

2003 SENATE BILL 323

1 **AN ACT** *to renumber* 66.0201 (2) (a); *to amend* 16.53 (14), 66.0203 (8) (b),
2 66.0203 (9) (title), (a), (b) and (d), 66.0203 (9) (e) (intro.), (f), (g) and (h), 66.0205
3 (intro.), 66.0207 (title), (1) (intro.) and (b), and (2) (intro.), 66.0209 (2) and (4),
4 66.0219 (8) and 66.0223; and *to create* 15.07 (2) (m), 15.07 (3) (bm) 5., 15.105
5 (23), 66.0201 (2) (am), 66.0203 (8) (c), 66.0203 (9) (dm), 66.0203 (9) (i) and
6 66.0217 (14) of the statutes; **relating to:** changing the procedures for the
7 incorporation of cities and villages, creating a board to review incorporation
8 petitions, and changing annexation procedures affected by incorporation
9 petitions.

Analysis by the Legislative Reference Bureau

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

10 **SECTION 1.** 15.07 (2) (m) of the statutes is created to read:

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1 15.07 **(2)** (m) The representative of the department of administration shall
2 serve as chairperson of the incorporation review board.

3 **SECTION 2.** 15.07 (3) (bm) 5. of the statutes is created to read:

4 15.07 **(3)** (bm) 5. The incorporation review board shall meet on the call of the
5 chairperson or a majority of the board's members.

6 **SECTION 3.** 15.105 (23) of the statutes is created to read:

7 15.105 **(23)** INCORPORATION REVIEW BOARD. (a) There is created an incorporation
8 review board attached to the department of administration under s. 15.03. The board
9 shall consist of the secretary of administration or his or her designee, 2 members
10 appointed by the Wisconsin Towns Association, one member appointed by the League
11 of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance
12 of Cities. Members serve at the pleasure of the appointing authority. All members
13 of the board, other than the secretary of administration or his or her designee, serve
14 only in an advisory capacity.

15 (b) No member of the incorporation review board may review a petition referred
16 to the board under s. 66.0203 (8) (b) if any of the following apply:

17 1. The member owns property in, or resides in, the town that is the subject of
18 the incorporation petition.

19 2. The member owns property in, or resides in, a city or village that is
20 contiguous to the town that is the subject of the incorporation petition.

21 (c) If the secretary of administration is affected by par. (b), he or she shall
22 appoint a designee who is not so affected to review the petition. If any other member
23 of the board is affected by par. (b), that person's appointing authority shall remove
24 that person from the board and shall appoint another member to review the petition
25 who is not so affected.

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1 **SECTION 4.** 16.53 (14) of the statutes is amended to read:

2 16.53 **(14)** REVIEW OF PROPOSED INCORPORATIONS AND ANNEXATIONS. The
3 department incorporation review board may prescribe and collect a fee for review of
4 any petition for incorporation of a municipality under s. 66.0203 ~~or~~. The department
5 may prescribe and collect a fee for review of any petition for annexation of municipal
6 territory under s. 66.0217. The fee shall be paid by the person or persons filing the
7 petition for incorporation or by the person or persons filing the notice of the proposed
8 annexation.

9 **SECTION 5.** 66.0201 (2) (a) of the statutes is renumbered 66.0201 (2) (ar).

10 **SECTION 6.** 66.0201 (2) (am) of the statutes is created to read:

11 66.0201 **(2)** (am) “Board” means the incorporation review board.

12 **SECTION 7.** 66.0203 (8) (b) of the statutes is amended to read:

13 66.0203 **(8)** (b) On the basis of the hearing the circuit court shall find if the
14 standards under s. 66.0205 are met. If the court finds that the standards are not met,
15 the court shall dismiss the petition. If Subject to par. (c), if the court finds that the
16 standards are met the court shall refer the petition to the ~~department~~ board. Upon
17 payment of any fee imposed under s. 16.53 (14), the ~~department~~ board shall
18 determine whether the standards under s. 66.0207 are met.

19 **SECTION 8.** 66.0203 (8) (c) of the statutes is created to read:

20 66.0203 **(8)** (c) 1. The court shall determine whether an annexation proceeding
21 that affects any territory included in the incorporation petition has been initiated
22 under s. 66.0217, 66.0219, or 66.0223. A court shall consider an annexation
23 proceeding under s. 66.0223 to have been initiated upon the posting of a meeting
24 notice by a city or village that states that the city or village is considering enacting
25 an ordinance under s. 66.0223.

