



State of Wisconsin  
2003 - 2004 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 85**

November 4, 2003 - Offered by Senator BROWN.

1     **AN ACT to renumber** 66.0201 (2) (a); **to amend** 16.53 (14), 59.692 (7) (ad) (intro.),  
2           66.0203 (8) (b), 66.0203 (9) (title), (a), (b), (d), (e) (intro.), (f), (g) and (h), 66.0205  
3           (intro.), 66.0207 (title), (1) (intro.) and (b), and (2) (intro.), 66.0209 (2) and (4),  
4           66.0219 (8), 66.0223, 66.0231 and 66.1001 (3) (a); and **to create** 15.07 (2) (m),  
5           15.07 (3) (bm) 5., 15.105 (23), 66.0201 (2) (am), 66.0203 (8) (c), 66.0203 (9) (i),  
6           66.0216 and 66.0217 (14) of the statutes; **relating to:** the incorporation of  
7           villages and cities, the incorporation of the town of Campbell in LaCrosse  
8           County as a village, and creating an Incorporation Review Board.

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

9           **SECTION 1.** 15.07 (2) (m) of the statutes is created to read:  
10           15.07 (2) (m) The representative of the department of administration shall  
11           serve as chairperson of the incorporation review board.

12           **SECTION 2.** 15.07 (3) (bm) 5. of the statutes is created to read:

1           15.07 (3) (bm) 5. The incorporation review board shall meet on the call of the  
2 chairperson or a majority of the board's members.

3           **SECTION 3.** 15.105 (23) of the statutes is created to read:

4           15.105 (23) INCORPORATION REVIEW BOARD. There is created an incorporation  
5 review board attached to the department of administration under s. 15.03. The board  
6 shall consist of the secretary of administration or his or her designee, 2 members  
7 appointed by the Wisconsin Towns Association, one member appointed by the League  
8 of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance  
9 of Cities. Members serve at the pleasure of the appointing authority.

10          **SECTION 4.** 16.53 (14) of the statutes is amended to read:

11          16.53 (14) REVIEW OF PROPOSED INCORPORATIONS AND ANNEXATIONS. The  
12 department incorporation review board may prescribe and collect a fee for review of  
13 any petition for incorporation of a municipality under s. 66.0203 ~~or~~. The department  
14 may prescribe and collect a fee for review of any petition for annexation of municipal  
15 territory under s. 66.0217. The fee shall be paid by the person or persons filing the  
16 petition for incorporation or by the person or persons filing the notice of the proposed  
17 annexation.

18          **SECTION 5.** 59.692 (7) (ad) (intro.) of the statutes is amended to read:

19          59.692 (7) (ad) (intro.) Provisions of a county shoreland zoning ordinance that  
20 are enacted under this section that were applicable, prior to incorporation, to any  
21 shoreland area that is part of a town that incorporates as a city or village under s.  
22 66.0203, 66.0211, 66.0213 ~~or~~, 66.0215, or 66.0216 after April 30, 1994, shall continue  
23 in effect and shall be enforced after incorporation by the incorporated city or village  
24 unless any of the following occurs:

25          **SECTION 6.** 66.0201 (2) (a) of the statutes is renumbered 66.0201 (2) (ar).

1           **SECTION 7.** 66.0201 (2) (am) of the statutes is created to read:

2           66.0201 (2) (am) “Board” means the incorporation review board.

3           **SECTION 8.** 66.0203 (8) (b) of the statutes is amended to read:

4           66.0203 (8) (b) On the basis of the hearing the circuit court shall find if the  
5 standards under s. 66.0205 are met. If the court finds that the standards are not met,  
6 the court shall dismiss the petition. If Subject to par. (c), if the court finds that the  
7 standards are met the court shall refer the petition to the department board. Upon  
8 payment of any fee imposed under s. 16.53 (14), the department board shall  
9 determine whether the standards under s. 66.0207 are met.

10           **SECTION 9.** 66.0203 (8) (c) of the statutes is created to read:

11           66.0203 (8) (c) 1. The court shall determine whether an annexation proceeding  
12 that affects any territory included in the incorporation petition has been initiated  
13 under s. 66.0217, 66.0219, or 66.0223 by an incorporated city or village.

