



OPTIONAL TOWNSHIP PLANS

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Minnesota Statutes and Rules are available online on the Office of the Revisor of Statutes webpage, found at: <https://www.revisor.mn.gov/pubs/>

I. INTRODUCTION

By default, a town board consists of three supervisors, one clerk, and one treasurer – all of whom are elected. Towns may alter this default structure by adopting one or more optional township government plans. Statute designates each option by letter as follows:

Plan	Effect
Option A - Five Supervisor Board	Allows for 5 elected supervisors instead of 3.
Option B - Appointed Clerk or Treasurer	Allows supervisors to appoint either a clerk, a treasurer, or both. Eliminates elections for clerk and/or treasurer.
Option C - Town Administrator	Allows supervisors to appoint a town administrator, who has powers listed in Minn. Stat. § 367.35, subd. 2.
Option D - Combined Clerk & Treasurer	One person serves as town's clerk and treasurer. Depending on the town's annual revenue, the town may need independent-outside audits.

The decision to pursue an optional form of township government can be initiated either by board action or by elector petition. In either case, the question of whether to adopt the option is submitted to the electors by ballot at the next annual town election. If the option passes, the board must follow the statutory procedure to implement the option. The town board cannot enact an optional form of government without a ballot vote of the electors.

II. METHOD TO SUBMIT AN OPTION TO THE ELECTORS

There are two ways to bring the question of an optional form of government to the voters, through town board action or through voter petition:

A. Board Motion/Resolution: In its discretion, the board may submit an optional township government question to the town electors.¹ The Board may pass either a motion or a resolution authorizing the question;

or

B. Elector Petition: The process may be started by a petition signed by electors equal in number to at least 15 percent of the electors voting at the last town election. The form of the petition must comply with the rules established by the Secretary



Sample Motion Language "I move to submit the question to adopt [insert Option here] to the electors, which would change the township government to allow [describe effect of the option]."

¹ Minn. Stat. § 367.31, subd. 1.

of State’s Office. Contact the Elections Division of the Secretary of State’s Office for help determining the number of electors in the last town election and for sample petitions.²

Completed petitions must be filed with the town clerk.³ The clerk is required to provide the person who delivers the petition a receipt.⁴ The clerk then has ten days in which to inspect the petition to verify the signatures are proper and that it complies with applicable statutory requirements.⁵ The clerk usually submits the petition to the county auditor to verify that the individuals who signed the petition are eligible to vote.⁶ After eligibility of the petition’s signatories is verified, the petition is returned to the clerk. If the petition is deficient in the number of eligible signatories or form, the clerk must notify the person who submitted the petition of its deficiency.⁷ If the petition is sufficient, the clerk presents the petition to the town board.

If a proper petition is timely and has at least the minimum number of signatures, the board is required to place the question on the ballot. The board or the electors may submit more than one option to the voters. For example, the town can simultaneously consider adopting Option D (combining the clerk and treasurer positions) and Option B (whether the clerk or treasurer will be elected or appointed).⁸

C. 74-Day Rule: The board motion or submission of the petition must occur more than 74 days before the election to provide the county auditor notice of the ballot questions to be asked at a town election.⁹ If the process is initiated after the deadline, the question cannot be asked until the following town election.

D. Notice: The town clerk **must** include the language of the question in the published and posted notice of the town election in which it will be asked regardless of whether the question was initiated by the board or by petition.¹⁰ This notice should include the language of the question and indicate that it will be asked at the election.

E. Language on the Ballot: The statute provides the language that must substantially be used

Minnesota Secretary of State’s Office can provide:

- Number of voters in last election
- Sample Petitions
Call: 1-877-600-VOTE (8683)

After receipt of a Petition, the Clerk must:

- Provide a receipt
- Verify correct number of signatures and eligibility of signatories
- Notify the person who submitted the Petition of its sufficiency or deficiency

If sufficient, present Petition

² Minn. Stat. § 367.31, subd. 1.

³ Minn. R. 8205.1040, subp. 3.

⁴ Minn. R. 8205.1040, subp. 4.

⁵ Minn. R. 8205.1050.

⁶ See Minn. R. 8205.1050, subp. 2 (the town clerk is responsible for verifying: (1) the petition has the correct number of signatures; and (2) the signatories “meet the applicable eligibility requirements.” Town clerks may work with the county auditor to verify that each signatory is eligible to vote.)

⁷ Minn. R. 8205.1050, subp. 2(B).

⁸ Minn. Stat. § 367.31, subd. 4.

⁹ Minn. Stat. § 205.16, subd. 4.

