



SouthDakota

Legislative Research Council

MINUTES

County Gov't Interim Committee

First Meeting
2015 Interim
August 19-20, 2015

Room 414
State Capitol
Pierre, South Dakota

Wednesday, August 19, 2015

The first meeting of the County Government Interim Study Committee was called to order by **Representative Kristin Konzet, Chair** at 8:30 a.m. (CDT) in room 414 of the State Capitol.

A quorum was determined with the following members answering the roll call: Representative Kristin Konzet, Chair; Senator Bob Ewing, Vice Chair; Representatives Mary Duvall, Dennis Feickert, Leslie Heinemann, Joshua Klumb, Elizabeth May, and James Schaefer; and Senators Jenna Hagggar, Jim Peterson, and Mike Vehle.

Staff members present included Fred Baatz, Principal Research Analyst; Amanda Jacobs, Research Analyst; Aaron Olson, Principal Fiscal Analyst; and Rena Ortbahn, Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.sd.gov>.

Representative Konzet said this is an information gathering meeting and that the committee is interested in the problems and the solutions to the problems.

Review of Revenue and Expenditures – Historical and Current Perspectives

Mr. Marty Guindon, Auditor General and **Mr. Russ Olson, Local Government Audit Manager, Legislative Audit**, appearing jointly, provided an overview of Legislative Audit including Legislative Audit's role and responsibilities to the counties; an overview of county funds; the history of county revenues, expenditures, and fund balances; and county budget issues. Information provided is summarized in: (**Document #1, Slide Presentation for County Revenues, Expenditures and Fund Balances History**; **Document #2, Exhibits and Appendices to County Revenues, Expenditures and Fund Balances History**). Document #1, in the form of "slides", provides the basic summary information, while specific data for each area discussed is included in "Exhibit" charts within Document #2. Mr. Guindon said any 1995-1996 grouping contained in the exhibit charts include the pretax limitation statutes; while data obtained from the year 1997 forward was subject to property tax limitation statutes.

Mr. Guindon explained the information provided is historical; all counties are not the same and may deviate greatly from statewide averages. In one example, he explained statewide averages change when Minnehaha and Pennington Counties are not included.

Mr. Guindon said budget priorities in some counties might be roads and bridges while in other counties it may be law enforcement. Counties differ in how much they transfer in to cover road

expenses, and counties differ in road miles and population per road mile. Mr. Guindon urged those interested in an individual county performance, to study the data in Document #2.

Mr. Guindon suggested perhaps the task force could consider discontinuing the semi-annual fund balance reports required by SDCL 7-21-18.1, as this information is not used or requested.

Mr. Russ Olson explained department county audits largely focus on the pass-through money handled by the counties that is distributed to other governments (Agency Funds); these funds account for approximately 60% of receipts that flow through the counties.

Mr. Guindon explained the counties are dependent upon property taxes for 57.5% of their revenue. He said statewide county revenues, in raw dollars, have been steadily increasing since 1995-1996. But again he said totals and averages don't tell the whole story, and individual counties differ in the percentage of total expenditures covered by property tax revenue.

Mr. Olson said the area of law enforcement is tough to control and budget for; there are factors the counties can't control; states attorney fees vary dramatically by counties and funding public defenders has always been an issue. He pointed out that while there has been a big drop from 2013 to 2014 in revenue for housing federal prisoners, expenditures aren't dropping. He added property taxes are used to cover law enforcement costs that are not covered by other law enforcement related revenues.

Mr. Olson said every county has a county road and bridge fund, it is defined in statute, and use of these funds is restricted. Transfers from general funds are often needed to cover road and bridge costs. Motor vehicle license fees and wheel taxes are also funding sources, but not every county has a wheel tax. He spoke of federal funding being inconsistent; they do not cover everything, and often have compliance requirements that increase project costs.

Mr. Guindon directed the task force's attention to **Document #3**, which shows the percentage of property tax revenue directed toward law enforcement expenditures for 60 counties. Again, he said you could see the variation between counties.

Responding to a question, Mr. Guindon said the general fund balances in Exhibit K are unrestricted and based on local decisions.

Mr. Olson explained county budgetary issues and concerns expressed to or noted by Legislative Audit. These issues are all summarized in Document #2, slides 35 through 39.

Counties mainly transfer in funds in the areas of the county road and bridge fund (by far the largest recipient fund of transfers), courthouse building fund, emergency management fund, and the 911 service fund.

Mr. Olson pointed out several counties have had to opt out of the property tax limitation to obtain a necessary increase in property tax dollars to meet their commitments. Many counties, for example, have put off needed courthouse maintenance.

County jail revenues are not keeping pace with the increases in county jail expenditure requirements. Counties are seeing significant declines of federal contracts for prisoner care from 2013 to 2014. Minnehaha County declined \$942,999.42; Hughes County declined \$776,288.05; and Pennington County declined \$477,041.17. Some counties now have to house their prisoners elsewhere; increasing transportation, personnel, and court costs.

The growing judicial system has requested additional space at many courthouses; forcing the counties to plan and budget for additional facilities. County public safety operations are requiring or requesting more and more equipment.

