

Jurisdictions planning under the first category of compliance with virtually all GMA requirements include both counties (and the cities within those counties) that were required to plan under these requirements as well as counties (and the cities within these counties) opting to plan under these requirements. Two separate sets of criteria were established to determine if a county was required to plan under all of the GMA requirements. These criteria are based upon the population of the county and the rate of population growth in the county over the preceding 10-year period.[5]

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h Originally there were three, separate, regional Growth Management Hearing Boards, one for eastern Washington, one for the central Puget Sound region, and one for the rest of western Washington. However, legislation was enacted in 2010 consolidating these boards into a signal, statewide board. (Section 4, Chapter 211, Laws of 2010, amending RCW 36.70A.250.) Several legislators involved in the informal committee that perfected the GMA legislation creating these hearings boards strongly opposed the creation of a single hearings board, and did not want people from central Puget Sound, and in particular King County, sitting on a board that could review actions of more rural counties.

Until changes included in this 2014 legislation, once a county was in the first category of compliance with all GMA requirements, the county (and cities in that county) remained in this category and could not drop out of this category. However, under this new legislation, four counties with small populations were given the option of removing themselves from this first category and becoming subject to "partial planning" under the GMA. Action by one of these counties to change its status level must be made on or before December 31, 2015. A county was only eligible to take this action if the county:

- Was one of the counties that opted into planning under all of the GMA requirements, rather than being required to plan under all of these requirements; and
- The county had a population of 20,000 or less at any time from April 1, 2010, to April 1, 2015.

The four counties meeting these requirements are Pend Oreille, Ferry, Columbia, and Garfield Counties. Once a county adopted a resolution of partial planning, cities within in the county had a 60 day period to reverse this option if at least 60 percent of the cities in the county, with an aggregate of at least 75 percent of the incorporated county population, pass a resolution opposing the county action.

Appendix G details which counties in the first category, as well as those counties that may remove themselves from this category and become subject to somewhat lesser GMA requirements.

This distinction between the three categories of counties and cities under the GMA may appear to be more significant than it actually is. Twenty-nine of the 39 counties in Washington fell into the first category, and were either required to or opted to plan under all GMA requirements. More than 94 percent of the state's population resides in these 29 counties. Only 0.4 percent of the state's population resides in the four of these 29 counties potentially able to remove themselves from this category and become subject to the "partial planning" GMA requirements. Only 5.4 percent of the state's population resides in the remaining 10 counties falling into the now third category of counties, and are required to plan under the fewest number of GMA requirements.

Washington State's GMA was somewhat based upon comprehensive growth management legislation enacted by the Oregon State Legislature in 1973.[i] However, the Washington GMA differs from the Oregon law as follows:

- The Oregon law provides for much more of a "top down" approach to land use regulation, while Washington's GMA provides for a system of shared responsibilities with much more of a "bottom up" approach. An Oregon state agency (the Land Conservation and Development Commission or LCDC) adopts regulations with binding force directing local land use efforts, automatically reviews local regulations adopted under this law, and either approves or rejects the local land use regulations. As discussed below, state agencies possess much less control over county and city land use actions under the Washington GMA.
- All counties and cities in Oregon are required to take a large number of actions, while in Washington two and now potentially three groups of local governments are designated. One group of counties and cities is required to take all actions under the GMA. The other group of counties and cities is only required to take a few actions under the GMA. The new potential third group of counties may opt to plan under a midlevel of GMA requirements.
- Oregon does not have an equivalent of Washington's State Environmental Policy Act (SEPA). SEPA requires state agencies and local governments to review proposed legislation and other actions to determine if they may have significant impacts on the environment. This involves use of an environmental check list. Mitigation measures must be taken if it is determined that a significant impact on the environment may occur.[j]

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i The Oregon State Legislature enacted Senate Bill 100 in 1973 providing for an extensive system of land use regulation throughout the State. (Chapter 80, Laws of 1973.)

j Chapter 72 includes a more detailed discussion of the SEPA.

A. Jurisdictions Planning Under All GMA Requirements

The Washington State GMA applies a phased or "building block" approach for counties and cities in the first category, planning under virtually all GMA requirements, and are required to take a number of steps over a number of years. This phased process culminates in counties and cities adopting detailed comprehensive plans and development regulations regulating land use and growth. Appendix H is a schematic illustrating the phased, building block approach used by these counties and cities to implement GMA requirements.

Statutes detail the requirements of the GMA and include a number of planning goals that are established to guide county and city actions under the GMA.[6] This includes a public participation requirement. Each county and city must provide for early and continuous public participation when taking actions required by the GMA.[7] Many counties and cities incorporated their public participation process into their comprehensive plans or development regulations.

The Department of Commerce adopts "procedural criteria" to assist counties and cities in adopting comprehensive plans and development regulations and "guidelines" to assist counties and cities in designating critical areas and natural resource lands.[k] These procedural criteria and guidelines do not have the standing of a regulation, but serve as a guide for counties and cities to meet their responsibilities under GMA. Actions taken by a county or city under the GMA are deemed valid upon adoption. However, if a party with standing timely appeals these actions to a Growth Management Hearings Board, the Growth Management Hearings Board determines if the challenged actions meet the requirements of the GMA.

1. County-wide planning policy

Each county in the first category, planning under virtually all of the GMA requirements, must adopt a county-wide planning policy establishing a "framework" from which the comprehensive plans of

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k RCW 36.70A.190(4)(b) directs the Department of Commerce to adopt procedural criteria to assist in the adoption of comprehensive plans and development regulations. RCW 36.70A.050 directs the Department of Commerce to adopt guidelines for counties and cities to consider when designating critical areas and natural resource lands. RCW 36.70A.170(2) requires counties and cities to consider these guidelines when making these designations.

the county and the cities located in the county are developed and adopted.[8]

County-wide planning policies must address a number of subjects, including: (a) Policies for the county to designate urban growth areas; (b) policies to promote contiguous and orderly development and the provision of urban services; and (c) policies for county-wide economic development. Although the county legislative authority adopts these county-wide planning policies, the county is required to collaborate with the cities located within its boundaries when developing the policies.[l] Once these policies are adopted, they become binding on the county and the cities located within the county.

Unlike other required actions under the GMA, only a city located within the county or the Governor may appeal an adopted county-wide planning policy to the Growth Management Hearings Board and the appeal must be made within 60 days of the county adopting the county-wide planning policy.

2. Critical areas

Counties and cities in the first category planning under all GMA requirements must designate five types of critical areas and adopt development regulations to protect these critical areas.[9] These five types of critical areas are:

- Wetlands;
- Fish and wildlife habitat areas;
- Frequently flooded areas;
- Geologically hazardous areas; and
- Areas with a critical recharging effect on aquifers used for drinking water.

Legislation was enacted in 1995 requiring that the "best available science" must be used when critical areas are designated and

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l State grants provided to counties and cities to meet GMA requirements included a requirement that each county and the cities in the county decide on how these moneys would be shared between the county and cities. In many instances, the group that made this decision became the group that developed the county-wide planning policy for the county that the county formally adopted. (Discussion with Mike McCormick, March 18, 2005.)

protected.[10] Counties and cities must adopt initial designations and measures to protect these critical areas. Eventually, more final designations and measures to protect these critical areas must be included in their comprehensive plans and development regulations.[11]

3. Natural resource lands

Counties and cities in the first category planning under all GMA requirements must designate three different types of natural resource lands and adopt development regulations to conserve these natural resource lands.[12] The three natural resource lands are:

- Agricultural lands with long-term significance for the commercial production of food or other agricultural products that are not already characterized by urban growth;
- Forest lands with long-term significance for the commercial production of timber that are not already characterized by urban growth; and
- Mineral resource lands with long-term significance for the extraction of mineral resources.

Although the term "natural resource lands" is not used in the GMA, these three types of lands have become known as natural resource lands. Counties and cities are required to adopt initial designations and measures to conserve these natural resource lands. Eventually, more final designations and measures to conserve these natural resource areas must be included in their comprehensive plans and development regulations.[13]

4. Urban growth areas

Each county in the first category planning under all GMA requirements must designate urban growth areas in its comprehensive plan within which urban growth is encouraged and outside of which growth may only occur if it is "non-urban" in nature.[14]

This is perhaps the most significant and controversial requirement of the GMA. The purpose of designating urban growth areas is to

provide for a compact pattern of growth within the county that is adequately served by urban services and facilities. A two-step process is used to establish urban growth areas, with the county establishing interim urban growth areas and then designating final urban growth areas. Urban growth areas in a county must include land areas and densities sufficient to accommodate the urban growth, within a range of population that is projected for the county by the Office of Financial Management to occur in the county over the next 20 years.

Each city located in the county must be included in an urban growth area. Two or more cities may be included in a single urban growth area. An urban growth area may include territory outside of cities, but only if the unincorporated area is characterized by urban growth or is adjacent to territory already characterized by urban growth. An urban growth area that does not include a city may be designated, if the area is already characterized by urbanized growth.

However, counties in the first category may authorize the following type of urban development outside of urban growth areas:

- Any county may approve new, fully contained communities outside of its urban growth areas.[15]
- Any county may approve master planned resorts outside of its urban growth areas;[16]
- Any county may approve major industrial developments outside of its urban growth areas;[17]
- Several counties may establish one or two banks of master planned industrial locations outside of its urban growth areas.[18]
- A county may designate a national historic town outside of its urban growth areas.[19]

A range of densities must be authorized in rural areas outside of urban growth areas, including limited and compact commercial areas.[20]

A city may request that the county in which it is located amend the urban growth area in which the city is located.[21]

5. Comprehensive plan

Each county and each city in the first category planning under all GMA requirements must adopt a comprehensive plan that is consistent with the county-wide planning policy for that county.[22]

A comprehensive plan must include a number of elements, including a land use element, housing element, capital facilities plan element, utilities element, transportation element, economic development element, parks and recreation element, provisions for designating critical areas, and provisions for designating natural resource lands. County comprehensive plans must also designate final urban growth areas and include a rural element controlling growth in rural portions of the county. Counties and cities must review their designation and protection of critical areas, and designation and conservation of natural resource lands, when adopting their comprehensive plans.[23]

A comprehensive plan must be internally consistent, as well as consistent with and coordinated with the comprehensive plans of nearby jurisdictions.[24] Coordination of these comprehensive plans is provided by the requirement that the comprehensive plans must be consistent with and implement the county-wide planning policy.

6. Development regulations

Each county and city in the first category planning under all GMA requirements must adopt development regulations that must implement and be consistent with its comprehensive plan.[m]

The requirement that development regulations implement and be consistent with the comprehensive plan was a clear attempt by the Legislature to reverse earlier common law established by the Supreme Court where, if a conflict exists between a comprehensive plan and zoning regulations, the zoning regulations would prevail.[n 25]

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m The requirement that development regulations implement and be consistent with the comprehensive plan is found in RCW 36.70A.040(3) & (4) and 36.70A.130(1)(c). A similar requirement is made for all counties and cities in the state by amending the general planning enabling acts to include a requirement that development regulations must be consistent with the comprehensive plan. (RCW 35.63.125, 35A.63.105, and 36.70.545.)

n The author helped staff the informal committee of Senators and Representatives that developed the final version of the 1990 GMA that was enacted by the Legislature. At the initial meeting of this informal committee, the author was asked to summarize what was included in the legislation as it had passed the House of Representatives and to present issues for members to discuss. These issues were placed into an order with the least controversial and easiest issues to resolve issues being first,

However, the Court in *dicta* appears to have negated this requirement that development regulations implement and be consistent with the comprehensive plan.[o] [26]

7. Concurrency

The GMA includes what has become called a concurrency requirement for jurisdictions in the first category planning under all GMA requirements, or a requirement that public facility needs and services adequate to serve a development must exist when the development is available for occupancy or within six years of that time.

Although the term "concurrency" is not used in the GMA, this concept is infused into the GMA. First, one of the goals of the GMA is to:

> "[e]nsure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."[27]

Second, the capital facility and transportation elements that must be included in a comprehensive plan include requirements that if probable funding is not available to finance identified capital facility or transportation needs, then the land use element must be "reassessed".[28] Presumably, this reassessment would be altering the basic land use element. Third, the county-wide planning policy must include policies to promote contiguous and orderly development and the provision of urban services to that development.[29]

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followed by somewhat controversial and difficult issues to resolve, and ending with the most controversial and most difficult issues to resolve. Interestingly, the first issue that was discussed was whether the court-created common law relating to conflicts between comprehensive plans and zoning ordinances should be reversed. The legislators unanimously agreed to reverse this court-created doctrine.

o This issue was not addressed by the briefs or in oral arguments presented to the Court. Both sides in the case petitioned the Court to delete this sentence from the decision or to correct the statement to reflect the clear words of the Growth Management Act. The Court refused to alter its decision.

8. Other requirements for some of these jurisdictions

A city in which a marine container port with annual operating revenues in excess of sixty million dollars is located must include a container port element in it comprehensive plan that is developed cooperatively with the port.[30]

A comprehensive plan and development regulations may not allow development near a military installation that is incompatible with the installation's ability to carry out its mission requirements.[31]

Any county located west of the crest of the Cascade Mountain range, with a population of 150,000 or more in 1995, and the cities in the county, are required to prepare a review and evaluation program to determine if they are reaching projected urban densities that includes determination of whether sufficient suitable land is available to accommodate projected population growth.[32] This requirement is more commonly known as the buildable lands inventory and applies to King, Pierce, Snohomish, Clark, Kitsap, Thurston, and Whatcom Counties.

B. Potential Jurisdictions Planning New Midlevel Category of GMA Requirements

The 2014 legislation created a new, potential category of counties (and cities in those counties) that were authorized to remove themselves from the requirement of planning under virtually all GMA requirements and plan under a new, midlevel of GMA requirements. Action to move into this midlevel of requirements must be taken on or before December 31, 2015, and is subject to an effective veto by cities in the county.

A county subject to this midlevel of GMA requirements must already be in compliance with the following GMA requirements at the time of adopting its resolution of partial planning, or apply to the Department of Commerce for a determination of compliance with these GMA requirements, by January 30, 2017:

- Have a countywide planning policy.

- Have a comprehensive plan that is consistent within the county-wide planning policy for that county and includes all mandatory elements for a comprehensive plan, including a rural element;
- Have development regulations that must implement and be consistent with its comprehensive plan;
- Designate and conserve natural resource lands;
- Designate and protect critical areas using "best available science;"
- The county must designate urban growth areas in its comprehensive plan, encourage urban growth within the designated urban growth areas, and not allow growth that is "urban in nature" outside of the designated urban growth areas.[33]

A county and cities subject to this new, mid-level of GMA requirements must still: (1) Designate and conserve natural resource lands; (2) designate and protect critical areas using the "best available science;" and (3) adopt a comprehensive plan meeting the requirements of the GMA.[34] For a county, these requirements include designating urban growth areas and adopting a rural element.

C. Jurisdictions Subject to only a Few GMA Planning Requirements

The GMA establishes a few requirements for all the other counties and cities in the state. These jurisdictions are required to take only a few actions under the GMA.

These counties and cities are required to both designate and protect the same five types of critical areas that the GMA jurisdictions are required to designate and protect.[35]

These counties and cities are also required to designate the same three types of natural resource lands that the GMA jurisdictions are required to designate.[36] However, no requirement exists that these jurisdictions are required to conserve the designated natural resource lands.

D. Change in Planning Enabling Planning Laws

As discussed above, the GMA amended all three planning enabling laws (Chapter 35.63 35A.63, and 36.70 RCW) reversing earlier common law established by the Supreme Court where, if a conflict existed between a comprehensive plan and zoning regulations, the zoning regulations would prevail. Development regulations or zoning ordinances under these three planning enabling laws are required to be consistent with and implement the comprehensive plan.[37] As mentioned above, *dicta* in a Supreme Court decision may have negated this express requirement.

E. State Agencies Must Comply

State agencies must comply with comprehensive plans and development regulations adopted by a county or city under the GMA, except for locating certain facilities housing sexually violent predators.[p] [38]

However, several GMA provisions address the location of important facilities. Each comprehensive plan must include a process for identifying and siting essential public facilities.[39] Although this term is not defined, it includes facilities that "are typically difficult to site". Comprehensive plans and development regulations may not preclude the siting of essential public facilities. Counties and cities must identity lands that are useful for public purposes, including landfills, sewage treatment plants, and schools.[40] Further, a county-wide planning policy must address policies for "siting public capital facilities of a county-wide or state-wide nature".[41]

F. Continuous Review

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p Little discussion of the significance of this change in state law occurred during the deliberations of the legislators who participated in the committee that put together the final version of the GMA that the Legislature enacted in 1990. This lack of deliberation struck the author as quite peculiar. The basic common law is that the State, as the sovereign, is not subject to any regulation by inferior governments such as counties or cities. However, the Shorelines Management Act includes a provision making the State subject to local shoreline master programs (RCW 90.58.280) and the State Building Code includes a provision providing that the State is subject to the local building codes (RCW 19.27.060(2)).

Comprehensive plans and development regulations adopted under the GMA by any jurisdiction, whether planning under all GMA requirements, planning under a midlevel of GMA requirements, or only required to take a few actions under the GMA, are subject to continuous review, evaluation, and possible amendment.[42] The initial staggering of review and possible amendment ran from December 1, 2004, through December 1, 2007. Subsequent requirement for reviewing and possible amending GMA ordinances is as follows:

- King, Pierce and Snohomish Counties, and the cities located within these counties, must conduct their reviews and amendments on or before June 30, 2015.
- Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom Counties, and the cities located within those counties, must complete their reviews and amendments on or before June 30, 2016.
- Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima Counties, and the cities located within those counties, must complete their reviews and amendments on or before June 30, 2017.
- Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman Counties, and the cities located within those counties, must complete their review and amendments on or before June 30, 2018.[43]

Thereafter, the formal review, evaluation, and possible amendment process is required to be performed every subsequent eight years.

With some exceptions, a county or city planning under all GMA requirements may only amend its comprehensive plan once a year.[44]

G. Growth Management Hearings Board

The basic enforcement of GMA requirements is through the Growth Management Hearings Board.

Initially, three separate Growth Management Hearings Boards were created each with jurisdiction limited on a geographic basis as follows: (1) Central Puget Sound Counties (King, Pierce, Snohomish, and Kitsap); (2) the remainder of Western Washington; and (3) Eastern Washington. However, legislation was enacted in 2010 combining these separate boards into a single Growth Management Hearings Board.[45]

The newly reconstituted Growth Management Hearings Board consists of seven members appointed by the Governor to staggered six-year terms of office.[46] Of these members, two each shall reside in the jurisdictions of the three prior boards -- central Puget Sound, the remainder of western Washington, and eastern Washington – and the seventh member may reside anywhere in the State. At least two members shall be county or city elected officials, one from western Washington and one from eastern Washington. No more than four members may be from the same political party and no more than two members may reside in the same county when they are appointed.

The Hearings Board does not automatically review actions taken by counties and cities under the GMA. Instead, the Board only hears appeals, by persons with standing that are timely filed, challenging actions or inactions of a county or city under the GMA. Automatic review of local actions taken under the GMA is performed by the Department of Commerce, but that agency does not officially determine whether local actions conform to GMA requirements.[47] A petition to review actions or inactions must be filed with the Hearings Board by a party with standing within 60 days of the date the county or city publishes notice that it has taken the particular action. Standing to petition for review is limited to the following entities or parties:

- The State. Presumably, the Governor would make the decision to file an appeal, but authority to appeal could also be left with the Department of Commerce which reviews actions taken by counties and cities under the GMA;
- Another county or city planning under all the GMA requirements or a midlevel of GMA requirements;

- A person who has participated in the local governments proceedings on the matter;
- A person who is certified by the Governor; or
- A person who has standing under standing requirements detailed in the state Administrative Procedures Act.[48]

The petition must include "a detailed statement of issues" presented for resolution.[49] Review by the Hearings Board is limited to considering the specific issue or issues detailed in the statement of issues portion of the appeal.

At least in theory, the *ad hoc* review of narrowly defined issues to determine if local actions concerning these issues comply with GMA requirements may be more intrusive of local prerogatives than a more traditional scheme of state review of mandated local actions, where a state agency reviews all of the actions of a local government taken as a whole, rather than isolated parts of local actions. This more traditional scheme of state review occurs under Washington's Shoreline Management Act and under the Oregon LCDC growth management law. Under the GMA scheme, identified parties are pitted against each other much like at a trial. The Hearings Board may not consider the totality of the actions taken by the local government under the GMA, and balance these separate actions, but is limited to consider only the specific issue or issues detailed in the petition for review. It is possible that a state agency reviewing the totality of a local government's actions under GMA could conclude that, in balance, the actions conform with the requirements, while if restricted to a more limited review of separate actions taken in isolation, the state agency may effectively be "forced into a corner" and conclude that the actions do not conform with the goals and requirements.

Actions of a county or city taken under the GMA are <u>presumed valid</u> upon adoption. A person requesting review has the burden of proof to demonstrate that the action or inaction was <u>clearly erroneous</u> in view of the entire record before the Hearings Board and in light of the goals and requirements of the GMA.[50]

A little known provision of the GMA provides that the Growth Management Hearings Board may hear appeals of actions taken by a state agency under the GMA, but this potential appears limited to appealing population projections made by the Office of Financial Management.[51]

Generally, the Hearings Board must hold a hearing, and issue its decision on the matter within 180 days of when the review was requested.[52] If the Hearings Board finds the action or inaction reviewed is not in compliance with the requirements of the GMA, the Hearings Board specifies a reasonable period of time for the county or city to take action to come into compliance with these specific requirements. In most instances, the reasonable amount of time may not exceed 180 days, but the Hearings Board may provide for a longer period in cases of unusual scope or complexity. The Hearings Board holds a subsequent hearing at the end of this period and determines if the county or city has taken action sufficient to come into compliance with the specific requirement of the GMA.[53]

The following consequences may occur if the Hearings Board determines that a county or city is not in compliance with a specific requirement of the GMA:

- The Hearings Board may continue its jurisdiction without any direct consequences to the county or city.[54]
- The Hearings Board may recommend that the Governor impose sanctions on the county or city and the Governor may choose whether to impose sanctions.[55] Sanctions are in the form of withholding moneys that the State distributes to the county or city, such as sales tax receipts, motor vehicle fuel tax receipts, and liquor profit and excise tax receipts.
- After continued noncompliance, the Hearings Board may invalidate all or parts of the comprehensive plan or development regulations relating to the matter appealed.[56] This action may only be taken if the Hearings Board finds that the county's or city's plan or development regulations would "substantially interfere with the fulfillment of the goals" of the GMA. An order of invalidity is prospective in nature and does not

extinguish rights that vested prior to the order. An order of invalidity restricts much development activity in the area.[q] If an order of invalidity has been issued, the burden of proof is reversed and the county or city must demonstrate that its actions taken in response to the order are in compliance with the GMA.

Any party aggrieved by a final decision of the Hearings Board may appeal to the superior court of the county, an adjacent county, or the Thurston County Superior Court, within 30 days of the final order.[57] The superior court is required to provide an expedited review of a determination or invalidity or order effectuating an order of invalidity.[58]

The creation of three separate Growth Management Hearings Boards by the 1991 GMA legislation was a very controversial issue. Legislators crafting the final version of GMA legislation that was placed before members of both the House of Representatives and Senate for final passage in 1991 considered the following three options:

- Do not create a state agency empowered to determine whether county or city actions comply with the GMA requirements and allow these determinations to be made on an *ad hoc* basis by the courts if litigation is commenced challenging actions or inactions. A court would only determine if specified actions were in compliance with the GMA requirements, not whether the overall actions of the local government complied with the GMA requirements.
- Submit all documents adopted by counties and cities to a state agency for review and official determination, if actions or inactions comply with the GMA requirements. A side issue would be if this agency had the authority to adopt binding rules further detailing the GMA requirements. This is the model

q As a general rule, a county or city whose comprehensive plan or development regulations have been found "invalid" will not issue a permit for a development under the regulations that have been found "invalid". The county or city avoids creating a potential liability by not issuing such a permit. (Conversation with Mike McCormick, March 18, 2005.)

used in this State by the Shorelines Management Act and in Oregon's growth management legislation.

- Create an appeals body or bodies to hear appeals of a specific county's or city's actions or inactions under the GMA and determine if actions or inactions were in compliance with the GMA requirements. A Hearings Board would only determine if specified actions were in compliance with the GMA requirements, not whether the overall actions of the local government complied with the GMA requirements.

The Legislature selected the third option, creating three separate Hearings Boards to hear these appeals. Apparently, the extent of this controversy abated by the time the three separate boards were combined into a single board.

H. Public Facility Needs

Public facility needs are a primary focus of the GMA. This focus is found in planning requirements, the concept of concurrency discussed above, a requirement that capital budget decisions must conform with the comprehensive plan, and additional sources of revenue that are authorized to finance public facility needs.

Each county-wide planning policy must include policies for siting public capital facilities of a county-wide nature and a statewide nature.[59] This includes policies for: (1) Promoting orderly development and providing urban services to this development; (2) siting capital facilities of a county-wide impact and of a state-wide impact; and (3) county-wide transportation facilities and strategies.

Each comprehensive plan must include a capital facilities element, utilities element, transportation element, and park and recreational facilities element, as well as a process to identify lands useful for various public purposes and to both identify and site essential public facilities.[60] Although the term "essential public facilities" is not defined, they include "those facilities that are typically difficult to site". Essential public facilities primarily include more important public facilities owned by governments, but also include facilities such as group homes that more typically are privately owned. A

comprehensive plan or development regulations may not preclude the siting of essential public facilities.

Both the capital facilities element and transportation element must include an inventory of existing facilities, a forecast of future needs, and a multi-year funding plan.

The GMA authorizes new sources of money to fund public facilities, including the authority to impose additional excise taxes on real estate sales and the authority to impose impact fees on development activities.[61]

Counties and cities required to or choosing to plan under RCW 36.70A.040 are required to perform their "activities and make capital budget decisions in conformity with their comprehensive plan."[62] Clearly, this requirement applies to counties and cities in the first category that plan under all GMA requirements. It is possible that this requirement also applies to counties and cities in the new second category with a mid-level of requirements under the GMA.

The six-year transportation plans that all counties, cities, and mass transit districts are required to prepare must conform with comprehensive plans adopted under the GMA or the regular planning enabling acts, if the county or city does not plan under all GMA requirements.[63]

The GMA amended the Platting and Subdivision Act to emphasize the provision of necessary public facilities as a condition of dividing land.[64]

Applicants for building permits of a building necessitating potable water must provide evidence of an adequate water supply for the intended use of the building.[65]

The GMA authorizes regional transportation planning organizations (RTPOs) to be formed. A RTPO must include at least three counties or have a population of at least 100,000. Such an organization is authorized to:

- Adopt a regional transportation strategy;

- Prepare a regional transportation plan that is consistent with county-wide planning polices, the state transportation plan, and local comprehensive plans[r];
- Establish guidelines and principles providing direction for the development of the transportation element of comprehensive plans of jurisdictions planning under all requirements of the GMA; and
- By December 31, 1996, certify that the transportation elements of comprehensive plans adopted under the GMA conform to those requirements, the guidelines the organization establishes, and the regional transportation plan.[66]

I. Mechanisms to Encourage Compliance

The GMA also includes several mechanisms to encourage counties and cities to take these required actions.

First, a county or city with a population of 5,000 or more planning under all the GMA requirements or a midlevel of GMA requirements may not expend receipts from the first local option 0.25 percent real estate excise tax after April 30, 1992, unless the county or city has adopted a capital facilities element of a comprehensive plan under the GMA.[67]

Second, a county or city is not eligible for loans or grants from the Centennial Clean Water Account unless the county or city has adopted its comprehensive plan and development regulations by the date such actions are required to have been taken, except where necessary to address a public health need or substantial environmental degradation.[68]

Pre-GMA Land Use Regulation

Land use regulation in Washington State prior to the enactment of the GMA was provided by counties and cities on an *ad hoc* basis.

A. Regulation Immediately Prior to GMA

r This requirement does not specify which of these plans or policies predominates. Instead, the agencies adopting each of these three plans or policies must agree on the consistency.

Land use regulation immediately prior to the enactment of the first phase of the GMA in 1990 basically consisted of an amalgam of regulations adopted by counties and cities under:

- Various planning enabling laws;
- The Subdivision and Platting Act;
- The Shoreline Management Act; and
- The State Environmental Policy Act.

All of these laws remain in effect today and are in addition to the GMA. Efforts were made to integrate the Shorelines Management Act into the GMA and to more closely align actions under the State Environmental Policy Act and the GMA.

Three basic planning enabling laws exist in Washington State allowing counties and cities, at their option, to adopt comprehensive plans and zoning ordinances or official controls regulating land uses within their boundaries.[s] These laws basically established procedural steps a county or city would follow to adopt a comprehensive plan and zoning regulations. Charter cities and charter counties may also adopt their own planning and use procedures.

The Subdivision and Platting Act was enacted by the Legislature in 1969, requiring counties and cities to review and approve most proposed divisions of land into smaller parcels to insure that adequate provision had been made for various public facilities and that the division was in the public interest.[69] This legislation replaced 1937 legislation requiring the control of subdivisions.[70] Two different levels of review are applied to divisions of land based upon the number of lots that are proposed to be created. Appreciating this difference, and the test used to determine if the more intense level of review applies, is the key to understanding the Subdivision and Platting Act.

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s The Legislature enacted Chapter 44, Laws of 1935 authorizing counties and cities, at their option, to regulate land uses by adopting comprehensive plans and providing restrictive zones. This legislation is codified in Chapter 35.63 RCW. The Legislature enacted Chapter 201, Laws of 1959 providing counties an alternative planning enabling act they could follow to regulate land uses. This legislation is codified in Chapter 36.70 RCW. The Legislature enacted Chapter 119, Laws of 1967 allowing code cities to be formed that included a planning enabling act for code cities. This legislation is codified as Title 35A RCW and the code city planning enabling legislation is codified in Chapter 35A.63 RCW.

- First, the factor triggering whether a county or city is required to review a proposed division of land is the size of the smallest lot resulting from the proposed division of land. Review is mandatory if the smallest resulting lot is less than five acres. However, a county or city may increase the size of the smallest resulting lot that triggers the mandatory review procedure.
- Second, the number of proposed lots resulting from the proposed division determines the level of review applied to the review of the proposed division. A proposed division of land subject to the less intense review is called a short subdivision. A proposed division of land subject to the more intense review is called a subdivision, or sometimes a long division to distinguish more clearly the difference between the this type of division and a short division.

A short subdivision is the division of land into four or fewer lots, while a subdivision or long subdivision is the division of land into five or more lots. However, the maximum number of lots in a short subdivision may be increased from four up to nine if either: (1) The land is located in a city and the city governing body adopts an ordinance increasing the maximum number of lots; or (2) the land is located in the unincorporated area of an urban growth area designated by the GMA and the county legislative authority adopts an ordinance increasing the maximum number of lots.

Review and approval of a short subdivision is a one step process performed by administrative staff without public notice or input that is described as being “summary approval”. The drawing that represents a short subdivision is called a short plat. A proposed short subdivision may be subject to “wholly different requirements” than those required for a subdivision.

Review and approval of a subdivision is a much more involved procedure where public notice of the proposal is made, public hearings on the proposal are held, and a two-step approval process is used to review and approve the proposed division. The first step involves preliminary approval of the subdivision, subject to the developer providing a number of improvements. This is the most

critical step in the procedure. The second step is final approval of the subdivision after the developer demonstrates that all of the required improvements have been made. A drawing that represents a subdivision is called a preliminary plat when preliminary approval of the subdivision occurs, or a plat after final approval of the subdivision is made.

Restrictions exist on further dividing a lot that was created by a short subdivision within a few years of when the short subdivision was approved. A lot that was created by a short subdivision may not be further divided within five years of the date the short subdivision was approved, unless the entire original short subdivision is approved as a subdivision. However, if the short subdivision created two or three lots, the short subdivision may be altered within this two year period to create up to a total of four lots only, using the short subdivision procedure.

Some counties have adopted a third procedure called a large lot subdivision. This procedure would apply to the division of land into lots where the smallest resulting lot is five acres or larger, or larger than some other minimum lot size above five acres that the county selects. A county could provide for any procedures to review and approve these divisions of land since state law does not require counties to review and approve these divisions.

The State Legislature enacted the State Environmental Policy Act (SEPA) in 1971.[t] This legislation requires governments to use a systematic approach to consider possible environmental impacts arising from their actions, including the proposed construction of public facilities and the proposed approval of various development activities, and could result in the preparation of an environmental impact statement (EIS).

State voters approved the Shorelines Management Act in 1972.[u] All counties and cities are required to prepare a local shoreline master program regulating land uses in the shoreline area based upon the state master program prepared by the Department of Ecology. Each proposed local master program is submitted to the Department of

t A more detailed discussion of SEPA is found in Chapter 72.

u A more detailed discussion of the Shoreline Management Act is found in Chapter 72.

Ecology for its review and approval or rejection. The Department of Ecology may adopt a local master program for a county or city failing to adopt its local master program. The Shorelines Management Act also required counties and cities to issue shoreline substantial development permits authorizing most land use activity within the shoreline area. Action by a county or city issuing or refusing to issue a substantial development permit may be appealed to the Department of Ecology.

