

2023 South Dakota Legislature

Draft 107

Requested by: **Senator Stalzer**

1 **An Act to provide for the establishment of regional jail authorities.**

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

3 **Section 1. That a NEW SECTION be added to title 24:**

4 Terms used in this chapter mean:

- 5 (1) "Board," the board of commissioners of a regional jail authority;
- 6 (2) "Bonds," any bonds, notes, interim certificates, debentures, or similar obligations
- 7 issued by a regional jail authority pursuant to this chapter;
- 8 (3) "Jail," as defined in § 24-11-1;
- 9 (4) "Political subdivision," a county, municipality, or other body politic of this state.

10 **Section 2. That a NEW SECTION be added to title 24:**

11 Two or more political subdivisions may form a regional jail authority by execution

12 of an agreement. The governing body of each political subdivision must:

- 13 (1) Adopt a resolution authorizing the agreement;
- 14 (2) Hold a public hearing prior to the adoption of the resolution; and
- 15 (3) Provide a notice of the hearing in the official newspaper of the political subdivision
- 16 at least ten days before the hearing.

17 The agreement and a certified copy of the resolution from each political subdivision

18 must be filed with the secretary of state. Upon determining that the agreement meets the

19 requirements of this chapter, the secretary of state shall issue a certificate of incorporation

20 that states the name of the authority and the date of incorporation. The existence of the

21 authority as a political subdivision of this state begins upon the date of issuance of the

22 certificate of incorporation. The certificate of incorporation is conclusive evidence of the

23 existence of the authority.

24 **Section 3. That a NEW SECTION be added to title 24:**

25 The regional jail authority agreement must state:

- (1) That the regional jail authority is created and incorporated under the provisions of this chapter as a political subdivision of this state, to exercise thereunder a part of the sovereign power of the state;
- (2) The name of the authority, which must include the words, regional jail authority;
- (3) The names of the political subdivisions that have authorized the agreement and are the initial members of the authority;
- (4) The number and representation of commissioners to be appointed by each political subdivision to the authority's board;
- (5) The names and addresses of the persons initially appointed by each governing body to the board;
- (6) The address of the registered office of the authority and the name of its registered agent;
- (7) That a political subdivision and its commissioners, officers, and agents are not liable for the authority's obligations;
- (8) The disposition, or method of disposition, of any property, funds, or other assets of the authority if the agreement is terminated; and
- (9) Any other provision for regulating the business of the authority that may be agreed upon by the political subdivisions.

Section 4. That a NEW SECTION be added to title 24:

The power of a regional jail authority is vested in a board of commissioners. The board may adopt and amend rules for the authority's operations, subject to the regional jail authority agreement and the provisions of this chapter.

Section 5. That a NEW SECTION be added to title 24:

The governing body of each political subdivision that is a member of a regional jail authority shall appoint commissioners to the board as specified in the regional jail authority agreement. Each commissioner shall be appointed for a three-year term. Any vacancy on the board must be filled for the unexpired term in the same manner as the original appointment. Each commissioner shall hold office until a successor is appointed.

The commissioners shall elect from their number a chair and a secretary-treasurer. A commissioner may not receive compensation for services on the board but must be reimbursed for necessary expenses incurred in the discharge of the commissioner's duties.

Section 6. That a NEW SECTION be added to title 24:

The board may appoint an executive director, and any other officers, agents, and employees. The board may delegate its powers and duties to its officers, agents, or employees.

Section 7. That a NEW SECTION be added to title 24:

The board may add a political subdivision to the regional jail authority if:

(1) The governing body of the political subdivision seeking to join the authority has adopted a resolution pursuant to section 2 of this Act; and

(2) The board approves, by resolution, adding the political subdivision to the authority.

The board shall file a certified copy of each resolution with the secretary of state.

Upon receipt of the resolutions, the secretary of state shall issue an amended certificate of incorporation to the authority.

Section 8. That a NEW SECTION be added to title 24:

A political subdivision may withdraw from the regional jail authority if the board consents to the withdrawal by resolution. The board may remove a political subdivision from the authority by resolution.

If a political subdivision seeks to withdraw or is removed, the board shall retain or dispose of the political subdivision's assets and liabilities within the authority. If the authority has any outstanding bonds, the political subdivision may not withdraw or be removed until each holder of the outstanding bonds consents in writing.

The board shall file a certified copy of any resolution adopted under this section with the secretary of state. Upon receipt of the resolution, the secretary of state shall issue an amended certificate of incorporation to the authority.

