1/14/04

Senate Bill 323

creates pecking order

brings more opinions to table

Town of Grand Chute ex.

→ Appleton heard about incorporation effort, hurried to file annexations

* had civil agreement that if annexations altered boundaries could amend petition for incorporation

Conflicts are common

→ allows petitions to "stand in line"

WTA supports

- board of review
- petition queue

→ does not support or oppose incorporations

still doesn't resolve other potential boundary battles

→ would like to require boundary agreements from towns that petition for incorporation

WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2003 Wisconsin Act 171 [2003 Senate Bill 323]	Municipal Incorporation
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 171 makes changes in the laws relating to municipal incorporation.

Generally, the procedure for incorporating territory as a city or village before Act 171 involved the following steps: (1) a petition for incorporation; (2) circuit court review to determine whether specified standards are met; (3) Department of Administration (DOA) review to determine whether other specified standards are met; and (4) an incorporation referendum. [A different process applies to incorporation of certain towns that are adjacent to the City of Milwaukee.]

The Act creates a five-member Incorporation Review Board to take the place of DOA in the above review process. The members of the board are the Secretary of DOA or his or her designee, two members appointed by the Wisconsin Towns Association, one member appointed by the League of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance of Cities. All members of the board, other than Secretary of DOA or his or her designee, serve only in an advisory capacity. The Act includes conflict-of-interest provisions so that if a member of the board owns property in, or resides in, the town that is the subject of the incorporation petition or a contiguous city or village, that member of the board is replaced for purposes of reviewing that petition.

The Act also modifies timelines specified in the statutes for requesting a hearing and for action on the proposed incorporation. Under the Act, within 30 days after receipt by the Incorporation Review Board of a petition from a circuit court, a party in interest may request a hearing; under prior law, the deadline was 20 days. Also, the Act provides that unless the court sets a different time limit, the board must prepare its findings and determination within 180 days after receipt of the referral from the court; this was 90 days under prior law. However, the 180 days or the time set by the court is to be stayed for a reasonable period of time to allow for alternative dispute resolution of any disagreements between interested parties that result from the filing of an incorporation petition if all interested parties agree to this stay and provide written notice of their agreement to the board and to the circuit court. In addition, the Act creates a new statute that states that if the Incorporation Review Board fails to make a

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

determination within 180 days after receipt of a referral or the time set by the court, it is required to refund incorporation review fees and then must make a determination as quickly as possible.

The Act specifies which takes precedence when both an annexation proceeding and incorporation proceeding have been initiated. Under the Act, the circuit court is required to determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated, and the following rules will apply:

- If the court determines that an annexation proceeding was initiated before the publication of a notice of intent to incorporate, the court must refer the incorporation petition to the Incorporation Review Board when the annexation proceeding is final. If the annexation is determined to be valid, the court must exclude the annexed territory from the territory proposed to be incorporated.

- If the court determines that an annexation proceeding was initiated after, and within 30 days after, the publication of a notice of intent to incorporate, the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.

- If the court determines that an annexation proceeding was initiated on the same day as publication of the notice of intent to incorporate, the court must determine which procedure was begun first on that date. That action may proceed and the other action may not proceed unless the first action fails.

- If the court determines that an annexation proceeding was initiated more than 30 days after the publication of the notice of intent to incorporate, the annexation is void.

Effective Date: The Act takes effect on April 20, 2004.

Prepared by: Richard Sweet, Senior Staff Attorney April 20, 2004

RNS:tlu:wu;jal

WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 323	Senate Amendment 1 and Assembly Amendments 1 and 2

Memo published: **March 12, 2004**

Contact: **Richard Sweet, Senior Staff Attorney (266-2982) and Mary Offerdahl, Staff Attorney (266-2230)**

Senate Bill 323 makes changes in the laws relating to municipal incorporation. Generally, the procedure for incorporating territory as a city or village involves the following steps: (1) a petition for incorporation; (2) circuit court review to determine whether specified standards are met; (3) Department of Administration (DOA) review to determine whether other specified standards are met; and (4) an incorporation referendum. [A different process applies to incorporation of certain towns that are adjacent to the City of Milwaukee.] The bill creates an Incorporation Review Board to take the place of DOA in the current review process. The bill also modifies timelines in current law for requesting a hearing and for DOA (Incorporation Review Board under the bill) action. In addition, the bill creates a new statute that states that if the Incorporation Review Board fails to make a determination within 180 days after receipt of a referral, it is required to refund incorporation review fees and then must make a determination as quickly as possible.

The bill specifies which takes precedence when both an annexation proceeding and incorporation proceeding have been initiated. Under the bill, the circuit court is required to determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated, and the following rules will apply:

- If the court determines that an annexation proceeding was initiated before the publication of a notice of intent to incorporate, the court must refer the incorporation petition to the Incorporation Review Board when the annexation proceeding is final. If the annexation is determined to be valid, the court must exclude the annexed territory from the territory proposed to be incorporated.
- If the court determines that an annexation proceeding was initiated on or within 30 days after the publication of a notice of intent to incorporate, the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.
- If the court determines that an annexation proceeding was initiated more than 30 days after the publication of the notice of intent to incorporate, the annexation is void.

Senate Amendment 1 makes the following changes to the bill:

1. The amendment modifies the provision of the bill dealing with initiation of annexation proceedings to specify when such an initiation occurs with respect to annexation of territory owned by a city or village. Under the amendment, such an annexation is considered to have been initiated upon the posting of a meeting notice by a city or village that states that the city or village is considering enacting an annexation ordinance.

2. The amendment modifies the portion of the bill that relates to annexation proceedings initiated on or within 30 days of the publication of a notice of intent to incorporate. The amendment deletes the reference to "on or within 30 days after" and instead refers to "after, and within 30 days after,". In addition, the amendment specifies that if the court determines that an annexation proceeding was initiated on the same day as publication of the notice of intent to incorporate, the court must determine which procedure was begun first on that date. That action may proceed and the other action may not proceed unless the first action fails.

Assembly Amendment 1 relates to the bill provision that requires the Incorporation Review Board to prepare its findings and determination within 180 days after receipt of the referral from the court and payment of any fee imposed for petition review under a particular statutory provision, whichever is later, unless the court sets a different time limit. The amendment requires that the time period specified or set by the court be stayed for a reasonable period of time to allow for alternative dispute resolution of any disagreements between interested parties that result from the filing of an incorporation petition, if all interested parties agree to this stay and provide written notice of their agreement to the board and to the circuit court.

