

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Seventh Session SESSION
2022 South Dakota Legislature

House Bill 1037

An Act to revise the penalty for certain willful violations by grain buyers and grain warehouse operators.

A prison/jail population cost estimate statement is required for HB1037 because the bill would increase the available penalties for willful violations of SDCL 49-45-25 and 49-43-62 resulting in financial loss.

SDCL 49-45-25 provides that if a grain buyer becomes aware that it is not in compliance with certain financial standards, it must notify the Public Utilities Commission of its financial condition. Currently, a willful violation of this section that results in financial loss to a grain supplier is a Class 6 felony. The bill would amend this provision so that a willful violation that results in financial loss is punishable as theft under chapter 22-30A. Under chapter 22-30A, the penalty for theft is determined by the value of the property stolen, ranging from a Class 2 misdemeanor to a Class 2 felony.

Since the statute took effect in 2013, there has been one conviction under SDCL 49-45-25 resulting in a penitentiary sentence. A restitution amount of \$4,966,491.80 was ordered in this case. Under the bill, any amount of financial loss above \$500,000 could be prosecuted as a Class 2 felony. Thus, it is estimated there could be approximately one Class 2 violation of SDCL 49-45-25 under the bill every ten years.

The average time served in prison for those sent to prison for non-violent Class 6 felonies is 165.3 days. For non-violent Class 2 felonies, the average time served in prison is 1372.5 days.

Individuals serving a penitentiary sentence for a Class 6 felony are typically housed in minimum security facilities. With an operational cost of \$52.53 per day, the annual operating cost for housing a prisoner convicted under this section would be up to \$8,683 over ten years.

Individuals serving time for a Class 2 felony, on the other hand, are typically housed in maximum security facilities. With an operational cost of \$100.46 per day, the annual operating cost for housing a prisoner convicted under this section as amended would be up to \$137,881 over ten years.

This would amount to a total prison increase of \$0 in the first year and up to \$129,198 over ten years.

SDCL 49-43-62 provides that if a grain warehouse operator becomes aware that it is not in compliance with certain financial standards, it must notify the Public Utilities Commission of its financial condition. Currently, a willful violation of this section that results in financial loss to a grain depositor is a Class 6 felony. The bill would amend this provision so that a willful violation that results in financial loss is punishable as theft under chapter 22-30A. Since the

statute took effect in 2013, there have been no convictions under SDCL 49-43-62. Thus, the impact of prison and jail costs is estimated to be negligible.

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