Section 9. That a NEW SECTION be added to title 24:

A regional jail authority agreement may only be terminated if:

(1) The authority does not have any outstanding bonds, debts, liabilities, or other obligations; and

(2) The governing body of each political subdivision that is a member of the authority consents to termination by resolution.

If each political subdivision adopts a resolution to terminate the agreement, the chair of the board shall file articles of dissolution with the secretary of state in accordance with §§ 47-26-9 and 47-26-10.

Section 10. That a NEW SECTION be added to title 24:

A regional jail authority may:

- (1) Sue and be sued, have a seal, and have perpetual succession;
- (2) Execute contracts and other instruments, and take action as may be necessary to carry out the purposes of this chapter; and
- (3) Exercise such powers as are necessary or incidental to carry out the purposes of this chapter.

Section 11. That a NEW SECTION be added to title 24:

A political subdivision that is a member of a regional jail authority may:

- (1) Lend or donate money to the authority;
- (2) Provide that all or a portion of the taxes or funds available to the political subdivision for jail purposes be transferred or paid directly to the authority;
- (3) Cause water, sewer or drainage facilities, or any other facilities that it is authorized to provide, to be furnished adjacent to or in connection with a jail;
- (4) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;
- (5) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to a jail;
- (6) Aid and cooperate with the authority in the planning, undertaking, construction, or operation of a jail; and
- (7) Enter into agreements with the authority regarding action to be taken by the political subdivision pursuant to the provisions of this section.

Section 12. That a NEW SECTION be added to title 24:

A regional jail authority may plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect its jail, and any facilities related to the operation of the jail. An authority may acquire real or personal property, or any interest therein, by purchase, gift, devise, lease, or condemnation.

Section 13. That a NEW SECTION be added to title 24:

1 Any property acquired by a regional jail authority and any income derived by the
2 authority is exempt from taxation.

3 **Section 14. That a NEW SECTION be added to title 24:**

4 A regional jail authority may annually certify to the governing bodies of the member
5 political subdivisions the amount of tax to be levied by the governing bodies for the
6 purposes provided in this chapter. Each political subdivision shall levy the amount
7 certified, pursuant to provisions of law authorizing municipalities and counties of this state
8 to levy taxes for jail purposes. Each political subdivision shall collect the taxes certified by
9 a regional jail authority in the same manner as other taxes are levied, collected, and paid
10 to the political subdivision.

11 **Section 15. That a NEW SECTION be added to title 24:**

12 A political subdivision that is a member of a regional jail authority may levy, in
13 addition to all other levies authorized by law, up to two dollars and forty cents per
14 thousand dollars of taxable valuation of property in the subdivision for the purposes
15 provided in this chapter.

16 A county levy does not apply to any municipality wholly or partially within its
17 boundaries that makes a levy as provided in this section.

18 **Section 16. That a NEW SECTION be added to title 24:**

19 A regional jail authority may, with the certification of an annual levy pursuant to
20 section 14 of this Act, designate a geographical portion of one or more member political
21 subdivisions that, in the judgment of the authority, will be or have been benefited by a
22 jail. The authority may then certify that the annual levy be applied only to the geographical
23 area.

24 **Section 17. That a NEW SECTION be added to title 24:**

25 The proceeds of taxes for a regional jail authority must be deposited in an account
26 in which other revenues of the authority are deposited. The proceeds may be expended
27 by the authority as provided in this chapter.

28 **Section 18. That a NEW SECTION be added to title 24:**

A board may adopt a resolution amending the regional jail authority agreement to specify that the regional jail authority may not levy a tax as provided in this chapter. The board shall file a certified copy of the resolution with the secretary of state. The secretary of state shall issue an amended certificate of incorporation to the authority. The board may not adopt a resolution to amend or repeal the resolution prohibiting the authority from levying a tax.

Section 19. That a NEW SECTION be added to title 24:

Prior to the issuance of bonds, the board may, by resolution, covenant and agree that the total amount of taxes authorized, or any portion thereof, will be certified, levied, and deposited annually as provided in this chapter until the bonds and interest thereon are fully paid.

Section 20. That a NEW SECTION be added to title 24:

A regional jail authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan, or both, to accomplish, in whole or in part, any of the purposes of this chapter.

Section 21. That a NEW SECTION be added to title 24:

A regional jail authority may issue bonds in principal amounts as the authority deems necessary to carry out any of its corporate purposes and powers, including:

- (1) The funding or refunding of the principal, interest, or redemption premiums on any bonds issued by the authority, whether or not the bonds or interest to be funded or refunded have or have not become due;
- (2) The establishment or increase of reserves to secure or to pay the bonds or interest thereon; and
- (3) The payment or establishment of reserves for all other costs or expenses of the authority incident to, and necessary to carry out, its corporate purposes and powers.

