



LAWS OF ALASKA

2006

Source

CSSSHB 133(JUD) am

Chapter No.

AN ACT

Relating to incorporation of boroughs, to annexation by local action, and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to incorporation of boroughs, to annexation by local action, and to regulations of the
2 Local Boundary Commission to provide standards and procedures for municipal
3 incorporation, reclassification, dissolution, and certain municipal boundary changes; and
4 providing for an effective date.

5

6 * **Section 1.** AS 29.05.100(a) is amended to read:

7 (a) **After providing public notice of each proposed amendment or**
8 **condition and an opportunity for public comment, the** [THE] Local Boundary
9 Commission may amend the petition and may impose conditions on the incorporation.
10 If the commission determines that the incorporation, as amended or conditioned if
11 appropriate, meets applicable standards under the state constitution and commission
12 regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031,
13 and is in the best interests of the state, it may accept the petition. Otherwise it shall
14 reject the petition.

1 * **Sec. 2.** AS 29.05 is amended by adding a new section to read:

2 **Sec. 29.05.115. Incorporation with legislative review.** (a) If the Local
3 Boundary Commission submits a proposal for borough incorporation to the legislature
4 under art. X, sec. 12, Constitution of the State of Alaska, AS 29.05.060 - 29.05.110 do
5 not apply. However, before the proposal is submitted to the legislature, the Local
6 Boundary Commission shall hold at least two public hearings in the area proposed for
7 incorporation.

8 (b) This section may not be construed as granting authority to the Local
9 Boundary Commission to propose a borough incorporation under art. X, sec. 12,
10 Constitution of the State of Alaska.

11 * **Sec. 3.** AS 29.06.040(c) is amended to read:

12 (c) In addition to the regulations governing annexation by local action adopted
13 under AS 44.33.812, the Local Boundary Commission shall establish procedures for
14 annexation and detachment of territory by municipalities by local action. The
15 procedures established under this subsection must include a provision that

16 (1) **a proposed annexation must be approved by a majority of votes**
17 **on the question cast by voters residing in the annexing municipality;**

18 (2) a proposed annexation **or** [AND] detachment must be approved by
19 a majority of votes on the question cast by voters residing in the area proposed to be
20 annexed or detached;

21 (3) [(2)] municipally owned property adjoining the municipality may
22 be annexed by ordinance without voter approval; and

23 (4) [(3)] an area adjoining the municipality may be annexed by
24 ordinance without an election if all property owners and voters in the area petition the
25 governing body.

26 * **Sec. 4.** AS 44.33.812(a) is amended to read:

27 (a) The Local Boundary Commission shall

28 (1) make studies of local government boundary problems;

29 (2) adopt regulations providing standards and procedures for municipal
30 incorporation, annexation, detachment, merger, consolidation, reclassification, and
31 dissolution; **the regulations providing standards and procedures are subject to**

1 **AS 29.04 - AS 29.10;**

2 (3) consider a local government boundary change requested of it by the
3 legislature, the commissioner of commerce, community, and economic development,
4 or a political subdivision of the state; "boundary change" may not be construed to
5 include a borough incorporation; and

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

12 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **APPLICABILITY.** A municipal incorporation, annexation, detachment, merger,
15 consolidation, reclassification, or dissolution proposal that has not taken effect on or before
16 the effective date of this Act and that has been initiated or considered under regulations that
17 do not meet the requirements of AS 44.33.812(a)(2), as amended in sec. 4 of this Act, or
18 under procedures that do not meet the requirements of AS 29.05.115, added by sec. 2 of this
19 Act, is void. The proposal may be initiated again under regulations that do meet the
20 requirements of AS 44.33.812(a)(2) or under procedures that do meet the requirements of
21 AS 29.05.115.

22 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

SSHB 133 Local Boundary Commission SPONSOR STATEMENT

Sponsor Substitute for House Bill 133 makes three changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Also we will add a provision that requires at least one public meeting and voter approval by a majority of the votes cast in an election before the Local Boundary Commission can take a proposal directly to the legislature.

