

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0363

SENATE BILL NO. 68

Introduced by: The Committee on State Affairs at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the establishment, operation, and control of
2 research parks on state land.

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

4 Section 1. The Legislature finds that to increase research and technology-related economic
5 activity in South Dakota and to expand the opportunities for South Dakota faculty members,
6 researchers, and students to participate in the application of research results and technological
7 innovations in commerce, government, or public service, it is critically important to encourage
8 research opportunities and programs within the regental system. To these ends, the Legislature
9 intends that this Act be construed as authorizing and encouraging coordinated public and private
10 investments in facilities situated on state university land and designed to support commercial
11 application of research results and technological innovations.

12 Section 2. Terms as used in this Act mean:

13 (1) "Private party lessee or contractor," a business, a nonprofit corporation, or a research
14 park corporation authorized by lease or contract with the Board of Regents to
15 construct, finance, operate, maintain, reconstruct, remodel, and manage, at its



1 expense and risk, any research park established pursuant to this Act;

2 (2) "Research," a planned research or critical investigation aimed at the discovery of new
3 knowledge to create a new product or service, a new process or technique, or to bring
4 about a significant improvement in an existing product or process;

5 (3) "Research park," a planned real estate development designed to bring together
6 universities, institutes, laboratories, businesses, and governmental and other
7 organizations devoted to testing, research, and development activities, to the
8 commercial application of research results or technological innovation, or to the
9 management of research or technology-based enterprises, agencies, or organizations.

10 The term includes such enterprises as may be necessary to support the activities of
11 the primary tenants, their staff, or visitors; and

12 (4) "Research park corporation," any nonprofit corporation formed pursuant to this Act
13 and title 47.

14 Section 3. The Board of Regents may dedicate state lands under its control to the
15 construction, development, maintenance, and operation of research parks.

16 Section 4. A research park authorized by this Act may accommodate all kinds of facilities,
17 laboratories, businesses, or organizations usually found at research parks affiliated with
18 universities.

19 Section 5. If any lands used for purposes of a research park are determined to be subject to
20 the school and public lands trust established pursuant to S.D. Const., Art. VIII, § 7, then:

21 (1) A civil, state, religious, or public organization seeking to develop and to operate a
22 research park may make application to the commissioner of school and public lands
23 for conveyance pursuant to § 5-9-34. If the Board of Regents agrees to transfer
24 possession of the land, the commissioner may convey defeasible title as provided in

1 § 5-9-35 for the purpose of operating a research park. Upon any reversion, the land
2 shall once again be placed under the control of the Board of Regents as part of the
3 campus from which it was originally severed; or

4 (2) The Board of Regents may select other lands under its control of equal value, as
5 determined by the commissioner of school and public lands, and exchange such other
6 lands for those comprising the research park in order to maintain the principal of the
7 school and public lands trust.

8 Section 6. Any mineral rights to state lands on which a research park has been established
9 shall be administered to support research park operations.

10 Section 7. Notwithstanding any other provision of law, including chapter 5-7, the Board of
11 Regents when approving a research park lease or sublease may lease such portions of the
12 mineral interests reserved to the State of South Dakota in the lands occupied by the research
13 park as may be necessary to permit the research park and its tenants to use geothermal resources
14 for heating or cooling on-site facilities. The mineral interests may be leased on behalf of the
15 State of South Dakota acting by and through the Board of Regents in a manner and upon terms
16 acceptable to the board.

17 Section 8. The commissioner of school and public lands may not authorize the lease of
18 mineral rights if exploitation of such rights would disturb the use of the research park, nor
19 authorize construction of dams, canals, water ditches, or laterals if such structures would impair
20 the use of the research park.

21 Section 9. The Board of Regents may enter into any lease, contract, or agreement with a
22 business, a nonprofit corporation, or a research park corporation to permit that entity, at its
23 expense and risk, to construct, finance, operate, maintain, and operate any research park
24 established pursuant to this Act.

1 Section 10. No lease, contract, or agreement may be construed to authorize the private party
2 lessee or contractor, or any subtenant, creditor, trustee, receiver, lien holder, heir, assignee, or
3 other party claiming an interest or right through such private party lessee or contractor, to use
4 or to permit the use of the research park for purposes other than those specified in this Act.

5 Section 11. The lease, contract, or agreement may permit the private party lessee or
6 contractor, or other parties claiming an interest or right through them, to pledge for
7 commercially reasonable periods of time such rights of use or occupancy as may be possessed
8 in order to obtain financing. However, no such pledge impairs the reversionary interests of the
9 Board of Regents.

10 Section 12. No lease granted pursuant to this Act may have a duration exceeding ninety-nine
11 years.

12 Section 13. Each lease, contract, or agreement shall contain provisions that require
13 commercially reasonable performance by the private lessee or contractor. Each lease, contract,
14 or agreement shall contain provisions that reserve to the Board of Regents the power to enforce
15 the requirements of this Act and of any leases, contracts, or agreements issued pursuant to it,
16 which reserved powers shall include the power of termination.

17 Section 14. Notwithstanding any other provision of law to the contrary, upon termination
18 of any such contract or lease, the Board of Regents may take title to all improvements
19 comprising the research park.

20 Section 15. Nothing in this Act authorizes the Board of Regents or any research park
21 corporation or other entity operating a research park to contract a debt on behalf of, or in any
22 way to obligate, the State of South Dakota, or to pledge, assign, or encumber in any way, or to
23 permit the pledging, assigning, or encumbering in any way, of appropriations made by the
24 Legislature of the State of South Dakota.

1 Section 16. The Board of Regents may form one or more research park corporations,
2 separate and apart from the state, to create, develop, maintain, and operate research parks or
3 economic development initiatives that support the teaching, research, or service mission of the
4 university system by expanding opportunities for South Dakota faculty members, researchers,
5 and students to participate in the application of research results and technological innovations
6 in commerce, government, or public service.

7 Section 17. Each research park corporation shall be governed by, and all of the corporation's
8 functions, powers, and duties shall be exercised by, a board appointed by the Board of Regents.
9 Members of the board may include university presidents, regents, university officers or
10 employees, and other persons selected by the Board of Regents.

11 Section 18. No portion of the net earnings realized by any such research park corporation
12 may inure to any director or officer of the corporation or to any private entity or individual.

13 Section 19. No debt or liability of a research park is an indebtedness, legal or moral, of the
14 State of South Dakota, and any such obligation is payable only from the net revenues, fees,
15 donations, and receipts to be derived from the construction, development, maintenance, and
16 operation of the research park, and is not payable out of nor enforceable against the State of
17 South Dakota, or any fund created or maintained directly or indirectly from taxation.

18 Section 20. No research park corporation may be deemed an agency, public body, or other
19 political subdivision of South Dakota, and no research park corporation may borrow money
20 secured by the State of South Dakota.

21 Section 21. No research park corporation is subject to statutes or rules regulating the conduct
22 of public bodies, including those relating to personnel, procurement of goods and services,
23 board meetings, gross receipts tax, disposition or acquisition of property, capital outlays, per
24 diem and mileage, and inspection of records.

1 Section 22. A research park corporation shall have all rights, powers, and privileges granted
2 to nonprofit corporations pursuant to title 47 which are necessary and convenient to carry out
3 and to effectuate the provisions of this Act.

4 Section 23. The Board of Regents may provide for the construction, development,
5 maintenance, and operation of a research park on the campus of the property in Sioux Falls
6 acquired pursuant to chapter 106 of the 2006 Session Laws and known as the University Center.
7 The limitations stated in that chapter do not apply to the research park nor to activities
8 conducted therein as authorized by this Act.