

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

366R0219

## HOUSE BILL NO. 1138

Introduced by: Representatives Peters, Brunner, Conzet, Cronin, Cutler, Deadrick, Dennert, Fargen, Hunt, Kirkeby, Moser, Pitts, Putnam, Rausch, Romkema, Rounds, Schlekeway, Street, Tidemann, and Wink and Senators Gray, Ahlers, Bartling, Brown, Hansen (Tom), Haverly, Hunhoff (Jean), Novstrup (Al), Peterson, and Rhoden

1 FOR AN ACT ENTITLED, An Act to create certified technology parks and to provide certain  
2 financing mechanisms and bonding authority to enhance knowledge and tech-based  
3 economic development.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Base taxable valuation," the aggregate assessed valuation of all taxable property  
7 located within a certified technology park on the date the park is designated pursuant  
8 to this Act;
- 9 (2) "Department," the Department of Tourism and State Development;
- 10 (3) "Gross retail base period amount," the aggregate amount of state and municipal sales  
11 and use taxes and contractor's excise taxes remitted in the area comprising a certified  
12 technology park during the full state fiscal year that precedes the date on which the  
13 certified technology park was designated pursuant to this Act;



- 1       (4) "Gross retail incremental amount," the aggregate amount of state and municipal sales  
2           and use taxes and contractor's excise taxes that are remitted in the area comprising  
3           a certified technology park during a state fiscal year less the gross retail base period  
4           amount;
- 5       (5) "High technology activity," includes any of the following:
- 6           (a) Advanced computing, which is any technology used in the design and  
7               development of computer hardware and software, data communications, or  
8               information technologies;
- 9           (b) Advanced materials, which are materials with engineered properties created  
10               through the development of specialized process and synthesis technology;
- 11          (c) Biotechnology, which is any technology that uses living organisms, cells,  
12               macromolecules, micro-organisms, or substances from living organisms to  
13               make or modify a product, improve plants or animals, or develop  
14               micro-organisms for useful purposes. Biotechnology does not include human  
15               cloning or stem cell research with embryonic tissue;
- 16          (d) Electronic device technology, which is any technology that involves:
- 17               (i) Microelectronics, semiconductors, or electronic equipment;
- 18               (ii) Instrumentation, radio frequency, microwave, and millimeter  
19               electronics;
- 20               (iii) Optical and optic-electrical devices; or
- 21               (iv) Data and digital communications and imaging devices;
- 22          (e) Engineering or laboratory testing related to the development of a product;
- 23          (f) Technology that assists in the assessment or prevention of threats or damage  
24               to human health or the environment, including environmental cleanup

1 technology, pollution prevention technology, or development of alternative  
2 energy sources;

3 (g) Medical device technology, which is any technology that involves medical  
4 equipment or products;

5 (h) Product research and development; or

6 (i) Advanced vehicles technology, which is any technology that involves:

7 (i) Electric vehicles, hybrid vehicles, or alternative fuel vehicles; or

8 (ii) Components used in the construction of electric vehicles, hybrid  
9 vehicles, or alternative fuel vehicles;

10 (6) "Public facility," a public facility includes:

11 (a) A street; road; bridge; storm water or sanitary sewer; sewage treatment  
12 facility; facility designed to reduce, eliminate, or prevent the spread of  
13 identified soil or ground water contamination; drainage system; retention  
14 basin; pretreatment facility; waterway; waterline; water storage facility; rail  
15 line; electric, gas, telephone or other communications lines, or any other type  
16 of utility line or pipeline; or other similar or related structure or improvement  
17 and necessary easements for the structure or improvement. Except for rail  
18 lines, utility lines, or pipelines, the structures or improvements described in  
19 this subdivision shall be either owned or used by a public agency; functionally  
20 connected to similar or supporting facilities owned or used by a public agency;  
21 or designed and dedicated to use by, for the benefit of, or for the protection of  
22 the health, welfare, or safety of the public generally, whether or not used by  
23 a single business entity. Any road, street, or bridge shall be continuously open  
24 to public access. A public facility shall be located on public property or in a