Assembly Amendment 2 relates to the bill provision that creates the Incorporation Review Board. The amendment specifies that all members of the board, other than the Secretary of Administration or his or her designee, serve only in an advisory capacity.

Legislative History

Senate Amendment 1 was introduced by Senator Ronald Brown. On January 28, 2004, the Senate adopted the amendment, and passed the bill as amended, both by voice votes.

Assembly Amendments 1 and 2 were offered by Representative Michael Huebsch and adopted by the Assembly, by voice vote, on March 11, 2004. On the same day, the Assembly concurred in Senate Bill 323, as amended, by voice vote.

RNS:MO:tlu:jal:wu;ksm

Gilbert, Melissa

From: Schmidtke, Erich
Sent: Monday, March 08, 2004 4:28 PM
To: Gilbert, Melissa
Subject: Amendments to SB 323

Melissa -
The amendments look good, with the exception of 3 concerns we have regarding the proposed section 66.0203(9)(dm) paragraph. These concerns are:

1) The paragraph does not set a time limit for how long a proceeding may be stayed. Without any limit it's conceivable that an incorporation proceeding could drag out too long. We suggest inserting the word 'reasonable' (see suggested language below).

2) The paragraph does not require that an agreement between parties to stay the 180 days be in writing. Failure to have this agreement in writing invites uncertainty and maybe mischief. Also, we suggest that this written agreement be sent to the Board (so it knows to quit working on the petition) and the circuit court.

3) The paragraph is too prescriptive regarding the kinds of disputes that may be stayed to attempt ADR, and also regarding the kinds of participants that may be involved. Specifically, the paragraph may be interpreted to allow a stay for ADR only of disputes involving annexation by cities and villages, and only when the participants to the dispute are a city/village, town, and petitioner. It does not allow for other kinds of incorporation-related disputes (services, taxation, transportation, land use, etc.) or other kinds of participants, such as a business or a stakeholder group that has intervened in the petition. Marc Shovers' letter indicates his uncertainty about this issue as well. Making the paragraph less prescriptive would likely eliminate his questions and our concerns (see suggested language below).

Suggested language:
66.0203(9)(dm) The time period specified or set by the court under par. (d) may be stayed for a reasonable period of time to allow for alternative dispute resolution of any disagreements between interested parties that result from the filing of an incorporation petition, provided that all interested parties agree to this stay and provide written notice to both the Board and circuit court.

The two amendments, taken together and with the changes suggested above, are agreeable to DOA and consistent with what we agreed to in your office last week. We're interested that two amendments, rather than one, were developed to accomplish a pretty limited set of changes, particularly since there's so little time for action in both houses this week. Do you have a sense for why the drafters chose that route?

Thank you for giving us the opportunity to review these amendments,
Erich

Erich Schmidtke
Department of Administration
Division of Intergovernmental Relations
101 East Wilson, 10th Floor
P.O. Box 8944
Madison, WI 53708-8944
(608) 264-6102

-----Original Message-----
From: Gilbert, Melissa
Sent: Monday, March 08, 2004 1:27 PM
To: Schmidtke, Erich
Subject: FW: second amendment to SB 323

Here's the second amendment to SB 323...

-----Original Message-----
From: Barman, Mike
Sent: Monday, March 08, 2004 1:25 PM
To: Sen.Brown

HERRLING, CLARK, HARTZHEIM & SIDDALL LTD.

800 NORTH LYNNDALE DRIVE • APPLETON, WISCONSIN 54914
PHONE (920) 739-7366 • FAX (920) 739-6352

Charles J. HARTZHEIM
Michael S. SIDDALL
Charles D. KOEHLER
Kevin LONERGAN
Robert B. LOOMIS
John D. CLAYPOOL
Greg P. CURTIS
Richard T. ELROD
Mark J. McGINNIS
Erika Leuffen SALERNO
Timothy B. ANDERSON
Kelly S. KOSHALEK-RIEHL
Lance E. MUELLER
OF COUNSEL:
Don R. HERRLING
Roger W. CLARK

February 12, 2004

FEB 16 2004

Senator Ron Brown
Wisconsin State Senator
District 31 – State Capitol
P. O. Box 7882
Madison, WI 53707-7882

RE: Incorporation <u>Procedural</u> Reform

Dear Senator Brown:

It has recently come to my attention that the Department of Administration has taken opposition to Senate Bill 323. You are aware that my thirty-five year history as a practicing municipal attorney has caused me to emphatically support your efforts to make the procedural changes that are proposed by Senate Bill 323. The court made procedural rule of prior precedence is flawed. The system is broken and needs fixing. Ask the residents of the Town of Campbell.

It is important to note that the Department of Administration has taken the opposition and claims this Bill represents an incorporation reform. It is therefore important for the Senate Committee, hearing this matter to understand that your Bill proposes <u>procedural</u> reforms only, with the exception of enlarging the decision making body to a Commission of five.

The Department of Administration has addressed a number of issues in negative terms as relates to your Bill. I would like to make the following comments with regard to the Department of Administration's position:

1. **The Department of Administration objects to the lengthening of the review period from ninety (90) to one hundred eighty (180) days.** Members of the Department of Administration's staff have, for many years, represented to me and others that the ninety (90) day time frame is unrealistic and in fact ridiculous. They indicate that the time frame should have been dealt with by the legislature to expand the time. It must be understood that the Department of Administration is empowered by statute to investigate the incorporation petitions that are filed and make determinations regarding whether those incorporation petitions meet the criteria of the statute. <u>This legislation does not propose any substantive changes to the standards the Department of Administration must examine nor the information it must review</u>.

The ninety (90) day period, however, is not realistic. The short period for investigation is acknowledged in the Department of Administration memo when the Department of Administration represents that "*petitions rarely include information needed by the Department of Administration to determine whether the standards of 66.0207 Wis. Stats. have been met. Petitioners frequently do not know what information is needed or are unmotivated to undertake the time and expense of gathering the information. This results in delay as the Department of Administration waits for information it needs.*"

I completely agree with the Department of Administration's statement and it is the reason why it is necessary to expand the time for decision by at least ninety (90) days, thereby allowing them to collect the information which they must obtain.

