

ROAD DISTRICT CODIFIED LAWS



CUSTER COUNTY

This document provides you with basic information for the creation and management of a road district. Road districts have the authority pursuant to South Dakota Codified law to obtain legal counsel and it is recommended that you obtain counsel to assist in the creation and management of the district. Below are South Dakota Codified Laws that were in effect at the time of this drafting. Laws frequently change and you should review South Dakota Codified Law for the latest laws affecting road districts. South Dakota statutes can be found at the Legislative Research Council's website at www.sdlegislature.gov.

The Auditor's Office assists with the formation of road districts and disbursement of collected taxes. The county is unable to provide legal advice to road districts, its board, or members. Any further questions or advice should be directed at legal counsel retained by the board or members of the district.

Form of petition for organization of a county road, ambulance, rural fire protection, sanitary, watershed, or water project district

https://sdsos.gov/elections-voting/assets/petition_docs/5-02-08-39.doc

Form of nominating petition for special district trustee

https://sdsos.gov/elections-voting/assets/petition_docs/5-02-08-35.doc

CHAPTER [31-12A](#)
COUNTY ROAD DISTRICTS

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[31-12A-1](#). Incorporation of road district.

Any 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.

Source: SL 1977, ch 241, § 1; SL 1982, ch 224, § 1; SL 1998, ch 36, § 9; SL 1999, ch 150, § 1; SL 1999, ch 151, § 1; SL 2014, ch 46, § 4.

[31-12A-1.1](#). Formation--Election--Qualification.

Notwithstanding any other provision of chapter [31-12A](#), an area with three or fewer landowners may be formed into a road district pursuant to this chapter. Each landowner shall be a trustee at large and no election of trustees is required.

After the district is incorporated and the number of landowners within the district is five or more, the district shall conduct an election pursuant to § [31-12A-16](#) to elect the board of trustees. The district shall conduct the election on the first Tuesday after the anniversary date of the formation of the district.

To serve as a trustee of a county road district that has one hundred or more eligible voters, the person shall be a resident and landowner of the district.

To serve as a trustee of a county road district with less than one hundred eligible voters, a person shall be a landowner who owns real property within the district.

Source: SL 1999, ch 150, § 2; SL 2000, ch 32, § 4; SL 2014, ch 46, § 6; SL 2021, ch 126, § 1.

31-12A-1.2. Eligible voter and landowner defined.

As used in this chapter, the term, eligible voter, has the meaning specified in this section. Only persons or public corporations that are landowners of land located within the proposed or existing road district are eligible to vote in the formation election or any subsequent election of a road district, except as provided in this chapter. An eligible voter may reside within or outside the district. Any firm, partnership, limited liability company, association, estate, or corporation that holds title to land located within the proposed or existing road district is entitled to one vote and may designate an officer or agent to vote on its behalf by presenting a written instrument to that effect to the election officials. The vote of any eligible voter who is a minor or a protected person as defined by § [29A-5-102](#), may be cast by the parent, conservator, or legal representative of the minor or protected person. However, if more than one person holds an interest in a lot, tract, or parcel of land, no more than one vote may be cast in any election with respect to any one lot, tract, or parcel of land, as the owners may among themselves determine.

As used in this chapter, the term, landowner, means any owner of land other than a governmental entity, 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 road district. If land is sold under a contract for deed that is of record in the office of the register of deeds in the county in which the land is situated, the individual purchaser of the land, as named in the contract for deed, is treated as the landowner.

Source: SL 2014, ch 46, § 5.

31-12A-2. Application for organization of road district--Verified survey and map required.

Any person making application for the organization of a road district shall first obtain an accurate survey and map of the territory intended to be embraced within the limits of the road district, showing the boundaries and area of the district. The accuracy of the survey and map shall be verified by the affidavit of the surveyor.

Source: SL 1977, ch 241, § 2; SL 2014, ch 46, § 7.

31-12A-3. Filing of petition--Contents.

Not less than twenty-five percent of the eligible voters as defined in § [31-12A-1.2](#) who own land lying within the limits of the territory proposed to be organized into a road district may file a petition with the board of county commissioners asking that a road district be organized to function in the territory described in the petition. The petition shall be filed with the county auditor and presented to the board of county commissioners for consideration at its next meeting. The petition shall conform with the requirements of § [6-16-2](#) and shall set forth:

- (1) The proposed name of the road district;
- (2) That there is need for road work in the territory described in the petition;
- (3) A description of the territory proposed to be organized as a road district;
- (4) A request that the board of county commissioners define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a road district in the territory; and that the board determine that such a district be created.

