

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft 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 draft 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 draft are summarized below. For additional information, see the text of the draft and notes following individual provisions of the draft.

I. BOUNDARY AGREEMENTS

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

1. Simplifying Current Procedure

The draft 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 draft 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 draft 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 draft 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.)

The draft 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 draft 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 the boundary “that is the subject of the annexation”. The draft provides that in contested consolidations, common detachments, or corporations, the action 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 draft expressly provides, for illustrative purposes, that the current ADR provisions that apply generally to court proceedings, s. 802.12, stats., apply to a contested annexation.

The draft requires the DOA to make available on its public website a list of persons who have identified themselves as professionals qualified to facilitate alternative dispute resolution 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 sub.
- 3 (14), and subject to s. ss. 66.0301 (6) (e) and 66.0307 (7), if a petition for direct annexation
- 4 signed by all of the electors residing in the territory and the owners of all of the real property
- 5 in the territory is filed with the city or village clerk, and with the town clerk of the town or

1 towns in which the territory is located, together with a scale map and a legal description of the
2 property to be annexed, an annexation ordinance for the annexation of the territory may be
3 enacted by a two-thirds vote of the elected members of the governing body of the city or
4 village without compliance with the notice requirements of sub. (4). In an annexation under
5 this subsection, subject to sub. (6), the person filing the petition with the city or village clerk
6 and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal
7 description of the territory to be annexed to the department and the governing body shall
8 review the advice of the department, if any, before enacting the annexation ordinance.

9 (3) OTHER METHODS OF ANNEXATION. (intro.) Subject to ~~s.~~ ss. 66.0301 (6) (e) and
10 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may
11 be annexed to the city or village in the following ways:

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

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

1 websites, such as those of relevant professional associations and county dispute resolution
2 centers.

NOTE: To facilitate use of ADR in annexation and other boundary disputes, requires the DOA to provide on its public website a list of persons who have identified themselves as professionals qualified to facilitate resolution of such disputes.

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

4 66.0217 (**11**) (b) An action contesting an annexation shall be given preference in the
5 circuit court. Section 802.12 applies to an action contesting an annexation.

NOTE: Adds reference to the ADR statute, s. 802.12, for illustrative purposes; the provision already applies to court proceedings involving a contested annexation. Specific reference may facilitate the use of the provision in contested annexations.

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

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

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

13 66.0221 (**1**) Upon its own motion and subject to sub. (3) and ~~s.~~ ss. 66.0301 (6) (e) and
14 66.0307 (7), a city or village, by a two-thirds vote of the entire membership of its governing
15 body, may enact an ordinance annexing territory which comprises a portion of a town or towns
16 and which was completely surrounded by territory of the city or village on December 2, 1973.
17 The ordinance shall include all surrounded town areas except those that are exempt by mutual
18 agreement of all of the governing bodies involved. The annexation ordinance shall contain
19 a legal description of the territory and the name of the town or towns from which the territory

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

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

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

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

19 66.0223 (1) In addition to other methods provided by law and subject to sub. (2) and
20 ss. 59.692 (7), 66.0301 (6) (e), and 66.0307 (7), territory owned by and lying near but not
21 necessarily contiguous to a village or city may be annexed to a village or city by ordinance
22 enacted by the board of trustees of the village or the common council of the city, provided that
23 in the case of noncontiguous territory the use of the territory by the city or village is not
24 contrary to any town or county zoning regulation. The ordinance shall contain the exact

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

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

12 **66.0225 (title) Stipulated boundary agreements in contested boundary actions.**

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

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

1 this section is subject to a referendum of the electors residing within the territory ~~annexed or~~
2 ~~detached~~ whose jurisdiction is subject to change under the stipulation, if within 30 days after
3 the publication of the stipulation to change boundaries in a newspaper of general circulation
4 in the area ~~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 area to~~
6 ~~be annexed or detached~~ residing within the territory whose jurisdiction is subject to change
7 under the stipulation is filed with the clerk of the municipality from which the greater area is
8 proposed to be ~~detached~~ removed and is filed as provided in s. 8.37. The referendum shall be
9 conducted as are annexation referenda. If the referendum election is ~~opposed to detachment~~
10 ~~from the 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 boundary “that is the subject of the annexation”. The stricken last sentence is replaced by a definition created by SEC. 10 of the draft.

