

Appendix C

The Alaska Local Boundary Commission

I. Constitutional Foundation of the Commission.

The framers of Alaska’s Constitution adopted the principle that, “unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution.”^{C-1} Thus, by mandating the establishment of the Local Boundary Commission (LBC or Commission) in article X, section 12 of the Constitution,^{C-2} the framers recognized that a “grave need” existed when it came to the establishment and alteration of municipal governments. The LBC is one of only five State boards or commissions established in the Constitution, among a current total of approximately 120 active boards and commissions.^{C-3}

The Alaska Supreme Court characterized the framers’ purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee: “. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.”

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

^{C-1} Victor Fischer, Alaska’s Constitutional Convention, p. 124.

^{C-2} Article X, section 12 states,

A local boundary commission or board shall be established by law in the executive branch of 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.

^{C-3} The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

II. Duties and Functions of the LBC.

The LBC acts on proposals for different types of municipal boundary changes.

These are:

- incorporation of municipalities;^{C-4}
- annexation to municipalities;
- detachment from municipalities;
- merger of municipalities;
- consolidation of municipalities;
- dissolution of municipalities; and
- reclassification of city governments.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under article X, section 12 of Alaska's Constitution.

The Alaska Supreme Court has stated that the above three Commission duties are mandatory. (*United States Smelt. R. & M. Co. v. Local Bound. Com'n*, 489 P.2d 140 (Alaska 1971).)

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*. That report was prepared in response to the directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy*



The LBC at a recent hearing

^{C-4} The term "municipalities" includes both city governments and borough governments.

Considerations and a Review of Opportunities for Consolidation. That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called for “a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River” (Section 48 Chapter 159 SLA 2004).

III. Nature of Proceedings.

Boards and commissions frequently are classified as quasi-legislative, quasi-executive, or quasi-judicial, based on their functions within the separation-of-powers scheme of the Constitution. The LBC has attributes of all three.

A. Quasi-Executive.

Article X, section 12 of the Alaska Constitution provides that the LBC, “shall be established by law in the *executive branch* of the state government.” (Emphasis added.) Members of the LBC are appointed by and serve at the pleasure of the Governor. The duty of the LBC under AS 44.33.812(a)(1) to “make studies of local government boundary problems” is one example of the quasi-executive nature of the LBC.

B. Quasi-Legislative.

In 1974, 1976, and 1993, the Alaska Supreme Court stated that the Alaska Constitution delegates legislative authority to the LBC to make fundamental public policy decisions; thus conferring quasi-legislative status upon the LBC. Specifically, the Court stated:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of *delegated legislative authority* to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission’s reading of the standards and its evaluation of the evidence.

Mobil Oil Corp. v. Local Boundary Com’n, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis added). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976) and *Valleys Borough Support Committee v. Local Boundary Com’n*, 863 P.2d 232, 234 (Alaska 1993).

In addition to exercising quasi-legislative powers in making boundary determinations, the LBC carries out a quasi-legislative duty under AS 44.33.812(a)(2) when it adopts “regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.”

C. Quasi-Judicial.

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to hold hearings, follow due process in conducting hearings and ruling on petitions, and apply pertinent standards in the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code to facts when making decisions.

D. Hearings and Decisions.

In *U.S. Smelting, supra*, the Alaska Supreme Court found that due process requirements apply in Commission proceedings.^{C-5} The Court stated it was the administrative action of the Commission, rather than legislative action, that it was reviewing in the case.

Among other things, due process in Commission proceedings means that adequate notice be given, that a fair and impartial hearing be conducted, and that a reasoned decision on the merits of the petition be set out in writing. Notice requirements are set out in statute (AS 44.33.818) and in numerous sections of the Commission's regulations (e.g., 3 AAC 110.450, 3 AAC 110.520, 3 AAC 110.550).

A fair and impartial hearing^{C-6} entails having the opportunity to present and examine evidence and having that evidence judged by impartial, unbiased fact finders. To some extent, the State's ethics laws (AS 39.52.110 - 39.52.950; 9 AAC 52.010 - 9 AAC 52.180) and the Commission's regulations at 3 AAC 110.800 address ethics requirements for Commissioner conduct. However, the Court also reviews fair-hearing issues to determine whether a fact finder has shown bias such as a prejudgment of the facts or issues or a personal bias for or against an issue or a participant in the proceeding.

^{C-5} The Court addressed judicial review of LBC decisions to determine whether applicable rules of law and procedure were followed. The Court stated:

[The *Murkowski*] test delineates the contours of judicial review employed by us in the case at bar in reaching the conclusion that the [LBC] failed to comply with the mandate of [AS 44.33.812(a)] that it develop standards for the changing of the local boundary lines. Without doubt there are questions of public policy to be determined in annexation proceedings which are beyond the province of the court. Examples are the desirability of annexation, as expressed in published standards. Judicial techniques are not well adapted to resolving these questions. In that sense, these may be described as political questions," beyond the compass of judicial review. **But other . . . issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques. *Murkowski* clearly permits this latter type of review.**

U.S. Smelting, at 143 (emphasis added).

