

CHAPTER 189.

[Substitute House Bill No. 37.]

BOUNDARY REVIEW BOARDS.

AN ACT relating to state and local government; establishing and providing for the establishment of boundary review boards; prescribing their powers, duties and functions; prescribing the powers, duties and functions of certain public officers and agencies in relation thereto; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Section 1. The legislature finds that in metropolitan areas of this state, experiencing heavy population growth, increased problems arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries. These problems affect adversely the quality and quantity and cost of municipal services furnished, the financial integrity of certain municipalities, the consistency of local regulations, and many other incidents of local government. Further, the competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided and that residents and businesses in those areas may rely on the logical growth of local government affecting them.

Local government—Boundary review boards—Declaration of purpose.

Sec. 2. As used herein:

Definitions.

(1) "Governmental unit" means any incorporated city or town, metropolitan municipal corporation, or any special purpose district as defined in this section.

Local government—Boundary review boards.

(2) "Special purpose district" means any sanitary district, sewer district, water district, fire protection district, drainage improvement district, drainage and diking improvement district, flood control zone district, irrigation district, metropolitan park district, drainage district, public utility district engaged in water distribution, or water distribution district.

(3) "Board" means a boundary review board created by or pursuant to this act.

Creation in class AA and A counties—Optional in first class counties, procedure.

Sec. 3. There is hereby created and established in each class AA and class A county a board to be known and designated as a "boundary review board". A boundary review board may be created and established in any first class county with a population over one hundred seventy thousand in the following manner:

(1) The board of county commissioners may, by majority vote, adopt a resolution establishing a boundary review board; or

(2) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the board of county commissioners, together with his certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the board of county commissioners shall submit the question of whether a boundary review board should be es-

tablished to the electorate at the next county primary or county general election which occurs more than thirty days from the date of receipt of the petition. Notice of the election shall be given as provided in RCW 29.27.080 and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established.

Sec. 4. For the purposes of this act, counties other than class AA and class A shall be deemed to have established boundary review boards on and after the date a proposition for establishing the same has been approved at an election as provided for in section 3, or on and after the date of adoption of a resolution of the board of county commissioners establishing the same as provided for in section 3.

First class counties, date deemed created.

Sec. 5. After the effective date of this act, the governor shall within forty-five days appoint a board for each class AA and class A county consisting of eleven members as provided for in this section. After a board has been established in a county other than class AA or class A by resolution or by approval of the electors after an election initiated by petition the governor shall appoint a board within forty-five days for each such county consisting of eleven members as provided for in this section.

Boundary review boards—
Appointment of members—
Terms—
Vacancies—
Nominations—
Limitations.

Of the members of the first board to be appointed in class AA and class A counties after the taking effect of this section, one-third shall have terms expiring January 1, 1970, one-third shall have terms expiring January 1, 1972, and one-third shall have terms expiring January 1, 1974. When any other county establishes such a board, the expiration date of the initial terms of the members of the board shall be adjusted so that one-third of the

Boundary re-
view boards—
Appointment
of members—
Terms—
Vacancies—
Nominations—
Limitations.

terms shall be at least two years, but less than four years, one-third shall be at least four years, but less than six years, and one-third shall be not less than six years nor more than eight years, and such terms shall expire January 1st of an even-numbered year. Upon the expiration of the terms of the initial members first to be appointed, each succeeding member shall be appointed and hold office for a term of six years.

Any vacancy on the board shall be filled by appointment by the governor from the same source as the preceding member, which source shall have the opportunity to make new nominations for the vacated position, and such appointee shall serve only for the balance of the full term of his predecessor.

Each boundary review board shall consist of eleven members all of whom shall be residents of the county in which the review board is established. Three members shall be selected independently by the governor and the remaining eight members shall be selected by the governor from the following sources:

(1) Three members shall be selected from nominees of the individual mayors of the cities and towns within the county;

(2) Three members shall be selected from nominees of the individual members of the board of county commissioners; and

(3) Two members shall be selected from nominees of each special purpose district lying wholly or partly within the county. Selection shall be made so that the terms of not more than one appointee from each source expires in any one year.

