

2003 SENATE BILL 323

November 19, 2003 – Introduced by Senators BROWN, A. LASEE and SCHULTZ, cosponsored by Representatives HUEBSCH, ALBERS, HAHN, HINES, LADWIG, OLSEN, OWENS and TOWNSEND. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

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

Analysis by the Legislative Reference Bureau

Under current law, towns may incorporate as cities or villages by a number of methods if certain procedures are followed. Under one of the methods, the procedures include the following:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the circuit court.
2. A circuit court hearing on the petition at which the court determines whether a number of statutory standards are met, including resident population and population density.
3. If the court finds that the standards are met, a review of the petition by the Department of Administration (DOA) for a determination on whether a number of

SENATE BILL 323

statutory standards are met, including the characteristics of the territory, the level of governmental services that are desired or needed by the residents compared to the level of services offered by the proposed city or village, the impact upon the remainder of the town from which the territory is to be incorporated, and the impact of the proposed incorporation on the metropolitan community.

If DOA dismisses the petition, the circuit court must issue an order dismissing the petition. If DOA grants the petition, the circuit court must order an incorporation referendum. If a majority of the votes on the referendum are cast in favor of a village or city, the secretary of state must issue and record a certificate of incorporation.

This bill makes a number of changes in the way in which incorporation petitions are reviewed, and subjects certain annexation procedures to incorporation petitions. Under the bill, following circuit court review of an annexation petition, the court forwards a petition to an Incorporation Review Board, which the bill creates. The board is attached to DOA, and is made up of the following five people who serve at the pleasure of their appointing authority:

1. The secretary of DOA or his or her designee.
2. Two people appointed by the Wisconsin Towns Association.
3. One person appointed by the League of Wisconsin Municipalities.
4. One person appointed by the Wisconsin Alliance of Cities.

Before a circuit court may forward a petition to the board, the bill requires the court to determine whether an annexation proceeding that affects any territory in the incorporation petition has been initiated. If the court determines that an annexation proceeding was initiated before the publication of a notice of intent to circulate a petition for incorporation (notice), the court may refer the petition to the board only after the annexation proceeding is final.

If a court determines that an annexation proceeding was initiated on or within 30 days after the publication of the notice, the annexation may not proceed until the validity of the annexation is determined. If the incorporation process is valid and complete, the annexation is void. If the incorporation is invalid, the annexation may proceed.

If a court determines that an annexation proceeding was initiated more than 30 days after the publication of the notice, the annexation is void.

Generally, under current law, DOA has 90 days to review a petition of incorporation forwarded by a circuit court. Under this bill, the board has 180 days to review the petition.

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:

SENATE BILL 323

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.

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

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

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

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

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

SENATE BILL 323

1 16.53 (14) REVIEW OF PROPOSED INCORPORATIONS AND ANNEXATIONS. The
2 department incorporation review board may prescribe and collect a fee for review of
3 any petition for incorporation of a municipality under s. 66.0203 ~~or~~. The department
4 may prescribe and collect a fee for review of any petition for annexation of municipal
5 territory under s. 66.0217. The fee shall be paid by the person or persons filing the
6 petition for incorporation or by the person or persons filing the notice of the proposed
7 annexation.

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

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

10 66.0201 (2) (am) “Board” means the incorporation review board.

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

12 66.0203 (8) (b) On the basis of the hearing the circuit court shall find if the
13 standards under s. 66.0205 are met. If the court finds that the standards are not met,
14 the court shall dismiss the petition. If Subject to par. (c), if the court finds that the
15 standards are met the court shall refer the petition to the department board. Upon
16 payment of any fee imposed under s. 16.53 (14), the department board shall
17 determine whether the standards under s. 66.0207 are met.

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

19 66.0203 (8) (c) 1. The court shall determine whether an annexation proceeding
20 that affects any territory included in the incorporation petition has been initiated
21 under s. 66.0217, 66.0219, or 66.0223.

22 2. If the court determines that an annexation proceeding described under subd.
23 1. was initiated before the publication of the notice under sub. (1), the court shall
24 refer the petition to the board when the annexation proceeding is final. If the

SENATE BILL 323

1 annexation is determined to be valid, the court shall exclude the annexed territory
2 from the territory proposed to be incorporated when it refers the petition to the board.

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

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

12 **SECTION 9.** 66.0203 (9) (title), (a), (b), (d), (e) (intro.), (f), (g) and (h) of the
13 statutes are amended to read:

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

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

23 (d) Unless the court sets a different time limit, the ~~department~~ board shall
24 prepare its findings and determination, citing the supporting evidence, within ~~90~~
25 180 days after receipt of the referral from the court and payment of any fee imposed

SENATE BILL 323

1 under s. 16.53 (14), whichever is later. The findings and determination shall be
2 forwarded by the department board to the circuit court. Copies of the findings and
3 determination shall be sent by certified or registered mail to the designated
4 representative of the petitioners, and to all town and municipal clerks entitled to
5 receive mailed notice of the petition under sub. (4).

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

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

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

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

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

21 66.0203 (9) (i) If the board fails to make a determination within the time limit
22 under par. (d), the board shall refund the fees imposed by the board under s. 16.53
23 (14) and shall then make a determination as quickly as possible.

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

SENATE BILL 323

1 **66.0205 Standards to be applied by the circuit court.** (intro.) Before
2 referring the incorporation petition as provided in s. 66.0203 (2) to the department
3 board, the court shall determine whether the petition meets the formal and signature
4 requirements and shall further find that the following minimum requirements are
5 met:

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

8 **66.0207** (title) **Standards to be applied by the department board.**

9 **(1)** (intro.) The department board may approve for referendum only those
10 proposed incorporations which meet the following requirements:

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

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

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

SENATE BILL 323

1 66.0209 **(2)** The decision of the ~~department~~ board made under s. 66.0203 (9) is
2 subject to judicial review under ch. 227.

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

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

9 66.0217 **(14)** LAW APPLICABLE. Section 66.0203 (8) (c) applies to annexations
10 under this section.

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

12 66.0219 **(8)** LAW APPLICABLE. ~~Section~~ Sections 66.0203 (8) (c) and 66.0217 (11)
13 applies apply to annexations under this section.

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

15 **66.0223 Annexation of territory owned by a city or village.** In addition
16 to other methods provided by law and subject to ss. 59.692 (7) and 66.0307 (7),
17 territory owned by and lying near but not necessarily contiguous to a village or city
18 may be annexed to a village or city by ordinance enacted by the board of trustees of
19 the village or the common council of the city, provided that in the case of
20 noncontiguous territory the use of the territory by the city or village is not contrary
21 to any town or county zoning regulation. The ordinance shall contain the exact
22 description of the territory annexed and the names of the towns from which
23 detached, and attaches the territory to the village or city upon the filing of 7 certified
24 copies of the ordinance in the office of the secretary of state, together with 7 copies
25 of a plat showing the boundaries of the territory attached. Two copies of the

SENATE BILL 323

1 ordinance and plat shall be forwarded by the secretary of state to the department of
2 transportation, one copy to the department of administration, one copy to the
3 department of natural resources, one copy to the department of revenue and one copy
4 to the department of public instruction. Within 10 days of filing the certified copies,
5 a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county
6 in which the annexed territory is located. ~~Section~~ Sections 66.0203 (8) (c) and
7 66.0217 (11) ~~applies~~ apply to annexations under this section.

8 **SECTION 17. Initial applicability.**

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

14 (END)