



2026 South Dakota Legislature  
**Senate Bill 228**  
**ENROLLED**

AN ACT

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

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

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

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

The board may, if requested by the owner of the structure, fully assess the structure without application of the formula. In waiving the formula for the structure of one owner, the board is not prohibited from applying the formula for subsequent new structures. The assessed value during any of the five years may not be less than the assessed value of the property in the year preceding the first year of the tax years following construction.

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

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

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

- (1) Any new industrial structure, or any addition, renovation, or reconstruction to an existing structure, if the new structure, addition, renovation, or reconstruction has a full and true value of thirty thousand dollars or more;
- (2) Any new industrial structure, including a power generation facility, or an addition to an existing facility, if the new facility or addition has a full and true value of thirty thousand dollars or more;
- (3) Any new nonresidential agricultural structure, or any addition to an existing structure, if the new structure or addition has a full and true value of ten thousand dollars or more;
- (4) Any new commercial structure, or any addition, renovation, or reconstruction to an existing structure, except a commercial residential structure as described in subdivision (5), if the new structure or addition, renovation, or reconstruction has a full and true value of thirty thousand dollars or more;
- (5) Any new commercial residential structure, or addition to an existing structure, containing four or more units, if the new structure or addition has a full and true value of thirty thousand dollars or more;
- (6) Any new affordable housing structure containing four or more units, with a monthly rental rate of the units at or below the annually calculated rent for the state's sixty percent area median income being used by the South Dakota Housing Development Authority for a minimum of ten years following the date of first occupancy, if the structure has a full and true value of thirty thousand dollars or more;
- (7) Any new residential structure, or addition to or renovation of an existing structure, located within a redevelopment neighborhood established pursuant to § 10-6-141, if the new structure, addition, or renovation has a full and true value of five thousand dollars or more, provided the structure is located in an area defined and designated as a redevelopment neighborhood based on conditions set forth in § 11-7-2 or 11-7-3; or
- (8) Any commercial, industrial, or nonresidential agricultural property that increases more than ten thousand dollars in full and true value, as a result of reconstruction or renovation of the structure.

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

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

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

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

**Section 3. 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 in a contiguous geographic area within a political subdivision, which is defined and created by resolution of the governing body, provided that parcels that are not otherwise adjacent are not contiguous based solely on the existence of an easement, right-of-way, transportation corridor, or waterway connecting the parcels, unless the parcels are:
  - (a) Separated only by the easement, right-of-way, transportation corridor, or waterway; and
  - (b) Located directly opposite one another;
- (3) "Governing body," a board of commissioners, board of trustees, common council, or other authoritative body by which a political subdivision is controlled;
- (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 chapter 11-2 or 11-6, a planning committee 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," an approved plan for the development or redevelopment of a district and all approved amendments to the plan;
- (8) "Taxable property," all real and personal taxable property located in a district; and
- (9) "Tax increment valuation," the total value of the district minus the tax increment base as determined pursuant to § 11-9-19.

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

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

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

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

- (1) Describes the boundaries of the district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included;
- (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:
  - (a) For a district created by a first class municipality, seven and one-half percent of the total assessed value of all taxable property in the political subdivision; and
  - (b) For all other classes, ten percent of the total assessed value of all taxable property in the political subdivision;
- (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; and

- (5) Demonstrates that the district has been reviewed by all affected taxing districts at a public meeting held pursuant to chapter 1-25, provided that the affected taxing districts may provide input but do not have authority to approve or reject the creation of the district.

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

**11-9-6.** Unless otherwise authorized by a joint resolution among the affected political subdivisions, a district established after July 1, 2026, may not overlap with any other existing district.

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

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

- (1) Not less than fifty percent, by area, of the real property within the district is a blighted area or 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.

It is not necessary to identify the specific parcels meeting the criteria.

**Section 8. 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.

**Section 9. 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) Unsanitary or unsafe conditions;
- (5) The deterioration of land or structures affixed to the land;
- (6) Tax or special assessment delinquencies exceeding the fair value of the land;
- (7) Defective or unusual conditions of title;
- (8) The existence of conditions 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.

**Section 10. 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, which are listed in a project plan as grants or costs of public works or improvements within a district.

**Section 11. 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 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;
  - (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, except:
    - (a) No payment or grant may be used for any residential structure pursuant to § 11-9-42; and
    - (b) A recipient for a grant made for a district shall enter into an agreement with the governing body specifying the only purposes for which a grant may be used; 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 12. That § 11-9-23 be AMENDED:**

**11-9-23.** 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 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 twenty-five 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 13. That § 11-9-32 be AMENDED:**

**11-9-32.** Moneys may 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 14. That § 11-9-46 be AMENDED:**

**11-9-46.** The district must be terminated when:

- (1) Positive tax increments are no longer allocable to the district pursuant to § 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.

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

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

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

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

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

- (1) By a municipal advisor, the advisor must:
  - (a) Act in the capacity of municipal advisor to the governing body and may not act on behalf of any developer, underwriter, or other private party; and
  - (b) Acknowledge in writing that the advisor owes a fiduciary duty to the governing body with respect to any advice provided in the review;
- (2) By a certified public accountant, the accountant:
  - (a) Must perform the review in accordance with applicable professional standards;
  - (b) May not prepare, or have prepared, any development feasibility analysis, financial projection, or valuation study for the developer or any affiliated entity relating to the district; and
  - (c) Must acknowledge in writing that the review is conducted for the benefit of the governing body; or
- (3) By an independent third-party reviewer, including a nonprofit or research organization, or attorney, approved by the governing body, the third-party reviewer may not receive funding or compensation, other than compensation for conducting the review, from the governing body or any developer, underwriter, or other private entity involved in the project.

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

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

- (1) Must contain:
  - (a) A description of the project plan, proposed district boundaries, and estimated project costs;
  - (b) An analysis of the tax increment base and the projected tax increment valuation for the anticipated duration of the district;
  - (c) An evaluation of whether the projected tax increment revenue is sufficient to pay the project costs and any other obligation proposed to be paid from the revenue;
  - (d) An analysis of the timing of projected revenue relative to anticipated expenditures or debt service requirements;
  - (e) A discussion of material financial risks to the feasibility of the project plan;

- (f) A statement identifying material assumptions, limitations, and reliance on information from other third persons; and
  - (g) A conclusion stating whether, based on the assumptions and analyses described in the report, the project plan is reasonably feasible from a financing standpoint;
- (2) Is advisory in nature and does not constitute a guarantee of project completion, revenue, or valuation;
  - (3) Does not relieve the governing body of the responsibility to evaluate the project plan; and
  - (4) Must be completed and made available to the governing body and the public at least fourteen days prior to the governing body's consideration of the resolution establishing the district.

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

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
Senate as Bill No. 228

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2026 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2026

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

Office of the Secretary of State

ss.

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2026  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of State

Senate Bill No. 228  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State