

State of South Dakota

EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

744T0489

SENATE BILL NO. 162

Introduced by: Senators Tidemann, Brown, Frerichs, Gray, Hansen (Tom), Haverly, Heineman, Hunhoff (Jean), Johnston, Olson (Russell), Peters, Rave, and Rhoden and Representatives Sly, Boomgarden, Conzet, Cronin, Dryden, Hawley, Kirkeby, Moser, Munsterman, Perry, Street, Vanneman, Wick, Willadsen, and Wismer

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 and to repeal certain provisions concerning certified technology
4 parks.

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

6 Section 1. Terms used in this Act mean:

- 7 (1) "Base taxable valuation," the aggregate assessed valuation of all taxable property
8 located within a certified technology park on the date the park is designated pursuant
9 to this Act;
- 10 (2) "GOED," the Governor's Office of Economic Development;
- 11 (3) "Governing body," the governing body of any incorporated municipality or
12 improvement district created pursuant to chapter 7-25A;
- 13 (4) "Gross retail base period amount," the aggregate amount of state and municipal sales



1 and use taxes and contractor's excise taxes remitted in the area comprising a certified
2 technology park during the full state fiscal year that precedes the date on which the
3 certified technology park was designated pursuant to this Act;

4 (5) "Gross retail incremental amount," the aggregate amount of state and municipal sales
5 and use taxes and contractor's excise taxes that are remitted in the area comprising
6 a certified technology park during a state fiscal year less the gross retail base period
7 amount;

8 (6) "High technology activity," includes any of the following:

9 (a) Advanced computing, which is any technology used in the design and
10 development of computer hardware and software, data communications, or
11 information technologies;

12 (b) Advanced materials, which are materials with engineered properties created
13 through the development of specialized process and synthesis technology;

14 (c) Biotechnology, which is any technology that uses living organisms, cells,
15 macromolecules, micro-organisms, or substances from living organisms to
16 make or modify a product, improve plants or animals, or develop
17 micro-organisms for useful purposes. Biotechnology does not include human
18 cloning or stem cell research with embryonic tissue;

19 (d) Electronic device technology, which is any technology that involves:

20 (i) Microelectronics, semiconductors, or electronic equipment;

21 (ii) Instrumentation, radio frequency, microwave, and millimeter
22 electronics;

23 (iii) Optical and optic-electrical devices; or

24 (iv) Data and digital communications and imaging devices;

- 1 (e) Engineering or laboratory testing related to the development of a product;
- 2 (f) Technology that assists in the assessment or prevention of threats or damage
- 3 to human health or the environment, including environmental cleanup
- 4 technology, pollution prevention technology, or development of alternative
- 5 energy sources;
- 6 (g) Medical device technology, which is any technology that involves medical
- 7 equipment or products;
- 8 (h) Product research and development; or
- 9 (i) Advanced vehicles' technology, which is any technology that involves:
- 10 (i) Electric vehicles, hybrid vehicles, or alternative fuel vehicles; or
- 11 (ii) Components used in the construction of electric vehicles, hybrid
- 12 vehicles, or alternative fuel vehicles;
- 13 (7) "Municipality," any incorporated municipality or improvement district created
- 14 pursuant to chapter 7-25A;
- 15 (8) "Public facility," a public facility includes:
- 16 (a) A street, road, bridge, storm water or sanitary sewer; sewage treatment facility;
- 17 facility designed to reduce, eliminate, or prevent the spread of identified soil
- 18 or ground water contamination; drainage system; retention basin; pretreatment
- 19 facility; waterway; waterline; water storage facility; rail line; electric, gas,
- 20 telephone or other communications lines, or any other type of utility line or
- 21 pipeline; or other similar or related structure or improvement and necessary
- 22 easements for the structure or improvement. Except for rail lines, utility lines,
- 23 or pipelines, the structures or improvements described in this subdivision shall
- 24 be either owned or used by a public agency; functionally connected to similar

