

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

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HOUSE ENGROSSED NO. **HB 1138** - 2/23/2010

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 or a private
20 nonprofit entity; functionally connected to similar or supporting facilities
21 owned or used by a public or a private nonprofit entity; or designed and
22 dedicated to use by, for the benefit of, or for the protection of the health,
23 welfare, or safety of the public generally, whether or not used by a single
24 business entity. Any road, street, or bridge shall be continuously open to

- 1 public access. A public facility shall be located on public or a private nonprofit
2 entity property or in a public utility or transportation easement or right of way;
- 3 (b) Land and other assets that are or may become eligible for depreciation for
4 federal income tax purposes for a research development, incubator, and
5 service facilities located in a certified technology park;
- 6 (c) Land and other assets that, if privately owned, would be eligible for
7 depreciation for federal income tax purposes for laboratory facilities, research
8 and development facilities, conference facilities, testing facilities, training
9 facilities, or quality control facilities:
- 10 (i) That are or that support property whose primary purpose and use is or
11 will be for a high technology activity;
- 12 (ii) That are owned by a public or a private nonprofit entity; and
- 13 (iii) That are located within a certified technology park; or
- 14 (d) Land and other assets, including laboratory, research and development,
15 conference, testing, training, or quality control facilities:
- 16 (i) That are or that support property the primary purpose and use of which
17 is or will be for a high technology activity; and
- 18 (ii) That are located within a certified technology park;
- 19 (7) "Private nonprofit entity," any nonprofit entity recognized as an exempt organization
20 under 501(c)(3) of the United States Internal Revenue Code, as amended and in effect
21 on January 1, 2010, whose substantial purpose is medical research or high technology
22 activity focused on conducting and stimulating research, knowledge, and tech-based
23 economic development;
- 24 (8) "Research development, incubator, and service facilities," any real or personal

1 property that is located in a certified technology park that is subject to an agreement
2 pursuant to this Act and was developed for the primary purpose of attracting one or
3 more owners or tenants who will engage in high technology activities.

4 Section 2. The governing body of a political subdivision may apply to the department for
5 designation of all or part of the area within the political subdivision as a certified technology
6 park and to enter into an agreement governing the terms and conditions of the designation. The
7 application shall be in a form specified by the department and shall include information the
8 department determines necessary to make the determinations required pursuant to this Act.

9 Section 3. The department may not approve an application that would result in a substantial
10 reduction or cessation of operations of a business in another location in this state in order to
11 relocate that business within the certified technology park.

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

- 16 (1) Total employment and payroll levels for businesses operating within the certified
17 technology park;
- 18 (2) The nature and extent of any technology transfer activity occurring within the
19 certified technology park;
- 20 (3) The nature and extent of any nontechnology businesses operating within the certified
21 technology park;
- 22 (4) The use and outcomes of any state money made available to the certified technology
23 park; and
- 24 (5) An analysis of the certified technology park's overall contributions to the

1 technology-based economy in this state.

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

4 Section 5. The governing body of the political subdivision that established the certified
5 technology park may enter an agreement with the department establishing the terms and
6 conditions governing a certified technology park designated pursuant to this Act. Upon
7 designation of the certified technology park under the terms of the agreement, the subsequent
8 failure of any party to comply with the terms of the agreement may result in the termination or
9 rescission of the designation of the area as a certified technology park. The agreement shall
10 include all of the following:

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

24 Section 6. If the department determines that a sale price or rental value at below market rate

1 will assist in increasing employment or private investment in a certified technology park, the
2 governing body of the political subdivision may determine the sale price or rental value for
3 public or private facilities owned in the certified technology park at below market rate.

4 Section 7. The department shall market the certified technology park. The department may
5 contract with any party for these marketing services.

