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NO. 97739-9

SUPREME COURT OF THE STATE OF WASHINGTON

SPOKANE COUNTY, a Washington municipal entity; AL FRENCH,
an individual taxpayer and current Spokane County Commissioner;
JOHN ROSKELLEY, an individual taxpayer and former Spokane County
Commissioner; and WASHINGTON STATE ASSOCIATION OF
COUNTIES, a Washington non-profit association,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Legislature has provided for a general and uniform system of county government under which boards of county commissioners are elected for all non-charter counties in the state. Const. art. XI, §§ 4, 5. But a general and uniform system need not function identically in all counties without regard to their circumstances. Article XI, sections 4 and 5 of the Washington Constitution vest significant authority in the Legislature to determine the form of county government for those counties that do not choose to adopt local charters.

The system of county government established in state law provides for boards of county commissioners, as well as other county elected officials. The boards of county commissioners generally consist of three members, but state law allows for five-member boards as well. Commissioners are generally nominated at primaries conducted on the basis of commissioner districts and then elected county-wide, but other approaches are authorized. The 2018 Legislature added a new facet to this system that applies to counties once they exceed 400,000 in population. Substitute House Bill 2887 (SHB 2887).¹ Spokane County, two current or former county commissioners, and the Washington State Association of

¹ SHB 2887 may be cited more formally as Laws of 2018, ch. 301, and appears in full as Appendix A to this brief.

Counties (collectively Spokane) challenge that act based upon the idea that SHB 2887 itself constitutes a non-uniform system of county government. But it is more accurately described as but one component of a single general and uniform system that applies collectively to all counties, and which therefore falls within the authority granted to the Legislature by the State Constitution. This Court should affirm the decision of the Spokane County Superior Court upholding SHB 2887 as valid.

II. ISSUE PRESENTED

Do challenged provisions of SHB 2887 properly execute the Legislature's authority to enact a general and uniform system of county government for non-charter counties?

III. STATEMENT OF THE CASE

The Constitution instructs the Legislature to "establish a system of county government, which shall be uniform throughout the state except as hereinafter provided." Const. art. XI, § 4. The next constitutional section in sequence adds that the "legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners . . . and other county . . . officers, as public convenience may

require.” Const. art. XI, § 5.² The Constitution does not define the terms “general” and “uniform,” and little case law enlightens their construction.

State law establishes a general and uniform system of county government. Const. art. XI, § 4. The application of those general and uniform statutes may vary according to the circumstances of particular counties, but the system itself is nonetheless general and uniform. Every non-charter county is governed by a board of county commissioners, often referred to as the county “legislative authority.” RCW 36.32.010, .120. But the election and operation of county commissions need not be the same everywhere.

The Legislature in 2018 added an additional variation within state law. Under SHB 2887, any county with a population of 400,000 or more must expand its board of commissioners to five members beginning in 2022. RCW 36.32.052. In preparation for doing so, each covered county must establish a county redistricting commission to divide the county into five commissioner districts of equal population. *Id.* Those districts will then be used both to nominate and elect the five county commissioners. RCW 36.32.050.

² Article XI, sections 4 and 5, appear in full in their current form as Appendix B to this brief.

Spokane seeks to invalidate most of SHB 2887, contending that the act exceeds the authority vested in the Legislature by the Washington Constitution. The Spokane County Superior Court rejected this challenge, upholding the state law. Spokane appeals.

IV. ARGUMENT

A. Standard of Review

Appellate courts reviewing a grant of summary judgment engage in the same inquiry as the trial court. *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005). This Court reviews issues of law *de novo*, and a trial court order may be sustained on any basis supported by the record. *Id.*

The party challenging the constitutionality of a statute “must prove that the statute is unconstitutional beyond a reasonable doubt.” *League of Educ. Voters v. State*, 176 Wn.2d 808, 820, 295 P.3d 743 (2013) (quoting *Sch. Dists.’ Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010)). Washington courts consistently hold that “[t]he Legislature’s power to enact a statute is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions.” *Washington State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 300-01, 174 P.3d 1142 (2007) (quoting *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 248, 88 P.3d 375 (2004)). The question in this case accordingly is whether article XI, sections 4 and 5

restrain the authority of the Legislature while explicitly granting authority to the Legislature to establish the form of county government. They do not.

B. The Washington Constitution Authorizes the Legislature to Establish a General and Uniform System of County Government

Article XI, sections 4 and 5 of the Washington Constitution are framed as affirmative instructions to the Legislature to statutorily establish a uniform and general system of county government. The Legislature has complied with this constitutional directive by enacting the statutes codified in RCW 36.32, including the provisions of SHB 2887.

