



2026 South Dakota Legislature

Senate Bill 109

Introduced by: **Senator Howard**

1 **An Act to modify requirements to create a tax increment financing district.**

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

3 **Section 1. That § 11-9-1 be AMENDED:**

4 **11-9-1.** Terms used in this chapter mean:

- 5 (1) "Department," the Department of Revenue;
- 6 (2) "District," a tax increment financing district;
- 7 (3) "Financing plan," the intended methods and revenue sources by which the political
- 8 subdivision will pay for the project costs;
- 9 ~~(4)~~ "Governing body," the board of trustees, the board of commissioners, or the
- 10 common council of a municipality, or the board of county commissioners, ~~or the~~
- 11 ~~common council of a municipality;~~
- 12 ~~(4)~~ ~~"Grant," the transfer of money or property to a transferee for a governmental~~
- 13 ~~purpose that is not a related party to or an agent of the political subdivision;~~
- 14 (5) "Planning commission," a planning commission created under chapters 11-2 or 11-
- 15 6, a planning committee of a governing body of a political subdivision that does
- 16 not have a planning commission, or the governing body of a political subdivision
- 17 that does not have a planning commission or planning committee;
- 18 (6) "Political subdivision," a municipality, as defined in § 11-6-1, or county of this
- 19 state;
- 20 (7) "Project plan," the properly approved plan for the development or redevelopment
- 21 of a tax increment financing district including and all properly approved
- 22 amendments to the plan;
- 23 (8) "Tax increment financing district," a contiguous geographic area within a political
- 24 subdivision defined and created by resolution of the governing body;
- 25 (9) "Taxable property," all real and personal taxable property located in a tax
- 26 increment financing district; and

1 (10) "Tax increment valuation," the total value of the tax increment financing district
2 minus the tax increment base as determined pursuant to § 11-9-19.

3 **Section 2. That § 11-9-5 be AMENDED:**

4 **11-9-5.** To ~~establish~~ create a district, the governing body must adopt a resolution,
5 which is subject to a referendum under the provisions of section 11 of this Act, that:

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

18 **Section 3. That § 11-9-8 be AMENDED:**

19 **11-9-8.** The resolution required by § 11-9-5 ~~shall~~ must contain the following
20 findings:

- 21 (1) Not less than ~~twenty-five~~ fifty percent, by area, of the real property within the
22 district is a blighted area ~~or~~ and not less than fifty percent, by area, of the real
23 property within the district will stimulate and develop the general economic welfare
24 and prosperity of the state through the promotion and advancement of industrial,
25 commercial, manufacturing, agricultural, or natural resources development; ~~and~~
- 26 (2) The improvement of the area is likely to significantly enhance the value of
27 substantially all other real property in the district; and
- 28 (3) The review required by section 12 of this Act indicates that the social or economic
29 benefits of the project exceed its costs to property owners and political subdivisions
30 authorized to impose a property tax within the boundaries of the district.

31 It is not necessary to identify the specific parcels meeting the criteria. ~~No county~~
32 ~~may create a district located, in whole or in part, within a municipality, unless the~~
33 ~~governing body of the municipality has consented to creation of a district by resolution.~~

1 **Section 4. That a NEW SECTION be added to chapter 11-9:**

2 No county may create a district located, in whole or in part, within a municipality,
 3 unless the governing body of the municipality has consented to the creation of the district
 4 by resolution.

5 No municipality may create a district unless the board of county commissioners of
 6 the county in which the district is located, either in whole or in part, has consented to the
 7 creation of the district by resolution.

8 **Section 5. That § 11-9-10 be AMENDED:**

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

- 14 (1) The presence of a substantial number of substandard, slum, deteriorated, or
 15 deteriorating structures;
- 16 (2) A predominance of defective or inadequate street layouts;
- 17 (3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- 18 (4) ~~Insanitary~~ Unsanitary or unsafe conditions;
- 19 (5) The deterioration of ~~site or other improvements~~ land or structures affixed to the
 20 land;
- 21 (6) ~~A diversity of ownership, tax, Tax or special assessment delinquency delinquencies~~
 22 exceeding the fair value of the land;
- 23 (7) Defective or unusual conditions of title; or
- 24 (8) The existence of conditions ~~which~~ that endanger life or property by fire and other
 25 causes; ~~or~~
- 26 ~~(9) A predominance of open space with obsolete platting, diversity of ownership, or~~
 27 ~~deterioration of structures or site improvements.~~

28 **Section 6. That § 11-9-14 be AMENDED:**

29 **11-9-14.** For the purposes of this chapter, the term "project costs" are any
 30 expenditures made or estimated to be made, or monetary obligations incurred or
 31 estimated to be incurred, by a political subdivision ~~that,~~ which are listed in a project plan
 32 as ~~grants or costs of public works or improvements within a district, plus any incidental~~

1 ~~costs diminished by any income, special assessments, or other revenues, other than tax~~
 2 ~~increments, received, or reasonably expected to be received, by the political subdivision~~
 3 ~~in connection with the implementation of the plan.~~

