

CHAPTER 261

AN ACT to repeal 61.01 to 61.15, 61.17 and 62.06; to amend 66.02 and 66.021 (7) (a); and to create 61.189 (4), 66.013 to 66.019 and 66.021 (11) of the statutes, relating to the incorporation of villages and cities and the review of certain consolidations and annexations, and increasing the appropriation under 20.350 (1) of the statutes.

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

SECTION 1. 61.01 to 61.15 of the statutes are repealed.

SECTION 2. 61.17 of the statutes is repealed.

SECTION 3. 61.189 (4) of the statutes is created to read:

61.189 (4) Any village incorporated after the enactment of ss. 66.013 to 66.019 may not become a city unless it meets the standards for incorporation in ss. 66.015 and 66.016.

SECTION 4. 62.06 of the statutes is repealed.

SECTION 5. 66.013 to 66.019 of the statutes are created to read:

66.013 INCORPORATION OF VILLAGES AND CITIES; PURPOSE AND DEFINITIONS. (1) PURPOSE. It is declared to be the policy of this state that the development of territory from town to incorporated status proceed in an orderly and uniform manner and that toward this end each proposed incorporation of territory as a village or city be reviewed as provided in ss. 66.013 to 66.019 to assure compliance with certain minimum standards which take into account the needs of both urban and rural areas.

(2) DEFINITIONS. As used in ss. 66.013 to 66.019 unless the context requires otherwise:

(a) "Director" means the state director of regional planning.

(b) "Population" means the population of a local unit as shown by the last federal census or by any subsequent population estimate certified as acceptable by the director.

(c) "Metropolitan community" means the territory consisting of any city having a population of 25,000 or more, or any 2 incorporated municipalities whose boundaries are within 5 miles of each other whose populations aggregate 25,000, plus all the contiguous area which has a population density of 100 persons or more per square mile, or which the director has determined on the basis of population trends and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years.

(d) "Metropolitan municipality" means any existing or proposed village or city entirely or partly within a metropolitan community.

(e) "Isolated municipality" means any existing or proposed village or city entirely outside any metropolitan community at the time of its incorporation.

66.014 PROCEDURE FOR INCORPORATION OF VILLAGES AND CITIES. (1) NOTICE OF INTENTION. At least 10 days and not more than 20 days before the circulation of an incorporation petition, a notice setting forth that the petition is to be circulated and including an accurate description of the territory involved shall be published in a newspaper of general circulation within the county in which said territory is located.

(2) **PETITION.** (a) The petition for incorporation of a village or city shall be in writing signed by 50 or more persons who are both electors and freeholders in the territory to be incorporated if the population of the proposed village or city includes 300 or more persons; otherwise by 25 or more such electors and freeholders.

(b) The petition shall be addressed to and filed with the circuit court of a county in which all or a major part of the territory to be incorporated is located; and the incorporation petition shall be void unless filed within 6 months of the date of publication of the notice of intention to circulate.

(c) The petition shall designate a representative of the petitioners, and an alternate, who shall be an elector or freeholder in the territory, and state his address; describe the territory to be incorporated with sufficient accuracy to determine its location and have attached thereto a scale map reasonably showing the boundaries thereof; set forth facts substantially establishing the standards for incorporation required herein; and request the circuit court to order a referendum and to certify the incorporation of the village or city when it is found that all requirements have been met.

(e) No person who has signed a petition shall be permitted to withdraw his name therefrom. No additional signatures shall be added after a petition is filed.

(f) The circulation of the petition shall commence not less than 10 days nor more than 20 days after the date of publication of the notice of intention to circulate.

(3) **HEARING; COSTS.** (a) Upon the filing of the petition the circuit court shall by order fix a time and place for a hearing giving preference to such hearing over other matters on the court calendar.

(b) The court may in its discretion by order allow costs and disbursements as provided for actions in circuit court in any proceeding under this subsection.

(c) The court may in its discretion, upon notice to all parties who have appeared in the hearing and after a hearing thereon, order the petitioners or any of the opponents to post bond in such amount as it deems sufficient to cover such disbursements.

(4) **NOTICE.** (a) Notice of the filing of the petition and of the date of the hearing thereon before the circuit court shall be given by publication once a week for 2 successive weeks in a newspaper having general circulation in the territory to be incorporated, and by certified or registered mail to the clerk of each town in which the territory is located and to the clerk of each metropolitan municipality of the metropolitan community in which the territory is located. The second publication and mailing shall be not less than 10 days prior to the time set for the hearing.

