

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

582S0276

## HOUSE BILL NO. 1169

Introduced by: Representatives Sly, Brunner, Jensen, Kirkeby, Kopp, Olson (Betty), Romkema, Verchio, and Wink and Senators Kraus, Adelstein, Haverly, Rampelberg, Rhoden, and Tieszen

1 FOR AN ACT ENTITLED, An Act to provide for the enlargement of special zoning areas, to  
2 revise certain provisions regarding special zoning areas, and to provide for the appointment  
3 of special zoning area commissions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 11-2-37 be amended to read as follows:

6 11-2-37. If an area within a county and not within a municipality becomes so situated that  
7 a zoning ordinance or any other purpose or procedure set forth in this chapter is advisable,  
8 persons within the area may apply to the board to establish or enlarge the area as a special  
9 zoning area or the board may on its own initiative establish or enlarge the area as a special  
10 zoning area, pursuant to this chapter. No special zoning area may be formed in a county in  
11 which a county wide comprehensive plan and zoning ordinances have been adopted. The  
12 formation of a special zoning area is only valid in a county that has not adopted a county wide  
13 comprehensive plan and zoning ordinances. The board may establish or enlarge a special zoning  
14 area on its own initiative if the special zoning area comprises an area of at least five square



1 miles.

2 Section 2. That § 11-2-38 be amended to read as follows:

3 11-2-38. Persons making application for the establishment or enlargement of a special  
4 zoning area, or the board if it is proposing the establishment of a special zoning area, shall first  
5 obtain an accurate survey and map of the territory intended to be embraced within the limits of  
6 the special zoning area, showing the boundaries and area of the proposed special zoning area.  
7 The accuracy of the survey and map shall be verified by the affidavit of the surveyor.

8 Section 3. That § 11-2-39 be repealed.

9 ~~11-2-39. Persons making application for the establishment of a special zoning area, or the~~  
10 ~~board, if it is proposing the establishment of a special zoning area, shall obtain an accurate~~  
11 ~~census of the resident population of the territory included in the map, as of a day not more than~~  
12 ~~thirty days before the application is filed with the county auditor as provided in § 11-2-41 or not~~  
13 ~~more than thirty days before the board has proposed the establishment of a special zoning area.~~  
14 ~~The census shall exhibit the name of every head of a family residing within the territory on such~~  
15 ~~day and the number and names of persons belonging to every family and shall also state the~~  
16 ~~names of all other persons residing within the territory at such time and, as to each person~~  
17 ~~named, whether the person is a qualified voter. It shall be verified by the affidavit of the person~~  
18 ~~taking the census, stating that, to the best information and belief of the affiant, the census~~  
19 ~~correctly shows the names and numbers of all residents and of all qualified voters within the~~  
20 ~~territory. Persons taking the census may at the same time obtain signatures on the application~~  
21 ~~for incorporation required by § 11-2-41.~~

22 Section 4. That § 11-2-40 be amended to read as follows:

23 11-2-40. The survey; and map; ~~and census~~ when completed and verified shall be left at some  
24 convenient public place, to be designated by the county auditor, within the proposed special

1 zoning area for a period of not less than twenty days for examination by the public.

2 Section 5. That § 11-2-41 be amended to read as follows:

3 11-2-41. The application for establishment or enlargement of a special zoning area shall be  
4 a petition verified by one or more applicants, by affidavit stating that the affiant personally  
5 witnessed the signatures on the petition and believe the signatures to be genuine, and shall be  
6 subscribed by not less than one-third of the whole number of qualified voters residing within  
7 the proposed special zoning area ~~according to the census taken~~. The petition shall be filed with  
8 the county auditor and presented to the board for consideration at its next meeting. If the board  
9 chooses to propose the establishment or enlargement of a special zoning area on its own  
10 initiative, the board may by resolution propose the establishment or enlargement of the special  
11 zoning area at any regular meeting of the board. After the board has adopted a resolution  
12 proposing the establishment or enlargement of a special zoning area, the board shall publish  
13 notice and hold a public hearing on the question as provided in §§ 11-2-43 and 11-2-47.

14 Section 6. That § 11-2-42 be amended to read as follows:

15 11-2-42. If a petition has been presented to the board as provided in § 11-2-41 and if the  
16 board is satisfied that the requirements of this chapter have been fully complied with, it shall  
17 make an order declaring that the territory shall, with the assent of the qualified voters thereof  
18 ~~as provided in § 11-2-39~~, be a special zoning area or number specified in the application. The  
19 board shall include in the order a notice for an election of the qualified voters resident in the  
20 proposed special zoning area, at a convenient place or places therein, on some day within one  
21 month from the notice, to determine whether the territory shall become a special zoning area.

