

Local Boundary Commission

Report to the 29th Alaska State Legislature

2nd Session

February 2016



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LOCAL BOUNDARY COMMISSION

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As members of the Local Boundary Commission (LBC or commission), we are pleased to present our annual report to the Second Session of the 29th Alaska State Legislature. The LBC is constitutionally mandated to consider any proposed local government boundary change. There are presently four active boundary change petitions before the Local Boundary Commission.

This report describes the activities of the commission and its staff during 2015. It also provides information on the background of the commission, as well as the role of the LBC staff in providing assistance to the commission, the public, and potential petitioners.

We look forward to continue working with the Legislature and to serving Alaskans statewide in 2016.

Very truly yours,

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Chapter 1: Background

Local Boundary Commission’s Constitutional Foundation

Article X, section 12 of the Constitution of the State of Alaska created the Local Boundary Commission also referred to as “LBC” or “commission.” It states that

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The commission is responsible for establishing and modifying proposed municipal government boundaries. The framers of the state constitution believed that local governments should have authority to determine which powers they would exercise. They also asserted their belief that the state should set municipal boundaries because “local political decisions do not usually create proper boundaries . . .”¹ Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, and to take areawide or statewide needs into consideration.²

LBC Duties and Functions

The LBC acts on proposals for several different municipal (cities and boroughs) boundary changes. These are:

- Incorporating municipalities
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities
- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

¹ *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955).

² *Id.*

LBC Membership

The LBC is an autonomous commission with five members. The governor appoints LBC members for five-year overlapping terms.³ One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. Commission members receive no pay for their service.

Members:



Lynn Chrystal, Chair, At Large, Wasilla



John Harrington, First Judicial District, Ketchikan



Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow



Darroll Hargraves, Third Judicial District, Wasilla



Lavell Wilson, Fourth Judicial District, Tok

Constitutional Origin

Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). That agency is the Alaska Department of Commerce, Community, and Economic Development (Commerce, or department).⁴ Commerce serves as staff to the LBC per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. This includes providing staff, research, and assistance to the LBC.

³ AS 44.33.810.

⁴ AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

LBC Staff Role

LBC staff is required by law⁵ to investigate and analyze each boundary change proposal and to make recommendations regarding it to the commission. For each petition, staff will write at least one report for the commission, all of which are public documents. Staff recommendations to the commission are based on properly interpreting the applicable legal standards, and rationally applying those standards to each petition. Due process is best served by providing the commission with a thorough, credible, and objective analysis of every local boundary change proposal.

Besides providing support to the commission, the LBC staff also delivers technical assistance to municipalities, to petitioners, to residents of areas impacted by existing or potential petitions, to respondents, to agencies, and to the general public. Assistance the LBC staff provides includes:

- Answering public, legislative, and other governmental inquiries relating to municipal government issues
- Writing reports on petitions for the LBC
- Drafting LBC decisions
- Traveling to communities to conduct public meetings and answer questions about proposed local boundary changes
- Developing and updating municipal incorporation or boundary change forms
- Sending local boundary change forms and materials to interested persons
- Providing a link between the LBC and the public
- Maintaining Alaska municipal incorporation and other boundary change records
- Coordinating, scheduling, and attending LBC public meetings and hearings
- Developing orientation materials and providing training for new LBC members
- Maintaining and preserving LBC records in accordance with Alaska's public records laws

