



# SDBA Legislative Update

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## Crossover Day Highlights

Due to last Friday's inclement weather, the deadline for bills to achieve final passage in their house of origin was moved to Tuesday, Feb. 20. In the Senate, that deadline came and went with little fanfare as the Senate had dealt with its hot-button bills by the end of last week. Tuesday's floor debate in the House was a bit more interesting, lasting until about 7:30 p.m. As I alluded to in last week's *Legislative Update*, the most contentious floor debate related to bills dealing with funding for K-12 schools, mandatory small school consolidation and alternatives surrounding the probable repeal of the 150 percent assessment rule for real property.

## Update on Key Legislation

**HB1156** – This bill aims to place a couple of new requirements on people who circulate petitions to gather enough signatures to meet statutory requirements for putting an initiated law or constitutional change or referred measure on the general election ballot. The bill would prohibit paid signature gatherers from being compensated on a per-signature-gathered basis and would also require that all circulators be residents of South Dakota. While unopposed in the House, HB1156 was opposed in the Senate State Affairs Committee by Susan Johnson from Luddington, Mich. Ms. Johnson has worked in the paid signature gathering business for more than 20 years and her firm was hired by the J.A.I.L. amendment proponents to assist in gathering petition signatures during the 2005–2006 election cycle. Despite her objections, the State Affairs Committee voted to send the bill to the full Senate on a 7-1 vote.

**SB77 & SB78** – These two bills dealing with the rights of **judgment** creditors of individual partners within a limited partnership or of individual members of limited liability companies each moved a step closer to final passage this morning as they received their hearing in the House Judiciary Committee. Both SB 77 and SB78 moved out of the committee and were sent to the floor on unanimous votes.

**SB89** – This bill proposes state adoption of the Uniform Prudent Management of Institutional Funds Act. This act, like many other uniform statutes, comes from the National Conference of Commissioners on Uniform State Laws and is looked upon with great favor by the charitable foundation community within South Dakota,

especially the foundations at our state's public universities. The bill received final approval in the House by a vote of 68-0 and now goes to the Governor for his signature.

**SB165** – This bill proposes a new regulatory framework for the mortgage brokerage/mortgage lending industry. Among the new forms of regulation proposed in this bill is to require the registration of mortgage loan originators. This class of individual would be the front line person who takes mortgage applications and who assembles the documentation necessary for obtaining a mortgage loan. These individuals would be required to work under the direct supervision of a licensed mortgage broker or lender for a two-year time period prior to being eligible to obtain a mortgage broker or lender's license. When this bill had its first hearing in the Senate Commerce Committee, I successfully pushed for the adoption of an amendment which clearly stated that regulated banks, their employees and their exclusive agents are exempt from the provisions of SB165.

The bill had its initial hearing before the members of the House Commerce Committee earlier today, passing on to the House Floor by vote of 13-0. Because this bill requires the Division of Banking to register and keep track of several thousand mortgage loan originators in addition to several hundred licensed mortgage brokerage and mortgage lending firms, the Division has suggested that they will need to add two new staff positions and will need to make a significant investment in computer hardware and software. The changes to the Division's budget to address those needs will be accomplished through the General Appropriations Bill for FY2008 (**HB1281**). In order to make that need clear to the members of the Joint Appropriations Committee, an amendment was added to SB165 by the Judiciary Committee this morning. I testified in favor of the amendment and in favor of the increased regulatory framework embodied in SB165. I will be helping Director Novotny by lobbying the members of the House and Senate Appropriations Committees to make sure those budgetary changes are amended into the General Appropriations Bill for FY2008. (**HB1281**).

**SB202** – The intent of this bill is to sync state law with federal bankruptcy law in terms of the amount of an individual's retirement assets which should be exempt from legal process/claim. State law currently sets that

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threshold at \$250,000, while federal bankruptcy code allows for \$1,000,000. The general concept of syncing this allowance at the \$1,000,000 level was discussed last summer by the members of the Governor's Trust Task Force and subsequently agreed to by the SDBA Board of Directors. Three sections of the Trust Task Force Omnibus Bill, **SB97**, dealt with this matter, but once SB202 had been introduced those provisions were stricken from SB97 at Sen. Dave Knudson's request. Once that had taken place, it became necessary to try to amend some additional changes onto SB202 in order to fully accomplish the objectives of the members of the Trust Task Force. Specifically, the following internal revenue code cross references were proposed to SDCL 43-45-17:

- Section 414 - Church plans
- Section 457 State and Local Government employee deferred compensation plan
- Section 501(a) – Tax exempt trust portions of a retirement plan

These three new cross references would then be added to a list which already includes 401K plans, IRAs, Roth IRAs, SEPs and the like.

The amendment was adopted and the bill passed out of the House Judiciary Committee earlier today by a vote of 12-1. If passed by the House of Representatives, the bill will need to be sent back to the full Senate for concurrence in the afore-mentioned amendment.

**HB1172** – This year's attempt at further tightening of payday lending regulations achieved unanimous passage in the Senate earlier this week. For several years now, the public policy in South Dakota has been to limit small dollar loans to not more than \$500 between any single lender and any individual borrower. Based on some of the initial examinations conducted during the past year by the Division of Banking, the legislature determined that a slight change was needed to existing law to clarify its intent with regard to the \$500 lending limit, hence we have HB1172 in its final form. The bill now goes to the Governor for his signature.

**SB44 and SB45** – These bills were brought on behalf of the Division of Banking which seeks to allow the Director to conduct criminal background checks on the division's employees and to repeal unused laws relating to state chartered savings and loan institutions. Both were scheduled to be heard last Friday in the House Commerce Committee but became victims of the impending snowstorm and the Legislature's collective desire to get home ahead of the storm. The bills will be heard next Wednesday, Feb. 28. No opposition is anticipated.

## Wrapup

According to the official calendar for the 2007 session, by the end of next week, all bills must have passed both houses in order to survive. Given the fact that the Legislature did not work last Friday, I am uncertain as to whether or not this deadline has been pushed back to Monday, March 5. In any case, the number of bills which still must be dealt with in their second committee is manageable, so the legislative bodies shouldn't struggle to complete their work due to the volume of bills. However, the final decisions on the weighty topics discussed in my opening paragraph will very likely not get made until the last possible moment. I will likely devote most of next week's update to a general discussion of either the final decisions or points of contention which are delaying the same.

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.