Finally, AS 29.06.040(c)(1) requires a proposed annexation to be approved by a "majority of the votes on the question cast by voters residing in the area proposed to be annexed". The Local Boundary Commission has a regulation that expands that requirement to "an aggregate vote of the people in the borough and the people in the area to be annexed." This is a requirement above and beyond what the legislature had in mind and dilutes the voting rights of those voters in the area to be annexed.

This legislation is about fairness, preserving a representative form of government, and making sure that laws implemented by non-elected servants of government through regulation do not extend beyond the laws implemented by elected legislators.

News & Announcements

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Governor Signs HB 133

FOR IMMEDIATE RELEASE: May 27, 2006 No. 06-091

Governor Signs HB 133 – Borough Incorporation and Annexation Bill (Juneau) — Governor Frank H. Murkowski has signed into law HB 133, which makes changes in the way the Local Boundary Commission processes municipal incorporations, annexations, detachments, mergers, consolidations, reclassifications, and dissolutions.

The bill, sponsored by North Pole Representative John Coghill, also protects the voters' right to incorporate, outline the boundaries of their municipality, and select the level of service they want. It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

"This bill cleans up the process local citizens use to define their own community," Murkowski said. "It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go."

Coghill said he appreciated that the governor was in agreement with the Legislature on the bill. "The Alaska Constitution supports the ideal that government from the bottom up is always best, whenever that is possible," Coghill said. "HB 133 puts a strong emphasis on getting people involved in local governance."

HB 133 also requires a majority vote of the voters residing in an area that is to be annexed to an existing municipality or borough, as well as a majority vote of those residing within the municipality. This provision will affect a current LBC regulation that has allowed annexations to go through by aggregating a majority vote of those voters in the area being annexed and the existing municipality, even though a majority in the area being annexed might be opposed.

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[John Manly Press Secretary, 465-3500](#)



In other news, Governor Murkowski and Staff Jim Claiborne, ConocoPhillips, ExxonMobil and after May 24 conference a completion of certainty port pipeline conti Steve Marsh (President, B Jim Bowles (ConocoPhillips Inc.), Ken Ko Vice President Gas - BP Alaska Clark (Chief of Governor Murkowski Richard Owe President, Exxon Alaska Production Joe Marusha President Alaska Slope Gas, D ConocoPhillips Inc.), Governor Murkowski. F

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Of Interest

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STATE OF ALASKA

DEPARTMENT OF LAW

FRANK H. MURKOWSKI
GOVERNOR

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May 26, 2006

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CSSSHB 133(JUD) am -- relating to incorporation of boroughs, to annexation by local action, and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes (**Revised**)
Our file: 883-06-0091

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed CSSSHB 133(JUD) am, relating to incorporation of boroughs, to annexation by local action, and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes.

Section 1 of the bill amends AS 29.05.100(a) to require the Local Boundary Commission (commission) to provide "public notice of each proposed amendment or condition and an opportunity for public comment" before the commission may impose an amendment on a petition for incorporation or a condition on the incorporation. Current law has been interpreted by the Alaska Supreme Court as allowing the commission to amend or condition a petition for incorporation when such action is necessary to approve a petition, on the basis of the commission's broad constitutional authority granted under art. X, sec. 12, of the Alaska Constitution. See *Petitioners for Incorporation of City & Borough of Yakutat v. Local Boundary Comm'n*, 900 P.2d 721, 725-26 (Alaska 1995) (scope of powers of the commission under statute is determined in light of constitutional provision that statute implements; commission has broad authority to decide what most appropriate boundaries of proposed borough would be). Under current law, amendments

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or conditions can be imposed by the commission up to and including in the decisional meeting -- a meeting that occurs after the public hearing and comment period has been achieved regarding an incorporation petition. While the commission will still be able to impose amendments and conditions under this bill's amendment, it will be required to provide public notice of the proposed amendment or condition. Thus, the amendment will add procedural steps to the incorporation process. The amendment does not specify the time period required for public notice of proposed amendments or conditions to a petition, therefore reasonable public notice must be provided. *See United States Smelting Ref. & Mining Co. v. Local Boundary Commission*, 489 P.2d 140 (Alaska 1971). In its regulations, the commission may also establish procedures for the public notice required under sec. 1. AS 44.33.812(a)(2).

