

2007 SENATE BILL 134

April 6, 2007 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Labor, Elections and Urban Affairs.

1 **AN ACT** *to repeal* 66.0307 (3) (dm), 66.0307 (5) (c) 4. and 66.0307 (5) (c) 5m.; *to*
2 *renumber* 66.0307 (1) (a); *to renumber and amend* 66.0225; *to amend*
3 66.0217 (2) and (3) (intro.), 66.0217 (11) (b), 66.0219 (intro.), 66.0221 (1),
4 66.0221 (2), 66.0223 (1), 66.0227 (intro.), 66.0229, 66.0230 (1) (a), 66.0231,
5 66.0301 (1) (a), 66.0305 (4) (b), 66.0307 (2) (intro.), 66.0307 (3) (b), 66.0307 (3)
6 (d) 4., 66.0307 (4) (b), 66.0307 (5) (c) 1., 66.0307 (5) (c) 2., 66.1105 (4) (gm) 1. and
7 117.132 (1m) (a); *to repeal and recreate* 66.0225 (title) and 66.0307 (3) (c); and
8 *to create* 66.0217 (6) (b), 66.0225 (1), 66.0225 (3), 66.0225 (4), 66.0301 (1) (c),
9 66.0301 (6), 66.0307 (1) (af) and 66.0307 (4m) of the statutes; **relating to:**
10 municipal boundary agreements and the use of alternative dispute resolution
11 in municipal boundary disputes.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was developed and is recommended by the joint legislative council's special committee on municipal annexation. The special committee was directed to review conflicts that arise under current annexation law and practice and the consequences of those conflicts, including costs to taxpayers and other affected parties, to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages.

This bill addresses 1) the determination of common municipal (city, village, and town) boundaries by agreement; and 2) the use of alternative dispute resolution (ADR) in annexation and other boundary disputes. General provisions of the bill are summarized below. For additional information, see the text of the bill and notes following individual provisions of the bill.

I. BOUNDARY AGREEMENTS

A. Boundary Agreements by Cooperative Plan (s. 66.0307, stats.)

1. Simplifying Current Procedure

The bill simplifies the current plan requirements of s. 66.0307, stats., by substituting a general requirement for consistency with a comprehensive plan for the current detailed planning requirements. "Comprehensive plan" means a comprehensive plan under s. 66.1001, stats., or, if a municipality has not adopted a comprehensive plan, the municipality's master plan.

The bill also reduces from 120 to 60 the minimum number of days that must pass, following the last authorizing resolution by a participating municipality, before the public hearing on the proposed cooperative plan may be held.

2. Mediated Agreement Procedure

If a city or village or a town declines to participate in the current procedure for developing a cooperative plan to determine common boundaries, the bill provides a procedure for an adjacent municipality to petition for development of a cooperative plan through mediation. If a city or village refuses to engage in mediation after being requested to do so, an annexation commenced during the shorter of 270 days after the refusal or the period beginning after the refusal until the city or village agrees to engage in mediation may be contested by the petitioning town if the department of administration (DOA) determines the annexation is not in the public interest following an advisory review of the annexation. If a town refuses to engage in mediation, the town may not contest any annexation of its territory to the petitioning city or village that is commenced during the shorter of 270 days after the refusal or the period beginning after the refusal until the town agrees to engage in mediation.

If both parties agree to engage in mediation, the mediation period expires after 270 days unless the participating municipalities agree to extend the period. If a cooperative plan is developed through mediation, the bill provides a time period for holding a public hearing on the plan. Otherwise, the provisions of s. 66.0307 apply to a cooperative plan agreed to under the mediated agreement procedure.

B. Boundary Agreements Under General Intergovernmental Cooperation Authority (s. 66.0301, stats.)

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The bill establishes a specific procedure for common municipal boundaries to be determined by agreement under s. 66.0301, stats. In addition to determining common boundaries, an agreement under the procedure may include any other provisions municipalities are authorized to agree to under s. 66.0301 and under s. 66.0305, stats., (agreements to share revenues).

Once an agreement expires, all provisions of the agreement expire with the exception of boundary determinations, which remain until subsequently changed. The maximum term of an agreement is 10 years.

The s. 66.0301 boundary agreement procedure requires a public hearing on a proposed agreement and provides for a referendum of the electors residing within the territory whose jurisdiction is subject to change as a result of the agreement if a sufficient referendum petition is timely submitted.

A boundary agreement under s. 66.0301 may provide that during the term of the agreement, no other procedure for altering municipal boundaries may be used to alter a boundary that is affected by the agreement (subject to one exception).

C. Stipulated Boundary Agreements in Contested Boundary Actions (s. 66.0225, stats.)

The bill limits the application of current s. 66.0225, stats., (boundaries fixed by court judgement) to contested annexations and limits the scope of a boundary determination under that procedure to that portion of the boundary “that is the subject of the annexation.” The bill provides that contested consolidations, detachments, and incorporations may be settled by entering into an agreement under the new s. 66.0301 procedure or under s. 66.0307 (boundary agreements by a cooperative plan). Contested annexations may also be so settled.

II. ALTERNATIVE DISPUTE RESOLUTION

The court and the parties to a contested annexation are encouraged under the bill to consider the applicability to the contested annexation of the current ADR provisions that apply generally to court proceedings, s. 802.12, stats.

The bill requires DOA to make available on its public website a list of persons who have identified themselves as professionals qualified to facilitate ADR of annexation, boundary, and land use disputes.