- 1 public utility or transportation easement or right of way;
- 2 (b) Land and other assets that are or may become eligible for depreciation for  
3 federal income tax purposes for a research development, incubator, and  
4 service facilities located in a certified technology park;
- 5 (c) Land and other assets that, if privately owned, would be eligible for  
6 depreciation for federal income tax purposes for laboratory facilities, research  
7 and development facilities, conference facilities, testing facilities, training  
8 facilities, or quality control facilities:
  - 9 (i) That are or that support property whose primary purpose and use is or  
10 will be for a high technology activity;
  - 11 (ii) That are owned by a public entity; and
  - 12 (iii) That are located within a certified technology park; or
- 13 (d) Land and other assets, including laboratory, research and development,  
14 conference, testing, training, or quality control facilities:
  - 15 (i) That are or that support property the primary purpose and use of which  
16 is or will be for a high technology activity; and
  - 17 (ii) That are located within a certified technology park;
- 18 (7) "Research development, incubator, and service facilities," any real or personal  
19 property that is located in a certified technology park that is subject to an agreement  
20 pursuant to this Act and was developed for the primary purpose of attracting one or  
21 more owners or tenants who will engage in high technology activities.

22 Section 2. The governing body of a political subdivision may apply to the department for  
23 designation of all or part of the area within the political subdivision as a certified technology  
24 park and to enter into an agreement governing the terms and conditions of the designation. The

1 application shall be in a form specified by the department and shall include information the  
2 department determines necessary to make the determinations required pursuant to this Act. No  
3 application may be submitted by the governing body, unless the proposed area for the certified  
4 technology park meets the following criteria:

- 5 (1) Contains at least one hundred acres of contiguous property which is located adjacent  
6 to an postsecondary educational institution that annually produces at least fifty  
7 million dollars in research;
- 8 (2) Has the capacity to construct a cluster of thirty or more research buildings and  
9 facilities; and
- 10 (3) Is designed primarily for private/public partnerships with research and development  
11 facilities to create and recruit high technology activities as documented in a master  
12 plan.

13 Section 3. After receipt of an application submitted pursuant to section 2 of this Act, and  
14 subject to section 4 of this Act, the department may designate a certified technology park if the  
15 department determines that the application demonstrates a firm commitment from at least one  
16 business engaged in a high technology activity creating a significant number of jobs and satisfies  
17 one or more of the following additional criteria:

- 18 (1) A demonstration of significant support from a postsecondary educational institution,  
19 a private research based institute, or a military research and development or testing  
20 facility on an active United States government military base or other military  
21 installation located within, or in the vicinity of, the proposed certified technology  
22 park, as evidenced by any of the following criteria:
  - 23 (a) Grants of preference for access to and commercialization of intellectual  
24 property;

- 1 (b) Access to laboratory and other facilities owned by or under the control of the
- 2 postsecondary educational institution or private research based institute;
- 3 (c) Donations of services;
- 4 (d) Access to telecommunications facilities and other infrastructure;
- 5 (e) Financial commitments;
- 6 (f) Access to faculty, staff, and students;
- 7 (g) Opportunities for adjunct faculty and other types of staff; or
- 8 (h) Other criteria considered as appropriate by the department;
- 9 (2) A demonstration of a significant commitment by a postsecondary educational
- 10 institution, a private research based institute, or a military research and development
- 11 or testing facility on an active United States government military base or other
- 12 military installation to the commercialization of research produced at the certified
- 13 technology park, as evidenced by the intellectual property and, if applicable, tenure
- 14 policies that reward faculty and staff for commercialization and collaboration with
- 15 private businesses;
- 16 (3) A demonstration that the proposed certified technology park will be developed to
- 17 take advantage of the unique characteristics and specialties offered by the public and
- 18 private resources available in the area in which the proposed certified technology
- 19 park will be located;
- 20 (4) The existence of or proposed development of an economic development organization
- 21 within the political subdivision which exhibits the following types of resources and
- 22 organization:
- 23 (a) Significant financial and other types of support from the public or private
- 24 resources in the area in which the proposed certified technology park will be

1 located;

2 (b) A business plan exhibiting the economic utilization and availability of  
3 resources and a likelihood of successful development of technologies and  
4 research into viable business enterprises; and

5 (c) A commitment to the employment of a qualified full-time manager to  
6 supervise the operation of the economic development organization;

7 (5) The existence of a business plan for the proposed certified technology park that  
8 identifies its objectives in a clearly focused and measurable fashion and that  
9 addresses the following matters:

10 (a) A commitment to new business formation;

11 (b) The clustering of businesses, technology, and research;

12 (c) The opportunity for and costs of development of properties under common  
13 ownership or control;

14 (d) The availability of and method proposed for development of infrastructure and  
15 other improvements, including telecommunications technology, necessary for  
16 the development of the proposed certified technology park; and

17 (e) Assumptions of costs and revenues related to the development of the proposed  
18 certified technology park; and

19 (6) A demonstrable and satisfactory assurance that the proposed certified technology  
20 park can be developed to principally contain property that is primarily used for, or  
21 will be primarily used for, a high technology activity.

