PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY 2018

HOUSE BILL NO. 1237

AN ACT TO REVISE CERTAIN PROVISIONS REGARDING VOTING IN ELECTIONS.

A prison/jail population cost estimate statement is required on HB1237 due to the creation of two Class 2 misdemeanors and two Class 6 felonies. Under this new crime, any person who opens, examines, or makes a communication about a ballot before counting votes begins is guilty of a Class 2 misdemeanor. Additionally, any person who intentionally disposes of a ballot in a way not authorized by HB1237 is guilty of a Class 2 misdemeanor. Any person who forges another voter's signature or unduly influences another voter is guilty of a Class 6 felony. Finally, any person who intentionally fails to deliver the ballot, intentionally fails to return identification and secrecy envelopes with the ballot, or tampers with the envelopes or ballot is guilty of a Class 6 felony.

To determine any potential impact of HB1237 the Legislative Research Council looked at the following existing South Dakota statutes;

- 12-19-10. Preservation and delivery of ballot to precinct superintendent--Comparison of statement and application--Deposit in ballot box--Unopened ballots--Unauthorized examination as misdemeanor;
- 12-19-14. Unlawful disposition of ballot or ballot link as misdemeanor;
- 12-19-33. Failure to deliver or tampering with ballot as felony;
- 12-20-20. Sealing of ballot boxes after deposit of counted ballots--Violation as misdemeanor;
- 12-26-10. Threats or intimidation to prevent public assembly of electors as misdemeanor--Hindering attendance at meeting;
- 12-26-12. Persecution, threats, or intimidation to influence vote as misdemeanor--Obstruction of voter on way to polls; and
- 12-26-23. Tampering with ballots, ballot box, or poll list as felony.

In the last six years there have been zero convictions under any of the above South Dakota statutes. The Legislative Research Council also looked to Colorado, which uses a vote-by-mail process. Section 1-13-803 of Colorado Revised Statutes Annotated makes any person who knowingly violates the laws relating to vote-by-mail subject to a fine of up to five thousand dollars, up to

eighteen months in the county jail, or both. In the last six years, Colorado has had no charges or convictions under section 1-13-803.

Oregon also uses a vote-by-mail process. Since 2001, there have been fifteen convictions in Oregon for violating laws relating to vote-by-mail, averaging approximately one conviction per year. Information is not available on what statutes were violated, however, these convictions generally involved the following:

- 1. Improper handling of the ballots;
- 2. Forging another voter's signature or use of undue influence to influence a voter to vote in a particular manner or to refrain from voting;
- 3. Intentionally disposing of a ballot in a way not authorized by law; or
- 4. Tampering with another voter's ballot, or intentionally failing to deliver/return the ballot on behalf of another voter.

The Legislative Research Council determined the average yearly rate of convictions per the number of registered voters in Oregon. When this rate is compared to the number of current registered voters in South Dakota, South Dakota could expect three convictions of vote-by-mail laws over a ten year period.

In South Dakota the average Class 2 misdemeanor serves 2 days in jail at a cost of \$89.73 per day. The average Class 6 felony serves 214 days in prison at a cost of \$42.23 per day.

Given the low rate of convictions for similar crimes in South Dakota and other states, the likely one-year prison and jail cost is zero. Over a ten year period, the maximum likely cost, based on Oregon data, would involve one Class 2 misdemeanor and two Class 6 felony convictions for a 10-year prison cost of \$18,074, a 10-year jail cost of \$179, and a total cost of \$18,254.

Approved: /s/ Jason Hancock Date: 1/31/18

Director, Legislative Research Council