



2024 South Dakota Legislature  
**House Bill 1132**  
**ENROLLED**

AN ACT

**ENTITLED An Act to revise certain provisions pertaining to municipal government.**

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

**Section 1. That a NEW SECTION be added to title 6:**

Any nonprofit organization formed for historical or educational purposes, pursuant to chapter 47-22 may form and name a corporate townsite upon land owned by the corporation or in which it has a legal or equitable interest, by causing the land to be platted by a registered land surveyor and recorded in the office of the register of deeds of the county in which the land is located.

Any corporate townsite established pursuant to this section is known as a historical or educational townsite and must be named by the corporation.

**Section 2. That a NEW SECTION be added to title 6:**

A historical or educational townsite may be organized without meeting the minimum population or other requirements for municipalities as required by chapter 9-3.

**Section 3. That a NEW SECTION be added to title 6:**

The officers and directors of the corporation that forms and organizes the townsite are the governing body of a historical or educational townsite. The rules and regulations of the townsite must be provided in the articles of incorporation and the bylaws of the corporation.

**Section 4. That a NEW SECTION be added to title 6:**

No historical or educational townsite may receive any state or local tax moneys or any distribution from either state or local sources except as provided under § 7-18-12, or

as approved by a local governing body or state agency from moneys allocated for tourism or educational or recreational purposes.

**Section 5. That a NEW SECTION be added to title 6:**

No historical or educational townsite is subject to any management or control of the state except as specifically provided by the Legislature or under the normal police powers of the political subdivision in which the townsite is located.

**Section 6. That a NEW SECTION be added to title 6:**

A townsite incorporated pursuant to this chapter may exist so long as the corporation maintains in good condition and repair all land, buildings, fences, fixtures, billboards, signs, and other improvements of the townsite, the township is actively operating for the purposes for which the townsite is incorporated, or until the corporation is dissolved in accordance with law.

The townsite must maintain the historical or educational integrity of the townsite's design, material, and workmanship of the sites, buildings, structures, and objects located within the platted townsite, including any advertising or promotional sign. The townsite must lose the status of historical or educational townsite if more than one-fourth of the number of properties experience:

- (1) Loss or disintegration of the roof or roofing materials;
- (2) Loss windows;
- (3) Deterioration or missing siding material;
- (4) Unstable foundation;
- (5) Leaning severely from plumb; or
- (6) Billboards or signs identifying, promoting, or advertising the townsite no longer conform to the requirements of chapter 31-29. For the purposes of this subdivision, the twelve continuous months required for determining a sign is abandoned does not apply.

**Section 7. That a NEW SECTION be added to title 6:**

The county in which the historic or educational townsite is located may take action, pursuant to section 6 of this Act, to dissolve the historical or educational townsite.

**Section 8. That § 9-1-1 be AMENDED:**

**9-1-1.** Terms used in this title, unless the context otherwise plainly requires, mean:

- (1) "County," the county or counties where a municipality is located;
- (2) "Governing body," the board of trustees, the board of commissioners, or the common council of a municipality;
- (3) "Lot" includes parcel or tract of land;
- (4) "Municipal corporation" or "municipality," any city or town that is organized pursuant to this title;
- (5) "Owner," the grantee in the last deed of conveyance of any lot or parcel of land recorded in the office of the register of deeds of the county or counties in which the municipality is located, or the heirs or successors to the grantee; and
- (6) "Publish," publication in an official newspaper of the municipality as designated by the governing body pursuant to § 9-12-6.

**Section 9. That a NEW SECTION be added to chapter 9-1:**

If notice is required to be published, proof of service to the person affected, pursuant to § 15-6-4, whether the personal service occurs within or without the state, is equivalent to the required publication.

**Section 10. That § 9-1-3 be AMENDED:**

**9-1-3.** The courts of this state shall take judicial notice of the existence of all municipalities organized under the laws of this state and of any change of organization authorized by law.

