



# SDBA Legislative Update

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## State of the State Highlights

Gov. Dugaard kicked off the 2017 Session on Tuesday, delivering his annual State of the State Address to South Dakota's state legislators, Supreme Court justices and other constitutional officers. Of the 105 legislators, 29 have no previous legislative experience. Each day this week, I spent time introducing the SDBA and myself to as many of these freshmen legislators as I could catch.

Among the highlights of the Governor's address was the announcement that Amazon would start collecting and remitting state and local sales taxes to the treasury. That is certainly welcome news, especially at a time when retail sales have suffered as a result of financial challenges facing the state's ag producers. Wouldn't it be nice if the nation's credit unions would step up to the plate and tell Congress that it is time for them to pay too? I won't hold my breath on that notion! But, I digress...it's time to take a look at legislative activity for week #1.

## Legislative News

Bills introduced during the first week typically fall into two general categories: those introduced on behalf of state agencies and those sponsored by interim legislative study committees. Only a few of those bills are of direct interest to the banking industry. Of the 110 bills introduced as of noon Jan. 13, here are some that I will be following.

**SB12** - Introduced on behalf of the SD Department of Agriculture, the last section of this bill proposes a technical clean-up of existing state law that gives the South Dakota Mediation Board the authority to structure the terms of contract mediators. That Board was abolished by the legislature in 2001, and the Department has been exercising that authority ever since. SB12 simply syncs the law with current practice.

**SB34** - The primary purpose of this bill is to change how the State Treasurer handles stocks, bonds and other negotiable instruments submitted as unclaimed property to his office. SB34 would impose a 90-day deadline on the State Treasurer to sell those types of instruments, thereby speeding up the time frame for remittance of

those proceeds to the state's general fund. You may recall that Gov. Dugaard had considered changing current law in a way that would have required holders of those types of financial instruments to liquidate them and then remit the sale proceeds to the state. Prior to session, I told administration officials about concerns the SDBA had received from member bankers about being forced to liquidate securities not owned by the bank. I am happy to report that no such requirement is included in SB34. You may also recall that the Governor is counting on passage of this legislation as the source of \$13 million of one-time revenue to the state general fund to help fill a hole in the state budget for the current year (FY2017). SDBA will closely monitor this legislation as it moves forward through the legislative process.

**SB36** - Although not likely to be of direct interest to banks, this bill applies to businesses licensed to collect and remit the various types of sales and use tax owed to the state and municipalities. Current law generally requires the filing of sales and use tax returns by the 23<sup>rd</sup> day of each month and remittance of taxes due by the second to last day of the following month. As a measure designed to bolster the state's cash flow, SB36 would move the filing deadline up by three days to the 20<sup>th</sup> day of month and the remittance deadline to the second business day following the due date for the return. Should this bill become law, banks should expect merchant customers to be discussing changes to timing arrangements for electronic tax payments.

**SB37** - Brought by the SD Department of Revenue, SB37 repeals outdated provisions throughout South Dakota's tax code that cross reference lien statutes that were part of South Dakota's bank franchise tax chapter 10-43 until passage of the DOR's SB53 during the 2016 session. This technical clean up measure received the unanimous support of members of the Senate Tax Committee on Friday morning. It will likely pass the Senate without debate next Tuesday.

**SB38** - This is the SD Department of Revenue's annual bill to sync cross references between various parts of South Dakota's tax code, including the bank franchise tax, to the most current version of the Internal Revenue

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Code. Members of the Senate Tax Committee also gave this bill unanimous approval on Friday morning.

**SB50** – This bill would allow the State of South Dakota’s Division of Insurance to apply for a state innovation waiver regarding health insurance as authorized by the Affordable Care Act. Because 44 SDBA member banks purchase health insurance coverage through the SDBA’s self-insured trust, SDBA will continually monitor these types of health insurance-related bills.

**HB1033** – The SD Bureau of Human Resources brought this bill in order to satisfy federal requirements relating to the treatment of confidential federal tax information that some state employees and state contractors may access in the performance of their responsibilities. HB1033 requires any employee or contractor of the state to submit to a federal background check if performance of required duties would entail access to such confidential information. While it is unlikely that employees of banks that act as depositories or as custodians of state funds would ever receive confidential information contained in a federal tax return, out of an abundance of caution, we suggested that state agencies should have an affirmative responsibility to inform current or prospective contractors if the terms of HB1033 would apply. Based on our suggestions, the bill was amended in the House State Affairs Committee on Friday morning and will be up for debate on the House floor next week. Even in its amended form, HB1033 is still short on specifics regarding how state agencies would react to and treat certain kinds of information discovered during a background check of current or prospective employees or contractors. SDBA will continue to monitor HB1033 as it moves through the rest of the legislative process.

**HB1038** – The SD Secretary of State is bringing this bill to repeal an archaic requirement that corporate farms must file annual farm reports. Some of the information that farm corporations, trusts or LLCs must report include a listing of each parcel of ground it owns, rents or leases along with who resides on the farm property, who owns the farm and who is actively engaged in farming. All of this is duplicative of what is already contained in a Farm Qualification report that was required at the time the corporation was established. Members of the SDBA’s Legislative Committee were asked if the annual report is used by bankers in their ag lending business lines. None were aware that such a report even existed. SDBA will continue to monitor this bill.

**HB1046** – This bill is the annual work product of the Governor’s Trust Task Force. According to the bill brief provided by the Division of Banking ([view the brief](#)), the first three sections of HB1046 relate to the regulation and supervision of state-chartered trust companies while the remaining sections contain technical amendment to Title 55 and SDCL Chapter 21-22 dealing with various trust provisions and the repeal of SDCL Chapter 43-10 which is no longer necessary. SDBA will monitor this legislation.

**HB1047** – The Director of the SD Division of Banking conducted a review of advance notice and publication requirements applicable to the various types of applications imposed by federal bank regulators and then compared those to South Dakota’s statutory requirements for state-chartered banks. Director Afdahl believes the application timeline for bank and trust company applications is longer than necessary to provide public notice and opportunity to comment. Currently, the Division is required to publish notice of those applications with a 30-day period for comment or objection. HB1047 would change the comment period from 30 days to 15 days, and the Division’s decision period would be shortened from 45 to 30 days. Notice will continue to be published the same as it is currently, and the public will continue to have the opportunity to comment on or object to the same bank and trust company applications. Based on feedback provided by members of the SDBA’s Legislative Committee, the SDBA will support passage of HB1047.

**HB1051** – This is another work product of the Governor’s Trust Task Force designed to establish a comprehensive framework for virtual representation as it pertains to trusts. According to an explanation of HB1051 provided by Director Afdahl,

“The concept of virtual representation addresses various notices related to trusts. Notice related to trusts is more complicated in South Dakota because certain trusts can last for a very long time, hundreds of years in some cases. Notice is required to all beneficiaries for modifications proposed to be made to a trust to correct mistakes, clarify ambiguities, etc. All beneficiaries are required to be notified, even if not all beneficiaries are known or born at the time of notice. Virtual representation is a framework to provide representation and notice to those beneficiaries that are not yet known or born at the time of notice.”

SDBA will monitor HB1051.

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## **SDBA BILLS**

SDBA will not be bringing any bills in 2017. Defense will be the name of our legislative game this year. Given the level of effort that will be needed to advance banking industry priorities in the U.S. Congress in 2017, a short legislative list in our state capitol is probably a good thing.

Once again in 2017, it is my pleasure to represent the interests of South Dakota's banking industry before the State Legislature. Please feel free to contact me any time you have questions or concerns.

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