

- The transfer of revenues and assets between the fire district(s) and the town;
  - A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;
  - A discussion with the fire district(s) regarding the division of assets and its impact to citizens inside and outside the newly-annexed area;
  - Community involvement, including an agreed upon schedule of public meetings in the area proposed for annexation;
  - Revenue sharing, if any;
  - Debt distribution;
  - Capital facilities obligations of the parties;
  - An overall schedule or plan on the timing of any annexations covered under the agreement; and
  - A description of which of the town's development regulations will apply in the area.
- The subject areas and policies and procedures the parties agree to undertake in annexations. These may include, but are not limited to:
- Roads and traffic impact mitigation;
  - Surface and storm water management;
  - Coordination and timing of comprehensive plan and development regulation updates;
  - Outstanding bonds and special or improvement district assessments;
  - Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;
  - Financial and administrative services; and
  - Consultation with other service providers, including water-sewer districts, if applicable.
- A term of at least five years, which may be extended by agreement of all the parties.

### **Notice to Boundary Review Board**

If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board, if one exists in the county. If the fire district, county, and town reach agreement on the enumerated goals, the jurisdiction of the board may not be invoked. If the town and county, but not the fire district, reach agreement on the goals, the annexation can proceed as discussed below, but the jurisdiction of the boundary review board review can now be invoked.

### **Ordinance/Referendum**

If the fire protection district, town, and county reach agreement on the enumerated goals, or if only the town and the county reach such agreement, the annexation can proceed. The town council approves the annexation by ordinance, but the ordinance is subject to referendum for 45 days after its passage, as follows:

- The petition must be signed by qualified electors representing not less than 10 percent of the number of votes cast in the last general state election in the area to be annexed. (An "elector" is not the same as a

registered voter, but rather is a person who is qualified to be a voter – 18 years of age or older, a U.S. citizen, and a resident of the jurisdiction for at least 30 days.)

- If a timely and sufficient petition is filed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within 90 days or at a special election under RCW 29A.04.330.
- Notice of the election must be given as provided in RCW 35A.14.070.
- The annexation is approved unless a majority of those voting on the proposition are in opposition to annexation.
- If no referendum petition is filed with the 45-day period, the area becomes annexed on the effective date stated in the annexation ordinance.

#### **Notice of Annexation** (RCW 35A.14.150, 35A.14.801, 84.09.030)

- **Notice to State (OFM Certification)** (RCW 35A.14.700). The town must submit an annexation certificate and additional supporting documents to the state Office of Financial Management (OFM) within 30 days of the effective date of annexation specified in the annexation ordinance. See OFM's webpages on Certification of Annexations: Procedures and Annexation and municipal boundary changes.

OFM files the approved annexation certificates on a quarterly basis. Filing dates are the last working days of November, February, May, and August. Annexations are not approved and filed until all of OFM's requirements are met. Revenues may be lost as a result of problems in the certification process, because revenue distributions are not backdated.

- **Special Notice to County Treasurer and Assessor, Light and Power and Gas Distribution Businesses, and, Where Applicable, to Fire District and Library District** (RCW 35A.14.801).

At least 60 days before the effective date of the annexation, the town is required by RCW 35A.14.801 to notify the county treasurer and assessor and light and power and gas distribution businesses of the annexation. The notice must be by certified mail or electronic means and must include a list of annexed parcel numbers and street addresses.

If the town annexes territory within a fire district and/or library district (and the town has not been annexed to such districts), it is required to provide the same notification to such district or districts. The county treasurer is required to remit only those road taxes and, where applicable, fire district and library district taxes collected 60 or more days after receipt of the notification. Light and power businesses and gas distribution businesses are only required to remit to the town those utility taxes collected 60 days or more after receipt of the notice.

