

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2006 JUL 28 P 4: 31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Regional Jail and Correctional Facility Auth. TITLE NUMBER: 94

CITE AUTHORITY: W. Va. Code § 31-20-10 (h)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3-7

TITLE OF RULE BEING AMENDED: Criteria and Procedures for Determination of Projected Cost Per Day for Inmates Incarcerated in Regional Jails and Operated by the Authority.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Regional Jail & Correctional Facility Authority
1325 Virginia Street East

Charleston WV 25301-3011 (304) 558 - 2110

LEGISLATIVE RULE TITLE: ~~94-CSR-3-7~~ Criteria and Procedures for Determination of
Projected Cost Per Day for Inmates Incarcerated in Regional
Jails operated by the Authority.

1. Authorizing statute(s) citation W.Va. Code 31-20-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 20, 2006

b. What other notice, including advertising, did you give of the hearing?
Internet Publication on www.wvrja.com

See Attachment No. 1, Names of newspapers

See Attachment No.2, Public Mailing

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment ended July 28, 2006 8:00am

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No. 3 No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2006

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Wyetta Fredericks, Executive Director
West Virginia Regional Jail & Correctional Facility Authority
1325 Virginia Street East

Charleston, WV 25301-3011 (304)558-2110 fax: 558-7299

care of: Lavana Harvey Email: lharvey@wvrja.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Wyetta Fredericks, Executive Director

West Virginia Regional Jail & Correctional Facility Authority

1325 Virginia Street East

Charleston, WV 25301-3011 (304)558-2110

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

June 28, 2006 through July 28, 2006

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 28, 2006

d. Attach findings and determinations and reasons:

Attached No. 4

The Journal
PO Box 720
Logan, WV 25601

The Dominion Post
1251 Earl L. Core
Morgantown, WV 26505-6298

The Moundsville Daily Echo
PO Box 369
Moundsville, WV 26041-0369

The Parkersburg News
PO Box 1787
Parkesburg, WV 26101

The Register
200 Main Street
Point Pleasant, WV 25550

Weirton Daily Times
114 Lee Avenue
Weirton, WV 26062

Welch Daily News
PO Box 569
Welch, WV 24801

Wheeling News-Register
1500 Main Street
Wheeling, WV 26003

Williamson Daily News
PO Box 1660
Williamson, WV 25661

The Register-Herald

PO Box 2398
Beckley, WV 25802

Bluefield Daily Telegraph

PO Box 1599
Bluefield, WV 24701

The Inter-Mountain

PO Box 2076
Buckhannon, WV 26201

Charleston Gazette

1001 Virginia Street, East
Charleston, WV 25301

The Clarksburg Exponent

324 Hewes Avenue
Clarksburg, WV 26301-2744

The Clarksburg Exponent

324 Hewes Avenue
Clarksburg, WV 26301-2744

Times-West Virginia

PO Box 2530
Fairmont, WV 26555-2530

The Journal

PO Box 720
Logan, WV 25601

The Herald-Dispatch

PO Box 2017
Huntington, WV 25720

Cumberland Times/News

19 Baltimore Street
Cumberland, MD 21502

West Virginia Daily News

PO Box 471
Lewisburg, WV 24901-0471

Logan Banner

PO Box 720
Logan, WV 25601

STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Dominion Post
1251 Earl L. Core
Morgantown, WV 26505-6298

Attn: Legal Ad Department

Please publish the enclosed "LEGAL NOTICE" as a Class I Legal Advertisement to run as soon as possible.

Upon completion of this advertisement, please render invoice as follows:

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The above steps must be complied with before your invoice can be paid.

Please submit invoice promptly to the West Virginia Regional Jail and Correctional Facility Authority, 1325 Virginia Street, East Charleston, West Virginia 25301. It is needed as evidence of publication.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Chad M. Cardinal".

Chad M. Cardinal, Esq.
General Counsel

CMC:lh
enclosure

STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Welch Daily News
PO Box 569
Welch, WV 24801

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1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Register-Herald
PO Box 2398
Beckley, WV 25802

Attn: Legal Ad Department

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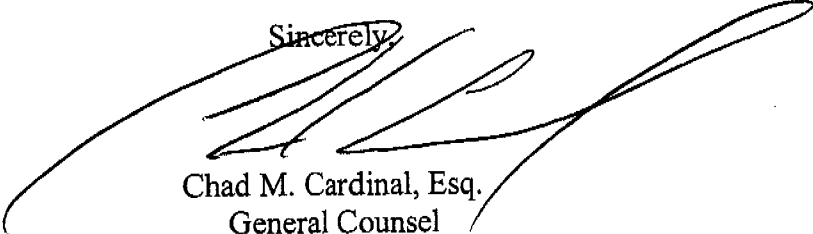
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1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Bluefield Daily Telegraph
PO Box 1599
Bluefield, WV 24701

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(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Inter-Mountain
PO Box 2076
Buckhannon, WV 26201

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1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Charleston Gazette
1001 Virginia Street, East
Charleston, WV 25301

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CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Clarksburg Exponent
324 Hewes Avenue
Clarksburg, WV 26301-2744

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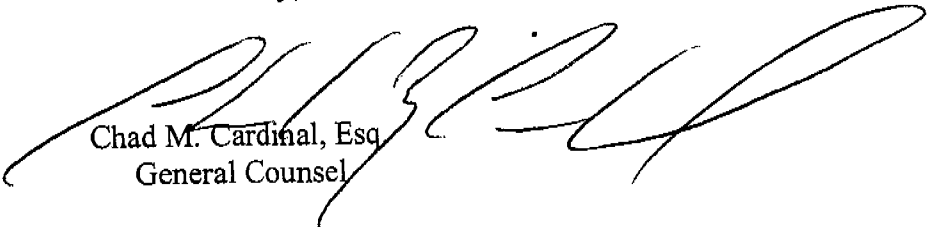
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JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Inter-Mountain
PO Box 1339
Elkins, WV 2641

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(304) 558-2110
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JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Times-West Virginia
PO Box 2530
Fairmont, WV 26555-2530

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1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

The Herald-Dispatch
PO Box 2017
Huntington, WV 25720

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WYETTA FREDERICKS
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July 11, 2006

Cumberland Times/News
19 Baltimore Street
Cumberland, MD 21502

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(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

West Virginia Daily News
PO Box 471
Lewisburg, WV 24901-0471

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(304) 558-2110
FAX: (304) 558-2115

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Governor

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Executive Director

July 11, 2006

Logan Banner
PO Box 720
Logan, WV 25601

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July 11, 2006

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JOE MANCHIN III
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July 11, 2006

The Moundsville Daily Echo
PO Box 369
Moundsville, WV 26041-0369

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July 11, 2006

The Parkersburg News
PO Box 1787
Parkersburg, WV 26101

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JOE MANCHIN III
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July 11, 2006

The Register
200 Main Street
Point Pleasant, WV 25550

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WYETTA FREDERICKS
Executive Director

July 11, 2006

Weirton Daily Times
114 Lee Avenue
Weirton, WV 26062

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The above steps must be complied with before your invoice can be paid.

Please submit invoice promptly to the West Virginia Regional Jail and Correctional Facility Authority, 1325 Virginia Street, East Charleston, West Virginia 25301. It is needed as evidence of publication.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Chad M. Cardinal".

Chad M. Cardinal, Esq.
General Counsel

CMC:lh
enclosure

STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Wheeling News-Register
1500 Main Street
Wheeling, WV 26003

Attn: Legal Ad Department

Please publish the enclosed "LEGAL NOTICE" as a Class I Legal Advertisement to run as soon as possible.

Upon completion of this advertisement, please render invoice as follows:

1. Invoice-Original and one copy, showing dates or dates published, number of words and the rate per word on the original and each copy. You must show federal Employment Identification Number.
2. Certificate of Publication- Original and one copy with a newspaper clipping attached to the original and the copy. All certificates must be full executed.

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STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

July 11, 2006

Williamson Daily News
PO Box 1660
Williamson, WV 25661

Attn: Legal Ad Department

Please publish the enclosed "LEGAL NOTICE" as a Class I Legal Advertisement to run as soon as possible.

Upon completion of this advertisement, please render invoice as follows:

1. Invoice-Original and one copy, showing dates or dates published, number of words and the rate per word on the original and each copy. You must show federal Employment Identification Number.
2. Certificate of Publication- Original and one copy with a newspaper clipping attached to the original and the copy. All certificates must be full executed.

The above steps must be complied with before your invoice can be paid.

Please submit invoice promptly to the West Virginia Regional Jail and Correctional Facility Authority, 1325 Virginia Street, East Charleston, West Virginia 25301. It is needed as evidence of publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad M. Cardinal".

Chad M. Cardinal, Esq.
General Counsel

CMC:lh
enclosure

LEGAL ADVERTISEMENT

The West Virginia Regional Jail and Correctional Facility Authority is soliciting public comment on a proposed Rule 94CSR3. The rule concerns the calculation of cost per day to house inmates within the Regional Jail System. A copy of the proposed rule may be obtained from the Secretary of State office or online at (<http://www.wvsos.com/adlaw/proposed/94-03.pdf>).

Written comments must be received no later than 8:00 am on July 28, 2006. Comments must be directed to:
West Virginia Regional Jail and
Correctional Facility Authority
1325 Virginia Street, East
Charleston, WV 25301
Att: Rules Committee

STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

1325 VIRGINIA STREET, EAST
CHARLESTON, WV 25301-3011
(304) 558-2110
FAX: (304) 558-2115

JOE MANCHIN III
Governor

WYETTA FREDERICKS
Executive Director

Memorandum

To: County Commissions
Municipalities
Division of Corrections
All Interested Parties

From: Chad M. Cardinal, Esq.
General Counsel

A handwritten signature in black ink, appearing to read "Chad M. Cardinal".

Date: July 10, 2006

Re: 94-CSR-3

The West Virginia Regional Jail and Correctional Facility Authority has filed rules for public comment. The Proposed Rule 94-CSR-3 concerns the formula for the calculation of the cost per inmate day to house inmates in the West Virginia Regional Jail System. Written comments must be received by the West Virginia Regional Jail and Correctional Facility Authority no later than 8:00 am on July 28, 2006.

Comments may be directed to:
West Virginia Regional Jail &
Correctional Facility Authority
1325 Virginia Street, East
Charleston, WV 25301
Att: Rule Committee

Attachment: Proposed Rule 94-CSR-3

City of Glen Dale
402 Wheeling Ave.
Glen Dale, WV 26038
Attn: Chief Stenger

City of Montgomery
706 3rd Ave.
Montgomery, WV 25136
Attn: Sandra Cole, Finance Director

City of Smithers
PO Box 489
Smithers, WV 25186
Attn: Terri Barnhart, City Recorder

The Honorable Dean Harris, Mayor
City of Weirton
200 Municipal Plaza
Weirton, WV 26062

Town of Clendenin
PO Box 694
Clendenin, WV 25045

Mr. David Ballard
Beckley Correctional Center
111 South Eisenhower Dr
Beckley, WV 25801

Mr. Jim Rubenstein, Commissioner
Division of Corrections
112 California Ave.
Charleston, WV 25305

City of New Cumberland
P O Box 505
New Cumberland, WV 26047

Town of Handley
P O Box 100
Handley, WV 25102

Town of Marmet
PO Box 15096
Marmet, WV 25365

The Honorable Chief Hendershot
City of Moundsville
800 Sixth St.
Moundsville, WV 26041

Municipal Judge
City of South Charleston
4th Ave. & D St.
South Charleston, WV 25303

City of Wellsburg
70 7th St.
Wellsburg, WV 26070

Town of Pratt
PO Box 128
Pratt, WV 25162

~~Charleston Work Release Center
Jeff A. Stannett - Admin.
607 Brooks St.
Charleston, WV 25301-1319~~

~~Transec America Inc
646 Melrose Ave.
Nashville, TN 37211-2161~~

City of Ravenswood
333 Virginia Street
Ravenswood, WV 26164

The Honorable Chief Greene
City of McMechen
47 Ninth St.
McMechen, WV 26040

City of Nitro
20th Street and Second Avenue
Nitro, WV 25143

City of St. Albans
PO Box 1488
St. Albans, WV 25177
Attn: Adeline Skelton

Town of Chesapeake
12404 MacCorkle Ave.
Chesapeake, WV 25315

Town of Sophia
PO Box 700
Sophia, WV 25921

~~Huntington Work Release Center
Renae Stubblefield, Administrator
1236 5th Ave.
Huntington, WV 25701-2232~~

City of Elkins
401 Davis Avenue
Elkins, WV 26241
Attn: Police Chief Taylor

City of Ripley
117 South Church Street
Ripley, WV 25271



City of Chester
Chester Municipal Court
375 Carolina Avenue
Chester, WV 26034

Town of Pineville
P O Box 220
Pineville, WV 24874

Town of Wayne
Wayne Police Department
PO Box 186
Wayne, WV 25570

Town of Fort Gay
P O Box 336
Fort Gay, WV 25514

Town of Lester
Box 56
Lester, WV 25865

Town of Mabscott
PO Box 176
Mabscott, WV 25871

Town of Alderson
PO Box 179
Alderson, WV 24910

Town of Beech Bottom
Beech Bottom Police Department
PO Box 204
Beech Bottom, WV 26030

City of South Charleston
4th Avenue and D Street
South Charleston, WV 25303

City of Kenova
PO Box 268
Kenova, WV 25530

City of Milton
Milton Police Department
PO Box 98
Milton, WV 25541

City of Hinton
PO Box 477
Hinton, WV 25951

City of Huntington
Huntington Police Department
675 10th Street
Huntington, WV 25701

City of Beckley
PO Drawer AJ
Beckley, WV 25802

City of Chesapeake
12404 MacCorkle Avenue
Chesapeake, WV 25315



Monroe County Commission
Monroe County Courthouse
PO Box 350.
Union, WV 24983

Nicholas County Commission
Nicholas County Courthouse
700 Main St.
Summersville, WV 26651

Pleasants County Commission
Pleasants County Courthouse
301 Court St.
St. Marys, WV 26170

Putnam County Commission
Putnam County Courthouse
3389 Winfield Rd.
Winfield, WV 25213

Ritchie County Commission
Ritchie County Courthouse
115 E. Main St.
Harrisville, WV 26362

Taylor County Commission
Taylor County Courthouse
214 W. Main St.
Grafton, WV 26354

Upshur County Commission
Upshur County Commission
38 W. Main St.
Buckhannon, WV 26201

Wetzel County Commission
Wetzel County Courthouse
PO Box 156
New Martinsville, WV 26155

Wyoming County Commission
Wyoming County Courthouse
100 Main St. - PO Drawer 309
Pineville, WV 24874

City of Cameron
44 Main St.
Cameron, WV 26033

Morgan County Commission
Morgan County Courthouse
PO Box 28 - 210 Fair Street
Berkeley Springs, WV 25411

Ohio County Commission
Ohio County Courthouse
1500 Chapline St.
Wheeling, WV 26003

Pocahontas County Commission
Pocahontas County Courthouse
900 10th Ave.
Marlinton, WV 24954

Raleigh County Commission
Raleigh County Courthouse
215 Main St. - PO Drawer AN
Beckley, WV 25801

Roane County Commission
Roane County Courthouse
PO Box 69 - 200 Main Street
Spencer, WV 25276

Tucker County Commission
Tucker County Courthouse
215 First St.
Parsons, WV 26287

Wayne County Commission
Wayne County Courthouse
P O Box 248t.
Wayne, WV 25570

Wirt County Commission
Wirt County Courthouse
PO Box 53
Elizabeth, WV 26143

City of Hurricane
3373 Teays Valley Road
Hurricane, WV 25526

Budget Department
City of Charleston
PO Box 2749
Charleston, WV 25330

McDowell County Commission
McDowell County Courthouse
90 Wyoming St. - Suite 111
Welch, WV 24801

Pendleton County Commission
Pendleton County Courthouse
PO Box 187 - 100 So Main Street
Franklin, WV 26807

Preston County Commission
Preston County Courthouse
101 W. Main St.
Kingwood, WV 26537

Randolph County Commission
Randolph County Courthouse
PO Box 2092 - 4 Randolph Avenue
Elkins, WV 26241

Summers County Commission
Summers County Courthouse
120 Ballengee St. - PO Box 97
Hinton, WV 25951

Tyler County Commission
Tyler County Courthouse
PO Box 66
Middlebourne, WV 26149

Webster County Commission
Webster County Courthouse
#2 Court Square
Webster Springs, WV 26288

Wood County Commission
Wood County Courthouse
#1 Court Square
Parkersburg, WV 26101

The Honorable Chief Longwell
City of Benwood
430 Main St.
Benwood, WV 26031

The Honorable Dick Bruner
City of Dunbar
PO Box 483
Dunbar, WV 25064

Barbour County Commission
Barbour County Courthouse
8 North Main Street
Philippi, WV 26416

Braxton County Commission
Braxton County Courthouse
PO Box 486
Sutton, WV 26601

Calhoun County Commission
Calhoun County Courthouse
PO Box 230
Grantsville, WV 26147

Fayette County Commission
Fayette County Courthouse
100 Court St.
Fayetteville, WV 25840

Greenbrier County Commission
Greenbrier County Courthouse
200 N. Court Street - P O Box 506
Lewisburg, WV 24901

Hardy County Commission
Hardy County Commission
204 Washington St.
Moorefield, WV 26836

Jefferson County Commission
Jefferson County Courthouse
100 East Washington St.
Charles Town, WV 25414

