

Counties, County Officers

CHAPTER 370

COUNTIES; CHANGE OF BOUNDARIES

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**370.01 CHANGE OF BOUNDARIES; CREATION OF NEW COUNTIES.** The boundaries of counties may be changed by taking territory from a county and attaching the same to an adjoining county, and new counties may be established out of territory of one or more existing counties, as hereinafter provided. No such new county shall contain less than 400 square miles, nor have less than 2,000 inhabitants, nor shall it have an assessed valuation of less than \$4,000,000. No existing county shall be reduced in area below 400 square miles, nor so as to have less than 2,000 inhabitants, nor so as to have an assessed valuation of less than \$4,000,000.

In existing counties having an area of more than 3,500 and less than 6,000 square miles, boundaries may be changed and new counties established having an assessed valuation of not less than \$2,500,000.

No change in the boundaries of any county having an area of more than 2,500 square miles, whether by the creation of a new county, or otherwise, shall detach from such existing county any territory within 12 miles of the county-seat thereof.

[ *RL s 380; 1913 c 337 s 1; 1917 c 359; 1919 c 458* ] (602)

**370.02 PETITION.** A separate petition for each county to be affected thereby, signed by the voters therein equal in number to at least one-fourth of those voting in such county at the last preceding election, giving the residence of each signer, may be filed with the secretary of state, and a copy thereof with the auditor of each county, not less than 90 days before any general election, praying for a change of county boundaries, or that a new county be established out of territory to be taken from one or more existing counties. If the petition be for a change of boundaries, it shall contain a description of the territory to be taken, the name of the county from which the same is to be detached, and the county to which the territory is to be attached; if for the establishment of a new county, the petition shall state the name of the proposed new county, a description of the territory to be included therein, giving boundaries, the name and location of the proposed county-seat, and the names and places of residence of the persons who shall constitute the first county board.

[ *RL s 381* ] (603)

**370.03 PROCLAMATION; ONLY ONE PROPOSITION.** If it appears that each petition is signed by the requisite number of persons who are voters in each of the counties affected, of which latter fact the affidavits of the persons procuring the signatures thereto shall be prima facie evidence, the secretary of state shall notify the governor of the filing thereof, who, not less than 60 days before such election, shall issue his proclamation, reciting that such petitions have been so filed, and the substance thereof, and directing that the question of such change of boundaries, or the establishment of such new county, as the case may be, be submitted to the voters of the counties to be affected thereby at such election; but in no case shall more than

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one proposition be submitted at the same election, except for mutual exchange of territory between counties.

[ *RL s 382* ] (604)

**370.04 RECORD PETITION; PUBLISH NOTICE.** Upon issuance of the proclamation, the secretary of state shall record the petitions, affidavits, and proclamation, and shall cause three weeks' published notice of the proclamation to be given at the county-seat of each county whose territory will be affected by the proposed change, and shall also transmit a certified copy of the proclamation, by mail, to the auditor of each county.

[ *RL s 383* ] (605)

**370.05 NOTICE OF ELECTION; FORM OF BALLOT.** The notice of the next general election of county officers shall specify that the question of forming the new county, or changing the boundaries of existing counties, as the case may be, will be voted upon at such election, and shall state substantially the facts set forth in the petition. If the proposition be for a change of boundaries, the ballots shall have printed thereon the words: "For changing county boundaries. Yes. No." If for the establishment of a new county, the words: "For a new county. Yes. No. ". Each of the last two words, "yes" and "no," shall be followed by a square in which the voter may make a cross to indicate his choice.

[ *RL s 384* ] (606)

**370.06 CANVASS; JUDGES OF ELECTION; COUNTY CANVASSING BOARD.** The judges of election, in addition to the returns required in other cases, shall, within 24 hours after the canvass is completed, transmit to the secretary of state, by certified mail, their certificate of the number of votes cast for and against any proposition submitted; and the county canvassing board shall make return of the vote as in the case of votes for state officers, and the return shall also show the result of the vote for and against any proposition submitted, in such proposed new county, as well as in the entire county affected by such election.

