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## Introduction

Concerned with heavy population growth in metropolitan areas, the proliferation of small cities and the haphazard and competitive extension of municipal services and boundaries, the Washington State Legislature in 1967 passed the Boundary Review Board Act (RCW 36.93) to insure that cities, towns and special purpose districts adequately plan and finance urban services and boundary extensions in a manner consistent with comprehensive land use plans.

The Legislature designed Boundary Review Boards to guide and control the growth of municipalities and urban services. There are 15 counties in the State of Washington with Boundary Review Boards: Benton, Clallam, Cowlitz, Douglas, Grays Harbor, King, Kitsap, Lewis, Pierce, Skagit, Skamania, Snohomish, Thurston, Whatcom, and Yakima. Counties that have adopted a Comprehensive Plan and consistent development regulations in conformance with the Growth Management Act (RCW 36.70A) have the option of disbanding their Boundary Review Board (RCW 36.93.230).

### Washington Counties with Boundary Review Boards



Boundary Review Boards are empowered by the State of Washington (RCW 36.93). They are independent agencies. Boards provide services to counties – but are not county agencies per se – although they obtain services/meet requirements in their respective counties (e.g., budgets).

The Board is a quasi-judicial, administrative body empowered to make decisions on such issues as incorporations, annexations, mergers, disincorporations, etc., by cities, towns and special purpose districts. The Board must base its decisions on specific factors and objectives stated in the Boundary Review Board Act. It can approve, modify, or deny a proposal. Board decisions are final unless appealed (see Appeals Section)

The Boundary Review Board appoints a Chief Clerk to serve as its administrator. This position has complex and diverse responsibilities, ranging from issuing subpoenas to checking legal descriptions. This manual is intended to serve as a base from which a common understanding of the role and responsibilities of a Boundary Review Board Chief Clerk can be achieved, while at the same time providing consistency to the application of the procedures described in the Boundary Review Board law.

## **Chief Clerk**

Each Boundary Review Board appoints a Chief Clerk who is accountable to the Board through its Chair. Specific powers of the Chief Clerk are described in RCW 36.93.070, and include the authority to:

1. Serve as Secretary of the Board
2. Administer oaths and affirmations
3. Certify to all official acts
4. Issue subpoenas to any public officer or employee to testify and produce public records, papers, books or documents
5. Invoke the aid of any court to carry out such powers

## **OFFICE MANAGEMENT**

### **Office Hours**

The office hours of the Boundary Review Board are set by the Chief Clerk to best provide public access and ensure efficient staff operations. In the case of scheduled vacation or compensatory time, public notice should be given.

### **Agency and Position Title**

Pursuant to RCW 36.93, each County can determine how the Boundary Review Board is situated within its organization. Most Boards are within the structure of the County; however, some are staffed under contract to other agencies. The actual title of the Chief Clerk can be established under the Board's Rules of Practice and Procedure or by County position titles. The information for each County is shown on the table below:

<b>County</b>	<b>Chief Clerk</b>	<b>Agency</b>
Benton	Planning Manager	Benton County Planning Department
Clallam	Admin. Assistant	Clallam County Commissioners' Office
Cowlitz	Senior Planner	Cowlitz County Building and Planning
Douglas	Permit Technician	Douglas County Transportation and Land Services
Grays Harbor	Chief Clerk	Commissioners' Office
King	Executive Secretary	Boundary Review Board Office
Kitsap	Chief Clerk	Kitsap County Community Development Dept.
Lewis	Chief Clerk	Boundary Review Board Office
Pierce	Clerk	Planning and Public Works Department
Skagit	Chief Clerk	Northwest Regional Council (under contract with Skagit County)
Skamania	Human Resources Specialist	Skamania County Commissioners' Office
Snohomish	Chief Clerk	Boundary Review Board/Office of Hearings Administration
Thurston	Land Use Clerk	Thurston County Development Services
Whatcom	Chief Clerk	Northwest Regional Council (under contract with Whatcom County)
Yakima	Project Planner – Long Range	Yakima County Division of Planning and Public Services

### **Assistant Staff**

In cases where there are Boundary Review Board staff in addition to the Chief Clerk, the Chief Clerk serves as the supervisor to the staff and is the liaison between the staff and the Board.

### **Public Records**

Virtually every document in the office of the Boundary Review Board is a public record. This includes just about anything in the files, on the desk, in emails, and on the computer. Fortunately, any public records request must be referred to the board's legal counsel. The Clerk's responsibility is to properly archive all materials and documents pertaining to the Notice of Intention files and other records with the board's counsel to respond to public records requests.

## **Maps**

The Chief Clerk will receive many requests for boundary information. Unless the Clerk is charged with maintaining official boundary maps, the request should be forwarded to the appropriate County staff person or department. This is often the GIS or Planning Department.

## **BOARD COMMUNICATION**

### **Communication**

Board meetings are the optimal way to report and discuss activities of the office. Other items may affect the members' decisions in future proposals. This includes keeping board members informed of pending proposals so that they may limit any conversations surrounding the issue. Some of the items to inform the Board about may be administrative in nature, such as establishing the dates for a conference, budget updates, or personnel changes. If email is used as a means of communication, members should be made aware that they should not "Reply All" to group emails or otherwise engage in group discussions, as this could violate open public meeting requirements.

### **Evaluation**

The Chief Clerk may be evaluated by the Board on a regular basis, (e.g., probably once a year). The Board must meet in Executive Session to discuss such personnel matters and invite the Chief Clerk to present their evaluation

The Chief Clerk and other staff members may be evaluated by the Board on a regular basis (e.g., once each year). The evaluation may be accomplished by a Personnel Committee in concert with the person being evaluated). The Board must meet in Executive Session to finalize the evaluation and then notify the staff member. The Board may be required to also notify the County.

### **Policy and Procedure Recommendations**

Each Board should develop its own set of Rules of Practice and Procedure (RCW 36.93.200). The Chief Clerk can make recommendations to the Board for additions or changes to the current rules, policies and procedures to better serve the public and to assist the Board in meeting the objectives of the Boundary Review Board Act. This is done in consultation with the board's legal counsel and may be due to legislative changes in the statutes or changes in State or County policies that relate to the decisions of the Boundary Review Board. See further discussion later in this manual.

In addition, the Chief Clerk can recommend changes in office procedures which will enable the board's office to better serve the needs of its and the public.

### **New Board Members**

New Board members should be provided an orientation (e.g., BRB Enabling Act, materials, mentoring). The Chief Clerk can team up with the Board's legal counsel and brief new Board members on the responsibilities of Board members, the nature of the Board, the laws and rules affecting Boundary Review Boards, and other areas necessary to allow a detailed understanding of the rules and policies.

