



2024 South Dakota Legislature
House Bill 1194
ENROLLED

AN ACT

ENTITLED An Act to clarify provisions pertaining to tax increment finance districts.

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

Section 1. That § 11-9-1 be AMENDED:

11-9-1. Terms used in this chapter mean:

- (1) "Department," the Department of Revenue;
- (2) "District," a tax increment financing district;
- (3) "Governing body," the board of trustees, the board of commissioners, the board of county commissioners, or the common council of a municipality;
- (4) "Grant," the transfer of money or property to a transferee for a governmental purpose that is not a related party to or an agent of the political subdivision;
- (5) "Planning commission," a planning commission created under chapters 11-2 or 11-6, a planning committee of a governing body of a political subdivision that does not have a planning commission, or the governing body of a political subdivision that does not have a planning commission or planning committee;
- (6) "Political subdivision," a municipality, as defined in § 11-6-1, or county of this state;
- (7) "Project plan," the properly approved plan for the development or redevelopment of a tax increment financing district including all properly approved amendments to the plan;
- (8) "Tax increment financing district," a contiguous geographic area within a political subdivision defined and created by resolution of the governing body;
- (9) "Taxable property," all real and personal taxable property located in a tax increment financing district;
- (10) "Tax increment valuation," the total value of the tax increment financing district minus the tax increment base as determined pursuant to § 11-9-19.

Section 2. That § 11-9-2 be AMENDED:

11-9-2. A political subdivision may:

- (1) Create one or more districts and define each district's boundaries;
- (2) Prepare project plans, approve the plans, and implement the provisions and purposes of the plans, including the acquisition by purchase or condemnation of real and personal property within the district and the sale, lease, or other disposition of property to private individuals, partnerships, corporations, or other entities at a price less than the cost of the acquisition and of any site improvements undertaken by the political subdivision pursuant to a project plan;
- (3) Issue tax increment financing bonds;
- (4) Deposit moneys into the special fund of any district; and
- (5) Enter into any contract or agreement, including an agreement with bondholders, determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of a project plan. A contract or agreement may include conditions, restrictions, or covenants that run with the land or otherwise regulate the use of land or that establish a minimum market value for the land and completed improvements to be constructed by a specific date, which date may not be later than the date of termination of the district pursuant to § 11-9-46. Any contract or agreement that provides for the payment of a specific sum of money at a specific future date must be made pursuant to the provisions of chapter 6-8B.

Section 3. That § 11-9-3 be AMENDED:

11-9-3. The planning commission shall hold a hearing at which interested parties are afforded a reasonable opportunity to express views on the proposed creation of a district and the district's proposed boundaries. The planning commission shall publish notice of the hearing at least once, not fewer than ten nor more than thirty days before the date of the hearing, in a legal newspaper having a general circulation in the redevelopment area of the political subdivision. Before publication of the notice, the planning commission shall send a copy of the notice to the chief executive officer of each local governmental entity having the power to levy taxes on property located within the proposed district and to the school board of any school district that has property located within the proposed district by first class mail.

Section 4. That § 11-9-5 be AMENDED:

11-9-5. To establish a district, the governing body must adopt a resolution that:

- (1) Describes the boundaries of a district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The boundaries may not split a whole unit of property that is being used for a single purpose;
- (2) Creates the district on a given date;
- (3) Includes a finding that the assessed value of the taxable property in the district plus the tax increment base of all other existing districts does not exceed ten percent of the total assessed value of all taxable property in the political subdivision; and
- (4) Assigns a name to the district for identification purposes. The first district created in each political subdivision must be known as "Tax Increment Financing District Number One, City (or Town, or County) of _____." Each subsequently created district must be assigned the next consecutive number.

Section 5. That § 11-9-10 be AMENDED:

11-9-10. For the purposes of this chapter, the term "blighted area" means an area that substantially impairs or arrests the sound growth of the political subdivision, inhibits housing development, constitutes an economic or social liability, or is a danger in its present condition and use to the health, safety, morals, or welfare of the public because of:

- (1) The presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures;
- (2) A predominance of defective or inadequate street layouts;
- (3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (4) Insanitary or unsafe conditions;
- (5) The deterioration of site or other improvements;
- (6) A diversity of ownership, tax, or special assessment delinquency exceeding the fair value of the land;
- (7) Defective or unusual conditions of title;
- (8) The existence of conditions which endanger life or property by fire and other causes; or
- (9) A predominance of open space with obsolete platting, diversity of ownership, or deterioration of structures or site improvements.

Section 6. That § 11-9-14 be AMENDED:

11-9-14. For the purposes of this chapter, the term "project costs" are any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by a political subdivision that are listed in a project plan as grants or costs of public works or improvements within a district, plus any incidental costs diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the political subdivision in connection with the implementation of the plan.

Section 7. That § 11-9-15 be AMENDED:

11-9-15. For the purposes of this chapter, the term "project costs" means:

- (1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the clearing, over-excavation, and grading of land, including use of engineered fill and soil compaction; and the amount of interest payable on tax increment bonds issued pursuant to this chapter until the positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax increment bonds when due;
- (2) Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs, any premium paid over the principal amount thereof because of the redemption of obligations prior to maturity, and a reserve for the payment of principal and interest on obligations in an amount determined by the governing body to be reasonably required for the marketability of obligations;
- (3) Real property assembly costs, including the actual cost of the acquisition by a political subdivision of real or personal property within a district, less any proceeds to be received by the political subdivision from the sale, lease, or other disposition of property pursuant to a project plan;
- (4) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
- (5) Imputed administrative costs, including reasonable charges for the time spent by a municipal or county employee in connection with the implementation of a project plan;
- (6) Relocation costs;

- (7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of a district and the implementation of project plans; and
- (8) Payments and grants made, at the discretion of the governing body, that are found to be necessary or convenient to the creation of a district, the implementation of project plans, or to stimulate and develop the general economic welfare and prosperity of the state. No payment or grant may be used for any residential structure pursuant to § 11-9-42.

