

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 809
89TH GENERAL ASSEMBLY

Reported from the Committee on Local Government & Related Matters, April 15, 1998, with recommendation that the House Committee Substitute for Senate Bill No. 809 Do Pass by Consent.
ANNE C. WALKER, Chief Clerk
L3512.05C

AN ACT

To repeal section 71.011, RSMo 1994, and sections 72.080, 72.400, 72.401, 72.405 and 72.407, RSMo Supp. 1997, relating to certain real property, and to enact in lieu thereof eight new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 71.011, RSMo 1994, and sections 72.080, 72.400, 72.401, 72.405 and 72.407, RSMo Supp. 1997, are repealed and eight new sections enacted in lieu thereof, to be known as sections 71.011, 72.080, 72.400, 72.401, 72.405 and 72.407, to read as follows:

71.011. [Other provisions of law to the contrary notwithstanding] **1. Except as provided in subsection 2 of this section,** property of a municipality which abuts another municipality may be concurrently detached from one municipality and annexed by the other municipality by the enactment by the governing bodies of each municipality of an ordinance describing by metes and bounds the property, declaring the property so described to be concurrently detached and annexed, and stating the reasons for and the purposes to be accomplished by the detachment and annexation. One certified copy of each ordinance shall be filed with the county clerk, with the county recorder of deeds, and with the clerk of the circuit court of the county in which the property is located, whereupon the concurrent detachment and annexation shall be complete and final. Thereafter all courts of this state shall take notice of the limits of both municipalities as changed by the ordinances. No declaratory judgment or election shall be required for any concurrent detachment and annexation permitted by this section if there are no residents living in the area or if there are residents in the area and they be notified of the annexation and do not object within sixty days.

2. In a county of the first classification with a charter form of government containing all or a portion of a city with a population of at least three hundred thousand inhabitants, unimproved property of a municipality which overlaps another municipality may be concurrently detached from one municipality and annexed by the other municipality by the enactment by the governing body of the receiving municipality of an ordinance describing by metes and bounds the property, declaring the property so described to be detached and annexed, and stating the reasons for and the purposes to be accomplished by the detachment and annexation. A copy of said ordinance shall be mailed

EXPLANATION—Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

to the city clerk of the contributing municipality, which shall have thirty days from receipt of said notice to pass an ordinance disapproving the change of boundary. If such ordinance is not passed within thirty days, the change shall be effective and one certified copy of the ordinance shall be filed with the county clerk, with the county recorder of deeds, and with the clerk of the circuit court of the county in which the property is located, whereupon the concurrent detachment and annexation shall be complete and final. Thereafter all courts of this state shall take notice of the limits of both municipalities as changed by the ordinances. No declaratory judgment or election shall be required for any concurrent detachment and annexation permitted by this section if there are no residents living in the area or if there are residents in the area and they be notified of the annexation and do not object within sixty days.

72.080. 1. Any unincorporated city, town or other area of the state may, except as otherwise provided in sections 72.400 to 72.420, become a city of the class to which its population would entitle it [under] **pursuant to** this chapter, and be incorporated [under] **pursuant to** the law for the government of cities of that class, in the following manner: Whenever a number of voters equal to fifteen percent of the votes cast in the last gubernatorial election in the area proposed to be incorporated shall present a petition to the governing body of the county in which such city or town or area is situated, such petition shall describe, by metes and bounds, the area to be incorporated and be accompanied by a plat thereof, shall state the approximate population and the assessed valuation of all real and personal property in the area and shall state facts showing that the proposed city shall have the ability to furnish normal municipal services within a reasonable time after its incorporation is to become effective and praying that the question be submitted to determine if it may be incorporated. If the governing body shall be satisfied that a number of voters equal to fifteen percent of the votes cast in the last gubernatorial election in the area proposed to be incorporated have signed such petition, the governing body shall submit the question to the voters.

2. The county may make changes in the petition to correct technical errors or to redefine the metes and bounds of the area to be incorporated to reflect other boundary changes occurring within six months prior to the time of filing the petition. Petitions submitted by proposing agents may be submitted with exclusions for the signatures collected in areas originally included in the proposal but subsequently annexed or incorporated separately as a city, town or village, although the governing body shall be satisfied as to the sufficiency of the signatures for the final proposed area. If a majority of the voters voting on the question vote for incorporation, the governing body shall declare such city, town or other area incorporated, designating in such order the metes and bounds thereof, and thenceforth the inhabitants within such bounds shall be a body politic and incorporate, by the name and style of "the city of", or "the town of", and the first officers of such city or town shall be designated by the order of the governing body, who shall hold their offices until the next municipal election and until their successors shall be duly elected and qualified. The county shall pay the costs of the election.