B. Earlier Land Use Regulatory Laws

A number of earlier land use regulatory laws preceded these basic land use laws that existed immediately before the GMA was enacted.

The first land use regulatory law in Washington was enacted by the first Legislative Assembly of Washington Territory in 1854, authorizing counties to regulate the erection of wharves at the terminus of any public highway.[71]

Some cities were authorized to regulate land uses from a number of different perspectives by the first State Legislature in 1890. This included establishing what were called “fire limits” or zones in which buildings were required to be constructed out of non-flammable materials, regulating the location of offensive trades, regulating the construction of dangerous buildings, and regulating wharves.[72] These old grants of regulatory power still exist in laws applicable to these types of cities and were the early basis of what has become known as development or zoning regulations.

Legislation was enacted in 1935, establishing direct state regulatory control over construction activities in areas susceptible to flooding.[73] The State Supervisor of Hydraulics was directed to designate flood control zones and restrict construction activities in these areas. After very modest implementation, it appears that this law was not followed for decades. However, the Department of Ecology, as the successor agency to the Supervisor of Hydraulics, began enforcing this old law in the late 1960's, under the direction of Governor Dan Evans.[v] Legislation was enacted in 1973, allowing the Department to delegate

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v A description of the initial modern efforts to enforce this 1935 law is discussed in *Maple Leaf Investors, Inc. v. Department of Ecology*, 88 Wn.2d 726 (1977).

to counties and cities the authority to regulate these activities.[w] Then legislation was enacted in 1987, providing that all regulation would be performed by counties and cities under supervision by the Department of Ecology.[74]

Realignment of Local Government Structure

The GMA encourages a realignment of local government within a county by both:

- Setting the stage for urbanized areas to incorporate as new cities or to be annexed into existing cities. This is encouraged from the creation of urban growth areas, which primarily surround one or more cities. The GMA includes non-binding language stating that cities are the primary providers of urban governmental services within urban growth areas.[75] The GMA also includes other non-binding language stating that in general, cities are the most appropriate units of local government to provide urban services.[76]
- Refocusing county government on regional matters, away from providing urban and suburban governmental services in unincorporated areas. This arises from provisions requiring counties to adopt county-wide planning policies and to designate urban growth areas. The GMA also includes non-binding language stating that the Legislature recognizes that counties are regional governments within their boundaries.[77]

The realignment of local government is most easily seen in King and Pierce Counties, which have experienced a number of new cities incorporating, and major annexations by cities. As a result, the county is no longer responsible for providing urban or suburban services in

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w The author has vivid recollections of viewing slides taken by the Department of Emergency Services showing flood damage after the eruption of Mount St. Helens in 1981. Department staff asked those present if anything appeared to be peculiar in one of the slides. What was "peculiar" was the remains of a condominium that had been constructed on inside, or on the water side, of a dike rather than behind or on the dry side of the dike. The city that issued the permit for the construction of the condominium had been delegated the authority to enforce the 1935 flood control laws under legislation enacted in 1973 allowing the Department to delegate its powers to counties and cities. (Section 1, Chapter 75, Laws of 1973, codified as RCW 86.16.085.).

these areas. These counties, and in particular King County, experienced a dramatic drop in tax receipts after these changes. Revenue from sales and use taxes dropped rather significantly in King County.

NOTES:

1. The Growth Management Act is codified in Chapter 36.70A RCW.
2. Chapter 287, Laws of 1971 1st ex sess.
3. These changes were called the “regulatory reform” measures and were included in ESHB 1724, Chapter 347, Laws of 1995.
4. Section 1, Chapter 147, Laws of 2014, amending RCW 36.70A.040.
5. RCW 36.70A.040.
6. The requirements are spread throughout Chapter 36.70A RCW, while the planning goals are included in RCW 36.70A.020.
7. RCW 36.70A.140.
8. RCW 36.70A.210.
9. RCW 36.70A.170(1)(d) & 36.70A.060(2).
10. RCW 36.70A.172.
11. RCW 36.70A.060.
12. RCW 36.70A.170(1)(a)-(c) & 36.70.060(1).
13. RCW 36.70A.060.
14. RCW 36.70A.110.
15. RCW 36.70A.350.
16. RCW 36.70A.360.
17. RCW 36.70A.365.
18. RCW 36.70A.367.
19. RCW 36.70A.520.
20. RCW 36.70A.070(5).
21. RCW 36.70A.1301.
22. RCW 36.70A.210.
23. RCW 36.70A.060(3).
24. RCW 36.70A.070 & 36.70A.100.

25. *Barrie v. Kitsap County*, 93 Wn.2d 843, 849 (1980).
26. *Citizens v. Mount Vernon*, 133 Wn.2d 861, 873 (1997).
27. RCW 36.70A.020(12).
28. RCW 36.70A.070(3)(e) & 36.70A.070(6)(a)(iv)(C).
29. RCW 36.70A.210(3)(b).
30. RCW 36.70A.085.
31. RCW 36.70A.530.
32. RCW 36.70A.215.
33. Section 2, Chapter 147, Laws of 2014, amending RCW 36.70A.060. Although this section deals with the designation of natural resource lands, the new language added by the 2014 amendment includes requirements for counties "adopting a resolution of partial planning" that involve each of these subjects listed above. The language is not drafted clearly. It is noted that the final bill report for this legislation did not list the requirements relating to countywide planning policies, comprehensive plans, and development regulations, other than the rural element requirement, listed above.
34. RCW 36.70A.040.
35. RCW 36.70A.170(1) & 36.70A.060(2).
36. RCW 36.70A.170(1).
37. RCW 35.63.125, 35A.63.105, & 36.70.545.
38. RCW 36.70A.103.
39. RCW 36.70A.200.
40. RCW 36.70A.150.
41. RCW 36.70A.210(3)(c).
42. RCW 36.70A.130(1) & (3).
43. RCW 36.70A.130(4).
44. RCW 36.70A.130(2).
45. Chapter 211, Laws of 2010.
46. RCW 36.70A.250-36.70A.345.
47. RCW 36.70A.106.
48. RCW 36.70A.280(2).
49. RCW 36.70A.290.
50. RCW 36.70A.320(3).
51. RCW 36.70A.280(1)(a).

52. RCW 36.70A.300.
53. RCW 36/70A.330.
54. RCW 36.70A.300.
55. RCW 36.70A.340 & 36.70A.345.
56. RCW 36.70A.302.
57. RCW 36.70A.300(5).
58. RCW 36.70A.305.
59. RCW 36.70A.210.
60. RCW 36.70A.070, 36.70A.150 & 36.70A.200.
61. RCW 82.46.035(2) & 82.02.050-82.02.100.
62. RCW 36.70A.120.
63. RCW 36.81.121, 35.77.010, & 35.58.2795.
64. RCW 58.17.060 and 58.17.110.
65. RCW 19.27.097.
66. RCW 47.80.023 & 47.80.026.
67. RCW 82.46.010(2).
68. RCW 70.146.070.
69. Chapter 271, Laws of 1969 ex. sess., codified in Chapter 58.17 RCW. The basis of approving subdivisions and short subdivisions is found in RCW 58.17.110 and 58.17.060(1).
70. Chapter 186, Laws of 1937, which was codified as Chapter 58.16 RCW.
71. An Act to Authorize and Regulate the Erection of Wharves, found in, Statutes of the Territory of Washington, 1854, 1st Session, Section 2, page 357.
72. First class cities were authorized to regulate cemeteries, direct the location of buildings where offensive trades are carried on, regulate the storage of combustibles, and establish fire limits by Section 5, pages 215-224, Laws of 1889-90. Second class cities were granted these regulatory powers by Section 38, pages 143-178, Laws of 1889-90. Third class cities were authorized to establish fire limits by Section 116(18), pages 178-198, Laws of 1889-90.
73. Chapter 159, Laws of 1935, codified in Chapter 86.16 RCW.
74. Chapter 523, Laws of 1987.
75. RCW 36.70A.210(1).
76. RCW 36.70A.110(4).
77. RCW 36.70A.210(1).

Chapter 71

Transportation

Transportation issues have been a dominant focus of government in Washington since the earliest years white settlers arrive here. Local governments have played a major role in providing and financing transportation facilities and services throughout the history of Washington.

As discussed below, evidence of this early focus on transportation issues can be seen from the more than ten measures dealing with roads that were enacted by the first Legislative Assembly of Washington Territory in 1854. The focus on transportation issues continues to the present day. The most recent trends in providing and financing transportation facilities and services are as follows:

- An unsuccessful attempt to finance certain major highway improvements in the urbanized portion of King, Pierce, and Snohomish Counties using a mix of federal, state, and regional tax receipts. Traditionally, these major highway improvements and maintenance were financed with only federal and state tax receipts. Adding regional financing requirements for these facilities would have constituted a major policy shift. These major highway projects, with the requirement for regional matching monies, included replacing the I-520 floating bridge and the Alaskan Way Viaduct and expanding I-405 east of Lake Washington.
- Expanding the variety of different types of special purpose districts authorized to finance transportation improvements and operations. These new special districts include regional governments occupying relatively large geographic areas, in part designed to

finance the new regional share of major highway projects but also to finance high capacity transportation systems. These new special districts also include much smaller special districts that function as subdivisions of counties and cities to finance local road and street improvements.

- A failed attempt to coordinate planning for and provide a variety of different types of transportation facilities and services on a regional basis. These efforts were most focused on central Puget Sound.
- Newly authorized, voter-approved, taxing authority for Sound Transit to complete its major high capacity transportation system.
- Major new financing for state transportation projects financed by a 11.9¢ per gallon increase in motor vehicle fuel taxes.

More detailed discussions of the authorities of these different types of local governments providing transportation improvements and services are found in pior chapters.[a]

Currently, a variety of different governments are involved in planning for and providing transportation improvements in Washington State. No other function of government is provided or funded by such a wide array of different types of government. The federal government, State, counties, cities, and a wide variety of different types of special purpose districts are involved in financing and providing transportation improvements in Washington State. These governments are layered over each other. For example, the following different governments at one time attempted to finance mass transit systems in Seattle:

- King County, which assumed the operations of the Metropolitan Municipal Corporation of Seattle (Seattle Metro) and provides bus service throughout the county.

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a This includes a discussion of counties in Chapter 4, cities in Chapter 8, metropolitan park districts in Chapter 13, metropolitan municipal corporations in Chapter 27, public transportation benefit areas in Chapter 28, regional transit authorities in Chapter 29, regional transportation investment districts in Chapter 30, transportation benefit districts in Chapter 31, road districts in Chapter 38, service districts in Chapter 42, and city transportation authorities in Chapter 44.

- Sound Transit, which is a regional transit authority (RTA) that constructs and provides three types of high capacity transportation improvements and service in the urbanized portion of Snohomish, King, and Pierce Counties. This includes: (1) Commuter rail service; (2) electric light rail; and (3) high occupancy vehicle expressways and regional bus service.
- Seattle, which contracts with a private company (the Seattle Monorail Services) to operate its monorail from Westlake Mall to the Seattle Center. The monorail was constructed for the Seattle World's Fair in 1962.
- The Seattle City Transportation Department operates a 1.3 mile streetcar line from Westlake Mall to South Lake Union and the First Hill Street Car, a new trolley line financed as part of Sound Transit's ST2 program that will begin operating soon, running from Occidental Mall in the SoDo neighborhood east up Jackson Street and north up Broadway to Sound Transit's new Capitol Hill Link Light Rail station. Work is progressing to build a connecting streetcar line along the Seattle waterfront between these two streetcar lines and to expand the First Hill Street Car line north to Aloha Street.
- The Seattle Popular Monorail Authority, which is a city transportation authority that was authorized at one time to construct and operate a monorail in the city. The Seattle Popular Monorail Authority was dissolved.
- The State, which helps to finance the operation of intercity rail passenger service and light rail service.
- The federal government, which provides monies for mass transit improvements.

The Puget Sound Regional Conference has been designated as both a metropolitan planning organization (MPO) and a regional transportation planning organization (RTPO) for the central Puget Sound region consisting of Snohomish, King, Pierce, and Kitsap Counties.

Transportation planning is provided by each county, city, and transit

authority developing a six-year capital plan for its transportation facilities. Other requirements exist for the creation of regional capital plans for transportation facilities, as well as a statewide capital plan for transportation facilities. Federal requirements exist for state and regional transportation planning.

Major transportation issues facing the State today include difficulties in financing highway and road improvements and maintenance, as well as financing and providing different modes of mass transit, especially in the more urbanized areas. Legislation was enacted in the 2006 Legislative Session, attempting to fundamentally alter transportation planning in central Puget Sound, but those efforts never materialized.

Funding and Provision of Transportation Facilities

A large number of different types of local governments plan for and finance or provide a variety of different types of transportation facilities in Washington State.

The provision of transportation facilities has gradually expanded on two fronts, as follows:

- First, the types of transportation improvements and facilities authorized to be provided has expanded. Initially, only roads and bridges were authorized to be provided. This soon expanded to include: (1) Various water transportation improvements and facilities, such as wharves, harbor improvements, and ferries; (2) airports; (3) freight rail facilities and service; and (4) various types of mass transit facilities and service.
- Second, the types of local governments authorized to plan for and provide transportation facilities expanded. Initially counties and their road districts were the only governments providing transportation facilities. The governments authorized to provide transportation facilities gradually expanded to include cities, the State, and a wide variety of different types of special purpose districts. Traditionally, the authority to plan for transportation facilities was the responsibility of the unit of local government that financed and provided

the facilities. However, efforts have been made to coordinate planning for and providing transportation facilities on a regional basis. Much of this focus has been on central Puget Sound.

A. Roads and Highways

The first "roads" in Washington consisted of very modest improvements to trails that indigenous peoples had used for centuries. Initially these trails were "improved" by white settlers on an *ad hoc* basis to allow passage of their wagons.[b] The federal government surveyed and constructed a number of military roads in Washington Territory beginning in 1855.[c] In some instances these military roads consisted of slight improvements to the earlier roads established by white settlers. The settlers also assisted in the "improvements" to these military roads. However, these routes and military roads were quite primitive and perhaps are better described as slightly improved trails. These federal efforts ended when the Civil War broke out, but military roads were further improved by settlers as part of the emerging system of roads in the new Territory.

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b A number of trails were improved and used by early settlers, including the Cowlitz Trail that was somewhat improved and used by the first American settlers to reach Puget Sound in 1845. The Cowlitz Trail was about 60 miles long and ran from Cowlitz Landing on the Cowlitz River to the site of modern day Tumwater and Olympia. This trail was initially "improved" by members of Simmons/ Bush Party over a two-week period in October of 1845 to allow passage of one wagon and several ox-drawn sleds with their goods. (Stevenson, Shanna, "A Freeway Runs Through It: Tumwater, a City Shaped by Transportation", which appears in *The River Remembers – A History of Tumwater, 1845-1995*, edited by Gayle L. Palmer, the Donning Company, 1995, at pages 88-89.) Nine years later, in 1854, it took Governor Isaac Stevens and his wife three days to travel this 60-mile long trail by wagon even though the northern portion of the trail had been further improved by settlers. (Richards, Kent D., "A Good Serviceable Road, The Columbia River to Puget Sound Connection", *Columbia, the Magazine of Northwest History*, Winter 1992/93, 6-11, at page 8.)

c A number of military roads were surveyed and constructed. Jefferson Davis (Secretary of the War Department during the administration of President Franklin Pierce) played an important role in securing funding for these roads. The Pacific Wagon Roads Office was established by the War Department in 1854 to supervise the surveying and construction of these military wagon roads, including: (1) A road from the Dalles on the Columbia River to Fort Vancouver; (2) a road from Fort Vancouver (also called the Columbia city barracks) to Fort Steilacoom, with a later extension from Fort Steilacoom to Fort Bellingham; (3) a road from Fort Walla Walla to Fort Steilacoom, which involved upgrading the old Naches Pass immigrant route; and (4) a road known as the Mullan Road connecting Fort Benton (located in what then was Nebraska Territory on the Missouri River, but now is located in Montana) to Fort Walla Walla. A map of the Mullan Road actually shows the road extending westward beyond Fort Walla Walla to Fort Dalles, which was located on the southern side of the Columbia River in Oregon. (Richards, at pages 6-11; Meador, Karen, "An Unlikely Champion, Jefferson Davis and the Pacific Northwest", *Columbia, the Magazine of Northwest History*, Winter 2004-2005, at pages 12-21; Grim, Ronald E. and Paul D. McDermott, "The Case of the Mullan Road", *Columbia, the Magazine of Northwest History*, Winter 2004-2005, at pages 22-28; and Ficken, at pages 86 & 89.)

Roads and bridges were the first type of transportation facilities authorized in Washington. As discussed in Chapters 1 and 4, the Legislative Assembly of Washington Territory had an early focus on transportation. This initial focus has been described as follows:

> "The territorial solons took road-making seriously, for the new government enacted into law at least ten road measures during the first session of the legislature."[1]

Initially authorized territorial roads included routes from: (1) Steilacoom to Seattle; (2) Steilacoom to Clark County; (3) Seattle to Bellingham Bay; (4) Olympia to Shoalwater; (5) Cathlamet to Thurston County; (6) Shoalwater to the Columbia River; and (7) Seattle to Walla Walla following the Old Immigrant trail. Many of these routes were the same as the military roads.

Counties and their road districts were the governments originally authorized to provide roads and bridges.[d] Legislation enacted by the first Legislative Assembly of Washington Territory in 1854 directed counties to provide roads and bridges throughout their boundaries using a system of road districts.[e 2] Although the Legislative Assembly enacted legislation providing for the laying out of different roads from one location to another location, the basic work on these roads was provided and funded by counties and their road districts. The types of roads that counties were authorized to provide were referred to as territorial roads, military roads, highways, and county roads. A pay-or-work system was instituted to provide roads and bridges in each county road district where adult males and property owners were required to make payments for road improvements or provide labor constructing and maintaining these roads. Cities were included in county road districts.

The county monopoly on providing roads and bridges was first broken in 1859, with the enactment of special legislation incorporating the town of Olympia and authorizing the new town to create and operate its own road district separately from Thurston County.[3] Immediately

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d The monopoly of county authority over all roads is described in "The Hundred Years of Washington, a Chapter in the Story of the Origin and Development of Local Government" which is contained in *The Book of the Counties*, *1953*, published by the Washington State Association of County Commissioners and the Washington State Association of County Engineers, 1953, at page 9. This publication is also referred to as the "1953 Yearbook" and commemorated the centennial celebration of the creation of Washington Territory.

e A more detailed discussion of road districts is found in Chapter 38.

prior to statehood in 1889, some cities were authorized to provide their own road districts, but county road districts still included all the unincorporated areas of the county as well as many cities. Legislation enacted by the first State Legislature in 1890 authorized all cities to provide streets. Counties no longer provide roads within cities, although some vestiges of this prior authority remain in modern statutes.[f]

Legislation was enacted in 1895 allowing townships to be formed to provide a wide variety of facilities and services in unincorporated areas.[g] [4] This included the provision of roads by creating township road districts in lieu of the county creating county road districts. The authority of townships to provide roads was eliminated in 1937. Only two counties (Spokane and Whatcom) ever organized into townships. No county is currently organized into townships.

The essential monopoly of counties constructing and maintaining territorial or state roads was broken in 1905 with the creation of the office of State Highway Commissioner and the State Highway Board.[h] [5] Responsibility for state highways became a joint responsibility with the State responsible for providing primary state highways and counties responsible for providing secondary state highways. Legislation was enacted in 1915, transferring state monies to counties to finance the maintenance of secondary state highways.[6] Comprehensive legislation enacted in 1937 essentially eliminated county construction and maintenance of state highways and placed all state highways under the control of the State.[7] The State began imposing a motor fuel tax in 1921 to finance state highways.[8] State voters approved Amendment 18 in 1944, restricting the use of this tax to highway purposes, including policing highways and operating ferries which are part of a highway. The State now finances and constructs state highways and provides funding to counties and cities

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f A more detailed discussion of cities providing streets is found in Chapters 4 and 8.

g A more detailed discussion of townships is found in Chapter 39.

h An earlier temporary state agency called the "board of state road commissioners" was created in legislation enacted in 1895 to provide for a wagon road over the northern portion of the Cascade Mountain Range. (Section 2, Chapter CLXVIII, Laws of 1895.) Although this effort soon failed, other efforts to build a highway at this location continued until finally State Highway 20 (the North Cascade Highway) was completed in 1972. If this road had actually been built in the 1890's it would have been the first state highway. An interesting article on the North Cascades Highway by David Keller, entitled "Highway History, the 1933 Road Survey through the Northern Cascades", is found in the *Columbia, the Magazine of Northwest History*, Summer 2004, at pages 31-33.

to construct roads and streets. Periodic distributions of state money are made to counties and cities, as well as grants for specific road or street improvements.

The concept of funding roads on a countywide basis began in 1881, when legislation was enacted allowing the county legislative authority to appropriate money from the county general fund to pay for roads.[9] Counties were authorized to impose a new county-wide property tax in 1893, to finance roads and bridges throughout the entire county.[10] This county road tax was in addition to the road district property taxes. The county-wide tax to finance roads was repealed in 1927.[11]

As discussed in Chapter 38, comprehensive legislation was enacted in 1937 revising road district laws. This legislation eliminated most provisions relating to road districts. However, road districts remain as the basic source of financing county roads. Today, each county has a single road district occupying all of its unincorporated area and the road district imposes an annual property tax to finance county roads in the unincorporated area.

As mentioned above, the federal government became involved in road construction in Washington soon after the creation of Washington Territory, by financing the construction of what were called military roads. Legislation was enacted in 1916 providing "federal aid" for state roads.[12] Major federal financing of modern highways arose with the enactment of the National Interstate and Defense Highways Act (also known as the Federal Highway Act of 1956) that established the Interstate Highway system.[13] At one time, ninety percent of the costs for interstate highways was provided by the federal government and the remaining ten percent was provided by the state in which the Interstate Highway was located. Today, federal monies are used to finance a wide variety of different transportation facilities and services, including highways and roads, as well as mass transit, airports, and maritime facilities. Congress enacted the Intermodal Surface Transportation Act of 1991 (ISTEA), fundamentally altering how federal transportation monies are distributed.[14]

Gradually, a variety of different types of special purpose districts were authorized to provide roads and highway improvements. Legislation was enacted in 1907 authorizing metropolitan park districts in part to

provide parkways and boulevards.[15] Port districts were authorized to provide toll bridges and tunnels in 1959, and were authorized to upgrade highways, streets, and roads that serve their facilities in 1990.[16] Later in the 20th century, service districts and transportation benefit districts were authorized to finance road and street improvements.[17] Finally, regional transportation investment districts were authorized to expand the capacity of major highways.

B. Water Transportation Facilities

A variety of different types of local governments are authorized to provide various water transportation facilities, including harbor improvements and docks, as well as ferries.

Cities were authorized to provide wharves and piers in the late 1800's.[18] Counties were authorized to create river and harbor improvement districts and impose special assessments to finance river, lake, canal, and harbor improvements in 1905.[19] Legislation was also enacted in 1911, authorizing port districts to be created to provide harbor improvements, including wharves, docks, and related shipping facilities. Today, a myriad of different port districts provide maritime shipping facilities, as well as marina facilities. Legislation was also enacted in 1911, authorizing public waterway districts to build and improve public waterways.[20]

Counties and cities were authorized to provide ferry service in 1895.[21] A few counties still provide ferry service today.

Legislation was enacted in 1949, authorizing the State to acquire or provide a system of ferries in Puget Sound and other water areas connected to Puget Sound.[22] The State purchased the privately owned Puget Sound Navigation Company in 1951 and began providing ferry service. Today, the State provides ferry service throughout Puget Sound, the San Juan Islands, and from Whidbey Island to Port Townsend.

Port districts were authorized to operate “passenger carrying vessels on interstate navigable rivers of the State and intrastate waters of adjoining states” in 1980.[23]

Ferry districts were authorized to be created in 2003.[24] This

legislation restored some of old authority to create ferry districts that was enacted in 1947, but repealed in 1994.[25]

C. Airports

A number of different types of local governments also provide airports.

Legislation was enacted in 1919, authorizing cities, and probably counties and port districts, to provide airports.[26] Additional legislation was enacted in 1929, clarifying that counties and port districts could provide airports.[27] More comprehensive legislation was enacted in 1945, providing for these local governments to provide airports and for the creation of county airport districts to provide airports.[28] Metropolitan park districts were authorized to provide "aviation landings" in 1919.[29]

D. Freight Rail Roads

A few special purpose districts are authorized to provide freight railroads and rail service.

Port districts were authorized to provide rail transfer facilities used in conjunction with their maritime shipping facilities in the original 1911 legislation authorizing port districts to be formed.[30] They were authorized to provide belt line railroads in 1963.[31] Legislation was enacted in 1980 and 1981, authorizing port districts to provide general cargo railroads and rail service inside and outside of the port district.[32] The Port of Pend Oreille used this authority to provide cargo rail service from Spokane County into Newport.

County rail districts are authorized to provide rail service for moving commodities.[33] Kittitas County voters approved the creation of a county rail district in 2007, but the district is inactive.

E. Mass Transit

A variety of different types of local governments have been authorized to provide mass transit. Mass transit service involves the movement of people using a variety of facilities and equipment, including buses and vans, rail service on heavy-gauge rail tracks, light rail, and elevated transportation systems such as monorails.

Cities were authorized to provide various forms of mass transit, including railways and buses in 1890.[34] Metropolitan municipal corporations (metros) were authorized to provide public transportation systems in 1957.[35] County transportation authorities were authorized to provide public transportation in 1974.[36] Counties were authorized to provide public transportation in 1975.[37] Public transportation benefit areas (PTBAs) were authorized to provide public transportation in 1975.[38] Regional transit authorities were authorized to provide high capacity transportation systems in 1992.[39] Finally, legislation was enacted in 2003, authorizing city transportation authorities to provide monorail transportation systems in cities with a population of over 300,000.[40]

Coordination of Transportation Projects

A myriad of state and federal laws require the State and local governments to adopt transportation plans. The general theme of these planning laws is to coordinate planning for our transportation infrastructure.

A. Federal Requirements

A variety of federal laws require each state and its local governments to engage in coordinated transportation planning.[41]

First, as a condition of receiving federal transportation assistance, federal law requires that every urbanized area with a population of 50,000 or more create a metropolitan planning organization (MPO) to provide a continuing, comprehensive, and cooperative planning process for transportation projects, including federal highway and transit investments.[42] Second, these planning requirements were enhanced by the Intermodal Surface Transportation Act of 1991 (ISTEA).[43] This legislation, in part, strengthens the MPO planning process by requiring a more comprehensive approach to transportation planning. Third, the requirement for comprehensive transportation planning was continued and further enhanced by the Transportation Equity Act for the Twenty-first Century (TEA-21) that was enacted in 1998.[44]

B. State Requirements

A variety of different state laws also require coordination between the transportation planning of the State and its local governments.

Counties, cities, and the various transit authorities are required to adopt comprehensive six-year plans for their capital transportation expenditures. These are perpetual six-year plans that are updated every year for the upcoming six-year period and are filed with the secretary of transportation. The requirement for six-year plans for road and street construction projects proposed to be performed was enacted in 1961.[45] These plans must include projects and programs of regional significance. A county operating ferries must include a separate section addressing ferries, docks, and related facilities. The requirement for transit authorities to adopt six-year plans was enacted in 1989.[46]

The State Transportation Commission was authorized in 1977 to direct the secretary of the Department of Transportation to develop a "comprehensive and balanced" state-wide transportation plan based upon transportation policies adopted by the Legislature and applicable state and federal laws.[47] This state-wide transportation plan is submitted to the Legislature for its review.

The Growth Management Act,[i] in part, includes requirements for counties and cities to plan for and coordinate their comprehensive land use plans and capital expenditures. This is accomplished by:

- A requirement that each comprehensive plan adopted under the Growth Management Act include a variety of elements, including a land use element and a transportation element.[48] All elements in the plan must be internally consistent.
- A requirement that, if probable funding is not available to finance the transportation needs identified in the transportation element of a comprehensive plan, the land use element of the comprehensive plan must be reassessed.[49]

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i The Growth Management Act is discussed in Chapter 70.

- A requirement that the comprehensive plans of counties and cities must be coordinated with and consistent with the comprehensive plans of adjacent jurisdictions and jurisdictions with related regional issues.[50] At least in part, this is accomplished by the requirement that every county adopt a countywide planning policy. A county-wide planning policy must address a number of issues and provides a "framework" for the county, as well as cities located in the county, to develop their comprehensive plans that ensure the consistency of these comprehensive plans.[51]
- A requirement that the six-year transportation plans developed by each county, city, and transit authority be consistent with the comprehensive plan adopted by the county or city.[52]
- A system of coordinated transportation planning.[53] Counties and cities are authorized to create regional transportation planning organizations to develop six-year regional transportation improvement programs based upon the six-year transportation plans that each county, city, and transit authority adopts.[54] The Department of Transportation establishes minimum standards for developing regional transportation plans.[55]

Legislation was enacted in 1990 and 1991, providing for regional high capacity transportation plans and additional voter approved taxes to finance high capacity transportation improvements.[56] Transit agencies in central Puget Sound are required to adopt a regional high capacity transportation plan. Transit agencies in any other county with a population of 175,000 or more, with an interstate highway within its boundaries, are permitted to adopt regional high capacity transportation plans. These plans include coordinating planning efforts, identifying alignments and locations of high capacity public transportation services, commuter rail service, and high occupancy vehicle lanes.

Legislation was enacted in 1993, requiring the Department of Transportation to adopt a state-wide transportation plan to guide all

transportation providers and coordinate state high-capacity transportation planning and regional transportation planning.[57] This includes a state-wide multimodal transportation plan, a freight mobility plan, a state highway plan, state ferry system plan, aviation plan, marine port and navigation plan, freight rail plan, intercity passenger rail plan, bicycle and pedestrian plan, and public transportation plan.

C. Central Puget Sound Region

Major changes are occurring in the planning for and financing regional transportation facilities in the central Puget Sound region.

The issue of coordinating transportation planning and projects in the central Puget Sound area has existed for years. As the need for additional transportation facilities and services have arisen in the central Puget Sound region, the Legislature has tended to authorize the creation of a new type of special purpose district to address each specific need. However, the Blue Ribbon Commission on Transportation issued a report in December of 2000, emphasizing the importance of empowering regions within the State to solve their own transportation problems by granting them new authority and revenue sources to plan for and provide transportation facilities and services.[j] It was recommended that a strong regional force be created in central Puget Sound to coordinate all types of local and regional transportation facilities and services.

Then Senator Mary Margaret Haugen and then Representative Ed Murray, along with the then Senator Bill Finkbeiner and then Representative Fred Jarrett, led efforts at the 2006 Legislative Session to coordinate transportation planning and projects in the central Puget Sound area. ESHB 2871 was enacted at that session, initiating major changes in planning for and financing transportation facilities in the central Puget Sound region.[58] Among other things, this legislation:

- Created a Regional Transportation Commission to

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j The Blue Ribbon Commission on Transportation was composed of 45 members, including: (1) The late Governor Booth Gardner; (2) the late Representative Ruth Fisher, who chaired the House Transportation Committee for years; (3) ex-Senator Mary Margaret Haugen, who chaired the Senate Transportation Committee; (4) ex-Representative Ed Murray, who chaired the House Transportation Committee and now is the mayor of Seattle; (5) ex-Senator Jim Horn, who chaired the Senate Transportation Committee for several years; and (6) Doug Beighle, of the Boeing Company, who chaired the Commission. The commission took more than two years to develop its recommendations.

evaluate the different transportation authorities in the central Puget Sound region and propose a governance proposal to the Legislature that would consolidate agencies, improve coordinated planning, coordinate transportation planning and land use planning, and adjust agency boundaries. One of the options must include a regional transportation entity with at least a majority of the members of its governing body who are elected directly to those positions.

- Attempted to coordinate funding proposals by Sound Transit and the regional RTID. The ability of both a RTA and a regional transportation investment district (RTID) to submit ballot measures to voters was temporarily restricted while these entities worked to coordinate their ballot measures. Neither type of local government was allowed to submit a ballot measure to voters until the 2007 general election. At the 2007 general election the two entities were required to submit a combined ballot measure which, if approved, would have: (1) Authorized Sound Transit's ST2 projects and funding proposal; and (2) authorized creation of the RTID, approved the RTID plan for regional highway improvements, and imposed additional taxes to finance these highway improvements. The combined ballot measure failed, with 44 percent of the vote supporting the measure and 56 percent of vote opposing the measure.

- King, Snohomish, and Pierce Counties are granted greater flexibility to finance regional highway improvements. First, they are granted flexibility to reduce the geographic area included in the three-county RTID from all of the territory in these counties down to any area that includes at least all of the area included in the RTA (Sound Transit). Second, after December 1, 2007, each of these counties may create their own RTID rather than being included in a single, multi-county RTID. Third, after December 1, 2007, each of these counties may create transportation benefit districts (TBDs) to finance a range of transportation facilities, including highways and mass

transit facilities.

