

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0665

## SENATE BILL NO. 214

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

1 FOR AN ACT ENTITLED, An Act to authorize agreements to indemnify persons who donate  
2 property for publicly beneficial uses and to declare an emergency.

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

4 Section 1. That chapter 5-24 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The Governor may enter into agreements with any person or governmental entity or agency  
7 who donates real or personal property to the Science and Technology Authority for public use  
8 or benefit, whereby the state agrees to indemnify, defend, and hold harmless such person upon  
9 the terms and conditions set forth in this Act. This Act applies only if the donation has been  
10 affirmatively accepted by the Science and Technology Authority, and only if the Governor finds  
11 that the donation was for public use or benefit and concludes that an agreement to indemnify  
12 is in the best interests of the state.

13 Section 2. That chapter 5-24 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 The indemnification provided for in section 1 of this Act may include indemnification of  
16 the donor against liability to any person, governmental entity or agency, or the United States for



1 injuries, costs, expenses, injunctive relief, reclamation, damages (including damages to natural  
2 resources or the environment) or any other claim (including claims for indemnification or  
3 contribution, claims by third parties for death, personal injury, illness, or loss of or damage to  
4 property, or claims for economic loss), under any law (including an administrative rule) for any  
5 claim arising out of or in connection with any contamination, pollution, or other condition or  
6 use of the property, regardless of when a condition giving rise to the liability originated or was  
7 discovered. The state's obligation to indemnify shall be secondary to that of any person who may  
8 be obligated contractually or otherwise to indemnify the donor.

9 Section 3. That chapter 5-24 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purposes of paying any claim under section 2 of this Act, the state may purchase or  
12 otherwise provide for insurance. The state's obligation to indemnify and the waiver of sovereign  
13 immunity provided for in this Act is limited to the extent coverage is afforded under such  
14 insurance.

15 Section 4. That chapter 5-24 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The indemnification provided for in this Act may only be enforced in the circuit court in  
18 Hughes County. For limited purposes of such enforcement, the state waives any claim of  
19 sovereign immunity and consents to suit and to the enforcement of any judgment that may be  
20 rendered against the state as the result of a claim filed under any agreement entered into under  
21 this Act.

22 Section 5. This Act is repealed on July 1, 2007. However, the repeal does not in any case  
23 affect the validity of any agreement entered into pursuant to section 1 of this Act prior to July 1,  
24 2007.

1           Section 6. Whereas, this Act is necessary for the support of the state government and its  
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
3 full force and effect from and after its passage and approval.