WISCONSIN LEGISLATIVE COUNCIL

Special Committee Staff Brief 04-6

MUNICIPAL ANNEXATION

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

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Joint Legislative Council

Special Committee on Municipal Annexation

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INTRODUCTION

The Joint Legislative Council's Special Committee on Municipal Annexation 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, determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages, and make related recommendations.

Annexation is the process by which unincorporated territory (i.e., town territory) becomes part of an existing incorporated municipality (i.e., a city or village). Annexation is one of several processes governed by municipal boundary law. In addition to annexation, municipal boundary law includes such procedures as incorporation (the process by which unincorporated territory becomes an incorporated municipality); detachment (the process by which territory may be detached from a city or village and become part of a city, village or town to which the territory is contiguous); consolidation (the process by which a town, village or city is merged with a contiguous town, village or city); and municipal boundary changes pursuant to a contract, a cooperative plan approved by the Department of Administration (DOA), or a stipulation in connection with certain municipal boundary legal proceedings.

The statutes and judicial interpretation of those statutes govern the annexation process. This Staff Brief provides background information on annexation law as follows:

- ***Part I*** summarizes current statutory requirements for annexation.
- ***Part II*** identifies and briefly describes key judicial opinions related to annexation.
- ***Part III*** describes recent legislation related to annexation.

This Staff Brief was prepared by Mary Offerdahl, Staff Attorney, and Don Dyke, Chief of Legal Services, Legislative Council, staff for the Joint Legislative Council's Special Committee on Municipal Annexation.

PART I

SUMMARY OF CURRENT STATUTORY PROCEDURES FOR ANNEXATION

Annexation is the process by which unincorporated territory (i.e., town territory) becomes part of an existing incorporated municipality (i.e., a city or village). Current law allows town territory to be annexed to a city or village at the initiative of either:

- Resident electors and property owners of the territory to be annexed, or
- The annexing city or village.

Several procedures are available to accomplish an annexation of territory. These procedures are described below.

ANNEXATION INITIATED BY RESIDENT ELECTORS AND PROPERTY OWNERS

Resident electors and owners of real property in the territory to be annexed can initiate annexation with a petition for either an "***annexation by referendum***" (i.e., an annexation requesting a court-ordered referendum of the electors residing in the territory proposed for annexation) or a "***direct annexation***" (i.e., an annexation without a referendum unless a petition for referendum is filed by a sufficient number of electors after the direct annexation process has begun). According to the DOA, direct annexation is used more frequently than annexation by referendum. Both types of annexation must comply with s. 66.0217, Stats., summarized below, and become effective only after the annexing city or village's governing body enacts an annexation ordinance.

There are two types of direct annexation: "***direct annexation by unanimous approval***" and "***direct annexation by 1/2 approval.***" According to the DOA, of those two procedures, the method of direct annexation by unanimous approval appears to be used more frequently. DOA flow charts summarizing the two types of direct annexation are set forth in ***Appendices A*** and ***B***.

Notice of Intent to Circulate Petition

Under ***direct annexation by unanimous approval***, if all resident electors and all owners of real property in the territory proposed for annexation unanimously sign a petition for direct annexation, there is no need for a referendum and, therefore, no need to circulate a notice of intent to circulate an annexation petition. [s. 66.0217 (2), Stats.] Otherwise, a notice of intent to circulate a petition is the first step in an annexation initiated by resident electors or property owners of the territory to be annexed.

Legal notice of intent to circulate an annexation petition must be published as a Class 1 notice, under ch. 985, Stats., in a newspaper in the territory proposed for annexation before the petition is circulated for signatures. [s. 66.0217 (4), Stats.] The notice must contain specified information concerning the proposed annexation, including a legal description and a scale map, as defined in s. 66.0217 (1) (c) and (g), Stats., of the territory proposed to be annexed. Within

five days after publication of the notice, the person who has the notice published must serve a copy of the notice, either by personal service or by certified mail with return receipt requested, upon: the clerk of each affected municipality; the clerk of each affected school district; each owner of land in the town whose land would be in the city or village after the annexation; and, if the proposed annexation proceeding would be in a county having a population of 50,000 or more, the DOA.