Towns in counties that do not have a boundary review board and that annex territory of a fire district or library district must provide notice to such district(s) of the town's "resolution" approving the annexation. (The statute, RCW 35A.14.801, uses the term "resolution," but the town action approving an annexation is in the form of an ordinance, so the notice should be of the ordinance approving the annexation.) The notice must be by certified mail within seven days of the resolution (i.e., ordinance) approving the annexation, and it must include a description of the annexed area.

- **Other Notice.** For information regarding the notice that should be given to the county, the Department of Revenue, and town departments.

Notice to Department of Revenue. Sales tax changes may take effect only on January 1, April 1, or July 1. The term "sales tax changes," for purposes of this legislation, includes changes resulting from annexation (RCW 82.14.055(4)). Local governments must provide notice to the Department of Revenue (DOR) at least 75 days before the change takes place. RCW 82.14.055 does not specify what the "notice" to DOR must consist of, but a

copy of the annexation ordinance would likely be necessary. DOR suggests e-mail notification followed-up by a mailed paper copy.

## CITY/TOWN BOUNDARY LINE ADJUSTMENTS

RCW 35.13.300 - .340 provide procedures by which a code city's/town's boundaries may be adjusted to include (or exclude) area located within a public street, or where one parcel is located both within and without the city's/town's limits. The process for such adjustments applicable to code cities/towns is the same as that applicable to other cities and towns.

A code city/town may annex any contiguous, unincorporated area within four miles of its corporate limits by either

- (1) an ordinance acknowledging an agreement with the federal government to annex federal government land or
- (2) an ordinance accepting a gift, grant, or lease from the U.S. government of the right to occupy, control, improve, or sublet it for commercial, manufacturing, or industrial purposes ([RCW 35A.14.310](#)). (MRSC does not know how an area can be both contiguous and up to four miles from the town limits. Because the "four miles" language is specific, the term "contiguous" here should be ignored.)

### Annexations Pursuant to a Gift, Grant or Lease

- **The Annexation Ordinance** ([RCW 35A.14.320](#)). When annexing such territory, a town may in its annexation ordinance:
  - Include such tidelands and shorelands as may be necessary or convenient for the use of the gift, grant, or lease, and
  - Accept the terms and conditions attached to the gift, grant, or lease.
- **Authority Over Annexed Territory** ([RCW 35A.14.320](#)). The town may:
  - Survey, subdivide, and plat the property into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places;
  - Grant or sublet any lot, block, or tract for commercial, manufacturing, or industrial purposes and reserve, receive, and collect rents; and
  - Expend rents received from the property to make and maintain public improvements in the area, and transfer any surplus remaining at the end of any fiscal year to the town current expense fund.

### Review by Review Board

When a boundary review board has been established in the county, a notice of intent to annex must be filed with it. See procedures outlined in [The Statutory Boundary Review Board](#). Review by the county annexation review board for code cities/towns is not required in counties without a boundary review board ([RCW 35A.14.220](#)).

### Notice of Annexation

- **Notice to State (OFM Certification)** ([RCW 35A.14.700](#)). The town must submit an annexation certificate and additional supporting documents to the state Office of Financial Management (OFM) within 30 days of the effective date of annexation specified in the annexation ordinance. See OFM's webpages on Certification of Annexations: Procedures and Annexation and municipal boundary changes.

OFM files the approved annexation certificates on a quarterly basis. Filing dates are the last working days of November, February, May, and August. Annexations are not approved and filed until all of OFM's requirements

are met. Revenues may be lost as a result of problems in the certification process, because revenue distributions are not backdated.

• **Special Notice to County Treasurer and Assessor, Light and Power and Gas Distribution Businesses, and, Where Applicable, to Fire District and Library District (RCW 35A.14.801).**

At least 60 days before the effective date of the annexation, the town is required by RCW 35A.14.801 to notify the county treasurer and assessor and light and power and gas distribution businesses of the annexation. The notice must be by certified mail or electronic means and must include a list of annexed parcel numbers and street addresses.

