

## CHAPTER 367

## TOWN OFFICERS

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**367.01 DELIVERY TO SUCCESSOR.**

Every town officer shall, immediately after qualifying, demand from the officer's predecessor or other person having control or possession of them, all books, records, and other property belonging to the office. Every person having control or possession of any of them shall, upon the demand, deliver them to the officer.

**History:** (1088) RL s 681; 1986 c 444; 1990 c 401 art 1 s 1

**367.02 WHEN BOARD IS TO ACCEPT RESIGNATIONS, NOTIFY CLERK.**

(a) The town board, for sufficient cause shown to it, shall accept the resignation of any town officer.

(b) The board shall promptly give notice of the resignation to the town clerk.

**History:** (1085) RL s 678; 1984 c 562 s 29; 1990 c 401 art 1 s 1

**367.03 MS 1957 [Repealed, 1959 c 675 art 13 s 1]****367.03 ANNUAL ELECTION OF OFFICERS; VACANCIES; SPECIAL ELECTIONS.**

Subdivision 1. **Supervisors, terms.** Except in towns operating under option A or in towns operating as provided in subdivision 4, three supervisors shall be elected in each town at the town general election as provided in this section. Each supervisor shall be elected for a term of three years and shall serve until a successor is elected and qualified.

Subd. 2. **New towns.** When a new town is organized and supervisors are elected at a town meeting prior to the annual town election, they shall serve only until the next annual town election. At that election three supervisors shall be elected, one for three years, one for two years, and one for one year, so that the term of one shall expire each year. The number of years for which each is elected shall be indicated on the ballot.

Subd. 3. MS 1986 [Repealed, 1988 c 563 s 8]

Subd. 3. **Supervisors; towns under option A.** When two supervisors are to be elected for three-year terms under option A, a candidate shall indicate on the affidavit of candidacy which of the two offices the candidate is filing for. At following annual town elections one supervisor shall be elected for three years to succeed the one whose term expires at that time and shall serve until a successor is elected and qualified.

Subd. 4. MS 1982 [Repealed, 1983 c 359 s 151]

Subd. 4. **Officers; November election.** Supervisors and other town officers in towns that hold the town general election in November shall be elected for terms of four

years commencing on the first Monday in January and until their successors are elected and qualified. The clerk and treasurer shall be elected in alternate years.

**Subd. 5. Election of clerk, treasurer.** Except in towns operating under option B or option D, or both, or in towns operating as provided in subdivision 4, at the annual town election in even-numbered years one town clerk and at the annual town election in odd-numbered years one town treasurer shall be elected. The clerk and treasurer each shall serve for two years and until their successors are elected and qualified.

**Subd. 6. Vacancies.** (a) When a vacancy occurs in a town office, the town board shall fill the vacancy by appointment. Except as provided in paragraph (b), the person appointed shall hold office until the next annual town election, when a successor shall be elected for the unexpired term.

(b) When a vacancy occurs in a town office:

(1) with more than one year remaining in the term; and

(2) on or after the 14th day before the first day to file an affidavit of candidacy for the town election;

the vacancy must be filled by appointment. The person appointed serves until the next annual town election following the election for which affidavits of candidacy are to be filed, when a successor shall be elected for the unexpired term.

(c) A vacancy in the office of supervisor must be filled by an appointment committee comprised of the remaining supervisors and the town clerk.

(d) Any person appointed to fill the vacancy in the office of supervisor must, upon assuming the office, be an eligible voter, be 21 years of age, and have resided in the town for at least 30 days.

(e) When, because of a vacancy, more than one supervisor is to be chosen at the same election, candidates for the offices of supervisor shall file for one of the specific terms being filled.

(f) When, for any reason, the town board or the appointment committee fails to fill a vacancy in the position of an elected town officer by appointment, a special election may be called. To call a special election, the supervisors and town clerk, or any two of them together with at least 12 other town freeholders, must file a statement in the town clerk's office. The statement must tell why the election is called and that the interests of the town require the election. When the town board or the appointment committee fails to fill a vacancy by appointment, a special town election may also be called on petition of 20 percent of the electors of the town. The percentage is of the number of voters at the last general election. A special town election must be conducted in the manner required for the annual town election.

(g) Law enforcement vacancies must be filled by appointment by the town board.

