REPORT

OF THE

INTERIM URBAN PROBLEMS COMMITTEE

SUBMITTED TO THE GOVERNOR
AND THE 1959 LEGISLATURE

January 1959

THE STATE OF WISCONSIN
STATE CAPITOL
MADISON

January 8, 1959

To the Honorable
Governor Gaylord A. Nelson
and the members of the
1959 Legislature

This report is submitted to you pursuant to Chapter 544, laws of 1957, as the final report of the interim urban problems committee created by that law. The report covers the work of the committee during the 1957–59 interim, and contains the conclusions and recommendations of the committee regarding urban expansion problems confronting city and village governments in the state.

Respectfully submitted,

CARROLL E. METZNER,
Chairman.

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PREFACE

This is the report of the urban problems committee to the governor and the 1959 legislature. This volume contains a summary of the committee's work and its final recommendations. Also included are copies of the 3 bills (Bill Nos. 226, A., 227, A., and 228, A.) which constitute the legislative proposals of the committee. These bills are found at the end of this volume. Each bill contains explanatory notes to assist the reader in interpreting the language and intent of the legislation.

The introduction to this volume contains information concerning the background and creation of the interim urban problems committee and outlines the scope of the report and the methods employed by the committee. Immediately following the introduction, the recommendations of the committee are summarized for convenient reference (this synopsis is printed on yellow paper). Chapters 1 through 5 review in detail the separate subjects studied by the committee.

The committee gratefully acknowledges the invaluable assistance received from the legislative council staff and other persons during the interim study. A significant contribution was made to the development of committee proposals by a drafting subcommittee composed of: (1) J. H. Beuscher, professor of law, university of Wisconsin; (2) Richard W. Cutler, attorney-at-law, Milwaukee; and (3) James R. Donoghue, director, university bureau of government. The League of Wisconsin Municipalities and certain individuals with an interest and competence in urban matters also supplied information to the committee from time to time.

Particular thanks is extended to Richard W. Cutler who generously took time from a busy law practice to prepare written material for the committee and to appear before the committee on a number of occasions. During the past 2 years, Mr. Cutler served as chairman of the land use and zoning committee of the Milwaukee metropolitan study commission, and in this capacity provided valuable, informal liaison between the state urban problems committee and the Milwaukee commission.

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INTRODUCTION

I. BACKGROUND AND CREATION OF THE COMMITTEE

Recognizing that continuing attention must be focused on the problems associated with the growth and development of urban areas in the state, the 1957 legislature created the urban problems committee pursuant to ch. 544. The act creating the committee was based on Bill No. 30, S., which was drafted by the urban development committee of the legislative council during the 1955–57 interim. The urban problems committee was assigned to the legislative council for administrative purposes only during the 1957–59 interim, and no separate appropriation or staff was made available. However, a substantial amount of time was devoted to research for the committee by the legislative council staff.

The broad purpose of the committee, set forth in ch. 544, was defined as that of conducting studies of the problems confronting city and village governments throughout the state resulting from urban expansion, and the effect of such expansion upon adjacent communities. The study extended to all parts of the state, except counties with a population of over 500,000. The specific duties assigned to the committee included:

(1) To determine what areas of the state are or may be concerned with problems of urban expansion.

(2) To consider the respective roles of the state and local governments in solving such problems.

(3) To consider and recommend such revisions in the statutes as are deemed necessary to aid in the solution of urban expansion problems.

(4) To report committee findings and recommendations, including specific legislative proposals, to the 1959 legislature.

The composition of the urban committee was specified in ch. 544 as follows: (1) 3 senators and 4 assemblymen, appointed as are the standing committees, representing both urban and rural communities; and (2) 8 citizens, appointed by the governor, having an interest in problems of urban expansion and its effect upon suburban and rural communities. The committee was authorized to hold hearings within the state, except in Milwaukee county, and was given the power to subpoena and swear witnesses.

The 1957 legislature also established, by ch. 421, a special commission to conduct a 4 year study of urban problems in Milwaukee county. This group was directed to report to the legislature at the beginning of the 1959 and 1961 sessions. The Milwaukee metropolitan study commission is composed of 15 persons, from Milwaukee county, all appointed for 4 year terms by the governor.

The committee realized the importance of interchanging views and information with the commission during the interim. Therefore, arrangements were made for a systematic and continuing exchange of reports and minutes of meetings. As mentioned in the preface to this volume, the fact that Richard W. Cutler served actively both as a commission member and

as a consultant to the urban problems committee facilitated coordination and cooperation between the 2 groups. At various times representatives of the commission appeared before the committee, and members of the urban committee attended several of the regular meetings of the commission.

II. SCOPE AND METHOD OF COMMITTEE STUDY

The urban problems committee held its organizational meeting in Madison on February 27, 1958. At this meeting the committee reviewed a staff report (Publication No. 59–8, February, 1958) which presented an analysis of the problems facing urban areas in Wisconsin in terms of the following general categories: (1) the number, structure, organization and powers of local governmental units; (2) financing government in urban areas; (3) provision of governmental services in urban areas; and (4) difficulties faced by urban communities in solving urban area-wide problems. The staff report also contained information regarding urban plans in other states, and a detailed pilot survey of the problems of the Madison urban area.

At the first 2 meetings, the committee discussed the broad aspects of the urban problem in Wisconsin and elsewhere. It was agreed that the urban problem in Wisconsin, outside of the Milwaukee county area, has not reached the magnitude found in more highly urbanized states. Nevertheless, the problem is becoming more acute, and the same stresses and strains which are so immediately apparent in the larger population centers in the county are becoming increasingly evident in Wisconsin. The large urban areas in the state have shown a decided population increase in the past decade, and to a lesser degree the same has been true for smaller urban areas. Since 1950 all of the cities in Wisconsin above 25,000 in population have grown in size, and other cities have reached that population. In particular areas the growth has been substantial, and in a few cases quite dramatic.

In attempting to isolate what are the major problems facing urban centers in the state, the committee heard from the Madison metropolitan development committee which had conducted a 2 year study of the Madison area. Also, the Waukesha city and county planners described the situation in that area of the state. It was clear to the committee after these appearances that each urban area has a set of problems peculiar to its own geographical location, economic base and historical development. It was also obvious, however, that there are certain basic problems common to all urban areas. Primary among these is the lack of a local governmental unit with broad enough powers to deal with matters over the entire urban area. All urban areas are similarly confronted with the problem of obtaining adequate revenues to maintain satisfactory services and functions of urban concern.

The committee was sharply aware of the fact that a detailed study of the entire broad range of urban problems would be impossible. To assist the committee in narrowing its interim investigation to manageable proportions, the legislative council staff prepared for the committee's consideration a list of suggested subjects which might be studied. At the April meeting the committee reviewed this list and decided to limit the scope of its inquiry mainly to: (1) possible revision of existing law to provide for

state level review of incorporation and annexation procedures; and (2) strengthening the present regional planning commission law to encourage governmental units to form such commissions.

Subsequent committee meetings were devoted to developing legislative proposals relating to these 2 subjects. In connection with a discussion of these matters, consideration was given to the way the state planning division might more effectively assist urban areas in solving area-wide problems. The committee also revised s. 66.30, relating to joint cooperation among governmental units. This revision was intended to encourage municipalities to join together in the performance of functions of mutual concern.

In developing its final proposals, the committee relied on the legislative council staff and members of the drafting subcommittee for the preparation of specific drafts of the bills. Information and advice was also received from the League of Wisconsin Municipalities and various other persons. The reports and materials filed with the committee can be found in the files of the legislative council, as well as a complete set of the minutes of committee meetings.

III. LIST OF COMMITTEE MEETINGS

The committee held a total of 10 meetings in Madison on the following dates:

February 27, 1958
March 18, 1958
April 17, 1958
June 2, 1958
July 8, 1958
August 13, 1958
September 17, 1958
October 15, 1958
November 24–25, 1958
January 8, 1959

SYNOPSIS OF COMMITTEE RECOMMENDATIONS

Following is a synopsis of the principal recommendations of the urban problems committee.

1. The problems arising from the rapid expansion of urban areas in the state are so numerous and complex that further study is essential. It is urged that the governor and the 1959 legislature seriously consider continuing the urban committee as one means of seeking solutions to the problems associated with urban growth and development.

2. The statutes relating to the incorporation of villages and cities should be clarified and modernized, and the procedures made uniform.

3. There is a need for state level review of all incorporations. Consolidations and large annexations should also be reviewed.

4. A state administrative agency—specifically, the state director of regional planning—should apply flexible standards established by the legislature to all incorporations. Other procedures for changing territorial boundary lines should also be reviewed.

5. The courts should review incorporations in terms of certain non-discretionary standards.

6. The standards to be applied by the director of regional planning should attempt to measure the ability of the territory proposing incorporation to assume the responsibilities and obligations of municipal government.

7. The director should have the power to alter the boundaries of a proposed incorporation if such an adjustment would promote orderly land use development.

8. The director should carefully consider the impact of an incorporation upon the remainder of the town from which the territory is to be incorporated.

9. To prevent the fragmentation of an urban area, the director should determine that a proposed incorporation will not hinder the solution of governmental problems affecting the entire urban complex.

10. Parties having an interest in the incorporation should be allowed to appear in the proceedings.

11. The formation of regional planning commissions should be encouraged as a means of meeting the problems of urbanization.

12. The power of the governor to create regional commissions should be expanded.

13. Local units should have substantial latitude in determining the composition and terms of such commissions.

14. Provisions for membership composition should be geared to the needs of different kinds of regions which might be created. The unusual conditions in the southeastern area of the state, centering on Milwaukee, require a special provision regarding membership composition.

15. The advisory and contractual powers available to a commission should be broadened.

16. Dissolution of a commission and individual unit withdrawal should be permitted, but there should be adequate assurance that a stable planning area can be maintained by a commission.

17. The joint cooperation statute [s. 66.30, Wis. Stats.] should be strengthened and clarified to encourage governmental units to joint together in the performance of functions of mutual concern.

18. The legal basis of contracts entered into under the joint cooperation law should be stabilized.

19. No alteration in the basic organization of the state planning division is recommended at this time.

20. The technical planning assistance made available by the state planning division to local units warrants an increased budgetary appropriation for that division to permit the expansion of staff and facilities.

CHAPTER 1

BACKGROUND OF THE URBAN PROBLEM IN WISCONSIN

The problems currently facing urban, or metropolitan, areas can be traced to a series of developments extending over the past 50 years. The rapid expansion of population, and the rural to urban population migration, coupled with transportation improvements have promoted the rise of large and complex urban areas throughout the country. Experts observing this metropolitan trend predict that both the size and number of metropolitan areas will continue to increase. It is imperative that some remedies be found for the pressing problems resulting from this trend.

The urban problem in Wisconsin, outside of the Milwaukee area, has not reached the magnitude of that in states which contain the largest population concentrations. However, the problem is becoming more acute in Wisconsin, and various communities are beginning to suffer the same growing pains experienced by the large urban centers elsewhere. It is necessary that some means be provided for coping with the financial and governmental problems resulting from continued urban expansion.

