

**2003 DRAFTING REQUEST**

**Bill**

Received: **09/23/2002**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Rep. Ladwig**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact: **George Hall, DOA  
Don Dyke**

Addl. Drafters:

Subject: **Munis - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Change consolidation statutes

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**Instructions:**

Get instructions from George Hall at DOA. May also talk to Don Dyke.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	mshovers 11/06/2002	kgilfoy 11/11/2002	pgreensl 11/12/2002	_____	amentkow 11/12/2002		S&L
/2	mshovers	kgilfoy	pgreensl	_____	lemery		S&L

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	12/19/2002	12/19/2002	12/20/2002	_____	12/20/2002		
/3	mshovers 01/23/2003	kgilfoy 01/23/2003	jfrantze 01/24/2003	_____	sbasford 01/24/2003	lemery 01/30/2003	

FE Sent For:

*A7 intro.*

<END>

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13 MES 1/23/03

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12	MES	12/12-12/19 Kmg	12/19 PS	12/20 PS			

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1	MES	11/5/11 KMG	11/11 88	11/11 <END>			
FE Sent For:							
18/120							

George Hall

Don Dyke

meeting 9/25/02

Towns & municipalities of the following characteristics can consolidate on their own motion.

Ord. referendum, ct review to ensure technicalities are met  
Consolidation does not affect any pre-existing rights or liabilities

The ordinance may include any transition provisions that the parties have agreed to

ASK Replading

- 1) Do you want to provide notice to surrounding municipalities
- 2) Do you want to specify any transition provisions

Characteristics -  
George will send a list, based on City & village of Rochester

- 3) Do you want to include any <sup>modified</sup> provisions of s. 66.0307

7) Do you want to create a procedure by which a part of a consolidating town may be detached, as part of a consolidation & attached to a contiguous town - vote of electors?

- 4) Note that w/out any review as in 66.0307 lots of other town land wld be removed from entry for land pres review

- 5) Do you want to provide public hearings or any venue for input by affected parties?

- 6) Do you want to create a simplified system for towns only to consolidate?

## Shovers, Marc

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**From:** Hall, George  
**Sent:** Wednesday, September 25, 2002 4:49 PM  
**To:** Shovers, Marc; Dyke, Don  
**Subject:** Our project

Rochester will get back to me on Friday (I'm at a conference tomorrow making a presentation).

Another idea to throw in here might be extra-territorial issues - should a combined entity be allowed to exercise extraterritorial powers over a border with an edge of 24 miles (or more).

I keep thinking about roles here, maybe the office becomes one of process oversight, and assumes more of a neutral facilitation role. (I keep arguing that WI needs a clear dispute resolution function, to assist the courts and the like when land use and related matters are litigated and they turn (usually not) to s. 802.12, and we frankly only have an ad hoc process when it comes to municipal affairs.)

**Shovers, Marc**

**From:** Hall, George  
**Sent:** Friday, September 27, 2002 11:46 AM  
**To:** Shovers, Marc  
**Cc:** Dyke, Don  
**Subject:** FW: Town & Village of Rochester

**Importance:** High

Let me know if you want more explicit information - I think there are sufficient categories here by which to generate threshold criteria....

-----Original Message-----

**From:** Betty Novy [mailto:vrochstr@wi.rr.com]  
**Sent:** Friday, September 27, 2002 11:46 AM  
**To:** Hall, George  
**Subject:** Re: Town & Village of Rochester

Both Town and Village have executed "Law Enforcement Contracts" with the Racine County Sheriff's Department. In these contracts, a certain number of hours are paid for during the course of the year. The hours include an officer and use of a squad car, equipment and mileage. A specific officer is assigned to work in the Town (or Village) to address any problems specific to our community. Reports are made monthly to Town and Village Boards so that communication flows freely. This arrangement allows the Sheriff's Department to enforce local ordinances. All hearings are performed through the Racine County court system- neither municipality operates its own municipal court.

If you would like a copy of the agreement(s), let me know your fax number. I'll be glad to provide it.

Betty J. Novy, Clerk  
 Town and Village of Rochester  
[vrochstr@wi.rr.com](mailto:vrochstr@wi.rr.com)

----- Original Message -----

**From:** Hall, George  
**To:** 'Betty Novy'  
**Sent:** Friday, September 27, 2002 9:42 AM  
**Subject:** RE: Town & Village of Rochester

This is precisely what I was looking for. Thank you very much!

Can you be more explicit about the relationship between the county sheriff and the village/town - is this simply mutual aid, how does it work. What are the counterpart obligations, and are they based on a special contract, or simply the sheriff providing law enforcement as would be the case with any jurisdiction in the county?

Anything else that you can think of that you share or collaborate/cooperate on?

-----Original Message-----

**From:** Betty Novy [mailto:vrochstr@wi.rr.com]  
**Sent:** Thursday, September 26, 2002 9:12 AM  
**To:** George Hall  
**Subject:** Town & Village of Rochester

George,

This is from our consolidation report:

09/30/2002

## INTERGOVERNMENTAL AGREEMENTS.

Several intergovernmental agreements are in place to provide the following services:

- Sewer Service (Western Racine County Sewerage District and Town of Rochester, Village of Rochester, Town of Waterford and Village of Waterford)
- Health Services (Western Racine County Health Department and Town of Rochester, Village of Rochester, Town of Waterford, Village of Waterford, and Town of Norway.)
- Animal Control Services (Countryside Humane Society and Town of Burlington, Town of Caledonia, Town of Dover, Town of Mt. Pleasant, Town of Norway, Town of Raymond, Town of Rochester, Town of Waterford, Town of Yorkville, Village of Elmwood Park, Village of North Bay, Village of Rochester, Village of Sturtevant, Village of Union Grove, Village of Waterford, Village of Wind Point, City of Burlington and City of Racine)
- Library Service (Town of Rochester and Village of Rochester independently to operate the Rochester Public Library) (Town of Rochester, Village of Rochester and Racine County Federated Public Library System- n.k.a. Lakeshores Library System to allow participation in the county-wide library program)
- Fire & Rescue Service (Rochester Volunteer Fire & Rescue Company and Town of Rochester, Village of Rochester and a portion of Town of Spring Prairie); (Mutual Aid Pacts exist with other area fire and rescue departments)
- Police Services (Racine County Sheriff's Department and Village of Rochester; Racine County Sheriff's Department and Town of Rochester)
- Park Use (Racine County Public Works and Town of Rochester)
- Mutual Aid Pact (all Racine County Health Departments)
- Joint Municipal Emergency Operations Plan (Town and Village of Rochester)

Two Intergovernmental Agreements are in place to govern co-ownership and lease of government buildings. Those are:

- "An Agreement Relating to the Rochester Municipal Building" (Town and Village of Rochester)
- "Lease Agreement" (Village of Rochester, Town of Rochester and Rochester Volunteer Fire Company)

Ownership and leasing of the Rochester Public Library building is addressed in the Joint Library Agreement between the Village and Town of Rochester dated October 14, 1998.