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

19           3. If the court determines that an annexation proceeding described under subd.  
20 1. was initiated on or within 30 days after the publication of the notice under sub.  
21 (1), the annexation may not proceed until the validity of the incorporation has been  
22 determined. If the incorporation is determined to be valid and complete, the  
23 annexation is void. If the incorporation is determined to be invalid, the annexation  
24 may proceed.

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

4           **SECTION 10.** 66.0203 (9) (title), (a), (b), (d), (e) (intro.), (f), (g) and (h) of the  
5 statutes are amended to read:

6           66.0203 (9) (title) ~~FUNCTION OF THE DEPARTMENT~~ BOARD. (a) Upon receipt of the  
7 petition from the circuit court and payment of any fee imposed under s. 16.53 (14),  
8 the ~~department~~ board shall make any necessary investigation to apply the standards  
9 under s. 66.0207.

10           (b) Within ~~20~~ 30 days after the receipt by the ~~department~~ board of the petition  
11 from the circuit court and payment of any fee imposed under s. 16.53 (14), whichever  
12 is later, any party in interest may request a hearing. Upon receipt of the request, the  
13 ~~department~~ board shall schedule a hearing at a place in or convenient to the territory  
14 sought to be incorporated.

15           (d) Unless the court sets a different time limit, the ~~department~~ board shall  
16 prepare its findings and determination, citing the supporting evidence, within ~~90~~  
17 180 days after receipt of the referral from the court and payment of any fee imposed  
18 under s. 16.53 (14), whichever is later. The findings and determination shall be  
19 forwarded by the ~~department~~ board to the circuit court. Copies of the findings and  
20 determination shall be sent by certified or registered mail to the designated  
21 representative of the petitioners, and to all town and municipal clerks entitled to  
22 receive mailed notice of the petition under sub. (4).

23           (e) (intro.) The determination of the ~~department~~ board made in accordance with  
24 the standards under ss. 66.0205, 66.0207 and 66.0217 (6) (c) shall be one of the  
25 following:

1 (f) If the department board determines that the petition shall be dismissed  
2 under par. (e) 1., the circuit court shall issue an order dismissing the petition. If the  
3 department board grants the petition, the circuit court shall order an incorporation  
4 referendum as provided in s. 66.0211.

5 (g) The findings of both the court and the department board shall be based upon  
6 facts as they existed at the time of the filing of the petition.

7 (h) Except for an incorporation petition which describes the territory  
8 recommended by the department board under ~~s. 66.0203 sub.~~ (9) (e) 3., no petition  
9 for the incorporation of the same or substantially the same territory may be  
10 entertained for one year following the date of dismissal under par. (f) of the petition  
11 or the date of any election at which incorporation was rejected by the electors.

12 **SECTION 11.** 66.0203 (9) (i) of the statutes is created to read:

13 66.0203 (9) (i) If the board fails to make a determination within the time limit  
14 under par. (d), the board shall refund the fees imposed by the board under s. 16.53  
15 (14).

16 **SECTION 12.** 66.0205 (intro.) of the statutes is amended to read:

17 **66.0205 Standards to be applied by the circuit court.** (intro.) Before  
18 referring the incorporation petition as provided in s. 66.0203 (2) to the department  
19 board, the court shall determine whether the petition meets the formal and signature  
20 requirements and shall further find that the following minimum requirements are  
21 met:

22 **SECTION 13.** 66.0207 (title), (1) (intro.) and (b), and (2) (intro.) of the statutes  
23 are amended to read:

24 **66.0207 (title) Standards to be applied by the department board.**

1           **(1)** (intro.) The ~~department~~ board may approve for referendum only those  
2 proposed incorporations which meet the following requirements:

3           **(b)** *Territory beyond the core.* The territory beyond the most densely populated  
4 one-half square mile specified in s. 66.0205 (1) or the most densely populated square  
5 mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units  
6 per quarter section or an assessed value, as defined in s. 66.0217 (1) (a) for real estate  
7 tax purposes, more than 25% of which is attributable to existing or potential  
8 mercantile, manufacturing or public utility uses. The territory beyond the most  
9 densely populated square mile as specified in s. 66.0205 (3) or (4) shall have the  
10 potential for residential or other urban land use development on a substantial scale  
11 within the next 3 years. The ~~department~~ board may waive these requirements to the  
12 extent that water, terrain or geography prevents the development.