(b) The notice shall contain:

1. A description of the territory sufficiently accurate to determine its location and a statement that a scale map reasonably showing the boundaries of the territory is on file with the circuit court.

2. The name of each town in which the territory is located.

3. The name and post-office address of the representative of the petitioners.

(5) **PARTIES.** Any governmental unit entitled to notice pursuant to sub. (4), any school district which lies at least partly in the territory or any other person found by the court to be a party in interest may become a party to the proceeding prior to the time set for the hearing.

(6) ANNEXATION RESOLUTION. Any municipality whose boundaries are contiguous to the territory may also file with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition. The resolution shall be filed at or prior to the hearing on the incorporation petition, or any adjournment granted for this purpose by the court.

(7) ACTION. (a) No action to contest the validity of an incorporation on any grounds whatsoever, whether procedural or jurisdictional shall be commenced after 60 days from the date of issuance of the charter of incorporation by the secretary of state.

(b) Any action contesting an incorporation shall be placed at the head of the circuit court calendar for an early hearing and determination. The time within which a writ of error may be issued or an appeal taken to obtain review by the supreme court of any judgment or order in any action or proceeding contesting an incorporation is limited to 30 days from the date of the filing of such judgment or order.

(8) FUNCTION OF THE CIRCUIT COURT. (a) After the filing of the petition and proof of notice, the circuit court shall conduct a hearing at the time and place specified in the notice, or at a time and place to which the hearing is duly adjourned.

(b) On the basis of the hearing the circuit judge shall find if the standards under s. 66.015 are met. If he finds that the standards are not met, he shall dismiss the petition. If he finds that the standards are met he shall refer the petition to the director and thereupon the latter shall determine whether or not the standards under s. 66.016 are met.

(9) FUNCTION OF THE DIRECTOR. (a) Upon receipt of the petition from the circuit court the director shall make such investigation as may be necessary to apply the standards under s. 66.016.

(b) Unless the court sets a different time limit, the director shall prepare his proposed findings and determination citing the evidence in support thereof within 90 days in the case of a proposed metropolitan municipality and 30 days in the case of a proposed isolated municipality after receipt of the reference from the court. Copies of the proposed findings and determination shall be sent by certified or registered mail to the designated representative of the petitioners, and to all town and municipal clerks entitled to receive mailed notice of the petition under sub. (4).

(c) If no objection to the proposed findings and determination is received by the director within 20 days after they are mailed the proposed findings and determination shall become final. If within said 20 days objection is received, the director shall schedule a hearing at a place in or convenient to the territory sought to be incorporated.

(d) Notice of the hearing shall be given at least 10 days before the hearing, by publication at least once in a newspaper having general circulation in the territory to be incorporated, and by mailing the notice to the designated representative of the petitioners or any 5 petitioners and to all town and municipal clerks entitled to receive mailed notice of the petition under sub. (4).

(e) After the hearing the director shall either declare his proposed findings and determination final or amend his proposed findings and determination and declare them final. The final findings and determination shall be forwarded by the director to the circuit judge.

(f) The determination of the director made in accordance with the standards under ss. 66.015, 66.016 and 66.021 (1) (c) shall be either:

1. The petition as submitted shall be dismissed;

2. The petition as submitted shall be granted and an incorporation referendum held;

3. The petition as submitted shall be adjusted to include more or less territory as specified in the director's determination, and the adjusted petition shall be granted and an incorporation referendum held.

(g) If the director determines that the petition should be dismissed, the circuit judge shall issue an order dismissing the petition. If the director grants the petition, as originally submitted or subsequently adjusted, the circuit judge shall order an incorporation referendum as provided in s. 66.018.

(h) The findings of both the judge and the director shall be based upon facts as they existed at the time of the filing of the petition.

(i) No petition for the incorporation of the same or substantially the same territory shall be entertained for one year following the date of the denial of the petition or the date of any election at which incorporation was rejected by the electors.

66.015 STANDARDS TO BE APPLIED BY THE CIRCUIT COURT. Before referring the incorporation petition as provided in s. 66.014 (2) to the director, the court shall determine whether the petition meets the formal and signature requirements and shall further find that the following minimum requirements are met:

(1) **ISOLATED VILLAGE.** Area, one-half square mile; resident population, 150.