1 **SECTION 1.** 66.0217 (2) and (3) (intro.) of the statutes are amended to read:
2 66.0217 (2) DIRECT ANNEXATION BY UNANIMOUS APPROVAL. Except as provided in
3 sub. (14), and subject to s. ss. 66.0301 (6) (d) and 66.0307 (7), if a petition for direct
4 annexation signed by all of the electors residing in the territory and the owners of
5 all of the real property in the territory is filed with the city or village clerk, and with
6 the town clerk of the town or towns in which the territory is located, together with
7 a scale map and a legal description of the property to be annexed, an annexation
8 ordinance for the annexation of the territory may be enacted by a two-thirds vote of
9 the elected members of the governing body of the city or village without compliance
10 with the notice requirements of sub. (4). In an annexation under this subsection,

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1 subject to sub. (6), the person filing the petition with the city or village clerk and the
2 town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal
3 description of the territory to be annexed to the department and the governing body
4 shall review the advice of the department, if any, before enacting the annexation
5 ordinance.

6 **(3) OTHER METHODS OF ANNEXATION.** (intro.) Subject to ~~s.~~ ss. 66.0301 (6) (d) and
7 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or
8 village may be annexed to the city or village in the following ways:

9 **SECTION 2.** 66.0217 (6) (b) of the statutes is created to read:

10 66.0217 **(6)** (b) *Alternative dispute resolution.* The department shall make
11 available on its public Web site a list of persons who identify themselves to the
12 department as professionals qualified to facilitate alternative dispute resolution of
13 annexation, boundary, and land use disputes. Persons identifying themselves to the
14 department as qualified professionals shall submit to the department a brief
15 description of their qualifications, including membership in relevant professional
16 associations and certifications in areas such as planning and alternative dispute
17 resolution. The department may edit the descriptions for inclusion on the list using
18 any criteria that, in the department's determination, is appropriate. The
19 department may include with the list a disclaimer that the department is not
20 responsible for the accuracy of the descriptions, and that inclusion of a person on the
21 list does not represent endorsement by the department. The department may include
22 links from the list to other websites, such as those of relevant professional
23 associations and county dispute resolution centers.

NOTE: Requires DOA to provide on its public Web site a list of persons who have identified themselves as professionals qualified to facilitate resolution of annexation and boundary disputes.

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1 **SECTION 3.** 66.0217 (11) (b) of the statutes is amended to read:

2 66.0217 **(11)** (b) An action contesting an annexation shall be given preference
3 in the circuit court. The court and the parties are encouraged to consider the
4 application of s. 802.12 to an action contesting an annexation.

NOTE: Encourages use of the ADR statute, s. 802.12, by the court and parties to a
contested annexation. Although the provision already applies to court proceedings
involving a contested annexation, specific reference may facilitate the use of the provision
in contested annexations.

5 **SECTION 4.** 66.0219 (intro.) of the statutes is amended to read:

6 **66.0219 Annexation by referendum initiated by city or village.** (intro.)
7 As a complete alternative to any other annexation procedure, and subject to sub. (10)
8 and s. ss. 66.0301 (6) (d) and 66.0307 (7), unincorporated territory which contains
9 electors and is contiguous to a city or village may be annexed to the city or village
10 under this section. The definitions in s. 66.0217 (1) apply to this section.

11 **SECTION 5.** 66.0221 (1) of the statutes is amended to read:

12 66.0221 **(1)** Upon its own motion and subject to sub. (3) and s. ss. 66.0301 (6)
13 (d) and 66.0307 (7), a city or village, by a two-thirds vote of the entire membership
14 of its governing body, may enact an ordinance annexing territory which comprises
15 a portion of a town or towns and which was completely surrounded by territory of the
16 city or village on December 2, 1973. The ordinance shall include all surrounded town
17 areas except those that are exempt by mutual agreement of all of the governing
18 bodies involved. The annexation ordinance shall contain a legal description of the
19 territory and the name of the town or towns from which the territory is detached.
20 Upon enactment of the ordinance, the city or village clerk immediately shall file 6
21 certified copies of the ordinance in the office of the secretary of state, together with
22 6 copies of a scale map. The secretary of state shall forward 2 copies of the ordinance
23 and scale map to the department of transportation, one copy to the department of

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1 natural resources, one copy to the department of revenue and one copy to the
2 department of administration. This subsection does not apply if the town island was
3 created only by the annexation of a railroad right-of-way or drainage ditch. This
4 subsection does not apply to land owned by a town government which has existing
5 town government buildings located on the land. No town island may be annexed
6 under this subsection if the island consists of over 65 acres or contains over 100
7 residents. Section 66.0217 (11) applies to annexations under this subsection. Except
8 as provided in sub. (2), after December 2, 1973, no city or village may, by annexation,
9 create a town area which is completely surrounded by the city or village.

10 **SECTION 6.** 66.0221 (2) of the statutes is amended to read:

11 66.0221 (2) A city or village may, by annexation, create a town area that is
12 completely surrounded by the city or village if a cooperative plan for boundary
13 change under s. 66.0301 (6) or 66.0307, to which the town and the annexing city or
14 village are parties, applies to the territory that is annexed.

15 **SECTION 7.** 66.0223 (1) of the statutes is amended to read:

16 66.0223 (1) In addition to other methods provided by law and subject to sub.
17 (2) and ss. 59.692 (7), 66.0301 (6) (d), and 66.0307 (7), territory owned by and lying
18 near but not necessarily contiguous to a village or city may be annexed to a village
19 or city by ordinance enacted by the board of trustees of the village or the common
20 council of the city, provided that in the case of noncontiguous territory the use of the
21 territory by the city or village is not contrary to any town or county zoning regulation.
22 The ordinance shall contain the exact description of the territory annexed and the
23 names of the towns from which detached, and attaches the territory to the village or
24 city upon the filing of 7 certified copies of the ordinance in the office of the secretary
25 of state, together with 7 copies of a plat showing the boundaries of the territory

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

8 **SECTION 8.** 66.0225 (title) of the statutes is repealed and recreated to read:

9 **66.0225 (title) Stipulated boundary agreements in contested boundary**
10 **actions.**

11 **SECTION 9.** 66.0225 of the statutes is renumbered 66.0225 (2) and amended to
12 read:

13 66.0225 (2) CONTESTED ANNEXATIONS. Any 2 municipalities whose boundaries
14 are immediately adjacent at any point and who are parties to an action, proceeding,
15 or appeal in court for the purpose of testing the validity ~~or~~ invalidity of an
16 annexation, ~~incorporation, consolidation or detachment~~ may enter into a written
17 stipulation, compromising and settling the litigation and determining the portion of
18 the common boundary line between the municipalities that is the subject of the
19 annexation. The court having jurisdiction of the litigation, whether the circuit court,
20 the court of appeals, or the supreme court, may enter a final judgment incorporating
21 the provisions of the stipulation and fixing the common boundary line between the
22 municipalities involved. A stipulation changing boundaries of municipalities shall
23 be approved by the governing ~~bodies of the detaching and annexing municipalities~~
24 body of each municipality and s. 66.0217 (9) and (11) shall apply. A change of
25 municipal boundaries under this section is subject to a referendum of the electors

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1 residing within the territory ~~annexed or detached~~ whose jurisdiction is subject to
2 change under the stipulation, if within 30 days after the publication of the
3 stipulation to change boundaries in a newspaper of general circulation in the ~~area~~
4 ~~proposed to be annexed or detached~~ that territory, a petition for a referendum
5 conforming to the requirements of s. 8.40 signed by at least 20% of the electors of the
6 ~~area to be annexed or detached~~ residing within that territory is filed with the clerk
7 of the municipality from which the greater area is proposed to be ~~detached~~ removed
8 and is filed as provided in s. 8.37. The referendum shall be conducted as are
9 annexation referenda. If the referendum election is ~~opposed to detachment from the~~
10 ~~municipality~~ fails, all proceedings under this section are void. ~~In this section,~~
11 ~~“municipalities” means cities, villages and towns.~~

NOTE: Limits the application of the current procedure in s. 66.0225, stats., (boundaries fixed by court judgment) to contested annexations and limits the boundary that is subject to the procedure to the portion of the boundary “that is the subject of the annexation.” The stricken last sentence is replaced by a definition in s. 66.0225 (1), created by SEC. 10 of the bill.

The limitations are intended to discourage use of s. 66.0225 for boundary agreements that are more appropriately developed under s. 66.0301 (6), as created by this bill, or s. 66.0307, as revised by this bill. Retention of the s. 66.0225 procedure for contested annexations, subject to the new limitation on which boundaries may be included, recognizes the history and utility of this provision in settling annexation litigation.

See, also, SEC. 11 of this bill.

12 **SECTION 10.** 66.0225 (1) of the statutes is created to read:

13 66.0225 (1) DEFINITIONS. In this section, “municipality” means a city, village,
14 or town.

NOTE: Provides a definition for use throughout s. 66.0225.

15 **SECTION 11.** 66.0225 (3) of the statutes is created to read:

16 66.0225 (3) CONTESTED BOUNDARY ACTIONS. (a) In this subsection, “boundary
17 action” means an action, proceeding, or appeal in court contesting the validity of an
18 annexation, consolidation, detachment, or incorporation.

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1 (b) If 2 municipalities whose boundaries are immediately adjacent at any point
2 are parties to a boundary action, the municipalities may enter into an agreement
3 under s. 66.0301 (6) or s. 66.0307 as part of a stipulation to settle the boundary action.
4 The court may approve and make part of the final judgment a stipulation that
5 includes an agreement under s. 66.0301 (6) or s. 66.0307.

NOTE: Requires parties to a contested consolidation, detachment, or incorporation proceeding to use new s. 66.0301 (6), or s. 66.0307, as revised, if the parties enter into a boundary agreement as part of the settlement of the contested action. Allows, but does not require, parties to a contested annexation proceeding to use those provisions. (Parties to a contested annexation proceeding will continue to be able to use current s. 66.0225, as revised by this bill.)

See SEC. 9 of this bill and the NOTE following that SECTION.

6 **SECTION 12.** 66.0225 (4) of the statutes is created to read:

7 66.0225 (4) AUTHORITY FOR CERTAIN STIPULATIONS. A stipulation that is
8 court-approved under this section before the effective date of this subsection
9 [revisor inserts date], that affects the location of a boundary between municipalities,
10 is not invalid as lacking authority to affect the location of the boundary.

NOTE: Recognizes that some court-approved stipulations under s. 66.0225 affected common boundaries of the municipalities party to the action beyond those boundaries in dispute. Despite the lack of express authority to do so and the revisions to the section made by this bill, this provision provides that those agreements are not invalid insofar as lacking authority to affect the location of the boundary that was included in the court-approved stipulation.

11 **SECTION 13.** 66.0227 (intro.) of the statutes is amended to read:

12 **66.0227 Detachment of territory.** (intro.) Subject to s. ss. 66.0301 (6) (d) and
13 66.0307 (7), territory may be detached from a city or village and attached to a city,
14 village or town to which it is contiguous as follows:

15 **SECTION 14.** 66.0229 of the statutes is amended to read:

16 **66.0229 Consolidation.** Subject to s. ss. 66.0301 (6) (d) and 66.0307 (7), a
17 town, village or city may be consolidated with a contiguous town, village or city, by
18 ordinance, passed by a two-thirds vote of all the members of each board or council,

