

WEST VIRGINIA LEGISLATURE
2021 SECOND EXTRAORDINARY SESSION

Introduced
House Bill 223

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Introduced June 24, 2021; Referred to the Committee
on Finance]

A BILL to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating to extending the expiration date of the freeze of the per diem rate to July 1, 2022; and clarifying that the per diem cost for incarcerated inmates in a regional jail is calculated annually and from the previous three fiscal years of actual costs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

1 **§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.**

2 (a) Any special revenue funds previously administered by the Regional Jail and
3 Correctional Facility Authority or its Executive Director are continued, and shall be administered
4 by the commissioner.

5 (b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use
6 to operations of jail functions, and for payment to the Regional Jail and Correctional Facility
7 Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay
8 operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis
9 for shared staff and for operational expenses of facilities being used as both prisons and jails.

10 (c) Whenever the commissioner determines that the balance in these funds is more than
11 the immediate requirements of this article, he or she may request that the excess be invested
12 until needed. Any excess funds so requested shall be invested in a manner consistent with the
13 investment of temporary state funds. Interest earned on any moneys invested pursuant to this
14 section shall be credited to these funds.

15 (d) These funds consist of the following:

16 (1) Moneys collected and deposited in the State Treasury which are specifically
17 designated by Acts of the Legislature for inclusion in these funds;

18 (2) Contributions, grants, and gifts from any source, both public and private, specifically
19 directed to the operations of jails under the control of the commissioner;

20 (3) All sums paid pursuant to §15A-3-16(g) of this code; and

21 (4) All interest earned on investments made by the state from moneys deposited in these
22 funds.

23 (e) The amounts deposited in these funds shall be accounted for and expended in the
24 following manner:

25 (1) Amounts deposited shall be pledged first to the debt service on any bonded
26 indebtedness;

27 (2) After any requirements of debt service have been satisfied, the Commissioner shall
28 requisition from these funds the amounts that are necessary to provide for payment of the
29 administrative expenses of this article, as limited by this section;

30 (3) The commissioner shall requisition from these funds, after any requirements of debt
31 service have been satisfied, the amounts that are necessary for the maintenance and operation
32 of jails under his or her control. These funds shall make an accounting of all amounts received
33 from each county by virtue of any filing fees, court costs or fines required by law to be deposited
34 in these funds and amounts from the jail improvement funds of the various counties;

35 (4) Notwithstanding any other provisions of this article, sums paid into these funds by each
36 county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate
37 account and shall be requisitioned from these funds to pay for costs incurred; and

38 (5) Any amounts deposited in these funds from other sources permitted by this article shall
39 be expended based on particular needs to be determined by the commissioner.

40 (f)(1) After a jail facility becomes available pursuant to this article for the incarceration of
41 inmates, each county within the region shall incarcerate all persons whom the county would have
42 incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those
43 whose incarceration in a local jail facility used as a local holding facility is specified as appropriate
44 under the previously promulgated, and hereby transferred standards and procedures developed
45 by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to
46 incarcerate therein.

47 (2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate
48 courts are authorized to:

49 (A) Detain persons who have been arrested or charged with a crime in a county or
50 municipal jail specified as appropriate under the standards and procedures referenced in §15A-
51 3-16(f)(1), for a period not to exceed 96 hours; or

52 (B) Commit persons convicted of a crime in a county or municipal jail, specified as
53 appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a
54 period not to exceed 14 days.

55 (g) When inmates are placed in a jail facility under the jurisdiction of the commissioner
56 pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a
57 municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be
58 determined by the state Budget Office annually by examining the most recent three fiscal years
59 of costs submitted by the commissioner for the cost of operating the jail facilities and units under
60 his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the
61 operations of the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing
62 through July 1, ~~2024~~ 2022, in no case shall any county or municipality be required to pay a rate
63 that exceeds \$48.25 per day, per inmate. Nothing in this section shall be construed to mean that
64 the per diem cannot be decreased or be less than \$48.25 per day per inmate.

65 (h) The per diem costs for incarcerating inmates may not include the cost of construction,
66 acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit
67 operating in this state shall keep a record of the date and time that an inmate is incarcerated, and
68 a county may not be charged for a second day of incarceration for an individual inmate until that
69 inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous
70 incarceration, subsequent per diem charges shall be made upon a county only as subsequent
71 intervals of 24 hours pass from the original time of incarceration.

72 (i) The county is responsible for costs incurred by the division for housing and maintaining

73 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of
74 housing shall be borne by the division on a felony conviction on which an inmate is incarcerated
75 beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1,
76 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate
77 is incarcerated beginning the calendar day following the day of conviction. In no case shall the
78 county be responsible for any costs of housing and maintaining felony convicted inmate
79 populations.

80 (j) The county is responsible for the costs incurred by the authority for housing and
81 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and
82 is awaiting transportation to a state correctional facility for a 60 day evaluation period as provided
83 in §62-12-7a of this code.

84 (k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of
85 phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code.
86 This report shall include information regarding savings realized because of the consolidation of
87 the former Division of Corrections, Division of Juvenile Services, and the operations of the
88 Regional Jail and Correctional Facility Authority, as well as any other recommendations that might
89 ease the burden of paying the per diem inmate costs by the counties or municipalities. On or
90 before January 1, 2019, January 1, 2020 and January 1, 2021, the commissioner shall report to
91 the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing
92 Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this
93 code and any amount not assessed to counties if the actual per diem cost is larger than the
94 amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018
95 and July 1, 2021.

NOTE: The purpose of this bill is to extend the expiration date of the freeze of the per diem rate to July 1, 2022.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.