Funding for county road and bridge fund operations are not enough to keep up with the needed construction, repair and maintenance of roads under the counties' jurisdiction, and most are subsidized general fund property tax transfers. The cost of replacing, repairing and maintaining roads is increasing faster than the increase allowed for property taxes (CPI and growth). Many counties find it necessary to finance major equipment purchases as they do not have the available funding to purchase outright. Large projects, such as a bridge replacement, are postponed; and by waiting the estimated cost of repairing the bridge is increasing dramatically. Furthermore, the restricted funds raised by the secondary road property tax levy are not sufficient to pay for the needed maintenance and repairs of secondary roads in unorganized townships.

Mr. Olson said he will follow up with the committee concerns as to what happens if the wheel taxes being referred to a voter in some counties passes and will provide the committee with further information as to the state criteria the counties must follow to qualify for reimbursements from the bridge improvement grant fund.

Senator Vehle questions what obligations are required by the state constitution or statute versus obligations the counties have picked up on their own.

Motor Vehicle Registration Fees

Ms. Peggy Laurenz, Director, Division of Motor Vehicles, provided a broad overview of the division (**Document #4**). She outlined its purpose and key programs and said her office and the county treasurers are constantly working together to serve the customers. She explained the SDCars database system and said more vehicles are being registered electronically.

Ms. Laurenz said license fee collections have been steadily increasing because of the increase in license fees and in the number of vehicles owned. She said the projected 2015 numbers don't include revenue from the SB1 increases. Ms. Laurenz said the division's policy is that people should license their vehicles in counties where they physically reside.

Since the implementation of SB 1 on April 15, Ms. Laurenz said ten counties have added or increased their wheel tax and a lot of counties are contemplating doing so. This tax is a method for counties to collect revenue for county road and bridge maintenance. She said currently fifteen counties do not charge a wheel tax and by statute the tax may not exceed \$5 per wheel or \$60 per vehicle.

Property Assessment and Taxation – Historical and Current Perspectives

Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, provided an overview of the property tax system in South Dakota (**Document #5, Property Assessment and Taxation – Historical and Current Perspectives**). He said it's not a popular tax, but it is a major source of revenue. The reason it's still around is it is a stable reliable revenue source for local governments.

Mr. Houdyshell pointed out since 2011, ag valuations have been increasing while owner occupied and commercial/utilities valuations have been stable.

Mr. Houdyshell summarized for the task force other sources of tax revenue (other than property taxes) allocated for counties (**Document #5**).

Mr. Houdyshell said counties tax pipeline property like any other property such as railroads and public utilities. He said 100% of these taxes go back to the counties, and will provide Senator Vehle with the numbers.

County Commissioners, Officials, and Administrators – Challenges and Successes

Ms. Cindy Heiberger, Minnehaha County Commissioner and **Ms. Carol Muller, Commission Assistant**, appearing jointly, spoke of the challenges facing Minnehaha County (*Document #6 – Minnehaha County, Strong Foundation, Strong Future* and *Document #7, FY2015 Minnehaha County Expenditures*).

Ms. Muller said the county budget is greatly affected by the numbers of mentally ill now being housed in jails. Prisoners may be jailed for six to nine months waiting to get a psychosexual exam from the Human Services Center.

Forty-five percent of the state's homeless population is in Sioux Falls. Responding to a question on poor relief, Ms. Muller said hospitals submit several thousand claims per year to the county, the county will pay out less than \$1 million, but each claim generates paperwork.

Ms. Heiberger said changes in the state statutes affect law enforcement at the local level and when law enforcement is mandated to take care of things, the county needs additional revenue. The county is looking at building a new jail and the county will probably fund it with property taxes. Ms. Muller said next year they may be looking at renting jail beds. Public safety, including law enforcement, is 53% of the Minnehaha County budget.

Ms. Heiberger said having to check on a job application that one is a felon makes it harder for that person to find employment. In responding to a question, she said in Minnesota felons no longer have to check the box.

Keeping qualified staff at the county level is a problem, as other governments pay more.

The 1996 property tax limitation program has provided minimal revenue increases, a problem when county growth is at about 13%, yet revenues are restricted. Ms. Heiberger said it is projected that 21% of the county general fund property taxes will be from opt outs in 2016. She said the county has between \$60 and \$70 million in unpaid liens.

Ms. Muller referred to the chart "Minnehaha County General Fund Historical Cash Balance" as the sheet they use and work off. She said the cash balance always dips before property taxes are paid.

Mr. Ron Buskerud, Pennington County Commissioner and **Ms. Janet Sayler, Pennington County Treasurer**, jointly appeared before the task force.

Mr. Buskerud spoke of law enforcement challenges. The jail is about full, law enforcement is arresting more people, the sheriff is requesting 13 new deputies, and the states attorneys and public defender's office want more attorneys for next year. A recent wage study shows that employees' wages should be increased.

Senator Vehle asked for the supporting information from Mr. Buskerud as to how the county will lose \$800,000 in bridge funds in three years because of SB 1 stipulations.

Mr. Buskerud shared the good things: the 24-7 program; a new administration building, and an updated IT division. Establishing a crisis care center has been a major accomplishment, it keeps

mental patients out of Rapid City Regional Hospital; and contracting for Behavior Management services saves the county a lot of money.

Mr. Buskerud doesn't think the Pennington County citizens will stand for raising property taxes. He thinks people would prefer a wheel tax to a property tax and he favors an alcoholic beverage tax user fee.

Ms. Saylor listed the duties according to statute of the county treasurer's office (**Document #8**). She said the legislature is always quick to add more responsibilities, but it never allows for the county to get paid for all of the extra work they are forced to do for everyone else. She said when laws are changed; the county is forced to update its computer systems to implement the law, usually at a significant expense to the county.