The Constitution instructs the Legislature to “establish a system of county government, which shall be uniform throughout the state except as hereinafter provided.”³ Const. art. XI, § 4. The constitutional provision that follows adds that the “legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners . . . and other county . . . officers, as public convenience may require.” Const. art. XI, § 5. Thus, it is the “system of county government” that must be uniform, not each of the individual components of that system.

³ After the provision for a system of government for non-charter counties, article XI, section 4, treats at length the option for counties to adopt their own county charters to tailor their system of government and provide for home rule. Const. art. XI, § 4. The result is that counties are governed either according to general law or their own local charters.

The terms “general” and “uniform” do not mean “rigidly unvarying.” Spokane relies on a century-old case for the view that to be “general and uniform” the structure of county government must be exactly the same in every county. That case considered a statute that allowed county prosecutors and justices of the peace of counties other than first class counties to assume the duties otherwise performed by the county coroner. *State ex rel. Maulsby v. Fleming*, 88 Wash. 583, 583-84, 153 P. 347 (1915). The court reasoned that varying the duties assigned to county officers would not be a uniform system. *Id.* at 584.

The reasoning of the *Maulsby* court in 1914 has not stood the test of time. In response to *Maulsby*, voters approved an amendment to article XI, section 5 to reverse its result. Section 5 now allows the Legislature to “classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers.” Const. art. XI, § 5 (as amended by Amendment 12 (1924)). The Washington Supreme Court later found that this amendment substantially broadened the Legislature’s authority to allow governmental structure to vary based on the population of the county. “If the legislature has the power, as the constitution says, to prescribe the duties . . . of two or more other officers, it would necessarily seem to follow that the legislature . . . had the right to transfer [duties among county officers].”

State ex rel. Scofield v. Easterday, 182 Wash. 209, 214, 46 P.2d 1052 (1935).

The two old Attorney Generals Opinions cited by Spokane erred for the same reasons that Spokane's present arguments miss the mark. Both relied untenably on *Maulsby*. Att'y Gen. Ltr. Op. 8 (1979), at 5-6 (discussing *Maulsby*); Op. Att'y Gen. 11 (1987), at 5-6 (same). This is unsurprising since Opinions of the Attorney General normally apply judicial precedent rather than call it into question. *See, e.g.*, Op. Att'y Gen. 6 (2019), at 3 (re-evaluating earlier opinions in light of case law).

The most recent relevant case reveals that Washington courts have not adhered to *Maulsby*'s narrow approach. Division III of the Court of Appeals, subsequent to all the authority cited above, has held that a system of county government is uniform when all counties could *potentially* use provisions that the law allows. *Mount Spokane Skiing Corp. v. Spokane County*, 86 Wn. App. 165, 181, 936 P.2d 1148 (1997). The test for whether a system of county government is general and uniform is therefore not whether all of its provisions are *presently* exercised in every non-charter county. Rather, the question is whether the statutes provide a system of county government that, depending on applicable facts, *could* apply anywhere. This is the case with SHB 2887. It applies to any non-charter county that exceeds 400,000 population.

The conclusion that SHB 2887 contributes to a general and uniform system of county government is further illustrated by considering other ways in which the Legislature might have achieved a similar objective. The Legislature set the population threshold for five-member boards at 400,000, but it could have chosen a different threshold. Or, for example, the Legislature could conceivably provide for a tiered system: three-member boards of county commissioners for all counties with populations below 100,000, five-member boards for counties between 100,000 and 300,000, and seven-member boards for counties over 300,000. Alternatively, it could by general law require any county to add an additional commissioner if the existing commissioners each represent more than 50,000 people. All of these alternative systems would be general and uniform even if, depending on the facts, they result in different numbers of commissioners in different counties. A system designed to accommodate population-based differences among counties is no less general and uniform than a system of basic education that requires different instructional standards for high school students than for elementary school students, or that treats very large school districts different than very small ones.

This Court thus need not overrule *Maulsby* in order to uphold SHB 2887 as a component of a general and uniform system of county government. *Scofield* and *Mount Spokane Skiing Corp.* reflect the later

realization that *Maulsby*'s unyielding rigidity would preclude the Legislature from providing for the diverse circumstances faced by the broad array of Washington counties as time progresses.

