

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

744M0244

HOUSE BILL NO. 1161

Introduced by: Representatives Brunner, Halverson, Hanks, Hills, McCoy, Rhoden, and
Turbiville and Senators McNenny, Bogue, Hansen (Tom), Koskan, Lintz, and
Napoli

1 FOR AN ACT ENTITLED, An Act to provide additional methods for the formation of special
2 zoning areas.

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

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

5 11-2-37. If an area within a county and not within a municipality becomes so situated that
6 a zoning ordinance or any other purpose or procedure set forth in this chapter is advisable,
7 persons within the area may apply to the board to establish the area as a special zoning area or
8 the board may on its own initiative establish the area as a special zoning area, pursuant to this
9 chapter. ~~The board may not form special zoning areas if~~ No special zoning area may be formed
10 in a county in which a county wide comprehensive plan and zoning ordinances have been
11 adopted. The formation of a special zoning area is only valid in a county that has not adopted
12 a county wide comprehensive plan and zoning ordinances. The board may establish a special
13 zoning area on its own initiative if at least five percent of the county's resident population reside
14 within the proposed special zoning area and the special zoning area comprises an area of at least
15 twenty square miles.



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

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

7 Section 3. That § 11-2-39 be amended to read as follows:

8 11-2-39. ~~Such persons~~ Persons making application for the establishment of a special zoning
9 area, or the board, if it is proposing the establishment of a special zoning area, shall obtain an
10 accurate census of the resident population of the territory included in ~~said~~ the map, as of a day
11 not more than thirty days ~~previous to the time of filing such application~~ before the application
12 is filed with the county auditor as provided in § 11-2-41. ~~Such~~ or not more than thirty days
13 before the board has proposed the establishment of a special zoning area. The census shall
14 exhibit the name of every head of a family residing within ~~such~~ the territory on such day and the
15 number and names of persons belonging to every ~~such~~ family and shall also state the names of
16 all other persons residing within ~~such~~ the territory at such time and, as to each person named,
17 whether ~~such~~ the person is a qualified voter. It shall be verified by the affidavit of the person ~~or~~
18 ~~persons~~ taking the ~~same~~ census, stating that, to the best information and belief of the affiant ~~or~~
19 ~~affiants~~, the census correctly shows the names and numbers of all residents and of all qualified
20 voters within the territory. Persons taking the census may at the same time obtain signatures on
21 the application for incorporation required by § 11-2-41.

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

23 11-2-40. ~~Such~~ The survey, map, and census when completed and verified shall be left at
24 some convenient public place, to be designated by the county auditor ~~of the county in which the~~

1 application for incorporation is to be filed, within such territory the proposed special zoning area
2 for a period of not less than twenty days for examination by ~~those having an interest in such~~
3 ~~application~~ the public.

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

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

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

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

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

1 11-2-43. The board shall give ten days' notice of the election by publication and by posting
2 a copy of the notice at three of the most public places in the proposed special zoning area. In the
3 case of a special zoning area that is proposed by the board, the board shall post such notice at
4 least ten days before the meeting at which it will act on the establishment of the special zoning
5 area. In addition, if the board is proposing the establishment of a special zoning area, the board
6 shall publish notice in the official newspapers of the county at least ten days before the meeting
7 at which it intends to act on the establishment of the special zoning area. For a special zoning
8 area proposed by the board, the published notice shall include a statement that the board will
9 hold a public hearing on the establishment of the proposed special zoning area; the location of
10 the proposed special zoning area; the date, time, and location of the meeting at which the
11 hearing will be held; and a statement that the board will take final action on the establishment
12 of the special zoning area after the hearing is completed.

13 Section 8. That § 11-2-47 be amended to read as follows:

14 11-2-47. After the vote is cast and canvassed, the judges shall make a verified statement
15 showing the whole number of ballots cast, together with the number voting for and the number
16 voting against establishment, and shall return the statement to the board at its next session. If
17 satisfied with the legality of the election, the board shall make an order declaring that the special
18 zoning area has been incorporated by the name or number adopted. The order is conclusive of
19 the fact of establishment.

20 In the case of a special zoning area that is proposed by the board, the board shall hold a
21 public hearing at a meeting of the board on the establishment of the proposed special zoning
22 area. The meeting shall be held as specified in the notice published pursuant to this Act. After
23 the public hearing, the board shall determine whether the special zoning area is to be
24 established. If the board decides to establish the special zoning area, the board shall issue an

1 order establishing and incorporating the special zoning area.

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

4 The board's decision to establish and incorporate the special zoning area may be referred to
5 a vote of the qualified voters of the proposed special zoning area pursuant to §§ 7-18A-17 to 7-
6 18A-24, inclusive. The qualified voters of the proposed special zoning area may refer the
7 decision withing twenty days after its publication by filing a petition signed by five percent of
8 the registered voters in the special zoning area, based upon the total number of registered voters
9 at the last preceding general election. The filing of a valid petition requires the submission of
10 the decision to establish and incorporate the special zoning area to a vote of the qualified voters
11 of the proposed special zoning area for its rejection or approval. The effective date of the
12 establishment and incorporation of the special zoning area on which a referendum is to be held
13 shall be suspended by the filing of a referendum petition until the referendum process is
14 completed.