

# County Offices: Combining or Making Appointed

November 2019

## Overview

Under [Minnesota Statutes, section 382.01](#), each county must have an elected county auditor, treasurer, sheriff, recorder, attorney, and coroner. This publication describes the two ways provided in general law that allow certain county offices to be changed from elected to appointed positions. One way, enacted in 1973, requires a referendum. The second way, enacted in 2019, requires a referendum only if a sufficient petition for a referendum is filed. This publication also explains what offices may be combined and summarizes what options counties have implemented and whether they have used general or special law.

## Referendum Requirements

### Changing a county office from elective to appointive, subject to referendum

Since 1973, [Minnesota Statutes, section 375A.10](#), has allowed a county board to appoint a person to fulfill the duties of the county auditor, treasurer, sheriff, or recorder, if the office has not been abolished by the adoption of other options.<sup>1</sup>

A county board may make an office an appointed position only after the voters in the county approve the change in a referendum. [Minn. Stat. § 375A.12](#). The referendum may be initiated by:

- a resolution by the county board,
- a petition signed by voters equal in number to at least 5 percent of the electors voting at the last election for the office of governor, or
- a recommendation of a county government study commission. If a study commission has been established under [Minnesota Statutes, section 375A.13](#), a referendum on an option may not be initiated by a resolution of the county board or a petition of voters until after the commission has completed its study.<sup>2</sup>

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<sup>1</sup> Under [Minnesota Statutes, chapter 375A](#), there are options in county government structure that include in part abolishing certain offices. For more information, see the House Research publication “Options in County Government Structure.”

<sup>2</sup> For information on county government study commission, see the House Research publication “[Options in County Government Structure](#)” and [Minnesota Statutes, section 375A.13](#).

If an office is made appointive, the board of county commissioners makes the appointment to the office. The statutorily required duties, functions, and responsibilities of the office are then vested in and performed by the board of county commissioners through a board-appointed department head. The county board may reorganize, reallocate, delegate, or otherwise change how the required functions of the office are performed. This means that in some counties, the specific office or title may not exist but the functions are still performed. [Minn. Stat. § 375A.10](#), subd. 3.

The officer elected to the office at the time of the adoption of this option serves as the head of any department created by the board of county commissioners to perform the functions formerly performed by the office until the term of office expires. [Minn. Stat. § 375A.10](#), subd. 3.

### **Changing a county office from elective to appointive, subject to reverse referendum**

As an alternative to the referendum process described above, as of July 2019, a county board may change an elected county auditor, treasurer, auditor-treasurer, or recorder office to an appointed position, subject to *reverse* referendum. [Minn. Stat. § 375A.1205](#).<sup>3</sup> With a reverse referendum process, the county board must publish notice of the proposal to make the office an appointed position and allow for public comment on the proposal at a regular meeting of the board before the resolution is adopted. The resolution must be approved by at least 80 percent of the members of the board and take effect after 30 days, unless a later date is provided in the resolution. If a sufficient petition requesting a referendum is filed within 30 days after the adoption of the resolution, the resolution is rescinded. If the county officer to be appointed is the incumbent and has signed a contract for the appointment, a referendum is not an option.

This process is available to the county board if:

- there is a vacancy in the office,
- the elected office holder agrees to appointment, or
- the elected office holder confirms that he or she will not run for election again. An elected county officer must notify the county board at least 104 days before the filing date if the officer intends to run for office again. If the elected office holder notifies the county board that he or she will not run again, and the county board has passed a resolution to make the office an appointed position, then the office will not be on the ballot.

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<sup>3</sup> In 2001, 2006, 2009, 2013, 2015, and 2017 legislation to provide for some version of this option was debated, but not enacted. See H.F. 1290/S.F. 510 (2001); H.F. 2946/S.F. 2805 (2006); H.F. 1278/S.F.1125 (2009); H.F. 800/S.F. 966 (2013); H.F. 1179/S.F. 675 (2015); H.F. 1696/S.F. 1426 (2017) (limited to county recorders).

The law provides that an incumbent appointed to the office must not be involuntarily demoted or discharged except for incompetency or misconduct, and provides procedures the county must follow before demoting or discharging an incumbent.

