

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 334
Appropriations/Base Budget Committee Substitute Adopted 3/21/13
Third Edition Engrossed 3/26/13
House Committee Substitute Favorable 5/22/13

Short Title: Dorothea Dix Lease.

(Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH THE STATUS QUO ANTE WITH REGARD TO THE DOROTHEA DIX PROPERTY IN ORDER TO ALLOW A TRANSACTION THAT REPRESENTS THE STATE'S NECESSITY OF HOUSING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, RALEIGH'S GOAL OF CREATING A WORLD CLASS DESTINATION PARK, THE MENTAL HEALTH COMMUNITY'S NEED FOR APPROPRIATE SERVICES, AND THE PEOPLE OF NORTH CAROLINA'S RIGHT TO A FAIR RETURN ON INVESTMENT.

Whereas, the Dorothea Dix Property represents a significant State asset with historic and sentimental significance for the mental health community and the City of Raleigh; and

Whereas, the State and the City of Raleigh have an obligation to proceed in a deliberate and orderly manner when entering into transactions that involve millions of dollars, hundreds of acres, and dozens of years; and

Whereas, transactions of this nature are best negotiated when the parties have sufficient knowledge to make appropriate decisions about the terms and conditions of the transaction; and

Whereas, the Department of Administration is the State agency best suited to negotiate land transactions on behalf of the State; and

Whereas, with regard to the future disposition of the Dorothea Dix Property and possibly any adjacent properties, the General Assembly seeks to put the State and the City of Raleigh in a position where both entities can fairly and adequately represent their respective interests and reach a mutually agreeable and beneficial outcome; Now, therefore, The General Assembly of North Carolina enacts:

PART I. LEGISLATIVE FINDINGS

SECTION 1. The General Assembly finds:

(a) General Background:

- (1) The authority to acquire the State property subsequently known as the "Dorothea Dix Property" was granted by the General Assembly in 1848 particularly for the benefit of North Carolinians with mental illness.
- (2) The Dorothea Dix Property constitutes a significant State asset owned by and for the benefit of the people of the State. Individuals with serious mental illness have received treatment there for more than 150 years, and portions of the Property may be held in trust by the State for that purpose. The



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- 1 Property currently houses over 1,800 employees of the Department of Health
2 and Human Services (DHHS). Relocation of those DHHS operations
3 represents a significant reorganizational effort.
- 4 (3) On December 28, 2012, Governor Beverly Perdue executed a 75- to 99-year
5 lease (the Lease) with the City of Raleigh (City) for use of the Dorothea Dix
6 Property as a city destination park. The Lease provides for annual payments
7 of five hundred thousand dollars (\$500,000) with a one and one-half percent
8 (1.5%) increase each year thereafter.
- 9 (4) The Lease also includes provisions for "Leasehold Financing" (the financing
10 provisions) which permits the City to subject improvements made to the
11 Property by the City and the City's leasehold interest to mortgages that create
12 liens against the improvements and which impair the underlying fee. During
13 the term of these mortgages, the State is prohibited from terminating the
14 Lease for any reason, may not reenter the Property, and may not enforce
15 performance in a mode provided by law.
- 16 (5) There is no current, modern survey of the Dorothea Dix Property. All the
17 appraisals, and the Lease itself, are based upon an estimated acreage of
18 between 306 to 311 acres. These estimates are based in part on recitals in the
19 original deeds, some of which date back to the mid-1800s. Lack of a current
20 survey creates ambiguity regarding what is being leased, the existence of any
21 unrecorded easements, and the extent of any encroachments. Lack of a
22 current survey is also contrary to standard practice and fundamental due
23 diligence for real estate transactions of this size and duration.
- 24 (6) All Appropriate Inquiries (AAI) have not been conducted with regard to the
25 Dorothea Dix Property. Known environmental issues include asbestos in the
26 construction of the main hospital building; storage and disposal during the
27 term of the facility of medical waste, industrial cleaning supplies, and
28 antiquated construction materials; interment of human remains; and the
29 siting of a former Raleigh landfill. The failure to conduct AAI creates
30 significant uncertainty as to future costs of mitigation and the ability to use
31 the Property for the purpose contemplated in the Lease. The failure to
32 conduct AAI is also contrary to standard practice and fundamental due
33 diligence for real estate transactions of this size and duration.
- 34 (7) The City is a political subdivision of the State and, as such, has only the
35 rights and authority granted to it by the General Assembly. The Lease by the
36 State to the City is for public use.
- 37 (b) Valuation:
- 38 (1) Assuming a 75-year term, the nominal value of the Lease is sixty-eight
39 million four hundred eighty-six thousand three hundred ninety dollars
40 (\$68,486,390). The Net Present Value (three percent (3%) discount) is
41 twenty-two million five hundred seventy-four thousand one hundred seventy
42 dollars (\$22,574,170).
- 43 (2) The Dorothea Dix Property has been the subject of multiple commercial
44 appraisals. Using an average of the appraised values of the 2011 Dix
45 Campus Appraisal, the nominal value of a 75-year lease is two hundred
46 nineteen million one hundred fifty-six thousand four hundred forty-nine
47 dollars (\$219,156,449). The Net Present Value (three percent (3%) discount)
48 is seventy-two million two hundred thirty-seven thousand three hundred
49 forty-five dollars (\$72,237,345). The annual rent would be one million six
50 hundred thousand dollars (\$1,600,000) with a one and one-half percent