**Subd. 7. Inability or refusal to serve.** In addition to the events specified in section 351.02, a vacancy in a town office may be declared by the town board when an officer is unable to serve in the office or attend board meetings for a 90-day period because of illness, or because of absence from or refusal to attend board meetings for a 90-day period. If any of the preceding conditions occurs, the town board may, after the board by resolution has declared a vacancy to exist, make an appointment to fill the vacancy at a regular or special meeting for the remainder of the unexpired term or until the ill or absent member is again able to resume duties and attend board meetings, whichever is earlier. If the vacancy is in the office of supervisor, the vacancy must be filled by an appointment committee made up of the remaining supervisors and the town clerk. If the original member is again able to resume duties and attend board meetings, the board shall by resolution so determine and remove the appointed officeholder and restore the original member to office.

**History:** 1959 c 675 art 6 s 28; 1961 c 195 s 1,2; 1961 c 264 s 1,2; 1963 c 799 s 3; 1975 c 274 s 9; 1976 c 41 s 1; 1978 c 681 s 1,2; 1982 c 463 s 1; 1982 c 595 s 4-6; 1984 c 386 s 1; 1985 c 169 s 11; 1986 c 444; 1987 c 90 s 6; 1990 c 401 art 1 s 1; 1990 c 585 s 31; 1993 c 24 s 1; 1994 c 646 s 25; 1995 c 21 s 1; 1997 c 147 s 74; 1999 c 132 s 41; 2000 c 467 s 32; 1Sp2001 c 10 art 18 s 42; 2002 c 241 s 1; 2003 c 56 s 2

**367.033 MAY BE ON BOTH TOWN AND SCHOOL BOARD EXCEPT IF URBAN TOWN.**

(a) Notwithstanding any other law to the contrary, a person may serve on both a school board, however organized, and a town board of supervisors concurrently.

(b) This section does not apply to members of the town board of a town exercising the powers of a statutory city under section 368.01, or a special law.

**History:** 1971 c 420 s 1; 1973 c 123 art 5 s 7; 1990 c 401 art 1 s 1

**367.035** [Repealed, 1984 c 562 s 48]

**367.04** [Repealed, 1969 c 823 s 2]

**367.05** Subdivision 1. MS 2002 [Renumbered 367.05]

Subd. 2. MS 1982 [Repealed, 1984 c 562 s 48]

Subd. 3. MS 1945 [Repealed, 1949 c 119 s 110]

Subd. 4. MS 1971 [Repealed, 1974 c 143 s 2]

**367.05 COMPENSATION; TOWN OFFICERS AND EMPLOYEES.**

The town board shall set the compensation of supervisors, town assessors, the treasurer, clerk, deputy clerk, if one is employed, deputy treasurer, if one is employed, and other employees of the town. In addition, supervisors, assessors, treasurers, clerks, deputy clerks, deputy treasurers, and other employees of the town shall be entitled to mileage for the use of their own automobile at a rate to be determined by the town board for necessary travel on official town business. The town board may fix the hours of employment for town employees, and reimburse a town assessor for expenses.

**History:** (1089, 1089 1/2) RL s 682; 1907 c 402; 1911 c 37; 1913 c 558; 1919 c 384; 1923 c 219; 1927 c 403 s 1,2; 1933 c 411; 1935 c 151; 1935 c 375; 1937 c 158 s 1; 1937 c 249 s 1; Ex1937 c 16; 1945 c 481 s 2; 1947 c 420 s 1; 1949 c 651 s 1; 1949 c 697 s 1; 1951 c 77 s 1; 1951 c 345 s 1; 1951 c 688 s 1; 1955 c 359 s 1; 1959 c 334 s 1; 1965 c 186 s 1; 1969 c 179 s 1; 1971 c 817 s 1; 1974 c 143 s 1; 1975 c 71 s 1; 1980 c 366 s 1; 1984 c 562 s 30; 1990 c 401 art 1 s 1; 1993 c 24 s 2

**367.06** [Repealed, 1974 c 143 s 2]

**367.07** [Repealed, 1974 c 143 s 2]

**367.08** [Repealed, 1974 c 143 s 2]

**367.09** [Repealed, 1949 c 697 s 2]

**367.10 TOWN CLERK; BOND; OATH.**

Every town clerk, before beginning the duties of the office, shall give bond to the town in an amount to be determined by the town board, conditioned for the faithful discharge of the duties of clerk. The bond shall be filed with the county auditor.

