

**ALASKA STATE LEGISLATURE  
ADMINISTRATIVE REGULATION REVIEW COMMITTEE**

March 13, 2007

3:15 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator Hollis French  
Senator Gary Wilken  
Representative Paul Seaton, Vice Chair  
Representative Mark Neuman  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative John Coghill

**COMMITTEE CALENDAR**

Committee Orientation

Geoduck Regulation Report

Proposed regulation changes by the Local Boundary Commission

**PREVIOUS COMMITTEE ACTION**

No previous action to consider

**WITNESS REGISTER**

TERRY LAUTERBACH

Legislative Counsel

Division of Legal and Research Services

Legislative Affairs Agency

**POSITION STATEMENT:** Presented orientation.

PAUL FUHS

PAC Alaska, LLC

Ketchikan, AK

**POSITION STATEMENT:** Presented Geoduck Regulation Report.

JIM SEEB, Chief of Research for Anadromous Fisheries  
Division of Commercial Fisheries  
Alaska Department of Fish and Game (ADF&G)  
Juneau, AK

**POSITION STATEMENT:** Presented Geoduck Regulation Report.

ARLISS STURGULEWSKI  
Former Alaska State Senator  
Anchorage, AK

**POSITION STATEMENT:** Spoke in support of Local Boundary Commission regulations.

GLEN MARUNDE  
Tok, AK

**POSITION STATEMENT:** Commented on annexations.

DARROL HARGRAVES, Chair  
Local Boundary Commission (LBC)

**POSITION STATEMENT:** Described the history of the LBC.

DAN BOCKHORST, Staff  
Local Boundary Commission (LBC)  
Anchorage, AK

**POSITION STATEMENT:** Explained LBC regulations.

LISA VON BERGEN  
Valdez, AK

**POSITION STATEMENT:** Available for questions.

#### **ACTION NARRATIVE**

**CHAIR LESLIE CHAIR MCGUIRE** called the Administrative Regulation Review Committee meeting to order at [3:15:29 PM](#). Present at the call to order were Senators McGuire, French, and Wilken and Representatives Holmes, Seaton, and Neuman.

#### **COMMITTEE ORIENTATION**

CHAIR MCGUIRE explained that this committee was formed to act as a liaison between the administration and the legislature on the issue of regulations. Many times legislative bills generate regulations, and occasionally there are disputes about whether they met the intent of the original legislation and this committee works with those issues. The legislature does not have the power to overturn any regulation that has been presented to the governor after making its way through the whole process; however, it can veto a regulation on the grounds that it doesn't

comport with legislative intent. Any member of the committee is free to make a decision about the committee's agenda or discuss the idea of bringing forward a bill to repeal a regulation.

3:19:14 PM

REPRESENTATIVE NEUMAN asked if it was true that the Administrative Regulation Review Committee could not change regulations without going through the full legislative process but that it can make recommendations for changing a regulation to state commissioners.

CHAIR MCGUIRE replied yes. Former Representative Jeanette James from North Pole passed a bill establishing negotiated rulemaking. This committee should be aware of it, because it is a way to bring stakeholders together to arrive at a resolution that isn't a surprise and doesn't invite controversy.

3:21:36 PM

REPRESENTATIVE SEATON commented that individual legislators' staff should be responsible for reviewing all regulations under their jurisdiction.

CHAIR MCGUIRE replied that all legislators should review applicable regulations, but time constraints may limit that.

3:24:56 PM

TERRY LAUTERBACH, Legislative Counsel, Division of Legal and Research Services, Legislative Affairs Agency (LAA), said that several years ago the legislature enacted a law attempting to enhance discussion before regulations were adopted. Every legislator gets a public notice when a regulation process is beginning, and standing committees should also receive an emailed copy of the regulations. The LAA doesn't look over the regulations in terms of policy, but rather the legality of the proposed regulations. Thus, the standing committees should examine the regulations as well. She added that her review is confidential, and under statute she isn't allowed to report back to the standing committee on her findings; technically, the agency could consider individual requests for copies of reports.

3:28:44 PM

CHAIR MCGUIRE said that the committee should try to work around that issue for now and make some suggestions for how the committee can access regulation reports.

