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South Dakota Tax Incremental Districts

TITLE 11. PLANNING, ZONING AND HOUSING PROGRAMS CHAPTER 11-9. TAX INCREMENTAL DISTRICTS

11-9-1. Definition of terms. Terms used in this chapter mean:

- (1) "Department of Revenue and Regulation," the South Dakota Department of Revenue and Regulation;
- (2) "Governing body," the board of trustees, the board of commissioners, the board of county commissioners, or the common council of a municipality;
- (3) "Municipality," any incorporated city or town in this state and, for purposes of this chapter only, any county in this state;
- (4) "Planning commission," a planning commission created under chapter 11-6 or a municipal planning committee of a governing body of a municipality which has no planning commission or, if the municipality is a county having no planning commission or planning committee, its board of county commissioners;
- (5) "Project plan," the properly approved plan for the development or redevelopment of a tax incremental district including all properly approved amendments thereto;
- (6) "Tax incremental district," a contiguous geographic area within a municipality defined and created by resolution of the governing body;
- (7) "Taxable property," all real and personal taxable property located in a tax incremental district;
- (8) "Tax increment valuation," is the total value of the tax incremental district minus the tax incremental base pursuant to § 11-9-19.

11-9-2. Municipal powers related to districts. A municipality may exercise those powers necessary and convenient to carry out the purposes of this chapter, including the power to:

- (1) Create tax incremental districts and to define their boundaries;
- (2) Prepare project plans, approve the plans, and implement the provisions and purposes of the plans, including the acquisition by purchase or condemnation of real and personal property within the tax incremental district and the sale, lease, or other disposition of such property to private individuals, partnerships, corporations, or other entities at a price less than the cost of such acquisition and of any site improvements undertaken by the municipality pursuant to a project plan;
- (3) Issue tax incremental bonds and notes;
- (4) Deposit moneys into the special fund of any tax incremental district; and
- (5) Enter into any contracts or agreements, including agreements with bondholders, determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which run with the land or otherwise regulate the use of land or which establish a minimum market value for the land and completed improvements to be constructed thereon until a specified date, which date may not be later than the date of termination of the tax incremental district pursuant to § 11-9- 46.

11-9-3. Planning commission hearing on creation of district--Notice. In order to implement the provisions of this chapter, the planning commission shall hold a hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and its proposed boundaries. Notice of the hearing shall be published once, not less than ten nor more than thirty days prior to the date of the hearing in a legal newspaper having a general circulation in the redevelopment area of the municipality. Prior to publication, a copy of the notice shall be sent by first class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which has property located within the proposed district.

11-9-4. Recommendation by planning commission for creation of district--Designation of boundaries. In order to implement the provisions of this chapter, the planning commission shall designate the boundaries of a tax incremental district recommended by it to be created and submit the recommendation to the governing body.

11-9-5. Governing body resolution creating district--Boundaries--Name. In order to implement the provisions of this chapter, the governing body shall adopt a resolution which:

- (1) Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The boundaries may not split a

whole unit of property which is being used for a single purpose;

- (2) Creates the district on a given date;
- (3) Assigns a name to the district for identification purposes. The first district created in each municipality shall be known as "Tax Incremental District Number One, City (or Town) of ____." Each subsequently created district shall be assigned the next consecutive number.

11-9-6. Districts with overlapping boundaries permitted. Subject to any agreement with bondholders, a tax incremental district may be created which overlaps one or more existing districts.

11-9-7. Maximum percentage of taxable property in municipality permitted in districts. In order to implement the provisions of this chapter, the resolution required by § 11-9-5 shall contain a finding that the aggregate assessed value of the taxable property in the district plus the tax incremental base of all other existing districts does not exceed ten percent of the total assessed value of taxable property in the municipality.

11-9-8. Findings required as to blighted areas--Likelihood of enhanced value from improvements. To implement the provisions of this chapter, the resolution required by § 11-9-5 shall contain findings that:

- (1) Not less than twenty-five percent, by area, of the real property within the district is a blighted area; and
- (2) The improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district.

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

11-9-9. Areas conducive to disease or crime defined as blighted. Any area, including slum area, in which the structures, buildings, or improvements, by reason of:

- (1) Dilapidation, age, or obsolescence;
- (2) Inadequate provisions for ventilation, light, air, sanitation, or open spaces;
- (3) High density of population and overcrowding;
- (4) The existence of conditions which endanger life or property by fire and other causes; or
- (5) Any combination of such factors; are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and which is detrimental to the public health, safety, morals, or welfare, is a blighted area.