22 Section 4. The department may not approve an application that would result in a substantial  
23 reduction or cessation of operations of a business in another location in this state in order to  
24 relocate that business within the certified technology park.

1 Section 5. A certified technology park designated pursuant to this Act shall be recertified  
2 every five years. The department shall develop procedures and the criteria to be used in the  
3 review. A certified technology park shall furnish to the department all of the following  
4 information to be used in the course of the review:

- 5 (1) Total employment and payroll levels for businesses operating within the certified  
6 technology park;
- 7 (2) The nature and extent of any technology transfer activity occurring within the  
8 certified technology park;
- 9 (3) The nature and extent of any nontechnology businesses operating within the certified  
10 technology park;
- 11 (4) The use and outcomes of any state money made available to the certified technology  
12 park; and
- 13 (5) An analysis of the certified technology park's overall contributions to the  
14 technology-based economy in this state.

15 The department shall maintain the confidentiality of any information that is submitted as  
16 part of this review process and marked as confidential by the certified technology park.

17 Section 6. The governing body of the political subdivision that established the certified  
18 technology park may enter an agreement with the department establishing the terms and  
19 conditions governing a certified technology park designated pursuant to this Act. Upon  
20 designation of the certified technology park under the terms of the agreement, the subsequent  
21 failure of any party to comply with the terms of the agreement may result in the termination or  
22 rescission of the designation of the area as a certified technology park. The agreement shall  
23 include all of the following:

- 24 (1) A description of the area to be included within the certified technology park;



- 1 (2) Any covenants and restrictions upon all or part of the properties contained within the  
2 certified technology park and terms of enforcement of any covenants or restrictions;
- 3 (3) The financial commitments of any party to the agreement and of any owner or  
4 developer of property within the certified technology park;
- 5 (4) The terms of any commitment required from a postsecondary educational institution  
6 or private research based institute for support of the operations and activities within  
7 the certified technology park;
- 8 (5) The terms of enforcement of the agreement, which may include the definition of  
9 events of default, cure periods, legal and equitable remedies and rights, and penalties  
10 and damages, actual or liquidated, upon the occurrence of an event of default; and
- 11 (6) The public facilities to be developed for the certified technology park and the costs  
12 of those public facilities, as approved by the department.

13 Section 7. If the department determines that a sale price or rental value at below market rate  
14 will assist in increasing employment or private investment in a certified technology park, the  
15 governing body of the political subdivision and the Legislature may determine the sale price or  
16 rental value for public facilities owned in the certified technology park at below market rate.

17 If public facilities developed under an agreement entered into pursuant to this Act are  
18 conveyed or leased at less than fair market value or at below market rates, the terms of the  
19 conveyance or lease shall include legal and equitable remedies and rights to assure that the  
20 public facilities are used for high technology activities. Legal and equitable remedies and rights  
21 may include penalties and actual or liquidated damages.

22 Section 8. The department shall market the certified technology park. The department may  
23 contract with any party for these marketing services.

24 Section 9. The governing body of the political subdivision that established the certified

1 technology park may adopt a resolution designating the certified technology park as an  
2 allocation area for purposes of the allocation and distribution of property taxes. After adoption  
3 of the resolution, the governing body shall:

4 (1) Publish notice of the adoption and substance of the resolution once each week for  
5 two consecutive weeks in the official newspaper of the political subdivision; and

6 (2) File the following information with each taxing district that has authority to levy  
7 property taxes in the geographic area where the certified technology park is located:

8 (a) A copy of the notice required by this section; and

9 (b) A statement disclosing the impact of the certified technology park as measured  
10 by increased employment and anticipated growth of real property values and  
11 the anticipated impact on tax revenues of each taxing unit.

12 The notice shall state the general boundaries of the certified technology park and shall state  
13 that written statements or objections may be filed with the governing body until the time  
14 designated for the hearing. The notice shall also name the place, date, and time when the  
15 governing body will receive and hear statements and objections from persons interested in or  
16 affected by the proceedings pertaining to the proposed allocation area and will determine the  
17 public utility and benefit of the proposed allocation area. The governing body shall file the  
18 information required by this section with the officers of the taxing district who are authorized  
19 to fix budgets, tax rates, and tax levies at least ten days before the date of the public hearing.  
20 Any person affected in any manner by the hearing, including any taxpayer within the taxing  
21 district, shall be considered notified of the pendency of the hearing and of subsequent acts,  
22 hearings, adjournments, and orders of the governing body affecting the allocation area if the  
23 governing body gives the notice required by this section.

