

2020 South Dakota Legislature

Draft 342

Requested by: Representative York

1 **An Act to minimize taxpayer costs by maximizing flexibility when funding county**
 2 **infrastructure construction.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
 4

5 **Section 1.** That a NEW SECTION be added:

6 **10-52B-1. Imposition of county non-ad valorem tax--Rate--Restriction--**
 7 **Conformance to state sales and use tax.**

8 For a purpose authorized under the provisions of this chapter, the board of county
 9 commissioners may, by a resolution approved by registered voters in accordance with the
 10 provisions of this chapter, impose a temporary non-ad valorem tax at a rate not to exceed
 11 one-half percent on the sale, use, storage, and consumption in the county of the same
 12 items subject to state tax under chapters 10-45 and 10-46. A county may not have more
 13 than one tax in effect under this section, and any tax imposed under this section must
 14 conform in all respects to the state tax with the exception of the rate.

15 **Section 2.** That a NEW SECTION be added:

16 **10-52B-2. Permitted purpose for imposition of tax--Definitions--Permitted**
 17 **use of tax revenue.**

18 A tax may only be imposed under the provisions of this chapter for the following
 19 purpose:

20 (1) To make payment on or to establish a debt reserve fund on a new or existing
 21 bond issue that is issued for the purpose of renovating or replacing either a building or
 22 structure described in SDCL §§ 7-25-1 and 7-25-3, or a facility designed to reduce jail
 23 incarceration; or

24 (2) To contribute funds to another county for the purpose of sharing expenses for
 25 the renovation or replacement of either a building or structure described in SDCL §§ 7-
 26 25-1 and 7-25-3, or a facility designed to reduce jail incarceration.

1 For purposes of this chapter, a facility designed to reduce jail incarceration means
2 a structure that provides an appropriate venue for programs and activities designed to
3 reduce incarceration.

4 Unless otherwise provided in this chapter, all revenue generated from a tax
5 imposed pursuant to this chapter may only be applied to the purpose of the tax as stated
6 in the resolution.

7 **Section 3.** That a NEW SECTION be added:

8 **10-52B-3. Required content of resolution.**

9 The resolution required under this chapter must include the following content:

10 (1) A statement that the tax is levied on the sale, use, storage and consumption
11 in the county on the same items subject to tax under chapters 10-45 and 10-46;

12 (2) The rate of the tax;

13 (3) The purpose of the tax, including a clear description of the building, structure,
14 or facility to be renovated or replaced if the resolution is approved; and

15 (4) The maximum number of years the tax will be imposed or the latest date the
16 tax will expire.

17 **Section 4.** That a NEW SECTION be added:

18 **10-52B-4. Procedures for approving resolution--Notification after approval--**
19 **-Effective date of resolution.**

20 The procedures for approving a resolution for the imposition of a tax under this
21 chapter are the same as the procedures applicable when a petition to refer a resolution
22 has been filed under § 7-18A-15. If the resolution is approved, the board of commissioners
23 shall notify the secretary of revenue of such approval in writing by registered or certified
24 mail and include a copy of the approved resolution with the mailing.

25 Notwithstanding §§ 7-18A-8 and 7-18A-14, the effective date of any new resolution
26 or amendment to a resolution approved under this section, and any tax rate affected
27 thereby, is the earlier of January first or July first after ninety days have passed from the
28 secretary of revenue's receipt of the mailing required under this section.

29 **Section 5.** That a NEW SECTION be added:

1 **10-52B-5. Tax expiration date--Extension or renewal of tax prohibited.**

2 The expiration date for a tax imposed under this chapter is the earlier of the
3 expiration of the term or date specified in the resolution, or the date on which the purpose
4 of the tax is satisfied. Any excess revenue received and remaining after the expiration of
5 the tax must be applied to expenses of maintaining or operating, or both, the building,
6 structure or facility that relates to the purpose of the tax.

7 No tax levied pursuant to this chapter may be extended or renewed, unless the
8 board of county commissioners adopts a new resolution that is approved by the voters in
9 accordance with the provisions of this chapter.

10 **Section 6.** That a NEW SECTION be added:

11 **10-52B-6. Issuance of county non-ad valorem tax revenue bonds.**

12 Each county imposing a non-ad valorem tax pursuant to this chapter may issue
13 county non-ad valorem tax revenue bonds in anticipation of the collection of the taxes
14 without holding a bond election pursuant to § 7-24-2. The bonds must be issued and sold
15 as provided in chapter 6-8B.

