

State Brand Board



ISSUE
MEMORANDUM
2018-04

Introduction – History

South Dakota brand laws have their roots in Dakota Territory days. In section 1 of Chapter 57, Laws of Dakota 1862, it was stated that:

It shall be the duty of the register of deeds of each county, upon application of any person residing in such county, to record a description of the marks or brands, with which such person may be desirous of marking his horses, cattle, sheep, or hogs; but the same mark or brand shall not be recorded for more than one resident of the same county.

Each register of deeds shall be entitled to receive the following fees for his services, under the provisions of this act, to wit: for recording any mark or brand, twenty cents; for giving certificate of the same, twenty cents

According to the Bureau of Labor Statistics Consumer Price Index inflation calculator, \$0.20 in 1862 is the equivalent of \$4.79 in 2018 dollars.

In 1897, the South Dakota Legislature provided for the creation of a State Brand and Mark Committee. The Governor was directed to appoint three reputable stock raisers "who shall be men of judgment and experience in marks and brands . . . and largely interested in cattle." Two of the three had to reside west of the Missouri River.¹

The secretary of state was charged with publishing a brand book, which in 1898-99 contained 2,066 registered brands. At that time, the fee for recording brands was \$1.50. Twenty percent of the amount was "paid to each member of the state brand and mark committee as full compensation for their services"² and twenty percent was set aside to defray the expenses of the secretary of state. According to the inflation calculator, the 1898-99 brand recording fee of \$1.50 equates to \$45.57 in 2018 dollars. In 1925, the Brand and Mark Committee was dissolved and the brand registration function was assigned to the Division of Animal Industry in the newly created Department of Agriculture. The fee for recording a brand was raised to \$2.50, which equates to \$36.02 in 2018 dollars.

In 1937, the South Dakota Legislature created the State Brand Board to establish and maintain "a complete permanent system of brand registration, re-recording and renewals" ³ Today, the board is comprised of five members, appointed by the Governor for a term of three years. In addition to the brand registration function, the board also provides for ownership inspection and for the investigation of livestock theft, fraud, and various brand law violations.

Funding

The State Brand Board operates entirely on user fees generated from livestock brand registrations, renewals, transfers, and inspections. No general fund dollars are used by the board. Much of the board's revenue is

¹ See 1897 S.D. SESS. LAWS, Ch.90.

² See 1897 S.D. SESS. LAWS, Ch. 90.

³ See 1937 S.D. SESS. LAWS, Ch. 162.

generated every five years, due to the brand renewal cycle. Carryover dollars are used to sustain the board's operations from one renewal cycle to the next. The last brand renewal cycle took place in 2015. The next renewal cycle will occur from January to May 2020.

Anticipated Shortfall

In testimony presented to the South Dakota Legislature during the 2018 session, Ms. Debbie Trapp, Director, State Brand Board, indicated that the board was expected to have a structural deficit in FY 2019, with a projected ending cash balance of \$ (-106,018.)

Department of Agriculture Brand Fund Condition Statement

	Actual FY 2015	Actual FY 2016	Actual FY 2017	Projected FY 2018	Projected FY 2019
Beginning Cash balance	357,506	1,328,271	1,065,402	751,515	330,047
Total receipts	1,304,420	121,016	79,001	36,300	30,000
Total Disbursements	333,655	383,885	392,887	457,768	466,065
Net (Receipts less Disbursements)	970,765	(262,869)	(313,887)	(421,468)	(436,065)
Ending Cash balance	1,328,271	1,065,402	751,515	330,047	(106,018)

In recent weeks, however, actual FY 2018 data has become available and is set forth below:

	Projected FY 2018	Actual FY 2018	Projected FY 2019
Beginning Cash balance	751,515	751,515	481,828
Total receipts	36,300	80,566	30,000
Total Disbursements	457,768	350,253	466,065
Net (Receipts less Disbursements)	(421,468)	(269,687)	(436,065)
Ending Cash balance	330,047	481,828	45,763

Because of higher than projected receipts and lower than projected disbursements, the Brand Board's FY 2018 ending cash balance was in fact \$481,828, rather than \$330,047. Using the projected FY 2019 numbers, the Brand Board would then be anticipating a \$45,763 ending cash balance rather than a deficit of \$(106,018).



Proposed Solution – Legislative Consideration

The State Brand Board is authorized by South Dakota Codified Laws § 40-18-16 to promulgate rules that establish fees for the registration of a brand, the renewal of a brand, the transfer of a brand, and the issuance of a duplicate certificate. By statute, however, the fees are capped as follows:

Registration:	Not to exceed \$25
Renewal:	Not to exceed \$10/year or \$50/five-year ownership period
Transfer:	Not to exceed \$25
Duplicate certification:	Not to exceed \$ 5

The State Brand Board is also authorized by statute to charge \$100 for rerecording a canceled brand.