Senate Bill 323 acknowledges the significant burden on the Department of Administration to prepare an incorporation decision within ninety (90) days. Attached to this correspondence is the outline of the decision of the Department of Administration in the incorporation of the Town of Suamico. A brief review of that outline will demonstrate all of the factors that must be examined and determined in the process of the incorporation decision. These materials are obviously too voluminous and detailed to expect the Department of Administration to obtain and analyze within the current statutory ninety (90) day period, no matter how they propose to rewrite the internal rules.

2. **The Department of Administration represents that the Bill does not represent policy differences between annexations and incorporations and will cause a delay in one or the other of those proceedings**. Under the current law and the court rule of prior precedence, not only are there delays, but the failure of one party to file before the other is fatal to either the petition for annexation or incorporation. Senate Bill 323 has taken away the fatal lack of timeliness and has replaced it with a "stand in line" procedure so that all parties know when and how the matter will proceed through the court and administrative process. Senate Bill 323 did not intend to address policy differences between annexations and incorporations. Neither have the courts ever addressed policy differences between annexation and incorporations. The resulting rule of prior precedence completely disregards policy and determines only that a lack of timeliness is fatal. It is that court rule that is the main target of Senate Bill 323.

3. **The Department of Administration represents that additional personnel to staff the Board in technical and administrative support members will be necessary**. Senate Bill 323 does not propose that any

additional information be collected and in fact simply directs the Department of Administration to complete its functions within one hundred eighty (180) days rather than ninety (90) days. All of the technical information staff and administrative support members are already present in the Department of Administration. The Department of Administration would not propose to complete their investigation within ninety (90) days if they did not already have the personnel and administrative staff. The additional Board members will create no additional cost. Those additional Board members will rely on the same information upon which the current decision maker at the Department of Administration relies.

4. **The technical expertise will continue to be provided by the Department of Administration**. The additional Board members are simply providing additional input as well as different viewpoints from the layman's point of view. In the event that the Town members and the City members are evenly divided it is clear that the technical expertise of the tie breaker will belong to the Department of Administration. That should be perfectly acceptable to Towns and Cities alike.

   What will change, and for the better is that a majority of the Commission will require timely decisions. Until the Senate spoke by passing this Bill, the Department of Administration has never had, nor ever will have any incentive to follow its internal rules.

5. **There is an objection that the fact finding process may become politicized**. After experiencing thirty-five years of the Department of Administration decision making process, it is my view that the process has already been politicized. It has become very obvious over the years to persons representing townships that the Department of Administration consistently refused to incorporate a proposed Village where there was an objection by a City neighbor. The Department of Administration has denied that its favoritism to the more populous community, but a review of the decisions since 1975 will make that clear.

6. **The Department of Administration suggests that the Bill does not contain standards for how the Board is to review the incorporation petition.** The statute already provides the standards. The Department of Administration has been using this process deciding on and the application of the statutory standards for many years. Nothing new is required and there is no intent of Senate Bill 323 to change the review standards.

7. **There is a concern by the Department of Administration that the failure of the Board to reach consensus in a timely manner could result in the Board having to return the fee**. This statement appears in the same memo wherein the Department of Administration represents that

it can get its decisions out in ninety (90) days and there's no reason to extend the decision period. The Department of Administration's memo, in my opinion represents talk out of both sides of its mouth. Clearly, if it truly believes that its new internal procedures will produce decisions in ninety (90) days then there should be no problem with producing decisions within one hundred eighty (180) days. I would foresee that this Board would function in such a way, having a membership from the municipalities, that they would control the timelines such that these decisions, in fact, would be timely.

In summary, the Department of Administration has as a matter of routine completely ignored the directives of the statute when it come to the timeliness of its decisions. Judges have had to issue court orders directing the Department to deliver its decisions where delays have many times been excessive. The Department of Administration decision makers have routinely pointed to conflicts between incorporation petitions and annexation petitions as a reason for further delay.

The new procedure proposed by Senate Bill 323 makes it very clear at the beginning of the conflict, how that conflict will be resolved between the incorporation and the annexation. It further makes it clear that the incorporation petition will not even be forwarded to the Department of Administration for decision until such time as the annexation matter is resolved. The time period for decision would not start until then. Therefore, at the time the incorporation decision would be commenced by the Department of Administration there would be conflicts which would remain unresolved.

The problems and difficulties of the Town of Campbell, the Town of Lake Hallie, and numerous others over the years, point out that Senate Bill 323 is an extremely important procedural reform.

It is respectfully requested that you present this information to the upcoming Assembly Committee hearing since I will be unable to attend the hearing.

Very truly yours,

ROGER W. CLARK

RWC/lpb
Enclosure

THE INCORPORATION OF THE TOWN OF SUAMICO

BROWN COUNTY, WISCONSIN

AS THE VILLAGE OF SUAMICO

Case No. 97-CV-1129

Table of Contents

INTRODUCTION 3

Background 4

SECTION 1(a) HOMOGENEITY AND COMPACTNESS 5

General Town Description 5
Physical and Natural Boundaries 6
Topography 6
Physical Boundaries 7
Drainage Basins 7
Soils 8
Critical Species 10
Environmental Corridors, Wetlands and Natural Areas 12
Ambient Air Quality 13
Historically Significant Resources 14
Transportation 14
Highways and Roads 14
Railroads 16
Air 16
Alternate Transit 16
Bicycle and pedestrian 16
Political Boundaries 17
Annexation History 17
Intergovernmental Agreements 17
School District Boundaries 18
Sanitary District 19
Shopping and Social Customs 21
Shopping and employment 21
Recreation 26
Civic Organizations 27
Churches 27
Summary of Current Land Uses 28
Section 1(a) Determination 31

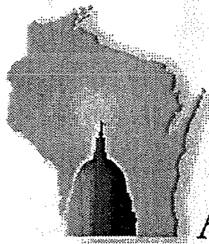
SECTION 1(b) TERRITORY BEYOND THE CORE 33

Comprehensive Plan 33
Sewer Service Area 34
Rezoning, Building Permit & Subdivision Plat Data 34
Section 1(b) Determination 35

SECTION 2(a) TAX REVENUE 36

Analysis of Petitioner's proposed budget 36
Overall Assumptions and Considerations 39
Expenditures 39
Revenues 43
Property tax base 43
Property tax rates 44
Asset distribution 44

