



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
MUNICIPAL ANNEXATION

May 25, 2005

PRL 2005-13

Special Committee on Municipal Annexation

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May 25, 2005

CONTENTS

PART I - KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS.....	3
WLC: 0132/1, Relating to Municipal Boundary Agreements and the Use of Alternative Dispute Resolution in Municipal Boundary Disputes	3
WLC: 0067/2, Relating to Department of Administration Advisory Review of Certain Annexations.....	3
PART II- COMMITTEE ACTIVITY.....	5
Assignment.....	5
Summary of Meetings.....	5
PART III - RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL	7
WLC: 0132/1	7
WLC: 0067/2	9
Appendix 1 - Committee and Joint Legislative Council Votes	11
Appendix 2 - Lists of Joint Legislative Council Members	13
Appendix 3 - List of Committee Members.....	15
Appendix 4 - Committee Materials List.....	17

PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Municipal Annexation recommends the following proposals to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature:

WLC: 0132/1, Relating to Municipal Boundary Agreements and the Use of Alternative Dispute Resolution in Municipal Boundary Disputes

WLC: 0132/1 does the following:

- Simplifies the current plan requirements for boundary agreements by a cooperative plan (s. 66.0307, Stats.) and reduces the minimum time period for developing a cooperative plan.
- Provides a procedure for an adjacent municipality to petition for development of a cooperative plan through mediation if an adjacent municipality declines to participate in the current procedure to develop a cooperative plan.
- Establishes a specific procedure for common municipal boundaries to be determined by agreement under s. 66.0301, Stats. (the general intergovernmental agreement statute).
- Limits the application of s. 66.0225, Stats. (boundaries fixed by court judgment) to contested annexations and limits the scope of a boundary determination under that procedure to the boundary “that is the subject of the annexation.”
- Provides that the current alternative dispute resolution (ADR) statute provision that applies generally to court proceedings, s. 802.12, Stats., applies to a contested annexation.
- Requires the 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.

WLC: 0067/2, Relating to Department of Administration Advisory Review of Certain Annexations

WLC: 0067/2 extends the Department of Administration (DOA) advisory review of annexations commenced under s. 66.0217, Stats. (annexations initiated by electors and property owners) to include such annexations commenced in any county, not only those commenced in counties with a population of 50,000 or more. In addition, for annexations of more than 20 acres, the draft requires the DOA in making its advisory public interest determination to consider the impact of the annexation on the tax base and property taxes.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Municipal Annexation by a May 21, 2004 mail ballot. The 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, and to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages, and to make related recommendations.

The membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of three Senators*, four Representatives, and seven public members. A list of committee members is included as **Appendix 3** to this report.

Summary of Meetings

The **Special Committee** held three meetings at the State Capitol in Madison on the following dates:

October 12, 2004
November 18, 2004
May 24, 2005

October 12, 2004: At its first meeting, the Special Committee heard testimony on suggestions for revising annexation-related statutes, and on how to reduce conflicts and costs experienced in annexation proceedings. The hearing included testimony from representatives of the Wisconsin Towns Association, the Wisconsin Alliance of Cities, Inc., and the League of Wisconsin Municipalities, as well as from property owners and an attorney emphasizing the need to take into account the interests of property owners in studying annexation.

The committee concluded by discussing its assignment and possible areas for recommendations. Possibilities identified included revisions to current boundary agreement procedures and expanded use of ADR.

November 18, 2004: At its second meeting, committee staff briefly described Memo Nos. 1 and 2, relating to municipal boundary agreement procedures, and Memo No. 4, relating to ADR.

Representative Gottlieb then gave an overview of his proposals outlined in Memo No. 3, most of which relate to municipal boundary agreement procedures, linking them to ADR and annexation law. He stated his goals as facilitating cooperation and minimizing disputes, encouraging municipalities to enter into cooperative agreements rather than litigation, and making it easier to resolve disputes when they occur.