In the 2018 Legislative Session, SB 29 proposed doubling the currently charged fees and establishing two new fees:

Application:	Not to exceed \$50
Expedited registration:	Not to exceed \$50.

The fees charged by the State Brand Board have remained the same since 1998. A \$25 fee charged in 1998 equates to \$38.67 in 2018. Representatives of the State Brand Board and the Department of Agriculture suggested during testimony on SB 29 that the increased fees would help the board offset increased operational costs and allow the board to maintain a positive ending cash balance until the 2025 renewal period. In the Senate Appropriations Committee, the South Dakota Cattlemen's Association and the South Dakota Farm Bureau expressed their support for the increased fees. Senate Bill 29 received a Do Pass (8-0) from the Senate Appropriations Committee and was adopted by the Senate (29-6).

When SB 29 was heard in the House Agriculture and Natural Resources Committee, the discussion centered around the amount of money that the State Brand Board needed to cover its costs. An amendment was offered which, rather than permitting a doubling of the fees, would have authorized a 40 percent increase. Proponents of the amendment argued that allowing a mere \$20 increase in the fee for renewing a brand, when multiplied by approximately 25,000 brands, would on its own raise an additional \$500,000, which would be spread over the five-year renewal period. In addition, the board would have access to the new fees authorized in the bill. The board argued that the 40 percent increase proposed in the House committee amendment would not be sufficient to ensure solvency.

Nevertheless, the House Agriculture and Natural Resources Committee accepted the amendment and recommended a Do Pass (12-0). The House of Representatives passed the bill as amended, 58-7. Conference committees were appointed by both chambers and ultimately, the Senate elected not to concur with the House version of the bill. It was recommended that a new conference committee not be appointed.

Future Considerations

The decision not to enact SB 29 left unresolved questions regarding the adequacy of the State Brand Board's current level of funding. Although the actual FY 2018 balances were not as dire as the projected balances had been, discussions regarding the funding level for the maintenance of solvency during the remainder of the current renewal period and the 2020-2025 renewal period continue to exist. Whether a doubling of the board's current fees is necessary to ensure solvency or whether an increase of some lesser amount would be sufficient remains to be determined.

To assist in that determination, the following table is included as a demonstration of how the board's current fees compare to those imposed in other mid-western cattle producing states.



State	New Brand Recording Fee	Renewal Fee	Renewal Period	Transfer Fee	Total Registered Brands
Colorado	\$200	\$300	5 years	\$100	33,453
Idaho	\$50	\$125 ^a	5 years	\$50	17,000
Kansas	\$45 electronic \$50 paper	\$45 electronic \$50 paper	5 years	\$15	17,000
Missouri	\$35	\$20	5 years	\$10	500
Montana ^b	\$200	\$100	10 years	\$200	55,000
Nebraska	\$100	\$50	4 years	\$40	40,000
North Dakota	\$25	\$25	5 years	\$25	21,200
South Dakota	\$25	\$50	5 years	\$25	26,554
Utah	\$75	\$50	5 years	\$50	14,586
Wyoming	\$165 ^c	\$330	10 years ^d	\$110	27,853

^a Idaho: \$100 of the renewal fee stays with the brand recording program and \$25 goes to the wolf coalition.

^b Montana: The brand recording program is housed in the Department of Livestock. If the brand recording program runs short of funds, it has access to the department's livestock per capita fees. Each year a self-reported tax of \$2.29 is placed on each head of cattle. Varying fees are also placed on horses and mules, swine, poultry, bees, llamas and alpacas, bison, domestic ungulates, and ratites.

^c Wyoming: Fee increases are limited to 25 percent per year.

^d Wyoming: Although the renewal period is ten years, the renewal dates are staggered so that some come due every two years.

Conclusion

Given the recording fees being charged in other mid-western cattle producing states, South Dakota is the third least costly, behind Missouri and North Dakota. Even if fees in South Dakota were permitted to be doubled, those fees would remain well below that being charged by most other states in the region.

A doubling of fees does not, however, translate to an automatic doubling of revenues. Consolidations within the industry will continue to impact registered brand numbers, as will individual decisions simply to allow for the release or lapse of certain brands, rather than continuing to pay for their renewal. As the State Brand Board tries to accurately project its financial future, it will also have to ensure that the manner in which it is providing services maximizes effectiveness and efficiencies. This includes utilizing technological advances and being receptive to operational changes.

This issue memorandum was written by L. Anita Thomas, Principal Legislative Attorney, on November 9, 2018, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.