If the town annexes territory within a fire district and/or library district (and the town has not been annexed to such districts), it is required to provide the same notification to such district or districts. The county treasurer is required to remit only those road taxes and, where applicable, fire district and library district taxes collected 60 or more days after receipt of the notification. Light and power businesses and gas distribution businesses are only required to remit to the town those utility taxes collected 60 days or more after receipt of the notice.

Towns in counties that do not have a boundary review board and that annex territory of a fire district or library district must provide notice to such district(s) of the town’s “resolution” approving the annexation. (The statute, RCW 35A.14.801, uses the term “resolution,” but the town action approving an annexation is in the form of an ordinance, so the notice should be of the ordinance approving the annexation.) The notice must be by certified mail within seven days of the resolution (i.e., ordinance) approving the annexation, and it must include a description of the annexed area.

• **Other Notice.** For information regarding the notice that should be given to the county, the Department of Revenue, and town departments.

Notice to Department of Revenue. Sales tax changes may take effect only on January 1, April 1, or July 1. The term “sales tax changes,” for purposes of this legislation, includes changes resulting from annexation (RCW 82.14.055(4)). Local governments must provide notice to the Department of Revenue (DOR) at least 75 days before the change takes place. RCW 82.14.055 does not specify what the “notice” to DOR must consist of, but a copy of the annexation ordinance would likely be necessary. DOR suggests e-mail notification followed-up by a mailed paper copy.

Method of Annexation	Subject to Review By		
	Boundary Review Board <sup>1</sup>	Ad Hoc Annexation Review Board <sup>2</sup>	County Annexation Review Board for Code Cities <sup>3</sup>
Election method, initiated by petition	Yes <sup>4</sup>	Yes <sup>7</sup>	Yes <sup>6</sup>
Election method, initiated by resolution	Yes <sup>4</sup>	Yes <sup>7</sup>	Yes <sup>6</sup>
Direct petition method (60 or 60 percent)	Yes <sup>5</sup>	Unclear <sup>8</sup>	No
Annexation for municipal purposes	No	No	No
Annexation of federally-owned areas	Yes	No	No
Boundary line adjustments	No	No	No
Annexation of unincorporated islands	Yes	No	No

- 1 Boundary review boards currently exist in 15 counties. If a boundary review board has been created, any required review would be by that board; no other board would be created in the county.
- 2 A county annexation review board for code cities/towns would only be created in those counties not having a boundary review board; the code city/town board only considers annexation proposals involving code cities/towns.
- 3 Review may be dispensed with if the proposed annexation is for an area of less than ten acres and \$2 million assessed valuation, if the board chair declares in writing that review is not necessary.
- 4 Review only required if request made by board members, an affected governmental unit, or by petition of voters or property owners.
- 5 Review is not required if proposed annexation is for area less than 50 acres, or less than \$2 million in assessed valuation.
- 6 Review is not required if proposed annexation is for area less than ten acres and less than \$800,000 in assessed valuation.
- 7 Whether review is required is unclear. If review is sought, the board's decision would be advisory only. See State ex rel. *Thigpen v. Kent*, 64 Wn.2d 823 (1964).

## THE STATUTORY BOUNDARY REVIEW BOARD

Boundary review boards are created by RCW 36.93.030 in each county with a population of 210,000 or more (King, Pierce, Snohomish, and Spokane Counties). Boundary review boards may be established in other counties by either a resolution adopted by majority vote of the county governing body or by a petition signed by persons equal in number to at least five percent of the votes cast in the county at the last county general election.

### Review Procedures

- **Notice of Intention.** Initiators of all types of annexations, other than a town council, must file a notice of intention with the board within 180 days of when the annexation is "proposed." For purposes of petition annexations, an annexation is "proposed" when the initiators file their petition. *Snohomish County Fire Protection District v. Boundary Review Board* (2005). When a town council initiates an annexation, the council may file a notice of intention immediately following its first acceptance or approval of the annexation (RCW 36.93.090).

