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## Agricultural and Grazing Leases of South Dakota School and Public Lands

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Each year the South Dakota Cooperative Extension Service receives many questions concerning the legality of land lease agreements. South Dakota law addresses many aspects of land rental arrangements. The material in this publication is presented only as a guideline or reference. This material is presented with the understanding and intent that the authors are not providing legal services. South Dakota codified law has specific sections and language that pertain to agricultural and grazing leases. This material was obtained from the South Dakota Legislative Research Council Web page found at <http://legis.state.sd.us/statutes/index.aspx>. The information in this publication is believed to be current as of the date of publication. Readers are cautioned to check with an attorney regarding any changes to the legal code governing agricultural and grazing leases. **If legal advice relative to a problem is desired, the services of a competent attorney should be obtained.**

South Dakota codified law has specific sections and language that pertains to agricultural and grazing leases of school and public lands. Some information regarding the leasing of South Dakota school and public lands can be found at <http://www.sdpubliclands.com/surface/grazingagrilases.shtm>. Information obtained from that Web site explains that “when South Dakota became a state in 1889, the federal government granted the state over 3.5 million acres of land. In each township, sections 16 and 36 were to be used for schools and other public purposes” (sdpubliclands.com). Further information obtained states that there are “765,000 acres of [s]chool and [p]ublic lands” leased for grazing and agricultural purposes, with the majority of that land being in the western portion of

South Dakota (sdpubliclands.com). The majority of South Dakota school and public lands is grassland, with only 2% of the land being used for crop production (sdpubliclands.com).

Lease rates for South Dakota school and public lands are set by a statutory regulation. This publication provides information on some of those statutory provisions. The following information is not intended to be an all-inclusive list of all provisions of South Dakota law governing agricultural and grazing leases of school and public lands, but is provided as reference material only. Additional information on South Dakota school and public lands can be found at <http://www.sdpubliclands.com/>. Information can be obtained on school-land maps, lease auctions, and mineral auctions, as well as the most recent annual report and the latest news.

### PROCESS OF LEASING SOUTH DAKOTA SCHOOL AND PUBLIC LANDS

South Dakota school and public lands are leased through a public auction process. South Dakota Codified Law (SDCL) section 5-5-5 states:

If land situated in a county is designated for leasing as provided in § 5-5-3, such land shall be advertised for lease at public auction by the publication of a notice stating the time and place at which the leasing of the land will begin. The notice shall be published once each week for at least four consecutive weeks in the official newspapers of the county in which the land is located.

Once the notice of the public auction of South Dakota school and public lands has been advertised, South Dakota statutes further define how the auction is to be conducted. The commissioner of school and public lands is given the authority to conduct the auction. SDCL section 5-5-6 states:

The lands designated shall be offered for lease at public auction to the highest bidder, at the courthouse of the county within which the lands are situated; or, if there be no courthouse, at the building in which the office of the county auditor is located. The auction shall be between the hours of 10 a.m. and 5 p.m.

Leases for South Dakota school and public lands can be written for up to 5 years. However, South Dakota statutes specify that the commissioner of school and public lands may accept a bid for a lease covering a period of 1 year or more, but not exceeding 5 years (SDCL sections 5-5-11 and 5-5-12). SDCL section 5-5-13 states:

The commissioner may lease agricultural and grazing lands for the period of up to 4 years for the purpose of approved land renovation practices such as summer-fallowing, mechanical or chemical control, ripping, furrowing, contouring, deferred grazing, wildlife production, or conservation plans as approved by the local conservation district, if in his opinion it is necessary to do so in order to bring the land back into production, the lessee to pay only 1 year's rent for such land.

With the number of acres of public and school land in South Dakota that are eligible for leasing, some may wonder why there are not more lease auctions every year. SDCL section 5-5-25 may offer an explanation to the question:

The commissioner shall notify each lessee by certified or registered mail directed to his post office address, as shown by the records in the office of the commissioner, on or before the first day of November first preceding the expiration of each lease that such lease will expire the following March first.