Ms. Saylor said the HB1228 is an example of the legislature passing a bill putting more work on the office and the staff in a potentially dangerous situation. According to the bill, no person who owes certain debts may renew any license in which their name appears on the title. When they come in to renew a vehicle registration and realize because they owe a debt they cannot do so, people become unhappy and vent their frustrations on county employees.

Ms. Saylor said the county collects taxes, does all the work, and the municipality benefits by getting a portion of the taxes. The collection of delinquent municipal special assessments is all a county expense. The county does distress warrants for the state, yet isn't reimbursed. There is no reimbursement for the pass through money the county distributes to other local governments.

Ms. Saylor suggested that 2% of all the revenue that counties collect for other entities and the state (approximately \$126.6 million collected by Pennington County), be reimbursed to the counties and used to fund the budgets of the county treasurers offices and the departments of equalization.

Ms. Jill Hanson, Beadle County Auditor and Ms. Kathy Glines, Harding County Auditor, appeared jointly before the task force listing the multiple tasks and challenges of the County Auditor office.

Ms. Hanson suggested if auditors were given 48 hours after the polls close to post election results, it would give them more time for accuracy and perfect results. She said over the years, the state has lost several auditors due to the stresses of election mandates and expectations, and fear of lawsuit. Election costs have been soaring, voters want perfection, and the public expects immediate election results.

The auditors handle all county insurance related activities. They are responsible for any county leases, and handle payroll and related items. Routine duties include calculating levies, minute taking, handling complaints, helping balance the county's checking account; and paying all the county bills.

Ms. Hanson said preparing and presenting the annual budget is stressful. Other county departments often have the attitude of "auditors control everything", and "the auditor doesn't want it done". Ms. Glines said the first number plugged into next year's budget is the property tax revenue.

Ms. Glines likened the annual report to a report card in revealing how well they did with their budget projections; the information Legislative Audit provided came from these reports.

Ms. Hanson said on even number years with the general election and property tax preparation both happening in November, it is hard to get everything done – especially if there are changes in calculations of school taxes. She wishes the timelines weren't so close together so there would be more time for tax preparation on election years.

Ms. Glines said office morale has been sinking and there is a high turnover rate. Ms. Hanson said it can take up to four years to properly train someone to work in the auditor's office.

Ms. Glines said when the legislature makes changes the auditors are often the first to see and hear about it from the public. She feels the legislature doesn't listen to their concerns and that requires better communication on both sides.

Ms. Hanson said there is increased communication, face to face time, and good training and support from state agencies. Ms. Glines said the LRC website is awesome; they can monitor what's going on without being in Pierre, and it helps them to keep the public informed. Ms. Hanson added the America Vote Act has helped to offset the cost of elections. Ms. Glines said the ability of counties to accumulate funds for capital outlay purposes is well used and appreciated, counties can put aside money now for equipment that might be needed in five years.

Ms. Cathy Powell, Clay County Treasurer and **Ms. Doreen Priebe, Brule County Treasurer**, testifying together spoke of the successes and challenges associated with their office.

Ms. Powell said advances in technology have greatly helped the office as have the state's sending out motor vehicle license renewal card notices six weeks ahead of time.

Ms. Powell thinks HB 1228 will adversely affect the treasurer's office. She asked how people can do business if they can't license their vehicles. She said county treasurers are tax collectors; if a resident doesn't pay their taxes; the county takes property away; a time-consuming process; in Clay County they deal with 10 to 12 tax deeds per year.

Ms. Elaine Reimer, Brule County Register of Deeds, (Document #9) said her office is responsible for 100 years plus of documents and records vital to real estate, legal, banking, and genealogy research. She said the records are used daily and have to be kept in good repair. They collect a flat \$5 recording fee that is used for record modernization and preservation. She said every county is working on modernizing the records and backs them up whether by computer or microfiche. In Brule County, they have all records scanned – even so, some abstractors like to look at the original record. She said smaller counties have only one terminal, they can't all be on one computer, so they will use the original books.

Ms. Reimer said top challenges for the office are staying current with technology, safeguarding the records while allowing public access, competitive wages, lack of land title research prior to filing documents, and inadequate physical space.

Mr. Jim Schmidt, Lincoln County Commissioner, said the start of any solution is recognizing the problem. He thinks the committee members are all motivated and can certainly find solutions.

He said since 1889 the county governments have been doing everything the state chooses not to. They finance these responsibilities mainly through the property tax. Property taxes aren't keeping up with the demand, so the counties are looking at alternatives. He likened opt outs to "cop outs", and said they are not a long term solution.

Mr. Schmidt said county governments have grown without any ability to increase revenue and they live in a property tax gap. He said in state statute, substituting the word "more" for "less" CPI would solve a lot of problems. He said giving local officials the control to address their individual needs is the biggest thing the state can do for the counties. He said there are no more conservative people than county commissioners as they daily face the taxpayers.

Mr. Schmidt believed SB 1 provides a solution and likes that it involves local control with the county commissioners given the ability to raise funds.

Law enforcement costs are increasing. Mr. Schmidt said the counties public defender budget once had one person, now they've hired a law firm. He said perhaps the state could provide assistance to the smaller counties. Lincoln County chose not to build a jail, because jails are costly, so they have prisoners dispersed all over.

