

2023 South Dakota Legislature

Senate Bill 74**AMENDMENT 74D
FOR THE SENATE ENGROSSED BILL**

1 **An Act to provide for the establishment of regional jail authorities.**

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

3 **Section 1. That a NEW SECTION be added to title 24:**

4 Terms used in this chapter mean:

5 (1) "Board," the board of trustees of a regional jail authority;

6 (2) "Bonds," any bonds, notes, interim certificates, debentures, or similar obligations
7 issued by a regional jail authority pursuant to this chapter;

8 (3) "Jail," any building or place provided or used by a political subdivision for the
9 detention of adult or juvenile persons convicted or accused of violating any law of
10 this state, any ordinance or bylaw of any county, municipality, or township, or any
11 rule or regulation of any board, commission, or public officer having the effect of
12 law; or for the detention of adult or juvenile persons held as witnesses or
13 committed for contempts; and

14 (4) "Political subdivision," a county or municipality of this state.

15 **Section 2. That a NEW SECTION be added to title 24:**

16 Two or more political subdivisions may form a regional jail authority by execution
17 of an agreement. To authorize the agreement, the governing body of each political
18 subdivision must:

19 (1) Adopt a resolution authorizing the agreement;

20 (2) Hold a public hearing prior to the adoption of the resolution; and

21 (3) Provide a notice of the hearing in the official newspaper of the political subdivision
22 at least ten days before the hearing.

23 The agreement and a certified copy of the resolution from each political subdivision
24 must be filed with the secretary of state. Upon determining that the agreement meets the
25 requirements of this chapter, the secretary of state shall issue a certificate of incorporation

1 that states the name of the authority and the date of incorporation. The existence of the
2 authority as a political subdivision of this state begins upon the date of issuance of the
3 certificate of incorporation. The certificate of incorporation is conclusive evidence of the
4 existence of the authority.

5 **Section 3. That a NEW SECTION be added to title 24:**

6 The regional jail authority agreement must state:

- 7 (1) That the regional jail authority is created and incorporated under the provisions of
8 this chapter as a political subdivision of this state, to exercise thereunder a part of
9 the sovereign power of the state;
10 (2) The name of the authority, which must include the words, regional jail authority;
11 (3) The names of the political subdivisions that have authorized the agreement and
12 are, as a result, the initial members of the authority;
13 (4) The number and representation of trustees to be appointed by each political
14 subdivision to the authority's board, and the qualifications necessary for
15 appointment;
16 (5) The names and addresses of the persons initially appointed by each governing body
17 to the board;
18 (6) The address of the registered office of the authority and the name of its registered
19 agent;
20 (7) The maximum tax that may be levied, for the purposes of this chapter, by each
21 political subdivision that is a member of the authority;
22 (8) That the political subdivisions that are members of the authority and their
23 governing bodies, officers, and agents are not liable for the authority's obligations;
24 (9) The process for termination of the authority;
25 (10) The disposition, or method of disposition, of any property, funds, or other assets
26 of the authority if the agreement is terminated; and
27 (11) Any other provision for regulating the business of the authority that may be agreed
28 upon by the political subdivisions.

29 **Section 4. That a NEW SECTION be added to title 24:**

30 The power of a regional jail authority is vested in a board of trustees. The board
31 may adopt and amend rules for the authority's operations, subject to the regional jail
32 authority agreement and the provisions of this chapter.

1 **Section 5. That a NEW SECTION be added to title 24:**

2 The governing body of each political subdivision that is a member of a regional jail
3 authority shall appoint trustees to the board as specified in the regional jail authority
4 agreement. Except for the initial board, for which the agreement may specify staggered
5 terms, each trustee shall be appointed for a three-year term. Any vacancy on the board
6 must be filled for the unexpired term in the same manner as the original appointment.
7 Each trustee shall hold office until a successor is appointed.

8 The trustees shall elect from their number a chair and a secretary-treasurer.

9 A trustee may not receive compensation for services on the board but must be
10 reimbursed for necessary expenses incurred in the discharge of the trustee's duties.

11 **Section 6. That a NEW SECTION be added to title 24:**

12 The board may appoint an executive director, and any other officers, agents, and
13 employees. The board may delegate its powers and duties to its officers, agents, or
14 employees.