SENATE BILL 323**SECTION 8**

1 2. If the court determines that an annexation proceeding described under subd.
2 1. was initiated before the publication of the notice under sub. (1), the court shall
3 refer the petition to the board when the annexation proceeding is final. If the
4 annexation is determined to be valid, the court shall exclude the annexed territory
5 from the territory proposed to be incorporated when it refers the petition to the board.

6 3. If the court determines that an annexation proceeding described under subd.
7 1. was initiated after, and within 30 days after, the publication of the notice under
8 sub. (1), the annexation may not proceed until the validity of the incorporation has
9 been determined. If the incorporation is determined to be valid and complete, the
10 annexation is void. If the incorporation is determined to be invalid, the annexation
11 may proceed.

12 4. If the court determines that an annexation proceeding described under subd.
13 1. was initiated on the same date as the publication of the notice under sub. (1), the
14 court shall determine which procedure was begun first on that date and that action
15 may proceed and the other action may not proceed unless the first action fails.

16 5. If the court determines that an annexation proceeding described under subd.
17 1. was initiated more than 30 days after the publication of the notice under sub. (1),
18 the annexation is void.

19 **SECTION 9.** 66.0203 (9) (title), (a), (b) and (d) of the statutes are amended to
20 read:

21 66.0203 **(9)** (title) FUNCTION OF THE ~~DEPARTMENT~~ BOARD. (a) Upon receipt of the
22 petition from the circuit court and payment of any fee imposed under s. 16.53 (14),
23 the ~~department~~ board shall make any necessary investigation to apply the standards
24 under s. 66.0207.

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1 (b) Within ~~20~~ 30 days after the receipt by the ~~department~~ board of the petition
2 from the circuit court and payment of any fee imposed under s. 16.53 (14), whichever
3 is later, any party in interest may request a hearing. Upon receipt of the request, the
4 ~~department~~ board shall schedule a hearing at a place in or convenient to the territory
5 sought to be incorporated.

6 (d) ~~Unless Subject to par. (dm), unless~~ the court sets a different time limit, the
7 ~~department~~ board shall prepare its findings and determination, citing the
8 supporting evidence, within ~~90~~ 180 days after receipt of the referral from the court
9 and payment of any fee imposed under s. 16.53 (14), whichever is later. The findings
10 and determination shall be forwarded by the ~~department~~ board to the circuit court.
11 Copies of the findings and determination shall be sent by certified or registered mail
12 to the designated representative of the petitioners, and to all town and municipal
13 clerks entitled to receive mailed notice of the petition under sub. (4).

14 **SECTION 9m.** 66.0203 (9) (dm) of the statutes is created to read:

15 66.0203 (9) (dm) The time period specified or set by the court under par. (d)
16 shall be stayed for a reasonable period of time to allow for alternative dispute
17 resolution of any disagreements between interested parties that result from the
18 filing of an incorporation petition if all interested parties agree to this stay and
19 provide written notice of their agreement to the board and to the circuit court.

20 **SECTION 9s.** 66.0203 (9) (e) (intro.), (f), (g) and (h) of the statutes are amended
21 to read:

22 66.0203 (9) (e) (intro.) The determination of the ~~department~~ board made in
23 accordance with the standards under ss. 66.0205, 66.0207 and 66.0217 (6) (c) shall
24 be one of the following:

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1 (f) If the department board determines that the petition shall be dismissed
2 under par. (e) 1., the circuit court shall issue an order dismissing the petition. If the
3 department board grants the petition, the circuit court shall order an incorporation
4 referendum as provided in s. 66.0211.

5 (g) The findings of both the court and the department board shall be based upon
6 facts as they existed at the time of the filing of the petition.

7 (h) Except for an incorporation petition which describes the territory
8 recommended by the department board under s. ~~66.0203~~ sub. (9) (e) 3., no petition
9 for the incorporation of the same or substantially the same territory may be
10 entertained for one year following the date of dismissal under par. (f) of the petition
11 or the date of any election at which incorporation was rejected by the electors.

12 **SECTION 10.** 66.0203 (9) (i) of the statutes is created to read:

13 66.0203 (9) (i) If the board fails to make a determination within the time limit
14 under par. (d), the board shall refund the fees imposed by the board under s. 16.53
15 (14) and shall then make a determination as quickly as possible.