- 1 (1.5%) increase each year thereafter to be equal to the Net Present Value
2 stated earlier in this subdivision.
- 3 (3) The terms of the Lease are significantly below fair market value.
- 4 (4) To the extent the State holds a portion of the Dorothea Dix Property in trust,
5 any disposition of that portion of the Property must be for fair market value,
6 and the proceeds from that portion of the transaction must be used for the
7 benefit of North Carolinians with mental illness.
- 8 (c) Statutory Requirements:
- 9 (1) G.S. 146-29.1(b) requires that leases to a public entity for less than fair
10 market value must be reported to the Joint Legislative Commission on
11 Governmental Operations (Gov Ops) at least 30 days prior to the lease (prior
12 notice requirement). The report must contain "the details of the transaction."
- 13 (2) The statutes that create Gov Ops also describe its purpose. G.S. 120-71
14 states that the members of the General Assembly are ultimately responsible
15 for making public policy decisions. "Legislative examination and review of
16 public policies, expenditures and reorganization implementation are an
17 integral part of legislative duties and responsibilities." As such, the purpose
18 of Gov Ops is to provide for the "continuing review of operations of State
19 government."
- 20 (3) G.S. 146-29 requires that any lease of State property must be submitted to
21 the Governor and Council of State for approval or disapproval.
- 22 (d) Chronology of Events:
- 23 (1) On November 30, 2012, the Department of Administration (DOA) reported
24 to Gov Ops the intent to lease the Dorothea Dix Property to the City. The
25 report gave the term of the Lease (75 years with one 24-year renewal
26 option), a description of the Property (325 acres), the annual rent amount
27 (five hundred thousand dollars (\$500,000) with a one and one-half percent
28 (1.5%) increase each year thereafter), and the general use of the Property (a
29 city destination park). The information did not include the financing
30 provisions, was based on estimated acreage, and lacked any information
31 related to environmental hazards. The financing provisions impair the State's
32 underlying fee, restrict its ability to enforce performance under the Lease,
33 are material to the proposed transaction, and were required to be reported to
34 Gov Ops along with other "details of the transaction."
- 35 (2) The prior notice requirement to Gov Ops expired on December 30, 2012.
- 36 (3) On December 4, 2012, the Governor and the Council of State approved a
37 lease of the Dorothea Dix Property based on the same information DOA
38 provided to Gov Ops. The information did not include the financing
39 provisions, was based on estimated acreage, and lacked any information
40 related to environmental hazards. The Governor and the Council of State's
41 approval of a lease of the Dorothea Dix Property on December 4, 2012,
42 occurred four days after DOA made its report to Gov Ops and before the
43 expiration of the prior notice requirement on December 30, 2012.
- 44 (4) On December 19, 2012, subsequent to the Council of State's approval of the
45 Lease, but before the execution of the Lease by the Governor, a Deputy
46 Attorney General for the North Carolina Department of Justice advised
47 against the inclusion in the Lease of the leasehold financing language which
48 had not previously been provided to Gov Ops and had not been approved by
49 the Council of State. The Deputy Attorney General also advised that the
50 leasehold financing language so materially expanded the transaction

- 1 presented to the Council of State that resubmission to that body of the
2 financing authority was at least wise and probably required.
- 3 (5) On December 28, 2012, two days prior to the expiration of the prior notice
4 requirement, the Governor executed the Lease effective December 31, 2012.
5 The Lease contained material details, including the financing provisions, not
6 provided to Gov Ops on November 30, 2012, and not provided to the
7 Governor and Council of State on December 4, 2012.
- 8 (e) Consequences of Failure to Provide Material Details of the Lease:
- 9 (1) The failure to provide all material details of the Lease to Gov Ops deprived
10 the General Assembly of information the law requires must be provided in
11 order for legislators to carry out their duties and responsibilities for the
12 continuing review of the operations of State government.
- 13 (2) The failure to provide all material details of the Lease to the Governor and
14 Council of State deprived members of the Council of State of information
15 the law requires must be provided in order for members of the Council of
16 State to carry out their duties and responsibilities with regard to the
17 appropriate disposition of State property.
- 18 (f) Consequences of Failure to Provide Required Time for Consultation:
- 19 (1) By approving a lease of the Dorothea Dix Property four days after Gov Ops
20 received notice of the proposed transaction and before the expiration of the
21 prior notice requirement, the Governor and Council of State acted contrary
22 to the letter of the law and the legislative intent of the law.
- 23 (2) By executing the Lease before expiration of the prior notice requirement, the
24 Governor acted contrary to the letter of the law and legislative intent of the
25 law.
- 26 (3) The effect of the DOA's failure to provide Gov Ops with the details of the
27 proposed transaction, the approval of a lease by the Governor and the
28 Council of State four days after DOA's report to Gov Ops and before
29 expiration of the prior notice requirement, and the Governor's execution of
30 the Lease prior to the expiration of the notice period requirement was to
31 deprive Gov Ops of the opportunity to recommend the General Assembly be
32 called into session to override the approval of a Lease of the Dorothea Dix
33 Property by the Governor and the Council of State.
- 34 (g) Ultra Vires Actions:
- 35 (1) Because the details of the proposed transaction as reported to both Gov Ops
36 and the Council of State did not include the details of the Lease, the
37 Governor did not have authority to execute the Lease on behalf of the State
38 on December 28, 2012.
- 39 (2) To the extent the State holds some portion of the Dorothea Dix Property in
40 charitable trust due to the terms of the conveyance to the State, the Governor
41 and Council of State did not have the authority to approve a disposition of
42 that portion of the Property for below fair market value, and the Governor
43 did not have the authority to execute a below fair market value lease on
44 behalf of the State.
- 45 (3) The Lease is not in the best interest of the State of North Carolina.
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47 PART II. REESTABLISH STATUS QUO ANTE