15 **Section 7. That a NEW SECTION be added to title 24:**

16 The board may add a political subdivision to the regional jail authority if:

17 (1) The governing body of the political subdivision seeking to join the authority has
18 provided notice, conducted a hearing, and adopted a resolution pursuant to section
19 2 of this Act; and

20 (2) The board approves, by resolution, adding the political subdivision to the authority.

21 The board shall file a certified copy of each resolution with the secretary of state.
22 Upon receipt of the resolutions, the secretary of state shall issue an amended certificate
23 of incorporation to the authority.

24 **Section 8. That a NEW SECTION be added to title 24:**

25 A political subdivision may withdraw from the regional jail authority if the board
26 consents to the withdrawal by resolution. Except if otherwise provided in the regional jail
27 authority agreement, the board may remove a political subdivision from the authority by
28 resolution.

29 If a political subdivision seeks to withdraw or is removed, the board shall retain or
30 dispose of the political subdivision's assets and liabilities within the authority. If the

1 authority has any outstanding bonds, the political subdivision may not withdraw or be
2 removed until each holder of the outstanding bonds consents in writing.

3 The board shall file a certified copy of any resolution adopted under this section
4 with the secretary of state. Upon receipt of the resolution, the secretary of state shall
5 issue an amended certificate of incorporation to the authority.

6 **Section 9. That a NEW SECTION be added to title 24:**

7 A regional jail authority agreement may only be terminated if:

8 (1) The authority does not have any outstanding bonds, debts, liabilities, or other
9 obligations; and

10 (2) The governing bodies of at least two-thirds, or as otherwise specified in the regional
11 jail authority agreement, of the political subdivisions that are members of the
12 authority each adopt a resolution consenting to termination.

13 Upon the adoption of the requisite number of resolutions consenting to termination
14 and certification by the chair of the board that no outstanding obligations exist, the chair
15 of the board shall file articles of dissolution with the secretary of state in accordance with
16 §§ 47-26-9 and 47-26-10.

17 **Section 10. That a NEW SECTION be added to title 24:**

18 A regional jail authority may:

19 (1) Sue and be sued, have a seal, and have perpetual succession;

20 (2) Execute contracts and other instruments, and take action as may be necessary to
21 carry out the purposes of this chapter; and

22 (3) Exercise such powers as are necessary or incidental to carry out the purposes of
23 this chapter.

24 **Section 11. That a NEW SECTION be added to title 24:**

25 A political subdivision that is a member of a regional jail authority may:

26 (1) Lend or donate money to the authority;

27 (2) Provide that all or a portion of the taxes or funds available to the political
28 subdivision for jail purposes be transferred or paid directly to the authority;

29 (3) Cause water, sewer or drainage facilities, or any other facilities that it is authorized
30 to provide, to be furnished adjacent to or in connection with a jail;

- 1 (4) Dedicate, sell, convey, or lease any of its interest in any property, or grant
2 easements, licenses, or any other rights or privileges therein to the authority;
3 (5) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads,
4 roadways, and walks from established streets or roads to a jail;
5 (6) Aid and cooperate with the authority in the planning, undertaking, construction, or
6 operation of a jail; and
7 (7) Enter into agreements with the authority regarding action to be taken by the
8 political subdivision pursuant to the provisions of this section.

9 **Section 12. That a NEW SECTION be added to title 24:**

10 A regional jail authority may plan, establish, acquire, develop, construct, purchase,
11 enlarge, improve, maintain, equip, operate, employ personnel including correctional staff,
12 transport prisoners, manage, regulate, and protect its jail, and any facilities related to the
13 operation of the jail. An authority may acquire real or personal property, or any interest
14 therein, by purchase, gift, devise, lease, or condemnation.

15 The sheriff of the county in which a jail is established or operated by a regional jail
16 authority shall have charge of the jail.

17 **Section 13. That a NEW SECTION be added to title 24:**

18 Any property acquired by a regional jail authority and any income derived by the
19 authority is exempt from taxation.

20 **Section 14. That a NEW SECTION be added to title 24:**

21 A regional jail authority may annually certify to the governing bodies of the member
22 political subdivisions the amount of tax to be levied by the governing bodies for the
23 purposes provided in this chapter and as may be limited by the regional jail authority
24 agreement. Each political subdivision shall levy the amount certified by the authority,
25 together with the amount the political subdivision deems necessary for the purpose of
26 transporting prisoners to and from the regional jail, pursuant to provisions of law
27 authorizing municipalities and counties of this state to levy taxes for jail purposes. Each
28 political subdivision shall collect the taxes certified by a regional jail authority in the same
29 manner as other taxes are levied, collected, and paid to the political subdivision.