The notice of intention must, under RCW 36.93.130, contain the following information:

- The nature of the action sought;
- A brief statement of the reasons for the proposed annexation;
- A legal description of the boundaries of the proposed annexation area (the description, if erroneous, may be altered under certain circumstances); and
- A county assessor's map on which the boundaries of the proposed annexation are designated. The board has the discretion to accept a map other than the county assessor's map.

Note that cities/towns in counties that have a boundary review board and that propose to annex territory of a fire district and/or library district must provide notice to such district(s) of the proposed annexation simultaneously when notice is provided to the boundary review board (RCW 35.13.270, 35A.14.801).

- **Filing Fee** (RCW 36.93.120). A \$50 filing fee must be paid by the initiators of an annexation.
- **Initiation of Review** (RCW 36.93.100). Board review is not automatic upon the filing of a notice of intention. To initiate board review, one of the following must occur within 45 days of the filing of the notice of intention:

- A governmental unit affected by the proposed annexation (e.g., a county or special purpose district), including the town for which the annexation is proposed, files a request for review;
- A petition requesting review is filed and signed by:
  - Five percent of registered voters in the proposed annexation area, or
  - The owner(s) of five percent of the assessed valuation of the area; or
- A majority of board members concur with a request for review when a petition requesting the review is filed by five percent of the registered voters who deem themselves affected by the proposed annexation and reside within one-quarter mile of the proposed annexation area but not within the town proposing the action.

The persons or entity seeking review must pay a \$200 fee to the county treasurer (for the county current expense fund) (RCW 36.93.120).

The proposed action (annexation) is deemed approved if the board’s jurisdiction is not invoked within the 45-day period.

- **Time Limitation on Board Decision** (RCW 36.93.100). If review of a proposal has been requested, the board must make its decision in writing within 120 days after the filing of the request for review. If no decision has been made within 120 days, the proposal is deemed approved unless the board and the person(s) who submitted the proposal agree to an extension.
- **Exemption from Review** (RCW 36.93.110). The board may decide not to review an annexation of less than ten acres and \$2 million assessed valuation. This decision is accomplished when the chair of the board issues a written statement declaring that review is not necessary for the protection of the interests of affected parties.
- **Simultaneous Consideration of Incorporation and Annexation Proposals or of Conflicting Annexation Proposals.**
  - **Incorporation and Annexation Proposals Involving Some or All of the Same Territory** (RCW 36.93.116). Municipal incorporation proceedings are formally initiated by the filing of an incorporation petition with the county auditor. If a resolution or a petition initiating an annexation involving any of the same territory as the incorporation proposal is adopted (by the town council) or filed (with the town) within 90 days of an incorporation petition being filed with the county auditor, the board may consider both matters simultaneously.

In doing so, the board could remove some or all of the territory proposed for annexation from the incorporation proposal, or it could decide to approve the incorporation as proposed, thus precluding annexation of any territory within the proposed town (unless the voters reject the proposed new city/town).

  - **Annexation Proposals by Another City/Town Involving Some or All of the Same Territory** (RCW 35.13.176, 35A.14.231). Once an annexation petition is filed with a town or an annexation resolution is adopted by a town council, another city/town may not annex any of the territory included in the petition or resolution, unless the board rejects the proposed annexation or modifies it and removes the territory. These statutes, however, do not preclude a board from considering other annexation petitions or resolutions. But a board must act upon the petition or resolution that was first filed with or adopted by a city/town, before it may act upon a subsequent annexation proposal from another city/town.
- **Hearing on Annexation** (RCW 36.93.160)
  - **Notice.** When the jurisdiction of the board is invoked, the board must set a date, time, and place for a public hearing on the proposal, and must provide notice of the hearing, in the manner required by RCW 36.93.160(1).

– Record. A verbatim record must be made of all testimony presented at the hearing (RCW 36.93.160(2)).