BASIC CAUSES OF URBANIZATION IN WISCONSIN

Wisconsin has been regarded as primarily urban since 1930 when over half the population was located in cities and villages. The population has continued steadily to shift to urban centers; and by 1955, cities and villages contained 55.5% of the state's population. If the present trend continues, and all indications are that it will, it is expected that the number of persons living in cities and villages will move to around 65% by 1975.

Between 1950 and 1957 the main portion of the population increase, both in absolute numbers and in per cent, took place in the 15 most populous counties in the state, including Milwaukee. These counties accounted for about 65% of the state's 1957 population; only 6.3% lived in the 20 smallest counties. The total population growth in Wisconsin from 1900 to 1955 was 78%. Urban population increased over 163%, or twice as fast as that of the state as a whole. The rural increase for the same period was only 26%. The most important reasons for this increase in urban population are:

1. *In-state migration to urban centers*: While the total out-of-state migration exceeds the in-state migration, it is obvious that those persons who do enter the state settle primarily in urban areas where employment is more readily available.

2. *Higher urban birth-rate:* The birth rate in the state as a whole has been shifting gradually upward from the low reached during the depression years. There are indications that this birth rate is increasing more

rapidly in urban than in rural areas. Rural areas had a high of 25.8 births per thousand population in 1949. In 1954 the urban rate of natural increase exceeded the rural for the first time.

3. *Intra-state migration to urban centers:* There seems to be a substantial movement of people within the state from rural to urban areas. The impact of this movement is indicated by the fact that since 1950, 32 counties in the state show a loss in the number of residents. The other 39 counties rose in population, some by small numbers; and the main increase took place in 15 counties, each of which gained more than the state average of 10.8%. While these figures are not conclusive, it is apparent that an increasing percentage of the Wisconsin population lives in urban areas. The heaviest concentration of population in the state lies east of and adjacent to a line drawn diagonally from Green Bay in Brown county through Madison in Dane county, with the most densely urbanized portion located in the southeast corner centering in Milwaukee.

The main urban areas in the state, outside of Milwaukee county, include: (1) Madison, Racine, Kenosha, and Green Bay which have the heaviest concentration; (2) the Oshkosh-Neenah-Menasha-Appleton district along the shores of Lake Winnebago and the Fox River, which evidences the same kind of continuous urban development found along the Milwaukee-Racine-Kenosha line; (3) Sheboygan and its environs; and (4) Eau Claire-Chippewa Falls.

Some other areas that may grow rapidly in the near future are: (1) the Janesville-Beloit area; (2) the Manitowoc-Two Rivers area; (3) Wausau and its environs; (4) Fond du Lac and its environs; (5) Wisconsin Rapids and its environs; and (6) the interstate metropolitan areas of Superior-Duluth, Marinette-Menomonie, and La Crosse and the Mississippi River fringe.

A significant population shift is occurring within urban areas. An increasing number of people are moving to the suburban fringe areas beyond the service and regulatory jurisdictions of the central city. The growth of these suburban communities around the large cities in the state has been quite pronounced since 1940, and somewhat dramatic since 1950. An exact measure of this growth can not be established precisely, however, until the results of the 1960 census are available. But it is safe to assume that in many areas the main population increase has been taking place outside the central city.

The reasons for this shift from the central city to the suburban fringe within an urban area have been expressed in terms of a desire for more space and freedom from congestion, a belief that costs are lower, and a presumption that suburbs are better places in which to live and raise children. Many persons also seem to feel that a small community provides a greater opportunity for self expression in community affairs, and contributes to a more personal relationship with officials and others active in local affiairs. These attitudes no doubt have contributed to the incorporation of independent communities bordering large cities and have served as a deterrent to annexation, thus contributing to the governmental decentralization evident within metropolitan areas.

GOVERNMENTAL COMPLEXITY AND FINANCIAL DIFFICULTIES IN URBAN AREAS

Every study of urban area problems quickly reveals an involved pattern of governmental structure, powers and organization. There is widespread agreement that there are too many individual units operating in urban areas to permit efficient and economical government over the entire area. It seems inevitable that populous urban centers develop complex and over-lapping governmental structures. For example, 3 of the largest metropolitan areas in the country contain the greatest number of local governmental units. The New York metropolitan area has 1,071 governmental units, the Chicago area 960, and the area centering on Philadelphia 702. While size and number of local units correlate fairly consistently, there are some urban areas which diverge sharply from this pattern. One such area is the Madison metropolitan area which ranked 102nd in population in 1950, but placed 11th in number of local governmental units with 292.

In 1952 Wisconsin ranked 4th among the states in the number of local governments with 7,257 units. This included: 71 counties, 534 municipalities, 1,281 towns, 5,298 school districts, and 73 special districts. By 1957 Wisconsin was 5th among the states with 5,730 units of local government. The reorganization of school districts was largely responsible for the decrease in the number of units. The number of special districts increased from 73 in 1952 to 78 in 1957. Federal census data released in 1957 reported that Wisconsin has the highest average number of local governments per county of any state in the nation. The per-county average for the nation ranges from a low of 3 in Virginia to a high of 81 in Wisconsin.

Balkanization of political power often is regarded as the greatest single problem facing urban areas. It is difficult to develop unity of purpose or to coordinate planning and action over the whole urban complex when a multiplicity of units are each exercising varying powers over portions of the urban area. Local governmental units in Wisconsin can be described in the following terms: (1) general purpose; (2) limited; and (3) special.

Cities and villages are the only local units of government which are municipal corporations. In Wisconsin these units have broad general powers under the constitutional home rule amendment, ratified in 1924, and other statutory provisions. A municipality is considered a general purpose type of government and is created to serve the needs of people living within a given geographical area. Of all local units, a municipality possesses the widest range of powers for the performance of governmental functions and corporate activities.

Population concentrations have changed the demands made on the municipal governments in urban areas. What were once considered municipal problems have become problems of the whole urban area, and in some fields of activity are even regional in character. The central city—the economic and cultural core of an urban area—not only has to provide for the growing needs of its own residents, but also is often requested to provide services for residents in the fringe areas.

Counties and towns in Wisconsin represent limited governments, since they are dependent upon powers specifically enumerated by the state legis-

lature. Although the legislature in recent years has extended the powers of both counties and towns, these units are still restricted to some degree in the scope of their activities.

A distinction can be made between urban and rural counties. As counties become primarily urban, the number of services to be provided increases and the costs necessarily rise. On the other hand, rural counties are faced with diminishing populations and inadequate tax resources to finance needed services for their residents. The role of county government in highly urbanized counties has become especially important. Because of the need for expanding services in urban counties, many observers regard county government as an ideal unit for providing county-wide services of an urban nature. However, county government, as presently constituted, with a large governing body and diffused executive responsibility, does not lend itself to administering these services.[1]

The town is typically thought of as strictly a rural form of government, but this is no longer always the case. Surrounding many cities are towns having a definite urban complexion. Administratively, town governments are unable to cope with the sudden demands for services which are made by residents of these urbanized towns. The necessity of providing services to these areas presents an obvious problem. One solution has been for urbanized portions of towns to join with an adjacent village or city to secure certain services. Others, in an attempt to protect the tax base and prevent inroads into town territory by annexation, have incorporated as 4th class cities. It is generally felt that the limited nature of town governmental structure precludes effectively meeting the needs and demands of an urban population.

Special districts make up the most varied area of local government. The majority of special districts are established to perform a single function, but some have been given authority to provide several kinds of services. Most special districts fall into the following functional classes: (1) fire protection, (2) soil conservation, (3) drainage, (4) housing authorities, (5) sanitary districts, and (6) sewerage districts.

Authorities generally regard the creation of a special district as an unsatisfactory way of solving urban problems. They claim that such an approach offers only a piecemeal solution, since special districts affect just a single governmental function. It is felt that a more comprehensive means is needed to achieve intergovernmental cooperation and coordinated planning for the whole urban area. Not only does the creation of special districts add to the number of existing governmental units; but also, since most special district governing bodies are appointed rather than elected, such districts are remote from the control of the voters they serve and affect.

The existence of a network of school districts adds still another layer of government in urban areas. The school system and the local government system, although connected in certain peripheral matters, are substantially separate entities in Wisconsin. The major problem relating to schools and

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[1] For a comprehensive analysis of the problems currently facing county governments in Wisconsin see: James R. Donoghue, "County Government and Urban Growth," *Wisconsin Law Review*, Volume 1959, Number 1, page 30. This article is one of 4 in a symposium of problems of urban growth appearing in this issue of the *Law Review*.

governmental units is that of determining to what extent it is desirable to strive for concurrence of school and governmental lines. This problem has caused friction between the central city and suburban communities in many urban areas. Outlying areas often prefer to use the school facilities of the city, but do not want to join the city for all purposes. On the other hand, the city is reluctant to offer services on an individual basis.

It is readily apparent that the number of independent and overlapping units within an urban area produces a governmental pattern which is inadequate to solve area-wide problems. This governmental dispersion produces an uneven distribution of services and costs throughout a metropolitan area, and this pattern is likely to become even more pronounced as the urban trend is intensified in Wisconsin.

The inequitable sharing of the financial burden among the governments in an urban area is a crucial consideration in any examination of the state's urban problem. In many places the central city underwrites in whole or in part the costs of government for the entire urban complex; that is, the city provides certain over-head operations necessary to the whole area. In many instances the city provides a service to outlying areas at some portion of the cost, or the existence of a full-fledged service in the city allows an outlying area either to avoid providing the service at all or allows it to provide the service on a minimum basis.

In urbanized areas the central city has typically extended old services and added new ones as it seemed necessary. Often newly formed neighboring suburban communities find it impossible to achieve this flexibility. When there is an insufficient tax base and inexperienced governmental officials, it is difficult to provide the municipal-type services desired by the suburbanite. This situation results in some fringe areas limiting the number and quality of services or contracting with the central city for selected services. The 2 services most frequently supplied by a central city to adjacent villages and urbanized towns are education and water. There has been a growing tendency on the part of cities to curtail these services, because they feel it imposes an unfair burden on the city's tax structure. Spokesmen for the city maintain that annexation of, or consolidation with, fringe areas offers the most sensible solution to the service-cost problem. On the other hand, suburbanites believe that they pay their way for services received from the city. Further, it is argued that in many cases a fringe community does not want, and should not be required to pay for the full range of municipal services typically associated with annexation or consolidation.

Another aspect of the urban problem is reflected in the frequent charge that the operation of the state's shared-tax formula is unfair to urban centers. Casual scrutiny of the per capita income tax payments to localities reveals wide variations in the amount returned to municipalities in urban areas. Generally, shared taxes are returned to the taxpayer's place of residence, rather than to the municipality where he earns his income. In the case of some urban areas, it is argued that this gives a tax advantage to the suburban areas over the central city. That is, high income suburbs can provide urban services and maintain a relatively low property tax rate, yet the suburbanite's employment, or place of business, is often located in the city and substantial use is made of the recreational and cul-

tural facilities of the central metropolis. Some observers believe that shared taxes are really attributable to the operations of the entire urban area, and therefore should not be for the exclusive benefit of any one locality.

One serious impediment to intra-urban cooperation is the traditional antagonism evidenced in Wisconsin between the central city and the surrounding suburban fringe. Each unit within the urban complex struggles to retain its own identity and independence at the expense of viewing objectively the forces at work within the broader metropolitan community. This city-suburban conflict is perpetuated by the absence of any ready machinery for settling intra-urban disagreements and problems. Without any legally-described means for communities to settle their differences and work together, many area-wide problems are going unsolved, or are being approached on an emergency, single-function basis.