The committee discussed proposals to be prepared as draft legislation for further review. Chair Lasee then appointed a subcommittee to work on draft legislation for committee consideration, based on the day's discussion. Members of the subcommittee were Representative Gottlieb, Mr. Clark, Mr. Derr, Mr. Kraft, and Mr. Mooney.

* Senator Coggs later resigned from the committee.

May 24, 2005: At its final meeting, the committee considered the draft legislation developed by the Drafting Subcommittee. Following its review and discussion, the committee voted to recommend WLC: 0132/1, relating to municipal boundary agreements and the use of ADR in municipal boundary disputes, without amendment.

As part of the committee's consideration of WLC: 0067/1, relating to DOA advisory review of certain annexations, the committee considered an amendment offered by Chair Lasee. The amendment would require the DOA, as part of its advisory public interest review of certain annexations, to consider the effect of the annexation on the tax base and real property taxes in the existing city or village and in the territory to be annexed. After revising the amendment, the committee voted to adopt the amendment and to recommend WLC: 0067/1, as amended.

During this meeting, Chair Lasee thanked members of the committee for their work and diligence and gave special recognition to members of the Drafting Subcommittee.

The ***Drafting Subcommittee*** held three meetings at the State Capitol in Madison on the following dates:

December 9, 2004
January 19, 2005
February 4, 2005

December 9, 2004, January 19, 2005, and February 4, 2005: The subcommittee developed draft language providing for various statutory alternatives for municipalities to reach a boundary agreement, in an attempt to minimize litigation and disputes, as follows:

- A boundary agreement procedure in the context of a contested boundary action in court under s. 66.0225, Stats.
- A mediated boundary agreement procedure in the context of a longer-term DOA-approved cooperative plan under s. 66.0307, Stats.
- A boundary agreement procedure in the context of shorter-term intergovernmental cooperation under s. 66.0301, Stats.

In addition, with one member dissenting, the subcommittee developed draft legislation providing for an expansion of DOA's advisory review authority concerning proposed annexations.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides a description of the drafts as recommended by the Special Committee on Municipal Annexation.

WLC: 0132/1

WLC: 0132/1 addresses: (1) the determination of common municipal (city, village, and town) boundaries by agreement; and (2) the use of 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 planning requirements under s. 66.0307, Stats., for cooperative plans by substituting a general requirement for consistency with a comprehensive plan for the current detailed planning requirements. The current requirements specify the content of a cooperative plan as the plan relates to the physical development of territory covered by the plan. “Comprehensive plan” is defined by the draft as 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 required public hearing on the proposed cooperative plan may be held.

2. Mediated Agreement Procedure

WLC: 0132/1 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.

A municipality may petition the DOA for mediation of a cooperative plan if the petitioning municipality has: (a) adopted a comprehensive plan and a resolution authorizing participation in the preparation of a cooperative plan; and (b) requested the adjacent municipality to adopt an authorizing resolution for a cooperative plan, which request was not honored within 60 days after the request.

The draft 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 three years after notice of refusal.

Incentives to agree to engage in mediation are included in the draft:

a. 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).

b. 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).

The draft provides for selection of a mediator, states the general role of the mediator, establishes a mediation period, and apportions the cost of mediation.

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.

Once the mediated agreement procedure is invoked by a municipality, any contested annexation commenced within the next three 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 to order the parties to attempt settlement by ADR, notwithstanding the objection of the nonpetitioning (or petitioning) municipality.

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., the general intergovernmental cooperation statute. 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). 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, its use in this regard has been questioned by some. For example, at least one circuit court has held that boundary agreements are not authorized under current s. 66.0301. (The draft provides 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.)

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. When it is desirable to have an agreement of longer duration, s. 66.0307 is available (and, presumably, another agreement under s. 66.0301 could be entered into).

The s. 66.0301 boundary agreement 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.

A boundary agreement under s. 66.0301 may provide generally 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.

The draft provides filing and recording requirements for boundary changes pursuant to an agreement under the new procedure and provides a statute of limitations for contesting the validity of such an agreement.

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 judgment) 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 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 the draft, or s. 66.0307, as revised by the 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.