- **Factors to be Considered in Decision.** The boundary review board must, in making its decision consider certain factors affecting the proposal. Those factors are identified in RCW 36.93.170.
- **Objectives of the Board.** The boundary review board is directed by RCW 36.93.180 to “attempt to achieve” the objectives identified in that statute.

The requirement that the board “attempt to achieve” the objectives are more than an aspiration, but the board need not achieve all or even most of the objectives. *Spokane County Fire Protection District v. Spokane County Boundary Review Bd.* (1982). If the board fails to achieve any of these objectives in its decision, that decision would be reversed on appeal. *Id.*

However, achieving only one objective may not be sufficient to support a board decision. *King County v. Boundary Review Bd.* (1993). A boundary review board’s decision that the objectives in RCW 36.93.180 will be achieved by a proposed annexation will be upheld on review if there is sufficient evidence in the record to convince a fair-minded person that, overall, the statutory objectives will be furthered by annexation approval. *Leer v. Whatcom County Boundary Review Bd.* (1998).

- **Decision** (RCW 36.93.160, 36.93.150). Within 40 days of the conclusion of the final hearing, the board must issue its written decision and file it with the county legislative body and with the clerk of each governmental unit directly affected. Its decision with respect to an annexation may do any of the following:

- Approve the proposal as submitted;
- Disapprove the proposal; or
- Modify the proposal by adjusting boundaries by deleting territory or by adding territory, as long as the amount of territory added does not exceed 100 percent of the original proposal and as long as the board holds a separate public hearing on the adding of territory. The deletion or addition of property by the board will not invalidate a petition that had previously satisfied the sufficiency of signature provisions. No modification may interfere with the authority of a town to require or not require pre- annexation agreements, covenants, or petitions; and
- Determine, where applicable, a division of assets and liabilities between the town and another governmental unit (e.g., a fire protection district).

The board may not modify or disapprove a proposed annexation unless there is evidence on the record to support a conclusion that the annexation as proposed is inconsistent with one or more of the objectives under RCW 36.93.180. Any such decision must be supported by written findings and conclusions (RCW 36.93.150).

The written decision must indicate the action taken, and, if a proposal is modified, it must indicate the terms of the modification. The decision need not include specific data on every factor required to be considered, but it must indicate that all factors were considered (RCW 36.93.160).

If the board disapproves an annexation proposal, no annexation proposal for the same or substantially the same territory may be initiated or considered for 12 months (RCW 36.93.150).

- **Appeal of Board Decisions**

- Appeal to the board (RCW 36.93.160). A “decision of the board” is one made by the majority of board members or by unanimous vote of a board hearing panel. (Boundary review boards may, under RCW 36.93.070, authorize panels of the board consisting of not less than five board members to hear proposals.) Such decisions are not appealable to the whole board. Other decisions are appealable to the

entire board within 10 days. An appeal to the entire board is to be on the record, which is to be furnished by the appellant. The board may in its discretion permit the introduction of additional evidence and argument.

– Appeal to superior court (RCW 36.93.160). The decision of the board may be appealed to the superior court within 30 days. A governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision may file the notice of appeal.

The filing of a timely appeal in superior court will stay the effective date of the board’s decision, until the appeal is adjudicated or withdrawn.

The superior court may not consider any evidence other than that contained in the record of hearing before the board.

- **Superior Court Decision** (RCW 36.93.160(6)). The superior court’s decision may:
  - Affirm the board’s decision;
  - Remand the case to the board for further proceedings; or
  - Reverse the board’s decision if any substantial rights have been prejudiced because the “administrative findings, inferences, conclusions, or decisions” are:
    - In violation of constitutional provisions; or
    - In excess of the statutory authority or jurisdiction of the board; or
    - Made upon unlawful procedure; or
    - Affected by other error of law; or
    - Unsupported by material and substantial evidence in view of the entire record as submitted; or
    - Clearly erroneous. (Under the clearly erroneous standard, a reviewing court will overturn a board decision if, after reviewing all the evidence on the record, it is left with “a definite and firm conviction” that a mistake has been made. King County v. Boundary Review Board (1993).)

