

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

527L0621

## SENATE BILL NO. 218

Introduced by: Senators Koskan, Abdallah, Adelstein, Apa, Bartling, Bogue, Dempster, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, McNenny, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Sutton (Dan), and Sutton (Duane) and Representatives Dykstra, Garnos, Gassman, Gillespie, Hackl, Haley, Hargens, Hunt, Jensen, Jerke, Klaudt, Kraus, Michels, Miles, Novstrup, Olson (Ryan), Putnam, Rave, Rhoden, Rounds, and Wick

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority.

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

3 Section 1. Terms used in this Act man as follows:

4 (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to  
5 this Act;

6 (2) "Board," the board of directors of the authority;

7 (3) "Facilities," electric generation and electric transmission facilities and the related  
8 supporting infrastructure, including any interest therein.

9 Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and  
10 expand the state's economy by developing in this state the energy production facilities and the  
11 energy transmission facilities necessary to produce and transport energy to markets outside of  
12 the state.

13 Section 3. The authority may provide for the financing, construction, development,



1 maintenance, and operation of new energy production facilities and energy transmission  
2 facilities. The authority may own, lease, or rent such facilities. The authority may enter into  
3 partnerships with public and private entities to develop and operate such facilities.

4 Section 4. If the authority becomes the owner or partial owner of any energy production  
5 facility or energy transmission facility, the authority shall attempt to divest itself of ownership  
6 as soon as economically practical.

7 Section 5. In order to finance projects authorized pursuant to this Act, the authority may  
8 issue and have outstanding bonds to finance facilities in an amount not to exceed one billion  
9 dollars. The authority shall have contracts sufficient to justify the issuance of bonds.

10 Section 6. There is hereby appropriated from the state general fund the sum of five hundred  
11 thousand dollars (\$500,000), or so much thereof as may be necessary, to the authority created  
12 pursuant to this Act to pursue the construction of facilities authorized by this Act.

13 Section 7. The director of the authority shall approve vouchers and the state auditor shall  
14 draw warrants to pay expenditures authorized by this Act.

15 Section 8. Any amounts appropriated in this Act not lawfully expended or obligated by  
16 June 30, 2007, shall revert in accordance with § 4-8-21.

17 Section 9. The governing and administrative powers of the authority are vested in its board  
18 of directors consisting of seven members. The Governor shall appoint the directors, with the  
19 advice and consent of the Senate. Not all members of the board may be of the same political  
20 party. The terms of the members of the board may not exceed six years. The terms of the initial  
21 board of directors shall be staggered by the drawing of lots so that not more than two of the  
22 director's terms shall end at the same time. Members of the board may serve more than one term.

23 Section 10. The Governor may remove any member of the board for cause, including  
24 incompetence, neglect of duty, or malfeasance in office.

1 Section 11. Members of the board shall receive compensation for the performance of their  
2 duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the  
3 authority. Members may be reimbursed at rates established by the Bureau of Personnel for  
4 necessary expenses, including travel and lodging expenses, incurred in connection with the  
5 performance of their duties as members.

6 Section 12. Each member of the board shall, before entering upon the duties of office, take  
7 and subscribe the constitutional oath of office.

8 Section 13. The board may appoint an executive director. The executive director may not  
9 be a member of the board. The executive director shall hold office at the discretion of the board.  
10 The executive director shall be the chief administrative and operational officer of the authority,  
11 shall direct and supervise its administrative affairs and general management, shall perform such  
12 other duties as may be prescribed from time to time by the board, and shall receive  
13 compensation fixed by the board. The executive director shall attend all meetings of the board.  
14 However, no action of the board or the authority is invalid on account of the absence of the  
15 executive director from a meeting. The board may engage the services of such other agents and  
16 employees as they deem appropriate, including attorneys, appraisers, scientists, researchers,  
17 engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and  
18 fix their compensation.

19 Section 14. The board shall meet on the call of the chair, upon the written request of four  
20 members of the board, or upon the request of the executive director.

21 Section 15. A majority of the members of the board constitute a quorum for the transaction  
22 of business. All official acts of the authority shall require the affirmative vote of at least four  
23 members of the board at a meeting of the board at which the members casting those affirmative  
24 votes are present.

