

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4497**

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Finance; February

25, 2022]



1 A BILL to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating  
2 to setting the regional jail per diem rate through July 1, 2023.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.**

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

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

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

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

14 (d) These funds consist of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54                 (g) When inmates are placed in a jail facility under the jurisdiction of the commissioner  
55 pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a  
56 municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be  
57 determined by the state Budget Office annually by examining the most recent three fiscal years  
58 of costs submitted by the commissioner for the cost of operating the jail facilities and units under  
59 his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the  
60 operations of the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing  
61 through July 1, ~~2022~~ 2023, in no case shall any county or municipality be required to pay a rate  
62 that exceeds \$48.25 per day, per inmate. Nothing in this section shall be construed to mean that  
63 the per diem cannot be decreased or be less than \$48.25 per day per inmate.

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

71                 (i) The county is responsible for costs incurred by the division for housing and maintaining  
72 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of  
73 housing shall be borne by the division on a felony conviction on which an inmate is incarcerated

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

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

83 (k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of  
84 phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code.  
85 This report shall include information regarding savings realized because of the consolidation of  
86 the former Division of Corrections, Division of Juvenile Services, and the operations of the  
87 Regional Jail and Correctional Facility Authority, as well as any other recommendations that might  
88 ease the burden of paying the per diem inmate costs by the counties or municipalities. On or  
89 before January 1, 2019, January 1, 2020, and January 1, 2021, and January 1, 2023 the  
90 commissioner shall report to the Joint Committee on Government and Finance and the co-  
91 chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated  
92 pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per  
93 diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-  
94 3-16(g) between July 1, 2018, and July 1, 2024 2023.