Additionally, training on Washington State's Open Public Meetings Act must be provided within 90 days of a member taking the oath of office pursuant to RCW 42.30.205.

### **Oath of Office**

At the new Board member's first meeting, the Chief Clerk can administer the oath of office, which follows:

*I, \_\_\_\_\_, do solemnly swear that I will support the constitution of the United States and the constitution and laws of the State of Washington and that I will perform the duties of the office as a member of the Boundary Review Board of \_\_\_\_\_ County to the best of my ability.*

### **LEGAL COUNSEL**

Each Board should have access to legal counsel. The attorney selected by the board is also the Chief Clerk's source of legal and procedural advice. The Chief Clerk does not have the authority to give legal advice to anyone and should not do so. Only the board's legal counsel can perform this function.

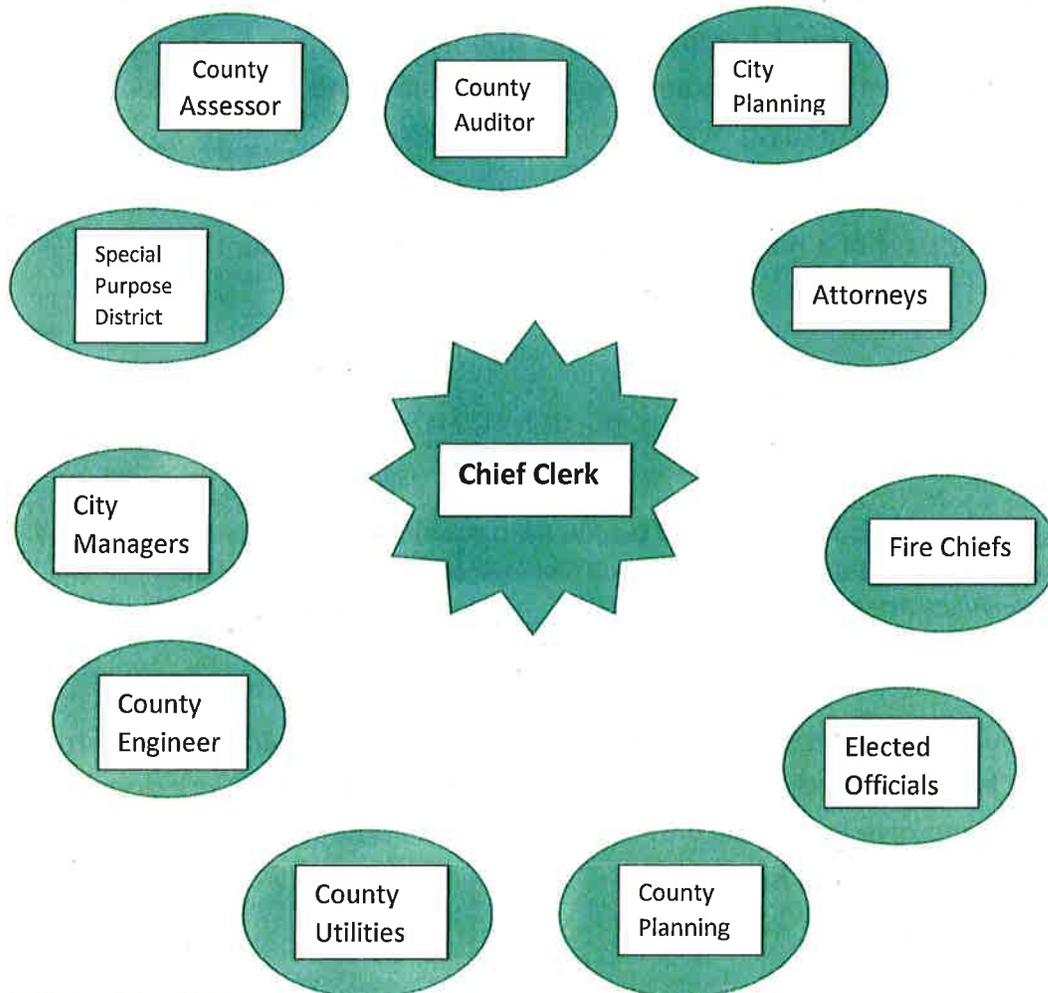
### **COUNTY RELATIONSHIP**

#### **Budget**

The annual budget for the Boundary Review Board is included in the County's Current Expense Fund budget. The Chief Clerk may prepare the budget for the Boundary Review Board office, or the budget may be part of another department's budget. In either case, the Chief Clerk should try to participate in the process by identifying expenses for the next year. Budget progress reports can be presented to the Board on a regular basis.

## Point of Contact

The Chief Clerk serves as the liaison between the board and County officials, both elected and appointed. Often, the County will appoint one key individual as the point of contact for the Clerk in communicating with the County.



## OTHER JURISDICTIONS

Cities, town and special purpose districts will submit Notices of Intention for filing to the Board. Jurisdictions may be encouraged to contact the Board prior to submitting a Notice of Intention. This provides the Chief Clerk with an opportunity to review with them the requirements of the Notice and assist them in determining the appropriate responses. It may help to show them a past Notice for a similar proposal to use as a guide. State agencies and the Tribes may also be affected by proposals and need to be included as information is dispersed to parties of interest.

## PUBLIC CONTACT

### **Media Contact**

The Chief Clerk is the Boundary Review Board's contact for the media – newspaper reporters, TV crews, radio talk shows, etc. The Chief Clerk is in charge of any information provided to the media, and has the choice of declining an interview or providing comments. If documents were discussed or distributed at a public meeting, they must be considered a public record and available for review by the media. Remember, in speaking with the media, there is no such thing as "off the record". Anything that is said may show up as a headline in tomorrow's news.

The board members should not speak to the media and should refer any such requests to the Chief Clerk.

### **General Public**

Residents, property owners and business owners are all affected by proposals before the board and will need information. Typical questions include whether their property is in an annexation area, how to go about invoking the board's jurisdiction, how to provide information to the board, or how to may be included in a proposal. They will have lots of questions and need to be informed of proposals that affect them and may request to be included in information that is distributed.

Often interested parties can be referred to the jurisdiction proposing the action, but in some cases this has not proved fruitful for them, so they turn to the Boundary Review Board, the impartial one in the process. The best advice is to be consistent, be as neutral as possible, and provide the same information to all parties in the same manner.