Section 2 of the bill adds a new section, AS 29.05.115, that provides that when the commission submits a proposal for borough incorporation to the legislature under art. X, sec. 12, of the Alaska Constitution, the procedures of AS 29.05.060 - 29.05.110 will not apply. The provisions of AS 29.05.060 - 29.05.110, set out the procedures for the filing of a municipal incorporation petition, its review and investigation by commission staff, public hearings, and decisions issued by the commission. In lieu of these procedures, which typically apply to all municipal incorporation petitions (city or borough incorporations), in the case of a borough incorporation petition to be submitted to the legislature under art. X, sec. 12, new AS 29.05.115(a) would require that the commission hold at least two public hearings in the area proposed for borough incorporation before submission of the petition to the legislature. And, in new AS 29.05.115(b), the statute provides that "[t]his section may not be construed as granting authority to the Local Boundary Commission to propose a borough incorporation under art. X, sec. 12, of the Constitution of the State of Alaska." This appears to impose a limitation on the commission's authority when "it" acts in the role of a proposer or petitioner of a borough incorporation to be submitted to the legislature. It does not affect other petitions for borough incorporation from being submitted to the legislature under art. X, sec. 12. Further, the language of this section is not inconsistent with the purpose of art. X, sec. 12, for which the Alaska Supreme Court has ruled that the constitutional framers' debate in adopting this article of the constitution simply did not address the question of whether incorporation petitions must be submitted to the legislature. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974). Finally, because subsec. (b) is drafted in the negative and is expressed in terms of prohibition, it is considered to repeal by implication any former inconsistent legislation and the common law, or prevents recourse to the general common law in specific circumstances covered by the legislation. Vol. 1A, *Sutherland Stat Const*, sec. 24.01 (5th Ed).

Section 3 of the bill amends AS 29.06.040(c), which concerns procedures that the commission is required to adopt for annexation and detachment of territory by

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municipalities by local action. These procedures are in addition to the regulations governing annexation by local action that the commission adopts under AS 44.33.812. The relevant amendment to AS 29.06.040(c) adds a new para. (1); as amended, subsec. (c) would read as follows:

(c) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection *must include* a provision that

(1) a proposed annexation must be approved by a majority of votes on the question cast by voters residing in the annexing municipality;

(2) a proposed annexation or detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;

(3) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; *and*

(4) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body. (emphasis added).

The new subsec. (c)(1) simply adds one more type of procedure that the commission must provide for with respect to annexations of territory by municipalities by local action. It is not a limitation on the commission's authority to adopt other procedures. This is evident from the use of the term "must include" in subsec. (c)'s lead-in language. According to AS 01.10.040(b), "[w]hen the words 'includes' or 'including' are used in a law, they shall be construed as though followed by the phrase 'but not limited to.'" Assuming that the commission has not already established a procedure for annexation by local action as required under new subsec. (c)(1), this bill requires it to adopt one.

Section 4 of the bill amends AS 44.33.812(a)(2), by providing that the commission's regulations providing standards and procedures are subject to AS 29.04 - AS 29.10. This new language is most likely legally unnecessary because the commission's regulations are already required under AS 44.62.030 to be consistent with the authorizing statute and be reasonably necessary. AS 44.62.030 reads: "If, by express

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or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute." And, AS 44.62.020 requires that: "To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." Therefore, we believe that the new language in AS 44.33.812(a)(2) is repetitive of standards provided for under other controlling law regarding regulations as cited above.

Section 5 of the bill voids an incorporation, annexation, detachment, merger, consolidation, reclassification, or dissolution proposal that has not taken effect on or before the effective date of the Act "and" was initiated or considered under regulations that do not meet the requirements as provided for in sec. 2 or 4 of the bill. This section also provides that a proposal rendered void by this bill may be initiated again if it complies with the applicable regulations and procedures as proposed in this bill.

An immediate effective date under AS 01.10.070(c) is provided for in sec. 6 of the bill.

We find no constitutional or other legal issues with the bill.

Sincerely,


for David W. Márquez
Attorney General

DWM:MV:pvp