POSSIBLE SOLUTIONS TO THE URBAN PROBLEM

The urban problems committee received several suggestions concerning the direction urban areas in Wisconsin should follow in finding some solution to the problems of urban growth. The committee expressed particular interest in the solutions briefly discussed below.

Reorganization of the county: The committee early in its deliberations considered the possibilities offered by county government for more effectively organizing urban areas. As presently constituted, the county faces a variety of problems in attempting to cope with rapid urbanization: (1) the rigidity of structure and powers imposed by the constitutional requirement of county uniformity;[2] (2) the size of county boards and the inequalities in representation; (3) the diffused and uncoordinated administration of county functions; and (4) the difficulties of providing urban-type services.

The problems listed above are particularly irksome in those counties of the state which are primarily urban in character. The legislature early recognized the special problems confronting Milwaukee county and loosened the requirement of "uniformity" by establishing a classification system of 2 groups: (1) Milwaukee county; and (2) all other counties. Fundamentally, however, county government, as presently constituted, is not likely to assume an aggressive role in meeting the challenge of urbanization. It has been suggested that as Wisconsin becomes more urban, changes should be made in the historic pattern of county government to permit the county to operate more effectively in the expanding urban scene.

Some committee members displayed considerable interest in an examination of the county as a means of handling services and functions on an area-wide basis. However, a detailed investigation of this possibility was deferred in light of the study of county government undertaken in January, 1958 by the bureau of government, university of Wisconsin extension division, at the request of the Wisconsin County Boards Association. The

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[2] The state constitution, in Art. IV, sec. 23, provides that: "The legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable."

bureau of government was directed to prepare a report to inform the county boards as to county problems involved in urbanization and to develop proposals that might be presented to the 1959 legislature.[3]

Creation of single-function agencies: Some committee members believed that progress could be achieved by developing legislation which would facilitate the establishment of single-function agencies or special districts to provide urban area-wide services such as schools, water, health planning and others. It was suggested that such agencies could effectively initiate cooperation between a city and its neighboring communities with the least disturbance in present governmental arrangements. It was felt that the wide public recognition of the need to solve particular problems would generate considerable popular support for the creation of such functional agencies or districts.

The general consensus of the committee was that the encouragement of such units of government offered only a partial solution to the urban area problem, and did not get to the root of the urban dilemma. It was generally agreed that with the creation of single-function agencies or special districts, the problem of coordinating all governmental activities within an urban area would become more and more difficult. Some persons stressed that there was some danger in undertaking to solve only one or a few critical difficulties, since attention then would be diverted from a more thorough effort to coordinate responsibility and activities over the whole urban area.

Control of municipal incorporations: In discussing the various aspects of urbanization in Wisconsin, the committee was consistently aware of the basic problem resulting from the existence of overlapping governmental units in urban areas. Incorporation of new municipalities in the fringe areas of an urban complex all too often is undertaken with little awareness of the broader interests of the entire urban community.

The committee agreed that present statutes relating to the incorporation of municipal territory should be revised in terms of present-day needs. Accordingly, a specific legislative proposal (Bill No. 226, A.) was evolved for the consideration of the 1959 legislature. The committee's conclusions and recommendations on this matter are discussed in detail in chapter 2 of this report and a copy of Bill No. 226, A. can be found at the end of the volume.

Creation of regional planning commissions: It was readily observed by the committee that the urban problems confronting local governments are often shared with neighboring communities throughout an enlarged region having common transportation, drainage and soil, and economic and social patterns. The existence of such "regional" entities was recognized by the 1955 legislature by the enactment of ch. 466, laws of 1955, creating s. 66.945 of the statutes relating to regional planning commissions. This legislation permits local units to join together in the formation of regional commissions which have advisory powers in planning for physical, social and economic development over an entire region.

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[3] This report, *County Government and the Problems of Urban Expansion*, March, 1959, is now available through the Bureau of Government, University Extension Division, The University of Wisconsin.

The committee was concerned that there had been no implementation of this statutory provision, even though some interest had been expressed in regional commissions in various parts of the state.[4] The committee decided to include in its interim study a careful reexamination of s. 66.945 with the idea in mind of making such changes as would strengthen regional commissions and encourage their formation. The final committee proposal became Bill No. 227, A. Committee action on this matter is described in chapter 3 of this report, and a copy of Bill No. 227, A., is included at the end of the volume.

Increased cooperation among governmental units: The committee noted that there have been increasing examples of cooperation among local units of government under s. 66.30, and other sections of the Wisconsin statutes, in recent years. Section 66.30 provides in broad terms that local governments can do anything on a cooperative basis that they are authorized by law to do individually. The committee agreed that these cooperative arrangements between municipalities supply an excellent tool in the solution of urban problems. Therefore, the committee considered legislation which would increase the effectiveness of s. 66.30. Bill No. 228, A., revising s. 66.30, reflects the final committee recommendation on this matter. A review of the committee's discussion of joint cooperation is contained in chapter 4, and a copy of Bill No. 228, A. is found at the end of this volume.

[4] A regional planning commission was established by executive order, dated January 2, 1959, for the counties of Ashland, Bayfield, Iron and Price.

CHAPTER 2

MUNICIPAL INCORPORATION LAW

Considerable animosity and litigation in recent years have resulted from attempts to alter territorial boundary lines in rapidly growing urban areas. Efforts to annex surrounding build-up territory by the core city have been met with counter-efforts by such territory either to retain its town status or to incorporate as a separate municipality. Both sides to this controversy have expressed dissatisfaction with existing state laws regulating territorial boundary changes. Perhaps the most serious shortcoming in the present law is the lack of consideration given to the impact of separate incorporations on the entire metropolitan area within which they occur.

Rapid and intensive residential development in urban areas is accompanied by the need for certain services and controls which can be supplied only by a government organized to perform municipal functions. It is often the case that areas incorporate to meet these needs, but are immediately faced with the overwhelming problems of high costs and rising taxes. This is especially true in those suburban communities which have little or no commercial or industrial property to bolster the tax base. The most perplexing problems in many suburbs relate to financing adequate schools and to developing comprehensive land use controls. Problems associated with schools, land use, police and fire protection, the construction of sewer and water systems and a network of roads and streets face each of the governmental units within an urban complex. The existence of a number of competing units attempting to solve these problems separately may well prevent the realization of those conditions under which governmental functions can best be performed. An especially aggravating problem is created when new units are formed to take advantage of a special tax or revenue situation to the disadvantage of other units in a metropolitan area.

THE EXISTING LAW AND SUGGESTED CHANGES

It has been suggested with increasing frequency that the village and city incorporation statutes should be revamped to reflect the changed conditions of the present. Supporters of this point of view cite the following reasons in defense of a revision of existing law.

1. In the past, protracted court battles over incorporations have caused unnecessary and prolonged uncertainty as to the legality of municipal boundaries. This hampers the development of land use planning and the initiation of needed governmental services in the disputed area, as well as causing considerable expense to the litigants.

2. There is no precise statutory definition of the type of land which reasonably could be considered municipal in character, and thus logically

eligible for incorporation. Without such guide-posts some areas have been incorporated which lack the characteristics normally associated with village or city government.

3. Under the present law there is a variation between the requirements and procedures for incorporation as a village and a city. It is difficult to ascertain the reasons for these differing requirements, and it is felt that these differences have caused confusion and possible opportunism in incorporation proceedings. A more uniform and systematic incorporation procedure obviously would be desirable.

4. No legal means is currently available giving contiguous municipalities an opportunity to protest the incorporation of territory on their borders. Many persons believe it would be preferable to permit parties with a legitimate interest in the incorporation to appear in the proceedings.

In order to evaluate the effectiveness of present incorporation statutes, something should be said about the past history of these laws. Originally, the state constitution gave the legislature the power to determine the boundaries of new villages and cities, and for many years all cities and some villages were incorporated by special legislative enactment. However, subsequent amendments to the constitution delegated the responsibility of incorporation of villages (1872) and cities (1892) to the local electorate. Apparently, the theory underlying this delegation was that persons residing in the territory affected by a proposed incorporation should determine the form of government for the area by the method of local petition and referendum. The legislature again took a hand in municipal incorporation in the 1955 session by enacting the controversial Oak Creek Law [s. 60.81, Wis. Stats.]. This special legislation permitted the incorporation of Oak Creek in Milwaukee county as a 4th class city. The law specifically provides that a town may incorporate as a 4th class city if the resident population is 5,000, the town is adjacent to a city of the first class, and the territory contains an equalized valuation of $20 million.

The incorporation laws operated well until the post World War II era when an increasing number of people migrated to large cities and the availability of rapid transportation facilitated the expansion of the population into the countryside surrounding metropolitan centers. This process of urbanization precipitated the formation of many new villages and cities around build-up urban centers. For example, in the Milwaukee area alone, 10 new municipalities were created between 1950 and 1957. Observers of this activity believe that some of these incorporated areas may have been too small to have been created at all, and that some may have been too large. Others may have been undertaken solely to block the expansion of neighboring municipalities. It is also felt that some of these newly formed municipalities lacked the tax base necessary to supply the services which eventually would be required in the area. The fact that these municipalities could be formed, largely by the decision of a slight majority of the electors who voted in a referendum at a given time, underscores the need for some better control over new incorporations. There is no unincorporated territory remaining in Milwaukee county, so any changes in existing law could offer no solution to the problems of fragmented government in that area. However, the difficulties experienced in Milwaukee county as a result of

this rash of incorporations since the war will be of increasing concern to other areas in the state which now are beginning to feel the full impact of urbanization. Some adequate legal means should be made available to foster sound metropolitan growth and development.

An examination of the present incorporation law reveals certain differences between the requirements for village and city incorporation which make city incorporation easier to accomplish than village incorporation. One difference is that villages are required to have 400 persons per square mile of territory to be incorporated; whereas there has never been any density requirement for cities. Since 1895 territory proposing city incorporation must contain only a minimum population of 1,500. Thus, many areas which logically could have been considered villages by nature, because they lacked industry or a significant population concentration, were incorporated directly from town to city status to avoid village density requirements.

Another significant difference between the 2 procedures relates to court approval requirements. Village incorporations must receive court approval before a referendum is held, but such approval has never been required for cities. A proposal recommended by the 1955–57 legislative council's urban development committee (Bill No. 5, S.) would have required all proceedings leading toward incorporation to be subject to judicial review.[5] The court, in making an incorporation order, would have been required to find that the territory possessed the "requisite urban characteristics." Bill No. 5, S. also provided that both villages and cities should include an average of 400 persons to each square mile for incorporation.

It is significant that the incorporation law has never clearly set forth any definite standards to be applied to proposed incorporations; and there is no statutory definition of the type of land which might lend itself to becoming a village or city. Those standards which are available stem largely from court decisions.