Section 2(a) Determination....44
SECTION 2(b) LEVEL OF SERVICES....49
SECTION 2(c) IMPACT ON THE REMAINDER OF THE TOWN....50
Physical Effects of Proposed Village Boundary and Shape....50
Public Services....50
Land Use Effects....51
Fiscal Effects....52
Revenue....52
Expenditures....52
Section 2 (c) Determination....52
SECTION 2(d) IMPACT UPON THE METROPOLITAN COMMUNITY....53
Cooperation with area jurisdictions....54
Extraterritorial Issues and Municipal Plans....54
Police protection....55
Services....56
Housing....56
Section 2(d) Determination....57
SUMMARY OF THE ANALYSIS OF THE INCORPORATION STANDARDS....59
APPENDIX 1: DEPARTMENT CONTACTS MADE DURING RESEARCH AND ANALYSIS*....60
APPENDIX 2 – BIBLIOGRAPHY....61
APPENDIX 3 – MAP: TABLE OF CONTENTS....63



WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
GOVERNOR
MARC J. MAROTTA
SECRETARY
Division of Intergovernmental Relations
101 East Wilson Street, 10th Floor
Post Office Box 8944
Madison, WI 53708-8944
Voice (608) 266-0288
Fax (608) 267-6917 TTY (608) 267-9629

February 24, 2004

Honorable Scott Gunderson
Chairman, Assembly Committee on Urban and Local Affairs
Room 7 West, State Capitol
Madison, Wisconsin 53708

Honorable Gregory Huber
Ranking Member, Assembly Committee on Urban and Local Affairs
Room 218 North, State Capitol
Madison, Wisconsin 53708

Re: Senate Bill 323

Dear Representatives Gunderson and Huber:

We have just learned that Senate Bill 323 has been scheduled for public hearing before the Assembly Committee on Urban and Local Affairs on February 26, 2004. The Division of Intergovernmental Relations in the Department of Administration (DOA) administers the municipal incorporation review program that is the subject of the bill. DOA recently announced several enhancements to the incorporation review procedure that will speed the review process and make SB 323 unnecessary. These enhanced procedures were published February 5, 2004 and will become effective March 1, 2004.

Specifically, the new DOA procedure implements a scheduling order incorporating all statutory deadlines currently in place. It will ensure that reviews are completed within 90 days (as provided under current law), not 180 days as required in SB 323.

In addition, DOA will specify the information it needs from local governments to ensure that all required documentation is provided at the commencement of an incorporation or consolidation review. In the past, reviews were often delayed by incomplete information submissions by the parties.

The new procedure also provides mechanisms to encourage conflicting parties to resolve border disputes outside of the court system. It allows parties to stay the review process to pursue Alternative Dispute Resolution (ADR) with the assistance of non-state agency consultants. Should the parties wish to pursue ADR, they must both agree in writing to stay the 90-day review period, and must also provide a specific date on which the 90-day period will re-commence. We have concerns that SB 323 will not allow flexibility for this type of negotiated resolution between the parties.

As we have learned more about the mechanics of SB 323, we have grown increasingly concerned that DOA may not be able to absorb the costs of the review board specified in the bill. The operation of the board may include significant spending on board member travel, meeting arrangements, material preparation and legal notices. These costs are indeterminate based upon unforeseeable factors including the frequency of board meetings, the depth of staff analysis sought by board members, and the level of review performed by the board. Of course, SB 323 provides no money for these functions and no specifics on how the board would function or make decisions.

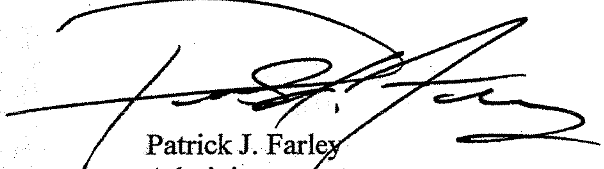
Finally, we are concerned that the composition of the SB 323 board places public policy and decision-making in the hands of trade organizations with paid lobbyists (Wisconsin Towns Association, League of Wisconsin Municipalities, Wisconsin Alliance of Cities). We are unaware of any other program in state government that places so much specific, direct authority in the hands of special interests. As a result, what is now an objective fact-finding process may become politicized. Furthermore, because the proposed board is evenly divided between municipal and town representatives, votes could easily require tie-breaking by DOA. This would yield a result no different from the current situation, but at the risk of greater cost and deterioration of the relationships between the municipal associations.

I have enclosed for your review the following documents that explain in detail DOA's revised incorporation and consolidation review:

1. Revised Incorporation and Consolidation Procedures
2. Scheduling Order
3. Information Request List Relating to Municipal Incorporation and Consolidation Reviews

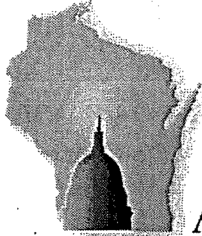
We would appreciate an opportunity to discuss these issues with you personally or with your committee on February 26. Please let me know how you would like to proceed.

Sincerely,



Patrick J. Farley
Administrator
Division of Intergovernmental Relations

Enclosures



WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
GOVERNOR
MARC J. MAROTTA
SECRETARY

Division of Intergovernmental Relations
101 E. Wilson Street, 10th Floor
Madison, WI 53702-0001
Voice (608) 266-0288 Fax (608) 266-5519
http://www.doa.state.wi.us

Municipal Incorporation and Consolidation Review

Revised Program Procedures
Published February 5, 2004

The Wisconsin Department of Administration (DOA) reviews municipal incorporations and consolidations under Chapter 66 of the Wisconsin Statutes. Local governments and other parties in interest are hereby notified that DOA will implement revised municipal incorporation and consolidation review procedures effective March 1, 2004. The revised procedures will produce several benefits for local government and taxpayers:

- Timeliness: Ensure that all reviews are completed within 90 days.
- Accuracy: Conduct reviews based on complete, accurate, and timely information.
- Cost Savings: Control local government expenses by reducing the costs of legal and other consultants.
- Dispute Resolution: Provide mechanisms and encouragement for local governments to resolve border disputes.

90 Day Review

- DOA will strive in all cases to prepare its findings and determination within 90 days after receipt of the referral from the court or payment of any fee imposed, whichever is later (Commencement Date).
- On or about the Commencement Date, DOA will provide the Petitioner and any Parties in Interest with a Scheduling Order including all salient deadlines.