Section 8. That § 11-9-16 be AMENDED:

11-9-16. The project plan for each district must contain:

- (1) A map showing the existing uses and conditions of real property in the district;
- (2) A map showing the proposed improvements and uses;
- (3) A map showing the proposed changes of zoning ordinances;
- (4) A statement listing changes needed in the master plan, map, building codes, and ordinances of the political subdivision;
- (5) A list of estimated nonproject costs; and
- (6) A statement of a proposed method for the relocation of persons to be displaced.

Section 9. That § 11-9-17 be AMENDED:

11-9-17. The governing body shall approve a project plan for each district. The approval by resolution must contain findings that the plan is feasible and in conformity with the master plan, if any, of the political subdivision.

Section 10. That § 11-9-20 be AMENDED:

11-9-20. Upon receiving an application by the county auditor or municipal finance officer, as applicable, on a form prescribed by the department, the department must determine the aggregate assessed value of the taxable property in the district, which aggregate assessed value, on certification to the county auditor or the municipal finance officer, as applicable, is the tax increment base of the district. The application must be accompanied by a detailed parcel list of the included legal descriptions, property ownership, and value, as provided by the director of equalization office, of the affected corresponding county. Except as provided in § 11-9-20.1, the department shall use the values, as last previously certified by the department, adjusted for the value to the date

the district was created, for any completed buildings or additions and without regard to any reduction pursuant to §§ 1-19A-20, 10-6-137, 10-6-137.1, and 10-6-144.

Section 11. That § 11-9-28 be AMENDED:

11-9-28. Notwithstanding any other provision of law, each officer charged by law to collect and pay over or retain local real property taxes shall first, on the next settlement date provided by law, pay over to the county treasurer or municipal finance officer, as applicable, out of all taxes collected, that portion that represents a tax increment allocable to the political subdivision.

Section 12. That § 11-9-30 be AMENDED:

11-9-30. Payment of project costs may be made by any of the following methods or by any combination of methods:

- (1) Payment by the political subdivision from the special fund of the district;
- (2) Payment out of the funds of the political subdivision;
- (3) Payment out of the proceeds of the sale of municipal bonds issued by the municipality under chapter 10-52 or 10-52A, or both;
- (4) Payment out of the proceeds of revenue bonds issued by the political subdivision under chapter 9-54; or
- (5) Payment out of the proceeds of the sale of tax increment bonds issued by the political subdivision under this chapter.

Section 13. That § 11-9-31 be AMENDED:

11-9-31. The county treasurer or municipal finance officer, as applicable, shall deposit all tax increments received in a district into a special fund for the district. The county treasurer or municipal finance officer, as applicable, may deposit additional moneys into the fund pursuant to an appropriation by the governing body. Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other funds of the political subdivision.

Section 14. That § 11-9-32 be AMENDED:

11-9-32. Moneys may only be paid out of the special fund created under § 11-9-31 to pay project costs or grants of the district, to reimburse the political subdivision for

the payment of project costs or grants of the district, or to satisfy claims of holders of tax increment bonds issued for the district.

Section 15. That § 11-9-35 be AMENDED:

11-9-35. Tax increment bonds may not be issued in an amount exceeding the aggregate project costs. The bonds may not mature later than twenty years from the date the district was created. The bonds may contain a provision authorizing the redemption of the bonds, in whole or in part, at stipulated prices, at the option of the political subdivision, on any interest payment date and must provide the method of selecting the bonds to be redeemed. The principal and interest on the bonds may be payable at any time and at any place. The bonds may be payable to the bearer or may be registered as to the principal or principal and interest. The bonds may be in any denominations.

Section 16. That § 11-9-36 be AMENDED:

11-9-36. Tax increment bonds are payable only out of the special fund created under § 11-9-31. Each bond must state that the bond is only payable out of the special fund and that the bond does not constitute a general indebtedness of the political subdivision or a charge against the general taxing power of the political subdivision.

Section 17. That § 11-9-39 be AMENDED:

11-9-39. To increase the security and marketability of its tax increment bonds, a political subdivision may do either or both of the following:

- (1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed by the bonds or the revenues from the bonds; or
- (2) Make covenants and do any and all acts, not inconsistent with the South Dakota Constitution, necessary, convenient, or desirable in order to additionally secure bonds or to make the bonds more marketable according to the best judgment of the governing body, including the establishment of a reserve for the payment of principal and interest on the bonds funded from the proceeds of the bonds or other revenues, including tax increments, of the political subdivision.

Section 18. That § 11-9-40 be AMENDED:

11-9-40. Tax increment bonds may be sold at public or private sale at a price that the governing body deems in the best interests of the political subdivision.

Section 19. That § 11-9-45 be AMENDED:

11-9-45. After all project costs and all tax increment bonds of the district have been paid or provided for, subject to any agreement with bondholders, any moneys remaining in the fund must be paid to each taxing district in the amount belonging to each respectively, with due regard for what portion of the moneys, if any, represent tax increments not allocated to the political subdivision and what portion, if any, represents voluntary deposits of the political subdivision into the fund.

Section 20. That § 11-9-48 be AMENDED:

11-9-48. The department may publish annually on its website a report of each tax increment financing district in the state. Any political subdivision that has created a tax increment financing district shall provide the department with any information requested to compile the report.

Section 21. That § 11-9-7 be REPEALED.**Section 22. That § 11-9-11 be REPEALED.**

An Act to clarify provisions pertaining to tax increment finance districts.

I certify that the attached Act originated in the:
House as Bill No. 1194

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. 1194
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State