

February 19, 2021

The Legislature has completed one-third of the long, 90-day session as it adjourned for an extended weekend on Friday. On Tuesday, the first half of the day was devoted to floor debate on bills advanced from Committee. Lawmakers efficiently processed 23 bills which moved to the second round of debate.

NBA SUPPORTED BILLS ADVANCE

The Banking, Commerce and Insurance Committee jumped out ahead of the pack with the first eight bills considered during floor debate on Tuesday morning having been advanced from the Committee:

NBA Affirmative Legislation

The following bills on the NBA Affirmative Legislative Agenda have been advanced to Select File:

LB 66 – Public Funds Deposit Security Act: Senator Williams (Gothenburg) has introduced a bill (LB 66), on behalf of the NBA, that makes a series of “technical” amendments to the Public Funds Deposit Security Act in recognition of the differences between the “dedicated” method and the “single bank pooled collateral” method of pledging for public funds by changing references from “custodial official” to “governmental unit,” where applicable. In addition, the bill provides for the manner in which a valid and perfected security interest is to be established in securities pledged for public funds under the “single bank pooled collateral” method of pledging for public funds. Finally, the bill clarifies that a bank, capital stock financial institution or qualifying mutual financial institution which is chartered by a foreign state agency as defined in *Neb.Rev.Stat.* Section 8-101.03(13) may serve as a qualified trustee under the “dedicated” and the “single bank pooled collateral” method of pledging for public funds.

LB 503 – Trust Deeds/Trustee Interpleader Action: Senator Mike Flood (Norfolk) has introduced LB 503 on behalf of the NBA, which would authorize a junior lienholder, in an interpleader action relating to the payment of proceeds of a trustee’s sale, to recover attorney fees from any party objecting, without a good faith reason, to the proposed distribution of funds by the trustee. If a judgment is entered in favor of the junior lienholder in an amount equal to or greater than the portion of funds paid into the court by the trustee to which the holder claims to be entitled, it is a rebuttable presumption that the objecting party did not do so in good faith.

Bills supported by the NBA:

Other bills of interest to the banking industry, supported by the NBA, which have also been advanced to Select File, include the following:

LB 23 – Real Property Appraiser Act: Senator Matt Williams has also introduced legislation that would make “technical corrections” to the existing Real Property Appraiser Act to remain in compliance with the Appraiser Qualification Board’s Real Property Appraiser Qualification Criteria.

LB 363 – Omnibus Department of Banking Bill: Senator Williams introduced LB 363 which (1) contains the annual state-chartered bank and savings and loan “wild card” provisions; (2) would replace the terms “undivided profits on hand” and “net profits on hand” with “retained net income” for purposes of dividend distributions; and (3) prohibit a person appointed to fill a vacancy on a trust company board of directors’ from serving as director until approval is obtained from the Department of Banking and would require the President of a trust company to be a member of the board of directors.

HEARING ACTIVITY

The NBA presented testimony in support of the following bills during the past week:

LB 139 – COVID-19 Liability Protection Act: Senator Tom Brieese (Albion) introduced a measure (LB 139) which would prevent a person from bringing or maintaining a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 unless the plaintiff could prove, by clear and convincing evidence, that the civil action relates to a minimum medical condition (a diagnosis of COVID-19 that requires inpatient hospitalization or results in death) resulting from gross negligence or willful misconduct.

LB 622 – Property Tax Valuations: Senator Curt Friesen (Henderson) introduced legislation (LB 622) which would limit increases in total assessed value of all non-agricultural real property for any year to not more than 3 percent greater than the total assessed value of all such property in the prior year, excluding any new growth (increase in real property valuation due to improvements to real property as a result of new construction and additions to existing buildings and any other improvements to real property which increase the value of such property) occurring since the prior year’s assessment. The bill would also limit increases in total assessed value of all agricultural land and horticultural land for any year to not more than 3 percent greater than the total assessed value of all such property in the prior year, excluding any new growth occurring since the prior year’s assessment.

