

## 2026 South Dakota Legislature

**Senate Bill 228****AMENDMENT 228A  
FOR THE INTRODUCED BILL**

1 **An Act to modify ~~requirements to create a~~ provisions for a tax increment financing**  
2 **district.**

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

4 **Section 1. That § 10-6-137 be AMENDED:**

5 **10-6-137.** ~~Any~~ Following the construction of any structure classified pursuant to  
6 this section, ~~must, following construction, be valued the valuation of the structure~~ for  
7 taxation purposes must occur in the usual manner. The board of county commissioners of  
8 the county in which the structure is located, may adopt a discretionary formula for  
9 assessed value to be used for tax purposes. Except as otherwise provided in § 10-6-137.1,  
10 the formula may include, for any or all of the five tax years following construction, all, any  
11 portion, or none of the assessed value for tax purposes. Any formula adopted ~~must be~~  
12 equally applied to specifically classified properties pursuant to this section may not be  
13 used for any property within a tax increment finance district.

14 ~~The board of county commissioners of the county in which the structure is located~~  
15 may, if requested by the owner of the structure, fully assess the structure without  
16 application of the formula. In waiving the formula for the structure of one owner, the  
17 ~~board of county commissioners~~ is not prohibited from applying the formula for subsequent  
18 new structures. The assessed value during any of the five years may not be less than the  
19 assessed value of the property in the year preceding the first year of the tax years  
20 following construction.

21 Any structure that is partially constructed on the assessment date may be valued  
22 for tax purposes, pursuant to this section, and the value may not be less than the assessed  
23 value of the property in the year preceding the beginning of construction. The period that  
24 the property is valued for tax purposes under this section may include the years when the  
25 property is partially constructed.

1           Following the five-year period under this section, the property must be assessed  
2           at the same percentage as all other property for tax purposes, except as otherwise  
3           provided in § 10-6-137.1.

4           Any of the following types of real property may be specifically classified for the  
5           purpose of taxation pursuant to this section:

- 6           (1) Any new industrial ~~or commercial~~ structure, or any addition, renovation, or  
7           reconstruction to an existing structure,~~located within a designated urban renewal~~  
8           ~~area as defined in § 11-8-4,~~ if the new structure, addition, renovation, or  
9           reconstruction has a full and true value of thirty thousand dollars or more;
- 10          (2) Any new industrial structure, including a power generation facility, or an addition  
11          to an existing structure facility, if the new structure facility or addition has a full  
12          and true value of thirty thousand dollars or more;
- 13          (3) Any new nonresidential agricultural structure, or any addition to an existing  
14          structure, if the new structure or addition has a full and true value of ten thousand  
15          dollars or more;
- 16          (4) Any new commercial structure, or any addition, renovation, or reconstruction to an  
17          existing structure, except a commercial residential structure as described in  
18          subdivision (5), if the new structure or addition, renovation, or reconstruction has  
19          a full and true value of thirty thousand dollars or more;
- 20          (5) Any new commercial residential structure, or addition to an existing structure,  
21          containing four or more units, if the new structure or addition has a full and true  
22          value of thirty thousand dollars or more;
- 23          (6) Any new affordable housing structure containing four or more units, with a monthly  
24          rental rate of the units at or below the annually calculated rent for the state's sixty  
25          percent area median income being used by the South Dakota Housing Development  
26          Authority for a minimum of ten years following the date of first occupancy, if the  
27          structure has a full and true value of thirty thousand dollars or more;
- 28          (7) Any new residential structure, or addition to or renovation of an existing structure,  
29          located within a redevelopment neighborhood established pursuant to § 10-6-141,  
30          if the new structure, addition, or renovation has a full and true value of five  
31          thousand dollars or more. The structure must be, provided the structure is located  
32          in an area defined and designated as a redevelopment neighborhood based on  
33          conditions ~~provided~~ set forth in § 11-7-2 or 11-7-3; or

- 1 (8) Any commercial, industrial, or nonresidential agricultural property that increases
- 2 more than ten thousand dollars in full and true value, as a result of reconstruction
- 3 or renovation of the structure.