The Regional Transportation Commission was a fifteen-member board, nine of whom were elected officials and six of whom were members of the general citizenry. Norm Rice, former mayor of Seattle, and John Stanton chaired the commission. The Regional Transportation Commission issued its recommendations for transportation governance in the central Puget Sound region on December 31, 2006. It was proposed that a fifteen-member Puget Sound Regional Transportation Commission be formed to plan, prioritize, and fund all modes of transportation in King, Pierce, Snohomish, and Kitsap Counties. The sub-area equity concept that formed a fundamental part of Sound Transit's funding and construction program was criticized as being counterproductive and a difficulty in effectively prioritizing necessary regional transportation programs. It was proposed that land use planning and transportation planning be integrated by having the proposed Commission absorb the Puget Sound Regional Council that has acted as the region's Metropolitan Planning Organization and Regional Transportation Planning Organization.

The Legislature failed to enact legislation implementing the Commission's recommendations.

The Legislature had a major focus on transportation during the 2015 legislative sessions. Among other actions, the state motor vehicle fuel excise tax was raised by an additional 11.5¢ per gallon in two phases, raising an additional $16.1 billion for highway projects over 16 years, and the transportation budget provided for major highway improvements, that include finishing the Highway 520 floating bridge, completing State Route 167, finishing the Alaskan Way viaduct replacement tunnel. Legislation was also enacted granting Sound Transit additional, voter-approved taxing authority, to complete its major high capacity transportation facilities.

NOTES:

1. Winter, Oscar Osburn, "Inland Transportation and Communication in Washington, 1844-1859", Pacific Northwest Quarterly, Volume 30, 1939, 371 - 380, 377.

2. Statutes of the Territory of Washington, 1854, 1st Session, Pages 340-352, which created the basic system of counties providing roads throughout the entire county.
3. Statutes of the Territory of Washington, 1859, 6th Session, Art. 4th, Sec. 6, Pages 31-34.
4. Chapter 175, Laws of 1895. Township laws were codified as Title 45 RCW. As discussed in Chapter 29, these laws have been repealed.
5. Chapter 174, Laws of 1905.
6. Section 18, Chapter 142, Laws of 1915.
7. Chapter 187, Laws of 1937.
8. Chapter 173, Laws of 1921.
9. Statutes of the Territory of Washington, 1881, 8th Biennial Session, Section 1, Page 17.
10. Section 5, Chapter LXIX, Laws of 1893.
11. Section 1, Chapter 21, Laws of 1927.
12. Pub. Law 64-156. This legislation was entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes."
13. Pub. Law 84-627.
14. Pub. Law 102-240.
15. Metropolitan park districts were authorized by Chapter 98, Laws of 1907, codified in Chapter 35.61 RCW. The authority of metropolitan park districts to provide parkways and boulevards is found in RCW 35.61.130.
16. The authority of port districts to provide tunnels and toll bridges was authorized by Section 1, Chapter 236, Laws of 1959, codified as RCW 53.34.010. The authority of port districts to upgrade highways serving their facilities was authorized by Section 1, Chapter 5, Laws of 1990, codified as RCW 53.08.330.
17. Service districts were authorized by Chapter 130, Laws of 1983, codified in Chapter 36.83 RCW. Transportation benefit districts were authorized by Chapter 327, Laws of 1987, codified in Chapter 36.73 RCW.
18. General town and village incorporation laws enacted in 1887 authorized towns and villages to erect wharfs. (Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session, Chapter CXXVI, Section 7(17), Page 224.) First class cities and second class cities were authorized to provide wharves, moorage, and harbor facilities in 1890. (Section 5, Pages 215-224, Laws of 1889-1890, codified as RCW 35.22.280(25); and Section 38, Pages 143-178, Laws of 1889-1890, now repealed.)
19. Chapter 143, Laws of 1903, codified in Chapter 88.32 RCW.
20. Chapter 23, Laws of 1911, codified as Chapter 91.08 RCW.

21. Sections 1 & 2, Chapter 130, Laws of 1895, codified as RCW 35.21.110 & 36.54.010.
22. Chapter 179, Laws of 1949, codified in Chapter 47.60 RCW.
23. Section 3, Chapter 110, Laws of 1980, codified as RCW 53.08.295. This legislation was enacted to allow the Port of Vancouver to operate passenger vessels to Portland.
24. Sections 301-309, Chapter 83, Laws of 2003, codified as RCW 36.54.110-36.54.190.
25. Ferry districts were originally authorized in Chapter 272, Laws of 1947, at the time when the ferry service on Puget Sound provided by private companies was diminishing. These laws were repealed by Section 92, Chapter 223, Laws of 1994.
26. Chapter 48, Laws of 1919, codified in Chapter 14.07 RCW.
27. Chapter 93, Laws of 1929, also codified in Chapter 14.07 RCW.
28. Chapter 182, Laws of 1945, codified in Chapter 14.08 RCW.
29. Section 2, Chapter 135, Laws of 1919, codified as RCW 35.61.130.
30. Section 4, Chapter 92, Laws of 1911, codified as RCW 53.08.020.
31. Section 3, Chapter 147, Laws of 1963, amending RCW 53.08.020.
32. Section 2, Chapter 110, Laws of 1980 and Section 1, Chapter 47, Laws of 1981, codified in RCW 53.08.290.
33. Chapter 303, Laws of 1983, codified as Chapter 36.60 RCW.
34. Section 1, Page 520, Laws of 1889-1890, codified as RCW 35.92.060.
35. Section 26, Chapter 213, laws of 1957, codified as RCW 35.58.260.
36. Chapter 167, Laws of 1974, ex. sess., codified in Chapter 36.57 RCW.
37. Section 9, Chapter 270, Laws of 1975, 1st ex. sess., codified as RCW 36.57.100.
38. Sections 11-26, Chapter 270, Laws of 1975, 1st ex. sess., codified as Chapter 36.57A RCW.
39. Chapter 101, Laws of 1992, codified in Chapter 81.112 RCW.
40. Chapter 248, Laws of 2002, codified in Chapter 35.95A RCW.
41. Information included in the following discussion was taken from: (a) The homepage of the federal Department of Transportation that may be found at < http://www.dot.gov/ >; and (b) the homepage of the Association of Metropolitan Planning Organizations that may be found at < http://www.ampo.org/policy/ >.
42. This requirement basically originated in: (a) The Federal-Aid Highway Act of 1962 (Pub. Law 87-866); and (b) Housing and Urban Development Act of 1965 amendments to what is known as the Section 701 Urban planning assistance

program that was established under the Housing Act of 1954. The Housing and Urban Development Act of 1965 was enacted as Pub. Law 89-117.

43. Pub. Law 102-240. The requirement for regional transportation plans is found in 23 U.S.C.S. §134 and the requirement for states to coordinate regional transportation plans is found in 23 U.S.C.S. §135.
44. Pub. Law. 105-178
45. Sections 1 & 2, Chapter 195, Laws of 1961, codified as RCW 36.81.121 and 35.77.010.
46. Section 1, Chapter 396, Laws of 1989, codified as RCW 35.58.2795.
47. Section 7, Chapter 151, Laws of 1977 ex. sess. See, RCW 47.01.170(4).
48. RCW 36.70A.070(6).
49. RCW 36.70A.070(6)(a)(iv)(C).
50. RCW 36.70A.100.
51. RCW 36.70A.210.
52. RCW 36.81.121, 35.77.010, and 35.58.2795.
53. Chapter 47.80 RCW.
54. RCW 47.80.023(5).
55. RCW 47.80.070.
56. Chapter 81.104 RCW.
57. Chapter 446, Laws of 1993, codified as Chapter 47.06 RCW.
58. Chapter 311, Laws of 2006.

Chapter 72

General Concepts and Laws

This chapter discusses various concepts and laws applicable to local governments in Washington State. Knowledge of these concepts and laws is essential to understanding local government in this state.

Appearance of Fairness Doctrine

The Appearance of Fairness Doctrine, as applied to local land use decision making, is a court-created doctrine based upon Due Process. This doctrine was severely restricted by the State Supreme Court and Legislature in the early 1980's.

The Appearance of Fairness Doctrine was applied to local land use decisions that were quasi-judicial in nature, where a multi-member body or a person determined the legal rights, duties, or privileges of specific parties at a hearing or other contested case proceeding. When applicable, the Doctrine required that both: (1) The proceedings appeared to have been conducted fairly; and (2) the decision-maker or decision-makers appeared to have been impartial. The tests used by courts to determine if a violation of the Appearance of Fairness Doctrine has occurred are:

- A proceeding appears to be fair if a fair-minded person, who attended each meeting on the proposal, could in good conscience say that the proceeding appeared to have been fair.
- A decision-maker or decision-makers appear to be impartial if a fair minded person, apprised of all contacts and relationships between the decision maker or makers and proponents and opponents of

> the action, would consider the proceeding to have been conducted by impartial officials.

An action taken by a decision maker was voided by the court, if it determined that the Appearance of Fairness Doctrine had been violated.

The Washington State Supreme Court first enunciated the Appearance of Fairness Doctrine on land use matters in 1969, and gradually developed the Doctrine in a number of cases.[a] In each instance, the Court applied the Doctrine to a proposal by an applicant to change land use controls or to approve a permit for a relatively small land area. A formal hearing was held on the matter where the public was allowed to provide input on the proposal, as compared to a public meeting where the public could observe, but was not allowed to provide input on the proposal. Clearly identifiable parties favored the proposal. Clearly identifiable parties opposed the proposal. The requested action by the government was for a re-zone, a preliminary plat approval, or an interwoven proposal involving both a narrow amendment to the comprehensive plan and a re-zone. Although the Court classified the requested re-zone, or interwoven request for both an amendment to the comprehensive plan and a re-zone, as being legislative in nature, the actual proceedings appeared to be more quasi-judicial in nature.

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a The Appearance of Fairness Doctrine was first recognized by the Washington State Supreme Court in *Smith v. Skagit County*, 75 Wn.2d 715, 739-741 (1969). A violation of the Doctrine was found where members of the planning commission met in private with powerful advocates of a re-zone after the hearing was closed. Another violation of the Doctrine was found by the Court in *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 866-869 (1971), where an applicant who was seeking a comprehensive plan amendment and re-zone met with and financed an inspection trip for both the chair of the planning commission and the chair of the board of county commissioners. A violation of the Doctrine was found by the Court in *Fleming v. Tacoma*, 81 Wn.2d 292, 299-300 (1972), where a city council member who participated in the council's deliberation over a proposed rezoning later accepted employment with the applicant, but did not actually vote on the re-zone. Another violation of the Doctrine was found by the Court in *Buell v. Bremerton*, 80 Wn.2d 518, 525 (1972), where a member of the planning commission owned property that appreciated in value as a result of a proposed rezoning voted on the re-zone, even though the vote was not determinative. A violation of the Doctrine was found by the Court in *Anderson v. Island County*, 81 Wn.2d 312, 326 (1972), where the chair of the board of county commissioners, who had sold property to another party who applied for a re-zone, both spoke in favor of the proposed change at the hearing and told an opponent at the hearing that "you are just wasting your time." Another violation of the Doctrine was found by the Court in *Swift v. Island County*, 87 Wn.2d 348, 361-362 (1976), where a member of the board of county commissioners, who was a stockholder and the chair of the board of directors of a savings and loan association that lent money to the developer of land, participated in the consideration of a preliminary plat approval for the land but resigned from the board of commissioners by the time the final vote was taken on the preliminary plat.

The Appearance of Fairness Doctrine was significantly narrowed by the Supreme Court and the Legislature in the early 1980's.

First, the Supreme Court narrowed the Appearance of Fairness Doctrine by refusing to apply the Doctrine to a proceeding that involved an amendment to a community plan, even where the proceeding appeared to be quasi-judicial in nature.[1] The Boeing Company had an option to purchase land from the Port of Seattle to develop a new corporate headquarters, conditioned on obtaining changes in regulations allowing the construction of office buildings on the land. An application to re-zone the property was filed jointly by the Port of Seattle and Boeing. However, King County chose to proceed with a very narrow amendment to the community plan, only applicable to the specific property, and expressly mentioning the proposed Boeing project, rather than proceeding with the re-zone. The community plan was a subarea plan applicable to the Hilltop area of King County that stood between the more general countywide comprehensive plan and the actual zoning regulations controlling land use on the property. Two members of the King County Council had *ex parte* contracts with Boeing officials over the matter, and each of these council members was given a campaign contribution of $700 from Boeing employees.

The Court narrowed the Appearance of Fairness Doctrine by holding that an amendment to the comprehensive plan, or even a community plan augmenting the comprehensive plan, was a legislative act since the actual regulation controlling the land use was the zoning ordinance. No analysis was made of the "interwoven" nature of the change in the community plan and the re-zone. No analysis was made of the fact that the Boeing Company had requested a re-zone of the property. In effect, the Court voided prior case law without expressly overruling these cases.

Second, legislation, primarily backed by the Boeing Company, was enacted by the Legislature in 1982 that dramatically restricted the Appearance of Fairness Doctrine.[b] [2] The legislation reversed almost every facet of the Appearance of Fairness Doctrine by:

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b The author staffed the Local Government Committee in the House of Representatives that considered this legislation and retains vivid memories of Forrest "Bud" Coffey, the principal

- Limiting application of the Doctrine to quasi-judicial actions which determine legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. The Doctrine expressly does not apply to legislative actions concerning comprehensive plans, community plans, or neighborhood plans or area-wide zoning ordinances or zoning amendments of area-wide significance.
- Eliminating statements made by candidates for public office while campaigning from being considered a possible violation of the Doctrine.
- Eliminating campaign contributions that were reported to the Public Disclosure Commission from being considered a possible violation of the Doctrine.
- Eliminating *ex parte* communications between a member of a decision making body and opponents or proponents of a proposal from being considered a possible violation of the Doctrine if: (1) A record of the substance of the communications is placed into the record; and (2) a public announcement is made of the content of the communication and the right of parties to rebut the substance of the communication.
- Precluding a party from raising the Doctrine after a decision has been made, if the party knew or should reasonably have known the basis of the alleged violation prior to the decision being made.
- Allowing members of decision making bodies with potential violations of the Doctrine to participate in the proceeding and vote as if the potential violation had not occurred if they: (1) Publicly disclose the potential violations prior to the decision being rendered; and (2) the disqualification would result in

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lobbyist for the Boeing Company, testifying in favor of this legislation. Coffey rarely testified before the Legislature. His great political power was behind the scenes. In testimony before the House Local Government Committee, Coffey never mentioned the lawsuit Boeing had on this matter before the State Supreme Court. Better to be safe than sorry and pursue two separate avenues to restrict the doctrine.

> either a lack of a quorum or the failure to obtain a majority vote.

The legislation also expressly precluded courts from expanding the Doctrine beyond what remained after the legislation was enacted.

Boundary Review Boards

The Legislature enacted legislation in 1967 providing for the creation of boundary review boards.[c] [3]

Each county with a population of 210,000 or more is required to create a boundary review board and any other county may choose to create a boundary review board.[4] A boundary review board in a county with a population of less than one million consists of five members, two of whom are appointed by the Governor, one of whom is appointed by the county legislative authority, one of whom is appointed by the mayors of cities located in the county, and one of whom is appointed by the boundary review board from nominations made by special purpose districts included in the county.[5] A boundary review board in a county with a population of one million or more (King County) consists of 11 members, three of whom are appointed by the Governor, three of whom are appointed by the county legislative authority, three of whom are appointed by mayors of the cities located in the county, and two of whom are appointed by the boundary review board from nominations made by special purpose districts located in the county.[6]

Legislation was enacted in 1991 allowing a county that planned under all of the Growth Management Act (GMA) requirements to dissolve its boundary review board, if the county, and all the cities within the county, have adopted comprehensive plans and development regulations in compliance with the GMA.[7] It does not appear that any boundary review boards have been dissolved under this provision.

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c As discussed in Chapter 6, two other types of boundary review board also exist relating to city annexations. First, a code city annexation review board exists in every county without a boundary review board in which a code city is located. Second, an *ad hoc* annexation review board is created every time a classified city proposes to annex territory in a county without a boundary review board.

A boundary review board is created to review proposed boundary changes by cities and various special purpose districts. The special purpose districts whose boundary changes are subject to review and action by a boundary review board include public utility districts (PUDs) that are engaged in water distribution, sewer districts, water districts, fire protection districts, metropolitan park districts, irrigation districts, flood control districts, diking improvement districts, and drainage improvement districts.[8]

The following types of boundary changes are potentially subject to boundary review board review:

- Creating or incorporating the local government;
- Altering boundaries, which includes annexations, removing territory, consolidations, and dissolutions, but not including city consolidations; and
- Extending permanent water service or sewer service beyond the boundaries of the entity proposing to provide the service.[9]

The proposal by a city to assume the assets, facilities, or indebtedness of a water district or sewer district is also subject to potential review by a boundary review board.

Notice of a proposed boundary action by a city or special purpose district is submitted to the boundary review board.[10] In some instances (e.g., a city incorporation) review by a boundary review board automatically occurs and an outside party need not invoke its jurisdiction. However, in most instances, review of a proposed boundary change by a boundary review board only occurs if the jurisdiction of the boundary review board has been invoked by an outside party. Jurisdiction of a boundary review board may be invoked in a number of ways, including: (1) A request by the county legislative authority; (2) a request by the governing body of an affected local government; (3) a petition of affected voters requesting review; or (4) a petition of affected property owners requesting review. A proposed boundary change is deemed approved if the jurisdiction of the board has not been invoked within 45 days of submission of the notice.[11]

If its jurisdiction has been invoked, a boundary review board reviews the proposed boundary change and may: (1) Approve the boundary change as submitted; (2) modify and approve the boundary change; or (3) reject the boundary change.[12] The proposed boundary change is deemed approved, if the board fails to take action on the proposal within 120 days of the date the jurisdiction of the board was invoked.[13]

Budgeting and Accounting Requirements

Various budgeting and accounting laws and requirements apply to local governments.

A. Accounting Requirements

Legislation was enacted in 1909, directing the State Auditor to formulate, prescribe, and install a uniform accounting system for local governments to keep their financial records.[14] This law is sometimes referred to as the State Accountancy Act. Among other requirements, a separate account was required for each "department, public improvement, undertaking, institution, and public service" and each separate account was required to pay the "true and fair value" of any service rendered by or property transferred from another account to that account.[15] The Supreme Court upheld the constitutionality of this legislation in a lawsuit filed shortly after the legislation was enacted.[16]

The office of the State Auditor gradually developed an accounting and reporting system for local governments under the authority of the State Accountancy Act.[17] An initial local government accounting system was established from 1910 to 1923. Movement toward a modern accounting and reporting system began in 1968, after a national association of municipal finance officers (the Municipal Finance Officers Association) released a set of general accounting principles for governments entitled "Governmental Accounting, Auditing and Financial Reporting" or GAAF principles. Modern accounting manuals were soon issued in Washington State, based upon the GAAF principles. A manual for school districts was issued jointly by the State Auditor and office of the Superintendent of Public Instruction in 1968. The State Auditor issued an accounting manual for counties and cities in 1969. The

new accounting requirements are called the "Budgeting, Accounting, and Reporting System" or BARS. A first edition of Local Government Comparative Statistics was released in 1973 detailing expenditure and revenue statistics for counties and cities. Gradually the BARS have been extended to special purpose districts, including port districts and various transit districts.

The BARS provided improved and uniform information on local government expenditures and revenues, utilizing what was then new computer technology. An anomaly is that the City of Seattle is not required to use BARS for its fiscal purposes, but annually translates its fiscal data into a report utilizing the BARS format and files the report with the State Auditor.

Improved access to local government fiscal data occurred in 1994, when the BARS were initially offered in electronic format. Requirements for more complete, timely, and reliable local government statistics were implemented in the late 1990's when the office of the State Auditor and the Legislative Evaluation and Accountability Program (LEAP) Committee released local government fiscal data under a new program that is now available online from both the State Auditor's home page and the LEAP's home page.[d] Users may generate income and expenditure information for individual local governments as well as aggregated information for groups of local governments.

B. Budgeting Requirements

Most different types of local governments are required to adopt budgets.[18] Appendix I summarizes local government budgeting requirements.

The requirement to adopt a budget is not contained in a general law. Instead, the requirement to adopt a budget is found in separate statutes for most different types of local governments, including counties, cities, school districts, fire protection districts, port districts, and public utility districts (PUDs).[19] Statutory

d These reports are part of the Local Government Finance Project. They may be accessed through the State Auditor's home page at "http://www.sao.wa.gov/" under the local government tab or through the Legislative Evaluation and Audit Program (LEAP) Committee's home page under the Special Projects and Studies tab at "http://leap.leg.wa.gov/leap/default.asp".

requirements do not exist for a few major types of local governments to adopt budgets, including water districts, sewer districts, public transit benefit areas (PTBAs), and metropolitan park districts.

Budgeting details differ widely, where the requirement exists for a type of local government to adopt budgets. Differences include:

- Procedural requirements for adopting a budget;
- Details for what must be included in a budget; and
- Whether or not the local government is expressly required to make its expenditures following an adopted budget.

Procedural requirements for adopting a budget vary widely. Detailed procedural requirements exist for counties, cities, and school districts to adopt budgets.[20] Minimal procedural requirements exist for port districts to adopt budgets. Metropolitan municipal corporations (metros) and cemetery districts are required to adopt budgets, but no procedural requirements exist to guide the adoption of the budgets.[e]

Requirements for budget details vary widely. Budget details may be required by statutes or by a state agency authorized by statute to establish budget details for a particular type of local government. Statutes require considerable budget detail for counties, cities, and school districts, but include only minimal budget details for library districts and metros.[21] Budget details are not provided for fire protection districts, port districts, PUDs, and other special purpose districts. The State Auditor is directed to establish budget details for counties, cities, park and recreation service areas, and park and recreation districts.[22] The County Road Administration Board (CRAB) is authorized to establish additional budget details for the road budget portion of county budgets.[23] The Office of the Superintendent of Public Instruction (OSPI) and State Auditor are

e Metros are required to adopt budgets by RCW 35.58.410(1), but no detail is provided for procedural steps to adopt a budget. However, the only functioning metro has been assumed by King County, so county budget requirements probably would apply to what was once known as the Metropolitan Municipal Corporation of Seattle. Cemetery districts are required to adopt budgets by RCW 68.52.290 but no the only procedural requirement is that the budget be adopted "in ample time" for property taxes to be levied.

authorized to establish additional budget requirements for school district budgets.[24]

Expenditures by counties, cities, park and recreation districts, school districts, and TV reception improvement districts must be made in accordance with adopted budgets.[25] Other local governments are not expressly required to make their expenditures in accordance with adopted budgets. Presumably, an implicit requirement exists that all governments adopting a budget must make their expenditures in accordance with their budgets.[f]

Normally, local governments adopt annual budgets for a calendar year. However, counties, cities, fire protection districts and regional fire protection service authorities are allowed to adopt either annual or biennial budgets.[26]

Civil Service Requirements

State statutes establish civil service systems of employment for three groups of local government employees. Other state statutes allow a few types of special purpose districts to create civil service systems of employment for their employees.

Charter counties and charter cities may establish a system of civil service employment, or other form of merit-based employment, for their employees who are not subject to statutes providing for civil service employment. It is not clear if this authority extends to noncharter counties or noncharter cities. Presumably, code cities would possess this authority given the strong statutory home rule provisions applicable to code cities.

A. Fire Department Employees

Legislation was enacted in 1935 providing for a civil service system of employment for employees of a “full paid fire department” in a city or municipality.[27] The provisions of this civil service law do not apply to a city that provides an alternative civil service system of

f A disagreement between the State Auditor and the Port of Tacoma arose in the 1990's during an audit of the Port of Tacoma. The Port argued that, although it was required by state statute to adopt a budget, no requirement existed for the port to spend its monies pursuant to this budget since no statute made this requirement. The State Auditor disagreed. After a few months, the Port of Tacoma retreated from its position.

employment for its fire department employees, if this alternative system substantially accomplishes the purposes of the state civil service law.[28]

It is not clear what local governments were included under the term "municipality" since these statutes do not include any definitions. Presumably, fire protection districts that were authorized to be created in the three more populous counties by legislation enacted in 1933, would be such municipalities.[29] However, the first fire protection district was not created until July 21, 1935.[30] This legislation was later amended so that a fire protection district could be created in any county. Interestingly, legislation was enacted in 1949, allowing a fire protection district with a "fully-paid fire department" to adopt a resolution providing for a civil service system of employment for its employees under what is now Chapter 41.08 RCW.[31] It is the author's guess that no one in 1949 (including a legislator, union official, or fire protection district staff or official) was aware of the probable application of the 1935 statute. The 1949 statute may have had the effect of removing the mandatory application of the 1935 statute from fire protection districts.

The term "municipality" possibly could have included King County, if that county employed sufficient full-time fire department personnel. King County appears to have appointed two fire marshals in the early 1930's who maintained fire fighting equipment and used volunteer fire fighters to extinguish fires.[32] Presumably this system of civil service employment applies to a port district that creates a fire department.

The required civil service system applies to each "full paid" employee of a "full paid fire department". However, a city or municipality may exclude the application of these statutes from a fire chief who is appointed after July 1, 1987.

The basic requirement is to appoint a three-member civil service board that adopts rules and regulations, administers the system, prepares and administers competitive tests, makes investigations, and holds hearings. All appointments to, and promotions in, the fire department must be made solely on the basis of merit, efficiency, and fitness ascertained by open competitive examinations and

impartial investigations. Reinstatements, transfers, suspensions, and discharges are also subject to civil service rules. Each covered position has a probationary period, during which the employee may be discharged if the "appointing authority" determines the person to be unfit and after which an employee who successfully completes the employment becomes a permanent employee in that position.

A city may provide for an alternative civil service system of employment for its fire fighters, if the system "substantially accomplishes the purpose" of the statutory fire fighter civil service system. Other "municipalities" are not granted this authority.

B. Police Department Employees

Legislation was enacted in 1937, providing a civil service system of employment for full paid employees of a police department of a city or municipality.[33] The provisions of this civil service law do not apply to a city that provides an alternative civil service system of employment for its police department employees, if this alternative system substantially accomplishes the purposes of the state civil service law.[34]

Basic requirements of this civil service system are the same as for the civil service system of employment in fire departments as described above. The major difference is the ability of the city or municipality to exclude certain persons from application of these provisions. All full-time paid commissioned officers are classified as civil service employees if the department (including the chief) consists of five or fewer officers. Exempt positions are established for departments with six or more officers, with the number of exempt positions increasing as the size of the department increases. The number of exempt positions ranges from two to ten.

This civil service system of employment includes definitions, but only a few terms are defined and several terms are defined in very peculiar ways. First, the term "city" is defined to include cities and municipalities, having a "full paid police department" even though all substantive provisions in the statutes use the terms "cities, towns, and municipalities". Second, the term "full paid police department" has two definitions, first it means "that all of the officers and policemen employed as such, are paid regularly by the city and devote their whole time to police duty" and second it also means

"full paid policemen".[35] However, this term is only used in the definition of "city" and is not used in the substantive provisions providing for the civil service system. Instead, substantive provisions apply the civil service requirements to "all full paid employees of the police department of a city, town or municipality". Literally, this language would include both "full paid" uniformed police officers as well as other "full paid" employees of a police department.

The term "municipality" is not defined. This term may have applied to townships, which employed constables when these statutes were enacted, but no townships remain in existence. Presumably, these statutes now apply to port districts employing police officers under legislation enacted in 1981, and to metropolitan park districts employing "park police" under legislation enacted in 1907.[36] It is possible that these provisions also apply to "security force" personnel hired by a joint operating agency under legislation enacted in 1981.[37]

C. Sheriff's Office Employees

State voters approved Initiative to the Legislature No. 23 in 1958, establishing a civil service system of employment for regular employees of a sheriff's department, whether employed on a full time or part time basis.[38]

Basic requirements of this civil service system are similar to those for a civil service system of employment in a fire department or police department, as described above. However, there are a few significant differences, as follows:

- Obviously, the sheriff is an elected official and not an appointed official, so the civil service system of employment would not apply to the sheriff.
- Many exempt positions are established for the county sheriff's office system of civil service. Besides the sheriff, the number of exempt positions ranges from two to thirteen, depending on the number of personnel in the office, whether the 911 emergency communications system is operated by the sheriff's office, and whether the county has a

population of 500,000 or more and operates under a home rule charter.

- These civil service provisions expressly apply to uniformed deputy sheriffs as well as other regular employees of the sheriff's office.
- Two or more counties, each with populations of less than 40,000, may create a combined civil service system for their counties, even if they are not contiguous.
- Counties are not authorized to establish alternative civil service systems that substantially accomplish the purposes of the state civil service system.

D. Other Expressly Authorized Civil Service Systems of Employment

Metropolitan park districts are authorized to establish civil service systems of employment for their employees.[39] No details are provided.

Metropolitan municipal corporations (metros) are authorized to establish personnel merit systems for their employees.[40] No details are provided.

Collective Bargaining Requirements

Chapter 41.56 RCW establishes a uniform system of collective bargaining rights for public employees. These provisions apply to both state and local government employees, including those also covered by civil service laws. The Public Employment Relations Commission (PERC) is created as a state agency to implement these uniform provisions.

Public employers may not interfere with the right of public employees to freely organize and to designate their collective bargaining representative. Public employers are required to bargain collectively with the designated representative of their employees over employment matters other than those that by ordinance, resolution, or charter have been delegated to a civil service commission or personnel board. A collective bargaining

agreement may include union security provisions and may provide for binding arbitration over labor disputes concerning the application or interpretation of matters contained in a collective bargaining agreement.

The PERC may certify an entity as the collective bargaining representative for a group of state or local government public employees, if a disagreement arises between the public employer and its public employees over which entity is the collective bargaining representative. Various criteria are designated in law for the PERC to make this determination, which may involve public employees voting to select their collective bargaining representative.

Additional rights are provided for uniformed personnel, who basically are defined as: (1) Law enforcement personnel of more populous local governments; and (2) all full time fire fighters and advanced life support personnel, without regard to the size of the local government.[g] [41] A local government is required to commence negotiations with uniformed personnel at least five months prior to the date the budget is submitted to the governing body of the local government for its consideration. An impasse may be declared by either party, without concurrence of the other party, within 60 days and the dispute is submitted to the PERC, which appoints a mediator. Binding arbitration over disputed issues may occur, if an agreement then is not reached within a "reasonable period".

Additional collective bargaining provisions apply to port districts, which include the authority to settle the issue of the public employee representative independently from the PERC.[42]

Contracting Procedures

g Uniformed personnel is defined as: (1) Law enforcement officers in any city with a population of 2,500 or more (in 2014 this included 150 of the State's 281 cities) and a county with a population of 10,000 or more (in 2014 this included all but four of the counties in the State); (2) correctional employees and security personnel in jails run by a county with a population of 70,000 or more; (3) peace officers, fire fighters, and crash fire rescue personnel employed by a port district with a population of one million or more (the Port of Seattle); (4) security forces employed by a joint operating agency (JOA); (5) full time fire fighters who are members of the Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System; (6) fire department employees who dispatch fire or emergency medical services; and (7) advanced life support technicians. (RCW 41.56.030.)

Most local governments are required to award contracts for public works projects using formal contracting procedures that are established in statutes providing for the type of local government. Normally, formal contracting procedures are only required for public works projects of over a specified dollar amount and the local government is allowed to award contracts for small dollar value projects without conforming to formal bidding procedures.

At times, the concept of mandatory bidding procedures becomes confused with the concept of day labor limits, discussed below. Bidding procedures are steps required to be taken to award a contract, normally for a public works project, whether a government chooses to contract for the work or is required to contract for the work. Day labor requirements refer to the public works projects that a government is not allowed to perform with its own labor and is required to contract with private enterprise to perform the project.

Bidding requirements do not apply to emergency contracts where the local government awards a contract for a public works project in response to an emergency situation.[43]

Traditionally, formal contracting procedures have involved what is sometimes called the design, bid, build procedure. A local government following this procedure: (1) Designs the project, or contracts for the design of the project; (2) publishes a notice that includes specifications for the project and requests contractors to submit sealed bids on or before a specified date and time; (3) opens the sealed bids at the designated time and place; and (4) awards a contract to the lowest responsible bidder who submits a responsive bid or rejects all bids.