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 draft, or s. 66.0307, as revised by this draft. 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 draft.

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, or town.

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

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

1 **66.0225 (3)** CONTESTED BOUNDARY ACTIONS. (a) In this subsection, “boundary action”
2 means an action, proceeding, or appeal in court contesting the validity of an annexation,
3 consolidation, detachment, or incorporation.

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

NOTE: Requires parties to a contested consolidation, detachment, or incorporation proceeding to utilize 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 draft.)

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

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

10 **66.0225 (4)** AUTHORITY FOR CERTAIN STIPULATIONS. A court–approved stipulation under
11 authority of this section before the treatment of this section by 2005 Wisconsin act [this act]
12 that affects the location of a boundary between municipalities is not invalid as lacking
13 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 draft, 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.

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

1 **66.0227 Detachment of territory.** (intro.) Subject to ~~s.~~ ss. 66.0301 (6) (e) and 66.0307
2 (7), territory may be detached from a city or village and attached to a city, village or town to
3 which it is contiguous as follows:

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

5 **66.0229 Consolidation.** Subject to ~~s.~~ ss. 66.0301 (6) (e) and 66.0307 (7), a town,
6 village or city may be consolidated with a contiguous town, village or city, by ordinance,
7 passed by a two-thirds vote of all the members of each board or council, fixing the terms of
8 the consolidation and ratified by the electors at a referendum held in each municipality. The
9 ballots shall bear the words, “for consolidation”, and “against consolidation”, and if a majority
10 of the votes cast in each municipality are for consolidation, the ordinances shall take effect and
11 have the force of a contract. The ordinance and the result of the referendum shall be certified
12 as provided in s. 66.0211 (5); if a town the certification shall be preserved as provided in ss.
13 66.0211 (5) and 66.0235, respectively. Consolidation does not affect the preexisting rights or
14 liabilities of any municipality and actions on those rights or liabilities may be commenced or
15 completed as if there were no consolidation. A consolidation ordinance proposing the
16 consolidation of a town and a city or village shall, within 10 days after its adoption and prior
17 to its submission to the voters for ratification at a referendum, be submitted to the circuit court
18 and the department of administration for a determination of whether the proposed
19 consolidation is in the public interest. The circuit court shall determine whether the proposed
20 ordinance meets the formal requirements of this section and shall then refer the matter to the
21 department of administration, which shall find as prescribed in s. 66.0203 whether the
22 proposed consolidation is in the public interest in accordance with the standards in s. 66.0207.
23 The department’s findings have the same status as incorporation findings under ss. 66.0203
24 to 66.0213.

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

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

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

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

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

21 66.0301 (1) (a) ~~In~~ Except as provided in pars. (b) and (c), in this section “municipality”
22 means the state or any department or agency thereof, or any city, village, town, county, school
23 district, public library system, public inland lake protection and rehabilitation district, sanitary
24 district, farm drainage district, metropolitan sewerage district, sewer utility district, solid

1 waste management system created under s. 59.70 (2), local exposition district created under
2 subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229,
3 local professional football stadium district created under subch. IV of ch. 229, a local cultural
4 arts district created under subch. V of ch. 229, family care district under s. 46.2895, water
5 utility district, mosquito control district, municipal electric company, county or city transit
6 commission, commission created by contract under this section, taxation district, regional
7 planning commission, or city–county health department.

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

9 66.0301 (1) (c) For purposes of sub. (6), “municipality” means a city, village, or town.

