



2026 South Dakota Legislature

Senate Bill 71

Introduced by: The Chair of the Committee on Transportation at the request of the Department of Transportation

1 **An Act to authorize the assumption of certain responsibilities and the waiver of**
 2 **sovereign immunity in connection with certain actions under federal**
 3 **environmental law.**

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

5 **Section 1. That a NEW SECTION be added to chapter 1-44:**

6 The Department of Transportation may, by agreement with the federal government
 7 pursuant to 23 U.S.C. §§ 326 and 327, assume all or part of the responsibilities of the
 8 federal government under the National Environmental Policy Act, as set forth under 42
 9 U.S.C. §§ 4321 to 4370, inclusive, for environmental review, consultation, or other actions
 10 required with respect to highway projects within this state.

11 **Section 2. That a NEW SECTION be added to chapter 1-44:**

12 In cases that involve compliance, discharge, or enforcement of responsibilities
 13 assumed by the Department of Transportation under section 1 of this Act, this state waives
 14 sovereign immunity from suit in federal court provided under the Eleventh Amendment to
 15 the Constitution of the United States.

16 **Section 3. That § 31-2-38 be AMENDED:**

17 **31-2-38.** The Notwithstanding any limitation in § 31-2-13.2 or 31-2-14.2, the
 18 State of South Dakota shall pay to any successful litigant in an action brought pursuant
 19 to this chapter or with respect to any highway or public transportation project pursuant to
 20 section 1 of this Act, the amount of damages awarded and the amount of attorney fees
 21 and costs assessed against the State of South Dakota this state, out of the state highway
 22 fund from all the moneys levied and collected by the state by general state taxation for
 23 state highway purposes, or appropriated for state highway purposes.