



# SDBA Legislative Update

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## Governor Rounds Kicks Off 2007 Session

Governor Mike Rounds delivered his 2007 State of the State address on January 9. As in past years, the Governor started his speech by reviewing key economic data within the context of the major components of the 2010 Initiative, which he launched shortly after taking office in 2003. He highlighted all-time high figures of:

- Gross state product at \$30 billion annually
- Visitor spending over \$800 million in 2005
- Capital investment in manufacturing (474 new and expanding businesses invested more than \$407 million in construction and equipment
- 18,000 new jobs created in the last four years

If you are interested in following our state's collective progress toward achieving the goals set forth in the 2010 Initiative, you can do so online at

[www.2010initiative.com](http://www.2010initiative.com)

The Governor also brought legislators up-to-speed on statewide development of alternative energy sources in the areas of biofuels (ethanol and biodiesel) and wind energy. By sometime next year, the Governor estimated that our state's ethanol production will have grown to a production capacity of 1.1 billion gallons per year, up from less than 200 million gallons in 2002. Amazing! He also updated listeners on South Dakota's pursuit of the National Science Foundation's (NSF) selection of a site for a deep underground science and engineering laboratory. Governor Rounds made special mention of our own T. Denny Sanford's generous \$70 million gift to the Science and Technology Authority to create an interim laboratory at the 4,850-foot level of the former Homestake gold mine in Lead and to help with construction of the deep laboratory at the 7,400-foot level and to build a world-class science education center. Governor Rounds stated, "While the competition for the NSF lab site is not yet over, Mr. Sanford's donation has helped tremendously with Homestake's chances to win the designation." What a great story!

While the general tone of the Governor's message was decidedly upbeat, he did call the legislators' attention to some challenges that need to be addressed including:

- Tribal economic development
- Enactment of an Indian Education Act
- Fighting the methamphetamine epidemic
- Raising the state's minimum wage
- Funding K-12 education

The general subject of school funding may be the most divisive issue debated during the 2007 session. School administrators continue to increase pressure on elected leaders to just give the public k-12 system more money. The Governor went to great lengths to point out that education has been a very high priority for him and for the legislature the past four years when funding has increased by more than \$475 per student. He stated that, "State aid to local schools is the only state-funded issue that is given a mandatory, statutory funding increase every single year. Schools are already first in line, by law, ahead of the elderly, the poor, the disabled and children who don't have health insurance." Perhaps his most pointed suggestion to legislators who wish to consider additional funding for k-12 schools was to target additional money toward specific goals to achieve specific results. Stay tuned for the debate to come.

## Other Legislative News

153 bills were introduced during the first four days of the regular portion of the 2007 session, which will run through March 6. While I am still waiting to hear on one particular banking/insurance-related issue, at this point the SDBA has no organizational bills to introduce this year. However, a number of bills of interest have been introduced. Some of them are:

**HB1043** – This perennial bill to update the state bank franchise tax code reference to the most recent version of the federal internal revenue code also includes similar reference updates in three other areas of state law dealing with the estate tax and with sales and property tax refunds for low-income elderly or disabled citizens. This bill should sail through early.

**HB1048** – In the wake of several fairly high-profile disputes over the application of our existing political campaign finance reporting laws, Secretary of State Chris Nelson has introduced this 24-page, omnibus reform bill. While this bill isn't of direct interest to bankers, the debate should be interesting, particularly given the fact that Rep. Roger Hunt (R-Dist 10 – Brandon) is the defendant in a campaign finance reporting lawsuit brought by Mr. Nelson and Attorney General Larry Long.

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**SB 1,2 & 3 & SJR11**– This series of Senate bills dealing with various facets of our state’s initiative and referendum process have been introduced on behalf of a nonpartisan group of political scientists, lawyers, judges and former judges, former state legislators and constitutional scholars formally known as the Constitutional Revision Commission. This group authored the language of proposed constitutional Amendment F, dealing with the constitution’s legislative article, which was voted down by two-thirds of the voters in the 2006 election. Undaunted, this group has introduced a total of four new bills and 11 proposed changes to our state constitution in the form of Senate joint resolutions for legislative consideration.

