

March 27, 2023

Judiciary Committee

HB 1296

Senator Diane Larson, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the North Dakota League of Cities, in opposition of HB 1296. I am the deputy director and attorney for the North Dakota League of Cities.

The North Dakota League of Cities' concerns are with Section 1 of the bill. The League of Cities does not have a position on Section 2 of the bill.

Research on Current Status of Charitable Gaming in Cities

In preparing for this bill hearing, League staff has reached out to legislators, charitable gaming regulators, city appointed officials, city elected officials, individuals on boards for charities conducting charitable gaming, charitable gaming management staff, and lobbyists representing charitable gaming interests. Even after all of those conversations, the League is not sure what the impacts of HB 1296 would be but here is what we have learned:

- In the vast majority of cases, cities issue site authorizations to the charity that the site owner has selected;
- Charities have done a wonderful job investing charitable gaming money back into the communities that host their sites such as:
 - o Building a band shell in Washburn; and
 - o Partially funding an additional sheet of ice in Mandan;
- A number of fire department charities provide funds to help with covering the public safety expense of fire protection;
- A lot of cities are not having issues with disputes over issuing charitable gaming site authorizations;
- In the cities where issues arise regarding site authorizations, those issues become contentious very quickly;
- In the cities where site authorization issues exist, there is often an outside influence driving the discord in the charitable gaming community; and
- Cities generally do not want to pick winners and losers in charitable gaming.

Legislative History

To better understand this bill, I reviewed the legislative history. Charitable gaming was added to the North Dakota Constitution per a ballot measure that passed in 1979. In 1981, the North Dakota Legislature adopted HB 1277 which codified charitable gaming regulations in North Dakota. The 1981 law created a divided licensing system. Class A licenses for games of chance were issued by the North Dakota Attorney General and were for eligible organizations that maintain a building for the use of its members. Class B organizations were for all other

qualifying organizations. Class B licenses for games of chance were issued by the Attorney General; however, the statute provided:

“Class B License applicants shall first secure approval of the proposed site or sites on which on intends to conduct games of chance under this Act from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general.”

In 1995, language was added providing, “A governing body of a city or county may not require an eligible organization to donate net proceeds directly to the city, county, or related political subdivision as a condition for receiving a site authorization.” In 1997, that language was expanded to say “A governing body of a city or county may not require an eligible organization to donate net proceeds directly to the city, county, or related political subdivision or for community services within the city or county as a condition for receiving a site authorization.”

Please note that there is administrative code that also governs charitable gaming. The administrative code chapter governing charitable gaming has been repealed and replaced several times. I have only reviewed the existing administrative code provisions.

Overall, in my brief review of the legislative history, other than the changes in 1995 and 1997, there was not a lot of discussion on city authority to approve sites. Most of the discussion in the legislative hearings seemed to be on games allowed, allowable expenditures, and taxes.

Current Status of Law

Currently, under North Dakota Century Code ch. 53-06.1, there is no longer a differentiation for Class A and Class B licenses; however, the language about the process of getting approval of a site first from a city and the discretion of the city has remained almost the same for the last 40 years.

Section 1 of HB 1296 would completely reverse the process and require a charity to sign a lease with a bar before applying for a site authorization from the city. In other words, the process seems to require a city to deny a site authorization, instead of granting a site authorization.

Potential Consequences

It is unclear what consequences will result from these changes; however, a few possibilities come to mind:

- Charities may not be able to commit to funding long term projects due to potential that a site owner will refuse to renew their lease without cause;
- Charities located in small cities may lose their sites to larger out of town charities;

- Small charities may not be able to compete with larger charities; and
- Residents in areas protected by fire departments partially funded by charitable gaming may lose their fire protection because a bar owner decides not to renew a lease with a fire charity.

Conclusion

Due to the uncertainties the language in Section 1 would create with the law on charitable gaming site authorizations that has existed for over 40 years, the North Dakota League of Cities respectfully requests a Do Not Pass recommendation on HB 1296.