30 **Section 15. That a NEW SECTION be added to title 24:**

1 A political subdivision that is a member of a regional jail authority may levy, in
2 addition to all other levies authorized by law, up to ninety cents per thousand dollars of
3 taxable valuation of property in the subdivision for the purposes provided in this chapter
4 as directed by the regional jail authority pursuant to the certification described in section
5 14 of this Act.

6 The ~~initial imposition of the~~ levy authorized by this section is not subject to the
7 limitation set forth in § 10-13-35, ~~but such limitation shall apply thereafter.~~ A county levy
8 does not apply to any municipality wholly or partially within its boundaries that makes a
9 levy as provided in this section.

10 **Section 16. That a NEW SECTION be added to title 24:**

11 The proceeds of taxes for a regional jail authority must be deposited in an account
12 in which other revenues of the authority are deposited. The proceeds may be expended
13 by the authority as provided in this chapter.

14 **Section 17. That a NEW SECTION be added to title 24:**

15 If a regional jail authority does not have any outstanding bonds, debts, liabilities,
16 or other obligations, a board may adopt a resolution, by a two-thirds majority unless the
17 regional jail authority agreement specifies a different vote requirement, amending the
18 regional jail authority agreement to specify that the regional jail authority may not levy a
19 tax as provided in this chapter for a certain time period or in perpetuity, as determined
20 by the board. The board shall file a certified copy of the resolution with the secretary of
21 state. The secretary of state shall issue an amended certificate of incorporation to the
22 authority. The board may not adopt a resolution to amend or repeal the resolution
23 prohibiting the authority from levying a tax.

24 **Section 18. That a NEW SECTION be added to title 24:**

25 Prior to the issuance of bonds, the board may, by resolution, covenant and agree
26 that the total amount of taxes authorized, or any portion thereof, will be certified, levied,
27 and deposited annually as provided in this chapter until the bonds and interest thereon
28 are fully paid.

29 **Section 19. That a NEW SECTION be added to title 24:**

1 A regional jail authority may accept, receive, receipt for, disburse, and expend
2 federal and state moneys and other moneys, public or private, made available by grant or
3 loan, or both, to accomplish, in whole or in part, any of the purposes of this chapter.

4 **Section 20. That a NEW SECTION be added to title 24:**

5 A regional jail authority may issue bonds in principal amounts as the authority
6 deems necessary to carry out any of its corporate purposes and powers, including:

7 (1) The funding or refunding of the principal, interest, or redemption premiums on any
8 bonds issued by the authority, whether or not the bonds or interest to be funded
9 or refunded have or have not become due;

10 (2) The establishment or increase of reserves to secure or to pay the bonds or interest
11 thereon; and

12 (3) The payment or establishment of reserves for all other costs or expenses of the
13 authority incident to, and necessary to carry out, its corporate purposes and
14 powers.

15 A regional jail authority shall constitute a public body under chapter 6-8B. All bonds
16 must be issued in accordance with chapter 6-8B, except no election is required to authorize
17 the issuance of bonds.

18 **Section 21. That a NEW SECTION be added to title 24:**

19 Any bonds issued by the regional jail authority are payable out of revenues or funds
20 of the authority, subject only to agreements with the holders of particular bonds pledging
21 any particular revenues or funds. An authority may issue types of bonds as it determines,
22 including bonds payable to principal and interest solely from one or more revenue
23 producing contracts made by the authority, or from its revenues generally.

24 Any bonds issued by the authority may be secured by a pledge of any grant,
25 subsidy, or contribution from any public agency or other person, or a pledge of revenue,
26 income, or funds from any other source. All such bonds are negotiable within the meaning
27 of the Uniform Commercial Code, subject only to any registration requirement.

28 **Section 22. That a NEW SECTION be added to title 24:**

29 The board shall authorize, by resolution, the bonds of the regional jail authority.
30 The bonds may be issued under the resolution or under a trust indenture or other security
31 agreement, in one or more series. The resolution, trust indenture, or other security

1 agreement must include the date, time of maturity, interest rate, denominations, be in
2 the form, either coupon or registered, carry such conversion, exchange and registration
3 privileges, have such rank or priority, be executed in such manner, be payable in such
4 medium of payment at such place or places within or outside the state, be subject to such
5 terms of redemption with or without premium, and contain or be subject to such other
6 terms as the resolution, trust indenture, or security agreement may provide. The bonds
7 are not restricted by any other law limiting amounts, maturities, interest rates, or other
8 terms or obligations of public agencies or private persons.