Lincoln County Commission
Lincoln County Courthouse
P O Box 497
Hamlin, WV 25523

Marshall County Commission
Marshall County Courthouse
600 7th Street - P O Drawer B
Moundsville, WV 26041

Mineral County Commission
Mineral County Commission
150 Armstrong St.
Keyser, WV 26726

Berkeley County Commission
attn: Finance Department
100 West King St - 3rd Flr
Martinsburg, WV 25401

Brooke County Commission
Brooke County Courthouse
632 Main St.
Wellsburg, WV 26070

Clay County Commission
Clay County Commission
207 Main St. - P O Box 190
Clay, WV 25043

Gilmer County Commission
Gilmer County Courthouse
10 Howard St.
Glenville, WV 26351

Hampshire County Commission
Hampshire County Courthouse
PO Box 806 - 66 N. High Street
Romney, WV 26757

Harrison County Commission
Harrison County Courthouse
301 W. Main St.
Clarksburg, WV 26301

Kanawha County Commission
Kanawha County Courthouse
407 Virginia Street East
Charleston, WV 25301

Logan County Commission
Logan County Courthouse
300 Stratton St.
Logan, WV 25601

Mason County Commission
Mason County Courthouse
200 6th St.
Point Pleasant, WV 25550

Mingo County Commission
Mingo County Courthouse
75 East 2nd Avenue Rm 308
Williamson, WV 25661

Boone County Commission
Boone County Courthouse
206 Court St.
Madison, WV 25130

Cabell County Commission
750 5th Ave. - Suite 300
Huntington, WV 25701

Doddridge County Commission
Doddridge County Courthouse
118 East Court St. - Room 102
West Union, WV 26456

Grant County Commission
Grant County Courthouse
5 Highland Ave.
Petersburg, WV 26847

Hancock County Commission
Hancock County Courthouse
102 N. Court St. - P O Box 485
New Cumberland, WV 26047

Jackson County Commission
Jackson County Courthouse
PO Box 800
Ripley, WV 25271

Lewis County Commission
Lewis County Courthouse
PO Box 466
Weston, WV 26452

Marion County Commission
Marion County Courthouse
200 Jackson St.
Fairmont, WV 26554

Mercer County Commission
Mercer County Courthouse
- 1501 Main St.
Princeton, WV 24740

Monongalia County Commission
Monongalia County Courthouse
243 High St.
Morgantown, WV 26505



List of Comments Received

1. County Commissioners Association of West Virginia
2. Cabell County Commission
3. Lewis County Commission
4. Grant County Commission
5. Kanawha County Commission
6. County Commission of Barbour County
7. West Virginia Municipal League
8. Logan County Commission
9. Putnam County Commission
10. Marshall County Commission
11. Uphsur County Commission
12. Nicholas County Commission

FILED

2006 JUL 28 P 4: 31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**TITLE 94
LEGISLATIVE RULE
REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY**

**SERIES 7
CRITERIA AND PROCEDURES
FOR DETERMINATION OF PROJECTED COST PER DAY FOR INMATES
INCARCERATED IN REGIONAL JAILS OPERATED BY THE AUTHORITY**

§94-7-1. 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 Municipalities are required by the statute to make payments to the regional jail and correctional facility 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. -- 1.4. Effective Date. --

1.5. Repeals and replaces 94CSR3 which was promulgated as a procedural rule on July 1, 1995.

§94-7-2. Application And Enforcement.

2.1. These legislative rules apply to the Regional Jail and Correctional Facility Authority, and to counties, municipalities, the West Virginia Division of Corrections, 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.

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

§94-7-3. 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. . Such schedules shall include all costs for personal services, fringe benefits for personnel necessary to the operation of

the 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 shall include reserve funds maintained in a manner consistent with § 9 et seq herein and all other costs necessary to operate and maintain the Regional Jail Authority.

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

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

§94-7-4. Annual Statement of Projected Cost Per Inmate Day.

4.1. The Authority shall, on an annual basis, prepare an estimate of the cost of operating 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 and maintaining the Regional Jail System.

4.2. In October of each year, 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, 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 may be provided, upon request, to any other entity on whose behalf an inmate may be incarcerated in a regional jail.

§94-7-5. Calculation Of Projected Cost Per Inmate Day.

5.1. The operational expenditure schedule as defined in § 3 herein shall be divided by the total anticipated number of inmate days in the regional jail system to yield the projected cost per inmate day as the quotient.

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

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

§94-7-6. Preparation And Distribution Of Monthly Billing Statements

6.1. The Authority shall prepare a monthly billing statement. This statement, at minimum, will include the name of the inmate, the number of days during the billing month, and the total charges for inmate maintenance during the month.

6.2. The monthly billing statement shall be due and payable upon receipt..

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.

§94-7-7. Allocation Of Costs For Inmates.

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 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. 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: 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.

§94-7-8. Extraordinary Costs.

- 8.1. If the actual operational costs deviate from the approved schedule of operational expenditures by more than ten percent (10%) during two fiscal quarters, the executive director, after consultation with the board shall adjust the cost per inmate day in an amount sufficient to cover the actual expenditures.

§94-7-9. 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.
- 9.3. 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. 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.
- 9.4. 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.

PUBLIC COMMENTS FINDINGS AND DETERMINATIONS

Based upon Public Comments received the Authority makes the following amendments to the Proposed Rule 94-CSR-3.

1. The Rule should be filed as 94-CSR-7.
2. Paragraph 1.5 repeals and replaces 94-CSR-3 which was promulgated as a Procedural Rule on July 1, 1995.
3. Paragraph 3.2 additions of the word renovation.
4. Paragraph 7.7 struck in its entirety.

The remaining Public Comments are addressed as follows:

Public Comments from Cabell County Commission

In response to the public comments filed by Ancil Ramey on behalf of the Cabell County Commission. Comments one through five, concern the emergency. The Emergency Rule was withdrawn.

Comment six concerns alledges that the Proposed Rule creates a new “fund” that is not authorized by law. The Proposed Rule creates no new funds or accounts. Assuming, for the sake of argument, that the proposed rule did create a new special fund. Special funds are authorized. W. Va. Code § 31-20-10(a) states in

pertinent part: “The regional jail and correctional facility authority may create special funds in the state treasury to identify various revenue sources and payment of specific obligations. These funds may be used for purposes that include, but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and the individual operations accounts of facilities operated by the authority. The authority may create other separate accounts within these funds that it determines are necessary for the efficient operation of the authority.” Thus, the creation of special funds in the state treasury is statutorily authorized.

Comment seven concerns whether the Proposed Rule exempts “United States Marshal Service and U. S. Bureau of Prisons” from its application. The Marshall service and Federal Bureau of Prisons are charged a rate determined by federal contracts. These contracts are authorized by W. Va. Code § 31-20-24 and W. Va. Code § 31-20-5. The Proposed Rule has no impact on the Authorities federal obligations or contracts.

Comment eight involves inclusion of operational expenses to include both direct and indirect costs and a concern that the Proposed Rule includes costs not attributable to Jail operations. The Proposed Rule does not change the funding mechanism for administrative expenses. The Proposed Rule will benefit the taxpayers by providing cost savings realized from centralized services necessary for the operation of a jail. Services such as information technology, human resources, legal services and internal affairs are more economically provided through one centralized office rather than by duplicating the services ten times throughout the state. The

Proposed Rule lowers the facilities operational costs by pooling limited resources, and thereby will lower per diem rates.

The Authority concedes in part with comment nine. The word “renovation” can be added to the proposed rule 3.2.

Comment ten concerns the centralized budgeting process. The Authority has specific statutory responsibilities to, “(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The Authority shall provide for the transportation of inmates between the Regional Jails and local holding facilities for court appearances.(w) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of regional jails and correctional facilities.” W. Va. Code § 31-20-5. Thus, the operation and budgeting of the jail system is under one central control. The Proposed Rule combines the estimated costs of each individual jail to derive a cost for all facilities under the Authority’s jurisdiction. The comment suggests that each of the ten separate Regional Jails should be independently budgeted and operated. This is not consistent with the concept of Regional Jails, and the specific statutory responsibility of the agency to operate the jail system.

Comment eleven concerns whether the Authority is creating a new fund. W. Va. code § 31-20-10 9(a) states: “ (a) The regional jail and correctional facility authority may create special funds in the state treasury to identify various revenue sources and payment of specific obligations. These funds may be used for purposes that include,

reserve which may be maintained to cover catastrophic contingencies such as inmates who require heroic, or chronic health care, unanticipated physical plant repairs, unfunded court mandates, and other unforeseeable but probable exigent expenditures. Without this contingency built into the budget the West Virginia Regional Jail and Correctional Facility Authority would not be able to make payroll, therefore it would not be able to fulfill statutory or court requirements, other contractual and necessary obligations.

The remaining comments from Cabell County Commission's concern statements of law involving the Security of State's authority in the rule making procedure.

Public Comments from Cabell County Commission dated July 27, 2006

The second comment letter from the Cabell County Commission restates the Cabell County Commission's concerns about the emergency filing. The emergency filing has been withdrawn. Finally, the letter comments that the Proposed Rule will impact all counties that are following Judge Pancake's ruling. The Authority believes that the Proposed Rule is consistent with the mandates of W. Va. Code § 31-20-10, 31-20-10a and all existing Law. Judge Pancake's ruling invalidated the current procedural rule 94-CSR-3. This Proposed Rule is required to comply with W. Va. Code § 31-20-10 (h).

Public Comment from Lewis County Commission

The Lewis County Commission comments concern a fear of a potential increase in per diem rates. The Proposed Rule and max provide a marginally lower per diem in the short term. Under the Proposed Rule per diem rates will be mathematically derived from operational costs and average inmate population, which is consistent with the

but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and the individual operations accounts of facilities operated by the Authority. The Authority may create other separate accounts within these funds that it determines are necessary for the efficient operation of the authority.” The Proposed Rule does not create a new fund for the Administrative expenses of the article. However, such a fund would be authorized.

The Authority concurs in part with comment 12 and will strike the proposed language concerning billing for fugitives from justice. Paragraph 7.7.

Comment thirteen and fourteen concerns the development of a catastrophic reserve fund. The Proposed Rule implements a procedure to implement the requirements of W. Va. Code § 31-20-10a(b)(2) in a fiscally predictable manner. The Proposed Rule provides two fiscal quarters basis upon which to base the need to adjust the per diem rate. Without this Proposed Rule per diem rates for the counties are subject to monthly fluctuations, and cannot be accurately adjusted to reflect actual expenses.

After hearing concerns the WV Regional Jail Authority researched budget preparation for business operations. It was recommended that, due to the vast majority of the WV Regional Jail and Correctional Facility expenses being for personal services, that we should maintain 6 months reserve for emergency, unfunded mandates (by courts or legislature) and/or unanticipated expenses. Therefore, based upon sound business practices, the Authority must plan for and anticipate catastrophic unforeseeable expenditures requiring immediate response, while maintaining the ability to meet reasonably anticipated operational costs. The Proposed Rule permits a four month

request made by Cabell County Commission. The per diem formula is found in W.Va. Code § 31-20-10 and W. Va. Code § 31-20-10a.

Public Comment from Grant County Commission

The Grant County comments adopt and incorporate the comments filed on behalf of the Cabell County Commission and the West Virginia Association of Counties. The Authorities response to those comments are thus incorporated by reference in response.

Public Comment from Kanawha County Commission

Kanawha County adopted Cabell County Commission's comments. The Authority's response to those comments are thus incorporated by reference in response.

The Kanawha County Commission further comments that the Proposed Rule includes costs for renovation and indirect expenses. The Authority agrees that renovation costs should not be included, and have amended the filing to add renovation costs in paragraph 3.2, accordance with W. Va. Code § 31-20-10. Other indirect costs of jail operation are statutory required to be included in the calculation of the per diem W. Va. Code § 31-20-10a(b)(1).

Public Comment from Barbour County Commission

Barbour County Comments that the Proposed Rule "contradicts exiting statute." Our review of existing statute and the Proposed Rule indicates that the Proposed Rule is consistent with the Legislative mandates of W. Va. Code § 31-20-10 and 31-20-10a, and all applicable statutory authority.

Public Comments from WV Municipal League

The first comment indicates that clarification should be added to 2.1.1, specifically that the Authority should not be allowed to contract more favorable terms

with the Federal Government than with other entities. The Authority agrees that the Federal Government should not receive better terms for the housing of inmates. However, the formula for Federal Governmental contracts to house inmates is controlled by Federal Regulations. It included direct and indirect expenses, plus a value assessed for depreciation assets. Federal contracts may also include annual costs of living increases.

The second comment identifies that section 3.1 included direct and indirect costs, medical, maintenance and technology and a contingency fund. These inclusions are specifically mandated by W Va. Code § 31-20-10a(b)(1) , “(b)(1) The authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.”(Emphasis added) and W. Va. Code § 31-20-10(c), “(c) Whenever the authority determines that the balance in these funds is in excess of the immediate requirements of this article, it may request that the excess be invested until needed. In this case, the excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to these funds.” The investment of excess funds is specifically authorized.

The third comment concerns section 4.1 which identifies the desire to fragment the per diem. The comment asks that different per diems be changed for different regions. The Authority is tasked with creating a cost efficient system of W. Va. Code § 31-20-1 et. seq. A statewide system is contemplated in W. Va. Code § 31-20-1 and 31-20-5. The Authority believes that the Code requires a unified cost effective jail system.

The final comment involves elimination of section 5.1.2 and change in 6.1 which the commentor believes would impair the municipality's ability to determine whether the a criminal commitment is from a municipal court. The Authority agrees that municipalities must be able to easily identify the committing jurisdiction in the billing statement and will endeavor to provide said information; the Authority does not believe that the change in the Proposed Rule will alter this practice.

Public Comments from Logan County Commission

Logan County Commission comments concern a proposed amendment to the Proposed Rules, to include billing the Division of Corrections for inmates sentenced to jail as a condition of probation on felony charges, or for other alternative sentences. This is not consistent with W. Va. Code § 31-20-10a, "(c) The county is responsible for costs incurred by the authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the commissioner of corrections".

The county commission next comments that the formula should provide a lower per diem when the facility is housing more inmates than design capacity. The Proposed Rule does this.

The county commission finally comments that the per diem should be based on an hourly charge rather than a per day charge. The Authority feels this is inconsistent with

W. Va. Code § 31-20-10 (h) which states in part, “(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.” Thus, the Proposed Rule is consistent with statutory authority.

Public Comments from Putnam County Commission

The Putnam County Commission first comments that they do not feel the per diem should fluctuate with the inmate population. The Authority believes this is required by W. Va. Code § 31-20-10h.

The second comment concerns § 7.6, dealing with billing for Fugitive from Justice. The Authority agrees with this comment and has stricken paragraph 7.6.

The third comment concerns centralized operation expenses. The Proposed Rule does not change the funding mechanism for administrative expenses. The Proposed Rule will benefit the taxpayers by optimizing the cost savings realized by centralized services necessary for the operation of a jail. Services such as information technology, human resources, legal services and internal affairs are more economically provided through one centralized office rather than by duplicating the

services ten times throughout the state. The Proposed Rule lowers the facilities operational costs by pooling limited resources, and thereby will lower per diem rates.

The fourth comment concerns the mechanism in the Proposed Rule to adjust the per diem should operational costs rise or fall with in a given fiscal year. The Authority believes this is necessary to properly credit the counties should operational expenditures rise or fall during the fiscal year.

The fifth comment concerns section 3.1 reserve funds. The Proposed Rule contains a catastrophic contingency item. After hearing concerns the WV Regional Jail Authority researched budget preparation for business operations. It was recommended that, due to the vast majority of the WV Regional Jail and Correctional Facility expenses being for personal services, that we should maintain 6 months reserve for emergency, unfunded mandates (by courts or legislature) and/or unanticipated expenses. Therefore, based upon sound business practices, the Authority must plan for and anticipate catastrophic unforeseeable expenditures requiring immediate response, while maintaining the ability to meet reasonably anticipated operational costs. The Proposed Rule permits a four month reserve which may be maintained to cover catastrophic contingencies such as inmates who require heroic, or chronic health care, unanticipated physical plant repairs, unfunded court mandates, and other unforeseeable but probable exigent expenditures. Without this contingency built into the budget the West Virginia Regional Jail and Correctional Facility Authority would not be able to make payroll, therefore it would not be able to fulfill statutory or court requirements, other contractual and necessary obligations.

Public Comments from County Commissioner's Association

Comments concern the Emergency Nature of the Rule. The Authority has withdrawn the Emergency filing.

Public Comments from Upshur County Commission

The first comment concerns the repeal of 94-CSR-3 and promulgation of a new Legislative Rule. The Authority asks that this new Proposed Legislative Rule be promulgated as 94-CSR-7.

The second comment involves the emergency filing. The Authority has withdrawn the emergency filing.

The third comment involves the creation of a new "fund." The Proposed Rule does not create a new fund. However, such funds are specifically statutorily authorized, W. Va. Code § 31-20-10(a).

The fourth comment involves the exclusion of Federal contracting entities. The comment suggest that the agency should not be allowed to contract more favorable terms with the Federal Government than with other entities. The Authority agrees that the Federal Government should not receive better terms for the housing of inmates. However, the formula for Federal Governmental contracts to house inmates is controlled by Federal Regulations. It includes direct and indirect costs, plus a value assessed for depreciation of assets Federal Contracts may also include, provisions for an annual cost of living increase also known as cost of living increase. Contracts with the Federal government are authorized by W. Va. Code § 31-20-5 and W. Va. Code § 31-20-24. The Proposed Rule has no impact on the Authority's contracts.