This Court should, however, clarify that *Maulsby*'s strict constitutional construction does not constrain legislative discretion. This Court should expressly overrule *Maulsby* as incorrect and harmful if the Court finds it necessary in order to permit reasonable legislative flexibility. This Court will overrule prior precedent that is incorrect and harmful or if the legal underpinnings for that precedent have changed or disappeared. *State v. Pierce*, ___ Wn.2d ___, 455 P.3d 647, 652 (2020). Experience has dramatically eroded *Maulsby*'s reasoning, depriving Washington as it does of the fruits of representative democracy in the Legislature and squeezing counties to a governmental system blind to their diversity.

Spokane reads article XI, sections 4 and 5 as requiring that the statutory system of county government apply in precisely the same way in every non-charter county. Spokane's challenge to SHB 2887 depends upon the notion that a system of county government is not "general and uniform" if it might result, depending on the facts, in most counties electing three-member boards of county commissioners with others electing five-member boards.

Spokane’s argument misconceives what it means for a system of government to be “general and uniform.” Const. art. XI, § 5. Spokane argues for a constitutional interpretation that fails to recognize that the circumstances and needs of counties might differ. State law does not confine counties to such unvarying rigidity. State law has long recognized that the structure of county government can take into account facts that may differ from county to county. Counties composed entirely of islands, for example, can vary their method of electing commissioners in order to reflect their various islands as social units. RCW 36.32.020, .040(2). The voters of counties with populations of 300,000 or more may choose to elect five-member boards of commissioners. RCW 36.32.055. Voters of *any* county may alter their system for electing county commissioners if necessary to avoid or remedy what might otherwise constitute a violation of the state Voting Rights Act.⁴ RCW 29A.92.040; RCW 36.32.020. Spokane does not challenge any of these sources of local flexibility.⁵

⁴ The state Voting Rights Act is distinct from its federal counterpart. Congress enacted the federal Voting Rights Act in 1965 to provide remedies for racial disparities in voting nationwide. *See* 52 U.S.C. §§ 10101-10702. Washington’s state Voting Rights Act stems from the same legislative session at which SHB 2887 was enacted. Laws of 2018, ch. 113 (*codified as* RCW 29A.92). The state act is focused on providing flexible ways for local governments to remedy the impairment of voting rights of voters who are members of a protected class or classes. RCW 29A.92.020.

⁵ Spokane correctly acknowledges the validity of the Washington State Voting Rights Act. Appellants’ Opening Br. at 30-32. But SHB 2887 is also valid for the very reasons Spokane offers in support of the Voting Rights Act. Like the Voting Rights Act, SHB 2887 is merely one component of a larger comprehensive system of county government that takes in a variety of concerns. Like the Voting Rights Act, SHB 2887

The Constitution does not limit the Legislature to Spokane's vision of an ossified one-size-fits-all system of county government. Just as the Constitution allows the Legislature to permit counties to modify local government to avoid discriminating against voters based on race as prohibited by the state Voting Rights Act, RCW 29A.92.040, so does it allow the Legislature to recognize practical differences among counties of widely varying size.

Spokane incorrectly characterizes SHB 2887 as applying to only one county. Under the state constitution, all counties are governed by the state's general law, subject to their choice to adopt their own county charters. Const. art. XI, § 4. SHB 2887 therefore establishes the legal baseline applicable to all counties. It applies to all counties when their populations exceed 400,000. RCW 36.32.050(2) (as amended by SHB 2887, § 7(2)). Five Washington counties have populations over 400,000.⁶ All of those counties therefore fall into the same classification for purposes of SHB 2887. All of them are required to elect five-member boards of

reflects a difference in circumstance among counties; the difference is that the Legislature directly recognized that difference, rather allowing counties to do so as in the Voting Rights Act.

⁶ Those counties are, in rank order, King, Pierce, Snohomish, Spokane, and Clark. Office of Financial Management, *April 1 2019 Population of Cities, Towns and Counties Used for Allocation of Selected State Revenues, State of Washington*, available online at https://ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm_april1_population_final.pdf.

commissioners elected by single-member districts unless they adopt county charters that provide otherwise. The same statutory provision therefore applies to all five of them, even though all but Spokane County have chosen to adopt county charters.⁷ As importantly, the provision will also apply in the future to any other counties that reach the specified population threshold. SHB 2887 thus sets a rule of general applicability contingent only upon the facts pertaining in any county.

