

MINUTES

Study Committee on County Funding and Services

Representative Roger Chase, Chair
Senator Randy Deibert, Vice Chair



First Meeting, 2023 Interim
Wednesday, June 14, 2023

Room 414 – State Capitol
Pierre, South Dakota

The first interim meeting of the Study Committee on County Funding and Services was called to order by Representative Roger Chase at 8:30 a.m. (CT) in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Amber Arlint, Kirk Chaffee, Roger Chase (Chair), Lance Koth, John Mills, Neal Pinnow, and Tim Reisch; and Senators Jim Bolin, Randy Deibert (Vice Chair), Helene Duhamel (remote), David Johnson (remote), Liz Larson, Jim Mehlhaff, and Al Novstrup.

Staff members present included Amanda Marsh, Principal Research Analyst; Jacob Carlson, Research Analyst; Joey Knofczynski, Fiscal Analyst; and Rachael Person, Administrative Specialist.

NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are hyperlinked to the document on the Legislative Research Council website. This meeting was live streamed. The archived live stream is available at the LRC website at sdlegislature.gov.

Opening Remarks

Representative Chase read the scope of the study ([Scope](#)) and asked the Committee members to introduce themselves, the districts they represent, and what they sought to gain and contribute to the summer study.

Covid-19 Stimulus and Counties

Mr. Joey Knofczynski, Fiscal Analyst, Legislative Research Council (LRC), presented on the Local Government COVID Recovery Fund (CARES Act) and the Local Fiscal Recovery Fund (ARPA) ([Document 1](#)). Mr. Knofczynski said after the CARES Act was put into law in 2020, the federal government allocated \$1.25 billion to South Dakota from the Coronavirus Relief Fund. From that, Mr. Knofczynski said, \$200 million went to localities, of which \$77.8 million was spent by counties and the rest was spent by cities and towns, with some funds being reallocated as needed.

Mr. Knofczynski explained the process by which counties could receive the funding, the requirements on how the funds could be spent, and necessary expenditures dictated by the state. Mr. Knofczynski also discussed the expenditures by the counties and the differences between the total numbers.

Senator Deibert asked where the remainder of the \$1.25 billion dollars went. Mr. Knofczynski said the rest of the allocation was used by state government and that spending was presented to the Joint Committee on Appropriations.

Mr. Knofczynski then discussed the Local Fiscal Recovery Fund (ARPA) from which counties received \$171.8 million and cities and towns received \$103.7 million from the federal government. Mr. Knofczynski said this funding was available for counties if they applied directly through the U.S. Department of Treasury's submission portal. Following submission and approval by the U.S. Department of Treasury, the counties received half of their allocation

in May 2021 and the second half in May 2022. Mr. Knofczynski said that due to the expanded possibilities for how the second batch of funding could be spent, each government entity was given a standard allowance of \$10 million in determining whether revenue was lost, and 63 out of the 66 counties in South Dakota had allocations under \$10 million.

Department of Legislative Audit

Mr. Russ Olson, Auditor General, Department of Legislative Audit (DLA), discussed the DLA's role and responsibilities in relation to counties ([Document 2](#)). The DLA, Mr. Olson said, audits all counties at least once every two years based on [SDCL 4-11-4](#), and during these audits the DLA looks at the financial statements, issues an opinion, and checks to ensure they are in compliance with laws and regulations. Mr. Olson said counties are tasked with the responsibility of distributing pass-through funds that come from the state of South Dakota, pass through the county treasurers and auditors, and are then distributed to someone else in accordance with state law. Mr. Olson explained that the DLA ensures the tax dollars are being distributed out to the various taxing entities correctly.

Mr. Olson discussed the three different funds counties have, which are governmental funds, proprietary funds, and fiduciary funds. Mr. Olson emphasized that each county is unique, and each county has its own circumstances and responsibilities. Mr. Olson also covered county revenues, comparisons of changes in county revenues, general funds, county expenditures, road and bridge fund expenditures, and county budget issues.

Representative Chase asked if the COVID fund dollars the counties received went into a special revenue fund. Mr. Olson responded that the first batch of funding went into the counties' general funds, but the second batch of funding went directly to the counties and is being tracked separately as there are significant compliance requirements the counties have to follow.

Representative Mills asked if counties were being reimbursed for providing the administrative service of managing the pass-through funds. Mr. Olson responded that statute states the counties will receive those taxes and allocate them out, but there is nothing in statute that says counties will receive an administrative fee for the service, so the majority of county treasurers and auditors are not being reimbursed.

Representative Chase asked if any trends were putting further binds on counties. Mr. Olson said the funding counties received from the COVID funds have helped counties and provided a cushion for them, but the DLA has advised counties not to build the money into their base as it is not an ongoing fund, so it is important to find ways for the counties to plan for the future and move forward when the money is gone.