Most local governments are allowed to award contracts for public works projects with an estimated cost of $300,000 or less using a small works roster procedure. General legislation provides a uniform procedure for these local governments to follow when a small works roster process is used.[44] A local government using the small works roster procedure, advertises for contractors who request being placed on the small works roster to bid on a small to medium valued project, and award the contract to the lowest bidder. The local government may request bids or quotations from all appropriate contractors on the roster or from at least five

appropriate contractors on the roster who submit bids, who may submit their bids or quotations using a secure telephone, written or electronic formats. If the project has an estimated value of between $150,000 and $300,000 all contractors on the roster must be contacted. Local governments authorized to use the small works roster procedure may also award contracts for contracts under $35,000 using what is called a limited public works process where bids from only three contractors need be solicited.[45]

Local governments may award larger dollar value contracts using what is called alternative public works contracting procedures.[46] Three alternative procedures are allowed:

- A design-build procedure for a project valued at over $10 million involving highly specialized construction activities, or involving an opportunity for innovation or efficiencies between the designer and builder, or significant delivery time savings will be realized.[47] The local government uses a competitive process to solicit proposals from contractors to both design and build the project, where a notice is published requesting proposals from contractors, the local government evaluates proposals and selects from three to five finalists, the local government enters into negotiations with the finalists, and the local government either awards the contract or terminates the process.
- A general contractor/construction manager (GCCM) procedure involving any of the following factors: (1) complex scheduling, phasing or coordination; (2) construction of an occupied facility that operates during construction; (3) the process is critical to the success of the project; (4) the project includes a complex or technical work environment; (5) the project requires specialized work on a building or historical significance; or (6) heavy civil construction is involved.[48] The contractor is selected early in the process to provide services during the design phase and to act as the construction manager and general contractor during the construction phase. A competitive process is used for awarding a GCCM

contract where bids are solicited for proposals by contractors, the bids are evaluated using evaluation factors, finalists who submit sealed bids for a percentage fee to be earned by the contractor for overhead and profit if chosen, and the local government selects the contractor.

- Several types of local governments may contract using a job order contracting process using unit price books and work orders where a determination is made that use of job order contracts will reduce total lead-time and costs for the repair and renovation of public facilities, using unit price books and work orders rather than using a separate contract action for each small project.[49] Only the following local governments may use this procedure: (1) The Central Puget Sound Regional Transit Authority, i.e., Sound Transit; (2) a city with a population of more than 70,000 and a public authority chartered by such a city; (3) any county with a population of more than 450,000; (4) any port district with revenues greater than $15 million; (5) any public utility district with revenues from energy sales of more than $23 million per year; or (6) any school district. The maximum contract that may be awarded using this process is $4 million per year for three years or $6 million per year for three years for a county with a population of more than one million or for a city with a population of 400,000 or more. A contract may be renewed for an additional two years. An individual work order done under this process may not exceed $35,000. The local government merely notifies the contractor to perform the type of work whenever it has a need for the work.

Local governments are required to use a special procedure for awarding contracts for engineering and architectural services.[50]

Day Labor Requirements

The term “day labor” requirements refers to the maximum dollar value of a public works project that public employees in most types of local government are allowed to perform, as specified in statutes relating to the type of local government. With certain exceptions, all public works projects equal to or greater in value to the statutory “day labor” limit must be performed by private enterprise.

The term “day labor” requirement does not relate to the process by which a government enters into a contract with private enterprise, such as formal competitive bidding requirements or use of a small works roster process.

“Day labor” requirements only apply to the construction of public facilities and do not apply to the maintenance of these facilities.

The term “day labor” appears to have arisen from old Territorial requirements discussed in Chapter 1 for all adult male residents of a road district, or school district, provide a certain number of days labor on roads or school facilities each year. These “day labor” requirements were gradually eliminated and public employees were authorized to construct facilities or the governments were authorized to contract with private enterprise for the construction of these facilities. Gradually, statutes were enacted for most types of local government, precluding public employees from constructing projects over a certain dollar value. The particular maximum dollar amount of a project that may be constructed by local government employees varies with the statutes for that type of local government. Port districts are the most significant types of local governments that are not subject to “day labor” requirements. They may construct any facility, without regard to its cost, using port employees.

Division of Governmental Studies and Services

The Division of Governmental Studies and Services is a social science research agency at Washington State University providing outreach services and graduate student training. It provides applied social science research services to federal, state, tribal, and local governments and publishes reports and research papers. The

Division was created in 1965 and is housed in the Department of Political Science and Criminal Justice Program. Funding is provided by both the College of Liberal Arts and the WSU Extension.

Ethics

Two sets of general laws establish limited codes of ethics for local officials and employees and restrict their conduct.

The older set of laws includes some provisions of territorial law, as well as other laws primarily enacted in 1909, and applying to state and local officials. These older laws establish various crimes involving misconduct by officials, including accepting rewards or gratuities for discharging official duties, wrongfully refusing to surrender public office, making false reports, falsely auditing and paying claims, misappropriating money, falsifying accounts, and willfully neglecting to perform duties.[51]

Newer laws were primarily enacted in 1961, establishing what is called a uniform code of ethics that basically prohibits local officers from having contractual conflicts of interest.[52] These provisions apply to all local officers, including elected and appointed officers, their deputies and assistants, and all other local government officers exercising "any of the powers or functions of a municipal officer." Local officers are prohibited from both:

- Having direct or indirect beneficial interests in any contract under their supervision or authority; or
- Accepting compensation, gratuities, or awards relating to these contracts.

These restrictions do not apply to remote interests. A long list of detailed exceptions is also provided. Contracts violating these provisions are void, the officer is liable for a penalty of $500 in addition to other civil or criminal penalties, and may be grounds for forfeiting his or her office. This code of ethics also prohibits local officers from using their positions to secure special privileges or exemptions for themselves or others or disclosing confidential information.

Conflicting city charter provisions control the prohibitions included in this code of ethics.

Incompatibility of Public Offices Doctrine

The Incompatibility of Public Offices Doctrine is a court-created doctrine prohibiting a person from holding public offices that are incompatible.[53] However, statutory law may allow a person to hold incompatible offices.

Two levels of incompatibility have been found. First, holding offices within the same agency is incompatible if one office is subordinate with the other office. For example, a person may not hold the office of fire commissioner and be a volunteer fire fighter for that fire protection district. However, legislation was enacted allowing a fire commissioner of a fire protection district to serve as a volunteer fire fighter for the fire protection district.[54] Second, offices in different public agencies are incompatible if certain interrelationships between the two different agencies exist that make the offices incompatible. For example, the mayor of a city may not serve as a commissioner of a port district with territory located in the city since port districts are somewhat subordinate to cities by being subject to city zoning and building codes.

The Incompatibility of Public Offices Doctrine has not been applied to state legislators.

Interlocal Cooperation Act

The Interlocal Cooperation Act authorizes all types of local governments to enter into what are called interlocal contracts and interlocal agreements.[h] [55]

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h The concept of the Interlocal Cooperation Act may have arisen from the Report of the Citizens Advisory Committee to the Joint Committee on Urban Government, of the Washington State Legislature, in June of 1962. The Joint Committee was created by Chapter 308, Laws of 1961, and directed to study and make recommendations to the Legislature on urban areas and possible changes to state laws. Although this Report did not expressly recommend legislation similar to the Interlocal Cooperation Act, it found that "cooperation of counties, cities, and metropolitan governments [should be] enabled and encouraged within and between metropolitan areas." (Recommendation 28, at page 13.) It appears that, apart from proposing new forms of local government, granting local governments the express authority to enter into contracts and agreements would foster this cooperation.

The original legislation enacted in 1967 only authorized counties, cities, port districts, public utility districts, and metropolitan municipal corporations to enter into interlocal contracts and interlocal agreements with each other, state agencies, agencies of other states, or federal agencies. Gradually, this legislation was amended, expanding the types of special purpose districts authorized to use its provisions. Finally, legislation was enacted in 1985, allowing any local unit of government to enter into interlocal contracts and interlocal agreements.[56]

Prior to enactment of the Interlocal Cooperation Act, virtually all types of local governments were authorized to enter into contracts. A few laws authorized different types of local governments to enter into contracts with other local governments for specific purposes. For example, two or more PUDs were allowed to enter into contracts for the joint provision of electrical generating facilities, and cities were authorized to adopt agreements with fire protection districts for the provision of fire protection services.[57] However, no general law existed authorizing local governments express authority to contract with each other.

The Interlocal Cooperation Act authorizes two different types of arrangements:

- Two or more local governments or other entities may enter into an interlocal contract where a party to the contract performs a service, activity, or undertaking for the other party or parties to the contract.[58] The basic requirement is that each party to the contract must be authorized to perform the service, activity, or undertaking that is subject to the contract.
- Two or more local governments or other entities may enter into an interlocal agreement for the joint or cooperative performance of a service, activity, or undertaking.[59] Again, the basic requirement is that each party to the agreement must be authorized to perform the service, activity, or undertaking that is subject to the agreement. A separate legal entity or administrative entity must be created under an interlocal agreement to provide for the joint or cooperative action. This provision has the

> appearance of authorizing local governments to create separate units of government.

Hundreds of interlocal contracts and interlocal agreements have been established by local governments. A number of statutes misuse the term “interlocal agreement”, rather than the correct term “interlocal contract”, when referring to an arrangement when one entity does something for another entity.

The Interlocal Cooperation Act may be seen as a milestone, potentially advancing the provision of regional services and facilities by specifically authorizing cooperation among local governments. However, the Interlocal Cooperation Act may also be seen as a “bandage” approach to local government reform, actually retarding more fundamental reform of the actual structure of local governments to provide regional services and facilities.

As discussed below, the Joint Municipal Utility Services law was recently enacted, substantially improving the procedure for the joint provision of utility services.

Joint Municipal Utility Services

The Legislature enacted the Joint Municipal Utility Services Act in 2011 authorizing counties, cities, public utility districts, port districts, water districts, sewer districts, and irrigation districts to create separate municipal corporations to provide water and sewer utility services for the municipal corporations creating the new entity.[60]

This legislation is an improvement over agreements under the Interlocal Cooperation Act for the joint provision of water and sewer utility services. Perhaps the most important issue is clear authority to create a separate municipal corporation for these purposes.

Lending of Credit and Gifts of Public Funds

Article VIII, Section 7 prohibits local governments from lending their credit, or providing gifts of public funds, to any person or private entity except for the necessary support of the poor and infirm. A somewhat similar provision is included in Article VIII, Section 5

prohibiting the State from lending its credit to any person or private entity.

The Supreme Court's analysis of these two provisions has been quite flexible in adapting to altered conditions. Recent opinions by the Court have narrowed the restrictions, and allowed the State and local governments to engage in many governmental activities that once would have been seen as unconstitutional under these Lending of Credit provisions.[61] Two legal theories have been used to narrow or restrict the prohibitions contained in Article VIII, Sections 5 and 7. First, a silent or implicit exception has been found, allowing governments to engage in traditional or "recognizable public government functions" without violating these provisions. Second, the Court has developed a two-part test where a gift of public funds does not occur unless both:

- A transfer of property occurs without consideration; and
- The government had a "donative intent" to give the property away.

Incidental private benefits are no longer deemed to be violations of these constitutional provisions.

Literally, these two constitutional provisions include quite different wording. The State lending of credit provision is much more abbreviated than the local government lending of credit provision and literally does not include:

- A prohibition on providing gifts of public funds to persons or private entities; or
- An exception permitting the State to provide support for the poor and infirm.

Nevertheless, the Supreme Court has ignored these differences and held that the two provisions are identical.[i]

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i The Court in *Health Care Facilities v. Ray*, 93 Wn.2d 108, 115 (1980), stated that: "Although section 5 [the state lending of credit provision] does not contain an express exception for 'the necessary support of the poor and infirm', we have construed sections 5 and 7 as containing similar restrictions, similar exceptions thereto, and as implementing nearly identical policies with respect to different political entities."

The local government lending of credit provision includes an exception from the general prohibition of local governments providing gifts or loans to people or private entities. Local governments may provide loans or gifts to the "poor and infirm". (Emphasis added.) Although this exception literally requires the recipient to be both poor and infirm, the Court has interpreted the exception as allowing gifts or loans of public funds to persons who are either poor or infirm.[j] Again, the Court grafted this exception from the local government lending of credit provision onto the state lending of credit provision.

A brief review of the historical context of these lending of credit provisions sheds light on at least some of the significant differences in the wording. These two provisions were part of the Populist underpinnings of the original State Constitution reflecting the public's fear of private corporations (especially the railroads) controlling government. Including an exception from the prohibition on lending the credit or providing gifts of public funds in the local government provision, but not the state government provision, reflected the scheme of government existing at the time the Constitution was approved by voters. This scheme of government was quite different from the modern scheme of government. County government was a dominant form of government during territorial years and the early years of Washington State when counties were the sole provider of public assistance. Public assistance was provided by counties establishing, "work houses" to house and employ paupers. These work houses were also known as county almshouses, poor houses, or poor farms. The State had no role in providing public assistance other than enacting laws providing for county public assistance. This changed dramatically

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j Express acceptance of this position required a number of years and involved the extension of the "poor and infirm" exception from the local government provision (Article VIII, Section 7) onto the state government provision (Article VIII, Section 5). First, the Court upheld the constitutionality of the State providing a relief program for the poor under the rubric that the "support of the poor and needy is a recognized public function" that the State could perform without mentioning that Section 5 does not include such an exception and failing to mention that the poor were not also infirm. (*Morgan v. Dept. of Social Security*, 14 Wn.2d 156, 169 (1942). Then the Court in *State v. Guaranty Trust Co.*, 20 Wn.2d 588, 592 (1944), explained its earlier decision and admitted that this exception is literally not included in Article VIII, Section 5, but again failed to mention that the eligible poor were not also required to be infirm. Although the Court in *Morgan* held that the State may engage in relief measures for the poor, the Court did not discuss the seeming requirement under Article VIII, Section 7 that the recipients must be both poor and infirm. Finally 38 years after the *Morgan* case, the Court in *Health Care Facilities*, at pages 115-116, noted that it was constitutional for a program to only require that beneficiaries be poor and need not be infirm.

in the early years of the Depression of the 1930's when the State assumed the primary responsibility of providing public assistance, and counties retained only minimal responsibility to provide public assistance.[62]

State voters approved Amendment 45 (Article VIII, Section 8) in 1965. This Amendment provides that a port district following legislation enacted by the Legislature may use public funds for "industrial development or trade promotion and promotional hosting" and that this use of public funds would not be deemed to be a "gift" prohibited by Article VIII, Section 7.[k]

The major Supreme Court case analyzing Amendment 45 is quite unsatisfactory, but this case essentially has been negated by subsequent judicial analysis of the lending of credit provisions themselves.[63] Legislation was enacted by the Legislature in the early 1970's allowing port districts and other local governments to enter into lease, lease purchase, or other binding agreements with private parties to finance the installation of pollution control equipment for the private parties. A lawsuit challenging the constitutionality of this financial program as violating the local government lending of credit provision. This lawsuit resulted in an "amended" opinion by the Court. First, the Court held that the financing scheme was an unconstitutional lending of credit. However, the Court failed to mention Amendment 45, which presumably created an exception from the general prohibition on local governments lending their credit that arguably made the financing scheme constitutional. The first opinion was included in the Court's advance sheets. A petition for a rehearing was submitted mentioning the failure of the Court to mention Amendment 45. Although the Court denied the petition for rehearing, it altered its earlier opinion by briefly mentioning

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k The wording of this Amendment appears to be lack clarity. More clear wording would have:

- Referred to these activities as "industrial development, trade promotion, and related promotional hosting";
- Provided that these authorized activities were exceptions from the prohibition on gifts or loans under Article VIII, Section 7, rather than merely the prohibition on providing gifts; and
- Provided that these activities may be authorized in legislation, without specifying that this legislation be "prescribed by the legislature". This alteration literally would allow state voters to authorize these activities by initiative action.

Amendment 45 and holding that it was not applicable. This altered or second opinion appears in the formal, hard bound Washington Reports. The Court held that these agreements were "financing lease agreements" that were "patent, albeit convoluted, violations of" the local government lending of credit provision and were not authorized by Amendment 45.[64] Although the decision is not particularly clear, the Court appeared to be hinting that Amendment 45 only authorized promotional hosting activities associated with industrial development or trade promotion. As mentioned above, this holding probably does not square with the more modern judicial analysis of the lending of credit provisions.

State voters have approved four constitutional amendments exempting energy, water, stormwater, and sewer service conservation assistance from the constitutional prohibition on local governments lending their credit or providing gifts of public funds.[l] Although no direct case law existed on this point when these amendments were approved, it was generally felt that use of public funds to finance conservation assistance would violate the lending of credit provisions. These amendments provide that local governments engaged in the sale or distribution of water, energy, or providing stormwater or sewers, may use operating revenues from these utility systems under programs authorized by the Legislature to assist owners in financing the acquisition and installation of materials and equipment for conserving and more efficiently using water, energy, or stormwater or sewer services and that these conservation programs would not violate the local government lending of credit provision.

All four of these constitutional amendments appear to have been meaningless, as the Supreme Court held in a recent case that the City of Tacoma could undertake its own program of financing conservation assistance deviating from the state authorized

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l The four Amendments are included in Article VIII, Section 10. Amendment 70, approved by state voters in 1979, allowed a local government that sells or distributes energy to provide a residential conservation program using monies obtained from the operating revenues of its utility under a program authorized by the Legislature from being a violation of the lending of credit provision. Amendment 82, approved by state voters in 1988, clarified the nature of these energy conservation programs to include "the acquisition and installation of materials and equipment for the conservation or more efficient use of energy". Amendment 86, approved by state voters in 1989, expanded the conservation programs to include water conservation. Finally Amendment 91, approved by state voters in 1997, further expanded the conservation programs to include stormwater and sewer service.

program without violating the local government of credit provision.[65] The Court noted that the Legislature, when it submitted these amendments to the voters, had relied on a prediction made by the Attorney General that the Court would find an energy conservation program to violate the local government lending of credit provision.[66] Notwithstanding this prediction, the Court found that Tacoma's energy conservation program did not violate the lending of credit provision.

Local Governance Study Commission

The Local Governance Study Commission was created by the Legislature in 1985 to study local governance in Washington State and make recommendations for changes to this system of local governance.[m] [67]

A final, two volume report of the Commission was issued in January of 1988. Volume I is a history of local government in Washington State. This was the most detailed description of the development of local government in Washington State until this book was written. Volume II recommends procedures for altering local government within the State.[n]

Municipal Research and Services Center

The Municipal Research and Services Center (MRSC) of Washington is a non-profit corporation providing research and services for local governments in the state. Its board of directors is composed of prior city and county officials.

Legislation was enacted in 1969, creating the Municipal Research Council as a state agency. The Council's sole responsibility was to contract for the provision of research and other services for cities.[68] This legislation was enacted in response to the closing of the Bureau of Governmental Research at the University of Washington

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m The Commission was composed of a number of local government officials and state legislators and initially was chaired by Dick Thompson, the Director of the Washington State Department of Department of Community Development, and then his successor Chuck Clarke. Primary staffing was provided by Ken Dolbeare and Edie Harding. Eugene Green (who staffed the Senate Government Operations Committee) and the author assisted the Commission in its efforts.

n A discussion of these recommended procedures is found in Chapter 24.

which had provided research and other services for all types of local governments since 1934. The Council was composed of state legislators, as well as city officials, appointed by the Governor. Since its inception, the Municipal Research Council has contracted with the MRSC to provide these services.

Legislation was enacted in 1997, expanding scope of services funded by the Municipal Research Council to include research and services for counties.[69] Membership on the Council was expanded to include county officials appointed by the Governor.

Legislation was enacted in 2006, expanding the purposes of the Municipal Research Council to include research and other services for special purpose districts.[70] However, the funding source to finance this additional responsibility was vetoed by Governor Christine Gregoire.

Legislation was enacted in 2010, abolishing the Municipal Research Council and transferring its responsibilities to the Department of Commerce that is required to contract for these municipal services.[71]

One Person, One Vote Doctrine

The One Person, One Vote Doctrine is a court-created doctrine derived from the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This Doctrine was originally enunciated by the United States Supreme Court in *Reynolds v. Sims* and has gradually evolved in subsequent opinions since that 1964 case.[72]

The One Person, One Vote Doctrine basically recognizes that the American scheme of representative government includes a sense of fundamental fairness as an inherent attribute where each citizen's vote should be given approximately equal weight. Two aspects of this Doctrine have developed:

- The first aspect relates to <u>proportional representation</u> of members of a governing body who are chosen using districts or subareas within a government's boundaries and the population that each official represents. Although some deviation is

allowed, basically each district or subarea must have the same population so that each member represents essentially the same number of people.

- The second aspect relates to franchise or voting rights. All registered voters residing within the boundaries of a government that exercises general governmental powers, or that imposes taxes, must be allowed to vote at elections relating to that government.

The Doctrine has been applied to all levels of government, including the federal government, states, and local governments (regional governments, counties, cities, and special purpose districts). Deviations from the Doctrine are permitted, but a state providing for a deviation has a strong burden to overcome demonstrating a compelling state interest or justification for the deviation. Perhaps the most significant deviation recognized by the Court is for special purpose districts with very narrow or limited purposes, having a disproportionate effect of its activities on landowners as a group. Although little or no discussion is presented in these cases, special purpose districts (such as irrigation districts) that do not exercise general government powers and do not impose taxes are not subject to the One Person, One Vote Doctrine and a state may limit franchise rights in these districts to property owners.[73] As discussed in Chapter 20, although our State Supreme Court recognized that franchise rights in irrigation districts could be restricted to property owners, as an exception to the One Person, One Vote Doctrine, the Court applied certain basic fairness requirements to irrigation district voting provisions under the Free and Equal Elections Clause of the State Constitution (Article I, Section 19).

With regard to proportional representation, greater deviation in the apportionment among districts from which members of governing bodies is elected is allowed for more “inferior” governments. More deviation is allowed among the populations of districts used to elect local governmental officials than to elect members of a state legislature. More deviation is allowed among the populations of legislative districts than among congressional districts in a state.

A quantum expansion in the One Person, One Vote Doctrine occurred when the United States Supreme Court extended the Doctrine to the scheme of representation on a federated governing body composed of officials serving in *ex offico* capacities rather than being elected directly to those positions.[74] Prior to this case the Doctrine had only been applied to officials who were elected directly to office. The Federal District Court of Western Washington applied the Doctrine to the scheme of representation in the Metropolitan Municipal Corporation of Seattle (Seattle Metro).[75] As discussed in Chapter 27, the response to this holding was the assumption of Seattle Metro by King County.

Open Public Meetings Act

The Legislature enacted the Open Public Meetings Act in 1971.[76] This legislation has two basic requirements. First, with some exceptions, all meetings held by a public multi-member board, commission, committee, council, or other public policy or rule making body, along with any committee of the larger body, must be held in public.[o] Second, public notice of the meeting must be provided.

It is notable that these requirements apply to every public multi-member body that makes policy or rules, including local governments and state agencies, but does <u>not</u> apply to the Legislature or the judiciary.

A multi-member body may only receive public testimony, deliberate, discuss matters, consider items, make evaluations, or take a final action at a meeting that is open to the public, where public notice of the meeting has been provided. Final action means a collective positive or negative decision or actual vote by a majority of the members of a multi-member body or a committee of a multi-member body, and would include adopting an ordinance or resolution or approving or rejecting a matter. Notice of regular meetings may be provided by ordinance, resolution, or rule specifying when and where regular meetings are to be held. An emergency meeting necessitated by fire, flood, earthquake, or other

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o The Attorney General has opined that a committee of a governing body is only subject to these open public meeting requirements if comprises a quorum of the larger governing body. (AGO 1986 No. 16.)

emergency may be held at other sites and times. Special meetings may be called with notice being provided personally or in writing to each member of the multi-member body, to each local newspaper of general circulation, and each local radio and television station that has a request for such notice on file with the multi-member body.

Any hearing may be continued to another time and place specified in the order of adjournment or continuance. Notice of the continuance must be conspicuously posted.

A multi-member body may hold executive sessions in private where certain matters are considered. Before convening in executive session, a multi-member body must publicly announce the purpose for excluding the public and the time and place where the executive session will occur. Examples of matters that may be considered in executive session include:

- Selection of a site or acquisition of real estate by lease or purchase, if public knowledge would cause a likelihood of an increased price;
- The minimum price at which real estate will be offered for sale or lease, when public knowledge would cause a likelihood of decreased price;
- Reviewing negotiations on publicly bid contacts when public knowledge would likelihood of increase costs;
- Receiving and evaluating complaints brought against a public officer or employee;[p]
- Evaluating the qualifications of an applicant for public employment or the performance of a public employee;
- Evaluating the qualifications of a candidate for appointment to an elected office; and
- Discussing matters with legal counsel relating to certain matters, including potential litigation, when

p The employee or official may request an open meeting on the matter.

public knowledge is likely to result in an adverse legal or financial consequence to the agency.

Secret ballots are not allowed.

An action taken in violation of these requirements is null and void. Any person may commence an action by mandamus or injunction to stop a violation of the Open Public Meetings Act and receives costs, including reasonable attorney fees, if he or she prevails. A member of a multi-member body who knowingly attends a meeting violating these requirements is subject to personal liability of a civil fine of $100. A multi-member body may be awarded reasonable expenses and attorney fees, if it prevails and the judge determines that the action was frivolous or advanced without reasonable cause.

Public Disclosure Act

State voters approved Initiative Measure No. 276 (I-276) in 1972. I-276 included a multitude of different topics and was called the Public Disclosure Act. These provisions have been altered and supplemented by legislation enacted by the Legislature and most significantly by Initiative to the Legislature No. 134 (I-134), which was approved by state voters in 1992. The Legislature enacted legislation in 2010, altering many of the provisions of the Public Disclosure Act and re-codified most of these provisions as a new Chapter 42.17A RCW.[77]

The Public Disclosure Act includes:

- Requirements for open public records. (These provisions are discussed below under public records.)[78]
- Requirements for campaign finance reporting, including periodic reporting of receipts and expenditures made by the political committee of a candidate running for most public offices, a political committee supporting or opposing the recall of a public official, a political committee for or against a ballot measure, and independent campaign expenditures.[79] Electronic filing of these records is

now available.[80] (Requirements for reporting independent campaign expenditures were added by I-134.)

- Requirements for registering and reporting by lobbyists of the Legislature or state agencies.[81] No state requirement exists for persons lobbying local governments to register and report their expenditures.
- Requirements for public officials to file annual reports of their financial affairs.[82] These reporting requirements apply to state and local elected officials, heads of various state agencies, and many legislative employees.
- Restrictions on the amount of contributions that may be made by any person to a candidate for: (1) The State Legislature; (2) state executive office; (3) county office; (4) city council or mayor; (5) school board; (6) public hospital district board in any district with a population of more than 150,000; (6) a special purpose district office if the special purpose district is authorized to provide freight and passenger terminal facilities and the special purpose district has 200,000 or more registered voters (the Port of Seattle and the Port of Tacoma); (7) a judicial office; (8) a caucus political committee; (9) a bona fide political party; or (10) political committee affiliated with the candidate.[83] Significant restrictions on contributions to campaigns for state offices were added by I-134. The Legislature has extended these restrictions to contributions for the listed local government offices and judicial offices.
- Restrictions on campaign advertising, including a requirement to identify the sponsors of advertising and a prohibition on false advertising.[84] (These restrictions were added by I-134.) The Court of Appeals recently held that the statute (RCW 42.17.530(1)(a)) prohibiting false campaign advertising violated the First Amendment to the United States Constitution.[85]

- Restrictions on a candidate converting contributions made to his or her political committee for one office to another office, unless authorized by the contributor.[86] This prohibition does not preclude a candidate from using contributions made in one campaign for a public office for a subsequent campaign for the same public office.
- Restrictions on the disposal of surplus funds by a political committee. These restrictions do not preclude contributions from being returned to the contributor; used to repay the candidate for lost earnings; donated to a political party or caucus political committee; given to the state general fund or the state library, the state archives account, or the Washington State legacy project; held for future campaigns for the same office; reimbursement for certain otherwise non-reimbursable public office expenses; or repayment of loans the candidate made to his or her campaign.[87]
- A prohibition on the use of public funds to finance political campaigns.[88] I-134 included a provision prohibiting any taxes, fees, penalties or other monies from being used to finance political campaigns for any state or local office. The Legislature amended this provision in 2008, retaining this prohibition on such monies being used to finance political campaigns for state or school district offices, but allowed a county, city, or other special purpose district to use monies "derived from local sources" to fund a program partial funding of campaigns for local office.
- Prohibitions on the use of public facilities to assist campaigns.[89] This does not preclude a governing body expressing a collective position on a matter supporting or opposing a ballot measure, or a statement by an elected official in support of or in opposition to a ballot measure made at an open press conference, or in response to a specific inquiry, or activities that are part of the normal and regular conduct of the office or agency.

These provisions are administered by the Public Disclosure Commission, which is composed of five members appointed by the Governor.

Initiative Measure No. 134, which was approved by state voters in 1992, significantly altered Public Disclosure Act requirements. However, the most significant changes made by this measure affect campaigns for statewide offices and legislative offices, and do not effect local campaigns.[q]

Public Records

A major part of the Public Disclosure Act established public record requirements.[90]

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q The most profound changes in I-134 were not discussed during the campaign on this measure and are little understood today. These changes involved restrictions on contributions made to candidates for any state executive or legislative office. I-134 established the following restrictions on these campaign contributions:

- Fairly restrictive limits were placed on the maximum amount of money that an individual or entity, other than a political party or caucus, may contribute directly to a campaign for any of these offices – $1,000 for a statewide office and $500 for a legislative office.
- Very generous "limits" were placed on the maximum amount of money that political parties and caucuses may contribute directly to a campaign for these offices. The maximum contributions to individual campaigns are as follows: (1) A state political party may contribute no more than 50¢ per registered voter in the jurisdiction from which the candidate is elected; (2) a party caucus may contribute no more than 50¢ per registered voter in the jurisdiction from which the candidate is elected; (3) a county central committee of a political party may contribute no more than 25¢ per registered voter in the jurisdiction from which the candidate is elected; and (4) a legislative district committee of a political party may contribute no more than 25¢ per registered voter in the jurisdiction from which the candidate is elected.

These dollar and cent amounts are periodically adjusted by the PDC based upon an inflation index.

Note that limitations on contributions by individuals and entities (other than political parties and caucuses) were described in a maximum dollar amounts but that the limitations on contributions by political parties and caucuses were described in terms of cents per registered voter in the jurisdiction from which the candidate is elected. This very subtle difference makes a ready comparison of the limitations quite difficult. On the surface a limitation on political parties and caucuses described in cents appears to be quite limiting. Very few people have any idea how many registered voters reside in a legislative district or even statewide.

These restrictions have resulted in a very pronounced reliance on contributions from political parties and caucuses. The only option for individuals, corporations, and labor unions desiring to make large contributions to candidates for statewide offices or legislative offices is to have the money funneled through political parties and causes or to make independent expenditures.

Legislation was enacted in 2005 re-codifying these provisions into a new chapter of laws (Chapter 42.56 RCW).[91] The exemptions from public disclosure are revised and placed into separate sections of law dealing with discrete subject matters.[r]

Generally, all public records must be available for public inspection and copying unless a law provides otherwise. This requirement is to be construed liberally and any exception is to be construed narrowly. However, the open public record requirement does not allow access to, or sale of, public of lists of individuals for commercial purposes.

Public records are required to be available for public inspection and copying during customary office hours of the particular public agency. Responses to requests for access to public records must be made promptly. Information that is not available for public inspection is deleted or redacted from public records, allowing the remainder of the public record to be available for public inspection and copying. The local superior court may be petitioned to enforce the right of the public to inspect and copy public records. No charges may be made for inspecting, locating, or making public records available for public inspection, but reasonable charges may be made for copying public records. These charges may not exceed the actual per page cost of making the copy, but if this cannot be determined, then 15¢ per page will be charged.

Other laws preclude the destruction of state public records, except under certain protocols.[92] Local government public records may not be destroyed without permission from the State. Permission may arise two different ways. First, a local records committee may approve the destruction of specific records and establish a schedule for retaining public records. The local public records

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r This legislation greatly improved the clarity of these numerous exemptions. Prior to this legislation, a single section of law included many exemptions. Other sections of law in the same chapter of laws included other exemptions. Finally other exemptions were included in other chapters of law. This was very confusing. The new legislation basically placed all of the exemptions into a new chapter of law, creating numerous new sections of law each including various exemptions relating to the same discrete category. This legislation removed much of the confusion. Prior to retiring, the author prepared a table listing exemptions from the public disclosure of public records in January of 2000 entitled “Requirements for Public Disclosure of Public Records and Exceptions from Public Disclosure Requirements”. More than 280 exemptions were included, 45 percent of which were for various business and financial records, 34 percent of which related to personal information included in public records, 12 percent of which related to criminal and investigative records, and 9 percent of which were other records.

committee is composed of the State Archivist, a representative appointed by the State Auditor, and a representative appointed by the Attorney General. Second, this local records committee may approve a general records control program for each local government providing for the recurring disposition of these records.

Public Water System Coordination Act of 1977

The Public Water System Coordination Act of 1977 creates a process to coordinate planning for public water systems in areas that are designated as critical water supply service areas.[93] A critical water supply service area is an area characterized by either: (1) A proliferation of small, inadequate water systems; or (2) water supply problems threatening present or future water quality or reliability of water service.

The county legislative authority, or the secretary of the Department of Health, may designate an area as a critical water supply service area. Designation of a critical water supply service area institutes a planning process to develop a coordinated water system plan for the area. A committee is created to take many of the planning actions. The committee is composed of a representative of each water purveyor within the area, the county legislative authority, the county planning agency, and local health agencies.

