

2019 HOUSE JUDICIARY COMMITTEE

HB 1278

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1278
1/28/2019
31537

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to eligible uses of net proceeds by licensed gaming organizations.

Minutes:

1

Chairman Koppelman: Opened the hearing on HB 1278.

Rep. Lisa Meier: Introduced the bill. (Attachment #1) This section of code deals with gaming for fraternal organizations. They have obtained \$9 Million last year. This would enable the organizations to repairs and maintenance. (00:43-1:10)

Chairman Koppelman: Would you explain what section of code this deals with. What specific types of games would the fraternal organizations be able to participate in now? We don't have much in the bill but it is an exception currently for veteran organizations and here if adds fraternal is all the bill really does.

Rep. Lisa Meier: Last session we approved pull tab machines and so a lot of these organizations have started to have them within their organizations. The one thing pull tab machines do they retain a lot of funding for the charitable organizations. They have already obtained about \$9million as of last year. That is what I understand. What the charitable organizations would like to do is be able to use some of the proceeds to do things like a repair to building or a new appliance or something in that area. A lot of the veterans are part of these organizations also.

Rep. Paur: You were saying for charitable organizations, this doesn't say that it is for fraternal organizations?

Rep. Meier: Fraternal organizations are actually part of charitable organizations. The Eagles for example does charitable donations out of the proceeds so that would make them part of charitable organizations.

Vice Chairman Karls: Fraternal orgnizatons were not included because they allow non-members to come in a patronize their clubs. Where as veterans organizations you have to be a member.

Rep. Meier: I am not sure. But I am sure someone coming up to testify may be able to explain that.

Chairman K. Koppelman: Any other support for HB 1278?

Arlan Scholl, Bismarck Mandan Elks Lodge: In support of HB 1278. I see the charitable dollars that go through. The charitable organizations are very active in their communities and also with the military. Our organization employs two door men that do stop you from coming in to the building. It is a members and bonafide guests only organization. I don't know how many veterans we have in our organization but we give out a free meal yearly to them and the 1800 tickets get taken in about 2 days. We are in support of this. These organizations that have been active over 100 years in your community need a little help right now.

Chairman K. Koppelman: You could use these funds for improvement, maintenance and repairs? Currently what are the restrictions that you have?

Arlan Scholl: It is only what is under the schedule c form, which is eligible charitable uses only.

Chairman K. Koppelman: Any further testimony on HB 1278. Seeing none what are the wishes of the committee?

Representative Magrum: Moved a Do Pass on HB 1278.

Representative Hanson: Seconded.

Chairman K. Koppelman: Any further discussion? Seeing none the clerk will call the roll on a do pass on HB 1278.

Roll Call vote: Yes 11 No 2 Absent 1. Motion carries.

Representative Magrum: Will carry the bill.

Hearing Closed.

REPORT OF STANDING COMMITTEE

HB 1278: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1278 was placed on the Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1278

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1278
3/12/2019
#33547 (32:04)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 3 of section 53-06.1-11.1 of the North Dakota Century Code, relating to eligible uses of net proceeds by licensed gaming organizations.

Minutes:

1 Attachment

Chair Larson opens the hearing on HB 1278. Senator Myrdal was absent.

Lisa Meier, District 32 Representative, testifies in favor (see attachment #1)

Chair Larson: These fraternal organizations would be considered the charity and eligible for the 40%?

Representative Meier: 40% of the money collected go to the charities.

Chair Larson: They wouldn't be giving it to another charity then; they would be giving it to their own.

Representative Meier: It would actually have to go up for review with the Gaming Division. Very little would actually go to the organizations. Their mission is still to go to the charitable organizations. They would just like to use a small percent of it to go towards building needs such as if they need a new refrigerator or something that needs to be fixed within their lodge.

Senator Luick: It says "with the exception of fraternal or veterans organizations, the uses in subsection 2". What's subsection 2? It seems to be missing in the bill.

(6) Deb McDaniel, Director of the Charitable Gaming Division for the Office of Attorney General, neutral party

McDaniel: That part explains the eligible uses under the century code such as the poor, mentally disabled and veterans.

Chair Larson: It says what kinds of charities are eligible?

McDaniel: No, what type of things are considered eligible uses that they can spend the charitable money on.

Chair Larson: not the 60% for the expenses but for the 40%.