In the case of *State ex rel. Holland v. Lammers* the state supreme court interpreted the state constitution as requiring that land to be incorporated should have certain judicially determined characteristics before being legally susceptible to incorporation.[6] The court ruled that a village or city must exist in fact prior to its incorporation, and a city or village was impliedly defined as those communities were understood in 1848 when the constitution was adopted. The *Lammers* decision states:

> "The word 'city' undoubtedly refers to a municipal corporation of the larger class, somewhat densely populated, governed by its mayor and board of aldermen, with other officers having special functions. A 'village' means an assemblage of houses less than a city, but nevertheless urban or semi-urban in its character, and having a density of population greater than can usually be found in rural districts."

Although the doctrine established by the *Lammers* decision has been reaffirmed many times, the requirement that a city or village as it existed in 1848 be literally 100% in existence prior to incorporation has been modi-

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[5] This proposal was contained in Bill No. 5, S., which failed to pass the 1957 legislature.

[6] 113 Wis. 398, 86 N.W. 677, 89 N.W. 501 (1902).

fied in 2 respects: (1) The *Lammers* case itself indicated that the area proposing to incorporate might include, in addition to the village in fact, "such adjacent lands as are naturally connected with, and are reasonably appurtenant and necessary for future growth, in view of the surroundings and circumstances of location and prospects of future prosperity." (2) The *Lammers* doctrine was liberalized by the decision in *In re Village of Chenequa.*[7] In the *Chenequa* case the supreme court ruled that the existence of a village in fact would be determined in accordance with the current conception of a village.

More recently, the court affirmed the *Lammers* decision in *In re Village of Oconomowoc Lake.*[8] This decision concluded that a village must have a "reasonably compact center or nucleus of population," and its territory must be "distinctly urban in character." The court reiterated the language of the *Lammers* decision that adjacent lands necessary for the future growth of the community could be considered part of the territory proposing to incorporate. In the opinion of one expert, the supreme court is well aware of current urban developments; and therefore it will be increasingly reluctant to limit, on constitutional or statutory grounds, the power of a majority of the local inhabitants to choose their form of government or municipal boundaries.

Considering both statutory provisions and various court rulings, there seems to be a serious doubt as to the legality of certain incorporations accomplished in recent years. Often an incorporation is so popular that no local citizen is willing to contest its validity, and interested neighboring municipalities are prevented from attacking the incorporation in court.[9]

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

The committee felt strongly that legislation was needed to provide a more systematic and stable legal framework for the orderly development of land and government within an urban area. At the June meeting, the committee discussed some legislative standards to be applied to territory proposing to incorporate as a village or city. A general outline of the major provisions which could be included in a revision of the incorporation law was also reviewed. Committee members agreed that some clear standards should be developed which recognize not only specific population, area and density requirements, but also spell-out some more flexible characteristics which should be possessed by an area contemplating incorporation.

While there was unanimous support for the establishment of legislative standards to govern municipal incorporations, 2 points of view were expressed regarding the body which should have the duty of applying these standards. Some persons felt that the courts should have the sole responsibility for reviewing incorporations and applying standards. Others were of the opinion that a state agency should make the determination as to whether the standards had been met, and that the courts should merely review procedural aspects. The question was finally resolved in favor of a

[7] 197 Wis. 163, 221 N.W. 856 (1928).

[8] 270 Wis. 530, 72 N.W. 2d 544 (1955).

[9] *Schatzman* v. *Greenfield,* 273 Wis. 277, 77 N.W. 2d 511 (1956) established the rule that a neighboring municipality has no standing in court to contest an incorporation of territory on its boundaries.

dual review of incorporations. This conclusion was prompted by the Wisconsin supreme court decision in the case of *In re Incorporation of Village of North Milwaukee*.[16] The *North Milwaukee* decision held that determining whether the creation of a municipality was in the public interest was a legislative matter that could not be handled by the judicial branch of the government. It was the opinion of legal experts appearing before the committee that this ruling would require some administrative review of incorporations, if any discretionary legislative standards were established to measure the compliance of incorporations with the public interest. The committee extended to both cities and villages the present requirement of court review of village incorporations. It was felt that this division of review responsibility would provide sufficient legislative guidance to maintain the purely judicial function of the courts.

A decision as to whether a new state agency should be created to apply flexible tests to incorporations, or whether an existing state agency should be assigned this responsibility was resolved in favor of the latter alternative. It was understood that the committee would reexamine at a later date the feasibility of creating a new state agency to perform this task. It was agreed initially that the state planning division, and specifically the state director of regional planning, was the most logical existing agency to perform the review function. The committee's final recommendation regarding the state planning division is discussed in chapter 5 *infra*.

At the direction of the committee, the drafting subcommittee and the legislative council staff prepared a bill embodying the committee's initial recommendations relating to the review of village and city incorporations and consolidations. This bill was numbered LRL 44 and was reviewed in detail at the July committee meeting.

The committee concurred with a suggestion made by a member of the drafting subcommittee that the annexation statutes also should be amended to require the review of annexations in urban areas and annexations of one square mile or over throughout the state. A bill numbered LRL 74 was submitted to the committee at the August meeting specifically detailing this suggestion. It was felt necessary to provide some review of large scale annexations to further protect the public interest and to prevent the annexation statutes from being used in a manner to defeat the purpose of the revised incorporation and consolidation statutes.

Subsequently LRL Nos. 44 and 74 were included in a single bill and numbered LRL 122. It was agreed that the 2 bills logically constituted a single package and should be introduced as such in the legislature. The committee spent considerable time at each meeting revising and refining the original provisions of LRL 122. Prior both to the November 24–25, 1958 and January 8, 1959 meetings, a special committee met with the legislative council staff to discuss the bill and prepare revised drafts of the bill for the consideration of the full committee. At the January 8, 1959 meeting, the committee voted, with 2 opposed, to submit LRL 122 to the legislature with recommendation for passage. The bill was introduced as Bill No. 226, A.

The major purpose of the bill is that of establishing standards to be applied to all municipal incorporations to determine whether they are in

[16] 93 Wis. 616, 67 N.W. 1033 (1896).

the public interest. The circuit court and the state director of regional planning both participate in the review of incorporations. Each of these bodies apply different kinds of standards consistent with the varying functions of judicial and administrative power. The present statutory provisions governing the incorporation of villages and cities are drawn together in a single procedure. The procedure is simplified and, where appropriate, coordinated with the new annexation procedure established by ch. 676, laws of 1957 [s. 66.021]. The bill also revises the consolidation and annexation statutes to provide state level review of consolidations and certain annexations to measure their compliance with the public interest.

The specific recommendations of the committee as contained in Bill No. 226, A. are given below. A description of the individual provisions of the bill can be found in the explanatory notes following each section of the bill.

1. For the purposes of the proposed bill, the committee felt it was necessary to define localities in terms of the extent to which an area is urban in character. "Metropolitan communities" are defined to include cities of 25,000 population or more, or 2 municipalities within 5 miles of each other having a combined population of 25,000, plus certain contiguous territory. Areas proposing incorporation are classified according to their proximity to these urban centers. [See s. 66.013 (2) of the proposed bill.]

2. The procedure for the incorporation of villages and cities is modified substantially by requiring both judicial and administrative review of all incorporations. The committee took the opportunity presented in reexamining the incorporation statutes to systematize existing law by combining and reorganizing the requirements currently found in ss. 61.01 to 61.15 and 61.17 [relating to village incorporation] and s. 62.06 [relating to city incorporation]. [See s. 66.014 of the proposed bill.]

3. The committee agreed that a desirable change in present law would be a provision permitting contiguous governmental units to protest the legality of proposed incorporations before the courts. [See s. 66.014 (5) of the proposed bill.]

4. There was some controversy among committee members regarding the section of the bill which allows a contiguous municipality to notify the review authorities of its willingness to annex the territory proposed for incorporation. Those opposed to the provision argued that the elimination of the annexation petition requirement would be a significant departure from the traditional annexation law which gives the property owners a voice in annexation proceedings. Because annexation might result from an incorporation petition, some felt incorporation proposals might originate which actually intended that the result be annexation.

The majority of committee members maintained that the inclusion of the provision relating to annexation would give the state an opportunity to examine the merits of all available alternatives before arriving at a final determination regarding the incorporation. It was also noted that the bill protected against any misrepresentation, since notice of the possibility of annexation resulting from the incorporation petition must appear on the face of the incorporation petition [s. 66.014 (2) (d)]. Another protection

against capricious action is the requirement of a referendum on the annexation question if it is determined that annexation offers the best governmental solution for the area. [s. 66.014 (9) (g)]. [See s. 66.014 (6) of the proposed bill.]

5. The committee established minimum population, area and density standards to be applied by the circuit court to each incorporation. Different minimums are stipulated for various areas depending on their proximity to a metropolitan center. The committee believed it was important to make the standards more stringent in urban areas to avoid the creation of new governmental units without sufficient area or population to provide needed services and functions. [See s. 66.015 of the proposed bill.]

6. The fundamental change made by the committee in existing law is contained in s. 66.016 which sets forth the standards to be applied by the director of regional planning in reviewing proposed incorporations. All incorporations must be "reasonably homogeneous and compact" and must evidence a pattern of significant land development. [See s. 66.016 (1) of the proposed bill.]

Consideration also must be given to the following factors: (a) the tax structure of the territory, both present and potential; (b) the level of services possible in the area; (c) the impact of the incorporation on the remainder of the town; and (d) the impact on the metropolitan community of which the incorporated municipality would be a part. However, the failure to meet all of the requirements mentioned in (a) through (d) above would not necessarily defeat the incorporation [See s. 66.016 (2) of the proposed bill.]

The committee was especially concerned that due consideration be given to the effect of incorporation on the town involved. There was wide support for the requirement that the director examine the possible effect, financial and otherwise, upon the town from which the territory proposed to be incorporated. It was felt especially important that growth in urban areas should receive special attention; and there was unanimous support for the provision that the director specifically determine "that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community."

7. The committee provided a procedure by which interested parties could appeal the decision reached by the court and the director. This review follows the administrative review procedure set forth in ch. 227 of the statutes. [See s. 66.017 of the proposed bill.]

8. The committee made appropriate changes in the referendum procedure to conform to the basic revision of the incorporation law accomplished by the bill. Wherever possible the incorporation referendum requirements were drafted to conform to annexation referendum procedures. [See s. 66.018 of the proposed bill.]

9. The committee consolidated various provisions currently scattered throughout the village and city incorporation statutes. These provisions relate to: (1) village and city powers subsequent to incorporation; (2) effect of ordinances in existence at the time of incorporation; (3) status of village or town officers after incorporation; (4) method of conducting the

first village or city election; (5) manner of collecting and dividing taxes levied before incorporation; and (6) means of reorganizing from city to village status. [See s. 66.019 of the proposed bill.]

10. The consolidation and annexation statutes were revised by the committee to provide for state level review of both these procedures, similar to the review established for proposed incorporations. It was agreed that the inter-relationship of the different methods of altering territorial boundary lines required that all be subject to review. Otherwise, it would be possible to circumvent the purpose of the new incorporation statutes. [See Sections 6, 7 and 8 of the proposed bill.]

11. The committee concluded at its January 8, 1959 meeting that the bill should include an appropriations section. There was agreement that this was necessary to insure that adequate funds would be available to the director of regional planning to perform the duties imposed by the bill. The committee accepted the annual budget estimates submitted by Mr. Henry Ford, state director of regional planning. They are as follows:

One full-time professional investigator	$ 9,000
Part time of a secretary-stenographer	3,000
Travel	2,000
Other expenses (office rent, postage, supplies)	1,000
Special investigator (as needed)	10,000
TOTAL	$25,000

[See Section 9 of the proposed bill and the fiscal note attached to the bill.]

