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## WISCONSIN LEGISLATIVE COUNCIL

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### MUNICIPAL ANNEXATION

Room 201 Southeast, State Capitol  
Madison, Wisconsin

November 18, 2004

10:00 a.m. - 2:00 p.m.

[The following is a summary of the November 18, 2004 meeting of the Special Committee on Municipal Annexation. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

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#### Call to Order and Roll Call

Chair Lasee called the meeting to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Alan Lasee, Chair; Reps. Mark Gottlieb, Dean Kaufert, and Josh Zepnick; and Public Members Roger Clark, Gerald Derr, Christine Jones, Pat Kaster, Warren Kraft, J. Michael Mooney, and Michael Parmentier.

COMMITTEE MEMBERS ABSENT: Sens. Ronald Brown and G. Spencer Coggs; and Rep. Samantha Kerkman.

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

#### Approval of October 12, 2004 Meeting Summary

*Mr. Mooney moved, seconded by Ms. Kaster, to approve the minutes of the committee's October 12, 2004 meeting. The motion carried on a voice vote.*

## **Discussion of Committee Assignment**

### **1. Background Information**

Mr. Dyke briefly reviewed Memos No. 1 and 2, relating to municipal boundary agreement procedures. He referred to a handout at committee members' places of the three statutory provisions relating to municipal boundary agreement procedures (ss. 66.0307, 66.0225, and 66.0301, Stats.). (He noted that the Department of Administration (DOA) was updating the page included with Memo No. 1 entitled "Distinguishing Between Different Statutory Methods of Resolving Municipal Land Use and Boundary Issues" to provide the current statutory citations and to change the "maybe" to "no" with respect to the "Subject to referenda" row under the middle column.)

Ms. Offerdahl reviewed Memo No. 4 by briefly describing alternative dispute resolution (ADR) and the range of ADR processes described in the American Bar Association attachment to the Memo. She then reviewed the three examples in the Memo of options for incorporating ADR into Wisconsin statutes governing annexation, and some of the potential benefits of ADR in the annexation context.

### **2. Memo No. 3, Outline of Proposal by Representative Mark Gottlieb (November 9, 2004)**

Representative Gottlieb gave a brief overview of his proposals, outlined in Memo No. 3, regarding various municipal boundary agreement procedures. Chair Lasee suggested that each committee member comment generally on the proposals.

Mr. Derr began by stating that, with respect to the last proposal relating to s. 66.0203, Stats., if annexations were allowed to proceed during the time that an incorporation petition was pending, there potentially could be a rush for annexation once an incorporation had started.

Ms. Kaster commented that it is better to have municipalities at the table earlier, rather than later.

Mr. Clark agreed with Ms. Kaster, and stated that it is better to have affected municipal parties talking with each other before the adoption of an annexation ordinance, rather than afterwards.

Mr. Parmentier noted that, if parties come together to establish a cooperative plan under s. 66.0307, Stats., currently DOA must approve such a plan. Mr. Parmentier stated that he saw no reason for this DOA approval requirement.

Ms. Jones expressed general agreement with Representative Gottlieb's proposal, and cited as an example of the current lack of incentives for municipalities to "come to the table" the Town of Linn's difficulties in getting the City of Lake Geneva to talk with the town.

Mr. Mooney expressed his belief in the rights of property owners and the need to enable economic development to flourish. He stated that it appears the cooperative agreement process needs to be simplified. Mr. Mooney indicated that he likes using incentives, and suggested thinking about using future revenues from sources such as transfer fees, sales tax, or income tax generated by new development to fund a pool from which incentives for cooperative agreements could be provided. Mr. Mooney stated that, with respect to ADR, he felt the standards should be set by a diverse group of interests, not just DOA.

Mr. Kraft mentioned that in his view, s. 66.0307 enables the interests of property owners and other stakeholders to be heard, and he questioned where the evidence was for s. 66.0307 being overly cumbersome. Mr. Kraft cited agreements that Madison had concluded with Middleton, and Oshkosh with Algoma, as evidence of favorable experience with s. 66.0307. He also indicated that the requirement for DOA approval under this provision is a benefit, because DOA serves as a guardian to ensure that statutory standards are met. With respect to the timeframe of 270 days in Representative Gottlieb's proposal, Mr. Kraft mentioned that the timeframe seemed somewhat short and that it had taken Oshkosh and Algoma 2½ years to negotiate a cooperative agreement under s. 66.0307.

Representative Zepnick expressed the possibility that towns may be a thing of the past, and stated that cities have inherent value that attracts people, but face the issue of free riders (people absorbing public services without contributing). He stated that, in general, a regional approach is desirable.

Representative Kaufert stated that, as Co-Chair of the Joint Finance Committee, when he hears talk of providing financial incentives for boundary agreements he questions where the money will come from. He also expressed an interest in ADR, and noted that the communities he represents have succeeded in establishing cooperative boundary agreements.

The committee next discussed individual provisions of the Memo. With respect to financial incentives under item 6 on page 2, Representative Gottlieb stated that his intention had been to have parties receive short-term incentives for boundary agreements from the state, before the comprehensive plan required under Smart Growth was due. In that sense, the incentives would have been analogous to Smart Growth grants intended to "jumpstart" the process. Mr. Mooney brought up his earlier suggestion of using future revenues from transfer fees, sales taxes, or income taxes generated by the new development.