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 statute provision that applies 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 ADR of annexation, boundary, and land use disputes.

WLC: 0067/2

WLC: 0067/2 extends the DOA advisory review of annexations under s. 66.0217, Stats., to include counties with a population of under 50,000. The current 50,000 population threshold limits the DOA advisory review to 27 counties. The DOA advisory review consists of a statutorily prescribed public interest determination, based: (1) on whether the governmental services to be supplied to the territory to be annexed could clearly be better supplied by the town or by another city or village; and (2) on the shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city. In practice, the advisory review also consists of a less formal “technical review” of proposed annexations by DOA staff, including accuracy of legal descriptions and maps. The annexing city or village is required to review DOA’s advisory determination before final action is taken on the annexation.

The draft also creates a new factor for the DOA to consider in making its advisory public interest determination for annexations commenced under s. 66.0217, Stats., that will annex more than 20 acres. Under the amendment, in addition to the two factors the department is to consider under current law, the department would be required to consider the annexing city’s or village’s estimate of the annexation’s ultimate impact on the tax base of and on taxes levied on real property in, the annexing municipality and in the territory proposed to be annexed. “Ultimate impact” refers to the impact at the time when the area is built-out and all real property taxes generated go to all taxing jurisdictions. For purposes of the estimate, the annexing city or village is to assume that undeveloped land in the territory proposed to be annexed will be developed in accordance with the master plan or comprehensive plan in effect at the time of the annexation. The annexing municipality is required to furnish the estimate to the department within five days after receiving the department’s request and to publish a notice summarizing the estimate before adopting the annexation ordinance.

Appendix 1

Committee and Joint Legislative Council Votes

The following drafts were recommended by the Special Committee on Municipal Annexation to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature:

WLC: 0132/1, relating to municipal boundary agreements and the use of alternative dispute resolution in municipal boundary disputes, was recommended by a vote of Ayes, 9 (Sens. Lasee and Brown; Reps. Gottlieb and Kerkman; and Public Members Clark, Derr, Kraft, Mooney, and Parmentier); Noes, 1 (Rep. Zepnick); and Absent, 3 (Rep. Kaufert and Public Members Jones and Kaster). Representative Kaufert would have voted in the affirmative had he been able to attend.

WLC: 0067/2, relating to Department of Administration advisory review of certain annexations, was recommended by a vote of Ayes, 9 (Sens. Lasee and Brown; Reps. Gottlieb, Kerkman, and Zepnick; and Public Members Clark, Derr, Mooney, and Parmentier); Noes, 1 (Public Member Kraft); and Absent, 3 (Rep. Kaufert and Public Members Jones and Kaster). Representative Kaufert would have voted in the affirmative had he been able to attend.

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE

Senate President

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Speaker Pro Tempore

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MICHAEL LEHMAN

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Speaker

481 Aubin Street, P.O. Box 119

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DEAN KAUFERT

1360 Alpine Lane

Neenah, WI 54956

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

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Senate President

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De Pere, WI 54115

Co-Chair

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Representative

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Madison, WI 53703

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Appendix 3

MUNICIPAL ANNEXATION

Senator Alan J. Lasee, **Chair**
2259 Lasee Road
De Pere, WI 54115

Representative Mark Gottlieb
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Representative Samantha Kerkman
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Mike Parmentier
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Senator Ronald W. Brown
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Eau Claire, WI 54701

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NAI MLG Commercial
Brown County Planning Commission
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STUDY ASSIGNMENT: The committee is 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, and to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages, and to make related recommendations

13 MEMBERS: 2 Senators, 4 Representatives, and 7 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Dyke, Chief of Legal Services, Mary Offerdahl, Staff Attorney, and Rachel Veum, Support Staff.