1 or supporting facilities owned or used by a public agency; or designed and
2 dedicated to use by, for the benefit of, for the protection of the health, welfare,
3 or safety of the public generally, whether or not used by a single business
4 entity. Any road, street, or bridge shall be continuously open to public access.
5 A public facility shall be located on public property or in a public utility or
6 transportation easement or right of way;

7 (b) Land and other assets that are or may become eligible for depreciation for
8 federal income tax purposes for a research development, incubator, and
9 service facilities located in a certified technology park;

10 (c) Land and other assets that, if privately owned, would be eligible for
11 depreciation for federal income tax purposes for laboratory facilities, research
12 and development facilities, conference facilities, testing facilities, training
13 facilities, or quality control facilities:

14 (i) That are or that support property whose primary purpose and use is or
15 will be for a high technology activity;

16 (ii) That are owned by a public entity; and

17 (iii) That are located within a certified technology park; or

18 (d) Land and other assets, including laboratory, research and development,
19 conference, testing, training, or quality control facilities:

20 (i) That are or that support property whose primary purpose and use of
21 which is or will be for a high technology activity; and

22 (ii) That are located within a certified technology park;

23 (9) "Research development, incubator, and service facilities," any real or personal
24 property that is located in a certified technology park that is subject to an agreement

1 pursuant to this Act and was developed for the primary purpose of attracting one or
2 more owners or tenants who will engage in high technology activities.

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

8 Section 3. After receipt of an application submitted pursuant to section 2 of this Act, the
9 GOED may designate a certified technology park if the GOED determines that the application
10 demonstrates a firm commitment from at least one business engaged in a high technology
11 activity creating a significant number of jobs and satisfies one or more of the following
12 additional criteria:

13 (1) A demonstration of support from a postsecondary educational institution, a private
14 research based institute, or a military research and development or testing facility on
15 an active United States government military base or other military installation located
16 within, or in the vicinity of, the proposed certified technology park, as evidenced by
17 any of the following criteria:

- 18 (a) Grants of preference for access to and commercialization of intellectual
19 property;
20 (b) Access to laboratory and other facilities owned by or under the control of the
21 postsecondary educational institutions or private research-based institutions;
22 (c) Donations of services;
23 (d) Access to telecommunications facilities and other infrastructure;
24 (e) Financial commitments;

- 1 (f) Access to faculty, staff, and students;
- 2 (g) Opportunities for adjunct faculty and other types or staff; or
- 3 (h) Other criteria considered as appropriate by the GOED;
- 4 (2) A demonstration of commitment by a postsecondary educational institution, a private
- 5 research based institute, or a military research and development or testing facility on
- 6 an active United States government military base or other military installation to the
- 7 commercialization of research produced at the certified technology park, as
- 8 evidenced by the intellectual property and, if applicable, tenure policies that reward
- 9 faculty and staff for commercialization and collaboration with private businesses;
- 10 (3) A demonstration that the proposed certified technology park will be developed to
- 11 take advantage of the unique characteristics and specialties offered by the public and
- 12 private resources available in the area in which the proposed certified technology
- 13 park will be located;
- 14 (4) The existence of or proposed development of an economic development organization
- 15 within the municipality which exhibits the following types of resources and
- 16 organization:
- 17 (a) Significant financial and other types of support from the public or private
- 18 resources in the area in which the proposed certified technology park will be
- 19 located;
- 20 (b) A business plan exhibiting the economic utilization and availability of
- 21 resources and a likelihood of successful development of technologies and
- 22 research into viable business enterprises; and
- 23 (c) A commitment to the employment of a qualified full-time manager to
- 24 supervise the operation of the economic development organization;

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

4 (a) A commitment to new business formation;

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

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

8 (d) The availability of and method proposed for development of infrastructure and
9 other improvements, including telecommunications technology, necessary for
10 the development of the proposed certified technology park; and

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

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

16 Section 4. A certified technology park designated pursuant to this Act shall be recertified
17 every five years. The GOED shall develop procedures and the criteria to be used in the review.