9 **Section 23. That a NEW SECTION be added to title 24:**

10 A regional jail authority shall file the information required by § 6-8B-19 with the
11 secretary of state for any bonds the authority issues.

12 **Section 24. That a NEW SECTION be added to title 24:**

13 Any bond reciting that it has been issued by the regional jail authority pursuant to
14 the provisions and for the purposes of this chapter is conclusively deemed to have been
15 issued pursuant to such provisions and for such purposes.

16 **Section 25. That a NEW SECTION be added to title 24:**

17 A regional jail authority may issue and deliver any bonds notwithstanding that any
18 of the trustees or officers executing the bonds or notes have ceased to hold office at the
19 time of actual delivery. Pending preparation of definitive bonds, an authority may issue
20 temporary bonds that must be exchanged for definitive bonds.

21 **Section 26. That a NEW SECTION be added to title 24:**

22 Bonds issued by a regional jail authority must be sold at public or private sale for
23 a price and in a manner determined by the authority.

24 **Section 27. That a NEW SECTION be added to title 24:**

25 Any bond issued by a regional jail authority pursuant to this chapter, and any
26 interest and income therefrom, is exempt from all taxes.

27 **Section 28. That a NEW SECTION be added to title 24:**

1 The trustees of a regional jail authority, or any person executing such bonds, are
2 not personally liable by reason of their issuance.

3 **Section 29. That a NEW SECTION be added to title 24:**

4 Except as may be limited by the terms and conditions of any grant, loan, or
5 agreement, made or received by the regional jail authority, an authority may, by sale,
6 lease, or otherwise, dispose of any of its property, or portion thereof or interest therein.

7 **Section 30. That § 10-12-21.1 be AMENDED:**

8 **10-12-21.1.** A county may levy taxes in addition to the limit prescribed in § 10-
9 12-21 for the following purposes:

- 10 (1) Accumulation for all county buildings and structures pursuant to §§ 7-25-1, 7-27-
11 1, and 34-8-5;
- 12 (2) Accumulations for interest and principal payments on all county bonds, long-term
13 indebtedness, and judgments pursuant to §§ 7-18-7, 7-22-11, 7-24-18, and 41-
14 18-6;
- 15 (3) For the highway and bridge reserve fund pursuant to § 10-12-13;
- 16 (4) For the snow removal and emergency disaster fund pursuant to § 34-5-2;
- 17 (5) For a railroad authority pursuant to § 49-17A-22;
- 18 (6) For regional airport authorities pursuant to § 50-6A-24;
- 19 (7) For secondary roads pursuant to § 31-12-27;
- 20 (8) For fire protection pursuant to § 34-31-3-; and
- 21 (9) For a regional jail authority pursuant to section 15 of this Act.

22 **Section 31. That § 24-11-13 be AMENDED:**

23 **24-11-13.** The sheriff or other officer designated by law or ordinance shall have
24 charge of a jail-~~of~~ located in his county or municipality and of all persons by law confined
25 therein.

26 The officer in charge of any jail shall conform in all respects to the policies and
27 procedures required by § 24-11-23.

28 **Section 32. That § 24-11-39 be AMENDED:**

29 **24-11-39.** Any municipality, county, ~~or~~ jail compact established pursuant to § 24-
30 11-4.1, or regional jail authority established pursuant to this Act, may construct, lease,

1 operate, purchase, maintain, or manage a jail, correctional facility, detention center, work
 2 camp, or related facility, either for its own inmate or prisoner needs or for the inmate or
 3 prisoner needs of the Department of Corrections or any other municipality, county, state,
 4 or federal agency, whether within ~~the State of South Dakota~~ or outside ~~the State of South~~
 5 ~~Dakota~~ this state. Any ~~such~~ facility may be operated by a private entity under contract
 6 with the compact, municipality, ~~or~~ county, or regional jail authority. ~~In addition, the~~ The
 7 authority granted to counties in §§ 7-25-19 and 7-25-20 applies to this section and §§ 24-
 8 11-40 to 24-11-44, inclusive.