The planning process involves several steps to develop a coordinated water system plan for the designated area:

- An outer boundary of the critical water supply area is designated. This boundary is reviewed by the county legislative authority, which either approves or rejects the boundaries.
- Once the outer boundaries have been approved, each water purveyor within the designated area develops its own water system supply plan. Among other requirements, a purveyor's water system supply plan must: (1) Identify its existing and future service boundaries; (2) provide for water systems capable of providing water within the service boundaries based upon land use regulations and development policies of the general purpose

governments; (3) incorporate fire protection standards; (4) identify feasible emergency interties with adjacent water purveyors; and (5) include policies for failing water systems. The county legislative authority resolves any disputes about overlapping service areas.

- The committee prepares a coordinated water system plan for the critical water supply service area based upon the adopted water system supply plans of the water purveyors. The coordinated plan must provide for maximum integration and coordination of the public water systems within the critical water supply service area. Counties and cities review the plan for consistency with their land use plans and development policies.
- The secretary of the Department of Health reviews each proposed coordinated water system plan and either approves or rejects the plan.

A coordinated water system plan must conform to land use plans and development policies of the county and cities in the designated area. New public water purveyors are not allowed to provide water service within an area subject to an approved coordinated water system plan unless an existing water purveyor is unable to provide water service. This restriction does not preclude a city from assuming jurisdiction over a water district's public water system.

A coordinated water system plan must be periodically reviewed.

Publishing Requirements

Local governments are subject to a variety of publishing requirements.

Cities are subject to an array of publishing requirements that are scattered throughout the RCWs. A city is required to post or publish each ordinance that it adopts, other than ordinances that adopt Washington State statutes and codes such as building codes.[94] In addition, separate statutes exist detailing common publishing requirements for first class cities, second class cities,

towns, code cities, and unclassified cities. Either the text of the adopted ordinance, or a summary of the content of the adopted ordinance, is required to be published in the city's official newspaper.[95] A summary is defined as a brief description that succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness constitutes a summary of the ordinance. An inadvertent mistake or omission in publishing the text or summary does not render the ordinance invalid.

Counties are subject to different publishing requirements. A county proposing to adopt a regulatory ordinance must publish the text of the proposed ordinance, or a summary of the proposed ordinance, before adopting the ordinance.[96] The same definition of a summary is provided for proposed county ordinances as for adopted city ordinances. Another statute defines a summary of an ordinance proposed to be adopted by a county to include both a "descriptive title" of the ordinance as well as a "section-by-section summary" of the ordinance.[97] County statutes do not include the exception that only the title of a proposed ordinance issuing bonds, notes, or other evidences of indebtedness constitutes a summary of the ordinance. The requirement for counties to publish proposed regulatory ordinances may also apply to non-regulatory ordinances proposed to be adopted by the county, but the county statute is quite vague.

Counties and cities are also required to publish notices of hearings or meetings when specific types of actions or regulations are being considered. Publishing requirements for hearings relating to land use planning and zoning vary depending upon the laws under which the county or city takes the action.

Notice must be published by local governments concerning hearings on many financial actions taken by local governments. Most local governments that are required to adopt budgets must publish notice of a public hearing on the proposed budget where the governing body considers the budget.[98] Notice must also be published for hearings that are being held relating to the creation of a local improvement district (LID) and finalizing assessment rolls listing the special assessments to be imposed on each property included in the LID.[99]

Advertisements for bids on public works projects must also be published by local governments when contracts are proposed to be let on public works projects with estimated costs over a specified dollar amount.[100] The specified dollar amount varies, depending on the type of local government. In addition, a general requirement exists that notice must be published of any public work in excess of $25,000, probable cost that is "executed by any means or method other than by contract or by a small works roster process", i.e., that is performed by public employees.[101]

Recall

State voters approved Amendment 8 (Article I, Sections 33 and 34) to the State Constitution in 1912, establishing a process for recalling most elected officials. All elected officials are subject to being recalled, except for members of a court of record, i.e., the Supreme Court, Court of Appeals, or a county superior court.[s] Legislation implementing this provision is codified in RCW 29A.56.110 through 29A.56.270.

A recall petition must: (1) Recite that the elected official sought to be recalled has "committed some act or acts of malfeasance or misfeasance, or has violated his [or her] oath of office"; (2) provide details about these matters; and (3) be signed by a sufficient number of voters of the State or "political subdivision" from which the official was elected. Any state voter may sign a petition to recall a statewide elected official. Only voters of the "political subdivision" from which other officials are elected may sign a petition to recall these other elected officials.[t]

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s An original provision of the State Constitution (Article IV, Section 9) allows the Legislature to adopt a joint resolution removing a member of the judiciary, the Attorney General, or a county prosecuting attorney from office for "incompetency, corruption, malfeasance, or delinquency in office." The joint resolution had to be approved by at least three quarters of the members of each house. An official who is being removed from office under this process must be provided with a copy of the charges against him or her and be given an opportunity to be heard in defense. Article IV, Section 31 creates the Commission on Judicial Conduct to hear complaints against members of the judiciary. The Supreme Court, upon recommendation of the commission, may suspend, remove, or retire a member of the judiciary. This provision arose from Amendments 71, 77, & 85.

t Clearly, the term "political subdivision" means the county from which county officials are elected, the city from which city officials are elected, and the special purpose district from which officials of a special purpose district are elected. However, presumably the term "political subdivision" means the legislative district from which a state legislator is elected, the county council district from which members of a charter county is elected as provided in the particular county charter, and the commissioner district from which port commissioners in the Ports of Seattle and Tacoma

Two categories of elected officials are created by Amendment 8, each with a different minimum level of voter signatures necessary to place the recall of an official from that category on the ballot. The differences are as follows:

- A petition to recall a statewide elected official (other than a judge), member of the Senate or House of Representatives, city official of a first class city, member of a school board in a city of the first class, or county official of a 1st, 2nd, or 3rd class county, must be signed by at least 25 percent of the number of votes cast for that office at the last election where that office was on the ballot.
- A petition to recall all other officials need only be signed by at least 35 percent of the number of votes cast for that office at the last election where that office was on the ballot.

This level of detail in the Constitution creates confusion. Presumably, the lower 25 percent signature requirement was intended to apply to the elected officials of more populous governments, reflecting the greater difficulty in obtaining a larger number of signatures in more populous governments. Literally this is not the case.[u]

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are elected. Preferred wording in the Amendment would be to provide that voters of the state, political subdivision, or district from which the official was elected may sign a recall petition.

u The State Constitution does not require counties to be classified and in fact statutes no longer establish classes of counties. Presumably, the lower 25 percent signature requirement for what were officials of larger counties in 1912 would be interpreted as applying to a petition to recall a county elected official of any county with a population of 40,000 (the minimum population of what was a 3rd class county before county classes were abolished). To further complicate the situation, county council members of four of the six charter counties are elected from council districts, rather than being nominated from districts and elected countywide, as is provided for county commissioners. It is not clear whether the population of the county, or of the council district, determines whether the 25 percent or 35 percent signature requirement would be used to recall county council members from such counties. Presumably, it is the population of the council district from which the council members are elected.

Population is no longer the determining factor in classifying most cities. Where population is used to classify a city, the relevant population is the population when the city was incorporated or reclassified, not its current population. Further, more than half of the cities in the State are classified as code cities and population has no relevance to this classification. Bellevue, a code city with a population of over 110,000, is the fifth most populous city in the State with a population more than six times that of Aberdeen, which is the least populous first class city with a population of about 16,500. Literally, the higher signature requirement of 35 percent appears to apply to Bellevue, while the lower 25 percent signature requirement applies to Aberdeen.

Legislation implementing the recall of public officials requires that the recall petition "recite" the alleged misconduct "in concise language, without unnecessary repetition" and provide the approximate date, location, and nature of each alleged act.[102] An exact date is not required, and only a statement that the action occurred "within a definite and limited period of time" is necessary.[103]

A fundamental change in the process to recall elected officials occurred in the mid-1980's. This fundamental change was recognized by the Supreme Court when it analyzed a seemingly technical amendment to the recall procedure that the Legislature had enacted. Prior to that time, the Supreme Court had only allowed a very minimally judicial review of the legal sufficiency of the allegation or charge.[104] No determination of the factual basis of the charges or allegations was made. Only a review of the legal sufficiency of the charge or allegation was allowed where a court determined whether, assuming the allegation or charge were true, it was legally sufficient to allow the recall, i.e., it constituted misfeasance, malfeasance, or a violation of the oath of office. Charges or allegations could be entirely unrelated to the real political issue or actual dispute involved in the recall. Prior to the change in the mid-1980's, nearly every recall petition had been upheld whenever a court reviewed the recall action. However, after the Supreme Court's interpretation of the recall legislation, courts actively reviewed recall efforts concerning both the legal and factual basis of the allegation or charge. As a result, superior courts are now rejecting a number of recall petitions as being inadequate.[105]

Controversy arose over a number of recall efforts in the 1970's and early 1980's. A 1973 article published in the University of Washington Law Review criticized the recall procedure. Seattle fire fighters had unsuccessfully attempted to recall Mayor Wes Uhlman

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Not many different types of special purpose districts were allowed to be created in 1912 when this Amendment was approved by voters. All special purpose districts, other than a few school districts, are subject to the 35 percent signature requirement without regard to their populations. For example, PUD commissioners from Snohomish County PUD are nominated from districts but elected by voters throughout the entire PUD, which includes all of Snohomish County and Camano Island, which is located in Skagit County. The population of Snohomish County PUD is more than 36 times greater than the population of Aberdeen, which is the least populous first class city. Nevertheless, the 35 percent signature requirement would apply to commissioners from Snohomish County PUD but the 25 percent signature requirement would apply to council members from Aberdeen.

in the early 1970's, alleging that the mayor failed to timely present the state of the city address as required by a date specified in the city charter. The real issue seemed to be over the adequacy of funding the Seattle Fire Department. In 1981, angry Democrats unsuccessfully attempted to recall State Senator Peter Von Reichbauer. Von Reichbauer had switched his party affiliation from the Democratic Party to the Republican Party, resulting in the Republicans becoming the majority party in the State Senate.

Recall efforts were also quite common in a number of smaller cities, including Rainier in Thurston County, Pacific in King County, and Oaksdale in Whitman County.[106]

The Supreme Court in 1983 hinted that it would accept statutory changes to the recall procedure when it stated that:

> "While change in this rule [of minimal court review of grounds for recalling officials] has been suggested, such change is for the Legislature or the people.... Absent some contrary direction from these quarters, we adhere to our established rule."[107]

Legislation changing the recall procedure was soon enacted in the 1984 Legislative Session.[108] These changes included: (1) Briefly defining malfeasance, misfeasance, and a violation of an oath office; (2) requiring petitioners to verify under oath that they believe the allegation or charge to be true; (3) providing for preparation of a synopsis of the recall; and (4) providing for an automatic review of the recall petition by the superior court, to determine whether the allegations or charges "satisfy the criteria for which a recall petition may be filed". This legislation literally did <u>not</u> eliminate the rule of minimal court review of the grounds for recalling elected officials.

However, the Supreme Court soon interpreted this legislation as fundamentally altering the recall procedure where the superior court reviews both the legal and factual sufficiency of the allegation or charges. The Supreme Court stated that:

> "We believe the changes indicate a legislative intent to place limits on the recall right, i.e., to allow recall for

> cause yet free public officials from the harassment of recall elections grounded on frivolous charges or mere insinuations. We perceive the legislative amendments to mean that a recall petition must be both legally and factually sufficient."[109]

A review of the factual sufficiency means that the facts describing the allegation or charge must establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office.[110]

As a result of this change, recall in Washington State differs dramatically from recall in California, where voters recalled Governor Gray Davis in 2003, without the necessity of a crime or violation of the oath of office occurring, much less even being alleged in the recall petition.

Shoreline Management Act

State voters approved Initiative to the Legislature No. 43B in 1972, which is known as the Shorelines Management Act.[v] This Initiative was, at least in part, a response to the decision of the State Supreme Court in *Wilbour v. Gallagher.*[w] [111]

The Shorelines Management Act consists of two basic requirements.

First, all counties and cities are required to adopt land use or zoning controls (called local shoreline master programs) regulating land uses in shoreline areas, which includes both water areas and areas adjacent to these water areas.[112] These regulations must comply with "guidelines" adopted by the Department of Ecology. Each local shoreline master program is submitted to the Department for its review, and either approval or rejection for compliance with the Act and the Department's guidelines. Appeals

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v Initiative to the Legislature No. 43B was approved by state voters in 1971. The Legislature placed an alternative measure on the ballot denominated as I-43B, while the proposal included in the Initiative was denominated as I-43A. State voters approved the alternative proposed by the Legislature. The Shoreline Management Act is codified in Chapter 90.58 RCW.

w The Court held that, in absence of zoning or other regulations authorizing these uses, the owner of land that is periodically submerged by navigable waters may not interfere with the public's right of access over waters filling in these lands or providing other obstructions on these lands.

from these decisions may be made. The appeal is made to the Shorelines Hearings Board, if the county or city does not plan under the Growth Management Act (GMA). Before the 2014 amendments to the GMA, this clearly meant counties and cities that did not plan under all of the GMA requirements. Presumably, after the 2014 GMA amendments, this also would not include counties and cities in the new second category of jurisdictions partially planning under the GMA. The appeal is made to a Growth Management Hearings Board, if the county or city plans under all GMA requirements and presumable if the county or city is in the new second category of jurisdictions partially plans under GMA requirements.[x] The Department may adopt a local master program for a county or city failing to adopt its local master program.[113] Priority shall be given to water related land uses, such as piers, marinas, and parks, as well as to single family residences.[114]

Second, these counties and cities are required to issue shoreline substantial development permits authorizing most land use activity within the shoreline area, but not including detached single family dwellings and their appurtenant structures.[115] Action by a county or city issuing or refusing to issue a substantial development permit may be appealed to the Shorelines Hearings Board, whether or not the county or city plans under all GMA requirements.

State Environmental Policy Act

The State Legislature enacted the State Environmental Policy Act (SEPA) in 1971.[116]

SEPA is similar to the National Environmental Policy Act (NEPA). A state agency, or local government, must consider possible environmental impacts that may arise from its major governmental actions. These major governmental actions include adopting regulations, choosing to construct a public facility, and issuing a permit authorizing construction of a public or private facility. A "threshold determination" is made using an environmental checklist

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x The Shorelines Hearings Board is composed of six members as follows: (1) The three members of the Pollution Control Hearings Board, which is created under Chapter 43.21B RCW; (2) one member appointed by the Association of Washington Cities; (3) one member appointed by the Washington State Association of Counties; and (4) the Commissioner of Public Lands or his or her designee. (RCW 90.58.170.) Growth Management Hearings Boards are created under Chapter 36.70A RCW. A discussion of the Growth Management Act is found in Chapter 70.

to decide if a "detailed statement" or environmental impact statement (EIS) must be prepared for a major governmental action to determine if the proposal significantly affects the quality of the environment.[117] A declaration of non-significance (DNS) is issued, if no adverse environmental impacts appear to arise. A declaration of significance (DS) is issued, if adverse environmental impacts appear to arise. If a DS is issued, either the proposal is altered to eliminate the adverse environmental impacts or actions are required to be taken to mitigate the adverse environmental impacts.

Unfunded Mandates

For years, local government officials have decried unfunded mandates from the State and federal governments. The basic argument is that if a superior level of government requires an inferior level of government to do something, the superior should pay for the costs of the inferior taking action. Although this argument has considerable political currency and appeal, it essentially negates the traditional relationship between a superior and an inferior. In fact, it essentially negates the basic relationship between the State and counties, which are political subdivisions of the State, whose very existence was established to carry out state responsibilities on a uniform basis throughout the State.

The first unfunded mandate provision was included in Initiative Measure to the Legislature No. 62 (I-62) that was approved by state voters in 1979.[118] Both the wording of the statute and judicial interpretation of this provision have changed over the years.

I-62 basically established a formula restricting increases in general state tax revenues to not exceed the growth rate of the combined income of the State's citizens. Provision was made for adjusting the limit upward, reflecting the cost of a local government program that may be transferred to the State, or downward, reflecting the cost of a state program that may be transferred to local governments. I-62 also included an unfunded mandate provision requiring the State to pay for new programs required of local governments in legislation enacted by the Legislature. General state revenues never increased as rapidly as increases in the combined income of the state's citizens, so the basic restriction in I-62 had no practical effect.

The Supreme Court held, in a 1985 case, that the purpose of the unfunded mandate provision was to avoid the effects of the state revenue limit being avoided by the Legislature "shifting responsibility for funding state programs to local governments".[119] This requirement did not apply to all increases in the costs of local governments caused by legislation enacted by the Legislature, but only if increased levels of service to the public were mandated. The interpretation appears to have narrowed the clear wording of the unfunded mandate provision which required the State to reimburse "taxing districts" for "new programs or increased levels of service under existing programs" that the Legislature imposes on the taxing districts. The clear language of the reimbursement requirement did not seem to be limited to reimbursement for the responsibility of state programs that were transferred, but clearly appeared to apply to any increased requirements whether or not the State had provided the program or service.

Legislation was enacted in 1990, altering the unfunded mandate requirement. The reimbursement requirement would only apply if legislation resulted in a net cost increase to local governments, taking into consideration both increased taxing authority that had been granted to local governments and increased grant monies that had been provided to local governments after I-62 was approved.[120] Essentially, the State would be given a credit for providing additional revenues to local governments before the reimbursement requirement would apply. This revision was included in legislation providing new state programs to fund criminal justice expenses of local government, including creation of both the county criminal justice assistance account and the municipal criminal justice training account, as well as increased taxing authority for counties to fund criminal justice costs of both the county and cities within the county. Legislators were well aware of massive increases in local government funding that it had provided after I-62 was approved by state voters, including: (1) A doubling of the basic county and city sales and use tax rate from 0.5 to 1 percent; (2) establishing an equalization program providing revenues to counties and cities with low per capita sales and use

tax revenues; and (3) providing increased capacity for junior taxing districts to impose their regular property taxes.[y]

The unfunded liability provision was soon to change by both judicial interpretation and a second initiative measure.

The Supreme Court appeared to expand the application of the unfunded mandate provision by requiring reimbursement for new responsibilities imposed on local law enforcement personnel and courts by the Domestic Violence Prevention Act.[121] A new standard was used to determine if reimbursement was required. Reimbursement was required if local government costs were increased from legislation that benefited the public and accomplished a public goal, rather than only if the legislation provided the public with new services or increased levels of service.[122]

Initiative Measure No. 601 was approved by state voters in 1993, fundamentally altering the basis of I-62 from a limitation on increases in state revenues to increases in state expenditures. The unfunded mandate provision was also altered to remove the credit provisions that the State could use to offset any cost increases and to sharpen the application of this requirement. Wording used in this Initiative also could be more precise. The new provisions sharpened the application of the reimbursement by:

- Applying this requirement for "political subdivisions" rather than "taxing districts". No definition is provided for this term, which presumably applies to all units of local government although the term "political subdivisions" normally refers to only counties.
- Requiring full reimbursement "by specific appropriation for the costs". A general appropriation providing new money to affected local governments

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y Maximum county and city sales and use tax rates were doubled, and the sales and use tax equalization programs were established, by Sections 17, 20, & 21, Chapter 49, Laws of 1982 1st ex sess. Added capacity to impose regular property tax levies was provided by Chapter 274, Laws of 1988. The author participated in the drafting of this legislation and staffed the House Local Government Committee though which this legislation passed.

would not satisfy this requirement unless words were included specifically stating that the appropriation was intended to reimburse local governments for the new requirements. Added taxing authority would not offset the reimbursement requirement.

- Requiring a decrease, or increase, in the restriction on state expenditures if by court order or action of the Legislature the costs of a "federal or local government program are transferred to or from the state". Presumably, the words "federal or state" should not have been included and the requirement to adjust the state's expenditure limitation should occur if any existing program is transferred to or from the State by action of a court or the Legislature. However, this requirement literally could result in a "double hit" for the State if the Legislature transferred a previous state program to local governments, since both the requirement to reimburse the local governments for the cost of the program applies and the state expenditure limit would also be decreased by the cost of the transferred program.

Whistle Blower Law

Legislation was enacted in 1992, establishing a "whistle blower" law for the employees of local governments.[123] The program includes procedures for employees to report alleged improper government action, prohibits local government officials or employees from taking retaliatory action against employees for reporting alleged improper governmental actions, and an administrative appeal procedure to determine if retaliatory action has occurred.

Improper governmental action is defined as actions by an officer or employee that is both:

- Undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the official's or employee's employment; and

- Violates any federal, state, or local rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

Each local government is required to adopt a policy on procedures to follow for the reporting alleged improper governmental action, or may adopt its own program for reporting alleged improper governmental action that meets the intent of the local government whistle blower law. The procedures specified in the law include the filing of a complaint, response by the local government, and the employee being able to request a hearing to establish that retaliatory action has occurred. Hearings are conducted by a state administrative law judge. An employee initiating the action must prove his or her claim by a "preponderance of the evidence". The administrative law judge may order the employee reinstated, with or without back pay, issue an injunction to prevent any recurrence of retaliatory action, impose a civil fine of up to $3,000, payable by each person found to have retaliated, and recommend that the employee taking the retaliatory action be suspended, with or without pay. Reasonable attorney's fees may be awarded to the prevailing party. Relief ordered by an administrative law judge is enforced by a petition to the superior court.

If a local government fails to adopt these policies, a local government employee may file a complaint directly with the local county prosecuting attorney, or the State Auditor, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper governmental action.

NOTES:

1. *Westside Hilltop v. King County*, 96 Wn.2d 171, 176 (1981).
2. Chapter 229, Laws of 1982, codified as Chapter 42.36 RCW.
3. Chapter 189, Laws of 1967, codified in Chapter 36.93 RCW.
4. RCW 36.93.030.
5. RCW 36.93.061.
6. RCW 36.93.051.

7. RCW 36.93.230.
8. RCW 36.93.020(2).
9. RCW 36.93.090.
10. *Id*.
11. RCW 36.93.100.
12. RCW 36.93.150.
13. RCW 36.93.100.
14. Chapter 76, Laws of 1909, codified as part of Chapter 43.09 RCW.
15. Section 3, Chapter 76, Laws of 1909, codified as RCW 43.09.210.
16. *State ex rel. Clausen v. Burr*, 65 Wash. 524, 531 (1911).
17. Information on the development of the local government accounting and reporting requirements established by the State Auditor's office was obtained from a briefing paper entitled "Local Government Budgeting, Accounting and Reporting Systems and Comparative Statistics", prepared by the State Auditor's office and presented to the House Transportation Committee on January 24, 2001. Linda L. Long, Deputy State Auditor, made the presentation.
18. Lundin, Steve, "Local Government Budget Requirements", a memo prepared for members of the House Government Operations Committee, on August 29, 1995.
19. Counties are required to adopt budgets in Chapter 36.40 RCW, and RCW 36.82.160-36.82.200, 36.56.060, 36.62.180(4), 36.68.060(7), 36.81.130, & 36.92.040. Cities are required to adopt budgets in Chapters 35.32A, 35.33, 35.34, 35A.33, and 35A.34 RCW. School districts are required to adopt budgets in Chapter 28A.505 RCW. Fire protection districts are required to adopt budgets in RCW 52.16.030. Port districts are required to adopt budgets in Chapter 53.35 RCW. PUDs are required to adopt budgets in RCW 54.16.080.
20. Considerable detail for county budgets is required by Chapter 36.40 and RCW 36.82.160-36.82.200; for city budgets by Chapters 35.32A, 35.33, 35.34, 35A.33, and 35A.34 RCW; and for school district budgets by Chapter 28A.505 RCW.
21. Budget details for counties are found in Chapter 36.40 and RCW 36.82.160-36.82.200; for city budgets in Chapters 35.32A, 35.33, 35.34, 35A.33, and 35A.34 RCW; and for school district budgets in Chapter 28A.505 RCW. Minimal details required for metro budgets are required by RCW 35.58.410(1) and for library districts in RCW 27.12.210(4).
22. The State Auditor is authorized to specify additional budget details for counties in RCW 36.40.040 and for cities in RCW 35.32A.030, 35.33.041, 35.34.060, 35A.33.040, and 35A.34.060. The State Auditor is directed to specify additional budget details for park and recreation service areas by

RCW 36.68.530 and for park and recreation districts by RCW 36.69.160.

23. RCW 36.82.160.
24. RCW 28A.505.090.
25. Counties are required to make expenditures following adopted budgets by RCW 36.40.100. Cities are required to make expenditures following adopted budgets by RCW 35.32A.090, 35.33.121, 35.34.200, 35A.33.120, and 35A.34.200. School districts are required to make expenditures following adopted budgets by RCW 28A.505.150. TV reception improvement districts are required to make expenditures following adopted budgets by RCW 36.95.090.
26. Counties are allowed to adopt biennial budgets in RCW 36.40.250. Cities are allowed to adopt biennial budgets in Chapters 35.34 and 35A.34 RCW. SHB 1313 (Chapter 40, Laws of 2015) authorized fire protection districts and regional fire protection service authorities to adopt biennial budgets.
27. Chapter 31, Laws of 1935, codified as part of Chapter 41.08 RCW.
28. RCW 41.08.010.
29. Chapter 60, Laws of 1933.
30. Hoyt, at page 1.
31. Section 1, Chapter 72, Laws of 1949, codified as RCW 52.30.040.
32. Hoyt, at pages 11, 34, 41, 54, 123, & 152.
33. Chapter 13, Laws of 1937, codified as part of Chapter 41.12 RCW.
34. RCW 41.12.010.
35. These terms are defined in RCW 41.12.220.
36. Port districts were authorized to employ police officers by Section 1, Chapter 62, Laws of 1974 ex. sess., codified as RCW 53.08.280. Metropolitan park districts were authorized to employ park policemen by Section 4, Chapter 98, Laws of 1907, codified as part of RCW 35.61.130.
37. Chapter 301, Laws of 1981, codified as RCW 43.52.520-43.52.535.
38. These statutes are codified in Chapter 41.14 RCW.
39. RCW 35.61.140.
40. RCW 35.58.370.
41. RCW 41.56.430-41.56.492, & 41.56.030(7).
42. Chapter 53.18 RCW.
43. RCW 39.04.280.
44. RCW 39.04.155.
45. *Id*.

46. Chapter 39.10 RCW.
47. RCW 39.10.051.
48. RCW 39.10.061.
49. RCW 39.10.130.
50. Chapter 39.80 RCW.
51. Chapter 42.20 RCW.
52. Chapter 268, Laws of 1961, codified as part of Chapter 42.23 RCW.
53. The Doctrine was recognized by the Court in *Kennett v. Levine*, 50 Wn.2d 212, 216-217 (1957). It has been developed in various Attorney's General Opinions, including AGO 1978 No. 12 and AGO 1883 No. 3.
54. RCW 52.14.010.
55. Chapter 239, Laws of 1967, codified in Chapter 39.34 RCW.
56. Chapter 33, Laws of 1985.
57. Agreements between a fire protection district and a city for the provision of fire service was authorized by Section 47, Chapter 34, Laws of 1939. Public utility districts were authorized to engage in joint projects by Section 2, Chapter 227, Laws of 1949, codified as RCW 54.16.200.
58. RCW 39.34.080.
59. RCW 39.34.030.
60. Chapter 258, Laws of 2011, codified as Chapter 39.106 RCW.
61. *Tacoma v. Taxpayers*, at pages 702-703. See, Reich, Jay A., "Lending of Credit Reinterpreted: New Opportunities for Public and Private Sector Cooperation", 19 Gonzaga L. Rev. 639-672 (1984); Spitzer, Hugh, "An Analytical View of Recent Lending of Credit" *Decisions in Washington State*, 8 Puget Sound L. Rev. 195-219 (1985); Hunting, Carol Sue, case note entitled "State Lending of Credit – New Analysis of State Constitutional Prohibitions", 61 Wash. L. Rev. 263-273 (1986); and Koegen, Roy J., *Washington Municipal Financing Deskbook*, 1993, §2:4, at page 17.
62. The Court noted this evolution of the Lending of Credit provisions in *Health Care Facilities v. Ray*, at page 115.
63. *Port of Longview v. Taxpayers*, 85 Wn.2d 216, 233 (1974).
64. *Port of Longview*, at pages 225 & 231. This decision has been roundly criticized. (See, for example, Powers, Leslie, case note entitled "Port of Longview", 50 Wash. L. Rev. 440-480 (1975).)
65. *Tacoma v. Taxpayers*, at page 700.
66. *Tacoma v. Taxpayers*, at page 688.
67. Chapter 388, Laws of 1985.

68. Chapter 108, Laws of 1969, codified as Chapter 43.110 RCW.
69. Chapter 437, Laws of 1997.
70. RCW 43.110.080, SSB 6555, Chapter 328, Laws of 2006.
71. Part VII, Section 701, Chapter 271, Laws of 2010, amending RCW 43.110.030.
72. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Major cases where the Doctrine has been expanded include *Avery v. Midland County*, 390 U.S. 474, 478-480 (1968); *& Abate v. Mundt*, 403 U.S. 182, 185-188 (1971).
73. *Sayler Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 728 (1973).
74. *Board of Estimate v. Morris*, at page 703. The Board of Estimate is a part of the government of New York City and is composed of three city-wide elected officials and the president of each borough in the City. Each borough president was elected by the voters of a borough and the populations of the boroughs varied dramatically.
75. *Cunningham v. Metropolitan Seattle*, No. C89-1587WD, September 6, 1990.
76. Chapter 250, Laws of 1971 ex. sess., codified as Chapter 42.30 RCW.
77. Chapter 205, Laws of 2010.
78. These provisions were codified in RCW 42.17.250-42.17.348, but now are codified in Chapter 42.56 RCW.
79. RCW 42.17A.200-42.17A.270.
80. RCW 42.17A.055.
81. RCW 42.17A.600-42.17A.655.
82. RCW 42.17A.700-42.17A.715.
83. RCW 42.17A.400-42.17A.550.
84. RCW 42.17A.300-42.17A.345.
85. *Rickert v. Public Disclosure Commission*, No. 32274-9-II, Sept. 7, 2005.
86. RCW 42.17A.490.
87. RCW 42.17A.430 & 42.17A.445.
88. RCW 42.17A.550.
89. RCW 42.17A.555.
90. Most of these requirements were codified in RCW 42.17.250-42.17.450
91. Chapter 274, Laws of 2005.
92. RCW 40.14.070. The provisions relating to state records, as well as specific requirements for legislative records, are codified in the remainder of Chapter 40.14 RCW.

93. Chapter 142, Laws of 1977 ex. sess. which is codified as Chapter 70.116 RCW.

94. RCW 35.21.180.

95. First class city publishing requirements are found in RCW 35.22.288. Second class city publishing requirements are found in RCW 35.23.221. Town publishing requirements are found in RCW 35.27.300. Unclassified city publishing requirements are found in RCW 35.30.018. Code city publishing requirements are found in RCW 35A.12.160.

96. RCW 36.32.120(7).

97. RCW 65.16.160.

98. For example: (a) Cities are required to publish notice of their budget hearings in RCW 35.32A.040, 35.33.061, 35.34.100, 35A.33.060, & 35A.34.100; (b) counties are required to publish notice of their budget hearings in RCW 36.40.060 and 36.82.190; (c) port districts are required to publish notice of their budget hearings in RCW 53.35.020; (d) PUDs are required to publish notice of their budget hearing in RCW 54.16.080; and (e) school districts are required to publish notice of their budget hearing in RCW 28A.505.050.

99. For example: (a) Cities are required to publish notice of the hearing on creating a LID or ULID in RCW 35.43.125 & 35.43.140 and on finalizing the assessment roll in RCW 35.44.090; and (b) counties are required to publish notice of the hearing on creating a RID in RCW 36.88.030 and 36.88.050 and on finalizing the assessment roll in RCW 36.88.090. Most local governments creating LIDs follow city procedures.

100. For example, requirements to publish advertisements for bids on: (a) County road projects is found in RCW 36.77.020; (b) other county construction projects is found in RCW 36.32.235 & 36.32.250; and (c) city construction projects is found in RCW 35.22.620 & 35.23.352.

101. RCW 39.04.020.

102. RCW 29A.56.110.

103. *Skidmore v. Fuller*, 59 Wn.2d 818, 824 (1962).

104. *State ex rel. Mandatory Bussing v. Brooks*, 80 Wn.2d 121, 124 (1972); *State ex rel. Lamon v. Westport*, 73 Wn.2d 255, 259 (1968); *Skidmore*, at page 822.

105. Editorial, “Recall is a powerful tool”, The Olympian, September 18, 2003. This editorial noted that “frivolous” recall attempts no longer survive, but “serious” recall efforts now proceed.

106. E-mail from Sam Reed, ex-Washington State Auditor.

107. *Pederson v. Moser*, 99 Wn.2d 456, 464-465 (1983).