## Methods of Combining Offices

### What county offices can be combined and how?

#### 1. Auditor and Treasurer

The county board may propose to combine the offices of the county auditor and treasurer. [Minn. Stat. § 375A.10](#), subd. 2, cl. (c). If the combined office is to remain elective, the proposed change generally is not subject to a referendum. If a referendum is not held, the resolution providing for the change must be adopted by 80 percent of the county board members. However, the county board may still require a referendum on the change. In addition, a referendum may be required if a petition is signed by a number of voters equal to at least 10 percent of those voting in the county at the last general election.<sup>4</sup>

Under [section 375A.12](#), if the combined office is to be appointive, a referendum must be held. Under [section 375A.1205](#), the county board may make the office of auditor-treasurer an appointed position subject only to a reverse referendum under the conditions described above.

The persons last elected as auditor and treasurer before the resolution has been adopted serve in those offices until the completion of the terms to which they were elected.

The statutorily required duties, functions, and responsibilities of the county auditor and the county treasurer are then vested in and performed by the appointed or elected auditor-treasurer.

#### 2. Assessor and Auditor, Treasurer, or Auditor-Treasurer

Under [Minnesota Statutes, section 273.061](#), subdivision 1, each county must have a county assessor. The county assessor is appointed by the board of county commissioners. Some counties have combined the office of assessor with that of auditor, treasurer, or auditor-treasurer. Because of concerns with the compatibility of these offices, the law explicitly provides for combining the offices. Whenever the assessor's office is combined with another, the person holding the office still must meet the qualifications required for assessor.

**Compatible offices.** The office of county assessor is compatible with the office of auditor, treasurer, or auditor-treasurer if those offices are appointed positions. A combined assessor-auditor must not serve on the board of appeal and equalization. The county board must not delegate any authority, power, or responsibility under the tax abatement process to the combined office.

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<sup>4</sup> The county auditor must receive the petition for a referendum within 30 days after the second publication of the board resolution that orders the combination.

An elected county auditor, treasurer, or auditor-treasurer may also serve as the county assessor if the auditor, treasurer, or auditor-treasurer office will be an appointed position within five years. The five-year period covers the time it might take from the referendum to make the auditor, treasurer, or auditor-treasurer an appointed office until the current elected office holder's term expires.

**Incompatible offices.** A county assessor must not serve in the listed elected positions: county attorney, county board member, auditor, treasurer, auditor-treasurer, town board supervisor for a town in the same county, or mayor or city council member for a city in the same county. Similarly, a city assessor must not also serve as a mayor or city council member for the same city, and a town assessor must not serve as a town board supervisor for the same town.

Except for an elective office that will become appointive, an assessor who accepts an office that is incompatible with the office of assessor is deemed to have resigned from the assessor position on the day of taking the incompatible office.

[Minn. Stat. § 273.061](#), subds. 1a, 1b, 1c.

## **Can a county change a position that has been combined or made appointed back to an elected position?**

Yes, but not until at least three years have passed. After three years, any office that has been combined or made appointed [under chapter 375A](#) may be changed back following the same procedures as were followed to make the office an appointed position. [Minn. Stat. § 375A.12](#), subd. 6; [375A.1205](#), subd. 7. However, if the change was made pursuant to special law, then special law is needed to change back.<sup>5</sup> Since 2011, special laws to authorize changing offices to appointed positions have also included a provision to provide for reverting to electing the offices that is substantially the same as the general law.

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<sup>5</sup> A special law is a law that applies to only a part of a class—for example, one county as opposed to all counties.

For more information on special laws, see the House Research publication "[Special Legislation](#)," October 2016.

## Counties That Have Implemented Changes

As of 2019, all but seven counties have implemented changes in their county offices, whether under general or special law.<sup>6</sup>

### Use of the General Law

**Combining the Elected Auditor and Treasurer Offices.** The following 43 counties appear to have used general law authority to combine the offices of elected auditor and treasurer: Becker, Beltrami, Brown, Carlton, Chisago, Clearwater, Cook,<sup>7</sup> Cottonwood, Douglas, Faribault, Fillmore, Freeborn,<sup>8</sup> Houston, Isanti, Kanabec, Koochiching, Lake of the Woods, Le Sueur, Lincoln, Marshall, McLeod, Mille Lacs, Morrison, Mower, Norman, Otter Tail, Pennington, Pope, Redwood, Renville, Sherburne, Sibley,<sup>9</sup> Stearns, Stevens, Todd, Traverse, Wabasha, Wadena,<sup>10</sup> Waseca, Watonwan, Wilkin, Winona, and Wright.