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1 fixing the terms of the consolidation and ratified by the electors at a referendum held
2 in each municipality. The ballots shall bear the words, “for consolidation”, and
3 “against consolidation”, and if a majority of the votes cast in each municipality are
4 for consolidation, the ordinances shall take effect and have the force of a contract.
5 The ordinance and the result of the referendum shall be certified as provided in s.
6 66.0211 (5); if a town the certification shall be preserved as provided in ss. 66.0211
7 (5) and 66.0235, respectively. Consolidation does not affect the preexisting rights or
8 liabilities of any municipality and actions on those rights or liabilities may be
9 commenced or completed as if there were no consolidation. A consolidation
10 ordinance proposing the consolidation of a town and a city or village shall, within 10
11 days after its adoption and prior to its submission to the voters for ratification at a
12 referendum, be submitted to the circuit court and the department of administration
13 for a determination of whether the proposed consolidation is in the public interest.
14 The circuit court shall determine whether the proposed ordinance meets the formal
15 requirements of this section and shall then refer the matter to the department of
16 administration, which shall find as prescribed in s. 66.0203 whether the proposed
17 consolidation is in the public interest in accordance with the standards in s. 66.0207.
18 The department’s findings have the same status as incorporation findings under ss.
19 66.0203 to 66.0213.

20 **SECTION 15.** 66.0230 (1) (a) of the statutes is amended to read:

21 66.0230 (1) (a) In addition to the method described in s. 66.0229 and subject
22 to subs. (2), (3), and (4) and to ~~s.~~ ss. 66.0301 (6) (d) and 66.0307 (7), all or part of a
23 town may consolidate with a contiguous city or village by ordinance passed by a
24 two-thirds vote of all of the members of each board or council and ratified by the
25 electors at a referendum held in each municipality.

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1 **SECTION 16.** 66.0231 of the statutes is amended to read:

2 **66.0231 Notice of certain litigation affecting municipal status or**
3 **boundaries.** If a proceeding under ss. 61.187, 61.189, 61.74, 62.075, 66.0201 to
4 66.0213, 66.0215, 66.0216, 66.0217, 66.0221, 66.0223, 66.0227, 66.0301 (6), or
5 66.0307 or other sections relating to an incorporation, annexation, consolidation,
6 dissolution or detachment of territory of a city or village is contested by instigation
7 of legal proceedings, the clerk of the city or village involved in the proceedings shall
8 file with the secretary of state 4 copies of a notice of the commencement of the action.
9 The clerk shall file with the secretary of state 4 copies of any judgments rendered or
10 appeals taken in such cases. The notices or copies of judgments that are required
11 under this section may also be filed by an officer or attorney of any party of interest.
12 The secretary of state shall forward to the department of transportation 2 copies and
13 to the department of revenue and the department of administration one copy each
14 of any notice of action or judgment filed with the secretary of state under this section.

15 **SECTION 17.** 66.0301 (1) (a) of the statutes is amended to read:

16 **66.0301 (1) (a)** ~~In~~ Except as provided in pars. (b) and (c), in this section
17 “municipality” means the state or any department or agency thereof, or any city,
18 village, town, county, school district, public library system, public inland lake
19 protection and rehabilitation district, sanitary district, farm drainage district,
20 metropolitan sewerage district, sewer utility district, solid waste management
21 system created under s. 59.70 (2), local exposition district created under subch. II of
22 ch. 229, local professional baseball park district created under subch. III of ch. 229,
23 local professional football stadium district created under subch. IV of ch. 229, a local
24 cultural arts district created under subch. V of ch. 229, family care district under s.
25 46.2895, water utility district, mosquito control district, municipal electric company,

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1 county or city transit commission, commission created by contract under this section,
2 taxation district, regional planning commission, or city–county health department.

3 **SECTION 18.** 66.0301 (1) (c) of the statutes is created to read:

4 66.0301 (1) (c) For purposes of sub. (6), “municipality” means any city, village,
5 or town.

NOTE: Provides a definition for use in new sub. (6) of s. 66.0301 created by SEC. 19
of this bill.

6 **SECTION 19.** 66.0301 (6) of the statutes is created to read:

7 66.0301 (6) (a) Any 2 municipalities whose boundaries are immediately
8 adjacent at any point may enter into a written agreement determining all or a portion
9 of the common boundary line between the municipalities. An agreement under this
10 subsection may include only the provisions authorized under this section and s.
11 66.0305, and one or more of the following:

12 1. That specified boundary lines apply on the effective date of the agreement.

13 2. That specified boundary line changes shall occur during the term of the
14 agreement and the approximate dates by which the changes shall occur.

15 3. That specified boundary line changes may occur during the term of the
16 agreement and the approximate dates by which the changes may occur.

17 4. That a required boundary line change under subd. 2. or an optional boundary
18 line change under subd. 3. is subject to the occurrence of conditions set forth in the
19 agreement.

20 5. That specified boundary lines may not be changed during the term of the
21 agreement.

22 (b) The maximum term of an agreement under this subsection is 10 years.

23 When an agreement expires, all provisions of the agreement expire, except that any

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1 boundary determined under the agreement remains in effect until subsequently
2 changed.

3 (c) 1. Before an agreement under this subsection may take effect, and subject
4 to par. (e), it must be approved by the governing body of each municipality by the
5 adoption of a resolution. Before each municipality may adopt a resolution, each shall
6 hold a public hearing on the agreement or both municipalities shall hold a joint
7 public hearing on the agreement. Before the public hearing may be held, each
8 municipality shall give notice of the pending agreement and public hearing by
9 publishing a class 1 notice, under ch. 985, and by giving notice to each property owner
10 whose property is currently located in that municipality and in, or immediately
11 adjacent to, the territory whose jurisdiction will change. Notice shall be given at
12 least 20 days before the public hearing and notice to property owners shall be made
13 by certified mail.