Department of Revenue

Mr. Michael Houdyshell, Cabinet Secretary, Department of Revenue (DOR), presented on the ways the DOR works closely with the counties on property tax administration, motor vehicle administration, tax increment finance districts, and revenue sources collected at the DOR that are distributed to counties ([Document 3](#)).

Mr. Houdyshell explained that property tax is the primary funding source for local governments in South Dakota, and schools, cities, counties, townships, and other taxing districts can levy property taxes. Mr. Houdyshell also explained that property tax is an ad valorem tax, and Directors of Equalization in the counties work to ensure the property tax burden is spread equitably amongst all the properties within the county. Mr. Houdyshell emphasized that neither the DOR, nor the state of South Dakota, collects or spends property tax dollars.

Mr. Houdyshell discussed the property tax cycle and how the DOR provides oversight to the counties to ensure the cycle is functioning properly at the county level, as well as providing oversight for abstract certification, ag land productivity, and mill rate calculations, and being involved at the legislative level.

Last year, Mr. Houdyshell said, \$1.5 billion of property taxes was collected for all of the various taxing districts, and was distributed as follows: schools – 56%, counties – 27%, municipalities – 13%, and townships and special assessments – 4%. Mr. Houdyshell also covered property tax contributions, the property tax modernization project, the transparency portal, wind farms, and the motor vehicle administration.

Senator Bolin asked who made the determination on tax-exempt facilities such as churches or educational facilities. Mr. Houdyshell said certain types of property are exempt from taxation, pursuant to the state constitution, statutes determine the process, and it is handled at the local level. Mr. Houdyshell added that most exempt properties have to apply annually to continue to receive the exemption, though certain properties that are deemed exempt will remain so until there is either a new owner or a change in use of the property.

Representative Chaffee commented that the state constitution provides exemptions for property owned by municipalities, schools, religious organizations, and health-care organizations among others, and a number of properties are not being assessed and taxed.

Mr. Houdyshell also covered the implementation of a web-based system in the property tax division of DOR to collect the necessary data from the counties, manage it, and then return certifications to the counties. Mr. Houdyshell said the division is working with the counties to ensure everyone has proper training and the right information to make the process run more efficiently for everyone involved. In addition to the web-based system, Mr. Houdyshell also highlighted the transparency portal on the DOR's website that can be accessed by constituents who may have questions on how property tax works in the state of South Dakota. That portal can be found at: sdproptax.info.

Unified Judicial System

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System (UJS), gave an overview of how the UJS interacts with counties on a funding basis ([Document 4](#)). Mr. Sattizahn said in 1972 voters approved a Constitutional Amendment unifying the court system, which transitioned the court system from a county-based system to the current state-based unified structure of the Magistrate Court, Circuit Court, and Supreme Court. With this unification, Mr. Sattizahn said, the state assumed several of the costs that had previously been paid by the counties, the largest being the cost of the people who run the court system.

Mr. Sattizahn discussed the breakdown of the costs paid for by the counties and by the state and said the UJS works to make sure every system is aware of the breakdown in effort to alleviate disputes that can occur. Mr. Sattizahn explained that the UJS collects money from things such as fines, fees, court costs, and surcharges, and then distributes that money out to different entities. In FY2022 the UJS remitted \$13,194,995 to the counties, and Mr. Sattizahn stated, that money has to be distributed to specific areas within the county such as schools.

Mr. Sattizahn also highlighted that South Dakota is one of two states that has an entirely county-funded process for providing legal services to indigent defendants. In the 2023 Legislative session, [House Bill 1064](#) created the Indigent Legal Services Task Force. The goal of the Task Force is to identify how legal services are delivered in South Dakota to indigent parties in criminal, juvenile, and child abuse and neglect proceedings statewide and to recommend ways to improve the delivery of services, ensure competent representation, and to identify potential funding options to ensure the delivery of legal services for indigent parties.

Senator Deibert asked if opportunities exist for multiple counties to share one courthouse to help counties alleviate their costs. Mr. Sattizahn replied that the regionalization concept has been discussed, and there are instances where counties have shifted some of their judicial services to other counties, however, there has been concern in the communities about what the impact would be and the courthouses not serving the particular areas, as well as the transportation of individuals.

Senator Larson asked if the Task Force had discussed the option of virtual court. Mr. Sattizahn responded that virtual court has been discussed and will continue to be discussed in the future, but there is an ongoing debate on issues such as witness testimony staying in the courtroom because it is easier to judge an individual's demeanor and ensure no one is off the screen influencing the witnesses.

