



SDBA Legislative Update

Volume 8, Issue 6

February 16, 2007

Legislature Takes a Long Weekend

According to the 2007 legislative calendar, the deadline for bills to pass in their first house was set for today. But the Friday forecast for freezing rain changing to snow coupled with winds in excess of 30 mph spurred a decision by legislative leaders from both parties to mutually agree to postpone crossover day until next Tuesday, Feb. 20. Next Monday, state government including the Legislature will observe President's Day. In essence, legislators will get to spend a rare four-day weekend at home with their constituents. Some of the activity which occurred over the past couple of days, both in committees and on the House and Senate floor, could set the stage for some interesting cracker barrel discussion tomorrow.

Update on Key Legislation

Property Tax Assessment Legislation – Yesterday, I listened with considerable interest to a rather heated debate over two bills in the House Taxation Committee which proposed two markedly different solutions to the inherent problems associated with a creature of the property tax assessment process known as the 150% rule. Among other things, HB1308 proposes a multi-year phase out of a law which has been in place since 1999 prohibiting directors of equalization from including the sale of any piece of property which sells for more than 150% of its assessed value in any type of sales ratio study. Sales ratio studies are one of the primary tools used by those directors in their attempts to equalize the property tax burden among local taxpayers.

What has happened since the enactment of the 150% rule is that the number of arms-length sales of property, particularly ag property, which have in fact been for a value at or below 150% of assessed value have continued to decline. Enforcement of the 150% rule has increasingly meant that many more sales get disqualified from inclusion in sales ratio studies than those which can be included. The Department of Revenue and Regulation estimates that the 150% rule is effectively keeping nearly \$4 billion of true market value from being included in the state's taxable real property base.

Because of limits on the growth or property tax spending by local units of government, the 150% rule doesn't necessarily equate to a direct limit on the ability of

counties, cities and school districts to raise more funds through property taxes. In the limited instance of property tax support for school district's capital outlay funds, bond redemption and special education funds, the artificial limit on property tax assessments under the 150% rule does inhibit overall tax collections. But in the case of funding for general education, county and city government, the 150% rule essentially causes a shifting of tax burden away from undervalued property toward property that is valued much closer to full and true market value. HB1308 passed out of the House Taxation Committee by a vote of 11-4 and will be considered by the full House of Representatives next Tuesday.

The imposition of the 150% rule goes back to a bill introduced during the 1999 session on behalf of the members of an interim taxation study committee. As initially introduced in 1999, SB1 provided that any ag land which sold for more than 150% of its agricultural income value was to be determined by capitalizing its annual cash rental value. That bill was changed by the full Senate to the language of the current 150% sales to assessment rule which has been in place on all types of property since 1999. Suffice it to say that production ag interests are very nervous about the prospect of repealing the 150% rule.

The second bill, SB173 offers a different solution for the 150% rule dilemma. This bill proposes that for property taxes payable in 2009 through 2013, property sales exceeding 150% of assessed value shall be included in sales ratio studies, but no property's taxable valuation may increase more than 5% per year because of those sales. The 150% rule would be completely repealed on July 1, 2013. The assessment mechanism for agricultural land, however, would switch to an agriculture income approach for taxes payable in 2009 and beyond. SB173 provides that ag income value would be based on three-year average cash rents capitalized at a rate of 6.16%. For the first three years of this new method, the total value of ag land within any county could not increase more than 15% in any year. SB173 passed the full Senate by a vote of 28-5.

As you can see, the assessment and taxation of real property is steeped in history and fraught with problems. Individual legislators generally strive to pass laws which can be administered fairly and accurately. They also try to avoid passing laws which, while well-intended, can

Published Weekly During Session by the
South Dakota Bankers Association ~ P.O. Box 1081 ~ Pierre, SD 57501 ~ Ph: 605-224-1653

sometimes lead to unintended consequences. The final outcome of the 2007 debate over solutions to the inherent inequities created by the 150% property tax assessment rule won't be decided until late in the game.

SB77 & 78 – During the SDBA's State Legislative Conference last week, a few bankers expressed concerns over the concepts of restricting a creditor's ability to attach the ownership interests of a partner of a limited partnership or a member's interest in a LLC. Bankers posed the example of a secured lenders interest in the stock held by an owner of an ethanol plant which might be organized as an LLC. I raised these concerns both to the SDBA's legal counsel and to the prime sponsors of SB77 and 78. They all reminded me that the terms of SB77 and 78 apply only to judgment creditors, not to creditors having a properly perfected security interest in stock of a LLC, such as an ethanol plant. If a person borrowed money from a bank to buy shares in an ethanol plant and pledged those shares as security for the loan, then a bank as a secured creditor would have the right to lay claim to those shares in the event of a default, the provision of SB77 or 78 notwithstanding. These two bills have been assigned to the House Judiciary Committee but have not yet been scheduled for a hearing.

Trust Task Force Bills

SB97, 98 and 99 – Each passed the full Senate last week with no dissenting votes. It is my understanding that the state Department of Social Services may want to amend SB98 to make sure that no one would be able to circumvent the proper application of financial means tests by placing assets into a self-settled trust. I will carefully review any such amendments if offered.

Availability and affordability of Health Insurance Coverage

At last week's Legislative Conference luncheon, I spoke briefly about a package of bills introduced by Sen. Tom Dempster (R-Sioux Falls) and Rep. Joel Dykstra (R-Canton) dealing with the availability and affordability of health insurance coverage. All but two of those bills have been laid to rest for this year. Two of those bills SB132 and HB1169 have morphed into a call for a summer study of this general topic. The task force members would be charged with the responsibility to:

- Develop a plan to provide health insurance to South Dakota residents who lack coverage.
- Seek to create efficiencies in the purchase of health insurance products.
- Prepare cost estimates and designate funding sources for any new proposals it recommends.
- Explore opportunities available from the federal government

Each of these bills has passed its original house by wide margins. Given the SDBA's ongoing interest in providing our members with a solid group health insurance product, we will closely follow these bills and, if enacted into law, we will also closely track task force activities. I will discuss this matter in more depth in my column in the March issue of *South Dakota Banker* magazine.

School Funding and Teacher Pay

SB157 – This bill, introduced primarily on behalf of an interesting mix of interests including schools and chambers of commerce from some of South Dakota's larger communities, seeks to increase the inflationary index factor driving state financial support for K-12 schools from its current annual maximum of 3% up to 4.3%. As originally introduced, the bill also proposed to create an optional teacher compensation assistance program for school districts which desire to enhance teacher pay beyond simple inflationary increases. The bill was amended in the Senate Education Committee to include some of the components of other bills dealing with allowable school district fund balances, mandatory consolidation of schools with fewer than 100 students and a few other concepts from other related bills. The full Senate narrowly failed to agree on the mandatory consolidation proposal and ultimately passed SB157 by a vote of 29-5. This again is one of those bills which likely won't be put into final form until the waning hours of the 2007 Legislative Session.

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.