Banks in South Dakota contributed heavily toward the defeat of proposed Amendment E (J.A.I.L. for Judges) during 2006. Banks were also called upon to support the defeat of Amendment D (property tax assessment limitation). Both measures were pummeled in the November election by at least 80 – 20 margins. Considerable discussion will take place during this session with regard to the process by which initiated and referred measures make their way onto South Dakota’s general election ballot. While I doubt much change will be made in the process whereby citizens can put new laws on the ballot or refer laws enacted by the legislature to the voters, I do think that the process for putting proposed constitutional changes before the voters may change. Our constitution can only be changed by act of our voters. It cannot be changed by an act of the legislature. As proposed, Amendments D and E each had glaring faults, both from a technical and a public policy standpoint. Had they been enacted by the voters, the legislature could not have fixed those flaws. Concern is growing over the relative ease with which proposed changes to our state constitution can be placed on our ballot. That concern will likely be expressed during the legislative debate over SB 1-3 and SJR 11. Look for the SDBA to play a part in that debate.

**SB40** –This bill, brought on behalf of the Department of Revenue and Regulation (DRR), proposes to change the distribution formula for bank franchise tax paid on net income generated by credit card servicing activities. Franchise tax revenues have traditionally been divided between the state general fund (26 2/3 percent) and the various units of local government (73 1/3 percent). The local share of bank franchise tax is divided between school districts, counties, cities, etc. in relatively the same proportion as do local taxes on real property. An exception to that general rule has existed for credit card bank income since Citibank came to South Dakota in 1981. Citibank’s bank franchise tax gets split differently, with 95 percent going to the state general fund and 5 percent going back to local government. I am told that

franchise tax paid on credit card income from two other banks is also allocated according to the 95/5 rule. SB40 seeks to impose the 95/5 rule on franchise tax derived from credit card servicing operations for all banks. Any bank with a credit card business will have to separate the income from core banking operations from that generated by its credit card business and report these two sources of net income separately when filing bank franchise tax returns. The tax owed will not change and will still be remitted to the DRR. Once received, the tax will be allocated by the DRR.

This bill had its initial hearing in the Senate Taxation Committee earlier today and passed out of committee on a 6-0 vote with no opposing testimony. I did testify, neither in favor nor against the bill, suggesting that individual bankers may have personal preferences as to the final destination of the franchise taxes they pay out of concern over local business banking relationships. I was careful to point out that bankers do recognize it is appropriate that the legislature decides on the allocation of those funds between state and local government priorities. Even though no one opposed the bill in committee, I believe that local government interests will be raised when the bill goes to the full Senate.

**SB44** – This bill is brought by the Division of Banking to authorize the division to conduct background checks on division personnel. This bill simply codifies existing business practice for the division. For BSA compliance exam purposes, FINCEN requires background checks for Division of Banking personnel. The SDBA will support this legislation.

**SB45** – This bill also is brought by the Division of Banking. It proposes the repeal of SDCL Title 52, which governs state-chartered savings and loan associations. The language is outdated and totally unused.

**SB47** – This bill is brought by the Division of Insurance seeking to prevent illegal multiple employer welfare arrangements (MEWAs) and other illegal health insurance activities in South Dakota. MEWAs are group health arrangements similar to that currently offered to SDBA member banks by the SDBA in cooperation with Wellmark Blue Cross/Blue Shield of SD. Our plan is legal. Some similar plans offered by an unlicensed, non-resident MEWA would become illegal under SB47. The SDBA will closely monitor this legislation.

Mark your calendars for February 7, 2007, and make plans to come to Pierre for our annual State Legislative Conference, Reception and Dinner. Visit [www.sdba.com](http://www.sdba.com) for more information. As always, please call me if you have any needs or concerns. The SDBA office number is (605) 224-1653 and my cell number is (605) 280-7985.

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