Representative Meier: Correct.

Senator Luick: Beyond what is in subsection 2, you're hoping these dollars then would be used for what's listed in the bill?

Representative Meier: Correct.

Senator Luick: even acquisition and buying new property?

Representative Meier: I don't believe it would be purchasing new property. It would be more for repairs. It would actually have to be up for review from the Gaming Commission. For that amount of purchase, I don't they would actually approve that. If you wanted to remove that, you certainly could.

Senator Bakke: This is what's already there for veteran's organizations, and you're adding fraternal organizations to this. It must be that the acquisition is in there for the veteran's organizations.

Representative Meier: Correct, thank you.

Senator Bakke: What is the source of funding for the fraternal organizations? Is it based on dues?

Representative Meier: I'll defer that question to the next testifiers.

Joseph Jensen, UND Law Intern, neutral party

Jensen: Generally speaking, you can use it to stimulate and promote economic development programs, support tourism in a city, county or state, benefits of education like scholarships and assistance to libraries, benefits for an indefinite number of persons by relieving him of disease, suffering or constraint, uses that perpetuate memory and history of the dead, etc. It's really just community spirited things like you would imagine these organizations are doing.

(10:25) Arlan Scholl, Bismarck/Mandan Elks Lodge member, testifies in favor

Scholl: To answer your question, the majority of our funds do come from dues paying members. However, in recent years with millennials, it's getting increasingly hard to get them to join a club or be a part of an organization like that. With our membership aging, we're seeing those funds start to diminish, but our utility bills, insurance and taxes are not going down. It actually goes up, so it's getting increasingly tough. I can't speak for the other clubs, but our gaming account consistently runs with about \$40,000 in it. I can't see this being used

very often by any of the clubs, but I can see where it would come in. Our building was built in the early 60s and doesn't have access to the upper level. An elevator would help, but when you put in an elevator, you also have to change every exit to handicap accessible which gets into dollars that we simply don't have in the bank anymore. That's where it would help. As far as the bill that he's reading, there is a list called "Schedule C" form. That's the eligible uses that you can use monies for. Believe me, if I don't use them correctly, I will hear about it. Over the past 41 years that I've been a member of this club and others, I've seen what they've done in communities. If you go to any ball park, swimming pool or anything of that nature, look at the plaques that are around the walls and structures. These were all supported by these fraternal clubs, and in many cases, built by these clubs and their funding back when we were stronger. Right now we're not quite as strong, and this bill will help assist us and help us survive so we can continue to do the work we do in the communities. It's very important to a lot of charities. Our lodge itself gives a minimum of \$70,000 just to community projects per year. It's a good thing and helps a lot of people. I've been fortunate enough to meet several hundred people that this has helped out; it's quite a blessing.

Senator Luick: You indicated that it's \$70,000 that you give per year. If this passes, what do you anticipate the change would be?

Scholl: For our lodge, we have a hot water situation where we could use an extra \$10-20,000 because it will probably cost us \$100,000 to fix. I don't see where I would have enough funds to ever fully fund something like this. I can't see us purchasing property, nor enough funds to do so. I can see this coming in for wheelchair handicap access, parking lot striping and things like that. Over the last 7 years, we've had to put a lot of improvements into our building. It's depleted our investment account by over \$700,000. Our majority of repairs are already done; however, that account is not what it used to be. Something like this would have helped over the course of those years to be able to get an extra \$10-20,000 here and there. All of these clubs are in the same, existing buildings and all very old. With diminishing membership, it's getting increasingly hard to have all these funds banked up to go build a new building.

Senator Luick: What is the estimate of the total amount of revenue coming through your facility on gaming?

Scholl: I would guess probably a quarter million. We give roughly \$70,000 to local charities, and our grand lodge requires us to have a state project which is Camp Grassick 50 miles east of here. They get roughly about the same amount on that on charity funds. It typically maintains a balance in that \$30-40,000 year in and year out. There was a time where you had to spend all of that money per quarter, but that changed which allowed us to save up for bigger projects. We just committed \$10,000 to the new ball diamonds, \$10,000 into the new Shawn Berg ice arena, \$10,000 to the VFW ice rink and a lot of other projects that we support. When they allowed us to save, that made a huge difference.

Vice Chairman Dwyer: Does the Elks run itself or do you have charities that come in and do it?