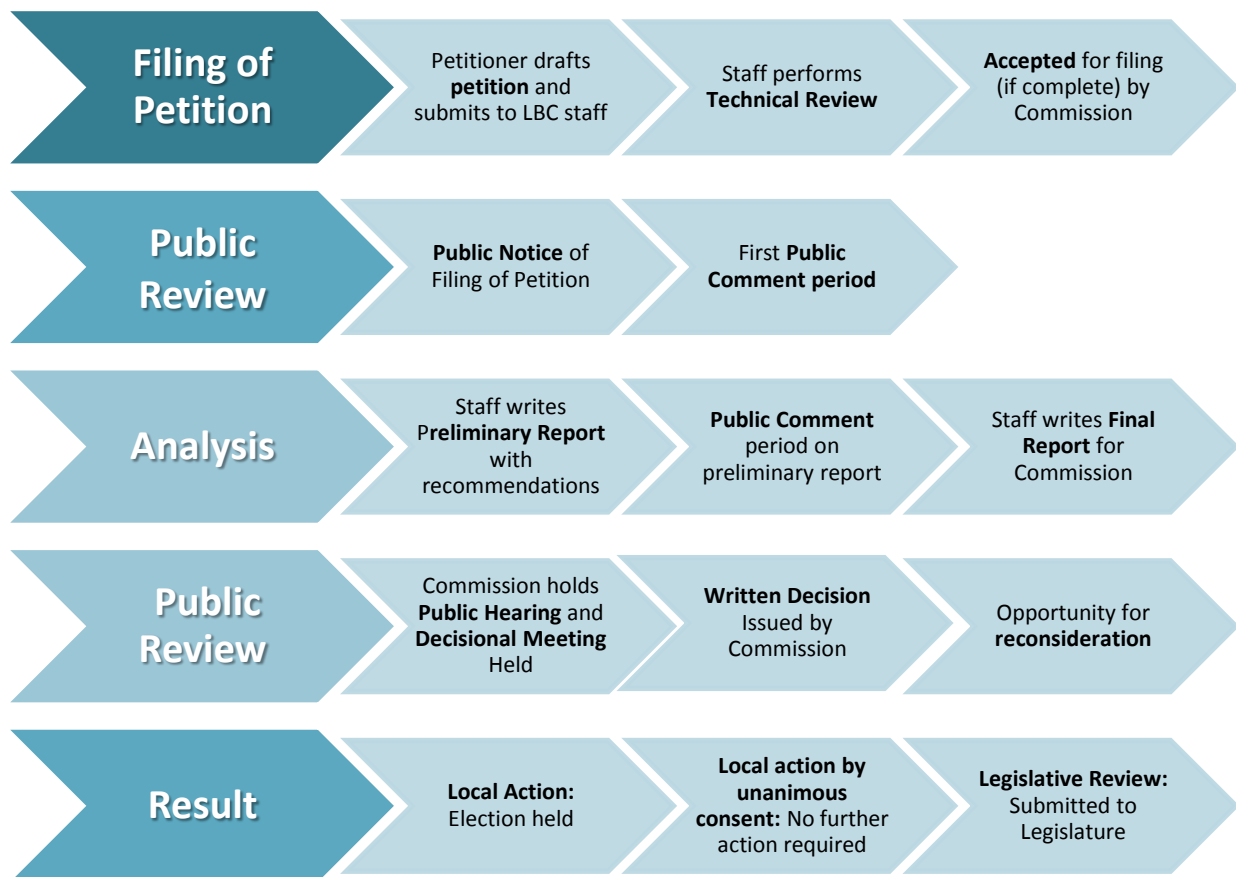
Two staff members serve the Local Boundary Commission and are located in Anchorage.

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⁵ See AS 29.04.040, AS 29.05.080, AS 29.06.110, and AS 29.06.480 - 29.06.490; 3 AAC 110.530.

Local Boundary Commission Petition Process

When it receives a petition, staff performs a technical review. When a petition is accepted for filing, staff works with the petitioner to ensure the public is notified and the petition is available for review. There are two public comment periods and two staff reports to the commissioners before the matter comes before the commissioners in a public hearing. At the public hearing, the commission listens to the parties and to any public comments given. At the decisional meeting, the commission discusses the record, and reaches a decision. It may amend, approve or deny a petition. Depending on the type of petition (legislative review or local action), if the LBC approves the petition, the decision is either submitted to the Legislature for the chance to disapprove the LBC’s decision, or to the Division of Elections to hold a vote, respectively.