**History:** (1062) RL s 658; 1982 c 507 s 1; 1984 c 562 s 31; 1985 c 169 s 12; 1990 c 401 art 1 s 1

**367.11 CLERK'S DUTIES.**

It shall be the duty of the town clerk:

(1) to act as clerk of the town board and keep in the clerk's office a true record of all of its proceedings;

(2) unless otherwise provided by law, to have custody of the records, books, and papers of the town and file and safely keep all papers required by law to be filed in the clerk's office;

(3) to record minutes of the proceedings of every town meeting in the book of town records and enter in them at length every order or direction and all rules and regulations made by the town meeting;

(4) to file and preserve all accounts audited by the town board or allowed at a town meeting and enter a statement of them in the book of records;

(5) to record every request for a special vote or special town meeting and properly post the requisite notices of them;

(6) to post, as required by law, fair copies of all bylaws made by the town, and make a signed entry in the town records, of the time when and the places where they were posted and record in full all ordinances passed by the town board in an ordinance book;

(7) to furnish to the annual meeting of the town board of audit every statement from the county treasurer of money paid to the town treasurer, and all other information about fiscal affairs of the town in the clerk's possession, and all accounts, claims, and demands against the town filed with the clerk; and

(8) to perform any other duties required by law.

**History:** (1064) *RL s 660; 1983 c 359 s 51; 1984 c 562 s 32; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 401 art 1 s 1*

### 367.12 DEPUTY CLERK.

Each town clerk may appoint a deputy, for whose acts the clerk shall be responsible, and who, in the clerk's absence or disability, shall perform the clerk's duties. If a town clerk has not appointed a deputy, the town treasurer shall perform the duties of the clerk relating to receiving candidate filings when the clerk is absent.

**History:** (1063) *RL s 659; 1986 c 444; 1990 c 401 art 1 s 1; 2004 c 293 art 2 s 46*

### 367.13 LOCATION OF OFFICE.

The clerk of a town may hold office in a statutory city the territory of which was, before incorporation, a part of the town.

**History:** (1065) *1905 c 98 s 1; 1973 c 123 art 5 s 7; 1986 c 444; 1990 c 401 art 1 s 1*

### 367.14 NEW TOWN.

When a new town is organized, embracing part of an existing town, the clerk of the existing town shall deliver to the clerk of the new town all papers and files pertaining to the new town that can be moved, and certified copies of all records, papers, and files that cannot be moved. When deposited in the office of the clerk of the new town, the certified copies shall have the same effect as originals that were originally filed there.

**History:** (1066) *RL s 661; 1990 c 401 art 1 s 1*

### 367.15 TOWN TREASURER; BOND.

Every town treasurer, before beginning the duties of the office, shall give bond to the town in an amount to be determined by the board, conditioned for the faithful discharge of the duties of treasurer. The bond shall be filed for record with the county auditor.

**History:** (1067) *RL s 662; 1975 c 8 s 1; 1976 c 181 s 2; 1982 c 507 s 2; 1984 c 562 s 33; 1990 c 401 art 1 s 1*

### 367.16 TREASURER'S DUTIES.

It is the duty of the town treasurer:

(1) to receive and take charge of all money belonging to the town, or which is required to be paid into its treasury, and to pay it out only upon the lawful order of the town or its officers;

(2) to preserve all books, papers, and property pertaining to or filed in the treasurer's office;

(3) to keep a true account of all money received as treasurer and the manner in which it is disbursed, in a book provided for that purpose, and provide the account, with the treasurer's vouchers, to the town board of audit, at its annual meeting, for adjustment;

(4) to deliver, on demand, all books and property belonging to the treasurer's office, and all money in the treasurer's hands as treasurer, to a qualified successor;

(5) to keep in a suitable book a register of all town orders presented for payment that cannot be paid for want of funds, with the date presented, and to endorse upon the back of each the words "not paid for want of funds," with the date of the endorsement, signed by the treasurer;

(6) to draw from the county treasurer, from time to time, money received by the county treasurer for the town, and receipt for it;

(7) to make and file with the town clerk, within five days preceding the annual town meeting, a statement, in writing, of the money received from the county treasurer and all other sources, and all money paid out as town treasurer. The statement shall show the items of money received and from whom, on what account and when each was received. The statement shall also show the items of payment and to whom, for what purpose, when and the amount of each that was made, and the unexpended balance on hand; and

(8) to perform other duties required by law.