### **Web page**

The State Association of Boundary Review Boards has a website available to the public ([wsabrb.org](http://wsabrb.org)). Most of the boards have a web page either as part of the County website or individually. The web page is often the first stop for those needing information on the Boundary Review Board. Make sure that the information included on the web page is up-to-date. And hopefully, the more information there is on the web page, the fewer calls there will be for information to the Board offices. The types of information that Boundary Review Boards customarily include are: a roster of board members and staff, office contact information, Rules of Practice and Procedure, current agenda and minutes, Notices of Intention, public hearing information, and links to the RCW's.

## RESOLVING DIFFERENCES

As previously stated, the Chief Clerk serves as the Board's liaison between the County, the public, and other agencies. In this capacity, the Chief Clerk may be in a position to learn whether there are potential conflicts associated with the proposals among the different groups. Serving as an impartial party, the Chief Clerk may be able to mediate some of the differences prior to the board's jurisdiction being invoked. This can be done by getting the parties to talk to each other, setting up a meeting for all affected parties, or just letting the parties know of the potential conflicts, thereby enabling them to work independently to resolve the matters at hand.

## Appointments

The appointment procedure for Boundary Review Board members is described in State Law (RCW 36.93.051-.067). Counties with less than one million in population have a five member board. For five-member boards, the Governor makes two appointments, the Mayors of the cities within the County make one appointment, the County Commissioners or Executive make one appointment, and the special purpose districts within the County submit nominations to the Board and the Board makes the special purpose district appointment. Counties with more than one million in population have an eleven-member Board. For eleven-member boards, cities and the county each make four appointments with three nominations from special purpose districts.

Boundary Review Board members are appointed for four-year terms that begin and end in odd-numbered years, based on the initial appointments when boards were created. All terms begin on February 1<sup>st</sup> and end on January 31<sup>st</sup>, except special district terms, which begin on March 1<sup>st</sup> and end on February 28<sup>th</sup>. There is no limit to the number of terms that a Board member can serve; however, the Governor will not usually re-appoint if a Board member has served two full terms.

If vacancies occur after a term begins, members appointed to fill vacant positions on the Board will complete the unexpired term which, consequently, will be less than four years.

## GOVERNOR APPOINTMENTS

### Recent Changes

Recent changes to the State law have removed the Governor from the appointment process for King County and in the future, may affect other counties as well (See RCW 36.93.051.)

### Reappointment

If there is a new member who is interested in being reappointed by the Governor, an application may be submitted online at:

<http://www.governor.wa.gov.boards/application/application.asp>. In addition, the Chief Clerk may want to write a letter to the Governor recommending the reappointment.

### **Governor's Contact**

Keith Swenson is the staff person in the Governor's Office handling appointments. He can be reached at 360-902-0604 or [keith.swenson@gov.wa.gov](mailto:keith.swenson@gov.wa.gov).

### **Recruitment**

If recruiting new members for a Governor's appointment, the prospective member should also be referred to the online application. The Governor asks for assistance in advertising the opening in the local community. This can be done with a news release to local newspapers, announcement on the Board web page, flyer sent to the Board agenda notification list, and by word of mouth.

### **OTHER APPOINTMENTS**

Advertisements, letters and news releases can be used to recruit applicants for appointments made by the City mayors and the County. Each jurisdiction may have its own way of advertising for vacant positions, so check with them to see if they would like assistance in getting the word out.

For special purpose district appointments, a letter can be sent to the districts in the County informing them of the opening and asking for nominations. The opening on the Board can also be advertised using news releases and advertisements.

## **Boundary Review Board Members**

### **QUALIFICATIONS**

Requirements for Boundary Review Board members are set forth in RCW 36.93. Board members should be residents of the County and must be able to evaluate technical planning and environmental documents and economic reports as well as testimony from the public in making their decisions. Members must attend the regular meetings, as well as public hearings and special meetings.

"No appointee may be an official or employee of the County or a governmental unit in the County, or a consultant or advisor on a contractual or regular retained basis of the County, any governmental unit in the County, or any agency thereof." (RCW 36.93.051)

## COMPENSATION

RCW 36.93.070 states that Boundary Review Board members are entitled to compensation of \$50 per day for work devoted to the Board. Most boards pay members for each meeting attended in consideration of the time also required to prepare for the meeting. Board members are not County employees, and are paid by the County through a professional services arrangement similar to a consultant.

## LEGAL COUNSEL

The Boundary Review Board may request legal counsel from either the State Attorney General's Office or the County Prosecuting Attorney (RCW 36.93.070). At this time, only one Board is represented by the Attorney General's Office (King); all the other boards are represented by the respective County Prosecuting Attorneys.

## APPEARANCE OF FAIRNESS

In general, decision-makers such as Board members must not only be fair in their actions, (i.e., have no conflicts of interest), but must also, to the ordinary citizen, appear to be free of any position or influence which would impair their ability to decide a case fairly. (See RCW 42.36). A board member with a conflict of interest may consider recusing him/herself from the matter at hand. The State Supreme Court has held that if a person is of the opinion that a decision-maker is so impaired, that opinion must be stated at the first available opportunity.

### **Ex Parte Communications**

Included in the Appearance of Fairness Doctrine is the restriction on ex parte communications. These occur when a Board member has conversations, or receives information, outside of a public meeting or hearing about a proposal which is before the Board. This material should be given to the board staff; not the board member.

If a Board member receives a letter, email or other communication relating to a matter before the Board from a source other than the Boundary Review Board office, that member should send it to the Chief Clerk for inclusion in the record so that all the Board members have the same information and the audience can respond to this information.

If a Board member has a conversation or receives a phone call regarding a matter before the Board, this should be disclosed at the earliest opportunity. Even when Board members are meeting just among themselves, it may be important to caution them not to discuss matters currently before the board, or anticipated to come before the board.

## Rules of Practice and Procedure

The Rules of Practice and Procedure for the Boundary Review Board are similar to an organization's bylaws. They describe how the Board conducts its business. Each Boundary Review Board has attempted to adopt Rules of Practice and Procedure consistent with the other Boundary Review boards in the State.

### ADOPTION

RCW 36.93.200 requires each Board to adopt rules governing the formal and informal procedures described in the law. The rules may include:

1. The qualifications of persons for practice before the Board
2. Rules of practice before the Board
3. Forms and instructions
4. Descriptive statements of its procedures

### AMENDMENTS

Before the Board adopts or amends its Rules, it must file a notice with the Clerk of the Superior Court. It must also provide notice describing the proposed changes to the Rules and the time and place of the meeting that the Rules will be discussed. This is so that interested parties may comment. The law states that this does not apply to interpretive rules, general statements of policy, or rules of internal Board organization, procedure or practice.