Mr. Schmidt said the county expanded the county building a few years and now has to expand to meet the judicial system's needs. He said this is a real issue the state could address.

Mr. Dean Wagner, Harding County Commissioner, said his county is low in population and large in land mass. He said it is impossible to provide some county services to remote areas.

The county has a hard time finding employees and often can't afford more than one person in an office. They have tried combining jobs, welfare directors are typically the county auditors. This can overload an office and staff may not be fully trained for all their duties.

Mr. Wagner understands the need for conflict of interest laws, but thinks they should allow for diversity and could be revised for smaller counties. These laws can prevent a county from getting good bids, an example would be gravel owned by a county official. He thinks the state should work with the counties and not against them and said it is frustrating to be approached with developments and then have the state step in and stop the project.

For solutions, Mr. Wagner thinks a county sales tax along with user fees has possibilities; when a county resident becomes a ward of the state because of mental illness, the state should be responsible for the costs; and suggested that if the state sends mandates to counties, they should send funding with them.

Mr. Larry Denke and Mr. Glen Bennett, Jackson County Commissioners, appeared jointly presenting a proposal for the implementation of a county sales tax (**Document #10**).

Mr. Denke pointed out that in Jackson County approximately 42% of the land is nontaxable due to tribal lands, national grasslands, and the Badlands National Park. He said the county provides services to the reservations but doesn't collect any revenue.

Taxpayers state they do not want another property tax opt-out and they do not want the county to increase taxation or implement a wheel tax allowed under SB 1. Mr. Denke wonders if the Indian tribe can demand a portion of any county imposed wheel tax.

Mr. Denke thinks a sales tax would be fair to all parties and presents it as an alternative for this committee to consider. He said if purchases had been subject to a sales tax, the revenue from the recent Sturgis motorcycle rally for the counties would have been substantial. There were also questions about whether Indian tribes could ask for a portion of any county sales tax. Mr. Baatz said this could be further researched.

Mr. Clayton Nelson, Brown County Welfare Director, provided an overview of county welfare programs in South Dakota: what it is, who is eligible (the indigent), why counties are responsible for providing assistance (state statutes), and what types of assistance is offered by the counties (**Document #11**). Each county has a welfare director, in the smaller counties it is usually the county auditor.

Mr. Nelson said counties do have the responsibility to provide services for the indigent, but not for the irresponsible. Assistance benefits are decided by the individual counties, they do not cover the total bill. The policies differ by county and he said having a county welfare policy manual provides for consistency in program implementation and saves money.

Mr. Nelson explained if a person qualifies for a health insurance subsidy under the Affordable Care Act, then they aren't eligible for county welfare, which has been a cost savings. County welfare programs assistance is in the form of liens for which the county seeks reimbursement or turns over to a collection agency; these liens are not discharged to bankruptcy.

Medical cases consume the biggest portion of county welfare; the answer is not always black and white. Each county has a catastrophic poor fund to which each county contributes. Some claims can wipe out a county budget. He said an expansion of the Medicaid program would help the counties tremendously. He said the county is obligated by law to pay at the Medicaid rate, which often is the lowest.

Mr. Rob Fines, Director, Hughes/Stanley County Emergency Management, said 911 brought lot of changes to emergency management programs. It is not a simple job. Each county is required to have an emergency management director. To cut costs and ensure quick responses, Hughes and Stanley County have combined the position and five counties, including the city of Mobridge, have combined services. In many counties the position is filled by the county auditor. Some counties may only budget, for example, 10% of an emergency management position, but regardless the requirements and training for the director is the same. The position is on call 24/7, constantly seeking funding, and its responsibilities are continually growing.

Mr. Fines said homeland security grant monies have helped counties purchase badly needed response equipment but do not provide for equipment maintenance.

Mr. Rolf Kraft, former Bennett County Commissioner, said there is a need for the federal government to help pay for county services on trust land, this is a federal responsibility, and the federal government should not subsidize its budget on the backs of depressed rural counties.

Mr. Kraft discussed the problems counties with significant trust lands face – specifically Bennett, Jackson, and Lyman counties (**Document # 12**). He said in Jackson and Bennett Counties, approximately 50% of the population live on Indian trust lands not subject to county property taxes. Yet the counties must provide county services for all its residents; a large financial burden. State imposed tax limitations and unfunded state mandates and programs have increased the problem. He said in other counties the tribes want to put more land into trusts which will result in additional financial problems.

He asked, what would you do if 50% of your people lived on tax exempt land? He would like to see the state provide more assistance to counties with trust lands.

He said that prior to opting out, Bennett County was on the verge of bankruptcy. Without its passage, they would have had to dissolve the county; but he thinks any county or entity that takes over a bankrupt county would come back to the taxpayers to pay the bill.

Payment in Lieu of Taxes (PILT) has not worked because it deals with acres, not the population and in the case of highly populated trust lands, the acres are actually meaningless, he said. It is the number of people who live on tax exempt trust land that generate the problem and impact the county budget. The wants of these people are included in the county budget as a normal expense.

Mr. Kraft estimates that twelve to sixteen South Dakota counties are impacted by tribal trust lands and suggested the issue be resolved with impact aid payments based on population. He thinks the impact funding per person on trust lands needs to be similar to the current property tax per person on deeded land.