1 Section 16. Notwithstanding any other law to the contrary it is not a conflict of interest for  
2 a trustee, director, officer, or employee of any financial institution, investment banking firm,  
3 brokerage firm, commercial bank or trust company, architectural firm, utility company,  
4 engineering firm, mining firm, insurance company, energy company, or any other firm, person,  
5 or corporation to serve as a member of the authority, if the trustee, director, officer, or employee  
6 abstains from deliberation, action, and vote by the authority in each instance where the business  
7 affiliation of any such trustee, director, officer, or employee is involved.

8 Section 17. Each meeting of the authority for any purpose whatsoever shall be open to the  
9 public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the  
10 authority. Resolutions need not be published or posted.

11 Section 18. The executive director or other person designated by the authority shall keep a  
12 record of the proceedings thereof and shall be custodian of all books, documents, and papers  
13 filed with the authority, the minute books or journal of the authority and its official seal. The  
14 executive director or other person designated by the authority may cause copies to be made of  
15 all minutes and other records and documents of the authority and may give certificates under  
16 the official seal of the authority to the effect that such copies are true copies and all persons  
17 dealing with the authority may rely on such certificates.

18 Section 19. The authority shall establish and collect fees, schedules of fees, rentals and other  
19 charges for the use of the facilities of the authority as the board may determine, and may borrow  
20 funds for the execution of the purposes of the authority, and mortgage and pledge any lease or  
21 leases granted, assigned, or subleased by the authority.

22 Section 20. The authority may:

- 23 (1) Have perpetual succession as a body politic and corporate exercising essential public  
24 functions;

- 1 (2) Sue and be sued in its own name;
- 2 (3) Have an official seal and alter the seal at will;
- 3 (4) Maintain an office at such places within the state as the authority may designate;
- 4 (5) Make and execute contracts and all other instruments necessary or convenient for the  
5 performance of its duties and the exercise of its powers and functions under this Act;
- 6 (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and  
7 employees as may be required and contract with agencies of the state to provide staff  
8 and support services;
- 9 (7) Procure insurance against any loss in connection with its property and other assets,  
10 including loans and notes in such amounts and from such insurers as it may deem  
11 advisable;
- 12 (8) Borrow money and issue bonds as provided by this Act;
- 13 (9) Procure insurance, letters of credit, guarantees, or other credit enhancement  
14 arrangements from any public or private entities, including any department, agency,  
15 or instrumentality of the United States or the state, for payment of all or any portion  
16 of any bonds issued by the authority, including the power to pay premiums, fees, or  
17 other charges on any such insurance, letters of credit, guarantees, or credit  
18 arrangements;
- 19 (10) Receive and accept from any source financial aid or contributions of moneys,  
20 property, labor, or other things of value to be held, used, and applied to carry out the  
21 purposes of this Act subject to the conditions upon which the grants or contributions  
22 are made, including, gifts or grants from any department, agency, or instrumentality  
23 of the United States for any purpose consistent with the provisions of this Act;
- 24 (11) To the extent permitted under its contract with the holders of bonds of the authority,

1 consent to any modification with respect to the rate of interest, time, and payment of  
2 any installment of principal or interest, or any other term of any contract, loan, loan  
3 note, loan note commitment, contract, lease, or agreement of any kind to which the  
4 authority is a party;

5 (12) To make loans and grants to, and enter into financing agreements with, any  
6 governmental agency or any person for the costs incurred in connection with the  
7 development, construction, acquisition, improvement, maintenance, operation, or  
8 decommissioning of a project, or for the maintenance of the physical or structural  
9 integrity of real or personal property incorporated or which may be incorporated into  
10 a project, in accordance with a written agreement between the authority and such  
11 governmental agency or person. However, no such loan or grant may exceed the total  
12 cost of such project as determined by the governmental agency or person and  
13 approved by the authority;

14 (13) Cooperate with and exchange services, personnel, and information with any  
15 governmental agency;

16 (14) Enter into agreements for management on behalf of the authority of any of its  
17 properties upon such terms and conditions as may be mutually agreeable;

18 (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority  
19 finds such action to be in furtherance of the purposes for which it was organized;

20 (16) Acquire, hold, lease, and dispose of real and personal property, and construct,  
21 develop, maintain, operate, and decommission projects for the purposes for which the  
22 authority was created;

