

FIRST REGULAR SESSION

SENATE BILL NO. 260

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Read 1st time January 12, 1999, and 1,000 copies ordered printed.

S1076.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 72.400, 72.401, 72.410, 72.416 and 72.422, RSMo Supp. 1998, relating to boundaries of political subdivisions, and to enact in lieu thereof five new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 72.400, 72.401, 72.410, 72.416 and 72.422, RSMo Supp. 1998, are repealed and five new sections enacted in lieu thereof, to be known as sections 72.400, 72.401, 72.410, 72.416 and 72.422, to read as follows:

72.400. As used in sections 72.400 to [72.418] **72.422**, 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, 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) **"Boundary correction", an alteration of the boundary between two municipalities or between a municipality and the county involving residential property of not more than thirty acres or commercial property of not more than ten acres annexed or incorporated into a municipality after January 1, 1990;**

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

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

[(4)] (5) "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)] (6) "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 municipality, although the commission shall be satisfied as to the sufficiency of the signatures for the final proposed area;

[(6)] (7) "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] **registered voters** 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)] (8) "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] **72.422**, 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] **72.422**, then annexation, incorporation and consolidation in such county shall proceed only as provided in sections 72.400 to [72.420] **72.422**. 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] **72.422** 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 [or], employee **or contractor** of the commission 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. 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] **72.422**. 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.

10. Notwithstanding any provision of law to the contrary, any boundary correction approved by all the registered voters, if any, or by the property owners, if there are no registered voters, and approved by the governing body of the receiving municipality or of the county, if the boundary correction will place the property in the unincorporated area, shall not be subject to commission review. Any such boundary correction shall be effective on January 1 of the year following approval.

72.410. If a boundary change is proposed by petition of seventy-five percent of the [residential property owners of all fee interests of record in all tracts of real property located] **registered voters** within the area proposed, then any election ordered pursuant to subdivision (2) of subsection 6 of section 72.405 shall be conducted in the petitioning area and the receiving municipality.

72.416. **The county, an interested municipality or any other interested party may bring an appropriate action against the commission regarding a proposed boundary change.** In any civil action brought against the commission regarding a proposed boundary change, if the commission prevails in the action, the court may require the party who initiated the action, **except the county**, to pay to the commission the reasonable costs incurred by the commission in opposing such action, including attorney's fees.

72.422. 1. Notwithstanding any other provision of sections 72.400 to [72.420] **72.422**, 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] **72.422** 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 two thousand five hundred; and

(4) Within thirty days of the filing of the petition, the commission shall make a determination whether the area described in the petition can be reasonably served.

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 five 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] **72.422**.

3. A petition submitted pursuant to this section and in accordance with the provisions of chapter 115, RSMo, 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 **county or 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.

Section B. Because of the immediate need for clarification and correction of boundary change procedures this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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