

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3561/P1dn
MES:wlj:ch

October 1, 2001

Rep. Berceau:

In drafting this bill I have tried to incorporate as much of the “pre-drafted” statute that you submitted as your drafting instructions. As a preliminary matter, there is no department of development; the name was changed to department of commerce several sessions ago, so the bill refers to that department. In addition, I did not include the purpose statement. Purpose, or intent statements, are almost always unnecessary, and may be counterproductive for a number of reasons, including the following:

1. A bill should include all provisions that are necessary to carry out legislative intent in the substantive text of the draft. Therefore, a statement of intent, purpose, or findings that mirrors the substantive text is redundant.
2. If an act has a purpose statement, a court might not look beyond it in attempting to determine the validity of the act.
3. A statement of intent, purpose, or findings that is initially drafted to be in harmony with substantive provisions of an act may, if the substantive provisions are later amended, be irrelevant to or in direct conflict with the amended provisions. If the statement is not at the time of the amendment also amended or repealed, the existence of the statement may confuse the status of the law.
4. A statement of intent, purpose, or findings may use undefined terms that differ from the terms used in substantive provisions of the bill. The undefined terms may be used later by a court to interpret the act’s substantive language either more broadly or more narrowly than was intended.
5. A statement of intent, purpose, or findings may include provisions that directly or indirectly grant rights, prohibit actions, or are otherwise substantive in nature, having unforeseen effects on other, seemingly unrelated laws.

In created sub. (2) (a), I’ve included the “characteristics of territory” from your instructions, but I think that some of them may be too confining if the intent of the bill is to make it very easy for cities and villages to annex town peninsulas. For example, the characteristics include “religious institutions, and shopping and social customs.” If the city, for example, contains a synagogue or mosque as well as a number of churches and the town peninsula has only a church, perhaps the department of commerce would

find an incompatibility of characteristics. In addition, I'm not sure what "shopping customs" includes and how the department of commerce would assess it.

Although your instructions specify that the department of commerce is the agency that approves or denies an ordinance, you should know that the department of administration is the agency that is empowered to approve or deny incorporation referenda. See s. 66.0207. Do you want the department of commerce or administration to be the agency to approve these ordinances?

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