I think this answers your question, but if you need more information let me know. As obvious, both municipalities share a municipal clerk. Just recently, the Town appointed a new assessor- who also happens to be the Village's assessor- that is working out well too! We continue to move forward in hopes that consolidation will occur.....

Betty Novy, Clerk  
Town & Village of Rochester  
Phone (262) 534-2431  
Fax (262) 534-9454  
[vrochstr@wi.rr.com](mailto:vrochstr@wi.rr.com)

Background material from

Date: March 25, 2002

George Hall, DOA

Issue: Use of s. 66.0307, Stats., "cooperative agreements," to enable municipal consolidation

Question: Is it possible to construe s. 66.0207 (1) (a), Stats., criteria used for consolidation review, through the application of s. 66.0307, Stats., "cooperative agreement," in order to facilitate the consolidation of towns that are largely rural, with a neighboring city or village?

Problem: Section 66.0229, Stats., "consolidation," contains minimal criteria/barriers for consolidation purposes,<sup>1</sup> except for the merger of a town with a city or village, when it refers the parties and the circuit court to the determinative criteria to be applied by the DOA in s. 66.0207, Stats. On its face, the criteria in s. 66.0207, Stats., would seem to only apply to "urbanized" territory. How can the department respond to the new-found interest in consolidation of territory which clearly doesn't fit the statute?

Current law (circa 1959) suggests that, given the stringency of the statutory process, full-size (36-square-mile) townships were not intended by the legislature to consolidate with cities or villages.

Town and city or village consolidation ordinances are currently referred to the department for review according to incorporation criteria. Among the department's "consolidation/incorporation" review criteria, s. 66.0207 (1) (a), Stats., contains the phrase "The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, ... present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs." In contrast, s. 66.0229, Stats., "consolidation," permits towns to consolidate with towns, and cities and villages with cities and villages, without application of any criteria (even such seemingly innocuous criteria as providing for consideration of comments by neighboring municipalities). Given this fairly stringent language, it would appear that the legislature basically said - no new "large" (as in 36-square mile) "consolidated" jurisdictions would be permitted.

Despite the existing statutory language, attorneys have provided a positive interpretation of this language to their clients, with the result that 3 consolidations of towns with nearby villages have been, or will be, filed with the department by circuit courts. All of the towns contain extensive rural agricultural or natural resource areas (in excess of 10-20+ square miles). A close reading of the preceding statutory language relating to "homogeneity and compactness" would suggest that none of the consolidations qualify for approval, as the phrase "entire territory...shall be reasonably homogenous and compact..." arguably works against nominally 36-square mile townships (36 square miles = compact?) with extensive rural versus nominally urbanized land uses. This reasoning follows from the criticism levied by the 1959 Urban Problems Committee Report against the "Oak Creek Law" communities, and the thought that never again would the state permit whole-town incorporations (with mixed effects for regional housing, socio-economic activities,, taxation and provision of local government services, and natural resource systems).

<sup>1</sup> For example, there is no statutory process for notifying and involving potentially affected neighboring units of government in the consolidation process when a town-town, or city/village-city/village consolidation occurs. And there are no qualifying criteria for this type of consolidation except the required referendum to be individually held by the consolidating jurisdictions.

But what if parties intending to consolidate agree to use s. 66.0307, Stats., the “cooperative agreement” statute, in order to commit lands to rural uses, and identify policies that future governing bodies will follow vis-à-vis how the consolidated unit of government would cooperate with the neighboring units of government on matters of joint concern, including municipal annexation? Such an agreement, besides defining how annexation might be used (or not) with respect to adjoining town territory, prospectively could reserve large agricultural and natural resource areas, and remove them from consideration when the strict criteria of s. 66.0207 are applied. And also through agreement, land exchanges with neighboring jurisdictions may occur, and new borders created, that might better correspond with drainage basins, transportation systems, and other landscape-scale attributes.

It is somewhat easier to contemplate how use of s. 66.0307, Stats., might potentially satisfy meeting the intent of other “consolidation” criteria, such as s. 66.0207 (2) (d), “impact on the metropolitan community,” by raising and addressing issues of state and regional concern (through application of the extensive socio-economic, and natural resource criteria these agreements are required to address, and the subsequent application of strict review criteria necessary for approval of such agreements by the state). It is less clear whether s. 66.0207 (1) (a), Stats., is sufficiently elastic to allow s. 66.0307, Stats., agreements to conform the content or shape/aerial extent of an area (either by preserving land uses for a period of time, or by transferring territory to an adjoining town) such that it might meet (1) (a) “homogeneity and compactness concerns.”

#### Conclusion

There are several issues to consider and overcome:

(1) Given the “homogenous and compact” language referenced previously (with the inference that what is passed as consolidation ordinances by the affected communities is what is reviewed by the department), can one accept for review a larger territory – such as 36-square miles—which is made “homogenous and compact” through successive agreements with the neighbors and by “binding” future governing bodies of the prospectively consolidated community? Probably not – if challenged, a court will likely apply the existing statutory construction, which is silent with respect to any prospective extenuating or ameliorating factors. A reading of the 1959 Urban Problems Study Committee report doesn’t provide support for any conclusion other than that the committee sought to minimize the size of consolidations through application of the “incorporation” criteria (to prevent any new “Oak-Creek Law”-style cities or villages – whereby entire 36-square mile townships incorporated as cities and villages).

A countervailing viewpoint might be that we don’t truly know what the committee thought, as consolidations were frankly treated as an afterthought, and no mention was made of how intergovernmental agreements might influence how criteria was to be applied, as the intergovernmental authority to address boundaries and land use planning at that time was limited (s. 66.0307, Stats., was enacted in 1992).

(2) By adopting consolidation ordinances and filing them in circuit court, towns, cities and villages enter into consolidation. What happens if these ordinances are subsequently altered through successive intergovernmental agreements with the neighbors (assuming agreements are permitted by the courts)? Should the ordinance be returned to the separate communities for ratification and re-filing with the court? Given the myriad of issues currently posed by consolidations, the ease of passing and submitting an ordinance to the circuit court masks numerous procedural problems.



The ordinance amendment issue, along with the prospective need to identify and admit neighboring jurisdictions as "intervenor," suggests that a rewrite of the consolidation statute, particularly where it discusses initiation, filing, role of the court, and role of the department, is necessary.

(3) Given the heightened emphasis on consolidation by the governor and some legislators, should the department attempt to work with willing parties interested in consolidation, as they craft intergovernmental agreements with their neighbors, and condition how land uses are to be maintained for extensive areas within the consolidated communities? Or would such interaction be viewed as inappropriate given current statutory wording? How much discretion should we exercise, or can we? (1) Above suggests there is no flexibility, hence the possible need for statutory relief.