24 At the hearing, which may be recessed and reconvened periodically, the governing body

1 shall hear any person interested in the proceedings and shall consider any written statement or  
2 objection that has been filed. After considering the evidence presented, the governing body shall  
3 take final action determining the public utility and benefit of the proposed allocation area  
4 confirming, modifying and confirming, or rescinding the resolution. The final action taken by  
5 the governing body shall be recorded.

6 Section 10. An allocation provision adopted pursuant to section 9 of this Act shall apply to  
7 the entire certified technology park and require that any property tax on taxable property  
8 subsequently levied by or for the benefit of any public body entitled to a distribution of property  
9 taxes in the certified technology park be allocated and distributed as provided in this section.  
10 Except as otherwise provided in this section, the proceeds of the taxes attributable to the taxable  
11 value of the taxable property for the assessment date with respect to which the allocation and  
12 distribution is made or the base taxable value. Except as provided in section 11 of this Act, all  
13 the property tax proceeds that exceed those described in this section shall be allocated to the  
14 governing body for the certified technology park and, when collected, paid into the certified  
15 technology park fund established pursuant to section 16 of this Act.

16 Section 11. Before July fifteenth of each year, the governing body shall:

17 (1) Determine the amount, if any, by which the property tax proceeds to be deposited in  
18 the certified technology park fund will exceed the amount necessary for the purposes  
19 of this Act;

20 (2) Provide a written notice to the county auditor and the officers who are authorized to  
21 fix budgets, tax rates, and tax levies for each of the other taxing districts that is  
22 wholly or partly located within the allocation area. The notice shall:

23 (a) State the amount, if any, of excess tax proceeds that the governing body has  
24 determined may be allocated to the respective taxing districts in the manner

1                   prescribed in subdivision (3); or

2                   (b) State that the governing body has determined that there are no excess tax  
3                   proceeds that may be allocated to the respective taxing units;

4                   (3) The county auditor shall allocate to the respective taxing units the amount, if any, of  
5                   excess tax proceeds determined by the governing body. The governing body may not  
6                   authorize an allocation of tax proceeds pursuant to this subdivision if to do so would  
7                   endanger the interests of the holder of bonds issued pursuant to this Act.

8                   Section 12. Notwithstanding any other law, the taxable valuation of all taxable property in  
9                   the certified technology park, for purposes of formulation of the budget, tax rate, and tax levy  
10                  for each political subdivision in which the property is located is the lesser of:

11                  (1) The taxable valuation of the taxable property valued without regard to sections 10  
12                  and 11 of this Act; or

13                  (2) The base taxable valuation as defined in section 1 of this Act.

14                  Section 13. The secretary of the Department of Revenue and Regulation may promulgate  
15                  rules, pursuant to chapter 1-26, and prescribe the forms and procedures that the secretary of the  
16                  Department of Revenue and Regulation considers appropriate for the implementation of an  
17                  allocation area pursuant to this Act.

18                  After each reassessment of property, the secretary of the Department of Revenue and  
19                  Regulation shall adjust the base taxable value one time to neutralize any effect of the  
20                  reassessment on the property tax proceeds allocated to the certified technology park fund.

21                  Section 14. After entering an agreement pursuant to section 6 of this Act, the governing  
22                  body shall send to the secretary of the Department of Revenue and Regulation:

23                  (1) A certified copy of the designation of the certified technology park;

24                  (2) A certified copy of the agreement entered pursuant to section 6 of this Act; and

1       (3)    A complete list of the employers in the certified technology park and the street names  
2            and the range of street numbers of each street in the certified technology park. The  
3            governing body shall update the list before July first of each year.

4        Not later than sixty days after receiving a copy of the designation of the certified technology  
5        park, the secretary of the Department of Revenue and Regulation shall determine the gross retail  
6        base period amount.

7        Section 15. Before October first of each year, the secretary of the Department of Revenue  
8        and Regulation shall calculate the gross retail incremental amount for the preceding state fiscal  
9        year for each certified technology park designated pursuant to this Act.