(2) **ISOLATED CITY.** Area, one square mile; resident population, 1,000; density, at least 500 persons in any one square mile.

(3) **METROPOLITAN VILLAGE.** Area, 2 square miles; resident population, 2,500; density, at least 500 persons in any one square mile.

(4) **METROPOLITAN CITY.** Area, 3 square miles; resident population, 5,000; density, at least 750 persons in any one square mile.

(5) Where the proposed boundary of a metropolitan village or city is within 10 miles of the boundary of a city of the first class or 5 miles of a city of the second or third class, the minimum area requirements shall be 4 and 6 square miles for villages and cities, respectively.

66.016 STANDARDS TO BE APPLIED BY THE DIRECTOR. (1) The director may approve for referendum only those proposed incorporations which meet the following requirements:

(a) *Characteristics of territory.* The entire territory of the proposed village or city shall be reasonably homogeneous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs. An isolated municipality shall have a reasonably developed community center, including some or all of such features as retail stores, churches, post office, telephone exchange and similar centers of community activity.

(b) *Territory beyond the core.* The territory beyond the most densely populated square mile specified in s. 66.015 shall have in an isolated municipality an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.021 (1) (b) for real estate tax purposes, more than 25 per cent of which is attributable to existing or potential mercantile, manufacturing or public utility uses; but the director may waive these requirements to the extent that water, terrain or geography prevents such development. Such territory in a metropolitan municipality shall have the potential for residential or other land use development on a substantial scale within the next 3 years.

(2) In addition to complying with each of the applicable standards set forth in sub. (1) and s. 66.015, any proposed incorporation in order to be approved for referendum must be in the public interest as determined by the director upon consideration of the following:

(a) *Tax revenue.* The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.

(b) *Level of services.* The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (6).

(c) *Impact on the remainder of the town.* The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

(d) *Impact on the metropolitan community.* The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

66.017 REVIEW OF THE ACTION OF THE CIRCUIT COURT AND THE DIRECTOR. (1) Exception may be taken by any party in interest to the order of the circuit judge.

(2) If the exception is addressed only to the application of the standards by the circuit judge under s. 66.015, it shall be perfected as an appeal to the state supreme court.

(3) If the exception is addressed only to the application of the standards by the director under s. 66.016, it shall be perfected pursuant to s. 227.16 as a proceeding for judicial review by the circuit court of the findings and determination of the director. Review shall be by the court in accordance with ch. 227 and appeal to the state supreme court shall lie from the circuit court's determination on the review.

(4) If exception is taken to the application of both the standards under s. 66.015 and the standards under s. 66.016, appeal to the state supreme court shall not be perfected until the circuit court has judicially reviewed the findings and determination of the director pursuant to ch. 227, and the time for perfecting the appeal shall not commence until the review has been completed by the circuit court.

(5) Where a referendum has been ordered by the circuit court, it shall not be stayed pending disposition of an exception to the order, unless the supreme court finds that a strong probability exists that the order will be set aside.

66.018 REFERENDUM PROCEDURE. (1) **ORDER.** The circuit court's order for an incorporation referendum shall specify the voting place and the date of the referendum, which shall be not less than 6 weeks from the date of the order, and name 3 inspectors of election. If the order is for a city incorporation referendum the order shall further specify that 7 aldermen shall be elected at large from the proposed city. The city council at its first meeting shall determine the number and boundaries of wards and the number of aldermen per ward by charter ordinance.

(2) **NOTICE OF REFERENDUM.** Notice of the referendum shall be given by publication of the order of the circuit court in a newspaper having

general circulation in the territory. Such publication shall be once a week for 4 successive weeks, the first publication to be not more than 4 weeks before the referendum.

(3) RETURN. An incorporation referendum shall be conducted in the same manner as an annexation referendum under s. 66.021 (5) insofar as applicable, and the form of the ballot shall be "for a city [village]" or "against a city [village]". The inspectors shall make a return to the judge of the circuit court.

(4) COSTS. If the referendum is against incorporation, the costs of the election shall be borne by the towns involved in the proportion that the number of electors of each town within the territory proposed to be incorporated, voting in the referendum, bears to the total number of electors in the territory voting in the referendum. If the referendum is for a village or city, the costs shall be charged against the municipality in the apportionment of town assets.