3. In any county with a charter form of government where fifty or more cities, towns and villages have been incorporated, an unincorporated city, town or other area of the state shall not be incorporated except as provided in sections 72.400 to 72.420.

4. Prior to the election described in subsection [1] 2 of this section, if the [owners of] **owner or owners of either** the majority of the commercial or **the majority of the** agricultural classification of real property in the proposed area to be incorporated object to such incorpora-

tion, such [owners] **owner or owners** may file an action in the circuit court of the county in which such unincorporated area is situated, [under] **pursuant to** the provisions of chapter 527, RSMo, praying for a declaratory judgment requesting that such [consolidation] **incorporation** be declared unreasonable by the court. As used in this subsection, a "majority of the commercial or agricultural classification" means a majority as determined by the assessed valuation of the tracts of real property in either classification to be determined by the assessments made according to chapter 137, RSMo. The petition in such action shall state facts showing that such [consolidation] **incorporation** including the real property owned by the petitioners is not reasonable **based on the same criteria as specified in subsection 3 of section 72.403** and is not necessary to the proper development of the city or town. If the circuit court finds that such inclusion is not reasonable and necessary, it may **enjoin the incorporation or** require the petition requesting the [consolidation] **incorporation** to be resubmitted excluding all or part of the property of the petitioners from the proposed [consolidation] **incorporation**.

72.400. As used in sections 72.400 to 72.418, the following terms mean:

(1) "Boundary adjustment", an adjustment of a boundary between two municipalities or a municipality and the unincorporated area of the county involving two residential parcels in common ownership or portions of a single residential parcel in common ownership or an adjustment between two municipalities or a municipality and the unincorporated area of the county involving only public property or public rights-of-way;

(2) "Boundary change", any annexation, consolidation, incorporation, [disincorporation,] transfer of jurisdiction between municipalities or between a municipality and the county, or combination thereof, which, if approved, would result in a municipality composed of contiguous territory;

(3) "Commission", a boundary commission established pursuant to this section;

(4) "Contiguousness", territory proposed for annexation in which at least fifteen percent of its boundary is adjacent to the municipality which is proposing the annexation;

(5) "Proposing agent", the governing body of any municipality which by ordinance has adopted a boundary change proposal or the governing body of the county which by ordinance has adopted a boundary change proposal, or a person presenting petitions signed by a number of registered voters equal to not less than fifteen percent of the number of votes cast for governor in the last gubernatorial election in the total combined area affected by the boundary change proposal. Petitions submitted by proposing agents may be submitted with exclusions for the signatures collected in areas originally included in the proposal but subsequently annexed or incorporated separately as a [city, town or village] **municipality**, although the commission shall be satisfied as to the sufficiency of the signatures for the final proposed area;

(6) "Simplified boundary change", an annexation initiated by a verified petition signed by seventy-five percent of the residential property owners of all fee interests of record of the area proposed for annexation and filed by the annexing municipality and which the commission determines and finds should be approved without voter approval;

(7) "Voting jurisdiction", a city, town or village, or areas of unincorporated territory with boundaries established by the commission for purposes of holding a boundary change election.

72.401. 1. If a commission has been established pursuant to section 72.400, any boundary change within the county shall proceed solely and exclusively in the manner provided for by sections 72.400 to 72.420, notwithstanding any statutory provisions to the contrary concerning such boundary changes.

2. In any county with a charter form of government where fifty or more cities, towns and villages have been established, there shall be no incorporation of any new city, town, or village wholly or partially in such county, nor any annexation or consolidation of any area wholly or partially in such county for one hundred twenty days after June 2, 1995, except for the following:

(1) As provided in subsection 3 of this section; or

(2) Where the governing body of the county specifically adopts an ordinance stating that a boundary commission shall not be established in the county, such incorporation, annexation or consolidation may resume after the effective date of the ordinance. Immediately after the expiration of such moratorium, if the governing body of such county has by ordinance established a boundary commission, as provided in sections 72.400 to 72.420, then annexation, incorporation and consolidation in such county shall proceed only as provided in sections 72.400 to 72.420. The procedures established in section 72.420 shall remain applicable to counties of the first classification where fifty or more cities, towns and villages have been established. The provisions of sections 72.400 to 72.420 shall expire on December 31, 2002, unless the general assembly reauthorizes such provisions prior to December 31, 2002.