UPCOMING HEARINGS

The NBA will be presenting testimony in **OPPOSITION** to the following bills which will be heard before the Banking, Commerce and Insurance Committee next Tuesday:

LB 648 – Transactions in Digital Assets Act: Senator Flood has also introduced legislation that would classify “digital assets” (a representation of economic, proprietary, or access rights that is

stored in a computer readable format and includes digital consumer assets, digital securities, and virtual currency) as property and specify the procedure for perfecting a security interest in digital assets. The bill would also authorize banks to provide digital asset custodial services (safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under the act as a custodian).

LB 649 – Nebraska Financial Innovation Act: Senator Flood introduced a measure, patterned after a Wyoming law, that would establish statutory guidelines for “digital asset depository institutions.” The bill would require a digital asset depository to maintain its headquarters and chief executive officer’s office in Nebraska; maintain at least \$5 million in capital; and would be prohibited from conducting direct lending activities. These new financial institutions would be supervised by the Nebraska Department of Banking and Finance and be required to comply with all applicable federal laws, including those relating to anti-money laundering, customer identification, and beneficial ownership. The measure would also allow a bank to invest not more than 20 percent of its capital and surplus either in stock of a corporation operating a digital asset depository institution or directly, alone, or with others, in a digital asset depository institution with written approval of the Director.

A “Background Paper” setting forth additional information and “talking points” accompanies this NBA Legislative Update for your assistance in contacting members of the Banking, Commerce and Insurance Committee to encourage their OPPOSITION to LB 649.

LB 654 – Public Entities Investment Trust Act: Senator Justin Wayne (Omaha) is the sponsor of legislation (LB 654) that would authorize the creation of trusts to provide an investment pool into which all public entities (excluding the state of Nebraska and any agency thereof) may deposit funds. The measure would authorize investments in (a) obligations, including letters of credit, of any agency or instrumentality of the United States government, including bonds, debentures, or notes issued by the Federal Home Loan Bank system; (b) direct obligations of the United States government or its agencies including collateralized mortgage obligations and obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation; (c) certain direct obligations of the state, its agencies, and instrumentalities; (d) certain obligations of other states, agencies, counties, cities, and political subdivisions; (e) certain commercial paper; (f) money market mutual funds whose shares are sold without fees, commissions, or other sales charges, that have a fixed net asset value of one dollar, and are comprised of obligations of the United States, its agencies, or instrumentalities; (g) certain fully collateralized repurchase agreements; (h) certain overnight and time deposits made in state or national banks, capital stock financial institutions, or qualifying mutual financial institutions doing business in the state; or (i) any other allowable investments permitted under state law.

The bill would require an established percentage of trust assets to be deposited with banks, capital stock financial institutions, and qualifying mutual funds as defined in *Neb.Rev.Stat. Section 77-2387*, including deposits with banks, capital stock financial institutions, and qualifying mutual funds whose total assets do not exceed \$1 billion.

Other Bills of Interest

The NBA will be presenting testimony before the Revenue Committee next week on the following measures:

LB 410 – Income Taxation: Introduced by Senator Lou Ann Linehan (Elkhorn), LB 410 would, for tax years beginning on or after January 1, 2021, allow individuals itemizing deductions on his or her federal return to subtract from federal adjusted gross income on his or her state income tax return the greater of either (a) the standard deduction; or (b) the sum of federal itemized deductions, except for the amount for state or local income taxes included in federal itemized deductions before any federal disallowance; and the total amount of state and local property taxes reported on the federal return before any federal disallowance or cap, less the amount of state and local property taxes actually included in federal itemized deductions.

LB 625 – Income Tax Surcharge: Senator Tony Vargas (Omaha) introduced LB 625, which would impose a surtax, for taxable years beginning on or after January 1, 2022, on high-income individuals for the purpose of providing funds for early childhood education in Nebraska. The bill would impose a surtax of 4 percent of the amount of taxable income in excess of \$1 million for individuals filing jointly or head of household and 4 percent of the amount of taxable income in excess of \$500,000 for all other individuals.