Section 22. That a NEW SECTION be added to title 24:

Any bonds issued by the regional jail authority are payable out of revenues or funds of the authority, subject only to agreements with the holders of particular bonds pledging any particular revenues or funds. An authority may issue types of bonds as it determines,

1 including bonds payable to principal and interest solely from one or more revenue
2 producing contracts made by the authority, or from its revenues generally.

3 Any bonds issued by the authority may be secured by a pledge of any grant,
4 subsidy, or contribution from any public agency or other person, or a pledge of revenue,
5 income, or funds from any other source. All such bonds are negotiable within the meaning
6 of the Uniform Commercial Code, subject only to any registration requirement.

7 **Section 23. That a NEW SECTION be added to title 24:**

8 The board shall authorize, by resolution, the bonds of the regional jail authority.
9 The bonds may be issued under the resolution or under a trust indenture or other security
10 agreement, in one or more series. The resolution, trust indenture, or other security
11 agreement must include the date, time of maturity, interest rate, denominations, be in
12 the form, either coupon or registered, carry such conversion, exchange and registration
13 privileges, have such rank or priority, be executed in such manner, be payable in such
14 medium of payment at such place or places within or outside the state, be subject to such
15 terms of redemption with or without premium, and contain or be subject to such other
16 terms as the resolution, trust indenture, or security agreement may provide. The bonds
17 are not restricted by any other law limiting amounts, maturities, interest rates, or other
18 terms or obligations of public agencies or private persons.

19 **Section 24. That a NEW SECTION be added to title 24:**

20 A regional jail authority shall file with the secretary of state any bonds the authority
21 executes and makes mortgages or deeds of trust, of the whole or any part of its property,
22 together with any assignments or release thereof.

23 **Section 25. That a NEW SECTION be added to title 24:**

24 Any bond reciting that it has been issued by the regional jail authority pursuant to
25 the provisions and for the purposes of this chapter is conclusively deemed to have been
26 issued pursuant to such provisions and for such purposes.

27 **Section 26. That a NEW SECTION be added to title 24:**

28 A regional jail authority may issue and deliver any bonds notwithstanding that any
29 of the commissioners or officers executing the bonds or notes have ceased to hold office

1 at the time of actual delivery. Pending preparation of definitive bonds, an authority may
2 issue temporary bonds that must be exchanged for definitive bonds.

3 **Section 27. That a NEW SECTION be added to title 24:**

4 Bonds issued by a regional jail authority must be sold at public or private sale for
5 a price and in a manner determined by the authority.

6 **Section 28. That a NEW SECTION be added to title 24:**

7 Any bonds issued by a regional jail authority pursuant to this chapter, and any
8 interest and income therefrom, is exempt from all taxes.

9 **Section 29. That a NEW SECTION be added to title 24:**

10 The commissioners of a regional jail authority, or any person executing such bonds,
11 are not personally liable by reason of their issuance.

12 **Section 30. That a NEW SECTION be added to title 24:**

13 Except as may be limited by the terms and conditions of any grant, loan, or
14 agreement, made or received by the regional jail authority, an authority may, by sale,
15 lease, or otherwise, dispose of any of its property, or portion thereof or interest therein.

16 **Section 31. That § 10-12-21.1 be AMENDED:**

17 **10-12-21.1.** A county may levy taxes in addition to the limit prescribed in § 10-
18 12-21 for the following purposes:

- 19 (1) Accumulation for all county buildings and structures pursuant to §§ 7-25-1, 7-27-
20 1, and 34-8-5;
- 21 (2) Accumulations for interest and principal payments on all county bonds, long-term
22 indebtedness, and judgments pursuant to §§ 7-18-7, 7-22-11, 7-24-18, and 41-
23 18-6;
- 24 (3) For the highway and bridge reserve fund pursuant to § 10-12-13;
- 25 (4) For the snow removal and emergency disaster fund pursuant to § 34-5-2;
- 26 (5) For a railroad authority pursuant to § 49-17A-22;
- 27 (6) For regional airport authorities pursuant to § 50-6A-24;
- 28 (7) For secondary roads pursuant to § 31-12-27;
- 29 (8) For fire protection pursuant to § 34-31-3~~;~~ and

(9) For a regional jail authority pursuant to section 15 of this Act.

