

1 **AN ACT** *to amend* 66.0307 (2) (intro.); and *to create* 66.0203 (8) (d) and 66.0307
2 (4m) of the statutes; **relating to**:

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

COMMENT: This preliminary draft was prepared for the Drafting Subcommittee of the Special Committee on Municipal Annexation. The draft reflects certain provisions included in Memo No. 3, "Outline of Proposal by Representative Mark Gottlieb", November 9, 2004, and discussion of those provisions at the Special Committee's November 18, 2004 meeting. Specifically, this draft addresses the provisions of Memo No. 3 included under the headings "Facilitated Negotiation Process" on page 2 of the Memo (characterized in the draft as "mediated agreement procedure") and "Revision of Section 66.0203, Stats." on page 3 of the memo.

3 **SECTION 1.** 66.0203 (8) (d) of the statutes is created to read:
4 66.0203 (8) (d) Paragraph (c) applies only if, before the notice under sub. (1) [notice
5 of intent to circulate incorporation petition] is published, a written opinion has been rendered
6 by a planner certified by [] that a reasonable argument can be made that the proposed
7 incorporation meets the requirements under s. 66.0207 (1) and the public interest
8 determination under s. 66.0207 (2). If a written opinion is not rendered before the notice under
9 sub. (1) is published, any annexation action affecting territory proposed for incorporation may
10 proceed during the pendency of the incorporation.

COMMENT: Provides an alternative to the suggestion included at the end of Memo No. 3 that current s. 66.0203 (8) (c), which stays annexation proceedings during a pending incorporation, be repealed. Current s. 66.0203 (8) (c) provides as follows:

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

been initiated upon the posting of a meeting notice by a city or village that states that the city or village is considering enacting an ordinance under s. 66.0223.

2. If the court determines that an annexation proceeding described under subd. 1. was initiated before the publication of the notice under sub. (1), the court shall refer the petition to the board when the annexation proceeding is final. If the annexation is determined to be valid, the court shall exclude the annexed territory from the territory proposed to be incorporated when it refers the petition to the board.

3. If the court determines that an annexation proceeding described under subd. 1. was initiated after, and within 30 days after, the publication of the notice under sub. (1), 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.

4. If the court determines that an annexation proceeding described under subd. 1. was initiated on the same date as the publication of the notice under sub. (1), the court shall determine which procedure was begun first on that date and that action may proceed and the other action may not proceed unless the first action fails.

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

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

2 66.0307 (2) BOUNDARY CHANGE AUTHORITY. (intro.) Any combination of municipalities
3 may determine the boundary lines between themselves under a cooperative plan that is
4 approved by the department under this section. A city, village, or a town that intends to use
5 the mediated agreement procedure under sub. (4m) to develop a cooperative plan under this
6 section may petition the department under sub. (4m) (a). No boundary of a municipality may
7 be changed or maintained under this section unless the municipality is a party to the
8 cooperative agreement. The cooperative plan shall provide one or more of the following:

COMMENT: References the new mediated agreement procedure, created
 by SEC. 3 of the draft, below.

9 **SECTION 3.** 66.0307 (4m) of the statutes is created to read:

1 66.0307 (4m) MEDIATED AGREEMENT PROCEDURE. (a) As an alternative to the parties
2 mutually invoking the procedure under this section, a city, village, or town may petition the
3 department for mediation of a cooperative plan under this paragraph.

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

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

8 b. The city or village [].

COMMENT: It is contemplated that the city or village would have to meet
certain standards, to be determined, in order to petition for the mediated
agreement procedure.

9 2. 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 requests in
11 writing an adjacent city or village to adopt an authorizing resolution under sub. (4) (a) (intro.)
12 and the city or village fails to adopt the resolution within 60 days after the request.

13 b. The town [].

COMMENT: It is contemplated that the town would have to meet certain
standards, to be determined, in order to petition for the mediated
agreement procedure.

14 (b) Upon receipt of a petition for mediation, the department shall notify the
15 nonpetitioning adjacent municipality identified in the petition that the petition has been
16 submitted. Within 20 days after receipt of notice from the department that a petition has been
17 submitted, the nonpetitioning municipality shall notify the department whether it agrees to
18 engage in mediation to develop a cooperative plan under this section. Failure of the
19 nonpetitioning municipality to timely notify the department is considered notice that the
20 municipality does not agree to engage in mediation.