**History:** (1068) *RL s 663; 1986 c 444; 1990 c 401 art 1 s 1*

#### **367.161 DEPUTY TREASURER.**

Each town treasurer may appoint a deputy not currently serving as an elected official of the town for whose acts the treasurer is responsible, and who, in case of the treasurer's absence or disability, shall perform the treasurer's duties.

**History:** *1990 c 471 s 3*

#### **367.17 NEGLECT OF DUTY.**

A town treasurer who refuses or neglects to comply with section 367.16 is guilty of a gross misdemeanor and shall also forfeit office as treasurer.

**History:** (1069) *RL s 664; 1986 c 444; 1990 c 401 art 1 s 1*

#### **367.18 AUDITED ACCOUNTS; PAYMENT, FORM.**

Accounts audited and allowed, and the amount of any account voted to be allowed, at any town meeting, shall be paid by the town treasurer, on the order of the town board, signed by the chair and countersigned by the clerk. Each order shall be drawn so that when signed by the treasurer in an appropriate place, it becomes a check on the town depository. The order shall be received in payment of town taxes of the town.

**History:** (1070) *RL s 665; 1953 c 319 s 3; 1986 c 444; 1990 c 401 art 1 s 1*

#### **367.19 ORDER OF PAYMENT; INTEREST.**

Town orders shall bear interest at the rate provided in section 475.55 from the date presented to the treasurer for payment. They shall be paid in the order in which they are registered, out of the first money that comes into the treasurer's hands for that purpose.

**History:** (1071) *RL s 666; 1943 c 254 s 1; 1967 c 761 s 2; 1984 c 562 s 34; 1990 c 401 art 1 s 1*

**367.20** [Repealed, 1969 c 788 s 2]

**367.21** [Repealed, 1983 c 359 s 151]

**367.22 LAW ENFORCEMENT OFFICIAL'S BOND.**

Before beginning duties, and within ten days after being notified of appointment, every law enforcement official shall give bond to the town, in a sum directed and with sureties approved by the chair of the town board, conditioned for the faithful discharge of official duties. The chair shall endorse approval on the bond, and have it filed with the town clerk, for the benefit of any person aggrieved by the acts or omissions of the law enforcement official. Any person aggrieved may maintain an action on the bond, in the person's own name, against the law enforcement official and the sureties. The town may also maintain an action.

**History:** (1083) *RL s 676; 1978 c 681 s 6; 1982 c 595 s 7; 1986 c 444; 1990 c 401 art 1 s 1*

**367.23 BONDS, HOW EXECUTED.**

Every bond required of a town officer shall be executed to the town by its name. When no other provision is made, it shall be in a sum fixed by the town board or, if none is fixed, in the sum of the bond of the last incumbent of the office. Every bond shall be filed with the town clerk within the time prescribed for filing the oath of office, except the bonds of the clerk and the treasurer, which shall be filed with the county auditor. When the town board deems a bond insufficient, it may require an additional bond to be made and filed in a sum and within a time not less than ten days to be fixed by it.

**History:** (1084) *RL s 677; 1976 c 181 s 2; 1984 c 562 s 35; 1985 c 169 s 13; 1990 c 401 art 1 s 1*

**367.24 FEES AND DUTIES OF POUNDMASTERS.**

Poundmasters shall be allowed fees in amounts determined by the town board for:

- (1) taking animals into the pound and discharging them;
- (2) keeping animals in pound; and
- (3) selling impounded animals.

The poundmaster shall have a lien on impounded animals for fees, which shall be paid before the animals are discharged. If not discharged within four days, they shall be advertised by the poundmaster for sale at public auction to the highest bidder, at the place where impounded, upon 15 days' posted notice. At the time and place fixed by the notice the poundmaster shall sell the animals pursuant to the notice. Out of the money received from the sale the poundmaster shall deduct fees and charges. The poundmaster shall pay the balance to the chair of the town board and, at the same time, deliver to the chair a correct written description of each animal sold and a statement of the amount received for it. The poundmaster shall take duplicate receipts for the animals, one of which shall be filed with the clerk. If the owner of an animal sold appears within 30 days, the money received by the chair shall be paid to the owner. If not claimed within that time, it shall be paid into the town treasury.