Circulation and Filing of Petition

An annexation petition must be circulated beginning not less than 10 days nor more than 20 days after the date of publication of the notice of intent to circulate. The annexation petition must be filed within six months of the date of publication of the notice and must contain the purpose of the petition, a legal description of the territory to be annexed, including an attached scale map, and the population of the territory. [s. 66.0217 (5) (a) and (c), Stats.]

Requirements for signatures and filing of the petition depend on the type of petition, as follows:

- ***Petition for Direct Annexation by Unanimous Approval***: As stated above, the petition must be signed by all the resident electors, and by the owners of all the real property, in the territory. The petition is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located. [s. 66.0217 (2), Stats.]

- ***Petition for Direct Annexation by 1/2 Approval:*** The petition must be signed by the number of qualified electors, if any, residing in the territory equal to at least the majority of votes cast for Governor in the territory at the last gubernatorial election and the owners of at least 50% of the real property, either in area or assessed value, within the territory. The petition is filed with the city or village clerk. [s. 66.0217 (3) (a) 1., Stats.]

- ***Petition for Annexation by Referendum:*** The petition must be signed by a number of qualified electors residing in the territory equal to at least 20% of the votes cast for Governor in the territory at the last gubernatorial election, and the owners of at least 50% of the real property, either in area or assessed value, within the territory. The petition is filed with the village or city clerk. [s. 66.0217 (3) (b), Stats.]

A person who has signed a petition may not withdraw his or her name from the petition, and no additional signature may be added after a petition is filed. [s. 66.0217 (5) (b), Stats.]

Whether a person qualifies as an elector or property owner is determined as of the date of filing a petition, except that all qualified electors residing in the territory proposed for annexation on the day of a referendum election on the annexation may vote in the election. [s. 66.0217 (10), Stats.]

Residence and ownership must be bona fide and not acquired for the purpose of defeating or invalidating the annexation proceeding. [s. 66.0217 (10), Stats.] The Wisconsin Supreme Court has determined that ch. 6, Stats., relating to eligible electors, determines who is a qualified

elector. Further, the court has concluded that an elector need not be registered in order to sign an annexation petition; however, if registration to vote is otherwise required, an elector must be registered in order to vote on any annexation referendum. [*Washington v. Altoona*, 73 Wis. 2d 250, 243 N.W.2d 404 (1976).]

"Owner" is defined in s. 66.0217 (1) (d), Stats., as:

> [T]he holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant is an owner to the extent of his or her interest.

DOA Review of Annexations

If a proposed annexation is in a county having a population of 50,000 or more, the person publishing the legal notice of intent to circulate an annexation petition must, within five days of the publication, mail a copy of the notice to the DOA, together with any fee imposed by the department for review of the annexation petition. [s. 66.0217 (6) (a), Stats.] The current DOA fee schedule may be found at http://www.doa.state.wi.us/dir/documents/Annexation_Request_Form.pdf.

Within 20 days after receipt of the notice, the DOA must mail to the clerk of the town within which the territory lies, and to the clerk of the annexing village or city, a notice that states DOA's opinion as to whether the annexation is in the public interest and that includes the reasons for DOA's opinion. For this purpose, "public interest" is determined by DOA after considering the following [s. 66.0217 (6) (c), Stats.]:

> [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.

The annexing municipality must review the DOA's advice before taking final action [s. 66.0217 (6) (a), Stats.], but is not required to follow DOA's advice.

City or Village Action on Petition; Referendum

How a city or village takes action on an annexation petition depends on the type of petition. If the petition is for ***direct annexation by unanimous approval***, the elected members of the governing body of the city or village, after reviewing any advice of the DOA, may enact an annexation ordinance by a 2/3 vote. [s. 66.0217 (2), Stats.]

If the petition is not unanimous, within 60 days after the filing of the petition, the common council or village board may accept or reject the petition. Acceptance may consist of adoption of an annexation ordinance. If rejected, the annexation proceeding ceases. Failure to reject the petition obligates the city or village to pay the cost of any referendum favorable to annexation. If the petition is not rejected, the clerk of the city or village must give written notice of the petition, by personal service or registered mail with return receipt requested, to the clerk of any town from which territory is proposed to be detached, and to any person who files a written request with the clerk. The notice must indicate whether the petition is for direct annexation or for annexation by referendum. [s. 66.0217 (7) (a), Stats.]