But, does it make any sense at all to use "consolidation" in this way, with the consequence of potentially creating 36 square mile cities and villages? Does this defeat the very purpose of the "incorporation" statute? Why shouldn't existing cities and villages enjoy the same "legroom," and does this not unfairly create a tremendous socio-economic advantage for these prospective new units of government, not to mention having an affect on rural agricultural systems (maybe use-value taxation has remedied this issue)?

In Wisconsin, for good or ill, we have a dual statutory scheme that permits and promotes a conflicting hierarchy of settlement patterns for rural and urban places. One is pattern occurs through the conventional route of city and village creation based on the historical locations of socio-economic activity that resulted in the settlement pattern up to say, 1960. In the last several decades, towns and counties, using their nearly co-equal development powers, have sited/permitted socio-economic development to occur in dispersed patterns over townships. No wonder we now have an impetus for "incorporation" and "consolidation" for areas with land use patterns that do not correspond with the policy intent of the 1959 Urban Problems Study Committee — that was later embodied in statutory law. Does the development now occurring in the towns belong to the town, or should that development belong in the neighboring cities and villages? Can state shared revenues ameliorate these differences?

Is it appropriate to allow any form of intergovernmental agreement to enable a "workaround" for these statutory conundrums?

(LPB 03-0218)

# Background material from George TOWN-CITY-VILLAGE CONSOLIDATIONS Hall at OOA

Consolidation is when a town, village, or city joins with another town, village, or city to form one jurisdiction where before there were two or more. The municipal consolidation process is relatively simple in most instances. Towns may consolidate with towns, and cities/villages with cities/villages, through individual consolidation ordinances approved separately by each governing body, followed by separate referendum elections for the voters in each community. If voters approve consolidation, the two government units become one.

It is only when a town decides to consolidate with a neighboring city or village that a circuit court and Department of Administration review proposed consolidations against statutory standards. In these instances, the initiating ordinances are submitted to a circuit court, which determines whether the formal requirements in s. 66.0205, Wis. Stats., are met, and if so, refers the consolidation to the Department of Administration for review and a determination on whether the proposed consolidation meets the requirements of s. 66.0207, Wis. Stats. If the Department determines that the standards of s. 66.0207, Wis. Stats., are met, a referenda may occur. If the standards of s. 66.0207, are not met, the consolidation may not occur.

By law, the standards applied to consolidations of a town with a city or village are exactly the same as those applied to municipal incorporations. They are as follows:

## The Standards Found in Section 66.0207, Wis. Stats.

(1) The Department may approve for referendum only those proposed incorporations consolidation between a town and city or village which meet the following requirements:

(a) *Characteristics of the territory.* The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, natural drainage basins, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs. An isolated municipality shall have a reasonably developed community center, including some or all of such features as retail stores, churches, post office, telecommunications exchange and similar centers of activity.

(b) *Territory beyond the core.* 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 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 urban land use development on a substantial scale within the next 3 years. The Department may waive these requirements to the extent that water, terrain or geography prevents such development.

(2) In addition to complying with each of the applicable standards set forth in sub. (1) and s. 66.0205, the proposed incorporation in order to be approved for referendum must be in the public interest as determined by the Department upon consideration of the following:

(a) *Tax revenue.* 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.

(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).

(c) *Impact on the remainder of the town.* The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

(d) *Impact on the metropolitan community.* 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.

Consolidation of a town and with city/village is similar to a whole town incorporation (when a town of 36 sq. miles consolidates with a village of 4 sq. miles, it is similar to that Town incorporating), and unlike consolidation of existing incorporated municipalities. The current statutory links between the standards for incorporation and the consolidation of towns with cities/villages was created for consistency. Without this consistency the consolidation statute could be strategically used to usurp the incorporation standards. The legislative history as recorded in the January 1959 Report of the Interim Urban Problems Committee clearly demonstrates this concern:

*The consolidation and annexation statutes were revised by the committee to provide for state level review of both these procedures, similar to the review established for proposed incorporations. It was agreed that the inter-relationship of the different methods of altering territorial boundary lines required that all be subject to review. Otherwise, it would be possible to circumvent the purposed of the new incorporation statutes. [See Sections 6, 7 and 8 of the proposed bill.]<sup>1</sup>*

Minutes from the Urban Problems Committee also bolster this point:

*Mr. Culter explained that s. 66.02 was amended to provide that the circuit court and the state director of regional planning would determine whether proposed consolidations were in the public interest. It was felt necessary to include this requirement as a safeguard against the use of an alternative means of changing territorial boundaries, if incorporation and annexation appear too difficult. The proposed change in s. 66.02 provides that the state director find as to whether the proposed consolidation meets the standards as prescribed in s. 66.015 (4)(b), and these findings are given the same status as the incorporation findings under s. 66.015.<sup>2</sup>*

The current statutes recognize that consolidation of towns with cities/villages is altogether different from the consolidation of a city/village with another city/village or town with another town. While all will lessen the number of local governmental units, the former will allow a larger

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<sup>1</sup> Report of the Interim Urban Problems Committee, January 1959., p. 16.

<sup>2</sup> Minutes of the Wisconsin Legislative Council Urban Problems Committee, 10:00 a.m., August 13, 1958.

area of Wisconsin to be incorporated while the latter will lessen governmental units while keeping the amount of incorporated territory the same. The policy manifest in current statutes is that transition of territory from unincorporated to incorporated status is an action needing State oversight; therefore, consolidation of towns with cities/villages requires state review by application of incorporation standards, whereas the consolidation of a city/village with another city/village or town with another town requires no state involvement.

Despite the ease by which two incorporated cities or two towns can consolidate, the Department knows of none. The last consolidation to occur in Wisconsin was of a town and city—the 1962 consolidation of the City of Green Bay and the Town of Preble.

LPB 03-0218 Background material from  
George Hall, DOA

Date: March 20, 2002

Issue: Interpretation of s. 66.0207, Stats., for the purpose of municipal consolidation

Question: Is it possible to construe s. 66.0207 (1) (a), Stats., through the application of s. 66.0307, Stats., agreements, so as to "shape" and "condition" the consolidation of whole towns that are largely rural, with a neighboring city or village?

Problem: Section 66.0229 contains minimal criteria/barriers for consolidation purposes,<sup>1</sup> except for the merger of a town with a city or village, when it refers the parties and the circuit court to the determinative criteria to be applied by the DOA in s. 66.0207, Stats. On its face, the criteria in s. 66.0207, Stats., would seem to only apply to "urbanized" territory.

Section 66.0207 (1) (a) contains the phrase "The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, ... present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs."

Currently 3 consolidations of towns with nearby villages have been, or will be, filed with MBR. All of the towns contain extensive rural ag or natural resource areas. A first reading of the preceding phrase would suggest that none of the consolidations qualify for approval, as the phrase "entire territory...shall be reasonably homogenous and compact..." arguably works against nominally 36-square mile townships (36 square miles = compact?) with extensive rural versus nominally urbanized land uses. This reasoning follows from the criticism levied by the 1959 Urban Problems Committee Report against the "Oak Creek Law" communities, and the thought that never again would the state permit whole-town incorporations.

