

MSBA Capitol Connection

February 5, 2010



The 2010 Minnesota Legislative Session began yesterday. The MSBA has a lengthy legislative agenda and we will be a visible presence at the Capitol. In addition to our advocacy for lawyers, we are a trusted source of advice for legislators. In all our legislative efforts, we will seek to apply the knowledge and experience of the profession to the public good.

2010 MSBA LEGISLATIVE AGENDA

Judicial Selection Reform

The MSBA's top legislative priority is passing [HF224/SF70](#), legislation that would reform judicial selection and retention in Minnesota. The MSBA is advocating for this legislation along with our partners in the [Coalition for Impartial Justice](#) (CIJ). The CIJ's bipartisan blend includes progressive and liberal think tanks, business and labor, good government groups, policy wonks, people of faith, and some of the state's most respected leaders. HF224/SF70 would enable Minnesotans to vote on a proposed constitutional amendment. The amendment would create a nonpartisan judicial evaluation commission and enable voters to determine judges' futures through retention elections. [Click here](#) for more information on this important legislation.

Justice System Funding

Another major issue for the MSBA will be supporting adequate funding for the state's justice system. During the 2009 session, Minnesota's courts, public defenders, and legal services programs were spared from heavy cuts due to a package of increased fees and surcharges. As part of the Coalition to Preserve the Justice System, the MSBA will once again be working to ensure that adequate funding for our legal system is among the state's highest priorities.

Other Legislation

In addition to our engagement on major policy and fiscal issues, the MSBA will be pushing a substantive legislative agenda that includes proposals from six sections. The following were endorsed by the MSBA Assembly in December:

- **Alternative Dispute Resolution:** Adoption of the Revised Uniform Arbitration Act with certain revisions incorporated.
- **Business Law:** A three-part proposal that includes substantive and technical amendments to the Minnesota Business Corporation Act, parallel changes to the Minnesota Nonprofit Incorporation Act, and a technical change to fix a drafting error related to non-business LLCs.
- **Family Law:** Modification of Minnesota's Uniform Parentage Act to bring the law in line with widely-used medical reproductive techniques, and give additional legal parental presumption to non-genetically related intended parents.
- **Probate & Trust:** A three-part proposal. First, clarifying that certain short- and long-term capital gains distributions will be treated as distributions of principal for trust accounting purposes. Second, a proposed new law that provides a procedure for appointing a temporary or emergency conservator. Finally, amendments to the Uniform Probate Code provisions defining the parent-child relationship for intestate succession purposes.
- **Real Property:** Two proposals: First, to add supplemental declarations to the list of documents that may be recorded against common interest community certificates of title. Second, a proposal to clarify the mortgage registry tax on mortgages that secure less than the full amount of the debt, in light of a recent Minnesota Supreme Court decision (*Business Bank v. Hanson*, WL 2253250).
- **Tax:** A proposed new "interest netting" statute that would eliminate an inequitable tax burden that arises when the state and a taxpayer, as part of resolving an audit, agree to move income from one year to another.

SESSION OVERVIEW

Laughter, Tears, & Red Ink

Lawmakers' primary task during the 2010 session will be grappling with a \$1.2 billion shortfall in the current budget biennium. Lower than expected revenues created the shortfall after Gov. Pawlenty's unallotment plan brought a swift end to the 2009 session. A recent district court order cast doubt on the constitutionality of the governor's actions, however. The court order only affected a relatively small nutrition program, but if it ends up being applied to the rest of the governor's unallotments, lawmakers could face an unraveling budget situation. The Minnesota Supreme Court is set to review the case and will hear oral arguments on March 15.

Next week Gov. Pawlenty will unveil his budget plan, which will consist of spending cuts alone. The governor continues to resist raising taxes, saying, "Our taxes are too high, and our spending is just ridiculous." Most observers expect lawmakers to devise a temporary solution to the budget problem, leaving a deficit of as much as \$8 billion for the next biennium. The fiscal situation caused Senate Minority Leader David Senjem (R-Rochester) to say, "Sometimes we have to laugh. If we didn't, we'd cry."

Bonding Battle

In addition to wrestling with the budget deficit, lawmakers might end up locking horns over a bonding bill. Even-numbered years like this one typically see the passage of a large bonding bill. Gov. Pawlenty has proposed a \$685 million package that he called “affordable and appropriate.” DFLers, on the other hand, are calling for a bonding package in the range of \$1 billion. DFL leaders want to move quickly on a bonding bill to spur employment and take advantage of low interest rates and low construction bids. “Our taxpayer dollar will go farther this year than if we wait two years for these projects,” said Rep. Alice Hausman (DFL-St. Paul), chair of the House Capital Investment Finance Division.

Things to Watch

Other issues likely to grab headlines during the session include:

- Restoration of General Assistance Medical Care funding
- Angel investment tax credits and other job stimulus measures
- Lifting the state’s moratorium on nuclear power plants
- A stadium push from the Vikings

Political Posturing

In addition to debates on issues, there will be plenty of political posturing. Every seat in the Legislature will be on the ballot in November, and several legislators are among a bevy of contenders vying to replace Gov. Pawlenty, whose presidential aspirations will add to the political intrigue. Against this backdrop, the table is set for a fast-paced, hard-hitting legislative session.