108. Chapter 170, Laws of 1984, codified as part of Chapter 29A.56 RCW.

109. *Chandler v. Otto*, 103 Wn.2d 286, 274 (1984).
110. *Cole v. Webster*, 103 Wn.2d 280, 285 (1984).
111. *Wilbour v. Gallagher*, 77 Wn.2d 306, 316 (1967).
112. RCW 90.58.030(3)(b) & (c) & RCW 90.58.070-90.58.100.
113. RCW 90.58.090(5).
114. RCW 90.58.020
115. RCW 90.58.030(3)(e) & 90.58.140-90.58.160.
116. Chapter 109, Laws of 1971 ex. sess., codified as Chapter 43.21C RCW.
117. RCW 43.21C.030(2)(c).
118. I-62 is codified in Chapter 43.135 RCW.
119. *State v. Howard*, 106 Wn.2d 39, 43 (1985).
120. Section 601, Chapter 1, Laws of 1990 ex sess.
121. *Tacoma v. State*, 117 Wn.2d 348, 360 (1991).
122. *State v. Howard*, at page 43; & *Tacoma v. State*, at page 359.
123. Chapter 44, Laws of 1992, codified in Chapter 42.41 RCW.

Chapter 73

Future of Local Government

It appears to this longtime observer of local government in Washington State that the future of local government in this state will involve three types of changes.

First, the Legislature will enact legislation granting existing types of local governments increased flexibility to provide public services and facilities. Second, the Legislature will enact legislation creating different "classes" of the same type of special purpose district in an attempt to provide different powers and responsibilities to these special purpose districts in different areas in the state, without violating the general prohibition on enacting special legislation granting powers to local governments. Third, the Legislature will enact enabling legislation authorizing the creation of new types of special purpose districts to provide limited ranges of public facilities and services. These new special purpose districts would include federations as well as subdivisons of either counties or cities.

Presumably, these changes will occur on a gradual, piecemeal basis, as they have in the past.

Past Significant Changes

The most significant changes in the structure of local governments in Washington State have occurred as follows:

- Original State Constitution. The original State Constitution approved by voters in 1889 established

a new base for local governments. This included: (1) Requiring a uniform system of county government to be established throughout the State (Article XI, Sections 4 & 5); (2) continuing the new era that began in 1886, of precluding special legislation from being used to incorporate new cities and providing that incorporations and the grants of power be made in general legislation (Article II, Section 28 and Article XI, Section 10); (3) granting counties and cities home rule police regulatory powers (Article XI, Section 11); and (4) allowing more populous cities greater flexibility to provide for their own governments by adopting charters (Article XI, Section 10).

- Gradual emergence of special purpose districts. Legislation was enacted after statehood allowing more and different types of special purpose districts to be created to provide a limited range of public services and facilities. This began in the middle 1890's, and has continued to the present day. The original State Constitution contained very few details about special purpose districts other than school districts (Article IX). Special purpose districts could only be created by following incorporation procedures detailed in general state law (Article XI, Section 10).

- Regional local governments. As discussed in Chapter 24, counties were the original regional local governments in Washington. However, legislation has been enacted, allowing regional special purpose districts to provide services and facilities over a relatively large geographic area. This began in the early 1900's with metropolitan park districts and port districts, and has continued to the present day. Initially, these regional special purpose districts were independent governments, with governing bodies composed of officials directly elected to office. More recently, the new regional special purpose districts have been federations of other local governments with governing bodies composed of officials of these other local governments serving in *ex officio* capacities, or appointed to office by these other local

governments to represent their interests in the new government.

- Changes shortly after World War II. A number of significant changes were made shortly after World War II, including: (1) Voter approval of Amendment 21 in 1948, allowing any county to adopt a regular home rule charter; (2) voter approval of Amendment 23 in 1948, allowing larger counties to adopt another type of home rule charter combining the major city with the county; (3) enactment of legislation inserting the broad grant of home rule police regulatory powers contained in the original State Constitution (Article XI, Section 11) into county statues. The first use of these new authorities occurred in 1968, when King County voters approved the first regular charter in the State.
- Changes in 1967. Significant local government legislation was enacted in 1967. This includes: (1) The Interlocal Cooperation Act; (2) what is called the County General Services Act (Chapter 36.94); (3) creating boundary review boards; and (4) code city statutes.
- Combined city-county charters. State voters approved Amendment 58 in 1972, fundamentally altering Article XI, Section 16. This altered the nature of a combined city-county charter, by: (1) Making this provision applicable to every county; (2) making this provision effective without enabling legislation; and (3) expanding the nature of the charter to control every aspect of local government within the county, not just combining the largest city with the county. No county has adopted a combined city/county charter.

Apart from the fundamental changes contained in the original State Constitution, most changes to the structure of local government have occurred gradually and on a piecemeal basis.

A description follows of possible changes that could be made to the structure of local government in Washington State.

Modest Changes

Changing the structure of local government will most likely involve continuing the recent trend of making modest changes on a piecemeal basis.

The history of local government in Washington State has been characterized by a search for greater flexibility by:

- Authorizing the formation of new types of special purpose districts to provide services and facilities;
- Providing new mechanisms for the joint provision of services and facilities by local governments; and
- Creating different classes of the same type of special purpose district, with authority to provide different services and facilities in different parts of the state.

Most of these efforts have been piecemeal, without fundamental reform of the structure of local government. This has resulted in a very complex web of local government in Washington State, with layer upon layer of different types of local governments. This complexity has increased with the tendency of the Legislature to craft different classes of the same type of special purpose district with the authority to provide different services and facilities in different areas of the state. Local governments have been granted additional taxing authority and other methods of financing services and facilities.

The search for flexibility has primarily focused on finding new mechanisms to provide regional facilities and services of a relatively large geographic area, encompassing a number of existing units of local government. Enhanced authority was provided for local governments to enter into contracts and agreements for the provision of these services and facilities. New special purpose districts have been authorized to provide regional services and facilities. Initially, the new types of regional special purpose districts were traditional local governments, with governing bodies composed of separately elected officials. More recently, these regional special purpose districts have been federations of existing local governments, with governing bodies composed of either of some officials of “parent” local governments serving in *ex officio* capacities, or persons appointed by the “parent” local governments to represent their

interests on the governing body of the federation. Granting counties additional regional responsibilities would also constitute a likely modest change in the scheme of local government.[1]

Most recently, the search for flexibility has focused on authorizing geographically smaller special purpose districts that are subdivisions of a single larger local government to provide additional levels of services and facilities on a neighborhood or community level. The governing body of the new special purpose district is composed of the officials of a "parent" county or city acting in *ex offico* capacities.[2]

This new search for mechanisms to provide more localized services and facilities on a neighborhood or community-wide basis seems to be moving in the opposite direction, rather than the more traditional search for finding mechanisms to provide regional facilities and services. However, both trends reflect a need or desire for additional flexibility.

Piecemeal change to the structure of local government is the least disruptive and least controversial method of change. Taking piecemeal actions is more acceptable to vested interests than implementing more fundamental changes to the structure of local government. The Legislature merely responds to the crisis of the moment, and crafts a narrow fix with little application to the rest of the State. This primarily has meant responding to the pressing needs of the central Puget Sound area. Most of the focus in this region has been to layer different type of special purpose districts on top of each other, providing part of the new transportation network, and to grant counties and cities additional taxing authority to finance transportation improvements.

Moderate Reforms

Although it is somewhat unlikely, a large number of moderate reforms could be taken, altering the structure of local government in Washington State. Apart from the apparent desire for some reforms relating to the provision of transportation facilities and services in the

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a A more detailed discussion of regional government is found in Chapter 24.

b A more detailed discussion of these subdivisions is found in Chapter 37.

central Puget Sound area, no constituency appears to exist at present to support moderate reforms.

As discussed in Chapter 71, the Legislature has begun focusing its attention on planning for and providing transportation facilities and services in the central Puget Sound area. Perhaps the most significant attempt was to alter how transportation facilities were planned for and constructed in central Puget Sound, but this attempt was not successful.

Other possible moderate reforms, in no order of importance, include:

- Townships. The State Constitution requires the Legislature to enact legislation providing for an alternative form of county government by organizing into townships. No laws currently exist provision for townships as the original township legislation enacted in 1895 has been repealed.

  A new form of township organization could be provided, with townships being multi-purpose special purpose districts that provide modern local services and facilities on a neighborhood or community level. Virtually no constitutional restrictions exist on the organization of a county into townships, other than voters of the entire county must approve a ballot proposition authorizing this organization. Townships would exist in unincorporated areas outside of cities, but some form of townships also could exist in cities. Certain types of special purpose districts could be united into townships.

- City classes. Legislation could be enacted eliminating second class cities, and possibly towns, and converting these municipalities into code cities. This would simplify city statutes and provide clearer home rule powers to cities.

- Villages. Legislation could be enacted allowing villages to be formed with the ability to provide a modicum of “city” services and facilities but without many “city” powers and responsibilities. A village

could be a transitional form of government before an area incorporates into a city. Less populous cities, especially those with extreme financial difficulties could reorganize into villages, with the possibility of including some of the surrounding unincorporated areas. This would still afford these areas a sense of community and the ability to provide a modicum of "city" services and facilities.

- Common local government procedures. General legislation could be enacted providing common procedures for different types of local government to take actions. Existing laws for each different type of local government tend to be complete, each with its own procedures. An alternative would be to enact common procedures for different types of local government to take the same actions. Common procedures could be provided for issuing revenue bonds, annexing territory, merging or consolidating, adopting budgets, and other matters.

- Regular charter counties. The Constitution could be amended to clarify the procedure by which counties adopt regular county charters. Confusion could be reduced by altering terminology found in the existing constitutional provision, including the term "board of freeholders." An additional optional procedure could be provided for counties to adopt regular county charters, without using the "board of freeholder" procedure. The existing process is quite lengthy and frequently the "need" for making the change recedes before the charter can be presented to voters for their approval or rejection. Several alternative regular county charters could be developed, any one of which could be directly referred to county voters for their approval or rejection.

- New procedures to alter noncharter county government. New procedures could be authorized allowing the structure of county government to be altered without electing a board of freeholders or the State drafting alternative county charters. HJR 4212, which was introduced in the 2005 Legislative

Session, provided such a procedure for ballot propositions to be placed before county voters to either: (1) Alter the structure of government for a county, much like a county charter could alter a county's structure of government; or (2) alter the structure of government between adjacently located counties, by providing for a single official to be elected or appointed for these counties, rather than a separate official for each county.

- Consolidating special purpose districts. Legislation could be enacted, simplifying the procedure by which special purpose districts consolidate or merge. Simple changes could be made, such as allowing a consolidated special purpose district to have a governing body with more members to avoid existing officials losing their positions. Fire protection district laws have been amended to provide this additional flexibility, with the authorization of regional fire protection service authorities, which to a great extend is a new way of consolidating fire protection districts. Another alternative would be to allow the county legislative authority to redraw the boundaries of two or more of the same type of special purpose district, if the changes are approved by the governing bodies of the affected special purpose districts.

More Fundamental Reforms

Fundamental reform of local governments has not occurred since statehood. It is quite unlikely that the Legislature will fundamentally reform the structure of local government.

However, some existing laws could be used to provide fundamental reform of local governments within a county. None of these laws have been used to make these fundamental changes. It is quite unlikely that fundamental structural changes will be made to local governments.

As discussed in Chapter 65, Amendment 58 (Article XI, Section 16) provides a mechanism to reforming the structure of local government in any county by adopting what is called a combined city/county

charter. Reforms in the charter could be slight or comprehensive. Changes could be made county-wide, or less than county-wide, although the charter must be approved by the voters of the entire county. Although a number of attempts have been made to adopt a combined city/county charter, voters have not approved such a charter for any county.

As discussed in Chapter 24, the Local Governance Study Commission issued its recommendations in January of 1988, proposing two separate procedures to modify local government. These proposals were contained in a constitutional amendment and implementing legislation. Extraordinary flexibility was provided by allowing changes to the fundamental structure of local government to be made within a relatively small geographic area, a county-wide area, or a greater than county-wide area. Although the constitutional amendment was not adopted, the Legislature eventually enacted legislation authoring a modification of one of the two recommended procedures. However, this procedure has never been used, and it is not clear how significant these changes could be, without a constitutional amendment authorizing this procedure.

Although strong arguments may be made for the necessity of fundamentally reforming the local government structure, it seems unlikely that these reforms will occur. For a number of reasons, the political climate does not appear ready for fundamental reforming of local government. First, political power is widely diffused among the many different types of local governments and these local governments and their officials have considerable influence in the Legislature. It is easier for the Legislature to create new and varied mechanisms to provide facilities and services, rather than fundamentally altering the structure of local government. Second, a general distrust of government exists. Voters probably would not trust any proposed reforms. Third, dynamic leadership with a vision of the future is needed before fundamental reforms may be made. However, little interest or even recognition of the need for change seems to exist among legislators and in the executive branch. Their attention is focused on other issues. Fourth, local officials with a commitment to change and a vision of the future are needed. Most local officials seem content to focus their attention and efforts on working within the limitations of the current system rather than focusing on fundamental reform.

Fundamental change in the structure of local government could be achieved by:

- Rewriting the local government article of the State Constitution (Article XI). Changes could include: (1) More clearly granting counties and cities broad home rule powers; (2) clarifying how county boundaries are altered by two or more counties consolidating or transferring territory from one county to another county; and (3) allowing the Legislature to enact what amounts to special legislation creating new regional governments in any area of the State.
- Revising the combined city/county provisions of Article XI, Section 16. The procedure could be clarified. Terminology could be altered. This includes changing the "board of freeholders" to a less confusing term such as a "citizen review board". This includes the name of the charter from a "combined city/county" charter to a more descriptive charter such as a "local government home rule charter".
- The basic proposals of the Local Governance Study Commission could be adopted. These proposals allowed maximum flexibility for citizens of any area in the State to craft a scheme of local government more closely fitting their current needs. Anyone interested in providing new mechanisms to fundamentally alter the structure of local government should closely review these proposals.

Although this appraisal of the outlook for fundamental reform is bleak, it seems to the author that some chance exists for fundamental local governmental reform to be approved by the voters of several counties with small populations, using the combined city/county charter process in Article XI, Section 16.

Appendix A

Glossary

Appearance of fairness doctrine. A court-created doctrine requiring that the quasi-judicial actions of a local government must not only be fair but appear to be fair to an outside observer. The Legislature has limited the application of this doctrine. (See, Part IV, Chapter 73.)

City. A general purpose municipal corporation or municipality incorporated by local voters to provide a wide range of services and facilities and regulate matters within its borders. A town is a similar type of municipality. Each city or town is created by action of local voters following general incorporation procedures specified in state statute. Cities and towns are the most powerful units of local government in the State. Cities and towns possess the greatest taxing authority of any units of local government in the state. They are given the flexibility to adopt a variety of forms or plans of government. Larger cities may adopt charters to provide for their governments. Most densely populated areas in the State are located in a city or town. (See, Part II, Chapters 6 through 9.)

Code city. A city operating under Title 35A RCW. These cities are granted very broad home rule powers. A majority of the cities in the State are code cities. (See, Part II, Chapter 7; and Part IV, Chapter 66.)

Combined city-county charter. A special type of county "Home Rule" charter adopted under Article XI, Section 16. A combined city-county charter may control every aspect of local government within the county. The county adopting such a charter possesses all the powers of every class or type of county or city. No county has adopted a combined city-county charter. (See, Part IV, Chapter 66.)

County. A local government that is both: (1) A political subdivision of the State, acting as the agent of the State; and (2) a general purpose municipal corporation authorized to provide a wide range of services and facilities and regulate matters within its borders. Counties are pervasive, every portion of the State is located in a county. Each county is required to have a uniform system of government and array of elected officials unless the county adopts a charter to provide for its own government. A county is created by special legislation enacted by the Legislature. (See, Part I, Chapters 2 through 5.)

Debt limitations. A limitation on the amount or dollar value of general indebtedness that a government may incur. Both constitutional debt limitations and statutory debt limitations exist. (See, Part IV, Chapter 64.)

Eminent domain. The power of a government to condemn or take property for its public purposes. Just compensation must be paid for any property that is condemned. (See, Part IV, Chapter 65.)

Excess property tax levy. A property tax levy that is not subject to, or is in excess of, the constitutional One Percent Limitation on the cumulative rate of most property tax levies that may be imposed on any property in any year. The concept of excess property tax levies arises from Article VII, Section 2 which creates the so-called One Percent Limitation. Excess levies include: (1) All property taxes imposed by port districts and public utility districts, normally without voter approval; and (2) levies in excess of the One Percent Limitation that voters authorize taxing districts to impose by a three-fifths vote together with a 40% validation requirement. (See, Part IV, Chapter 65.)

Excise tax. In Washington State all taxes that are not property taxes are classified as excise taxes. An excise tax is said to be imposed on a privilege rather than on property. (See, Part IV, Chapter 64.)

Federation. A regional unit of local government created by two or more parent or sponsoring units of local government to provide services or facilities for the parent units of local government. The federated nature of a federation normally arises from the

composition of its governing body, consisting of either: (1) Members of the parent units of government who serve *ex officio* as members of the federation's governing body; or (2) persons who are appointed to office by the governing bodies of the parent units of local government. (See, Part III-B, Chapters 24 through 36.)

General indebtedness. A financial obligation of a government, as distinguished from a "fund" of a government. General indebtedness is subject to constitutional and statutory limitations. General obligation bonds constitute general indebtedness. Revenue obligations are not classified as general indebtedness. (See, Part IV, Section 65.)

General obligation (G.O.) bond. A security issued by a government that is: (1) Payable from all or a portion of the government's taxing authority; and (2) subject to the constitutional limitation on indebtedness that a government may incur. Frequently, the issuing government pledges its "full faith and credit," as well as taxing authority, to secure a G.O. bond. In Washington State a bond secured by only a portion of the issuing government's taxing authority is general indebtedness subject to the constitutional indebtedness limitation in the same manner as a bond secured by all of the issuing government's taxing authority and full faith and credit, so little purpose exists to issuing a limited tax obligation bond. (See, Part IV, Chapter 64.)

General purpose units of government. Counties and cities (including towns) are general purpose units of government. They are authorized to provide a broad array of services and facilities and broad authority to regulate matters. (See, Part I, Chapters 2 through 5, and Part II, Chapters 6 through 9.)

Home rule. The right of local self-government or the authority of a local government to control its local affairs without interference from the State. Only counties and cities possess home rule powers. Special purpose districts do not possess home rule powers. Home rule may involve the right to act without being granted express statutory authority to take the particular action. For example, Article XI, Section 11 grants broad home rule police regulatory powers to counties and cities unless restricted by state statutes. The State Supreme Court recognizes greater authority for charter counties,

charter cities, and code cities to act without being granted express authority to act than non-charter counties or other types of cities. Home rule also may involve the right to act contrary to state statutes concerning matters of local concern. For example, the State Supreme Court has held that a county charter may provide details about the county's form of government that conflict with state statutes or are superior to state statutes. (See, Part IV, Chapter 66.)

Incorporated area. Any area located within a city or town. Compare, unincorporated area.

Interlocal Cooperation Act. A statute allowing all units of local government (including counties, cities, towns, and special purpose districts) to enter into both: (1) Interlocal contracts where one government performs a service, activity, or undertaking for the other party or parties to the contract; and (2) interlocal agreements where two or more governments jointly perform a service, activity, or undertaking. (See, Part IV, Chapter 73.)

Lending of credit. A phrase found in Article VIII, Section 7 which prohibits local governments from lending their credit, or providing gifts of public funds, to any person or private entity except for the necessary support of the poor and infirm. (See, Part IV, Chapter 73.)

Limited purpose local governments. Special purpose districts. These local governments are authorized to provide a limited range of services and facilities. (See, Part III, Chapters 10 through 63.)

Local improvement district (LID). A mechanism created to finance local improvements that benefit, or increase the market value, of property located within the LID. Special assessments are imposed on benefited property located within the LID to finance the local improvements. Other financial mechanisms are essentially the same thing as local improvement districts, and include utility local improvement districts (ULIDs), road improvement districts (RIDs), and local utility districts (LUDs). (See, Part IV, Chapter 64.)

Municipal corporation. A general purpose unit of local government authorized to provide a wide variety of services and

facilities and to regulate matters. Technically, only cities and towns are municipal corporations. However, counties possess municipal corporate powers in Washington State, so they would also be considered municipal corporations. At times this term is used to include all or most units of local government, including special purpose districts which more accurately would be considered quasi-municipal corporations. Compare quasi-municipal corporation.

One Person, One Vote Doctrine. A court-created doctrine derived from the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution. Two aspects of this Doctrine have developed. One aspect relates to proportional representation of members of a governing body who are chosen from districts or subareas within a government's boundaries and the population that each official represents. The other aspect relates to the franchise or right to vote at elections. (See, Part IV, Chapter 73.)

Ordinance. A rule or law adopted by a county, city, or town.

Police powers. A broad set of governmental powers recognized by courts. The general power of a government to enact laws and ordinances regulating matters, and providing some basic public services for the purpose of protecting the public health, safety, morals, education, good order, and general welfare. (See, Part IV, Chapter 67.)

Property tax. A tax imposed on real and personal property that is measured by the value of the property. An *ad valorem* tax. (See, Part IV, Chapter 35.)

Quasi-municipal corporation. A limited purpose unit of local government. This normally would include all special purpose districts, which by there nature are created to perform limited functions. However, sometimes this term is used as only applying to those special purpose districts with voting rights limited to property owners, such as irrigation districts and diking districts.

Regional government. A unit of government that is superimposed over other units of local government and provides services or facilities within this relatively large geographic area. Counties are regional units of local government. County-wide port districts are

regional units of government. Public utility districts tend to be regional units of government. Federations are regional units of government. (See, Part III-B, Chapters 24 through 36.)

Regular property tax levy. Most property tax levies are regular levies and include: (1) All property tax levies that are subject to the constitutional One Percent Limitation on the cumulative rate of property taxes that may be imposed on any property in any year; and (2) excess levies imposed by port districts and public utility districts. (See, Part IV, Chapter 64.)

Revenue obligations. Obligations of a "fund" that is created by a government, as distinguished from a debt of the government itself. Revenue obligations are not subject to constitutional or statutory debt limitations. (See, Part IV, Chapter 64.)

Revenue bond. A security that is payable from a "fund" created by a unit of government. Washington State was the first state to allow the use of revenue bonds, which are not subject to indebtedness limitations. This term may be used broadly to include all types of bonds that are not general indebtedness. This term may also be used more narrowly to only include a type of non-general indebtedness that is payable from a dedicated stream of operational revenues. (See, Part IV, Chapter 64.)

Special assessment. A type of extraction that some governments impose on property, normally located in a local improvement district, to finance local improvements. Special assessments used to be called "special taxes." Some assessments or special assessments are imposed that are not associated with local improvement districts, such as assessments imposed by irrigation districts or special assessments imposed by cities or counties within parking and business improvement areas. (See, Part IV, Chapter 64.)

Special assessment bond. A security payable from special assessments. These securities are revenue obligations that normally are called local improvement district bonds. (See, Part IV, Chapter 64.)

Special purpose district. A type of local government created to provide a limited number of services or facilities. Special purpose districts are a separate category of local governments. More than 60 different types of special purpose districts may be created in this State, including fire protection districts, school districts, and water districts. (See, Part III, Chapters 10 through 63.)

Subdivision of another government. A unit of government or special purpose district that is created by a parent or sponsoring unit of government to act as its agent within a portion of the boundaries of the parent unit of government. Counties are, in part, the political subdivisions of the State and in many instances act for the State. Counties are authorized to create various different type of subdivisions, including road districts, flood control zone districts, and park and recreation service areas. Subdivisions of counties were the first types of special purpose districts authorized in Washington Territory. However, this form of special purpose district fell out of favor after statehood but has reemerged at the end of the Twentieth Century. (See, Part III-C, Chapters 37 through 63.)

Tax. An extraction or pecuniary burden imposed by a government to pay for its general support. Unless required by law, no relationship need exist among the amount of taxes that are imposed, the person or activity that is taxed, and the use of the tax receipts. Two types of taxes exist in Washington State – property taxes and excise taxes. Property taxes, or *ad valorem* taxes, are the oldest type of tax in Washington and are imposed based upon the value of the property. Excise taxes are the broadest category of taxes and include all taxes that are not property taxes. (See, Part IV, Chapter 64.)

Town. A general purpose unit of local government that is authorized to provide a wide variety of services and facilities and to regulate matters within its boundaries. Cities are similar types of local governments. Traditionally, a town has a smaller population than a city when it is formed. Towns may no longer incorporate in Washington State. (See, Part II, Chapters 6 through 9.)

Township. A political subdivision of a county that acts for the county in a portion of the county's boundaries. Article XI, Section 4

requires the Legislature to enact legislation providing for the organization of counties into townships as an alternative form of government. Only two counties (Spokane and Whatcom) were ever organized into townships, but these counties dissolved their townships. The Legislature repealed statutes allowing counties to organize into townships. (See, Part III, Chapter 29.)

Unincorporated area. Any area located outside of a city. Compare, incorporated area.

Appendix B

Creation of Counties in What Became Washington State

County	Date	Authority creating county
Twality[1]	July 5, 1843	Legislative committee of Provisional Government of Oregon Country
Clackamas[2]	July 5, 1843	Legislative committee of Provisional Government of Oregon Country
Clark[3]	June 27, 1844	Legislative committee of Provisional Government of Oregon Country
Lewis	Dec. 21, 1845	House of Representatives of Provisional Government of Oregon Country
Pacific	Feb. 4, 1851	Legislative Assembly of Oregon Territory
Thurston	Jan. 12, 1852	Legislative Assembly of Oregon Territory
Pierce	Dec. 12, 1852	Legislative Assembly of Oregon Territory
King	Dec. 22, 1852	Legislative Assembly of Oregon Territory
Jefferson	Dec. 22, 1852	Legislative Assembly of Oregon Territory
Island	Jan. 6, 1853	Legislative Assembly of Oregon Territory
Mason[4]	Mar. 13, 1854	Legislative Assembly of Washington Territory
Grays Harbor[5]	Apr. 14, 1854	Legislative Assembly of Washington Territory
Cowlitz	Apr. 21, 1854	Legislative Assembly of Washington Territory
Wahkiakum	Apr. 25, 1854	Legislative Assembly of Washington Territory
Walla Walla	Apr. 25, 1854	Legislative Assembly of Washington Territory
Clallam	Apr. 26, 1854	Legislative Assembly of Washington Territory
Whatcom	Mar. 9, 1854	Legislative Assembly of Washington Territory

Skamania[6]	Mar. 9, 1854	Legislative Assembly of Washington Territory
Kitsap[7]	Jan. 16, 1857	Legislative Assembly of Washington Territory
Spokane[8]	Jan. 29, 1858	Legislative Assembly of Washington Territory
Klickitat	Dec. 20, 1859	Legislative Assembly of Washington Territory
Snohomish	Jan. 14, 1861	Legislative Assembly of Washington Territory
Stevens[8]	Jan. 20, 1863	Legislative Assembly of Washington Territory
Ferguson[9]	Jan. 20, 1863	Legislative Assembly of Washington Territory
Yakima	Jan. 21, 1865	Legislative Assembly of Washington Territory
Quillehuyte[10]	Jan. 29, 1868	Legislative Assembly of Washington Territory
Whitman	Nov. 29, 1871	Legislative Assembly of Washington Territory
San Juan	Oct. 31, 1873	Legislative Assembly of Washington Territory
Columbia	Nov. 11, 1875	Legislative Assembly of Washington Territory
Garfield	Nov. 29, 1881	Legislative Assembly of Washington Territory
Asotin	Oct. 27, 1883	Legislative Assembly of Washington Territory
Kittitas	Nov. 24, 1883	Legislative Assembly of Washington Territory
Lincoln	Nov. 24, 1883	Legislative Assembly of Washington Territory
Adams	Nov. 28, 1883	Legislative Assembly of Washington Territory
Douglas	Nov. 28, 1883	Legislative Assembly of Washington Territory
Franklin	Nov. 28, 1883	Legislative Assembly of Washington Territory
Skagit	Nov. 28, 1883	Legislative Assembly of Washington Territory
Okanogan	Feb. 2, 1888	Legislative Assembly of Washington Territory
Ferry	Feb. 21, 1899	Washington State Legislature
Chelan	Mar. 13, 1899	Washington State Legislature
Benton	Mar. 8, 1905	Washington State Legislature
Grant	Feb. 24, 1909	Washington State Legislature
Pend Oreille	Mar. 1, 1911	Washington State Legislature

NOTES:

1. Included the western portion of what became Washington State, along with parts of the rest of Oregon Country. All areas north of the centerline of the Columbia River were removed for several months and then included again. No longer exists in Washington State.

2. Included the remainder of what became Washington State, along with parts of the rest of Oregon Country. No longer exists in Washington state.

3. Originally called Vancouver District or Vancouver County and included all of Oregon Country north of the Columbia River and west of the Cascade Mountains. Name changed to Clarke County and then Clark County.

4. Originally called Sawamish County.

5. Originally called Chehalis County.

6. The Legislative Assembly of Washington Territory abolished Skamania County in 1865 and transferred its territory to Clark and Klickitat Counties. (Pages 45-46, Statutes of the Territory Washington, 1864-1865, 12th Session.) However, Congress nullified this law.

7. Originally called Slaughter County.

8. Spokane County has had a varied existence. The Legislative Assembly created Spokane County in 1858. (Page 51, Statutes of the Territory of Washington, 1857-1858, 5th Session.) The federal government created the State of Oregon in 1859 and transferred what eventually became the State of Idaho, along with what eventually became portions of the States of Montana and Wyoming, to Washington Territory. The Legislative Assembly responded by significantly expanding the boundaries of Spokane County in 1859 to include this newly added territory. (Pages 436-438, Private laws, Statutes of the Territory of Washington, 1858-1859, 7th Session.) The Territorial Assembly created Stevens County by removing significant territory from Spokane County in 1863. (Page 6, Private and Local Laws, Statutes of the Territory of Washington, 1862-1863.) Then, the federal government created Idaho Territory later in 1863 by removing what eventually became Idaho State, and eventually became a portion of the States of Montana and Wyoming, from Washington Territory. The Legislative Assembly responded by annexing Spokane County to Stevens County in 1864. (Page 70, Private and Local Laws, Statutes of the Territory of Washington, 1863-1864, 11th Session.) Finally, the Legislative Assembly recreated Spokane County in 1879. (Pages 203-204, Statutes of the Territory of Washington, 1879, 7th Biennial Session.)

9. Ferguson County only existed for two years and no longer exists. It was located in central Washington. Most of its territory was included in the newly formed Yakima County, and a portion was added to Stevens County, when the short lived county was abolished.

10 Quillehuyte County only existed for one year and no longer exists. It was located on the Olympic Peninsula. Its territory was transferred to Jefferson and Clallam Counties when it was abolished.

Appendix C

County Data

County	Population*	Square miles**
Adams	19,410	1,894
Asotin	22,010	633
Benton	188,590	1,722
Chelan	75,030	2,918
Clallam	72,650	1,753
Clark	451,820	627
Columbia	4,090	853
Cowlitz	104,280	1,144
Douglas	39,990	1,831
Ferry	7,710	2,202
Franklin	87,150	1,253
Garfield	2,260	709
Grant	93,930	2,675
Grays Harbor	73,110	1,910
Island	80,600	212
Jefferson	30,880	1,805
King	2,052,800	2,128
Kitsap	258,200	393
Kittitas	42,670	2,317
Klickitat	21,000	1,908
Lewis	76,660	2,423
Lincoln	10,720	2,306
Mason	62,200	926
Okanogan	41,860	5,301
Pacific	21,210	908
Pend Oreille	13,240	1,402
Pierce	830,120	1,676
San Juan	16,180	179
Skagit	120,620	1,735
Skamania	11,430	1,672
Snohomish	757,600	2,098

County	**Population***	**Square miles****
Spokane	488,310	1,764
Stevens	44,030	2,481
Thurston	267,410	714
Wahkiakum	3,980	261
Walla Walla	60,650	1,262
Whatcom	209,790	2,126
Whitman	47,250	2,153
Yakima	249,970	4,268
TOTAL	**7,061,410**	**66,544**

* Est. April 1, 2015 pop., Office of Financial Management website http://www.ofm.wa.gov.