But what if parties intending to consolidate agree to use s. 66.0307, Stats., the "cooperative agreement" statute, in order to commit lands to rural uses, and identify policies that future governing bodies will follow vis-à-vis how the consolidated unit of government would cooperate with the neighboring units of government on matters of joint concern. Such an agreement, besides defining how annexation might be used (or not) with respect to adjoining towns, prospectively could reserve large agricultural and natural resource areas, and remove them from consideration when the strict criteria of s. 66.0207 are applied. And also through agreement, land exchanges with neighboring jurisdictions may occur.

It is somewhat easier to contemplate how use of s. 66.0307, Stats., might satisfy meeting the intent of s. 66.0207 (2) (d), "impact on the metropolitan community," by raising and addressing issues of state and regional concern (through application of the extensive socio-economic, and natural resource criteria, and the subsequent review and consideration necessary for approval of such agreements by the state). It is less clear whether s. 66.0207 (1) (a), Stats., is sufficiently elastic to allow s. 66.0307, Stats., agreements to conform the content or shape/aerial extent of an area (either by preserving land uses for a period of time, or by transferring territory to an adjoining town) such that it might meet (1) (a).

<sup>1</sup> For example, there is no statutory process for notifying and involving potentially affected neighboring units of government in the consolidation process when a town-town, or city/village-city/village consolidation occurs. And there are no qualifying criteria for this type of consolidation except the required referendum to be individually held by the consolidating jurisdictions.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0218/

MES...

king  
FAR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

Wed  
H/B

gen

1 AN ACT ...; relating to: creating a new method for towns to consolidate.

*generally* **Analysis by the Legislative Reference Bureau**  
Under current law, a city, village, or town (municipality) may be consolidated with a contiguous municipality if a consolidation ordinance is passed by a two-thirds vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each municipality.

Also under current law, an ordinance proposing the consolidation of a town and another municipality may not, following its enactment, be submitted to the electors for approval in a referendum until the circuit court and the Department of Administration (DOA) determine whether the proposed consolidation is in the public interest. In determining whether the proposed consolidation is in the public interest, DOA is required to consider a variety of factors, including whether governmental services could be better supplied to the residents of the consolidated territory by the consolidated municipal government, the shape of the proposed territory, the population and housing density of the territory beyond the most densely populated one-half or one square mile of the territory, and the homogeneity and compactness of the territory.

This bill creates another method for certain towns to consolidate with other municipalities. Under this bill, a town to which a number of specifications *apply* may consolidate with a contiguous municipality if a consolidation ordinance is passed by a majority vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each municipality. The specifications that must apply to a town to enable it to consolidate include the following:

1. The town must be a party to an intergovernmental cooperation agreement under which the town's residents must receive, or have access to, sewage disposal

applies

services; public health services; police, fire, and emergency services; library services; animal control services; and park services.

2. The town must be a party to an intergovernmental cooperation agreement that relates to the ownership or leasing of government buildings.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1

<sup>STET</sup>  
SECTION 1. 66.023~~0~~ of the statutes is created to read:

2

<sup>TOWN</sup>  
~~66.023~~ <sup>STET</sup> ~~simplified~~ consolidation. (1) (a) In addition to the method

3

described in s. 66.0229 and subject to subs. (2) and (3) and to s. 66.0307 (7), a town

4

may consolidate with a contiguous city, village, or town by ordinance passed by a

5

majority vote of all <sup>of</sup> the members of each board or council, fixing the terms of the

6

consolidation and ratified by the electors at a referendum held in each municipality.

7

The terms of consolidation shall include a description of how all of the items listed

8

in subs. (2) and (3) apply to the town.

9

(b) With regard to the referendum, the ballots shall bear the words "for

10

consolidation" and "against consolidation", and if a majority of the votes cast in each

11

municipality are for consolidation, the ordinances shall take effect and have the force

12

of a contract. The ordinance and the result of the referendum shall be preserved as

13

provided in ss. 66.0211 (5) and 66.0235.

14

(c) Consolidation does not affect the preexisting rights or liabilities of any

15

municipality and actions on those rights or liabilities may be commenced or

16

completed as if there were no consolidation.

17

(2) A town may consolidate with a city, village, or town under sub. (1) if the town

18

is party to an intergovernmental cooperation agreement, as described under s.

1 66.0301, that provides town residents with, or access to, at least all of the following  
2 services:

- 3 (a) Sewage disposal services.
- 4 (b) Public health services.
- 5 (c) Animal control services.
- 6 (d) Library services.
- 7 (e) Fire and emergency rescue services.
- 8 (f) Law enforcement services.
- 9 (g) Public parks services.

10 (3) A town may consolidate with a city, village, or town under sub. (1) if the town  
11 is party to an intergovernmental cooperation agreement, as described under s.  
12 66.0301, that relates to the ownership or leasing of government buildings.

13 SECTION 2. 66.1001 (3) (d) of the statutes is amended to read:

14 66.1001 (3) (d) Consolidation of territory under s. 66.0229 or ~~66.0230~~ 66.0230.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90.

15 SECTION 3. 79.036 (1) (d) of the statutes is amended to read:

16 79.036 (1) (d) The department of revenue shall consider a consolidation  
17 ordinance under s. 66.0229 or ~~66.0230~~ 66.0230 to be an agreement to consolidate municipal  
18 services for purposes of this subsection.

History: 2001 a. 102.

19 (END)



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0218/1dn

MES...

*King*

Representative Ladwig:

This bill is based on a description of the intergovernmental cooperation agreements that exist between the Village of Rochester and the Town of Rochester that was sent to George Hall. Is this consistent with your intent? Do you want the contents of the agreements to be any more specific? For example, do you want to require that a specific percentage of town residents actually receive certain services?

In my meeting with George Hall and Don Dyke, a number of questions and issues arose that you may wish to consider:

1. Do you want to provide notice to surrounding municipalities?
2. Do you want to specify any transition provisions?
3. Do you want to include any (modified) provisions from s. 66.0307? ✓
4. Note that without any review by DOA, as contained in s. 66.0307 (5), a lot of town territory could be removed from county farmland preservation review. ✓
5. Do you want to provide for a public hearing or any venue for input by affected parties?
6. Do you want to create a simplified system for towns to consolidate only with other towns?
7. Do you want to create a procedure by which a remnant of a consolidating town may be detached as part of a consolidation and attached to a contiguous town?

Please let me know if you have any questions or if you would like any changes made to the bill.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0218/1dn  
MES:kmg:pg

November 12, 2002

Representative Ladwig:

This bill is based on a description of the intergovernmental cooperation agreements that exist between the Village of Rochester and the Town of Rochester that was sent to George Hall. Is this consistent with your intent? Do you want the contents of the agreements to be any more specific? For example, do you want to require that a specific percentage of town residents actually receive certain services?