¹⁰ Minn. Stat. § 367.31, subd. 3.

in the questions. The question must be followed by the words “Yes” and “No” with an appropriate oval before each in which an elector may record a choice.¹¹ The language provided in the statute must be changed, or expanded, in the circumstances discussed under the individual option sections. Refer to Minn. Stat. § 204B.36, subd. 3 for the requirements to place a question on a ballot.

- F. Majority Vote:** If there is a majority of votes cast on the question are in the affirmative, the option voted upon shall be adopted in the town and shall remain in effect until it is abandoned.¹²

III. OPTION A - FIVE SUPERVISOR BOARD

This option expands the board of supervisors from a three-member board to a five-member board of supervisors. In order to submit the questions to the electors, the ballot question must look like “*Shall option A, providing for a five-member town board of supervisors, be adopted for the government of the town?*”

- A. Implementation:** If the Option A is adopted, the town board, except in urban towns, has two methods to elect the additional supervisors:

- Method 1 - conduct a special town election to elect the two additional supervisors; or
- Method 2 - wait for the next town election to elect the two additional supervisors.

Towns exercising urban powers, or that were granted those powers by special legislation, must use Method 1 to hold a special election to fill the newly created supervisor positions.¹³

1. Method 1 - Special Election

In 2017 the law was changes to limit the number of days a special election could be held. The new reform creates five uniform dates throughout the calendar year when a special election can be held to fill a vacancy in local elections. Those five dates include:

- The second Tuesday in February
- The second Tuesday in April
- The second Tuesday in May
- The second Tuesday in August
- The second Tuesday after the first Monday in November (i.e. General Election Day)¹⁴

The township may designate a Special Election date by Board Resolution or on its own motion. Minn. Stat. § 205.10.

¹¹ Minn. Stat. § 367.31, subd. 4.

¹² Minn. Stat. § 367.31, subd. 5.

¹³ Minn. Stat. § 367.33, subd. 1, amended by Chapter 92, Article 2, Section 17.

¹⁴ Minn. Stat. § 205.10, subd. 3a, amended by Chapter 92, Article 2, Section 10.

When posting notice for the special election, the clerk must give ten days posted notice, and one-week published notice, of the special election.¹⁵ Notice of the first and last dates for filing affidavits of candidacy must be published at least two weeks before the first day for filing. A minimum of one-week published notice is permitted **if** the publication schedules do not allow sufficient time for two weeks published notice.¹⁶

Minn. Stat. § 205.13, controls the filing of affidavits of candidacy. These affidavits must be filed not more than three weeks and not less than ten days before the election.¹⁷

The supervisors elected at the special election serve only until the next town election. Both positions go up for election - one as a three-year term, the other as a two-year term. Persons **must** indicate in the affidavit of candidacy which position they are seeking.¹⁸ In order to facilitate this process, the town should designate **all** of its supervisor positions with a number or letter so a candidate can indicate a specific position. For example, “supervisor position 2, a three-year term.” The top vote-getter for the particular office wins the office, even if the runner up for another office at the same election received more votes.

2. Method 2 - Next Annual Town Election

In non-urban towns, the board may choose to have the two new supervisor positions filled by election at the next annual town election. One of the positions would be for a three-year term, and the other a two-year term as with Method 1. Otherwise, the terms of three supervisors would expire in the same year. Again, persons filing for office must indicate the particular position they are seeking (i.e., selecting one of the two 3-year positions, or the 2-year position). It is important that all the supervisor positions are permanently designated with a letter or number to allow the tracking of each position and to make it easier to file for a particular position.

B. Towns Adopting Urban Town Powers: When a town adopts urban town powers under Minn. Stat. § 368.01, or is granted urban town powers by special law, the town is required to submit the question of adopting Option A to the electors at the next annual town election.¹⁹ If the option is adopted, the board must call a special town election to elect the two additional supervisors (i.e., Method 1 above).²⁰

C. Upon Abandonment: If the question to abandon Option A is placed on the ballot, the election proceeds as usual. However, if the question to abandon the option passes, the election of the supervisor or supervisors in that election is nullified.²¹ The person or persons elected to the supervisor position(s) simply do not take office and the position or positions are dissolved. The purpose of the nullification is to remove two supervisor positions. If only one supervisor was

¹⁵ Minn. Stat. § 367.33, subd. 2.

¹⁶ Minn. Stat. § 367.33 subd. 3.

¹⁷ *Id.*

¹⁸ Minn. Stat. § 367.33, subd. 4; 367.03, subd. 3.

¹⁹ Minn. Stat. § 367.31, subd. 2.

²⁰ Minn. Stat. § 367.33, subd. 1.