**History:** (1090) *RL s 683; 1984 c 562 s 36; 1986 c 444; 1990 c 401 art 1 s 1*

**367.25 OATH OF OFFICE; BOND; FILING; PENALTIES.**

Subdivision 1. **Requirement, fee.** Every person elected at a March election or appointed to a town office, within ten days after receiving a certificate or notice of election or appointment, shall take and subscribe the oath required by law. Persons elected at a November election shall take their oath before assuming office. If taken before the town clerk, the oath shall be administered and certified without fee.

Subd. 2. **Bond and oath, violations.** Before entering upon duties, the person taking the oath shall file it with the town clerk. Failure to file the oath and bond within the time required shall be deemed a refusal to serve.

Subd. 3. **Oath, violations.** A town officer who enters upon the duties of office before taking the oath required shall forfeit to the town the sum of \$50.

**History:** 1959 c 675 art 6 s 29; 1983 c 359 s 52; 1986 c 444; 1990 c 401 art 1 s 1; 1997 c 147 s 75

### 367.30 OPTIONAL PLANS.

Subdivision 1. **Option A; five-member town board.** A town may provide for a five-member board of supervisors as provided in sections 367.30 to 367.36. This is option A.

Subd. 2. **Option B; appointment of clerk and treasurer.** A town may provide for the appointment by the town board of its clerk or treasurer, or both, or if combined pursuant to the adoption of option D as defined in subdivision 4, its clerk-treasurer, as provided in sections 367.30 to 367.36. This is option B.

Subd. 3. **Option C; town administrator.** A town may provide for the appointment of an administrator as provided in sections 367.30 to 367.36. This is option C.

Subd. 4. **Option D; combining clerk and treasurer.** A town may combine the offices of clerk and treasurer. This is option D. The combined office may be made elective or appointive pursuant to option B as provided in subdivision 2. Unless the board action or petition seeking the adoption of option D specifies that the appropriate ballot question for option B is also to be submitted to the voters at the same time as the ballot question on option D, the combined position shall be filled in the manner currently being used for the town clerk position.

**History:** 1975 c 274 s 1; 1983 c 216 art 1 s 86; 1984 c 562 s 37; 1988 c 639 s 2,3; 1990 c 401 art 1 s 1; 2003 c 60 s 1,2

### 367.31 ADOPTION OF SPECIFIC OPTION.

Subdivision 1. **Submission to electors.** Except as provided in subdivision 2, the town board may, and upon a petition signed by electors equal in number to at least 15 percent of the electors voting at the last previous town election shall, submit to the electors at an annual town election the question of adopting option A, B, C, or D.

Subd. 2. **Mandatory submission of option A in urban towns.** The town board of a town exercising the powers of a statutory city pursuant to section 368.01 or a special law granting substantially similar powers shall submit the adoption of option A to the electors at the annual town meeting next following June 3, 1975. The town board of any town that subsequently qualifies under section 368.01 or receives substantially similar powers pursuant to a special law adopted after June 3, 1975, shall submit the adoption of option A to the electors at the annual town election next following the grant of powers.

Subd. 3. **Notice of question.** When the adoption of a specific option is to be voted on at the annual election, the town clerk shall include notice of the question in the notice of the annual election.

Subd. 4. **Election; form of ballot.** The proposals for adoption of the options shall be stated on the ballot substantially as follows:

“Shall option A, providing for a five-member town board of supervisors, be adopted for the government of the town?”

“Shall option B, providing for the appointment of the clerk and treasurer by the town board, be adopted for the government of the town?”

“Shall option C, providing for the appointment of a town administrator by the town board, be adopted for the government of the town?”

“Shall option D, providing for combining the offices of clerk and treasurer, be adopted for the government of the town?”

If a proposal under option B is to appoint only the clerk or only the treasurer, or if it is to appoint the combined clerk-treasurer following the adoption of option D or when submitted simultaneously with the ballot question for option D, the ballot question shall be varied to read appropriately. If an option B ballot question is submitted for the combined clerk-treasurer office at the same election in which option

D is also on the ballot, the ballot must note that the approval of option B is contingent on the simultaneous approval of option D. In any of these cases, the question shall be followed by the words "Yes" and "No" with an appropriate square before each in which an elector may record a choice.

**Subd. 5. Adoption by affirmative vote.** If a majority of the votes cast on the question of adoption of option A, B, C, or D is in the affirmative, the option voted upon shall be adopted in the town. It shall remain in effect until abandoned by a similar majority at a subsequent annual town election at which the question of abandonment is submitted.

