

Striving for Better Language – Suspension/Debarment – Take Two

1051 – Revise certain provisions regarding suspension or debarment of a business by the Bureau of Administration

The South Dakota Chamber of Commerce and Industry along with the Associated General Contractors (AGC) opposed this bill during its hearing in the House Committee; which approved HB 1051 on a vote of 5 to 0. The full House approved HB 1051 on a vote of 55 to 10.

Following the literary legacy of Don Quixote, the Man of La Mancha in his quest to foil evil – which turned out to literally be tilting at windmills – the Chamber and AGC are after the bill again! Since the attempt to kill the bill fell short (to put it gently) the Chamber and AGC headed out Thursday morning to make HB 1051 better.

HB 1051 seeks to add the following language to law:

Suspension or debarment may be imposed for:

- (1) The criminal conviction of or civil judgment against a business or principal, officer, director, or manager of the business involving fraud or dishonesty;*
- (2) Willful failure or a history of failure to perform in accordance with the terms of one or more government contracts or transactions;*

(3) Failure to comply with laws or regulations;

- (4) Debarment, suspension, or other comparable action by the federal government or another state;*
- (5) Failure to make delivery or complete the project within the time specified in the contract or purchase order, or delivery of items that do not comply with the specifications of a government contract or purchase order;*
- (6) History of offensive behavior in dealing with state employees; or*
- (7) Any other cause of a serious or compelling nature that creates substantial doubt as to whether the business may be relied upon to fulfill the business's obligations under any contract awarded to the business. The bureau may promulgate rules, pursuant to chapter 1-26, to establish the procedures and parameters for suspension and debarment of a business.*

During the hearing on Thursday morning the Chamber and AGC offered an amendment that would delete sections (5) and (6) plus a change to section (3) dependent on a record of violations. The bill was held over by the Chairman and will be given final consideration next Tuesday. With the amendments above, the Chamber and AGC will support passage of HB 1051.

SB 58 – Tax Increment Finance (TIF) bill.

The first thing to make clear is that the hearing before House Taxation Committee on HB 58 went as well as things ever go when a group of people ends up discussing tax increment financing.

The second thing to make clear is that SB 58 does nothing to change the use of TIFs, it only deals with the school funding state-aid formula and how money that goes to schools from TIF districts is raised. Local TIFs raise money from the taxpayers of the local school district, and SB 58 will now allow TIFs created for “affordable housing” to raise the money for schools from the statewide mil levies set by the legislature as part of the state-aid formula. No – there isn’t a simple way to make this understandable to first time readers – we apologize.

As often happens with discussions regarding SB 58 the committee ended up discussing the larger policy of how TIFs are used by various communities. Fortunately, this broader debate didn’t stop SB 58 from passing out of House Taxation Committee to the full house of Representatives on a vote of 8 yea to 5 nay with 2 excused. It would be helpful if Chamber members would encourage local legislators to vote yes on SB 58 if they see them legislative coffees, cracker barrels or crossing the street. Below is the committee vote:

SB 58, House Taxation, Do Pass - 2018

Yea 8 Nays 5 Excused 2 Absent 0

Haugaard	Yea	Dennert	Nay	Duvall	Yea
Goodwin	Yea	Jamison	Yea	Kaiser	Nay
Latterell	Nay	Mills	Nay	Rasmussen	Nay

Ring	Yea	Rozum	Excused	Schoenfish	Excused
Wiese	Yea	Wismer	Yea	Willadsen	Yea

Are Campaign Donations a Conflict of Interest?

HB 1267 – Wismer (D-Britton) - An Act to prohibit campaign contributions from certain government contractors and certain attorneys.

Giving voice to those who are skeptical about the entanglements between some business interests and some political interests, Representative Wismer sought to ban the businesses and lawyers that do business with the state from contributing to the public officials that award those very contracts.

Speaking specifically about things like elected officials awarding “no bid” contracts to businesses that are allowed to contribute to their campaigns her bill proposed restrictions such as:

Any person or entity is ineligible for a government contract valued at twenty-five thousand dollars or more, annually, for the rendition of personal services, the buying of personal or real property, or furnishing of any material, supplies, or equipment to the government, if between one year before the execution of the contract and the completion of the contract that person or entity directly or indirectly made any contribution, or promise expressly or impliedly to make any contribution to any political committee, for any political purpose, or knowingly solicits any contribution for any political purpose.

The bill also banned attorneys that are a party to a legal action involving the State of South Dakota; Represents a person or entity that is party to a legal action involving the State of South Dakota; or is a partner or associate of a law firm representing a person or entity that is party to a legal action involving the State of South Dakota.

Understanding that these business owners and attorneys might actually enjoy being prohibited from making political donations; in the end the bill was considered to be too broad. Members of the House State Affairs Committee “deferred HB 1267 to the 41st day” on a vote of 11 to 2; a motion that kills the bill.

New Attempt to Appropriate Economic Development Funds

SB 134 – Sutton (D-Burke) - provide for the transfer of funds from the future fund to the education enhancement trust fund for the purpose of funding needs-based grants.

Senate Minority Leader and Democratic Candidate for Governor Billie Sutton has proposed the most recent attempt to have the legislature direct the funds that are in the “employers’ investment fund” to a specific program. In this case he wants to transfer \$5 million dollars to the education enhancement trust fund to fund the needs-based grants.

The “employers’ investment fund”; also known as the Future Fund gets its money from a fee that is attached to the premium a business pays for Unemployment Insurance (UI). This parallel fee was established by Governor Mickelson over 30 years ago when the UI fees were reduced by the amount of the fee, making the impact on business costs – neutral.

The fund has been used by 5 Governors to underwrite many economic development ideas that range from training programs to purchasing equipment for technical institutes. The key to the success of the fund has been the ability of the Governor to direct the funds without the political pressures of 105 legislators trying to get “a fair share”.

While the need-based scholarship program is a worthy program, the Chamber continues its long held resistance to having the future fund being appropriated by the Legislature. The Chamber opposed the bill before the Joint Appropriations Committee on Thursday morning. SB 134 was tabled by the Joint Appropriations Committee on a vote of 13 yea to 3 nay.