Source: SL 1977, ch 241, § 3; SL 1982, ch 224, § 2; SL 2014, ch 46, § 8.

31-12A-4. Public examination of survey, map, and petition.

Such survey, map, and petition when completed and verified 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 such territory for a period of not less than twenty days for examination by those having an interest in such application.

Source: SL 1977, ch 241, § 4.

31-12A-5. Repealed by SL 2014, ch 46, § 9.

31-12A-5.1. Territory within subdivision jurisdiction of municipality--Requirement for approval of petition.

If any territory is within the subdivision jurisdiction of a municipality, the petition for the incorporation described in § [31-12A-3](#) shall first be submitted to the municipality's governing body for approval at its discretion, and upon approval shall be presented to the county board of commissioners.

Source: SL 1982, ch 224, § 7A; SL 2021, ch 127, § 1.

31-12A-5.2. Transfer of jurisdiction over public highway to road district prohibited.

No political subdivision of the state may relinquish or transfer jurisdiction over any public highway to a road district.

Source: SL 1999, ch 151, § 13.

31-12A-6. Order declaring territory incorporated--Name of district--Election.

If the board of county commissioners is 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 eligible voters, as specified in § [6-16-2](#), in an election as provided in § [6-16-4](#) to [6-16-6](#), inclusive, be an incorporated road district by the name specified in the petition. The name shall be different from that of any other road district in this state.

Source: SL 1977, ch 241, § 6; SL 1998, ch 36, § 11; SL 2014, ch 46, § 10.

31-12A-7 to 31-12A-9. Repealed by SL 1998, ch 36, §§ 12 to 14

31-12A-10. Incorporation of district by majority vote--Exclusion of agricultural property from district by notice to county auditor--Notation on survey and map.

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.

Source: SL 1977, ch 241, § 10; SL 1998, ch 36, § 15.

31-12A-11. Order of incorporation--Order as conclusive of fact of incorporation.

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.

Source: SL 1977, ch 241, § 11; SL 1998, ch 36, § 16.

31-12A-12. District as governmental subdivision and public body.

Such road district, created and established under this chapter, shall be a governmental subdivision of this state and a public body, corporate and politic.

Source: SL 1977, ch 241, § 13.

31-12A-13. Expenditure of county funds authorized for application and election costs--Expenditure of transportation department funds allocated to county.

The board of county commissioners is authorized to 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 incorporation of road districts hereunder. The county board is also authorized to accept and expend any funds appropriated to the State Department of Transportation and allocated by that department to the county for these purposes.

Source: SL 1977, ch 241, § 12.

31-12A-14. Repealed by SL 1998, ch 36, § 17

31-12A-15. Annual election of officers--Time and place--Conduct.

In each road district, after the initial election provided for in §§ [6-16-5](#) and [6-16-5.2](#), an annual election of officers shall be held on the first Tuesday in May at a place in the district as the board of trustees shall designate. Unless otherwise specified, the election shall be conducted according to chapter [8-3](#), at a meeting of the eligible voters of the road district.

Source: SL 1977, ch 241, § 16; SL 2002, ch 144, § 1; SL 2003, ch 158, § 1; SL 2010, ch 74, § 26; SL 2014, ch 46, § 11.

31-12A-15.1. Notice of meeting and election--Contents--Notice upon vacancy.

Notice of the meeting and election required by § [31-12A-15](#) shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which the district is situated or notice may be given by posting in a public place within the district and delivering the notice to each eligible voter of the district. The notice shall include the time and place of the election and candidate names for each vacancy to be filled at the election. The meeting shall be held not less than seven days nor more than fourteen days after the date of publication or delivery of the notice.

The same type of notice shall be given setting forth each vacancy occurring by termination of the term of office of any elective officer. The notice shall also state the time and place where nominating petitions may be filed for each office. The notice shall be given not less than thirty days prior to the deadline for filing nominating petitions.

Source: SL 2002, ch 144, § 2; SL 2005, ch 152, § 1; SL 2014, ch 46, § 12.