(5) CERTIFICATION OF INCORPORATION. If a majority of the votes in an incorporation referendum are cast in favor of a village or city, the clerk of the circuit court shall certify the fact to the secretary of state and supply him with 4 copies of a description of the legal boundaries of the village or city and 4 copies of a plat thereof, of which 2 copies of both shall be forwarded to the highway commission and one copy to the department of taxation. The secretary of state shall issue a certificate of incorporation and record the same.

66.019 POWERS OF NEW VILLAGE OR CITY: ELECTIONS; ADJUSTMENT OF TAXES; REORGANIZATION AS VILLAGE. (1) VILLAGE OR CITY POWERS. Every village or city incorporated under this section shall be a body corporate and politic, with powers and privileges of a municipal corporation at common law and conferred by these statutes.

(2) EXISTING ORDINANCES. Ordinances in force in the territory incorporated or any part thereof, insofar as not inconsistent with chs. 61 and 62, shall continue in force until altered or repealed.

(3) INTERIM OFFICERS. All officers of the village or town embracing the territory thus incorporated as a village or city shall continue in their powers and duties until the first meeting of the board of trustees or common council at which a quorum is present. Until a village or city clerk is chosen and qualified all oaths of office and other papers shall be filed with the circuit court, with whom the petition was filed, who shall deliver them with the petition to the village or city clerk when he qualifies.

(4) FIRST VILLAGE OR CITY ELECTION. (a) Within 10 days after incorporation of the village or city, the clerk of the circuit court with whom the petition was filed shall fix a time for the first election, and where appropriate designate the polling place or places, and name 3 inspectors of election for each place. The time for the election shall be fixed no less than 40 nor more than 50 days after the date of the certificate of incorporation issued by the secretary of state, irrespective of any other provision in the statutes. Nomination papers shall conform to ch. 5 insofar as applicable. Such papers shall be signed by not less than 5 per cent nor more than 10 per cent of the total votes cast at the referendum election, and be filed no later than 15 days before the time fixed for the election. Ten days' previous notice of the election shall be given by the clerk of the circuit court by publication in the newspapers selected under s. 66.018 (2) and by posting notices in 3 public places in such village or city, but failure to give such notice shall not invalidate the election.

(b) The election shall be conducted as prescribed by ch. 6, except that no registration of voters shall be required. The inspectors shall make returns to the clerk of the circuit court who shall, within one week after

such election, canvass the returns and declare the result. The clerk shall notify the officers-elect and issue certificates of election. If the first election is on the first Tuesday in April the officers so elected and their appointees shall commence and hold their offices as for a regular term. Otherwise they shall commence within 10 days and hold their offices until the regular village or city election and the qualification of their successors and the terms of their appointees shall expire as soon as successors qualify.

(5) TAXES LEVIED BEFORE INCORPORATION; HOW COLLECTED AND DIVIDED. Whenever a village or city is incorporated from territory within any town or towns, after the assessment of taxes in any year and before the collection of such taxes, the tax so assessed shall be collected by the town treasurer of the town or the town treasurers of the different towns of which such village or city formerly constituted a part, and all moneys collected from the tax levied for town purposes shall be divided between the village or city and the town or the towns, as provided by s. 66.03, for the division of property owned jointly by towns and villages.

(6) REORGANIZATION AS VILLAGE. If the population of the city falls below 1,000 as determined by the United States census, the council may upon petition of 15 per cent of the electors submit at any general or city election the question whether the city shall reorganize as a village. If three-fifths of the votes cast on the question are for reorganization the mayor and council shall file a certified copy of the return in the office of the register of deeds and the clerk of the circuit court, and shall immediately call an election, to be conducted as are village elections, for the election of village officers. Upon the qualification of such officers, the board of trustees shall declare the city reorganized as a village, whereupon the reorganization shall be effected. The clerk shall forthwith certify a copy of such declaration to the secretary of state who shall file the same and indorse a memorandum thereof on the record of the certificate of incorporation of the city. Rights and liabilities of the city shall continue in favor of or against the village. Ordinances, so far as within the power of the village, shall remain in force until changed.