11-9-10. Developed areas impairing growth defined as blighted. Any area which by reason of:

- (1) The presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures;
- (2) Predominance of defective or inadequate street layouts;
- (3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (4) Insanitary or unsafe conditions;
- (5) Deterioration of site or other improvements;
- (6) Diversity of ownership, tax, or special assessment delinquency exceeding the fair value of the land;
- (7) Defective or unusual conditions of title;
- (8) The existence of conditions which endanger life or property by fire and other causes; or
- (9) Any combination of such factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, is a blighted area.

11-9-11. Open areas impairing growth defined as blighted. Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of a municipality, is a blighted area.

11-9-12. Determination of tax incremental base on creation or expansion of district. Upon the creation of a tax incremental district or adoption of any amendment subject to § 11-9-23, its tax incremental base shall be determined as provided in §§ 11-9-20 to 11-9-25, inclusive.

11-9-13. Recommendation of project plan by commission--Statement of improvements proposed, costs, and plan for financing. In order to implement the provisions of this chapter, the planning commission shall prepare and adopt a project plan for each tax incremental district and submit the plan to the governing body. The plan shall include a statement listing:

- (1) The kind, number, and location of all proposed public works or improvements within the district;
- (2) An economic feasibility study;

- (3) A detailed list of estimated project costs;
- (4) A fiscal impact statement which shows the impact of the tax increment district, both until and after the bonds are repaid, upon all entities levying taxes upon property in the district; and
- (5) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred.

No expenditure may be provided for in the plan more than five years after a district is created unless an amendment is adopted by the governing body under § 11-9-23.

11-9-14. Definition of project costs. "Project costs" are any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by a municipality which are listed in a project plan as costs of public works or improvements within a tax incremental district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the municipality in connection with the implementation of the plan.

11-9-15. Specific items included in project costs. Project costs include, but are not limited to:

- (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 and grading of land; and the amount of interest payable on tax incremental bonds or notes issued pursuant to this chapter until such time as 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 incremental bonds or notes 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 such obligations prior to maturity and a reserve for the payment of principal of and interest on such obligations in an amount determined by the governing body to be reasonably required for the marketability of such obligations;
- (3) Real property assembly costs, including the actual cost of the acquisition by a municipality of real or personal property within a tax incremental district less any proceeds to be received by the municipality from the sale, lease, or other disposition of such 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 municipal employees 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 tax incremental districts and the implementation of project plans; and

(8) Payments made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

11-9-16. Statement as to zoning and property use impact--Relocation methods. The plan required by § 11-9-13 shall also include:

- (1) A map showing the existing uses and conditions of real property in the district;
- (2) A map showing the proposed improvements and uses therein;
- (3) A map showing the proposed changes of zoning ordinances;
- (4) A statement listing changes needed in the master plan, map, building codes, and municipal ordinances;
- (5) A list of estimated nonproject costs; and
- (6) A statement of a proposed method for the relocation of persons to be displaced.

11-9-17. Governing body resolution adopting project plan--Findings of feasibility and conformity with municipal master plan. In order to implement the provisions of this chapter, the governing body shall approve a project plan. The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the municipality.

11-9-18. Amendment to project plan--Procedure. The planning commission may at any time adopt an amendment to a project plan which shall be subject to approval by the governing body in the same manner as an initial project plan.

11-9-19. Tax incremental base defined. A "tax incremental base" is the aggregate assessed value of all taxable property located within a tax incremental district on the date the district is created, as determined by § 11-9-20.

11-9-20. Determination of tax incremental base for newly created district. Upon application in writing by the municipal finance officer, on a form prescribed by the Department of Revenue and Regulation, the department shall determine the aggregate assessed value of the taxable property in the district, which aggregate assessed valuation, upon certification to the finance officer shall constitute the tax incremental base of the district. Except as provided for in § 11-9-20.1, the department shall use the valuations as last previously certified by the department adjusted for the value to the date the district was created for any buildings or additions completed or removed and without regard to any reduction pursuant to §§ 1-19A-20, 10-6-35.2, 10-6-35.21, and 10-6-35.22.

11-9-20.1. Aggregate assessed value for district not in compliance with § 10-6-33.8. For the purpose of aggregate assessed value in § 11-9-20, the department shall, for any district located within a county not in compliance with § 10-6-33.8, determine the aggregate assessed value in order to reflect an aggregate assessed value as if there had been compliance with the requirements in § 10-6-33.8.

11-9-21. Identification on assessment rolls of property within districts. The director of equalization shall identify on the assessment roll required by §§ 10-3-28 and 10-6-44 those parcels of property which are within an existing tax incremental district, specifying the name of each district.