Complete Documents

- The Petitioner's interests are best served by ensuring DOA is provided a complete set of documents demonstrating that the proposed incorporation or consolidation meet statutory requirements on the Commencement Date. DOA will immediately review the submitted documents for completeness. Petitioners will be notified as soon as practical whether additional information is required. Petitioners must submit needed information within 10 days of notification. Failure to do so may adversely affect their interests.
- Notification of need for additional information will not stay the 90-day review period.
- Petitioners should use the *Information Request List Relating to Municipal Incorporation and Consolidation Reviews (2004)* to ensure the completeness of its submission.

Parties in interest[1]

- Parties in Interest (often referred to as *Intervenors*) have 20 days after the Commencement date to provide the DOA with information to support their position with regard to the petition. Lack of such information will not result in DOA's 90 day review period being stayed or extended. However, failure to submit this information may adversely affect a Party in Interest.

Time Extensions and Alternative Dispute Resolution

- The 90 day review period may be stayed by filing with DOA a written agreement that includes (1) a reasonable date for resumption of the 90 day review period and (2) the signatures of representatives of Petitioners and all Parties in Interest, or their attorneys.
- Alternative Dispute Resolution (ADR) will be presented to the Petitioner and Parties in Interest as a means of finding a solution outside of the court system. However, neither DOA nor any state cabinet agency will provide ADR services to the parties. DOA will develop a listing of non-state agency consultants available to provide ADR services. Petitioner and Parties in Interest can stay the 90 day review period to attempt ADR provided they file with DOA a written agreement that includes (1) a date for resumption of the 90 day review period and (2) the signatures representatives of Petitioners and all Parties in Interest, or their attorneys.

Hearing Requests

- The Petitioner or any Party in Interest may request that DOA schedule a hearing on the incorporation petition or consolidation ordinance within 20 days from the Commencement Date. DOA will strive to schedule the hearing to occur within 30 days of the request.
- Hearings will be scheduled at a location in or convenient to the territory sought to be incorporated.
- Petitioners and Parties in Interest have 10 days after the hearing to submit any additional information, and then an additional 5 days to respond to this additional information.

Typical Timeline

Action	Day
Commencement Date	0
Submittal date for documents	10
Hearing Request Deadline	20
Hearing Date	50
Submission of Additional Documentation	60
Response to Additional Documentation	65
DOA Publishes Findings and Determination	90

Petitioners are encouraged to contact DOA before commencing a municipal incorporation or consolidation action. Call or write:

George Hall
(608) 266-0683
george.hall@doa.state.wi.us

Erich Schmidtke
(608) 264-6102
erich.schmidtke@doa.state.wi.us

Division of Intergovernmental Relations
Municipal Boundary Review
P.O. Box 1645
Madison, WI 53701-1645

[1] Pursuant to section 66.0203(5), Wis.Stats., each town in which the territory proposed for incorporation ("territory") is located, each municipality within the metropolitan area in which the territory is located, each school district located fully or partly in the territory, and any other person may be found by the circuit court to be a party in interest to the incorporation or consolidation proceeding.

STATE OF WISCONSIN CIRCUIT COURT (name) COUNTY

In Re:

The Incorporation of Certain Territory in the Town of (name), (name) County, Wisconsin as the City/Village of (name)

Case No. (number)

(name), Representative of the petitioners for the Incorporation of the village of (name),

Petitioners

and

(name),

Intervenors.

SCHEDULING ORDER
WISCONSIN DEPARTMENT OF ADMINISTRATION

WHEREAS, a Petition/Ordinance for the Incorporation/Consolidation as a City/Village of certain territory in the Town of (name) was filed with the (name) County Circuit Court on (date);

WHEREAS, the circuit court referred the petition/ordinance to the Department of Administration (DOA) pursuant to s. 66.0203(9), Wis.Stats., on (date);

WHEREAS, the DOA is required to determine whether the petition/ordinance meets the incorporation/consolidation standards set forth in s. 66.0207 Wis.Stats.;

WHEREAS, the DOA received payment of its fee pursuant to ss. 16.53(14) and 66.0203(9)(b) Wis.Stats., from Petitioners on (date); [omit if consolidation]

IT IS HEREBY ORDERED AS FOLLOWS:

1. The DOA's 90 day review period in which to issue its findings and determination commences upon the receipt of an incorporation/consolidation petition/ordinance from a circuit court and payment of the incorporation fee, whichever is later (omit payment of fee if consolidation), (Commencement Date). The DOA's Commencement Date for this incorporation/consolidation petition is: (date – Commencement Date). The DOA will issue its findings and determination on whether the petition/ordinance meets the standards set

forth in s. 66.0207, Wis.Stats., no later than ___(date – 90 days after the Commencement Date)___.

2. Pursuant to s. 66.0203(2)(c) & 66.0203(9) Wis.Stats, the DOA considers the information included in the petition/ordinance to be the complete incorporation/consolidation package from the petitioner, enabling the DOA to review the standards in s. 66.0207, Wis.Stats. The DOA will perform an initial review of the information provided supporting the petition/ordinance, notify Petitioners of any information that is found missing, and will allow Petitioners 10 days to provide this information to the DOA. Missing information does not result in a stay of DOA's 90 day review period. Failure by Petitioner to submit this information may adversely affect their interests. For example, it could hamper DOA's ability to find that one or more of the standards of Wisconsin Statute s. 66.0207 are met. Petitioners are reminded that all information submitted to the DOA must also be provided to other Parties in Interest according to this same schedule. A *Party in Interest* is described in s. 66.0203(5), Wis.Stats., to include each town in which the territory proposed for incorporation/consolidation is located, each municipality within the metropolitan area in which the territory is located, each school district located fully or partly in the territory, and any other person that may be found by the circuit court to be a Party in Interest to the incorporation/consolidation proceeding. Parties in Interest are also referred to as *Intervenors*.

3. Parties in Interest have until ___(date – 20 days after the Commencement Date)___ to provide the DOA with information to support their position with regard to the petition/ordinance. Lack of such information from a Party in Interest will not result in DOA's 90 day review period being stayed or extended. However, failure to submit this information may adversely affect their interests. For example, it could hamper DOA's ability to consider their position with regard to one or more of the standards in s. 66.0207, Wis.Stats. Parties in Interest are reminded that all information submitted to the DOA must also be provided to Petitioners and any other Parties in Interest according to this same schedule.