Section 32. That § 24-11-39 be AMENDED:

24-11-39. Any municipality, county, ~~or~~ jail compact established pursuant to § 24-11-4.1, or regional jail authority established pursuant to this Act, may construct, lease, operate, purchase, maintain, or manage a jail, correctional facility, detention center, work camp, or related facility, either for its own inmate or prisoner needs or for the inmate or prisoner needs of the Department of Corrections or any other municipality, county, state, or federal agency, whether within ~~the State of South Dakota~~ or outside ~~the State of South Dakota~~ of this state. Any ~~such~~ facility may be operated by a private entity under contract with the compact, municipality, ~~or~~ county, or regional jail authority. ~~In addition, the~~ The authority granted to counties in §§ 7-25-19 and 7-25-20 applies to this section and §§ 24-11-40 to 24-11-44, inclusive.

Section 33. That § 24-11-40 be AMENDED:

24-11-40. The governing body of any compact, municipality, ~~or~~ county, or regional jail authority may contract with a private entity to place inmates or prisoners in a detention facility, jail, correctional facility, work camp, or related facility operated by a private entity. The governing body of the compact, municipality, ~~or~~ county, or regional jail authority may not contract with a private entity in which a member of the governing body of the compact, municipality, ~~or~~ county, or regional jail authority, or an elected or appointed peace officer who serves in the municipality or county, has a financial interest.

Section 34. That § 24-11-41 be AMENDED:

24-11-41. The governing body of any compact, municipality, ~~or~~ county, or regional jail authority may contract with a private entity to provide for the financing, design, construction, leasing, operation, purchase, maintenance or management of a jail, correctional facility, detention center, work camp, or related facility. The governing body of any compact, municipality, ~~or~~ county, or regional jail authority may not award a contract under this section unless it requests proposals by public notice and not less than thirty days from such notice receives a proposal that meets or exceeds the requirements specified in the request for proposals. Before the governing body of any compact, municipality, ~~or~~ county, or regional jail authority enters into a contract under this section,

1 the governing body ~~of the compact, municipality, or county shall~~ must receive the written
2 approval of the sheriff or other designated law enforcement official ~~of such the municipality~~
3 ~~or, county, which written compact, or regional jail authority. The written approval shall~~
4 may not be unreasonably withheld.

5 **Section 35. That § 24-11-42 be AMENDED:**

6 **24-11-42.** A contract made under § 24-11-41 ~~shall~~ must:

- 7 (1) Require the private entity to operate the facility in compliance with minimum
8 standards, to the extent such standards may be applicable, adopted by the
9 Department of Corrections or any other applicable state agency having jurisdiction
10 with respect thereto and, to the extent otherwise required, receive and retain a
11 certification of compliance from such agency;
- 12 (2) Provide for regular, on-site monitoring by the sheriff or other designated law
13 enforcement official;
- 14 (3) If the contract includes construction, require a performance bond approved by the
15 governing body that is adequate and appropriate for the proposed construction
16 contract;
- 17 (4) Provide for assumption of liability by the private entity for all claims arising from
18 the services performed under the contract by the private entity;
- 19 (5) Provide for an adequate plan of insurance for the private entity and its officers,
20 guards, employees, and agents against all claims, including claims based on
21 violations of civil rights, arising from the services performed under the contract by
22 the private entity;
- 23 (6) Provide for a plan for the purchase and assumption of operations by the compact,
24 municipality, ~~or county,~~ or regional jail authority in the event of the bankruptcy of
25 the private entity;
- 26 (7) If the contract involves conversion of an existing correctional facility to provide
27 private entity operation, require the private entity to give preferential consideration
28 in hiring to employees at the existing facility who meet or exceed the private
29 entity's qualifications and standards for employment in available positions;
- 30 (8) Require the private entity to provide health care benefits comparable to that of the
31 compact, municipality, ~~or county,~~ or regional jail authority;
- 32 (9) Provide for an adequate plan of insurance to protect the compact, municipality, ~~or~~
33 county, or regional jail authority against all claims arising from the services
34 performed under the contract by the private entity and to protect the compact,

1 municipality,~~or~~ county, or regional jail authority from actions by a third party
2 against the private entity, its officers, guards, employees, and agents as a result
3 of the contract; and

4 (10) Contain comprehensive standards for conditions of confinement and annual review
5 of the programs for compliance.

6 **Section 36. That § 24-11-43 be AMENDED:**

7 **24-11-43.** A private entity operating under a contract authorized by § 24-11-40
8 or 24-11-41 is not entitled to claim sovereign immunity in a suit arising from the services
9 performed under the contract by the private entity. However, this section does not deprive
10 the private entity or the compact, municipality,~~or~~ county, or regional jail authority of any
11 benefits of any law limiting exposure to liability, setting a limit on damages, or establishing
12 defenses to liability.