11-9-22. Property recently acquired by municipality--Presumption as to inclusion in tax incremental base. It is a rebuttable presumption that any property within a tax incremental district acquired or leased as lessee by a municipality, or any agency or instrumentality thereof, within one year immediately preceding the date of the creation of the district was acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the municipality with proof that the property was leased or acquired primarily for a purpose other than to reduce the tax incremental base. If the presumption is not rebutted, in determining the tax incremental base of the district, but for no other purpose, the taxable status of the property shall be determined as though such lease or acquisition had not occurred.

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

11-9-24. Annual notice to taxing districts as to total assessed value and tax incremental base--Change in laws not to result in lower assessed values--Conditions. The Department of Revenue and Regulation shall annually give notice to the auditor or finance officer of all governmental entities having the power to levy taxes on property within a district of both the assessed value of the property and the assessed value of the tax incremental base. The notice shall also explain that the taxes collected in excess of the base will be paid to the municipality as provided in § 11-9-28. No change in the laws of the State of South Dakota affecting taxation of property may result in a lower assessed value of the property and the assessed value of the tax incremental base so long as the tax incremental district is in force and until bonds issued pursuant to this chapter are retired.

11-9-25. Allocation to municipality of tax increments--Duration of allocation. Positive tax increments of a tax incremental district shall be allocated to the municipality which created the district for each year from the date when the district is created until the earlier of:

(1) That time, after the completion of all public improvements specified in the plan or amendments, when the municipality has received aggregate tax increments of the district in an

amount equal to the aggregate of all expenditures previously made or monetary obligations previously incurred for project costs for the district; or

(2) Fifteen years after the last expenditure identified in the plan has been made or until retirement of all outstanding tax incremental bonds or notes issued pursuant to § 11-9-35 have matured.

11-9-26. Definition and computation of tax increment for district. A "tax increment" is that amount obtained by multiplying the total county, municipal, school, and other local general property taxes levied on all taxable property within a tax incremental district in any year by a fraction having a numerator equal to that year's assessed value of all taxable property in the district minus the tax incremental base and a denominator equal to that year's assessed value of all taxable property in the district. In any year, a tax increment is "positive" if the tax incremental base is less than the aggregate assessed value of taxable property. It is "negative" if the base exceeds such value.

11-9-27. Taxation of property in district. With respect to the municipality, the county, school districts and any other local governmental body having the power to levy taxes on property located within a tax incremental district, the calculation of the assessed valuation of taxable property in a tax incremental district, for purposes of computing the dollar and cents rates of such taxing units, may not exceed the tax incremental base of the district until the district is terminated. The dollar and cents rates of all such taxing units so determined, however, shall be assessed and extended against all taxable property in the tax incremental district at its current assessed valuation. However, no change in South Dakota law affecting taxation of property may result in a lesser rate for the tax incremental base until the district is terminated pursuant to this chapter.

11-9-28. Payment to municipality of allocable tax increment. Notwithstanding any other provision of law, every officer charged by law to collect and pay over or retain local general property taxes shall first, on the next settlement date provided by law, pay over to the municipal treasurer finance officer out of all such taxes which he has collected that portion which represents a tax increment allocable to such municipality.

11-9-29. Repealed by SL 1983, ch 37, § 9

11-9-30. Methods of paying project costs. Payment of project costs may be made by any of the following methods or by any combination thereof:

- (1) Payment by the municipality from the special fund of the tax incremental district;
- (2) Payment out of the municipality's general funds;
- (3) Payment out of the proceeds of the sale of municipal improvement bonds issued by the municipality under chapter 9-44;

(4) Payment out of the proceeds of revenue bonds issued by the municipality under chapter 9-54;

(5) Payment out of the proceeds of the sale of tax incremental bonds or notes issued by the municipality under this chapter.

11-9-31. Tax increments deposited in special fund--Municipal appropriations to fund--Investment of moneys in fund. All tax increments received in a tax incremental district shall, upon receipt by the municipal treasurer or finance officer, be deposited into a special fund for the district. The municipal treasurer or finance officer may deposit additional moneys into the fund pursuant to an appropriation by the governing body. Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other municipal funds.

11-9-32. Permissible uses of special fund. Moneys shall be paid out of the special fund created under § 11-9-31 only to pay project costs of the district, to reimburse the municipality for the payments or to satisfy claims of holders of tax incremental bonds or notes issued for the district.

11-9-33. Bonds and notes authorized for payment of project costs. For the purpose of paying project costs, the governing body may issue tax incremental bonds or notes payable out of positive tax increments.

11-9-34. Resolution authorizing bonds or notes--Voters' approval not required. Tax incremental bonds or notes shall be authorized by resolution of the governing body without the necessity of a referendum or any voter's approval.