10       Section 16. The state treasurer shall establish an incremental tax financing fund for each  
11       certified technology park designated pursuant to this Act. The fund shall be administered by the  
12       state treasurer. Money in the fund does not revert to the state general fund at the end of a state  
13       fiscal year. Subject to this section, the following amount shall be deposited during each state  
14       fiscal year in the incremental tax financing fund established for a certified technology park. The  
15       aggregate amount of state and municipal sales and use taxes that are remitted by businesses  
16       operating in the certified technology park, until the amount of state and municipal sales and use  
17       taxes deposited equals the gross retail incremental amount for the certified technology park.

18       Not more than a total of ten million dollars may be deposited in a particular incremental tax  
19       financing fund for a certified technology park over the life of the certified technology park.  
20       Before the twentieth day of each month, all amounts held in the incremental tax financing fund  
21       established for a certified technology park shall be distributed to the governing body of the  
22       political subdivision for deposit in the certified technology park fund.

23       Section 17. Each governing body of a political subdivision that establishes a certified  
24       technology park pursuant to this Act shall establish a certified technology park fund to receive

1 property tax proceeds allocated pursuant to section 10 of this Act and money distributed to the  
2 governing body of the political subdivision pursuant to section 16 of this Act.

3 Section 18. Money deposited in the certified technology park fund may be used by the  
4 governing body only for one or more of the following purposes:

5 (1) Acquisition, improvement, preparation, demolition, disposal, construction,  
6 reconstruction, remediation, rehabilitation, restoration, preservation, maintenance,  
7 repair, furnishing, and equipping of public facilities;

8 (2) Operation of public facilities;

9 (3) Payment of the principal of and interest on any obligations that are payable solely or  
10 in part from money deposited in the fund and that are incurred by the governing body  
11 for the purpose of financing or refinancing the development of public facilities in the  
12 certified technology park;

13 (4) Establishment, augmentation, or restoration of the debt service reserve for obligations  
14 described in subdivision (3);

15 (5) Payment of the principal of and interest on bonds issued by the governing body to  
16 pay for public facilities in or serving the certified technology park;

17 (6) Payment of premiums on the redemption before maturity of bonds described in  
18 subdivision (3);

19 (7) Payment of amounts due under leases payable from money deposited in the fund;

20 (8) Reimbursement to the political subdivision for expenditures made by it for public  
21 facilities in or serving the certified technology park; and

22 (9) Payment of expenses incurred by the political subdivision for public facilities that are  
23 in the certified technology park or serving the certified technology park.

24 The certified technology park fund may not be used for operating expenses of the governing

1 body of the political subdivision.

2 Section 19. A governing body of a political subdivision may issue bonds for the purpose of  
3 providing public facilities pursuant to this Act. The bonds shall be authorized by a resolution  
4 of the governing body. The terms and form of the bonds shall be set out either in the resolution  
5 or in a form of trust indenture approved by the resolution. The bonds shall mature within fifty  
6 years. The governing body shall sell the bonds at public or private sale upon such terms as  
7 determined by the governing body. The bonds are payable solely from:

- 8 (1) Property tax proceeds allocated to the certified technology park fund;
- 9 (2) Money distributed to the governing body pursuant to section 16 of this Act;
- 10 (3) Other funds available to the governing body; or
- 11 (4) A combination of the methods listed in this section.

12 Section 20. All money received from any bonds issued pursuant to this Act shall be applied  
13 solely to the payment of the cost of providing public facilities within a certified technology park  
14 or the cost of refunding or refinancing outstanding bonds for which the bonds are issued. The  
15 cost may include:

- 16 (1) Planning and development of the public facilities and all related buildings, facilities,  
17 structures, and improvements;
- 18 (2) Acquisition of a site and clearing and preparing the site for construction;
- 19 (3) Equipment, facilities, structures, and improvements that are necessary or desirable  
20 to make the public facilities suitable for use and operation;
- 21 (4) Architectural, engineering, consultant, and attorney's fees;
- 22 (5) Incidental expenses in connection with the issuance and sale of bonds;
- 23 (6) Reserves for principal and interest;
- 24 (7) Interest during construction and for a period thereafter determined by the governing

1 body, but not to exceed five years;

2 (8) Financial advisory fees;

3 (9) Insurance during construction;

4 (9) Municipal bond insurance, debt service reserve insurance, letters of credit, or other  
5 credit enhancement; and

6 (10) In the case of refunding or refinancing, payment of the principal of, redemption  
7 premiums, if any, for, and interest on, the bonds being refunded or refinanced.