If the notice indicates that the petition is for ***direct annexation by 1/2 approval***, no referendum is held unless, within 30 days after the date of personal service or mailing of this notice, a petition requesting a referendum is properly filed with the town clerk, signed by at least 20% of the electors residing in the area proposed to be annexed. If a petition requesting a referendum is filed, the town clerk must have notice of the referendum published in a newspaper of general circulation in the area proposed for annexation on the publication day next preceding the referendum election and one week prior to that election. A referendum of the electors residing in the area proposed for annexation must be held not less than 42 days nor more than 72 days after the town clerk receives the referendum petition. The town clerk must mail a copy of the notice to the clerk of the city or village to which the annexation is proposed. [s. 66.0217 (7) (a) 3., Stats.]

If the notice indicates that the petition is for ***annexation by referendum***, the clerk of the city or village must file the notice with the official or agency responsible for preparing the ballots for the election no later than 42 days prior to the election at which the referendum will appear on the ballot. The town clerk must have the notice published in a newspaper of general circulation in the area proposed for annexation on the publication day next preceding the referendum election and one week prior to that election. A referendum of the electors residing in the area proposed for annexation must be held not less than 42 days nor more than 72 days after the date that the clerk of the city or village gave written notice of the petition.

Annexation Ordinance

The governing body of the city or village may enact an ordinance for the annexation of the territory described in the annexation petition by a 2/3 vote of the elected members. An ordinance resulting from a petition for direct annexation by 1/2 approval, or from a petition for annexation by referendum, is to be enacted not less than 20 days after the publication of the notice to circulate the petition and not later than 120 days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election. If the annexation is subject to review by the DOA (described above), the city or village governing body must review

the reasons given by the DOA for whether the proposed annexation is in the public interest before enacting an annexation ordinance. [s. 66.0217 (8) (a), Stats.]

Annexation Ordinance Filing Requirements

When territory is annexed, the city or village clerk must immediately file the annexation ordinance and other information with the Secretary of State and with specified local officials and affected utilities. Failure to so file does not affect the validity of the annexation; the duty to file is a continuing one. [s. 66.0217 (9) (a), Stats.] The Secretary of State is required to supply annexation information to specified state agencies. [s. 66.0217 (9) (b), Stats.]

Adjustment of Assets and Liabilities

A detailed statutory procedure, containing substantive requirements, is provided for the adjustment of assets and liabilities between the annexing city or village and the remaining unincorporated territory (town). [s. 66.0235, Stats.] The adjustment provision also applies to annexations initiated by the annexing city or village, described below.

ANNEXATION INITIATED BY THE ANNEXING CITY OR VILLAGE

In contrast to the procedures described above, which are initiated by electors or property owners of the territory to be annexed, a city or village can initiate annexation in accordance with one of the procedures summarized below. According to the DOA, use of the annexation by court-ordered referendum procedure, described below, is very rare. The use of the other two procedures described below--annexation of town islands and annexation of owned territory--depends on individual circumstances.

Annexation by Court-Ordered Referendum

Initiation of Procedure

The governing body of a city or village may adopt, by 2/3 of the members-elect, a resolution declaring its intention to apply to the circuit court for an order for an annexation referendum. [s. 66.0219 (1) (a), Stats.] The resolution must contain certain information specified by statute and be published as a legal notice in a newspaper having general circulation in the area proposed to be annexed. In addition, the resolution must be served on the clerk of the town or towns from which territory is to be detached within five days of the date of publication of the resolution. The city or village files an annexation petition with the circuit court not less than 30 nor more than 45 days after publication of the resolution. [s. 66.0219 (1) (a) and (b), Stats.]

Protest to Court by Electors in Territory to be Annexed

If, prior to the date set for hearing on the annexation petition, a protest petition with the requisite number of signatures is filed with the court, the court is required to deny the petition for an annexation referendum. The protest petition must be signed by a number of qualified electors residing in the territory to be annexed equal to at least a majority of the votes cast for Governor

in the territory at the last gubernatorial election or the owners of more than 1/2 of the real property in assessed value in the territory. [s. 66.0219 (2) (a), Stats.]

