

## 2023 South Dakota Legislature

**Senate Bill 74****AMENDMENT 74B  
FOR THE SENATE JUDICIARY ENGROSSED BILL**

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 trustees 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; ~~and~~

8 (3) "Jail," any building or place provided or used by a political subdivision for the  
9 detention of adult or juvenile persons convicted or accused of violating any law of  
10 this state, any ordinance or bylaw of any county, municipality, or township, or any  
11 rule or regulation of any board, commission, or public officer having the effect of  
12 law; or for the detention of adult or juvenile persons held as witnesses or  
13 committed for contempts; and

14 (4) "Political subdivision," a county or municipality of this state.

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

16 Two or more political subdivisions may form a regional jail authority by execution  
17 of an agreement. To authorize the agreement, the governing body of each political  
18 subdivision must:

19 (1) Adopt a resolution authorizing the agreement;

20 (2) Hold a public hearing prior to the adoption of the resolution; and

21 (3) Provide a notice of the hearing in the official newspaper of the political subdivision  
22 at least ten days before the hearing.

23 The agreement and a certified copy of the resolution from each political subdivision  
24 must be filed with the secretary of state. Upon determining that the agreement meets the  
25 requirements of this chapter, the secretary of state shall issue a certificate of incorporation

1 that states the name of the authority and the date of incorporation. The existence of the  
 2 authority as a political subdivision of this state begins upon the date of issuance of the  
 3 certificate of incorporation. The certificate of incorporation is conclusive evidence of the  
 4 existence of the authority.

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

6 The regional jail authority agreement must state:

- 7 (1) That the regional jail authority is created and incorporated under the provisions of  
 8 this chapter as a political subdivision of this state, to exercise thereunder a part of  
 9 the sovereign power of the state;  
 10 (2) The name of the authority, which must include the words, regional jail authority;  
 11 (3) The names of the political subdivisions that have authorized the agreement and  
 12 are, as a result, the initial members of the authority;  
 13 (4) The number and representation of trustees to be appointed by each political  
 14 subdivision to the authority's board, and the qualifications necessary for  
 15 appointment;  
 16 (5) The names and addresses of the persons initially appointed by each governing body  
 17 to the board;  
 18 (6) The address of the registered office of the authority and the name of its registered  
 19 agent;  
 20 (7) The maximum tax that may be levied, for the purposes of this chapter, by each  
 21 political subdivision that is a member of the authority;  
 22 (8) That the political subdivisions that are members of the authority and their  
 23 governing bodies, officers, and agents are not liable for the authority's obligations;  
 24 ~~(8)~~(9) The process for termination of the authority;  
 25 ~~(9)~~(10) The disposition, or method of disposition, of any property, funds, or other  
 26 assets of the authority if the agreement is terminated; and  
 27 ~~(10)~~(11) Any other provision for regulating the business of the authority that may be  
 28 agreed upon by the political subdivisions.

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

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

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

2 The governing body of each political subdivision that is a member of a regional jail  
3 authority shall appoint trustees to the board as specified in the regional jail authority  
4 agreement. Except for the initial board, for which the agreement may specify staggered  
5 terms, each trustee shall be appointed for a three-year term. Any vacancy on the board  
6 must be filled for the unexpired term in the same manner as the original appointment.  
7 Each trustee shall hold office until a successor is appointed.

8 The trustees shall elect from their number a chair and a secretary-treasurer.

9 A trustee may not receive compensation for services on the board but must be  
10 reimbursed for necessary expenses incurred in the discharge of the trustee's duties.

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

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

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

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

17 (1) The governing body of the political subdivision seeking to join the authority has  
18 provided notice, conducted a hearing, and adopted a resolution pursuant to section  
19 2 of this Act; and

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

21 The board shall file a certified copy of each resolution with the secretary of state.  
22 Upon receipt of the resolutions, the secretary of state shall issue an amended certificate  
23 of incorporation to the authority.

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

25 A political subdivision may withdraw from the regional jail authority if the board  
26 consents to the withdrawal by resolution. Except if otherwise provided in the regional jail  
27 authority agreement, the board may remove a political subdivision from the authority by  
28 resolution.

29 If a political subdivision seeks to withdraw or is removed, the board shall retain or  
30 dispose of the political subdivision's assets and liabilities within the authority. If the

1 authority has any outstanding bonds, the political subdivision may not withdraw or be  
2 removed until each holder of the outstanding bonds consents in writing.

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

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

7 A regional jail authority agreement may only be terminated if:

- 8 (1) The authority does not have any outstanding bonds, debts, liabilities, or other  
9 obligations; and  
10 (2) The governing bodies of at least two-thirds, or as otherwise specified in the regional  
11 jail authority agreement, of the political subdivisions that are members of the  
12 authority each adopt a resolution consenting to termination.