[omit (3.) if the court has not identified any Parties in Interest]

4. Petitioners and Parties in Interest have 10 calendar days following the deadlines in (2.) and (3.) in which to respond to any submitted information. If additional information is submitted, then Petitioners and Parties in Interest have 5 additional calendar days in which to respond to this new information. All information submitted to the DOA must also be provided to Petitioner and Parties in Interest according to this same schedule.

5. Pursuant to s. 66.0203(9)(b), Wis.Stats., Petitioners, and any Party in Interest, have until ___(date - 20 days from the Commencement Date)___ to request that DOA schedule a hearing on the incorporation/consolidation petition at a location in, or convenient to, the territory sought to be incorporated/consolidated. The DOA will strive to schedule this hearing to occur within 30 days of the request.

6. If a public hearing is held, Petitioners and Parties in Interest have 10 calendar days following the hearing in which to submit additional information bearing on the petition. If additional information is submitted, then Petitioners and Parties in Interest have 5 additional calendar days in which to respond to this new information. All information submitted to the DOA under this provision must also be provided to the Petitioner and all Parties in Interest according to this same schedule.

7. At any time during its 90 day review period, the DOA may request additional information from Petitioner and Parties in Interest and may provide up to 20 days for its submittal. If additional information is submitted, then Petitioner and Parties in Interest have 5 additional calendar days in which to respond to this new information. Request for additional information will not result in DOA's 90 day review period being stayed or extended. Failure to submit this information may adversely affect the interests of Petitioner or a Party in Interest. For example, it could hamper DOA's ability to find that one or more of the standards in s. 66.0207, Wis.Stats., are met. Any additional information submitted at the request of the DOA must also be provided to Petitioner and all Parties in Interest according to this same schedule.

8. The DOA's 90 day review period may be stayed by filing with the DOA a written agreement that includes (1) a reasonable date for resumption of the 90 day review period and (2) the signatures of representatives of Petitioners and all Parties in Interest.

9. The DOA encourages Petitioners and Parties in Interest to resolve local disputes (that may have precipitated or include the filing of an incorporation/consolidation petition) through use of alternative dispute resolution (ADR) techniques. Because of its decision-making role with incorporation/consolidation petitions, the DOA does not provide these ADR services. However, a listing of individuals and organizations that do provide these services is available at: ___(email address, phone number, etc.)___. Additionally, if the parties to a dispute desire to stay the DOA's 90 day review period in order to attempt ADR, they can obtain a stay by filing with the DOA an agreement as described in (8.) above.

Dated this __(date)__ day of ________(date)________, 20____.

____
Name
Municipal Boundary Review Program
Department of Administration

INFORMATION REQUEST LIST RELATING TO

MUNICIPAL INCORPORATION AND CONSOLIDATION REVIEWS

December, 2003

Petitioners and intervenors are requested to supply the information and analysis listed below in order for the Wisconsin Department of Administration to promptly determine if an incorporation petition meets the statutory standards in section 66.0207, Wis. Stats. Please also provide copies of any information and analysis submitted to the Department to each party-in-interest named by the court. The Department recommends that the parties meet with DOA staff prior to beginning preparation of your petition submittal to discuss our review process and how we can work with you to help make the process more efficient and less costly.

The following headings relate to the Department's incorporation/consolidation review requirements found in s. 66.0207, Wis. Stats.

(1) Section 1(a), Homogeneity and Compactness:

The standard to be applied as found in §66.0207(1)(a) reads as follows:

> *The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs.*

If the petition is for a proposed "isolated" village or city (see section 66.0201 (2) Wis. Stats.), describe how it has an identifiable "community center," by using the information requested below. If there is no identifiable "community center," explain why its absence does not matter.

If the petition is for a "metropolitan" village or city (see section 66.0201 (2) Wis. Stats.), describe how natural resource attributes, the built environment, and related socio-economic activities occurring within the territory distinguish it from the character and activity of adjacent incorporated cities and villages.

Provide a written explanation showing how the natural resource and socio-economic information listed below supports a finding that the proposed community is homogenous and compact.

a. Maps showing the regional context of the territory proposed for incorporation including neighboring communities and other jurisdictions, and other information described in the enclosed instructions for map preparation.

b. A description of historic, governmental, social, and economic factors that demonstrate cohesion, unity, and identity for the proposed community. Specific types of information include: a description of organized events and historic or other celebrations; shopping and social and recreational customs or other activity patterns of any type (such as a sanitary, lake, or utility district, volunteer fire department, etc.); a list of local groups, social clubs, churches, including meeting locations, frequency of meeting, and an estimate of the proportion of members who are residents of the proposed community.

c. A list of businesses within the proposed community organized by type of business, address and zip code. State whether the business is seasonal or year round, and the number of people employed on a part-or full-time basis. This information is most readily utilized by the Department when provided in printed, and in an accompanying spreadsheet file.

d. Current school district enrollment, and the proportion of students who live in the proposed city or village by type of school (elementary, middle, high school). A brief physical

description of any school facilities within the proposed boundary, along with any proposed modifications/additions. Describe how adjoining neighborhoods or town residents use these school facilities and identify any formal or informal agreements between school districts and municipal jurisdictions or social organizations.

e. A list of the existing ordinances in the proposed city or village, including a zoning map, zoning classification descriptions and abbreviations corresponding to the zoning map, subdivision regulations, an official map, and others that you think relate to compactness and homogeneity of the territory. Include analysis of how these ordinances relate to this Standard.

f. Information describing land use trends including the development potential of the territory proposed for incorporation. This information could include a list of parcel rezones, land divisions/subdivisions, building permits, and number of developable acres.

g. A functional street classification map (shows various road classes i.e. state highways, county roads, etc.) for the territory, and any relevant transportation improvement plans, traffic data (traffic counts, level of service status, projections, etc) and relevant corridor plans or special studies. Provide an explanation as to how this information supports your position and how the transportation system a finding that the proposed territory is compact and homogenous.

h. Relevant excerpts from local and county or regional plans and maps portraying and discussing existing and proposed land use. For example, these excerpts could address residential and commercial land uses, public facilities, parks, environmental corridors or significant natural resources, wetlands, and historic buildings/sites. Examples of relevant plans are comprehensive plans, farmland preservation plans, outdoor recreation plans, economic development plans, transportation improvement plans, erosion control and lake management districts, capital improvement plans, and urban service area plans. Provide an explanation as to how this information relates to the compactness and homogeneity standard.

i. Relevant excerpts from engineering, planning, financial reports or feasibility studies, and monitoring reports for public utilities including sewer, water, and stormwater management systems that explain how services are currently provided, and will be provided in the proposed territory for incorporation.

j. A description of any existing or closed solid waste landfills.

k. If the boundaries of the proposed incorporation are irregular and form peninsulas or town islands with an adjoining city or village, discuss why this does or does not matter. Provide copies of any existing intergovernmental agreements or other adopted instruments that address and resolve intergovernmental service delivery and identity issues for any peninsulas/islands.