14 2. An agreement under this subsection is subject to a referendum of the electors
15 residing within the territory whose jurisdiction is subject to change as a result of the
16 agreement. After each municipality approves the agreement by adoption of a
17 resolution, each municipality shall publish the agreement in the territory whose
18 jurisdiction is subject to change as a result of the agreement as a class 1 notice, under
19 ch. 985. A referendum shall be held if, within 30 days after the publication of the
20 agreement, a petition for a referendum conforming to the requirements of s. 8.40,
21 signed by at least 20 percent of the electors residing within the territory whose
22 jurisdiction is subject to change as a result of the agreement is filed, in accordance
23 with s. 8.37, with the clerk of each municipality that is a party to the agreement. The
24 referendum shall be conducted jointly by the municipalities and shall otherwise be
25 conducted as are annexation referenda. If the agreement is approved in the

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1 referendum, it may take effect. If the agreement is not approved in the referendum,
2 it may not take effect.

3 (d) An agreement under this subsection may provide that, during the term of
4 the agreement, no other procedure for altering a municipality's boundaries may be
5 used to alter a boundary that is affected by the agreement, except an annexation
6 conducted under s. 281.43 (1m), regardless of whether the boundary is proposed to
7 be maintained or changed or is allowed to be changed under the agreement. After
8 the agreement has expired, the boundary may be altered.

9 (e) A boundary change included in an agreement under this subsection shall
10 be accomplished by the enactment of an ordinance by the governing body designated
11 to do so in the agreement. The filing and recording requirements under s. 66.0217
12 (9) (a), as they apply to cities and villages under s. 66.0217 (9) (a), apply to
13 municipalities under this subsection. The requirements for the secretary of state
14 under s. 66.0217 (9) (b), as they apply under that section, apply to the secretary of
15 state when he or she receives an ordinance that is filed under this subsection.

16 (f) No action to contest the validity of an agreement under this subsection may
17 be commenced after 60 days from the date the agreement becomes effective.

18 (g) This subsection is the exclusive authority under this section for entering
19 into an agreement that determines all or a portion of the common boundary line
20 between municipalities.

21 (h) An agreement under this section that has been entered into before the
22 effective date of this subsection ... [revisor inserts date], that affects the location of
23 a boundary between municipalities, is not invalid as lacking authority under this
24 section to affect the location of the boundary.

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NOTE: Creates another tool for any two municipalities with a common boundary to determine by agreement all or a portion of the common boundary line between them. It is envisioned that this authority will be used, for example, by municipalities who wish to make minor changes in their common boundaries or by municipalities who wish to enter into an initial, shorter term agreement before developing a cooperative plan under s. 66.0307.

Currently, there is no express authority under s. 66.0301 to enter into boundary agreements and, although the section has been used for such agreements, has been questioned by some (see the note concerning par. (h), below).

Paragraph (a) of subsection (6) provides the authority to enter into written boundary agreements and the permitted content of those agreements. The authority regarding boundary lines is patterned after the language found in s. 66.0307. The agreements may also include provisions the party municipalities may agree to under s. 66.0301 generally and under s. 66.0305 (agreements to share revenues).

Paragraph (b) establishes the maximum term of an agreement at ten years (although a boundary line established under an agreement remains until subsequently changed). When it is desirable to have an agreement of longer duration, s. 66.0307 is available (and, presumably, another agreement under this subsection could be entered into).

Paragraph (c) sets forth the procedure for approving an agreement under this subsection. The procedure includes a public hearing on the proposed agreement (including individual notice to specified affected property owners); approval by the governing body of each municipality by adoption of a resolution; and an optional referendum of the electors residing within the territory whose jurisdiction is subject to change as a result of the agreement.

Paragraph (d) authorizes an agreement under this subsection to provide that during the term of the agreement no other procedure for altering a municipality's boundaries may be used to alter a boundary affected by the agreement (with the exception of an annexation conducted under s. 281.43 (1m), stats., relating to a department of natural resources order for sewer service extension).

Paragraph (e) provides filing and recording requirements for boundary changes pursuant to an agreement under the subsection. It is patterned after s. 66.0307 (10).

Paragraph (f) provides a statute of limitations for contesting the validity of an agreement under the subsection. It is patterned after s. 66.0307 (11).

Paragraph (g) limits the authority under s. 66.0301 for entering into an agreement that determines all or a portion of the common boundary line between municipalities to that extended under the subsection.

Paragraph (h) is intended to eliminate uncertainty regarding the authority under current s. 66.0301 to determine municipal boundaries. For example, at least one circuit court has held that boundary agreements are not authorized under s. 66.0301. This provision is intended to provide that agreements previously entered into under s. 66.0301 that affected the location of a boundary between municipalities are not invalid insofar as lacking authority under s. 66.0301 to affect the location of the boundary.

- 1 **SECTION 20.** 66.0305 (4) (b) of the statutes is amended to read:
- 2 66.0305 (4) (b) An agreement entered into under sub. (2) may address any other
- 3 appropriate matters, including any agreements with respect to services or
- 4 agreements with respect to municipal boundaries under s. 66.0225, 66.0301 (6), or
- 5 66.0307.

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1 **SECTION 21.** 66.0307 (1) (a) of the statutes is renumbered 66.0307 (1) (am).

2 **SECTION 22.** 66.0307 (1) (af) of the statutes is created to read:

3 66.0307 (1) (af) “Comprehensive plan” means an adopted plan that contains
4 the elements under s. 66.1001 (2) or, if a municipality has not adopted a plan that
5 contains those elements, a master plan adopted under s. 62.23 (2) or (3).

NOTE: Provides a definition for the s. 66.0307 boundary agreement-by-cooperative
plan procedure.