^{C-6} In many instances, a fair hearing also entails the right to cross-examine adverse witness. However, the Department of Law has advised that there is no right to cross-examine witnesses in LBC proceedings. Furthermore, in the Commission's 2006 – 2007 comprehensive review of its regulations, the Commission rejected a conceptual proposal to allow cross-examination.

Due process in Commission proceedings also entails a written, well-reasoned decision^{C-7} based on the facts in the record and the application of pertinent boundary-change standards. Procedural requirements for Commission decisions are set out 3 AAC 110.570. Commission decisions dealing with the different types of municipal boundary changes that come before it are subject to appeal^{C-8} under the Administrative Procedure Act (at AS 44.62.560 - 44.62.570). Commission decisions must be written so that the Court can determine if there is a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence.^{C-9}



LBC at a recent hearing

Assuming compliance with due process and jurisdictional limitations, a Commission decision is typically reviewed for abuse of discretion,^{C-10} which occurs if the LBC has not proceeded in the manner required by law, if its decision is not supported by the evidence, or if the Commission has not properly interpreted applicable standards.

^{C-7} In *Mobil Oil*, the Alaska Supreme Court stated that commission decisions do not have to contain formal findings of fact and conclusions of law. The court stated that as long as the Commission's decisions reflected a reasonable basis for its interpretation of applicable legal standards, the Court would sustain the decision (assuming, of course, compliance with due process of law, *U.S. Smelting*).

^{C-8} AS 29.04.040; 29.05.100, 29.06.040, 29.06.130, 29.06.500.

^{C-9} See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil* at 97-8. Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; when the LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

^{C-10} In interpreting AS 44.62.570, the Alaska Supreme Court has recognized at least four principal standards of review of administrative decisions: "These are the 'substantial evidence test' for questions of fact; the 'reasonable basis test' for questions of law involving agency expertise; the 'substitution of judgment test' for questions of law where no expertise is involved; and the 'reasonable and not arbitrary test' for review of administrative regulations." *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

IV. Limitations on Direct Communications with the LBC.

As noted above, when the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution must be conducted in a manner that upholds the rights to due process and equal protection. Ensuring that communications with the LBC are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications on pending petitions, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC Staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

Local Boundary Commission Staff
Department of Commerce, Community, and Economic Development
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Telephone: (907) 269-4501
Fax: (907) 269-4539
E-mail: LBC@alaska.gov

A. LBC Membership.

The LBC is an autonomous commission. The Governor appoints members of the LBC for five-year overlapping terms (AS 44.33.810). Notwithstanding the prescribed length of their terms, however, members of the LBC serve at the pleasure of the Governor (AS 39.05.060(d)).

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as Chair of the LBC.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service. However, they are entitled to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.



Kermit L. Ketchum, Chair, At-Large Appointment. On June 25, Governor Palin appointed Kermit L. Ketchum as Chair of the LBC, effective July 1, 2007. Commissioner Ketchum succeeds Darroll Hargraves, who retired effective June 30, 2007. Commissioner Ketchum is a resident of the greater Wasilla area in the Matanuska-Susitna Borough. He received his bachelor's degree in business administration and has undertaken graduate studies in computer science. Commissioner Ketchum served 21 years in the U.S. Air Force, retiring from that career in 1976. He subsequently worked for the University of Alaska, Matanuska-Susitna College from 1976 to 1997, and was an Associate Professor in Computer Science at the College from 1987 to 1997.



Georgianna Zimmerle, First Judicial District. Commissioner Zimmerle is a life-long resident of Ketchikan.^{C-11} She earned an Associate of Arts degree from the University of Alaska in May 1985. Commissioner Zimmerle was appointed to the LBC on March 25, 2003, and was reappointed to her second term in January 2006. An Alaska Native, Commissioner Zimmerle is a Tlingit of the Raven moiety and her Indian name is JEEX-GA-TEET'. She is also Haida from her paternal family. Commissioner Zimmerle worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Commissioner Zimmerle served as the General Manager of Ketchikan Indian Community for 2½ years. She is currently retired and working part-time for Tongass Federal Credit Union. Her current term on the LBC ends January 31, 2011.

^{C-11} Commissioner Zimmerle lives within the corporate boundaries of both the City of Ketchikan and the Ketchikan Gateway Borough. The City of Ketchikan was incorporated in 1900. Sixty years later, voters adopted a home-rule charter for the City of Ketchikan, making it one of the first home-rule local governments in the newly formed State of Alaska. DCCED's 2006 certified population for the City of Ketchikan is 7,622. The Ketchikan Gateway Borough was incorporated in September 1963 under the Mandatory Borough Act. It is a second-class borough. The 2006 population of the Ketchikan Gateway Borough, as certified by DCCED, is 13,174.



