2026 South Dakota Legislature

Senate Bill 228

Introduced by: ***Senator*** *Karr*

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

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) "Financing plan," the intended methods and revenue sources by which the political subdivision will pay for the project costs;

(4) "Governing body," the board of trustees, the board of commissioners, the board of county commissioners, or the common council of a municipality;

~~(4)~~(5) "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)~~(6) "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)~~(7) "Political subdivision," a municipality, as defined in § 11-6-1, or county of this state;

~~(7)~~(8) "Project plan," the properly approved plan for the development or redevelopment of a tax increment financing district~~, including~~ and all properly approved amendments to the plan;

~~(8)~~(9) "Tax increment financing district," a contiguous geographic area within a political subdivision defined and created by resolution of the governing body;

~~(9)~~(10) "Taxable property," all real and personal taxable property located in a tax increment financing district; and

~~(10)~~(11) "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 § 11-9-5 be AMENDED:

11-9-5. To ~~establish~~ create a district, the governing body must adopt a resolution that is subject to a referendum under the provisions of section 12 of this Act, and which:

(1) Describes the boundaries of ~~a~~ the 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~~ five 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 3. That § 11-9-8 be AMENDED:

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

(1) Not less than ~~twenty-five~~ fifty percent, by area, of the real property within the district is a blighted area ~~or~~ and not less than fifty percent, by area, of the real property within the district will stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources development; ~~and~~

(2) The improvement of the area is likely to significantly enhance the value of substantially all other real property in the district; and

(3) The review required by section 13 of this Act indicates that the social or economic benefits of the project exceed its costs to property owners and political subdivisions authorized to impose a property tax within the boundaries of the district.

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

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

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

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

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~~ Unsanitary or unsafe conditions;

(5) The deterioration of ~~site or other improvements~~ land or structures affixed to the land;

(6) ~~A diversity of ownership, tax,~~ Tax or special assessment ~~delinquency~~ delinquencies exceeding the fair value of the land;

(7) Defective or unusual conditions of title;

(8) The existence of conditions ~~which~~ that 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, provided this subdivision does not apply to a municipality having fewer than fifteen thousand legal residents.

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~~, which 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~~, except:

(a) No payment or grant may be used for any residential structure pursuant to § 11-9-42; and

(b) The amount of payments and grants made for a district may not exceed ten percent of the project costs; and

(9) 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 8. 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. For purposes of determining the tax increment base, the value of agricultural property in the district must be determined in the same manner as nonagricultural property.

Except as provided in this section and § 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 9. That § 11-9-23 be AMENDED:

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

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

Section 10. That § 11-9-32 be AMENDED:

11-9-32. Moneys may ~~only~~ be paid out of the special fund for the district created under § 11-9-31 only 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 11. That § 11-9-46 be AMENDED:

11-9-46. The ~~existence of a~~ district ~~shall terminate~~ must be terminated when:

(1) Positive tax increments are no longer allocable to a district under § 11-9-25; or

(2) The governing body, by resolution, dissolves the district, after payment or provision for payment of all project costs, grants, and all tax increment bonds of the district.

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

If the tax increment base of a proposed district is greater than one-half percent of the total assessed value of all taxable property in the political subdivision, the governing body creating the district must call a special election to determine the question of the establishment of the district. The election must be held on a Tuesday between forty-five and sixty days from when the governing body adopted the resolution establishing the district.

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

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

Section 13. That a NEW SECTION be added to chapter 11-9:

<u>The governing body shall submit the project plan and financing plan for the district to an independent, certified public accountant or economist to provide:</u>

<u>(1) A cost-benefit analysis of the project;</u>

<u>(2) An estimate for the expected change in the distribution of property taxes over time resulting from the project; and</u>

<u>(3) An estimate for the expected effects on employment, housing, and economic output resulting from the project.</u>