Several of these counties have since obtained special legislation to change the elected auditor-treasurer office to an appointed position, subject to a reverse referendum, but not all have implemented the special legislation.

**Other offices.** As of 2019, the Chippewa County auditor-treasurer and recorder positions are appointed positions, following a 2018 referendum approving the change.

In Dodge County, the auditor-treasurer position became an appointed position in 2007, following approval by the voters at the 2004 general election. The recorder's office became an appointed office following voter approval at the 2012 primary election.

In Douglas, Fillmore, and Kanabec Counties, voters at the 2016 general election rejected making the offices of auditor-treasurer and recorder appointed positions.

In Mille Lacs County, the auditor and treasurer positions were combined following a referendum in 1980. A 1974 referendum to combine the offices and make the combined office

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<sup>6</sup> The information in this section is based on a phone survey of all counties in 2016, and the 2019-2020 *Minnesota Legislative Manual* (known as the "Blue Book," published by the Office of the Minnesota Secretary of State). The seven counties are Aitkin, Big Stone, Grant, Mahanomen, Meeker, Red Lake, and Roseau. Big Stone County was authorized under special law to combine the auditor and treasurer as an elected position but a petition for a referendum was filed, and the referendum failed.

<sup>7</sup> Cook County held a referendum on the proposal in 1976 and the part to combine the offices passed, but the part to make the combined office appointive failed.

<sup>8</sup> Freeborn County combined the offices of auditor and treasurer in 1982 following a referendum on the question.

<sup>9</sup> Sibley County's auditor and treasurer were combined offices as of January 1, 2019, pursuant to a referendum vote favoring the combination.

<sup>10</sup> Wadena County was authorized by [Laws 1994, chapter 394](#), to combine the offices of auditor and treasurer, subject to local approval of the special legislation. Wadena County did not file the local approval as required, and the authority under special law has expired. However, the offices are combined, presumably under general law in [Minnesota Statutes, chapter 375A](#).

appointive failed. The recorder position became an appointed position at the beginning of 2007, following approval by the voters at the 2004 general election.

In Swift County, the voters approved changing the offices of recorder and auditor to appointed positions at the November 2012 general election.

To date, no county has opted to make the sheriff an appointed position.

## Special Laws

The table below shows that more than half of the counties have special laws that authorized those counties to combine or make appointive certain county offices. Even though a county has gotten special law authority, it has not always resulted in implementing the change.<sup>11</sup>

As under the general law, once an office is made an appointed position, the county board may reorganize, reallocate, delegate, or otherwise change how the required functions of the office are performed. This means that in some counties, the specific office or title may not exist but the functions are still performed.

Before 2001, some special laws provided for a reverse referendum, but not all. Since 2001, special legislation has contained substantially the same conditions. A special law:

- 1) requires local approval by the governing body for the law to take effect;<sup>12</sup>
- 2) requires the county board to adopt the resolution providing for the change by at least 80 percent vote of the board;
- 3) provides for a reverse referendum; and
- 4) provides for the elected office holder, if any, to continue to hold the office until the term expires.

Since 2011, an additional provision that spells out how the county may revert to making offices elective after having made them appointive under the special law is included in any special law.<sup>13</sup>

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<sup>11</sup> A special law is a law that applies to only a part of a class—for example, one county as opposed to all counties.

For more information on special laws, see the House Research publication “[Special Legislation](#),” October 2016.

<sup>12</sup> See [Minn. Stat. § 645.021](#), for what is required for “local approval.”

<sup>13</sup> See [Laws 2017, chapter 92](#), article 3, section 1, subdivision 5, for example.