Nominations shall be filed with the office of the governor within thirty days after the effective date of this act, within thirty days after the creation of a boundary review board by election or resolution as provided in section 3, or within thirty days of the

creation of a vacancy on the board, as appropriate. Nominations to fill vacancies caused by expiration of terms shall be filed at least thirty days preceding the expiration of the terms. Each source shall nominate at least two persons for every available position. In the event there are less than two nominees for any position, the governor may appoint the member for that position independently.

No nominee for membership and no member shall be a consultant or adviser on a contractual or regular retaining basis of the state of Washington, or of any municipal corporation thereof within the county in which the board is established, or any agency or association thereof.

NOTE: See also section 1, chapter 98, Laws of 1967 ex. sess.

Sec. 6. In counties other than class AA or class A, if the resolution or petition establishing the board so provides, the board shall consist of five members, selected as follows:

- (1) Two by the governor, independently;
 - (2) One from nominees of the individual mayors of the cities and towns within the county;
 - (3) One from nominees of the individual members of the board of county commissioners; and
 - (4) One from nominees of each special purpose district lying wholly or partly within the county.
- Nomination shall be made and vacancies filled in the manner provided in section 5.

Boards established pursuant to this section shall not meet in panels. In all other respects, such boards shall organize and operate as generally provided in this act.

Sec. 7. The members of each boundary review board shall elect from its members a chairman, vice chairman, and shall employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of

Composition
of board—
Other than
class AA or A
counties.

Boundary re-
view boards—
Officers—Per
diem—Source
of funds.

Boundary review boards—
Officers—Per diem—Source of funds.

business and shall provide by resolution for the time and manner of holding all regular or special meetings, and shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him to testify before the board and produce public records, papers, books or documents. The chief clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

The board by rule may provide for hearings by panels of members consisting of not less than five board members, the number of hearing panels and members thereof, and for the impartial selection of panel members. A majority of a panel shall constitute a quorum thereof.

At the request of the board, the state attorney general, or at the board's option, the county prosecuting attorney, shall provide counsel for the board.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

Each member of the board shall be compensated from the county current expense fund at the rate of twenty-five dollars per day, or a major portion thereof, for time actually devoted to the work of the boundary review board. Each board of county commissioners shall provide such funds as shall be necessary to pay the salaries of the members and staff, and such other expenses as shall be reasonably necessary.

Sec. 8. Expenditures by the board shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties.

Expenditures
—Budget law.

Sec. 9. Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

Notice of proposed local government action required
—When.

- (1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district; or
- (2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town.

Sec. 10. The board shall review and approve, disapprove, or modify any of the actions set forth in section 9 when any of the following shall occur within sixty days of the filing of a notice of intention:

Board to review proposed local government action.

- (1) The chairman or any three members of the boundary review board files a request for review;
- (2) Any governmental unit affected files a request for review;
- (3) A petition requesting review is filed and is signed by
 - (a) five percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the boundary review board in its discretion subject to immediate review by writ of certiorari to the superior court); or
 - (b) an owner or owners of property consisting of five percent of the assessed valuation within such area.

Local govern-
ment—Bound-
ary review
boards-

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

Annexation—
When review
not necessary.

Sec. 11. In case of annexation to a city or a town, where the area proposed for annexation is less than ten acres and less than two hundred thousand dollars in assessed valuation, the chairman of the review board may by written statement declare that review by the board is not necessary for the protection of the interest of the various parties, in which case the board shall not review such annexation.

Review by
board—Costs
—Deposit.

Sec. 12. If the jurisdiction of the review board is invoked pursuant to section 10 of this act, the initiator of the proposal subjected to review and the person or entity seeking review, except for the boundary review board itself, shall each pay to the county treasurer and place in the county current expense fund the sum of one hundred dollars.

Notice of
intended ac-
tion—Con-
tents.

Sec. 13. The notice of intention shall contain the following information:

- (1) The nature of the action sought;
- (2) A brief statement of the reasons for the proposed action;
- (3) The legal description of the boundaries proposed to be created, abolished or changed by such action;
- (4) A county assessor's map on which the boundaries proposed to be created, abolished or changed by such action are designated.