The fifth comment involves the expense schedule including both "direct and indirect costs." These inclusions are specifically mandated by W Va. Code § 31-20-

10a(b)(1) , “(b)(1) The Authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.”

The sixth comment involves the addition of the word “renovation”. The Authority agrees and has inserted the word renovation into paragraph 3.2.

The seventh comment involves a desire by Upshur County to set different per diems by region. The Authority’s specific statutory responsibilities to, “(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The authority shall provide for the transportation of inmates between the regional jails and local holding facilities for court appearances.(w) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of regional jails and correctional facilities.” W. Va. Code § 31-20-5 The Proposed Rule combines the estimated costs of each individual jail to derive a cost for all facilities under the Authority’s jurisdiction. The comment suggests that each of the ten separate Regional Jails should be independently budgeted and operated. This is not consistent with the

concept of Regional Jails, and the specific statutory responsibility of the agency to operate the jail system. The Authority is tasked with creating a cost efficient system of W. Va. Code § 31-20-1 et. seq. A statewide system is contemplated in W. Va. Code § 31-20-1 and 31-20-5.

The eighth comment concerns creation of a “new fund.” The Proposed Rule creates no new funds. However, W. Va. code § 31-20-10(a) states: “ (a) The regional jail and correctional facility authority may create special funds in the state treasury to identify various revenue sources and payment of specific obligations. These funds may be used for purposes that include, but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and the individual operations accounts of facilities operated by the authority. The authority may create other separate accounts within these funds that it determines are necessary for the efficient operation of the authority.” The Rule does not create a new fund for the Administrative expenses of the article.

The ninth comment concerns billing for Fugitive from Justice. The Authority agrees and has deleted § 7.7.

The tenth comment concerns the Operational Reserve Fund. W. Va. Code § 31-20-10(c) specifically authorizes this reserve. “(c) Whenever the authority determines that the balance in these funds is in excess of the immediate requirements of this article, it may request that the excess be invested until needed. In this case, the excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to these funds.” As was noted earlier W. Va. Code § 31-20-10(a) specifically permits the

creation of special funds within the state treasury for the purpose of the effective, efficient operation of the Authority. Thus, the code specifically authorizes the investment of excessive funds to for the purpose of carrying out the directives of the article.

The eleventh comment involves the emergency filing. The Authority has withdrawn the emergency filing.

The twelfth comment suggest that the Authority is attempting to “ use Judge Pancake’s ruling as an opportunity to re-write statute.” The Authority believes that the Proposed Rule is consistent with the mandates of W. Va. Code § 31-20-10, W. Va. Code § 31-20-10a, and all applicable legislation.

Public Comments from Nicholas County Sheriffs Department

The Nicholas County Sheriffs Department comments: “That the Regional Jail Authority has given every county in the State a slap in the face by attempting to use Emergency Rule Title 94. The counties already have to carry the blunt share of the cost for the operation of the Regional Jail which has turned out to be a “Money Eating Monster.” I think this is outrageous and ridiculous.”

The Authority believes that it is providing a cost effective alternative to the costly, litigious and unconstitutional local jails of the past.

UPSHUR COUNTY COMMISSION
Upshur County Courthouse Annex
88 West Main Street, Room 808 • Buckhannon, West Virginia 26201

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TDD Numbers
Business: 472-9550
Emergency: 911

July 27, 2006

Ms. Betty Ireland, Secretary of State
Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

FILED
2007 JUL 28 A 8:50
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Subject: Emergency Rule Title 94

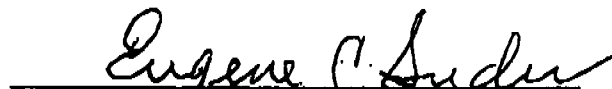
Please be advised that the Upshur County Commission does hereby object to the adoption of these emergency rules as set forth by the West Virginia Regional Jail & Correctional Facility Authority. Enclosed you will find a listing that would outline the objections of the Upshur County Commission. We are requesting these emergency rules be disallowed and disapproved.



Donnie R. Tenney, President



Stephen P. Abel, Commissioner


Eugene C. Suder, Commissioner

- The rules that are being amended were originally promulgated as "procedural rules," not "legislative rules." WV Code §29A-3-15(a) provides that agencies may adopt, amend or repeal *any legislative rule* but procedural rules cannot be amended as legislative rules. It would appear that in order for the Regional Jail Authority to promulgate *emergency legislative rules* they would first have to promulgate an entirely new set of legislative rules rather than amend old procedural rules.
- The emergency rule can be disapproved by the Secretary of State because it exceeds the scope of the authorizing statute and an emergency does not exist.
- Emergency Rule 94 creates a new "fund" that is not authorized by law. The Legislature ~~has never authorized a "regional jail and correctional facility fund" and it is not proper procedure to create a fund through amended procedural rules that is not authorized by statute.~~
- Emergency Rule 94 exempts the "United States marshal service" and the "United States bureau of prisons" from its application. The Authority has exempted through rules two entities that the Legislature has expressly determined should be subject to its rules.
- Emergency Rule 94 extends operational expenses to include "both direct and indirect costs...including centralized operations expenses." This means that counties will pay for the operation of the administrative office (currently a state expense) in addition to the operation of the jails. This is completely contrary to statute and the Legislature's intent that counties' obligations be limited to the "costs.....for operating and maintaining the regional jail" serving those counties.
- Emergency Rule 94 would result in counties being responsible for renovation costs, in direct contradiction to statute which states: "The per diem costs for incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities.
- Emergency Rule 94 further disregards statute and alters the entire regional jail concept by centralizing the budget process. Currently, the Authority is required by statute to look at operational expenses *for each regional jail* but the rule is revised to state and maintaining the regional jail system.
- Emergency Rule 94 defies statute by creating a new fund, expanding the obligations of counties to include central office expenses, expanding the obligations of counties to include renovations, and completely revising how the regional jail per diem is to be calculated and charged.
- Emergency Rule 94 disregards existing statute by extending the financial obligations of counties to include the "costs incurred by the regional jails for housing and maintaining inmates who are being held as a fugitive."
- Emergency Rule 94 creates a new "Operational Reserve Fund" which is not authorized by statute. The rule would allow the Authority to accumulate four months of anticipated expenditures. In other words, 25% of its budget could be held in reserve from year to year.
- There is no emergency. The Authority already has the ability to meet and "add a temporary surcharge to the cost per inmate day in an amount sufficient to cover actual expenditures."
- These emergency rules appear to be an attempt to use Cabell County Judge Pancake's ruling as an opportunity to rewrite statute.

From: Judy Cooper <jcooper@wvsos.com>
Subject: **comments**
Date: July 28, 2006 11:51:04 AM EDT
To: ccardinal <ccardinal@mac.com>
📎 2 Attachments, 135 KB

I think this is the end. <<upshur.pdf>> <<nicholas.pdf>>



upshur.pdf (99.2 KB)



Wetzel Bennett
Sheriff Of Nicholas County

Nicholas County Court House
700 Main Street - Suite 3 • Summersville, West Virginia 26651
Phone (304) 872-7880 • Fax (304) 872-7869
Web Page www.wvncsd.com



July 28, 2006

Sheriff Wetzel Bennett
Nicholas County Sheriff's Department
700 Main Street, Suite 3
Summersville, WV 26651

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

FILED
2006 JUL 28 A 11: 09
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Re: Emergency Rule Title 94

Dear Secretary Ireland,

I believe that the Regional Jail Authority has given every County in the State a slap in the face by attempting to use Emergency Rule Title 94. The counties already have to carry the blunt share of the cost for the operation of the Regional Jail which has turned out to be a "Money Eating Monster." I think this is outrageous and ridiculous.

Anything you could do to help in this situation would be greatly appreciated.

Sincerely,

Sheriff Wetzel Bennett



County Commissioners' Association of West Virginia

2309 Washington Street, East

Charleston, West Virginia 25311

E-mail ccawv@citynet.net (304) 345-4839 Fax (304) 346-3512

July 24, 2006

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Re: Emergency Rule Title 94

Dear Secretary Ireland:

FILED
2006 JUL 25 A 11:12
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The County Commissioners' Association of West Virginia writes to voice our objection to the approval of Emergency Rule Title 94 – West Virginia Regional Jail & Correctional Facility Authority.

While we concede that revision of the existing "*criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority*" may be necessary, we do not believe that this revision should take place by filing an "emergency legislative rule." First of all we do not believe that a "procedural rule" can be made a "legislative rule" through an emergency filing. As can be seen from the face of the rules themselves, they were originally promulgated as "procedural rules," not "legislative rules;" thus, they cannot be amended under WV Code 29A-3-15(a). The only way for the Regional Jail and Correctional Facility Authority to promulgate emergency legislative rules would be to promulgate an entirely new set of legislative rules, not amend old procedural rules. Legislative rules should go through the legislative process, with full and open debate on the merit of such rules allowing participation of all involved parties.

Secondly, we believe the Authority has failed to establish an "emergency" situation. The emergency filing indicated that Judge Pancake's ruling in Cabell County Circuit Court, Case Number 05-C-590, found the current rule invalid, creating a need for this emergency rule. However, by agreement of the parties involved, Judge Pancake's order has been stayed pending appeal, which will not be resolved before the next legislative session, thus there is no emergency. Again, the issue of a methodology for calculating the regional jail per diem, should be addressed by the Legislature and/or the Legislative Rule-Making Review Committee, allowing ample time and opportunity for active involvement by all affected parties.

The County Commissioners' Association of West Virginia strongly objects to the approval of these emergency rules. Thank you for your consideration of our objections.

Sincerely,

Karen Disibbio, President

cc: Regional Jail Authority, Rules Committee
CCAWV Board of Directors
Cabell County Commission

Vivian Parsons, Executive Director

visit our web site www.parksia.wvu.edu/ccawv



CABELL COUNTY COMMISSION

JUL 27 2006

247

SUITE 300 - 750 6TH AVENUE
CABELL COUNTY COURTHOUSE
HUNTINGTON, WEST VIRGINIA 25701-2072

COMMISSIONERS

BOB BAILEY 304-526-8637
W. SCOTT BIAS 304-526-8638
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TELEPHONE

EXECUTIVE OFFICE 304-526-8634
FAX 304-526-8648
TDD 304-526-8682

July 27, 2006

The Honorable Betty Ireland
West Virginia Secretary of State
Charleston, WV 25301

Dear Secretary Ireland:

The Cabell County Commission would like to go on record as taking strong objection to the Emergency Rules that have been filed by the Regional Jail Authority. (Emergency Rule Title 94). You have previously received comments regarding this filing from Ancil Ramey, of Steptoe and Johnson, on behalf of the Cabell County Commission.

First, this filing does not justify an emergency. It was established in court filings that the Authority had, at a minimum, \$12,000,000 in "reserve" at the close of fiscal year 2005. Because the Authority has been using the same per diem rate in fiscal 2006, it is likely that the reserve is much larger at this time. In addition, there is currently a mechanism in place for the Authority to utilize if emergency funds are needed.

Secondly, these rules are a dramatic departure from current statute. Clearly, the changes contemplated are so sweeping and far reaching, that the legislature should have an opportunity to review them.

And, finally, these rules would create more charges to the per diem rate which will have a significant impact on future county budgets. The new rules not only incorporate those items in the per diem rate that Judge Pancake's ruling stated were not appropriate, but add additional charges that are not authorized by statute. For any county that is following Judge Pancake's ruling, the impact will be felt in this fiscal year, which would unfairly necessitate changes to the current year's budget. Every county budget would be negatively impacted in the future if these rules are adopted.

The Honorable Betty Ireland
July 27, 2006
Page -2-

Please take these concerns into account when contemplating approval of these rules.
Thank you for your consideration.

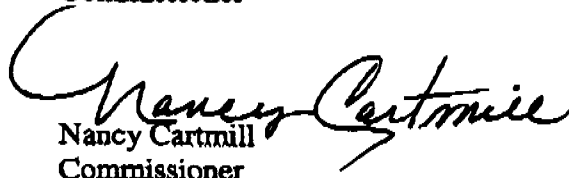
Sincerely,



W. Scott Bias
President



Bob Bailey
Commissioner



Nancy Cartmill
Commissioner

ria

cc: Honorable David M. Pancake, Judge
Rules Committee, Regional Jail and Correctional Facility Authority
Jack C. McClung, Esquire
County Commissioner's Association

July 25, 2006

BY MAIL AND E-MAIL
The Honorable Betty Ireland
Secretary of State
Bldg. 1, Suite 157-K
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Charleston, WV 25305-0770
Email wvsos@wvsos.com

FILED
2006 JUL 25 P 2:48
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Re: Emergency Rule Title 94

Dear Secretary Ireland:

This is in response to the Jail Authority's letter dated July 25, 2006.

Nothing could articulate better the absence of an "emergency" as defined in the applicable statute than the Authority's letter:

[T]here is a real danger that counties will simply stop paying the Regional Jail Authority or, as Cabell County has, pay only such amount that the county decides in its discretion to pay.

Apparently, there has not been a single county which has stopped making its payments or has reduced its payments in light of Judge Pancake's order, which has been stayed, but only the Authority's unsubstantiated fear that such might occur. There has been not a single county which has filed suit seeking to reduce its payments in light of Judge Pancake's order, but only the Authority's unsubstantiated fear that such might occur.

W. Va. Code § 29A-3-15(f) provides, "For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest."

It was stipulated in the proceedings before Judge Pancake that (1) the Authority ended fiscal year 2005 with a reserve of \$12.3 million and (2) the Authority's revenues exceeded its expenses by over \$15.7 million in fiscal year 2005. [Ex. A].

There is no financial emergency at the Authority, which has operated at a profit for several years and accumulated enormous cash reserves. Even if every county stopped making payments to the Authority, it could continue to operate at the same level of service on its cash reserves for three to four months. The assertion of an "emergency" by the Authority

The Honorable Betty Ireland
Emergency Rule Title 94
July 25, 2006
Page 2

with over \$12 million in cash reserves based upon (1) what might, but has not occurred, and (2) a purported financial exigency, is preposterous.

Counties might stop paying the Authority and West Virginia might be hit with a tsunami, but neither unlikely future catastrophe satisfies the statutory definition of an "emergency," which justifies emergency rules "for the immediate preservation of public peace, health, safety or welfare" or "to prevent substantial harm to the public interest."

If counties stop paying or reduce their payments, and the Authority begins to exhaust its substantial cash reserves, an emergency might arguably exist, but not as circumstances currently exist. What has occurred is that the Authority is using the pretense of an emergency based upon an stayed order to rewrite the statute, but you will notice that the Authority makes no absolutely no effort to address the other problems discussed in my previous letter.

W. Va. Code § 29A-3-15(a)(1) provides, "The secretary of state, acting under the authority provided for in section fifteen-a of this article, or the attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section." [Emphasis supplied]. See also W. Va. Code § 29A-3-15a(b)(same).

As noted in my earlier letter, the Authority simply cannot amend a "procedural rule" into a "legislative rule." W. Va. Code § 29A-3-15(a)(1)(C). Nowhere in the Authority's letter is this issue addressed. Thus, the proposed emergency rules "was not promulgated in compliance with the provisions" of W. Va. Code § 29A-3-15(a)(1).

Moreover, nowhere in the Authority's letter does it address the nine separate ways the Authority's proposed emergency rules exceed "the scope of the law authorizing or directing the promulgation thereof."¹

¹ See also Syl. pt. 4, *State ex rel. Callaghan v. Civil Service Comm'n*, 166 W. Va. 117, 273 S.E.2d 72 (1980) ("Procedures and rules properly promulgated by an administrative agency with authority to enforce a law will be upheld so long as they are reasonable and do not enlarge, amend or repeal substantive rights created by statute."); *Chico Dairy, supra* at 247, 382 S.E.2d at 84 ("the rule of the West Virginia Human Rights Commission, 6 W. Va. Code of State Rules § 77-1-2.7 (1982), defining a 'handicapped person' to include a person who does not in fact have a 'handicap,' as defined by W. Va. Code, 5-11-3(t), as amended, but who 'is regarded as having such a handicap,' is invalid because that rule clearly conflicts with the legislative intent by expressly enlarging upon the substantive rights created by the statute."); W. Va. Code § 29A-3-15(d) ("The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any

**The Honorable Betty Ireland
Emergency Rule Title 94
July 25, 2006
Page 3**

The Authority's silence on these issues, I submit, speaks volumes.

Thus, the Cabell County Commission requests that you either (1) disapprove the rules or (2) make a further investigation including allowing other interested parties to submit additional information or comment and/or scheduling the matter for an evidentiary hearing.

Thank you for considering the Cabell County Commission's comments to these emergency rules. If I can be of any further assistance, please let me know.

With warmest regards,

Ancil G. Ramey

Enclosure

**cc: Hon. David M. Pancake, Judge (w/encl.)
Rules Comm., Regional Jail and Correctional Facility Authority (w/encl.)
Chad M. Cardinal, Esq. (w/encl.)
Gary E. Pullin, Esq. (w/encl.)
Jack C. McClung, Esq. (w/encl.)
William T. Watson, Esq. (w/encl.)
Stephen J. Zoeller, Administrator (w/encl.)**

emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.")(emphasis supplied).