** Directory of County Officials in Washington State, Jan. 2001, at pages 2 & 3.

Appendix D

City Information [1]

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Aberdeen	Grays Harbor	1890	16,780	First	Mayor-Council
Airway Heights	Spokane	1955	8,385	Code	Council Manager
Albion	Whitman	1910	555	Town	Mayor-Council
Algona	King	1955	3,105	Code	Mayor-Council
Almira	Lincoln	1904	280	Town	Mayor-Council
Anacortes	Skagit	1891	16,310	Code	Mayor-Council
Arlington	Snohomish	1903	18,490	Code	Mayor-Council
Asotin	Asotin	1890	1,160	Code	Mayor-Council
Auburn[2]	King	1891	75,545	Code	Mayor-Council
Bainbridge Island[3]	Kitsap	1947	23,390	Code	Council Manager
Battle Ground	Clark	1951	19,250	Code	Council Manager
Beaux Arts Village	King	1954	300	Town	Mayor-Council
Bellevue	King	1953	135,000	Code	Council Manager

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Bellingham	Whatcom	1883[4]	82,810	First	Mayor-Council
Benton City	Benton	1945	3,285	Code	Mayor-Council
Bingen	Klickitat	1924	735	Code	Mayor-Council
Black Diamond	King	1959	4,200	Code	Mayor-Council
Blaine	Whatcom	1890	4,905	Code	Council Manager
Bonney Lake	Pierce	1949	19,490	Code	Mayor-Council
Bothell	King/ Snohomish	1909	42,430	Code	Council Manager
Bremerton	Kitsap	1901	39,410	First	Mayor-Council
Brewster	Okanogan	1910	2,395	Code	Mayor-Council
Bridgeport	Douglas	1910	2,455	Code	Mayor-Council
Brier	Snohomish	1965	6,500	Code	Mayor-Council
Buckley	Pierce	1890	4,440	Code	Mayor-Council
Bucoda	Thurston	1910	565	Town	Mayor-Council
Burien	King	1993	48,810	Code	Council Manager
Burlington	Skagit	1902	8,485	Second	Mayor-Council
Camas	Clark	1906	21,210	Code	Mayor-Council
Carbonado	Pierce	1948	615	Town	Mayor-Council
Carnation[5]	King	1912	1,790	Code	Council Manager
Cashmere	Chelan	1904	3,040	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Castle Rock	Cowlitz	1890	2,175	Code	Mayor-Council
Cathlamet	Wahkiakum	1907	490	Town	Mayor-Council
Centralia	Lewis	1886[6]	16,790	Code	Council Manager
Chehalis	Lewis	1883[7]	7,365	Code	Council Manager
Chelan	Chelan	1902	4,045	Code	Mayor-Council
Cheney	Spokane	1883[8]	11,440	Code	Mayor-Council
Chewelah	Stevens	1903	2,650	Second	Mayor-Council
Clarkston	Asotin	1902	7,235	Code	Mayor-Council
Cle Elum	Kittitas	1902	1,865	Second	Mayor-Council
Clyde Hill	King	1953	3,020	Code	Mayor-Council
Colfax	Whitman	1873[9]	2,790	Second	Mayor-Council
College Place	Walla Walla	1946	9,110	Code	Mayor-Council
Colton	Whitman	1890	420	Town	Mayor-Council
Colville	Stevens	1890	4,705	Second	Mayor-Council
Conconully	Okanogan	1908	230	Town	Mayor-Council
Concrete	Skagit	1909	730	Town	Mayor-Council
Connell	Franklin	1910	5,405	Code	Mayor-Council
Cosmopolis	Grays Harbor	1891	1,640	Code	Mayor-Council
Coulee City	Grant	1907	560	Town	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Coulee Dam	Douglas/ Grant/ Okanogan	1959	1,080	Town	Mayor-Council
Coupeville	Island	1910	1,900	Town	Mayor-Council
Covington	King	1997	18,520	Code	Council Manager
Creston	Lincoln	1903	230	Town	Mayor-Council
Cusick	Pend Oreille	1927	200	Town	Mayor-Council
Darrington	Snohomish	1945	1,350	Town	Mayor-Council
Davenport	Lincoln	1890	1,685	Second	Mayor-Council
Dayton	Columbia	1881[10]	2,550	Code	Mayor-Council
Deer Park	Spokane	1909	3,950	Code	Mayor-Council
Des Moines	King	1959	30,100	Code	Council Manager
Dupont	Pierce	1951[11]	9,250	Code	Mayor-Council
Duvall	King	1913	7,345	Code	Mayor-Council
East Wenatchee	Douglas	1935	13,390	Code	Mayor-Council
Eatonville	Pierce	1909	2,880	Town	Mayor-Council
Edgewood	Pierce	1996	9,615	Code	Council Manager
Edmonds	Snohomish	1890	40,490	Code	Mayor-Council
Electric City	Grant	1950	1,010	Town	Mayor-Council
Ellensburg	Kittitas	1883[12]	18,810	Code	Council Manager

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Elma	Grays Harbor	1890	3,135	Code	Mayor-Council
Elmer City	Okanogan	1947	285	Town	Mayor-Council
Endicott	Whitman	1905	296	Town	Mayor-Council
Entiat	Chelan	1944	1,155	Code	Mayor-Council
Enumclaw	King/Pierce	1913	11,140	Code	Mayor-Council
Ephrata	Grant	1909	7,985	Code	Mayor-Council
Everett	Snohomish	1893	105,800	First	Mayor-Council
Everson	Whatcom	1929	2,580	Code	Mayor-Council
Fairfield	Spokane	1905	615	Town	Mayor-Council
Farmington	Whitman	1888[13]	150	Town	Mayor-Council
Federal Way	King	1990	90,760	Code	Mayor-Council
Ferndale	Whatcom	1907	12,710	Code	Mayor-Council
Fife	Pierce	1957	9,545	Code	Council Manager
Fircrest	Pierce	1925	6,575	Code	Council Manager
Forks	Clallam	1945	3,565	Code	Mayor-Council
Friday Harbor	San Juan	1909	2,215	Town	Mayor-Council
Garfield	Whitman	1890	595	Town	Mayor-Council
George	Grant	1961	720	Code	Mayor-Council
Gig Harbor	Pierce	1946	8,555	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Gold Bar	Snohomish	1910	2,115	Code	Mayor-Council
Goldendale	Klickitat	1879[14]	3,425	Code	Mayor-Council
Grand Coulee	Grant	1935	1,050	Code	Mayor-Council
Grandview	Yakima	1909	11,200	Code	Mayor-Council
Granger	Yakima	1909	3,640	Code	Mayor-Council
Granite Falls	Snohomish	1903	3,390	Code	Mayor-Council
Hamilton	Skagit	1891	305	Town	Mayor-Council
Harrah	Yakima	1946	650	Town	Mayor-Council
Harrington	Lincoln	1902	420	Code	Mayor-Council
Hartline	Grant	1907	160	Town	Mayor-Council
Hatton	Adams	1907	110	Town	Mayor-Council
Hoquiam	Grays Harbor	1890	8,575	Code	Mayor-Council
Hunts Point	King	1955	410	Town	Mayor-Council
Ilwaco	Pacific	1890	945	Code	Mayor-Council
Index	Snohomish	1907	160	Town	Mayor-Council
Ione	Pend Oreille	1910	440	Town	Mayor-Council
Issaquah[15]	King	1892	33,330	Code	Mayor-Council
Kahlotus	Franklin	1907	185	Code	Mayor-Council
Kalama	Cowlitz	1890[16]	2,500	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Kelso	Cowlitz	1890	11,950	Code	Council Manager
Kenmore	King	1998	21,500	Code	Council Manager
Kennewick	Benton	1904	78,290	Code	Council Manager
Kent	King	1890	121,400	Code	Mayor-Council
Kettle Falls	Stevens	1892	1,615	Code	Mayor-Council
Kirkland	King	1905	82,590	Code	Council Manager
Kittitas	Kittitas	1931	1,455	Code	Mayor-Council
Krupp	Grant	1911	50	Town	Mayor-Council
La Center	Clark	1909	3,100	Code	Mayor-Council
La Conner	Skagit	1883[17]	895	Town	Mayor-Council
Lacey	Thurston	1966	46,020	Code	Council Manager
Lacrosse	Whitman	1917	320	Town	Mayor-Council
Lake Forest Park	King	1961	12,810	Code	Mayor-Council
Lake Stevens	Snohomish	1960	29,900	Code	Mayor-Council
Lakewood	Pierce	1996	58,400	Code	Council Manager
Lamont	Whitman	1910	80	Town	Mayor-Council
Langley	Island	1913	1,100	Code	Mayor-Council
Latah	Spokane	1892	195	Town	Mayor-Council
Leavenworth	Chelan	1906	1,980	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Liberty Lake	Spokane	2001	8,975	Code	Mayor-Council
Lind	Adams	1902	560	Town	Mayor-Council
Long Beach	Pacific	1922	1,420	Code	Mayor-Council
Longview	Cowlitz	1924	37,130	Code	Council Manager
Lyman	Skagit	1909	445	Town	Mayor-Council
Lynden	Whatcom	1891	13,920	Code	Mayor-Council
Lynnwood	Snohomish	1959	36,420	Code	Mayor-Council
Mabton	Yakima	1905	2,310	Code	Mayor-Council
Malden	Whitman	1909	205	Town	Mayor-Council
Mansfield	Douglas	1911	325	Town	Mayor-Council
Maple Valley	King	1997	24,700	Code	Council Manager
Marcus	Stevens	1910	175	Town	Mayor-Council
Marysville	Snohomish	1891	64,140	Code	Mayor-Council
Mattawa	Grant	1958	5,535	Town	Mayor-Council
McCleary	Thurston	1943	1,680	Code	Mayor-Council
Medical Lake	Spokane	1890	4,945	Code	Mayor-Council
Medina	King	1955	3,095	Code	Council Manager
Mercer Island	King	1960	23,480	Code	Council Manager
Mesa	Franklin	1955	495	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Metaline	Pend Oreille	1948	175	Town	Mayor-Council
Metaline Falls	Pend Oreille	1911	235	Town	Mayor-Council
Mill Creek	Snohomish	1983	19,760	Code	Council Manager
Millwood	Spokane	1927	1,790	Town	Mayor-Council
Milton	Pierce/King	1907	7,385	Code	Mayor-Council
Monroe	Snohomish	1903	17,620	Code	Mayor-Council
Montesano	Grays Harbor	1883[18]	4,095	Code	Mayor-Council
Morton	Lewis	1912	1,125	Code	Mayor-Council
Moses Lake	Grant	1938	22,080	Code	Council Manager
Mossyrock	Lewis	1948	750	Code	Mayor-Council
Mount Vernon	Skagit	1890	33,530	Code	Mayor-Council
Mountlake Terrace	Snohomish	1954	21,090	Code	Council Manager
Moxee City	Yakima	1921	3,810	Code	Mayor-Council
Mukilteo	Snohomish	1947	20,900	Code	Mayor-Council
Naches	Yakima	1921	830	Town	Mayor-Council
Napavine	Lewis	1913	1,835	Code	Mayor-Council
Nespelem	Okanogan	1935	245	Town	Mayor-Council
Newcastle[19]	King	1994	10,940	Code	Council Manager
Newport	Pend Oreille	1903	2,160	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Nooksack	Whatcom	1912	1,460	Code	Mayor-Council
Normandy Park	King	1953	6,420	Second	Council Manager
North Bend	king	1909	4,460	Code	Mayor-Council
North Bonneville	Skamania	1935	1,005	Code	Mayor-Council
Northport	Stevens	1898	295	Town	Mayor-Council
Oak Harbor	Island	1915	22,000	Code	Mayor-Council
Oakesdale	Whitman	1888[20]	425	Town	Mayor-Council
Oakville	Grays Harbor	1905	685	Code	Mayor-Council
Ocean Shores	Grays Harbor	1970	5,935	Code	Council Manager
Odessa	Lincoln	1902	905	Town	Mayor-Council
Okanogan	Okanogan	1907	2,580	Code	Mayor-Council
Olympia	Thurston	1859[21]	51,020	Code	Council Manager
Omak	Okanogan	1911	4,900	Second	Mayor-Council
Oroville	Okanogan	1908	1,695	Code	Mayor-Council
Orting	Pierce	1889[22]	7,290	Code	Mayor-Council
Othello	Adams	1910	7,780	Code	Mayor-Council
Pacific	King/Pierce	1909	6,840	Code	Mayor-Council
Palouse	Whitman	1888[23]	1,030	Second	Mayor-Council
Pasco	Franklin	1891	68,240	Code	Council Manager

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Pateros	Okanogan	1913	525	Code	Mayor-Council
Pe Ell	Lewis	1906	640	Town	Mayor-Council
Pomeroy	Garfield	1886[24]	1,405	Code	Mayor-Council
Port Angeles	Clallam	1890	19,140	Code	Council Manager
Port Orchard[25]	Kitsap	1890	13,510	Second	Mayor-Council
Port Townsend	Jefferson	1860[26]	9,380	Code	Council Manager
Poulsbo	Kitsap	1907	9,950	Code	Mayor-Council
Prescott	Walla Walla	1903	325	Code	Mayor-Council
Prosser	Benton	1899	5,845	Code	Mayor-Council
Pullman	Whitman	1888	32,110	Code	Mayor-Council
Puyallup	Pierce	1890	38,950	Code	Council Manager
Quincy	Grant	1907	7,270	Code	Mayor-Council
Rainier	Thurston	1947	1,880	Code	Mayor-Council
Raymond	Pacific	1907	2,905	Code	Mayor-Council
Reardan	Lincoln	1903	570	Town	Mayor-Council
Redmond	King	1912	59,180	Code	Mayor-Council
Renton	King	1901	98,470	Code	Mayor-Council
Republic	Ferry	1900	1,090	Code	Mayor-Council
Richland	Benton	1958[27]	53,080	First	Council Manager

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Ridgefield	Clark	1909	6,400	Code	Council Manager
Ritzville	Adams	1890	1,670	Second	Mayor-Council
Riverside	Okanogan	1913	285	Town	Mayor-Council
Rock Island	Douglas	1890	865	Code	Mayor-Council
Rockford	Spokane	1930	470	Town	Mayor-Council
Rosalia	Whitman	1894	560	Town	Mayor-Council
Roslyn	Kittitas	1886	890	Second	Mayor-Council
Roy	Pierce	1908	805	Code	Mayor-Council
Royal City	Grant	1962	2,235	Code	Mayor-Council
Ruston	Pierce	1906	905	Town	Mayor-Council
Sammamish	King	1999	49,980	Code	Council Manager
Sea-Tac	King	1990	27,650	Code	Council Manager
Seattle	King	1869[28]	662,400	First	Mayor-Council
Sedro-Wolley	Skagit	1898	10,700	Second	Mayor-Council
Selah	Yakima	1919	7,495	Code	Mayor-Council
Sequim	Clallam	1913	6,915	Code	Council Manager
Shelton	Mason	1890	9,995	Code	Commission
Shoreline	King	1995	54,500	Code	Council Manager
Skykomish	King	1909	195	Town	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Snohomish	Snohomish	1883[29]	9,385	Code	Council Manager
Snoqualmie	King	1903	12,850	Code	Mayor-Council
Soap Lake	Grant	1919	1,530	Second	Mayor-Council
South Bend	Pacific	1890	1,620	Code	Mayor-Council
South Cle Elum	Kittitas	1911	530	Town	Mayor-Council
South Prairie	Pierce	1909	435	Town	Mayor-Council
Spangle	Spokane	1888[30]	280	Code	Mayor-Council
Spokane	Spokane	1881[31]	213,100	First	Mayor-Council
Spokane Valley	Spokane	2003	93,340	Code	Council Manager
Sprague	Lincoln	1883[32]	445	Code	Mayor-Council
Springdale	Stevens	1903	290	Town	Mayor-Council
St. John	Whitman	1904	510	Town	Mayor-Council
Stanwood	Snohomish	1903	6,530	Code	Mayor-Council
Starbuck	Columbia	1905	130	Town	Mayor-Council
Steilacoom	Pierce	1854[33]	6,115	Town	Mayor-Council
Stevenson	Skamania	1907	1,530	Code	Mayor-Council
Sultan	Snohomish	1905	4,680	Code	Mayor-Council
Sumas	Whatcom	1891	1,467	Code	Mayor-Council
Sumner	Pierce	1891	9,660	Code	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Sunnyside	Yakima	1902	16,280	Code	Council Manager
Tacoma	Pierce	1875[34]	200,900	First	Council Manager
Tekoa	Whitman	1889[35]	785	Second	Mayor-Council
Tenino	Thurston	1906	1,730	Code	Mayor-Council
Tieton	Yakima	1942	1,255	Code	Mayor-Council
Toledo	Cowlitz	1892	725	Code	Mayor-Council
Tonasket	Okanogan	1927	1,110	Code	Mayor-Council
Toppenish	Yakima	1907	8,965	Code	Council Manager
Tukwila	King	1908	19,300	Code	Mayor-Council
Tumwater	Thurston	1869[36]	18,800	Code	Mayor-Council
Twisp	Okanogan	1909	945	Town	Mayor-Council
Union Gap	Yakima	1883[37]	6,150	Code	Council Manager
Uniontown	Whitman	1890	335	Town	Mayor-Council
University Place	Pierce	1995	31,720	Code	Council Manager
Vader[38]	Lewis	1906	615	Code	Mayor-Council
Vancouver	Clark	1857[39]	170,400	First	Council Manager
Waitsburg	Walla Walla	1881[40]	1,235	Unclassified	Mayor-Council
Walla Walla	Walla Walla	1862[41]	33,930	Code	Council Manager
Wapato	Yakima	1908	5,040	Second	Mayor-Council

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Warden	Grant	1910	2,710	Code	Mayor-Council
Washougal	Clark	1908	15,170	Code	Mayor-Council
Washtucna	Adams	1903	205	Town	Mayor-Council
Waterville	Douglas	1889[42]	1,160	Town	Mayor-Council
Waverly	Spokane	1907	108	Town	Mayor-Council
Wenatchee	Chelan	1893	33,230	Code	Mayor-Council
West Richland	Benton	1955	13,960	Code	Mayor-Council
Westport	Grays Harbor	1914	2,110	Code	Mayor-Council
White Salmon	Klickitat	1907	2,420	Code	Mayor-Council
Wilbur	Lincoln	1890	880	Town	Mayor-Council
Wilkeson	Pierce	1909	485	Town	Mayor-Council
Wilson Creek	Grant	1903	205	Town	Mayor-Council
Winlock	Lewis	1890	1,340	Code	Mayor-Council
Winthrop	Okanogan	1924	435	Town	Mayor-Council
Woodinville	King	1993	11,240	Code	Council Manager
Woodland	Cowlitz/Clark	1906	5,845	Code	Mayor-Council
Woodway	Snohomish	1958	1,335	Code	Mayor-Council
Yacolt	Clark	1908	1,620	Town	Mayor-Council
Yakima	Yakima	1886[43]	93,220	First	Council Manager

Name	County	Year Incorporated	2015 Population	Class	Plan of government
Yarrow Point	King	1959	1,020	Town	Mayor-Council
Yelm	Thurston	1924	8,165	Code	Mayor-Council
Zillah	Yakima	1911	3,140	Code	Mayor-Council

1. Class and form of government data taken from the home page of the Municipal Research and Services Center of Washington which may be found at http://www.msrc.org . Population figures obtained from the website for the Washington State Office of Financial Management which may be found at http://www.ofm.gov.wa . Incorporation dates taken from *1998-99 Directory of Washington City and Town Officials*, Municipal Research and Services Center of Washington and *2001 Data Book*, Office of Financial Management, State of Washington.
2. Originally incorporated as Slaughter in 1891 but changed its name to Auburn in 1893.
3. Originally incorporated as Winslow in 1947 but annexed the remainder of Bainbridge Island in 1991 and then changed its name to Bainbridge Island effective January 1, 1992.
4. Whatcom was incorporated by a special act of the Legislative Assembly at Pages 137-155, Statutes of the Territory of Washington, 1883, 9th Biennial Session. Fairhaven was incorporated in 1890. Whatcom changed its name to New Whatcom. Then New Whatcom and Fairhaven consolidated to form Bellingham in 1903.
5. Originally incorporated as Tolt but changed its name to Carnation in 1951.
6. Centralia was incorporated by special legislation enacted by the Legislative Assembly at Pages 444-447, Statutes of the Territory of Washington, 1885-1886, 10th Biennial Session.
7. Chehalis was incorporated by special legislation enacted by the Legislative Assembly at Pages 234-242, Statutes of the Territory of Washington, 1883, 9th Biennial Session.
8. Cheney was incorporated by special legislation enacted by the Legislative Assembly at Pages 335-350, Statutes of the Territory of Washington, 1883, 9th Biennial Session.
9. This incorporation date for Colfax is shown in both the *1998-99 Directory of Washington City and Town Officials* and the *2001 Data Book*. However, the Legislative Assembly enacted special legislation incorporating Colfax in 1881. (See, Pages 157-166, Statutes of the Territory of Washington.) Colfax may have incorporated using the general provisions for incorporating towns that was enacted by the Legislative Assembly in 1871 and then was re-incorporated by special legislative act of the Legislative Assembly in 1881 after the Legislative Assembly repealed the general incorporation act.
10. Dayton was incorporated by special legislation enacted by the Legislative Assembly at Pages 87-114, Statutes of the Territory of Washington, 1881, 8th Biennial Session.
11. DuPont originally incorporated in 1912, then dis-incorporated in 1926, and then re-incorporated in 1951.
12. Ellensburg was incorporated by special legislation enacted by the Legislative Assembly at Pages 87-114, Statutes of the Territory of Washington, 1881, 8th Biennial Session.
13. No special legislation was enacted by the Legislative Assembly incorporating Farmington, so this city must have incorporated under the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

14. Goldendale was incorporated by special legislation enacted by the Legislative Assembly at Pages 187-197, Statutes of the Territory of Washington, 1879, 7th Biennial Session.

15. Originally incorporated as Gilman, but changed its name to Issaquah in 1899.

16. Kalama first was incorporated by special act of the Legislative Assembly at Pages 142-152, Statutes of the Territory of Washington, 1871, 3rd Biennial Session, then dis-incorporated at Pages 360-361, Statutes of the Territory of Washington, 1877, 6th Biennial Session, and finally re-incorporated in 1890 under the new city and town general incorporation legislation enacted by the first State Legislature.

17. La Conner was first incorporated by special act of the Legislative Assembly at Pages 288-295, Statutes of the Territory of Washington, 1883, 9th Biennial Session, then was dis-incorporated by special act of the Legislative Assembly at Page 449, Statutes of the Territory of Washington, 1885-1886, 10th Biennial Session, and finally re-incorporated under the new city and town general incorporation legislation enacted by the first State Legislature.

18. Montesano was incorporated by special act of the Legislative Assembly at Pages 263-270, Statutes of the Territory of Washington, 1883, 9th Biennial Session.

19. Incorporated as Newport Hills.

20. The 2001 Data Book shows Oakesdale as incorporating in 1890, but the 1998-99 Directory of Washington City and Town Officials shows Oakesdale as incorporating in 1888. The Legislative Assembly did not enact special legislation incorporating Oakesdale, so if 1888 is the correct incorporation date, Oakesdale must have incorporated under the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

21. Olympia was incorporated by special legislation enacted by the Legislative Assembly at Pages 31-34, Statutes of the Territory of Washington, 1858-1859, 6th Session.

22. The Legislative Assembly did not enact special legislation incorporating Orting, so if 1889 is the correct incorporation year, the incorporation must have occurred using the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

23. The Legislative Assembly did not enact special legislation incorporating Palouse, so if 1888 is the correct incorporation year, the incorporation must have occurred using the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.) Palouse originally incorporated as Palouse City but changed its name to Palouse in 1894.

24. The Legislative Assembly enacted special legislation incorporating Pomeroy at Pages 324-350, Statutes of the Territory of Washington, 1885-1886, 10th Biennial Session

25. Originally incorporated as Sidney but changed its name to Port Orchard in 1903.

26. The Legislative Assembly enacted special legislation incorporating Port Townsend at Pages 433-436, Statutes of the Territory of Washington, 1859-1860, 7th Session.

27. Richland originally incorporated in 1910, then dis-incorporated, and re-incorporated in 1958.

28. The Legislative Assembly enacted special legislation incorporating the Town of Seattle at Pages 75-79, Statutes of the Territory of Washington, 1864-1865, 12th Session, then dis-incorporated the town at Page 181, Statutes of the Territory of Washington, 1866-1867, 14th Session, but re-incorporated the City of Seattle at Pages 437-456, Statutes of the Territory of Washington, 1869, 16th Session, 2nd Biennial Session.

29. The Legislative Assembly enacted special legislation incorporating Snohomish at Pages 295-310, Statutes of the Territory of Washington, 1883, 9th Biennial Session.

30. The Legislative Assembly did not enact special legislation incorporating Spangle, so if 1888 is the correct incorporation date, the incorporation must have occurred using the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

31. The Legislative Assembly enacted special legislation incorporating Spokane Falls at Pages 148-156, Statutes of the Territory of Washington, 1881, 8th Biennial Session. The city was renamed as Spokane in 1890.

32. The Legislative Assembly enacted special legislation incorporating Sprague at Pages 243-263, Statutes of the Territory of Washington, 1883, 9th Biennial Session.

33. Steilacoom was the first city incorporated in Washington Territory at Pages 455-458, Statutes of the Territory of Washington, 1854, 1st Session.

34. Tacoma was originally incorporated by special legislation enacted by the Legislative Assembly at Pages 92-96, Statutes of the Territory of Washington, 1875, 5th Biennial Session. This city became know as "Old" Tacoma after a separate city of "New Tacoma" was incorporated by special legislation enacted by the Legislative Assembly at Pages 66-87, Statutes of the Territory of Washington, 1881, 8th Biennial Session. The two cities were consolidated as Tacoma by special legislation enacted by the Legislative Assembly at Pages 310-335, Statutes of the Territory of Washington, 1883, 9th Biennial Session.

35. The Legislative Assembly did not enact special legislation incorporating Tekoa, so if 1889 is the correct incorporation date, the incorporation must have occurred using the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

36. The Legislative Assembly enacted special legislation incorporating Tumwater at Pages 481-484, Statutes of the Territory of Washington, 1869, 16th Session, 2nd Biennial Session, then enacted special legislation dis-incorporating the town at Pages 361-362, Statutes of the Territory of Washington, 1877, 6th Biennial Session, but then enacted special legislation re-incorporating Tumwater at Pages 134-137, Statutes of the Territory of Washington, 1883, 9th Biennial Session.

37. The Legislative Assembly enacted special legislation incorporating Yakima City at Pages 206-214, Statutes of the Territory of Washington, 1883, 9th Biennial Session. The city was renamed as Union Gap in 1905.

38. Originally incorporated as Little Falls, but changed its name to Vader in 1913.

39. The Legislative Assembly enacted special legislation incorporating Vancouver at Pages 69-73, Statutes of the Territory of Washington, 1856-1857, 4th Session.

40. Waitsburg incorporated by special act of the Legislative Assembly at Pages 138-148, Statutes of the Territory of Washington, 1881, 8th Biennial Session.

41. The Legislative Assembly enacted special legislation incorporating Walla Walla at Pages 16-24, Statutes of the Territory of Washington, 1861-1862, 9th Session.

42. The Legislative Assembly did not enact special legislation incorporating Waterville, so if 1889 is the correct incorporation year, the incorporation must have occurred using the new general laws for incorporating towns and villages that was enacted in 1888. (See, Pages 221-232, Statutes of the Territory of Washington, 1887-1888, 11th Biennial Session.)

43. The Legislative Assembly enacted special legislation incorporating North Yakima at Pages 373-395, Statutes of the Territory of Washington, 1885-1886, 10th Biennial Session. North Yakima changed its name to Yakima in 1918.

Appendix E

Special Purpose District Laws

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Air pollution control authorities	1967	Ch. 70.94	Regular	Fed. - state, counties & cities	Resolution of county leg. auth.'s	Odd number of county & city appointees by formula	Adopt rules to reduce, control, & prevent air pollution; issue orders	Grants & aid; voter approved excess property tax levies
Cemetery dist.	1947	68.52.090 - 68.52.330	Regular	Indep.	Approval by co. leg. auth. + ballot prop.	3 commissioners, elected	Provide cemeteries	Non-voter approved, regular prop. tax; voter approved excess levies; fees; G.O. bonds
City transporta-tion authorities	2002	Ch. 35.95A	Regular	Partial sub. - city	Ballot prop.	Any number on governing body, either appointed or elected	Provide monorail transportation service & associated terminals, & parking facilities	Voter approved MVET, sales tax on auto rentals, & vehicle license fees; rates & fares; voter approved regular & excess levies; LID's; G.O., rev., & LID bonds
Community facility districts	2010	Ch. 36.145	N.A.	Sub. - county	Approval of co. leg. auth.	Odd number, 5 or more, appointed by county and cities	Finance, acquire and manage various public facilities, including sewers, water, flood control, streets & roads, railways, parks, libraries, educational facilities, cultural facilities	Create LIDs & impose special assessments, fees
Conserva-tion dist.	1939	Ch. 89.08	Regular	Partial sub. - State	State Conserv. Comm. Finding + ballot prop.	3 supervisors, elected	Provide conservation of water and soil of farm & grazing areas; control & prevent soil erosion	Grants & assessments
County airport dist.	1945	14.08.290 *et al.*	Regular	Sub. or Indep., depending on gov. body	Ballot prop.	Either: a) County legislative authority, *ex officio* ; or b) 3 comm'ers, elected	Build & operate airports	Regular prop. tax, 1st levy voter approved; fees & charges; G.O. & revenue bonds
County rail dist.	1983	Ch. 36.60	Regular	Sub. - county	Ballot prop.	County legislative authority, *ex officio*	Provide "rail service along light-density essential-service rail line" for moving commodities	Voter approved excess property tax levies; revenues from its operations; G.O. bonds; revenue bonds
County transporta-tion authorities	1974	Ch. 36.57	Regular	Fed. - county & cities	Resolution by county leg. auth.	Up to 3 county legislative authority members, *ex officio* or app'ted + 3 city mayors, app'ted	Provide public transportation of passengers; terminals; parking facilities	Voter approved excise taxes; rates & charges; revenue bonds; G.O. bonds
Cultural arts, stad. & conv. center dist.	1982	Ch. 67.38	Regular	Partial sub. - county or city	Ballot prop.	Up to 9-member board of county or city officials as specified on ballot, appointed	Provide cultural arts, stadium, or convention center facilities	Voter approved excess property taxes to retire bonds; G.O. bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Diking dist.	1895	Title 85	Prop. owners	Indep.	Co. eng'r feasibility study & ballot prop.	3 directors, elected	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Diking improve. dist.	1917	Title 85	Prop. owners	Partial sub. - county	Co. engineer feasibility study & ballot prop.	Either: a) 3 supervisors, elected; or b) county engineer	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Drainage dist.	1875	Title 85	Prop. owners	Indep.	Co. engineer feasibility study & ballot prop.	3 directors, elected	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Drainage improve. dist.	1913	Title 85	Prop. owners	Partial sub. - county	Co. engineer feasibility study & ballot prop.	Either: a) 3 supervisors, elected; or b) county engineer	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Emerg. medical service dist.	1979	36.32.480	Regular	Sub. - county	Resolution by county leg. auth.	County legislative authority, *ex officio*	Provide EMS services	Regular prop. tax, voter approved
Ferry dist.	2003	36.54.110 - 36.54.190	Regular	Sub. - county	Ordinance by county leg. auth.	County legislative authority, *ex officio*	Provide passenger-only ferry service and facilities	Regular prop. taxes, voter approved excess prop. Taxes; rates and charges
Fire protection dist.	1933	Title 52	Regular	Indep.	Approval of co. leg. authority + ballot prop.	3, 5, or 7 commissioners, elected	Provide fire protection & suppression; emergency services; ambulances	Non-voter approved regular prop. taxes; voter approved excess property taxes; benefit charges; LID's; G.O. bonds
Fire protection service authority	2004	Chapter 52.26	Regular	Indep. or sub. of member jurisdictions	Ballot prop.	Any number, must be elected officials, could be directly elected, *ex officio* , or appointed	Provide fire protection & suppression; emergency services; ambulances	Non-voter approved regular prop. taxes; voter approved excess property tax levies; benefit charges; LID's; G.O. bonds
Flood control dist.	1937	Ch. 86.08	Prop. owners	Indep.	Ballot prop.	3 directors, elected	Provide flood control, dikes, & drains	Special assessments; rates and charges; bonds
Flood control zone dist.	1961	Ch. 86.15	Regular	Sub. - county	Resolution by county leg. auth.	Members co. leg. auth. *ex officio* or elected	Provide flood control, dikes, & drains	Special assess.; non-voter approved reg. prop. taxes; rates & charges; & bonds
Health dist.	1945	Ch. 70.46	N.A.	Sub. - county	Resolution of 1 or more county leg. auth.'s	Not less than 7 board members, appointed by co. leg. auth.	Act as local health board	Grants & contributions