Pending action
not affected.

Sec. 14. Actions described in section 9 which are pending at the effective date of this act, or actions in counties other than class AA or class A which are pending on the date of the creation of a boundary review board therein, shall not be affected by the provisions of this act. Actions shall be deemed pend-

ing on and after the filing of sufficient petitions initiating the same with the appropriate public officer, or the performance of an official act initiating the same.

Sec. 15. The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this act:

Action of
board after
review.

- (1) Approval of the proposal as submitted;
- (2) Modification of the proposal by adjusting boundaries to add or delete territory: *Provided*, That any proposal for annexation by the board shall be subject to RCW 35.21.010 and shall not add additional territory, the amount of which is greater than that included in the original proposal;
- (3) Determination of a division of assets and liabilities between two or more governmental units where relevant;
- (4) Determination whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district; or
- (5) Disapproval of the proposal.

Unless the board shall disapprove a proposal, the proposal as it may have been modified by the board shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people.

When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from

date of disapproval and shall again be subject to the same consideration.

Local govern-
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board—Hear-
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publication—
Procedure—
Appeal.

Sec. 16. (1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of such area and to the proponent of such change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing, and the notice shall also be posted in ten public places in the area affected for five days. If the board after such hearing shall determine to modify the proposal by adding territory, then the board shall set a date, time and place for an additional hearing on the modification, for which notice shall be given as provided in this subsection.

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of such testimony shall be provided to any person or governmental unit.

(3) The chairman upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the produc-

tion by him of any records, books, documents, public records or public papers.

(4) Within thirty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of such modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within ten days from the date of said action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal. The filing of such notice of appeal within such time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

Local govern-
ment—Bound-
ary review
board—Hear-
ing, notice,
publication—
Procedure—
Appeal.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Arbitrary or capricious.

An aggrieved party may secure a review of any final judgment of the superior court by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases.

Factors used
by board.

Sec. 17. In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive use plans and zoning; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities.

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services

from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units.

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

Sec. 18. The decisions of the boundary review board shall attempt to achieve the following objectives:

Objectives of board.

(1) Preservation of natural neighborhoods and communities;

(2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;

(3) Creation and preservation of logical service areas;

(4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries; and

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character.

Sec. 19. For a period of ten years from the date of the final decision, no proceeding, approval, action, or decision on a proposal or an alternative shall be deemed to cancel any franchise or permit theretofore granted by the authorities governing the

Decisions of board—Limitation on changes.

Local government—Boundary review boards.

territory to be annexed, nor shall it be deemed to supersede the application as to any territory to be annexed, of such construction codes and ordinances (including but not limited to fire, electrical, and plumbing codes and ordinances) as shall have been adopted by the authorities governing the territory to be annexed and in force at the time of the decision.

Adoption of procedure rules—Notice.

Sec. 20. Each review board shall adopt rules governing the formal and informal procedures prescribed or authorized by this act. Such rules may state the qualifications of persons for practice before the board. Such rules shall also include rules of practice before the board, together with forms and instructions.

To assist interested persons dealing with it, each board shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the board shall file notice thereof with the clerk of the court of the county in which the board is located. So far as practicable, the board shall also publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views either orally or in writing. Such notice shall include (1) a statement of the time, place, and nature of public rule-making proceedings, (2) reference to the authority under which the rule is proposed, and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

This paragraph shall not apply to interpretative rules, general statements of policy, or rules of internal board organization, procedure or practice.

Filing rules.

Sec. 21. Each board shall file forthwith with the clerk of the court a certified copy of all rules and

regulations adopted. The clerk shall keep a permanent register of such rules open to public inspection.

Sec. 22. Whenever a review board has been created pursuant to the terms of this act, the provisions of law relating to city annexation review boards set forth in chapter 35.13 RCW and the powers granted to the boards of county commissioners to alter boundaries of proposed annexations or incorporations shall not be applicable. Inconsistent laws—Construction.

Sec. 23. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. Severability.

Sec. 24. The effective date of this act is July 1, 1967. Effective date.

Passed the House February 21, 1967.

Passed the Senate March 6, 1967.

Approved by the Governor March 21, 1967.