9 **Section 33. That § 24-11-40 be AMENDED:**

10 **24-11-40.** The governing body of any compact, municipality, ~~or~~ county, or
 11 regional jail authority may contract with a private entity to place inmates or prisoners in
 12 a detention facility, jail, correctional facility, work camp, or related facility operated by a
 13 private entity. The governing body of the compact, municipality, ~~or~~ county, or regional jail
 14 authority may not contract with a private entity in which a member of the governing body
 15 of the compact, municipality, ~~or~~ county, or regional jail authority, or an elected or
 16 appointed peace officer who serves in the municipality or county, has a financial interest.

17 **Section 34. That § 24-11-41 be AMENDED:**

18 **24-11-41.** The governing body of any compact, municipality, ~~or~~ county, or
 19 regional jail authority may contract with a private entity to provide for the financing,
 20 design, construction, leasing, operation, purchase, maintenance, or management of a jail,
 21 correctional facility, detention center, work camp, or related facility. The governing body
 22 of any compact, municipality, ~~or~~ county, or regional jail authority may not award a contract
 23 under this section unless it requests proposals by public notice and not less than thirty
 24 days from such notice receives a proposal that meets or exceeds the requirements
 25 specified in the request for proposals. Before the governing body of any compact,
 26 municipality, ~~or~~ county, or regional jail authority enters into a contract under this section,
 27 the governing body ~~of the compact, municipality, or county shall~~ must receive the written
 28 approval of the sheriff or other designated law enforcement official of ~~such the~~ the municipality
 29 ~~or, county, which written compact, or regional jail authority. The written approval shall~~
 30 may not be unreasonably withheld.

31 **Section 35. That § 24-11-42 be AMENDED:**

- 1 **24-11-42.** A contract made under § 24-11-41 ~~shall~~ must:
- 2 (1) Require the private entity to operate the facility in compliance with minimum
- 3 standards, to the extent such standards may be applicable, adopted by the
- 4 Department of Corrections or any other applicable state agency having jurisdiction
- 5 with respect thereto and, to the extent otherwise required, receive and retain a
- 6 certification of compliance from such agency;
- 7 (2) Provide for regular, on-site monitoring by the sheriff or other designated law
- 8 enforcement official;
- 9 (3) If the contract includes construction, require a performance bond approved by the
- 10 governing body that is adequate and appropriate for the proposed construction
- 11 contract;
- 12 (4) Provide for assumption of liability by the private entity for all claims arising from
- 13 the services performed under the contract by the private entity;
- 14 (5) Provide for an adequate plan of insurance for the private entity and its officers,
- 15 guards, employees, and agents against all claims, including claims based on
- 16 violations of civil rights, arising from the services performed under the contract by
- 17 the private entity;
- 18 (6) Provide for a plan for the purchase and assumption of operations by the compact,
- 19 municipality, ~~or~~ county, or regional jail authority in the event of the bankruptcy of
- 20 the private entity;
- 21 (7) If the contract involves conversion of an existing correctional facility to provide
- 22 private entity operation, require the private entity to give preferential consideration
- 23 in hiring to employees at the existing facility who meet or exceed the private
- 24 entity's qualifications and standards for employment in available positions;
- 25 (8) Require the private entity to provide health care benefits comparable to that of the
- 26 compact, municipality, ~~or~~ county, or regional jail authority;
- 27 (9) Provide for an adequate plan of insurance to protect the compact, municipality, ~~or~~
- 28 county, or regional jail authority against all claims arising from the services
- 29 performed under the contract by the private entity and to protect the compact,
- 30 municipality, ~~or~~ county, or regional jail authority from actions by a third party
- 31 against the private entity, its officers, guards, employees, and agents as a result
- 32 of the contract; and
- 33 (10) Contain comprehensive standards for conditions of confinement and annual review
- 34 of the programs for compliance.

35 **Section 36. That § 24-11-43 be AMENDED:**

1 **24-11-43.** A private entity operating under a contract authorized by § 24-11-40
2 or 24-11-41 is not entitled to claim sovereign immunity in a suit arising from the services
3 performed under the contract by the private entity. However, this section does not deprive
4 the private entity or the compact, municipality, ~~or county,~~ or regional jail authority of any
5 benefits of any law limiting exposure to liability, setting a limit on damages, or establishing
6 defenses to liability.