AN ACT

ENTITLED, An Act to provide for the enlargement of special zoning areas, to revise certain provisions regarding special zoning areas, and to provide for the appointment of special zoning area commissions.

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

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

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

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

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

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 That § 11-2-39 be repealed.

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

11-2-40. The survey and map when completed and verified shall be left at some convenient

public place, to be designated by the county auditor, within the proposed special zoning area for a period of not less than twenty days for examination by the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-2-48. The board may expend funds of the county, in the manner and to the extent permitted by law for other county expenditures, in the payment of necessary costs of preparation of petitions, surveys, maps, and applications submitted under the provisions of this chapter, and of the holding of elections on the establishment or enlargement of special zoning areas under the provisions of this chapter.

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

follows:

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

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

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

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

The term of each of the appointed members of the special zoning area commission shall be for three to five years as the board of county commissioners may provide. However, when the special zoning area commission is first appointed, the lengths of the terms shall be varied so that no more than one-third of the terms expire in the same year. Any appointed member of the special zoning area commission may be removed for cause, after hearing prior to the expiration of the term by a majority vote of the elected members of the board of county commissioners. Administrative officials of the county may be appointed as ex officio members of the special zoning area commission.

An Act to provide for the enlargement of special zoning areas, to revise certain provisions regarding special zoning areas, and to provide for the appointment of special zoning area commissions.

I certify that the attached Act originated in the

HOUSE as Bill No. 1169

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1169
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State