4 **Section 2. That § 10-12-44 be AMENDED:**

5 **10-12-44.** The county auditor having jurisdiction over a school district shall raise  
 6 additional revenue, for the general fund and special education fund, from real property  
 7 taxes, to compensate for a tax abatement, a tax increment financing district, or a  
 8 discretionary formula in accordance with the following:

- 9 (1) For tax increment financing districts created pursuant to chapter 11-9, the county  
 10 auditor shall impose an additional tax levy, for an amount not to exceed an amount  
 11 equal to the sum of the levies in §§ 10-12-42 and 13-37-16 multiplied by the ~~tax~~  
 12 increment value, as defined in § 11-9-1 total value of the tax increment financing  
 13 district less the tax increment base as determined pursuant to § 11-9-19;
- 14 (2) For property subject to § 10-6-137, 10-6-137.1, or 10-6-144, the county auditor  
 15 shall impose an additional tax levy, for an amount not to exceed the amount of  
 16 taxes that were not collected, due to the reduction in value based on the maximum  
 17 levies, pursuant to §§ 10-12-42 and 13-37-16; and
- 18 (3) For abated taxes, the county auditor shall impose an additional tax levy, for an  
 19 amount not to exceed the amount of the school district's portion of the taxes that  
 20 were abated, pursuant to chapter 10-18, during the previous tax year.

21 The levies in this section are not subject to the referendum provision of § 10-12-  
 22 43 and these levies must maintain the same proportion to each other, as represented in  
 23 the mathematical relationship at the maximum levies pursuant to § 10-12-42.

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

25 **11-9-1.** Terms used in this chapter mean:

- 26 (1) "Department," the Department of Revenue;
- 27 (2) "District," a tax increment financing district in a contiguous geographic area within  
 28 a political subdivision, which is defined and created by resolution of the governing  
 29 body, provided that parcels that are not otherwise adjacent are not contiguous  
 30 based solely on the existence of an easement, right-of-way, transportation  
 31 corridor, or waterway connecting the parcels, unless the parcels are:  
 32 (a) Separated only by the easement, right-of-way, transportation corridor, or  
 33 waterway; and

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

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

26                   **11-9-4.** The planning commission shall designate the boundaries of a district that  
27                   the planning commission recommends be created. The planning commission shall submit  
28                   the recommendation to the governing body. The boundaries of a district may not split a  
29                   whole unit of property that is being used for a single purpose.

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

31                   **11-9-5.** ~~To establish~~ create a district, the governing body must adopt a resolution  
32                   that ~~is subject to a referendum under the provisions of section 12 of this Act, and which:~~

- 1 (1) Describes the boundaries of ~~a~~ the district with sufficient definiteness to identify  
 2 with ordinary and reasonable certainty the territory included. ~~The boundaries may~~  
 3 ~~not split a whole unit of property that is being used for a single purpose;~~
- 4 (2) Creates the district on a given date;
- 5 (3) Includes a finding that the assessed value of the taxable property in the district  
 6 plus the tax increment base of all other existing districts does not exceed ~~ten five:~~  
 7 (a) For a district created by a first class municipality, seven and one-half  
 8 percent of the total assessed value of all taxable property in the political  
 9 subdivision; and
- 10 (b) For all other classes, ten percent of the total assessed value of all taxable  
 11 property in the political subdivision;
- 12 (4) Assigns a name to the district for identification purposes. The first district created  
 13 in each political subdivision must be known as "Tax Increment Financing District  
 14 Number One, City (or Town, or County) of \_\_\_\_\_." Each subsequently  
 15 created district must be assigned the next consecutive number; ~~and~~
- 16 (5) Demonstrates that the district has been reviewed by all affected taxing districts at  
 17 a public meeting held pursuant to chapter 1-25, provided that the affected taxing  
 18 districts may provide input but do not have authority to approve or reject the  
 19 creation of the district.