State's Attorney Association

Mr. Dan Nelson, President, State's Attorney Association, said South Dakota is unique in that it is made up of rural counties so not all state's attorneys in South Dakota are full-time. Mr. Nelson said this creates challenges when it comes to funding because it is more difficult to compare Minnehaha's state's attorney budget to a rural county's state's attorney budget. Mr. Nelson discussed [Senate Bill 70](#) (2013) and how the passage of that bill shifted a lot of costs back to the counties, causing counties to have to allocate more resources and funding to deal with criminal justice at the local level. Mr. Nelson said this presents difficulties for the counties when it comes to issues such as rehabilitation, mental health programs, and infrastructure for adult and juvenile offenders.

Representative Reisch spoke on the number of juveniles being incarcerated and said the rural communities do not have the services available to treat the juveniles in their communities, and it was vital to figure out what can be done at the juvenile level to keep young people out of the penitentiary.

Representative Chase asked if the rural counties are able to find qualified state's attorneys to represent them. Mr. Nelson responded that there are qualified attorneys representing counties in that capacity, and some state's attorneys are representing multiple counties.

South Dakota Sheriffs' Association

Ms. Staci Ackerman, Executive Director, South Dakota Sheriffs' Association, said the primary source of revenue for counties to fund public safety is property tax, and it goes towards the prosecution of crimes, victim services, and criminal defense attorneys. Ms. Ackerman pointed out that one of the increasing costs in counties is now coming from defense attorneys calling in expert witnesses and private investigators. Ms. Ackerman said this used to happen only in major cases but is now happening more often in lower-level cases such as class one misdemeanors.

Ms. Ackerman said the four areas of concern when it comes to county budgets for sheriffs are jails, criminal defense costs, transportation costs, and emergency committal costs. Ms. Ackerman commented that the lack of jail beds throughout the state is a direct result of counties not having access to sufficient dollars to build and operate facilities. Criminal defense and transportation costs have increased exponentially, Ms. Ackerman said, and when it comes to emergency committal costs when an individual is taken to the Human Services Center, or other behavioral institutions in the state, the county is billed for the services incurred at those institutions.

Sheriff Tyler Appel, Roberts County Sheriff, explained the difficulties he faces as the sheriff in a small county that accrues costs similar to larger counties in South Dakota. Sheriff Appel explained how his county struggles to find more deputies and cars to provide the public safety needed, as well as to pay for criminal defense attorneys, mental health services, and transportation costs.

Department of Corrections

Mr. Doug Clark, Deputy Secretary, Department of Corrections (DOC), said when parolees violate the conditions of their parole agreement, the parole agent may authorize detainment in a county jail and the DOC is required by statute to reimburse the counties for those expenses. In FY2022, the DOC reimbursed counties \$600,000 at a rate of \$70/day for expenses incurred in the detention of parole violators.

Ms. Brittini Skipper, Director of Finance and Administration, DOC, said the DOC entered into a contract with the Hughes County jail to temporarily house adult offenders from the women's prison due to the overcrowding the facility has been experiencing. This contract spans two years at a cost of \$2.8 million and will house up to 48 offenders per day at a rate of \$95 per day.

Ms. Skipper said that per statute, the DOC reimburses counties for transportation expenses of offenders and the DOC has a joint powers agreement with Brown and Pennington counties to provide transportation routes. Ms. Skipper said the DOC also reimburses counties for expenses for housing juveniles.

County Commissioners Association

Ms. Kris Jacobsen, Executive Director, South Dakota Counties, said criminal defense costs, mental health holds, elections, indigent services, medical assistance, cyber security, veteran service officer costs, and juror fees are all areas of concern for the counties. Ms. Jacobsen discussed the COVID funds received by counties, the Catastrophic Legal Expense Reimbursement Program, and the Catastrophic County Poor Relief Fund.

Mr. Eric Erickson, Lobbyist, Sioux Falls, highlighted property tax and the distribution of it back to the counties, the increasing court fees, the impact of employment issues, and Medicaid expansion and its impact on counties. Mr. Erickson encouraged the Committee members to speak with the county commissioners in their districts to gain a better understanding of the challenges counties are facing.

Representative Mills said he wanted to know what the common denominators are for the counties that are struggling and what kind of statewide solution could be focused on. Mr. Erickson said the focus has been on those expenses that are increasing exponentially, the primary concern being that of the court-appointed attorney costs and counties having to move out of their courthouses.

Senator Deibert commented that property taxes are not the solution to helping the counties, and should be a last resort, because people are already being taxed out of their homes.

Committee Discussion and Adjournment

The next meeting of the Study Committee on County Funding and Services will be held July 12, 2023, in Room 414 of the State Capitol, Pierre, starting at 8:30 a.m. (CT).

Representative Chaffee moved, seconded by Senator Bolin, that the Study Committee on County Funding and Services meeting be adjourned. The motion prevailed on a voice vote.

The Committee adjourned at 3:02 p.m.