3. Notwithstanding any provisions of law to the contrary, any boundary changes approved by voters, simplified boundary changes approved by one hundred percent of the property owners and the governing body of the annexing city, and exchanges of land agreed to by the governing bodies of the jurisdictions involved in the exchange, which have been approved or agreed to prior to June 2, 1995, and which have not yet taken effect at the time of the first meeting of the boundary commission shall not be subject to commission approval.

4. Any proposal for incorporation by petition of at least six thousand registered voters which has been submitted to the governing body of the county under section 72.080 by June 30, 1995, shall not be subject to commission approval, and such boundary changes shall become effective on the date determined by the jurisdictions involved or by court order. Notice of such boundary changes shall be provided to the commission.

5. The commission shall be composed of eleven members as provided in this subsection. No member shall be an elective official, employee or contractor of any [political subdivision or of any organization representing political subdivisions or officers or employees of political subdivisions] **municipality or county**. Each of the appointing authorities described in subdivisions (1) to (5) of this subsection shall appoint persons who shall be residents of their respective locality so described. The appointing authority making the appointments shall be:

(1) The chief elected officials of all municipalities wholly within the county which have a population of more than twenty thousand persons, who shall name the number of members to the commission as prescribed in this subsection;

(2) The chief elected officials of all municipalities wholly within the county which have a population of twenty thousand or less but more than ten thousand persons, who shall name the number of members to the commission as prescribed in this subsection;

(3) The chief elected officials of all municipalities wholly within the county which have a population of ten thousand persons or less, who shall name the number of members to the commission as prescribed in this subsection;

(4) Each member of the county council of the three county council districts with the largest number of residents residing within the unincorporated area of the county, who shall each be allowed to nominate one member of the commission in the manner prescribed in this subdivision. Each such county council member shall submit a list of two residents of the

unincorporated area of such member's district to the county executive, and the county executive shall select one person from each list so submitted to be a member of the commission. If a list is not submitted to the county executive by the times prescribed in subsection 6 of this section, the county executive shall name a person to be a member of the commission; and

(5) The county executive of the county, who shall name two of the members of the commission from the unincorporated area of the county. The seat of a commissioner shall be automatically vacated when the commissioner ceases to be a resident member of the appointing group. The vacancy shall be filled according to subsection 7 of this section. Each appointing authority described in subdivisions (1) to (3) of this subsection shall appoint a member for every sixteen and two-thirds percent, rounded up or down to the nearest sixteen and two-thirds percent, of the population of the county which resides in the municipalities described in such subdivisions. In the event that rounding would result in more than six members from the three municipal appointing authorities, then rounding up shall not apply to the appointing authority farthest from the next higher sixteen and two-thirds percent. Percentages and populations shall be calculated according to the last federal decennial census. They shall be calculated as of June 30, 1995.

6. Upon the passage of an ordinance by the governing body of the county establishing a boundary commission, the governing body of the county shall, within ten days, send by United States mail written notice of the passage of the ordinance to the chief elected official of each municipality wholly or partly in the county. Each of the appointing authorities described in subdivisions (1) to (3) of subsection 5 of this section shall meet within thirty days of the passage of the ordinance establishing the commission to compile its list of appointees. Each list shall be delivered to the county executive within forty-one days of the passage of such ordinance. The county executive shall appoint members representing the unincorporated areas of the county within forty-five days of the passage of the ordinance. If a list is not submitted by the time specified, the county executive shall appoint the members using the criteria of subsection 5 of this section before the sixtieth day from the passage of the ordinance. On the sixty-first day from the passage of such ordinance, the commission shall begin to exercise the powers and duties assigned to it by sections 72.400 to 72.418. At the first meeting of the commission, the commissioners shall choose by lot the length of their terms. Three shall serve for one year, two for two years, two for three years, two for four years, and two for five years. All succeeding commissioners shall serve for five years. Terms shall end on December thirty-first of the respective year. No commissioner shall serve more than two consecutive full terms. Full terms shall include any term longer than two years.

7. When a member's term expires, or if a member is for any reason unable to complete his term, the respective appointing authority shall appoint such member's successor. The appointee shall be determined by the appointing authority from whose list the outgoing member was appointed. Each appointing authority shall act to ensure that each appointee is secured accurately and in a timely manner, when a member's term expires or as soon as possible when a member is unable to complete his term. A member whose term has expired shall continue to serve until his successor is appointed and qualified.

8. The commission, its employees and subcontractors shall be subject to the regulation of conflicts of interest as defined in sections 105.450 to 105.498, RSMo, and to the requirements for open meetings and records under chapter 610, RSMo.