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

21 ~~11-9-6. Subject to any agreement with bondholders, a district may overlap with~~  
 22 ~~one or more existing districts if the boundaries of the districts are not identical. Unless~~  
 23 ~~otherwise authorized by a joint resolution among the affected political subdivisions, a~~  
 24 ~~district established after July 1, 2026, may not overlap with any other existing district.~~

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

26 **11-9-8.** The resolution required by § 11-9-5 ~~shall~~ must contain the following  
 27 findings:

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

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

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

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

9 **Section 8. That a NEW SECTION be added to chapter 11-9:**

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

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

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

17 **11-9-10.** For the purposes of this chapter, the term "blighted area" means an area  
18 that substantially impairs or arrests the sound growth of the political subdivision, inhibits  
19 housing development, constitutes an economic or social liability, or is a danger in its  
20 present condition and use to the health, safety, morals, or welfare of the public because  
21 of:

22 (1) The presence of a substantial number of substandard, slum, deteriorated, or  
23 deteriorating structures;

24 (2) A predominance of defective or inadequate street layouts;

25 (3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

26 (4) ~~Insanitary~~ Unsanitary or unsafe conditions;

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

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

31 (7) Defective or unusual conditions of title;

32 (8) The existence of conditions ~~which~~ that endanger life or property by fire and other  
33 causes; or

- 1 (9) A predominance of open space with obsolete platting, diversity of ownership, or  
 2 deterioration of structures or site improvements, ~~provided this subdivision does~~  
 3 ~~not apply to a municipality having fewer than fifteen thousand legal residents.~~

4 **Section 10. That § 11-9-14 be AMENDED:**

5 **11-9-14.** For the purposes of this chapter, the term "project costs" are any  
 6 expenditures made or estimated to be made, or monetary obligations incurred or  
 7 estimated to be incurred, by a political subdivision ~~that, which~~ are listed in a project plan  
 8 as grants or costs of public works or improvements within a district, ~~plus any incidental~~  
 9 ~~costs diminished by any income, special assessments, or other revenues, other than tax~~  
 10 ~~increments, received, or reasonably expected to be received, by the political subdivision~~  
 11 ~~in connection with the implementation of the plan.~~

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

13 **11-9-15.** For the purposes of this chapter, the term "project costs" means:

- 14 (1) Capital costs, including the actual costs of the construction of public works or  
 15 improvements, buildings, structures, and permanent fixtures; the demolition,  
 16 alteration, remodeling, repair, or reconstruction of existing buildings, structures,  
 17 and permanent fixtures; the acquisition of equipment; the clearing, over-  
 18 excavation, and grading of land, including use of engineered fill and soil  
 19 compaction; and the amount of interest payable on tax increment bonds issued  
 20 pursuant to this chapter until the positive tax increments to be received from the  
 21 district, as estimated by the project plan, are sufficient to pay the principal of and  
 22 interest on the tax increment bonds when due;
- 23 (2) Financing costs, including all interest paid to holders of evidences of indebtedness  
 24 issued to pay for project costs, any premium paid over the principal amount thereof  
 25 because of the redemption of obligations prior to maturity, and a reserve for the  
 26 payment of principal and interest on obligations in an amount determined by the  
 27 governing body to be reasonably required for the marketability of obligations;
- 28 (3) Real property assembly costs, including the actual cost of the acquisition by a  
 29 political subdivision of real or personal property within a district, less any proceeds  
 30 to be received by the political subdivision from the sale, lease, or other disposition  
 31 of property pursuant to a project plan;
- 32 (4) Professional service costs, including those costs incurred for architectural,  
 33 planning, engineering, and legal ~~advice and~~ services;