Appendix 4

Committee Materials List

May 24, 2005 Meeting

- WLC: 0132/1 (municipal boundary agreements and the use of alternative dispute resolution in municipal boundary disputes)
- WLC: 0067/1 (Department of Administration advisory review of certain annexations)
- WLC: 0217/1 (amendment to WLC: 0067/1)
- Fiscal Estimate, Initial Estimate to WLC: 0132/1, prepared by DOA
- Fiscal Estimate, Initial Estimate to WLC: 0067/1, prepared by DOA
- Handout, Key Annexation Factors*, prepared by J. Michael Mooney
- Memo, Comments on Legislative Proposals Recommended by the Drafting Subcommittee, from Curt Witynski, Assistant Director, League of Wisconsin Municipalities (5-24-05)

February 4, 2005 Drafting Subcommittee Meeting

- WLC: 0063/P3 (simplifying s. 66.0307, revising s. 66.0225, and authorizing certain boundary agreements under s. 66.0301)
- WLC: 0064/P3 (cooperative boundary plan by mediated agreement)
- WLC: 0063/P4 (simplifying s. 66.0307, revising s. 66.0225, and authorizing certain boundary agreements under s. 66.0301)
- WLC: 0064/P4 (cooperative boundary plan by mediated agreement)

January 19, 2005 Drafting Subcommittee Meeting

- WLC: 0063/P2 (simplifying s. 66.0307 and expanding the application of s. 66.0225)
- WLC: 0064/P2 (cooperative boundary plan by mediated agreement)
- WLC: 0068/P2 (DOA list of qualified ADR professionals)

December 9, 2004 Drafting Subcommittee Meeting

- WLC: 0063/P1 (simplifying s. 66.0307 and expanding the application of s. 66.0225)
- WLC: 0064/P1 (cooperative boundary plan by mediated agreement)
- WLC: 0066/P1 (application of alternative dispute resolution (ADR) to contested annexations)
- WLC: 0067/P1 (expanding DOA advisory review of annexations)
- WLC: 0068/P1 (DOA list of qualified ADR professionals)
- Memo, Preliminary Draft Legislation WLC: 0063/P1, from Brian W. Ohm, Chair, State-Local Government-Private Sector Working Group & Associate Professor, Department of Urban & Regional Planning, University of Wisconsin-Madison/Extension (12-9-04)

November 18, 2004 Meeting

- Memo No. 1, Current Boundary Agreement Procedures and Suggested Revisions (11-9-04)
- Summary Comparison
- Flowchart
- Memo No. 2, Additional Background Information on Cooperative Boundary Agreements (11-9-04)
- Cooperative Boundary Agreement Checklist
- What's Unique About the Cooperative Boundary Agreement Statute
- Memo No. 3, Outline of Proposal by Representative Mark Gottlieb (11-9-04)
- Memo No. 4, Three Options for Expanding Use of Alternative Dispute Resolution in Annexation Procedures (11-9-04)
- Guide to Dispute Resolution Process
- Section 802.12, Stats.
- Algoma-Oshkosh Agreement
- Exhibit A
- Exhibit B
- Exhibit C
- Questions and Answers
- Algoma Cooperative Agreement Approval
- Handout, Proposed for Amendment 2003 Wis. Act 317, distributed by Public Member Roger Clark

October 12, 2004 Meeting and Public Hearing

- Staff Brief 04-6, Municipal Annexation (10-4-04)
- Statutes, Wisconsin's Annexation Statutes, Division of Intergovernmental Relations, Department of Administration (2004)
- Meeting Notice
- Public Hearing Notice
- Testimony, Richard J. Stadelman, Executive Director, Wisconsin Towns Association
- Testimony, Edward Huck, Executive Director, Wisconsin Alliance of Cities Inc.
- Testimony, Curt Witynski, Assistant Director, League of Wisconsin Municipalities
- Testimony, Richard J. Lukas
- Testimony, Beverly Lancaster and Marilyn Neumann
- Handout, Background on Annexation for the Joint Legislative Council's Special Committee on Municipal Annexation, Department of Administration (10-04)
- Handout, Brian W. Ohm, Chair, State-Local Government-Private Sector Working Group & Associate Professor, Department of Urban & Regional Planning, University of Wisconsin-Madison/Extension