

February 26, 2021

The Legislature is heading into the last week of “two-a-day” Committee hearings, with the exception of the Judiciary Committee, which has the pleasure of conducting public hearings for another week, having had almost 140 bills referred to the Committee for processing. The hectic Committee hearing schedule has limited the ability of Committees to hold executive sessions for consideration and advancement of bills, however, over 100 bills have already made their way to the floor for future debate.

DIGITAL ASSET “BANK” BILL DISCUSSED

On Tuesday, Nebraska bankers shared concerns with the Legislature’s Banking, Commerce and Insurance Committee regarding LB 649. NBA Chairman and President and CEO of Nebraska Bank of Commerce Chris Hove, President and CEO of West Gate Bank Carl Sjulín, President and CEO of Bank of Bennington Leslie Andersen and NBA General Counsel Bob Hallstrom all testified in opposition to the bill.

Introduced by Senator Mike Flood (Norfolk), LB 649 would authorize a new type of financial institution known as a digital asset depository institution (DADI). 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.

The bill is aimed at bringing the headquarters of Telcoin to Nebraska. Telcoin is a cryptocurrency based on the Ethereum blockchain and a financial technology platform used to facilitate international remittances.

In his testimony, Hove noted a new charter is unnecessary because banks can already serve as custodians for digital assets. He also discussed the significant number of regulations banks must comply with and questioned how a DADI would do the same. He also noted the potential reputational risk from a non-bank institution like a DADI calling themselves a bank. Sjulín expanded on this topic, asking why these institutions should have the privileges of a bank without being chartered as a bank. Andersen noted her bank and others are already investing in financial technology and are interested in expanded opportunities for technological innovation. She also referenced an article from the Bank Policy Institute, “Beware the Kraken,” which detailed problematic issues with a similar charter authorized in Wyoming.

Senator Flood closed the hearing by stating he looks forward to working with representatives of the banking industry to amend the bill in order to find an acceptable compromise.

The NBA also testified in opposition to a companion “digital asset” bill, also introduced by Senator Flood. LB 648 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).

An amendment to LB 648 was introduced during the Committee hearing which would adopt the most recent version of legislation being drafted by the Uniform Law Commissioners’ (ULC) Committee on the Uniform Commercial Code and Emerging Technologies, relating to the perfection and priority of security interests in digital assets (controllable electronic records).

While the amendment represents an improvement from the original bill, the NBA cautioned the Committee against “jumping the gun” prior to final adoption of a recommended legislative draft by the ULC, which would be an unprecedented action for the state of Nebraska.

OTHER COMMITTEE ACTIVITY

The NBA also presented or submitted testimony on a host of bills of interest to the banking industry during the past week.

Banking, Commerce and Insurance

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 \$1, 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. **(NBA Position – Oppose)**

Revenue Committee

LB 18 – ImagiNE Nebraska Act: Senator Mark Kolterman (Seward) has introduced legislation (LB 18) which would provide that equivalent employees include hours paid to employees who were employed in Nebraska and subject to the Nebraska income tax on compensation received from the employer (previously limited to employees who were residents of the state). The measure would also include “qualified locations,” a location at which post harvesting crop activities or the processing of tangible personal property are conducted. **(NBA Position – Support)**

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 their federal tax return to subtract from federal adjusted gross income on their 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 410 would address the adverse effect of the federal “SALT cap” which placed limits on the amount of state and local taxes that can be utilized as itemized deductions. **(NBA Position – Support)**

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. **(NBA Position – Oppose)**

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. **(NBA Position – Support)**