**Section 11. That § 9-1-4 be AMENDED:**

**9-1-4.** Every municipality must have and use a corporate seal that may be changed by a majority vote of the governing body.

Each municipality must have a corporate name. The corporate name must be used when exercising municipal power.

**Section 12. That § 9-1-5 be AMENDED:**

**9-1-5.** No contract of a municipality is valid unless the contract has been authorized by a vote of the governing body at an official meeting.

Each written contract must be executed in the name of the municipality by the mayor or president of the board of trustees, be countersigned by the finance officer, and have the corporate seal attached. However, the governing body of a municipality may, by ordinance or resolution, delegate to any employee of the municipality the authority to enter into a contract on behalf of the municipality and to execute the contract and any other instrument necessary or convenient for the performance of the contract subject to the limitations delegated by the governing body.

**Section 13. That § 9-1-6 be AMENDED:**

**9-1-6.** Any resident of a municipality may maintain an action or proceeding to prevent, by proper remedy, a violation of any provision of this title by that municipality.

**Section 14. That § 9-2-1 be AMENDED:**

**9-2-1.** The three classes of municipal corporations are:

- (1) Municipalities of the first class: municipal corporations with a population of five thousand and over;
- (2) Municipalities of the second class: municipal corporations with a population between five hundred and four thousand nine hundred ninety-nine;
- (3) Municipalities of the third class: municipal corporations with a population of fewer than five hundred.

**Section 15. That § 9-2-2 be AMENDED:**

**9-2-2.** For the purpose of classification, the population of each municipality is determined by the last preceding federal census. Whenever the municipal boundaries included in the last preceding census substantially differ from the current boundaries of the municipality, the governing body by resolution may direct the finance officer to determine the population by filing a certificate showing the number of persons who voted at the last preceding annual municipal election. That number multiplied by three constitutes the population for the purpose of classification until the next federal census is completed.

**Section 16. That a NEW SECTION be added to chapter 9-2:**

If the population of a municipality, as shown by the last preceding federal census, increases or decreases causing the municipality to pass into a different class of

municipality pursuant to § 9-2-1, the municipality may, through its governing body, apply to the circuit court having jurisdiction for a judgment authorizing the classification change. Upon the presentation of the application, the court must establish a time and place for hearing the application. Notice of the hearing must be given by publishing the order once a week for two successive weeks, the last publication to be not less than ten days prior to the day of the hearing. Not less than ten days prior to the date of the hearing, the notice of hearing must also be posted in three public places in the municipality.

**Section 17. That a NEW SECTION be added to chapter 9-2:**

After the hearing, if the facts warrant the granting of the application, the court must make and enter its judgment changing the status of the municipality to that of a municipality of the appropriate class, pursuant to § 9-2-1. The court shall establish the time when the change is effective and shall determine the manner in which the change must be made.

A certified copy of the judgment shall be filed in the office of the secretary of state and the office of the register of deeds of the county where the municipality is located.

**Section 18. That § 9-2-4 be AMENDED:**

**9-2-4.** The present classification of government of existing municipalities continues until changed as provided by this title.

**Section 19. That § 9-2-7 be AMENDED:**

**9-2-7.** For the purpose of dividing a municipality into wards, the number of inhabitants is determined by subdivision 2-14-2(20). The governing body may, by resolution, authorize the finance officer to determine the number of inhabitants by filing a certificate showing the number of persons registered to vote in each ward of the municipality. That number multiplied by two constitutes the number of inhabitants until the next federal census is completed.

**Section 20. That § 9-3-1.1 be AMENDED:**

**9-3-1.1.** A municipality may not be incorporated if any part of the proposed municipality lies within three miles of any point on the perimeter of the corporate limits of an incorporated municipality, unless the incorporated municipality refuses or fails to annex

a territory that is contiguous to the incorporated municipality after the contiguous territory has properly petitioned the municipality to be annexed as provided by § 9-4-1.

A proposed municipality may be incorporated that is within three miles of an incorporated municipality if the territory to be incorporated is in a different county and has a post office prior to incorporation.