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
High capacity transporta-tion corridor areas	2009	81.104.200 & 81.104.210	Regular	Sub. of transit agency	Transit agency in county w. 400,000 + pop, & on state border adopts resolution	Members of transit agency acting *ex officio* and independently	Provide high capacity transportation system	Voter approved employer tax, sales & use taxes, and sales tax on car rentals
Housing authorities	1939	Ch. 35.82	Regular	Partial sub. - county or city	Resolution by county leg. auth. or city council to activate	5 commissioners, app'ted by city or county	Provide housing for low income persons & senior citizens, related commercial development, rural housing projects, group homes or halfway houses, & demolish slums	Rates & charges; revenue bonds
Intercounty diking dist.	1909	Title 85	Prop. owners	Indep.	Co. engineer feasibility study & ballot prop.	3 directors, elected	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Intercounty drainage dist.	1909	Title 85	Prop. owners	Indep.	Co. engineer feasibility study & ballot prop.	3 directors, elected	Provide dikes, drains, & flood control	Special assessments; rates & charges; bonds
Intercounty rural library dist.	1947	Ch. 27.12	Regular	Partial sub. - county	Ballot prop. or resolution of co. leg. authorities	5 or 7 trustees, appointed by co. leg. authorities	Provide library facilities and services	Prop. tax (reg & excess) & G. O. bonds
Intercounty weed dist.	1959	Ch. 17.06	Prop. owners	Indep.	Resolution of county leg. auth.'s	3 directors, elected	Adopt rules & plans for destroying & preventing noxious weeds, require removal of weeds, destroy weeds	Charges on parcels for removing weeds; assessments for district expenses
Irrigation dist.	1890	Title 87	Prop. owners	Indep.	Ballot prop.	3 or 5 directors, elected	Provide irrigation; drinking water; drainage; sewers; electricity; insulation; fire hydrants; street lighting; heating systems	Assessments; rates & charges; LID's; bonds
Irrigation & rehabilita-tion dist.	1961	Ch. 87.84	Prop. owners	Indep.	Ballot prop.	3 or 5 directors, elected	Provide irrigation; drinking water; drainage; sewers; electricity; insulation; fire hydrants; street lighting; rehabilitate inland water bodies & shorelines; heating systems; recreation; inset abatement; general regularoty and police powers	Assessments; rates & charges; LID's; bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Island library dist.	1982	27.12.400+	Regular	Partial sub. - county	Ballot prop.	5 trustees, appointed by co. leg. authority	Provide library facilities and services	Non-voter approved regular prop. taxes; voter approved excess
Joint city-county housing authorities	1980	35.82.300	Regular	Partial sub. - county & city	Agreement of city & county	5 commissioners, app'ted by city or county	Provide housing for low income persons & senior citizens, related commercial development, rural housing projects, group homes or halfway houses, & demolish slums	Rates & charges; revenue bonds
Joint municipal utility authorities	2011	Ch. 39.106	N.A.	Fed. of entities creating it	Two or more cities, counties, water-sew. dist., port dist., PUDS, etc., adopt	As specified in agreement	Provide water, sewers, drainage, or flood water facilities	Rates & charges, LIDs & special assessments
Joint operating agencies (JOA's)	1953	Ch. 43.52	Presum-ably regular	Fed. - PUD's & cities	Findings of Dir. of Dept. of Ecol. + agreement of two or more PUD's or cities	Either: a) 1 director from each member entity, appointed; or b) if have nuclear plant, then also 9 member exec. committee w. 3 from board of directors & 6 outside members (3 appointed by board & 3 by Governor)	Generate, transmit and sell electrical energy	Rates & charges; revenue bonds
Joint park & recreation dist.	1979	36.68.420+	Regular	Indep.	Ballot prop.	5 commissioners, elected	Provide leisure time activities & facilities & recreation facilities, incl. sr. citizen & community centers	Voter approved regular prop. Taxes; voter approved excess levies; charges & fees; LID's; revenue bonds; G.O. bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Library capital facility area	1995	Ch. 27.15	Regular	Sub. of county or Fed. of two or more counties	Ballot prop.	3 members of county legislative authority, as follows: a) *ex offico* if only 3 members; b) appointed if more than 3 members on co. leg. authority; c) appointed by co. leg. authorities if in more than one county	Provide library capital facilities	Voter approved, excess property taxes to retire bonds; G.O. bonds
Metropoli-tan municipal corp's (metro's)	1957	Ch. 35.58 & 35.97	Regular	Fed. or sub. - county & cities unless county assumes it	Ballot prop.	Either: a) Elected officials appointed by component counties & cities per agreement; or b) county leg. authority if metro assumed by county	Water pollution abatement; water supply; public transportation; garbage disposal; parks and parkways; advisory comprehensive planning	Voter approved excise taxes; voter approved excess levies; LID's; G.O. bonds; rev. bonds; rates & charges
Metropoli-tan park dist.	1907	Ch. 35.61	Regular	Either: a) indep.; or b) or partial subdiv.; or c) or subdiv.	Ballot prop.	Either: a) 5 commissioners, elected; b) city or county officials, *ex officio*; or c) other per interlocal contract	Provide parks, recreation, boulevards, aviation landings, playgrounds, bath houses, sell food stuffs & merchandise, & park police	Non-voter approved regular property taxes; voter approved excess levies; rates & charges; G.O. bonds
Mosquito control dist.	1957	Ch. 17.28	Regular	Partial sub. - county	Ballot prop.	At least 5 trustees, appointed by co. leg. authority & included cities	Exterminate mosquitos,dealare landowners responsible for controlling mosquetos	Cause expenses of control as lien on property; assessments for district operations; excess voter approved property taxes; G.O. bonds
Park and recreation dist.	1957	Ch. 36.69	Regular	Indep.	Ballot prop.	5 commissioners, elected	Provide leisure time activities & facilities, and recreational facilities incl. senior & community centers	Voter approved regular prop. taxes; voter approved excess levies; charges & fees; LID's; revenue bonds; G.O. bonds
Park and recreation service areas	1963	36.68.400 +	Regular	Sub. - county or fed. of a county and city	Ballot prop.	Either: a) County legislative authority, *ex officio*; or b) any composition by interlocal agreement between county and city	Provide park, senior citizen centers, zoos, aquariums, & recreation facilities	Voter approved regular prop. taxes; voter approved excess levies; charges & fees; G.O. bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Pest dist. (6)	1919	Ch. 17.12	N.A.	Partial sub. - county & State	Resolution of 1 or more county leg. auth.'s	1 supervisor who is county agricultural expert, or a county commissioner, or someone appointed by county	Exterminate pests, including squirrels, prairie dogs, gophers, moles, & other animals that destroy crops, fruit trees, or valuable plants	None (6)
Port dist.	1911	Title 53	Regular	Indep.	Ballot prop.	3 or 5 commissioners, elected	Maritime shppping facilities; airports; gen. industrial facilities; gen. commercial facilitits; marinas; economic development; sewer & water facilities; parks; police dept.; fire dept.	Non-voter approved & voter approved prop. taxes; rates and charges; LID's; revenue bonds; G.O. bonds
Public facilities dist.	1988 & 1999	Ch. 36.100 & Chap. 35.57	Regular	Partial sub. - county & cities or county & state	Resolution of 1 or more county leg. auth.'s	Varied factors; 5 or 7 directors, either: a) appointed by counties & cities; or b) 3 appointed by Governor & remainder by co. leg. author in King County	Provide public events centers; sports, entertainment, or convention center facilities, regional centers, & contiguous parking facilities; or baseball stadium if located in county w. 1 million or more pop.	Charges & fees; voter approved excise taxes; voter approved excess property tax levies; revenue bonds; G.O. bonds
Public hosp. cap. facility areas	2009	Ch. 70.265	Regular	Partial sub. - county	Petition & action by county leg. authority	Three members of county legislative authority	Construct, acquire, & remodel public hosptial capital facilities	G.O. bonds & exces levies
Public hospital dist.	1945	Ch. 70.44	Regular	Indep.	Ballot prop.	3 or 5 commissioners, elected	Provide hospital & other health care services; ambulances	Non-voter approved regular prop. taxes; voter approved excess levies; charges; revenue bonds; G.O. bonds
Public stadium authorities	1997	Ch. 36.102	Regular	Partial sub. - state & possibly county	Resolution of 1 or more county leg. auth.'s	7 directors appointed by Governor	Provide open-air stadium suitable for professional football & Olympic soccer; exhibition center; associated parking facilities	Naming rights; donations; charges & fees
Public transit benefit areas (PTBA's)	1975	Ch. 36.57A	Regular	Fed. - county & cities	Resolution of conference (county leg. authority & 1 elected official of each included city)	Body composed of county leg. authority & 1 elected official of each included city	Provide public transportation service, incl. buses, tramways, overhead railways, moving sidewalks, passenger terminals & parking facilities	Fares & charges; voter approved excise taxes

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Public utility dist. (PUD's)	1931	Title 54	Regular	Indep.	Ballot prop.	3 or 5 commissioners, elected	Generate and distribute electrical energy, provide domestic water supply; irrigation; sewers	Rates and charges; nonvoter approved prop. taxes; LID's; revenue bonds; G.O. bonds
Reclamation dist.	1927	Ch. 89.30	Regular	Indep.	Ballot prop.	Any number of directors equal to 1 from each director district established by county when dist. created	Provide irrigation, water, & drainage systems; develop & sell electrical energy; regulate land settlements	Voter approved regular prop. taxes; special assessments; tolls; G.O. bonds; revenue bonds
Regional transit authorities (RTA's)	1992	Ch. 81.112	Regular	Fed. - counties	Ballot prop.	Board members as determined by county leg. auth.'s w. 1 per 145,000 pop., then in proportion to pop.'s of different counties; appointed by county executives	Provide high capacity transportation systems	Tolls & fares; voter approved sales and use taxes; voter approved business excise taxes; non-voter approved sales taxes on car rentals; G.O. bonds; revenue bonds
Regional transporta-tion investment dist. (RTIDs)	2002	Ch. 36.120	Regular	Fed. - counties	Capital planning committee action + county leg. auth. approval + ballot proposition	Members of county leg. authorities of participating counties (any co. w. pop. of 1.5 mill. + may have each adjacent co. w. pop. of .5 mill.)	Provide capital improvements to highways of state significance, adding lanes to st. or fed. highway, associated approaches, park & ride lots, buses, vans, HOV lanes, & some local arterials	Voter approved excise taxes; tolls; G.O. bonds
Road dist. (7)	1854	Various (6)	Regular	Sub. - county	Resolution of county leg. auth.	Presumably, county legislative authority, *ex officio* (7)	Presumably to fund county roads (7)	Presumably non-voter approved regular property taxes & voter approved excess property tax levies (7)
Rural county library dist.	1941	Ch. 27.12	Regular	Partial sub. - county	Ballot prop. or resolution of co. leg. authorities	5 trustees, appointed by co. leg. authority	Provide library facilities and services	Non-voter approved regular prop. taxes; voter approved excess levies; G.O. bonds
Rural partial-county library dist.	1993	27.12.470	Regular	Partial sub. - county	Ballot prop. or resolution of co. leg. authorities	5 trustees, appointed by co. leg. authority	Provide library facilities and services	Non-voter approved regular prop. taxes; voter approved excess levies; G.O. bonds
School dist. (8)	1854	Title 28A	Regular	Partial sub. - state (8)	Votor petition; approval by bds of directors; agreement of school dist's; ballot prop.	5 or 7 directors, elected	Provide common schools; playgrounds; libraries; night schools; student transportation; sports; lunchrooms	State & federal moneys; voter approved excess property tax levies; G.O. bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Separate legal authorities	1981 & 1983	87.03.018 & 87.03.825+	Depends on the creating entity	Subdiv. or fed.	Action of 1 or more irrig. dist, city, or PUD	Presumably as designated when created	Generate hydro electrical energy from irrigation or drainage facilities	Rates & charges
Service dist.	1983	Ch. 36.83	Regular	Sub. - county	Resolution of 1 or more county leg. auth.'s	3 commissioners, appointed by county leg. authority or executive	Provide capital funding for bridges, roads, & highways	Voter approved excess property tax levies; LID's; G.O. bonds
Sewerage improve-ment dist. (9)	1923	Ch. 85.08	Prop. owners	Indep. or sub. - county	? (9)	Either: a) 3 supervisors, elected; or b) county engineer	Provide sewage disposal & treatment, including on-site & off-site systems	Special assessments
Shellfish protection dist.	1985	90.72	Regular	Sub. - county	Ordinance by county leg. author.	County leg. Authority	Eliminate stormwater contaminants; monitor; inspect; education	Recieves county tax rev.; inspection fees; & rates and charges
Solid waste disposal dist.	1982	Ch. 36.58	Regular	Sub. - county	Resolution of 1 or more county leg. auth.'s	County legislative authority, *ex officio*	Provide solid waste disposal	Fees; excise taxes; voter approved property tax levies; G.O. bonds; revenue bonds
Transporta-tion benefit dist.	1987	Ch. 36.73	Regular	Sub. - county	Resolution of co. leg. auth. or city council	County legislative authority or city council, *ex offici* o	Provide roads, streets, or highways	Voter approved excess property tax levies; G.O. bonds; LID's; development fees
TV reception improvement dist.	1971	Ch 36.95	Regular	Partial sub. or sub. - county	Resolution of 1 or more county leg. auth.'s	Either: a) 3,5,7, or 9 members appointed by county leg. authority; or b) county leg. authority, *ex officio*	Provide TV reception and transmission facilities	Excise taxes
Unincopr. transp. benefit areas	1975	36.57.100 & 36.57.110	Regular	Sub. - county	Resolution of co. leg. author.	County leg. authority	Provide publilc transportation services	Presumably rates, tolls, & charges
Urban emergency medical service dist.	1994	35.21.762	Regular	Sub. - city	Resolution of city council	City council, *ex officio*	Provide EMS services	Regular prop. tax, voter approved
Water-sewer dist. (10)	1913	Title 57	Regular	Indep.	Approval of co. leg. auth. & allot proposition	3, 5, or 7 commissioners, elected	Provide water systems, sanitary sewers, storm sewers; heating systems; street lighting	Rates & charges; LID's; voter approved excess levies; G.O. bonds; revenue bonds

Entity	Year (1)	RCW's	Voting (2)	Nature (3)	How created (4)	Governing body (5)	General powers	Finances
Weed dist.	1921	Ch. 17.04	Prop. owners	Indep.	Resolution of 1 or more county leg. auth.'s	3 directors, elected	Adopt rules & plans for destroying & preventing noxious weeds, require removal of weeds, destroy weeds	Charges on parcels for removing weeds; assessments for district expenses

NOTES:

1) Year legislation enacted authorizing the special purpose district.
2) Type of franchise or voting rights.
3) Nature of special purpose district, e.g.: (a) Independent (Ind.) if no special relationship exists between the special purpose district and another government; (b) Partial subdivision (Partial sub.) if some special relationships exist between the special purpose district and another government; (c) Subdivision (Sub.) if considerable special relationships exist between the special purpose district and two or more other governments. The other government or governments with special relations to the special purpose district are shown.
4) Normally created by voter approval of a ballot proposition or sometimes by action or resolution of a governing body, which is normally the county legislative authority. Sometimes additional action required beyond approval by a boundary review board where applicable.
5) Describes the governing body of the special purpose district, i.e., number of members, what it is called, and how members obtain these positions (elected, appointed, or *ex officio*.)
6) These are very incomplete statutes with the funding authority being repealed in 1973.
7) Road districts are an anomaly. Presumably they are separate units of government since they are used for purposes of imposing property taxes for county road purposes, but they have no authorities under current law. The few existing road district statutes are scattered throughout the state statutes, e.g., RCW 36.75.060, 36.82.020, 84.52.010, and 84.52.043.
8) A number of different types of school districts are authorized, including: (a) Four different types of 1st class school districts; (b) 2nd class school districts; (c) city or town districts (RCW 28A.315.520); and (d) joint school districts (RCW 28A315.350 - .440). School districts are unique in that an extremely close relationship exists between them and the State through the Superintendent of Public Instruction, State Board of Education, and educational service districts which somewhat resemble special purpose districts but are actually regional state agencies created by the State Board of Education. Originally, these special relationships were with counties.
9) Laws providing for sewerage improvement districts are not clear. There no longer are provisions for creating these districts or for voting rights in these districts. No sewerage improvement district appears to exist in the state. However, records indicate that a sewerage improvement district existed in Grays Harbor County that somehow began operating as a sewer district in the 1950's.
10) Separate laws providing for water districts and sewer districts were combined in 1996 and these districts now are called water-sewer districts. At least prior to that date water districts (authorized in 1913) and sewer districts (authorized in 1941) were separate special purpose districts.

APPENDIX F

Local Government Powers of Eminent Domain

Entity	Statutes authorizing
Counties	General provisions Ch. 8.08 RCW; plus RCW 14.07.020, 14.08.030, 36.37.020, 36.54.010, 36.54.020, 36.57.040(7), 36.57A.090(2), 36.58A.030, 36.64.070, 36.68.010, 36.75.040(3), 36.75.160, 36.75.170, 36.75,180, 36.75.210, 36.75.230, 36.81.110, 36.85.010, 36.88.310, 36.89.030, 36.94.020, 36.94.240, 67.28.020, 85.08.190, 86.12.020, 86.12.030, 86.12.040, 91.08.100, 91.08.160, & 91.08.250
Cities & towns	General provisions Ch. 8.12 RCW; plus RCW 14.07.020, 14.08.030, 35.21.020, 35.21.110, 35.21.152, 35.21.190, 35.23.440(45), 35.27.570, 35.30.020, 35.41.010, 35.43.042, 35.44.020(6), 35.55.040, 35.56.060, 35.59.030, 35.59.050, 35.67.020, 35.80A.010, 35.81.070, 35.81.080, 35.84.020, 35.84.030, 35.86.030, 35.86A.080(2)(c), 35.92.010, 35.92.020, 35.92.030, 35.92.050, 35.92.054, 35.92.060, 35.92.190, 35.92.220, 35.92.310, 35.94.040(2), 35A.11.030, 35A.64.200, 67.20.010, 67.30.020, 68.24.180
Cemetery districts	RCW 68.52.200
City transportation auth.	RCW 35.95A.050
County airport districts	RCW 14.08.030
County rail districts	RCW 36.60.070
County transporta-tion authorities	RCW 36.57.040

Entity	Statutes authorizing
Diking districts	RCW 85.05.070, 85.05.230, 85.05.240, 85.05.380, 85.38.180(5)
Diking or drainage improvement districts	RCW 85.24.070, 85.24.260, 85.24.261, 85.24.265, 85.38.180(5)
Drainage districts	RCW 85.06.070, 85.06.350, 85.06.660, 85.06.690, 85.07.170, 85.38.180(5)
Fire protection districts	RCW 52.12.021, 52.12.041, 52.12.051
Fire prot. service authorities	RCW 52.26.090
Flood control districts	RCW 86.09.151, 86.09.202, 86.09.205, 86.09.208, 86.09.211, 86.09.217, 86.09.220, 86.09.223, 85.38.180(5)
Flood control zone dist.	RCW 86.15.080(5)
High cap. trans. corridor areas	81.104.200
Housing author's	RCW 35.82.110
Irrigation districts	RCW 87.03.018, 87.03.137, 87.03.140, 87.03.145, 87.03.150, 87.80.130(1)
Irrig. & rehab. districts	RCW 87.84.060
Joint municipal utility authorities	RCW 39.106.040
Joint operating agencies	RCW 43.52.300, 43.52.391
Metro. municipal corporations	RCW 35.58.320, 35.58.200(2), 35.58.220(2), 35.58.240(2), 35.58.250, 35.58.280(2), 35.58.290(2)
Metropolitan park districts	RCW 35.61.130
Mosquito control districts	RCW 17.28.160(3)
Park & rec. service areas	RCW 36.68.555

Entity	Statutes authorizing
Port districts	RCW 14.07.020, 14.08.030, 53.08.010, 53.08.020, 53.20.050, 53.25.010, 53.25.190, 53.25.250, 53.34.010, 53.34.170
Public hospital districts	RCW 35.82.070(5), 35.82.110, 35.82.285
Public transp. ben. areas	RCW 35.57A.090(2)
Public utility districts	Chap. 54.20 RCW; RCW 54.04.100, 54.16.020, 54.16.030, 54.16.040, 54.16.050, 54.16.050, 54.16.150, 54.16.200, 54,16,220, 54.24.018, 54.32.040
Reclamation districts	RCW 89.30.130, 89.30.184, 89.30.187, 89.30.190, 87.30.193, 89.30.202, 89.30.208, 89.30.220
Regional transit author.	RCW 81.112.080
School districts	Chap. 8.16 RCW; RCW 28!.335.220
Service districts	RCW 36.83.090
Sewer districts	RCW 57.08.005(1)&(5)
Transportation ben. dist.	RCW 36.73.130
TV reception improve. districts	N.A.
Water districts	RCW 57.08.005(1)&(5)

Appendix G

Counties Planning Under All Growth Management Act Requirements

County	1996 pop.	How became required	Date became required
King	1,628,800	Required, large	7/1/90
Pierce	665,200	Required, large	7/1/90
Snohomish	538,100	Required, large	7/1/90
Spokane	406,500	Required, large	7/1/93
Clark	303,500	Required, large	7/1/90
Kitsap	224,700	Required, large	7/1/90
Yakima	207,600	Required, large	7/1/90
Thurston	193,100	Required, large	7/1/90
Whatcom	152,800	Required, large	7/1/90
Benton	131,000	Opted in*	10/1/90
Skagit	95,500	Required, large	7/1/90
Island	70,300	Required, large	7/1/90
Lewis	66,700	Required, large	7/1/93
Grant	66,400	Required, large	7/1/91
Clallam	65,000	Required, large	7/1/90
Chelan	61,300	Required, large	7/1/90
Walla Walla	48,500	Opted in	10/30/90
Mason	46,700	Required, small	7/1/90
Franklin	43,700	Opted in	10/30/90
Stevens	36,600	Opted in	9/28/93
Kittitas	30,800	Opted in	12/1/90
Douglas	30,400	Opted in*	10/1/90
Jefferson	25,700	Required, small	7/1/90

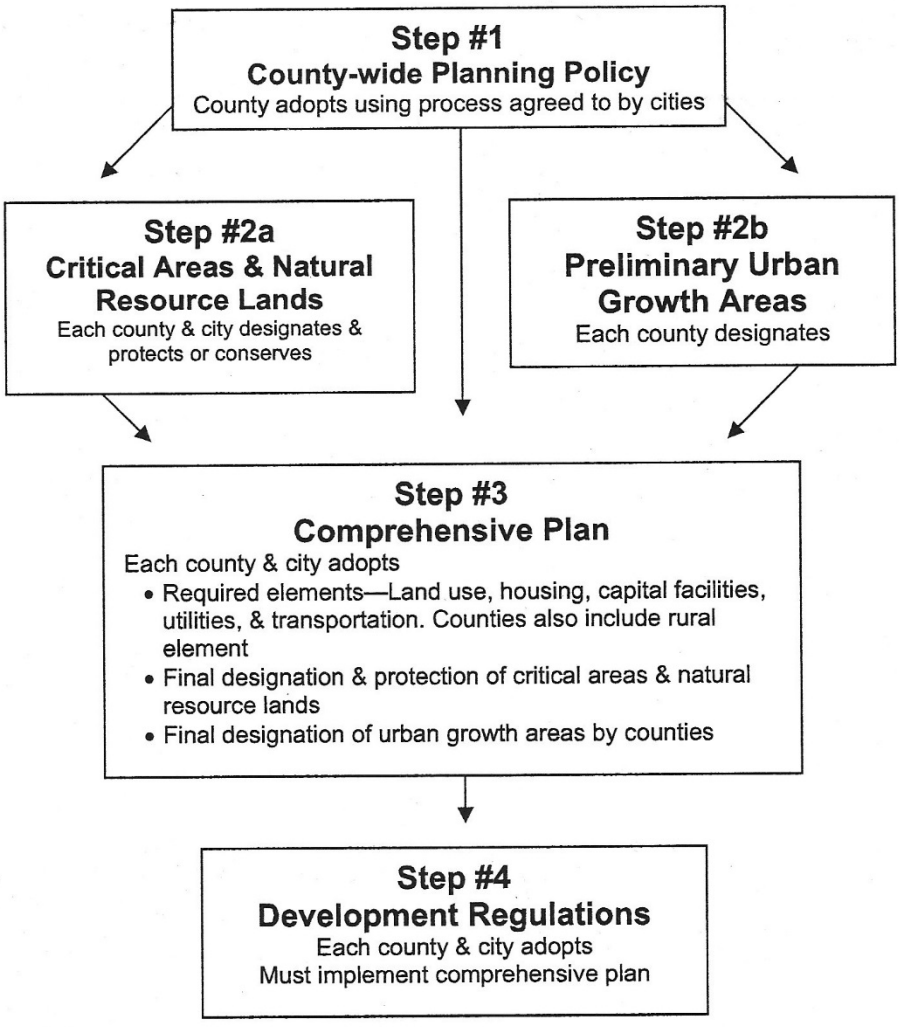
County	1996 pop.	How became required	Date became required
Pacific	21,100	Opted in	10/30/90
San Juan	12,400	Required, small	7/1/90
Pend Oreille**	11,100	Opted in	12/28/90
Ferry**	7,200	Opted in	12/27/90
Columbia**	4,200	Opted in	9/1/91
Garfield**	2,400	Opted in	10/1/91

* = Later met population and growth factors to be required to plan under all GMA requirements.

** = May opt to partially plan under GMA.

Appendix H

Growth Management Act Requirements
Phased Development



Appendix I

Local Government Budget Requirements

Local gov't entities	Statutes (RCW's)	Budget required	Procedural details	Budget item detail	Mandatory dates	Hearing required	State agency regulations [1]	Expenditures must follow
Air pollution control auth.	70.94.092	Yes	None	Some	One	No	None	No
Counties	Ch. 36.40; 36.82.160 - .200, 36.56.060, 36.62.180(4), 36.68.060(7), 36.81.130, 36.92.040	Yes	Many	Many	Several [2]	Yes	State Auditor generally, County Road Admin. Bd. for road budget	Yes
Cities & towns [3]	Ch. 35.32A, 35.33, 35.34, 35A.33, 35A.34	Yes	Many	Many	Several	Yes	State Auditor	Yes
Cemetery dist.	68.52.290	Yes	None	None	Sort of [4]	No	None	No
Diking dist.	85.38.140, 85.38.170	Only new districts	Some	None	One	On assess-ment roll	None	No
Drainage dist.	85.38.140, 85.38.170	Only new districts	Some	None	One	On assess-ment roll	None	No
Ferry dist.	36.54.150	Yes	No	No	No	No	None	No
Fire prot. dist.	52.16.030	Yes	None	None	Sort of [4]	No	None	No
Fire prot. service auth.	52.26.090	By infer-ence	None	None	Sort of [4]	No	None	No
Flood cont. dist.	86.09.466 - .487	Yes	Some	None	Several	On assess-ment roll	None	No
Flood cont. zone dist.	86.15.140	Yes	None	Some	None	Yes	None	No
Health dist.	70.46.060	Possible inference	?	?	?	?	?	?
Irrigation dist.	87.25.140, 87.80.140 - .180	If certify bonds or joint dist.	None	None	One	Only if joint district	None	No
Library dist.	27.12.050, .210, & .220	Yes	Some	Some	None	No	None	No
Metro's	35.58.410(1)	Yes	None	Some	One	None	None	No

Local gov't entities	Statutes (RCW's)	Budget required	Procedural details	Budget item detail	Mandatory dates	Hearing required	State agency regulations [1]	Expenditures must follow
Park & rec. dist.	36.69.160 & .170	Yes	None	None	None	No	State Auditor	Yes
Park & rec. serv. areas	36.68.530	Yes	None	None	None	No	State Auditor	No
Port dist.	Ch. 53.35	Yes	Some	None	Several [2]	Yes	None	No
Public hospital dist.	70.44.060(6)	Yes	Some	None	Several	Yes	None	No
PUD's	54.16.080	Yes	None	None	Several	Yes	None	No
School dist.	Ch. 28A.505	Yes	Many	Many	Several	Yes	Superintendent of Public Instruction	Yes
TV benefit improve. dist.	36.95.090 [5]	Yes	Many	Many	Several	Yes	State Auditor	Yes

NOTES:

1 In several instances a state agency is authorized to establish additional requirements for budgets of a particular type of local government entity.

2 A number of specific deadlines are set in statute for budget preparation and adoption by counties and port districts. However counties and port district may deviate from these specified deadlines. An alternative date is permitted for the county legislative authority to hold the budget hearing and allows the county legislative authority to specify alternative dates for other specified deadlines. Similarly, an alternative date is permitted by which port commissions must file a copy of the final budget with the county and allows the port commission to specify alternative dates for other specified dates.

3 Separate laws exist for different types of cities and towns. Chapter 35.32A RCW applies to annual budgets by a city with a population of 300,000 or more. Chapter 35.33 RCW applies to annual budgets by non-code cities and towns and is substantively identical with Chapter 35A.33 RCW which applies to annual budgets by code cities. Chapter 35.34 RCW applies to optional biennial budgets by non-code cities and towns and is substantively identical with Chapter 35A.34 RCW which applies to optional biennial budgets by code cities.

4 Not a precise date, but a requirement that the budget must be submitted to the county "in ample time" for property taxes to be levied.

5 References requirements for county budgets in Chapter 36.40 RCW.

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"An Act, to create and establish the office of County Auditor", passed on January 31, 1853, and

found on pages 53-55 of "General Laws Passed by the Legislative Assembly of the Territory of Oregon at the Fourth Regular Session Begun ... December 6, 1852".

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Referendum Measure No. 48, approved by state voters at the 1995 general election, defeating Initiative to the Legislature No. 164, which was enacted as Chapter 98, Laws of 1995.
Sections 501 & 1703, Chapter 230, Laws of 1996.
Chapter 292, Laws of 1996.
Chapter 36, Laws of 1997.
Section 1, Chapter 256, Laws of 1997.
Section 10, Chapter 361, Laws of 1997.
Referendum Bill No. 48, Chapter 220, Laws of 1997.
Chapter 437, Laws of 1997.
Section 4, Chapter 447, Laws of 1997.
Chapter 165, Laws of 1999.
Section 1(2), Chapter 315, Laws of 1999.
Initiative Measure No. 695 in 1999.
Initiative Measure No. 728.
Initiative Measure No. 732.
Section 3, Chapter 33, Laws of 2001.
Section 4 & 5, Chapter 73, Laws of 2001.
Chapter 212, Laws of 2001.
Chapter 1, Laws of 2002.

Section 1, Chapter 9, Laws of 2002.
Chapter 56, Laws of 2002.
Section 1, Chapter 84, Laws of 2002.
Chapter 88 (including Section 7), Laws of 2002.
Chapter 248, Laws of 2002.
Section 6, Chapter 1, Laws of 2003.
Chapter 42, Laws of 2003.
Chapter 79, Laws of 2003.
Sections 301-309, Chapter 83, Laws of 2003.
Section 2404, Chapter 111, Laws of 2003.
Section 1, Chapter 304, Laws of 2003.
Section 1, Chapter 309, Laws of 2003.
Chapter 331, Laws of 2003.
Section 2, Chapter 24, Laws of 2003, 1st sp. sess.
Section 170, Chapter 75, Laws of 2004.
Section 1, Chapter 80, Laws of 2004.
Chapter 129, Laws of 2004.
Chapter 271, Laws of 2004.
Chapter 77, Laws of 2005.
Chapter 122, Laws of 2005.
Section 1, Chapter 242, Laws of 2005.
Sections 6 & 7, Chapter 243, Laws of 2005.
Chapter 274, Laws of 2005.
Chapter 313, Laws of 2005.
Chapter 336 (including Sections 1(3), 15, 18(2) & 19), Laws of 2005.
Section 2, Chapter 482, Laws of 2005.
Sections 1 & 4, Chapter 450, Laws of 2005.
Chapter 457 (including Section 8), Chapter 457, Laws of 2005.
Chapter 311 (including Sections 5, 5(8), 7, 8(2), 12(10), 20, & 25), Laws of 2006.
Section 1, Chapter 344, Laws of 2006.
Chapter 348, Laws of 2006.
Sections 1–4, Chapter 31, Laws of 2007.
Section 1, Chapter 382, Laws of 2007.
Chapter 309, Laws of 2008.
Section 1, Chapter 15, Laws of 2009.
Section 1, Chapter 40, Laws of 2009.
Section 1, Chapter 115, Laws of 2009.
Chapter 144, Laws of 2009.
Chapter 481, Laws of 2009.

Chapter 548, Laws of 2009.

Chapter 7, Laws of 2010.

Chapter 126, Laws of 2010 (including Section 2).

Chapter 236, Laws of 2010.

Chapter 85, Laws of 2011.

Sections 4, 6 & 9, Chapter 92, Laws of 1911

Chapter 258, Laws of 2011.

Section 2, Chapter 349, Laws of 2011.

Chapter 47, Laws of 2012.

Initiative Measure No. 1240.

Section 4, Chapter 62, Laws of 1913.

Chapter 161 (including Section 10), Laws of 1913.

Chapter 177 (including section 6), Laws of 2013.

Section 2, Chapter 15, Laws of 2014.

Chapter 51, Laws of 2014.

Section 1, Chapter 147, Laws of 2014.

Initiative Measure No. 1351.

Chapter 17, Laws of 2015.

Chapter 35, Laws of 2015.

Chapter 40, Laws of 2015.

Chapter 135, Laws of 2015.

Chapter 35, Laws of 2015 3rd Sp. Sess.

Sections 318-330, 321, 422, & 423, and Chapter 44, Laws of 2015 3rd sp. sess.

F. Washington State Codified Statutes

Pierce's Code 1929, §§ 7100-79 & 7100-80.

Remington Revised Statutes §§ 4791, 4812, 4824, 5144, & 5150.

Remington Revised Statutes §11407.

Remington Revised Statutes §§ 11445 & 11481.

Chapter 2.06 RCW.

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RCW 3.66.010, 3.66.020, & 3.66.070.

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RCW 29A.12.020, 29A.12.050, 29A.12.085, 28A.12.130, & 29A.12.140.

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36.70A.172, 36.70A.200, 36.70A.210 (including subsections (1), (3)(b) & (3)(c)), 36.70A.350, 36.70A.360, 36.70A.365, & 36.70A.367.

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RCW 39.28.030.

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RCW 39.36.010 & RCW 39.36.020 (including subsections (1), (2)(a), (2)(a)(ii), (2)(b), (3), (4), & (8)).

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