

2026 South Dakota Legislature

Senate Bill 228**AMENDMENT 228B
FOR THE SENATE TAXATION ENGROSSED BILL**

1 **An Act to modify provisions for a tax increment financing district.**

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

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

4 **10-6-137.** ~~Any~~ Following the construction of any structure classified pursuant to
5 this section, ~~must, following construction, be valued~~ the valuation of the structure for
6 taxation purposes must occur in the usual manner. The board of county commissioners of
7 the county in which the structure is located, ~~may adopt a~~ discretionary formula for
8 assessed value to be used for tax purposes. Except as otherwise provided in § 10-6-137.1,
9 the formula may include, for any or all of the five tax years following construction, all, any
10 portion, or none of the assessed value for tax purposes. Any formula adopted ~~must be~~
11 equally applied to specifically classified properties pursuant to this section may not be
12 used for any property within a tax increment finance district.

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

20 Any structure that is partially constructed on the assessment date may be valued
21 for tax purposes, pursuant to this section, and the value may not be less than the assessed
22 value of the property in the year preceding the beginning of construction. The period that
23 the property is valued for tax purposes under this section may include the years when the
24 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) "Governing body," ~~the board of trustees, the board of commissioners, the board of~~
3 ~~county commissioners, or the common council of a municipality~~ a board of
4 commissioners, board of trustees, common council, or other authoritative body by
5 which a political subdivision is controlled;
- 6 (4) "Grant," the transfer of money or property to a transferee for a governmental
7 purpose that is not a related party to or an agent of the political subdivision;
- 8 (5) "Planning commission," a planning commission created under ~~chapters~~ chapter 11-
9 2 or 11-6, a planning committee ~~of a governing body~~ of a political subdivision that
10 does not have a planning commission, or the governing body of a political
11 subdivision that does not have a planning commission or planning committee;
- 12 (6) "Political subdivision," a municipality, as defined in § 11-6-1, or county of this
13 state;
- 14 (7) "Project plan," ~~the property~~ an approved plan for the development or
15 redevelopment of a ~~tax increment financing~~ district ~~including~~ and all ~~properly~~
16 approved amendments to the plan;
- 17 (8) "Tax increment financing district," ~~a contiguous geographic area within a political~~
18 ~~subdivision defined and created by resolution of the governing body;~~
- 19 ~~(9)~~ "Taxable property," all real and personal taxable property located in a ~~tax~~
20 ~~increment financing~~ district; and
- 21 ~~(10)~~(9) "Tax increment valuation," the total value of the ~~tax increment financing~~ district
22 minus the tax increment base as determined pursuant to § 11-9-19.

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

24 **11-9-4.** The planning commission shall designate the boundaries of a district that
25 the planning commission recommends be created. The planning commission shall submit
26 the recommendation to the governing body. The boundaries of a district may not split a
27 whole unit of property that is being used for a single purpose.

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

29 **11-9-5.** ~~To establish~~ create a district, the governing body must adopt a resolution, and
30 which is subject to a referendum under the provisions of section 17 of this Act, that:
31 (1) Describes the boundaries of ~~a~~ the district with sufficient definiteness to identify
32 with ordinary and reasonable certainty the territory included. ~~The boundaries may~~
33 ~~not split a whole unit of property that is being used for a single purpose;~~

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

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

18 **11-9-6.** ~~Subject to any agreement with bondholders, a district may overlap with~~
19 ~~one or more existing districts if the boundaries of the districts are not identical.~~ Unless
20 otherwise authorized by a joint resolution among the affected political subdivisions, a
21 district established after July 1, 2026, may not overlap with any other existing district.

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

23 **11-9-8.** The resolution required by § 11-9-5 ~~shall~~ must contain the following
24 findings:

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

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

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

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

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

8 **Section 9. 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;
- 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 10. 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

1 as grants or costs of public works or improvements within a district, ~~plus any incidental~~
2 ~~costs diminished by any income, special assessments, or other revenues, other than tax~~
3 ~~increments, received, or reasonably expected to be received, by the political subdivision~~
4 ~~in connection with the implementation of the plan.~~

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

6 **11-9-15.** For the purposes of this chapter, the term "project costs" means:

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

1 (8) Payments and grants made, at the discretion of the governing body, that are found
 2 to be necessary or convenient to the creation of a district, the implementation of
 3 project plans, or to stimulate and develop the general economic welfare and
 4 prosperity of the state. ~~No, except:~~

5 (a) No payment or grant may be used for any residential structure pursuant to
 6 § 11-9-42; and

7 (b) A recipient for a grant made for a district shall enter into an agreement with
 8 the governing body specifying the only purposes for which a grant may be
 9 used; and

10 (9) Incidental costs diminished by any income, special assessments, or other
 11 revenues, other than tax increments, received, or reasonably expected to be
 12 received, by the political subdivision, in connection with the implementation of the
 13 plan.