13 Upon the adoption of the requisite number of resolutions consenting to termination  
14 and certification by the chair of the board that no outstanding obligations exist, the chair  
15 of the board shall file articles of dissolution with the secretary of state in accordance with  
16 §§ 47-26-9 and 47-26-10.

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

18 A regional jail authority may:

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

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

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

- 26 (1) Lend or donate money to the authority;  
27 (2) Provide that all or a portion of the taxes or funds available to the political  
28 subdivision for jail purposes be transferred or paid directly to the authority;  
29 (3) Cause water, sewer or drainage facilities, or any other facilities that it is authorized  
30 to provide, to be furnished adjacent to or in connection with a jail;

- 1       (4) Dedicate, sell, convey, or lease any of its interest in any property, or grant  
2       easements, licenses, or any other rights or privileges therein to the authority;  
3       (5) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads,  
4       roadways, and walks from established streets or roads to a jail;  
5       (6) Aid and cooperate with the authority in the planning, undertaking, construction, or  
6       operation of a jail; and  
7       (7) Enter into agreements with the authority regarding action to be taken by the  
8       political subdivision pursuant to the provisions of this section.

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

10           A regional jail authority may plan, establish, acquire, develop, construct, purchase,  
11           enlarge, improve, maintain, equip, operate, employ personnel including correctional staff,  
12           transport prisoners, manage, regulate, and protect its jail, and any facilities related to the  
13           operation of the jail. An authority may acquire real or personal property, or any interest  
14           therein, by purchase, gift, devise, lease, or condemnation.

15           The sheriff of the county in which a jail is established or operated by a regional jail  
16           authority shall have charge of the jail.

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

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

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

21           A regional jail authority may annually certify to the governing bodies of the member  
22           political subdivisions the amount of tax to be levied by the governing bodies for the  
23           purposes provided in this chapter and as may be limited by the regional jail authority  
24           agreement. Each political subdivision shall levy the amount certified ~~by the authority,~~  
25           ~~together with the amount the political subdivision deems necessary for the purpose of~~  
26           ~~transporting prisoners to and from the regional jail,~~ pursuant to provisions of law  
27           authorizing municipalities and counties of this state to levy taxes for jail purposes. Each  
28           political subdivision shall collect the taxes certified by a regional jail authority in the same  
29           manner as other taxes are levied, collected, and paid to the political subdivision.

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

1 A political subdivision that is a member of a regional jail authority may levy, in  
2 addition to all other levies authorized by law, up to ~~two dollars and forty ninety~~ cents per  
3 thousand dollars of taxable valuation of property in the subdivision for the purposes  
4 provided in this chapter as directed by the regional jail authority pursuant to the  
5 certification described in section 14 of this Act.

6 The levy authorized by this section is not subject to the limitation set forth in § 10-  
7 13-35. A county levy does not apply to any municipality wholly or partially within its  
8 boundaries that makes a levy as provided in this section.

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

10 ~~Except as may be limited by the regional jail authority agreement, a regional jail authority~~  
11 ~~may, with the certification of an annual levy pursuant to section 14 of this Act, designate a~~  
12 ~~geographical portion of one or more member political subdivisions that, in the judgment of~~  
13 ~~the authority, will be or have been benefited by a jail. The authority may then certify that the~~  
14 ~~annual levy be applied only to the geographical area.~~

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

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

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

20 If a regional jail authority does not have any outstanding bonds, debts, liabilities,  
21 or other obligations, a board may adopt a resolution, by a two-thirds majority unless the  
22 regional jail authority agreement specifies a different vote requirement, amending the  
23 regional jail authority agreement to specify that the regional jail authority may not levy a  
24 tax as provided in this chapter for a certain time period or in perpetuity, as determined  
25 by the board. The board shall file a certified copy of the resolution with the secretary of  
26 state. The secretary of state shall issue an amended certificate of incorporation to the  
27 authority. The board may not adopt a resolution to amend or repeal the resolution  
28 prohibiting the authority from levying a tax.

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

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

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

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

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

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

12 (1) The funding or refunding of the principal, interest, or redemption premiums on any  
13 bonds issued by the authority, whether or not the bonds or interest to be funded  
14 or refunded have or have not become due;

15 (2) The establishment or increase of reserves to secure or to pay the bonds or interest  
16 thereon; and

17 (3) The payment or establishment of reserves for all other costs or expenses of the  
18 authority incident to, and necessary to carry out, its corporate purposes and  
19 powers.

20 A regional jail authority shall constitute a public body under chapter 6-8B. All bonds  
21 must be issued in accordance with chapter 6-8B, except no election is required to authorize  
22 the issuance of bonds.

