



# SDBA Legislative Update

Volume 18, Issue 3

January 27, 2017

## Legislative News

Yesterday was the deadline for the unrestricted introduction of bills by individual legislators. More bills will still be introduced next week, but the rate of overall introduction will slow as bill introduction limits are phased in. Here are some new bills that I added to my list this week.

**SB86** – This bill proposes to allow the funds of any individual county in any bank located in South Dakota. Current law holds that as long as there are two or more banks operating within a given county, funds in the county treasury must be kept on deposit in a bank or banks within that county. Sen. Lance Russell (R-Hot Springs), the sole sponsor of SB86, brought this bill at the request of one member of the Fall River County Commission who believes the county could realize higher interest earnings on county funds if the county could shop their deposits statewide. By my count, there are 12 South Dakota counties where either 1 or no banks are operating. Those counties can shop their deposits in an adjacent county under current law. Three banks currently operate in Fall River County, so they don't have the option to shop deposits outside the county. Like Fall River, there are 22 other counties in South Dakota where either two or three banks are operating. That leaves 35 counties where four or more banks have operations.

SB86 will have its first hearing next Wednesday, Feb. 1, in the Senate Local Government Committee. Local deposits, including county government deposits, are important sources of liquidity for local banks. They are the support for local lending. I intend to testify to that effect during the bill hearing. At the same time, the SDBA represents banks in South Dakota that compete every day for deposits, county-level concerns aside. I also don't want to suggest that banks don't support competition in the deposit marketplace. As it stands, SB86 is a local interest bill without support from statewide associations representing county commissioners or county officials. There is no groundswell of support for changing the status quo, so I will take great care in my approach to this legislation.

**HB1102**, brought by Rep. Steven Haugaard (R-Sioux Falls), proposes to allow funeral home directors to collect reasonable expenses incurred in providing funeral services from a decedent using processes set up in the Uniform Probate Code that currently allow only a successor to collect personal property by affidavit in the case of small estates under \$50,000. Under HB1102, a funeral director could simply walk into a decedent's bank, present a bank teller or other bank officer with an affidavit stating the amount owed for funeral services and would expect the banker to withdraw the requisite amount of money out of the decedent's account, without notice to any legal successor. On its surface, this sounds like an ill-advised legislative proposal, but SDBA legal counsel Brett Koenecke and I are seeking counsel from the SDBA's Board of Directors to establish our official position. No hearing date has been set.

**SB97** deals with the process for releasing mechanics liens placed on the titles of motor vehicles when repair bills go unpaid. Owners, insurers or primary lienholders on motor vehicles operate under the premise that a mechanic's lien can be removed by paying the unpaid repair bill, but the current language of SDCL 32-2-29 doesn't clearly state that is the case. SB97, brought by Sen. Craig Kennedy (D-Yankton) simply adds that clarity to the South Dakota code.

**HB1073** is one of several pieces of new legislation designed to pick up the pieces in the wake of a circuit judge's ruling that IM22, the anti-government-corruption ballot measure, was unconstitutional. Rep. Mark Mickelson (R-Sioux Falls) is the prime sponsor of this bill to set forth a clear state policy on gifts to public officials. SDBA and member banks/bankers could potentially have run afoul of IM22 restrictions on "gifts" in three primary areas:

- SDBA's State Legislative Day-Dinner and Reception
- Scholarship activities of the South Dakota Bankers Foundation
- Business Plan Competition prizes

In the case of our State Legislative Day, the costs associated with the evening dinner and reception could

Published Weekly During Session by the  
South Dakota Bankers Association - P.O. Box 1081 - Pierre, SD 57501 - 605-224-1653

Visit [www.sdba.com](http://www.sdba.com)

have put legislators over IM22's \$100 annual gift limit, especially if a legislator's spouse would attend. HB1073 still imposes a \$100 gift limit, but exempts "any food or beverage provided for immediate consumption" from that limit.