CHAPTER 3

THE REGIONAL PLANNING COMMISSION STATUTE

As discussed earlier in this report, the post-war population explosion and related developments have produced a number of striking changes in Wisconsin. There has been a continuing process of population concentration and dispersion associated with the growth of the state's urban centers, with the result that some profound alterations have occured in the social, economic and governmental arrangements in metropolitan areas. Urbanization is characterized by a disregard of traditional political boundary lines and its impact is unavoidably regional in nature.

Observers of this "regional" feature of urban expansion point to the need for some agency which can offer efficient and effective leadership in coordinating and directing activities over an entire region. Several states have recognized the need for such an agency, and to-date 33 states have enacted some sort of regional planning legislation. Of the 15 states without such legislation, 4 have county planning statutes which might be adequate substitutes. The remaining states, with the exception of Missouri, Delaware, Rhode Island and Virginia, are primarily rural states where the pressure of urbanization has not created an urgent need for regional planning[11]

THE EXISTING LAW AND SUGGESTED CHANGES

Wisconsin's regional planning law was enacted by the 1955 legislature [ch. 466] and became s. 66.945 of the statutes. This section provides that upon receipt of a petition from one or more local governmental units indicating a need for and an interest in a regional planning commission, the governor, or his designee, is empowered to create such a commission. The general policy behind s. 66.945 is to encourage and assist local governmental units to plan and act cooperatively on matters of common interest.

Since the passage of s. 66.945, only one regional commission has been organized in the state. This commission includes the far-northern counties of Ashland, Bayfield, Iron and Price; it was created January 2, 1959. There has been considerable agitation over the past 4 years for the creation of a regional commission for the 4 heavily urbanized counties in the southeastern corner of the state around Milwaukee. However, to-date only Waukesha and Milwaukee counties have petitioned the governor expressing an interest in such a commission.

The Milwaukee metropolitan study commission concluded, after a 2 year study, that the failure to get a regional commission in southeastern Wisconsin could be traced to the following factors: (1) the lack of public

[11] For a detailed discussion of the status of regional planning legislation in other states, see Milwaukee metropolitan study commission, committee on land use and zoning progress report 2, *Report on Regional Planning Legislation*, chapter II.

awareness of the existence of regional problems and of the ways a regional planning agency could help in solving them; (2) the failure of interested groups to actively plead the case for regional planning; and (3) the existence of certain weaknesses in the present regional planning law.

The climate of opinion which is reflected in the first 2 points made above very possibly prevails in parts of the state other than the Milwaukee area, and for this reason would warrant some attention. However, the urban problems committee felt that it could more profitably devote its time to an examination of the specific provisions of the regional planning law itself. It was hoped that a review of the law would indicate where some revisions might be made which would encourage the formation of regional commissions in the state.

Criticism of the existing law has focused on 4 provisions dealing with: (1) the creation of regional commissions; (2) the withdrawal provision; (3) the membership composition of a commission; and (4) the powers and functions of a commission. Each of these items is discussed below.

1. Creation of regional commissions: Under s. 66.945 (2) of the present regional planning law, the impetus for the creation of a regional commission must come from a local governmental unit in the form of a petition to the governor. Upon finding that there is a need for a commission in the area, the governor has the authority to order its creation. The governor in determining the boundaries of the region must take into account:

> ". . . the elements of homogeneity based upon, but not limited to, such considerations as topographic and geographic conformations, extent of urban development, the existence of special or acute agricultural, forestry, conservation or other rural problems, uniformity of social or economic interests and values, park and recreational needs, civil defense, or the existence of problems of physical, social and economic problems (sic) of a regional character."

It is agreed that this provision permits the delineation of a region which embraces sufficient territory for comprehensive planning. It establishes some appropriate factors which the governor can consider in establishing a region which logically encompasses entire watersheds, drainage basins, transportation networks and metropolitan areas.

The major objection to s. 66.945 (2) came from persons in the Milwaukee area. This criticism was directed at the voluntary system of petitioning the governor for the creation of a commission. It was argued that the creation of regional agencies should not be left to chance, but should be mandatory—particularly in urbanized areas where the need for regional planning is most pronounced. The Northeastern Illinois Metropolitan Area Planning Commission, created in 1957 by the Illinois legislature, was cited as an example of mandatory creation of a regional agency; and this commission apparently is operating with great success.

Most committee members favored retaining the voluntary nature of the law on the grounds that an effective regional planning commission can not be created by compulsion. There was substantial agreement that the situation in the Milwaukee area presents a special problem. Initially the committee decided to take no action on this matter, preferring that recom-

mendations dealing specifically with the Milwaukee area should be introduced as separate legislative proposals. The committee heard testimony favoring an expansion of the governor's power to create commissions in those cases where a majority of the constituent units voiced approval. The committee felt that the law would be improved by incorporating this suggestion in the revision of s. 66.945.

2. **Withdrawal provision:** The charge was made repeatedly that the major weakness of the present statute is the provision which permits local units to withdraw at will from the jurisdiction of the regional agency [s. 66.945 (2)]. The attorney general has interpreted the withdrawal provision to mean that any local unit—county, village, city, or town—is free to remove itself from the commission at any time. Therefore, a local unit may leave the commission either before the agency is operative, or after it is organized.[12] The resulting instability of a commission's jurisdiction is considered a negation of the logic of regional planning.

Even though a local unit may withdraw from the planning jurisdiction of the regional commission, s. 66.945 (14) of the statutes makes all units within the area, including those which have withdrawn, liable for the commission's charges.[13] There was a strong feeling that if withdrawal is permitted, there should be definite statutory assurance that a unit will fulfill any financial obligations incurred while a member of the commission.

There was considerable discussion of eliminating the right of withdrawal entirely and substituting a procedure for dissolution of a commission if a majority of the units opposed its continuation. A compromise solution was suggested which would permit individual units to withdraw, but only after the unit had given the matter extremely careful consideration. It was observed that nothing would be gained by forcing units to remain a part of a commission, since it would be impossible to elicit the real cooperation of such units against their will. It was felt that any provision for withdrawal should make it possible for residents of the region to have adequate notice of the intention to withdraw and an opportunity to express their views on the matter prior to the withdrawal.

3. **Membership composition:** Section 66.945 (3) presently provides that a regional planning commission "shall consist of one representative from each local unit within the region, chosen by such local unit according to procedures it may adopt." It is felt that this requirement would produce a governing body much too large to operate effectively. For example, in the case of a southeastern Wisconsin 4-county agency more than 85 local units would be involved, and presumably the commission could have more than 100 members. To avoid the administrative problems associated with oversized executive bodies, it was suggested that sub. (3), which specifies the composition of a commission, should be completely revised.

Some persons strongly favored revising sub. (3) to permit the governor to participate in the appointment of commission members. This point of view was defended on the grounds that the governor would be in a position to view the needs of the commission from a truly regional perspective and would not be unduly influenced by the pressures of local politics and

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[12] 47 Ops. Wis. Att'y. Gen. 105 (1958).
[13] *Ibid.*

prejudices. Some persons appearing before the committee suggested that opposition to the creation of regional agencies might be lessened if a majority of commission members were appointed by the governor. Others urged that the composition of a commission should remain a matter for local determination.

One objection to the present requirement that each constituent unit must be represented on a commission is that such representation does not accurately reflect the differences in size and population among the various units in a region. However, it also is well recognized that basing membership strictly on population distribution would be particularly unpopular with those suburbs which fear domination by the urban center within a potential region.

The various ways suggested for determining commission membership were discussed at length by the committee. The members were sharply aware of the varying problems in different areas of the state, and felt that the statute should recognize these differences. It seemed desirable to afford local units within a region substantial latitude in determining the composition of their own commission. By permitting the governmental units affected to develop a membership scheme appropriate to the particular region, it was believed that a significant contribution would be made to establishing a climate of opinion responsive to planning over the entire region. In the event no agreement could be reached among the local units, the committee provided a statutory method of selecting commission members. In deference to the thorough study of regional planning in the Milwaukee area conducted by the Milwaukee metropolitan study commission, the urban committee accepted the study commission's recommendation regarding membership for a regional commission in that area.

4. Powers and functions: Subsection (6) of the regional planning statute permits the regional agency to appoint a director and hire other employees and consultants. It may also appoint advisory committees and councils to assist the commission in a consultative and advisory capacity [s. 66.945 (7)].

Subsection (8) authorizes the commission to "conduct all types of research studies, collect and analyze data, prepare maps, charts and tables, and conduct all necessary studies for the accomplishment of its other duties." The commission has the further function of advising local units within the region on planning problems. Other provisions relate to the commission's duty to make and adopt a master plan for the physical development of the region [s. 66.945 (9) and (10)]. It is important to note that these powers are *advisory* only, and the regional planning commission is entirely dependent upon persuasion to accomplish its objectives.

The commission is granted somewhat more authoritative powers under sub. (11). This subsection specifies that before taking final action the local units must submit the following matters for advisory review by the commission:

> "the location of, or acquisition of land for, any of the items or facilities which are included in the adopted regional master plan, and all subdivision plats of land within the region submitted to the governmental unit for approval under statute or ordinance."

The commission is directed to make recommendations on the matters referred to it pursuant to sub. (11) within 20 days. However, the referring body can take final action without considering the commissions recommendations. Even though the advice given by the commission is without the force of law, the committee agreed that it would serve the useful purpose of embracing the regional outlook and defining regional needs and goals.

It was urged by persons appearing at committee meetings that a regional commission should have the prerogative of temporarily suspending its power to review all subdivision plats of land within the region, upon notice to all local units affected by the suspension. The committee agreed with the idea of permitting the commission to postpone this review function in order to allow adequate time to accumulate the necessary staff. Also, it was anticipated that the staff would need time to become acquainted with the general nature of the region and the specific projects underway before wise decisions could be made regarding subdivision and platting matters.

The committee received another suggestion which it believed was extremely worthwhile. This suggestion was that the authority to review porposed subdivisions, now retained by various state agencies, should be transferred to the regional commission. The committee felt that after the regional agency had sufficient staff and was fully organized, such a transfer would greatly simplify the present subdivision review procedure.

In connection with the committee's revision of the joint cooperation statute [s. 66.30], the committee decided to expand the powers of regional commissions to permit them to contract under the broad powers of s. 66.30. It was agreed that granting commissions these powers was a logical extension of regional planning activities.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

The committee was impressed with the potentially significant role regional planning commisions could play in promoting wise land use development and comprehensive planning over an entire natural community. Such commissions also could serve a useful purpose in coordinating the activities of state, county, local and national government agencies having regional service responsibilities, and thus further the efficient operation of governmental activities over a broad area. It is apparent that in some respects at least the present law has been unacceptable to local units of government. The urban problems committee devoted a substantial amount of time to a revision of s. 66.945 in an attempt to make those statutory changes which would make it more satisfactorory to local units.