LB 680 – Income Taxation: Senator Linehan also introduced LB 680 which would reduce the tax rate on corporate income in excess of \$100,000 from 7.81 percent to 6.84 percent beginning January 1, 2022.

APPROPRIATIONS COMMITTEE PRELIMINARY BUDGET

The Appropriation Committee issued its preliminary budget on Tuesday morning. The Committee has moved much more quickly this session in finalizing the budget process in hopes of adopting the budget more quickly in case the pandemic has an adverse impact on the session. Growth under the preliminary budget is -1.3 percent in fiscal year 2022 and 2.5 percent in fiscal year 2023 for a two-year average of 0.6 percent.

BACKGROUND PAPER ON 649

ISSUE: LB 649 – NEBRASKA FINANCIAL INNOVATION ACT

NBA POSITION: OPPOSE

BACKGROUND:

LB 649 would authorize a new type of financial institution to be known as a “digital asset depository institution” (DADI). While the legislation purports to restrict lending activities by these new institutions, they would be allowed to facilitate lending and borrowing activities of depositors interacting with decentralized platforms.

While the legislation would allow a DADI to accept traditional deposits, it would not be required to obtain Federal Deposit Insurance Coverage. In addition, a DADI would not likely be subject to the vast array of rules, regulations, and guidelines to which banks are subject, and would have no Community Reinvestment Act obligations. Significantly, a DADI would be eligible to make application to become a Federal Reserve Bank member for the purpose of accessing the federal payments system.

A DADI charter would allow cryptocurrency businesses to take uninsured U.S. dollar deposits from consumers, convert them to “digital assets”, conduct payments, connect them to lending and investment platforms, and provide custody services for digital assets.

ARGUMENTS IN OPPOSITION TO LB 649:

1. **Untested Waters.** Allowing a DADI into the US backed currency and payments system is untested and risky. While access to the payments system would lower transaction costs for a crypto company by allowing it to avoid having to work through a regulated bank, it will introduce unmitigated risk to the US banking and payments systems.
2. **Relaxed/Nonexistent Regulations.** The proposed DADI business model encompasses many services already provided by traditional depository institutions, but would not have access to the same federal protections as commercial banks, such as deposit insurance and other federal backstops, nor would they be subject to the same regulations and supervision mandated for all other depositories.
3. **New Charter Unnecessary.** A new charter with limited oversight is unnecessary. Banks can already serve as custodians for digital assets. They serve as important intermediaries between cryptocurrency companies and the U.S. payments system.
4. **Reputational Risk to Banks.** In the absence of federal deposit insurance and other consumer protections, coupled with relatively low capital requirements, the failure of a DADI will almost certainly result in the loss of depositors’ money. Customers of a DADI will not fully understand that their deposits are exposed to loss. This confusion and any losses will result in reputational and other risks to the banking industry, as consumers and the general public will only see that a “bank” failed and lost its depositors’ money.
5. **State Regulatory Costs.** The state of Nebraska will be solely responsible for oversight of DADIs and will need to absorb substantial costs associated with creating rules, hiring and training competent examiners and ensuring compliance with consumer protection, anti-money laundering and other regulatory requirements for a complex and evolving financial product and marketplace.

6. **Money Laundering.** The Financial Crimes Enforcement Network (FinCEN) has identified convertible virtual currencies held in un-hosted wallets as an “illicit finance threat.” A DADI would create a vulnerable entry point into the US financial system for bad actors until these loopholes are closed.

7. **Limited Economic Development.** The proposed new DADI charter is unlikely to attract any significant number of new jobs to Nebraska. The reality is that firms that include cryptocurrency exchanges and digital wallet providers operate primarily online and are unlikely to establish a significant physical presence in our state.

Please contact the members of the Banking, Commerce and Insurance Committee set forth below to encourage them to **OPPOSE** LB 649.

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