County Planning, Development, and Cooperation

Mr. Greg Henderson, Executive Director, Planning and Development District III, (*Document #13*) explained the planning districts were formed under joint powers legislation and they are funded through membership dues, service contracts from federal and state agencies, and fees for services. He said their bosses are county officials; they are very accountable and probably best example of county cooperation in the state.

Mr. Henderson said the planning districts assist the counties in community and economic development, fill a staffing void, and provide an institutional memory.

Mr. Henderson believes counties will have to be more proactive and do more with less. He hopes counties will support five year transportation plans, and said transportation is critical.

Mr. Tom Tveidt, Hughes County Commissioner, told the task force that often state and federal programs offered to help counties end up costing the counties more and do not provide continuing support, giving the example of the Hughes County voting centers.

Mr. Tveidt said the 24-7 and Teen Court programs have worked well for the county, in avoiding incarceration and decreasing reoffenders. Hughes County has consolidated the treasurer, auditor, and register of deeds into one position of an elected finance officer who then hires deputies for those positions; this is streamlined, efficient, and consumer friendly.

He asked the task force to consider permissive legislation allowing the counties to assess a sales and use tax. It would be a county decision to implement.

He asked the task force for legislative permission to make changes in the sheriff's fees for serving papers (presently \$10 to \$20 per service), to an amount closer to the actual cost.

Referring to two recent election fraud cases, he doesn't see that it is fair that simply because the state capital is in Hughes County, that Hughes County has to pay all expenses not covered by the Attorney General's Office.

Mr. John Claggett, Davison County Commissioner, referred to a Davison County road study indicating the county needs to find an additional \$259 million in twenty years just for highways and bridges and asks where is he going to find the \$1.3 million per month to meet this cost.

He supports and encourages the committee to consider a 1% statewide county sales tax.

Representative Conzet recessed the committee at 4:45 p.m. on August 19, 2015 and reconvened it at 8:15 a.m. on August 20. Representative Heinemann was excused, the other members were present.

Sheriff's Office

Ms. Staci Ackerman, Executive Director of the SD Sheriffs Association, said there are 29 county jails in South Dakota; many are at capacity and aging. Although counties have similar issues of

funding, staff, salaries, and operating jails; they are unique and different because of geography, population, judicial circuits, legislation, reservations, and trust lands.

Changes in statutes have resulted in more arrests and increased court cases; there are more sex crime investigations, new crimes on the internet. More and more fingerprinting is required by legislation, this is the responsibility of sheriffs. Court and parole services increasingly requests sheriffs to check on clients or to provide urinalysis. When presentence investigations are ordered, the client remains in jail until completed, a cost to the county.

Some communities contract with the sheriff's office for police services. These communities may request sheriffs to respond to non-felonies, not a sheriff's responsibility, which a sheriff may do because it is the right thing to do, but it puts a strain on the office. The fees for servicing summons, etc. are not enough to hire someone in these smaller communities, yet it must be done. The availability of highway patrol in rural areas is also an issue along with the availability of backup.

Ms. Ackerman said staff is doing more with less. She listed everything the office is doing, and that each action requires a report. Some offices struggle to do the basics because of lack of staff and resources. Many counties have only three or four officers and there is a problem of who covers when the sheriff is gone. Counties without jails face transportation issues.

Mentally ill and alcohol committals are time consuming and dangerous. The Human Services Center only allows for three psychosexual evaluations per month, while waiting there are jail costs. Then there is the challenge of transporting the client to HSC, which can take all day and perhaps overnight, costs must be covered by the county.

Jailing and housing prisoners costs more today; at the same time there is an increased demand.

Law enforcement must compete for funds on the county level with roads and others. Ms. Ackerman said people want to live in safe communities, but don't understand why they have to pay more in property taxes.

Through regional meetings, the sheriffs have been discussing how costs can be lowered. Every county's budget is unique and different; they are looking at agency policy decisions and how neighboring agencies can help each other - such as deputizing sheriffs in neighboring counties to help when the local sheriff is gone. She gave the example of Buffalo County with a small population and much reservation land contracting with Jerauld County.

She concluded by suggesting a comprehensive review of who does what and how funds are being distributed.

Sheriff Randy Thaler, Charles Mix County, operates a regional jail facility (**Document #14**). He said since the enactment of SB 70 there have been more probation violators and more detainers issued. These people are usually jailed two days at a time; they are in and out of jail more often; all of which has resulted in increased costs to the county.

Because of SB 70, Sheriff Thaler said some convicted felons are being placed on probation versus being sent to the penitentiary. Alcohol and drug treatment is ordered, these facilities are unavailable in Charles Mix County and the sheriff is ordered to transport violators to treatment facilities all across South Dakota. Often they violate their bond conditions and are jailed by order of the judge awaiting a treatment slot. He said two round trips are normally required to transport one violator from the jail to the treatment facility, at the counties expense. Staff must cover for those transporting, often resulting in overtime expenses. Sheriff Thaler said psychosexual evaluations are also a major issue for the county, it is at least an all-day affair, sometimes two days, and a great distance is traveled.

In closing, he said what the county receives from the state for reimbursement hasn't covered the costs to the county. He referred to his office as being a taxi cab for the courts, if the judge orders it, they have to transport.

Sheriff Troy Wellman, Moody County, said the Flandreau Indian Tribe, as of September 4, will no longer contract to provide police services for the city of Flandreau. At the same time, the use of marijuana will soon be legal on the reservation. Sheriff Wellman sees problems as the Flandreau police department becomes smaller and marijuana use increases.

