



# SDBA Legislative Update

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## Legislation of Interest to Banking

**SB103** the work product of the Governor's Trust Task force cleared another hurdle this week, passing out of the House Judiciary Committee on a 12-1 vote.

**HB1070** to update an archaic statute relating to the voidability of contracts involving the repayment of a gambling debt received final passage in the Senate on Wednesday. Next stop for HB1070 is the Governor's desk.

Next week, two bills of interest to banks in the credit and prepaid debit card business will likely have their first hearing in the second house. **SB190**, a bill to sync South Dakota's credit card statutes with Regulation Z provisions regarding the ability of a cardholder to opt out of certain changes in contractual conditions, will be heard on Monday, March 1 in the House Commerce Committee. Most likely on Wednesday, members of that same committee will consider **SB81**, the bill to exempt certain open-loop, prepaid debit cards from the provisions of South Dakota's unclaimed property laws.

## Other Legislative News

The bulk of this week's update is provided by SDBA General Counsel and fellow lobbyist, Brett Koenecke. On behalf of other utility industry clients, Brett has been involved in ongoing discussions relating to changes in the structure of a program that provides economic incentive payments in the form of rebates of contractors' excise and sales taxes paid on large construction projects in South Dakota. I thought bankers might appreciate some background on this issue.

One of the issues confronting legislators in South Dakota is the prospects for the ongoing program known as sales tax and contractor's excise tax refunds on large construction projects. Those incentives were put in place in 2005 in order to make it possible to compete with other states for the location of the Big Stone II Power Plant, which was ultimately proposed to be built in Grant County. South Dakota's reliance on sales taxes and contractor's excise taxes make it difficult to build large construction projects. The total of the two taxes in rural areas is 6 percent and if construction projects are within city limits, the additional city sales tax is also applied. Those represent substantial costs (\$30 million on a \$500 million project) that must be taken in to

consideration when planning a project and must be paid upfront and whether the project ever makes any money. Those costs make us uncompetitive with surrounding states for construction of these large projects. Other states do not charge sales taxes and contractor's excise tax in a number of cases on these projects.

Current state law provides for a tiered system of refunds of taxes levied and paid which does help to a certain degree. Projects more than \$600 million can get back 90 percent of the taxes paid on their project costs which exceed that figure. The tiers go down from there. The Legislature is facing a cash crunch and would like to fill that hole with some of these refunds. However, the proposals which have been made would do bad things for projects already under construction or under consideration and would make us less competitive with surrounding states. In order to grow our way out of the recession, we need to have large projects which create infrastructures so that others can piggyback on them to make good things happen. For example, the proposed Keystone Pipeline in western South Dakota requires enormous amounts of electrical upgrading and consumption in order to run the massive pumps around the clock. Those electrical upgrades are being considered by wind developers, and perhaps development of wind energy potential in western South Dakota will be enhanced by the provision of new electric transmission lines to serve that project. Some legislators can only see the connection with jobs in economic development. However, we have to take a broader view and look at infrastructure development as well in order to be successful. There are a number of industries that simply could not locate here even if they wanted to because of a lack of basic infrastructure in some places.

The lack of a corporate income tax remains a very positive factor in our economic development equation. There is no question that it is a prime consideration for businesses considering whether to locate in South Dakota. However, these other taxes which we do levy (New Mexico is the only other state with the contractor's excise tax) make some types of industrial and commercial development extremely difficult. For example, wind developers with access to the huge amounts of capital required to construct such projects typically have developers working in many states trying to bring potential projects online. Not all of those projects will be developed and as bankers, you know that

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only the most profitable ones will be developed. While we will never achieve tax parody with every other state, we do have to remain attentive to tax laws and policies which hold back development.

The business community has not been insensitive to legislators' need for cash. Business has proposed trimming back the tax refunds and sun-setting the program at the end of 2012 in order to ease the cash crunch and allow for time to work with a new legislature and governor to set up targeted tax policy to encourage the kind of development that will make us viable and competitive. This is a complicated matter and getting legislative attention for a long enough period of time to discuss the matter properly can be difficult. I would encourage you to take an interest in how this matter unfolds and share your thoughts with your legislators. As bankers, you have a thorough understanding of the needs of business and finance, and your perspective will be valued.

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