Court Hearing

If no protest petition is filed, the court holds a hearing on the annexation referendum petition. The court is required to hear all parties interested in the petition (including affected towns). The court may direct a survey to be made and refer any question for further examination. [s. 66.0219 (2) (b), Stats.]

If for any reason the proceedings are dismissed, the court may order the city or village to reimburse some or all of the "disbursements" incurred by parties opposed to the annexation. [s. 66.0219 (3), Stats.]

Referendum

If, after the hearing, the court is satisfied that the description of the territory or any survey is accurate and the statutory requirements for the annexation proceeding have been satisfied, the court files an order directing that a referendum be held on the annexation question. [s. 66.0219 (4) (a), Stats.] The referendum must be held in the territory proposed for annexation not less than 42 days nor more than 72 days after the court order is filed. [s. 66.0219 (4) (b), Stats.] All costs of the referendum are borne by the petitioning city or village. [s. 66.0219 (4) (c), Stats.]

If the referendum fails, no other proceeding under s. 66.0219, Stats., affecting the same territory or part of the same territory may be commenced by the same city or village until six months after the date of the referendum. [s. 66.0219 (5) (a), Stats.] If the referendum is successful, the territory is annexed to the city or village after the city or village complies with statutory requirements regarding filing of the annexation ordinance and plat and legal description of the annexed territory. [s. 66.0219 (5) (b), Stats.]

Effect of Department of Natural Resources' Order Relating to Connection of Unincorporated Territory to Sewerage System or Sewage or Refuse Disposal Plant

Under s. 281.43 (1) and (1m), Stats., the Department of Natural Resources (DNR) may, among other things, order the connection of unincorporated territory to a city or village sewerage system or sewage or refuse disposal plant. Such an order is not effective for 30 days following issuance. Within 30 days of the order, the governing body of the city or village subject to the order may commence an annexation proceeding under s. 66.0219, Stats., to annex the unincorporated territory that is subject to the order. If the city or village fails to commence an annexation proceeding within the 30-day period, the DNR order is effective. If the territory is successfully annexed under s. 66.0219, sewerage service must be extended to the annexed territory. If the annexation under s. 66.0219 is unsuccessful, the DNR order is void.

Annexation of and Creation of Town Islands

By 2/3 vote of the entire membership of its governing body, a city or village 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 [i.e., a "town island"] on December 2,

1973." [s. 66.0221, Stats.] An annexation ordinance adopted to annex a town island must include all surrounded town areas except those that are exempt by mutual agreement of all of the governing bodies involved. The clerk of the annexing city or village must file copies of the ordinance and scale map with the Secretary of State, who then must forward copies to specified agencies. This special annexation procedure for town islands is not available:

- If the town island was created only by the annexation of a railroad right-of-way or drainage ditch.

- If the land is owned by a town which has town government buildings located on the land.

- If the town island consists of over 65 acres or contains over 100 residents.

A city or village may not create a town island by annexation of surrounding territory unless a cooperative boundary plan [under s. 66.0307, Stats.] applies to the territory that is annexed, and the town and the annexing city or village are parties to the cooperative plan.

Annexation of Owned Territory

A city or village may also annex territory owned by and lying near, but not necessarily contiguous to, the city or village simply by adopting an ordinance. [s. 66.0223, Stats.] This procedure does not apply to noncontiguous territory if the use of the territory by the city or village is contrary to any town or county zoning regulation.

An annexation ordinance adopted under this procedure is effective upon filing of copies of the ordinance in the Office of the Secretary of State, together with copies of a plat showing the boundaries of the annexed territory.

PART II

KEY JUDICIAL OPINIONS RELATED TO ANNEXATION

This Part describes key judicial opinions that interpret, and in so doing place limits on, the statutory grant of power to municipalities to annex town territory.

RULE OF PRIOR PRECEDENCE

The common law "Rule of Prior Precedence" holds that, if there is conflict between competing annexation proceedings, or between an annexation and an incorporation proceeding, the proceeding that was "instituted" first has precedence and the later proceeding must yield to it. A proceeding is "instituted" on the date that the earliest or first statutorily required procedural step is taken. [*Town of Delavan v. City of Delavan*, 176 Wis. 2d 516, 500 N.W.2d 268 (1993).] In an annexation proceeding, except for a direct annexation by unanimous approval, the first statutorily required procedural step is generally the publication of notice of intent to circulate a petition. [*Village of Brown Deer v. City of Milwaukee*, 274 Wis. 50, 79 N.W.2d 340 (1956).] See the summary, in Part III of 2003 Wisconsin Act 171, which addresses the rule of prior precedence statutorily.