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

15 **11-9-23.** ~~If~~ Except as provided in this section, if the municipality adopts an
 16 amendment to the original project plan for any district that includes additional project
 17 costs for which tax increments may be received by the municipality, the tax increment
 18 base for the district ~~shall~~ must be redetermined pursuant to § 11-9-20. The tax increment
 19 base as redetermined under this section is effective for the purposes of this chapter only
 20 if it exceeds the original tax increment base determined pursuant to § 11-9-20.

21 The provisions of this section do not apply if the additional project costs are ~~thirty-~~
 22 ~~five~~ twenty-five percent or less than the amount approved in the original project plan and
 23 the additional project costs will be incurred before the expiration of the period specified in
 24 § 11-9-13.

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

26 **11-9-32.** Moneys may ~~only~~ be paid out of the special fund for the district created
 27 under § 11-9-31 only to pay project costs or grants of the district, to reimburse the
 28 political subdivision for the payment of project costs or grants of the district, or to satisfy
 29 claims of holders of tax increment bonds issued for the district.

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

31 **11-9-46.** ~~The existence of a district shall terminate~~ must be terminated when:

1 (1) Positive tax increments are no longer allocable to ~~a~~ the district under pursuant to
 2 § 11-9-25; or

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

6 Within thirty days after the termination of a district, the governing body shall
 7 provide to the department a notice, which must include the name of the district and copies
 8 of the resolution of dissolution and the district's final financial statement. The final financial
 9 statement must account for the distribution of any remaining funds pursuant to § 11-9-
 10 45.

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

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

15 The review must be conducted by a third-party who is a municipal advisor
 16 registered with the Municipal Securities Rulemaking Board and the United States Securities
 17 and Exchange Commission pursuant to section 15B of the Securities Exchange Act of 1934,
 18 15 U.S.C. §§ 78a to 78qq, inclusive (January 1, 2026), a licensed certified public
 19 accountant, or another independent third-party reviewer, including a nonprofit or research
 20 organization, or attorney, with demonstrated experience in municipal finance and tax
 21 increment financing, approved by the governing body.

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

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

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

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

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

31 (a) Must perform the review in accordance with applicable professional
 32 standards;

- 1 **(b) May not prepare, or have prepared, any development feasibility analysis,**
 2 **financial projection, or valuation study for the developer or any affiliated**
 3 **entity relating to the district; and**
 4 **(c) Must acknowledge in writing that the review is conducted for the benefit of**
 5 **the governing body; or**
 6 **(3) By an independent third-party reviewer, including a nonprofit or research**
 7 **organization, or attorney, approved by the governing body, the third-party**
 8 **reviewer may not receive funding or compensation, other than compensation for**
 9 **conducting the review, from the governing body or any developer, underwriter, or**
 10 **other private entity involved in the project.**

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

- 12 **A fiscal feasibility review required pursuant to section 15 of this Act:**
 13 **(1) Must contain:**
 14 **(a) A description of the project plan, proposed district boundaries, and**
 15 **estimated project costs;**
 16 **(b) An analysis of the tax increment base and the projected tax increment**
 17 **valuation for the anticipated duration of the district;**
 18 **(c) An evaluation of whether the projected tax increment revenue is sufficient**
 19 **to pay the project costs and any other obligation proposed to be paid from**
 20 **the revenue;**
 21 **(d) An analysis of the timing of projected revenue relative to anticipated**
 22 **expenditures or debt service requirements;**
 23 **(e) A discussion of material financial risks to the feasibility of the project plan;**
 24 **(f) A statement identifying material assumptions, limitations, and reliance on**
 25 **information from other third persons; and**
 26 **(g) A conclusion stating whether, based on the assumptions and analyses**
 27 **described in the report, the project plan is reasonably feasible from a**
 28 **financing standpoint;**
 29 **(2) Is advisory in nature and does not constitute a guarantee of project completion,**
 30 **revenue, or valuation;**
 31 **(3) Does not relieve the governing body of the responsibility to evaluate the project**
 32 **plan; and**

1 (4) Must be completed and made available to the governing body and the public at
2 least fourteen days prior to the governing body's consideration of the resolution
3 establishing the district.

4 **Section 17. That a NEW SECTION be added to chapter 11-9:**

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

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

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