1 (c) If a town is the nonpetitioning municipality and refuses to engage in mediation, the
2 town may not contest any annexation of town territory to the petitioning city or village if the
3 annexation is commenced within 3 years after notice of the town's refusal to engage in
4 mediation. If a city or village is the nonpetitioning municipality and refuses to engage in
5 mediation, annexation proceedings to annex territory of the petitioning town to the
6 nonpetitioning city or village may be commenced only under s. 66.0217 (2) for 3 years after
7 notice of the city's or village's refusal to engage in mediation.

COMMENT: Reference to s. 66.0217 (2) is to annexations under the direct
annexation by unanimous approval procedure.

8 (d) If both the petitioning municipality and nonpetitioning municipality agree to engage
9 in mediation to develop a cooperative plan under this section, the department shall appoint a
10 qualified mediator. The mediator shall assist the parties through recognized mediation
11 techniques to develop and reach agreement on a cooperative plan under this section. Unless
12 the participating municipalities agree to extend the mediation period, the mediation period
13 expires after 270 days. The participating municipalities are responsible for the costs of the
14 mediation. During the mediation period, no proceeding to annex territory of the participating
15 town to the participating city or village may commence except under s. 66.0217 (2).

COMMENT: Reference to s. 66.0217 (2) is to annexations under the direct
annexation by unanimous approval procedure.

16 (e) Before the participating municipalities engage in mediation under this subsection,
17 each shall adopt a resolution under sub. (4) (a) (intro.) and provide the required notice of the
18 resolution. If the participating municipalities agree on a cooperative plan under this
19 subsection, a public hearing on the plan shall be held under sub. (4) (b) no sooner than 45 days
20 after agreement is reached and at least 45 days before submitting the plan to the department

1 for review and approval under sub. (5). Otherwise, the provisions of this section apply to a
2 cooperative plan agreed to under this subsection.

COMMENT: Links the new mediated agreement procedure to other provisions in current s. 66.0307. Thus, 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.

3 (f) For a period of 5 years after notice by the nonpetitioning municipality under par. (b)
4 that it agrees to engage in mediation, in any litigation commenced during that period involving
5 annexation of the participating town to the participating city or village the judge may require
6 the town and city or village, without their consent, to engage in nonbinding arbitration, as
7 defined in s. 802.12 (1) (h), to attempt to settle the annexation dispute. Section 802.12 (2) (c)
8 and (d) apply to an order by a judge for nonbinding arbitration under this subsection. If the
9 parties do not accept the opinion of the arbitrator, the opinion of the arbitrator may be
10 introduced as evidence to the extent relevant to the annexation dispute that is the subject of
11 the litigation. This paragraph does not affect the admissibility of the arbitrator's opinion for
12 other purposes.

COMMENT: 1. "Nonbinding arbitration" is defined in s. 802.12 (1) (h) as "a dispute resolution process in which a neutral third person is given the authority to render a nonbinding decision as a basis for subsequent negotiation between the parties after the parties present evidence and examine witnesses under the rules of evidence agreed to by the parties or determined by the neutral third person".

2. Section 802.12 (2) (c) and (d), referenced in the above provision, provides:

802.12 (2) (c) If the parties cannot agree on a person to provide the settlement alternative, the judge may appoint any person who the judge believes has the ability and skills necessary to bring the parties together in settlement.

(d) If the parties cannot agree regarding the payment of a provider of a settlement alternative, the judge shall direct that the parties pay the

reasonable fees and expenses of the provider of the settlement alternative. The judge may order the parties to pay into an escrow account an amount estimated to be sufficient to pay the reasonable fees and expenses of the provider of the settlement alternative.

- 1 (g) If a cooperative plan developed under this subsection becomes effective before
2 December 31, 2009, each participating municipality is eligible for [financial incentive].

COMMENT: Contemplates possible financial incentives for developing a cooperative plan under the provision before the consistency requirement comprehensive plans takes effect.

- 3 (END)