



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2011 Assembly Bill 181

**Assembly Substitute
Amendment 1, as Amended**

Memo published: November 3, 2011

Contact: Anna Henning, Staff Attorney (266-0292)

CURRENT LAW

Direct annexation by unanimous approval is one of several methods by which Wisconsin cities and villages may annex unincorporated land. Under current law, a town may not bring an action to contest the validity of an annexation effected through direct annexation by unanimous approval. The prohibition applies to any legal action, whether procedural or jurisdictional, to contest the validity of such an annexation. [s. 66.0217 (11) (c), Stats.]

2011 ASSEMBLY BILL 181

2011 Assembly Bill 181 repeals the provision prohibiting a town from bringing a legal action to contest the validity of an annexation effected through direct annexation by unanimous approval. The change would apply to any annexation that commences on or after the effective date of the legislation.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 to 2011 Assembly Bill 181 generally retains the provision prohibiting towns from contesting direct annexations by unanimous approval. However, the substitute amendment creates an exception whereby a town may bring such an action pursuant to specified findings by the Department of Administration (DOA).

Specifically, the substitute amendment authorizes a town to request DOA review of an annexation effected by the direct annexation by unanimous approval procedure, provided that the request is made within 30 days of the enactment of an annexation ordinance. Upon the receipt of such a request, DOA must review the annexation to determine whether the annexation violates one or both of the following limitations on annexations:

- No territory may be annexed by a city or village by the direct annexation by unanimous approval procedure unless the territory to be annexed is contiguous to the annexing city or village. [s. 66.2017 (2), Stats.]
- In the absence of a supporting resolution by the town in which the territory to be annexed is located, a city or village may not annex territory if no part of the city or village is located in the same county in which the territory to be annexed is located. [s. 66.2017 (14), Stats.]

Within 20 days of receiving the town's request, the substitute amendment requires DOA to send a copy of its findings to the town, any affected landowner, and the annexing city or village. If DOA finds that an annexation violates either of the above requirements, the town may challenge the annexation in circuit court within 45 days of the town's receipt of DOA's findings.

The substitute amendment also provides for the payment of court costs and attorney fees in such cases. Specifically, if the court rules against a town that commences an action under these provisions, the substitute amendment requires the town to pay the court costs and the defending city's or village's reasonable attorney fees. Likewise, if the town prevails in the court action, the defending city or village must pay the court costs and reasonable attorney fees incurred by the town.

Finally, the substitute amendment amends the limitation under current law that prohibits annexation of territory in a county in which no part of the annexing municipality lies. Specifically, under the substitute amendment, such annexations are authorized if the relevant town board adopts a resolution approving the proposed annexation, whereas current law requires such resolutions from both the town and the county in which the territory to be annexed is located.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to the substitute amendment adds a provision to specify the effect of the lack of a timely response to a request made by a town for DOA review of an annexation. Specifically, under Assembly Amendment 1, if DOA does not complete its review of an annexation within 20 days of receiving the town's request for a review, the effect on the town and the annexing city or village shall be the same as if DOA found no violation of the requirements specified above. In such situations, a town would be prohibited from bringing an action to contest the validity of an annexation effected by direct annexation by unanimous approval.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 to 2011 Assembly Bill 181 were offered by Representative A. Ott on October 25, 2011. On November 2, 2011, the Assembly Committee on Rural Economic Development and Rural Affairs voted to recommend adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a unanimous vote. The committee also voted to recommend adoption of Assembly Substitute Amendment 1, as amended, on a unanimous vote. On the same day, the committee voted to recommend passage of Assembly Bill 181, as amended, on a unanimous vote.

AH:jal