- 1 (5) Imputed administrative costs, including reasonable charges for the time spent by  
 2 a municipal or county employee in connection with the implementation of a project  
 3 plan;
- 4 (6) Relocation costs;
- 5 (7) Organizational costs, including the costs of conducting environmental impact and  
 6 other studies and the costs of informing the public of the creation of a district and  
 7 the implementation of project plans; ~~and~~
- 8 (8) Payments and grants made, at the discretion of the governing body, that are found  
 9 to be necessary or convenient to the creation of a district, the implementation of  
 10 project plans, or to stimulate and develop the general economic welfare and  
 11 prosperity of the state. ~~No, except:~~
- 12 (a) No payment or grant may be used for any residential structure pursuant to  
 13 § 11-9-42; and
- 14 (b) ~~The amount of payments and grants A recipient for a grant made for a~~  
 15 ~~district may not exceed ten percent of the project costs shall enter into an~~  
 16 ~~agreement with the governing body specifying the only purposes for which~~  
 17 ~~a grant may be used; and~~
- 18 (9) Incidental costs diminished by any income, special assessments, or other  
 19 revenues, other than tax increments, received, or reasonably expected to be  
 20 received, by the political subdivision, in connection with the implementation of the  
 21 plan.

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

23 ~~11-9-20. Upon receiving an application by the county auditor or municipal finance officer, as~~  
 24 ~~applicable, on a form prescribed by the department, the department must determine the~~  
 25 ~~aggregate assessed value of the taxable property in the district, which aggregate assessed~~  
 26 ~~value, on certification to the county auditor or the municipal finance officer, as applicable, is~~  
 27 ~~the tax increment base of the district.~~

28 ~~The application must be accompanied by a detailed parcel list of the included legal~~  
 29 ~~descriptions, property ownership, and value, as provided by the director of equalization office,~~  
 30 ~~of the affected corresponding county. For purposes of determining the tax increment base,~~  
 31 ~~the value of agricultural property in the district must be determined in the same manner as~~  
 32 ~~nonagricultural property.~~

1 ~~Except as provided in this section and § 11-9-20.1, the department shall use the values, as~~  
 2 ~~last previously certified by the department, adjusted for the value to the date the district was~~  
 3 ~~created, for any completed buildings or additions and without regard to any reduction~~  
 4 ~~pursuant to §§ 1-19A-20, 10-6-137, 10-6-137.1, and 10-6-144.~~

5 **Section 12. That § 11-9-23 be AMENDED:**

6 **11-9-23.** ~~If~~ Except as provided in this section, if the municipality adopts an  
 7 amendment to the original project plan for any district that includes additional project  
 8 costs for which tax increments may be received by the municipality, the tax increment  
 9 base for the district ~~shall~~ must be redetermined pursuant to § 11-9-20. The tax increment  
 10 base as redetermined under this section is effective for the purposes of this chapter only  
 11 if it exceeds the original tax increment base determined pursuant to § 11-9-20.

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

16 **Section 13. That § 11-9-32 be AMENDED:**

17 **11-9-32.** Moneys may ~~only~~ be paid out of the special fund for the district created  
 18 under § 11-9-31 only to pay project costs or grants of the district, to reimburse the  
 19 political subdivision for the payment of project costs or grants of the district, or to satisfy  
 20 claims of holders of tax increment bonds issued for the district.

21 **Section 14. That § 11-9-46 be AMENDED:**

22 **11-9-46.** ~~The existence of a district shall terminate~~ must be terminated when:

- 23 (1) Positive tax increments are no longer allocable to ~~a the~~ the district ~~under pursuant to~~  
 24 § 11-9-25; or  
 25 (2) The governing body, by resolution, dissolves the district, ~~after~~ after payment or  
 26 provision for payment of all project costs, grants, and all tax increment bonds of  
 27 the district.

28 Within thirty days after the termination of a district, the governing body shall  
 29 provide to the department a notice, which must include the name of the district and copies  
 30 of the resolution of dissolution and the district's final financial statement. The final financial

1 statement must account for the distribution of any remaining funds pursuant to § 11-9-  
2 45.

