

2007 DRAFTING REQUEST

Bill

Received: **03/30/2007**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-0298**

By/Representing: **Don Dyke**

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

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - zoning**

Extra Copies:

Submit via email: **YES**

Requester's email: **don.dyke@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Municipal boundary agreements; alternative dispute resolution in municipal boundary disputes

Instructions:

Companion to 2007 LRB -2263/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 03/30/2007	csicilia 03/30/2007		_____			S&L
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FE Sent For:

*at intro
4/6*

<END>

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*which was a redraft of
2005 SB 460 (LRB-3191/2)*

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FE Sent For:

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2007 BILL

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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,

BILL**SECTION 1**

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

BILL**SECTION 9**

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,

BILL**SECTION 14**

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.