SECTION 6. 66.02 of the statutes is amended to read:

66.02 Any town, village * * * or city may be consolidated with a contiguous town, village * * * or city, by ordinance, passed by a two-thirds vote of all the members of each board or council, fixing the terms of the consolidation and ratified by the electors at a referendum held in each municipality. The ballots shall bear the words, "for consolidation," and "against consolidation," and if a majority of the votes cast thereon in each municipality shall be for consolidation, the ordinances shall then be in effect and * * * have the force of a contract. The ordinance and the result of the referendum shall be certified * * * as provided in * * * s. 66.018 (5); if a town * * * the certification shall be preserved as provided in * * * ss. 60.05 * * * and 66.018 (5), respectively. Consolidation shall not affect the pre-existing rights or liabilities of any municipality and actions thereon may be commenced or completed as though no consolidation had been effected. *Any consolidation ordinance proposing the consolidation of a town and another municipality shall, within 10 days after its adoption and prior to its submission to the voters for ratification at a referendum, be submitted to the circuit court and state director of regional planning for a determination whether such proposed consolidation is in the public interest. The circuit court shall determine whether the proposed ordinance meets the formal requirements of this section and shall then refer the matter to the state director of regional planning, who shall find as prescribed in s. 66.014 whether the proposed*

consolidation is in the public interest in accordance with the standards in s. 66.016. The director's findings shall have the same status as incorporation findings under ss. 66.014 to 66.019.

SECTION 7. 66.021 (7) (a) of the statutes is amended to read:

66.021 (7) (a) An ordinance for the annexation of the territory described in the annexation petition may be enacted by a two-thirds vote of the elected members of the governing body * * * *not less than 20 days after the publication of the notice of intention to circulate such petition and not later than 60 days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election if favorable to the annexation. If the annexation is subject to sub. (11) the governing body shall first review the reasons given by the state director of regional planning that the proposed annexation is against the public interest.* Such ordinance may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). Before introduction of an ordinance containing such temporary classification, the proposed classification shall be referred to and recommended by the plan commission. The authority to make such temporary classification shall not be effective when the county ordinance prevails during litigation as provided in s. 59.97 (4a).

SECTION 8. 66.021 (11) of the statutes is created to read:

66.021 (11) REVIEW OF ANNEXATIONS. (a) *Annexations within a metropolitan community.* No annexation proceeding within a metropolitan community shall be valid unless the person causing a notice of annexation to be published pursuant to sub. (3) shall within 5 days of the publication mail a copy of the notice and a scale map of the proposed annexation to the clerk of each municipality affected and the state director of regional planning. The director may within 20 days after receipt of the notice mail to the clerk of the town within which the territory lies and to the clerk of the proposed annexing village or city a notice that in his opinion the annexation is against the public interest. No later than 10 days after mailing the notice, the director shall advise the clerk of the town in which the territory is located and the clerk of the village or city to which the annexation is proposed of the reasons the annexation is against the public interest as defined in par. (c). The annexing municipality shall review such advice before final action is taken.

(b) *Annexations of one square mile or more.* Whenever a village or city adopts an ordinance annexing an area of one square mile or more, it shall immediately petition the circuit court of the county in which the village or city is situated for a determination that the annexation is in the public interest and the ordinance shall not be in effect until the court so determines. The court shall obtain an advisory report of the state director of regional planning on whether the annexation is in the public interest as defined in par. (c). Notice of the filing of the petition shall be given by the village or city promptly by publication once in a newspaper having general circulation in the county where the village or city is situated and by certified mail to the clerk of the town from which the territory is sought to be annexed. The town or any elector or owner of real estate in the territory may intervene in the court proceedings within 20 days of the publication of notice of the filing of the petition. The adoption of the ordinance shall constitute prima facie evidence that the annexation is in the public interest.

(c) *Definition of public interest.* For purposes of this subsection public interest is determined by the state director of regional planning after consideration of the following:

1. Whether the governmental services, including zoning, to be supplied to the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation which files with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory upon receiving an otherwise valid petition for the annexation of the territory.

2. 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.

SECTION 9. The appropriation made by s. 20.350 (1) of the statutes, as affected by the laws of 1959, is increased as follows:

| | 1959-60 | 1960-61 |
|------------------------------------|----------|----------|
| Operation, maintenance and capital | \$25,000 | \$25,000 |

for the purpose of providing staff and expenses in connection with the review of municipal incorporations, annexations and consolidations.

SECTION 10. The provisions of this act shall not apply to any incorporation proceedings commenced prior to February 14, 1957, nor to any certificate of incorporation issued prior thereto by the secretary of state nor to any future proceedings to incorporate all or substantially all of any territory for which a certificate of incorporation was issued by the secretary of state prior to February 14, 1957, but which shall subsequent thereto be declared invalid by a court.

Approved July 31, 1959.