At the July meeting the committee considered the first draft of a bill (number LRL 48) revising the regional planning statute. This bill was reviewed in detail at subsequent meetings; and a final draft received the unanimous approval of the committee at the January 8, 1959 meeting. LRL 48 was introduced in the legislature as Bill No. 227, A., by joint request of the urban problems committee and the Milwaukee metropolitan study commission. A copy of the bill can be found at the end of this volume. The readers attention is called to the explanatory notes following each section of the bill.

The major recommendations of the committee included in the bill are summarized below:

1. The scope of the present section dealing with the creation of regional planning commissions is broadened to permit the governor to establish a commission, even though one or more local units in the region does not join in the original petition requesting formation of a commission. [See s. 66.945 (2) of the proposed bill.]

2. The method of determining the membership composition of a regional commission is changed substantially to provide alternative methods of selecting commission members. For a region including a city of the first class, a mandatory provision is set forth which requires that a commission in such region will be composed of one member appointed from each county in the region, plus double this number appointed by the governor. For all other regions the local units have the opportunity of determining the plan of membership. Absent this determination, multi-county regions shall follow the scheme established for the Milwaukee area. Regions contained within a single county shall follow a specific plan set forth in the bill. [See s. 66.945 (3) of the proposed bill.]

3. The plat review procedures are simplified by providing that review responsibilities can be delegated to a regional planning commission. Also, the commission is authorized to suspend its review powers. [See s. 66.945 (11) of the proposed bill.]

4. The provisions of s. 66.30 are extended to regional planning commissions to permit regional commissions to offer advice and assistance to local units in matters relating to: (a) the location of public facilities and open spaces; (b) economic development; (c) local administrative and financial problems; and (d) governmental service problems. [See s. 66.945 (12) (b) of the proposed bill.]

5. The existing provision is clarified which relates to the financial obligations of the constitutent units within the region. [See s. 66.945 (14) (a) of the proposed bill.]

6. A specific procedure is established for accomplishing the dissolution of a regional commission. Resolutions of dissolution must be adopted by the governing bodies of a majority of the local units in the region before the governor can order the dissolution of a regional planning commission. [See s. 66.945 (15) of the proposed bill.]

7. The right of withdrawal is retained, but the procedure for accomplishing this action is changed to require a ⅔ vote of the governing body at least 6 months prior to the effective date of the withdrawal of any local unit from the region. [See s. 66.945 (16) of the proposed bill.]

8. Consistent with changes made in s. 66.945, the platting law is amended to provide that regional planning commissions can contract under s. 66.30 for the cooperative exercise of plat review and approval authority. [See s. 236.10 (4) of the proposed bill.]

CHAPTER 4

JOINT COOPERATION AMONG GOVERNMENTAL UNITS

As urban areas have expanded to include a number of governmental units within a single economic and social community, conflicts and antagonisms also have developed among the political entities conprising this community. For a variety of reasons—some intangible in nature—geographical proximity has not necessarily promoted a similar closeness of purpose or interest among local units. Often the 2 forces opposing one another in urban areas are the central city and the suburban fringe. In some of the larger urban areas in Wisconsin this city-suburban split has been particularly bitter and conspicuous in recent years.

One factor inhibiting the successful reconciliation of conflicting interests in urban areas is the lack of suitable machinery for settling "disputes" which arise. Without some ready means for working out urban-wide problems, units tend to view service and function difficulties in terms of individual governmental unit boundary lines. It is obvious that joint action to solve mutually shared problems in urban areas would serve at least 3 worthwhile purposes: (1) the sharing of financial burdens; (2) the elimination of wasteful duplication of facilities; and (3) the provision of service administration over a wide area.

In Wisconsin a particularly effective means for accomplishing intergovernmental cooperation is provided by s. 66.30 of the statutes. Local units have made increased use of this general grant of power, and other statutes authorizing joint cooperation for specific purposes, in recent years in attempting to solve urban-area problems. It has been suggested that s. 66.30 should be strengthened to encourage the participation of local governments in joint activities.

THE EXISTING LAW AND SUGGESTED CHANGES

Section 66.30 is the most sweeping and important statutory authorization for joint action found in the Wisconsin law. This section now reads as follows:

> "LOCAL CO-OPERATION. (1) Any city, village, town, county or school district may, by action of the governing body thereof, enter into an agreement with any other such governmental unit or units or with the state or any department or agency thereof including building corporations created pursuant to section 37.02 (3) for the joint or cooperative exercise of any power or duty required or authorized by statute, and as part of such agreement may provide a plan for prorating any expenditures involved.

"(2) Any city, village, town, county or school district in the exercise of its powers may contract jointly with any other city, village, town, county or school district for any joint project, wherever each portion of the project is within the scope of authority of the respective city, village, town, county or school district."

The law was originally enacted by the 1939 legislature [ch. 210, laws of 1939]. It was expanded to its present wording in 1951 [chs. 241 and 268, laws of 1951]; and sub. (2) was added by ch. 293, laws of 1951. This section has never been before the supreme court, but the legal counsel of the League of Wisconsin Municipalities has interpreted the provision as permitting 2 or more local governments to do virtually anything on a cooperative basis that they are authorized by law to do individually.

In addition to s. 66.30 the statutes contain a number of sections authorizing joint cooperation among local units for specific purposes. Some examples of these statutes are listed below:

30.05 (7) _____breakwater, protection pier or dam
43.26 (4) _____joint library board
45.055 _____joint-memorials
49.02 (4) _____joint relief administration
60.29 (18), (20) ____joint fire department
66.47 _____city-county hospital
66.505 _____city-county auditoriums
66.508 _____city-county safety building
66.51 _____general city-county co-operation
66.527 (2) _____recreation authority
66.945 _____regional planning commission
86.331 _____connecting streets, swing, lift bridges
114.151 _____joint airports
140.09 _____city-county health departments
144.07 _____joint sewerage systems

There are a number of examples of Wisconsin municipalities using the various cooperation sections to perform services and exercise powers and duties by joint action. This seems to be at least one useful means of promoting desirable coordination among units, and of achieving more workable arrangements in urban areas.[14] The committee decided to consider legislation to improve the possibilities of cooperation among local units of government in the expectation that some progress could be made in solving urban problems by this method. Acting upon this decision, the committee requested the League of Wisconsin Municipalities to submit a report on intergovernmental cooperation. This report, presented at the September committee meeting, analyzed the weaknesses of present Wisconsin statutes authorizing joint cooperation and made a specific recommendation for legislation to strengthen s. 66.30. The report emphasized that this revision of s. 66.30 would not resolve all questions surrounding joint cooperation among governmental units, but would make some improvements in the existing law to facilitate action under this broad joint contracting provision.

[14] A summary of instances where Wisconsin municipalities have availed themselves of the cooperation statutes is found in: *The Municipality*, "Local Intergovernmental Cooperation," October, 1958.

The League pointed out that the various joint cooperation statutes are deficient in several respects. It was suggested that these deficiences may deter some units from using this approach to solving urban problems. The inadequacies in existing law were stated as follows:

1. The existence of numerous statutes providing for joint cooperation between municipalities may create some uncertainty as to the authority of municipalities to proceed independent of such specific statutes. It was suggested that the committee consider developing legislation eliminating those statutes which may be unnecessary and organizing the remainder into a uniform provision.

2. In the attempt to exercise jointly the functions covered by the various cooperation statutes, the power of municipalities to prescribe for the administration of the function in a manner different from that authorized by statute has been questioned. The suggestion was made that legislative action might be necessary to correct this situation, and it was hoped that the committee would have sufficient time to investigate this possibility.

3. It is contemplated that a board or commission will be established to administer a function contracted for under s. 66.30. The application of other general statutes relating to such boards or commissions immediately becomes a problem. It was recommended that the committee attempt to review relevant statutes with the intention of developing legislation to eliminate possible conflicts.

4. Some questions have been raised in specific negotiations for joint contracts under s. 66.30 about the legal status of long-term contracts, about the authority of one municipality to delegate its legislative and administrative powers to another municipality, and about the jurisdiction of one municipality within the corporate limits of another municipality. It was observed that the committee might want to consider legislative action to clarify these problems.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

The committee found that time limitations did not permit the intensive and thorough study which would be needed to develop specific legislative proposals regarding items (1) and (2) above. However, the committee did decide to make some changes in s. 66.30 in an attempt to encourage municipalities to join together in the performance of functions of mutual concern. Accordingly, the committee requested the League of Wisconsin Municipalities to cooperate with the legislative reference library in drafting a bill incorporating the suggestions made at committee meetings.

The first draft of a bill (number LRL 152) revising the joint cooperation statute was presented at the November meeting. The committee voted unanimously at that time to recommend the bill for introduction in the 1959 legislature. LRL 152 was introduced as Bill No. 228, A., and a copy of the bill can be found at the end of this volume. An explantory note is attached to the bill describing the contents of the proposal.

The major recommendations of the committee as reflected in the various sections of the bill are:

1. Consistent with changes made by the committee in s. 66.945, Wis. Stats., the provisions of s. 66.30 are expanded to include regional planning commissions. [See s. 66.30 (1) of the proposed bill.]

2. The language of the present law is clarified to specifically authorize municipalities to contract for the furnishing of services. [See s. 66.30 (2) of the proposed bill.]

3. A new provision gives municipalities entering cooperative agreements the authority to establish a specific plan for administering the function for which a contract is negotiated. This section is intended to eliminate possible conflicts among various provisions in existing statutes. [See s. 66.30 (3) of the proposed bill.]

4. A significant addition is made to existing law by the provision which stipulates that any contract entered into by 2 or more municipalities pursuant to s. 66.30 "may bind the contracting parties for the length of time specified therein." This precludes a participating municipality from withdrawing from an agreement made under s. 66.30 for the duration of the contract. The committee believed that the state has the authority to deny the right of withdrawal to such units, even though some persons maintain that a municipal governing body may not bind itself with respect to the exercise of its legislative discretion. [See s. 66.30 (4) of the proposed bill.]

CHAPTER 5

OTHER MATTERS CONSIDERED BY THE COMMITTEE

THE STATE PLANNING DIVISION

In connection with the committee's decision to require the review of all incorporations and consolidations and certain annexations by some state level agency (provided by Bill No. 226, A.), there was a discussion of the appropriate agency to handle this additional duty. There were 2 fairly distinct points of view expressed regarding this matter:

1. That an existing state agency should be assigned the responsibility for reviewing these procedures to avoid burdening state administrative machinery with a new agency.

2. That a new agency should be created to perform the review function on the grounds that the review function, and other matters dealing with local government, warrant the creation of a separate agency.

After hearing testimony in favor of both positions, the committee concluded that it was not necessary to establish a new agency at this time. There was general agreement that the present state planning division, through the state director of regional planning, logically could assume the duties contemplated by Bill No. 226, A.

There was strong support for the idea that some agency at the state level of government should provide research, technical assistance and leadership to assist local communities in dealing with urban matters. It was felt that a separate agency with responsibility for metropolitan area and municipal problems could best develop a comprehensive program intending to assist in the solution of the myriad problems facing urban areas in the state. Persons appearing before the committee suggested that it would be appropriate to place such an agency in the governor's office. Another suggestion was that the state planning division should be removed from the bureau of engineering and assigned broader and more comprehensive planning responsibilities.