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

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

11 66.0301 (6) (a) Any 2 municipalities whose boundaries are immediately adjacent at any
12 point may enter into a written agreement determining all or a portion of the common boundary
13 line between the municipalities. An agreement under this subsection may not include any
14 provision other than those authorized under pars. (b) and (e) and one or more of the following:

- 15 1. That specified boundary lines are effective upon the effective date of the agreement.
- 16 2. That specified boundary line changes shall occur during the term of the agreement
17 and the approximate dates by which the changes shall occur.
- 18 3. That specified boundary line changes may occur during the term of the agreement
19 and the approximate dates by which the changes may occur.
- 20 4. That a required boundary line change under subd. 2. or an optional boundary line
21 change under subd. 3. is subject to the occurrence of conditions set forth in the agreement.
- 22 5. That specified boundary lines may not be changed during the term of the agreement.

1 (b) In addition to provisions under par. (a), an agreement under this subsection may
2 include provisions the municipalities are authorized to agree to under this section and s.
3 66.0305.

4 (c) The maximum term of an agreement under this subsection is 10 years. When an
5 agreement expires, all provisions of the agreement expire and any boundary determined under
6 the agreement remains until subsequently changed.

7 (d) 1. An agreement under this subsection shall be approved by the governing body of
8 each municipality by adoption of a resolution. Before each municipality may adopt a
9 resolution, each municipality shall hold a public hearing on the agreement or both
10 municipalities shall hold a joint hearing on the agreement. Before the public hearing may be
11 held, each municipality shall give notice of the pending agreement and public hearing by
12 publishing a class 1 notice and by giving notice to each property owner whose property is
13 currently located in that municipality and in, or immediately adjacent to, the territory whose
14 jurisdiction will change. Notice shall be given at least 20 days before the public hearing and
15 notice to property owners shall be made by certified mail.

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

1 conducted jointly by each municipality and shall otherwise be conducted as are annexation
2 referenda. If the referendum approves the agreement, the agreement may take effect. If the
3 referendum does not approve the agreement, the agreement may not take effect.

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

10 (f) A boundary change included in an agreement under this subsection shall be
11 accomplished by the enactment of an ordinance by the governing body designated to do so in
12 the agreement. The filing and recording requirements under s. 66.0217 (9) (a), as they apply
13 to cities and villages under s. 66.0217 (9) (a), apply to municipalities under this subsection.
14 The requirements for the secretary of state are the same as those required in s. 66.0217 (9) (b).

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

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

20 (i) An agreement under authority of this section before the treatment of this section by
21 2005 Wisconsin act [this act] that affects the location of a boundary between municipalities
22 is not invalid as lacking authority under this section to affect the location of the boundary.

NOTE: Creates another tool for any 2 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. (i), 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.

Paragraph (b) authorizes an agreement under the subsection to also include provisions the party municipalities may agree to under s. 66.0301 generally and under s. 66.0305 (agreements to share revenues).

Paragraph (c) establishes the maximum term of an agreement at 10 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 (d) 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 (e) 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 (f) provides filing and recording requirements for boundary changes pursuant to an agreement under the subsection. It is patterned after s. 66.0307 (10).

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

Paragraph (h) 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 (i) 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 agreements with
4 respect to municipal boundaries under s. 66.0225, 66.0301 (6), or 66.0307.

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

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

7 66.0307 (1) (af) “Comprehensive plan” means a plan adopted under s. 66.1001 or, if
8 a municipality has not adopted a plan under s. 66.1001, a master plan adopted under s. 62.23
9 (2) or (3).

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

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

11 66.0307 (2) BOUNDARY CHANGE AUTHORITY. (intro.) Any Unless the mediated
12 agreement procedure under sub. (4m) is used to develop a cooperative plan, any combination
13 of municipalities may determine the boundary lines between themselves under a cooperative
14 plan that is approved by the department under this section. A single city or village and a single
15 town may use the mediated agreement procedure under sub. (4m) to determine a common
16 boundary line under a cooperative plan that is approved by the department under this section.

1 No boundary of a municipality may be changed or maintained under this section unless the
2 municipality is a party to the cooperative agreement. The cooperative plan shall provide one
3 or more of the following:

NOTE: Revised to reflect the creation by SEC. 28 of this draft of a new mediated agreement procedure for developing a cooperative plan.