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July 18, 2006

BY MAIL AND E-MAIL

The Honorable Betty Ireland
Secretary of State
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Charleston, WV 25305-0770
Email wvsos@wvsos.com

Re: Emergency Rule Title 94

Dear Secretary Ireland:

I represent the Cabell County Commission and object to approval of Emergency Rule Title 94 filed in your office on June 28, 2006, for the following reasons:

1. W. Va. Code § 29A-3-15(f) provides, "For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest." Judge Pancake's order invalidated one rule, W. Va. C.S.R. § 94-3-5, which governs the method of calculating the regional jail per diem, because it had not been promulgated as a legislative rule, as required by statute. Consequently, he lowered from \$45.00 per day¹ to \$40.42 per day, the per diem the Authority could charge to the Cabell County Commission, but made his ruling retroactive only to July 1, 2004, and subject to increase "if, after the entry of this Order, the 'actual operational costs' per inmate day of the Western Regional Jail exceed \$40.42 by 'more than ten percent,' the Jail may 'add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures' at the Western Regional Jail." Ex. A. Moreover, by agreement of the parties, Judge Pancake's order has been stayed pending appeal, which will not be resolved before the next legislative session. Thus, there is no emergency. If the Authority's "actual

¹Judge Pancake also lowered the per diem from \$48.50 to \$45.00 not because of any rule, but because there was no quorum and one of the members voted by proxy in violation of the Authority's own procedural rules at the meeting in which an increase in the per diem from \$45.00 to \$48.50 was approved. Ex. A.

operational costs” per inmate day at the Western Regional jail “exceed \$40.42 by ‘more than ten percent,’” the Authority can simply meet and, if it has a quorum and none of its members vote by proxy, it can “add a temporary surcharge to the cost per inmate day in an amount sufficient to cover actual expenditures.” Moreover, with respect to the methodology for calculating the per diem, such issue can be addressed by the Legislature and/or the Legislative Rule-Making Review Committee.

2. W. Va. Code § 29A-3-15(a) provides, “Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed with the secretary of state, and a notice of such filing shall be published in the state register. Such emergency rules shall become effective upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon the approval of the attorney general in accordance with section fifteen-b or upon the forty-second day following such filing, whichever occurs first. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity.” [Emphasis supplied]. *See also* W. Va. Code § 29A-3-15(a)(1)(A)(“The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof”)(emphasis supplied). As can be seen from the face of the rules themselves, they were originally promulgated as “procedural rules,” not “legislative rules;”² thus, they cannot be amended under W. Va. § 29A-3-

²“A regulation that is proposed by an agency and approved by the Legislature is a ‘legislative rule’ as defined by the State Administrative Procedures Act, W. Va. Code, 29A-1-2(d) [1982], and such a legislative rule has the force and effect of law.” Syl. Pt. 5, *Smith v. West Virginia Human Rights Comm’n.*, 216 W. Va. 2, 602 S.E.2d 445 (2004). Certainly, if Rule 94 had originally been adopted as a legislative rule, it would have the “force and effect of law” and, in an emergency situation, could be amended under W. Va. Code § 29A-3-15, subject to subsequent legislative approval. Because it was originally promulgated as a “procedural rule,” however, it cannot be “amended” into a “legislative rule.” One of the reasons the Honorable David M. Pancake, Judge of the Circuit Court of Cabell County, invalidated Rule 94, *see* Ex. A, was because W. Va. Code § 31-20-10(h) provides, “When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility

15(a). The only way for the Regional Jail and Correctional Facility Authority to promulgate emergency legislative rules would be to promulgate an entirely new set of legislative rules, not amend old procedural rules.

3. W. Va. Code § 29A-3-15(a)(1) provides, "The secretary of state, acting under the authority provided for in section fifteen-a of this article, or the attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section." [Emphasis supplied]. *See also* W. Va. Code § 29A-3-15a(b)(same).
4. As previously noted, the Authority simply cannot amend a "procedural rule" into a "legislative rule" and, therefore, you should disapprove Emergency Rule Title 94 under W. Va. Code § 29A-3-15(a)(1)(C).
5. Moreover, as the "emergency rule . . . exceeds the scope of the law authorizing or directing the promulgation thereof," for reasons to be discussed below, you should disapprove Emergency Rule Title 94 under W. Va. Code § 29A-3-15(1)(A). *See also* Syl. pt. 4, *State ex rel. Callaghan v. Civil Service Comm'n*, 166 W. Va. 117, 273 S.E.2d 72 (1980) ("Procedures and rules properly promulgated by an administrative agency with authority to enforce a law will be upheld so long as they are reasonable and do not enlarge, amend or repeal substantive rights created by statute."); *Chico Dairy, supra* at 247, 382 S.E.2d at 84 ("the rule of the West Virginia Human Rights Commission, 6 W. Va. Code of State Rules § 77-1-2.7 (1982), defining a 'handicapped person' to include a person who does not in fact have a 'handicap,' as defined by W. Va. Code, 5-11-3(t), as amended, but who 'is regarded as having such a handicap,' is invalid because that rule clearly conflicts with the legislative intent by expressly enlarging

authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code," which the Authority admits that it did not do. Thus, such Rule is of no force and effect. *See Chico Dairy Store No. 22 v. Human Rights Comm'n*, 181 W. Va. 238, 244, 382 S.E.2d 75, 81 (1989) ("This 'legislative rule' was not, however, submitted to, reviewed by and approved by the legislative rule-making review committee and the legislature, as required by W. Va. Code, 29A-3-9 to 29A-3-14, as amended. It is, therefore, of no effect under the State Administrative Procedures Act.") (emphasis supplied).

upon the substantive rights created by the statute.”);³ W. Va. Code § 29A-3-15(d)(“The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.”)(emphasis supplied).

6. First, Emergency Rule 94 creates a new “fund” that is not authorized by law. The existing procedural rule referenced the “regional jail and correctional facility fund,” which is expressly authorized by law. See W. Va. Code § 31-20-4(e) (“All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.”)(emphasis supplied). The Legislature has not authorized a “regional jail and correctional facility fund” and it is improper for the Authority, through amendment to a procedural rule, to create a “fund” not authorized by statute. Moreover, the Authority sets forth no “emergency” that requires the creation of a new “fund” not authorized by statute.
7. Second, Emergency Rule 94 exempts the “United States marshal service” and the “United States bureau of prisons” from its application⁴ in a manner completely contrary to statute. See W. Va.

³Even a “legislative rule” approved by the Legislature is invalid if it is “contrary to the legislative enactment that triggered its promulgation.” *Appalachian Power Co. v. State Tax Dept.*, 195 W. Va. 573, 586, 466 S.E.2d 424, 437 (1995).

⁴Rather than providing that the United States Marshal Service and the United States Bureau of Prisons be subject to the same rules as other entities housing prisoners in regional jails, as the Legislature clearly intended, Emergency Rule Title 94 provides, “Nothing in these rules shall limit the Authorities [sic] ability and the authorization to enter into contracts with Federal Authorities and surrounding states for the housing of inmates within the Regional Jail System.” Although W. Va. Code § 31-20-5(k) grants the Authority the power to “make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article,” nowhere did the Legislature authorize the Authority to enter into contracts with “surrounding states” to house their prisoners. It is beyond belief that the Authority would dare, through emergency rule, to expand its authority to begin taking in prisoners, without limitation, from Ohio, Kentucky, Virginia, Pennsylvania, and Maryland.

Code § 31-20-10a(a) (“This section applies to the regional jail and correctional facility authority, counties, municipalities, the division of corrections, the United States marshal service, the United States bureau of prisons and any other entity by whose authority inmates are incarcerated and maintained in facilities operated by the authority.”)(emphasis supplied). How can the Authority possibly exempt from its Rules two entities that the Legislature has expressly determined should be subject to its Rules? Moreover, the Authority sets forth no “emergency” that requires exemption of the “United States marshal service” and the “United States bureau of prisons” from its Rules.

8. Third, Emergency Rule Title 94 extends operational expenses to include “both direct and indirect costs . . . including centralized operations expenses” which means that counties will pay not only for the operation of regional jails, but for the operation of the administrative office. This is unprecedented and completely contrary to statute, which limits the per diem to the operating costs of the regional jails. W. Va. Code § 31-20-10a(b)(1) provides, “The authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.” [Emphasis supplied]. The Legislature has spoken as to the source of the funding for the Authority’s central office expenses: “All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.” W. Va. Code § 31-20-4(e). The source of revenue for such “fund” is not the payment of the users of regional jails, but from the “sale of bonds or other borrowing authorized by this article.” W. Va. Code § 31-20-10(f)(1). Indeed, W. Va. Code § 31-20-10(f)(3) specifically states: “After any requirements of debt service have been satisfied, the authority shall requisition from these funds the amounts that are

necessary to provide for payment of the administrative expenses of this article.” It cannot be clearer that foisting the Authority’s central office expenses on the counties is completely contrary to the Legislature’s intent that their obligations be limited to the “costs . . . for operating and maintaining the regional jail” serving those counties.

9. Fourth, Emergency Rule Title 94 completely eliminates “renovation” from the operational expenditure schedule in a manner directly contrary to statute: “The per diem costs for incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities.” W. Va. Code § 31-20-10(h)(emphasis supplied). If the Secretary approves this emergency rule, it will clearly be done in direct and utter disregard for statute, and will result in the imposition of renovation costs on the counties and other users of the regional jail system. Certainly, if the Legislature wants to amend the statute to require counties and other users to pay for regional jail renovations, which might bankrupt some counties, such might be the Legislature’s prerogative, but to allow the Authority to do so is completely contrary to the applicable law.

10. Fifth, Emergency Rule Title 94 blatantly disregards the statute and effectively alters the entire regional jail concept by centralizing the budgeting process: “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 (1) day. The estimate shall include all costs of operating ~~each regional jail~~ and maintaining the Regional Jail System.” Emergency Rule 4.1. Again, it cannot be clearer that this is directly contrary to statute: “The authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.” W. Va. Code § 31-20-10a(b)(2)(emphasis supplied). An agency’s ability to promulgate emergency legislative rules is not a license to get out an Etch-A-Sketch®, turn the Code upside down, shake it a little, and re-write the law. Approval of this Rule could not be more contrary

to statute as the Rule takes verbiage directly from W. Va. Code § 31-20-10a(b)(2) and simply re-writes it.

11. Sixth, Emergency Rule Title 94's amendments to W. Va. C.S.R. § 94-3-5 is also obviously contrary to statute by creating a new fund, expanding the obligations of users to include central office expenses, expanding the obligations of users to include renovations, and otherwise completely ignoring the statute regarding how the regional jail per diem is to be calculated and charged. W. Va. Code § 31-20-10a(c) provides, "The county is responsible for costs incurred by the authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the commissioner of corrections." It does not impose upon counties the cost of maintaining the Authority's central office. It does not impose upon counties the cost of renovating regional jails. It is brilliant in its simplicity – it requires counties to pay the per diem cost of operating and maintaining the regional jails served by those counties. All of the other expenses of the "regional jail system," under the existing statutes, are to be paid through the sale of bonds, borrowing, investments, and legislative appropriations. Again, if the Legislature wants to amend the statute to alter the funding structure for the regional jail system, such is likely a legislative prerogative, but the Authority cannot amend the statutes upon which it relies for its existence through the promulgation of emergency legislative rules.
12. Seventh, Emergency Rule Title 94 blatantly disregards the existing statute by extending the financial obligations of counties to include the "costs incurred by the regional jails for housing and maintaining inmates who are being held as a fugitive" until "the date of the extradition hearing in Circuit Court." Emergency Rule 7.6. W. Va. Code § 31-20-10a(h) plainly provides, "The costs incurred by the authority for housing and maintaining inmates who are being held as fugitives from justice from another jurisdiction shall be billed to the fugitive's demanding jurisdiction, except the costs incurred by the authority for housing and maintaining any person who is arrested and confined in one of the authority's facilities on the basis of the commission of a new crime shall be billed to the arresting county until the pending West Virginia charges have been properly resolved." It is well-known that the Authority has difficulty in collecting the costs of maintaining fugitives from other states. The Legislature has provided, however, that those costs are to be collected only from those states unless the prisoner was arrested for a new crime, under which circumstances the "arresting county" is responsible for the incarceration "until the pending West Virginia charges have been

properly resolved.” The Authority may not expand the scope of a county’s obligations in such regard through the promulgation of an emergency legislative rule.

13. Eighth, Emergency Rule Title 94 ignores the existing statutory language for the assessment of surcharges. W. Va. Code § 31-20-10a(b)(2) provides, “If the actual operational costs exceed the approved schedule of operational expenditures by more than ten percent in a line item, the authority’s executive director shall add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures.” The Emergency Rule simply disregards this statute and new “two fiscal quarters” formula.
14. Finally, Emergency Rule Title 94 creates a new “Operational Reserve Fund,” which is not authorized by statute, into which the Authority may accumulate “an amount consistent with four months of anticipated operational expenditures.” In other words, the Authority, without any statutory provision, will be allowed to carry over, from year-to-year, as much as 25 percent of its total annual budget.
15. W. Va. Code § 29A-3-15a(a) provides, “Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the secretary of state, the secretary of state shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved.” Respectfully, these emergency rules, for the foregoing reasons, should be disapproved.
16. Alternatively, “If . . . the secretary of state concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.” W. Va. Code § 29A-3-15a(c).

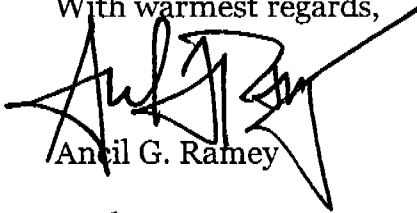
Obviously, these emergency rules are of grave concern to the Cabell County Commission and every county commission and county officer in the State. What the Authority has done is use Judge Pancake’s ruling as an opportunity to re-write the statute, under the guise of an “emergency” that does not exist, in a manner more satisfactory to the Authority. This,

The Honorable Betty Ireland
Emergency Rule Title 94
July 17, 2006
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respectfully, the Authority cannot do and the Cabell County Commission requests that you either (1) disapprove the rules or (2) make a further investigation including allowing other interested parties to submit additional information or comment and/or scheduling the matter for an evidentiary hearing.

Thank you for considering the Cabell County Commission's comments to these emergency rules. If I can be of any further assistance, please let me know.

With warmest regards,

A handwritten signature in black ink, appearing to read 'Ancil G. Ramey', with a long horizontal stroke extending to the right.

Ancil G. Ramey

Enclosure

cc: Hon. David M. Pancake, Judge (w/encl.)
Rules Comm., Regional Jail and Correctional Facility Authority (w/encl.)
Chad M. Cardinal, Esq. (w/encl.)
Gary E. Pullin, Esq. (w/encl.)
Jack C. McClung, Esq. (w/encl.)
William T. Watson, Esq. (w/encl.)
Stephen J. Zoeller, Administrator (w/encl.)

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

**STATE ex rel. West Virginia
Regional Jail and Correctional
Facility Authority,**

Petitioner,

v.

**CIVIL ACTION NO. 05-C-0590
Judge David M. Pancake**

**COUNTY COMMISSION OF CABELL
COUNTY, WEST VIRGINIA; BOB BAILEY,
as President; W. SCOTT BIAS, as
Commissioner; and NANCY CARTMILL,
as Commissioner,**

Respondents.

FINAL ORDER

On a former day, to-wit, April 20, 2006, came the parties, by their respective attorneys, for purposes of a hearing on cross-motions for summary judgment. Upon consideration of the motions, memoranda, and argument of counsel, the Court is of opinion to and doth hereby make the following findings of fact and conclusions of law:

Findings of Fact

1. The Court hereby adopts the stipulations of facts submitted by the parties, with the exceptions of clarifying that the Supreme Court of Appeals did not remand the case to this Court, but issued a rule in mandamus returnable to this Court, and that although the Cabell County jail was placed into receivership by the United States District Court for the Southern District of West Virginia in 1981, such placement was not opposed by the Cabell County Commission, and other public entities that opposed federal receivership of their jails throughout the country during this period were generally successful.

2. The Court finds that Jail Authority member Dan Huck participated and voted by telephone in a meeting conducted on February 10, 2004.

3. The Court has been presented with no evidence that the Jail Authority had adopted any rules or regulations permitting members to attend Jail Authority meetings by telephone.

4. The Court finds that Jail Authority member Tom Susman did not attend a meeting conducted on February 10, 2004, but voted by proxy.

5. The Court finds that the letter dated July 12, 2004, from John Poffenbarger, Acting Secretary of the Department of Administration, Mr. Susman's successor, appointing Donna Lipscomb, as his Jail Authority designee, is insufficient to establish Ms. Lipscomb's appointment by Mr. Susman five months earlier.

6. The Court finds that no evidence has been presented that Mr. Susman had officially appointed Ms. Lipscomb as his Jail Authority designee prior to the meeting of February 10, 2004.¹

7. The Court finds that Ms. Lipscomb voted "by proxy," as indicated in official Jail Authority minutes, which is contrary to the Jail Authority's own procedural rules.

8. The Court finds that the only voting members of the Jail Authority who attended the meeting of February 10, 2004, were Christy Morris and Glen Stotler as (i) Dan Huck participated by telephone; (ii) Tom Susman did not attend and voted by proxy; (iii) Willie Akers was absent; (iv) Tennis Hatfield was absent; and (vii) John Walden was absent.

¹The Jail Authority's request at the hearing to supplement the record with any such evidence was rejected as the time for discovery had closed, as the parties had agreed to proceed by stipulations, and it would have been unfair to the Commission to allow the record to be supplemented following the hearing and the filing of stipulations.