Scholl: We run our own charitable gaming.

Vice Chairman Dwyer: Do some facilities have charities that come in and run gaming for them?

Scholl: I think the fraternal all own their own gaming.

Vice Chairman Dwyer: Whatever you raise from your own gaming, 60% you can use for expenses, and 40% you are required by law to give to charities right now.

Scholl: Correct, under schedule c form.

Vice Chairman Dwyer: There's no limit on the 40%, so you could use all of it for expenses?

Scholl: It will be upon approval with the attorney general's office; it won't give us carte blanche to go spend the funds. Just about every group has a raffle going, so they're all getting into gaming. For an example, we give a lot of money to the cancer center. However, they're not an eligible use because they have their own gaming tags; you can't write that off of your schedule c form. That's starting to happen too. Everyone wants in on the raffles to try to get the biggest bang for their buck state-wide. As you know, if you have kids and grandkids, you get inundated with sales of tickets and things like that. It's eligible use, and the AG's office has been very diligent and do a terrific job on making sure that we do follow through on what we have to do.

(19:35) William Kopp, President of the Bismarck Eagles, testifies in favor

Kopp: As far as charities that we give to, they're all local and the majority goes to kid's programs in Bismarck and Mandan. We try to support as many groups as possible. Two years ago, we had a chart on the wall to show what we donated. We couldn't quite outdo the Elks, but we donated about \$60,000 to our local charities here in town. Right now if you came to our club, you would see what this charities money would help us do. We've got water coming everywhere. In general, the charities money that we get, we give and try to give local. Any of this money that we could get from the charities would be an asset to our club.

(21:50) Deb McDaniel, Director of Charitable Gaming Division for the Office of Attorney General, neutral party

McDaniel: Last session the bill did go through for veteran's organizations to improve their facilities. The concern that we have today is that personal property was not taken out for veterans even though with the testimony, they agreed that this was for building structure improvements only, not personal property. When the veterans ask for improvements, it's building improvements; it's not refrigerators or the bar area of the club but instead structural improvements like bathrooms, heating, air conditioning, flooring, ceilings, windows and that kind of thing. We have a concern where in the law it still says personal property. It also includes paying for a facility and property. There are veteran's clubs that are saving their money in order to build a facility. Other than that, we can regulate this just fine because they do have an IRS designation. We would verify that any fraternal club that would ask for this type of improvement to their buildings, we would verify that they are actual, fraternal just like we do with the veterans.

Chair Larson: Please explain the items under the 60% for expenses.

McDaniel: There's cost of games, rent, which fraternal and veterans don't pay, supplies, payroll and other gaming expenses. They're allowed 60%. 40% has to go to charitable uses. In that 60%, if they can keep their gaming expenses under that 60%, they can use what is left over for their club.

Chair Larson: I would guess that you get an accounting of those things as well.

McDaniel: We don't look at those unless we do a complete audit. If they keep their expenses under that 60%, and as long as they transfer the 40% into the trust account and keep it for charitable uses, that's the part that we're concerned about. We don't make them itemize.

Chair Larson: Out of \$10, they can use \$6 for expenses. Say they only need \$2 for payroll and supplies. They could use \$4 to repair a waterline or some of those things.

Senator Bakke: The 40% that goes to charity, could that be their own community activities and scholarships or does it have to be an outside charity?

McDaniel: Their primary purpose is to give to others, not to themselves.

Senator Bakke: but they could use it for their own scholarship program or do they have to give it to another recognized charity?

McDaniel: No, they can give it to their own scholarship program.

Vice Chairman Dwyer: We had a bill on raffles. You explained how many charitable organizations there are that fall under your regulation. Please explain that again.

McDaniel: We license over 320 gaming organizations. They get licensed through our state and have to have shown that they have conducted their primary purpose for two years and that they're nonprofit registered with the secretary of state's office. They have to pay a \$150 licensing fees, get cite authorizations, fill out tax returns and keep all of their paperwork. Then there are also local permit holders which are little local community people that have to conduct under certain restrictions. They're primary prize can't exceed \$6,000, and their total prizes can't exceed \$12,000 in a year. Those organizations are all under a local permit regulated by the cities and counties.

Vice Chairman Dwyer: Of the 320, where's the breaking point where it's just a local and they have to apply for a state license?