[ *RL s 385; 1913 c 422 s 1; 1978 c 674 s 60* ] (607)

**370.07 CANVASS; PROCLAMATION; SECRETARY OF STATE; AUDITOR; NOTICE TO COUNTY COMMISSIONERS.** The state canvassing board shall canvass such returns at the time of canvassing the votes cast for state officers, and in the same manner; and it may resort to the returns received from the election judges for the correction of errors in the returns of the county canvassing board, and for supplying omissions therein. When the canvass is completed, the board shall make and file with the secretary of state its certificate declaring the result of the vote; and, if the certificate shows that the proposition has received a majority of the votes cast thereon in each county to be affected thereby, and also has received a majority of the votes cast thereon in the territory forming the proposed new county, if the proposition was for the establishment of a new county, the governor, within ten days thereafter, shall issue his proclamation declaring the same adopted. The secretary of state shall record the certificate and proclamation in his office, and transmit a certified copy of the proclamation to the auditor of each county whose territory is affected thereby. The auditor shall cause three weeks' published notice thereof to be given, and, if the proposition was for the establishment of a new county, shall serve a certified copy thereof on each of the persons elected as county commissioners of the new county. The proclamation shall also be published with the general laws enacted at the next session of the legislature thereafter.

[ *RL s 386; 1913 c 422 s 2* ] (608)

**370.08 EFFECT OF PROCLAMATION.** Upon the issuance of the proclamation, the proposed change of boundaries shall become effective; and, if the proposition was for the establishment of a new county, it shall thereupon become duly organized; but the territory included therein shall remain attached, for judicial purposes, to the county from which it was taken, until the officers of the new county have been appointed and have qualified, as provided in section 370.09.

[ *RL s 387* ] (609)

**370.09 COMMISSIONERS TO QUALIFY, ELECT CLERK, APPOINT COUNTY OFFICERS.** Immediately after the service upon them of copies of the governor's proc-

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lamation, the persons chosen as commissioners shall meet at the place named as the county-seat and qualify. The county board shall elect one of its members to act as clerk until the auditor shall have qualified; and shall then appoint the county officers, beginning with the auditor, and the persons so appointed shall qualify as required by law.

[ *RL s 388* ] (610)

**370.10 FILLING VACANCY IN COMMISSIONER DISTRICT CAUSED BY CHANGE OF BOUNDARIES.** In all cases when a change in the boundaries of any county shall have heretofore resulted, or shall hereafter result, in the abolishment of any commissioner district or districts in the county, by the removal of all the territory of such district or districts from the original county, or otherwise, or in a vacancy or vacancies in the board of county commissioners of the original county, for the filling of which provision is not otherwise made by law, and when in such case the board of county commissioners shall be left with less than five members or with an even number of members, the governor shall forthwith, upon the issuance of his proclamation declaring such change in the boundaries of any county, appoint a sufficient number of members to complete a board of five commissioners for the county; or, if the board, after the change of boundaries, shall have been left with more than five members, to complete a board consisting of an odd number of members, and shall designate, in his appointment, the name of the retiring commissioner succeeded by each commissioner appointed by him.

[ *1907 c 5 s 1* ] (611)

**370.11 COMMISSIONER AT LARGE; QUALIFICATION.** Each commissioner so appointed by the governor shall be chosen from the county for which he is appointed, shall not be a resident of any town which already has a member on the board, and shall be known as a commissioner at large. The appointment shall at once be communicated to the auditor of the county, who shall immediately notify the appointee; and the latter shall qualify as such commissioner, in the manner required as to other commissioners in the same county, at any time within five days after notice of his appointment. His failure so to do shall be deemed a refusal of the office, and the governor shall thereupon appoint another commissioner at large in his stead, and similar proceedings shall be had as before until the vacancy shall be filled.

