

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

519L0596

### HOUSE BILL NO. 1180

Introduced by: Representatives Schafer, Hanks, Hills, McLaughlin, and Turbiville and  
Senators Olson (Ed), Dempster, Duniphan, Gray, Kelly, McCracken, and  
Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning business  
2 improvement districts and to exempt general occupational tax receipts from the sales and  
3 gross receipts taxes.

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

5 Section 1. That § 9-55-3 be amended to read as follows:

6 9-55-3. Any money generated pursuant to § 9-55-2 may be used for any one or more of the  
7 following purposes:

- 8 (1) The acquisition, construction, maintenance, and operation of public off-street parking  
9 facilities for the benefit of the district area;
- 10 (2) Improvement of any public place or facility in the district area, including landscaping  
11 and plantings;
- 12 (3) Construction or installation of convention or event centers, pedestrian shopping malls  
13 or plazas, sidewalks, including moving sidewalks, parks, meeting and display  
14 facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures,  
15 trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular



1 overpasses and underpasses or any useful or necessary public improvement;

2 (4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing  
3 parking lots or parking garages, both above and below ground, or other facilities for  
4 the parking of vehicles, including the power to install such facilities in public areas,  
5 whether such areas are owned in fee or by easement, in the district area;

6 (5) Creation and implementation of a plan for improving the general architectural design  
7 of public areas in the district area;

8 (6) The development of any activities and promotion of ~~events~~ in the district area;

9 (7) Maintenance, repair, and reconstruction of any improvements or facilities authorized  
10 by this chapter;

11 (8) Any other project or undertaking for the betterment of the facilities in the district  
12 area, whether the project is capital or noncapital in nature;

13 (9) Enforcement of parking regulations within the district area; and

14 (10) Employing or contracting for personnel, including administrators for any  
15 improvement or promotional program under this chapter, and providing for any  
16 service necessary or proper to carry out the purposes of this chapter.

17 Section 2. That § 9-55-4 be amended to read as follows:

18 9-55-4. A business improvement district may only be created as provided by this chapter and  
19 shall be within the boundaries of an established business area of the municipality zoned for  
20 business, public, or commercial purposes. For the purposes of this chapter, an established  
21 business area, may also include noncontiguous property within the incorporated municipality  
22 that has a common zoning designation.

23 Section 3. That § 9-55-7 be amended to read as follows:

24 9-55-7. Upon receiving a recommendation from the business improvement board, the

governing body may create one or more business improvement districts by adopting a resolution of intent to establish a district or districts. The resolution shall contain the following information:

- (1) A description of the boundaries of any proposed district;
- (2) The time and place of a hearing to be held by the governing body to consider establishment of a district or districts;
- (3) The proposed public facilities and improvements to be made or maintained within any such district; and
- (4) The proposed or estimated costs for improvements, facilities and activities within any district, and the method by which the revenue shall be raised. If a special assessment is proposed, the resolution also shall state the proposed method of assessment.

The notice of intent shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business or on rented hotel and motel rooms and units offered and let for overnight occupancies of less than thirty continuous calendar days, which tax may not exceed two dollars per occupied room per night. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Section 4. That § 9-55-10 be amended to read as follows:

9-55-10. If a hearing is held under subdivision 9-55-7(2), the governing body shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the governing body ~~may deem~~ deems necessary.

1 If a special assessment is to be used, the proceedings shall terminate if written protest is  
2 made prior to the close of the hearing by the owners of a majority of the assessable front footage  
3 in the proposed district. If an occupation tax is to be used, the proceedings shall terminate if  
4 protest is made by the users of a majority of the space in the proposed district. If the general  
5 occupational tax is based upon rented hotel and motel rooms pursuant to ~~§ 9-55-13~~ § 9-55-7,  
6 the proceedings shall terminate if written protest is made prior to the close of the hearing by the  
7 owners of a majority of the hotels and motels in the proposed district.

8 Any bonds for the construction of a convention facility that are payable from the proceeds  
9 of the hotel and motel room general occupational tax may only be issued and sold if at least two-  
10 thirds of the hotel and motel owners in the proposed district approve in writing of the issuance  
11 and sale of the bonds.

12 Section 5. That § 9-55-13 be amended to read as follows:

13 9-55-13. A municipality may levy a special assessment against the real property located in  
14 a district, to the extent of the special benefit on such property, for the purpose of paying all or  
15 any part of the total costs and expenses of any project authorized by this chapter, within ~~such~~  
16 the district. The amount of each special assessment shall be determined by the governing body.  
17 Assessments shall be levied in accordance with the method of assessment proposed in the  
18 ordinance creating the district. If the governing body finds that the proposed method of  
19 assessment does not provide a fair and equitable method of apportioning costs, then ~~it~~ the  
20 governing body may assess the costs under ~~such a method as~~ the governing body finds to be fair  
21 and equitable. ~~If the public improvement consists of convention facilities, the general~~  
22 ~~occupation tax may be based on rented hotel and motel rooms and units offered and let for~~  
23 ~~overnight occupancies of less than thirty continuous calendar days, which tax may not exceed~~  
24 ~~two dollars per occupied room per night.~~ Notice of a hearing on any special assessments to be

1 levied under this chapter shall be given to the landowners in ~~such~~ the district by publication of  
2 the description of the land, the amount proposed to be assessed, and the general purpose for  
3 which ~~such~~ the assessment is to be made, once a week for two weeks in a daily or weekly  
4 newspaper of general circulation published in the municipality. The notice shall be published  
5 at least thirty days prior to the hearing and shall provide the date, time, and place of the hearing  
6 to hear any objections or protests by landowners in the district as to the amount of assessment  
7 made against their property. All special assessments levied under this chapter ~~shall be~~ constitute  
8 liens on the property and shall be certified for collection and collected in the same manner as  
9 other special assessments.

10 Section 6. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 For the purposes of the tax imposed by this chapter, gross receipts do not include the general  
13 occupation tax collected by any business pursuant to chapter 9-55.

14 Section 7. That chapter 10-45D be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 For the purposes of the tax imposed by this chapter, gross receipts do not include the general  
17 occupation tax collected by any business pursuant to chapter 9-55.