### Special Laws Enacted

County	Appointed Auditor	Appointed Treasurer	Appointed Recorder	Elected Auditor-Treasurer	Appointed Auditor-Treasurer
Anoka <sup>14</sup>	<a href="#">1989 ch. 243</a>	<a href="#">1989 ch. 243</a>	<a href="#">1989 ch. 243</a>		
Beltrami			<a href="#">2007 ch. 26</a>		
Benton <sup>15</sup>			<a href="#">1997 ch. 91</a> ; <a href="#">2017, ch. 92</a> , art. 3, § 2	<a href="#">1997 ch. 91</a>	<a href="#">1997 ch. 91</a>
Big Stone <sup>16</sup>				<a href="#">1992 ch. 421</a>	
Blue Earth	<a href="#">1990 ch. 431</a>	<a href="#">1990 ch. 431</a>	<a href="#">1990 ch. 431</a>		
Carlton			<a href="#">2002 ch. 263</a>		
Carver	<a href="#">2006 ch. 173</a>	<a href="#">2006 ch. 173</a>	<a href="#">2006 ch. 173</a>		
Cass <sup>17</sup>			<a href="#">2001 ch. 105</a>		<a href="#">2001 ch. 105</a>
Chippewa				<a href="#">1992 ch. 421</a>	
Chisago <sup>18</sup>			<a href="#">1998 ch. 302</a>		
Clay			<a href="#">2014 ch. 146 § 3</a>		<a href="#">2014 ch. 146 § 3</a>
Crow Wing			<a href="#">2015 ch. 38</a>		<a href="#">2015 ch. 38</a>
Dakota <sup>19</sup>			<a href="#">1991 ch. 338</a>	<a href="#">1991 ch. 338</a>	<a href="#">1998 ch. 308</a>
Freeborn <sup>20</sup>			<a href="#">1994 ch. 393</a>		<a href="#">1994 ch. 393</a>
Goodhue			<a href="#">2001 ch. 184</a>		<a href="#">2001 ch. 184</a>

<sup>14</sup> In [Laws 2005, chapter 28](#), these provisions were codified in [Minnesota Statutes, sections 383E.03](#) to 383E.06.

<sup>15</sup> In Benton County, a referendum pursuant to a petition was held following the 1997 special law's enactment. The part that combined the offices of auditor and treasurer passed, but the part to make the office of recorder and the combined office of auditor-treasurer appointive failed. In 2017, the county was again authorized to make the office of recorder appointive, subject to reverse referendum.

<sup>16</sup> Big Stone County never approved the special law as required. A petition for a referendum was filed and the referendum failed. Thus, the option was not implemented and the authority to implement it under special law has expired.

<sup>17</sup> Cass County approved the law but has not yet made the recorder an appointive position. The 2019-2020 *Minnesota Legislative Manual* shows that the elected recorder's term expires 2023. The auditor-treasurer's position was made appointive effective May 1, 2005.

<sup>18</sup> The 2019-2020 *Minnesota Legislative Manual* shows the recorder with a term ending in 2023, which indicates it is an elected position.

<sup>19</sup> Dakota County's law is now codified in [Minnesota Statutes, section 383D.09](#).

<sup>20</sup> Freeborn County was authorized to make the county recorder and combined office of auditor-treasurer appointive offices. [Laws 1994, ch. 393](#). Although local approval was completed for the special legislation, the options were not implemented after a referendum was held pursuant to a petition and failed.

County	Appointed Auditor	Appointed Treasurer	Appointed Recorder	Elected Auditor-Treasurer	Appointed Auditor-Treasurer
Hennepin <sup>21</sup>			1967 ch. 599		1967 ch. 599
Hubbard	2001 ch. 105	2001 ch. 105	2001 ch. 105		
Itasca				1993 ch.127	
Jackson					2014 ch. 146 § 1
Kandiyohi			2014 ch. 146 § 4	1992 ch. 421	2014 ch. 146 § 4
Kittson			2011 ch. 99		2011 ch. 99
Koochiching <sup>22</sup>			1994 ch. 387		
Lac qui Parle			2005 ch. 75 § 2		2005 ch. 75 § 2
Lake <sup>23</sup>			2014 ch. 146 § 2	1974 ch. 227	2014 ch. 146 § 2
Lyon			2014 ch. 146 § 5		2014 ch. 146 § 5
Marshall <sup>24</sup>			2011 ch. 99; 2017 ch. 92, art. 3, § 5		2011 ch. 99
Martin				1991 ch. 81	
Morrison <sup>25</sup>			2017 ch. 92, art. 3, § 1		
Murray				1993 ch. 200	
Nicollet					2008 ch. 160
Nobles <sup>26</sup>			2005 ch. 75 § 3	1993 ch. 200	2005 ch. 75 § 3
Olmsted			1992 ch. 474	1990 ch. 438	1998 ch. 307