18 A certified technology park shall furnish to the GOED all of the following information to be
19 used in the course of the review:

20 (1) Total employment and payroll levels for businesses operating within the certified
21 technology park;

22 (2) The nature and extent of any technology transfer and research activity occurring
23 within the certified technology park;

24 (3) The nature and extent of any nontechnology businesses operating within the certified

1 technology park;

2 (4) The use and outcomes of any state money made available to the certified technology
3 park; and

4 (5) An analysis of the certified technology park's overall contributions to the
5 technology-based economy in this state.

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

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

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

15 (2) Any covenants and restrictions upon all or part of the properties contained within the
16 certified technology park and terms of enforcement of any covenants or restrictions;

17 (3) The financial commitments of any party to the agreement and of any owner or
18 developer of property within the certified technology park;

19 (4) The terms of any commitment required from a postsecondary educational institution
20 or private research based institute for support of the operations and activities with the
21 certified technology park;

22 (5) The terms of enforcement of the agreement, which may include the definition of
23 events of default, cure periods, legal and equitable remedies and rights, and penalties
24 and damages, actual or liquidated, upon the occurrence of an event of default; and

(6) The public facilities to be developed for the certified technology park and the costs of those public facilities, as approved by the GOED.

Section 6. If the GOED determines that a sale price or rental value at below market rate will assist in increasing employment or private investment in a certified technology park, the governing body of the municipality may determine the sale price or rental value for public facilities owned in the certified technology at below market rate.

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

Section 7. The GOED shall market the certified technology park. The GOED may contract with any party for these marketing services. This provision does not preclude or inhibit any certified technology park from contracting for or providing marketing services of their own.

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

- (1) Publish notice of the adoption and substance of the resolution once each week for two consecutive weeks in the official newspaper of the municipality; and
- (2) File the following information with each taxing district that has authority to levy property taxes in the geographic area where the certified technology park is located:
 - (a) A copy of the notice required by this section; and
 - (b) A statement disclosing the impact of the certified technology park including

1 the estimated economic benefits and costs as measured by increased
2 employment and anticipated growth of real property values and the anticipated
3 impact on tax revenues of each taxing unit.

4 The notice shall state the general boundaries of the certified technology park and shall state
5 that written statements or objections may be filed with the governing body until the time
6 designated for the hearing. The notice shall also name the place, date, and time when the
7 governing body shall receive and hear statements and objections from any person interested in
8 or affected by the proceedings pertaining to the proposed allocation area and shall determine the
9 public utility and benefit of the proposed allocation area. The governing body shall file the
10 information required by this section with each taxing district that has authority to levy a property
11 tax within the proposed certified technology park at least ten days before the date of the public
12 hearing. Any person affected in any manner by the hearing, including any taxpayer within the
13 taxing district, shall be considered notified of the pendency of the hearing and of subsequent
14 acts, hearings, adjournments, and orders of the governing body affecting the allocation area if
15 the governing body gives the notice required by this section.

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

22 Section 9. An allocation provision adopted pursuant to section 8 of this Act shall apply to
23 the entire certified technology park and require that any property tax on taxable property
24 subsequently levied by or for the benefit of any public body entitled to a distribution of property

1 taxes in the certified technology park be allocated and distributed as provided in this section.
2 Except as otherwise provided in this section, the proceeds of the taxes attributable to the lesser
3 of base taxable value or the taxable value of the taxable property for the assessment date with
4 respect to which the allocation and distribution is made or the base taxable value. Except as
5 provided in section 10 of this Act, all the property tax proceeds that exceed those described in
6 this section shall be allocated to the governing body for the certified technology park and, when
7 collected, paid into the certified technology park fund established pursuant to section 15 of this
8 Act.