In my meeting with George Hall and Don Dyke, a number of questions and issues arose that you may wish to consider:

1. Do you want to provide notice to surrounding municipalities?
2. Do you want to specify any transition provisions?
3. Do you want to include any (modified) provisions from s. 66.0307?
4. Note that without any review by DOA, as contained in s. 66.0307 (5), a lot of town territory could be removed from county farmland preservation review.
5. Do you want to provide for a public hearing or any venue for input by affected parties?
6. Do you want to create a simplified system for towns to consolidate only with other towns?
7. Do you want to create a procedure by which a remnant of a consolidating town may be detached as part of a consolidation and attached to a contiguous town?

Please let me know if you have any questions or if you would like any changes made to the bill.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

WLA: problem w/ river extension  
Meeting Notes from 12/19/02

Y J F ? meeting w/ Rep Ludwig & LWM,  
DUNOYKE, Alliance of cities, Towns Assoc., Counties Assoc.  
req. border agreement - may only be  
if modified by agreement, & the AM,  
procedure shld be contained in the  
border agreement

### INSTRUCTIONS for 12

stands process?  
for 12

(1) 2/3 vote (2) border agreement

(3) joint comp plan by consal municipalities

(4) permissive remnant language from LWM memo

for 12

what about land use planning grants?  
If ~~state~~ town is working w/ a intent for a  
land use planning grants town consolidates,  
what happens? what DOT deal  
w/ this-- they hand out the  
grants



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](mailto:league@lwm-info.org)  
[www.lwm-info.org](http://www.lwm-info.org)

**To: Representative Bonnie Ladwig**  
**From: Curt Witynski, Assistant Director**  
**Re: Creating a New Method for Towns to Consolidate with Other Municipalities**  
**Date: December 9, 2002**

Thanks for giving the League the opportunity to comment on your legislative proposal allowing towns to consolidate with other municipalities without circuit court or Department of Administration (DOA) review. We offer the following comments regarding LRB-0218/1:

- In general, we support modifying state law to allow a town and a village or a town and a city to consolidate upon mutual agreement approved by their electors at a referendum without DOA and circuit court review, as long as the consolidating communities meet the conditions set forth in the bill draft and a few others we suggest below.
- The proposed bill requires that the consolidation ordinance be passed by a majority vote of the governing bodies of each of the municipalities. We recommend requiring that the consolidation ordinance be approved by a 2/3 vote of the governing bodies. A super majority requirement would be consistent with the procedure villages and cities must follow under current law when consolidating and when adopting an annexation ordinance.
- At our last meeting on this issue the Towns Association raised a concern over the newly consolidated city or village's ability to annex adjacent towns. To address this concern, the Towns Association suggested that the legislative proposal explicitly prohibit a consolidated town-city or town-village from having the authority to annex. We oppose the creation of a hybrid municipality lacking the authority to annex territory. However, we believe the Towns Association's concerns can be addressed in another way. We propose that a town-city or town-village consolidation be conditioned upon the newly consolidated entity entering into boundary agreements, within a specified period of time, with all neighboring towns addressing annexation issues. Section 66.0301, Stats., the intergovernmental cooperation statute, should be modified to expressly allow communities to enter into enforceable boundary agreements.
- The proposed bill should require, as a condition of consolidation, that the consolidating town and city or village adopt a joint comprehensive plan. (It is my understanding from speaking with the Rochester Village clerk that the village and the town have entered into a joint land use plan.)
- We have concerns about the consolidation of a town and village creating a large incorporated area containing lots of undeveloped land. Requiring the two communities to have entered into a joint comprehensive plan prior to consolidation would mitigate this concern. Also, we support adding a provision to the bill creating a procedure by which a remnant of a consolidating town may be detached as part of the consolidation and attached to a contiguous town.

*permission  
is OK*

# WISCONSIN ALLIANCE OF CITIES

14 W. MIFFLIN STREET #206 • MADISON, WI 53703-2576  
(608) 257-5881 FAX 257-5882 www.wiscities.org • EMAIL: wisall@inxpress.net

*Simplify standards - all workable standards that towns & villages agree on A of C is OK w/ "permanent" border agreement Ed: "permanent" means no sunset date*

Appleton  
Ashland  
Baraboo  
Beaver Dam  
Beloit  
Cudahy  
De Pere  
Eau Claire  
Fond du Lac  
Green Bay  
Greenfield  
Kaukauna  
Kenosha  
La Crosse  
Madison  
Manitowoc  
Marinette  
Marshfield  
Menasha  
Morrill  
Milwaukee  
Monroe  
Neenah  
Oak Creek  
Oshkosh  
Racine  
Sheboygan  
Stevens Point  
Superior  
Two Rivers  
Watertown  
Waukesha  
Wausau  
Wauwatosa  
West Allis  
West Bend  
Whitewater  
Wisconsin Rapids

December 6, 2002

To: Rep. Bonnie Ladwig

From: Gail Sumi, Intergovernmental Coordinator

Re: LRB 0218/1, creating a new method for towns to consolidate

You have asked the Alliance to comment on the legislative draft that creates a new method for towns to consolidate. Thank you for the opportunity to provide input.

In general the draft raises the following questions and concerns:

- In most areas of the state consolidation of a town and village can create a large area of undeveloped land that would then be available for TIF. This makes it even more difficult for urban areas to compete for economic development and may circumvent a broader regional view of economic activity.
- A consolidation of this type may lead to rapid growth and a need for new municipal infrastructure and schools.

We concur with questions raised by the drafter in the drafter's note and others at the December 18 meeting and suggest the following:

- Because consolidation affects activity in the region, communities should have a voice in the proceedings.
- Public hearings in the communities and neighboring communities should be part of the process.
- As a condition of consolidation the new municipality would have to conclude a permanent boundary agreement with any municipality that is within the area of its extraterritorial plat review or where it is contiguous to any town. If agreed to, this would prevent annexation of neighboring town property and also allow villages and cities to grow. In addition, it would give citizens in those areas a voice with their elected officials to comment on the consolidation.
- Allow a town remnant to attach to another town if the character or density of that area is appropriate to remain as a town.

Here are some additional suggestions related to consolidation:

- Consider advancing the statutory language included in the budget repair bill allowing a simplified process for one town to consolidate with another.
- Amend the Wisconsin State Constitution, Section 4, 3 (c), to read as follows: "The powers of each sheriff shall be determined by resolution and county-wide referendum initiated by the county board or municipalities representing 50% of the county's population." (see attached position paper.)

Again, thank you allowing us to provide feedback. We look forward to working with you during the 2003-04 legislative session.

## Powers of Sheriff (Double Whammy)

**Our Position:** Amend the Wisconsin State Constitution, Section 4, 3 (c), to read as follows: "The powers of each sheriff shall be determined by resolution and county-wide referendum initiated by the county board or municipalities representing 50% of the county's population."