CONTIGUITY

Except for the annexation of territory owned by a city or village, the statutes require that annexed territory be "contiguous" to the city or village. (Provisions for annexing town islands require that the annexed territory be entirely surrounded by the city or village.) The meaning of "contiguous" is not defined in the statutes. The Wisconsin Supreme Court has not attempted to provide a specific definition for the term, stating: "Although finding a single, precise definition of 'contiguous' is difficult, one may discern a trend in Wisconsin's courts to require at a minimum some significant degree of physical contact between the properties in question." [*Town of Delavan*, 176 Wis. 2d at 528.]

The meaning of "contiguous" can be further clarified to some extent by comparing the facts in a couple of illustrative cases. In *Town of Delavan*, the court found that the lakeshore territory the city was trying to annex, which included the tip of a barrier peninsula that was separated from the city by a lake, was noncontiguous. In contrast, in *Town of Lyons v. City of Lake Geneva*, 56 Wis. 2d 331, 202 N.W.2d 228 (1972), the court held that an intervening public road between the city and territory to be annexed did not destroy the concept of "contiguous." In comparing the two cases, the court stated:

> Not only is a 400 foot stretch of water significantly wider than the 23 foot public road at issue in Town of Lyons, but we also conclude that we should not so expand the definition of "contiguous" as to place distant lakeshore property owners at risk of being annexed by neighboring municipalities.

Despite its conclusion that the territory at issue in *Town of Delevan* was noncontiguous, the court allowed the annexation to proceed because "hypertechnical application of the requirement for contiguity would be contrary to the public interest. Accordingly, insofar as the land in dispute is a one and a half acre strip of uninhabited land at the tip of a 'Barrier Peninsula' and comprises a tiny fraction of the total annexation, we conclude that the lack of contiguity in respect to this navigational jetty designed to control water currents is a trivial matter with which we shall not be concerned." [*Town of Delevan*, 176 Wis. 2d at 531.] The court concluded that "insofar as our decision to affirm the...annexation despite the trivial noncontiguity of the intruding barrier is limited to the unique facts of this case, the holding carries no precedential weight for future such disputes--except for the already well recognized *de minimis* doctrine rationale which applies to all court decisions." [*Id.* at 532.]

RULE OF REASON

The "rule of reason" is not set forth in the statutes. In fact, although the rule of reason continues to be an important doctrine in the context of judicial review of annexations, it has not been resolved whether the rule is of state constitutional origin or whether the rule is a judicial doctrine which can be altered by the Legislature. [See Comment, "The Rule of Reason in Wisconsin Annexations," 1972, *Wis. Law Rev.*, 1125.] Wisconsin courts recognize the following three components to the rule of reason [*Town of Menasha v. City of Menasha*, 70 Wis. 2d 181, 189, 488 N.W.2d 104 (Ct. App. 1992)]:

- Exclusions and irregularities in boundary lines must not be the result of arbitrariness;
- There must be some present or demonstrable future need for the annexation; and
- There must be no other factors that constitute an abuse of discretion on the part of the municipality.

Because the Legislature has given cities and villages broad powers to annex unincorporated territory, Wisconsin courts give an annexation ordinance a presumption of validity and place the burden of showing that an annexation violates the rule of reason on the challenger. As the Wisconsin Supreme Court has stated: "The rule of reason does not authorize a court to inquire into the wisdom of the annexation before it or to determine whether the annexation is in the best interest of the parties to the proceeding or of the public. These matters are inherently legislative and not judicial in character." [*Town of Pleasant Prairie v. City of Kenosha*, 75 Wis. 2d 322, 326; 249 N.W.2d 581 (1977).] Instead, the court determines whether the annexation is arbitrary and capricious or is an abuse of discretion.