He said when the county transports prisoners; there is inadequate staff to cover the county.

Sheriff Thaler, responding to questions, said he's looking for grants to cover additional budget costs resulting from the loss of the tribal contract and asks if there are state or county resources to offset the additional cost he foresees.

Sheriff Thaler said the tribe will staff a police department just for the tribe. He explained the tribe does have its own court system for natives; any non-native arrested for marijuana, even if on tribal grounds, will still go through the county. He said if a native is arrested for marijuana use off the reservation, that also would be a Moody county problem.

Sheriff Ray Clements, Jackson County, said his county includes a reservation, Badlands National Park, and national grasslands, all of which are non-taxable and yet residents expect county services. Sheriff Clements and one deputy cover this area. He said when both he and his deputy are transporting prisoners, the county is either uncovered, or has to get someone to help.

Sheriff Clements said he didn't realize the impact of SB 70 until he saw the increase in the jail budget and the state reimbursements were not covering it. He said he has currently \$76,000 in jail bills, with an annual budget of \$56,000. He says the number of calls for services have gone up. Sheriff Clements said now, people are being sentenced to the penitentiary, suspended, and given 180 days county jail time. This is at county expense.

Sheriff Clements said the court services officers are overwhelmed, it sometimes takes two months to get a presentence investigation report from an officer, which means two months of county jail time, not including medical bills.

He said for ten counties in what is referred to as the "badlands squad", there are seven highway patrolmen. Sometimes a trooper has to travel 150 miles or more to an accident site, so the sheriff's office helps when they are available. There is no overtime money available for his deputies.

Sheriff Clements said there are currently 382 active warrants, the majority are south of the White River, within the reservation area. Some warrants are over 20 years old.

Time spent in court is an issue, for example, yesterday there were 43 cases in three hours. He said the county is not being reimbursed for a majority of attorney fees. He and his deputy put on 6,000 miles per month; he has finally got a part time secretary to help. Sheriff Clements said he doesn't know the answers; he's been so busy he couldn't put everything together for this meeting.

Sheriff Kevin Schurch, Spink County, said increased jail costs have been an issue since the passage of SB 70. He said his jail bill was \$16,000 for last month, which he can't handle in his budget. He has faced issues with keeping and retaining staff. He thinks drugs and alcohol have been big problems resulting in increased jail time and increased medical costs. He didn't want to repeat issues that have already been covered by others.

Sheriff Mike Leidholt, Hughes County, said mental illness commitments have resulted in major increased costs to the county. He said these programs are important, they better people's lives; but there is no reimbursement for the counties and often the expenses are passed on to county welfare. He said each time they transport a client it can cost from \$450 to \$500 a trip, and he projects that this year his office will provide possibly 100 transports.

Sheriff Leidholt thinks it's time to readjust fees received by sheriffs for serving papers, subpoenas, executing judgments, etc. He said in general the county recovers about 44% of the costs of providing the service. A basic internet search showed him that other states get much more in reimbursements.

Sheriff Leidholt said mental illness is a challenge for sheriffs nationally. He thinks the bigger issue is the mentally ill are being housed in jails, especially in the big cities. Mental illness medications are an extremely huge expense.

Sheriff Leidholt said with SB 70 he hasn't seen an increase in probation violators; and as sheriffs they did have some input into its development.

Sheriff Andy Howe, Clay County, has not seen funding changes in his county because of SB 70. He said in the 80s it was alcohol, now the jails are filled with drug addicts. Prisoners fabricate medical complaints to get meds. Inmates know the system; for example, how to get an MRI and at the county's cost.

Sheriff Howe said people are staying in jail longer; sometimes for a pretrial they have to wait months and can't afford to bond out of jail. It costs the counties a fortune and he is seeking a solution.

Deputies are spending a lot of time transporting; with at least a trip or two a week to the Human Services Center, he can only image what other counties with further distances are going through. Psychosexual evaluation is a burden in that it ties up one or two deputies for a full day, often they are notified at the last minute.

Sometimes it's difficult working around vacations and mandated training. When the sheriff has a prisoner in the car they can't work something else, for example, a car accident.

They manage their days by prioritization of duties and responding to calls - eventually traffic enforcement is incidental; it gets put off often along with investigations of crime.

Juvenile detentions are not a problem in that Clay County contracts with Minnehaha County. He said the Pennington County coordinated prisoner transport system is a big timesaver.

In conclusion, he said the lack of funding and staffing is huge and the counties do the best they can in working together; often informally.

Department of Corrections

Ms. Laurie Feiler, Deputy Secretary, Department of Corrections, provided a brief overview of adult and juvenile corrections (institutions, parole, and aftercare) and explained the detention costs that the state covers through the Department of Corrections.

She spoke of local law enforcement help when warrants are issued; how state is able to tell whether someone stopped is on parole, and that DOC contributes toward the prisoner transportation system

out of Pennington County. She mentioned various grants available to keep juveniles out of the adult corrections system.

Ms. Feiler explained the SB 70 reinvestment fund, so far \$314,000 out of the \$1 million available has been reimbursed back to the counties, and the remainder will be reimbursed over the next years according to a process in administrative rule. The next payment will be for FY 2015. She explained reimbursements on the juvenile side have not yet been implemented; the first reimbursements will be in the spring of 2017; and counties will be able to submit applications based on FY 2016 data.