SHB 2887 differs in this critical regard from the Nevada case to which Spokane traces *Maulsby's* genealogy. Rather than describing a class of counties, as SHB 2887 does, the statute challenged in that early Nevada case related to the duties of a single county officer in a single county, called out by county name.⁸ *State ex. rel. Attorney General v. Boyd*, 19 Nev. 43, 5 P. 735, 735 (1885). SHB 2887, by contrast, determines the composition of boards of county commissioners of any and all counties to which it applies factually.

Even if only one county falls into a particular classification, the law would still establish a general and uniform system of government. *State ex*

⁷ Municipal Research & Service Center, *County Forms of Government*, <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and-Organization/County-Forms-of-Government.aspx>.

⁸ More precisely, the legislation identified a class of counties based on the number of registered voters, but then addressed its provisions only to specific counties. *Boyd*, 5 P. at 736.

rel. Allen v. Schragg, 159 Wash. 68, 70, 292 P. 410 (1930). In *Allen*, only one county fell within a classification for counties between 5,600 and 6,000 in population. *Id.* The law remained a general law, however, because it applied to all counties falling within that class. *Id.* “A law is general when it operates upon all persons or things constituting a class, even though such class consists of but one person or thing.” *Id.* (quoting *Spokane & Eastern Trust Co. v. Hart*, 127 Wash. 541, 548, 221 P. 615 (1923)).

Washington courts have consistently taken a broader view than does *Spokane* as to what constitutes general legislation. The constitution distinguishes between general and special legislation, prohibiting special legislation on a variety of topics. Const. art. II, § 28. “Special legislation is legislation which operates upon a single person or entity while general legislation operates upon all things or people within a class.” *Brower v. State*, 137 Wn.2d 44, 60, 969 P.2d 42 (1998). SHB 2887 is clearly a general law because it operates on the class of all non-charter counties with a population of at least 400,000. RCW 36.32.052(1). It is no objection that at present only one county falls within that class. *Allen*, 159 Wash. at 70. “A class may consist of one person or corporation provided the law applies to all members of the class.” *Brower*, 137 Wn.2d at 60. The Legislature commonly distinguishes among local governments on the basis of population, and such classes are upheld “[s]o long as population bears a

rational relationship to the purpose and subject matter of the legislation.” *CLEAN v. State*, 130 Wn.2d 782, 802, 928 P.2d 1054 (1996) (quoting *City of Seattle v. State*, 103 Wn.2d 663, 674, 694 P.2d 641 (1985)). The Legislature found that SHB 2887 promoted the interest of greater representation by local elected officials of the communities they serve. Substitute H.B. 2887, § 1, 65th Leg., Reg. Sess. (Wash. 2018) (codified as a note to RCW 36.32.051). The Legislature further found that both nominating and electing county commissioners from properly drawn districts further promotes the public interest by making elected officials “more responsible to their constituents by bringing candidates closer to the communities from which they are elected.” *Id.*

State law creates a single general and uniform system of county government, although differing facts may lead to that system operating differently in different counties. The constitutional reference to a general and uniform system of county government, Const. art. XI, §§ 4, 5, is parallel to the requirement that the Legislature “provide for a general and uniform system of public schools.” Const. art. IX, § 2. Spokane’s analogy to education cases is inapt because this Court has not defined “a general and uniform system of public schools” as one that operates in the same way everywhere. Rather, it is “one in which every child in the state has free access” to schools meeting various criteria. *El Centro de la Raza v. State*,

192 Wn.2d 103, 114, 428 P.3d 1143 (2018) (quoting *Federal Way School District No. 210 v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009)). Nothing “mandates that the education must be *identical*” everywhere. *Tunstall v. Bergeson*, 141 Wn.2d 201, 222, 5 P.3d 691 (2000). The facts applicable to specific counties may cause a general and uniform system to function differently in different counties, just as in the educational context a general and uniform system of public schools might manifest differently under different factual contexts. *Id.* (upholding a system of public schools that functioned differently for incarcerated minors than for others). In the educational context, as here, it is the *system* that must be general and uniform, not the *application* of that system under a particular set of facts.

The Legislature has provided a general and uniform system of county government. If the Constitution is construed to require that general statutes apply in exactly the same way no matter the factual circumstances in any county, the result would be an ossified system of local government incapable of accommodating the diversity of local circumstances.

C. The Constitution Does Not Preclude the Legislature From Classifying Counties by Population for the Purpose of Varying the Size and Electoral Process for Boards of County Commissioners

Article XI, section 5 begins by directing the Legislature to, “by general and uniform laws . . . provide for the election in the several counties of boards of county commissioners” It continues:

Provided, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify counties by population.