48 **SECTION 2.** Notwithstanding G.S. 146-66, the Lease of the Dorothea Dix
49 Property to the City of Raleigh by the State of North Carolina approved by the Governor and
50 Council of State and executed December 28, 2012, is void and without force or effect. The
51 Governor shall give notice to the City to this effect. Any payments made by the City under the

1 Lease to the State shall be refunded. The City is released from any obligations to the State that
2 may have otherwise arisen under the Lease.

3 **SECTION 3.(a)** When this section becomes effective, as a political subdivision of
4 the State with only such rights and authority as granted by the General Assembly, the City is
5 directed to terminate the Lease and to notify the Governor of the termination.

6 **SECTION 3.(b)** When this section becomes effective, the Governor shall notify
7 the City that the State also terminates the Lease.

8 **SECTION 3.(c)** Subsequent to the termination of the Lease by the City and the
9 State, and upon repayment of all payments paid by the City to the State under the Lease, the
10 City shall release the State from any other obligations arising under the Lease, and the State
11 shall release the City from any other obligations arising under the Lease.

12 **PART III. FUTURE ACTIONS**

13 **SECTION 4.** The Department of Administration (DOA) and Department of Health
14 and Human Services (DHHS) shall jointly evaluate the recommended uses of the Dorothea Dix
15 Property identified in the 2007 State Government Facilities Master Plan (2007 Facilities Master
16 Plan). DOA shall also evaluate whether implementation of all or any portion of Section 8 of the
17 2007 Facilities Master Plan would be facilitated by a change of use for adjacent State property.
18 DOA and DHHS shall jointly report their findings and recommendations to the General
19 Assembly by March 15, 2014, including any request for authority or funds to implement the
20 same.

21 **SECTION 5.** If DOA determines it is in the best interest of the State to dispose of,
22 at fair market value, a portion of the Dorothea Dix Property identified in the 2007 State
23 Government Facilities Master Plan for use as a public park, it may do so pursuant to Article 7
24 of Chapter 146 of the General Statutes. The disposition may be by cash sale, installment
25 purchase, lease, or other method as determined by DOA and approved by the Council of State.
26 DOA may reserve certain portions of the Property and include adjacent State property,
27 including the property and grounds where the Governor Morehead School is located, if DOA
28 determines it is appropriate. The City of Raleigh shall have the right of first refusal. Nothing in
29 Section 4 of this act shall limit the authority of the DOA to act under this section.

30 **SECTION 6.** A disposition by DOA under Section 5 of this act shall reserve to the
31 State that portion of the Dorothea Dix Property that is necessary to house DHHS operations and
32 shall allow adequate time and access to the Property and State records for all parties to exercise
33 due diligence, obtain appraisals, and make all appropriate inquiries.

34 **SECTION 7.** It is the intent of the General Assembly that the proceeds from any
35 disposition of the Dorothea Dix Property under Section 5 of this act be held in a special fund
36 for appropriation by the General Assembly for mental health purposes consistent with the
37 purposes in the underlying deeds transferring the Dorothea Dix Property to the State and in
38 Chapter 1 of the Laws of 1848-1849 that authorized acquisition of the Property.

39 **PART IV. MISCELLANEOUS PROVISIONS**

40 **SECTION 8.** If any provision of this act or its application is held invalid, the
41 invalidity does not affect other provisions or applications of this act that can be given effect
42 without the invalid provisions or application, and to this end the provisions of this act are
43 severable. Nothing in this act limits or restricts the right of the State to otherwise exercise its
44 powers of eminent domain at any time with regards to the Lease.

45 **SECTION 9.** Sections 2 and 3 of this act become effective April 1, 2014. The
46 remainder of this act is effective when it becomes law.
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