

**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

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**Division of Intergovernmental Relations
Municipal Boundary Review**
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November 29, 2005

DOA PETITION FILE NO. 12750

RAY FISHER, CLERK
CITY OF MADISON
210 MARTIN LUTHER KING JR BLVD
MADISON, WI 53703-3340

JANE HOEPKER, CLERK
TOWN OF BURKE
5365 REINER RD
MADISON, WI 53718-6347

Subject: HOEPKER ET AL ANNEXATION

The proposed annexation submitted to our office on November 7, 2005, has been reviewed and found to be in the public interest.

The subject petition is for territory that is reasonably shaped and contiguous to the City of Madison. Although this petition encircles considerable Town lands, a connection from the remainder of the Town to these particular Town parcels is provided by Hoepker Road right-of-way.

As we earlier advised by letter to the municipal clerks dated November 9, 2005, due to the ongoing Town of Burke/Village of DeForest "boundary change by cooperative plan and agreement," activities, the department believes that the following boundary freeze language, "no other procedure . . . for altering a municipality's boundary may be used to alter a boundary included in the proposed cooperative plan . . .," found in s. 66.0307 (7), and again as a citation in s. 66.0217 (2), Wis. Stats , precludes adopting an ordinance for this unanimous consent petition at this time

Town of Burke and Village of DeForest have 180 days from the date of their joint public hearing in which to decide whether or not to approve the agreement and submit it to the Department for review and further action. If these parties to the cooperative agreement exceed the time limit, or should one or both of them choose not to ultimately approve the agreement, then arguably the annexation petition becomes actionable

Since the joint public hearing conducted by Town of Burke and Village of DeForest, the cities of Madison and Sun Prairie became involved with the Town and Village in municipal boundary and service discussions. Counsel for all of the parties have informally advised the department that several meetings to discuss boundaries and related issues have already taken place and more meetings are scheduled. These discussions could very well result in changes to the map and agreement previously presented at the joint public hearing; changes that potentially reflect different municipal and landowner objectives, including part or all of the parcels included in this annexation petition.

Until the discussions involving all of the affected parties (Burke, DeForest, and the contiguous municipalities of Madison and Sun Prairie) are completed, I would advise exercising patience when it comes to considering an annexation ordinance for this petition, particularly as s. 66.0217 (2), Wis Stats , relating to unanimous consent petitions contains no time limit for the adoption of an annexation ordinance. Although counsel for the municipalities involved may have other interpretations of the interplay of these two statutes (and this particular question has never been tested in the courts), it is possible that the ongoing discussions may result in new or amended provisions in the cooperative plan and agreement that mirror the intent of this petition

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and make annexation moot.

An additional point to consider is that following the current discussions and prior to submission of any agreement to the department, the parties may well provide opportunities for public comment on any changes made to the proposed cooperative agreement –but it is up to the municipalities involved to determine (aside from the required joint public hearing, which has been held) how best to provide additional information and address citizen and landowner concerns and objectives. It may be instructive as well to review the department's statutory approval criteria for cooperative plans and agreements found in s. 66.0307 (5) (c), Wis. Stats., as these relate to compatibility with characteristics of surrounding territory, present and potential municipal service facilities and infrastructure (sewer, water, and storm water drainage), fiscal capacity, boundaries of school districts, shopping and social customs, and other measures enumerated by statute. These criteria could help shape the location of future municipal boundaries.

Once the City is ready to take up this petition (if it becomes necessary to do so), the department reminds clerks of annexing municipalities of the requirements of s. 66.0217 (9)(a), Wis. Stats., which states:

"The clerk of a city or village which has annexed shall file immediately with the secretary of state a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district..."

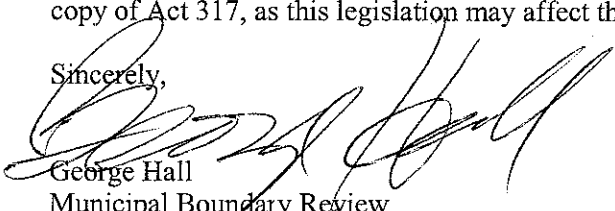
State and federal aids based on population and equalized value may be significantly affected through failure to file with the Secretary of State. Please file a copy of your annexing ordinance, including a statement certifying the population of the annexed territory. **Please also include the MBR number with your ordinance as this assists with record keeping. Your MBR number is: 12750**

The address of the Office of the Secretary of State is:

Annexations and Railroads
Division of Government Records
Office of the Secretary of State
P.O. Box 7848
Madison, WI 53707-7848

Please call me at (608) 266-0683, should you have any questions concerning this annexation review letter. This is a complex matter, and I can appreciate that many different questions may arise. I am enclosing a copy of Act 317, as this legislation may affect the future passage of any annexation ordinance.

Sincerely,



George Hall
Municipal Boundary Review

Cc: Attorney Michael J. Lawton
Attorney Jim Voss, City of Madison
Amy Volkmann, Administrator, Town of Burke
Attorney Stanley Riffle, Town of Burke
Jo Ann Miller, Administrator, Village of DeForest
Attorney Al Reuter, Village of DeForest
Attorney Paul Evert, City of Sun Prairie

2003 Senate Bill 87

Date of enactment: April 22, 2004

Date of publication*: May 6, 2004

2003 WISCONSIN ACT 317

AN ACT to renumber and amend 66 0223; to amend 66 0217 (2), 66 0217 (3) (intro.), 66 0219 (intro) and 66 0221 (1); and to create 66 0217 (11) (c), 66 0217 (14), 66 0219 (10), 66 0221 (3) and 66 0223 (2) of the statutes; relating to: limiting the authority of cities and villages to annex territory and specifying the boundaries for certain annexations.

