

AN ACT

ENTITLED, An Act to establish a uniform procedure for creating certain special districts and electing the first board of trustees.

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

Section 1. Sections 1 to 7, inclusive, of this Act apply to elections for the formation of certain special districts and for the initial election of the board of directors or trustees for these districts. The special districts covered are: county road, ambulance, rural fire protection, sanitary, irrigation, watershed, and water project districts.

Section 2. The application for organization shall be a petition verified by one or more circulators by affidavit stating that each affiant personally witnessed the signatures on the petition and believe the signatures to be genuine. The petition shall be signed by at least twenty-five percent of the landowners within the proposed district who are also registered voters within the district. If the proposed district is in two or more counties, a petition shall be filed in each county and each petition shall be signed by at least twenty percent of the landowners within the proposed district who are also registered voters within the proposed district in that county. The petition shall be accompanied by a deposit covering the estimated costs as determined by the county auditor of the public notices and the conduct of the election for the formation of the district.

Section 3. If the proposed district is in two or more counties, each county auditor and board of county commissioners shall cooperate to perform the requirements of sections 1 to 7, inclusive, of this Act and the chapter specific to the formation of that district in setting the date for and conducting the election of the proposed district.

Section 4. The county auditor shall publish the notice of the voter registration deadline at least once each week for two consecutive weeks, the last publication to be not less than twenty-five nor more than thirty days prior to the election. The auditor shall publish notices of election at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten

days before the election.

Section 5. The county auditor shall set a date, time, and location for a meeting to be held within the district to conduct an election on the question of formation of the special district. The date may not be more than sixty days after the appropriate board declares the application for incorporation to be valid. The auditor shall appoint three judges of election, one of whom shall serve as the superintendent, to conduct the election. The vote upon the question of incorporation shall be by ballot in the form provided by § 9-13-22. After the vote is cast and counted, the judges shall prepare a certification showing the whole number of ballots cast, together with the number voting for and the number voting against incorporation, and shall return the certification to the county auditor. If a majority of the votes cast on the question of formation is in favor, an election shall be conducted by those present at the same meeting to elect the initial board of directors or trustees.

Section 6. A person who is a landowner in the proposed district and is registered to vote in the proposed district may vote in the elections provided for in section 5 of this Act. However, the qualifications of a voter for irrigation district elections are provided in chapter 46A-4. Absentee voting is allowed pursuant to chapter 12-19 for the election on the question of formation of the special district.

Section 7. If there is a conflict regarding who has a right to vote in the election pursuant to sections 4 to 6 of this Act, the judges of election shall settle the conflict by referring to the official records of the register of deeds and county auditor in each county where these official records are held.

Section 8. The State Board of Elections may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The petition form; and
- (2) The notice of election.

The petition form and notice of election shall include a description of the proposed district

boundaries.

Section 9. That § 31-12A-1 be amended to read as follows:

31-12A-1. A populated area outside the boundary of a municipality, which is situated so that the construction or maintenance of roads becomes desirable, may be incorporated as a road district pursuant to this chapter.

Section 10. That § 31-12A-5 be amended to read as follows:

31-12A-5. The application for organization shall be as provided in section 6 of this Act and shall be filed with the county auditor and presented to the board of county commissioners for consideration at its next meeting.

Section 11. That § 31-12A-6 be amended to read as follows:

31-12A-6. If the board of county commissioners is satisfied that the requirements of this chapter have been fully complied with, it shall issue an order declaring that the territory shall, with the assent of the voters, as specified in section 2 of this Act, in an election as provided in sections 4 to 6, inclusive, of this Act, be an incorporated road district by the name specified in the application. The name shall be different from that of any other road district in this state.

Section 12. That § 31-12A-7 be repealed.

Section 13. That § 31-12A-8 be repealed.

Section 14. That § 31-12A-9 be repealed.

Section 15. That § 31-12A-10 be amended to read as follows:

31-12A-10. If a majority vote in favor of the incorporation, the territory is deemed a road district by the name and style specified in the order of incorporation issued by the board of county commissioners; otherwise, no further proceedings may be taken. However, any owner of land classified as agricultural property for the purposes of taxation may exclude that property from the district by notifying the county auditor in writing within sixty days after the incorporation of the district. The district shall note any alterations to the district resulting from exclusion upon the survey

and map filed pursuant to this chapter.