6 Section 8. The governing body of the political subdivision that established the certified
7 technology park may adopt a resolution designating the certified technology park as an
8 allocation area for purposes of the allocation and distribution of property taxes. After adoption
9 of the resolution, the governing body shall:

- 10 (1) Publish notice of the adoption and substance of the resolution once each week for
11 two consecutive weeks in the official newspaper of the political subdivision; and
- 12 (2) File the following information with each taxing district that has authority to levy
13 property taxes in the geographic area where the certified technology park is located:
 - 14 (a) A copy of the notice required by this section; and
 - 15 (b) A statement disclosing the impact of the certified technology park as measured
16 by increased employment and anticipated growth of real property values and
17 the anticipated impact on tax revenues of each taxing unit.

18 The notice shall state the general boundaries of the certified technology park and shall state
19 that written statements or objections may be filed with the governing body until the time
20 designated for the hearing. The notice shall also name the place, date, and time when the
21 governing body will receive and hear statements and objections from persons interested in or
22 affected by the proceedings pertaining to the proposed allocation area and will determine the
23 public utility and benefit of the proposed allocation area. The governing body shall file the
24 information required by this section with the officers of the taxing district who are authorized

1 to fix budgets, tax rates, and tax levies at least ten days before the date of the public hearing.
2 Any person affected in any manner by the hearing, including any taxpayer within the taxing
3 district, shall be considered notified of the pendency of the hearing and of subsequent acts,
4 hearings, adjournments, and orders of the governing body affecting the allocation area if the
5 governing body gives the notice required by this section.

6 At the hearing, which may be recessed and reconvened periodically, the governing body
7 shall hear any person interested in the proceedings and shall consider any written statement or
8 objection that has been filed. After considering the evidence presented, the governing body shall
9 take final action determining the public or private utility and benefit of the proposed allocation
10 area confirming, modifying and confirming, or rescinding the resolution. The final action taken
11 by the governing body shall be recorded.

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

23 Section 10. Before July fifteenth of each year, the governing body shall:

24 (1) Determine the amount, if any, by which the property tax proceeds to be deposited in

1 the certified technology park fund will exceed the amount necessary for the purposes
2 of this Act;

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

6 (a) State the amount, if any, of excess tax proceeds that the governing body has
7 determined may be allocated to the respective taxing districts in the manner
8 prescribed in subdivision (3); or

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

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

15 Section 11. Notwithstanding any other law, the taxable valuation of all taxable property in
16 the certified technology park, for purposes of formulation of the budget, tax rate, and tax levy
17 for each political subdivision in which the property is located is the lesser of:

18 (1) The taxable valuation of the taxable property valued without regard to sections 9 and
19 10 of this Act; or

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

21 Section 12. The secretary of the Department of Revenue and Regulation may promulgate
22 rules, pursuant to chapter 1-26, and prescribe the forms and procedures that the secretary of the
23 Department of Revenue and Regulation requires for the implementation of an allocation area
24 pursuant to this Act.

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

4 Section 13. After entering an agreement pursuant to section 5 of this Act, the governing
5 body shall send to the secretary of the Department of Revenue and Regulation:

- 6 (1) A certified copy of the designation of the certified technology park;
- 7 (2) A certified copy of the agreement entered pursuant to section 5 of this Act; and
- 8 (3) A complete list of the employers in the certified technology park and the street names
9 and the range of street numbers of each street in the certified technology park. The
10 governing body shall update the list before July first of each year.

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

14 Section 14. Before October first of each year, the secretary of the Department of Revenue
15 and Regulation shall calculate the gross retail incremental amount for the preceding state fiscal
16 year for each certified technology park designated pursuant to this Act.

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

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

6 Section 16. Each governing body of a political subdivision that establishes a certified
7 technology park pursuant to this Act shall establish a certified technology park fund to receive
8 property tax proceeds allocated pursuant to section 9 of this Act and money distributed to the
9 governing body of the political subdivision pursuant to section 15 of this Act.

