



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON MUNICIPAL ANNEXATION

FROM: Don Dyke, Chief of Legal Services

RE: Current Boundary Agreement Procedures and Suggested Revisions

DATE: November 9, 2004

This Memo summarizes current municipal boundary agreement procedures and revisions to those procedures suggested at the Special Committee's October 12, 2004 meeting. The Memo is intended to facilitate discussion by committee members of possible legislative changes to those procedures. A summary comparison of the statutory procedures used for boundary agreements, prepared by the Department of Administration (DOA), is included with this Memo.

COOPERATIVE BOUNDARY AGREEMENTS (SECTION 66.0307, STATS.)

Current Procedure

Section 66.0307 contains a procedure for changing or maintaining municipal boundaries by agreement. Any combination of cities, villages, or towns may set the common boundary lines between or among themselves pursuant to a cooperative plan approved by the DOA. The cooperative plan must include, among other things, a relatively comprehensive plan for the area covered by the plan, a schedule and description of boundary changes and freezes, and provision for delivery of municipal services to the territory covered by the plan. The procedure at the local level for adopting a cooperative plan consists of an authorizing resolution, public hearing, adoption of the final version of the plan (an extraordinary vote may be required), an optional advisory referendum, and submittal of the plan to DOA for approval. The duration of a plan is 10 years, or longer if agreed to by the parties and approved by DOA.

DOA must approve a cooperative plan if the plan meets statutorily specified criteria concerning: the plan's consistency with applicable laws; the plan's provision for municipal services; the compatibility of any affected boundary with the characteristics of the surrounding community; the shape of any affected boundary; and the plan's identification of and response to any significant adverse environmental consequences that may be caused by any proposed physical development of territory

covered by the plan. Once a plan is approved, provisions in the plan to maintain existing boundaries, any boundary changes in the plan and the schedule for those changes, and the service delivery plan and schedule are binding on the parties to the plan and have the force and effect of a contract. Procedures for amending a plan are provided by statute. (For more detail on s. 66.0307, consult the statute itself and Memo No. 2, *Additional Background Information on Cooperative Boundary Agreements* (November 9, 2004).)

Background

The boundary procedure contained in s. 66.0307 is based on draft legislation developed by the Legislative Council's Special Committee on Municipal Boundary and Related Issues. The draft legislation was recommended by the Legislative Council for introduction in the 1991-92 Legislative Session; however, the proposal was not introduced as a separate bill because there was insufficient time to obtain a formal draft bill from the Legislative Reference Bureau. The proposed procedure was adopted by the Legislature as an amendment, offered by an individual legislator, to the 1991 Budget Adjustment Bill, and was enacted as part of 1991 Wisconsin Act 269 (Budget Adjustment Act).

At the time the draft that formed the basis of s. 66.0307 was being developed by the study committee, then current law (s. 66.027, 1990-91 Stats.) allowed any two municipalities (cities, villages, or towns) whose boundaries were shared at any point to set the common boundary between them. The statute created separate procedures for establishing common boundaries in two contexts: (1) the context of litigation (see current s. 66.0225, Stats.); and (2) outside the context of litigation.

During its deliberations, the Legislative Council's Special Committee on Municipal Boundary and Related Issues observed that setting boundaries by agreement may be more desirable and may result in more rational urban development than is possible under other available annexation boundary change procedures. The Special Committee learned that the authority at that time to enter into boundary agreements did not eliminate all legal questions concerning such agreements and provided no procedure for neutral review of agreements. Therefore, the Special Committee recommended that authority to establish common municipal boundaries outside the context of litigation be replaced by the procedure now found in s. 66.0307.

Among the policy objectives and goals of the Special Committee in recommending the s. 66.0307 procedure were: cooperation--the procedure is premised on local governmental cooperation; certainty--the procedure specifies what parties can agree to and the binding nature of the agreement; planning--the parties are required to develop a plan in connection with boundary changes or boundary freezes; public participation--a procedure is provided for developing a cooperative plan, including notice and public hearing provisions and an optional advisory referendum; and review of plans--DOA approval of a cooperative plan is required.

Suggested Revisions

Suggestions to revise the s. 66.0307 boundary agreement procedure made or received at the October 12, 2004 meeting include:

1. Make it easier for municipalities to enter into cooperative agreements under the procedure. At a minimum, reduce statutory waiting periods between certain steps in the process. (In this regard, see the flowchart, included with this Memo, on the s. 66.0307 procedure, prepared by DOA.)

2. Consider providing financial incentives to communities that enter into boundary agreements under the section.

3. Delete the section's planning requirements, replacing them with a requirement that a cooperative boundary agreement be consistent with each party's comprehensive plan under the comprehensive planning statute, s. 66.1001, Stats.

ESTABLISHING MUNICIPAL BOUNDARIES BY COURT APPROVED STIPULATION (SECTION 66.0225, STATS.)

Current Procedure

Under s. 66.0225, any two municipalities with boundaries immediately adjacent at any point that are parties to a court action, proceeding, or appeal for the purpose of testing the validity of an annexation, incorporation, consolidation, or detachment may enter into a written stipulation to settle the litigation and determine the common boundary line between the municipalities. The court with jurisdiction of the litigation may enter a final judgment incorporating the provisions of the stipulation and fixing the common boundary line.

A stipulation under the section that changes the boundaries of the municipalities must be approved by the governing body of each. The filing requirements and time limits for contesting the boundary change that otherwise apply to annexations under s. 66.0217, Stats., apply to the boundary change.

A stipulation changing boundaries is also subject to a referendum if, within 30 days after publication of the stipulation in a newspaper of general circulation in the area proposed to be annexed or attached, a petition signed by at least 20% of the electors of the area is filed with the clerk of the municipality from which area is proposed to be detached. The referendum is conducted as are annexation referenda. If the referendum election is opposed to detachment from the municipality, all proceedings are void.

Suggestions for a Revision

A suggestion made at the Special Committee's October 12, 2004 meeting, is to consider modifying s. 66.0225 to extend its application to any boundary change, not only boundary changes arising in the context of litigation. (The suggestion is intended as an alternative to a previous suggestion that the current intergovernmental cooperation statute, s. 66.0301, Stats., be revised to clarify that it may be used to establish municipal boundaries.) As noted above, s. 66.0225 at one time was not limited to boundary changes arising in the context of litigation; it was limited to the latter by the enactment of the cooperative boundary statute, s. 66.0307.

INTERGOVERNMENTAL COOPERATION AUTHORITY (SECTION 66.0301, STATS.)

Current Law

General authority for municipalities to enter into agreements for the cooperative exercise of their authority is found in s. 66.0301. Section 66.0301 (2) provides:

In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities...for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal...parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities....

Some observers, noting the lack of specific authority for boundary agreements in this section and the existence of other sections expressly authorizing boundary agreements, have questioned the extent to which this section authorizes boundary agreements.

Suggested Revisions

A suggestion made at the October 12 meeting is to modify s. 66.0301 to expressly allow communities to enter into long-term enforceable boundary agreements of reasonable duration. (A companion suggestion offered is that, if this change is made, certain public participation provisions, such as a public hearing and referendum, be considered.)

DD:rv