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

5 66.0307 (3) (b) *Purpose of plan.* The cooperative plan shall be made with the general
6 purpose of guiding and accomplishing a coordinated, adjusted and harmonious development
7 of the territory covered by the plan ~~which will, in accordance with existing and future needs,~~
8 ~~best promote public health, safety, morals, order, convenience, prosperity or the general~~
9 ~~welfare, as well as efficiency and economy in the process of development~~ consistent with the
10 comprehensive plan of each participating municipality.

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

11 **SECTION 25.** 66.0307 (3) (c) of the statutes is repealed and recreated to read:

12 66.0307 (3) (c) *Content of plan; consistency with comprehensive plan.* The cooperative
13 plan shall describe how it is consistent with each participating municipality's comprehensive
14 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.

1 **SECTION 26.** 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.

1 **SECTION 27.** 66.0307 (4) (b) of the statutes is amended to read:

2 66.0307 (4) (b) *Public hearing.* At least ~~120~~ 60 days after adoption under par. (a) of
3 the last resolution by a participating municipality and at least 60 days before submitting a
4 cooperative plan to the department for review and approval under sub. (5), the participating
5 municipalities shall hold a joint hearing on the proposed plan. Notice of the hearing shall be
6 given by each participating municipality by class 3 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.

7 **SECTION 28.** 66.0307 (4m) of the statutes is created to read:

8 66.0307 (4m) **MEDIATED AGREEMENT PROCEDURE.** (a) As an alternative to the parties
9 mutually invoking the procedure under this section, a city, village, or town may petition the
10 department for mediation of a cooperative plan under this paragraph.

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

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

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

1 2. A town may petition for mediation if all of the following apply:

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

5 b. The town has adopted a comprehensive plan.

6 (b) A municipality that is authorized under par. (a) to petition the department for
7 mediation and elects to do so shall submit the petition within 90 days after the municipality
8 has adopted the authorizing resolution described in par. (a) 1. a. or par. (a) 2. a. Upon receipt
9 of a petition for mediation, the department shall notify the nonpetitioning adjacent
10 municipality identified in the petition that the petition has been submitted. Within 45 days
11 after receipt of notice from the department that a petition has been submitted, the
12 nonpetitioning municipality shall notify the department whether it agrees to engage in
13 mediation to develop a cooperative plan under this section. Failure of the nonpetitioning
14 municipality to timely notify the department is considered notice that the municipality does
15 not agree to engage in mediation. If the nonpetitioning municipality refuses to engage in
16 mediation, the petitioning municipality may not submit a petition under par. (a) involving the
17 same nonpetitioning municipality for a period of 3 years after notice of the refusal.

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

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

23 b. The period beginning after the town refuses under par. (b) to engage in mediation until
24 the town agrees to engage in mediation.

1 2. If a nonpetitioning city or village refuses under par. (b) to engage in mediation, an
2 annexation of territory of the petitioning town to the nonpetitioning city or village [shall be
3 reviewed by the department under s. 66.0217 (6), regardless of the population of the county
4 in which the annexation proceeding is commenced, and] may be contested by the town if the
5 department determines the annexation is not in the public interest, s. 66.0217 (11) (c)
6 notwithstanding, if the annexation is commenced during the shorter of the following periods:

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

9 b. The period beginning after the city or village refuses under par. (b) to engage in
10 mediation until the city or village agrees to engage in mediation.

COMMENT: 1. The bracketed alternative in subd. 2. assumes current law regarding DOA advisory review of annexations. It is bracketed pending consideration of WLC: 0067/1 by the special committee.

2. If current law on DOA's advisory review of annexations is retained, additional statutory treatment may be necessary to ensure that all annexations described in subd. 2. are submitted to DOA for review.

11 (d) 1. If both the petitioning municipality and nonpetitioning municipality agree to
12 engage in mediation to develop a cooperative plan under this section, the municipalities shall
13 select a mediator. The department may assist the municipalities in selecting a mediator. If the
14 municipalities are unable to agree on the selection of a mediator, the department shall furnish
15 a list of 5 mediators to the municipalities. The municipalities shall alternatively strike a name
16 from the list until one name remains, who is the mediator.