6 **SECTION 23.** 66.0307 (2) (intro.) of the statutes is amended to read:

7 66.0307 (2) BOUNDARY CHANGE AUTHORITY. (intro.) Any combination of
8 municipalities may determine the boundary lines between themselves under a
9 cooperative plan that is approved by the department under this section. A single city
10 or village and a single town may use the mediated agreement procedure under sub.
11 (4m) to determine a common boundary line under a cooperative plan that is approved
12 by the department under this section. No boundary of a municipality may be
13 changed or maintained under this section unless the municipality is a party to the
14 cooperative agreement. The cooperative plan shall provide one or more of the
15 following:

NOTE: Revised to reflect the creation by SEC. 29 of this bill of a new mediated
agreement procedure for developing a cooperative plan.

16 **SECTION 24.** 66.0307 (3) (b) of the statutes is amended to read:

17 66.0307 (3) (b) *Purpose of plan.* The cooperative plan shall be made with the
18 general purpose of guiding and accomplishing a coordinated, adjusted and
19 harmonious development of the territory covered by the plan ~~which will, in~~
20 ~~accordance with existing and future needs, best promote public health, safety,~~
21 ~~morals, order, convenience, prosperity or the general welfare, as well as efficiency~~

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1 ~~and economy in the process of development~~ consistent with the comprehensive plan
2 of each participating municipality.

NOTE: Links the purpose language for a cooperative plan under s. 66.0307 to each participating municipality's comprehensive plan.

3 **SECTION 25.** 66.0307 (3) (c) of the statutes is repealed and recreated to read:
4 66.0307 **(3)** (c) *Content of plan; consistency with comprehensive plan.* The
5 cooperative plan shall describe how it is consistent with each participating
6 municipality's comprehensive plan.

NOTE: Repeals the detailed provisions of current s. 66.0307 (3) (c) specifying the content of a cooperative plan for the physical development of the territory covered by the plan. Substitutes a general requirement that the cooperative plan describe how it is consistent with each participating municipality's comprehensive plan. The repealed language provides as follows:

66.0307 **(3)** (c) *Content of plan; physical development of territory.* The cooperative plan, and any accompanying maps, plats, charts and descriptive and explanatory materials, shall show the plan agreed upon for the physical development of the territory covered by the plan. The plan may include, without limitation because of enumeration, any of the following:

1. The general location, character and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways and playgrounds.

2. Sites for public buildings and structures, airports, pierhead and bulkhead lines and waterways.

3. Routes for railroads and buses.

4. The general location and extent of sewers, water conduits and other public utilities, whether privately or publicly owned.

5. The acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals described in subds. 1. to 4.

6. Historic districts.

7. The general location, character and extent of community centers and neighborhood units.

8. The general character, extent and layout of the replanning of blighted districts and slum areas.

9. A comprehensive zoning plan.

7 **SECTION 26.** 66.0307 (3) (d) 4. of the statutes is amended to read:
8 66.0307 **(3)** (d) 4. Include a statement explaining how any part of the plan
9 related to the location of boundaries meets the approval criteria under sub. (5) (c)
10 ~~4. and 5.~~

NOTE: Strikes a cross-reference to a statutory provision repealed by SEC. 32 of this bill.

SENATE BILL 134**1 SECTION 27. 66.0307 (3) (dm) of the statutes is repealed.**

NOTE: Repeals the current provision describing the required content of a cooperative plan in connection with environmental consequences and housing needs. Much of this will be addressed in a municipality's comprehensive plan. The repealed language provides as follows:

66.0307 (3) (dm) *Content of plan; environmental consequences and housing needs.*

The cooperative plan shall:

1. Identify any significant adverse consequences to the natural environment, including air and water pollution, energy use, development outside compact urban areas and contribution to urban sprawl, that may be caused by the proposed physical development of the territory covered by the plan.

2. Demonstrate that each participating municipality has considered alternatives to the proposed physical development of the territory covered by the plan, in order to minimize or avoid significant adverse environmental consequences, including those under subd. 1., and include in the plan a description of the alternatives considered.

3. If the physical development of the territory covered by the plan is subject to federal environmental laws or regulations, state laws or state environmental rules, describe how compliance with the laws, regulations or rules will be achieved.

4. Address the need for safe and affordable housing to meet the needs of diverse social and income groups in each municipality that is participating in the preparation of the plan.

5. Include a statement of why the cooperative plan meets the approval criterion under sub. (5) (c) 5m.

2 SECTION 28. 66.0307 (4) (b) of the statutes is amended to read:

3 66.0307 (4) (b) *Public hearing.* At least ~~120~~ 60 days after adoption under par.
4 (a) of the last resolution by a participating municipality and at least 60 days before
5 submitting a cooperative plan to the department for review and approval under sub.
6 (5), the participating municipalities shall hold a joint hearing on the proposed plan.
7 Notice of the hearing shall be given by each participating municipality by class 3
8 notice under ch. 985.

NOTE: Reduces from 120 to 60 the minimum number of days that must pass, after the last adoption by a participating municipality of its resolution authorizing participation in the cooperative plan preparation, before the municipalities may hold the required public hearing on the proposed plan.

9 SECTION 29. 66.0307 (4m) of the statutes is created to read:

10 66.0307 (4m) MEDIATED AGREEMENT PROCEDURE. (a) 1. As an alternative to the
11 parties mutually invoking the procedure under this section, a city, village, or town

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1 may petition the department for mediation of a cooperative plan under this
2 paragraph.

3 2. A city or village may petition for mediation if all of the following apply:

4 a. The city or village adopts an authorizing resolution under sub. (4) (a) (intro.)
5 and requests in writing an adjacent town to adopt an authorizing resolution under
6 sub. (4) (a) (intro.) and the town fails to adopt the resolution within 60 days after the
7 request is received by the town.

8 b. The city or village has adopted a comprehensive plan.