### FILING

Each time the Board adopts or amends its Rules of Practice and Procedure, a copy must be filed with the Clerk of the Superior Court. This is described in RCW 36.93.210. The Clerk should have a file with the adopted Boundary Review Board Rules of Practice and Procedure and all amendments.

### INTERNAL ORGANIZATION

In addition the Board may adopt rules for internal Board organization which are exempt from the process identified above. These can be adopted to clearly establish the responsibilities of the Chief Clerk and his/her relationship with the Board.

## CONTENTS

Rules of Practice and Procedure are the opportunity for boards to specify the manner in which a NOI is filed, how the Chief Clerk will process it, how it will conduct its meetings and hearings, and how it will amend its Rules.

### Public Meetings

The Open Public Meetings Act (RCW 42.30) lays out the parameters for public meetings for all public bodies in the State of Washington which include Boundary Review boards. The law requires that all of the Board's business must be done in the public:

*The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

### REGULAR MEETINGS

Regular meetings of the Board are set in the Board's Rules of Practice and Procedure and may be described in the following manner:

*"The third Tuesday of each month at 3:00 p.m. in the County Library, 1 Main Street, Fairfield".*

### Agenda

The Chief Clerk may confer with the Chair to set an agenda for the regular meeting. The agenda can include any NOI's filed, pending notices, setting public hearing dates, or other matters of interest to the Board.

The agenda is sent to Board members, its legal counsel and interested parties usually at least a week in advance. The Chief Clerk can compile a list of jurisdictions and other interested parties for agenda distribution. Because this can be done by email, it is easy to add interested parties.

### Rules of Order

Most boards use "Robert's Rules of Order" to cover areas not included in its Rules of Practice and Procedure. As the Chief Clerk, it would be helpful to be familiar with Robert's Rules of Order.

## **Minutes**

All official actions of the Board are incorporated in the official minutes signed by the Chair. It is the Chief Clerk's responsibility to certify that the minutes accurately reflect the action of the Board and present them to the Board at a public meeting. Meetings are usually recorded for the purpose of preparing more accurate minutes, and these recordings are also considered public documents. See RCW 40.14 for records retention requirements.

## **Quorum**

A quorum for the transaction of any business by the Board is the majority of the Board. In a board with no current vacancies, for five-member boards, this would be three members and for eleven-member boards, this would be six members.

## **SPECIAL MEETINGS**

Special meetings of the Board may be called by the Chair or the majority of Board members. Twenty-four hours' notice must be given to the Board and any media contacts who have filed requests for notification with the Board, posted on the Board website, at the Board's principal location and at the meeting site if different. The notice is required to include the time, date, and place of the meeting, as well as the business to be transacted. Action cannot be taken on any item not on the agenda of the special meeting. Because special meetings are limited to items on the advertised agenda, the Board must refrain from discussing other topics.

With email notice, it is less cumbersome to notify the parties of the meeting 24 hours in advance. It may also be prudent to inform the same parties that are included on the Board's agenda mailing list via email.

## **EXECUTIVE SESSIONS**

An executive session is closed to the public and may be called for a limited number of reasons. Participants are limited to the Boundary Review Board, its legal counsel, and it may include the Chief Clerk or others as directed by the Chair. Boards have very few reasons to hold an executive session – see RCW 42.30.110. The most common are to discuss pending litigation with its legal counsel and to review the performance of a public employee (the Chief Clerk).

An executive session can be held as part of either a regular meeting or a special meeting. In both cases, the reason for the executive session must be included on the agenda for the meeting.

To begin the executive session, the Chair announces that the Board will go into executive session at a specific time and return at a specific time. The Chair must announce the purpose and state the RCW for the exemption to comply with the Open Public Meetings Act (RCW 42.30.110.2). During the session, Board members may not take action on any item. If the session is not concluded by the stated time, the Chair or Clerk, if directed by the Chair, will announce outside the door of the room that the session will be extended and state the new time at which the session is expected to conclude. This procedure is continued until the session is ended. If the session ends earlier than announced, the board must wait until the announced time to continue its meeting.

## Notice of Intention

The Notice of Intention (NOI) is the official manner in which the board receives a proposal for the creation of or changes to a jurisdiction's boundaries. The State law describes the circumstances under which a Notice is filed (RCW 36.93.090), when a Notice is not filed (RCW 36.93.105), filing fees (RCW 36.93.120), and proposal contents (RCW 36.93.130).

Essentially, a NOI must be filed with the Boundary Review Board when a city, town or special purpose district proposes a boundary change. This could be an annexation, consolidation, merger, partial merger, formation, incorporation, disincorporation, assumption, or extension of water or sewer lines. See RCW 36.93.090.

### DETERMINATION OF SUFFICIENCY

A critical task for the Chief Clerk is to determine if a NOI is complete. Neither a file number nor a date should be assigned until the Notice is deemed by the Chief Clerk to be complete. RCW 36.93.120 identifies minimum requirements. The Board may establish its own minimum requirements. Each Boundary Review Board should adopt a NOI form that requires this information and documentation of the jurisdiction's actions.

A checklist of the required contents for the NOI can include:

1. The completed NOI form which includes the nature of the action sought (annexation, merger, Incorporation, etc.), a statement of reasons for the action (i.e., provide fire protection), and statements as to how the proposal addresses RCW 36.93. Legal Description certified by a licensed surveyor
2. Assessor's Map or other map(s) acceptable to the Boundary Review Board
3. Documentation of the process
4. Fiscal studies

5. SEPA Documents and Determination, if applicable
6. Filing Fee of \$50
7. Copies as specified

Suggested steps for Chief Clerk in checking the NOI before filing:

1. Look at the signature on the Notice. Is the person an employee or elected official of the jurisdiction submitting the Notice?
2. Examine the legal description and map or have someone whose expertise is reading legal descriptions determine that it accurately describes the area identified on the map. Is the proposed area contiguous to the existing boundaries of the jurisdiction?

Does the proposed boundary change leave an "island" – small areas left out of the proposal though mostly surrounded by the subject jurisdiction?

For city annexations, does the legal description use rights of way of roads and not centerlines? For city annexations in counties planning under the Growth Management Act, is the proposed area within the Urban Growth Area? This may be referred to the County Planning Department for their determination.

For special purpose district annexations, is the proposed area within the jurisdiction's identified service area? The answer to this question may be found in the County Coordinated Water System Plan for water purveyors, in the County Wastewater Management Plan for sewer service, the Fire Protection District Plan. The question may also be referred to the County Utilities/Engineer for his/her determination.