13           **(2)** (intro.) In addition to complying with each of the applicable standards set  
14 forth in sub. (1) and s. 66.0205 in order to be approved for referendum, a proposed  
15 incorporation must be in the public interest as determined by the ~~department~~ board  
16 upon consideration of the following:

17           **SECTION 14.** 66.0209 (2) and (4) of the statutes are amended to read:

18           **66.0209 (2)** The decision of the ~~department~~ board made under s. 66.0203 (9) is  
19 subject to judicial review under ch. 227.

20           **(4)** An incorporation referendum ordered by the circuit court under s. 66.0203  
21 (9) (f) may not be stayed pending the outcome of further litigation, unless the court  
22 of appeals or the supreme court, upon an appeal or upon the filing of an original  
23 action in the supreme court, concludes that a strong probability exists that the order  
24 of the circuit court or the decision of the ~~department~~ board will be set aside.

25           **SECTION 15.** 66.0216 of the statutes is created to read:

1           **66.0216 Incorporation of certain towns surrounded by navigable**  
2 **waterways. (1) PETITION.** If the resident population of a town exceeds 4,000, as  
3 shown by the most recent federal census or by a census under sub. (2), the town is  
4 wholly contained within a land area not exceeding 15 square miles, the land area is  
5 surrounded by navigable waterways, the equalized valuation of the town exceeds  
6 \$125,000,000, and a petition signed by at least 100 persons, each of whom is an  
7 elector and taxpayer of the town, requesting submission of the question to the  
8 electors of the town, is filed with the town clerk, the procedure for becoming a village  
9 under this section is initiated. The procedure under this section may be used only  
10 with respect to an area that constitutes an entire town. If at the time of the filing  
11 of the incorporation petition any portion of the town is subject to a prior annexation  
12 proceeding by an incorporated municipality, that portion of the town shall be  
13 detached from the town if the annexation is determined to be valid either as a result  
14 of the failure of the town, or a resident of the town, to have filed a valid legal objection  
15 or by final judgment. If the annexation is determined by final judgment to be invalid,  
16 the territory that is subject to the annexation shall become part of the village formed  
17 under this section.

18           **(2) REFERENDUM.** At the next regular meeting of the town board following the  
19 filing of the petition under sub. (1), the town board by resolution shall provide for a  
20 referendum by the electors of the town. The resolution shall conform to the  
21 requirements of s. 5.15 (1) and (2) and shall determine the numbers and boundaries  
22 of each ward of the proposed village and the time of voting, which may not be earlier  
23 than 6 weeks after the adoption of the resolution. The resolution may direct that a  
24 census be taken of the resident population of the territory on a day not more than 10  
25 weeks before the date of the election, exhibiting the name of every head of a family

1 and the name of every person who is a resident in good faith of the territory on that  
2 day, and the lot or quarter section of land on which that person resides, which shall  
3 be verified by the affixed affidavit of the person taking the census.

4 **(3) NOTICE OF REFERENDUM.** The town clerk shall publish the resolution adopted  
5 under sub. (2) in a newspaper published in the town. If no newspaper is published  
6 in the town, the town clerk shall publish the resolution in a newspaper designated  
7 in the resolution. The town clerk shall publish the resolution once a week for 4  
8 successive weeks, the first publication to be not more than 4 weeks before the  
9 referendum.

10 **(4) VOTING PROCEDURE.** The referendum shall be conducted in the same manner  
11 as elections for town board supervisors. The question appearing on the ballot shall  
12 be “Shall the town of ... become a village?” Below the question shall appear 2  
13 squares. To the left of one square shall appear the words “For a village” and to the  
14 left of the other square shall appear the words “Against a village.” The inspectors  
15 shall make a return to the town clerk.