Robert Harcharek, Second Judicial District. Commissioner Harcharek, a resident of Barrow,^{C-12} was appointed to the LBC on July 18, 2002 by then-Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him Vice-Chair of the Commission. Commissioner Harcharek has lived and worked on the North Slope for more than 25 years. He has been a member of the Barrow City Council since 1993. He has also been a member of the North Slope Borough School Board. He is currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public

Works. Commissioner Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska School Activities Association. His current term on the LBC ends January 31, 2009.



Lynn Chrystal, Third Judicial District. Lynn Chrystal, a resident of Valdez,^{C-13} serves from the Third Judicial District. Governor Palin appointed him to the Commission on March 27, 2007. Commissioner Chrystal is a former Mayor and member of the City Council of the City of Valdez. He has lived in Valdez for the past 32 years. Commissioner Chrystal retired in 2002 from the federal government after 4 years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other

organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. Commissioner Chrystal is retired, but teaches on a substitute basis at Valdez schools. His current term on the LBC ends January 31, 2012.

^{C-12} Commissioner Harcharek lives within the corporate boundaries of both the City of Barrow and the North Slope Borough. The City of Barrow, incorporated in 1958, is a first-class city. DCCED's 2006 certified population for the City of Barrow is 4,065. The North Slope Borough was incorporated in 1972. DCCED's 2006 certified population for the North Slope Borough is 6,807.

^{C-13} Commissioner Chrystal lives within the corporate boundaries of the City of Valdez, a city in the unorganized borough. The City of Valdez, incorporated in 1901, became a home-rule city in 1961. DCCED's 2006 certified population of the City of Valdez is 4,353.

Lavell Wilson, Fourth Judicial District. Lavell Wilson, a resident of Tok,^{C-14} serves from the Fourth Judicial District. Governor Palin appointed him to the Commission on June 4, 2007. Commissioner Wilson is a former member of the State House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since that time. Commissioner Wilson attended college at the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981- 1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. He has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2010.

V. Staff to the Commission.

The Alaska Department of Commerce, Community, and Economic Development (DCCED), Division of Community Advocacy (DCA) provides staff to the Commission pursuant to AS 44.33.020(a)(4).^{C-15} The following sections address the role of DCCED/DCA.

A. Constitutional Origin of the Local Government Agency.

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed." In addition to the previously noted five boards and commissions named in the Constitution, the framers provided for only one State agency or department – the local government agency mandated by article X, section 14 to advise and assist local governments.^{C-16} It is worth noting that of the six boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The constitutional standing granted to the LBC and the local government agency reflects the framers' conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in part, upon those two entities.

^{C-14} Commissioner Wilson lives in Tok, an unincorporated community in the unorganized borough. The State Demographer estimates that the population of Tok was 1,347 in 2006. (Note: Elsewhere in this appendix, population figures are listed as DCCED certified figures. DCCED does not certify population figures for unincorporated communities.)

^{C-15} AS 44.33.020(a)(4) provides that DCCED shall "serve as staff for the Local Boundary Commission."

^{C-16} Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

In its capacity as staff to the LBC, DCCED is required to investigate each boundary-change proposal and to make recommendations regarding such to the LBC.^{C-17} As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCCED adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC Staff is committed to developing its recommendations to the LBC based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC Staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

DCCED's Commissioner, DCCED's Deputy Commissioners, and the Director of DCA provide policy direction concerning recommendations to the LBC.

The recommendations of LBC Staff are not binding on the LBC. As noted previously, the LBC is an autonomous commission. While the Commission is not obligated to follow the recommendations of the LBC Staff, it has, nonetheless, historically considered DCCED's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC Staff also delivers technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by the LBC Staff include:

- conducting feasibility and policy analysis of proposals for city reclassification and incorporation, annexation, detachment, merger, consolidation, and dissolution of cities and boroughs;
- writing reports regarding the analyses of petitions for such boundary changes;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during Commission hearings and other meetings;
- drafting decisional statements of the LBC;

^{C-17} AS 29.04.040, 29.05.080, 29.06.110, and 29.06.450 and 3 AAC 110.530.

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- implementing decisions of the LBC;
 - preparing and overseeing appeals of Commission decisions, in coordination with agency counsel from the Department of Law;
 - drafting annual reports of the Commission as directed;
 - preparing Commission ethics reports for the LBC Chairman;
 - certifying municipal boundary changes;
 - maintaining incorporation and boundary records for each of Alaska's 162 municipal governments;
 - coordinating, scheduling, and overseeing public meetings and hearings for the LBC, including arranging travel and accommodations for Commissioners and staff;
 - developing orientation materials and providing training for new LBC members;
 - maintaining and preserving LBC records in accordance with the public records laws of the State;
 - developing and updating forms and related materials for use in municipal incorporation, alteration, dissolution, and reclassification;
 - at direction of the Commission, proposing amendments to Commission regulations and completing the regulations amendment and adoption process under the Administrative Procedure Act (AS 44.62) as necessary; and
 - at direction of the Commission, proposing amendments to Commission bylaws and completing the amendment and adoption process as necessary.