MS. LAUTERBACH added that another thing not in statute is that there is no way for a minority leader to attach priority to a request for review.

[3:30:16 PM](#)

REPRESENTATIVE SEATON said that this issue needs to be fixed so that everyone on the committee can see the reports.

MS. LAUTERBACH said that the LAA always reports through the chair of a committee. She continued to explain how a report and subsequent review would be conducted and the resulting corrective steps taken if necessary. Reports are not public record unless submitted by a legislator. The suggestions made in the review process don't necessarily need to be taken, but usually the agencies do comply. There's isn't any follow-up on the adopted regulations, but the Department of Law is required to show that it has at least considered its suggestions.

[3:37:30 PM](#)

REPRESENTATIVE NEUMAN asked if the committee will receive copies of the reports.

MS. LAUTERBACH replied that the reports on statutory authority, consistency, and legality are sent to the committee chair.

REPRESENTATIVE NEUMAN asked if the presentations are, or could be, given in a summarized form to the committee.

MS. LAUTERBACH said reports are usually about two pages.

CHAIR MCGUIRE remarked that the committee recently shifted leadership, and now it can establish its own policies if it wishes. To that end, it will set up a practice of forwarding all reports to all members of the committees. A bill should be crafted to improve the guidelines of the committee permanently.

[3:41:21 PM](#)

REPRESENTATIVE SEATON asked for clarification on the procedure for maintaining confidentiality of reports.

MS. LAUTERBACH replied that the report shouldn't be discussed in committee meetings, save executive meetings.

CHAIR MCGUIRE said that she will work on a method to relay opinions in a confidential matter and encouraged any suggestions regarding confidentiality.

[3:43:57 PM](#)

MS. LAUTERBACH said that the LAA cannot release any information regarding its review of a proposed regulation besides what is provided in this section (which provides for reports). So even if information is distributed to committee members, she would not be able to discuss it.

[3:44:38 PM](#)

REPRESENTATIVE NEUMAN asked if the members have the ability to talk about regulation information outside the committee.

MS. LAUTERBACH replied that information on certain topics can be freely discussed. She explained that there have been 260 proposed sets of regulations. The length varies widely as well as the frequency; the topics of the regulations were mainly occupational licensing, HES committee bills, and education bills. She then listed the different sorts of reports issued and their historical rate of review. She emphasized that cooperation with the agency is great.

[3:49:07 PM](#)

REPRESENTATIVE NEUMAN asked how often the committee will meet outside of session.

CHAIR MCGUIRE said she couldn't anticipate that at the moment, but that the committee was created as a year-round entity. At the least, recommendations should be produced year-round.

[3:50:23 PM](#)

REPRESENTATIVE SEATON referenced a handout referencing AS 44.62.030 on consistency between regulation and statute. It says a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. It seems that regulations are valid unless the legislature passes a bill to overturn them and yet the Administrative Procedure Act says it's not valid if it's not reasonably necessary to carry out the purpose or unless it's consistent with the statute. He asked for enlightenment.

MS. LAUTERBACH responded that she operates under AS 24.21.05. At least 80 percent of these regulations have a very broad grant of statutory authority from the legislature that tells the agency to adopt regulations to regulate, license certain practitioners, or establish a grant program. The legislature grant doesn't contain a lot of detail, and when you get to the point of whether a regulation is reasonably necessary for the purpose of the statute, it is usually a policy question that she would get

into in her legal review. The "reasonably" standard is there for challenging the regulation in court.

REPRESENTATIVE SEATON asked if the Administrative Procedures Act is overseen by the executive branch and if regulation can be set aside using the Act.

MS. LAUTERBACH replied that the legislature can amend a law for clarification of a regulation if it thinks the agency went an unreasonable route.

[3:56:20 PM](#)

CHAIR MCGUIRE said that the committee would be hearing a presentation on geoduck regulations.

### **GEODUCK REGULATION REPORT**

[3:56:34 PM](#)

PAUL FUHS, PAC Alaska, said that it's difficult to create rural opportunities in Alaska, and geoduck farming had been a long-standing project. Current regulations aren't compatible with maintaining a local industry and the department has four outstanding lawsuits concerning it. The issue is incredibly complicated but pending legislation would transfer regulations from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR). The issues of genetics and disease control are legitimate functions of ADF&G but regulations would be best placed under DNR.