31-12A-16. Election of trustees at large--Terms of office--Annual elections.

There shall be elected from among the eligible voters of the district at the first election of a road district, held pursuant to § [6-16-5](#) or [6-16-5.2](#), three trustees at large, who shall respectively hold their offices, one for a term of one year, one for a term of two years, and one for a term of three years. The person having the highest number of votes shall serve for a term of three years, the person receiving the second highest number of votes shall serve for a term of two years, and the person receiving the third highest number of votes shall serve for a term of one year, and such persons shall be declared elected to such offices. Thereafter, in accordance with §§ [31-12A-15](#) and [31-12A-15.1](#), there shall be elected annually one trustee for a term of three years. The judges shall subscribe and certify a statement of the persons elected to fill the offices of trustees in the road district and file the statement with the county auditor within ten days after the date of the election.

Source: SL 1977, ch 241, § 15; SL 2014, ch 46, § 13.

31-12A-17. Nominations for trustee--Certificates of nomination.

If the initial trustees are to be elected at the meeting at which the incorporation election is held as provided in § [6-16-5](#), the trustees shall be nominated by the eligible voters in attendance at the meeting. Otherwise, the initial trustees shall be nominated as provided in § [6-16-5.2](#). Any trustee to be elected at any subsequent election, shall be nominated by filing with the district clerk not less than fifteen days before the subsequent election, a certificate of nomination for the office of trustee. The certificate 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 eligible voters.

Source: SL 1977, ch 241, § 17; SL 1998, ch 36, § 18; SL 2014, ch 46, § 14.

31-12A-18. Trustees not compensated--Election of president.

The members of the board of trustees shall serve without compensation. They shall organize by electing one of their number president, whose duty it shall be to preside over all meetings of said board and to call all special meetings of said board when he or a majority of said board deems such meeting necessary and, in case said president should fail or refuse to call such meeting or meetings, then such meeting or meetings may be called by a majority of said board.

Source: SL 1977, ch 241, § 18.

31-12A-19. Rules and regulations of trustees--Meetings--Quorum.

The board of trustees shall adopt such rules and regulations for the conduct of the business of said board, and shall fix a stated time at which the regular meetings of said board shall be held. A majority of the board of trustees shall constitute a quorum but a smaller number may adjourn from day to day. A concurrence of the majority shall be necessary to any action of such board.

Source: SL 1977, ch 241, § 19.

31-12A-20. Record of proceedings required of trustees.

The board of trustees shall cause to be kept a full, complete, accurate, and itemized account of all of its proceedings, ordinances, orders, resolutions, rules, and regulations.

Source: SL 1977, ch 241, § 20.

31-12A-20.1. Sanitary district assuming road district powers.

The board of trustees of any sanitary district incorporated under chapter [34A-5](#) may submit to the voters of the district at an annual election or a special election called and held in accordance with chapter [9-13](#) the question of whether the district shall be authorized to exercise the powers of road districts incorporated under this chapter, or the petitioners' application for incorporation filed in accordance with § [34A-5-6](#) may request such authority. Upon approval of the grant of such authority by a majority of the voters voting on the question, or upon entry of the order incorporating the district if the application has requested such authority, the board of trustees shall be authorized to exercise all powers which a road district organized under this chapter may exercise, including the powers granted by §§ [31-12A-21](#) to [31-12A-26](#), inclusive.

Source: SL 1979, ch 196.

31-12A-21. Powers of trustees.

The board of trustees may:

- (1) Appoint a treasurer and a clerk, an engineer, attorney, and other employees for the road district and fix their compensation. These officers shall hold their respective offices at the pleasure of the board, and be bonded for the faithful performance of their duties as may be required by the board;
- (2) Sue and be sued and contract in the name of the district;
- (3) Adopt a corporate seal;
- (4) Construct roadways and maintain them;
- (5) Borrow money, levy taxes, and special assessments, and issue bonds pursuant to § [31-12A-23](#);
- (6) Establish speed and weight limits and other restrictions on roads under the road district's jurisdiction in accordance with the provisions of §§ [32-14-3](#) to [32-14-7](#), inclusive, [32-22-47](#) and [32-25-9.1](#).

Source: SL 1977, ch 241, § 21; SL 1982, ch 224, § 3; SL 1999, ch 151, § 2.