3. Maps are key to understanding where the proposal is in comparison to roads, landmarks, and other city and district boundaries. The Board can require additional information on maps for a NOI, such as:
  - ❖ The boundary of the area involved in the proposal and the size in acres.
  - ❖ The current corporate boundaries of the proposing entity.
  - ❖ The current water and sewer service areas of the proposing entity as approved in the comprehensive plan. The location of the nearest service point(s) for the required utility services to the area, showing existing and proposed water/sewer lines and diameters.
  - ❖ Major physical features such as streets and highways, railways, public facilities, etc.

- ❖ Descriptions of major environmental features, e.g., water bodies, terrain, flora, fauna, etc.
- ❖ The boundaries of cities or special purpose districts having jurisdiction in or near the proposed area.
- ❖ The County or City zoning, Comprehensive Plan designations, Urban Growth Area, and future water and sewer service areas and, if available for city annexations, proposed city planning and zoning plan designations.

If the maps included with the NOI are not easy to read or do not contain the information needed, the Clerk is authorized to request changes to the maps or to request additional maps. Supplemental maps may also be available from other County sources. The maps are prepared by the engineer of the jurisdiction submitting the NOI. In either case, the legal description should be prepared and stamped by a licensed engineer or surveyor.

4. Each Board requires documentation of the boundary change process. Below is a sample checklist of things to keep in mind during this phase:
  - a. Certified copy of the petition for special purpose districts (petition signatures are valid for 180 days) or
  - b. A Certificate of Sufficiency issued by the County Assessor for city annexations using the petition method or
  - c. A Certificate of Sufficiency issued by the County Auditor for city annexations using the election method
  - d. A copy of assessed valuation of the annexation area
  - e. An affidavit of publication of public hearing notice
  - f. Certified copy of minutes of public hearing
  - g. A signed and certified copy of the resolution accepting the proposal (cannot be older than 180 days)
5. If required, The State Environmental Policy Act (SEPA) (WAC 197-11 and RCW 43.21C) provide a process that must be completed prior to the filing of a NOI with the Boundary Review Board. As an agency with jurisdiction, the board should be sent the SEPA documents when they are issued, if required. In most cases, this will be a Determination of Non-significance (DNS) and an Environmental Checklist. The Threshold Determination must be filed with the Notice of Intention.

The act of annexation by a city or town is categorically exempt under SEPA. However, cities and towns are required to follow SEPA if making changes to their

comprehensive plans to accommodate annexation. Incorporation proceedings are also exempt from SEPA review (RCW 36.93.170).

Special purpose districts are required to conduct an environmental review per SEPA.

The NOI should not be filed until the comment period ends and after any SEPA appeals are adjudicated. Examples of SEPA documents are included in the Appendix.

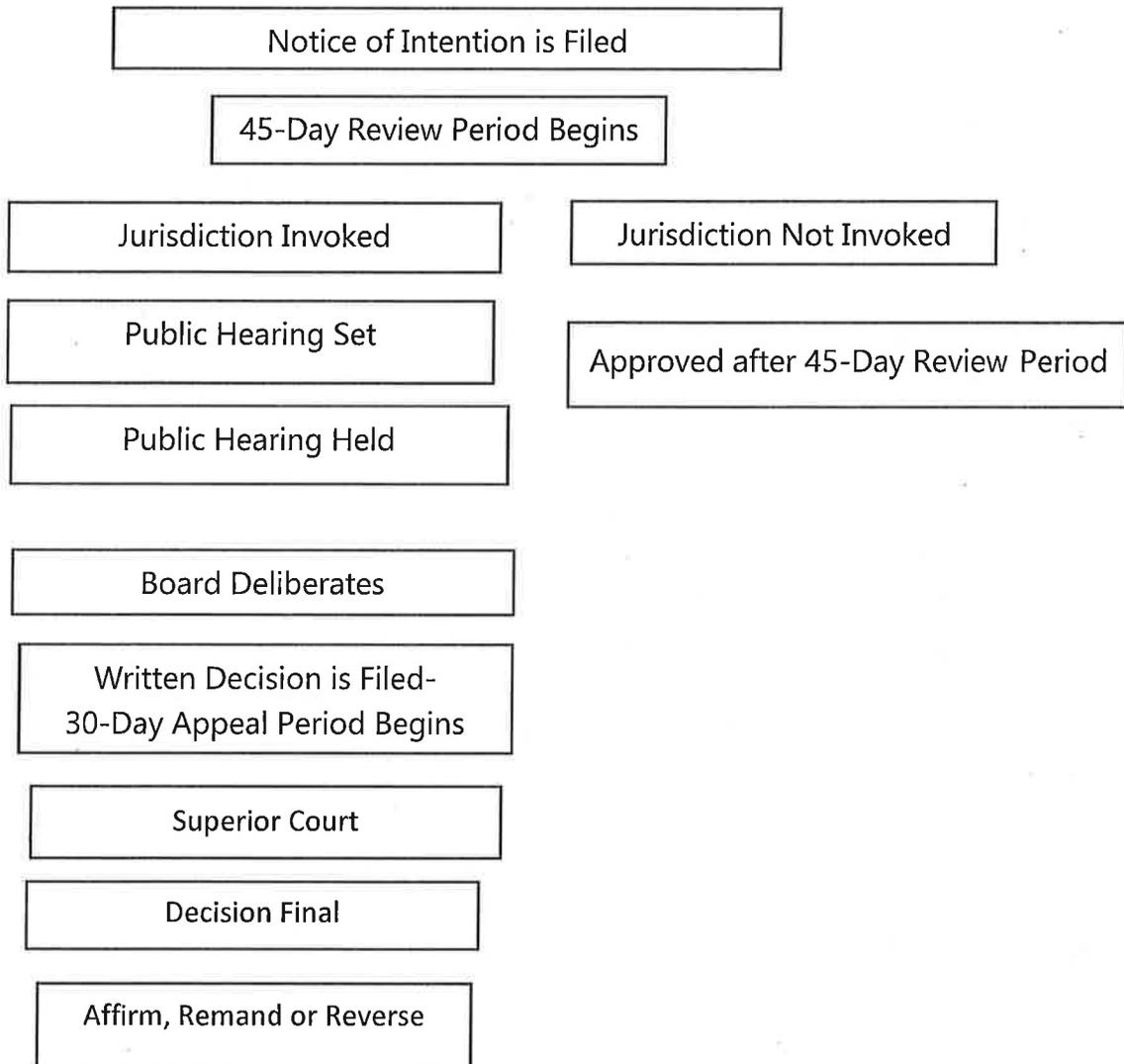
6. Review the statements made within the NOI for accuracy and completeness. If necessary, request assistance from those with expertise (County planning, engineering, GIS, etc.)