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

SECTION 1. 66 0217 (2) of the statutes is amended to read:

66 0217 (2) DIRECT ANNEXATION BY UNANIMOUS APPROVAL ~~If Except as provided in sub. (14), and subject to s. 66.0307 (7),~~ if a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of sub. (4). In an annexation under this subsection, subject to sub. (6), the person filing the petition with the city or village clerk and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal description of the territory to be annexed to the department and the governing body shall review the advice of the department, if any, before enacting the annexation ordinance

SECTION 2. 66 0217 (3) (intro) of the statutes is amended to read:

66 0217 (3) OTHER METHODS OF ANNEXATION (intro.) Subject to s. 66 0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:

SECTION 3. 66 0217 (11) (c) of the statutes is created to read:

66.0217 (11) (c) No action on any grounds, whether procedural or jurisdictional, to contest the validity of an annexation under sub (2), may be brought by any town

SECTION 4. 66 0217 (14) of the statutes is created to read:

66.0217 (14) LIMITATIONS ON ANNEXATION AUTHORITY (a) 1 Except as provided in subd 2., no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final

2. No payments under subd. 1. must be made if the city or village, and the town, enter into a boundary agreement under s. 66 0225, 66 0301, or 66 0307

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located

* Section 991 11, WISCONSIN STATUTES 2001-02 : Effective date of acts "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment]

in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 5. 66 0219 (intro) of the statutes is amended to read:

66.0219 Annexation by referendum initiated by city or village. (intro) As a complete alternative to any other annexation procedure, and subject to sub. (10) and s. 66 0307 (7), unincorporated territory which contains electors and is contiguous to a city or village may be annexed to the city or village under this section. The definitions in s. 66 0217 (1) apply to this section.

SECTION 6. 66 0219 (10) of the statutes is created to read:

66.0219 (10) LIMITATIONS ON ANNEXATION AUTHORITY. (a) 1. Except as provided in subd. 2, no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70 65, in the year in which the annexation is final.

2. No payments under subd. 1 must be made if the city or village, and the town, enter into a boundary agreement under s. 66 0225, 66 0301, or 66 0307.

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 7. 66 0221 (1) of the statutes is amended to read:

66.0221 (1) Upon its own motion and subject to sub. (3) and s. 66.0307 (7), a city or village, by a two-thirds vote of the entire membership of its governing body, may enact an ordinance annexing territory which comprises a portion of a town or towns and which was completely surrounded by territory of the city or village on December 2, 1973. The ordinance shall include all surrounded town areas except those that are exempt by mutual agreement of all of the governing bodies involved. The annexation ordinance shall contain a legal description of the territory and the name of the town or towns from which the territory is detached. Upon enactment of the ordinance, the city or village clerk immediately shall file 6 certified copies of the ordinance in the office of the secretary of state, together with 6 copies of a scale map. The secretary of state shall forward 2 copies of the ordinance

and scale map to the department of transportation, one copy to the department of natural resources, one copy to the department of revenue and one copy to the department of administration. This subsection does not apply if the town island was created only by the annexation of a railroad right-of-way or drainage ditch. This subsection does not apply to land owned by a town government which has existing town government buildings located on the land. No town island may be annexed under this subsection if the island consists of over 65 acres or contains over 100 residents. Section 66 0217 (11) applies to annexations under this subsection. Except as provided in sub. (2), after December 2, 1973, no city or village may, by annexation, create a town area which is completely surrounded by the city or village.

SECTION 8. 66 0221 (3) of the statutes is created to read:

66.0221 (3) (a) 1. Except as provided in subd. 2, no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70 65, in the year in which the annexation is final.

2. No payments under subd. 1 must be made if the city or village, and the town, enter into a boundary agreement under s. 66.0225, 66 0301, or 66 0307.

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 9. 66.0223 of the statutes is renumbered 66 0223 (1) and amended to read:

66 0223 (1) In addition to other methods provided by law and subject to sub. (2) and ss. 59.692 (7) and 66 0307 (7), territory owned by and lying near but not necessarily contiguous to a village or city may be annexed to a village or city by ordinance enacted by the board of trustees of the village or the common council of the city, provided that in the case of noncontiguous territory the use of the territory by the city or village is not contrary to any town or county zoning regulation. The ordinance shall contain the exact description of the territory annexed and the names of the towns from which detached, and attaches the territory to the village or city upon the filing of 7 certified copies of the ordinance in the office of the secretary of state, together with 7 copies of a plat showing the boundaries of the territory attached. Two copies of the ordinance and plat shall be forwarded by the secretary of state to the department of transportation, one copy to the department of administration, one copy to the department

of natural resources, one copy to the department of revenue and one copy to the department of public instruction. Within 10 days of filing the certified copies, a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county in which the annexed territory is located. Section 66 0217 (11) applies to annexations under this section.

SECTION 10. 66 0223 (2) of the statutes is created to read:

66.0223 (2) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

(a) The town board adopts a resolution approving the proposed annexation

(b) The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

(c) The city or village, and the town, enter into a boundary agreement under s. 66 0225, 66 0301, or 66 0307

SECTION 11. Initial applicability.

(1) This act first applies to any annexation that has not taken effect on the effective date of this subsection