### **Background:**

Some municipalities seek to consolidate police forces within a county but do not want to use a sheriff's department as the mechanism because the county sheriff is a partisan elected office. As cities, villages and towns in Wisconsin have moved over the last century and a half to create professional law enforcement agencies, they have sought to insulate law enforcement from political influence by establishing police and fire commissions, and turning the job of law enforcement over to nonpartisan professionals.

A 1992 decision by the Wisconsin Supreme Court, *Manitowoc County v. Local 986B, AFSCME*,<sup>1</sup> essentially gave constitutional protection to the common-law powers of the sheriff: to enforce the laws and preserve the peace. The result is to make it difficult to change the duties of the sheriff without the sheriff's consent.

M. Kevin McGee, an economist at UW-Oshkosh, found that the typical county spends about \$120 more per household annually on public safety services for town residents as for city and village residents, who pay additional public safety costs in their city and village budgets.<sup>2</sup>

The resulting subsidy to residents of rural areas, which McGee estimated at between \$150 and \$350 annually overall, "creates a strong incentive for the growth of residential developments in rural areas, i.e. in urban sprawl," he wrote.

"A reform in the way town and city/village residents are taxed for county services is therefore warranted," McGee concluded.

The elected nature of the chief law enforcement official in each county is an impediment to consolidation efforts and helps perpetuate this "double whammy" taxation.

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<sup>1</sup> 168 Wis.2d 819.

<sup>2</sup> See: <http://www.wiscities.org/Study.htm>

# Wisconsin Towns Association

Richard J. Stadelman  
Executive Director  
W7686 County Road MMM  
Shawano, Wis. 54166

*Kent*

*1) Don't like any annex/ auto for newly-  
incorporated munis*

Tel. (715) 526-3157

Fax (715) 524-3917

Email [wtowns@frontiernet.net](mailto:wtowns@frontiernet.net)

*2) or, must have strictly-enforced, perpetual border agreements*

To: Rep. Bonnie Ladwig  
From: Rick Stadelman, Executive Director  
Re: Consolidation of two or more units of government  
Date: December 7, 2002

Thank you for giving our association the opportunity to submit comments about the issue of two or more units of government consolidating without Department of Administration review. I am sorry that I can not personally be present at your meeting on Tuesday, December 10<sup>th</sup>.

I am assuming that your proposal would require that there be an agreement between the two units of government, which has been approved by majority vote of the governing body. One of the issues could be if a super majority (2/3 vote, for example) should be required. In addition I am assuming that your proposal would require that the consolidation (based on the agreement of the governing bodies) be subject to a referendum vote of the electors in each community. I am also assuming that the referendum vote would have to pass by majority vote in each community, not just a majority vote of all votes combined between the two communities.

First, our association would have no concerns if the two communities (presumably two towns, or a town and village, or a town and city), consolidated as a town rather than as a village or city. This would not create a unit of government which becomes a threat to the surrounding towns through annexation. I see no problems with such a consolidation, nor do I see any particular need for any particular standards to be met, because it is the voluntary agreement of two mutual "consenting" governments and their electors.

Our association does have concerns with a town and village, or town and city consolidating as a village or city, without some protection to neighboring towns, because the new entity has annexation power over these neighboring towns. There may be ways to address this. First, we would suggest that such a consolidation as either a village or city be a village or city that by statute does not have annexation power. I believe that because annexation is a statutory grant of power, the legislature could legitimately state that such consolidated entities have all powers of a village or city but annexation.

Second, we would suggest as an alternative to the option of no annexation authority that before such authority could be exercised in a neighboring town that the new consolidated municipality must have a boundary agreement with the town

government from which land is being proposed to be annexed. This limitation to be able to exercise annexation only where the new consolidated entity and the neighboring town would not violate any constitutional provisions, because annexation is a legislative grant of power not a constitutional right either for the new city or village or the property owners in the neighboring town.

The last area of concern that I do not have any specific opinions on at this time are whether to become a village or city by consolidation from a town and village/city there should be some minimum standards for service levels before such a consolidation could take place, presumably without DOA review. For example, should the new entity be required to provide 24 hour, 7 day a week, 365 day a year law enforcement? Should the new entity have capacity for sewer and water service to a minimum percentage of their population or land area? If so, what percentage? These types of services should possibly be an issue because these are the types of issues that the current DOA review is intended to address.

In conclusion while I want to express our wholehearted support for two communities to be able to consolidate upon mutual agreement approved by their electors at a referendum vote, I do not want to merely continue the boundary disputes for a new set of neighboring governments. Therefore, I believe it important to be able to address what limits or procedures can be adopted to if not eliminate should new boundary wars, at least reduce them or force the neighbors to come to agreement before annexations move into the new territory usually six miles away from the current border fight.



RMR

2003 BILL

D-note

SOON  
FN: 12/19

refer

1 AN ACT to amend 66.1001 (3) (d) and 79.036 (1) (d); and to create 66.0230 of the  
2 statutes; relating to: creating a new method for towns to consolidate.

**Analysis by the Legislative Reference Bureau**

Generally, under current law, a city, village, or town (municipality) may be consolidated with a contiguous municipality if a consolidation ordinance is passed by a two-thirds vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each municipality.

Also under current law, an ordinance proposing the consolidation of a town and another municipality may not, following its enactment, be submitted to the electors for approval in a referendum until the circuit court and the Department of Administration (DOA) determine whether the proposed consolidation is in the public interest. In determining whether the proposed consolidation is in the public interest, DOA is required to consider a variety of factors, including whether governmental services could be better supplied to the residents of the consolidated territory by the consolidated municipal government, the shape of the proposed territory, the population and housing density of the territory beyond the most densely populated one-half or one square mile of the territory, and the homogeneity and compactness of the territory.

This bill creates another method for certain towns to consolidate with other municipalities. Under this bill, a town to which a number of specifications applies may consolidate with a contiguous municipality if a consolidation ordinance is passed by a ~~majority~~ <sup>two-thirds</sup> vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each municipality. The

all or part of  
two-thirds

**BILL**

specifications that must apply to a town to enable it to consolidate include the following:

1. The town must be a party to an intergovernmental cooperation agreement under which the town's residents must receive, or have access to, sewage disposal services; public health services; police, fire, and emergency services; library services; animal control services; and park services.

2. The town must be a party to an intergovernmental cooperation agreement that relates to the ownership or leasing of government buildings.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

FNS  
ANL

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 66.0230 of the statutes is created to read:

**66.0230 Town consolidation.** (1) (a) In addition to the method described in s. 66.0229 and subject to subs. (2), ~~and (3)~~ <sup>and (4)</sup> and to s. 66.0307 (7), <sup>all or part of</sup> a town may consolidate with a contiguous city, village, or town by ordinance passed by a ~~majority~~ <sup>two-thirds</sup> vote of all of the members of each board or council, fixing the terms of the consolidation, and ratified by the electors at a referendum held in each municipality. The terms of consolidation shall include a description of how all of the items listed in subs. (2) and (3) apply to the town.