**Subd. 6. Abandonment of options; three-year limitation.** At any time more than three years after the adoption of an option, the question of its abandonment may be submitted to the electors, in the same manner provided for the submission of the question of adoption, except that in the statement of the question on the ballot, the word "abandoned" shall be substituted for the word "adopted." If a majority of the votes cast on the question is in favor of abandonment, the plan shall be abandoned. Subject to the provisions for transition back to the regular form of town government, the form of town government existing prior to adoption of the abandoned option shall be resumed in the town.

**Subd. 7. Report by town clerk.** When the question of adoption or abandonment of an option is submitted, the town clerk shall promptly file with the county auditor and the secretary of state a certificate stating the date of the election, the question submitted, and the vote on the question.

**History:** 1975 c 274 s 2; 1976 c 41 s 2; 1984 c 562 s 38; 1986 c 327 s 3; 1986 c 444; 1988 c 639 s 4; 1989 c 24 s 1-4; 1990 c 401 art 1 s 1; 2003 c 60 s 3

### 367.32 APPLICABLE LAW; SAME RIGHTS, LIABILITIES, PROCEEDINGS.

**Subdivision 1. Applicable law.** All laws applicable to a town before adoption of an option and consistent with the option shall govern the town after adoption of an option.

**Subd. 2. Ordinances or resolutions.** Any ordinance or resolution in effect at the time of adoption of an option shall continue in effect until amended or repealed, notwithstanding the adoption of the option.

**Subd. 3. Rights, liabilities; proceedings.** No valid and legally subsisting right or liability and no judicial proceeding shall be affected by a change in the form of town government unless otherwise provided.

**History:** 1975 c 274 s 3; 1990 c 401 art 1 s 1

### 367.33 OPTION A; ELECTION OF ADDITIONAL SUPERVISORS.

**Subdivision 1. Election at annual election or special election.** Following the adoption of option A in a town, except a town exercising the powers of a statutory city, the town board may call a special town election to be held not less than 30 nor more than 60 days after the annual town election at which the option is adopted, to elect two additional members to the board of supervisors. In lieu of a special election, the town board may determine to elect the additional members at the next annual town election.

If the town is exercising the powers of a statutory city under section 368.01 or a special law granting substantially similar powers, the town board shall call a special election to be held not less than 30 nor more than 60 days after the annual election at which option A is adopted to elect the two additional supervisors.

**Subd. 2. Notice of special election.** If a special election is called under subdivision 1, the clerk shall give ten days' posted notice of it, specifying its purpose. If a newspaper is published in the town, the clerk shall give one week's published notice of the election.

**Subd. 3. Affidavits of candidacy.** Section 205.13 shall apply to the filing of affidavits of candidacy, except that if the additional supervisors are to be elected at a special election, the affidavits shall be filed not more than three weeks nor less than ten



days before the election, and notice of the first and last dates for filing affidavits of candidacy shall be published at least two weeks before the first day for filing. If publication schedules do not allow sufficient time to give two weeks' notice, at least one week notice shall be given.

Subd. 4. **Terms.** If the additional supervisors are elected at a special election, they shall serve until the next annual town election. Additional members shall then be elected, one for two years and one for three years. A candidate for one of the additional supervisor positions shall specify in the affidavit of candidacy that the candidate is filing for either the two-year or the three-year term.

Subd. 5. **Abandonment of option A.** In a town where option A is abandoned, the terms of incumbent supervisors shall not be affected, but if one or more supervisors are elected at the annual town election on the same day as the annual town election at which the option is abandoned, the election of one supervisor, or two if more than one is elected, shall be null. Otherwise the offices of the two incumbent supervisors expiring at the annual town election or elections next following the annual election at which the option is abandoned shall not be filled. Thereafter the town board shall be composed of three supervisors unless option A is again adopted.

**History:** 1975 c 274 s 4; 1980 c 509 s 145; 1987 c 90 s 7-9; 1989 c 24 s 5,6; 1990 c 401 art 1 s 1; 1990 c 585 s 32

### 367.34 CONTINUANCE IN OFFICE; ELECTIONS.

Subdivision 1. **Option B; incumbent clerk and treasurer.** If option B is adopted at an election at which a clerk or treasurer, or a clerk-treasurer under option D, is elected, the candidate elected to that office shall not take office and that candidate's election shall be null. Otherwise, when option B is adopted in a town, the incumbent clerk or treasurer, or clerk-treasurer, shall continue to serve until the expiration of their terms or until an earlier vacancy.