3 **~~Section 14. That a NEW SECTION be added to chapter 11-9:~~**

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

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

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

15 **~~Section 15. That a NEW SECTION be added to chapter 11-9:~~**

16 ~~The governing body shall submit the project plan and financing plan for the district to an~~  
17 ~~independent, certified public accountant or economist to provide:~~

18 ~~(1) A cost benefit analysis of the project;~~

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

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

23 **~~Section 15. That a NEW SECTION be added to chapter 11-9:~~**

24 For any district established after July 1, 2026, a governing body may not approve  
25 a project plan unless an independent fiscal feasibility review has been completed and  
26 submitted to all political subdivisions.

27 The review must be conducted by a third-party who is a municipal advisor  
28 registered with the Municipal Securities Rulemaking Board and the United States Securities

1 and Exchange Commission pursuant to section 15B of the Securities Exchange Act of 1934,  
 2 15 U.S.C. §§ 78a to 78qq, inclusive (January 1, 2026), a licensed certified public  
 3 accountant, or another independent third-party reviewer, including a nonprofit or research  
 4 organization, or attorney, with demonstrated experience in municipal finance and tax  
 5 increment financing, approved by the governing body.

6 The person conducting the review may be compensated for conducting the review  
 7 but must be independent of any developer, obligated person, and private entity receiving  
 8 financial assistance or reimbursement under the project plan. If the review is conducted:

9 (1) By a municipal advisor, the advisor must:

10 (a) Act in the capacity of municipal advisor to the governing body and may not  
 11 act on behalf of any developer, underwriter, or other private party; and

12 (b) Acknowledge in writing that the advisor owes a fiduciary duty to the  
 13 governing body with respect to any advice provided in the review;

14 (2) By a certified public accountant, the accountant:

15 (a) Must perform the review in accordance with applicable professional  
 16 standards;

17 (b) May not prepare, or have prepared, any development feasibility analysis,  
 18 financial projection, or valuation study for the developer or any affiliated  
 19 entity relating to the district; and

20 (c) Must acknowledge in writing that the review is conducted for the benefit of  
 21 the governing body; or

22 (3) By an independent third-party reviewer, including a nonprofit or research  
 23 organization, or attorney, approved by the governing body, the third-party  
 24 reviewer may not receive funding or compensation, other than compensation for  
 25 conducting the review, from the governing body or any developer, underwriter, or  
 26 other private entity involved in the project.

27 **Section 16. That a NEW SECTION be added to chapter 11-9:**

28 A fiscal feasibility review required pursuant to section 15 of this Act:

29 (1) Must contain:

30 (a) A description of the project plan, proposed district boundaries, and  
 31 estimated project costs;

32 (b) An analysis of the tax increment base and the projected tax increment  
 33 valuation for the anticipated duration of the district;

- 1            (c) An evaluation of whether the projected tax increment revenue is sufficient  
2            to pay the project costs and any other obligation proposed to be paid from  
3            the revenue;
- 4            (d) An analysis of the timing of projected revenue relative to anticipated  
5            expenditures or debt service requirements;
- 6            (e) A discussion of material financial risks to the feasibility of the project plan;  
7            (f) A statement identifying material assumptions, limitations, and reliance on  
8            information from other third persons; and
- 9            (g) A conclusion stating whether, based on the assumptions and analyses  
10           described in the report, the project plan is reasonably feasible from a  
11           financing standpoint;
- 12           (2) Is advisory in nature and does not constitute a guarantee of project completion,  
13           revenue, or valuation;
- 14           (3) Does not relieve the governing body of the responsibility to evaluate the project  
15           plan; and
- 16           (4) Must be completed and made available to the governing body and the public at  
17           least fourteen days prior to the governing body's consideration of the resolution  
18           establishing the district.