If review uncovers areas that are deficient, this is the time to address them. If there is an error in the legal description, maps, dates on petitions or resolutions, etc., contact the initiator (person signing the NOI) and inform him/her of the error. Let him/her know also if a document or information is missing.

Only after the NOI is deemed sufficient by the Chief Clerk can a file number and date be assigned.

Checks may be deposited upon receipt of the NOI, or may be held until the determination of sufficiency is made. No refund is required if a file is determined to be insufficient.

## Timing is Everything...



### FILING AND DISTRIBUTION OF A NOTICE OF INTENTION

The administrative end of the filing of a NOI is described in the following steps and it covers most actions that are filed with the Board.

In the event that a file is deemed insufficient, the Clerk may determine the length of time permitted for correction or completion of the file. Typically a proponent may be permitted up to two weeks to provide the required materials. If the materials are not provided in a timely manner, the Clerk will invite the proponent to withdraw the NOI or the Clerk may terminate the NOI and return all materials to the proponent. Timeframes may be established in the Board Rules of Practice and Procedure.

When the NOI is deemed sufficient for filing, the filing fee is deposited with the Treasurer's Office for placement in the County coffers. In the event that the file is found insufficient following the deposit of the check, the file may be returned to the proponent. The check may be held for services provided to the point of return.

1. Once the Chief Clerk deems the NOI sufficient, a filing number and filing date are assigned. The 45-day review period is also determined and the clock starts.
2. The NOI is placed in the numbered file with all pertinent documentation and affidavits.
3. The NOI, along with a memo indicating the date of filing and the deadline for requesting that the Board's jurisdiction be invoked, is sent to all affected agencies and interested parties.
4. The notification should follow the Board's Rules of Practice and Procedure, and may be made by mail or electronically. The list generally consists of affected cities, fire districts, water districts, and County departments. State and regional agencies as well as affected Tribes must also be notified.
5. A letter, along with a copy of the NOI and information of the filing date and the deadline for requesting that the board's jurisdiction be invoked, is sent to the initiator of the action.
6. If the NOI seems to be of significant interest, notices can be sent to property owners within the proposed area and/or those immediately adjacent to the area. The area can also be posted. However, if jurisdiction is invoked, posting is required.
7. Complete an Affidavit of Mailing, attach it to the mailing list and place it in the file folder. This can be notarized and provides written documentation of the distribution.
8. Include any written comments received during the 45-day review period in the file. This can include letters, electronic mail and exhibits.
9. If the 45-day review period ends and the Board's jurisdiction is not invoked, a Certificate of Expiration, or a letter informing the parties that the board has approved the NOI by "operation of law", is mailed to the initiator and those parties who were sent the NOI. If the Board's jurisdiction is invoked, the steps to follow are covered in the section on Public Hearings.
10. The initiating jurisdiction then needs to adopt its final resolution/order/ordinance finalizing the action.
11. In some counties, the final document and recording fees are sent to the Boundary Review Board office. This gives the Chief Clerk an opportunity to verify that the legal description is the same as the one approved by the Boundary Review Board. The

Chief Clerk then records one copy with the County Auditor and files two copies with the County Assessor and one with the County Board of Commissioners.

12. In other counties, the jurisdiction sends the final documents and recording fee directly to the County Auditor with copies to the County Assessor and County legislative body (Commission/Executive).

In either case, the Chief Clerk then ensures that affected County maps are updated and notifies the affected County departments and agencies of the changed boundaries. The task of actually changing the map may be done by County Planning, GIS, Engineer, or Assessor, depending on each County's structure.

## WAIVERS

Often misunderstood, the waiver discussed in RCW 36.93.110 applies to annexations under ten acres in size and two million dollars in assessed value. It states that the Chair can declare that review is not necessary for these annexations. "Review" in BRB terms means a request for review and a public hearing.

A NOI is still required to be filed even though it may be accompanied by a request for a waiver. The effect of the waiver is that the 45-day review period can be shortened. To ensure public notification and full Board support of the waiver, the NOI can be distributed to affected jurisdictions with a memo stating that a waiver has been requested and the date that the Board will determine if a waiver will be granted. On that date and at a public meeting, the Board can direct the Chair to either grant, or not, a waiver. If a waiver is granted, the Clerk can notify the affected parties in a similar manner to a 45-day review expiration.

## Public Hearings

**Public Meetings:** All Notices of Intention may be reviewed by the board in a public meeting or by a system permitted in RCW 36.93. The public may attend such meetings and provide written materials to the Chief Clerk for the record. However, a public meeting differs from a public hearing, in that public testimony is not permitted in a public meeting.

**Invoking of Jurisdiction:** The board may not take action on a Notice of Intention (except for a situation in which a waiver has been approved) until the completion of the 45 day review period. If jurisdiction is invoked with the 45 day review period, then the Board will conduct a public hearing (pursuant to RCW 36.93). This hearing serves as a mechanism for the board to receive information – via oral testimony and/or written materials – that will be utilized by the board in their decision-making process.

Until the board's jurisdiction is invoked, the Boundary Review Board cannot take action on a proposal. Public hearings serve as the mechanism for boards to receive the information that they will use in making their decision. Preparing both the board and the public for these hearings is a key role that the Chief Clerk serves.

## INVOKING THE BOARD'S JURISDICTION

### **Request for Review**

A 45-day review period is set when the NOI is filed. Within that review period, the board's jurisdiction may be invoked as follows:

1. The submittal of a written notice by a government unit to the board at its official address. This is the most common method by which the board's jurisdiction is invoked.
2. A petition of five percent of the registered voters residing within the area which is being considered for the proposed action. The board has the discretion to accept the validity of the petition. Checking with the County Auditor/Director of Elections who maintains the voter registration records is a necessary first step to determine if the persons signing the petition are indeed registered voters. They can also provide the names of registered voters from affected precincts.
3. A petition of owners of property consisting of five percent of the assessed valuation within the proposed area. The validity of this petition can be determined by the County Assessor who maintains the land ownership records. The County Assessor can tell: 1) the assessed valuation of all of the property in the proposed action; 2) the assessed valuation of the parcels owned by the signatures; and 3) whether the persons signing the petition own the property.
4. At a regular meeting of the board, the majority of the members present consider the request for review when a petition requesting review is filed by five percent of the registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action. The board has discretion to accept or reject the request for a public hearing
5. Check with the Auditor/Director of Elections for voter registration information. This is important because areas surrounding proposed actions are generally sparsely developed, five percent of the registered voters may only be a few people.