23 (17) Indemnify any person or governmental agency for such reasonable risks as the  
24 authority deems advisable if the indemnification is a condition of a grant, gift, or

1 donation to the authority. However, any such obligation to indemnify may only be  
2 paid from insurance or from revenues of the authority, and such obligation does not  
3 constitute a debt or obligation of the State of South Dakota;

4 (18) Do any act and execute any instrument which in the authority's judgment is necessary  
5 or convenient to the exercise of the powers granted by this Act or reasonably implied  
6 from it.;

7 (19) After consultation with the Public Utilities Commission and any other relevant  
8 governmental authority, establish and charge reasonable fees, rates, tariffs, or other  
9 charges for the use of all facilities administered by the authority and for all services  
10 rendered by it; and

11 (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity.

12 Section 21. The authority may invest any funds not needed for immediate investment in the  
13 following:

14 (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities  
15 constituting direct obligations of, or obligations the principal of and interest on which  
16 are fully guaranteed or insured by, the United States of America;

17 (2) Obligations issued by or obligations the principal of and interest on which are fully  
18 guaranteed or insured by any agency or instrumentality of the United States of  
19 America;

20 (3) Certificates of deposit or time deposits constituting direct obligations of any bank  
21 which is a qualified public depository or any savings and loan association which is  
22 a savings and loan depository under the Public Deposit Insurance Act pursuant to  
23 chapter 4-6A, unless sufficient volume of such certificates is not available at  
24 competitive interest rates. In that event, the authority may purchase noncollateralized

1 direct obligations of any bank or savings institution or holding company if such  
2 institution or holding company is rated in the highest two quality categories by a  
3 nationally recognized rating agency;

4 (4) Obligations of any solvent insurance company or other corporation or business entity  
5 existing under the laws of the United States or any state thereof, if the obligation of  
6 the insurance company or other corporation or business entity is rated in the two  
7 highest classifications established by a standard rating service of insurance  
8 companies or a nationally recognized rating agency;

9 (5) Short term discount obligations of the Federal National Mortgage Association;

10 (6) Obligations issued by any state of the United States or any political subdivision,  
11 public instrumentality, or public authority of any state of the United States, which  
12 obligations are not callable before the date the principal thereof will be required to  
13 be paid and which obligations are fully secured as to both sufficiency and timely  
14 payment by, and payable solely from, securities described in subdivision (1) and  
15 which obligations are rated in the highest investment classification by at least two  
16 standard rating services of such obligations.

17 Any securities may be purchased at the offering or market price thereof at the time of the  
18 purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to  
19 the time when, in the judgment of the authority, the funds so invested will be required for  
20 expenditure. The express judgment of the authority as to the time when any funds will be  
21 required for expenditure or be redeemable is final and conclusive. Investment in any obligation  
22 enumerated in this section may be made either directly or in the form of securities of, or other  
23 interests in, an investment company registered under the Federal Investment Act of 1940, whose  
24 shares are registered under the Federal Securities Act of 1933, and whose investments are

1 limited to these obligations.

2 Section 22. The authority may issue revenue bonds, notes, or other evidences of  
3 indebtedness to pay the cost incurred in connection with developing, constructing, acquiring,  
4 improving, maintaining, operating, and decommissioning projects. For the purpose of  
5 evidencing the obligations of the authority to repay any money borrowed, the authority may,  
6 pursuant to resolution, from time to time issue and dispose of its interest bearing revenue bonds,  
7 notes, or other instruments and may also from time to time issue and dispose of such bonds,  
8 notes, or other instruments to refund, at maturity, at a redemption date or in advance of either,  
9 any revenue bonds, notes, or other instruments pursuant to redemption provisions or at any time  
10 before maturity. All such revenue bonds, notes, or other instruments shall be payable solely  
11 from the revenues or income to be derived with respect to projects, from the leasing or sale of  
12 the projects, or from any other funds available to the authority for such purposes. The revenue  
13 bonds, notes, or other instruments may bear such date or dates, may mature at such time or times  
14 not exceeding forty years from their respective dates, may bear interest at such rate or rates, may  
15 be in such form, may carry such registration privileges, may be executed in such manner, may  
16 be payable at such place or places, may be made subject to redemption in such manner and upon  
17 such terms, with or without premium as is stated on the face thereof, may be authenticated in  
18 such manner, and may contain such terms and covenants as may be provided by an applicable  
19 resolution.