With regard to the first component of the rule of reason, which requires that exclusions and irregularities in boundary lines not be the result of arbitrariness, a general rule is that when direct annexation proceedings are initiated by property owners, the annexing municipality may not be charged with arbitrary action in drawing the boundary lines. [*Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 2d 473, 479; 605 N.W.2d 274 (Ct. App. 1999).] An exception to this general rule occurs if the municipality is the "real controlling influence" in selecting the boundaries, even though the property owners are the petitioners. In such a case, a court may charge the municipality with any arbitrariness in the boundaries. [*Town of Pleasant Prairie,* 75 Wis. 2d at 326.] For example, the court in the *Town of Menasha* case found that the City of

Menasha had "real controlling influence," because the petitioners wanted only their own land annexed in order to obtain city services and had no interest in including an additional lot, which the city included when it developed the boundary lines. [*Town of Campbell v. City of La Crosse*, 268 Wis. 2d 253, 274; 673 N.W.2d 696, 706 (Ct. App. 2003), citing *Town of Menasha*, 70 Wis. 2d at 192.]

The Court of Appeals has recently placed into doubt another exception to the general rule that when direct annexation proceedings are initiated by property owners, the annexing municipality may not be charged with arbitrary action in drawing the boundary lines. Under this exception, when petitioning property owners exclude property owners opposed to the annexation from the proposed area, so as to ensure the success of the annexation, a court could examine the boundaries of the annexation for arbitrariness even though the petitioning property owners set the boundaries. [*Town of Medary v. City of La Crosse*, 88 Wis. 2d 101, 115-116; 277 N.W.2d 310, 317 (Ct. App. 1979).] In *Town of Campbell*, however, the court found this exception "difficult to harmonize with subsequent supreme court cases that recognize the right of petitioning property owners to include only their own properties and state that in such situations the annexing municipality is not charged with arbitrariness, as long as it is not a controlling influence." [*Town of Campbell,* 268 Wis. 2d at 276.] The *Town of Campbell* court concluded "the better course is to follow the analysis in [*Town of Pleasant Prairie*], under which there is not a violation of the first component of the rule of reason if the property owners are the petitioners and the city is not a controlling influence." [*Id.*]

With regard to the second component of the rule of reason, which requires some present or demonstrable future need for the annexation, among the factors the court has considered relevant on the question of need are:

> The necessity for reasonable and orderly plans for municipal development; an increase in population and the existence of growth overflowing existing boundaries, a need for additional area for industrial or residential construction to accommodate present and reasonably anticipated future growth, and the extension of police, fire, sewer and other services to a substantial number of residents of adjacent areas; and the avoidance of pollution problems that might result from reliance on septic tanks in developing the annexed area. Moreover, in cases of direct annexation this court has recently held that "absent unfair inducement or pressures [by the annexing municipality] upon the petitions, a showing of benefits to the annexed land can be considered in the overall question of need under the rule of reason." [Citations omitted.] [*Town of Pleasant Prairie*, 75 Wis. 2d at 335-336.]

In general, if a municipality shows any reasonable need for the annexation, the court will uphold the annexation. The court also may consider the needs of the annexed territory in determining whether the need component is met, and in 2003 the Court of Appeals concluded that "if the petitioners are in need of services the Town cannot provide but the City can, the need factor is met." [*Town of Campbell*, 268 Wis. 2d at 279.]

The third component of the rule of reason is a sort of "catchall" for claims that the annexation constitutes an abuse of discretion on the part of the municipality, which arises from particular facts of the annexation case that may not be adequately addressed by either of the first two components of the rule of reason.

PART III

RECENT LEGISLATION RELATED TO ANNEXATION

2003 ACT 171

Among other things, 2003 Act 171 addresses the ***rule of prior precedence***, discussed in the previous section. It creates s. 66.0203 (8) (c), Stats., which applies to all annexation procedures except for the special procedure for annexation of town islands (described in Part I). The statute provides:

> **66.0203 (8) (c)** 1. The court shall determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated under s. 66.0217, 66.0219, or 66.0223. A court shall consider an annexation proceeding under s. 66.0223 to have been initiated upon the posting of a meeting notice by a city or village that states that the city or village is considering enacting an ordinance under s. 66.0223.
>
> 2. If the court determines that an annexation proceeding described under subd. 1. was initiated before the publication of the notice [of intent to circulate an incorporation petition], the court shall refer the petition to the board when the annexation proceeding is final. If the annexation is determined to be valid, the court shall exclude the annexed territory from the territory proposed to be incorporated when it refers the petition to the board.
>
> 3. If the court determines that an annexation proceeding described under subd. 1. was initiated after, and within 30 days after, the publication of the notice [of intent to circulate an incorporation petition], the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.
>
> 4. If the court determines that an annexation proceeding described under subd. 1. was initiated on the same date as the publication of the notice [of intent to circulate an incorporation petition], the court shall determine which procedure was begun first on that date and that action may proceed and the other action may not proceed unless the first action fails.
>
> 5. If the court determines that an annexation proceeding described under subd. 1. was initiated more than 30 days after the publication

of the notice [of intent to circulate an incorporation petition], the annexation is void.

2003 ACT 233

Before the enactment of 2003 Act 233, the comprehensive planning statute [s. 66.1001, Stats.] required, beginning on January 1, 2010, that any action of a local governmental unit that affects land use be consistent with its comprehensive plan. Among the listed actions subject to the consistency requirement were annexation and other boundary procedures. Under 2003 Act 233, annexation and other procedures relating to municipal boundaries are no longer subject to the consistency requirement of the comprehensive planning statute.

2003 ACT 317

2003 Act 317 adds two general and one more specific prohibition to various annexation procedures.

Payment of Property Taxes to Town

The first general prohibition, which applies to all annexation procedures except for annexation of territory owned by a city or village (described in Part I), prohibits a city or village from annexing territory unless the city or village agrees to pay annually to the town, for five years, an amount equal to the amount of property taxes that the town levied on the annexed territory in the year in which the annexation is final. No payments are required, however, if the city or village and the town enter into one of the following types of boundary agreements:

- A boundary agreement under s. 66.0225, Stats., which permits any two municipalities (cities, villages, and towns) whose boundaries are immediately adjacent at any point and who are parties to a court action testing the validity of an annexation, incorporation, consolidation, or detachment to enter into a written stipulation determining a common boundary line.

- A boundary agreement under s. 66.0307, Stats., which generally allows a municipality to contract with other municipalities and with federally recognized Indian tribes and bands in this state for "the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law."

- A boundary agreement under s. 66.0301, Stats., which allows any combination of municipalities to determine the boundary lines between themselves under a cooperative plan approved by the DOA.

Annexation Across County Lines

The second general prohibition applies to all annexation procedures, except that it is somewhat different for annexation of territory owned by a city or village (described in Part I). No territory may be annexed by a city or village 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:

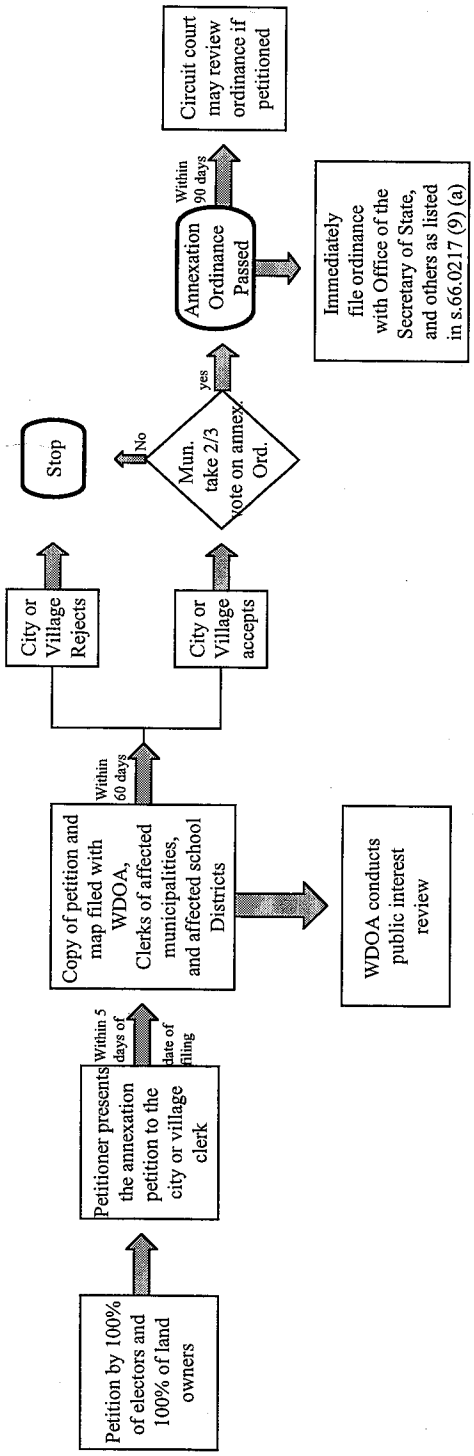
- Both the town board and the county board adopt a resolution approving the proposed annexation.