[ *1907 c 5 s 2* ] (612)

**370.12 DUTIES OF AUDITOR; MEETING OF BOARD.** Immediately upon the appointment and qualification of such commissioner or commissioners at large the county auditor shall give notice, in writing, delivered personally or by mail, to each commissioner in the county, of a meeting of the board, which shall be held not less than five, nor more than ten, days thereafter, and, together with such other business as may then come up for attention, any business which may have been required by law, or by previous proceedings, to be transacted by the board of the county at a meeting held after such change of boundaries became effective and before the vacancies thereby caused were filled, and which shall not have been then transacted, shall be disposed of at the meeting so held after the qualification of such commissioner or commissioners at large, and shall have like effect and validity as if accomplished at the prior meeting; and further proceedings required to follow the commissioners' action on such matters shall be taken within the times or on the dates provided by law, or within such reasonable time thereafter as will permit of the notice required by law and of the earliest possible adjustment of affairs to the usual routine.

[ *1907 c 5 s 3* ] (613)

**370.13 REDISTRICTING OF COUNTY; SUBSEQUENT ELECTION.** At least six months before the general election in the county held next after the appointment and qualification of the commissioner or commissioners at large, unless less time shall intervene between such appointment and qualification and the election, in which event the action herein provided for shall be taken at the first meeting after such commissioners shall have qualified, the board shall proceed to re-divide its county into commissioner districts, five in number, to be numbered from 1 to 5, unless otherwise provided by law; and, at the next general election held in the county after such redistricting, a commissioner shall be elected from each district, the member from each odd-numbered district to hold for the term of two years, and the member from each even-numbered district to hold for the term of four years, and thereafter all com-

missioners, except those elected or appointed to fill vacancies for unexpired terms, shall be elected for the term of four years. If, upon such redistricting, any new district shall cover the same territory as any one of the old districts, the commissioner elected from such old district shall continue to act as commissioner from the new district for the remainder of the term for which he was elected. In case a contest, or other litigation, shall be pending involving the legality of the change of boundaries of the county, the redistricting herein provided for shall not be made until after such contest, or other litigation, has been finally determined in favor of such change of boundaries. In such event, if the term of any commissioner at large shall expire before the county is redistricted, his successor shall be elected by the voters of the entire county, whose term shall be four years, unless sooner ended, as in this chapter provided for, or otherwise.

[ 1907 c 5 s 4 ] (614)

**370.14 BOUNDARIES RESTORED AFTER CONTEST.** If, as the result of a contest, or other litigation, involving the change of boundaries of any such county, it shall follow, after the appointment or election of any commissioner or commissioners at large, that the territory detached from the county by the change of boundaries shall, by final determination of the courts, be restored to it, the term of office of all such commissioners at large shall at once terminate upon the election or appointment and qualification of a commissioner for the district of the former commissioner whose place on the board is occupied by him; and, if the term for which the former commissioner was elected shall not have expired, he shall, within 30 days after the final determination restoring his district to the county, qualify as required by law and hold his office for the remainder of his term; otherwise the vacancy shall be filled by appointment as in other cases.

[ 1907 c 5 s 5 ] (615)

**370.15 CENTER LINE OF HIGHWAY TO BE BOUNDARY OF COUNTY IN CERTAIN CASES.** Where a city of the fourth class is situated in one county and such city adjoins a city of the first class in another county, and where a highway runs along the boundary line between these cities and the boundary line between the counties and where the center line of the highway deviates from the boundary line between these cities and counties, but the boundary line between the cities and counties is within or on the lateral limits of the highway, then the center line of the highway between the cities and the counties shall be established as the boundary line between the city of the fourth class and the city of the first class and as the boundary line between the counties in which the cities are situated.

[ 1933 c 230 ] (615-1)

**370.16** [ Local, Big Stone and Lac Qui Parle counties ]

**370.17 TOWNS, SCHOOL, AND ROAD DISTRICTS.** The several towns, school districts, and road districts whose boundaries are unaffected by the change of county lines shall continue to be such in the new county, or county to which transferred, under the same officers as before. Fractions of such towns or districts as are divided by the changed county lines shall be reorganized by the county board of the county in which they are placed, or be attached to adjoining towns or districts, as the board shall deem best.