9 3. A town may petition for mediation if all of the following apply:

10 a. The town adopts an authorizing resolution under sub. (4) (a) (intro.) and
11 requests in writing an adjacent city or village to adopt an authorizing resolution
12 under sub. (4) (a) (intro.) and the city or village fails to adopt the resolution within
13 60 days after the request is received by the city or village.

14 b. The town has adopted a comprehensive plan.

15 (b) A municipality that is authorized under par. (a) to petition the department
16 for mediation and elects to do so shall submit the petition within 90 days after the
17 municipality has adopted the authorizing resolution described in par. (a) 2. a. or 3.

18 a. Upon receipt of a petition for mediation, the department shall notify the
19 nonpetitioning adjacent municipality identified in the petition that the petition has
20 been submitted. Within 45 days after receipt of notice from the department that a
21 petition has been submitted, the nonpetitioning municipality shall notify the
22 department whether it agrees to engage in mediation to develop a cooperative plan
23 under this section. Failure of the nonpetitioning municipality to timely notify the
24 department is considered notice that the municipality does not agree to engage in
25 mediation. The department shall send written notice of the nonpetitioning

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1 municipality's decision, on whether it will participate, to the petitioning
2 municipality. If the nonpetitioning municipality refuses to engage in mediation, the
3 petitioning municipality may not submit a petition under this paragraph involving
4 the same nonpetitioning municipality for a period of 3 years after the department
5 sends notice of the refusal.

6 (c) 1. If a nonpetitioning town refuses under par. (b) to engage in mediation, the
7 town may not contest any annexation of its territory to the petitioning city or village
8 that is commenced during the shorter of the following periods:

9 a. The period of 270 days beginning after the town refuses under par. (b) to
10 engage in mediation.

11 b. The period beginning on the date the town refuses under par. (b) to engage
12 in mediation and ending on the date the town agrees to engage in mediation.

13 2. If a nonpetitioning city or village refuses under par. (b) to engage in
14 mediation, an annexation of territory of the petitioning town to the nonpetitioning
15 city or village that is commenced during the shorter of the following periods shall be
16 reviewed by the department in the manner described under s. 66.0217 (6), regardless
17 of the population of the county in which the annexation proceeding is commenced,
18 and, notwithstanding s. 66.0217 (11) (c), may be contested by the town if the
19 department determines that the annexation is not in the public interest:

20 a. The period of 270 days beginning after the city or village refuses under par.
21 (b) to engage in mediation.

22 b. The period on the date the city or village refuses under par. (b) to engage in
23 mediation and ending on the date the city or village agrees to engage in mediation.

24 (d) 1. If both the petitioning municipality and nonpetitioning municipality
25 agree to engage in mediation to develop a cooperative plan under this section, the

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1 municipalities shall select a mediator. The department may assist the
2 municipalities in selecting a mediator. If the municipalities are unable to agree on
3 the selection of a mediator, the department shall furnish a list of 5 mediators to the
4 municipalities. The municipalities shall alternatively strike a name from the list
5 until one name remains, who shall be the mediator.

6 2. The mediator shall assist the parties through recognized mediation
7 techniques to develop and reach agreement on a cooperative plan under this section.
8 Unless the participating municipalities agree to extend the mediation period, the
9 mediation period expires after 270 days. Unless they agree otherwise, the
10 participating municipalities are equally responsible for the costs of the mediation.

11 (e) Before the participating municipalities engage in mediation under this
12 subsection, each shall adopt a resolution under sub. (4) (a) (intro.) and provide the
13 required notice of the resolution. Notwithstanding sub. (4) (b), if the participating
14 municipalities agree on a cooperative plan under this subsection, a public hearing
15 on the plan shall be held under sub. (4) (b) no sooner than 45 days after agreement
16 is reached and at least 45 days before submitting the plan to the department for
17 review and approval under sub. (5).

18 (f) If any litigation contesting annexation of territory of the petitioning or
19 nonpetitioning town to the city or village is commenced during the 3-year period
20 after the department receives the petition for mediation under par. (b), the judge
21 shall under s. 802.12 (2), unless the nonpetitioning municipality objects, order the
22 parties to select a settlement alternative under s. 802.12 (1) (i) as a means to attempt
23 settlement.

NOTE: Creates a mediated agreement procedure under the boundary
agreement-by-cooperative plan statute that provides a means for one municipality to

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SECTION 29

bring an adjacent municipality “to the table” in connection with a common boundary and related issues.

Paragraph (a) states the conditions under which a municipality may petition DOA for mediation of a cooperative plan: the petitioning municipality 1) must have adopted a comprehensive plan and a resolution authorizing participation in the preparation of a cooperative plan and 2) must have requested the adjacent municipality to adopt an authorizing resolution for a cooperative plan, which request was not honored within 60 days after the request.

Paragraph (b) establishes time periods for petitioning DOA for the mediated agreement procedure and for the nonpetitioning municipality to respond to the invitation to mediate. It also provides that if the nonpetitioning municipality refuses to engage in mediation, the petitioning municipality may not submit another petition for mediation involving the same municipality for a period of three years after notice of refusal.

Paragraph (c) provides the incentive to agree to engage in mediation.

If a town refuses to engage in mediation, the town may not contest any annexation of its territory to the petitioning city or village that is commenced during the shorter of the following periods: 1) the period of 270 days beginning after the town refuses to engage in mediation; or 2) the period beginning after the town refuses to engage in mediation until the town agrees to engage in mediation (the latter assumes that the town may agree to engage in mediation after first refusing).

If a city or village refuses to engage in mediation, an annexation of territory of the petitioning town to the nonpetitioning city or village may be contested by the town if DOA determines that the annexation is not in the public interest and if the annexation is commenced during the shorter of the following periods: 1) the period of 270 days beginning after the city or village refuses to engage in mediation; or 2) the period beginning after the city or village refuses to engage in mediation until the city or village agrees to engage in mediation (the latter assumes that the city or village may agree to engage in mediation after first refusing).