## **Board Itself Invoking Jurisdiction**

There are two types of proposals in which the Boundary Review Board may invoke its own jurisdiction. The first is when the board concurs with a request for review from petitioners, and the second is when a jurisdiction in a County planning under the Growth Management Act extends water or sewer lines outside of its boundaries and those lines measure over six and eight inches, respectively. Three members of a five member board and five members of an eleven member board are required to invoke jurisdiction.

## **Review Fee**

If the jurisdiction of the board is invoked, the person or entity requesting the review, except for the Boundary Review Board itself, is required to submit a fee of two hundred dollars (RCW 36.93.120). Counties generally do not submit a fee with their request for review as it gets deposited back to them.

## **PREPARING FOR THE PUBLIC HEARING**

### **Setting a Public Hearing Date**

The board must make a finding within 120 days of the filing of request for Review (RCW 36.93.100). With that in mind, when a request for review is received, the board must set a date for a public hearing. This action must take place in a public meeting. The Chief Clerk can notify the Chair when a request for review is received and the Chair can set it as an agenda item for the next regular meeting or as a special meeting. A special meeting may include a conference call, and the same meeting notification procedures apply.

### **Venue**

Often the same location that the board uses for regular meetings is used for public hearings. The board has the option of conducting the public hearing in the area affected by the proposed action. This may include schools, libraries, grange halls, or other public facilities. It may not appear to be a fair hearing if it is held in a non-neutral location, i.e., city council chambers for a city annexation. Make whatever arrangements need to be made to secure the facility for the public hearing.

### **Notification**

The Chief Clerk is responsible for providing notification for public hearings. Thirty days' advance notice is required for public hearings (RCW 36.93.160). Advance notification requires notifying each governmental unit having jurisdiction within the proposed

boundary area, each city within three miles of the area, and the proponent of the action. Notification requirement does apply to numerous governmental bodies outside of the County. The notice can be mailed or sent by email, and an affidavit of notification can be signed to document the date of the notification.

### **Legal Ads**

Notice shall be published in a newspaper of general circulation in the area of the proposed action at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing (RCW 36.93.160). The entire legal description does not need to be in the legal ad, but enough information to identify the affected area is required.

### **Posting**

The area will need to be posted with notices of the hearing prior to the public hearing specifying the time, date, and place of the public hearing and the action and area affected (RCW 36.93.160). The posting shall be completed five days in advance of the public hearing and in ten public places when the area is ten acres or more and in five public places when the area is less than ten acres. An affidavit of posting should be signed to document the date and location of the postings noted on a map.

### **Court Reporter**

A verbatim transcript of the public hearing is required and the official method is to employ a court reporter. The hearing may also be recorded for the use of the Board. Production of the verbatim transcript is required if the decision is appealed to the Superior Court or upon request and payment of reasonable costs (RCW 36.93.160(2)). The court reporter only needs to record the public hearing portion of the meeting. Once the public hearing is closed, the court reporter can leave and need not remain for deliberations.

### **Exhibits**

Prior to the public hearing, interested parties may submit written materials to be considered by the board in making its decision. The board may specify how it will receive exhibits in its Rules of Practice and Procedure. This may include the number of copies, format (i.e. no emails), or deadline for having exhibits sent by the Chief Clerk to the board prior to the hearing.

Exhibits can also be submitted during the public hearing. Exhibits should be numbered in the order that they are received. The first exhibit is usually the Request for Review.

Prior to the public hearing, any exhibits received need to be distributed to board members for their consideration. The Board must retain all exhibits until a decision is filed and the appeal period of thirty days has ended.

In addition, copies of exhibits can be provided to the proponent of the action and the entity requesting jurisdiction. This allows both parties an opportunity to address the exhibits at the public hearing and may allow a more efficient use of the public hearing time.

### **Subpoenas**

The Chief Clerk may issue subpoenas at the direction of the board to any public official requesting testimony or public documents (RCW 36.93.160(3)).

### THE PUBLIC HEARING

#### **Sign-in Roster**

A roster should be prepared so that those who wish to testify may sign in. The Chair can use this roster to call on the speakers during the public hearing. Attendees of the hearing who are not testifying cannot be required to identify themselves or sign in.

#### **Administration of the Oath**

The Oath must be administered at the beginning of the hearing. The board has the option of requesting that the Chief Clerk or legal counsel administer the oath to those planning to testify. This can be done individually. Alternatively, the Chief Clerk or legal counsel can stand and ask all those planning on testifying to rise, raise their right hand and respond to the question, "Do you solemnly swear to affirm that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth?"

#### **Call to Order**

At this point, the board Chair takes over and the role of the Chief Clerk is to monitor the proceedings and pay particular attention to testimony that may be used in the support or non-support of RCW 36.93 (e.g., the board's factors and objectives) and other applicable statutes for the Hearing Decision.

After the last speaker has testified, the board may close the public hearing or continue it to receive more information. If the hearing is closed, the board may decide to deliberate then or schedule another meeting for deliberation.

## **Continuation**

If the hearing is continued, the Chief Clerk will comply with notification rules per RCW 36.93 and RCW 42.30 and place a notice on the door of the venue door stating the time, date and place of the continuation.

## **Deliberations**

There are many ways in which boards have conducted deliberations on proposals. Some consider each factor and objective and have each board member contribute; some have a written checklist that they use to take notes; and some make a motion and in their reasoning state how the proposal meets or doesn't meet the objectives. The basics of deliberation are that they take place at a public meeting; the Board discusses how the proposal is consistent with the relevant factors and furthers the relevant objectives; the board bases its decision on evidence (exhibits and testimony) on the record; and that the Board be fair, neutral, and impartial in its decision.

## **Motion**

The Board's motion on the proposed action can be as follows: *"I move that the Chief Clerk be directed to prepare a Resolution and Hearing Decision approving/disapproving/modifying the proposal."* The reasoning for the motion can also be stated.

## **Resolution and Hearing Decision**

The Chief Clerk prepares or directs the preparation of the written hearing decision of the board. The decision includes whether the proposal was approved, denied, or modified and evidence that the board considered the Boundary Review Board law (RCW 36.93.170 and 180). In addition, if applicable, this decision must find that it is consistent with the Growth Management Act (RCW 36.70A.020, .110 and .201) and the State Environmental Policy Act (RCW 43.21C).

Dissenting members of the board may have their written dissents included as a part of the hearing decision.

A draft of the hearing decision shall be presented to board members in a public meeting for their consideration. A motion to adopt the hearing decision is made in a public meeting and the decision is signed by the Chair in a public meeting.

