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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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<b>2003 Wisconsin Act 171</b> [2003 Senate Bill 323]	<b>Municipal Incorporation</b>
2003 Acts: <a href="http://www.legis.state.wi.us/2003/data/acts/">www.legis.state.wi.us/2003/data/acts/</a>	Act Memos: <a href="http://www.legis.state.wi.us/lc/act_memo/act_memo.htm">www.legis.state.wi.us/lc/act_memo/act_memo.htm</a>

*2003 Wisconsin Act 171* makes changes in the laws relating to municipal incorporation.

Generally, the procedure for incorporating territory as a city or village before Act 171 involved the following steps: (1) a petition for incorporation; (2) circuit court review to determine whether specified standards are met; (3) Department of Administration (DOA) review to determine whether other specified standards are met; and (4) an incorporation referendum. [A different process applies to incorporation of certain towns that are adjacent to the City of Milwaukee.]

The Act creates a five-member Incorporation Review Board to take the place of DOA in the above review process. The members of the board are the Secretary of DOA or his or her designee, two members appointed by the Wisconsin Towns Association, one member appointed by the League of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance of Cities. All members of the board, other than Secretary of DOA or his or her designee, serve only in an advisory capacity. The Act includes conflict-of-interest provisions so that if a member of the board owns property in, or resides in, the town that is the subject of the incorporation petition or a contiguous city or village, that member of the board is replaced for purposes of reviewing that petition.

The Act also modifies timelines specified in the statutes for requesting a hearing and for action on the proposed incorporation. Under the Act, within 30 days after receipt by the Incorporation Review Board of a petition from a circuit court, a party in interest may request a hearing; under prior law, the deadline was 20 days. Also, the Act provides that unless the court sets a different time limit, the board must prepare its findings and determination within 180 days after receipt of the referral from the court; this was 90 days under prior law. However, the 180 days or the time set by the court is to be stayed for a reasonable period of time to allow for alternative dispute resolution of any disagreements between interested parties that result from the filing of an incorporation petition if all interested parties agree to this stay and provide written notice of their agreement to the board and to the circuit court. In addition, the Act creates a new statute that states that if the Incorporation Review Board fails to make a

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

determination within 180 days after receipt of a referral or the time set by the court, it is required to refund incorporation review fees and then must make a determination as quickly as possible.

The Act specifies which takes precedence when both an annexation proceeding and incorporation proceeding have been initiated. Under the Act, the circuit court is required to determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated, and the following rules will apply:

- If the court determines that an annexation proceeding was initiated before the publication of a notice of intent to incorporate, the court must refer the incorporation petition to the Incorporation Review Board when the annexation proceeding is final. If the annexation is determined to be valid, the court must exclude the annexed territory from the territory proposed to be incorporated.
- If the court determines that an annexation proceeding was initiated after, and within 30 days after, the publication of a notice of intent to incorporate, the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.
- If the court determines that an annexation proceeding was initiated on the same day as publication of the notice of intent to incorporate, the court must determine which procedure was begun first on that date. That action may proceed and the other action may not proceed unless the first action fails.
- If the court determines that an annexation proceeding was initiated more than 30 days after the publication of the notice of intent to incorporate, the annexation is void.

***Effective Date:*** The Act takes effect on April 20, 2004.

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RNS:tlu:wu:jal