<sup>21</sup> Hennepin County's special law is codified at [Minnesota Statutes, section 383B.025](#). The special law did not provide for a reverse referendum.

<sup>22</sup> Koochiching County was authorized to make the office of county recorder appointive, and although the special legislation was approved by the county board, the option was not implemented after the referendum held pursuant to a petition failed.

<sup>23</sup> The auditor-treasurer position is currently elected with a term ending 2023.

<sup>24</sup> Marshall County, after holding a public hearing on the matter, voted not to implement the special law and did not complete approval of it. The special law has now expired and will not take effect. In 2017, the county was again authorized to make the recorder's office appointive, subject to reverse referendum.

<sup>25</sup> The 2019-2020 *Minnesota Legislative Manual* shows the recorder with a term ending in 2023, which indicates it is an elected position.

<sup>26</sup> Nobles County did not file the certificate of local approval of the 2005 law with the secretary of state and the law did not take effect.



County	Appointed Auditor	Appointed Treasurer	Appointed Recorder	Elected Auditor-Treasurer	Appointed Auditor-Treasurer
Pine <sup>27</sup>			2002 ch. 263		2017 ch. 92, art. 3, § 3
Pipestone <sup>28</sup>				1993 ch. 200	
Polk			2002 ch. 258	1993 ch. 127	2002 ch. 258
Pope <sup>29</sup>			2005 ch. 75 § 1		2005 ch. 75 § 1
Ramsey <sup>30</sup>	1971 ch. 611	1971 ch. 611	1971 ch. 611		
Rice			2017 ch. 92, art. 3, § 6		2017 ch. 92, art. 3, § 6
Rock			2003 ch. 43	1993 ch. 200	2008 ch. 209
St. Louis <sup>31</sup>			1986 ch. 366 § 3	1969 ch. 591	
Scott <sup>32</sup>	1997 ch. 90	1997 ch. 90	1997 ch. 90		
Stearns			2017 ch. 92, art. 3, § 4		
Steele			2002 ch. 256		
Wadena <sup>33</sup>				1994 ch. 394	
Washington			1997 ch. 153		1997 ch. 153
Wright			2001 ch. 180		
Yellow Medicine			2008 ch. 161		2008 ch. 161

<sup>27</sup> Pine County may also combine the duties of the appointed recorder and the county assessor into one department, as long as the person appointed has the qualifications required in statute for assessors.

<sup>28</sup> Pipestone County was authorized to combine the offices of auditor and treasurer, and although the county board approved the special law, the option was not implemented after the referendum held pursuant to a petition failed. The *2019-2020 Minnesota Legislative Manual* shows the treasurer is an appointed position.

<sup>29</sup> When a petition for a referendum was filed, the Pope County board rescinded its resolution. The law was not approved and has expired. A referendum held November 6, 2012, on whether to make the offices of recorder and auditor-treasurer appointed, failed.

<sup>30</sup> Ramsey County's special law is codified at [Minnesota Statutes, section 383A.20](#).

<sup>31</sup> St. Louis County's special law is codified at [Minnesota Statutes, section 383C.136](#). In 1969, the treasurer's position was abolished and functions given to the auditor. In 1986, the recorder's position was made an appointed position. The special law did not provide for a reverse referendum.

<sup>32</sup> [Laws 2000, chapter 259](#), allowed Scott County to generally reorganize and transfer the duties of the appointive positions to the county administrator.

<sup>33</sup> Wadena County did not file the local approval as required, and the authority under special law has expired. However, the offices are combined, presumably under general law in [Minnesota Statutes, chapter 375A](#).



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