During the discussion of the present operation of the state planning division, information was requested concerning the nature of work currently performed by the division. The committee was informed that the division is engaged in a number of activities, including: (1) the examination and transmittal of plats; (2) conducting planning studies for state departments; and (3) furnishing technical planning assistance to local governments. The duties, powers and organization of the planning division are detailed in s. 15.845, Wis. Stats. The statutory direction for other functions performed by the director of regional planning, which are not enumerated in this section, include among others: (1) plat review authority [s. 236.12 (1) (a)]; (2) membership on the building commission technical advisory committee [s. 13.351 (2) (c)]; and (3) assisting the state department of veterans' affairs on housing matters [s. 66.92 (3)].

Upon questioning by committee members, it was reported that the division has been working under the handicap of having insufficient staff to perform the various duties assigned. The expansion of staff has been impossible, because funds have not been made available for the hiring of additional persons. The major portion of the division's work is in 2 areas: (1) plat review and approval; and (2) planning studies for localities. The director of regional planning commented that the plat review function has been particularly time consuming since the 1955 platting law was passed [ch. 570, laws of 1955]. Also, there has been an increased realization by the smaller communities in the state of the need for planning services; and this has placed heavy demands on the division. The committee was told that the budget request for the division will be somewhat higher than for the last biennium in the hope that the staff can be expanded to correspond more nearly to the work-load imposed. It was explained that this proposed increase in the division's budget did not reflect the increased expenditures which would be necessary to implement the provisions of Bill No. 226, A.

At the January 8, 1959 meeting, the committee unanimously approved the following recommendations relating to the state planning division:

1. The committee expressed its strong support of the valuable work the division is doing, and decided to make no recommendation for altering the present organization and operation of the division at this time. In arriving at this decision, the committee was influenced by the governor's stated intention of studying the entire administration of planning functions in the state as a part of the general governmental reorganization study.

2. The committee was well aware that the state planning division, with present staff and facilities, would be unable to satisfactorily perform the duties imposed by Bill No. 226, A. Therefore, the committee recommends that the division's budgetary appropriation be increased to permit the hiring of the necessary staff. (As noted in chapter 2 of this report, an appropriations section was included in Bill No. 226, A. at the direction of the committee.)

CONTINUATION OF THE URBAN COMMITTEE

The committee concluded that all available evidence indicates that there will be a continuation of the urban trend in Wisconsin. As this trend gains momentum, the impact on existing urban areas undoubtedly will become more severe. With the growth of population in urban centers and the continued expansion of the suburban fringe areas, the pressure for finding solutions to the resultant service-cost problems will be intensified. The committee was concerned that the state government supply whatever assistance, advice and leadership is necessary to promote the orderly expansion of urban areas within its borders.

The committee specifically recommends that the life of the urban problems committee be extended. Such an extension would make it possible to continue the studies begun during the 1957–59 interim, and to develop additional legislative proposals to provide a workable legal framework for the solution of urban problems.

PERSONAL PROPERTY TAX STUDY

The legislative council at its July 21, 1958 meeting directed the urban problems committee to study and review the personal property tax and to bring the reports of the previous taxation and revenue sources interim committees up-to-date. The committee was further directed to attempt to formulate recommendations regarding the personal property tax for submission to the legislative council.

At the August meeting, the committee received copies of a legislative council staff report on interim committee studies relating to the personal property tax in Wisconsin. The committee placed this subject on its agenda and decided to consider it in detail after completing the studies already underway. No action was taken on the matter by the committee due to time limitations.

BILLS RECOMMENDED BY URBAN PROBLEMS COMMITTEE

BILL NO. 226, A.

(LRL 122)

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.

BILL NO. 227, A.

(LRL 48)

RELATING TO THE CREATION, ORGANIZATION, POWERS AND FINANCING, AND DISSOLUTION OF REGIONAL PLANNING COMMISSIONS.

BILL NO. 228, A.

(LRL 152)

RELATING TO THE JOINT CO-OPERATION AMONG GOVERNMENTAL UNITS.

STATE OF WISCONSIN

IN ASSEMBLY

No. 226, A.

February 18, 1959—Introduced by Mr. NALEID, by request of The Interim Committee on Urban Problems. Referred to Committee on Municipalities.

A BILL

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.

NOTE: It is the intent of this bill to provide more comprehensive state level control over the development of new municipalities to assure that the creation of such units is in the public interest. Existing statutes relating to village and city incorporations are substantially revised by ss. 66.013 to 66.019, and the provisions are made uniformly applicable to both village and city incorporation proceedings.

The circuit court and the state director of regional planning are directed to examine all proposed incorporations in terms of minimum standards relating to the size, shape and content of the territory. Particular attention is devoted to establishing minimum standards which are relevant to the problems presented by governmental organization in metropolitan areas. This bill also recognizes the special problems of rural or "isolated" areas by providing somewhat different standards for proposed incorporations in such areas.

The circuit court initially reviews all incorporations to determine that certain specified area, population and density requirements are met—this type of review is presently required in village incorporations. Present law is changed by the additional requirement that a state agency shall apply other more flexible tests intended to show whether the incorporation is in the public interest. The provision for review of proposed incorporations by *both* the executive and judicial branches of state government, rather than by the courts alone, was deemed necessary in light of the Wisconsin

supreme court decision in the case of *In re Incorporation of Village of North Milwaukee*, 93 Wis. 616 (1896). The *North Milwaukee* case held that determining whether the creation of a municipality was in the public interest was a legislative matter that could not be handled by the judicial branch of the government. It was the opinion of legal experts that requiring a state administrative officer to make recommendations to the court based on statutorily prescribed standards provided sufficient legislative guidance to maintain the purely judicial function of the courts.

This bill authorizes the director to alter the boundaries of a proposed incorporation prior to the referendum, if such a boundary adjustment would promote orderly land use development. It is further provided that if a contiguous municipality submits a resolution indicating a willingness to annex the area, the director may consider whether such annexation would better serve the public interest. If the director finds that this purpose would be served, a referendum on annexation, rather than incorporation, would be ordered. Upon a favorable vote, the annexation resolution would be deemed an annexation ordinance.

Another important feature of this revision is the requirement that the director consider "the impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated." This is intended to protect the towns from the situation where incorporation of part of the town territory leaves the remainder without sufficient tax base to finance needed services. The impact of an incorporation on a metropolitan community must also be considered. To prevent fragmentation of an urban area the director is required to make "an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community" of which the territory is a part.

This bill also revises present consolidation and annexation procedures. Consolidation of town territory with neighboring incorporated municipalities and certain annexation must be reviewed by the court and the director to determine whether these boundary changes are in the public interest and whether these procedures are being used to evade the new incorporation standards.

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.

NOTE: Consistent with the general revision of the incorporation law, par. (d) requires that city incorporations accomplished under s. 61.189 meet the standards set forth 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 and which permit a determination that annexation to a contiguous municipality may be preferable to incorporation.

NOTE: Sections 66.013 to 66.019 establish the policy of state level review of all proposed incorporations of territory within the state and provide the alternative of annexation if it is determined that such action would best serve the public interest. To prevent the annexation and consolidation statutes from being used in a manner to defeat the purpose of the incorporation statutes, ss. 66.02 and 66.021 are amended to require the review of consolidations and certain annexations.

(2) DEFINITONS. 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.

NOTE: Sub. (2) defines a number of terms which are applicable only to actions under ss. 66.013 to 66.019. For purposes of convenience and brevity, the term "director" is used to denote the state director of regional planning. The standard construction of the word "population" is expanded to permit the use of population estimates other than the last federal census, if more recent statistics are available.

The remainder of the definitions are new and are intended to provide a meaningful breakdown of types of localities in terms of the extent to which an area is urban in character. Par. (c) defines "metropolitan community" and pars. (d) and (e) categorize municipalities according to their proximity to these urban centers.

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.

NOTE: Section 66.014 draws together in a single section present procedural provisions relating to the incorporation of villages [present provisions are contained in ss. 61.01 to 61.15 and 61.17] and cities [present provisions are found in s. 62.06]. It is the intention to consolidate and simplify existing procedures relating to incorporation and to co-ordinate, where appropriate, incorporation procedures with the new annexation procedures set forth in s. 66.021 [ch. 676, laws of 1957].

This section is a departure from existing law in that it establishes a comprehensive system of judicial and administrative review of all proposed incorporations. Legislative standards are established for this review by ss. 66.015 and 66.016.

Sub. (1) is a restatement of the present law relating to city incorporation found in s. 62.06 (2) (b), with the exception that the requirement is deleted that notice be posted in 8 public places. The posting requirement is no longer considered an effective or essential means of giving notice.

(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.

(d) Where the territory to be incorporated is contiguous to an existing municipality the following shall appear on the face of the petition: "NOTICE: If an appropriate resolution is filed by a village or city contiguous to the territory described in this petition, and if the state director of regional planning so determines, the referendum requested herein will be for *annexation* to such village or city rather than for incorporation of an independent municipality."

(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.

NOTE: Sub. (2) sets forth the revised petition requirements. Par. (a) is intended to simplify existing law by setting a reasonable and uniform requirement for the number of signatures needed on incorporation petitions. It represents an increase in the number presently required in village incorporations [s. 61.01 requires "not less than 5 taxpayers and residents"]. In the case of cities, this paragraph lowers the existing requirement that the petition be signed by 100 persons who are electors and taxpayers [s. 62.06 (2) (a)].

Par. (b) applies to all incorporations the present requirement that village incorporation petitions be submitted to the circuit court. The last phrase of this paragraph imposes the same time limitation on the validity of the incorporation petition as pertains currently to annexation petitions under s. 66.021 (4) (c).

Par. (c) specifies the contents of the petition in terms of the basic changes made in the incorporation procedure. The requirement that the petition include a scale map and a description of the territory is taken from s. 66.021 (4) (a).

Par. (d) is entirely new. It relates to sub. (6) of this section and is intended to fully advise signers of the petition of the possible future actions which might result from submission of an incorporation petition.

Par. (e) is identical to s. 66.021 (4) (b), and par. (f) repeats the language of the first sentence of s. 66.021 (4) (c).

(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.

NOTE: Sub. (3) is primarily a restatement of s. 61.07 (3) relating to the hearing and costs under present village incorporation law. In addition it provides that the court may order the parties to post bond to cover disbursements incurred in the hearing.

(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.

NOTE: Sub. (4) co-ordinates and partially revises annexation notice requirements under s. 66.021 (3) and present notice provisions relating to village incorporations.

(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.

NOTE: Sub. (5) broadens existing law by permitting any party having a legitimate interest in the proposed incorporation to enter the proceedings prior to the hearing. It is the intent of this provision to give the review authorities an opportunity to hear all relevant testimony, particularly from neighboring municipalities or towns which might be affected by the incorporation.

(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. It is deemed equivalent to an annexation ordinance if an annexation referendum under s. 66.018 is favorable.

NOTE: Sub. (6) introduces a completely new feature to the incorporation procedure under existing Wisconsin law. Consistent with the basic intent of this bill, sub. (6) gives the director an opportunity to examine the merits of all available alternatives before a final determination is made regarding a proposed incorporation. By permitting a contiguous municipality to submit an annexation resolution, as provided by this subsection, consideration can be given to whether the best interests of the territory proposed for incorporation will be served by annexation to a contiguous municipality or by creation of a separate village or city.