16 **SECTION 11.** 66.0205 (intro.) of the statutes is amended to read:

17 **66.0205 Standards to be applied by the circuit court.** (intro.) Before
18 referring the incorporation petition as provided in s. 66.0203 (2) to the department
19 board, the court shall determine whether the petition meets the formal and signature
20 requirements and shall further find that the following minimum requirements are
21 met:

22 **SECTION 12.** 66.0207 (title), (1) (intro.) and (b), and (2) (intro.) of the statutes
23 are amended to read:

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1 **66.0207** (title) **Standards to be applied by the department board. (1)**

2 (intro.) The department board may approve for referendum only those proposed
3 incorporations which meet the following requirements:

4 (b) *Territory beyond the core.* The territory beyond the most densely populated
5 one-half square mile specified in s. 66.0205 (1) or the most densely populated square
6 mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units
7 per quarter section or an assessed value, as defined in s. 66.0217 (1) (a) for real estate
8 tax purposes, more than 25% of which is attributable to existing or potential
9 mercantile, manufacturing or public utility uses. The territory beyond the most
10 densely populated square mile as specified in s. 66.0205 (3) or (4) shall have the
11 potential for residential or other urban land use development on a substantial scale
12 within the next 3 years. The department board may waive these requirements to the
13 extent that water, terrain or geography prevents the development.

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

18 **SECTION 13.** 66.0209 (2) and (4) of the statutes are amended to read:

19 66.0209 **(2)** The decision of the department board made under s. 66.0203 (9) is
20 subject to judicial review under ch. 227.

21 **(4)** An incorporation referendum ordered by the circuit court under s. 66.0203
22 (9) (f) may not be stayed pending the outcome of further litigation, unless the court
23 of appeals or the supreme court, upon an appeal or upon the filing of an original
24 action in the supreme court, concludes that a strong probability exists that the order
25 of the circuit court or the decision of the department board will be set aside.

SENATE BILL 323**SECTION 14**

1 **SECTION 14.** 66.0217 (14) of the statutes is created to read:

2 66.0217 **(14)** LAW APPLICABLE. Section 66.0203 (8) (c) applies to annexations
3 under this section.

4 **SECTION 15.** 66.0219 (8) of the statutes is amended to read:

5 66.0219 **(8)** LAW APPLICABLE. ~~Section~~ Sections 66.0203 (8) (c) and 66.0217 (11)
6 applies apply to annexations under this section.

7 **SECTION 16.** 66.0223 of the statutes is amended to read:

8 **66.0223 Annexation of territory owned by a city or village.** In addition
9 to other methods provided by law and subject to ss. 59.692 (7) and 66.0307 (7),
10 territory owned by and lying near but not necessarily contiguous to a village or city
11 may be annexed to a village or city by ordinance enacted by the board of trustees of
12 the village or the common council of the city, provided that in the case of
13 noncontiguous territory the use of the territory by the city or village is not contrary
14 to any town or county zoning regulation. The ordinance shall contain the exact
15 description of the territory annexed and the names of the towns from which
16 detached, and attaches the territory to the village or city upon the filing of 7 certified
17 copies of the ordinance in the office of the secretary of state, together with 7 copies
18 of a plat showing the boundaries of the territory attached. Two copies of the
19 ordinance and plat shall be forwarded by the secretary of state to the department of
20 transportation, one copy to the department of administration, one copy to the
21 department of natural resources, one copy to the department of revenue and one copy
22 to the department of public instruction. Within 10 days of filing the certified copies,
23 a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county
24 in which the annexed territory is located. ~~Section~~ Sections 66.0203 (8) (c) and
25 66.0217 (11) applies apply to annexations under this section.

SENATE BILL 323**1 SECTION 17. Initial applicability.**

2 (1) The treatment of sections 16.53 (14), 66.0203 (8) (b) and (c) and (9) (title),
3 (a), (b), (d), (e) (intro.), (f), (g), (h), and (i), 66.0205 (intro.), 66.0207 (title), (1) (intro.)
4 and (b), and (2) (intro.), 66.0217 (14), 66.0219 (8), and 66.0223 of the statutes first
5 applies to a petition for incorporation of a village or city that is filed with a circuit
6 court under section 66.0203 (2) of the statutes on the effective date of this subsection.

7 (END)