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

- 10 (1) Determine the amount, if any, by which the property tax proceeds to be deposited in
11 the certified technology park fund exceed the amount necessary for the purposes of
12 this Act;
- 13 (2) Provide a written notice to the county auditor and each taxing district that has
14 authority to levy a property tax that is wholly or partly located within the allocation
15 area. The notice shall:
- 16 (a) State the amount, if any, of excess tax proceeds that the governing body has
17 determined may be allocated to the respective taxing districts in the manner
18 prescribed in subdivision (3); or
- 19 (b) State that the governing body has determined there are no excess tax proceeds
20 that may be allocated to the respective taxing units; and
- 21 (3) The county auditor shall allocate to the respective taxing units the amount, if any, of
22 excess tax proceeds determined by the governing body. The governing body may not
23 authorize an allocation of tax proceeds pursuant to this subdivision if to do so
24 endangers the interests of the holder of bonds issued pursuant to this Act.

1 Section 11. Notwithstanding any other law, the taxable valuation of all taxable property in
2 the certified technology park, for purposes of levying a property tax in each taxing district in
3 which the property is located is the lesser of:

- 4 (1) The taxable valuation of the taxable property valued without regard to sections 9 and
5 10 of this Act; or
6 (2) The base taxable valuation as defined in section 1 of this Act.

7 Section 12. The secretary of the Department of Revenue may promulgate rules, pursuant to
8 chapter 1-26, and prescribe the forms and procedures that the secretary of the Department of
9 Revenue requires for the implementation of an allocation area established pursuant to this Act.

10 After each reassessment of property, the secretary of the Department of Revenue shall adjust
11 the base taxable value one time to neutralize any effect of the reassessment on the property tax
12 proceeds allocated to the certified technology park fund.

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

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

20 Not later than sixty days after receiving a copy of the designation of the certified technology
21 park, the secretary of the Department of Revenue shall determine the gross retail base period
22 amount.

23 Section 14. Before October first of each year, the secretary of the Department of Revenue
24 shall calculate the gross retail incremental amount for the preceding state fiscal year for each

1 certified technology park designated pursuant to this Act.

2 Section 15. The state treasurer shall establish an incremental tax financing fund for each
3 certified technology park designated pursuant to this Act. The fund shall be administered by the
4 state treasurer. Money in the fund does not revert to the state general fund at the end of a state
5 fiscal year. Subject to this section, the following amount shall be deposited during each state
6 fiscal year in the incremental tax financing fund established for a certified technology park. The
7 aggregate amount of state and municipal sales and use tax that are remitted by businesses
8 operating in the certified technology park, until the amount of state and municipal sales and use
9 tax deposited equals the gross retail incremental amount for the certified technology park.

10 Not more than a total of five million dollars may be deposited in a particular incremental tax
11 financing fund for a certified technology park over the life of the certified technology park.
12 Before the twentieth day of each month, all amounts held in the incremental tax financing fund
13 established for a certified technology park shall be distributed to the governing body of the
14 municipality for deposit in the certified technology park fund.

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

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

- 21 (1) Acquisition, improvement, preparation, demolition, disposal, construction,
22 reconstruction, remediation, rehabilitation, restoration, preservation, maintenance,
23 repair, furnishing, and equipping of public facilities;

- 24 (2) Operation of public facilities;

- 1 (3) Payment of the principal of and interest on any obligations that are payable solely or
2 in part from money deposited in the fund and that are incurred by the governing body
3 for the purpose of financing or refinancing the development of public facilities in the
4 certified technology park;
- 5 (4) Establishment, augmentation, or restoration of the debt service reserve for obligations
6 described in subdivision (3);
- 7 (5) Payment of the principal of and interest on bonds issued by the governing body to
8 pay for public facilities in or serving the certified technology park;
- 9 (6) Payment of premiums on the redemption before maturity of bonds described in
10 subdivision (3);
- 11 (7) Payment of amounts due under leases payable from money deposited in the fund;
- 12 (8) Reimbursement to the municipality for expenditures made by it for public facilities
13 in or serving the certified technology park; and
- 14 (9) Payment of expenses incurred by the municipality for public facilities that are in the
15 certified technology park or serving the certified technology park.