Section 16. That § 31-12A-11 be amended to read as follows:

31-12A-11. If satisfied with the legality of the election, the board of county commissioners shall issue an order declaring that the road district is incorporated by the name adopted. The order shall be conclusive of the fact of such incorporation in all suits by or against the road district.

Section 17. That § 31-12A-14 be repealed.

Section 18. That § 31-12A-17 be amended to read as follows:

31-12A-17. The trustees to be elected at the initial election, shall be nominated by the voters in attendance at the meeting in which the organizational election is held. Any trustee to be elected at subsequent elections, shall be nominated by filing with the district clerk not less than fifteen days before any subsequent election, certificates of nomination for the offices of trustee. The certificates shall be in writing and shall contain the name of the candidate, residence, business address, and the office for which the candidate is named, and shall be signed by at least five percent of the qualified voters.

Section 19. That § 34-11A-1 be amended to read as follows:

34-11A-1. If any rural territory, equivalent in area to one township or more, requests to form, organize, establish, equip, and maintain an ambulance district, the petition shall be presented to the county auditor of each county in which the territory is situated setting forth their desires and purposes, or the board of county commissioners in each county where the ambulance district would be situated may initiate formation of the district by resolution.

Section 20. That § 34-11A-2 be amended to read as follows:

34-11A-2. Any municipality located within the area may be included in the ambulance district if twenty percent of the landowners within the municipality who are also registered voters within the municipality sign a petition, or if the governing body of the municipality establishes intent by passing a resolution so indicating.

Section 21. That § 34-11A-3 be amended to read as follows:

34-11A-3. The petition shall contain the suggested name of the proposed district, the area in square miles to be included, and a complete description according to government survey, if possible, of the boundaries of the real properties intended to be embraced in the proposed ambulance district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district and shall deposit with the county auditor a sum sufficient to defray the expenses of publishing the notices required by § 34-11A-6 and section 4 of this Act.

Section 22. That § 34-11A-4 be amended to read as follows:

34-11A-4. Upon the filing of petition in the office of the county auditor, the county auditor shall determine and certify that the petition has been signed by the number of voters as specified in section 2 of this Act. If the petition contains sufficient names, the county auditor shall designate a time and place for the petition or resolution of the county commissioners to be heard by the board of county commissioners.

Section 23. That § 34-11A-6 be amended to read as follows:

34-11A-6. Notice of the hearing shall be given by publication two weeks in the legal newspapers of each county affected, the last publication appearing at least seven days prior to the hearing and shall include a statement of the proposed boundaries as set forth in the petition.

Section 24. That § 34-11A-8 be amended to read as follows:

34-11A-8. Following the filing of the order of the board of county commissioners, an election shall be conducted as provided in sections 4 to 6, inclusive, of this Act.

Section 25. That § 34-11A-9 be repealed.

Section 26. That § 34-11A-10 be repealed.

Section 27. That § 34-11A-11 be repealed.

Section 28. That § 34-31A-2 be amended to read as follows:

34-31A-2. If an application for organization as provided in section 2 of this Act covering any rural

territory is completed and requests to form, organize, establish, equip, and maintain a rural fire protection district, the application shall be filed with the county auditor of each county in which the territory is located. The board of county commissioners in each county where the rural fire protection district would be located may by resolution initiate the formation of the district.

Section 29. That § 34-31A-3 be amended to read as follows:

34-31A-3. Any municipality located within the area, whether the municipality has a fire department or not, may be included in the rural fire district if twenty percent of the landowners within the municipality who are also registered voters within the municipality sign the petition, or if the governing body of the municipality establishes intent by passing a resolution so indicating.

Section 30. That § 34-31A-4 be amended to read as follows:

34-31A-4. The petition shall contain the suggested name of the proposed district, the area in square miles to be included, and a complete description according to government survey, if possible, of the boundaries of the real properties intended to be embraced in the proposed rural fire protection district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district.

Section 31. That § 34-31A-5 be amended to read as follows:

34-31A-5. Upon the filing of the petition in the office of the county auditor, the county auditor shall determine and certify that the petition has been signed by the number of voters as specified in section 2 of this Act. If the petition contains sufficient names, the county auditor shall designate a time and place for the petition or resolution of the county commissioners to be heard by the board of county commissioners.