16 **Section 7.** That a NEW SECTION be added:

17 **10-52B-7. Administration of tax--Recordkeeping.**

18 The department of revenue shall administer any tax imposed under this chapter.
19 All moneys received and collected on behalf of a county by the department of revenue
20 under this chapter must be distributed to the county after deducting the amount of refunds
21 made, the amounts necessary to defray the cost of collecting the tax, and the
22 administrative expenses incident thereto. The balance must be paid within thirty days
23 after collection to the county entitled to the payment.

24 The department of revenue shall keep full and accurate records of all moneys
25 received and distributed under this chapter.

26 **Section 8.** That a NEW SECTION be added:

27 **10-52B-8. Promulgation of rules.**

28 The secretary of revenue may promulgate rules, pursuant to chapter 1-26,
29 concerning:

30 (1) Licensing, including bonding and filing license applications;

31 (2) The filing of returns and the payment of the tax;

- 1 (3) The application of the tax and exemptions;
- 2 (4) Taxpayer record-keeping requirements; and
- 3 (5) Determining audits.
- 4

DRAFT

An act to minimize taxpayer costs by maximizing flexibility when funding county infrastructure construction

The problem:

- Like other units of government, counties are required to build and maintain infrastructure to fulfill their legally mandated responsibilities. Some expensive infrastructure (like courthouses and jails) is specified (SDCL § 16-6-7 §16-12A-29.1, § 24-11-2, § 24-11-3) as county responsibilities in state law.
- Unlike other units of government, counties' only way to pay for this is property tax. This typically requires a property tax bond that will last 20 years. For taxpayers, this means a bump in property taxes for 20 years. For ag producers, this 20-year bump in property taxes is significant and fluctuations in commodity prices make this added expense a burden to manage from year to year.

A solution:

- **Give voters the option to approve a county-wide sales tax, limited in time and scope, to save money.** In many South Dakota counties, this would greatly lessen the burden upon taxpayers, especially upon ag producers. The modification would allow counties to ask their voters to levy ½¢ (0.5%) sales tax solely for the purpose of infrastructure (as described in SDCL § 7-25-1 and 7-25-3 and for facilities designed to reduce jail incarceration).
 - Majority of voters must approve.
 - Ballot must clearly state the maximum possible term of the sales tax and the infrastructure to be built should the tax be approved.
 - When the bond is paid or when the maximum term is reached, the .5% sales tax stops. It can only continue with voter re-approval.
- **How would this make things better for taxpayers?**
 - *It's fairer.* Sales tax would spread the burden among all residents, not just property owners. This is particularly fair for public safety infrastructure like courthouses and jails.
 - *Shortens the length of time of the tax.* In many SD counties, ½¢ sales tax would pay off a bond more quickly than a property tax funded bond. All revenues gained would have to be used to pay the bond to build the voter-approved infrastructure minimizing the length of time for the tax.
 - *Increases the opportunity to save taxpayers' money.* Paying off a bond more quickly can mean significant savings on financing costs. Here is a comparison for a few SD counties for a \$17 million building:

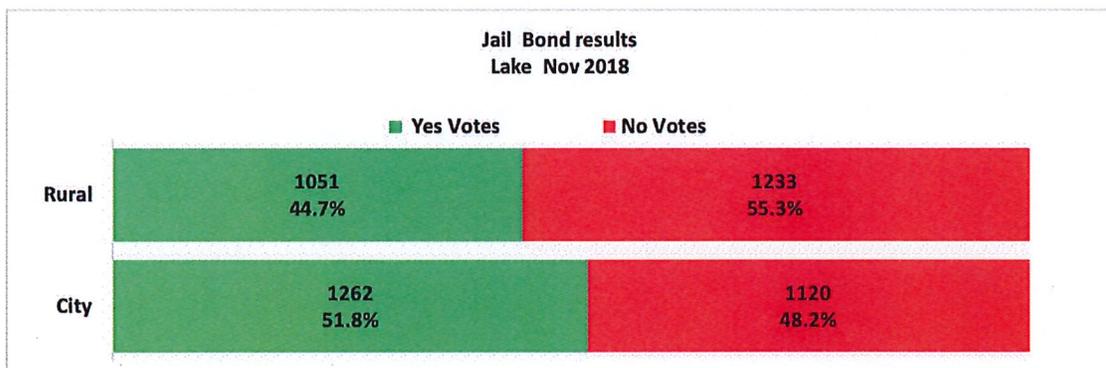
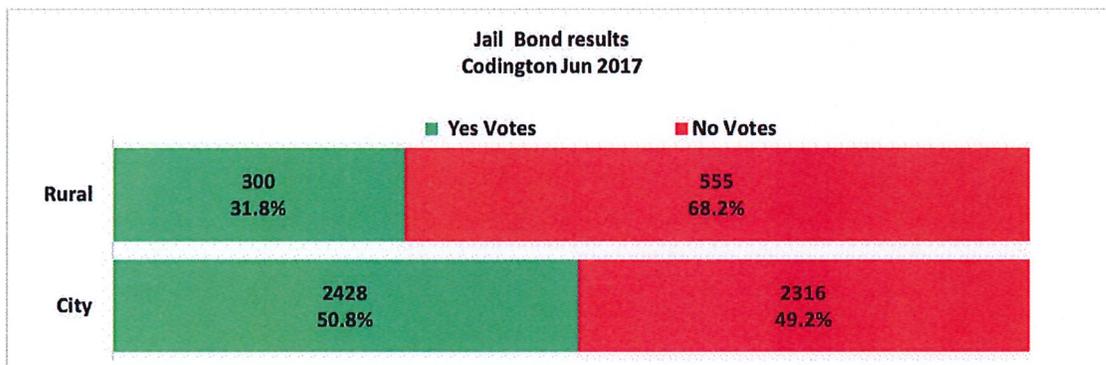
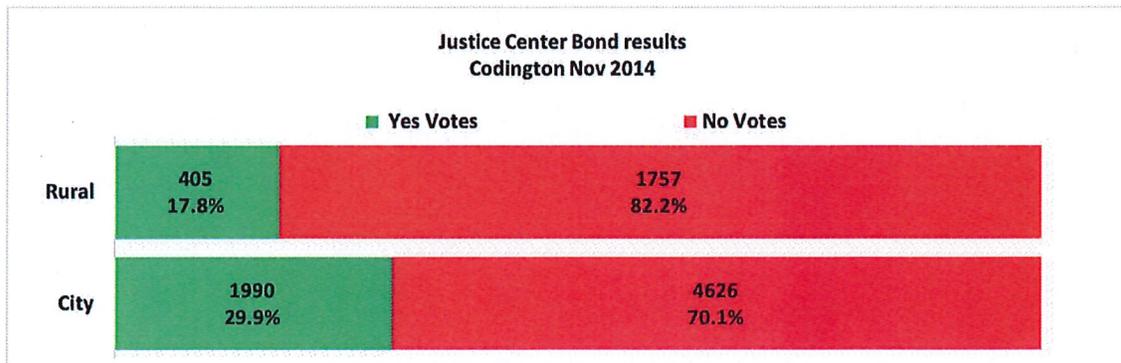
		Brookings	Brown	Codington	Lawrence
Bond Type	Property Tax	½¢ Sales Tax	½¢ Sales Tax	½¢ Sales Tax	½¢ Sales Tax
Bond Amount	\$17,000,000	\$17,000,000	\$17,000,000	\$17,000,000	\$17,000,000
Term in Years¹	20	6	4	5	8
Estimated Interest Rate	3.25%	3.75%	3.75%	3.75%	3.75%
Estimated Annual Debt Svc Paymt	\$1,169,241	\$3,216,607	\$4,655,769	\$3,791,882	\$2,498,973
Estimated revenue from ½¢ sales tax²		\$3,254,740	\$4,235,651	\$3,650,722	\$2,715,158
Total Payments	\$23,384,821	\$19,299,644	\$18,623,075	\$18,959,410	\$19,991,781
Estimated Savings in total costs	\$0	\$4,085,177	\$4,761,746	\$4,425,410	\$3,393,039

- *More public debate.* The requirement for voter approval would cause a health public debate about the need for and nature of the infrastructure and whether property or ½¢ sales tax is the best approach.
- *Increases local control.* Provides locally elected officials a money-saving option to put before voters.
- *Gives voters a voice in how they are taxed.* Any tax enacted under the provisions of this act would require voter approval.

¹ Term for sales tax bonds reduced to shortest term possible based on estimated revenue from 1/2¢ sales tax.

² Half of average of 5 years of 2nd penny sales tax data for largest cities in each county (Lawrence includes both Spearfish & Deadwood)

- *Eases the burden on ag producers.* Ag producers tend to be affected most by increases in property tax. An increase to property taxes that lasts 20 years is an unwelcome added burden as commodity prices fluctuate and producers must juggle expenses. This problem is reflected in the results of three recent county bond votes shown below. **These show how rural vs city voters viewed property tax funding for county infrastructure.**



- *Ensures as many counties as possible can benefit*
 - Counties that don't host the infrastructure in question, would be able to use the provisions in this act to share in the cost of building infrastructure in another county. This would be helpful for things like regional jails and shared county extension facilities.
 - Counties that have a current property bond, could use the provisions in this act to effectively "refinance" a property tax bond with a sales tax bond. This would offer a possibility to save financing costs to counties who have property tax bonds in place.