Amendment B, School and Public Lands: Fines Apportionment and Interest Rate Change

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Fines Apportionment and Interest Rate Change

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In this amendment offered by the Legislature changes in Sections 3 and 5 of Article VIII of the state constitution are proposed. Voters must vote on the changes proposed in both sections together. A "yes" vote favors passage of the amendment.

Proposed change: apportionment of fines

Under the present constitution, the proceeds from violations of state laws are paid to the county treasurer by the clerk of courts in the county where the fines are imposed. The county treasurers then remit the funds to the state treasurer. The commissioner of school and public lands apportions the funds back to the county treasurer in the counties where the fines were collected who then apportions them to the elementary and secondary schools.

The funds have been apportioned on the basis of the number of children of school age in each school within a county. In the 1981-82 school year, $3,215,794.85 from fines was apportioned to the schools (about 1% of total South Dakota school expenditures).

The proposed change would eliminate the requirement that proceeds from fines be remitted to the state treasurer and then apportioned back to the schools by the commissioner of school and public lands. The county treasurer would apportion the fines directly to the schools.

In the past, the census taken each year by the individual schools was used as the basis for apportionment. The 1982 Legislature repealed the law requiring the school census. Future apportionments will be based upon average daily membership.

Proposed changes: terms of school lands sales

Two changes are proposed in this section. The present wording of this section stipulates that the interest rate on school and public land sales contracts shall be 5% annually and that land for sale must be advertised in at least three newspapers of general circulation, two of which shall be located in the vicinity of the land to be sold, and one at the seat of government (state capitol).

The proposed changes would eliminate the 5% interest rate stipulation and substitute a requirement that the interest rate be established by the Legislature. The advertising requirement would be deleted entirely from the constitution, and the statutes would set forth the advertising requirements.

Significance of the change in fine apportionment

The change would eliminate some administrative costs. More importantly, it would speed the time from the initial fine payment to the disbursement to the schools.

If the voters approve the amendment, the state treasurer and the commissioner of school and public lands will no longer be involved in the apportionment process. Fines would be collected by the clerk of courts and remitted directly to the county treasurer who would then apportion them to the schools.

Under the present system, county treasurers remit the fines collected to the state treasurer monthly, and the funds are placed in interest bearing accounts. The funds accumulate for a 12-month apportionment year. After a 5-month holding period they are then apportioned back to the counties for distribution to the school districts. The process can be as long as 18 months or as short as 6 months, depending on when during the apportionment year the fines were paid.

Under the terms of the proposed amendment, the clerk of courts would certify the fines to the treasurer at the end of each month. The treasurer would then apportion the funds as a part of the regular monthly distributions to the
schools. The proposed procedure should cut the maximum time from 18 months to 50 days and the minimum from 6 months to 20 days.

The proposed amendment would not change the amount of fines apportioned to the individual schools. It would eliminate the state investment and apportionment of the interest. Under the present constitution, interest earned on fines is placed in the Common School Interest and Income Fund which is apportioned annually to the schools on a per pupil basis. Thus, schools in counties where fine collections have been low receive the same interest apportionment per pupil as the schools where the amount of fine collections was high. It is quite possible for a county to receive a larger interest payment than the amount deposited in fines.

If the amendment passes, individual schools will have greater flexibility in handling their apportioned share. They may use it or place it in interest bearing accounts. Currently a number of school districts take out short-term loans to meet cash flow problems.

Significance of the changes in land sales interest rates

The proposed change in section 5 is designed to allow flexibility in the interest charged on school and public land sales contracts. The 5% rate fixed by the present constitution is far below the current market rate. The Legislature must establish the rate of interest by law under the terms of the proposed amendment. The principal on all sales of land is deposited in the permanent school fund which, according to the constitution, can never be spent. The interest earned from the permanent school fund is deposited in the Interest and Income Fund along with interest on the sale of school and public land and is apportioned to the schools annually.

In fiscal 1982 elementary and secondary schools were apportioned $7.51 million interest income earned from permanent school fund investments and $607,360 from interest on land sale deferred payments.

The proposed change could substantially increase the amount of interest on land sale deferred payments to be distributed annually, assuming the Legislature establishes the interest rates at, or near, current market levels.

The constitution requires that land be sold in 80-acre tracts at the appraised value, but at no less than $10 per acre with at least 10% down and the balance within 30 years. The Department of School and Public Lands has for many years been selling land on 20-year contracts and 30% down on day of sale. Assuming an 80-acre tract is sold at the appraised value of $100 per acre at those terms (80 acres @ $100, 30% down, balance in 20 years @5% interest) the total purchase price would be $8,000. Payment on day of sale would be $2,400 with interest payments on the balance ($5,600) totaling approximately $2,940. If the interest rate were doubled to 10%, the interest earned would also double to about $5,880.