CHAIR MCGUIRE explained that the dispute arose because there is a no-finfish farming law, but she opined that shellfish stocks should be promoted.

[4:01:34 PM](#)

JIM SEEB, Chief of Research for Anadromous Fisheries, Division of Commercial Fisheries, Alaska Department of Fish and Game, said that he would be available for questions and agreed that some farming elements are best taken care of by ADF&G.

REPRESENTATIVE SEATON said that he thought there were specific regulations beyond the statutory framework being discussed, such as bond posting.

MR. FUHS said that he would provide information about the regulatory packets. He explained how there's a troublesome tax on the accidental harvesting of wild geoducks.

REPRESENTATIVE HOLMES asked to see the reports.

[4:05:36 PM](#)

REPRESENTATIVE NEUMAN remarked that the USDA recognizes farming aquaculture and agreed that placing such regulations under the authority of the ADF&G seems suitable.

MR. FUHS agreed that the classification is commonsense.

CHAIR MCGUIRE said that in the next meeting the committee could discuss potential regulatory conflict.

**PROPOSED REGULATION CHANGES BY THE LOCAL BOUNDARY COMMISSION**

[4:07:18 PM](#)

ARLISS STURGULEWSKI, former state Senator, said Article 10, Section 12, of the State Constitution sets up the Local Boundary Commission (LBC) and the Board of Regents. She was pleased that the LBC had come up with these regulations. The legislature created the unorganized borough in 1961, which is far from what had been intended by the writers of the constitution. It caused a lot of problems and the failure to address this has caused more problems. Boroughs have formed either as a protection method against other areas coming to tie down the resources from a particular tax base, but it means a huge area in rural Alaska has no boundaries for data collection - whether it's on alcohol or drug abuse or economic development. So the LBC has had a rough time of setting up model boundaries because the legislature hasn't fully developed legislative intent. Part of her appearance is to encourage looking at implementing what she sees as a constitutional mandate. She said there is inadequate money for organizational planning for boroughs, lack of assessment data, and concern over school district consolidation. These are big issues the LBC can't handle without some legislative direction. She encouraged them to adopt the commission's regulations and change them wherever necessary but also to look at the broader question of how to fully implement the local government section of the constitution.

[4:12:31 PM](#)

REPRESENTATIVE COGHILL agreed that the commission needs direction. He said the regulations forward are troubling because many go against existing statute. He thought the legislature should tell the LBC to withdraw these regulations. The Model Boundary Act is a work that came to Alaska through the commission, but the process was never publicly vetted, in his view. So he thought that should be made more public.

He said that Article 10 and Article 12 of the State Constitution make the legislature the law-making authority. This particular set of regulations has 273 citations to the constitution's law-making authority and assumes it as a grant from the constitution, not from the legislature. That is very troublesome and worthy of challenge, he said. Last year he introduced HB 133 regarding places where there was going to be a need to combine certain areas so that people on both sides of an area would get a chance to vote. The Commission suggested an aggregate vote and he said no; they should each have an equal say. Otherwise one group would always rule another. The bigger question is: should overarching rules be adopted that say there are other compelling state reasons why they should organize?

REPRESENTATIVE COGHILL said he thought they should ask the Lieutenant Governor to withdraw the regulations that go contrary to the statute. And he recommended delay in adopting the others so the legislature can look at the specific statutory provisions that have been absolutely overridden in the process stating that he has legal opinions that show specific areas where statutory intent has been changed substantially. He recommended changing the Boundary Commission from the Office of Community Advocacy and combine the advocate position to the constitutional language in Article 10, Section 14. This would make the LBC a quasi-judicial group. At least the regulations brought to light some of the areas that need review. As a legislator he found it hard enough to figure out the regulations and his sympathies are with the people of Alaska who have to discern these things and make reasoned comment knowing full well that many times they have to go to court to protect themselves from their own government.

[4:19:53 PM](#)

REPRESENTATIVE NEUMAN said he agreed with Representative Coghill's recommendations for a number of reasons - one of them being that the regulations have 110 amendments and the scope of the project is very large compared to the amount of time they have looked at it. He also thought there should be two separate chances for public review of any changes.