9. The Court finds that the two non-voting members, Manfred Holland and Jim Rubenstein, attended the meeting on February 10, 2004.

10. The Court finds that only two of the seven voting members of the Jail Authority were "present" at the meeting on February 10, 2004, and only four of the nine total members of the Jail Authority were "present" at the meeting on February 10, 2004.

11. The Court finds that W. Va. C.S.R. § 94-3-5 is a "procedural rule."

12. The Court finds that W. Va. C.S.R. § 94-3-5 has not been amended since 1995 and does not make reference to the Western Regional Jail.

Conclusions of Law

1. W. Va. Code § 31-20-1(b)(1) provides, "The purposes of this article are as follows: To provide a cost-efficient system within this state for the construction, maintenance and operation of adult jails and correctional facilities."

2. W. Va. Code § 31-20-3 provides, "The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the commissioner of the division of corrections; the director of the division of juvenile services; the secretary of the department of military affairs and public safety; the secretary of the department of administration, or his or her designated representative; three county officials appointed by the governor, no more than two of which may be of the same political party; and two citizens appointed by the governor to represent the areas of law and medicine. The commissioner of the division of corrections and the director of the division of juvenile services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority."

3. W. Va. Code § 31-20-4(b) provides, "A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present."

4. W. Va. C.S.R. § 94-1-8.1 provides, "A majority of the members of the Board shall constitute a quorum. The affirmative vote of a majority of all members present at any meeting shall be sufficient to approve any action. Proxy voting is hereby prohibited; duly qualified members of the Board, or their designee as provided by W. Va. Code § 31-20-3, are permitted to vote."

5. Any action taken by a public body in the absence of a quorum is void. *See, e.g. In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 303 S.E.2d 691 (1983)(lack of quorum rendered void action taken at meeting of county board of equalization and review).

6. The Court concludes that the Jail Authority lacked a quorum at its meeting on February 10, 2004; that the Jail Authority's action in increasing the per diem from \$45.00 to \$48.50 is void; and that the Jail Authority must reduce the amount allegedly owed by the Commission from and after July 1, 2004, by \$3.50 for every inmate day charged to the Commission.

7. Since 1998, W. Va. Code § 31-20-10(h) has provided, "When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code and as established in section ten-a of this article to cover the costs of operating the regional jail facilities of this state to maintain each inmate. The per diem costs for

incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities”

8. The term “legislative rule” is defined by W. Va. Code § 29A-1-2(d) as “every rule, as defined in subsection (i) of this section, proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the legislature.”

9. The term “procedural rule” is defined by W. Va. Code § 29-1-2(h) as “every rule, as defined in subsection (i) of this section, which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency.”

10. W. Va. C.S.R. § 94-3-5 provides:

5.1. 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 to yield the 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.

5.1.2. 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 bed capacity of the regional jails shall be defined as follows:

Eastern Regional Jail 120;
Central Regional Jail 192;
South Central Regional Jail 288;
Northern Regional Jail &
Correctional Facility 192; and,
Southern Regional Jail 288.

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 for which an inmate is maintained in a regional jail.

W. Va. C.S.R. § 94-3-5, however, was adopted as a "procedural rule," not a "legislative rule."

11. Where an administrative agency is directed to promulgate a "legislative rule," requiring approval by the Legislature in order to have the force and effect of law, but fails to follow the statutory procedures for promulgation of legislative rules, any rule promulgated in violation of the legislative directive is invalid. Syl. pt. 1, *Chico Dairy Co. Store No. 22 v. Human Rights Comm'n*, 181 W. Va. 238, 382 S.E.2d 75 (1989) ("The rule of the West Virginia Human Rights Commission, 6 W. Va. Code of State Rules § 77-1-2.7 (1982), defining a 'handicapped person,' for purposes of the West Virginia Human Rights Act, to include a person who does not in fact have a 'handicap,' as defined by W. Va. Code, 5-11-3(t), as amended, but who 'is regarded as having such a handicap,' is invalid. That rule is a 'legislative rule' under W. Va. Code, 29A-1-2(d), as amended, but was not submitted to the legislative rule-making review committee for its approval, as required by W. Va. Code, 29A-3-9 to 29A-3-14, as amended.").

12. The Court concludes that because W. Va. C.S.R. § 94-3-5 was adopted as a "procedural rule" in 1994 when W. Va. Code § 31-20-10(h) used the term "regulations," but was

never adopted as a "legislative rule" after W. Va. Code § 31-20-10(h) was amended in 1998 to require the adoption of "legislative rules," W. Va. C.S.R. § 94-3-5 is invalid.

13. W. Va. Code § 31-20-10a(a) provides, "This section applies to the regional jail and correctional facility authority, counties, municipalities, the division of corrections, the United States marshal service, the United States bureau of prisons and any other entity by whose authority inmates are incarcerated and maintained in facilities operated by the authority."

14. W. Va. Code § 31-20-10a(b)(1) provides, "The authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year."

15. W. Va. Code § 31-20-10a(b)(2) provides, "If the actual operational costs exceed the approved schedule of operational expenditures by more than ten percent in a line item, the authority's executive director shall add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures."

16. W. Va. Code § 31-20-10a(c) provides, "The county is responsible for costs incurred by the authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the commissioner of corrections."

17. The Court concludes that, pursuant to statute, a county is responsible only for the actual operational costs per inmate day at the regional jail for which charges are being assessed.

18. The Court concludes that the Jail Authority must reduce the amount allegedly owed by the Commission from and after July 1, 2004, to \$40.42, the amount stipulated by the parties to be the actual operational cost per inmate day for the Western Regional Jail for fiscal year 2005, for every inmate day charged to the Commission from and after July 1, 2004.

19. The Court concludes that if, after the entry of this Order, the "actual operational costs" per inmate day of the Western Regional Jail exceed \$40.42 by "more than ten percent," the Jail may "add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures" at the Western Regional Jail.²

20. W. Va. Code § 31-20-10(h) provides, "When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code and as established in section ten-a of this article to cover the costs of operating the regional jail facilities of this state to maintain each inmate."

21. W. Va. Code § 31-20-10(g) provides, "After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall

²The Court also notes that there is no evidence in the record that W. Va. C.S.R. § 94-3-5 was adopted following notice, public hearing, and comment. Series 5 of the Jail Authority's procedural rules was originally promulgated in 1994. W. Va. C.S.R. § 94-3-5 was originally adopted in 1994. The Jail Authority presented evidence of notice, public hearing, and comment in 1995, but the

incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.”

22. W. Va. Code § 31-20-10a(a) provides, “This section applies to the regional jail and correctional facility authority, counties, municipalities, the division of corrections, the United States marshal service, the United States bureau of prisons and any other entity by whose authority inmates are incarcerated and maintained in facilities operated by the authority.”

23. W. Va. Code § 31-20-10a(i) provides, “Any other entity or jurisdiction, unless otherwise stipulated in this section, is responsible for any and all costs associated with housing its inmates in a facility operated by the authority.”

24. W. Va. C.S.R. § 94-3-4 provides:

4.1. The Authority shall, on an annual basis, prepare an estimate of the cost of operating each regional jail 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.

4.2. The annual statement of 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 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.

25. The Commission argues that, reading these statutes and regulations in pari materia, counties should not be responsible for inmates who are incarcerated following arrests by municipal law enforcement authorities, but that municipalities should be responsible for those inmates. The Jail Authority argues that municipalities are responsible for inmates processed through municipal court, but that counties are responsible for inmates processed through magistrate court.

26. W. Va. Code § 31-20-10a(c) provides, "The county is responsible for costs incurred by the authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the commissioner of corrections."

27. The Court notes that efforts have been unsuccessful to amend the statute to place some financial responsibility on municipalities for the cost of incarcerating inmates in regional jails who were arrested by municipal law enforcement authorities, from which an inference can be drawn that proponents of such legislation believe the current statute does not place such responsibility on municipalities.

28. The Court concludes that Cabell County municipalities are not responsible for inmates incarcerated in regional jails where such inmates are incarcerated pursuant to an order of a circuit court or magistrate court, but that the Commission is responsible for the per diem cost of such inmates.

29. In Syllabus Point 1 of *State ex rel. Buxton v. O'Brien*, 97 W. Va. 343, 125 S.E. 154 (1924), the Court held, "Mandamus is a proper remedy to compel tribunals and officers exercising

discretionary and judicial powers to act, when they refuse so to do, in violation of their duty, but it is never employed to prescribe in what manner they shall act, or to correct errors they have made.”³

30. In *State ex rel. Canterbury v. County Court*, 151 W. Va. 1013, 158 S.E.2d 151 (1967), the County Clerk of Wayne County sued the Wayne County Court after it reduced the county clerk’s budget when it had incurred a substantial deficit at the close of the preceding fiscal year. Reversing a trial court’s ruling that the county commission was obliged to fund the county clerk’s office to allow its efficient operation, the Court held in Syllabus Point 2 that:

In the absence of arbitrary action on the part of a county court in the exercise of its discretion as to the sum to be allotted to the office of the county clerk for the compensation of deputies and assistants for the ensuing fiscal year, in accordance with the provisions of Code, 7-7-7, as amended, mandamus will not lie.

Thus, in the absence of arbitrary action, this Court lacks authority to order the Commission to exercise its budgetary powers in any particular manner.

31. In *State ex rel. Bd. of Educ. v. Rockefeller*, 167 W. Va. 72, 281 S.E.2d 131 (1981), the State of West Virginia was faced with a budget crisis. In order to address an impending deficit, the Governor ordered an across-the-board reduction in the State budget. The Governor’s action was challenged by a county board of education on the grounds that the cut would impede its ability to

³See also Syl. pt. 6, *State ex rel. Affiliated Const. Trades Foundation v. Vieweg*, 205 W. Va. 687, 520 S.E.2d 854 (1999); *State ex rel. State v. Gustke*, 205 W. Va. 72, 77 n.2, 516 S.E.2d 283, 288 n.2 (1999); Syl. pt. 8, *Nobles v. Duncil*, 202 W. Va. 523, 505 S.E.2d 442 (1998); Syl. pt. 2, *State ex rel. Billy Ray C. v. Skaff*, 191 W. Va. 178, 459 S.E.2d 921 (1995); Syl. pt. 4, *Paxton v. State Dept. of Tax and Revenue*, 192 W. Va. 213, 451 S.E.2d 779 (1994); Syl. pt. 3, *Anderson v. Richardson*, 191 W. Va. 488, 446 S.E.2d 710 (1994); Syl. pt. 3, *Thompson v. W. Va. Bd. of Osteopathy*, 191 W. Va. 15, 442 S.E.2d 712 (1994); Syl. pt. 6, *Lyons v. Richardson*, 189 W. Va. 157, 429 S.E.2d 44 (1993); *State ex rel. Coats v. Means*, 188 W. Va. 233, 235, 423 S.E.2d 636, 638 (1992); Syl., *Ney v. West Virginia Workers' Compensation Fund*, 186 W. Va. 180, 411 S.E.2d 699 (1991); Syl. pt. 2, *State ex rel Lambert v. Cortellessi*, 182 W. Va. 142, 386 S.E.2d 640 (1989).

perform its constitutional obligation to provide a "thorough and efficient" system of public education. The Supreme Court agreed, compelling the Governor to restore the expenditures reduced for public education, holding in Syllabus Points 1 and 2 that:

1. The provisions of Article XII, Section 1 et seq., as well as Article X, Section 5 of the West Virginia Constitution, when construed in the light of our prior cases, gives a constitutionally preferred status to public education in this State.

2. Because of public education's constitutionally preferred status in this State, expenditures for public education cannot be reduced under W. Va. Code, 5A-2-23, in the absence of a compelling factual record to demonstrate the necessity therefor.

Likewise, in the earlier case of *Chiles v. Bailey*, Civil Action No. 05-C-162, the Commission acknowledged the merits of the constitutional officers' arguments that the budget revisions ordered jeopardized their ability to perform their constitutional obligations.

32. This Court hereby reaffirms its final order in *Chiles v. Bailey*, Civil Action No. 05-C-162, wherein this Court concluded that under circumstances where a county has exhausted its constitutional and statutory revenue sources, but has insufficient funds to finance all of its constitutional, statutory, and contractual obligations, a county must first fully fund all of its constitutional obligations and, thereafter, if additional funds remain, fund so much of its statutory obligations as possible and, thereafter, if additional funds remain, fund so much of its contractual obligations as possible.

33. This Court also reaffirms its holding in *Chiles v. Bailey*, Civil Action No. 05-C-162, that this Court is without jurisdiction, under W. Va. Const. art. VI, § 1, to order the Respondent Commission to exercise its budgetary authority in any specific manner, but is authorized only to prevent it from exercising such budgetary authority in an unreasonable and arbitrary manner. *State*

ex rel. Lambert v. Cortellessi, 182 W. Va. 142, 386 S.E.2d 640 (1989); *Meador v. County Court*, 141 W. Va. 96, 87 S.E.2d 725 (1955); *State v. Tyler County Court*, 112 W. Va. 406, 164 S.E. 515 (1932); 20 C.J.S. Counties § 200 (2004) (“Courts are reluctant to interfere with the budgetary process, and the action of the county commissioners in fixing budgets may be reviewed only for abuse of discretion.”)(footnotes omitted)”

WHEREFORE, for the reasons herein set forth, the Court is of opinion to grant, in part, and deny, in part, the cross-motions for summary judgment; to order that the Commission is liable to the Jail Authority for per diem charges as adjusted in accordance to the foregoing findings of fact and conclusions of law; to order that each side is to bear its own costs; and to order that this case be dismissed from the Docket of this Court.


The objections and exceptions to this Final Order by the Petitioner and the Respondents are duly noted and the Clerk of this Court is hereby directed to provide a copy to all counsel of record upon its entry.

Entered this 15 th day of May, 2006.




Hon. David M. Pancake, Judge

Prepared by:



Ancil G. Ramey, Esq.
WV State Bar No. 3013
Counsel for Respondents

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON MAY 15 2006
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS MAY 15 2006
 CLERK
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

Gary E. Pullin by AGR

Gary E. Pullin, Esq.
WV State Bar No. 4528
Counsel for Petitioner

July 25, 2006

BY MAIL AND E-MAIL

The Honorable Betty Ireland
Secretary of State
Bldg. 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770
Email wvsos@wvsos.com

Re: Emergency Rule Title 94

Dear Secretary Ireland:

This is in response to the Jail Authority's letter dated July 25, 2006.

Nothing could articulate better the absence of an "emergency" as defined in the applicable statute than the Authority's letter:

[T]here is a real danger that counties will simply stop paying the Regional Jail Authority or, as Cabell County has, pay only such amount that the county decides in its discretion to pay.

Apparently, there has not been a single county which has stopped making its payments or has reduced its payments in light of Judge Pancake's order, which has been stayed, but only the Authority's unsubstantiated fear that such might occur. There has been not a single county which has filed suit seeking to reduce its payments in light of Judge Pancake's order, but only the Authority's unsubstantiated fear that such might occur.

W. Va. Code § 29A-3-15(f) provides, "For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest."

It was stipulated in the proceedings before Judge Pancake that (1) the Authority ended fiscal year 2005 with a reserve of \$12.3 million and (2) the Authority's revenues exceeded its expenses by over \$15.7 million in fiscal year 2005. [Ex. A].

There is no financial emergency at the Authority, which has operated at a profit for several years and accumulated enormous cash reserves. Even if every county stopped making payments to the Authority, it could continue to operate at the same level of service on its cash reserves for three to four months. The assertion of an "emergency" by the Authority

with over \$12 million in cash reserves based upon (1) what might, but has not occurred, and (2) a purported financial exigency, is preposterous.

Counties might stop paying the Authority and West Virginia might be hit with a tsunami, but neither unlikely future catastrophe satisfies the statutory definition of an "emergency," which justifies emergency rules "for the immediate preservation of public peace, health, safety or welfare" or "to prevent substantial harm to the public interest."

If counties stop paying or reduce their payments, and the Authority begins to exhaust its substantial cash reserves, an emergency might arguably exist, but not as circumstances currently exist. What has occurred is that the Authority is using the pretense of an emergency based upon an stayed order to rewrite the statute, but you will notice that the Authority makes no absolutely no effort to address the other problems discussed in my previous letter.

W. Va. Code § 29A-3-15(a)(1) provides, "The secretary of state, acting under the authority provided for in section fifteen-a of this article, or the attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section." [Emphasis supplied]. See also W. Va. Code § 29A-3-15a(b)(same).

As noted in my earlier letter, the Authority simply cannot amend a "procedural rule" into a "legislative rule." W. Va. Code § 29A-3-15(a)(1)(C). Nowhere in the Authority's letter is this issue addressed. Thus, the proposed emergency rules "was not promulgated in compliance with the provisions" of W. Va. Code § 29A-3-15(a)(1).

Moreover, nowhere in the Authority's letter does it address the nine separate ways the Authority's proposed emergency rules exceed "the scope of the law authorizing or directing the promulgation thereof."¹

¹See also Syl. pt. 4, *State ex rel. Callaghan v. Civil Service Comm'n*, 166 W. Va. 117, 273 S.E.2d 72 (1980) ("Procedures and rules properly promulgated by an administrative agency with authority to enforce a law will be upheld so long as they are reasonable and do not enlarge, amend or repeal substantive rights created by statute."); *Chico Dairy, supra* at 247, 382 S.E.2d at 84 ("the rule of the West Virginia Human Rights Commission, 6 W. Va. Code of State Rules § 77-1-2.7 (1982), defining a 'handicapped person' to include a person who does not in fact have a 'handicap,' as defined by W. Va. Code, 5-11-3(t), as amended, but who 'is regarded as having such a handicap,' is invalid because that rule clearly conflicts with the legislative intent by expressly enlarging upon the substantive rights created by the statute."); W. Va. Code § 29A-3-15(d) ("The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any

The Honorable Betty Ireland
Emergency Rule Title 94
July 25, 2006
Page 3

The Authority's silence on these issues, I submit, speaks volumes.