22 Section 7. That § 11-2-43 be amended to read as follows:

23 11-2-43. The board shall give ten days' notice of the election by publication and by posting  
24 a copy of the notice at three of the most public places in the proposed special zoning area. In the

1 case of a special zoning area that is proposed by the board, the board shall post such notice at  
2 least ten days before the meeting at which it will act on the establishment or enlargement of the  
3 special zoning area. In addition, if the board is proposing the establishment or enlargement of  
4 a special zoning area, the board shall publish notice in the official newspapers of the county at  
5 least ten days before the meeting at which it intends to act on the ~~establishment of the~~ special  
6 zoning area. For a special zoning area proposed by the board, the published notice shall include  
7 a statement that the board will hold a public hearing on the ~~establishment of the~~ proposed  
8 special zoning area; the location of the proposed special zoning area; the date, time, and location  
9 of the meeting at which the hearing will be held; and a statement that the board will take final  
10 action on the ~~establishment of the~~ proposed special zoning area after the hearing is completed.  
11 The publication may be waived if a copy of the notice is mailed to every qualified voter within  
12 the proposed special zoning area, by first class mail or bulk mail, at least ten days before the  
13 election.

14 Section 8. That § 11-2-46 be amended to read as follows:

15 11-2-46. The vote upon the question of establishing or enlarging a special zoning area shall  
16 be by ballot which conforms to a ballot for a statewide question except that the statement  
17 required to be printed on the ballot shall be prepared by the state's attorney. If a majority of those  
18 voting vote in favor of the establishment or enlargement, the territory is from that time a special  
19 zoning area by the name and style specified in the order of the board.

20 Section 9. That § 11-2-47 be amended to read as follows:

21 11-2-47. After the vote is cast and canvassed, the judges shall make a verified statement  
22 showing the whole number of ballots cast, together with the number voting for and the number  
23 voting against establishment or enlargement, and shall return the statement to the board at its  
24 next session. If satisfied with the legality of the election, the board shall make an order declaring

1 that the special zoning area has been incorporated by the name or number adopted. The order  
2 is conclusive of the fact of establishment or enlargement.

3 In the case of a special zoning area that is proposed by the board, the board shall hold a  
4 public hearing at a meeting of the board on the ~~establishment of the~~ proposed special zoning  
5 area. The meeting shall be held as specified in the notice published pursuant to § 11-2-43. After  
6 the public hearing, the board shall determine whether the special zoning area is to be established  
7 or enlarged. If the board decides to establish or enlarge the special zoning area, the board shall  
8 issue an order ~~establishing and~~ incorporating the special zoning area.

9 Section 10. That § 11-2-47.1 be amended to read as follows:

10 11-2-47.1. The board's decision to ~~establish and~~ incorporate the special zoning area may be  
11 referred to a vote of the qualified voters of the proposed special zoning area pursuant to §§ 7-  
12 18A-17 to 7-18A-24, inclusive. The qualified voters of the proposed special zoning area may  
13 refer the decision within twenty days after its publication by filing a petition signed by five  
14 percent of the registered voters in the special zoning area, based upon the total number of  
15 registered voters at the last preceding general election. The filing of a valid petition requires the  
16 submission of the decision to ~~establish and~~ incorporate the special zoning area to a vote of the  
17 qualified voters of the proposed special zoning area for its rejection or approval. The effective  
18 date of the ~~establishment and~~ incorporation of the special zoning area on which a referendum  
19 is to be held shall be suspended by the filing of a referendum petition until the referendum  
20 process is completed.

21 Section 11. That § 11-2-48 be amended to read as follows:

22 11-2-48. The board may expend funds of the county, in the manner and to the extent  
23 permitted by law for other county expenditures, in the payment of necessary costs of preparation  
24 of petitions, surveys, maps, and applications submitted under the provisions of this chapter, and

1 of the holding of elections on the establishment or enlargement of special zoning areas under  
2 the provisions of this chapter.

3 Section 12. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 For the purposes of §§ 11-2-37 to 11-2-38, inclusive, the term, proposed special zoning area,  
6 means the area proposed for the establishment of the district or the area to be added to an  
7 existing special zoning area if it is a proposed enlargement.

8 Section 13. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 If a special zoning area is established or enlarged pursuant to this chapter, the board of  
11 county commissioners may appoint a commission of five or more members to be known as the  
12 special zoning area commission or the board may designate the planning and zoning  
13 commission to have jurisdiction over the special zoning area. The total membership of the  
14 special zoning area commission shall always be an uneven number and at least one member  
15 shall be a member of the board of county commissioners. The special zoning area commission  
16 members appointed by the board shall reside within the special zoning area. The special zoning  
17 area commission may exercise any of the powers granted to county planning and zoning  
18 commission under this chapter.

19 Section 14. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 The term of each of the appointed members of the special zoning area commission shall be  
22 for three to five years as the board of county commissioners may provide. However, when the  
23 special zoning area commission is first appointed, the lengths of the terms shall be varied so that  
24 no more than one-third of the terms expire in the same year. Any appointed member of the

1 special zoning area commission may be removed for cause, after hearing prior to the expiration  
2 of the term by a majority vote of the elected members of the board of county commissioners.  
3 Administrative officials of the county may be appointed as ex officio members of the special  
4 zoning area commission.