

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

HOUSE BILL NO. 1253

**AN ACT TO ENSURE THE RIGHTS OF GUN OWNERS STATEWIDE AND PROTECT
THE RESIDENTS OF SOUTH DAKOTA FROM FEDERAL GUN REGULATIONS.**

A legislative incarceration fiscal impact statement has been requested on HB1253 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: 02/10/2014
Interim Director, Legislative Research Council