Thus, the Cabell County Commission requests that you either (1) disapprove the rules or (2) make a further investigation including allowing other interested parties to submit additional information or comment and/or scheduling the matter for an evidentiary hearing.

Thank you for considering the Cabell County Commission's comments to these emergency rules. If I can be of any further assistance, please let me know.

With warmest regards,

A handwritten signature in black ink, appearing to read "Ancil G. Ramey", written over a printed name.

Ancil G. Ramey

Enclosure

cc: Hon. David M. Pancake, Judge (w/encl.)
Rules Comm., Regional Jail and Correctional Facility Authority (w/encl.)
Chad M. Cardinal, Esq. (w/encl.)
Gary E. Pullin, Esq. (w/encl.)
Jack C. McClung, Esq. (w/encl.)
William T. Watson, Esq. (w/encl.)
Stephen J. Zoeller, Administrator (w/encl.)

emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.")(emphasis supplied).

3/30/06

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE ex rel. West Virginia
Regional Jail and Correctional
Facility Authority,

Petitioner,

v.

CIVIL ACTION NO. 05-C-0590
Judge David M. Pancake

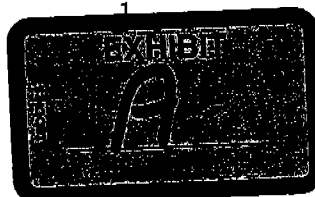
COUNTY COMMISSION OF CABELL
COUNTY, WEST VIRGINIA; BOB BAILEY,
as President; W. SCOTT BIAS, as Commissioner;
and NANCY CARTMILL, as Commissioner,

Respondents.

STIPULATIONS

COME NOW the parties, by their respective attorneys, to file with the Court the following stipulations:

1. The Petitioner is the West Virginia Regional Jail and Correctional Facility Authority. The Jail Authority was established pursuant to by W. Va. Code §§ 31-20-1 *et seq.* The Jail Authority is governed by a nine-member board with seven voting members and two non-voting members. The Authority Board, with the advice and consent of the Senate, appoints an Executive Director to act as the Authority's executive officer. W. Va. Code § 31-20-4. The Jail Authority is a body corporate and governmental instrumentality exercising the public powers of the State, and granted all powers necessary and appropriate to carry out the purposes of the enabling legislation. W. Va. Code § 31-20-5. These powers include the ability to sue, to be sued, and to make contracts. *Id.*
2. The individual Respondents are duly elected county officers. *See* W. Va. Const., art. IX, § 9.



3. A survey conducted in the summer of 1989 revealed that 65% of the county jails were more than sixty years old and nearly 23% were over 80 years old. More than 50% of the counties were operating under either the terms of a court order or were actively engaged in a court action. For example, in 1981, the Cabell County jail was placed into receivership by the United States District Court for the Southern District of West Virginia.

4. In 1982, under the auspices of the Governor's Committee on Crime, Delinquency, and Corrections, a special study called for the establishment of a regional jail system to address the problems associated with the operation of individual county jails. In 1985, the Legislature created the West Virginia Regional Jail and Prison Authority (now West Virginia Regional Jail and Correctional Facility Authority) to provide a mechanism by which the problems of both prisons and jails could be addressed. The Act placed priority upon the development of regional jails. The Legislature set out to provide a cost-efficient system for the construction, maintenance, and operation of adult jails and correctional facilities. W. Va. Code §§ 31-20-1 *et seq.*

5. Construction costs for the West Virginia Regional Jail system are borne through the issuance of bonds, paid primarily by fees related to convictions for criminal violations. W. Va. Code §§ 7-5-15, § 8-11-1.

6. Operational costs for the West Virginia Regional Jails are borne by the entities housing inmates in the West Virginia regional jails facilities. W. Va. Code §§ 31-20-10 and 31-20-10a; W. Va. C.S.R. §§ 94-3-1 *et seq.*

7. The cost per day to house inmates, known as the "per diem," is set pursuant to W. Va. Code § 31-20-10(h) and regulations promulgated pursuant to this statute.

8. The per diem for the first West Virginia Regional Jail, which opened in 1990, was \$49.67. By July 1, 2004, the per diem for the Regional Jail system was \$45.00. On February 10, 2004 the Authority Board voted to raise the per diem to \$48.50. The Western Regional Jail opened on December 13, 2003

9. On June 15, 2005, the Jail Authority filed a petition for writ of mandamus in the Supreme Court of Appeals. The petition for writ of mandamus states: "Cabell County is currently in default by \$1,544,670.50 in paying for inmates incarcerated by the Circuit and Magistrate Courts which sit in Cabell County." Petition at 1. On June 16, 2005, however, the Commission approved payment to the Jail Authority in the amount of \$526,752.00, which was paid prior to the end of fiscal year 2005. During the pendency of this action, the Commission has made additional payments on fiscal year 2005 invoices and the current amount of unpaid invoices for fiscal year 2005 is \$457,355.00.

10. As of February 16, 2006, the Commission owed the Jail Authority a total of \$1,663,404.00, which includes amounts invoiced during fiscal year 2006. The Commission does not dispute this amount, but asserts a number of legal defenses.

11. On June 28, 2005, the Respondents filed their response with the Supreme Court of Appeals.

12. On July 5, 2005, the Court entered an order providing that "a rule show be awarded herein. It is therefore considered and ordered that a rule do issue returnable before the Circuit of Cabell County, for random assignment to a circuit judge by the circuit clerk, for such further proceedings as necessary to determine the issues presented."

13. Pursuant to the Court's order, the undersigned was assigned to preside over this matter for purposes of "such further proceedings as necessary to determine the issues presented."

14. Prior to the commencement of the fiscal year 2005, the Commission approved budgets for each of its constitutional officers based upon projected revenues, projected expenses, and continued discussions with the Jail Authority over the per diem charges being assessed.

15. Each of the constitutional officers relied upon the Commission's budget in budgeting and staffing their offices to perform their constitutional and statutory duties.

16. After discussions between the Commission and the Jail Authority were unsuccessful, the Commission directed its County Manager, Glenn A. White, to calculate the projected budget deficit if the Commission were to pay all of the anticipated charges by the Authority for the remainder of the fiscal year.

17. In the fiscal year 2003-2004, Cabell County Commission budgeted \$1,635,839.00 for jail costs. The first five months of that fiscal year, Cabell County also budgeted and operated its old county jail. In fiscal year 2004-2005 the Cabell County Commission budgeted \$1,089,322.00 for Jail costs.

18. On February 23, 2005, Mr. White reported to the Commission, indicating that the budget line item for the Jail Authority had been exhausted and that an additional \$1,651,469.00 would be needed, by June 30, 2005, to pay the West Virginia Regional Jail and Correctional Facility Authority. Mr. White identified \$4,413,698.00 in budget line items that for various reasons, including grant limitations, special funds created by statute, and \$1,776,826.00 already paid and/or owed to the Jail Authority, that were not eligible for reduction. Mr. White also identified \$1,000,000.00 in reserves needed at the end of June 30, 2005, in order to maintain sufficient cash flow for the County to meet payroll and pay its bills in July and August, 2005, before the County would begin receiving tax revenues for fiscal year 2005/2006.

19. Based upon Mr. White's analysis of the County's expected revenues, expenses, and legal obligations, he calculated a projected budget deficit of \$2,444,007.00 by the end of June 30, 2005. In order to balance the County's budget and leave the County with a sufficient cash balance in order to meet its obligations at the beginning of the 2005/2006 fiscal year, Mr. White calculated that a reduction of 22.10 percent of \$11,057,095.00 in line items was necessary.

20. With respect to the County's ability to generate additional revenue, W. Va. Const. X, § 7 provides, "County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation, except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three fifths of all the votes cast for and against it," and W. Va. Code § 7-3-13 provides, "Notwithstanding the provisions of general law, any county court authorized by this act to issue bonds, may become indebted for the purposes in this act authorized, to any amount, including all other indebtedness, up to but not exceeding five percent of the value of the taxable property in such county as shown by the last assessment thereof for State and county purposes next prior to the authorization of such bonds, subject to the levy limitations as provided in the Constitution. For the purpose of effectuating the provisions and purposes of this act and for the purpose of obtaining revenue to pay said bonds and their interest, or for the purpose of redeeming said bonds in whole or in part, such court may and is authorized to increase the levies on each class of property not to exceed fifty percent of the rates authorized by section ten, article eight, chapter sixty-seven, acts of the legislature, second extraordinary session, one thousand nine hundred thirty-three, not to exceed

five years, and may submit to the voters of the county the question of authorizing such increase, not to exceed five years, at the same time and as a part of the scheme to issue said bonds and provide for the payment thereof. Such increase of levies shall not continue for more than three years without submission to the voters, but the question of future levy increases for such purposes may be again submitted to the voters." Applying these and other limitations imposed by law, Mr. White calculated the uncommitted excess levy rate potential for fiscal year 2004-2005 at only \$250,095.00, which would only be a fraction of the revenue necessary to address a projected budget deficit of \$2,444,007.00. The Commission has no additional levying authority nor any means of raising additional revenue with the exception of selling county property.

21. On March 2, 2005, a special session of the Commission was conducted at which time it considered the foregoing budget projections, the County's approximately \$750,000.00 current obligation to the Jail Authority, the County's projected obligation of \$1,651,469.00 to the Jail Authority, the absence of alternative revenue source, and the effect of budget revisions on the ability of its county officials to perform their constitutional and statutory obligations.

22. At this special session, the Commissioners unanimously approved a resolution providing for a revision to the County's budget, which would effectuate a 22.10 percent reduction in the following line items: Commission, County Clerk, Circuit Clerk, Sheriff, Prosecuting Attorney, and Assessor. The total amount of budget reductions in these county offices would be \$1,588,640.00, which would still be inadequate to pay the County's anticipated obligation to the Jail Authority.

23. Therefore, in addition to the reduction in the line items for the Commission and its county officials, the Commission approved budget reductions for other line items of the budget and a line item for the cash reserves needed to pay the County's current obligations at the

beginning of fiscal year 2006. The amount of these reductions included: a reduction in the Medical Insurance Fund from \$1,840,418.00 to \$1,433,686.00; a reduction in funding for the courthouse facility from \$740,262.00 to \$576,664.00; a reduction in funding for other county buildings from \$110,230.00 to \$85,869.00; a reduction in funding for data processing from \$185,956.00 to \$144,860.00; a reduction in funding of the home confinement program from \$461,030.00 to \$363,562.00; a reduction in funding for the communications center from \$10,200.00 to \$7,946.00; a reduction in funding for the central garage from \$97,211.00 to \$75,727.00; and a reduction in funding for mental health from \$29,667.00 to \$23,111.00. The total amount of budget reductions was \$2,444,007.00, of which 1,651,469.00 would be allocated to pay the Authority by end of the fiscal year the amount projected to be due and owing at that time.

24. Because the budget reductions in fiscal year 2005 could not reasonably be implemented until the last quarter of the fiscal year, the effective budget reduction would have been 88.40% for the remainder of the fiscal year, which would not have been sufficient to pay the salaries of any the county officials' employees or assistants for the remainder of the fiscal year.

25. After the Commission voted to reduce its budget in order to pay its regional jail bills, its county officials filed suit in the Circuit Court of Cabell County. Ultimately, an order was entered by the Court on March 23, 2005, directing the Commission to restore the cuts.

26. Following entry of this order, the Commission restored the budget cuts and on May 25, 2005, its representatives met with Mr. Canterbury regarding the financial inability of the Commission to meet all of its obligations to the Jail Authority by the end of the fiscal year. The

Commission's representatives, however, informed Mr. Canterbury that the Commission intended to make a payment in the range of \$500,000 before the end of the fiscal year.

27. On June 16, 2005, the Commission approved a payment in the amount of \$526,752.00, to the Authority. On June 15, 2005, however, the date prior to the Commission's scheduled meeting, Mr. Canterbury filed a writ of mandamus in the Supreme Court of Appeals, which issued a rule to show cause returnable to this Court.

28. Upon remand, this Court entered an order allowing the parties to engage in discovery, which included written discovery and a Rule 30(b)(7) deposition of the Jail Authority's representative.

29. The Commission is legally obligated to pay the Jail Authority and is subject to suit for non-payment:

6.1. The Authority shall prepare a monthly statement of charges for each entity for which an inmate is maintained in a regional jail. Each monthly statement charges will include the name of 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 statements of cost incurred shall be due and payable upon receipt by the responsible entity.

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.

W. Va. C.S.R. §§ 94-3.6.1-3.

30. If the Commission fails to pay the Jail Authority the amounts billed by the end of a fiscal year, the amount is simply carried over to the next fiscal year. W. Va. C.S.R. § 94-3-9.1.2 ("At the end of each fiscal year, a settlement statement may be prepared by the Authority 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.”)

31. With respect to the methodology for calculating the per diem, the Jail Authority’s representative testified that the W. Va. C.S.R. § 94-3-1-1 requires the Jail Authority to develop an operational cost per day for inmates incarcerated in regional jails:

Q If you'd turn to the first page of this particular exhibit, 94-3-1.1, it says, "West Virginia Code 31-20-10, Subsection h, requires the West Virginia Regional Jail and Correctional Facility Authority. You would agree that that's what that particular Code requires, would you not?

A Yes. I think it goes on later in the Code to tell you how to arrive at that, but yes.

Q Okay. And it goes on to say, "the Authority is required to develop criteria and procedures for the development of these operational per diem costs," criteria and costs -- Oh, "through the mechanism of regulations pursuant to West Virginia Code 29A-3." Is that correct?

A That's what it says, yes.

Q And then it says, "Counties are required by the statute to make payments to the Regional Jail and Correctional Facility Development Fund in an amount sufficient to cover the costs of operating such Regional Jail facilities and to maintain inmates incarcerated therein." And is that the purpose of calculating the per diem, so that those who are charged are paying the actual cost per diem of providing services to inmates in those facilities?

A The purpose would be to, pursuant to the Section 5 of this, of the cost that would relate to that formula, yes.

Id. at 17-19.

32 The representative acknowledged that the Authority’s own regulations reference “cost per inmate day.”

Q Okay. If you'll turn to Code of State Regulations, Section 94-3-4.

A (Witness complies).

Q The title of this is "Annual Statement of Cost per Inmate Day." What -- What is that?

A A cost per inmate day based upon the -- The next section over you can calculate the cost of inmates and basically that's what that's about. I mean, I don't -- I don't think I quite understand your question.

Q Is this the per diem?

A Yeah, I would have to say that would be that.

Q And so the per diem is the cost of maintaining one inmate for one day. Is that correct?

A Yes.

Q Okay. And it also says in Subsection 4.3 there, "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." So if the Cabell County Commission or the City of Huntington or the Beckley Work Release Center wants to know what the per diem is, they can contact the Authority and be provided that annual statement. Is that correct?

A Yes.

Q And the per diem is calculated on an annual basis. Correct?

A I believe that it is reviewed annually, yes.

Id. at 20-21.

33.. The Authority's representative testified that the "per diem" is the actual and anticipated cost per day for each regional jail inmate:

Q Okay. Now, if you'll turn to Section 94-3-5.

A (Witness complies).

Q "Calculation of Cost Per Inmate Day." Is this the, what you meant to refer to in your discovery responses as the method by which the per diem is calculated?

A Yes, I believe that's correct. Right, Chad?

MR. CARDINAL: (Indicating).

THE WITNESS: Okay.

BY MR. RAMEY:

Q Okay. It says, "The Authority shall sum the operational costs of each Regional Jail and shall divide the total of such anticipated operational" expenses "by the total anticipated number of inmate days in each of the Regional Jails to yield the cost per inmate day as the quotient." Is that the basic formula that's used?

A Yes.

Q So you calculate the -- For example, an FY '06 for the Western Regional Jail, you would estimate what you anticipate your operating costs would be. Is that correct?

A Based on previous years' expenditures, yes, sir.

Id. at 23-24.

34. The Authority's representative conceded, however, that the Authority calculates the per diem using the formula outlined in W. Va. C.S.R. § 94-3-5.

Q And then you would divide that by the total number of anticipated inmate days for FY '06. Would that be correct?

A For that facility, but I believe that would be calculated by a 90 percent occupancy.

Q Well, where does it say in 5.1 that you do that? I mean, doesn't it say in there that you don't do that? What it says in there is you take the total anticipated operating expenditures and you divide it by the anticipated number of inmate days. Do you not use as the denominator for that calculation the total number of anticipated inmate days based upon the experience for FY '05 at the Western Regional Jail?

A No, they would use 4, or 5.1.2. They would -- And in this case, since it wasn't open longer than two years as of yet, it would be at 90 percent occupancy.

Id. at 24-25.

35. The Rule does not calculate the per diem by the actual number of inmate days, but by the bed capacity in each regional jail:

Q How about the Central Regional Jail? It lists in the regulation the bed capacity at 192. Is that accurate?

A The bed capacity, 192, plus 25. That was one of the jails that had some partial double bunking in it.

Q So for the Central Regional Jail, in calculating the per diem, you would use additional jails, based on double bunking. Is that correct?