Subd. 2. **Abandonment of option B.** When option B is abandoned, the offices of clerk or treasurer, or the office of clerk-treasurer under option D, shall be filled conditionally at that election. The ballot shall indicate that the successful candidate shall take office only if the option is abandoned at the election.

**History:** 1975 c 274 s 5; 1986 c 444; 1988 c 639 s 5; 1990 c 401 art 1 s 1; 2003 c 60 s 4

### 367.35 TOWN ADMINISTRATOR.

Subdivision 1. **Appointment; removal.** As soon as practicable after adoption of option C in a town, the town board shall appoint an administrator upon the terms it deems advisable. The administrator shall be chosen solely on the basis of training, experience, and administrative qualifications and need not be a resident of the town. The town clerk may be designated the administrator if the clerk meets these qualifications. The administrator shall be appointed for an indefinite period and may be removed by the board at any time, but after having served as administrator for one year the administrator may demand written charges and a public hearing on the charges before the board before final removal takes effect. Pending a hearing and removal, the board may suspend the administrator from office, with or without pay. The board may appoint a qualified person to perform the duties of the administrator during absence or disability.

Subd. 2. **Powers and duties.** (a) The town administrator shall be the administrative head of the town and be responsible for the administration and supervision of the affairs of the town as assigned.

(b) The administrator shall, with the approval of the town board, coordinate the various activities of the town.

(c) The administrator shall exercise the authority and responsibilities assigned by the town board by ordinance or resolution which may include the following duties:

(1) to provide for the execution of all ordinances, resolutions, and orders of the board and all laws of the state required to be enforced through the town board, by the administrator or by officers under the administrator's direction and supervision;

(2) to recommend to the town board the appointment, suspension, and removal of all town personnel whose appointment, suspension, or removal is a function of the town board by law;

(3) to provide for town purchases in accordance with statutory procedures;

(4) to prepare and submit to the town board a proposed annual budget, including detailed estimates of revenue and expenditures, and enforce the budget as adopted by the board;

(5) to attend all meetings of the board and recommend measures for adoption as the administrator deems advisable or expedient;

(6) to advise the board as to the financial condition and needs of the town;

(7) to perform other assigned ministerial, nondiscretionary duties.

Subd. 3. **Abolishing office of administrator.** If option C is abandoned, the town board shall, as soon as practicable, abolish the office. Duties and responsibilities assigned to the administrator shall be assumed by the town board or by the officer having responsibility for the function prior to the appointment of the administrator.

**History:** 1975 c 274 s 6; 1986 c 444; 1990 c 401 art 1 s 1

### 367.36 CLERK, TREASURER COMBINED; AUDIT STANDARDS.

Subdivision 1. **Transition; audit.** (a) In a town in which option D is adopted, the incumbent treasurer shall continue in office until the expiration of the term. Thereafter, or at any time a vacancy other than a temporary vacancy under section 367.03 occurs in the position, the duties of the treasurer prescribed by law shall be performed by the clerk who shall be referred to as the clerk-treasurer. If option D is adopted at an election in which the treasurer is also elected, the election of the treasurer's position is void.

(b) If the offices of clerk and treasurer are combined and the town's annual revenue is more than the amount in paragraph (c), the town board shall provide for an annual audit of the town's financial affairs by the state auditor or a public accountant in accordance with minimum audit procedures prescribed by the state auditor. If the offices of clerk and treasurer are combined and the town's annual revenue is the amount in paragraph (c) or less, the town board shall provide for an audit of the town's financial affairs by the state auditor or a public accountant in accordance with minimum audit procedures prescribed by the state auditor at least once every five years, which audit shall be for a one-year period to be determined at random by the person conducting the audit. Upon completion of an audit by a public accountant, the public accountant shall forward a copy of the audit to the state auditor. For purposes of this subdivision, "public accountant" means a certified public accountant or a certified public accounting firm licensed by the Board of Accountancy under chapter 326A.

(c) For the purposes of paragraph (b), the amount in 2004 is \$150,000, and in 2005 and after, \$150,000 adjusted for inflation using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce.