McDaniel: The prize restrictions is what regulates that. Everyone that has a state gaming license doesn't have restrictions in how many prizes they give out or how often they can conduct.

Vice Chairman Dwyer: If it's under 6 or 12 or if the bill passes, then they can just be local; otherwise they have to get a state license.

McDaniel: Yes, and the local permits can only conduct raffle, bingo and sports pools. The local permits can't do e-tabs, pull tabs, 21 and others. Those activities have to be done under a licensed organization.

Vice Chairman Dwyer: Veterans and fraternal have their own buildings, but the rest would rent a facility in the games of chance.

McDaniel: Correct. They have to conduct in a bar say.

Vice Chairman Dwyer: Then they pay the rent.

McDaniel: Yes.

Scholl: Typically, after the dust settles on a quarterly report, there's not a lot left in that charity's account. Labor takes the line share of what comes out of that 60%. In my case, I'm running five employees down there counting myself. As you know, you can get people for minimum wage, but that's what you get. There's not a lot left in the quarterly report for those expenses on the building. We can use it for improving our gaming cite, but that's just like blackjack chairs, covering a table, cameras or things like that.

McDaniel: If you keep your expenses under that 60%, whatever is left over, you can use.

Scholl: There's typically not a lot left in the end.

Chair Larson closes the hearing on HB 1278.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1278
3/27/2019
#34279 (13:12)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 3 of section 53-06.1-11.1 of the North Dakota Century Code, relating to eligible uses of net proceeds by licensed gaming organizations.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1278.

Chair Larson: Proceeds from those gaming machines- 60% can go towards expenses and 40% has to go towards the charity. Clubs like Elks and Eagles came in and said that since their whole mission is giving to charity, they want to be able to use some of that 40% that goes to charities to use to buy capital, real property.

(see attachment #1)

Senator Luick: I had some extensive conversations with the AG's office gaming department about this. The concern was that going back to the whole purpose of charitable gaming in this state, it's not for these fraternal organizations to be using it for personal business use property. The suggestions were for coolers, chairs, tables, roof and wall repair and also acquisition of property. My amendment addresses some of those concerns. In law today, they are not to use any of the net proceeds to do any of that personal real property oversight and repair. In my amendment, we are giving them up to 20%. Also they would not be able to use the proceeds for the purpose of acquiring real property.

Senator Bakke: You're saying with the 40% they're supposed to give to charity, 20% of that they can use not giving it to charity? They would take 20% of the 40%?

Senator Luick: Whatever their take is out of that.

Senator Bakke: for their expenses?

Senator Luick: Correct.

Senator Bakke: so it's not their take for charity, but their take for expenses which is the 60%. So they'd be able to use 20% of that.

Senator Luick: of net proceeds.

Chair Larson: so that would be 20% out of the 40%.

Senator Myrdal: Are you saying this is unique because they are a nonprofit? The intent of the bill was way too large with acquisition and buying property. You're narrowing it?

Senator Luick: That's correct. They're having a hard time regulating the dollars coming in. The organizations that are using these funds are exceeding what they're supposed to be doing already. This language was approved through the AG's office, and actually they felt the 20% is still high.

Senator Bakke: I have a problem if that 20% is coming out of the 40% that is supposed to go to charity. If it's coming out of their 60%, which I have down was for the cost of the games and the rental...

Chair Larson: Plus, all expenses. Remember one member said that they pay all of their staff that run those machines, so they are using it for wages. It's for all of the expenses associated with it that they can take out of that 60%. The intent of the bill is so they can further use the proceeds for other stuff outside of their expenses.

Senator Bakke: If that's the case, I think 20% is too high. They've gotten away from the whole charitable contribution piece. I have a problem with it being that high.

Chair Larson: I have a problem with it being anything beyond the 60%.

Senator Myrdal: This relates to an enormous amount of money across the state. Next session will be something else and something else the next. Fundamentally, the whole charitable gaming in this state will keep rolling into more ambiguous language and more struggles because when it comes to money, charitable or not, we are human. I appreciate Senator Luick's attempt to make something that I think is faulty from its foundation.

Chair Larson: The clubs came in and said they need more of the proceeds in order to pay for some of these things since their membership is decreasing with young kids not interested to join. They need to find ways to be more relevant outside of getting more money from gambling. I will oppose this bill. I don't think an amendment will help.

