

EMERGENCY RULE QUESTIONNAIRE

DATE: June 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Regional Jail and Correctional Facility Auth.

1325 Virginia Street, East Charleston, West Virginia
304-558-2110

EMERGENCY RULE TITLE: 94

1. Date of filing June 28, 2006

2. Statutory authority for promulgating emergency rule:

W. Va. Code § 31-20-10 (h)

3. Date of filing of proposed legislative rule: June 28, 2006

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? _____

Yes, the rule amends 94CSR3 to adopt new language.

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

The previous rule was found invalid by Cabell County Circuit Court, Case Number 05-C-590. The rule is required by W. Va. Code § 31-20-10 (h) to provide the funding mechanism for this states Regional Jail System. The rule is necessary to continue the safe and orderly operations of the West Virginia Regional Jail System.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

No.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The Regional Jail System is financed through the formula found in this section, without a valid funding mechanism the Regional Jail System can not fulfill it's vital public safety mission.

Summary of Proposed Emergency Rule

The rule establishes the formula for calculating the cost per inmate day billed to entities who incarcerate individuals in the Regional Jail System. The Regional Jail system is financed through the formula found in this section. Without a valid funding mechanism the Regional Jail System cannot to fulfill it's vital pubic safety mission.

The previous rule was found invalid by Cabell County Circuit, Case Number 05-C-590. The rule is required W. Va. Code § 31-20-10 (h) to provide the funding mechanism for this states Regional Jail System. The rule is necessary to continue the safe and orderly operations of the West Virginia Regional Jail system.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 94CSR3: Legislative Rule Regional Jail & Correctional Facility Authority

Type of Rule: Legislative Interpretive Procedural

Agency: WV Regional Jail & Correctional Facility Authority

Address: 1325 Virginia St. E.
Chas., WV 25301

Phone Number: 3-4 558 2110 Email: tdavis@wvrja.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The WV Regional Jail and Correctional Facility Authority Board, a body corporate and government instrumentality, approved this rule at the May, 2006 Board meeting to define the formula for determining the projected cost per day for inmates incarcerated in the WV Regional Jail system. The Board voted not to increase the per diem rate prior to July 1, 2007. It is projected that the per diem rate will generate revenue equaling the current anticipated jail expenditures and maintain an operational reserve fund to cover four months of anticipated operational expenditures.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Title 94CSR3: Legislative Rule Regional Jail & Correctional Facility Authority

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Will not increase or decrease fees for Fiscal Year 2006 or Fiscal Year 2007, as approved by the West Virginia Regional Jail and Correctional Facility Authority.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule will not increase or decrease fees for Fiscal year 2006 or Fiscal Year 2007, as approved by the WV Regional Jail and Correctional Facility Board in the May 2006 meeting.

The WV Regional Jail and Correctional Facility Authority had promulgated a procedural rule to determine the per diem rate. The rule had not been brought up to date since 1995. Legislation changed and new facilities were brought on line that were not in the previous rule.

Date: June 28, 2006

Signature of Agency Head or Authorized Representative

James W. Spears

FILED
2006 JUN 28 A 10:25
OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 94
~~PROCEDURAL LEGISLATIVE RULE~~
REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

SERIES 3
CRITERIA AND PROCEDURES
FOR DETERMINATION OF PROJECTED COST PER DAY FOR INMATES
INCARCERATED IN REGIONAL JAILS OPERATED BY THE AUTHORITY

§94-3-1. General.

1.1. Scope. -- W. Va. Code §31-20-10(h) requires the West Virginia Regional Jail and Correctional Facility Authority to develop an operational cost per day for inmates incarcerated in regional jails. The Authority is required to develop criteria and procedures for the development of these operational per diem costs through the mechanism of regulations pursuant to W. Va. Code §29A-3-1 et. seq. Counties, the West Virginia Division of Corrections, and are Municipalities are required by the statute to make payments to the regional jail and correctional facility development fund ~~fund~~ in an amount sufficient to cover the costs of operating such regional jail facilities and to maintain inmates incarcerated therein.

1.2. Authority. -- W. Va. Code §31-20-10(h).

1.3. Filing Date. -- ~~May 16, 1995.~~

1.4. Effective Date. -- ~~July 1, 1995.~~

1.5. Repeal of former rule. ~~B~~—This filing represents an amendment of the procedural rule formerly filed on ~~April 8, 1994~~ May 16, 1995 and effective on July 1, ~~1994~~1995.

§94-3-2. Application And Enforcement.

2.1. These ~~procedural legislative~~ rules apply to the Regional Jail and Correctional Facility Authority, and to counties, municipalities, the West Virginia Division of Corrections, ~~the United States Marshals Service, the United States Bureau of Prisons~~ and any other entity by whose authority inmates are incarcerated and maintained in regional jails operated by the West Virginia Regional Jail and Correctional Facility Authority.