[ RL s 389 ] (616)

**370.18 RECORDS TRANSCRIBED.** All records in the office of the county recorder affecting real estate transferred under this chapter from one county to another shall be transcribed by the county recorder of the county to which such transfer is made, and he shall receive such compensation therefor as the board of commissioners of the county to which the records are transmitted shall fix. In like manner and with like effect the county auditor shall transcribe from the auditor's office such records and documents as the county board shall direct, for which he shall receive six cents per folio. These transcribed records shall have the same effect, for all purposes, as the originals.

[ RL s 390; 1907 c 136 s 1; 1976 c 181 s 2 ] (617)

**370.19 TAXES; LEVY; COLLECTION.** No transfer of territory under the provisions of this chapter shall affect the collection of taxes levied at the date of the filing of the petition therefor, but all such taxes shall be collected by the officers of the orig-

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inal county, and all moneys then remaining in or afterward coming into the treasury of the original county, or into the possession of any officer of the county, and belonging to any town, school, or road district in the territory transferred, shall be apportioned and paid over to such town or district in the same manner as if such town or district had remained a part of such original county. After the filing of the petition no county tax shall be extended, by or on behalf of the original county, upon any property within the territory proposed to be transferred, unless and until the proposed change shall have been rejected.

[ *RL s 391* ] (618)

**370.20 NEW COUNTIES; TAX LEVY.** When a new county shall have been, or may hereafter be, created and organized out of territory embraced within the boundaries of one or more organized counties in the state, the county board of the newly created county may, immediately upon the organization thereof, or at any time within 90 days thereafter, levy a tax for county purposes for the current year, subject to the limitations now provided by law, and the auditor of the county shall forthwith extend the same upon the tax books of his office, and it shall be due and payable from and after 30 days from the date of the levy thereof, and shall be paid and collected as other taxes for county purposes are now paid and collected; and any and all tax levies made for county purposes by the county board of the county or counties out of which the new county is created and organized, during the year immediately preceding the organization of the new county, so far as the same shall affect the territory embraced within the boundary of the new county, are vacated and any extension thereof is hereby declared void.

[ *1911 c 11 s 1* ] (619)

**370.21 TRANSFER OF PLATS.** Original plats of lands embraced in territory transferred to another county under the provisions of this chapter, on file or of record in the office of the county recorder of the county from which the transfer is made, or certified copies thereof, shall be delivered by such county recorder to the county recorder of the county to which the territory is transferred, and by him filed and recorded.

[ *RL s 392; 1976 c 181 s 2* ] (620)

**370.22 COUNTY INDEBTEDNESS; COUNTY BUILDINGS.** All territory so transferred shall continue liable for its proportion of the excess, if any, of the indebtedness of the original county above the value of its county buildings and of the balance of funds in its treasury. Such share shall be based upon the last assessment, and the value of the buildings, unless agreed upon by the respective county boards, shall be fixed by the sworn appraisal of three disinterested citizens, none of whom shall be a resident or taxpayer in either county, and who shall be appointed by the governor, upon the written application of the board of either county. The appraisal shall be in writing, subscribed and verified by at least two of such appraisers, and filed in the office of the secretary of state, and shall be final and conclusive. Within five days after the filing of the appraisal, the secretary of state shall transmit to the auditor of each of such counties a certified copy of the appraisal, application, appointment and oath.

[ *RL s 393* ] (621)

**370.23 COUNTY BONDS; PAYMENT AND ISSUE.** The county board of the county to which such territory is transferred shall make provision for payment of such indebtedness by levying a tax therefor at the time fixed by law for so doing; and, for the purpose of meeting any portion of the indebtedness which may become due before the same can be raised by taxation, and providing for the necessary county expenses, such board in any such new county may issue bonds of its county, with coupons attached, not exceeding in amount the sum of \$10,000, to run for a period of not more than ten years, bearing interest at a rate not exceeding six percent per annum.

[ *RL s 394* ] (622)

**370.24 PENALTY FOR REFUSAL TO ACT.** The validity of the establishment of any such new county shall not be affected by the failure or refusal of any county officer to do any of the acts or things required by this chapter, but any officer who shall refuse or wilfully neglect to perform any duty herein required shall be guilty of malfeasance in office.

[ *RL s 395* ] (623)