



# SDBA Legislative Update

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## Update/Continuing Request on HB1179

With limited exceptions, state and federal laws hold that lending activities of all types are subject to regulation. As previously described, HB1179 proposes to exempt a certain amount of nonresidential lending from state licensing and taxation requirements. Rep. David Lust (R-Rapid City) introduced HB1179 on behalf of a Rapid City constituent who has been loaning money to startup businesses for some time. Per testimony offered in the House Commerce Committee on Monday, this individual's loan portfolio has been as high as \$6 million and currently sits at about \$2.5 million. Interest rates on those loans have ranged from 5 to 15 percent. HB1179 proposes an exception to existing laws that would allow an entity to make five or fewer loans in any 12-month period, and as long as those loans totaled less than \$3 million, the lender would not be required to hold a mortgage or money lending license. In addition, the net income from the non-licensed entity would not be subject to South Dakota's bank franchise tax.

The SDBA appeared as the only opponent to HB1179 during the committee hearing. Despite our efforts, the bill gained the approval of the majority of committee members and was sent on to the full House of Representatives on a vote of 8-5. HB1179 will be debated and up for passage on the floor of the House next Tuesday, Feb. 21. Since legislators will be back in their home districts for a four-day weekend beginning today, I strongly encourage bankers to visit with members of the House that you may know, especially those representing your legislative district. Here are some suggestions to frame that conversation:

- Bankers do not oppose the lending activities of non-bank entities that support HB1179. We simply believe that entities in the business of lending should be licensed and their net income should be subject to the bank franchise tax. HB1179 is being touted as necessary to keep capital flowing to small businesses that generally can't qualify for a bank loan because of the underlying risk characteristics of the business. It is important for legislators to know that hometown banks do make riskier loans to main

street businesses because it is good for their communities. They don't ask for exemptions from regulation or taxation in return. Why should the subjects of HB1179 get special treatment?

- Other providers of financial products and services, like insurance or investments, must be licensed. You can't sell up to five insurance policies with premiums totaling less than \$3 million dollars and not have an insurance agent license. You can't sell up to five investment instruments with a face value of up to \$3 million and not have an investment advisor license. HB1179 seeks those exemption levels for lenders. Why should money or mortgage lenders get special treatment?
- The process of obtaining a mortgage lender license is not complex or expensive, especially considering the amount of income being earned by the lender who is seeking these exemptions. He and his company are large and sophisticated enough to have mortgages and financing documents created and to hire a lobbyist, but don't want to be bothered with a license application and tax returns. Is that a good reason to carve exceptions to laws and regulations designed to make sure that lending gets done the right way and that taxes are assessed and collected fairly?
- Failure to enact HB1197 will not prevent farmers, ranchers, business owners or home owners from financing the sale of their own farm, ranch, business or home. The laws of South Dakota already allow that. The same is true for a parent or grandparent who decides to make a loan to a son, daughter or grandchild for any reason. Our laws already allow that to happen without a license.

Here is a link for contact information for all 70 members of the South Dakota House of Representatives. Again, please reach out to your House members this weekend and ask them to vote no on HB1179.

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## Action Alert on SB86

SB86 is the bill to allow counties to shop their deposits with any bank located in South Dakota. This bill has passed the Senate and is now scheduled for a hearing in the House Local Government committee on Tuesday, Feb. 21. I will continue to raise concerns with this bill, expressing the importance of local deposits as support for local lending by hometown banks. Whether or not I am able to overcome the proponents' argument that counties ought to have the same flexibility as cities and school districts remains to be seen. To the extent that you have concerns about this bill, here is listing of the members of the House Local Government Committee:

- **Chair Kris Conzet** (R-Rapid City)
- **Vice Chair Burt Tulson** (R-Lake Norden)
- **Lana Greenfield** (R-Doland)
- **Greg Jamison** (R-Sioux Falls)
- **Jason Kettwig** (R-Milbank)
- **Sam Marty** (R-Prairie City)
- **Herman Otten** (R-Lennox)
- **Tim Reed** (R-Brookings)
- **Kyle Shoefish** (R-Scotland)
- **Jamie Smith** (D-Sioux Falls)
- **Karen Soli** (D-Sioux Falls)
- **Charles Turbiville** (R-Deadwood)
- **Nancy York** (R-Watertown)

Again, their contact information can be found here.

## Update on Other Bills

**Governor Dugaard** signed both of the bills submitted on behalf of his Trust Task Force on Friday--HB1046 and HB1051.

**HB1079** was a bill that concerned the SDBA as introduced because it proposed to give cities the ability to order county treasurers to levy a special assessment against the owner of real property in the case an occupant failed to pay municipal utility charges. SDBA was successful in converting that special assessment into a first-in-time, first-in-right lien to address those unpaid utilities. On Wednesday, the House of Representatives decided not to approve the amended version of HB1179, as the do-pass motion failed on vote of 20-46. So for now, this dust up between city and county government officials is history for 2017.

**HB1090** was introduced on behalf of members of the American Financial Services Association out of concern that the 36 percent rate cap imposed by South Dakota

voters on companies licensed under South Dakota's money lender chapter 54-4 had inadvertently affected their business in South Dakota. An amended version of HB1090 was approved on Wednesday by an 11-1 vote of the members of the House Commerce Committee. Though this bill doesn't directly impact the members of the SDBA, I will continue to monitor its progress.

## Wrapup

I want to say a brief, but sincere word of thanks to all of the bankers who made the trip to Pierre last week for our annual State Legislative Day. Also I want to offer a special thank you to those who responded to Halley Lee's post-conference survey. Your suggestions are very valuable to us as we develop the agenda for our 2018 event.

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

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