9. Notwithstanding any provisions of law to the contrary, any boundary adjustment approved by the residential property owners and the governing bodies of the affected

municipalities or the county, if involved, shall not be subject to commission review.

72.405. 1. For any proposed boundary change submitted after August 28, 1995, the commission shall issue a finding approving or disapproving such proposals within nine months after such submittal. If the commission finds in favor of a proposed boundary change, it shall submit the question to the voters residing within the areas subject to the proposed boundary change, except as provided in subsection 6 of this section.

2. If a boundary change is proposed by a municipality or the county and if the commission finds against the proposed boundary change submitted by a municipality or the county, it shall disapprove the boundary change proposal. In disapproving any boundary change proposal, the commission shall issue a document indicating the reasons such proposal was disapproved. No election shall be held on any such proposal not approved by the commission.

3. If the boundary change is proposed pursuant to a petition, the commission may make such changes in the proposal as it finds would result in an acceptable proposal, such changes to include but not be limited to additions, deletions or the modification of a proposal which contains boundaries which overlap those boundaries contained in any other proposal. **After submittal, the commission may allow the proposing agent to make minor additions, deletions or modifications which do not substantially alter the proposal.** When reviewing more than one boundary change proposal made by petition, the commission may consolidate two or more unincorporated areas into one proposed boundary change. Any changes made by the commission shall meet the criteria established in section 72.403.

4. Where a proposal submitted by a municipality, the county or by a petition, contains more than two voting jurisdictions, the commission may provide for approval of a boundary change comprising only those municipalities where a majority of voters approve the boundary change and unincorporated area if the resulting municipality would meet the criteria established in section 72.403.

5. If a boundary change is proposed by a municipality or the county and the commission determines that there is a minor error or discrepancy in the legal descriptions of the areas subject to the proposal as submitted by the municipality or county, then the commission with the concurrence of the proposing agent may make such changes to the proposal as are necessary to rectify the error in the legal description.

6. A simplified boundary change may be proposed by:

(1) A verified petition signed by seventy-five percent of the **residential property** owners of all fee interests of record in all tracts of real property located within the area proposed to be annexed which is filed by the annexing municipality; or

(2) A proposal by a municipality for a transfer of jurisdiction between municipalities **or between a municipality and the county.** Within twenty-one days of receipt of a proposal under this subsection, the commission shall publish notice of such proposal and the date of the public hearing thereon in at least one newspaper of general circulation qualified to publish legal notices. The commission shall, within twenty-one days of receipt of such proposal, mail written notification of such proposal and the date of the public hearing thereon to the county clerk, and to the city or village clerk of each municipality or village, and to any other political subdivision which, in the opinion of the commission, is materially affected by such proposal. The commission shall hold a public hearing concerning the matter not less than fourteen nor more than sixty days after such publication and notification is complete. At the public hearing any interested person, corporation or political subdivision may present evidence regarding the proposed boundary

change. Within four months of receipt of the proposal, the commission shall determine whether to disapprove the proposal, or to approve the proposal and allow it to proceed as an approved boundary change to be adopted or rejected by the voters pursuant to section 72.407, or to approve the proposal as a simplified boundary change, for which no vote shall be required. In making its determination, the commission shall consider the factors set forth in subsection 3 of section 72.403. If the commission determines that the proposal should be approved as a simplified boundary change, such proposal shall become effective upon the date set forth in the commission's written report of approval.

7. A municipality which wishes to propose a boundary change containing two or more unincorporated areas that are noncontiguous to each other shall submit separate proposals for the unincorporated areas that are noncontiguous to each other, in which case there shall be a separate vote for each proposal approved by the commission. The municipality may:

(1) Adopt and submit separate ordinances for each such separate proposal; or

(2) Adopt and submit one ordinance containing said separate proposals, which ordinance shall clearly state that the municipality is making multiple, separate proposals, and is desirous of separate votes for each separate proposal. The ordinance shall also clearly identify each separate proposal that the municipality is making.

8. The commission shall not approve any boundary change proposal in which more than fifty percent of the combined land subject to the proposal is unincorporated territory or territories unless the area subject to the proposal has a population of more than ten thousand persons.

9. [As] A proposing agent[, a municipality] may modify its proposal and submit additional information during the review period.