4 **Section 7. That § 11-9-15 be AMENDED:**

5 **11-9-15.** For the purposes of this chapter, the term "project costs" means:

- 6 (1) Capital costs, including the actual costs of the construction of public works or
 7 improvements, buildings, structures, and permanent fixtures; the demolition,
 8 alteration, remodeling, repair, or reconstruction of existing buildings, structures,
 9 and permanent fixtures; the acquisition of equipment; the clearing, over-
 10 excavation, and grading of land, including use of engineered fill and soil
 11 compaction; and the amount of interest payable on tax increment bonds issued
 12 pursuant to this chapter until the positive tax increments to be received from the
 13 district, as estimated by the project plan, are sufficient to pay the principal of and
 14 interest on the tax increment bonds when due;
- 15 (2) Financing costs, including all interest paid to holders of evidences of indebtedness
 16 issued to pay for project costs, any premium paid over the principal amount thereof
 17 because of the redemption of obligations prior to maturity, and a reserve for the
 18 payment of principal and interest on obligations in an amount determined by the
 19 governing body to be reasonably required for the marketability of obligations;
- 20 (3) Real property assembly costs, including the actual cost of the acquisition by a
 21 political subdivision of real or personal property within a district, less any proceeds
 22 to be received by the political subdivision from the sale, lease, or other disposition
 23 of property pursuant to a project plan;
- 24 (4) Professional service costs, including those costs incurred for architectural,
 25 planning, engineering, and legal ~~advice and~~ services;
- 26 (5) Imputed administrative costs, including reasonable charges for the time spent by
 27 a municipal or county employee in connection with the implementation of a project
 28 plan;
- 29 (6) Relocation costs;
- 30 (7) Organizational costs, including the costs of conducting environmental impact and
 31 other studies and the costs of informing the public of the creation of a district and
 32 the implementation of project plans; and
- 33 (8) ~~Payments and grants made, at the discretion of the governing body, that are found~~
 34 ~~to be necessary or convenient to the creation of a district, the implementation of~~

1 ~~project plans, or to stimulate and develop the general economic welfare and~~
 2 ~~prosperity of the state. No payment or grant may be used for any residential~~
 3 ~~structure pursuant to § 11-9-42~~Incidental costs diminished by any income, special
 4 ~~assessments, or other revenues, other than tax increments, received, or~~
 5 ~~reasonably expected to be received, by the political subdivision, in connection with~~
 6 ~~the implementation of the plan.~~

7 **Section 8. That § 11-9-23 be AMENDED:**

8 **11-9-23.** ~~If~~Except as provided in this section, if the municipality adopts an
 9 amendment to the original project plan for any district that includes additional project
 10 costs for which tax increments may be received by the municipality, the tax increment
 11 base for the district ~~shall~~ must be redetermined pursuant to § 11-9-20. The tax increment
 12 base as redetermined under this section is effective for the purposes of this chapter only
 13 if it exceeds the original tax increment base determined pursuant to § 11-9-20.

14 The provisions of this section do not apply if the additional project costs are ~~thirty-~~
 15 ~~five~~ fifteen percent or less than the amount approved in the original project plan and the
 16 additional project costs will be incurred before the expiration of the period specified in
 17 § 11-9-13.

18 **Section 9. That § 11-9-32 be AMENDED:**

19 **11-9-32.** Moneys ~~may only~~ be paid out of the special fund only for the district
 20 created under § 11-9-31 to pay project costs ~~or grants~~ of the district, to reimburse the
 21 political subdivision for the payment of project costs ~~or grants~~ of the district, or to satisfy
 22 claims of holders of tax increment bonds issued for the district.

23 **Section 10. That § 11-9-46 be AMENDED:**

24 **11-9-46.** ~~The existence of a district shall terminate~~ must be terminated when:
 25 (1) Positive tax increments are no longer allocable to a district under § 11-9-25; or
 26 (2) The governing body, by resolution, dissolves the district, after payment or
 27 provision for payment of all project costs, ~~grants,~~ and all tax increment bonds of
 28 the district.

29 **Section 11. That a NEW SECTION be added to chapter 11-9:**

1 If the estimated project costs of a proposed district are greater than fifteen million
2 dollars, the governing body creating the district must call a special election to determine
3 the question of the establishment of the district. The election must be held on a Tuesday
4 between forty-five and sixty days from when the governing body adopted the resolution
5 establishing the district.

6 If the resolution is adopted within the ninety days prior to the political subdivision's
7 regular election or a primary or general election and with sufficient time to comply with
8 the subdivision's requirements for publishing notice of the election, the question must be
9 submitted to the voters at that election.

10 A special election held pursuant to this section must be held upon the same notice
11 and conducted in the same manner as a regular election of the political subdivision.

12 **Section 12. That a NEW SECTION be added to chapter 11-9:**

13 The governing body shall submit the project plan and financing plan for the district
14 to an independent, certified public accountant to provide:

15 (1) A cost-benefit analysis of the project;

16 (2) An estimate for the expected change in the distribution of property taxes over time
17 resulting from the project; and

18 (3) An estimate for the expected effects on employment, housing, and economic
19 output resulting from the project.