²¹ Minn. Stat. § 367.33, subd. 5.

up for election in that year, one of the supervisor's positions in the following election is dissolved by not placing the position up for election. It is not clear when the supervisor position to be eliminated expires since there will be no swearing in of a new officer to mark the transition of the position. Nevertheless, it seems appropriate to treat the position as expiring at the end of the seven-day election contest period. Beyond that point, the dissolved supervisor would no longer be eligible to perform any of the functions or powers of the position and must return all town property in their possession.

IV. OPTION B - APPOINTED CLERK OR TREASURER

This option allows the town to make either the town clerk or treasurer position, or both, appointed by the town board. The question must reflect which offices are to be made appointive (indicated by the language in [] below).

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

A. Implementation: If Option B is adopted, the elected office expires when the term is up. For example, if the clerk's position is made appointive in an even numbered year (i.e., the year in which clerks are elected) or when the position is open because of a vacancy, the election for that position is nullified and the position is filled by appointment by the town board. If the option is passed for a position in which the incumbent still has one year remaining in the term, the incumbent may finish the term. At the end of the term, the position is vacated, and the board then appoints to fill the position. If the incumbent officer resigns before the end of the term, the position becomes vacant and is filled by town board appointment.

Because adopting Option B changes the position from elected to appointed, the person the board appoints to the position does not need to be a resident of the township. However, the person should otherwise be eligible to hold office in the township.

B. Upon Abandonment: If the question to abandon Option B will be asked at an election, the position or positions to which it applies must be filled conditionally at the election. Therefore, the clerk must place the appropriate position(s) up for election. The ballot must indicate that the successful candidate shall take office only if the option is abandoned at the election. The term of the position would apparently either be one or two years, depending on whether the question was asked in an even or odd year. The clerk must be aware of this and advertise the position accordingly.

V. OPTION C - TOWN ADMINISTRATOR

This option provides for the appointment of a town administrator. The language should be as written below:

“Shall Option C, providing for the appointment of a town administrator by the town board, be adopted for the government of the town?”²²

- A. Implementation:** If Option C is adopted, the town board is required to appoint an administrator as soon as practicable after the election on the terms the board deems advisable.²³ The person appointed does not need to be a resident of the town, but the administrator must be chosen solely based on training, experience, and administrative qualifications. The town clerk may be appointed as the administrator if the clerk meets the qualifications. The appointment is for an indefinite period. The board may appoint a qualified person to perform the administrator’s duties during absence or disability. An administrator may be removed by the board at any time. However, if the administrator has served for at least one year, the administrator may require the board to make written charges and hold a *public* hearing on the charges before the final removal takes effect. Until the hearing, the board may suspend the administrator, with or without pay. The powers and duties of the administrator are set out in the statute.²⁴
- B. Upon Abandonment:** If abandonment of Option C is approved, as soon as practicable after the election the board must abolish the office. The position should be abolished by town board resolution. Once abolished, the duties and responsibilities of the position shall be assumed by the town board or by the officer having responsibility for the function prior to the appointment of the administrator.

VI. OPTION D - COMBINED CLERK-TREASURER POSITION

This option allows for the combining of the offices of the clerk and treasurer.²⁵ The combined position is either appointed or elected depending on whether Option B is adopted in the same election or is already in effect. If the intent is to have the position appointed instead of elected, both the Option D and the Option B questions are asked on the ballot. Next to the Option B question, language must be inserted indicating that the approval of Option B is contingent on the simultaneous approval of Option D.²⁶ If the combined position is to be elected and the existing clerk and treasurer positions are currently elected, it appears the town would just ask the Option D question without having to alter the language of the question. On the other hand, if either the clerk or treasurer positions are currently appointed, it is advisable to indicate the position would be combined as an elected position as shown below:

“Shall Option D, providing for the combining of the offices of clerk and treasurer as an [elected] position, be adopted for the government of the town?”

If the position is to be appointed, the following question would also be included on the ballot:

²² Minn. Stat. § 367.31, subd. 4.

²³ Minn. Stat. § 367.35.

²⁴ Minn. Stat. § 367.35, subd. 2.

²⁵ Minn. Stat. § 367.30, subd. 4.

²⁶ Minn. Stat. § 367.31, subd. 4.

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

Note: Approval of the Option B question is contingent on the simultaneous approval of Option D.”

A. Implementation: Implementation of this option is not specifically described in the statute. However, by using the procedures for implementing Option B as a guide, the following seems to be the appropriate procedures under the various circumstances that may be present in the year in which the option is passed.