## **Filing the Hearing Decision**

The board's decision is not final until its written decision is filed and this must be done within forty days after the conclusion of the public hearing on the proposal, and no later than one hundred and twenty days after the filing of a request for review. If the written decision is not filed within the 120-day period, the proposal is automatically deemed approved (RCW 36.93.100). The proponent and the board may agree to an extension of the one hundred twenty-day period, but not the forty-day period.

The written Hearing Decision is filed with the legislative authority of the County (Commission/Council) and the Clerk of each governmental unit directly affected.

## **APPEAL**

### **Appeal Period**

In some cases, if other than a unanimous decision is rendered by the board, an appeal can be filed to the whole board within 10 days of the decision.

Final decisions of the Board may be appealed to the superior court. A notice of appeal must be filed with the superior court and delivered to the Board within thirty days of the filing of the board's written decision with the County. If an appeal is timely filed, the Board shall certify and deliver a copy of its record to the superior court. The defense of the appeal will be the responsibility of the Board's counsel (special assistant attorney general or deputy county prosecuting attorney).

Appellate review of Superior Court decisions are treated as civil cases.

### **Preparing the Record**

Boundary Review Board appeals are decided by the Court "on the record". This means that the Court must have a complete copy of the record for its decision. The record for the file consists of the NOI, Hearing decision, documentation of notifications, verbatim transcripts or the public hearing, and all exhibits.

Depending on office organization, the board's attorney may rely on the Clerk to compile all of the documents and prepare a list which is numbered. A Certificate of Official Record is prepared by the attorney for the Clerk to certify. The Clerk is declaring to the Superior Court, under penalty of perjury, that the record is complete and accurate.

### **Transcripts**

Verbatim transcripts are required as part of the record. The party initiating the appeal pays the costs of preparing the official transcript. It is good practice to get the written

consent of the party agreeing to payment prior to ordering the transcript from the court reporter.

## **State Association of Boundary Review Boards**

The State Association of Boundary Review Boards was formed to provide an organization for study, discussion, and action on matters of interest to Boundary Review Boards within the state. Upon payment of established dues, each Boundary Review Board becomes a member of the State Association, and the Association holds a combined conference/training program each year that serves as an opportunity to learn and exchange ideas. In addition, the Association sponsors other training and networking opportunities throughout the year. The State Association website is [wsabrb.org](http://wsabrb.org).

### **Officers**

Each year a President and President-Elect are elected and Chairs for the Association Committees are appointed. In addition, the President appoints an Executive Officer, Financial Officer, and a Legislative Officer from the Boundary Review Board staff.

### **Executive Committee**

The Executive Committee includes the President, President-Elect and the Chair of each committee. It usually meets twice a year and confers during the year via conference call and email. The Committee is charged with coordinating Association policies and activities.

### **Legislative Committee**

This committee is responsible for developing, monitoring, reviewing, and responding to legislative proposals which affect board powers and responsibilities under RCW 36.93. The committee usually meets once or twice during the legislative session and confers via telephone and email as legislation is introduced. The president of the Association serves as Chair.

### **Conference/ Education and Training Committee**

This committee is responsible for planning the agenda and arranging annual meetings of the Association. It is also responsible for identifying, documenting and arranging for the education and training of Board members. It is chaired by a member of the Board hosting the annual meeting.

## Nominating Committee

The Executive Board appoints this committee to prepare for elections of officers. The committee usually confers over telephone and solicits nominees for the office of President-Elect. Elections occur at the Association's Annual Business Meeting.

## Resources

### STATE OF WASHINGTON

#### Governor's Office – Appointments

Keith Swenson      [keith.swenson@gov.wa.gov](mailto:keith.swenson@gov.wa.gov)      (360) 902-0604

#### Department of Commerce – Growth Management Division

Mark McCaskill      [mark.mccaskill@commerce.wa.gov](mailto:mark.mccaskill@commerce.wa.gov)      (360) 725-3055

#### Department of Ecology – SEPA

Website:      <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

### LOCAL GOVERNMENT

#### Municipal Research and Services Center

Main Website:      [www.mrsc.org/Home](http://www.mrsc.org/Home)      206-625-1300; 800-933-6772

For contacts at individual jurisdictions:

Cities and Towns      [www.mrsc.org/home](http://www.mrsc.org/home)      Click on Research Tools

Counties      [www.mrsc.org/home](http://www.mrsc.org/home)      Click on Research Tools

State Agencies      [www.access.wa.gov](http://www.access.wa.gov)      Click on Government Agencies

Service Districts      [www.access.wa.gov](http://www.access.wa.gov)      Click on Service Agencies

Tribal Information      [www.access.wa.gov](http://www.access.wa.gov)      Click on Tribal Government

### STATE ASSOCIATION OF BOUNDARY REVIEW BOARDS

Lenora Blauman      [Lenora.blauman@kingcounty.gov](mailto:Lenora.blauman@kingcounty.gov)      206-477-0634

Bob Kaufman      [Bob@rcklegal.com](mailto:Bob@rcklegal.com)      425-615-7222

## BOUNDARY REVIEW BOARD STAFF

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<b>CLALLAM</b>	Alanna Gores, Deputy Clerk	<a href="mailto:agores@co.clallam.wa.us">agores@co.clallam.wa.us</a>	(360) 417-2493
<b>COWLITZ</b>	Greta Holmstrom, Exec. Officer	<a href="mailto:holmstromg@co.cowlitz.wa.us">holmstromg@co.cowlitz.wa.us</a>	(360) 577-3052
<b>DOUGLAS</b>	Shari Tincher, Chief Clerk	<a href="mailto:stincher@co.douglas.wa.us">stincher@co.douglas.wa.us</a>	(509) 884-7173, ext. 6589
<b>GRAYS HARBOR</b>	Jenna Amsbury, Chief Clerk	<a href="mailto:jamsbury@co.grays-harbor.wa.us">jamsbury@co.grays-harbor.wa.us</a>	(360) 249-3731
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<b>PIERCE</b>	Danica Williams, Chief Clerk	<a href="mailto:danica.williams@piercecounywa.gov">danica.williams@piercecounywa.gov</a>	253-798-7156
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<b>THURSTON</b>	Katrina VanEvery	<a href="mailto:brbchiefclerk@trpc.org">brbchiefclerk@trpc.org</a>	(360) 956-7575
<b>WHATCOM</b>	Kristine Glasgow, Chief Clerk	<a href="mailto:glasgkm@dshs.wa.gov">glasgkm@dshs.wa.gov</a>	(360) 676-6749 or 1-800-585- 6749
<b>YAKIMA</b>	Bridget Pechtel, Chief Clerk	<a href="mailto:bridget.pechtel@co.yakima.wa.us">bridget.pechtel@co.yakima.wa.us</a>	(509) 574-2300