A I do not believe that's what the Accounting Department did, no. I believe they used the 90 and 100 percent occupancy, based upon original design capacity.

* * *

Q Do you know -- Do you know how many -- How many inmates today, just a guesstimate, in the Central Regional Jail?

A Okay. I looked at the numbers yesterday because I was moving some inmates around. . . . I'm thinking they are around 230, 240

Q So just so I understand, in calculating the per diem for the Central Regional Jail, you would use not 230 to 240. Is that correct?

A No, we'd use the 192, as articulated there.

Q And you would also not use the 222, which would be the actual number of beds in the facility. Is that correct?

A Understanding the Accounting Department uses the original design capacity.

Q Okay. Well, doesn't that inflate what the calculated per diem is?

A I couldn't answer that.

Q Doesn't it -- Doesn't it yield a higher number?

A It would be a larger number, yes, obviously.

Id. at 30-32.

36. The per diem charged for the Western Regional Jail in fiscal year 2005 was \$48.50. Using the formula outlined in W. Va. C.S.R. 94-3-1, by dividing the actual operating expenses for the Western Regional Jail by bed capacity, the operating cost per bed capacity day

in fiscal year 2005 was \$55.22. Dividing the actual operating expenses for the Western Regional Jail by the actual number of inmate days, the operating cost per inmate day in fiscal year 2005 was \$40.42.

37. The formula found in W.Va. C. S. R. 94-3-1 explains how the Jail Authority is able to operate the regional jail system even though several entities are not current in their payments. Indeed, as of September 30, 2005, according to the Jail Authority's own figures, it had received \$6,863,186.50 in revenues for the Western Regional Jail against \$6,965,603.94 in accounts receivable, for a deficit of \$102,417.44, for operation of the Western Regional Jail.¹

38. The Jail Authority invoiced \$8,359,929.00 for the Western Regional Jail in fiscal year 2005. If all those invoices had been paid, it would have had excess funds of \$1,394,325.06.

39. The Jail Authority currently maintains a reserve:

Q Does the Authority have a contingency fund?

A No. Not exactly. We have what you may call a contingency fund. It's just money not spent, and it carries over from month to month.

Q Now, is the money -- Is there money carried over from year to year?

A Yes, it could be, at the end of the Fiscal Year.

* * *

Q What is it now? Do you have any idea?

A About 12. About 90 days operating capital.

Q About 12,000?

A No, about 12 million.

Q 12 million?

¹ These figures do not reflect the central operational expenses such as; legal, fiscal, internal affairs, human resources, accounting, fleet management, programs coordinating, information technology.

A Uh huh.

Q So the Authority right now has \$12 million, shall we say, in the bank to pay--

A Well, that's my guess. You would have to check.

Id. at 127. The Jail Authority ended fiscal year 2005 with a reserve of \$12.3 million. The Jail Authority's revenues exceeded its income by over \$15.7 million in fiscal year 2005.

40. Under W. Va. Code § 31-20-10 (h), the cost for housing inmates is established in W.

Va. C.S.R. § 94-3-5, which states in pertinent part:

5.1. 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 to yield the 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.

5.1.2. 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 bed capacity of the regional jails shall be defined as follows:

Eastern Regional Jail 120;
Central Regional Jail 192;
South Central Regional Jail 288;
Northern Regional Jail & Correctional Facility 192; and
Southern Regional Jail 288.

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.

Using this formula, the Jail Authority calculates that the actual per diem rate for the Regional Jail system should be \$59.55. The Jail Authority, however, has maintained the per diem rate at \$48.50.

41. The most recent increase in the per diem was adopted at a meeting of the Authority on February 10, 2004. The minutes of the Authority's meeting reflects the following:

Chairman Huck inquired if there was any other discussion for or against the Executive Director's recommendation for the per diem increase. None was heard. The Chairman asked for any objection to move on to a vote. Hearing no objections, he asked for a roll call vote of voting members. Hearing no objections to the roll call vote, Secretary Rubenstein called the role for a vote:

Willie Akers	absent
Tom Susman by proxy	"aye"
Tennis Hatfield	absent
Manfred Holland	non-voting
Dan Huck	"aye"
Christy Morris	"aye"
Jim Rubenstein	non-voting
Glen Stotler	"no"
John Walden	absent

The seven voting members of the Authority were Mr. Akers, Mr. Susman (or designated representative), Mr. Hatfield, Mr. Huck, Ms. Morris, Mr. Stotler, and Mr. Walden. Mr. Huck, according to the minutes, participated "via conference call."

42. W. Va. Code § 30-20-3, provides in pertinent part: "The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the commissioner of the division of corrections; the director of the division of juvenile services; the secretary of the department of military affairs and public safety; the secretary of the department of administration, or his or her designated representative; three county officials appointed by the governor, no more than two of which may be of the same political party; and two citizens

appointed by the governor to represent the areas of law and medicine. The commissioner of the division of corrections and the director of the division of juvenile services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board."

43. W. Va. Code § 31-20-4(a) provides, "The governing body of the authority shall consist of the voting members of the board as provided for in section three of this article and shall exercise all the powers given to the authority in this article." W. Va. Code § 31-20-4(b) provides, "A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present." W. Va. CSR § 94-1-8, provides, "A majority of the members of the Board shall constitute a quorum. The affirmative vote of a majority of all members present at any meeting shall be sufficient to approve any action. Proxy voting is hereby prohibited; duly qualified members of the Board, or their designee as provided by W. Va. Code § 31-20-3, are permitted to vote."

44. With respect to the meeting at which the per diem was increased from \$45.00 to \$48.50, the Jail Authority's representative testified as follows:

Q So in fact, there wasn't a quorum as provided in these regulations, was there?

A As provided in what 8 says, it doesn't appear that way.

Q And the vote by proxy was, was also not proper as of the regulations. Isn't that correct?

A Well, I'm speculating a little bit, but I can't say I can't go wrong with that theory.

Id. at 172.

45. Presently, the Jail Authority charges the Commission the cost of inmates housed in the Western Regional Jail even if those inmates are arrested under the authority of the Cabell County municipalities of Huntington, Barboursville, and Milton. Indeed, the majority of inmates incarcerated in the Western Regional Jail are arrested by these municipalities, not by other law enforcement authorities.

46. Moreover, although its interpretation of its statutory obligations differs from the Commission, the Jail Authority's representative testified as follows:

Q Well, you -- Would you not agree with me that when a municipality doesn't have to pay the per diem charges for the persons arrested and incarcerated at a Regional Jail, they have -- They don't have the same incentive as a County Commission does to reduce the number of prisoners being incarcerated?

A If you're talking about the ones that are the municipal commitments, the municipal officers bring through the Magistrate or Circuit Court?

Q Correct.

A I have heard that stipulated by quite a few people across the state. In fact, the Regional Jail Authority, although we don't take that as our mission now, but under previous administration the Regional Jail Authority -- The way I characterized that might get me in trouble, mightn't it?

But anyway, the Regional Jail Authority sponsored legislation about what, and Mr. Canterbury coined the phrase, "equanimity in billing," but the Code was never changed. So we, as the Authority, never had an issue, if the Code was changed, to allow municipalities to pay. The point is, the Code hasn't been changed.

Q Right. And so you don't dispute the fact, and we are only talking theoretically here, that if municipalities had to pay for all prisoners arrested, no matter whether they were booked on city charges or state charges, that the number of inmates would likely go down.

A Well, that's a bit speculative, but I will agree with you that it would seem to make sense that if the municipal officers had the same sense of fiscal issues that the county officers would, then that should make a difference.

Now, whether that would cause the population to go down dramatically? I don't know that, but I would think that the theory would be sound, that that should give

them some incentive, and if nothing else, at least their leaders in those cities, some incentives to instill upon them being careful about who they bring and who they don't.

Id. at 99-101. Thus, the Jail Authority did not disagree, in the past, that municipalities *could be made to* pay for inmates arrested by municipalities; indeed, Jail the Authority had officially advocated that position. Rather, its interpretation of the current statute is different from the Commission's.

47. In any event, the Jail Authority does not charge the Commission the costs of inmates housed in the Western Regional Jail when those inmates are committed under the authority municipal courts.

48. The Jail Authority bills the cost of housing inmates by the committing jurisdictions, not arresting agencies. Inmates committed to the custody of Division of Corrections are billed to the Division of Corrections. Inmates committed by federal authorities are billed to the federal authorities. Inmates committed by circuit courts and magistrate courts are billed to counties where those courts sit. Inmates committed by municipal courts are billed to the municipalities where those courts sit.

49. W. Va. Code § 31-20-10(h) provides: “[w]hen inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine – a of this code and as established in section ten-a of this article to cover the costs of operating the regional jail facilities of this state to maintain each inmate. The per diem costs for incarcerations inmates may not include the cost of construction, acquisition or renovation of the

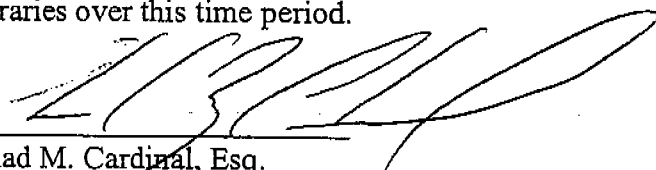
regional jail facilities . . .” See also W. Va. C.S.R. § 94-3-7.1 (“The county shall be responsible for costs occurred by regional jails for housing and maintaining inmates in regional jails who have not been lawfully sentenced to the custody of the Commissioner of Corrections.”), W. Va. CSR § 94-3-5.2 (“ The Authority shall collect the cost per inmate day from each entity for which an inmate is maintained in a regional jail.”)

50. In the past, bills have not been enacted by the Legislature which would have placed the responsibility for per diem payments on entities other than the counties. See, e.g., House Bill No. 3348 (2005); Senate Bill No. 432 (2004); House Bill No. 3127 (2004); Senate Bill No. 598 (2003); House Bill No. 3127 (2003).

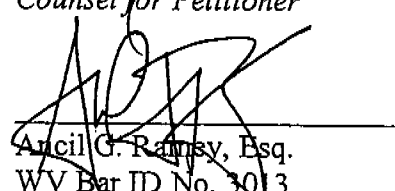
51. A review of the Cabell County’s tax revenues indicates that the revenues have increased over the period of fiscal year 1998 to fiscal year 2005, although not keeping pace with inflation. Assessed valuations for tax purposes increased from \$2.173 billion in fiscal year 2000 to \$2.491 billion in fiscal year 2006.

52. The county’s jail budgets from fiscal year 1998 to fiscal year 2003 increased from \$1.7 million to \$2.1 million. This was prior to the regional jail being opened in Cabell County.

53. There was no decrease in the amounts budgeted by the Commission for parks or libraries over this time period.



Chad M. Cardinal, Esq.
WV Bar ID No. 6016
Counsel for Petitioner



Ancil G. Ramsey, Esq.
WV Bar ID No. 3013
Counsel for Respondents

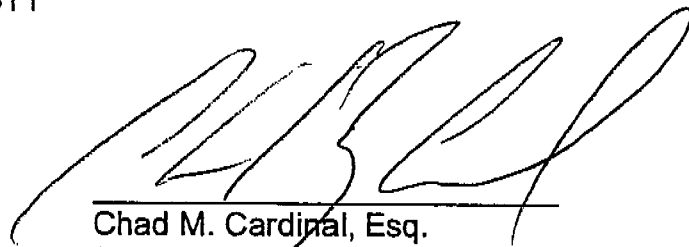
CERTIFICATE OF SERVICE

I, Chad M. Cardinal, do hereby certify that the foregoing "*Stipulations*" was served upon the following by depositing a true and exact copy thereof in the United States mail, first class, postage prepaid, this 30th day of March, 2006 as follows:

To: Ancil G. Ramey, Esq.
Hannah B. Curry, Esq.
P.O. Box 1588
Charleston, WV 25326-1588

William T. Watson, Esq.
P.O. Box 137
Huntington, WV 25715-0137

Jack C. McClung, Esq.
2211 Washington Street, East
Charleston, WV 25311



Chad M. Cardinal, Esq.
(State Bar ID: 6016)
West Virginia Regional Jail
and Correctional Facility
Authority
1325 Virginia Street, East
Charleston, WV 25301
(304) 558-2110

Lewis County Commission

Commissioners:

Robert J. Conley, President
Samuel U. Hicks
Robert A. Rinehart

P.O. Box 466
Weston, WV 26452

County Administrators:
Shella K. Lewis
Phyllis L. Corathers

(304) 269-8200
Fax (304) 269-2416
TDD 911/269-8241

July 25, 2006

West Virginia Regional Jail and Correctional Facility Authority
Attn: Rule Committee
1325 Virginia Street, East
Charleston, WV 25301

Re: Emergency Rule Title 94

Dear Committee Members:

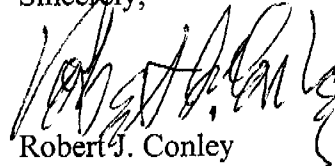
Please accept this correspondence from the Lewis County Commission opposing the approval of Emergency Rule Title 94. This rule will have a negative effect and will add to the financial burden of our county. This Commission opposes the past per diem rate increase of \$3.50 in view of the Regional Jail Authority's Reserve Fund having an excess of twelve million dollars that should have been used to offset any per diem increase. With such a Reserve Fund, we do not believe that the Regional Jail System has a funding crisis and certainly not be in an "emergency" situation.

The West Virginia Code §29A-3-15a provides a solution to this problem and will provide relief for counties as the Secretary of State, through this code section, can disapprove Emergency Rule Title 94 and any amendment to that rule.

We, the Lewis County Commission, through this comment, is urging the disapproval of the above mentioned rule and any amendment to the emergency rule and questions if the Regional Jail Authority has the legal ability to even file emergency rules.

Therefore, we respectfully urge the Secretary of State, the Honorable Betty Ireland, to consider our comments and act in accordance with the West Virginia Code by disapproving Emergency Rule Title 94.

Sincerely,



Robert J. Conley
President

RJC/skl

OFFICE OF THE
PROSECUTING ATTORNEY
GRANT COUNTY
P.O. BOX 515
PETERSBURG, WEST VIRGINIA 26847
TELEPHONE 304-257-2323



DENNIS V. DiBENEDETTO
PROSECUTING ATTORNEY

July 26, 2006

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

Re: Emergency Rule Title 94
Regional Jail and Correctional
Facility Authority

Dear Secretary Ireland:

At a meeting of the Grant County Commission held on July 25, 2006, the Commission unanimously voted and authorized me to file this objection to approval of the above listed Emergency Rule. The Commissioners have reviewed the objections filed on behalf of the Cabell County Commission and the West Virginia Association of Counties. The Commission fully concurs with the positions and points of law relied upon in those objections.

The Commission is greatly concerned by the Regional Jail Authority's attempt to circumvent the law and by illegal and improper action foist upon the Counties rules, regulations and excessive financial burdens not specifically authorized by the Legislature. Therefore, the Commission would request that you not approve said Emergency Rule and prevent this attempt to bypass proper legislative debate and action on the issues raised.

Yours truly,

A handwritten signature in black ink that reads "Dennis V. DiBenedetto".

Dennis V. DiBenedetto

cc: Wyetta Fredericks, Executive Director
Chad M. Cardinal, Esq.
Ancil G. Ramey, Esq.
Jack C. McClung, Esq.
Grant County Commission

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336



Telephone (304) 357-0101
Fax (304) 357-0788

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

July 25, 2006

Via Facsimile 304.558.0900
and Regular United States Mail
The Honorable Betty S. Ireland
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Re: Emergency Rule Title 94

FILED
2006 JUL 25 P 2:12
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Dear Secretary Ireland:

At their meeting on July 20, 2006, the County Commission of Kanawha County, West Virginia, ("Kanawha County Commission") agreed to object to the approval of Emergency Rule Title 94 filed in your office on June 28, 2006. The Kanawha County Commission fully supports and agrees with the objections of the County Commission of Cabell County, West Virginia ("Cabell County Commission").

Just about all counties in the state have been laden with the increased per diem jail costs, which ultimately impacts providing basic services, like water and sewer, to the citizens of their respective counties. Kanawha County has met similar issues in budgeting for the jail costs and funding alternative solutions to the jail, with the agreement of the judicial system.

The Regional Jail Authority has failed to show that there is an emergency in which the rule must be created. West Virginia Code § 29A-3-15a provides that the Secretary of State shall disapprove an emergency rule if an emergency does not exist. West Virginia Code § 31-20-10a(b)(2) already provides "If the actual operational costs exceed the approved schedule of operational expenditures by more than ten percent in a line item, the authority's executive director shall add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures." Therefore, the Legislature has already provided a method in the case of a funding crisis, which would not require the creation of this emergency rule.



**Via Facsimile 304.558.0900
and Regular United States Mail**
The Honorable Betty S. Ireland
Emergency Rule Title 94
July 25, 2006
Page 2

For various other reasons, which are well documented in the objections of the Cabell County Commission, dated July 18, 2006, this rule blatantly disregards W. Va. Code § 31-20-10a(a), et. seq., by including various items within the per diem cost that were previously prohibited by statute (i.e. renovation and indirect expenses).

The Regional Jail Authority has blatantly attempted to re-write the statute under which it exists, to the severe detriment of the counties in West Virginia. An "emergency" rule cannot be used for this purpose and any such change should be left to our Legislature during its regular sessions.

For all of the reasons above, as well as those provided in Cabell County Commission's objections, the Kanawha County Commission respectfully requests that you disapprove Emergency Rule Title 94.

