

LEGISLATIVE INCARCERATION FISCAL IMPACT STATEMENT
EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY 2014

SENATE BILL NO. 133

AN ACT TO CLARIFY CERTAIN STATUTES PROHIBITING POLITICAL SUBDIVISIONS FROM RESTRICTING FIREARMS, TO ASSERT THE SOVEREIGNTY OF THE STATE OF SOUTH DAKOTA WITH REGARDS TO THE REGULATION OF ARMS AND WEAPONS, AND TO PROVIDE RECOURSE AND PENALTIES FOR VIOLATIONS.

A legislative incarceration fiscal impact statement has been requested on SB133 due to the establishment of new penalties in Sections 2, 3, 4, and 9.

The felony provisions of this Act are, in all likelihood, unconstitutional and unenforceable. The penalties in Sections 2, 3, and 4 propose to punish as felonies the agents and employees of various local units of government for obeying local ordinances, regulations, and executive orders that have, at the very least, color of law. If such local ordinances, regulations, and executive orders are of questionable legality, due process would suggest that the appropriate remedy would be to litigate the ordinance, not prosecute the employee or agent who is obeying the law as it exists. The felony in Section 9 is in direct conflict with the federal supremacy clause. Hence, in the absence of any prosecutions or convictions, there can be no impact on the prison population.

Approved: /S/ Fred Schoenfeld Date: 2/4/2014
Interim Director, Legislative Research Council