(b) With regard to the referendum, the ballots shall bear the words "for consolidation," and "against consolidation," and if a majority of the votes cast in each municipality are for consolidation the ordinances shall take effect and have the force of a contract. The ordinance and the result of the referendum shall be preserved as provided in ss. 66.0211 (5) and 66.0235.

(c) Consolidation does not affect the preexisting rights or liabilities of any municipality and actions on those rights or liabilities may be commenced or completed as if there were no consolidation.

**BILL**

*All or part of a*

1 (2) ~~A~~ town may consolidate with a city, village, or town under sub. (1) if the town  
2 is party to an intergovernmental cooperation agreement, as described under s.  
3 66.0301, that provides town residents with, or access to, at least all of the following  
4 services:

- 5 (a) Sewage disposal services.
- 6 (b) Public health services.
- 7 (c) Animal control services.
- 8 (d) Library services.
- 9 (e) Fire and emergency rescue services.
- 10 (f) Law enforcement services.
- 11 (g) Public parks services.

*all of the following apply: # cast the*

12 (3) ~~A~~ town may consolidate with a city, village, or town under sub. (1) if ~~the~~ town  
13 is party to an intergovernmental cooperation agreement, as described under s.  
14 66.0301, that relates to the ownership or leasing of government buildings.

*INS  
3-14*

15 **SECTION 2.** 66.1001 (3) (d) of the statutes is amended to read:

16 66.1001 (3) (d) Consolidation of territory under s. 66.0229 or 66.0230.

17 **SECTION 3.** 79.036 (1) (d) of the statutes is amended to read:

18 79.036 (1) (d) The department of revenue shall consider a consolidation  
19 ordinance under s. 66.0229 or 66.0230 to be an agreement to consolidate municipal  
20 services for purposes of this subsection.

21 (END)

INSERT ANL

3. The city or village with which the town wishes to consolidate enters into a boundary agreement with every municipality that borders the proposed consolidated city or village.

4. The consolidating town and municipality enter into an agreement to adopt jointly a comprehensive plan.

5. If less than an entire town consolidates with a municipality, the consolidation may not take effect unless the town enters into an agreement with a municipality that shares a border with the town remnant under which the town remnant becomes part of the municipality with a common boundary.

Insert 3-14

(b) The city or village with which the town wishes to consolidate enters into a boundary agreement, with every city, village, and town that borders the proposed consolidated city or village, which determines the boundaries between every bordering city, village, and town. The boundary agreement shall state the term of the agreement and shall contain the procedures under which the agreement may be amended during its term.

(c) The consolidating town and city, village, or town enter into an intergovernmental agreement to adopt jointly a comprehensive plan under s. 66.1001.

(4) If less than an entire town consolidates with a city, village, or town under sub. (1), the consolidation may not take effect unless the town enters into an agreement with a city, village, or town that has a common boundary with the remnant of the town that is not consolidated under which the town remnant becomes part of the city, village, or town with the common boundary. An agreement described under this subsection shall be included in a boundary agreement under sub. (3) (b) if a town remnant becomes part of a city or village.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0218/2dn

MES:kmg:pg



Representative Ladwig:

This bill incorporates the 4 changes which were agreed to by the group that met with you in your office. Please review the changes carefully to ensure that I <sup>that I have</sup> correctly captured your intent, especially the language <sup>have</sup> I've created in s. 66.0230 (4). Don Dyke and I discussed this subsection and we believe it captures the intent of the group.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0218/2dn  
MES:kmg:pg

December 19, 2002

Representative Ladwig:

This bill incorporates the 4 changes which were agreed to by the group that met with you in your office. Please review the changes carefully to ensure that I have correctly captured your intent, especially the language that I have created in s. 66.0230 (4). Don Dyke and I discussed this subsection and we believe it captures the intent of the group.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.state.wi.us](mailto:marc.shovers@legis.state.wi.us)

## Shovers, Marc

---

**From:** Hale, Janine  
**Sent:** Wednesday, January 15, 2003 3:29 PM  
**To:** Shovers, Marc  
**Subject:** FW: Redraft of LRB 0218/2 - per our telephone conversation



municipalities  
comments.doc

Hi Marc,

Attached is an e-mail from Curt Witynski of the League of Municipalities commenting on LRB 0218/2 (town consolidation). Rep. Ladwig has yet to review these comments because she had knee replacement surgery on Jan. 8th. I mentioned them to her on the phone the other day and she said she'd like to review them and then give you a call.

I'm forwarding Curt's comments so that you can be prepared for her call.

If you have any questions, please contact me.

Janine Hale

-----Original Message-----

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

Sent: Thursday, January 09, 2003 11:31 AM

To: Hale, Janine

Cc: Gail Sumi; Ed Huck

Subject: RE: Redraft of LRB 0218/2 - per our telephone conversation

Janine: Thanks for sending us a copy of the town consolidation draft and asking for our comments. While in general the draft looks fine, I think a few sections need further clarification. Following are three comments and suggestions:

1. Proposed sec. 66.0230(3)(b) requires the city or village with which a town wishes to consolidate to enter into a "boundary agreement" with every community bordering the proposed consolidated city or village which "determines the boundaries between every bordering city, village or town." The provision does not specify under what statutory grant of authority the communities shall enter into a boundary agreement. There are two options under current law.

The first option is for the communities to use the boundary change pursuant to an approved cooperative plan process in sec. 66.0307, Stats. However, this is a long, difficult process that requires DOA approval of the boundary agreement. This would seem contrary to the goal of the bill, which is to make it easier for a town and neighboring city or village to consolidate.

The second option the communities have for entering into a boundary agreement is to use the intergovernmental cooperation statute, sec. 66.0301. This statute is easier for communities to use and can lead to quicker agreements. However, circuit courts have ruled that boundary agreements entered into under sec. 66.0301 are unenforceable. To address this problem, I recommend that, as a part of this bill, sec. 66.0301 be modified to expressly authorize communities to enter into enforceable boundary agreements.

2. I recommend modifying proposed sec. 66.0230(3)(c) as follows to clarify that a joint comprehensive plan must be in place as a precondition to the



policy (2)

consolidation going forward:

(c) The consolidating town and city, village, or town have ~~enter into an intergovernmental agreement to~~ adopted jointly a joint comprehensive plan under sec. 66.1001.

3. Proposed sec. 66.0230(4) provides that if less than an entire town consolidates with a city or village, the consolidation may not take effect unless the town enters into an agreement with a municipality that shares a border with the town remnant under which the town remnant becomes part of the municipality with a common boundary. The provision does not specify how the town remnant is to become attached to the neighboring municipality. What process do the communities use? Annexation, consolidation, boundary change through cooperative plan or an intergovernmental agreement? The quickest, and easiest way to reach an agreement would be to use the intergovernmental cooperation statute. Unfortunately, as noted above under my first comment, such boundary agreements have been held to be unenforceable. To address this problem, I recommend that, as a part of this bill, sec. 66.0301 be modified to expressly authorize communities to enter into enforceable boundary agreements.

