

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Seventh Session SESSION
2022 South Dakota Legislature

House Bill 1053

An Act to authorize counties to issue bonds for certain expenditures funded by a gross receipts tax.

A prison/jail population cost estimate statement is required for HB1053 because the bill imposes two new Class 6 felony penalties.

This bill as introduced would authorize counties to impose a gross receipts tax, up to 1.0 percent, for the purpose of financing bonds for the construction, repair, and renovation of certain county public buildings and facilities, as well as county roads and bridges. The procedures for administering, collecting, and remitting this tax would be similar to those for the general state sales tax. In keeping with this similarity, the Department of Revenue would be empowered to propound administrative rules to affect legislative intent, to create forms, and for "the making of returns, and for the ascertainment, assessment, and collection of the tax." The major difference between this tax and the general sales tax is that the department would credit the funds received from the county's tax to a special county tax fund, less the costs of administration and any refunds.

Section 8 of the bill contains violations and associated penalties:

- Subdivision 1 would make it a Class 6 felony to file a false or fraudulent tax return "in attempting to defeat or evade the tax." In other words, there would need to be a showing of fraudulent intent in providing an inaccurate tax return. This provision mirrors the penalty in subdivision 10-45-48.1(1) applicable to sales taxes generally;
- Subdivision 6 would make it a Class 6 felony for failure to pay tax due within sixty days of its due date, two or more times in any twelve-month period. This provision also would mirror a penalty for sales tax enforcement in general. See subdivisions 10-45-48.1(2) and (8); and
- Subdivision 6 would make it a Class 6 felony for failure to file a return within sixty days of its due date, two or more times in any twelve-month period. This provision also mirrors a penalty for sales tax enforcement in general. See subdivisions 10-45-48.1(4) and (8).

As these penalties mirror the existing penalties in subdivisions 10-45-48.1(1) and (8) for general sales tax enforcement, the number of associated convictions may be instructive, but to a point. In the last decade, per Unified Judicial System data, there have been five convictions for filing a false or fraudulent sales tax return, and twenty-four convictions for repeat failure to file a return or pay tax due--with both sets of convictions split almost even between being served in the penitentiary and in jail. However, it is unclear how, given the similarity of the collection mechanism, one distinguishes between those who fraudulently file, or repeatedly fail to comply with the procedures of, the general sales tax under SDCL 10-45-48.1, and those who do so under this bill. Therefore, this new offense is likely to be

charged, if at all, alongside or subsumed under a violation of SDCL 10-45-48.1. The applicability of this data is further limited by the ability of counties to choose not to assess the additional tax.

Based on these multiple, compounding variables, the impact of this bill on the state prison system and county jail populations, along with the associated operational and capital costs, is not readily quantifiable.

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