## **THE COUNTY ANNEXATION REVIEW BOARD FOR CODE CITIES/TOWNS**

### **Formation and Composition of Board** (RCW 35A.14.160 - .190)

A county annexation review board for code cities/towns is to be established in each county containing one or more code cities/town and in which a boundary review board has not been formed. Its function is to review annexations by code cities/towns within the county.

- **Membership of Board.** The governor is to appoint members of the county annexation review board for code cities/towns, supposedly within 45 days of the first code city/town having been established in the county, as set out in RCW 35A.14.160 - .170.
- **Terms of Board Members** (see RCW 35A.14.180).
- **Organization and Rules of Board** (see RCW 35A.190).

### **Annexations Subject to Review** (RCW 35A.14.220)

- Those initiated by resolution of the town council for an election under RCW 35A.14.015, and



- Those initiated by voter petition for an election under RCW 35A.14.020.

However, review is not required for annexations of less than 50 acres or less than \$2 million in assessed valuation.

### **Annexations Not Subject to Review by the Board (RCW 35A.14.220)**

- Annexations initiated by a 60 percent petition under RCW 35A.14.120,
- Annexations of unincorporated islands under RCW 35A.14.295 and 35A.14.297,
- Annexations for municipal purposes under RCW 35A.14.300, and
- Annexations of gifts, grants, or leases of federal land under RCW 35A.14.310 and 35A.14.320.

### **Annexation Review Procedures**

- **Jurisdiction (RCW 35A.14.200).** The jurisdiction of the county annexation review board is invoked when either of the following is filed with the board:
  - A resolution for an annexation election under RCW 35A.14.015; or
  - A petition for an annexation election under RCW 35A.14.020.
- **Meeting to Fix Hearing Date (see RCW 35A.14.040).**
- **Notice of Hearing on Annexation Proposal (see RCW 35A.14.040).**
- **Hearing**
  - Participants (RCW 35A.14.040)
    - A representative of the town, who must make a brief presentation explaining the annexation and its benefits;
    - The annexation petitioners;
    - Any resident of the town or of the area proposed to be annexed;
  - Record (RCW 35A.14.200). A verbatim record must be made of all testimony presented at the hearing. A copy of the transcript of the testimony must be provided to any person or governmental unit that requests it and pays its reasonable cost.
  - Continuances (RCW 35A.14.040). The hearing may be adjourned from time to time in the board's discretion, not to exceed 30 days from the commencement of the hearing.
- **Factors to be Considered in Decision (RCW 35A.14.200)** In making a decision on an annexation proposal, the board is to determine whether the proposed annexation is in the public interest and for the public welfare. The factors it must consider include those identified in RCW 35A.14.200.
- **Decision (RCW 35A.14.050).**

Within 30 days after the final day of hearing, the board must take one of the following actions:

- Approve the proposal as submitted;
- Modify the proposal and approve it as modified. The board may delete territory, or add territory if it does not increase the total area by more than five percent and if residents and property owners of the additional territory are afforded an opportunity to be heard; or
- Disapprove the proposal.

The board must issue a written decision, including written findings and conclusions. The findings need not include specific data on all of the factors listed above, but they must indicate that all factors were considered (RCW 35A.14.200). If an annexation proposal is modified by the board, the modification must set out in the written decision (RCW 35A.14.050).

Dissenting members of the board have a right to have their written dissents included as part of the decision.

The board must file its written decision with the county legislative body and with the town council (RCW 35A.14.050).

If the board disapproves the proposal, no further action is taken, and no proposal for annexation of the same or substantially the same territory may be initiated or considered for 12 months (RCW 35A.14.050).

- **Appeal** (see RCW 35A.14.210).