Bill Brief – House Bill 1064

Options for Disposition or Use of the School for the Deaf Property in Sioux Falls

What has been done to address use of School for the Deaf property in Sioux Falls?

• After a Board of Regents’ committee recommended selling undeveloped property at the School for the Deaf in Sioux Falls, the regents took official action Dec. 6, 2017, to approve a future sale of surplus real estate. The board also agreed to maintain the school’s core operations and services at the historic Sioux Falls site, and lease out any part of the school’s main building not considered necessary for School for the Deaf operations.

What does this bill do?

• This bill amends 2017 legislation that encouraged the sale of all or any portion of the historic South Dakota School for the Deaf (SDSD) campus in Sioux Falls.

• HB 1064 amends the 2017 legislation in two principal ways:
  1. It permits property exchanges or commercial leases, in addition to property sales; and
  2. It differentiates between trust and non-trust campus property, allowing for the sale of non-trust property by means other than a public auction and by appropriating the net proceeds from the sale of non-trust land to School for the Deaf for capital or operating expenses.

• HB 1064 also amends existing statutes:
  o To provide clearer differentiation between sale of trust land and sale of non-trust land,
  o To provide assurance that any commercial lease income realized from trust land will be paid out to SDSD, and
  o To authorize the Board of Regents to undertake the commercial lease of portions of buildings that SDSD continues to occupy.

• Recognizing that the Board of Regents may decide to continue to operate SDSD from its current facilities, to lease portions of those facilities, and to sell a portion of the non-trust land in order to finance certain improvements or repairs, House Bill 1064 authorizes such activities and appropriates net proceeds or rentals to the Board of Regents to support capital and operating expenditures.
Background and Legal Detail:

- The 2017 legislation was based upon an assumption that the whole campus and all improvements formed part of the SDSD endowment trust. Accordingly, it limited the disposition options to sales conducted by public auction and it required that all proceeds be added to the SDSD endowment investment fund, with the increased investment earnings being payable to support the institution.

- The 2017 legislation also assumed that SDSD would continue to provide services that it currently provides at facilities on the historic campus. As a practical matter, this presented two options: 1) to continue to use part of the campus to support SDSD or 2) to relocate to a new facility. A choice to relocate would require either an appropriation to purchase a new facility or assurance that available revenues would cover new lease costs.

  - The requirement that all sale proceeds be deposited into the SDSD endowment investment fund presented an impediment to being able to finance relocation. The Constitution allows for exchange of trust lands, so long as the exchange does not diminish the value of the trust. An exchange of properties would provide an avenue to secure a new site without having to find new monies to finance its acquisition. Accordingly, House Bill 1064 amends the 2017 legislation to authorize land exchanges.

  - The requirement that all sale proceeds be deposited into the SDSD endowment investment fund also presented a challenge in the event that SDSD remained in place but sold a portion of the campus grounds or facilities. A commercial lease might provide viable alternative means to create a revenue stream to assist in meeting such foreseeable expenses. Accordingly, House Bill 1064 amends the 2017 legislation to authorize commercial leases.

- When reviewing the 2017 legislation, it was determined that approximately half of the campus grounds were not in the endowment trust, since they had been purchased by the Territory of Dakota. This meant that the non-trust portions of the campus could be sold or leased through means other than a public auction. Accordingly, House Bill 1064 amends the 2017 legislation to permit sales through sealed bids (a process already employed by the Department of Transportation) or through competitive sealed proposals to achieve a development that complements SDSD operations (modeled on a process already employed by municipalities for industrial development or other public purpose).

- To maximize the options available to the Board of Regents, House Bill 1064 was drawn to permit the regents to keep SDSD at its historic location, but to make more efficient use of existing facilities through commercial leases.

- Finally, the option to permit co-location of SDSD and commercial lessees in a single structure presents questions involving lessee renovations within state-owned buildings. Accordingly, House Bill 1064 authorizes such leases and establishes requirements that should assure that tenant modifications are consistent with the type and quality of work that the state requires.