[4:21:50 PM](#)

REPRESENTATIVE COGHILL commented that he would be submitting his recommendations to the LBC.

SENATOR WILKEN said that he would be so bold to throw out the work of 160 people over a year because he objected to one or two items. He asked him to pare down his list of concerns saying

these regulations didn't just fall out of a tree with a few people getting together to decide how to change people's lives. He said these regulations may get people closer to realizing their responsibility rather than avoiding them through the guise of limited government; local governance is best. However, he added, he would be amenable to making changes in a few them.

[4:25:17 PM](#)

REPRESENTATIVE COGHILL said that he thought some of the Boundary Commissions' actions were unwise, and some of the leadership in the commission has been lacking, but he agreed that Alaskans should pay their own way.

[4:26:38 PM](#)

SENATOR WILKEN said that the LBC is one of two constitutionally mandated committees. So citing the constitution without looking at specifics might not be quite as onerous as they might think because that is where they derive their powers - at a macro level, not a micro level.

REPRESENTATIVE COGHILL said the Commission is cited as a use of authority to make law rather than to enforce what has been given them by law. That is why he feels so strongly about it.

CHAIR MCGUIRE said her intent would be to send a letter to the commission as chair of the committee to slow down the process of approving the changes, because more deliberation was needed. Many people across the state have expressed concern.

REPRESENTATIVE NEUMAN asked Senator Wilken to provide more background on the commission's meetings.

SENATOR WILKEN replied that he had provided them with a synopsis of the process that started on January 4, 2006.

CHAIR MCGUIRE said that the difficulty with the committee is that it's usually called up in times of crisis; it's hard to make changes early on in a regulation process.

[4:31:47 PM](#)

GLEN MARUNDE, Tok, agreed with Senator Coghill's remarks. As a member of the unorganized borough, he was completely overwhelmed by downloading 179 pages of regulations - "Were we in that bad of shape?" Hardly anyone in the unorganized borough has any idea what is in there. Last session, both Houses sent a strong message to the LBC to change their attitude. HB 133 was passed almost without dissent, so he knows the LBC received the

message. He said his prepared testimony deals with the number of times the constitution is erroneously cited in the 179 pages of regulations. Article 10 deals with local governments and its purpose is to provide maximum local self government with minimal government units and to prevent duplicate taxing jurisdictions. Those trying to divide the state into 19 organized boroughs in accord with the model concept are misinterpreting Section 1 in an attempt to force wall-to-wall borough government. The model borough plan was adopted by the LBC and not passed by the legislature. The plan does not agree with the constitution. There are nearly twice as many cities in the unorganized borough as in the organized ones. Some communities are organized as tribal governments and some claim sovereignty. "There is a lot of organized government in the unorganized borough." He doesn't want people to find themselves with a new layer of government that they do not need or want (an additional taxing authority), and they would suffer a loss of local control. The model plan guarantees the maximum duplication of tax levying jurisdictions. The framers of the constitution did not provide for regional governments intentionally.

[4:37:17 PM](#)

DARROL HARGRAVES, Local Boundary Commission, said that the commission would be conducting hearings throughout the week.

CHAIR MCGUIRE said she requested that the public comment period be extended and he did so, but more time may be needed. There is a possibility of preserving some of the committee's work.

MR. HARGRAVES said the commission is named in the state constitution, and its process is extensive. He then listed the powers and responsibilities of the commission. He assured the committee that the commission appreciates the legislative interest in regulation changes, and added that it's difficult to deal with legislators in direct conflict with one another.

He continued to say that the commission respected legislative policy regarding school districts in its report and recommendations, and said that the Alaska Supreme Court has recognized borough governments as supreme institutions; the legislature requires the commission to meet certain standards, and the regulations must be in the best interest of the state. It has been 15 years since the commission's regulations have been revised in a comprehensive manner. He then listed the duties of the commission, and explained its history at length.

He said that the commission's effort to review and revise regulations has been extensive, and after the comment period is over the commission will spend several days deliberating. He pointed out that the actual changes in the regulations are few, and that any petition brought before the committee at that time would be duly considered.

