



# SDBA Legislative Update

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## Legislative News

Week three of the 2010 session, scheduled for four days, ended up as a short three, as last weekend's snowstorms delayed many legislators' return to Pierre until late Monday afternoon. Continuing weather problems prompted legislative leaders to push back final bill introduction deadlines to Feb. 3 for individual bills and Feb. 4 for committee-sponsored bills. Total bill count reached 375 as of yesterday's close of business.

## Legislation of Interest to Banking

Rep. Gerald Lange's (D- Madison) **HB1123 - An act to Repeal the Bank Franchise Tax**, had a short life. Introduced on Tuesday, Jan. 26, the bill had its first hearing in the House Taxation Committee on Thursday and was promptly deferred to the mythical 41st legislative day. A companion measure also proposed by Rep. Lange, **HB1124 - An Act to Repeal the Premium and Annuity Tax on Insurance Companies**, suffered a similar fate as the Taxation Committee tabled it during the same meeting. A lesson to be learned here is that serious discussion of reform for our state's system of taxation is unlikely during times of economic weakness and large budget deficits.

The House Judiciary Committee took action to amend and subsequently send **HB1070** to the full House of Representatives on Wednesday by a vote of 10-3. As I explained last week, this bill comes as a result of last fall's South Dakota Supreme Court decision relating to the enforceability of contracts involving gambling debts. The SDBA supported an amendment offered by Jeremiah D. Murphy on behalf of Citibank, whereby contracts where the creditor is a regulated lender would be exempt from the provisions of this seldom used, antiquated provision of contract law. SDBA lobbyists will be visiting with House members advocating passage of the amended version of **HB1070** next week by the full House of Representatives.

**HB1139** intends to clarify the application of common law civil trespass on agricultural land and to provide for the recovery of liquidated damages against trespassers. While clearly aimed at discouraging hunters from illegal trespass, we will monitor this bill closely to make sure that an ag lender's rights to inspect loan collateral (dirt, crops, livestock or equipment) are not unknowingly compromised in the event that **HB1139** should pass.

Rep. David Lust (R-Rapid City) introduced **HB1201** to provide that certain tax laws applicable on Dec. 31, 2009, will apply to certain wills and trusts that refer to federal estate and generation-skipping transfer tax laws. This bill is designed to remedy problems associated with Congress' failure to deal with the matter of the federal estate tax repeal/reinstatement in a substantive way prior to the end of CY2009. It addresses provisions in many wills that reference the federal inheritance tax rate which became ambiguous once the tax expired on Dec. 31.

As co-chair of the Governor's Trust Task Force, Sen. Dave Knudson (R-Sioux Falls) is the prime sponsor of **SB103 - An Act to revise certain provisions relating to trusts**. This legislation contains several sections brought on behalf of the Division of Banking which are designed to strengthen the legal and regulatory framework for "public trust companies" that engage in trust company business with the general public by advertising, solicitation or other means as compared to trust companies that manage assets belonging strictly to individuals or family members.

**SB119**, introduced by Sen. Margaret Gillespie (D-Hudson) seeks to carve out an exception to South Dakota's real estate licensing and appraisal statutes to permit an auctioneer to offer an opinion regarding the value of personal or real property on a fee for service basis. While I don't expect that real estate lenders could or would rely on such an opinion in support of a real estate loan, the SDBA will track the progress of SB119.

**SB141** is brought by Sen. Jason Gant (R-Sioux Falls) on behalf of county Registers of Deeds, seeking to keep preparers of documents to be filed at these county offices from including any "personally identifiable information" (PII) on those documents. Personally identifiable information includes complete Social Security numbers; checking, savings or account share numbers; or credit, debit or charge card numbers. You may recall that the SDBA opposed similar legislation last session because it created civil liability for preparers in the event that said PII information on their documents led or contributed to identity theft. By USDA regulation, preparers and filers of Effective Financing Statements are required to include borrowers' Social Security numbers on an EFS document, creating sort of a damned if you do - damned if you don't conundrum for ag lenders. In order to

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address that concern, Section 4 of SB141 states that the provisions of sections 2 - 6 of the act do not apply, among other things, to “a uniform commercial code filing in the county office of the register of deeds.”

Hopefully this exclusion eliminates practical concerns which bankers have over this measure. However, I want to know quickly if bankers have other concerns about this legislation.

Lastly for this week, I call your attention to **SB142, An act to prohibit certain business entities and affiliated persons from making political campaign contributions to state officeholders or candidates if the business entity does contractual business with certain state agencies.**

In light of the recent, highly publicized U.S. Supreme Court decision regarding the ability of corporations and labor unions to support candidates for federal office, this bill is an interesting attempt to stifle the free speech of state government contractors and their family members. Stay tuned for partisan political fireworks.

As always, please contact me with any questions or concerns.

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Have a great weekend!!

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