

TITLE 44 - STATE GOVERNMENT

Chapter 33 - Department of Community & Economic Development Local Boundary Commission

Section

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Sec. 44.33.810. LOCAL BOUNDARY COMMISSION.

There is in the department a local boundary commission. The local boundary commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chairman of the commission. (Sec. 7 ch 64 SLA 1959; am Sec. 5 ch 200 SLA 1972; am Sec. 100 ch 59 SLA 1982)

Revisors Notes - Formerly AS 44.47.565. Renumbered in 1999. Formerly AS 44.19.250. Renumbered in 1980.

Cross References - For further provisions relating to the appointment, qualifications, and terms of members of the commission, see AS 39.05.060.

Decisions -When constitutional provision effective. - The method for making boundary changes, contemplated by Alaska Const., art. X, Sec. 12, was operative upon the enactment of AS 44.19.260 now AS 44.47.567 and this section. Fairview Pub. Util. Dist. No. 1 v. Anchorage, 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Cited in Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Sec. 44.33.812. POWERS AND DUTIES.

- (a) The local boundary commission shall
- (1) make studies of local government boundary problems;
 - (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
 - (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and regional affairs, or a political subdivision of the state; and

(4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The local boundary commission may

(1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and

(2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years. (Sec. 7 ch 64 SLA 1959; Sec. 2 ch 45 SLA 1960; am Sec. 1, 2 ch 55 SLA 1964; am Sec. 1, 2 ch 161 SLA 1966; am Sec. 6 ch 200 SLA 1972; am Sec. 30 ch 58 SLA 1994)

Revisors Notes - Formerly AS 44.47.567. Renumbered in 1999. Formerly AS 44.19.260. Renumbered in 1980.

Cross References -For further provisions relating to powers and duties of the commission, see AS 29.06 and Alaska Const., art. X, Sec. 12.

Amendment Notes -The 1994 amendment, effective August 22, 1994, in paragraph (a)(2), substituted "adopt regulations providing" for "develop proposed" and "municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution" for "changing local boundary lines."

AG Opinions -

When grouped together, the powers and duties of the local boundary commission are as follows: (1) To consider any local government boundary change (Sec. 12, art. X, Alaska Constitution); (2) to present proposed changes to the legislature (Alaska Const., art. X, Sec. 12; Sec. 7, ch. 64, SLA 1959); (3) (subject to law) to establish procedures whereby boundaries may be adjusted by local action (Alaska Const., art. X, Sec. 12); (4) to make studies of local government boundary problems (Sec. 7, ch. 64, SLA 1959); (5) to develop proposed standards and procedures for changing local boundary lines (Sec. 7, ch. 64, SLA 1959); (6) to hold hearings on proposed boundary changes (Sec. 7, ch. 64, SLA 1959). 1959 Op. Att'y Gen., No. 30.

The local boundary commission has the power and authority to recommend borough boundaries to the legislature. 1959 Op. Att'y Gen., No. 30.

The commission has the authority to amend a petition for the annexation of an area to a municipality by changing the boundaries of the area proposed for annexation. This authority must, of course, be exercised in accordance with the applicable annexation regulations. October 25, 1982, Op. Att'y Gen.

Decisions -

Duties of commission. - By this section and AS 44.47.583 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

When constitutional provision effective. - The method for making boundary changes, contemplated by Alaska Const., art. X, Sec. 12, was operative upon the enactment of AS 44.19.260 now AS 44.47.567 and this section. *Fairview Pub. Util. Dist. No. 1 v. Anchorage*, 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Methods for changing boundaries. - Alaska Const., art. X, Sec. 12 established two methods by which local boundaries might be changed: (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Step annexation allows for gradual assimilation. - As an alternative to immediate annexation, the step-annexation provision allows for gradual assimilation of contiguous areas into incorporated cities where direct annexation would be premature or impractical. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

How step annexation commenced. - Ordinarily, a step annexation will be commenced by a municipality's petition specifically requesting that alternative, although presumably the commission could require the municipality to annex by the step method. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Section implements Alaska Const., art. X, Sec. 12. - The legislature implemented Alaska Const., art. X, Sec. 12 by enacting this section. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The intention of Alaska Const., art. X, Sec. 12 and this section - was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Mandatory or discretionary nature of duties. - The duties imposed upon the commission in subsection (a) are mandatory. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

The duties imposed in subsection (b) are discretionary. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

The development of standards is a precondition - to the commission's exercise of its discretion under subsection (b) of this section. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

The exercise of the commission's discretion under subsection (b) of this section is conditioned upon the development of standards and procedures for changing local boundary lines under subsection

(a)(2) of this section. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Under subsection (a) of this section the legislature requires the commission to develop standards in order to recommend boundary changes. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

Since mandatory terms were used, the legislature clearly intended the local boundary commission to adopt regulations concerning modification of local boundary lines. *Mukluk Freight Lines v. Nabors Alaska Drilling, Inc.*, 516 P.2d 408 (Alaska 1973) (decided prior to the 1994 amendment).