Mr. Kraft suggested that another possibility for a financial incentive for a village or city to come to a boundary agreement under s. 66.0307 could be that it would not have to share revenue generated by a new development with schools, tech schools, or counties for a certain period of time. Mr. Derr suggested the possibility of having a town receive a financial contribution relating to the percentage of land it had contributed to the development, and also noted that a town might be willing to give up some of its state shared revenue money in exchange for sharing the economic gains from future development with the annexing community. Mr. Derr also noted that another incentive for an agreement, equally applicable to both sides, is saving money from not paying lawyers.

After further discussion relating to other types of incentives, and who would benefit or lose under various types of municipal revenue sharing arrangements, Representative Gottlieb repeated his original idea that financial incentives be provided by the state if the state wanted to encourage cooperative boundary agreements. He noted that, once parties are at the table, they can negotiate various municipal revenue sharing schemes themselves, but his proposal was intended to provide a state-funded incentive to get them to the table to start talking to each other. Representative Gottlieb concluded that he would prefer to delete item 6 on page 2 if the state did not have the money to implement it, rather than to take a financial incentive out of one community's pocket to put it into another's. Mr. Kraft stated that there might be some potential for other types of incentives, however, and volunteered to look at financial incentives further as a member of the subcommittee.

Regarding the Memo's proposal to expand the statute relating to municipal boundaries fixed by judgment (s. 66.0225, Stats.), Mr. Clark expressed his opinion that s. 66.0301 was a better candidate than s. 66.0225 for the proposal.

Regarding the proposal on page 3 relating to s. 66.0203, Stats., which would allow annexations to proceed during the time an incorporation petition is pending, Representative Gottlieb stated that his intention with this proposal was to keep frivolous incorporations from blocking annexations. In response to a question regarding how 2003 Act 171 changed current law, Mr. Clark explained that, under Act 171, the initiation of an annexation proceeding or the publication of notice to circulate an incorporation, whichever came first, would have the effect of putting on hold the subsequent proceeding until the validity of the first one was determined. Under prior law, the subsequent proceeding would have had to start all over again. Representative Gottlieb stated that perhaps requiring the people filing an incorporation petition to affirm in some way that they meet the statutory standards for incorporation would be an alternative way to prevent frivolous incorporation petitions. Mr. Clark stated that he would not file an incorporation petition on behalf of a town unless he knew it was not frivolous and it had a planner's opinion backing it up, and Representative Gottlieb stated that a planner's opinion for an incorporation petition might be yet another alternative for achieving his goal of preventing frivolous incorporation petitions.

### **3. Other Proposals and Issues**

The committee discussed the three options in Memo No. 4 relating to ADR, and generally made the following decisions regarding preliminary drafts:

- Option 1: The committee agreed to consider draft legislation amending the annexation statutes to state that s. 802.12, Stats., applies in the context of annexation.
- Option 2: The committee generally agreed that DOA should be able to suggest, but not require, ADR, and therefore statutory authorization for DOA was not necessary because DOA can suggest ADR now as part of its annexation review. However, because currently DOA annexation review is limited to annexations in counties with a population of 50,000 or more, Chair Lasee suggested expanding DOA's authority to review annexations in *all* counties. The committee agreed to consider draft legislation expanding DOA annexation review to all counties.
- Option 3: The committee agreed to consider draft legislation requiring DOA to create and maintain a list of qualified ADR professionals to help resolve annexation and other boundary and land use conflicts. The issue of the need to develop a pool of such professionals, and the possibility of a certification process that recognized ADR expertise in the context of annexation, was also raised.

The committee discussed a handout from Mr. Clark that proposed changing the prohibition under 2003 Act 317 against towns challenging unanimous annexation. Page 3 of the handout states Mr. Clark's proposal that towns be allowed to contest a unanimous consent annexation if the "annexation includes more than two parcels or two property owners" or if the "annexation is contiguous to the city/village when attached all or in part to a unanimous consent annexation that occurred within five (5) years of the current annexation." Mr. Kraft stated that he was against Mr. Clark's proposal, because it could override property owner rights. Chair Lasee indicated that he did not approve of hiding under the

umbrella of property rights, because the town neighbors of those property owners who want the annexation could be negatively affected. Representative Gottlieb suggested the committee should not change Act 317, because it was a negotiated agreement and the committee should stick to less controversial issues rather than shift the balance of power between cities and towns. Mr. Derr stated that he did not like the Act 317 provision under discussion, but to the extent that the committee succeeds in encouraging cooperative boundary agreements, the sort of gerrymandered annexation shown in Mr. Clark's handout would hopefully not happen. The committee consensus was not to address this issue at this time.

### **Other Business**

Chair Lasee asked for volunteers to form a subcommittee to work on draft legislation for committee consideration, based on the day's discussion. Representative Gottlieb, Mr. Kraft, Mr. Clark, Mr. Derr and Mr. Mooney volunteered and were appointed by Chair Lasee to the subcommittee.

### **Plans for Future Meetings**

The next meeting of the Special Committee will be held after the subcommittee meets and has prepared recommendations to present to the full committee.

### **Adjournment**

The meeting was adjourned at 2:00 p.m.

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