Const. art. XI, § 5.

Article XI, section 5 authorizes the Legislature to vary county governmental structures for several purposes: (1) to “classify counties by population”; (2) to “provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers”; and (3) to “regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify counties by population.” Const. art. XI, § 5. SHB 2887 fits squarely within the first of those purposes, classifying counties by population to provide a system of electing county commissioners for the largest non-charter counties. RCW 36.32.052.

As amended after *Maulsby*, article XI, section 5 explicitly authorizes classifying counties by population. Const. amend. 12 (providing that “the legislature may, by general laws, classify the counties by population *and* provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers;” emphasis added). The authorization to classify counties by population is separated from the other provisions of the section by the word “and.” Spokane’s reading of this sentence is incorrect because it reads the word “and” out of the text added by Amendment 12. *See Spokane County v. Dep’t of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018) (construction must give effect to all words). The inclusion of the word “and” indicates that the text joins two separate concepts, rather than setting forth a single concept with the second phrase operating to limit the first. Article XI, section 5 was not, after all, drafted to read “the legislature may, by general laws, classify the counties by population *in order to* provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers” (emphasis added), although this is the meaning for which Spokane argues.

At no point does the constitution prohibit the Legislature from classifying counties for other purposes. The Legislature’s authority to legislate as it chooses is therefore unrestricted. *See Farm Bureau*, 162

Wn.2d at 300-01. Indeed, the quoted proviso was added to the constitution specifically to reverse the overly-restrictive construction of the original article XI, section 5 in *Maulsby*. See *Scofield*, 182 Wash. at 213-14 (describing the voters' approval of Amendment 12 after *Maulsby*).

The choice of the Legislature to describe the class of counties subject to SHB 2887 in terms of population does not conflict with any constitutional restriction.

V. CONCLUSION

For these reasons, this Court should affirm the ruling of the Spokane County Superior Court.

RESPECTFULLY SUBMITTED this 4th day of March 2020.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Washington State Supreme Court and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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DATED this 4th day of March 2020, at Olympia, Washington.

s/ Kristin D. Jensen
KRISTIN D. JENSEN
Confidential Secretary

conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards;

(26) Performing conversion therapy on a patient under age eighteen.

Passed by the Senate March 3, 2018.

Passed by the House February 28, 2018.

Approved by the Governor March 28, 2018.

Filed in Office of Secretary of State March 29, 2018.

CHAPTER 301

[Substitute House Bill 2887]

COUNTY COMMISSIONERS--DISTRICT-BASED ELECTIONS

AN ACT Relating to county commissioner elections; amending RCW 36.32.030, 36.32.050, 29A.76.010, 36.32.055, and 44.05.080; adding new sections to chapter 36.32 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that the leaders of local jurisdictions should represent the interests of the communities they serve and should be accountable to all their constituents. The legislature further finds that district-based elections help to make elected officials more responsible to their constituents by bringing candidates closer to the communities from which they

are elected. The legislature further finds that the districting process requires transparent and fair decision making in a bipartisan effort to ensure that districts constitute an accurate and balanced representation of the community.

NEW SECTION. Sec. 2. A new section is added to chapter 36.32 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "District" means a geographic area within county boundaries and designated in a county redistricting plan, as provided in section 5 of this act.

(2) "District election" means a candidate from each district is elected in a general election by the voters of the district in which the candidate resides.

(3) "District nomination" means a candidate from each district is nominated in a primary election by the voters of the district in which the candidate resides.

NEW SECTION. Sec. 3. A new section is added to chapter 36.32 RCW to read as follows:

(1) Beginning in 2022, any noncharter county with a population of four hundred thousand or more must have a board of commissioners with five members, and must use district nominations and district elections for its commissioner positions, in accordance with RCW 36.32.050.

(a) By April 30, 2021, the county must establish a redistricting committee, in accordance with section 4 of this act, to create, review, and adjust county commissioner districts in accordance with subsection (1) of this section. The commissioner districts established by the redistricting committee must be designated as districts numerically one through five. Any districting plan adopted by the redistricting committee must designate the initial terms of office for each of the county commissioner positions, as provided in RCW 36.32.030(2).

(b) Beginning in 2022, district elections for all county commissioners in a noncharter county with a population of four hundred thousand or more must be held in accordance with any districting plan adopted by a redistricting committee that is established in accordance with section 5 of this act.