Senator Luick: I would propose that we put the amendment on in case it does pass.

Senator Myrdal: Motions to adopt amendment 19.0539.01003.

Senator Luick: Seconds.

Senator Bakke: I'm still bothered by 20%, but I understand where you're going with this.

Chair Larson: From the proceeds from those games, 60% of that amount can be used for expenses, whether it's paying rent on machines, paper for the pull tabs or paying people to be there to run the games. 40% goes to the charity that the charitable gaming is supporting. This bill had those clubs saying they wanted to be able to get more of those proceeds for their use for paying for some of their expenses that they have. The amendment limits them to only 20%. If a machine makes \$1,000, then \$600 of that can be used for expenses. 40% has to go to the charity. This bill proposes that they don't have to give \$400 to the charity. They can take that \$600 plus some of that \$400.

Senator Lemm: With this, they can get up to \$800 then.

Chair Larson: Yes.

Senator Bakke: The bill said they wanted to be able to take whatever they want of the 40%. Senator Luick's amendment will limit that amount to another 20% so they don't take it all.

Senator Luick: I am comfortable to moving that percent lower. I want to make it better by taking the real property and acquisition out of here completely. That 20% was something I wanted to bring down to the committee to discuss; I have no problem changing that.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Senator Luick: Motions for a Do Not Pass as Amended.

Senator Myrdal: Seconds.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Chair Larson: We are at the point in our calendar upstairs that everything rolls from the 6th order to the 14th order. We won't have a day in between.

Chair Larson will carry the bill.

March 21, 2019

SK
LW
3/27

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

Page 1, line 7, overstrike "With the exception of a"

Page 1, line 7, remove "fraternal or"

Page 1, line 7, overstrike "veterans organization, the" and insert immediately thereafter "The"

Page 1, line 10, after the period insert "Notwithstanding this subsection, for purposes of the eligible uses outlined in subsection 2, a fraternal or veterans organization:

- a. May use no more than twenty percent of net proceeds to erect, improve, maintain, or repair real property owned or leased by an organization.
- b. May not use net proceeds to acquire real property."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1278**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chair Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1278: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1278 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "With the exception of a"

Page 1, line 7, remove "fraternal or"

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Renumber accordingly

2019 TESTIMONY

HB 1278

#1
HB 1278
1-28-19
PZ1

HB 1278

Mr. Chairman and members of the Judiciary Committee.

For the record I am Representative of District 32.

HB 1278 will allow fraternal organizations such as the Eagles, the Elks and the Moose clubs to become Eligible users under section 53-06.1-11.1 of the North Dakota Century Code thus allowing for a greater usage of the net proceeds from their gaming. This bill is very important to these organizations to be able to use some of the proceeds for repairs maintenance and other improvements to their buildings and I ask for your favorable consideration.

Thank you.

#1
HB 1278
3.12.19

HB 1278

Madame Chairwomen and members of the Judiciary Committee.

For the record I am Representative Lisa Meier of District 32.

HB 1278 will allow fraternal organizations such as the Eagles, the Elks and the Moose clubs to become eligible users under section 53-06.1-11.1 of the North Dakota Century Code thus allowing for a greater usage of the net proceeds from their gaming. A fraternal organization is defined in statute as qualifying to hold a 501C8 or a 511C10 tax exempt status and is generally a branch lodge or a chapter of a national organization. This is a benefit right now that the veteran organizations, are able, to take advantage of after being approved by our state last session.

This is a short description of how this works. An organization has an account with the department of gaming under the Attorney General office Gaming division. 60% of each account can be used for expenses and 40% goes to charities.

This bill will allow these fraternal organizations to access the 40% for new construction and maintenance of public buildings, safety issues, such as hand rails, parking, plumbing, heating and cooling, or windows and things of this nature.

The Division of Gaming reviews the receipts and if anything is out of order the organization is audited. If there is an ineligible expense, the organization is required to pay back the funds to their charitable account. The Director of the division of gaming stated that the veteran organizations have been very good about calling ahead to make sure that their proposed expense gets the official ok.

The membership is down for these organizations so funds are not as readily available. The passage of HB1278 would really help keep up the buildings and facilities, in order, to continue offering the services that collect funds for charities. I ask for favorable consideration!

Thank you

March 21, 2019

|
HB 1278
3.27.19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

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Renumber accordingly