Section 32. That § 34-31A-7 be amended to read as follows:

34-31A-7. Notice of the hearing shall be given by publication two weeks in the legal newspapers of each county affected, the last publication appearing at least seven days prior to the hearing. The notice shall include a statement of the proposed boundaries as set forth in the petition.

Section 33. That § 34-31A-9 be amended to read as follows:

34-31A-9. Following the filing of the order of the board of county commissioners, an election shall be conducted as provided in sections 4 to 6, inclusive, of this Act.

Section 34. That § 34-31A-10 be repealed.

Section 35. That § 34-31A-11 be repealed.

Section 36. That § 34-31A-12 be repealed.

Section 37. That § 34-31A-13 be amended to read as follows:

34-31A-13. Permanent organization shall be effected by the election of a board of directors consisting of not less than five residents of the district. If the district includes any incorporated municipalities which are located within the boundaries of the district, no more than two members of a five-member board of directors may be voters who are residents of the incorporated municipal areas of the district if at least forty percent of the registered voters of the district live outside the incorporated areas of the district, and no more than three members of the board of directors may be voters who are residents of the incorporated municipal areas of the district if at least twenty percent of the registered voters of the district live outside the incorporated areas of the district. If the board of directors consists of more than five members, the additional members, as nearly as can be accomplished, shall be in the proportions set forth in this section.

Section 38. That § 34A-5-2 be amended to read as follows:

34A-5-2. No sanitary district may be incorporated which contains less than thirty legal residents, including minors, or less than ten landowners within the proposed district who are also registered voters in the proposed district.

Section 39. That § 34A-5-4 be repealed.

Section 40. That § 34A-5-5 be amended to read as follows:

34A-5-5. The survey and map when completed shall be left at some convenient public place, to be designated by the county auditor of the county in which the application for incorporation is to be

filed, within the territory for a period of not less than twenty days for examination by any person having an interest in the application.

Section 41. That § 34A-5-6 be amended to read as follows:

34A-5-6. The application for organization shall be as provided in section 6 of this Act and shall be filed with the county auditor and presented to the board of county commissioners for consideration at the board's next meeting.

Section 42. That § 34A-5-7 be amended to read as follows:

34A-5-7. If the board of county commissioners shall be satisfied that the requirements of this chapter have been fully complied with, the board shall issue an order declaring that the territory shall, with the assent of the electors as specified in section 2 of this Act, in an election as provided in sections 4 to 6, inclusive, of this Act, be an incorporated sanitary district by the name specified in the application. The name shall be different from that of any other sanitary district in this state.

Section 43. That § 34A-5-8 be repealed.

Section 44. That § 34A-5-9 be repealed.

Section 45. That § 34A-5-10 be repealed.

Section 46. That § 34A-5-11 be amended to read as follows:

34A-5-11. If a majority vote in favor of the incorporation, the territory shall be deemed a sanitary district by the name and style specified in the order of incorporation by the board of county commissioners; otherwise, no further proceedings may be taken.

Section 47. That § 34A-5-12 be amended to read as follows:

34A-5-12. If satisfied with the legality of the election, the board of county commissioners shall issue an order declaring that the sanitary district has been incorporated by the name adopted. The order shall be conclusive of the fact of incorporation in all suits by or against the sanitary district.

Section 48. That § 34A-5-15 be repealed.

Section 49. That § 34A-5-19 be amended to read as follows:

34A-5-19. If a majority of the voters approve the question to increase the board of trustees to five, the voters shall elect one additional trustee for a three-year term and one additional trustee for a two-year term at the next regular election and the trustees shall be certified in the same manner as provided by law.

Section 50. That § 34A-5-21 be amended to read as follows:

34A-5-21. Any trustee to be elected at the initial election shall be nominated by any person in attendance at the meeting at which the organizational election is held. Any trustee to be elected at a subsequent election shall be nominated by filing with the district clerk, not more than forty nor less than twenty days before any subsequent election, a nomination petition for office of trustee. The petition shall be in writing and shall contain the candidate's name, residence, business address, and the office for which the candidate is named and shall be signed by at least five percent of the voters. However, no petition need be signed by more than fifty voters.