17 2. The mediator shall assist the parties through recognized mediation techniques to
18 develop and reach agreement on a cooperative plan under this section. Unless the participating
19 municipalities agree to extend the mediation period, the mediation period expires after 270

1 days. Unless they agree otherwise, the participating municipalities are equally responsible for
2 the costs of the mediation.

3 (e) Before the participating municipalities engage in mediation under this subsection,
4 each shall adopt a resolution under sub. (4) (a) (intro.) and provide the required notice of the
5 resolution. If the participating municipalities agree on a cooperative plan under this
6 subsection, a public hearing on the plan shall be held under sub. (4) (b) no sooner than 45 days
7 after agreement is reached and at least 45 days before submitting the plan to the department
8 for review and approval under sub. (5). Otherwise, the provisions of this section apply to a
9 cooperative plan agreed to under this subsection.

10 (f) If any litigation contesting annexation of territory of the petitioning or
11 nonpetitioning town to the city or village is commenced during the 3-year period after the
12 department receives the petition for mediation under par. (a), the judge shall, unless the
13 nonpetitioning municipality objects, order the parties to select a settlement alternative under
14 s. 802.12 (1) and (2) as a means to attempt settlement.

NOTE: Creates a mediated agreement procedure under the boundary agreement-by-cooperative plan statute that provides a means for one municipality to 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 the DOA for mediation of a cooperative plan: the petitioning municipality must have (1) 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 the 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 3 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 the 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 3 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 29.** 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 to enable
- 3 the department to make the determinations under subds. 2. to ~~5~~ 5.

1 **SECTION 30.** 66.0307 (5) (c) 2. of the statutes is amended to read:

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

NOTE: Revises one of the 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.

5 **SECTION 31.** 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.

6 **SECTION 32.** 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. 26 of the draft:

 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.

7 **SECTION 33.** 66.1105 (4) (gm) 1. of the statutes is amended to read:

8 66.1105 (4) (gm) 1. Describes the boundaries, which may, but need not, be the same as
9 those recommended by the planning commission, of a tax incremental district with sufficient

1 definiteness to identify with ordinary and reasonable certainty the territory included in the
2 district. The boundaries of the tax incremental district may not include any annexed territory
3 that was not within the boundaries of the city on January 1, 2004, unless at least 3 years have
4 elapsed since the territory was annexed by the city, unless the city enters into a cooperative
5 plan boundary agreement, under s. 66.0301 (6) or 66.0307, with the town from which the
6 territory was annexed, or unless the city and town enter into another kind of agreement relating
7 to the annexation except that, notwithstanding these conditions, the city may include territory
8 that was not within the boundaries of the city on January 1, 2004, if the city pledges to pay the
9 town an amount equal to the property taxes levied on the territory by the town at the time of
10 the annexation for each of the next 5 years. If, as the result of a pledge by the city to pay the
11 town an amount equal to the property taxes levied on the territory by the town at the time of
12 the annexation for each of the next 5 years, the city includes territory in a tax incremental
13 district that was not within the boundaries of the city on January 1, 2004, the city's pledge is
14 enforceable by the town from which the territory was annexed. The boundaries shall include
15 only those whole units of property as are assessed for general property tax purposes. Property
16 standing vacant for an entire 7-year period immediately preceding adoption of the resolution
17 creating a tax incremental district may not comprise more than 25% of the area in the tax
18 incremental district, unless the tax incremental district is suitable for industrial sites under
19 subd. 4. a. and the local legislative body implements an approved project plan to promote
20 industrial development within the meaning of s. 66.1101. In this subdivision, "vacant
21 property" includes property where the fair market value or replacement cost value of structural
22 improvements on the parcel is less than the fair market value of the land. In this subdivision,
23 "vacant property" does not include property acquired by the local legislative body under ch.
24 32, property included within the abandoned Park East freeway corridor or the abandoned Park

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 34.** 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, 66.0219,
5 66.0221, 66.0223, 66.0225, 66.0227, 66.0301 (6), or 66.0307.

6 (END)