16 **(5) CERTIFICATE OF INCORPORATION.** If a majority of the votes are cast in favor  
17 of a village, the town clerk shall certify that fact to the secretary of state, together  
18 with the result of the census under sub. (2), if any, 4 copies of a description of the legal  
19 boundaries of the town, and 4 copies of a plat of the town. The secretary of state shall  
20 issue a certificate of incorporation and record the certificate in a book kept for that  
21 purpose. The secretary of state shall provide 2 copies of the description and plat to  
22 the department of transportation and one copy to the department of revenue.

23 **(6) VILLAGE POWERS.** A village incorporated under this section is a body  
24 corporate and politic, with the powers and privileges of a municipal corporation at  
25 common law and conferred by ch. 61.



1           **(7) EXISTING ORDINANCES.** (a) Ordinances in force in the territory or any part  
2 of the territory, to the extent not inconsistent with ch. 61, continue in force until  
3 altered or repealed.

4           (b) A county shoreland zoning ordinance enacted under s. 59.692 that is in force  
5 in any part of the territory continues in force until altered under s. 59.692 (7) (ad).

6           **(8) INTERIM OFFICERS, FIRST VILLAGE ELECTION.** Section 66.0215 (8) and (9), as it  
7 applies to a town that is incorporated as a city under s. 66.0215, applies to a town that  
8 is incorporated as a village under this section.

9           **SECTION 16.** 66.0217 (14) of the statutes is created to read:

10           **66.0217 (14) LAW APPLICABLE.** Section 66.0203 (8) (c) applies to annexations  
11 under this section.

12           **SECTION 17.** 66.0219 (8) of the statutes is amended to read:

13           **66.0219 (8) LAW APPLICABLE.** ~~Section~~ Sections 66.0203 (8) (c) and 66.0217 (11)  
14 applies apply to annexations under this section.

15           **SECTION 18.** 66.0223 of the statutes is amended to read:

16           **66.0223 Annexation of territory owned by a city or village.** In addition  
17 to other methods provided by law and subject to ss. 59.692 (7) and 66.0307 (7),  
18 territory owned by and lying near but not necessarily contiguous to a village or city  
19 may be annexed to a village or city by ordinance enacted by the board of trustees of  
20 the village or the common council of the city, provided that in the case of  
21 noncontiguous territory the use of the territory by the city or village is not contrary  
22 to any town or county zoning regulation. The ordinance shall contain the exact  
23 description of the territory annexed and the names of the towns from which  
24 detached, and attaches the territory to the village or city upon the filing of 7 certified  
25 copies of the ordinance in the office of the secretary of state, together with 7 copies

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

9 **SECTION 19.** 66.0231 of the statutes is amended to read:

10 **66.0231 Notice of certain litigation affecting municipal status or**  
11 **boundaries.** If a proceeding under ss. 61.187, 61.189, 61.74, 62.075, 66.0201 to  
12 66.0213, 66.0215, 66.0216, 66.0217, 66.0221, 66.0223, 66.0227 or 66.0307 or other  
13 sections relating to an incorporation, annexation, consolidation, dissolution or  
14 detachment of territory of a city or village is contested by instigation of legal  
15 proceedings, the clerk of the city or village involved in the proceedings shall file with  
16 the secretary of state 4 copies of a notice of the commencement of the action. The  
17 clerk shall file with the secretary of state 4 copies of any judgments rendered or  
18 appeals taken in such cases. The notices or copies of judgments that are required  
19 under this section may also be filed by an officer or attorney of any party of interest.  
20 The secretary of state shall forward to the department of transportation 2 copies and  
21 to the department of revenue and the department of administration one copy each  
22 of any notice of action or judgment filed with the secretary of state under this section.

23 **SECTION 20.** 66.1001 (3) (a) of the statutes is amended to read:

24 66.1001 (3) (a) Municipal incorporation procedures under s. 66.0201, 66.0203  
25 ~~or~~, 66.0215, or 66.0216.