- For annexation of territory owned by a city or village, the city or village and the town enter into one of the three types of boundary agreements described above (listed in the previous set of bullets).

Contesting Unanimous Direct Annexations

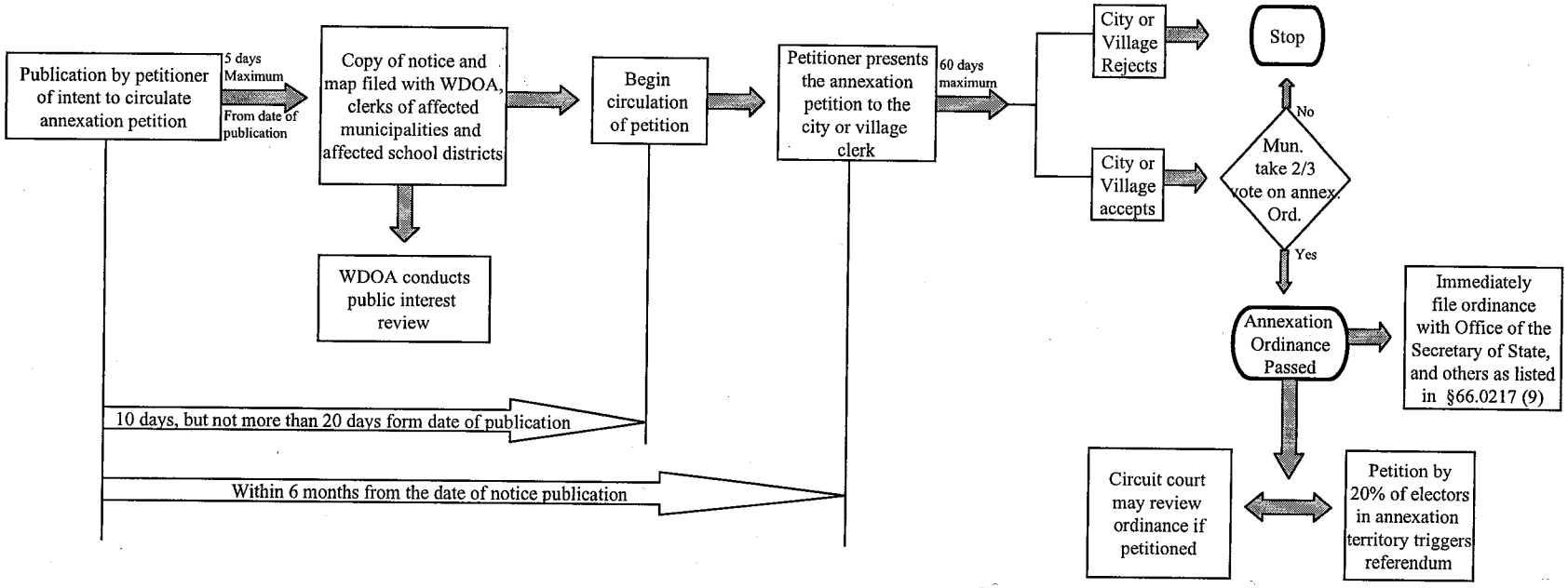
Finally, the more specific prohibition created by 2003 Act 317 applies only to the annexation procedure for direct annexation by unanimous approval (described in Part I) and prohibits a town from bringing any action, whether procedural or jurisdictional, to contest the validity of such an annexation. [s. 66.0217 (11) (c), Stats.]

DIRECT ANNEXATION BY UNANIMOUS APPROVAL
UNDER SECTION 66.0217, WIS. STATS.



Source: Department of Administration

DIRECT ANNEXATION BY 1/2 APPROVAL UNDER SECTION 66.0217, WIS. STATS.



Source: Department of Administration

APPENDIX B