



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 323

**Senate Amendment 1 and
Assembly Amendments 1 and 2**

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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.

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