11-9-35. Maximum amount of bonds or notes--Maturity--Redemption provisions--Bearer or registered--Denominations. Tax incremental bonds or notes may not be issued in an amount exceeding the aggregate project costs. The bonds or notes may not mature later than twenty years from the date thereof. The bonds or notes may contain a provision authorizing the redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality, on any interest payment date and shall provide the method of selecting the bonds or notes to be redeemed. The principal and interest on the bonds and notes may be payable at any time and at any place. The bonds or notes may be payable to their bearer or may be registered as to the principal or principal and interest. The bonds or notes may be in any denominations.

11-9-36. Bonds and notes payable only from special fund--Not general debt of municipality. Tax incremental bonds or notes are payable only out of the special fund created under § 11-9-31. Each bond or note shall contain such recitals as are necessary to show that it is only so payable and that it does not constitute a general indebtedness of the municipality or a charge against its general taxing power.

11-9-37. Pledge of special fund to bonds or notes--Restrictions on use of fund--Lien on fund. The governing body shall irrevocably pledge all or a stated percentage of the special fund created under § 11-9-31 to the payment of the bonds or notes. The special fund or designated part thereof may thereafter be used only for the payment of the bonds or notes and interest until they have been fully paid, and any holder of the bonds or notes or of any coupons appertaining thereto shall

have a lien against the special fund for payment of the bonds or notes and interest and may either at law or in equity protect and enforce the lien.

11-9-38. Bonds and notes negotiable--Bonds payable only from tax increment. Each bond or note issued under the provisions of this chapter and all interest coupons appurtenant thereto are declared to be negotiable instruments. Bonds so issued are not general obligation bonds and are payable only from the tax increment of the project as provided in this chapter.

11-9-39. Other provisions to secure holders of bonds and notes. To increase the security and marketability of its tax incremental bonds or notes, a municipality may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; or

(2) Make covenants and do any and all acts, not inconsistent with the South Dakota Constitution, necessary, convenient, or desirable in order to additionally secure bonds or notes or to make the bonds or notes more marketable according to the best judgment of the governing body, including the establishment of a reserve for the payment of principal of and interest on the bonds or notes funded from the proceeds of such bonds or notes or other revenues, including tax increments, of the municipality; or

(3) Comply with both subdivisions (1) and (2) of this section.

11-9-39.1. State pledge not to alter rights vested in bondholders until bonds or notes are fully discharged. The State of South Dakota does hereby pledge to and agree with the holders of any bonds or notes issued under this chapter that the state will not alter the rights vested in the bond holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

11-9-40. Sale of bonds or notes--Other municipal bonding provisions applicable. Tax incremental bonds or notes may be sold at public or private sale at a price which the governing body deems in the best interests of the municipality. Insofar as they are consistent with this chapter, the provisions of chapter 9-25 relating to procedures for issuance, form, contents, execution, negotiation, and registration of municipal bonds and notes shall be followed.

11-9-41. Procedure for condemnation under power of eminent domain. The exercise of the power of eminent domain in connection with tax increment districts shall proceed as condemnation proceedings are conducted by the Department of Transportation under chapter 31-19.

11-9-42. Tax increments not to be used for residential development. No tax increments shall be used for the construction of residential structures.

11-9-43. Performance bond required of purchaser or lessee of property. As security for its fulfillment of the agreement with the governing body, a purchaser or lessee of redevelopment

property shall furnish a performance bond, with such surety and in such form and amount as the governing body may approve or make such other guaranty as the governing body may deem necessary in the public interest.

11-9-44. Notice to purchaser or lessee and surety of default in contract--Taking possession of property on default. If the governing body finds that the redevelopment is not being carried out or maintained in accordance with the contract terms and conditions, or there is a failure to prosecute the work with diligence, or to assume its completion on time, it shall notify the purchaser or lessee and the surety in writing of the noncompliance. Unless the purchaser or lessee complies with the terms of the agreement within twenty days from the date of such notice, the governing body may take over the work and may cause such work to be done, and the cost of the work shall be paid by the surety. The governing body may take possession of the site of the work and utilize in completion of the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

11-9-45. Disposition of special fund remaining after payment of project costs. After all project costs and all tax incremental bonds and notes of the district have been paid or provided for subject to any agreement with bondholders, if any moneys remain in the fund, they shall be paid to the treasurer of each county, school district, or other tax-levying municipality or to the general fund of the municipality in such amounts as belong to each respectively, having due regard for what portion of such moneys, if any, represents tax increments not allocated to the municipality and what portion thereof, if any, represents voluntary deposits of the municipality into the fund.

11-9-46. Termination of tax incremental district. The existence of a tax incremental district shall terminate 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 and all tax incremental bonds and notes of the district.

11-9-47. Repealed by SL 1982, ch 16, § 14