



2026 South Dakota Legislature  
**Senate Bill 71**  
**ENROLLED**

AN ACT

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

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

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

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

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

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

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

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

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

I certify that the attached Act originated in the:  
Senate as Bill No. 71

Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_, 2026 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_ for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby approved this \_\_\_\_ day of \_\_\_\_\_, A.D., 2026

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2026 at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of State

Senate Bill No. 71  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State