Subd. 2. **Abandonment.** If option D is abandoned, the office of treasurer that would be filled at that election shall be filled conditionally at that election, and the ballot shall indicate that the candidate shall assume office only if the option is abandoned as a result of the election.

**History:** 1975 c 274 s 7; 1986 c 444; 1990 c 401 art 1 s 1; 1992 c 592 s 6; 1994 c 546 s 1; 1995 c 27 s 1; 1995 c 186 s 119; 2001 c 109 art 2 s 6; 2003 c 60 s 5; 2004 c 281 s 1

### 367.40 DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the following terms shall have the meanings given them.

Subd. 2. **Peace officer.** "Peace officer" has the meaning assigned in section 626.84.

Subd. 3. **Constable.** "Constable" means any individual employed or appointed by a political subdivision and licensed by the Board of Peace Officer Standards and Training on or before April 21, 1988, who is charged with the prevention and detecting of crime, the enforcement of the criminal laws of the state, and who has full powers of arrest. The term applies even though the individual exercises powers and duties on a part-time basis with or without receipt of compensation.

Subd. 4. **Deputy constable.** "Deputy constable" means any individual employed or appointed by a political subdivision to fulfill law enforcement duties but who is prohibited from carrying a firearm while exercising powers and duties and who has powers of arrest no greater than those of a citizen who is not a peace officer or constable. The term also includes individuals voluntarily assisting local police or sheriff departments unless they qualify as constables or peace officers.

Subd. 5. **Part-time peace officer.** "Part-time peace officer" has the meaning assigned to it in section 626.84.

**History:** 1978 c 681 s 3; 1982 c 595 s 8,9; 1986 c 444; 1988 c 563 s 1,2; 1990 c 401 art 1 s 1

### 367.401 LAW ENFORCEMENT OFFICERS; APPOINTMENT; CONSTABLES.

Subdivision 1. **Appointment.** The town, by majority vote at its annual meeting, may decide to authorize the town board to form a law enforcement agency and appoint law enforcement officers. The positions may be filled by a combination of peace officers or part-time peace officers. The number of part-time peace officers must not exceed three.

Subd. 2. **Chief law enforcement officer.** The board of supervisors shall designate one of its law enforcement officers as the chief law enforcement officer of the agency.

Subd. 3. **Reserve officers.** A town may appoint reserve officers as defined by section 626.84.

Subd. 4. **Requirements.** Towns that had either peace officers or constables, or both, on April 21, 1988, have met the requirements for forming a law enforcement agency.

**History:** 1988 c 563 s 3; 1990 c 401 art 1 s 1

367.41 Subdivision 1. [Repealed, 1988 c 563 s 8]

Subd. 2. [Repealed, 1980 c 578 s 12]

Subd. 3. [Repealed, 1980 c 578 s 12]

Subd. 4. [Repealed, 1988 c 563 s 8]

Subd. 5. [Repealed, 1988 c 563 s 8]

367.411 [Repealed, 1996 c 310 s 1]

### 367.42 DEPUTY CONSTABLES.

Subdivision 1. **Powers and duties.** Notwithstanding any general or local law or charter to the contrary, any deputy constable employed on or after March 23, 1982, by a town of the state of Minnesota has the following powers and duties:

- (a) to have the powers of arrest of a private person;
- (b) to perform the duties of a constable prescribed by law relative to election procedure;
- (c) to perform the following duties at the direction of the sheriff or a peace officer:
  - (i) to inspect communication wire and cable or records of the wire and cable pursuant to section 325E.21;
  - (ii) to conduct hotel lien sales pursuant to section 327.76; and
  - (iii) to conduct public auction sales of unclaimed property pursuant to sections 345.04 and 345.05;

(d) to provide general administrative or clerical assistance to the town's law enforcement agency.

Subd. 2. [Repealed, 1988 c 563 s 8]

Subd. 3. **Criminal records check.** No person may be employed as a deputy constable unless the person submits proof from the sheriff that the sheriff has checked the criminal records system and that the applicant has not been convicted of a felony within the past ten years.

**History:** 1978 c 681 s 5; 1981 c 270 s 139; 1982 c 595 s 11; 1983 c 216 art 1 s 62; 1987 c 384 art 2 s 1; 1988 c 563 s 5,6; 1990 c 401 art 1 s 1

**367.43** [Repealed, 1996 c 310 s 1]