20 Section 23. Any holder of any revenue bonds, notes, or other instruments issued by the  
21 authority may bring suits at law or proceedings in equity to compel the performance and  
22 observance by any corporation or person or by the authority or any of its agents or employees  
23 of any contract or covenant made with the holders of such revenue bonds, notes, or other  
24 instruments, to compel such corporation, person, the authority, and any of its agents or

1 employees to perform any duties required to be performed for the benefit of the holders of any  
2 such revenue bonds, notes, or other instruments by the provision of the resolution authorizing  
3 their issuance and to enjoin such corporation, person, the authority, and any of its agents or  
4 employees from taking any action in conflict with any such contract or covenant.

5 Section 24. If the authority fails to pay the principal of or interest on any of the revenue  
6 bonds or premium, if any, as the same become due, a civil action to compel payment may be  
7 instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which  
8 such default of payment exists or by an indenture trustee acting on behalf of such holders.  
9 Delivery of a summons and a copy of the complaint to the chair of the board constitutes  
10 sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and  
11 jurisdiction over the authority and its officers named as defendants for the purpose of  
12 compelling such payment.

13 Section 25. Notwithstanding the form and tenor of any such revenue bonds, notes, or other  
14 instruments and in the absence of any express recital on the face of any such revenue bond, note,  
15 or other instruments that it is non-negotiable, all such revenue bonds, notes, and other  
16 instruments shall be negotiable instruments. Pending the preparation and execution of any such  
17 revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may  
18 be issued as provided by resolution.

19 Section 26. To secure the payment of any or all of such revenue bonds, notes, or other  
20 instruments, the revenues to be received by the authority from a lease agreement or loan  
21 agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings  
22 of the authority in connection with the issuance thereof and the issuance of any additional  
23 revenue bonds, notes, or other instruments payable from such revenues, income, or other funds  
24 to be derived from projects, the authority may execute and deliver a trust agreement. A remedy

1 for any breach or default of the terms of any such trust agreement by the authority may be by  
2 mandamus proceedings in the appropriate circuit court to compel the performance and  
3 compliance therewith, but the trust agreement may prescribe by whom or on whose behalf the  
4 action may be instituted.

5 Section 27. The revenue bonds or notes shall be secured as provided in the authorizing  
6 resolution which may, notwithstanding any other provision of this Act, include in addition to  
7 any other security a specific pledge or assignment of and lien on or security interest in any or  
8 all revenues or money of the authority from whatever source which may by law be used for debt  
9 service purposes and a specific pledge or assignment of and lien on or security interest in any  
10 funds or accounts established or provided for by resolution of the authority authorizing the  
11 issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority  
12 of revenues or other moneys received or to be received by the authority pursuant to an  
13 agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other  
14 evidences of indebtedness of the authority shall be binding from the time the pledge is made.  
15 Revenues and other moneys received or to be received by the authority pursuant to an agreement  
16 with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or  
17 other evidences of indebtedness of the authority shall be held outside of the state treasury and  
18 in the custody of the authority or a trustee or a depository appointed by the authority. Revenues  
19 or other moneys received or to be received by the authority pursuant to an agreement with a  
20 governmental agency relating to a project so pledged to pay revenue bonds, notes, or other  
21 evidences of indebtedness of the authority and thereafter received by the authority or such  
22 trustee or depository shall immediately be subject to the lien of the pledge without any physical  
23 delivery thereof or further act, and the lien of any pledge shall be binding against all parties  
24 having claims of any kind of tort, contract, or otherwise against the authority or the State of

1 South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor  
2 any other instrument by which a pledge is created need be filed or recorded except in the records  
3 of the authority.