31-12A-22. Power of trustees to pass and enforce ordinances and regulations.

The board of trustees shall have the power to pass all necessary ordinances, resolutions, orders, rules, and regulations for the proper management and conduct of the business of said road district, and to carry into effect the ordinances, orders, resolutions, rules, and regulations of said road district for the business for which such district is formed.

Source: SL 1977, ch 241, § 23.

31-12A-23. Certification to county auditor of delinquent charges for services--Penalty and interest--Tax sale--Referendum on assessment or bond issue.

The board of trustees may cause the amount of any charges, and interest and penalties on the charges, for road district service rendered or made available to any land within and part of the district, which are due and unpaid on the first day of October in each year to be certified by the clerk of the district to the county auditor in the manner provided in § [10-12-7](#) together with any taxes levied by the district for corporate purposes. All amounts so certified shall be inserted by the county auditor upon the tax list of the current year and are payable and delinquent at the same time and shall incur penalty and interest and shall be collected by the same procedure as real estate taxes on the same property. In the event of a tax sale or the issuance of a tax deed, the provisions of §§ [9-43-112](#) and [9-43-113](#) apply to all amounts so certified and then delinquent, in the same manner as delinquent installments of special assessments. Five percent of the eligible voters of the district may petition the board of trustees for referendum of any special assessment or bond issue. A majority of the eligible voters of the district who own the lots, tracts, or parcels of land subject to a special assessment or bond issue by the road district is required for approval of the special assessment or bond issue. For purposes of a referendum, if more than one person holds an interest in a lot, tract, or parcel of land subject to a special assessment or bond issue, the vote for the lot, tract, or parcel of land shall be exercised as the owners may among themselves determine and in no event may more than one vote be cast with respect to any one lot, tract, or parcel of land in any referendum. The referendum shall be governed, to the extent applicable, by chapter [9-20](#). The referendum petition shall be filed with the clerk of the district within twenty days after the notice of the levy of the special assessment or bond issue has been given the landowner.

Source: SL 1977, ch 241, § 25; SL 2003, ch 158, § 3; SL 2004, ch 193, § 1; SL 2014, ch 46, § 15; SL 2021, ch 43, § 20.

[31-12A-24](#). Trustee and employee interest in contracts or other dealings of district prohibited--Exception.

No trustee or employee of a road district may be directly or indirectly interested in any contract, work, or business of the district, or the sale of any article, the expense, price, or cost of which is paid by the district, nor in the purchase of any real, personal, or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the district. No trustee may be a joint or co-owner of land in the road district with an employee of the same road district. This section does not apply to any trustee or employee of a district consisting of less than twenty-five residents for a winter road maintenance contract or work.

Source: SL 1977, ch 241, § 22; SL 2003, ch 158, § 2; SL 2018, ch 173, § 1.

[31-12A-25](#). Laws applicable to proceedings for constructing roads, borrowing money, making special assessments, and issuing bonds.

All proceedings for constructing and maintaining the roads and the borrowing of money, making of special assessments, and issuing of bonds shall be governed, to the extent applicable, by § [9-12-1](#) and chapters [9-26](#), [9-40](#), [9-43](#), [9-45](#), and [9-46](#).

Source: SL 1977, ch 241, § 24; SL 1982, ch 224, § 4.

[31-12A-25.1](#). Roads as public highways--Vehicle or traffic regulations may be enforced by law enforcement officer.

Any road constructed or maintained pursuant to this chapter is a public highway, and any speed limits, vehicle weight limits, and any other vehicle or traffic regulations on such roads may be enforced by any law enforcement officer.

Source: SL 1999, ch 151, § 3.

[31-12A-26](#). Road work projects outside district's area.

Notwithstanding any other provision of this chapter, a road district may contract for and expend district funds for road work projects to be constructed outside of the geographical area of the road district, if the board of trustees approves that action by a two-thirds vote of the membership. The owners of any land, including any land subject to an easement, outside the district on which the road is to be constructed shall consent in writing to the project. If persons outside the district area would also benefit from such a project, the board may negotiate with and accept funds or any other assistance from any person on the basis and terms negotiated. The provisions of § [31-12A-25.1](#) do not apply to any road work performed pursuant to this section.