Ms. Feiler responded to questions. She said the prison population has remained the same for the last couple of years. She does not have the county incarceration data since the passage of SB 70. The state does not reimburse the county for serving warrants.

Ms. Feiler said it's important to get a good definition of who's actually in county jails and all the different categories of jail population, before being able to decide the actual costs of the implementation of SB 70, and whether the counties are being adequately compensated for those funds.

Responding to Representative May's questions, Ms. Staci Ackerman said the DCI does a sheriff's management study which would provide average daily jail costs. She said when looking at these numbers there are many factors that go into them and counties may differ in funding. She said some information is hard to get.

Unified Judicial System – County Court System

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System, together with **Judge Scott Myren, Presiding Judge of the Fifth Judicial Circuit**, appeared before the committee. Mr. Sattizahn provided a general summary of how UJS interacts with the counties (***Document #15, UJS Interactions with County Government***). The state-based, unified court system includes the magistrate, circuit, and supreme courts. The state and the counties together pay for this system and Mr. Sattizahn explained those differing costs.

Mr. Sattizahn explained the county jail usage, and said SB 70, with presumptive probation, has reinforced the use of county jails versus sentencing to the penitentiary.

Judge Myren said SB 70 is a fundamental change in sentencing, there is presumptive probation, and the focus is on fixing problems rather than sending a person to the penitentiary. He is hopeful the future will show this has been a change for the better.

Mr. Sattizahn said SB 70 has resulted in more people on probation, that's how it's supposed to work. There is more pressure on the probation system, UJS has hired additional officers, and is looking at next year's budgetary needs.

Judge Myren explained probation officers often specialize and if new probation officers are hired, the counties will have to provide the space. He said parole and probation officer functions can't be combined. Mr. Sattizahn said several statutes clearly state that a county is responsible for providing adequate space to the court.

Judge Myren said court appointed attorneys may be appointed by the judge, may be the responsibility of a public defender's office, or counties may contract for the services. Judges make the final decisions on expert witnesses and are frugal with the county's money.

Mr. Sattizahn explained that probation costs differ according to the different levels of probation; risk factors determine the level. The use of the drug or teen courts, the number of probation officer contacts, and travel distance also affects probation costs.

Judge Myren explained that SB 70 allows judges to keep offenders in the community who previously would have been sent to the penitentiary. Judges now have more resources available to them such as 24/7 and intensive probation programs. If the person is a danger to others, judges will sentence them to the penitentiary.

Judge Myren said there is a standard statewide fee for court appointed attorneys and that all counties provide court chambers. He thinks there are enough judges to handle the cases in a timely matter. He said people should be seen before a judge within 48 hours of their arrest, and once seen, they may be in jail for 6 months or longer.

Mr. Sattizahn will provide Senator Vehle information as to who in the county receives the overweight and civil penalty fines.

Mr. Jim Seward, General Counsel for the Governor's Office, said it has been found that if nonviolent people can be kept in the community, gainfully employed, and raising their kids, that this decreases costs to the county and to the state. Mr. Seward said there are numerous financial benefits to counties with SB 70, and that sheriffs were involved in its development. Previously thousands of misdemeanor cases in South Dakota needed to have hearings before grand juries. Sheriffs asked this be eliminated and it was. The use of Drug and DUI courts has expanded, with participants required to be working. He said SB 70 asked judges to use 60 days rather than 180 days, and this should result in fewer jail bed days.

Mr. Seward does not know of a good system of tracking the county incarceration data. A statewide report shows that in FY 09 thru 11 there were 30,000 jail bed days/year, in 2013 prior to the passage of SB 70 there were 48,000 jail bed days, and in both FY 14 and 15 there were 35,000 jail bed days.

Mr. Seward explained the state knew there would be an increase in probationers under SB 70. The state set up the \$1 million reinvestment fund to help the counties cover the increased costs of more probationers in the county jails. He said the payments, coupled with the savings from fewer jail bed days, and with more parents home to take care of their kids, should result in a savings to the counties. He said the reinvestment fund wasn't intended to go on forever.

Mr. Seward asked with SB 70, people learn the system, look at the numbers, and study what's going on. If the sheriffs or the counties have problems or concerns with SB 70 they should report it to the oversight council which reports to the Governor's Office. Mr. Seward asks the sheriffs for the data as to what is going on in those jails, so the state will have the right data to make the right decisions.

He said many times people are in jail for reasons that has nothing to do with SB 70. He said with courtroom cameras a judge does not have to be physically in a county to hold a hearing. Sheriffs can request their states attorney for a teleconference hearing.

Responding to questions, he said since the passage of SB 70 the women's prison population has gone down 20% and the men's prison population has remained almost flat. Speaking to Representative May's concern that SB 70 has increased Jackson County's costs, Mr. Seward said the purpose of the oversight council is to look into these types of concerns. The council needs to know what caused the increases, and whether it was jail bed days for offenses covered by SB 70.

County State's Attorney

Mr. Eric Bogue, Corson County State's Attorney, said he also serves as the deputy state's attorney for Ziebach County. These are rural counties containing the Cheyenne & Standing Rock Tribes. He explained there are three levels of jurisdiction in those counties including state, tribal and federal. Jurisdiction depends on the crime and whether it involves a tribal member or non-member.

