February 14, 2011

SENATE BILL No. 325

DIGEST OF SB 325 (Updated February 11, 2011 4:36 pm - DI 110)

Citations Affected: IC 4-33.

Synopsis: Local development agreements. Provides for the Indiana gaming commission's regulation of local development agreements.

Effective: Upon passage.

Banks, Delph, Kruse, Mrvan

January 10, 2011, read first time and referred to Committee on Public Policy.
February 14, 2011, amended, reported favorably — Do Pass.

C o p y

February 14, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 325

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-33-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Administration of Local Development Agreements

Sec. 1. As used in this chapter, "affiliate" means any person who directly or indirectly controls, is controlled by, or is under common control of another person.

Sec. 2. As used in this chapter, "development agreement" means the written agreement or group of written agreements that:

(1) is between a person or a unit of government, and a development provider; and

(2) sets forth the financial commitments of a development provider to support economic development, including, without limitation, charitable or educational purposes in a specified location.

Sec. 3. As used in this chapter, "development provider" means:

(1) a licensed owner;

(2) an operating agent; or

(3) an affiliate of a licensed owner or an operating agent who makes or may make an economic development payment.

Sec. 4. As used in this chapter, "economic development payment" means monetary disbursement paid under a development agreement that is:

(1) received by a unit of government or any other person; and

(2) not paid in legitimate exchange for anything of value, including, without limitation:

(A) a lease;

(B) a purchase order; or

(C) a service contract.

Sec. 5. As used in this chapter, "specified recipient" means a person that is named in a development agreement that:

(1) receives an economic development payment from a development provider; and

(2) is not a party to the development agreement.

Sec. 6. As used in this chapter, "unspecified recipient" means a person that is not named in a development agreement that receives a disbursement of money from a specified recipient.

Sec. 7. (a) The commission has continuous jurisdiction over development agreements, including, without limitation, the ability to disapprove part or all of a development agreement if disapproval would ensure:

(1) compliance with state and federal law;

(2) the integrity of gambling operations in Indiana; and

(3) compliance with the purposes of the agreement.

(b) The commission may verify and ensure that development agreements, economic development payments, disbursements to unspecified recipients, and expenditures of third party recipients:

(1) comply with state and federal law;

(2) do not adversely affect the integrity of gambling operations in Indiana; and

(3) comply with the purposes of the agreement.

Sec. 8. All development agreements must contain the following statement:

"All parties to this agreement recognize the authority of the Indiana gaming commission over this agreement, including, without limitation, the authority to disapprove all or part of this agreement, to verify and ensure payments made under this agreement, to verify and ensure expenditures by recipients, to verify and ensure that compliance with the

C o p y

purposes of the agreement, and to act concerning modifications to the agreement. All parties to this agreement agree to comply fully with any requests for information or directives related to the exercise of the commission's authority.".

Sec. 9. A development agreement shall accurately reflect the flow of economic development payments.

Sec. 10. (a) A development provider shall report annually to the commission the following:

(1) the total dollar amounts of economic development payments;

(2) the parties or specified recipients, or both, that receive economic development payments; and

(3) any other items related to an economic development payment that the commission may require.

(b) A specified recipient of an economic development payment shall report annually to the commission an accounting of:

(1) any economic development payment received by the recipient; and

(2) any disbursements of economic development payment money that the recipient makes to:

(A) another specified recipient; or

(B) an unspecified recipient.

(c) A report submitted under subsection (b) must include:

(1) the legal name of the person submitting the report;

(2) the date, amount, and purpose of each disbursement;

(3) the name of each specified or unspecified recipient receiving a disbursement; and

(4) any other information that the commission may require.

(d) Upon request of the commission, a person submitting a report under subsection (a) or (b) shall attach to the report sufficient documentation to support a transaction described in the report.

(e) A report submitted under subsection (a) or (b) must be made available electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(f) The commission may require, with respect to a report required by this section:

(1) the format of the report;

(2) the deadline by which the report must be filed; and

(3) the manner in which the report must be maintained and

C o p y

filed.

Sec. 11. (a) A party that is not the development provider may not be a for-profit person.

(b) A specified recipient may not be a for-profit person.

(c) A specified recipient who disburses part or all of an economic development payment to an unspecified recipient has a duty to ensure that the expenditures made by an unspecified recipient directly advance the stated purposes of the economic development payment.

Sec. 12. (a) Each nonprofit specified recipient must have a conflict of interest statement that complies with state and federal law, and must provide the commission with a copy of the statement.

(b) Each nonprofit specified recipient must provide the commission with a copy of its bylaws.

Sec. 13. (a) Any recipient of an economic development payment must deposit the economic development payment into a separate and segregated bank account not later than five (5) days after its receipt.

(b) The bank account referenced in subsection (a):

(1) must allow expenditures only in accordance with the terms of the development agreement;

(2) must be used to account for and report the proceeds of economic development payments; and

(3) must be maintained at an FDIC insured bank that is located in and has a corporate presence in the State of Indiana.

Sec. 14. (a) If all parties to a development agreement agree to modify a development agreement, the parties shall:

(1) submit to the commission a written request for modification, which shall be signed by all parties;

(2) submit a copy of the development agreement as it would appear after modification; and

(3) submit a document explaining the parties' reasons for the requested modifications.

(b) The commission may consider a request for modification that complies with subsection (a).

(c) If the commission approves the parties' request, the parties shall provide the commission with a fully executed copy of the new development agreement not later than thirty (30) days after the date of commission approval.

Sec. 15. (a) If the commission has disapproved all or part of a

C o p y

development agreement, the development provider shall request a modification of the development agreement.

(b) The development provider shall submit to the commission:

(1) a copy of the development agreement as it would appear after modification; and

(2) a listing of all proposed modifications.

(c) The commission shall consider a request for modification that complies with subsections (a) and (b).

(d) The development provider shall notify all parties to the development agreement whose participation in the development agreement has not been disapproved of by the commission that it has submitted a modification request to the commission.

(e) Any party to a development agreement whose participation in the development agreement has not been disapproved of by the commission may submit to the commission any information that it considers relevant to the proposed modification.

Sec. 16. Upon request of the attorney general, the commission shall make available to the attorney general all filings made under this chapter regarding a development agreement.

SECTION 2. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 325, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 325 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 7, Nays 0.

C o p y