SDCL section 5-5-25 also explains that the commissioner can state the rate at which the lease can be

extended for an additional 5 years. Thus, the current lease holder may be able to extend a lease and no lease action would be necessary.

## **LEASE RATES**

Generally, for leases of agricultural property, the cash rental rate should be the rate that equates 1) the amount of land that landlords would be willing to rent and 2) the amount of land that tenants are willing to rent, for that given price. While landlords hope to receive the highest possible rate, and tenants hope to pay the lowest rate possible, both parties are willing to negotiate to determine a rate that is fair to both. Both tenants and landlords will state that a fair lease is a lease that is equitable or fair to both parties. However, in practice, it is much easier to talk about an equitable agreement than to actually negotiate one. Cash rental rates depend on several factors, including last year's rental rate, expected crop prices and production costs, government farm program provisions, and the availability of and competition for rental land in the community. Differences in cash rents among different parcels of land are influenced by the productivity, size, location, accessibility and configuration of the parcel; government farm program yields, base levels, and production restrictions; facilities included (e.g., buildings, irrigation equipment); and the relationship between landowner and tenant.

For leases of South Dakota school and public lands, the rate at which the property can be leased is governed by state statutes. SDCL section 5-5-6.1 states that the commissioner can specify the minimum annual rental rate per acre for property to be leased. This is the rate at which the lease auction is started. SDCL section 5-5-6.1 states the following are considered when calculating minimum annual rental rates:

1. Location, accessibility, and utility of the land as influenced by roads, easements, and topography
2. Soil capabilities
3. Climate
4. Current rental rates prevailing in the county in which such lands are situated

There are also additional considerations for the commissioner. SDCL section 5.5.10.2 states that the commissioner has the duty to appraise the grazing lands to determine the number of animals that can be

grazed on the land. SCDL section 5-5-10.1 defines animal units, annual animal carrying capacity, and South Dakota school and public grazing land rental rate:

- (1) 'Animal unit,' one cow and calf, one horse, five sheep, or five goats.
- (2) 'Annual animal carrying capacity,' the number of acres needed for one animal unit to subsist on natural forage, on a given tract of land for one year.
- (3) 'Rental rate,' 20 percent of the average price of one calf as sold in South Dakota for the last reported 5 years based on the weight of a 425 pound calf.

State statues also direct the commissioner to take into account several factors for assessing the carrying capacity of grasslands. These factors are listed in SDCL section 5-5-10.3:

- (1) Inventory of the forage resources: kind, amount, and location of vegetation.
- (2) Accessibility and usability of the forage resources as influenced by topography, availability of stock water and season of usability.
- (3) Condition of soils—the erosion situation.
- (4) Other and related resources—such as timber and watershed protection.
- (5) Annual animal carrying capacity used by other public agencies in the same locality.
- (6) Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.
- (7) Carrying capacity set for similar land in a state grazing district in which the land is situated.

While SCDL section 5-5-10.1 gives a definition of rental rate, SDCL section 5-5-10.4 further defines the formula for calculating the rate. SDCL section 5-5-10.4 states, in part:

In fixing the minimum annual rental per acre, the following formula shall be used:

The rental rate shall be divided by the annual animal carrying capacity.

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determination of the commissioner of school and public lands made pursuant to the appraisal of grazing lands provided in § 5-5-10.2.

The average price per pound of all calves sold in South Dakota shall be taken from statistics published by the South Dakota Crop and Livestock Reporting Service of the United States Department of Agriculture current at the time of computation of the rental.

Once the opportunity to lease South Dakota school or public land is offered at auction, the winning bidder must deposit with the commissioner the rent for that year. Rent for South Dakota school and public land is to be paid in advance on January 31 of each year.

South Dakota law addresses many aspects of land rental arrangements. The material in this publication is presented only as a guideline or reference. Readers are encouraged to consult the South Dakota Commissioner of School and Public Lands or a competent attorney if they have specific questions concerning South Dakota school and public lands. There are several provisions that relate to school and public lands specified in South Dakota statute that are not addressed in this publication. Some of the topics not discussed in this publication are land improvements, conservation activities, assignment or subletting of lease, and the control of weeds on public land.



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