10. Every proposal submitted by a municipality shall be accompanied by a two thousand dollar filing fee.

72.407. 1. Boundary changes may be adopted by the voters in the following manner:

(1) If the commission approves a proposed boundary change containing more than one municipality and no unincorporated areas, such proposal shall be adopted if a separate majority of the votes cast on the question in each municipality are in favor of the boundary change, except as provided in subsection 4 of section 72.405;

(2) If the commission approves a proposed boundary change containing one or more municipalities and at least one unincorporated area, such proposal shall be adopted if a separate majority of the votes cast on the question in each municipality and a separate majority of votes cast in each voting jurisdiction comprising unincorporated areas of the county are in favor of the boundary change, except as provided in subsection 4 of section 72.405. If a voting jurisdiction comprising unincorporated areas of the county has no residents or if no votes are cast for or against the boundary change, such boundary change shall become effective if a majority of the votes cast in all other voting jurisdictions and municipalities are in favor of the boundary change. On or after January 1, 1996, if the commission approves a proposed boundary change containing one or more municipalities and at least one unincorporated area which is classified as an unincorporated pocket, such proposal shall be adopted if a separate majority of the votes cast on the question in each municipality and a majority of votes cast in the whole municipality which would result from the boundary change are in favor of the boundary change, except as provided in subsection 4 of section 72.405. As used in this subdivision, the term "unincorporated pocket" means an unincorporated territory with an average residential density in excess of one dwelling per three acres, and which has a population of [less than five thousand] **of no more than two**

hundred and which is accessible by public or private roadway only from incorporated jurisdictions and/or another county.

2. Any election held pursuant to sections 72.400 to 72.420 shall be held on a date established by the commission in accordance with the provisions of chapter 115, RSMo. If the proposing agent is a petitioner or the governing body of the county, all costs of the election shall be paid by the county. If the proposing agent is the governing body of any municipality, the cost of such election in each municipality shall be paid by each municipality and if the proposal contains any unincorporated territory the cost of the election in the unincorporated territory shall be paid by the county.

3. Questions concerning the annexation of an area covered by sections 72.400 to 72.418 and the incorporation of the same area shall not be put to the voters at the same election. Any such election where the questions of annexation and incorporation have been put to the voters shall be void in the area covered by both propositions. This subsection shall not affect the results of that election in areas where both questions were not put to the voters at the same time. When boundary change proposals for annexation and for incorporation cover the same area, the proposal for annexation shall be put to the voters first.

72.408. 1. If a boundary change is disapproved by the commission or by the voters, no boundary change which contains any lot, parcel or tract of land in the disapproved boundary change shall be submitted to or processed by the commission any sooner than three years after the date of the disapproved boundary change.

2. Every petition shall be presented to the commission within two hundred eighty days following the date on which the first signature was affixed to the petition, or any part thereof. Failure to present a petition within the foregoing time period shall render the petition absolutely void.

72.422. 1. Notwithstanding any other provision of sections 72.400 to 72.420, residents of an unincorporated area of a county may remain unincorporated and not subject to any boundary change as provided by sections 72.400 to 72.420 if the following are satisfied:

(1) A person presents to the boundary commission a petition signed by a number of registered voters equal to not less than fifteen percent of the number of votes cast for governor in the last gubernatorial election in the unincorporated area;

(2) A legal description of the unincorporated area accompanies the petition. If there is a minor error or discrepancy in the legal description of the unincorporated area, the commission, with the concurrence of the proponents of the petition, may make such changes to the proposal as are necessary to rectify the error in the legal description;

(3) The unincorporated area contains a population of not less than five thousand;
and

(4) Within thirty days of the filing of the petition with the commission, the governing body of the county passes a resolution that the area described in the petition is reasonable and appropriate to remain unincorporated territory.

2. Not later than thirty days after the receipt of the items set forth in subdivisions (1) to (4) of subsection 1 of this section, the commission upon finding that the proposal satisfies the criteria of subdivisions (1) to (4) of subsection 1 of this section shall submit the proposal to the voters within the described unincorporated area for voter approval or disapproval. The proposal shall be submitted at the next general or special election in

accordance with the provisions of chapter 115, RSMo. The cost of the election shall be paid by the county. If the proposal is approved by the voters then the area shall remain unincorporated territory for a period of seven years from the date of the vote and shall not be subject to any boundary change provided for in sections 72.400 to 72.420.

3. A petition submitted pursuant to this section shall take precedence over any other boundary change proposal which includes any territory within the unincorporated area described in the petition submitted pursuant to this section. No boundary change proposal which includes any territory within an unincorporated area described in a petition submitted pursuant to this section shall be approved or submitted to the voters until the unincorporated proposal is voted upon.

4. If the commission fails to comply with the provisions of this section, the proponents of the petition may file a mandamus action or other appropriate action to compel compliance with the ministerial duties set out in this section.

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