2.1.1 Nothing in these rules shall limit the Authorities ability and the authorization to enter into contracts with Federal Authorities or surrounding states for the housing of inmates within the Regional Jail System.

2.2. The enforcement of these regulations rests with the Executive Director of the Regional Jail and Correctional Facility Authority.

§94-3-3. Annual Schedule of Operating Expenditures.

3.1. The Regional Jail and Correctional Facility Authority shall develop and approve a schedule of anticipated operational expenditures both direct and indirect. ~~for each regional jail.~~ Such schedules shall include ~~funds~~ all costs for personal services, and fringe benefits for personnel necessary to the operation of the facility Regional Jail Authority including centralized operations expenses, as well as allocations of funds for food, clothing, utilities, supplies, transportation, medical, maintenance, and technology. ~~The schedule and shall include a reserve funds maintained in a manner consistent with § 9 et seq herein and shall include~~ all other costs necessary to operate and maintain ~~the facility~~ the Regional Jail Authority.

~~3.2. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jails.~~

~~3.2_3.32.~~ The operational expenditure schedule shall not include any costs, either direct or indirect, for the construction, ~~renewation~~ or acquisition of a regional jail.

~~3.3 3.43.~~ The Authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.

§94-3-4. Annual Statement of Projected Cost Per Inmate Day~~Cost Per Inmate Day.~~

4.1. The Authority shall, on an annual basis, prepare an estimate of the cost of operating each regional jail~~the Regional Jail system~~ and maintaining inmates therein. This estimate of cost will be expressed as the cost of maintaining one (1) inmate for one (1) day. This estimate shall include all costs of operating each regional jail~~and maintaining the Regional Jail System.~~

4.2. In October of each year, ~~The the~~ an annual statement of projected cost per inmate day will be forwarded to both the Sheriff and the county commission of each county, the Commissioner of the Division of Corrections, the United States Marshals Service, the United States Bureau of Prisons and the mayor of each municipality served by the Regional Jail Authority to provide notice of per diem costs and for their use in preparing their own budgets.

4.3. The annual statement of ~~cost per inmate day for each regional jail~~ may be provided, upon request, to any other entity on whose behalf an inmate may be incarcerated in a regional jail.

§94-3-5. Calculation Of Projected Cost Per Inmate Day.

5.1. - Beginning July 1, 2007, ~~The operational expenditure schedule as defined in § 3 herein shall be divided by~~ The Authority shall sum the operational costs of each regional jail and shall divide the total of such anticipated operational expenditures by the total anticipated number of inmate days in each of the regional jails jail system to yield the projected cost per inmate day as the quotient.

5.1.1. ~~If the Authority has revenue available for use as operational funds, the Authority may apply such revenue to the total of the schedule of operational expenditures before calculating the cost per inmate day. In such case, the net operational costs shall become the dividend.~~

5.1.1 The anticipated number of inmate days to be provided in a fiscal year shall be calculated as the billed average daily inmate population.

5.1.2. ~~The anticipated number of inmate days to be provided in a fiscal year shall be the product of the bed capacity of the regional jail multiplied by a capacity factor of ninety percent (90%), multiplied by the number of days in the fiscal year. Provided, that, the design bed capacity of the regional jails shall be defined as follows:~~

Eastern Regional Jail	_____	288120;
Central Regional Jail	_____	192;
South Central Regional Jail	_____	288;
Northern Regional Jail & Correctional Facility	_____	192; and,
Southern Regional Jail	_____	288;
Southwestern Regional Jail	_____	288
Potomac Highlands Regional Jail	_____	192;
North Central Regional Jail	_____	384;
Western Regional Jail	_____	384; and,
Tygart Valley Regional Jail	_____	288.

5.1.2 If the daily inmate population fluctuates by ten percent (10%) or more in any two fiscal quarters the Executive Ddirector shall, after consultation with the Board, adjust the cost per inmate day to allow operations at the current level.

~~5.1.3. The Authority may, when operational history is available on any regional jail for more than two years, increase the capacity factor described in §5.1.2. to reflect the actual population levels documented for that particular regional jail: provided, that, in no event shall the population factor be greater than one hundred per cent (100%) of the bed capacity for the regional jail.~~

5.2 The Authority shall collect the cost per inmate day from each ~~entity committing jurisdiction or appropriate entity~~ for which an inmate is maintained in the regional jail system a regional jail.

§'94-3-6. Preparation And Distribution Of Monthly Billing Statements Of Costs Incurred.