One can only speculate on the difference an increase in the interest rate might make on the eventual sale of the 850,000 acres of school lands unsold. The long-term trend in both the appraised value and the interest rate on real estate has been upward. If all of the remaining land were to be sold at an appraised value of $100 per acre at 10% interest, the proposed amendment would result in over $3 million additional interest on land sales.

On some sales the difference between the selling price and the total interest (principal plus interest) might not be as large as it first appears. Numerous factors influence the bid price for the land, with the interest rate being only one. All other factors being equal, buyers are more likely to bid a higher sale price if the interest rate is 5% rather than even 6%. In the marketplace, higher interest rates may result in lower selling price, which would then reduce the amount of money deposited in the permanent school fund and increase the amount going to the interest and income fund.

Studies by the Department of School and Public Lands indicate that on most sales the interest rate is not a major factor. On a substantial number of sales there is no bidding at all with the land being sold at the appraised value. On other sales, such factors as need and personal relations between competing bidders appear to be overriding.

Significance of the deletion of advertising requirements

The Legislature is proposing the deletion of the requirement that school and public land offered for sale be advertised for 60 days "in at least three newspapers of general circulation, two of which shall be located in the vicinity of the lands to be sold, and one at the seat of government."

There are at least two reasons why the Legislature would prefer that the advertising requirements be deleted:

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3Schools also receive apportioned funds from mineral leases, surface leases, easements and other miscellaneous sources.

4Purchasers have the option of paying the balance or any part of the balance on any interest paying date.
from the constitution—to remove some of the confusion that exists between constitutional and statutory advertising requirements and to cut advertising costs.

“Newspapers of general circulation” is not clearly defined. Some people interpret the word “general” to imply only a daily newspaper whereas others interpret “general” more broadly. “Official” newspapers, however, are clearly defined by law.

House bill 1046, passed just this year, requires the Department of School and Public Lands to advertise either the sale of land leases or land “once each week for at least 4 consecutive weeks in the official newspapers of the county in which the land is located.” If the notice is for a land sale the law also requires that the land sale be advertised in a newspaper in Hughes County where Pierre is located. (Some people, however, interpret the “seat of government” requirement in the constitution to mean the county seat.)

A question also arises on whether the advertising in daily newspapers must appear every day or only once weekly over the 60-day period.

The consensus of the Legislature is that the 60-day advertising requirement is excessive and that “once a week for 4 consecutive weeks” is more specific and appropriate.

The text of Article VIII, Sections 3 and 5.

Article VIII, Education and School Lands, contains 19 sections. The following is a complete text of sections 3 and 5. The phrases to be deleted are italicized, phrases to be added appear in parentheses.

3. Fund income apportioned among schools—apportionment of fines.

The interest and income of this fund together with all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the state, and shall be for this purpose apportioned among and between all the several public school corporations of the state in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of public schools for the equal benefit of all the people of the state.

That the proceeds of all fines collected from violations of state laws shall be paid to the county treasurer of the county in which said fine shall have been imposed, and by him remitted to the state treasurer and apportioned by the commissioner of school and public lands back to the county from which such moneys were collected to be distributed among and between all of the several public schools incorporated in such county in proportion to the number of children in each, of school age, as may be fixed by law.

5. Terms of sale of school lands.

No land shall be sold for less than the appraised value, and in no case for less than ten dollars per acre. The purchaser shall pay at least onethenth of the purchase price in cash. The Legislature shall provide by general law for payment of the balance which shall be made in partial payments and must be fully paid up within thirty years. Interest shall be five percent annually (established by the legislature). All lands may be sold for cash, provided further, that the purchaser or purchasers shall have the right or option of paying the balance in whole or in part on any interest paying date, under such rules as the Legislature may provide. No land shall be sold until appraised and advertised and offered for sale at public auction, after sixty days advertisement of the same in at least three newspapers of general circulation, two of which shall be located in the vicinity of the lands to be sold, and one at the seat of government. No land can be sold except at public sale.

Such lands as shall not have been specially subdivided shall be offered in tracts of not more than eighty acres and these subdivided into the smallest division of the lands designated for sale and not sold within two years after their appraisal shall be reappraised by the board of appraisers as hereinafter provided before they are sold.

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