

2003 Senate Bill 323

Date of enactment: **April 5, 2004**  
Date of publication\*: **April 19, 2004**

# 2003 WISCONSIN ACT 171

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

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

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

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

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

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

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

15.105 (23) INCORPORATION REVIEW BOARD. (a) There is created an incorporation review board attached to the department of administration under s. 15.03. The board shall consist of the secretary of administration or his or her designee, 2 members appointed by the Wisconsin Towns Association, one member appointed by the

League of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance of Cities. Members serve at the pleasure of the appointing authority. All members of the board, other than the secretary of administration or his or her designee, serve only in an advisory capacity.

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

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

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

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

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\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

66.0201 (2) (am) "Board" means the incorporation review board.

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

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

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

66.0203 (8) (c) 1. The court shall determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated under s. 66.0217, 66.0219, or 66.0223. A court shall consider an annexation proceeding under s. 66.0223 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 ordinance under s. 66.0223.

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

3. If the court determines that an annexation proceeding described under subd. 1. was initiated after, and within 30 days after, the publication of the notice under sub. (1), 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 annex-

ation is void. If the incorporation is determined to be invalid, the annexation may proceed.

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

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

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

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

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

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

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

66.0203 (9) (dm) The time period specified or set by the court under par. (d) shall 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.

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

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

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

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

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

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

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

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

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

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

**66.0207 (title) Standards to be applied by the department board.** (1) (intro.) The department board may approve for referendum only those proposed incorporations which meet the following requirements:

(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 tax 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 board may waive these requirements to the extent that water, terrain or geography prevents the development.

(2) (intro.) In addition to complying with each of the applicable standards set forth in sub. (1) and s. 66.0205 in order to be approved for referendum, a proposed incor-

poration must be in the public interest as determined by the department board upon consideration of the following:

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

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

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

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

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

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

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

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

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

**SECTION 17. Initial applicability.**

(1) The treatment of sections 16.53 (14), 66.0203 (8) (b) and (c) and (9) (title), (a), (b), (d), (e) (intro.), (f), (g),

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(h), and (i), 66.0205 (intro.), 66.0207 (title), (1) (intro.) and (b), and (2) (intro.), 66.0217 (14), 66.0219 (8), and 66.0223 of the statutes first applies to a petition for incor-

poration of a village or city that is filed with a circuit court under section 66.0203 (2) of the statutes on the effective date of this subsection.

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