Please let me know if you have any questions or need additional information.  
Thanks.

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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0218/2

MES:kmg:pg

3  
RMR

2003 BILL

SOON  
IN: 1/23

reger

1 AN ACT to amend 66.1001 (3) (d) and 79.036 (1) (d); and to create 66.0230 of the  
2 statutes; relating to: creating a new method for towns to consolidate.

*Analysis by the Legislative Reference Bureau*

Generally, under current law, a city, village, or town (municipality) may be consolidated with a contiguous municipality if a consolidation ordinance is passed by a two-thirds vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each municipality.

Also under current law, an ordinance proposing the consolidation of a town and another municipality may not, following its enactment, be submitted to the electors for approval in a referendum until the circuit court and the Department of Administration (DOA) determine whether the proposed consolidation is in the public interest. In determining whether the proposed consolidation is in the public interest, DOA is required to consider a variety of factors, including whether governmental services could be better supplied to the residents of the consolidated territory by the consolidated municipal government, the shape of the proposed territory, the population and housing density of the territory beyond the most densely populated one-half or one square mile of the territory, and the homogeneity and compactness of the territory.

This bill creates another method for certain towns to consolidate with other municipalities. Under this bill, all or part of a town to which a number of specifications applies may consolidate with a contiguous municipality if a consolidation ordinance is passed by a two-thirds vote of the governing bodies of each municipality and if the ordinance is ratified by the electors in a referendum in each

**BILL**

municipality. The specifications that must apply to a town to enable it to consolidate include the following:

1. The town must be a party to an intergovernmental cooperation agreement under which the town's residents must receive, or have access to, sewage disposal services; public health services; police, fire, and emergency services; library services; animal control services; and park services.

2. The town must be a party to an intergovernmental cooperation agreement that relates to the ownership or leasing of government buildings.

3. The city or village with which the town wishes to consolidate enters into a boundary agreement with every municipality that borders the proposed consolidated city or village.

4. The consolidating town and municipality enter into an agreement to adopt jointly a comprehensive plan. *The plan must take effect before the consolidation may take effect.*

5. If less than an entire town consolidates with a municipality, the consolidation may not take effect unless the town enters into an agreement with a municipality that shares a border with the town remnant under which the town remnant becomes part of the municipality with a common boundary.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 66.0230 of the statutes is created to read:

2           **66.0230 Town consolidation.** (1) (a) In addition to the method described in  
3 s. 66.0229 and subject to subs. (2), (3), and (4), and to s. 66.0307 (7), all or part of a  
4 town may consolidate with a contiguous city, village, or town by ordinance passed by  
5 a two-thirds vote of all of the members of each board or council, fixing the terms of  
6 the consolidation, and ratified by the electors at a referendum held in each  
7 municipality. The terms of consolidation shall include a description of how all of the  
8 items listed in subs. (2) and (3) apply to the town.

9           (b) With regard to the referendum, the ballots shall bear the words “for  
10 consolidation,” and “against consolidation,” and if a majority of the votes cast in each  
11 municipality are for consolidation the ordinances shall take effect and have the force

**BILL**

1 of a contract. The ordinance and the result of the referendum shall be preserved as  
2 provided in ss. 66.0211 (5) and 66.0235.

3 (c) Consolidation does not affect the preexisting rights or liabilities of any  
4 municipality and actions on those rights or liabilities may be commenced or  
5 completed as if there were no consolidation.

6 (2) All or part of a town may consolidate with a city, village, or town under sub.  
7 (1) if the town is party to an intergovernmental cooperation agreement, as described  
8 under s. 66.0301, that provides town residents with, or access to, at least all of the  
9 following services:

10 (a) Sewage disposal services.

11 (b) Public health services.

12 (c) Animal control services.

13 (d) Library services.

14 (e) Fire and emergency rescue services.

15 (f) Law enforcement services.

16 (g) Public parks services.

17 (3) All or part of a town may consolidate with a city, village, or town under sub.  
18 (1) if all of the following apply:

19 (a) The town is party to an intergovernmental cooperation agreement, as  
20 described under s. 66.0301, that relates to the ownership or leasing of government  
21 buildings.

22 (b) The city or village with which the town wishes to consolidate enters into a  
23 boundary agreement, with every city, village, and town that borders the proposed  
24 consolidated city or village, which determines the boundaries between every  
25 bordering city, village, and town. The boundary agreement shall state the term of

**BILL**

1 the agreement and shall contain the procedures under which the agreement may be  
2 amended during its term.

ENS  
4-2

3 (c) The consolidating town and city, village, or town enter into an  
4 intergovernmental agreement to adopt jointly a comprehensive plan under s.  
5 66.1001 and the comprehensive plan must be in effect before  
6 the consolidation may take effect

7 (4) If less than an entire town consolidates with a city, village, or town under  
8 sub. (1), the consolidation may not take effect unless the town enters into an  
9 agreement with a city, village, or town that has a common boundary with the  
10 remnant of the town that is not consolidated under which the town remnant becomes  
11 part of the city, village, or town with the common boundary. An agreement described  
12 under this subsection shall be included in a boundary agreement under sub. (3) (b)  
13 if a town remnant becomes part of a city or village.

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4-12

**SECTION 2.** 66.1001 (3) (d) of the statutes is amended to read:

66.1001 (3) (d) Consolidation of territory under s. 66.0229 or 66.0230.

**SECTION 3.** 79.036 (1) (d) of the statutes is amended to read:

79.036 (1) (d) The department of revenue shall consider a consolidation ordinance under s. 66.0229 or 66.0230 to be an agreement to consolidate municipal services for purposes of this subsection.

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0218/3ins  
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INSERT 4-2

~~No 9~~ A boundary agreement entered into under this paragraph is a binding contract upon the parties, and the agreement may take effect only if it is adopted by the governing bodies of each party to the agreement.

INSERT 4-12

~~No 9~~ An agreement entered into under this subsection is a binding contract upon the parties, and the agreement may take effect only if it is adopted by the governing bodies of each party to the agreement.

**Mentkowski, Annie**

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**From:** Mentkowski, Annie  
**Sent:** Monday, January 27, 2003 12:59 PM  
**To:** Rep.Ladwig  
**Subject:** LRB-0218 per your request

01/27/2003

**Emery, Lynn**

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**From:** Hale, Janine  
**Sent:** Thursday, January 30, 2003 11:20 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-0218/3 Topic: Change consolidation statutes

It has been requested by <Hale, Janine> that the following draft be jacketed for the ASSEMBLY:

Draft review. LRB-0218/3 Topic: Change consolidation statutes