Mr. Bogue's biggest complaint and concern is the lack of resources for intensive probation, TEEN courts, DUI courts and HOPE courts. As a prosecutor, he tries to be creative and not have a lot of trials, for example, for the first offense of underage consumption he may order the offender to write a paper and do ten hours of community service.

He said the biggest issue for the counties is the large amount of nontaxable Indian trust land.

Mr. Bogue said SB 70 does what it was designed to do; however, for low level felonies it requires extra steps if he thinks the offender should go to the penitentiary.

Mr. Bogue said the tribes in his area have entered into a sales tax compact with the state and about 75% of these taxes go back to the tribe. He is concerned whether the county would realize most of a 1% sales tax levied in his area of the state.

Asked for suggestions, Mr. Bogue said at some level its ok to allocate money that isn't going to make complete fiscal sense; like deciding to do teen court in small counties because it is worth doing it even though it will cost more per person to deliver. He also said what sometimes appears to be a problem may be an opportunity.

Mr. Bogue believes consolidation would make services in his counties even more remote and would not be a cost saver. He said the UJS electronic file and courtroom video systems have helped.

Mr. Bogue said there may be a 45 to 60 day wait before people with drug, alcohol, and mental health problems can be evaluated. They must be evaluated before they can be sentenced to treatment. This, along with the cost of transporting clients to the evaluations, is an issue.

Mr. Bogue said in Corson and Ziebach counties, law enforcement and the attorneys all work together well; however, the Indian Health Service often does not pay the bills they have been federally ordered to pay, so someone else picks up tab.

Mr. Bogue pointed out that if the federal government paid PILT funds for reservation trust land, another source of revenue would be immediately available to the counties.

Public Testimony

Sheriff Mike Leidholt, Hughes County, said in the sixth circuit there used to be a judge in every courthouse; now there are the same amount of judges, but with one in Winner and the rest are in Pierre. Housing these judges has been an extra burden for Hughes and Stanley counties.

Mr. Casey Krogman, Mellette County Commissioner, said in White River a person could break a window, run across the highway, and then be on tribal land, where the non-tribal governments have no authority. He said the county has tried to set up an agreement with Rosebud to house prisoners – it would have saved the county money and transportation costs and allow for better family visits. The problem is the jail could only take Native Americans; non-natives would have to go somewhere else,

and a judge said non-natives could claim discrimination. He said without the judge's permission it is hard to set up the agreement.

Mr. Krogman asked who wants to consolidate with a broken, bankrupt county. He said Mellette County problems are similar to Jackson County, and neither one wants the other. Mr. Krogman said counties are in need of funds to cover the costs of services on tribal trust land; PILT funds are not available for the counties; and it is a national problem.

Mr. Dick Kelly, Minnehaha County Commissioner, quoting from a national survey, said that of those who drink alcohol, 5% consume 48% of the alcohol. He believes a majority of people in county jails are there for offenses influenced by the consumption of alcohol. He thinks when you have 5% of the drinkers drinking about 50% of the alcohol; these are the people causing most of the problems. So this is a burden on the property tax payers caused by a small segment of society. He suggested a 1% alcoholic beverage tax for the counties, which would ease the financial burden.

Mr. Kelly knows alcoholic beverage tax laws are hard to change. He sees the tax revenue going back to the counties just like a municipal sales tax.

Mr. Gary Jaeger, Deuel County Commissioner, said the counties are already frugal and are creative in taking care of budgets. He would be for any type of tax that would help the counties.

Mr. Dick Howard, Pierre, said a liquor tax is an alternative that should be looked at because the influence of alcohol consumption has a big impact on law enforcement costs. He said there have been no increases in this tax since the 1930's. A problem would be distribution of this tax revenue. Possibly distribution could be based on a formula of 50% population and the other 50% on assessed valuation.

Mr. Duane Sutton, Brown County Commissioner, proposed a ½ cent county sales tax and believes it would bring in approximately \$75 million to the counties. He would guarantee all 66 counties \$300,000. He would divide the remaining \$55 million between the top 15 most heavily populated counties. He said a ½ cent sales tax would go a long way towards helping the small counties. He added a lot of this tax would be paid by visitors.

Mr. Eric Bogue, Corson County States Attorney, said if there is technology that can facilitate the long travel distances that law enforcement and states attorneys travel in Corson and Ziebach counties, it would be appreciated. He said there is a lot of drug traffic going through Corson County.

Ms. Lynne Valenti, Secretary, Department of Social Services, provided further information on the forensic evaluations provided by the Human Services Center (HSC). She said HSC is the states only psychiatric hospital and it is at or near capacity. She said HSC performs three forensic evaluations per month for the counties; charging the counties a \$600 admission rate, but doesn't charge them the daily rate. The clients stay an average of 6 days and the psychiatrists spend an average of 15 hours with each patient (not including travel time or court time). She said these evaluations are not HSC's primary duties, and the evaluations are done as a courtesy to the counties; that it is a county responsibility. She suggested the counties could develop their own expertise and perhaps something could be done with telemedicine.

Ms. Carol Mueller, Minnehaha County, commented that perhaps the evaluation reports could be shortened; other states have only two pages.

In conclusion, Representative Conzet thanked everyone for testifying. She said the task force had been given a lot of information.

Adjourn

SENATOR HAGGAR MOVED, SECONDED BY REPRESENTATIVE MAY, THAT THE COUNTY GOVERNMENT INTERIM COMMITTEE BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The meeting was adjourned at 2:40 p.m.

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