Section 51. That § 46A-4-15 be amended to read as follows:

46A-4-15. The Board of Water and Natural Resources shall then give notice of an election for the purpose of determining if the proposed district shall be organized under the provisions of this chapter. The election shall be conducted as provided in sections 4 to 6, inclusive, of this Act.

Section 52. That § 46A-4-15.1 be repealed.

Section 53. That § 46A-4-16 be repealed.

Section 54. That § 46A-4-19 be amended to read as follows:

46A-4-19. If a majority of all the votes cast are "Irrigation District -- Yes," the board shall, by resolution, declare the territory duly organized as an irrigation district, under the name and style designated. Upon filing of a true copy of the resolution with the secretary of state, the irrigation district shall become a political subdivision of the state with the authority, powers, and duties prescribed in chapters 46A-4 to 46A-7, inclusive.

Section 55. That § 46A-4-26 be amended to read as follows:

46A-4-26. Notwithstanding any other provision of this chapter and chapters 46A-5 to 46A-7, inclusive, the provisions of the general election law concerning the hours during which polls shall be open for voting shall apply to each irrigation district annual election.

Section 56. That § 46A-4-27.1 be amended to read as follows:

46A-4-27.1. The results of the election for the organization of the district shall be transmitted to the Board of Water and Natural Resources.

Section 57. That § 46A-14-2 be amended to read as follows:

46A-14-2. Terms used in this chapter mean:

- (1) "Appraisers," the persons appointed by the managers of the district to ascertain and report benefits and damages arising from proposed work;
- (2) "Board," the State Board of Water and Natural Resources;
- (3) "Clerk," the clerk of a circuit court for the county in which any judicial proceeding concerning a district is pending or may arise;
- (4) "Conservation district," conservation districts established in accordance with state law;
- (5) "County auditor," the county auditor of any county affected by a watershed district;
- (6) "District," the proposed or existing watershed district as provided in this chapter;
- (7) "District secretary-treasurer," the secretary-treasurer appointed by the board of managers;
- (8) "Engineer," an engineer designated by the managers to act as engineer;
- (9) "Hearing," a hearing scheduled and conducted by either the managers, conservation districts or the Board of Water and Natural Resources, during which all interested parties shall be given a reasonable opportunity to be heard;
- (10) "Initiating petition," a petition as provided in this chapter for the creation or modification of a watershed district;
- (11) "Interested party," any public corporation or any person having an interest in the subject matter pending or involved and including the designated representative or any agency of

government;

- (12) "Landowner," any owner of land, as evidenced by records in the offices of the register of deeds and the clerk of courts in the county containing a proposed or existing watershed district. If land is sold under a contract for deed which is of record in the office of the register of deeds in the county wherein such land is situated, both the landowner and his individual purchaser of the land, as named in the contract for deed, shall be treated as a landowner;
- (13) "Managers," the board of managers of a watershed district;
- (14) "Municipality" or "municipalities," incorporated cities or towns;
- (15) "Person," a natural person, firm, copartnership, association or corporation, but not a public or political subdivision;
- (16) "Petition," initiating petition for "work" which may consist of one or more petitions therefor;
- (17) "Public corporation," a county, municipality, school district, or a political division or subdivision of the state, other than a watershed district;
- (18) "Public health," any act or thing tending to improve or benefit or contribute to the safety or well-being of the general public or benefit the inhabitants of the district;
- (19) "Public welfare," "general welfare," and "public benefit," any act or thing tending to improve or benefit or contribute to the safety or well-being of the general public or benefit the inhabitants of the district;
- (20) "Publications," publication once a week for three successive weeks unless otherwise specified; and
- (21) "Work" or "works," any construction, maintenance, repairs, or improvements of a watershed district.

Section 58. That § 46A-14-5 be amended to read as follows:

46A-14-5. Any proceeding for the establishment of a watershed district shall be initiated by the filing of an initiating petition with each conservation district in which the proposed watershed district is located, which initiating petition shall be as provided in section 2 of this Act, or by the authorized officials of any municipality authorized by resolution duly passed by the governing body and if signed by the governing officials of one or more municipalities, the petition need not be signed by any of the freeholders of the municipalities.

Section 59. That § 46A-14-9 be repealed.