(2) After 2022, by April 30th of each year ending in one, each qualifying county must establish a redistricting committee in accordance with section 4 of this act. The redistricting committee must review and adjust as necessary the boundaries of the county's commissioner districts.

NEW SECTION. Sec. 4. A new section is added to chapter 36.32 RCW to read as follows:

(1) A county redistricting committee established under this chapter must have five members appointed in each year ending in one, as follows:

(a) One member shall be appointed by the members of each of the two largest caucuses, respectively, of the house of representatives whose legislative districts are wholly or partially within the noncharter county with a population of four hundred thousand or more;

(b) One member shall be appointed by the members of each of the two largest caucuses, respectively, of the senate whose legislative districts are wholly or partially within the noncharter county with a population of four hundred thousand or more; and

(c) The fifth member, who shall serve as the nonvoting chair of the committee, shall be appointed by a majority of the other four members.

(2) Committee members may not be appointed until after January 1, 2021.

(a) If any member is not appointed in accordance with the process in subsection (1)(a) or (b) of this section by March 1st then the respective legislative leader of each caucus whose qualifying members have not made an appointment must make the respective appointment by April 1st. If any caucus does not have at least one qualifying member, then the legislative leader of that caucus shall make the appointment by April 1st.

(b) If the fifth member is not appointed in accordance with subsection (1)(c) of this section by April 15th, then the county board of commissioners must appoint the fifth member by April 30th.

(3) A vacancy on a redistricting committee must be filled in the same manner as the initial appointment within fifteen days after the vacancy occurs.

(4) No person may serve on a redistricting committee who:

(a) Is not a registered voter of the state at the time of appointment;

(b) Is not a resident of the county;

(c) Is or within two years before appointment was a consultant for or had a contract with the county, or had been a registered lobbyist that lobbies the county commission; or

(d) Is or within two years before appointment was an elected official or elected legislative, county, or state party officer.

(5) Members of a redistricting committee may not:

(a) Campaign for elective office while a member of the committee;

(b) Actively participate in or contribute to any political campaign of any candidate for county elective office while a member of the committee; or

(c) Hold or campaign for a seat as a county commissioner for two years after the date the redistricting committee concludes its duties under this chapter.

(6) Before serving on a county redistricting committee, every person must take and subscribe an oath to faithfully perform the duties of that office.

(7) The legislative body of the county will provide adequate funding and resources to support the duties of the redistricting committee.

NEW SECTION. Sec. 5. A new section is added to chapter 36.32 RCW to read as follows:

(1) Within one hundred twenty days after a redistricting committee is established under this chapter, the committee must prepare and publish a draft districting plan dividing the county into five commissioner districts. The committee must hold public meetings in preparing the draft, in compliance with chapter 42.30 RCW, and records of the committee must be available for public disclosure, pursuant to chapter 42.56 RCW.

(2) Within sixty days of publishing the draft districting plan, the committee must:

(a) Solicit written public comment on the draft;

(b) Hold at least one public hearing on the plan, including notice and public comment;

(c) Amend the draft as necessary after the public comment and hearing; and

(d) Either:

(i) Adopt the original or amended districting plan by a vote of at least three of the four voting committee members, and promptly file the adopted districting plan with the county auditor; or

(ii) Notify the state redistricting commission, established under chapter 44.05 RCW, with instructions to approve a districting plan for the county.

(3) If the committee instructs the state redistricting commission to approve a districting plan for the county, the state redistricting commission must convene or reconvene for purposes of approving a districting plan for the county, in addition to its duties under chapter 44.05 RCW. The committee may submit any proposed plans drafted by the committee or a committee member to assist the state redistricting commission. The state redistricting commission must approve a districting plan for the county within sixty days of receiving notice from the committee, and promptly file the plan with the county auditor.

(4) The districting plan is effective upon filing the plan with the county auditor either by the committee or by the state redistricting commission.

(5) County commissioner elections pursuant to the districting plan filed with the county auditor must begin in the next even-numbered year, and conducted in accordance with RCW 36.32.050.

(6) Each commissioner district established by a redistricting committee under this section must comprise as nearly as possible one-fifth of the population of the county. The boundaries of commissioner districts must:

(a) Correspond as nearly as practicable to election precinct boundaries; and

(b) Create districts with compact, contiguous territory containing geographic units, natural communities, and approximately equal populations.

(7) Upon filing of the adopted districting plan with the county auditor, or sixty days after providing notice to the state redistricting commission, the redistricting committee is dissolved until such time as a new redistricting committee is established as provided in section 2 of this act.