1. **Treasurer up for election and the clerk-treasurer position is made elective:** The election for the treasurer’s position is nullified and the incumbent clerk performs the combined duties of the clerk-treasurer. The clerk-treasurer position goes up for election in the following year (i.e., follows the same cycle as the clerk’s position).
2. **Treasurer up for election and clerk-treasurer position is made appointive:** The election for the treasurer’s position is nullified. The incumbent clerk performs the combined duties of the clerk-treasurer until the next election at which a vacancy occurs in the position that is filled by town board appointment.
3. **Clerk up for election and the clerk-treasurer position is made elective:** The incumbent treasurer continues in office for the one year remaining in the term. The elected clerk takes office and performs only the duties of the clerk. Once the treasurer’s position becomes vacant in the following year, the incumbent clerk performs the combined duties of clerk-treasurer. The clerk-treasurer position is then placed up for election in the following year (i.e., the year the clerk’s position would be on the ballot).
4. **Clerk up for election and the clerk-treasurer position is made appointive:** The incumbent treasurer continues in office for the one year remaining in the term. The election of the clerk is nullified, and the vacancy is filled by town board appointment. The person appointed only performs the duties of the clerk until the treasurer’s position becomes vacant in the following year. Then the clerk takes on the duties of the clerk-treasurer.

B. Outside Audit Requirement: Once the clerk and treasurer positions are combined, an outside audit of the town’s financial affairs is required.²⁷ The audit is required because combined clerk-treasurer position does not provide the checks and balances available when the positions are separate. The frequency of the required audit depends upon town’s annual revenues. Starting in 2005, an annual audit is required if the town’s annual revenue are over \$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.”²⁸ The Office of the State Auditor publishes the yearly audit thresholds on its website, which is \$225,000 in 2018.²⁹

²⁷ Minn. Stat. § 367.36, subd. 1.

²⁸ Minn. Stat. § 367.36, subd. 1(c).

²⁹ In 2018 the amount needed to require a yearly audit was \$225,000. See <http://www.auditor.state.mn.us/default.aspx?page=20160130.000>.

1. **Under the Yearly Audit Threshold:** If the town’s annual revenue is under the yearly audit threshold, as adjusted for inflation, the board must have an audit of the town’s financial affairs conducted at least once every five years. The audit shall cover a one-year period within the five years that is chosen at random by the person conducting the audit.
 2. **Over Yearly Audit Threshold:** If the town’s annual revenue is over the yearly audit threshold, as adjusted for inflation, the board must have an audit conducted of its financial affairs every year.
 3. **Outside Auditor Required:** The state auditor, a certified public accountant, or a certified public accounting firm must conduct the audits in accordance with minimum audit procedures prescribed by the state auditor. The accountant is required to forward a copy of the audit to the state auditor.
- C. **Upon Abandonment:** The statute handles abandonment of the option by focusing on filling the treasurer’s position. The treasurer’s position must be conditionally placed up for election at the election that the question of abandonment will be asked. If a majority of those voting vote to abandon the option, the treasurer’s position is re-established, and the person elected to that position takes office. Again, the term of the position would only be one year if the question were asked in an even numbered year. It seems clear that the previously elected clerk-treasurer would continue with the town as the clerk and the position would continue as usual in the election cycle. However, it is not clear how the clerk’s position is to be treated if the clerk-treasurer was appointed. Two options seem plausible for handling this situation: (1) conditionally place the clerk’s position up for election in same way as the treasurer’s position; or (2) allow the clerk to serve until the following election at which the position would be placed up for election. The problem with the first option is that it could result in a turnover in both the clerk and treasurer position, leaving an absence of knowledge regarding the financial and administrative aspects of the town. The town board should consider both options and choose the one that appears to best serve the interests of the town.

VII. EFFECT OF ADOPTING AN OPTION ON OTHER LAWS

All laws applicable to a town before the adoption of an option and consistent with the option shall govern the town after adoption of an option. Ordinances and resolutions continue in effect until amended or re-pealed, and no valid and legally subsisting right or liability and no judicial proceeding shall be affected by the change in the form of government.³⁰

³⁰ Minn. Stat. § 367.32.

VIII. ABANDONMENT OF OPTIONS

- A. Opportunity to Abandon an Option:** The statutes provide an opportunity to abandon a previously adopted option and reverting to the form of town government that existed prior to the adoption of the option. The question of abandonment is raised in the same manner as the question to adopt an option (i.e., by board motion or elector petition).³¹
- B. Time Period:** A question to abandon an option may not be submitted to the electors in the first three years after the option was adopted. Any time after the first three years, the question to abandon an option can be submitted to the electors.
- C. Question:** The same language is used for question to abandon an option as is used to adopt an option, except that the word “abandoned” is substituted for the word “adopted” in the question.
- D. Transition:** If a majority of the votes cast on the question are in favor of abandonment, the optional form of government is extinguished according to the statutory procedure. Refer to the particular options for a discussion of the effects of abandoning an option.
- E. Notice:** After the election, the town clerk must 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.³²

³¹ Minn. Stat. § 367.31, subd. 6.

³² Minn. Stat. § 367.31, subd. 7.