[4:55:11 PM](#)

CHAIR MCGUIRE thanked Mr. Hargraves for his testimony and for extending the public comment deadline.

REPRESENTATIVE NEUMAN asked about the public comment hearings and the number of people who offered comments and participated.

MR. HARGRAVES said that he couldn't cite the exact number, but that many written comments had been received. He said few verbal comments had been made at the meetings.

REPRESENTATIVE NEUMAN said that he thinks there should be at least two meetings in each community.

CHAIR MCGUIRE asked for comment on the meeting requirements.

MR. HARGRAVES said he couldn't explain why it wasn't included in the revised regulations.

REPRESENTATIVE NEUMAN called Mr. Hargraves' attention to the existing statute regarding public comment periods.

CHAIR MCGUIRE said that the revised regulations appear to be in direct conflict with current statute.

DAN BOCKHURST, staff to the LBC, said that the commission recognizes the requirement for two public hearings, and that the issue will be resolved. He clarified that many sites have participated in commission meetings.

MR. HARGRAVE said that calling attention to errors is part of the review process.

CHAIR MCGUIRE clarified the dates for future comments and hearings, and asked how people can find out about the hearings.

MR. HARGRAVE said 160 people have been informed already.

MR. BOCKHURST said a notice is published in statewide newspapers and information is sent to interested parties and legislators.

REPRESENTATIVE SEATON asked Mr. Hargrave to discuss the process of separate votes in the annexation process.

MR. BOCKHURST said the commission included provisions dealing with this requirement. There are methods dealing with annexation by election, and there are very few such annexations because the areas in question typically want to connect to a city government. A popular approach that has been used about 125 times since statehood and is founded in the constitution under Article 10, Section 12. It requires a municipal government, the legislature, and commissioner to petition the LBC for a boundary change. The LBC would hold a public hearing on it, and if the LBC agrees that it meets certain standard it would submit the recommendation to legislature. The legislature would approve it.

REPRESENTATIVE SEATON said there are two different estimations of what popular means. One is where the people in the area like the annexation and one is based on how often the process is used. He surmised then that the modifications made in HB 133 only apply to the rare cases of election-type annexations, and the forced annexations is the popular route of the LBC. "I'm not sure that that was the intent of the statute."

MR. BOCKHURST said he will send the legal opinion today.

REPRESENTATIVE NEUMAN said he was on the committee that approved it, and HB 133 specifically stated that the LBC will use a majority vote. Both sides have to agree to the annexation, and "your changes in the regulations ... am I wrong in assuming that you want to maybe expand that back into having more tools in your tool belt in how you can approve an annexation, which would be contrary to HB 133?"

MR. BOCKHURST said the LBC has drafted proposed regulations that are consistent HB 133. There has never been an understanding in the LBC of limiting the constitutional authority of local governments to seek legislative annexations. It is not reflected in the DOL opinion that he will submit to the committee.

[5:14:35 PM](#)

LISA VON BERGEN, Valdez, said the city manager sent information.

MR. MARUNDE said that he's concerned about model boroughs, and that they will provoke hostile reactions from the public. He said no one in rural Alaska is familiar with the regulation

changes, and the notification time is insufficient. Many villages can't access a Legislative Information Office (LIO).

[5:18:24 PM](#)

REPRESENTATIVE SEATON asked for information in the regulations about decisional and executive meetings.

MR. HARGRAVES said that the legality of making decisional meetings into executive meetings has been called into question, and that personally he will vote against that provision.

SENATOR WILKEN commented that government is only as extensive as the people want it to be.

[5:24:28 PM](#)

CHAIR MCGUIRE asked how the problem of the public hearings can be solved, so they become as inclusive as possible.

MR. BOCKHURST said that the department usually facilitates meeting participation through the LIOS, and that he would look into making toll-free calling available.

CHAIR MCGUIRE said that the presumption should be that one must go to the LIO if possible, and those unable to do so should be able to access the hearing via a toll-free number. The biggest apparent issue with the commission is the lack of public trust.

MR. HARGRAVES said that the commission will take the recommendations into consideration.

There being no further business to come before the committee, Chair McGuire adjourned the meeting at [5:27:25 PM](#).