(2) Section 1(b), Territory Beyond the Core:

The standard to be applied as found in §66.0207(1)(b), Wis.Stats, reads as follows:

The territory beyond the most densely populated one-half square mile specified in s. 66.0205 (1) or the most densely populated square mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.0217 (1) (a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility uses. The territory beyond the most densely populated square mile as specified in s. 66.0205 (3) or (4) shall have the potential for residential or other land use development on a substantial scale within the next three years. The

Department may waive these requirements to the extent that water, terrain or geography prevents such development.

a. Provide the department with an accurate estimate of the population of the proposed village, and area population trends using Wisconsin Demographics Services Center or U. S. Bureau of Census data. The population estimate is critical because if the incorporation petition is approved, population will determine the initial allocation of state aids and shared revenues for the community.

b. For "isolated" petitions, identify either the most densely populated contiguous one-half square mile if filing as a "village," or contiguous one square mile if filing as a "city," using a Public Land Survey System standard measurement (such as 40 acres, 80 acres, 160 acres).

c. For "metropolitan" petitioners, use the maps described in the attached mapping instructions for the Environmental/Natural Resource Maps, Public Utility Maps, and building permit and other information (listed in section 1 (a) paragraph f) to identify lands suitable for development and the availability of municipal sewer and water services within the territory proposed for incorporation.

(3) Section 2(a), Tax Revenue:

The standard to be applied is found in §66.0207(2)(a), Wis. Stats., and reads as follows:

The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate, which compares favorably with the tax rate in a similar area for the same level of services.

Provide the following in your petition submittal:

a. A proposed village or city budget, using the Wisconsin Department of Revenue chart of accounts format for municipalities, including current debts and other liabilities (or proportion potentially transferable to the proposed unit of government, if less than a whole town or parts of a town).

b. An estimate of the current equalized value of the proposed community.

c. Town annual financial reports for the preceding 5 years along with a 5-year history of changes in equalized value by property tax classes.

d. For all "special purpose districts" serving the territory, explain how existing debts and obligations are to be "shared" by the proposed village/city.

e. An explanation as to how any existing intergovernmental agreements address payment for services or shared infrastructure, and proposed contracts/agreements regarding water or sewer service, police, fire and rescue services, joint transportation projects, recreation programs, studies, etc.

f. An estimate of new capital facility needs or improvements to existing facilities.

g. Intervenors in opposition, who have filed a resolution expressing a willingness to annex the territory proposed for incorporation, should submit the information in the preceding a.-f., that relates to the territory they proposed to annex. This should describe how the territory proposed for annexation relates to existing adopted plans, capital and operating budgets, personnel and facilities, urban service and extraterritorial authority, etc.

(4) Section 2(b), Level of Services:

The standard to be applied is found in s. 66.0207(2)(b), Wis. Stats., and provides that the proposed incorporation must be in the public interest as determined by the department upon consideration of:

> *(b) Level of services. The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.0203(6), Wis. Stats.*

If no adjacent city files a resolution to annex the entire territory as provided for by §66.0203(6), Wis. Stats., with the circuit court, this standard is not applicable, and the information listed in below is not needed.

a. A description of public works (road maintenance, snow plowing, ditch and culvert work, signage, etc.), public safety, administrative functions, library, or other services desired or needed to be performed by the proposed village/city, how they will be performed, and who will perform them.

b. Information on the level of services available to the territory proposed for incorporation from a contiguous local government, which files a resolution to participate as an intervenor in the incorporation process. Intervenors should include an analysis of their physical and financial ability to serve the territory as well as existing and planned facilities/infrastructure/personnel necessary for providing these services.

c. A list and brief description of all town buildings and equipment, the age of the equipment, and any plans to purchase, or upgrade equipment.

d. A list and discussion of the services the town currently provides and/or which the town contracts for. Include information such as the current fire insurance (ISO) rating, emergency response times, and EMS capabilities. Indicate whether services are provided by full-time, paid-on-call, or volunteer staff. If possible, provide statistics on the number and type of incidents responded to within the town or territory proposed for incorporation.

(5) Section 2(c), Impact on the Remainder of the Town:

The standard to be applied is found in Section 66.0207(2)(c), Wis. Stats., calling for the Department to consider:

> *The impact, financial and otherwise, upon the remainder of the Town from which the territory is to be incorporated.*

This section applies when less than an entire town is petitioned for incorporation. If the entire town is petitioning for incorporation, then this standard is not applicable and the information listed below is not needed.

a. An analysis of the impact of incorporation on the remainder of the Town and on surrounding municipalities within the metropolitan area, including evaluation of fiscal, service, political, environmental, and land use impacts.

b. A description of any impact of incorporation on existing special purpose districts or on urban service boundaries, supported by maps, data, or other documentation.

c. An estimate of the residual equalized value for the remainder of the town and a prospective budget and tax levy for the remainder of the town. The department will seek to determine whether or not the remainder of the town would constitute a viable unit of government.

(6) Section 2(d), Impact on the Metropolitan community:

The standard to be applied is found in Section 66.0207(2)(d)), Wis. Stats and reads as follows:

The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

This section only applies to "metropolitan" incorporation petitions. If this is an "isolated" city or village petition, this standard does not apply, and therefore, the information listed below is not needed.

a. "Metropolitan" petitioners and intervenors should describe the policy, regulatory, and service issues of concern to local and county governments within the immediate region, how past or current activities occurring within the territory proposed for incorporation may affect these concerns, and the impact incorporation would have.

b. Describe the consistency of existing policy, regulatory, and service issues in the territory proposed for incorporation with those of the county and adjacent municipalities. Examples of metropolitan issues from past incorporations include regional transportation projects, environmental and watershed protection, stormwater runoff, protection of agricultural lands, economic development, housing, public works (water and sewer), and safety (police, fire, emergency medical assistance).