Our concerns in the case of scholarship and Business Plan Competition awards were that IM22's gift restrictions extended to immediate family members of all state officials, elected or otherwise. HB1073 also extends the \$100 limit on gifts to immediate family members. So if the son or daughter of any elected or appointed state official or any rank and file state employee were to receive an SDBA-funded scholarship of any type (bank issued, SDBA issued or individual education institution issued) or a Business Plan Competition award, the recipient and the issuer would have committed a crime. Because we feel strongly that it is unfair to discriminate against sons or daughters of state employees or elected officials who might otherwise be deserving of a scholarship or award, I have worked with Speaker Mickelson on language to be added to HB1073 to carve out those types of scholarships and prize awards. I plan to discuss these issues with members of the House State Affairs Committee and will work to gather their support for the amendment. No hearing date has been scheduled.

**SB96** is a bill that would require all employers to provide mandatory minimum sick leave benefits to all employees at a rate of 1 hour for every 30 hours worked. Benefits would begin on the 91st day of employment. Brought by Sen. Reynold Nesiba (D-Sioux Falls), the list of bill sponsors is comprised solely of Democrats. Similar legislation introduced in 2015 was opposed by 10 business groups and was defeated by a unanimous vote in committee. SDBA did not testify in 2015 because the bill's fate was pretty well determined before its initial hearing. Unless it appears that the political winds have changed, I will keep the SDBA's powder dry on SB96.

**HB1079** proposes to allow a municipality to levy a special assessment against any property located within its borders in the amount of any unpaid municipal utility charges plus any associated interest or penalties. Brought by Rep. Timothy Johns (R-Lead) presumably on behalf of the City of Lead, in its current form HB1079 doesn't specify whether such special assessment would take priority over the interests of a the holder of a mortgage on the property. Koenecke has talked with Rep. Johns about a possible amendment that would assure the continuing priority of prior lienholders.

Absent the addition of appropriate language, SDBA will likely oppose the bill. No hearing date has been established.

**HB1090** has been introduced by Rep. Tim Rounds (R-Pierre) on behalf of members of the American Financial Services Association which counts companies like Ford Motor Credit among its members. That association is concerned that the 36 percent rate cap imposed by South Dakota voters on companies licensed under South Dakota's money lender chapter 54-4 may have inadvertently affected their business in South Dakota. Even though South Dakota's banks are not impacted by the rate restrictions of IM21, I will be monitoring HB1090.

**HB1096** would make it a crime for anyone to intentionally prevent the enforcement of a secured creditor's security interest in a person's motor vehicle by failing to return the vehicle to the secured creditor following notice of default or by prohibiting the creditor from taking possession of the vehicle. Among other things, HB1096 also requires any secured creditor taking possession of a motor vehicle to pay for any towing, storage or other related fees or charges if a law enforcement agency seizes the vehicle on behalf of the creditor. Rep. David Lust (R-Rapid City) is the prime sponsor of HB1096. At this writing, I am not aware of the specific background behind the bill but will monitor progress throughout the process.

### **Action on Prior Bills**

I am pleased to report that **HB1059**, introduced by Rep. Hugh Bartels (R-Watertown) easily cleared its first two hurdles this week. HB1059 provides for the perfection of liens upon application for duplicate certificates of title for motor vehicles and large boats. Rep. Bartels did a great job explaining the bill to members of the House Judiciary Committee and received supporting testimony from the Codington County Treasurer, the South Dakota Division of Motor Vehicles, the SDBA and the ICBSD. The committee gave the bill a unanimous supporting vote and even placed the bill on the House's consent calendar. The bill is now idling on the agenda of the Senate Judiciary Committee.

That's it for this week. As always, please feel free to contact me any time you have questions or concerns.

- Office Phone: 605.224.1653
- Cell Phone: 605.280.7985
- Email: [ceverson@sdba.com](mailto:ceverson@sdba.com)

**Published Weekly During Session by the**  
**South Dakota Bankers Association - P.O. Box 1081 - Pierre, SD 57501 - 605-224-1653**  
Visit [www.sdba.com](http://www.sdba.com)