Sec. 6. RCW 36.32.030 and 2015 c 53 s 63 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section, the terms of office of county commissioners shall be four years and shall extend until their successors are elected and qualified and assume office in accordance with RCW 29A.60.280(=PROVIDED, That)) The terms of office of county commissioners shall be staggered so that either one or two commissioners are elected at a general election held in ((an)) each even-numbered year.

(2) At the general election held in 2022, any noncharter county with a population of four hundred thousand or more must elect county commissioners in accordance with a districting plan adopted under section 5 of this act. Any county commissioner whose term is set to expire on or after January 1, 2023, is subject to the new election in accordance with the districting plan. The county commissioners shall begin their terms of office on January 1, 2023, and such terms shall be staggered terms, as designated in the districting plan.

Sec. 7. RCW 36.32.050 and 2009 c 549 s 4063 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section or this chapter, county commissioners shall be elected by the qualified voters of the county and the person receiving the highest number of votes for the office of

commissioner for the district in which he or she resides shall be declared duly elected from that district.

(2) Beginning in 2022, in any noncharter county with a population of four hundred thousand or more, county commissioners must be nominated and elected by the qualified electors of the commissioner district in which he or she resides. The person receiving the highest number of votes at a general election for the office of commissioner for the district in which he or she resides must be declared duly elected from that district.

Sec. 8. RCW 29A.76.010 and 2011 c 349 s 26 are each amended to read as follows:

(1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) Except as otherwise provided in this act, no later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. Before adopting the plan, the municipal corporation, county, or district ((shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan)) must:

(a) Publish the draft plan and hold a meeting, including notice and comment, within ten days of publishing the draft plan and at least one week before adopting the plan; and

(b) Amend the draft as necessary after receiving public comments and resubmit any amended draft plan for additional written public comment at least one week before adopting the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the

county in which he or she resides, within fifteen days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district.

Sec. 9. RCW 36.32.055 and 1990 c 252 s 2 are each amended to read as follows:

(1) The board of commissioners of any noncharter county with a population of three hundred thousand or more, and less than four hundred thousand, may cause a ballot proposition to be submitted at a general election to the voters of the county authorizing the board of commissioners to be increased to five members.

(2) As an alternative procedure, a ballot proposition shall be submitted to the voters of a noncharter county authorizing the board of commissioners to be increased to five members, upon petition of the county voters equal to at least ten percent of the voters voting at the last county general election. At least twenty percent of the signatures on the petition shall come from each of the existing commissioner districts.

Any petition requesting that such an election be held shall be submitted to the county auditor for verification of the signatures thereon. Within no more than thirty days after the submission of the petition, the auditor shall determine if the petition contains the requisite number of valid signatures. The auditor shall certify whether or not the petition has been signed by the requisite number of county voters and forward such petition to the board of county commissioners. If the petition has been signed by the requisite number of county voters, the board of county commissioners shall submit such a proposition to the voters for their approval or rejection at the next general election held at least sixty days after the proposition has been certified by the auditor.

Sec. 10. RCW 44.05.080 and 2017 3rd sp.s. c 25 s 33 are each amended to read as follows:

In addition to other duties prescribed by law, the commission shall:

(1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;

(2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and 42.56 RCW;

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.30.035;

(6) Be subject to the provisions of RCW 42.17A.700;

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to: (a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries;

(8) Adopt a districting plan for a noncharter county with a population of four hundred thousand or more, pursuant to section 5 of this act.

NEW SECTION. Sec. 11. This act may be known and cited as the responsible representation act.

NEW SECTION. Sec. 12. 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.

NEW SECTION. Sec. 13. Section 9 of this act takes effect January 1, 2021.

Passed by the House March 3, 2018.

Passed by the Senate February 27, 2018.

Approved by the Governor March 28, 2018.

Filed in Office of Secretary of State March 29, 2018.

CHAPTER 302

[House Bill 1085]

SINGLE FAMILY DETACHED HOMES--MINIMUM FLOOR AREA

AN ACT Relating to regulation of the minimum dimensions of habitable spaces in single-family residential buildings; amending RCW 19.27.060, 35.63.080, 35A.63.100, 36.43.010, and 36.70.750; and creating a new section.