Source: SL 1977, ch 241, § 28; SL 1982, ch 224, § 5; SL 2012, ch 157, § 1.

[31-12A-27](#). Dissolution of road district by petition of voters--Procedure.

A majority of the eligible voters of a road district may petition a court of competent jurisdiction for the dissolution of the road district. Dissolution proceedings shall, to the extent applicable, conform to the provisions for dissolution of municipalities pursuant to chapter [9-6](#).

Source: SL 1977, ch 241, § 26; SL 2014, ch 46, § 16.

31-12A-28. Dissolution of road district by trustees.

Notwithstanding the provisions of § [31-12A-27](#), the board of trustees of a road district may, by unanimously adopting a proper resolution, provide for the dissolution of the district and the disposition of all unencumbered assets and assets which may thereafter accrue. Before adopting the resolution, the board shall give notice and conduct hearings as the board deems necessary. Any party feeling aggrieved by the decision of the board may appeal to the circuit court.

Source: SL 1977, ch 241, § 27; SL 2014, ch 46, § 17.

31-12A-29. Consolidated road districts authorized--Governing body to propose consolidation by resolution.

Two or more road districts may form a consolidated road district that comprises their combined area pursuant to §§ [31-12A-29](#) to [31-12A-36](#), inclusive. The governing body of each road district shall by resolution propose the formation of the consolidated road district, specifying the road districts proposed to be included within the boundaries of the consolidated road district.

Source: SL 2001, ch 159, § 1.

31-12A-30. Proposed consolidation submitted to eligible voters at special election.

The governing body of each road district described in § [31-12A-29](#) shall submit by resolution the question of consolidation to the eligible voters of each road district at a special election called for that purpose pursuant to chapter [6-16](#). The proposition shall be submitted to the eligible voters of each road district on a separate ballot and shall be stated as to enable each eligible voter to vote for or against the proposed consolidation.

Source: SL 2001, ch 159, § 2; SL 2014, ch 46, § 18.

31-12A-31. Resolution declaring consolidated road district.

If the eligible voters of each road district approve the formation of the consolidated road district by a majority of the votes cast on the consolidation question, the governing body of each road district shall so declare by resolution and file a certified copy of each proceeding taken for the consolidation with the road district's clerk, the secretary of state, and the county auditor. After the certified copies are filed, the consolidation is effective and complete, and the consolidated road district has the powers conferred upon a road district by this chapter.

Source: SL 2001, ch 159, § 3; SL 2014, ch 46, § 19.

31-12A-32. Consolidated board of trustees.

The consolidated board of trustees shall be elected as provided in chapter [6-16](#) and this chapter and shall govern the consolidated road district as provided in this chapter.

Source: SL 2001, ch 159, § 4; SL 2014, ch 46, § 20.

31-12A-33. Consolidated road district does not acquire property or obligations of included road districts.

The consolidated road district does not, by virtue of its incorporation, acquire any of the property or assume any of the debts, obligations, or liabilities of any road district included within its boundaries.

Source: SL 2001, ch 159, § 5.

31-12A-34. Consolidated road district authorized to contract for property.

A consolidated road district may contract with any road district for the purchase or use of property that the road district is authorized to construct or acquire and maintain pursuant to this chapter.

Source: SL 2001, ch 159, § 6.

31-12A-35. Directors authorized to adjust boundaries of district--Limitations.

After the creation of a road district, minor adjustments to the boundaries of the district may be made by the directors, without referendum. Such adjustments may not delete lands from the district that have been subject to a special assessment during the budget year or the current year and such adjustments may not include additional land in the district without the written approval of the owner of the land.

Source: SL 2001, ch 159, § 7.

31-12A-36. Annexation of area--Procedures.

A contiguous area may be annexed to a road district by circulation of an initiating petition for annexation signed by twenty-five percent of the eligible voters in the area to be annexed and twenty-five percent of the eligible voters in the existing district, similar to an initiating petition specified in this chapter.

Upon receipt of an initiating petition and passage of a resolution by the directors finding that the petition is valid, the area shall be annexed if a majority of the eligible voters in the area to be annexed and a majority of the eligible voters in the existing area vote in favor of the annexation in the same manner as prescribed for creation of a new road district.

Source: SL 2001, ch 159, § 8; SL 2014, ch 46, § 21; SL 2016, ch 152, § 1.