16 The certified technology park fund may not be used for operating expenses of the governing
17 body of the municipality.

18 Section 18. A governing body of a municipality may issue bonds for the purpose of
19 providing public facilities pursuant to this Act. The bonds shall be authorized by a resolution
20 of the governing body. The terms and form of the bonds shall be set out either in the resolution
21 or in a form of trust indenture approved by the resolution. The governing body shall sell the
22 bonds at public or private sale upon such terms as determined by the governing body. The bonds
23 are payable solely from:

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

- 1 (2) Money distributed to the governing body pursuant to section 15 of this Act;
- 2 (3) Other funds available to the governing body; or
- 3 (4) A combination of the methods listed in this section.

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

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

24 Section 20. That § 6-18-2 be repealed.

~~6-18-2. The governing body of a political subdivision may apply to the Governor's Office of Economic Development for designation of all or part of the area within the political subdivision as a certified technology park or certified site and to enter into an agreement governing the terms and conditions of the designation. The application shall be in a form specified by the Governor's Office of Economic Development and shall include information the Governor's Office of Economic Development determines necessary to make the determinations required pursuant to this chapter.~~

Section 21. That § 6-18-3 be repealed.

~~6-18-3. The governing body of the political subdivision that established the certified technology park may enter an agreement with the Governor's Office of Economic Development establishing the terms and conditions governing a certified technology park designated pursuant to this chapter. Upon designation of the certified technology park under the terms of the agreement, the subsequent failure of any party to comply with the terms of the agreement may result in the termination or rescission of the designation of the area as a certified technology park. The agreement shall include all of the following:~~

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

~~(2) Any covenants and restrictions upon all or part of the properties contained within the certified technology park and terms of enforcement of any covenants or restrictions;~~

~~(3) The financial commitments of any party to the agreement and of any owner or developer of property within the certified technology park;~~

~~(4) The terms of any commitment required from a postsecondary educational institution or private research based institute for support of the operations and activities within the certified technology park;~~

~~(5) The terms of enforcement of the agreement, which may include the definition of~~

1 ~~events of default, cure periods, legal and equitable remedies and rights, and penalties~~
2 ~~and damages, actual or liquidated, upon the occurrence of an event of default; and~~
3 ~~— (6) — The public or private facilities to be developed for the certified technology park and~~
4 ~~the costs of those public or private facilities, as approved by the Governor's Office~~
5 ~~of Economic Development.~~

6 ~~— The governing body of the political subdivision and the Governor's Office of Economic~~
7 ~~Development shall maintain the confidentiality of any information that is submitted as part of~~
8 ~~this review process and marked as confidential.~~

9 Section 22. That § 6-18-4 be repealed.

10 ~~— 6-18-4. The Governor's Office of Economic Development shall promulgate rules pursuant~~
11 ~~to chapter 1-26 to:~~

12 ~~— (1) — Prescribe the application procedures and the form and content of the application and~~
13 ~~business plan for a certified technology park or certified site;~~

14 ~~— (2) — Set the minimum criteria for an area to be designated as a certified technology park~~
15 ~~or certified site;~~

16 ~~— (3) — Establish certain level of financial and technical support for the certified technology~~
17 ~~park and the required evidence of public and private partnerships;~~

18 ~~— (4) — Establish terms and conditions on how the certified technology park may be operated~~
19 ~~including the ownership of facilities and buildings;~~

20 ~~— (5) — Determine the commitment of postsecondary, private, or federal research and~~
21 ~~development for the park;~~

22 ~~— (6) — Determine the commitment of the local governments and economic development~~
23 ~~organization to the park; and~~

24 ~~— (7) — Require certain documents and reports regarding the operation and activities of the~~

1 ~~park to be filed with the Governor's Office of Economic Development.~~