The Kanawha County Commission appreciates your consideration in this matter.

Sincerely,


W. Kent Carper
President

cc: Henry C. "Hoppy" Shores, Commissioner
Dave Hardy, Commissioner
Marc Slotnick, County Attorney
Brent Pauley, County Manager
Ancil Ramey, Esquire



DEPUTIES:

MACEL AUVIL
PAM FOSTER
LESA COONTZ
DEBRA KITTLE

COUNTY ADMINISTRATOR:

CHARLES W. FOLEY
PHONE 304-457-4339
FAX 304-457-5472
E-MAIL: barbour@bcnetmail.org

County Commission of Barbour County

DEBRA H. TALBOTT
8 NORTH MAIN ST.
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TDD 911

COUNTY COMMISSIONERS:

TIMOTHY L. McDANIEL
PRESIDENT
ROUTE 2, BOX 71E
PHILIPPI, WV 26416

STEVEN H. SINSEL
ROUTE 1, BOX 48G
PHILIPPI, WV 26416

PHIL HART
RR03, 212 SERPELL AVE.
BELINGTON, WV 26250

July 21, 2006

Betty Ireland - Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd, East
Charleston, WV 25305

Re: Comment on Regional Jail Authority Emergency Rule Title 94

Dear Secretary

The Barbour County Commission believes that Emergency Rule Title 94 should be denied based on the Cabell County Commission claims and the Courts findings in the case with the Regional Jail Authority.

Emergency rule 94 disregards, defies and contradicts existing statute.

The Commission believes the issues involved should be scrutinized and the intent of the Legislature be observed.

Respectfully submitted,

Philip Hart
Philip Hart, President
Barbour County Commission

cc

Mary Poling - Delegate
Sarah Minear - Senator
Jon Hunter - Senator

FILED
2006 JUL 24 A 11:06
OFFICE WEST VIRGINIA
SECRETARY OF STATE



July 25, 2006

WV Regional Jail & Correctional Facility Authority
1325 Virginia Street, East
Charleston, WV 25301
Att: Rules Committee

Re: Rule 94-CSR-3

To the Rules Committee:

The WV Municipal League received a copy of your rules through one of our members, have reviewed the same and offer our comments accordingly. While we understand the necessity to change from procedural to legislative rule, there are certain areas that have been written causing some concern.

We realize the state cannot pass laws governing the federal level, but equitable cost allocation is and should remain intact. Clarification should be added in 2.1.1 that the agency not be allowed to contract to offer more favorable terms with the Federal Government than with other entities listed subject to the rules.

Section 3.1 makes changes to the authorized expenditures to add direct and indirect costs, medical, maintenance and technology, as well as a newly authorized operational reserve fund. We cannot find the authorization in statute for these items and feel that it is shifting the "administrative" costs from the agency to local governments. Conversely, the statute clearly states that cost of construction, acquisition, or renovation may not be included in the per diem. Municipal courts and Counties collect a \$40.00 per offense fine to fund these items for Regional Jails. Relating to the reserve fund, an automatic increase is granted when line item expenditures increase by more than 10%, so an operational reserve fund should not be considered as written.

Section 4.1 changes the cost of operating each regional jail to a system-wide cost calculation. We fail to find authorization for this. While this might ease some administrative burden, we believe it is contrary to the statute; it will eliminate a region's knowledge of efficiency, and reduce individual accountability. One cost effective region should not bear the increased burden of a region that is not cost efficient.

- MAYOR TERRY WILLIAMS
President, Spencer
- MAYOR DANNY JONES
Vice President, Charleston
- MAYOR JESSE CORLEY
Secretary, White Hall
- MAYOR DAVID FELINTON
Treasurer, Huntington
- MAYOR WILLIAM MILLER
Weirton
- MAYOR JIM CHRISTIE
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Parkersburg
- MAYOR TONY PAESANO
Follansbee
- MAYOR NICK SPARACHANE
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- MAYOR NICK FANTASIA
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Hinton
- MAYOR MICHAEL MARTIN
Mt. Hope
- MAYOR BARBARA HICKMAN
Oak Hill
- MAYOR RON LIVELY
Princeton
- MAYOR JOHN MANCHESTER
Lewisburg
- MAYOR RON JUSTICE
Morgantown
- MAYOR MELBA WHITE
Montgomery
- COUNCILOR TOM MAINELLA
Fairmont
- COUNCILOR GARY LAWSON
Ravenswood
- COUNCILOR ED ROEDERSHEIMER
Parkersburg
- COUNCILOR STEVE NICKELL
Beckley
- COUNCILOR MARK SIMMS
Moundsville
- COUNCILOR FRANK SCAFELLA
Morgantown
- COUNCILOR ED ROEDERSHEIMER
Parkersburg
- CLERK SUZAN SINGLETON
Glen Dale
- CLERK BONNIE SHANNON
New Martinsville
- CITY MANAGER KAREN WEAVER
Philippi
- CITY CLERK JANICE JONES
Auditor, Wheeling
- MAYOR EMMETT PUGH, III
Immediate Past President, Beckley
- Past Presidents
- COUNCILOR JAMES HUNT
Clarksburg
- MAYOR LYDIA MAIN
Masonstown
- MAYOR JAMES HERRICK
New Martinsville
- MAYOR RICHIE ROBB
South Charleston
- MAYOR DAVE HAMILL
Ranson
- MAYOR RAYMOND PEAK
Hurricane
- RECORDER NANCY SHOBE
Parliamentarian, Buckhannon
- MAYOR TREY MORRONE
Chaplain, Kenova
- LISA DOOLEY
Executive Director

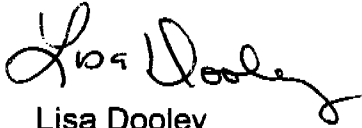
2020 Kanawha Boulevard East
Charleston, WV 25311
PH: 304-342-5564 ★ FAX: 304-342-5586
1-800-344-7702 ★ www.wvml.org

Page 2
WVML comments
July 25, 2006

We believe the elimination of Section 5.1.2 and change in 6.1 with the billing statement will take away a city's ability to review billing and determine if the municipal court is responsible for the incarceration. The ability to determine whether the charge is from a municipal court should remain in tact.

Thank you for the opportunity to offer these comments on behalf of our Municipal members. I am happy to answer any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Dooley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lisa Dooley
Executive Director

COUNTY OF LOGAN

COMMISSIONER:
ARTHUR E. KIRKENDOLL
PRESIDENT



COMMISSIONERS:
DANNY R. GODBY
WILLIE D. AKERS, JR.

OFFICE OF THE COUNTY COMMISSION

ROOM 103 • LOGAN COUNTY COURTHOUSE
LOGAN, WV 25601
(304) 792-8626 FAX (304) 792-8511

July 27, 2006

**Chad M. Cardinal, Esquire
General Counsel
West Virginia Regional Jail &
Correctional Facility Authority
1325 Virginia Street, East
Charleston, WV 25301-3011**

VIA FAX 304-558-2115 and 1ST CLASS MAIL

**Re: West Virginia Regional Jail & Correctional
Facility Authority Rules Filed for Public
Comment**

Dear Mr. Cardinal:

The County Commission of Logan County, West Virginia, would like to make comments regarding Proposed Rule 94-CSR-3, §94-3-7 (7.1).

The Logan County Commission believes that the Rules should be modified so that anyone who is sentenced to the Regional Jail on a felony conviction, their incarceration would be paid for by the Department of Corrections.

Currently, several felony charges carry a County Jail alternative or the Circuit Court may, as an condition of probation on a felony charge, sentence an inmate to up to four (4) months in the Regional Jail. The County Commission believes that any inmate who is sentenced on a felony conviction should be paid for by the Department of Corrections and not the County. There are several younger inmates who may have been sentenced to an alternative sentence on a grand larceny charge to the Regional Jail by the Circuit Court who are currently paid for by the County.

**Chad M. Cardinal, Esquire
General Counsel
West Virginia Regional Jail and
Correctional Facility Authority
Page 2
July 27, 2006**

Re: Proposed Rule 94-CSR-3, §94-3-7 (7.1)

It is not fair for the County to have to pay for an Inmate's incarceration on a felony conviction even if it is an alternative sentence in the Regional Jail instead of confinement to the State Penitentiary. Therefore, the County Commission would propose that the Rules be changed to make the Department of Corrections responsible for these type of inmates.

In addition, the County Commission believes that the way the formula is calculated should be changed so that, as in our case, when the jail capacity is actually exceeded by the number of inmates that the cost per day is calculated on the actual number of inmates housed and not the number of inmates that that facility was supposed to hold.

As one of our County Commissioners has said, "We should not pay full price for an inmate who is sleeping on the floor." Therefore, the formula should be adjusted so that the actual number of inmates in our Regional Jail who are housed are counted when considering the per day cost per inmate instead of the number of inmates that the facility was supposed to hold since we routinely exceed the original intended capacity of our Regional Jail Facility.

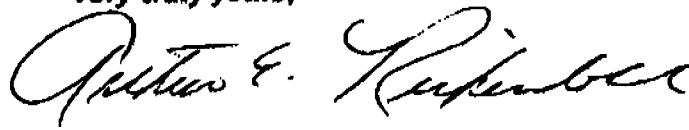
The County Commission is also concerned that we are being charged, and that the Rules should be changed to reflect, that an inmate who is placed in jail at 11:00 p.m. and released at 8:00 a.m. the next day at the present time costs the County two (2) days for that inmate when, in fact, he may have been in jail for only nine (9) hours. Therefore, the Logan County Commission would propose that the Rules be changed to take into account the actual number of hours that the inmate is in the facility and not simply to charge two days to the County, as set forth in the previous paragraph.

We would propose that the Regional Jail & Correctional Facility Authority consider making these changes to the formula since the current cost of housing inmates at the Regional Jail Facility, at least for our County, is enormous. We truly believe that the changes we have recommended herein would save Logan County at least twenty percent (20%) of its annual cost of housing inmates at the Regional Jail, and we would respectfully request that the Regional Jail Authority consider adopting these changes in order to help lift the burden on the Counties regarding Regional Jail costs.

**Chad M. Cardinal, Esquire
General Counsel
West Virginia Regional Jail and
Correctional Facility Authority
Page 3
July 27, 2006**

Re: Proposed Rule 94-CSR-3, §94-3-7 (7.1)

Very truly yours,

A handwritten signature in cursive script, appearing to read "Arthur E. Reep".

LOGAN COUNTY COMMISSION

Thomas A. Zamow, Counsel

TAZ:sac

COMMISSIONERS
STEPHEN A. ANDES
JAMES H. CARUTHERS, JR.
R. JOSEPH HAYNES

Putnam Commission

33
W
ROAD
25213

PHONE: 586-0201
FAX: 586-0211

July 25, 2006

The Honorable Betty Ireland
WV Secretary of State
Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305

RE: Proposed (Non-Emergency) Amendment to 94 CSR 3

Dear Secretary Ireland:

Thank you for this opportunity to comment on the proposed rule submitted by the West Virginia Regional Jail and Correctional Facility Authority ("Authority") seeking to amend 94 CSR 3 "Criteria and Procedures for Determination of Projected Cost Per Day for Inmates Incarcerated in Regional Jails Operated by the Authority". For the reasons explained below, we object to the most portions of the proposal and respectfully request that you forward our comments onto the legislative rule-making body.

There are many changes in the proposed rule with which we disagree. First, we do not believe an increase in the number of inmates will necessarily increase the overall cost of operation to the point that the Authority should be authorized to inflate the bill to counties when the counties already pay for each and every inmate per each and every day. Currently, if there is an increase in the number of inmates, then there will be an increase in payments from the counties. Consequently, there would be no need for the Authority to "adjust the cost per inmate day" simply because there is a fluctuation in the number of inmates as the proposed Section 5.1.2 provides in 94 CSR 3.

Second, the proposed change to Section 7.6 which proposes billing a county for the cost of a fugitive who was picked up in that county "from the date of the extradition hearing" would conflict with W.Va. Code Section 31-20-10a(h) which provides that the cost for fugitives be billed to the "demanding" jurisdiction and not the jurisdiction wherein the fugitive was located. This change would be contrary to law.

Third, we also do not agree with the broad proposal of having counties pay for all expenses of the Authority, "including centralized operations expenses." Although it is reasonable for counties to pay operational expenditures of the regional jails they use, the cost of the bureaucratic office of the Authority should be born by the State of whom it is an agency – not the counties who have no say in how the state agency spends its money.

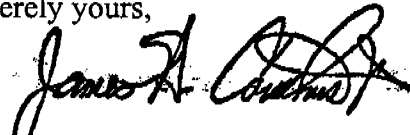
Fourth, we strongly oppose the suggested change to Section 8.1 which would essentially remove the word "temporary" from the surcharge that the Authority may add onto counties' bills. Again, we believe this is another backdoor means of increasing fees to counties when there is already a measure in place in case of emergencies, to wit: the section as currently written.

Fifth, we oppose setting a minimum on the amount of excess funds the Authority would first have to accumulate before considering returning payments to counties. The proposed Section 9.3 would require the Authority to first build a "nest egg" large enough to cover four months of operational expenditures before counties could expect the possibility of having any of the excess payments returned or credited to them. We have received information that the Authority had an excess of Twelve Million Dollars in reserve funds when it increased the per diem rate for counties an additional \$3.50 per inmate per day. A county must constantly watch its budget and revenue to ensure checks will be covered for daily expenditures, including jail costs, and could never fathom having \$12,000,000 in reserves. It is shocking to learn that a state agency has such a large reserve while some less fortunate counties must scrape together money to pay utilities, much less jail fees. Thus, although we do not expect to ever see the Authority vote to "credit" counties when revenues increase, we would at least like to know that there is no minimum amount of excess funds required before the Authority may even consider the issue.

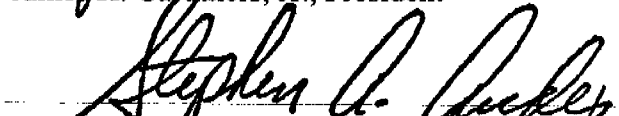
Lastly, we would like to express our support for the proposed Section 7.7 whereby municipalities would be responsible for the costs of their inmates. This would at least lessen the burden on counties who pay for the incarceration of individuals committed through municipal courts.

Again, we appreciate the opportunity to comment on the proposed emergency rule. Thank you for your attention to this matter.

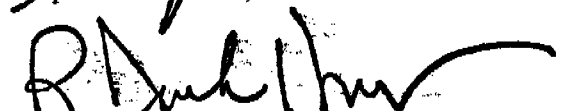
Sincerely yours,



James H. Carothers, Jr., President



Stephen A. Andes, Commissioner



R. Joseph Haynes, Commissioner

MARSHALL COUNTY COMMISSION

JASON E. PADLOW, PRESIDENT

DONALD K. MASON

HOWARD L. "BIGGIE" BYARD

BETSY WILSON FROHNAPFEL, ADMINISTRATOR

JAN PEST, COUNTY CLERK

July 26, 2006

WV Regional Jail & Correctional Facility Authority
Correctional Facility Authority
1325 Virginia Street, E.
Charleston, WV 25301

Att: Rules Committee

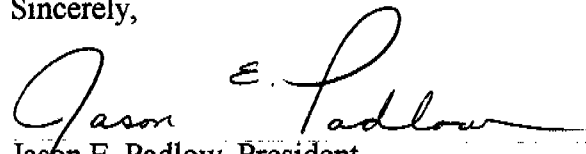
To Whom It May Concern:

The Marshall County Commission and the Sheriff of Marshall County are writing this letter to show our opposition to the passage of the emergency rules (Proposed Rule 94-CSR-3) filed by the Regional Jail Authority.

It is our opinion that the approval of these rules could be potentially financially devastating to many Counties' in the State. It is also our opinion that many of the items listed in the proposed rules are contrary to the current statute.

If you have any questions or would like more information on our opposition of the emergency rules, please contact the Marshall County Commission at (304) 845-0482 or the Marshall County Sheriff at (304) 843-1400.

Sincerely,



Jason E. Padlow, President
Marshall County Commission



John Gruzinskas
Sheriff of Marshall County

Cc: Ms. Betty Ireland, Secretary of State

UPSHUR COUNTY COMMISSION

Upshur County Courthouse Annex
38 West Main Street, Room 302 • Buckhannon, West Virginia 26201

Telephone: (304) 472-0585
Telecopier: (304) 472-2399

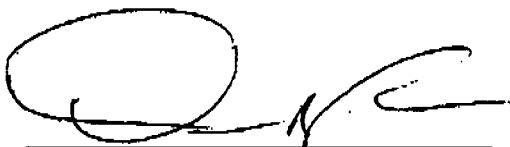
TDD Numbers
Business: 472-9550
Emergency: 911

July 27, 2006

Ms. Wyetta Fredericks, Executive Director
WV Regional Jail & Correctional Facility Authority
1325 Virginia Street, East
Charleston, West Virginia 25301-3011

Subject: Emergency Rule Title 94

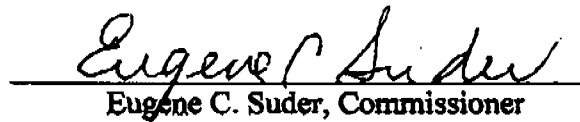
Enclosed you will find a listing of objections on the above referenced matter, Please be advised that the Upshur County Commission does hereby object to the adoption of these emergency rules and will forward correspondence to the Office of the Secretary of State requesting disapproval.



Donnie R. Tenney, President



Stephen P. Abel, Commissioner



Eugene C. Suder, Commissioner