6.1. The Authority shall prepare a monthly billing statement. This statement, at minimum, will include ~~of charges for each entity committing jurisdiction for which an inmate is maintained in a regional jail. Each monthly statement of charges will include the name of the any inmate, maintained in the regional jail, the number of days during the billing month the inmate was maintained, and the total charges for inmate maintenance during the billing month.~~

6.2. The monthly billing statements of costs incurred shall be due and payable upon receipt, ~~by the responsible entity jurisdiction.~~

6.3. The Executive Director, on behalf of the Authority, may initiate legal action to collect any debts resulting from the failure of a responsible entity to make prompt payment of billed charges.

§'94-3-7. Allocation Of Costs For Inmates Sentenced To The Division Of Corrections.

7.1. The county shall be responsible for costs incurred by regional jails for housing and maintaining inmates in regional jails who have not been lawfully sentenced and committed to the custody of the Commissioner of Corrections.

7.2. The county shall be responsible for the costs incurred by the regional jails for housing and maintaining inmates who, prior to sentencing, are waiting transportation to a state correctional facility for a sixty day evaluation period as provided in W. Va. Code, §'62-12-7.

7.3. The Division of Corrections is responsible for the costs incurred by the regional jails for housing and maintaining inmates who have been sentenced to the custody of the Division of Corrections beginning the calendar day following the day the commitment order has been Entered: Provided, that the Circuit Clerk of the county from which the commitment order has been entered shall immediately transmit by facsimile machine an advance copy of the certified commitment order to the Division of Corrections and to the Regional Jail to which the inmate was confined.

7.4. The Division of Corrections is responsible for the costs incurred by the regional jails for housing and maintaining inmates who have been held on a parole violation warrant.

7.5. The Division of Corrections is responsible for the costs incurred by the regional jails for housing and maintaining inmates who have been returned to the regional jail under court order: Provided, however, that the county from which the inmate was charged shall be responsible for the per diem costs in the event that a court of competent jurisdiction shall set aside or vacate the order of commitment to the Division of Corrections, from the date of said order or the return of the inmate to the regional jail, whichever is later. The Regional Jail may provide transportation of such inmates from the correctional facility to the regional jail when such transportation can be provided without undue hardship upon the regional jail, its staff or operating budget: Provided, that the order from the court of competent jurisdiction has stipulated that the regional jail is responsible for the transportation of the inmate.

~~7.6.~~ 7.6.—The costs incurred by the regional jails for housing and maintaining inmates who are being held as a fugitive from justice from another jurisdiction shall be billed to the fugitive's original jurisdiction from the date of the extradition hearing in Circuit Court: Provided, that the costs incurred by the regional jails for housing and maintaining any person who is arrested and confined on the basis of the commission of a new crime shall be billed to the arresting county until such time as the pending West Virginia charges have been properly resolved.

7.7. The municipalities shall be responsible for the costs incurred by the regional jails for housing and maintaining inmates committed through their respective municipal courts.

§'94-3-8. Extraordinary Costs.

8.1. _____ If the actual operational costs ~~exceed~~ deviate from the approved schedule of operational expenditures by more than ten percent ~~centum~~ (10%) during two fiscal quarters in a line item, a the Executive Ddirector, after consultation with the board shall adjust temporary surcharge will be added to the cost per inmate day in an amount sufficient to cover the actual expenditures.

§'94-3-9. Settlement Statement.

9.1. At the end of each fiscal year, a settlement statement may be prepared by the Authority.

9.2. Pursuant to WV Code 31-20-10(c), whenever the Authority determines that the balance in these funds is in excess of the requirements for the WV Regional Jail Authority, it may request that the excess be invested until needed. This fund shall be an Operational Reserve Fund. In this case the excess shall be invested in a manner consistent with the investment of temporary state funds.

~~9.39.1.1. In the event that the Operational Reserve Fund reaches an amount consistent with four months of anticipated operational expenditures, the Executive Director may credit any remaining balance to the responsible entity on the same basis as payments were received. If collected revenues exceeded the total operational expenditures, during two fiscal quarters the Executive director may after consultation with the board, credit any remaining balance may be credited to the responsible entity on the same basis as payments were received. The Authority may apply any such remaining excess to the anticipated operational expenditures for the succeeding fiscal year, in such case, the Authority shall treat such revenue as revenue available for use as operational funds before calculating the projected cost per inmate day.~~

~~9.49.1.2. If collected revenues are less than total operational expenditures, the settlement statement may reflect a balance due and payable to the Authority from the responsible entity. t may reflect a balance due and payable to the Authority from the responsible entity.~~

~~The Authority may, if collected revenues exceed the six months expenditures in a fiscal year, apply any such excess revenues to the anticipated operational expenditures for the succeeding fiscal year; in such case, the Authority shall treat such revenue as revenue available for use as operational funds as described in '5.1.1. and shall reduce the net amount of the anticipated operational expenditures thereby before calculating the cost per inmate day to be collected from entities which incarcerate inmates in any regional jail. Provided however that such funds shall not exceed the anticipated operational expenditures for four months.~~