Gilbert, Melissa

From: Curt Witynski [witynski@lwm-info.org]

Sent: Wednesday, January 14, 2004 4:05 PM

To: melissa.gilbert@legis.state.wi.us

Subject: SB 323

Missy: Thanks for listening to my comments on how SB 323 treats annexations under the rule of prior precedence. On page 4, lines 22-24 of the bill, it provides that if a court determines that an annexation was initiated "before" the publication of the notice of Intent to Circulate an Incorporation Petition, the court can't refer the incorporation petition to the incorporation board until the annexation proceeding is final. I have no problem with that.

The next section, however, raises some concerns. On page 5, lines 3-8 of the bill, it states that if the court determines that an
annexation "was initiated on or within 30 days after the publication of the notice of intent to circulate an incorporation petition, the annexation may not proceed until the validity of the incorporation has been determined. I read this to say that if both the notice of intent to circulate an annexation petition and the notice of intent to circulate an incorporation petition are published on the same day, the incorporation process goes forward and the annexation process is put on hold.

I think the bill should say, in sec. 66.0203(8)(c)2, that "If the court determines that an annexation proceeding described under subd. 1., was initiated ON OR before the THE DATE OF THE publication of the notice under sub. (1), the court shall refer the petition to the board when the annexation proceeding is final." Section 66.0203(8)(c) 3 should say " If the court determines that an annexation ... was initiated within 30 days after the date of the publication of the notice ..."

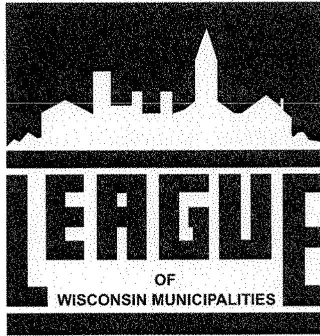
I think annexations should be allowed to go forward if initiated the same day as incorporations because, if unchallenged, they reach finality much quicker than incorporation. Also, such an approach may discourage persons from using the incorporation process as a means to block annexations.

I have a technical question regarding the bill. I see the bill makes annexations of municipally owned property under sec. 66.0223 subject to the codified rule of prior precedence. My question is when are such annexations considered "initiated" for purposes of sec. 66.0203(8)(c)? No petitions or newspaper notices are necessary in such annexations. A municipal governing body must merely adopt an ordinance annexing the territory owned by the municipality. Is an annexation initiated under such a scenario when the meeting agenda is posted? Is it initiated only when the ordinance is adopted? What if a community has a local rule that requires each ordinance to be read three times before being enacted. Is such an annexation initiated upon the first reading of the ordinance? The clearest option is probably to specify that an annexation of owned territory is initiated when a motion is made to adopt the annexation ordinance.

Talk to you later.

****

Curt Witynski
Assistant Director
League of Wisconsin Municipalities
202 State Street, Suite 300
Madison, WI 53703
Ph. (608) 267-2380
Fax (608) 267-0645



202 State Street
Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: January 14, 2004

Re: Comments on SB 323, Changing the Incorporation Process

The League's Board of Directors has not yet taken a formal position on SB 323, changing the incorporation process and codifying the rule of prior precedent. I offer the following comments for information purposes only.

The League appreciates Senator Brown's focus on streamlining the incorporation and annexation process. We are not certain, however, that the changes made by this bill will accomplish the goal of reducing the length and expense of the incorporation process.

I. Incorporation Review Board created

The bill creates a 5-person Incorporation Review Board attached to DOA and consisting of the following members:

1) DOA secretary or his or her designee;
2) Two members appointed by the Wisconsin Towns Association;
3) One member appointed by the League of Wisconsin Municipalities, and
4) One member appointed by the Wisconsin Alliance of Cities.

In speaking with municipal officials about this proposal, the most common comment I received was that the local government members of the Board would probably split 2-2 most of the time, leaving the DOA representative to cast the tiebreaking vote. Moreover, DOA staff would likely prepare reports and make recommendations to the Board on whether a proposed incorporation meets the statutory standards. Consequently, most felt that it was not helpful or necessary to tie up 4 people's time when DOA staff will end up making the final decision anyway.

II. Statutory deadlines extended and clarified

Under the bill, the time in which the Incorporation Review Board has to prepare its findings and determination on incorporation petitions is extended from the 90-days currently afforded to DOA to 180-days. The time in which interested parties to an incorporation petition have in which to request a hearing is extended from 20 days to 30 days.

We believe this would be a helpful clarification. Currently, uncertainty exists about when DOA's 90-day review period commences. Also, uncertainty exists about how a requested hearing fits in with this 90-day deadline. This bill makes clear that the 180-day deadline begins when DOA receives the petition from the circuit court and that the hearing is to occur sometime within this 180-day review period.

III. Relationship between competing annexation and incorporation petitions clarified

When an annexation and an incorporation proceeding affecting the same territory are commenced at approximately the same time the general rule in this state is that the proceeding first instituted has precedence, regardless of which is first completed or effective. The date a proceeding is "instituted" is the date on which the earliest statutory requirement is undertaken. With annexations, this will vary depending on which method of annexation is used. With most direct annexations and annexations by referendum under sec. 66.0217, publication of the Notice of Intent to Circulate is the first step. With incorporations, the first step is publication of the Notice of Intent to Circulate an Incorporation Petition.

Thus, under the "Rule of Prior Precedence," if a Notice of Intent to Circulate a Petition for Incorporation were published before a Notice of Intent to Circulate an Annexation Petition, the incorporation proceeding would have priority until the territory becomes incorporated or until the petition is dismissed.

This bill codifies the Rule of Prior Precedence and establishes a queue for competing petitions.

Unfortunately, however, SB 323 does not address the main problem municipalities face under the rule of prior precedence. Our concern is that towns can use the rule of prior precedence to temporarily freeze boundaries and thwart annexations. For example, a town or town resident may file a Notice of Intent to Circulate an Incorporation Proceeding if it knows that an annexation proceeding involving town territory is about to be commenced. This delay tactic can be used even if the petitioner knows that the territory will not likely meet the statutory standards for incorporation. While the incorporation proceeding has priority, no annexation can be effective. As noted above, the incorporation proceeding has priority until the territory becomes incorporated or until the petition is dismissed. Even under this bill, it could take two years for the incorporation proceeding to be finalized. This is true even though the bill states that the department must issue its decision within 180-days after receiving the petition from the circuit court and even though it might appear obvious that the territory proposed for incorporation does not meet the standards for incorporation set forth in the statutes.