Chapter 2 – Local Boundary Changes and Activities

Submitted Petitions

Allakaket

In 2013 the City of Allakaket petitioned by legislative review to detach 174 acres of land important to the community of Alatna. Allakaket concurrently petitioned to annex 12.3 square miles of land and water in order to include residents who had moved outside city limits after a 1994 flood. On October 14, 2014, the LBC approved the city's petition and staff member Brent Williams submitted the commission's decision to the Legislature on January 23, 2015. The detachment and concurrent annexation for the City of Allakaket became effective on March 16, 2015. Staff submitted the new certificate to the recorder's office.

Big Lake

On July 24, 2014, the LBC accepted for filing a petition from Big Lake residents, who sought to incorporate Big Lake as a second class city. The LBC chair consolidated it with the Houston annexation petition because the two petitions sought territory which overlapped. The commission amended the petition by reducing the proposed city boundaries from 113.3 square miles to 76.8 square miles which staff recommended in its written reports. On July 16, 2015, the LBC found that the amended petition met the standards and approved it in a public hearing held in Big Lake. Per the petitioner's request, the commission conditioned its consent upon voters authorizing a 3.09 mil rate real property tax. On October 27, 2015, voters in the proposed city defeated the incorporation ballot measure with more than 80 percent voting against incorporation.

Dillingham

In 2011, the commission approved a local action petition from the City of Dillingham to annex 399 unpopulated square miles of Nushagak Bay in order to administer a fish tax. The Dillingham voters approved the annexation, and it became effective in 2012. The Native Village of Ekuk appealed the decision to the Alaska Superior Court.

In 2014, the Alaska Superior Court vacated the LBC's decision, and remanded the petition to the LBC to process by the legislative review method. The legislative review annexation process requires a petitioner to hold a hearing before submitting the petition to the LBC. The court's decision stated that proceeding by local action violated the respondent's due process rights because they could not participate in a pre-submission hearing or vote in an annexation election. The court ruled that as nobody lived in the territory proposed for annexation, there could be no election there, but if a legislative review petition was submitted, the petitioner would be required to hold a pre-submission public hearing which would give the respondents their due process rights.

Later in 2014, the commission approved a resolution directing the city to refile an annexation petition by legislative review, if it desired to proceed with its petition. In early 2015, Dillingham submitted a legislative review petition to annex Nushagak Bay. LBC staff accepted the petition on June 12, 2015. The LBC chair consolidated it with the Manokotak annexation petition because the proposed territories for annexation overlap. Currently these petitions are in the public comment period.

Fairbanks

On May 22, 2015, the LBC staff accepted a petition from the City of Fairbanks to detach a single, privately owned 48.5-acre piece of property on the edge of the city. Recently the property owner realized the property was actually within the city, but had not been assessed as such in several years. Through this petition, Fairbanks seeks to formalize the de facto situation and allow the property to detach from the city. Staff member Eileen Collins wrote a preliminary report recommending the commission approve the petition. The matter will be decided by a commission public hearing in February of 2016.

Houston

On May 5, 2015, the commission approved the City of Houston's petition to annex 2.43 square miles by unanimous consent at a public hearing in Big Lake. The territory is owned by Knikatnu, Inc., and is part of the Port MacKenzie Rail Extension project.

Kotzebue

The City of Kotzebue submitted an annexation petition on April of 2014. It sought to annex 148.47 square miles on Baldwin Peninsula, extending down to the proposed deep-water port of Cape Blossom. The LBC staff could not accept the petition because Kotzebue first needed to hold a pre-submission public hearing. That hearing occurred on December 11, 2014. On December 18, 2014, however, the city council directed the city manager not to submit the petition to LBC staff at that time. No petition has been received since.

Manokotak

On September 1, 2015, the City of Manokotak submitted a petition to annex 37 square miles of land and 119 square miles of water on the western shore of Nushagak Bay. After staff member Brent Williams finished his technical review, staff accepted the petition on December 4, 2015. The LBC chair consolidated it with the Dillingham annexation petition because the two petitions' territories overlapped. Staff is currently accepting public comments on the petitions.