Section 60. That § 46A-14-10 be amended to read as follows:

46A-14-10. Upon receipt of the initiating petition, the board of conservation district supervisors shall determine if the petition contains sufficient signatures as required by section 2 of this Act.

Section 61. That § 46A-14-15 be amended to read as follows:

46A-14-15. After the hearing, if it appears to the conservation district supervisors that public interest in the conservation of the natural resources within the proposed district, including wildlife, water resources, forests, and soils, will be served and protected; that the engineering and economic practicability of creating a district will be sound and feasible, when considered in relation to the public interest; and the resulting cost to the owners of the property to be assessed and that the purpose of this chapter would be served by the creation of a watershed district, the conservation district supervisors shall order a vote to be taken as provided in sections 4 to 6, inclusive, of this Act if a district should be organized.

Section 62. That § 46A-14-16 be amended to read as follows:

46A-14-16. If the initiating petition is signed by sixty percent or more of the landowners in a proposed district who are registered voters in the proposed district and who own at least sixty percent of the land in the proposed district, the petition may be accepted by the conservation district supervisors in lieu of the favorable vote at a referendum as specified in § 46A-14-26 and the referendum specified in § 46A-14-15 is not required.

Section 63. That § 46A-14-17 be amended to read as follows:

46A-14-17. The conservation district supervisors shall perform the duties of the county auditor as provided in sections 4 to 6, inclusive, of this Act.

Section 64. That § 46A-14-18 be repealed.

Section 65. That § 46A-14-19 be repealed.

Section 66. That § 46A-14-20 be repealed.

Section 67. That § 46A-14-21 be repealed.

Section 68. That § 46A-14-22 be repealed.

Section 69. That § 46A-14-23 be repealed.

Section 70. That § 46A-14-24 be repealed.

Section 71. That § 46A-14-25 be repealed.

Section 72. That § 46A-18-4 be amended to read as follows:

46A-18-4. The petition established pursuant to § 46A-18-2 shall contain:

- (1) The name of the proposed district;
- (2) The object and purpose of the water project and works proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works or program of activities;
- (3) A legal description of the lands constituting the proposed district and the names of any municipalities included partly or wholly within the boundaries of the proposed district;
- (4) The location of the principal place of business of the proposed district; and
- (5) The number of members of the board of directors of the proposed district, which number may not be less than three nor more than seven, a statement as to whether the directors shall be elected at large or shall be elected by director divisions, the names and addresses of the members who shall serve as directors until their successors are elected and qualified as provided in this chapter, and, if director divisions are provided for, the respective

divisions that the directors are to represent. The persons named in the petition as directors shall be qualified voters of the district and, if director divisions are provided for, shall be qualified voters of the respective divisions the directors are to represent.

Section 73. That § 46A-18-5 be repealed.

Section 74. That § 46A-18-10 be amended to read as follows:

46A-18-10. The formation petition shall be signed by the number of signers required by section 2 of this Act.

Section 75. That § 46A-18-11 be repealed.

Section 76. That § 46A-18-14 be amended to read as follows:

46A-18-14. The Board of Water and Natural Resources, within ninety days from the receipt of a petition, or within ninety days from the time funds become available to defray the cost of an investigation, shall determine if the proposed project is feasible and conforms to public convenience and welfare. If the project is deemed not feasible or not conforming to public convenience and welfare, the board shall dismiss the petition. If the board determines that the project is feasible and conforms to public convenience and welfare, the board shall by resolution approve the petition and call an election of the voters of the proposed water project district on the question of whether the proposed district should be established. The election shall be held as provided in sections 4 to 6, inclusive, of this Act.

Section 77. That § 46A-18-15 be amended to read as follows:

46A-18-15. The Board of Water and Natural Resources shall perform the duties of the county auditor as provided in sections 4 to 6, inclusive, of this Act.

Section 78. That § 46A-18-16 be repealed.

Section 79. That § 46A-18-17 be repealed.

Section 80. That § 46A-18-18 be repealed.

Section 81. That § 46A-18-19 be repealed.

An Act to establish a uniform procedure for creating certain special districts and electing the first board of trustees.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 12

Secretary of the Senate
=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 12
File No. _____
Chapter No. _____

=====

Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor
=====

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

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State