This subsection provides that the annexation resolution will be "deemed equivalent to an annexation ordinance if an annexation referendum under s. 66.018 is favorable." This is a departure from present requirements set forth in the annexation statutes, and is intended to contribute to the logical and orderly development of the procedure established under this section. The interests of the territory proposed for incorporation are protected by the stipulation that the municipality submitting the resolution must annex the territory if the voters in the territory favor such annexation.

(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.

NOTE: Sub. (1) is a restatement of the provision relating to actions under s. 66.021 (10) of the annexation statutes.

(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, and the annexation resolution, if any, to the director and thereupon the latter shall determine whether or not the standards under s. 66.016 are met.

NOTE: Sub. (8) expands the present requirement of court review of village incorporations to both village and city incorporations. The court's review powers are limited only to examining the petition to ascertain that the area, population and density requirements specified in s. 66.015 of this bill are met. The petition then is referred to the director for a determination that the proposed incorporation meets the standards set forth in s. 66.016.

(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 (11) (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 granted, except that the

referendum shall be for annexation and not for incorporation, provided that a contiguous municipality has filed a resolution under sub. (6);

4. 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; or

5. The petition as submitted shall be adjusted to include more or less territory as specified in the director's determination, and an annexation referendum shall be held for the adjusted territory. This determination may not be made unless a contiguous municipality, within 60 days after receipt of notice of such adjustment from the director, files a resolution as specified in sub. (6) for the territory as adjusted.

(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. If the director determines that a referendum be held on the matter of annexing to a contiguous municipality which has submitted a resolution pursuant to sub. (6), the circuit judge shall order a 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.

NOTE: Sub. (9) is completely new. In keeping with the fundamental purpose of this bill, the director is assigned the responsibility of investigating each incorporation to determine whether it is in the public interest on the basis of the standards specified in s. 66.016.

Par. (a) to (e) specify the steps which the director must follow in arriving at his determination. If there are objections to the initial findings and determination of the director, a hearing must be held to give all interested parties an opportunity to present their testimony.

Par. (f) enumerates the 5 different rulings on the petition that might be made by the director. Subd. 3 gives him the discretionary power to require that an annexation referendum shall be held in the territory proposing incorporation if the conditions under sub. (6) are met, and if the territory conforms to the standards under s. 66.021 (11) (c).

Par. (f) 4 and 5 give the director discretionary power to alter the boundaries specified in the petition. This grant of power is intended to promote orderly land use development by giving the director authority to exercise some control over the size and shape of proposed incorporations and certain annexations.

Par. (g) requires the court to order the appropriate action to implement the director's final determination. Par. (h) establishes a definite time for the ascertainment of facts regarding a proposed incorporation.

Par. (i) is taken from present s. 61.07 (3) relating to village incorporations. It imposes a one-year limitation on further incorporation petitions in the territory if the petition is dismissed or the referendum is unfavorable.

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.

NOTE: This section consolidates and completely revamps present statutory provisions relating to the area, population and density requirements for village and city incorporations. The circuit court is empowered to review all incorporations to determine that the minimum requirements under this section are met.

For each of the types of municipalities defined in s. 66.013 (2) different minimums are established. The minimums vary according to the proximity of the proposed incorporation to a metropolitan center. The requirements for creation of a village or city near a metropolitan community are more stringent to avoid the creation of governmental units without sufficient area or population to economically supply services or perform functions which are needed.

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, maunfacturing 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 terrtiory 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.

NOTE: This section is new. It establishes the rule that in order for a proposed incorporation to be in the public interest the territory must possess certain urban characteristics. It is intended that the director examine each proposed incorporation in terms of the territory's capacity to assume the responsibilities and obligations of a municipal government. This section details the standards to be applied by the director in determining that the proposed incorporation is in the public interest. The requirements under sub. (1) must be met. Those under sub. (2) must be considered by the director, but failure to meet all these requirements would not preclude granting the incorporation petition.

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.

NOTE: This section details the procedure for seeking judicial review of the action taken by the circuit court and the director under ss. 66.013 to 66.019. This section follows the customary administrative review procedures set forth in ch. 227 of the statutes.

66.018 REFERENDUM PROCEDURE. (1) ORDER. The circuit court's order for an incorporation or annexation 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 insofar as applicable, and the form of the ballot shall be "for a city [village]" or "against a city [village]". An annexation referendum shall be conducted according to s. 66.021 (5). The inspectors shall make a return to the judge of the circuit court.

(4) COSTS. If the referendum is against incorporation or annexation, 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. If the referendum favors annexation to a contiguous municipality, the costs shall be borne by such municipality.

(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.

(6) CERTIFICATION OF ANNEXATION. If the referendum is for annexation the annexation shall be effective upon approval by a majority of the electors voting in the referendum, and the clerk of the

annexing village or city shall comply with the filing requirements specified in s. 66.021 (8).

NOTE: This section consolidates and revises referendum requirements currently found in various sections under the village and city incorporation statutes. It also makes certain procedures for annexation referendums applicable to incorporations. Sub. (1) simplifies and changes referendum order requirements now contained in ss. 61.08 and 62.06 (3). Under present s. 62.06 (3) the number and boundaries of wards and the number of aldermen for each ward is established by the resolution providing a referendum. Sub. (1) changes this requirement by providing that 7 aldermen will be elected at large and that local officials will subsequently determine by charter ordinance the wards and boundaries. This is intended to simplify the procedure.

Sub. (2) restates existing s. 62.06 (4).

Sub. (3) makes the annexation referendum procedure under s. 66.021 (5) applicable to an incorporation referendum. This change is consistent with the determination that annexation and incorporation procedures should be uniform where appropriate.

The first sentence of sub. (4) repeats s. 66.021 (5) (f) of the annexation statutes. The remainder of this subsection spells out the financial obligations of the parties concerned if either the incorporation or annexation referendum is favorable.

Sub. (5) restates and combines the basic provisions under ss. 61.11 and 62.06 (6) relating to certification of incorporation.

Sub. (6) provides that the present annexation filing requirement specified in s. 66.021 (8) will apply if an annexation referendum conducted under this section is successful.

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.

NOTE: This section is a restatement and consolidation of various provisions under existing village and city incorporation statutes. Consistent with the general procedure created by this bill, the circuit court is given various duties currently divided among several local agencies.

Sub. (1) is taken from ss. 61.10 (3) and 62.06 (7).

Sub. (2) combines ss. 61.10 (4) and 62.06 (8).

Sub. (3) follows ss. 61.10 (5) and 62.06 (9).

Sub. (4) is a restatement of s. 62.06 (10). It provides the additional requirement that nomination 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."

Sub. (5) restates s. 61.17.

Sub. (6) repeats the language of s. 62.06 (11).

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 ~~shall~~ have the force of a contract. The ordinance and the result of the referendum shall be certified ~~to the clerk of the consolidated corporation and by him recorded and certified~~ as provided in ~~section 61.11 if a village, or subsection~~

~~(6) of section 62.06 if a city; to the county clerk;~~ *s. 66.018 (5);* if a town ~~and~~ the certification shall be preserved as provided in ~~subsection (6) of section~~ *ss.* 60.05~~,~~ ~~section 61.11 and subsection (6) of section 62.06~~ *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.*

NOTE: Section 66.02 is amended to require that the circuit court and the director review all proposed consolidations to determine that they are in the public interest. For purposes of uniformity the incorporation standards also are applied to all consolidations. The intention is to guard against the use of an alternative means of changing territorial boundaries if incorporation appears too difficult.

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 ~~within~~ *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).

NOTE: Section 66.021 (7) (a) is amended to conform to the provisions under newly created s. 66.021 (11).

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 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.

NOTE: This section is new. It provides that the director shall review annexations within a metropolitan community and all annexations of one square mile or more. In both cases the director's findings are only advisory.

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.

NOTE: APPROPRIATIONS SECTION (information supplied by Henry Ford, Director of regional planning, bureau of engineering)

(Annual Budget)

One full-time professional investigator	$ 9,000
Part time of a secretary-stenographer	3,000
Travel	2,000
Other expenses (office rent, postage, supplies)	1,000
Special investigator (as needed)	10,000
TOTAL	$25,000

FISCAL NOTE

Estimated	Biennial Total	1959–1960	1960–1961
1. INCREASE IN COST	$50,000.00	$25,000.00	$25,000.00
2. DECREASE IN COST	None	None	None
3. INCREASE IN REVENUE	None	None	None
Executive budget revenue			
Revolving budget revenue			
4. DECREASE IN REVENUE	None	None	None
Executive budget revenue			
Revolving budget revenue			
5. INCREASE IN APPROPRIATION	50,000.00	25,000.00	25,000.00
Personal services, bonus	3,080.00	1,540.00	1,540.00
Personal services, basic	40,920.00	20,460.00	20,460.00
Materials and expense	6,000.00	3,000.00	3,000.00
Capital outlay	None	None	None
6. DECREASE IN APPROPRIATION	None	None	None
Personal services, bonus			
Personal services, basic			
Materials and expense			
Capital outlay			

Above based on Budget request x, Budget bill__, Sub. amdt.__, Budget act__, Other__

7. APPROPRIATION SECTION AFFECTED: (Ch. 20) Section 20.350 Subsection (1)
   (a) Type of appropriation: Executive x, Revolving__, Segregated__.

8. FUND AFFECTED: General x, Highway__, Conservation__, Other (name) __.

9. EXPLANATION OR QUALIFICATION (if any) OF ABOVE ESTIMATES:
   We have tried to search out the experience in Wisconsin on annexations. The data that is available is somewhat sketchy. There is no uniform or consistent pattern to annexation from year to year. The best information was secured from the Municipal Yearbooks published by the International City Managers Association.
   During the last 9 years there have been 403 annexations recorded for Wisconsin cities of over 5,000 population; these involved 36,706 acres and 77,952 people. The average number of annexations per year was 45; the average acreage was 91 acres, and the average number of people involved per annexation was 191.
   The greatest number of annexations in this record was 69 actions in 1955.
   Whether the averages or the peaks will continue into the future is anybody's guess. Some may argue that there will probably be a lull in annexations during the next few years, but that by 1965 or 1970 we will have another flurry of annexations because about then the present post-World War II baby crop will be in the market for new homes.
   It would seem illogical to try to gear a staff organization to process the annexation proceedings to the peak that might be expected in a year. It seems possible to depend on special investigators to carry on a large share of the work that may be necessary. However, it would require at least some staff member who could be assigned such duties and to review the work of such special investigators. There would also have to be some clerical assistance continuously as needed.
   It would seem, therefore, that a minimum staff requirement would be for one full-time professional person, with clerical assistance drawn from a common pool, plus some additional funds earmarked for the employment of special investigators as required.

The following is a suggested annual budget:

One full-time professional investigator		$ 9,000.00
Part time of a secretarial-stenographer		3,000.00
Travel	$2,000.00	
Other expenses (office rent, postage, supplies)	1,000.00	3,000.00
Subtotal		$15,000.00
Special investigator (on a per diem basis, as needed)		10,000.00
Total		$25,000.00

10. LONG-RANGE EFFECT (if any):
There may be some further increase in annexation proceedings when a great upsurge in home formation is to be expected when the post-World War II baby crop will be in the market for new homes by 1965–1970.

STATE PLANNING DIVISION

(End)