There are three purposes - underlying the statutory requirement of annexation standards.

First, such standards expose the basic decision-making processes of the commission to public view. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Second, the standards guide local governments in making annexation decisions and in preparing proposals for the commission. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Continued failure to have promulgated standards - made an annexation a fortiori voidable and prima facie illegal. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Failure must result in injustice. - Failure to promulgate standards for annexations was not an error so substantial as to result in injustice. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Reasonable time limitation on duty. - The duty under subsection (a)(3) to consider requested boundary changes implies a reasonable time limitation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Veto power of legislature. - Alaska Const., art X, Sec. 12, empowers the legislature to veto commission actions. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Review by legislature. - Alaska Const., art. X, Sec. 12 does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Alaska Const., art. X, Sec. 12, and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Legislature handicapped in absence of known standards. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Existing cities with local boundary commission created boundaries - remain unaffected by the holding, under the de facto

municipality doctrine, in *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

Doctrine of de facto municipal incorporation applied to annexations. - See *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The doctrine of de facto municipal incorporation insulates from collateral attack annexations not impeccably effected where the annexation is attempted under a proper statute, a good faith effort is made to comply with the statute, the statute is colorably complied with, and the municipality has exercised its powers in good faith within the annexed territory. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

All annexations will have the purpose and effect, - in part, of extending city services. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Differently served and treated areas after annexation. - The post-annexation creation of differently served and treated areas does not impugn the reasonableness of the annexation. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Common challenge is to attack procedures. - The more common challenge to local boundary commission action attacks the procedures by which the substantive decisions were made. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The selection of annexation method made by the commission - and approved by the legislature is controlling. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Judicial review. - 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 annexation issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Annexations effected through local boundary commission procedures receive a full administrative hearing, followed by legislative review, before they are subjected to judicial scrutiny. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part

of the city of Dillingham. When the boundary commission's proposal for boundary change became effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968) (decided prior to the 1994 amendment).

Sec. 44.33.814. MEETINGS AND HEARINGS.

The chairman of the commission or the commissioner with the consent of the chairman may call a meeting or hearing of the local boundary commission. All meetings and hearings shall be public. (Sec. 3 ch 45 SLA 1960; am Sec. 7 ch 200 SLA 1972)

Revisors Notes - Formerly AS 44.47.569. Renumbered in 1999. Formerly AS 44.19.270. Renumbered in 1980.

Sec. 44.33.816. MINUTES AND RECORDS.

The local boundary commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes. (Sec. 3 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.571. Renumbered in 1999. Formerly AS 44.19.280. Renumbered in 1980.

Sec. 44.33.818. NOTICE OF PUBLIC HEARINGS.

Public notice of a hearing of the local boundary commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible. (Sec. 3 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.573. Renumbered in 1999. Formerly AS 44.19.290. Renumbered in 1980. In 1989 "commissioner" was substituted for "director of local affairs" to reflect the changes made by ch. 200, SLA 1972.

Sec. 44.33.820. QUORUM.

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing. (Sec. 3 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.575. Renumbered in 1999. Formerly AS 44.19.300. Renumbered in 1980.

Sec. 44.33.822. BOUNDARY CHANGE.

A majority of the membership of the local boundary commission must vote in favor of a proposed boundary change before it may be presented to the legislature. (Sec. 3 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.577. Renumbered in 1999. Formerly AS 44.19.310. Renumbered in 1980.

Sec. 44.33.824. EXPENSES.

Members of the local boundary commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions. (Sec. 4 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.579. Renumbered in 1999. Formerly AS 44.19.320. Renumbered in 1980.

Cross References - For per diem and travel expenses, see AS 39.20.180.

Sec. 44.33.826. HEARINGS ON BOUNDARY CHANGES.

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change. (Sec. 2 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.581. Renumbered in 1999. Formerly AS 44.19.330. Renumbered in 1980.

Sec. 44.33.828. WHEN BOUNDARY CHANGE TAKES EFFECT.

When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 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. (Sec. 2 ch 45 SLA 1960)

Revisors Notes - Formerly AS 44.47.583. Renumbered in 1999. Formerly AS 44.19.340. Renumbered in 1980.

Decisions - Change effective unless legislature disapproves. - By this section and AS 44.47.567 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

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& Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Compliance with legislative requirements. - Alaska Const., art. X, Sec. 12 does nothing to compel the legislature to review for compliance with its own requirements. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

This section and Alaska Const., art. X, Sec. 12, do not make the decision as to whether the commission has complied with the law exclusively legislative. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Legislature handicapped in absence of known standard governing change. - Under Alaska's Constitution the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

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Stated in State, Dep't of Nat'l Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981).