**Section 21. That § 9-3-3 be AMENDED:**

**9-3-3.** Any person making application for the organization of a proposed municipality shall cause an accurate census to be taken of the landowners and the legal resident population of the proposed municipality not more than thirty days prior to the time of presenting the application to the board of county commissioners. The census must list the name of each landowner and legal resident residing in the proposed municipality. The census must be verified by the affidavit of the person taking the census.

**Section 22. That § 9-3-4 be AMENDED:**

**9-3-4.** Within two days of the completion and verification of the survey, map, and census, the documents must be filed with the county auditor and made available to the public during regular business hours.

**Section 23. That § 9-3-5 be AMENDED:**

**9-3-5.** The application for incorporation of a proposed municipality must be by a petition verified by the circulator and signed by not less than twenty-five percent of the qualified voters who are either residents and registered voters in the proposed municipality or landowners in the proposed municipality who are also registered voters of this state. The application shall identify the type of government to be formed, the number of trustees, commissioners, or wards in the proposed municipality, the boundaries and area according to the survey, and the legal resident population according to the census taken. The application must include the name of the proposed municipality. The name may not be the same as any incorporated municipality in the state. The application must be filed with the county auditor and heard at a regular or special meeting of the board of county commissioners within sixty days of being filed.

**Section 24. That § 9-3-6 be AMENDED:**

**9-3-6.** After the public hearing on the application, if the board of county commissioners determines the requirements of this chapter have been met, the board must set a date for an election on the question of whether the proposed municipality is to be incorporated. The election must be conducted pursuant to title 12.

**Section 25. That § 9-3-10 be AMENDED:**

**9-3-10.** The vote upon the question of incorporation of a proposed municipality must be by ballot that conforms to a ballot for a statewide question, except that the statement required to be printed on the ballot must be prepared by the state's attorney.

If a majority of the qualified voters, who are either residents and registered voters in the proposed municipality or landowners in the proposed municipality and are registered voters in this state, vote in favor of the incorporation, the proposed municipality is incorporated by the name and style specified in the application for incorporation.

**Section 26. That § 9-3-11 be AMENDED:**

**9-3-11.** After the canvass of the vote, the county auditor shall make a verified statement showing the whole number of ballots cast, together with the number voting for and the number voting against incorporation and shall return the same to the board of county commissioners at its next meeting.

**Section 27. That § 9-3-12 be AMENDED:**

**9-3-12.** If satisfied of the legality of the election, the board of county commissioners must make an order declaring that the proposed municipality is incorporated by the name adopted. The order is conclusive of the fact of the incorporation in all suits by or against the municipality.

**Section 28. That § 9-3-13 be AMENDED:**

**9-3-13.** Within the sixty days following the order declaring the incorporation, the board of county commissioners has full power to settle and adjust all claims and accounts existing between the municipality and the civil township or townships that formed a part of the municipality previous to its incorporation. The board shall immediately proceed to settle and adjust the claims and accounts with due regard for the interests of all concerned.

**Section 29. That § 9-3-14 be AMENDED:**

**9-3-14.** Within thirty days of the order declaring incorporation, the county auditor shall file a certified copy of the canvass of the votes showing the result of the election held on the question of incorporation with the register of deeds and the secretary of state. The register of deeds shall record the certified copy. The secretary of state shall keep a registry of all incorporated municipalities within the state.

**Section 30. That § 9-3-18 be AMENDED:**

**9-3-18.** The person having the highest number of votes respectively for each office to be filled is declared elected. If there is a tie, the county auditor must determine by lot the person deemed elected. The county auditor shall notify each person elected of the person's election within two days after the result of the election is declared.

**Section 31. That a NEW SECTION be added to chapter 9-3:**

Each official elected at the first election shall hold office until the first Monday of the next following May or until a successor is elected and qualified.