10 Section 17. Money deposited in the certified technology park fund may be used by the
11 governing body only for one or more of the following purposes:

- 12 (1) Acquisition, improvement, preparation, demolition, disposal, construction,
13 reconstruction, remediation, rehabilitation, restoration, preservation, maintenance,
14 repair, furnishing, and equipping of public facilities;
- 15 (2) Operation of public and private facilities;
- 16 (3) Payment of the principal of and interest on any obligations that are payable solely or
17 in part from money deposited in the fund and that are incurred by the governing body
18 for the purpose of financing or refinancing the development of public and private
19 facilities in the certified technology park;
- 20 (4) Establishment, augmentation, or restoration of the debt service reserve for obligations
21 described in subdivision (3);
- 22 (5) Payment of the principal of and interest on bonds issued by the governing body to
23 pay for public or private facilities in or serving the certified technology park;
- 24 (6) Payment of premiums on the redemption before maturity of bonds described in

1 subdivision (3);

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

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

5 (9) Payment of expenses incurred by the political subdivision for public or private
6 facilities that are in the certified technology park or serving the certified technology
7 park.

8 The certified technology park fund may not be used for operating expenses of the governing
9 body of the political subdivision.

10 Section 18. A governing body of a political subdivision may issue bonds for the purpose of
11 providing public and private facilities pursuant to this Act. The bonds shall be authorized by a
12 resolution of the governing body. The terms and form of the bonds shall be set out either in the
13 resolution or in a form of trust indenture approved by the resolution. The bonds shall mature
14 within fifty years. The governing body shall sell the bonds at public or private sale upon such
15 terms as determined by the governing body. The bonds are payable solely from:

16 (1) Property tax proceeds allocated to the certified technology park fund;

17 (2) Money distributed to the governing body pursuant to section 15 of this Act;

18 (3) Other funds available to the governing body; or

19 (4) A combination of the methods listed in this section.

20 Section 19. All money received from any bonds issued pursuant to this Act shall be applied
21 solely to the payment of the cost of providing public or private facilities within a certified
22 technology park or the cost of refunding or refinancing outstanding bonds for which the bonds
23 are issued. The cost may include:

24 (1) Planning and development of the public and private facilities and all related

- 1 buildings, facilities, structures, and improvements;
- 2 (2) Acquisition of a site and clearing and preparing the site for construction;
- 3 (3) Equipment, facilities, structures, and improvements that are necessary or desirable
- 4 to make the public and private facilities suitable for use and operation;
- 5 (4) Architectural, engineering, consultant, and attorney's fees;
- 6 (5) Incidental expenses in connection with the issuance and sale of bonds;
- 7 (6) Reserves for principal and interest;
- 8 (7) Interest during construction and for a period thereafter determined by the governing
- 9 body, but not to exceed five years;
- 10 (8) Financial advisory fees;
- 11 (9) Insurance during construction;
- 12 (10) Municipal bond insurance, debt service reserve insurance, letters of credit, or other
- 13 credit enhancement; and
- 14 (11) In the case of refunding or refinancing, payment of the principal of, redemption
- 15 premiums, if any, for, and interest on, the bonds being refunded or refinanced.

16 Section 20. The Department of Tourism and State Development shall promulgate rules
17 pursuant to chapter 1-26 to:

- 18 (1) Prescribe the application procedures and the form and content of the application and
- 19 business plan for a certified technology park;
- 20 (2) Set the minimum criteria for an area to be designated as a certified technology park;
- 21 (3) Establish certain level of financial and technical support for the certified technology
- 22 park and the required evidence of public and private partnerships;
- 23 (4) Establish terms and conditions on how the certified technology park may be operated
- 24 including the ownership of facilities and buildings;

- 1 (5) Determine the commitment of postsecondary, private, or federal research and
2 development for the park;
- 3 (6) Determine the commitment of the local governments and economic development
4 organization to the park; and
- 5 (7) Require certain documents and reports regarding the operation and activities of the
6 park to be filed with the department.