4 Section 28. The State of South Dakota pledges to and agrees with the holders of the revenue  
5 bonds and notes of the authority issued pursuant to this Act that the state will not limit or  
6 decrease the rights and powers vested in the authority by this Act so as to impair the terms of  
7 any contract made by the authority with such holders or in any way impair the rights and  
8 remedies of such holders until such revenue bonds, notes, or other instruments, together with  
9 interest thereon, with interest on any unpaid installments of interest, and all costs and expenses  
10 in connection with any action or proceedings by or on behalf of such holders, are fully met and  
11 discharged. The authority may include these pledges and agreements of the state in any contract  
12 with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

13 Section 29. Nothing in this Act may be construed to authorize the authority to create a debt  
14 of the state within the meaning of the Constitution or statutes of South Dakota and all revenue  
15 bonds, notes, other instruments and obligations issued by the authority pursuant to the  
16 provisions of this Act are payable and shall state that they are payable solely from the funds  
17 pledged for their payment in accordance with the resolution authorizing their issuance or in any  
18 trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any  
19 event liable for the payment of the principal of or interest on any bonds, notes, instruments, or  
20 obligations issued by the authority or for the performance of any pledge, mortgage, obligation,  
21 or agreement of any kind whatsoever which may be undertaken by the authority. No breach of  
22 any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon  
23 the state or any charge upon its general credit or against its taxing power.

24 Section 30. The state and all counties, municipalities, political subdivisions, public bodies,

1 public officers, banks, bankers, trust companies, savings banks and institutions, building and  
2 loan associations, savings and loan associations, personal representatives, conservators, trustees,  
3 and other fiduciaries may legally invest any debt service funds, money, or other funds belonging  
4 to them or within their control in any bonds or notes issued pursuant to this Act.

5 Section 31. Any documentary material or data made or received by the authority for  
6 purposes under this Act, to the extent that such material or data consists of trade secrets,  
7 scientific or technical secrets, matters involving national security, or commercial or financial  
8 information regarding the operation of a business, may not be considered public records, and  
9 are exempt from disclosure. Any discussion or consideration of such information may be held  
10 by the authority in executive session.

11 Section 32. The authority may acquire title to any project with respect to which it exercises  
12 its authority.

13 Section 33. The authority may acquire by purchase, lease, gift, or otherwise any property or  
14 rights to any property from any person or any governmental agency, whether improved for the  
15 purposes of any prospective project or unimproved. The authority may also accept any donation  
16 of funds for its purposes from any of those sources.

17 Section 34. The authority may acquire, develop, construct, improve, maintain, operate, and  
18 decommission any project, either under its own direction or through collaboration with any  
19 approved applicant, or to acquire any project through purchase or otherwise, using for that  
20 purpose the proceeds derived from its sale of revenue bonds, notes, or other instruments or  
21 governmental loans, grants, or other funds and to hold title to those projects in the name of the  
22 authority.

23 Section 35. The authority may enter into intergovernmental agreements with any  
24 governmental agency.

1 Section 36. The authority may share employees with governmental agencies.

2 Section 37. The provisions of § 5-2-19 do not apply to real or personal property given to the  
3 authority.

4 Section 38. The authority shall designate a qualified public depository as defined in § 4-6A-  
5 1 as a depository of its money. Those depositories shall be designated only within the state and  
6 upon condition that bonds approved as to form and surety by the authority and at least equal in  
7 amount to the maximum sum expected to be on deposit at any one time shall be first given by  
8 the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt  
9 repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in  
10 any such depository, the treasurer and the sureties on the treasurer's official bond are, to that  
11 extent, exempt from liability for the loss of any of the deposited funds by reason of the failure,  
12 bankruptcy, or any other act or default of the depository. However, the authority may accept  
13 assignments of collateral by any depository of its funds to secure the deposits to the same extent  
14 and conditioned in the same manner as assignments of collateral are permitted by law to secure  
15 deposits of the funds consistent with the provisions of chapter 4-6A.

16 Section 39. The income of the authority and all land, improvements, equipment, fixtures,  
17 or other property interests owned by the authority are exempt from all taxation in the State of  
18 South Dakota. The authority is exempt from the provisions of chapter 47-31A.

19 Section 40. The authority is attached to the Department of Tourism and State Development  
20 for reporting purposes. The authority shall submit such records, information, and reports in the  
21 form and at such times as required by the secretary. However, the authority shall report at least  
22 annually.

23 Section 41. Notwithstanding any other provisions of law, all funds received by the authority  
24 shall be set forth in an informational budget as described in § 4-7-7.2.