Petersburg

In April 2011, a petition was submitted to incorporate a Petersburg Borough. In November 2011, the City and Borough of Juneau filed a petition to annex some of the area that the Petersburg petitioners sought to incorporate. In August 2012, the commission approved the Petersburg Borough incorporation petition. Juneau appealed the LBC decision to the superior court. After that court upheld the LBC, Juneau appealed to the Alaska Supreme Court. On December 4, 2015, the Alaska Supreme Court upheld the LBC's decision and found that the LBC had considered Juneau's claims. The ruling does not change any boundaries as the Petersburg Borough had been in existence and functioning for nearly three years. Instead, the decision merely affirms the Petersburg borough formation, with the same boundaries. A link to the case can be found at: <http://www.courtrecords.alaska.gov/webdocs/opinions/ops/sp-7067.pdf>.

Whale Pass

On August 17, 2015, residents of Whale Pass submitted a petition to incorporate as a second class city. Staff member Eileen Collins completed its technical review, and the petition was accepted for filing on January 7, 2016.

Communities that Expressed Interest in Boundary Changes

Bethel

On December 8, 2015, the Bethel City Council voted to give the city manager the authority to explore the possibility of forming a borough. The Bethel city manager reached out to staff member Brent Williams seeking information on borough formation. The possible borough would include the Donlin Creek Mine.

Hollis

The community of Hollis expressed interest in incorporating as a second class city and raised the issue at a community association meeting in early 2015. A vote ended in a fifty-fifty split and the community postponed the issue.

Kuspuk

The Kuskokwim Corporation (TKC) has expressed interest in forming a borough in the present Kuspuk REAA. It would include the Donlin Creek Mine. Staff has met with a consultant from TKC on the matter several times at the consultant's request.

Nikiski

Nikiski is considering incorporating as a city. Residents are interested in city boundaries that would follow existing borough service area boundaries that cross Cook Inlet.

Nome

A city consultant sought and received information from staff member Brent Williams regarding boundaries and assessments for a possible annexation by the city.

Port Protection

Port Protection is interested in becoming a second class city. The community has held workshops regarding potential city formation, and is working on a petition.

Prince of Wales Island

A committee has formed and is working on a draft charter for a possible home rule borough petition. Several island residents have contacted staff with questions and have expressed both support and opposition.

Sand Point

The Sand Point city administrator met with staff several times, and is actively working on a petition to annex via legislative review. Staff member Brent Williams has answered his questions. A petition is expected in spring of 2016.

Soldotna

The first class City of Soldotna expressed interest in becoming a home rule city.

Susitna

Persons attending a Talkeetna community meeting expressed interest in detaching from the Matanuska-Susitna Borough, and incorporating as a Susitna borough that would range from Sunshine to the Denali Borough. They were not interested in incorporating as a city or in joining the neighboring Denali Borough. A group interested in detachment and borough formation is working on a Susitna Borough feasibility study. Through the winter, local focus groups are scheduled to meet and discuss aspects of creating and maintaining a borough. Staff member Brent Williams has been working with residents to answer questions regarding this process.

Thorne Bay

Some Thorne Bay residents contacted the LBC staff regarding the feasibility and process of detaching from Thorne Bay and incorporating as a second class city of South Thorne Bay. The residents felt disconnected from the existing city.

Ward Cove

Some residents of Ward Cove had expressed interest in incorporating as a home rule city, but in October 2015, the group stopped working on the petition due to a lack of support.

Chapter 3: Conclusion

This report has explained the background of the LBC, and described the commission and staff processes. It also provided a summary of submitted petitions, and listed communities that expressed interest in boundary changes during 2015.

The LBC is pleased to continue serving the people of Alaska by fulfilling its constitutionally mandated authority to consider any proposed local government boundary change. The staff is also pleased to continue providing assistance to the public and potential petitioners. There are presently four active local boundary change petitions before the Local Boundary Commission, all of which will likely come before the commission for a public hearing in 2016.