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

24 Any bonds issued by the regional jail authority are payable out of revenues or funds  
25 of the authority, subject only to agreements with the holders of particular bonds pledging  
26 any particular revenues or funds. An authority may issue types of bonds as it determines,  
27 including bonds payable to principal and interest solely from one or more revenue  
28 producing contracts made by the authority, or from its revenues generally.

29 Any bonds issued by the authority may be secured by a pledge of any grant,  
30 subsidy, or contribution from any public agency or other person, or a pledge of revenue,

1 income, or funds from any other source. All such bonds are negotiable within the meaning  
2 of the Uniform Commercial Code, subject only to any registration requirement.

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

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

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

16 A regional jail authority shall file the information required by § 6-8B-19 with the  
17 secretary of state for any bonds the authority issues.

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

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

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

23 A regional jail authority may issue and deliver any bonds notwithstanding that any  
24 of the trustees or officers executing the bonds or notes have ceased to hold office at the  
25 time of actual delivery. Pending preparation of definitive bonds, an authority may issue  
26 temporary bonds that must be exchanged for definitive bonds.

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

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



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

2 Any bond issued by a regional jail authority pursuant to this chapter, and any  
3 interest and income therefrom, is exempt from all taxes.

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

5 The trustees of a regional jail authority, or any person executing such bonds, are  
6 not personally liable by reason of their issuance.

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

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

11 **Section 30. That § 10-12-21.1 be AMENDED:**

12 **10-12-21.1.** A county may levy taxes in addition to the limit prescribed in § 10-  
13 12-21 for the following purposes:

- 14 (1) Accumulation for all county buildings and structures pursuant to §§ 7-25-1, 7-27-  
15 1, and 34-8-5;
- 16 (2) Accumulations for interest and principal payments on all county bonds, long-term  
17 indebtedness, and judgments pursuant to §§ 7-18-7, 7-22-11, 7-24-18, and 41-  
18 18-6;
- 19 (3) For the highway and bridge reserve fund pursuant to § 10-12-13;
- 20 (4) For the snow removal and emergency disaster fund pursuant to § 34-5-2;
- 21 (5) For a railroad authority pursuant to § 49-17A-22;
- 22 (6) For regional airport authorities pursuant to § 50-6A-24;
- 23 (7) For secondary roads pursuant to § 31-12-27;
- 24 (8) For fire protection pursuant to § 34-31-3-; and
- 25 (9) For a regional jail authority pursuant to section 15 of this Act.

26 **Section 31. That § 24-11-13 be AMENDED:**

27 **24-11-13.** The sheriff or other officer designated by law or ordinance shall have  
28 charge of a jail-~~of~~ located in his county or municipality and of all persons by law confined  
29 therein.

1           The officer in charge of any jail shall conform in all respects to the policies and  
2           procedures required by § 24-11-23.

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

4           **24-11-39.** Any municipality, county, ~~or~~ jail compact established pursuant to § 24-  
5   11-4.1, or regional jail authority established pursuant to this Act, may construct, lease,  
6   operate, purchase, maintain, or manage a jail, correctional facility, detention center, work  
7   camp, or related facility, either for its own inmate or prisoner needs or for the inmate or  
8   prisoner needs of the Department of Corrections or any other municipality, county, state,  
9   or federal agency, whether within ~~the State of South Dakota~~ or outside ~~the State of South~~  
10 ~~Dakota~~ this state. Any ~~such~~ facility may be operated by a private entity under contract  
11 with the compact, municipality, ~~or~~ county, or regional jail authority. ~~In addition, the~~ The  
12 authority granted to counties in §§ 7-25-19 and 7-25-20 applies to this section and §§ 24-  
13 11-40 to 24-11-44, inclusive.

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

15           **24-11-40.** The governing body of any compact, municipality, ~~or~~ county, or  
16 regional jail authority may contract with a private entity to place inmates or prisoners in  
17 a detention facility, jail, correctional facility, work camp, or related facility operated by a  
18 private entity. The governing body of the compact, municipality, ~~or~~ county, or regional jail  
19 authority may not contract with a private entity in which a member of the governing body  
20 of the compact, municipality, ~~or~~ county, or regional jail authority, or an elected or  
21 appointed peace officer who serves in the municipality or county, has a financial interest.

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

23           **24-11-41.** The governing body of any compact, municipality, ~~or~~ county, or  
24 regional jail authority may contract with a private entity to provide for the financing,  
25 design, construction, leasing, operation, purchase, maintenance, or management of a jail,  
26 correctional facility, detention center, work camp, or related facility. The governing body  
27 of any compact, municipality, ~~or~~ county, or regional jail authority may not award a contract  
28 under this section unless it requests proposals by public notice and not less than thirty  
29 days from such notice receives a proposal that meets or exceeds the requirements  
30 specified in the request for proposals. Before the governing body of any compact,  
31 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.