**Section 32. That § 9-3-20 be AMENDED:**

**9-3-20.** The validity of the incorporation of any municipality may only be challenged in an action or proceeding instituted by or on behalf of the state.

**Section 33. That § 9-11-6 be AMENDED:**

**9-11-6.** If a petition signed by fifteen percent of the registered voters of any municipality, as determined by the total number of registered voters at the last preceding general election, is presented to the governing body, requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners, or trustees, the governing body must call an election that must be held within fifty days from the date of the filing of the petition with the municipal finance officer. At that election, the question of the change of form of government or the number of wards, commissioners, or trustees, or both, must be submitted to the voters. No petition is valid if filed more than six months after the circulation start date declared on the petition forms. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply



with the provisions of § 9-13-14, the question may be submitted at that annual municipal election.

The election must be held upon the same notice and conducted in the same manner as other municipal elections.

**Section 34. That § 9-11-7 be AMENDED:**

**9-11-7.** Both the question of form of government and the number of wards, trustees, or commissioners may be submitted upon one ballot, when both questions are to be voted upon.

The vote upon the questions must be by ballot in the form and be cast in the manner provided by chapter 9-13.

**Section 35. That a NEW SECTION be added to chapter 9-11:**

Each first or second class municipality must be governed by a mayor and common council, a mayor and a common council with a city manager, a board of commissioners, or a board of commissioners with a city manager. Each third class municipality must be governed by a board of trustees.

The present form of government of existing municipalities must continue until changed as provided by this title.

**Section 36. That § 9-1-9 be REPEALED.**

**Section 37. That § 9-2-3 be REPEALED.**

**Section 38. That § 9-3-17 be REPEALED.**

**Section 39. That § 9-3-19 be REPEALED.**

**Section 40. That § 9-3-22 be REPEALED.**

**Section 41. That § 9-3-23 be REPEALED.**

**Section 42. That § 9-3-24 be REPEALED.**

**Section 43. That § 9-3-25 be REPEALED.**

**Section 44. That § 9-3-26 be REPEALED.**

**Section 45. That § 9-3-27 be REPEALED.**

**Section 46. That § 9-3-28 be REPEALED.**

**Section 47. That § 9-3-29 be REPEALED.**

**Section 48. That § 9-3A-1 be REPEALED.**

**Section 49. That § 9-3A-2 be REPEALED.**

**Section 50. That § 9-3A-3 be REPEALED.**

**Section 51. That § 9-3A-4 be REPEALED.**

**Section 52. That § 9-3A-5 be REPEALED.**

**Section 53. That § 9-3A-6 be REPEALED.**

**Section 54. That § 9-3A-7 be REPEALED.**

**Section 55. That § 9-3A-8 be REPEALED.**

**Section 56. That § 9-3A-9 be REPEALED.**

**Section 57. That § 9-3A-10 be REPEALED.**

**Section 58. That § 9-3A-11 be REPEALED.**

**Section 59. That § 9-3A-12 be REPEALED.**

**Section 60. That § 9-3A-13 be REPEALED.**

**Section 61. That § 9-3A-14 be REPEALED.**

**Section 62. That § 9-3A-15 be REPEALED.**

**Section 63. That § 9-3A-16 be REPEALED.**

**Section 64. That § 9-3A-17 be REPEALED.**

**Section 65. That § 9-3A-18 be REPEALED.**

**Section 66. That § 9-3A-19 be REPEALED.**

**Section 67. That § 9-3A-20 be REPEALED.**

**Section 68. That § 9-11-3.1 be REPEALED.**

**Section 69. That § 9-11-4 be REPEALED.**

An Act to revise certain provisions pertaining to municipal government.

I certify that the attached Act originated in the:  
House as Bill No. 1132

Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_, 2024 at \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk

By \_\_\_\_\_ for the Governor

\_\_\_\_\_  
Speaker of the House

The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2024

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
President of the Senate

Attest:

Filed \_\_\_\_\_, 2024 at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Secretary of State

House Bill No. 1132  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State