



SDBA Legislative Update

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The End Is in Sight

As I write this update, the official agenda for the last few legislative days is a bit uncertain due to the forces of Mother Nature. Travel anywhere east of Pierre will be difficult if not impossible for the rest of today, so it appears increasingly likely that the Legislature will treat Saturday as a make-up day for Friday, Feb. 16 when another impending winter storm sent legislators home early. Essentially, the Legislature will be back on track to conclude its official business not later than Tuesday, March 6 as originally planned. The 40th legislative day is set for March 26 when legislators will return to deal with any gubernatorial vetoes.

Update on Key Legislation

Division of Banking Bills

SB 44 - This bill to authorize the conduct of criminal background checks on all Banking Division employees passed the House floor yesterday by a unanimous vote. Besides being prudent public policy, SB44 was born out of a need to comply with the U.S. Treasury's FINCEN and BSA examination requirements.

SB45 – This bill to repeal the statutory authority for state-chartered savings and loan associations also passed the House yesterday by a unanimous vote. This body of law in South Dakota has been unused for over a decade. At some point in the future, the Division of Banking would be willing to work with parties interested in enacting a modernized version of a state thrift charter.

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 attained final passage. On Monday, both SB 77 and SB78 passed the full House of Representatives by unanimous votes and have been delivered to the Governor.

SB80 – This bill increases from \$30 to \$40 the allowable fee which merchants can collect for handling a dishonored check. On Wednesday, the bill received final passage in the House of Representatives by a vote of 51-18. Next stop is the Governor's desk.

Trust Task Force Bills

SB's 97, 98 & 99 – All three bills achieved final passage in the House on unanimous votes this past week. Officials from the Department of Social Services offered an amendment to SB98, the bill to clarify our law with regard to the rights of a creditor to attach a beneficiary's interest, making sure that DSS could take those interests into account when determining eligibility for public benefits.

SB165 – This bill proposes a new regulatory framework for the mortgage brokerage/mortgage lending industry. I testified in support of this bill as it represents a step in the direction of regulatory equality between banks and non-bank mortgage lenders. I did so with the caveat that the Legislature must also provide the Division of Banking with the fiscal and human resources needed to implement this new law. To that end, I have visited with the Republican leadership of both the House and Senate Appropriations Committee as well as individual Democrat members about the need to amend the Division's budget as contained in the General Appropriations Act for 2008, (**HB1281**). While it is difficult to know how many new individuals will ask to be registered as mortgage loan originators, the Division will ask for 2.0 FTE and a little more than \$300,000 in other fund expenditure authority to implement the provisions of SB165. Increased fees paid by mortgage lenders and brokers and new fees paid by mortgage loan originators will be used to cover those costs.

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 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.

Yesterday, the Senate voted to concur in the amendment which I offered in the House Judiciary Committee to include references to internal revenue code 414 (church) plans, 457 (state and local government employee supplemental retirement) plans and 501a (tax exempt trust portions of plans). Now the bill heads to the desk of Governor Rounds.

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HB1231 – This bill to clarify the treatment of accrued wages under bankruptcy achieved final passage by unanimous vote in the Senate on Feb. 27.

HB1275 – This bill establishes a three-year statute of limitations for real estate appraisers. The bill achieved final passage in the Senate on Tuesday by a unanimous vote.

Funding for K-12 Education

At this writing, the House and Senate have yet to come to an agreement on a handful of issues key to state general fund support of public K-12 schools in South Dakota. Contentious issues include:

- Rate of increase in per-student funding for FY2008 and beyond between the 3 percent level recommended by Gov. Rounds and as much as 4.3 percent. At this writing, the Senate version of HB1082 contains a 4.3 percent level of increase.
- Whether or not to mandate small school consolidations, and if so, what minimum level would be required. At this writing, the Senate version of HB1082 contains a 100-student minimum requirement.
- Whether or not to freeze the small school bonus funding factor at a maximum level of approximately \$850 per student. The alternative is to continue to allow an inflationary upward adjustment each year.

HB1082 and/or SB157 will ultimately contain any substantive changes in funding or structural policy with regard to K-12 education.

Property tax Assessments

SB173 proposes several substantive changes to the methodology used to set taxable values of real property in South Dakota. SB173 proposes a gradual repeal of what is commonly referred to as the 150 percent rule. Under current law, if a piece of real property sells for more than 150 percent of its assessed value, that sale cannot be used by the local director of equalization in sales ratio studies used to establish taxable valuations. What has happened over time is that many more sales of property, particularly ag property, are eliminated from consideration than can be included in the sales ratio studies. As a result, several billion dollars worth of property are effectively not recognized as part of the taxable real property base. Urban legislators from both parties have become increasingly bothered by the inequity of treatment between ag property and commercial property in terms of both assessment and taxation.

In addition, phasing in a full repeal of the 150 percent rule, the original version of SB173 also proposed that the assessed value of agricultural land should be determined not through the use of sales ratio data, but instead would

be established based on a pseudo capitalization of cash rental methodology. This methodology has long been supported by many legislators who come from farm and ranch country and more recently by some urban legislators. This methodology is not viewed with favor by some urban legislators from both political parties. The final version of SB173 will likely not be determined until late in the 2008 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.