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

****NEW SECTION. Sec. 1. The legislature finds that there is a growing need for ecologically sustainable and affordable housing, and small home construction is a way to meet this need. The legislature also finds that regulations mandating a minimum gross floor area for single-family dwellings, such as minimum floor or room area requirements, that do not further fire, life safety, or environmental purposes, objectives, or standards prevent construction of small homes. It is the intent of the legislature that counties, cities, and towns may adopt regulations eliminating any minimum gross floor area requirement for single-family dwellings or providing a minimum gross floor area requirement that is below the minimum***

ARTICLE XI
COUNTY, CITY, AND TOWNSHIP ORGANIZATION

SECTION 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION. The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general law.

Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state, and for such purpose the legislative authority of such county may cause an election to be had, at which election there shall be chosen by the qualified voters of said county not less than fifteen (15) nor more than twenty-five (25) freeholders thereof, as determined by the legislative authority, who shall have been residents of said county for a period of at least five (5) years preceding their election and who are themselves qualified electors, whose duty it shall be to convene within thirty (30) days after their election and prepare and propose a charter for such county. Such proposed charter shall be submitted to the qualified electors of said county, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said county and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, or any existing form of county government, and all special laws inconsistent with such charter. Said proposed charter shall be published in two (2) legal newspapers published in said county, at least once a week for four (4) consecutive weeks prior to the day of submitting the same to the electors for their approval as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election and shall be given for at least ten (10) days before the day of election in all election districts of said county. Said elections may be general or special elections and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said county. Such charter may be amended by proposals therefor submitted by the legislative authority of said county to the electors thereof at any general election after notice of such submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others.

Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.

Notwithstanding the foregoing provision for the calling of an election by the legislative authority of such county for the election of freeholders to frame a county charter, registered voters equal in number to ten (10) per centum of the voters of any such county voting at the last preceding general election, may at any time propose by petition the calling of an election of freeholders. The petition shall be filed with the county auditor of the county at least three (3) months before any general election and the proposal that a board of freeholders be elected for the purpose of framing a county charter shall be submitted to the vote of the people at said general election, and at the same election a board of freeholders of not less than fifteen (15) or more than twenty-five (25), as fixed in the petition calling for the election, shall be chosen to draft the new charter. The procedure for the nomination of qualified electors as candidates for said board of freeholders shall be prescribed by the legislative authority of the county, and the procedure

for the framing of the charter and the submission of the charter as framed shall be the same as in the case of a board of freeholders chosen at an election initiated by the legislative authority of the county.

In calling for any election of freeholders as provided in this section, the legislative authority of the county shall apportion the number of freeholders to be elected in accordance with either the legislative districts or the county commissioner districts, if any, within said county, the number of said freeholders to be elected from each of said districts to be in proportion to the population of said districts as nearly as may be.

Should the charter proposed receive the affirmative vote of the majority of the electors voting thereon, the legislative authority of the county shall immediately call such special election as may be provided for therein, if any, and the county government shall be established in accordance with the terms of said charter not more than six (6) months after the election at which the charter was adopted.

The terms of all elective officers, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, who are in office at the time of the adoption of a Home Rule Charter shall terminate as provided in the charter. All appointive officers in office at the time the charter goes into effect, whose positions are not abolished thereby, shall continue until their successors shall have qualified.

After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law. All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers by the charter. The legislative authority may by resolution delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.

The provisions of sections 5, 6, 7, and the first sentence of section 8 of this Article as amended shall not apply to counties in which the government has been established by charter adopted under the provisions hereof. The authority conferred on the board of county commissioners by Section 15 of Article II as amended, shall be exercised by the legislative authority of the county. [**AMENDMENT 21**, 1947 Senate Joint Resolution No. 5, p 1372. Approved November 2, 1948.]

NOTES:

Original text — Art. 11 Section 4 COUNTY GOVERNMENT AND TOWNSHIP

ORGANIZATION — *The legislature shall establish a system of county government which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine, and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made and the business of such county, and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.*

SECTION 5 COUNTY GOVERNMENT. The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: *Provided*, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population: *Provided*, That it may delegate to the legislative authority of the counties the right to prescribe the salaries of its own members and the salaries of other county officers. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them, or officially come into their possession. [AMENDMENT 57, part, 1971 Senate Joint Resolution No. 38, part, p 1829. Approved November, 1972.]

NOTES:

Amendment 12 (1924) — Art. 11 Section 5 COUNTY GOVERNMENT — *The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: Provided, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them, or officially come into their possession.* [AMENDMENT 12, 1923 p 255 Section 1. Approved November, 1924.]

Original text — Art. 11 Section 5 ELECTION AND COMPENSATION OF COUNTY OFFICERS — *The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them, and for all public moneys which may be paid to them, or officially come into their possession.*

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