Paragraph (d) provides for selection of a mediator, states the general role of the mediator, establishes a mediation period, and apportions the cost of mediation.

Paragraph (e) links the mediated agreement procedure to other provisions in current s. 66.0307. Subject to the specified differences, a cooperative plan developed under the new procedure is subject to the content, procedure, approval, and other requirements under s. 66.0307.

Paragraph (f) provides that, once the mediated agreement procedure is invoked by a municipality, any contested annexation commenced within the next three years involving the petitioning and nonpetitioning municipality is subject to a requirement that the judge, unless the nonpetitioning municipality objects, order the parties to select a settlement alternative under the current ADR statute. This provision is not intended to affect the court’s discretionary authority under s. 802.12, notwithstanding the objection of the nonpetitioning (or petitioning) municipality.

- 1 **SECTION 30.** 66.0307 (5) (c) 1. of the statutes is amended to read:
- 2 66.0307 (5) (c) 1. The content of the plan under sub. (3) (c) to (e) is sufficient
- 3 to enable the department to make the determinations under subds. 2. to ~~5~~ 5.
- 4 **SECTION 31.** 66.0307 (5) (c) 2. of the statutes is amended to read:

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1 66.0307 (5) (c) 2. The cooperative plan is consistent with each participating
2 municipality's comprehensive plan and with current state laws, municipal
3 regulations, and administrative rules that apply to the territory affected by the plan.

NOTE: Revises one of DOA's approval criteria for a cooperative plan to reflect the new general requirement that the cooperative plan be consistent with each municipality's comprehensive plan.

4 **SECTION 32.** 66.0307 (5) (c) 4. of the statutes is repealed.

NOTE: Repeals the following DOA approval criterion as unnecessary in light of the general requirement that the cooperative plan be consistent with each municipality's comprehensive plan:

66.0307 (5) (c) 4. Any boundary maintained or any boundary change under the cooperative plan is reasonably compatible with the characteristics of the surrounding community, taking into consideration present and potential transportation, sewer, water and storm drainage facilities and other infrastructure, fiscal capacity, previous political boundaries, boundaries of school districts and shopping and social customs.

5 **SECTION 33.** 66.0307 (5) (c) 5m. of the statutes is repealed.

NOTE: Repeals the following approval provision, reflecting the repeal of s. 66.0307 (3) (dm) by SEC. 27 of the bill:

66.0307 (5) (c) 5m. The cooperative plan adequately identifies and addresses the significant adverse environmental consequences to the natural environment that may be caused by the proposed physical development of the territory covered by the plan, the municipalities submitting the plan have adequately identified and considered alternatives to minimize or avoid the significant adverse environmental consequences, the proposals in the plan for compliance with federal environmental laws or regulations and state environmental laws or rules are adequate and the need for safe and affordable housing for a diversity of social and income groups in each community has been met.

6 **SECTION 34.** 66.1105 (4) (gm) 1. of the statutes is amended to read:

7 66.1105 (4) (gm) 1. Describes the boundaries, which may, but need not, be the
8 same as those recommended by the planning commission, of a tax incremental
9 district with sufficient definiteness to identify with ordinary and reasonable
10 certainty the territory included in the district. The boundaries of the tax incremental
11 district may not include any annexed territory that was not within the boundaries
12 of the city on January 1, 2004, unless at least 3 years have elapsed since the territory
13 was annexed by the city, unless the city enters into a cooperative plan boundary
14 agreement, under s. 66.0301 (6) or 66.0307, with the town from which the territory

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1 was annexed, or unless the city and town enter into another kind of agreement
2 relating to the annexation except that, notwithstanding these conditions, the city
3 may include territory that was not within the boundaries of the city on January 1,
4 2004, if the city pledges to pay the town an amount equal to the property taxes levied
5 on the territory by the town at the time of the annexation for each of the next 5 years.
6 If, as the result of a pledge by the city to pay the town an amount equal to the property
7 taxes levied on the territory by the town at the time of the annexation for each of the
8 next 5 years, the city includes territory in a tax incremental district that was not
9 within the boundaries of the city on January 1, 2004, the city's pledge is enforceable
10 by the town from which the territory was annexed. The boundaries shall include only
11 those whole units of property as are assessed for general property tax purposes.
12 Property standing vacant for an entire 7-year period immediately preceding
13 adoption of the resolution creating a tax incremental district may not comprise more
14 than 25 percent of the area in the tax incremental district, unless the tax incremental
15 district is suitable under subd. 4. a. for either industrial sites or mixed use
16 development and the local legislative body implements an approved project plan to
17 promote industrial development within the meaning of s. 66.1101 if the district has
18 been designated as suitable for industrial sites, or ~~mixed-used~~ mixed-use
19 development if the district has been designated as suitable for mixed-use
20 development. In this subdivision, "vacant property" includes property where the fair
21 market value or replacement cost value of structural improvements on the parcel is
22 less than the fair market value of the land. In this subdivision, "vacant property"
23 does not include property acquired by the local legislative body under ch. 32, property
24 included within the abandoned Park East freeway corridor or the abandoned Park

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1 West freeway corridor in Milwaukee County, or property that is contaminated by
2 environmental pollution, as defined in s. 66.1106 (1) (d).

3 **SECTION 35.** 117.132 (1m) (a) of the statutes is amended to read:

4 117.132 **(1m)** (a) “Annexed” means annexed or attached under s. 66.0217,
5 66.0219, 66.0221, 66.0223, 66.0225, 66.0227, 66.0301 (6), or 66.0307.

6 (END)