

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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FILED

2013 JUL 26 AM 11:35

OFFICE OF THE 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 Authority TITLE NUMBER: 94

CITE AUTHORITY: Section 31-20-10(h)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 07

TITLE OF RULE BEING AMENDED: CRITERIA AND PROCEDURES FOR DETERMINATION OF
PROJECTED COST PER DAY FOR INMATES INCARCERATED IN
REGIONAL JAILS

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 26, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Regional Jail and Correctional Facility
Authority
1325 Virginia St. E
Charleston, WV 25301 T: (304) 558-2110

LEGISLATIVE RULE TITLE: ~~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 Section 31-20-10(h)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 26, 2013

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 26, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached N/A No comments received 0

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

July 26, 2013

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

Joseph DeLong, Executive Director
1325 Virginia St. E
Charleston, WV 25301

T: (304) 558-2110

F: (304) 558-2115

- 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)

Mr. Tony Atkins, Chief Financial Officer
West Virginia Regional Jail and Correctional Facility Authority
1325 Virginia St. E
Charleston, WV 25301
T: (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.

N/A

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

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

EARL RAY TOMBLIN
Governor

JOSEPH C. THORNTON
Cabinet Secretary

MEMORANDUM

FROM: Shane P. McCullough,
General Counsel, WVRJA

DATE: July 26, 2013

**SUBJECT: IN REGARD TO PUBLIC COMMENTS ON PROPOSED
LEGISLATIVE RULE CHANGE**

On June 26, 2013, the West Virginia Regional Jail and Correctional Facility Authority ("Authority") submitted a proposed legislative rule change to the rule entitled "Criteria and Procedures for Determination of Projected Cost Per Day for Inmates Incarcerated in Regional Jails." The Authority received no public comments during the public comment period which took place between June 26, 2013 and July 26, 2013.

Submitted by:

A handwritten signature in black ink, appearing to read "SP McCullough".

Shane P. McCullough
General Counsel
WVRJCF
1325 Virginia St. E
Charleston, WV 25301

STATE OF WEST VIRGINIA



WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

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EARL RAY TOMBLIN
Governor

JOSEPH C. THORNTON
Cabinet Secretary

June 26, 2013

STATEMENT OF FACTS AND CIRCUMSTANCES

The West Virginia Regional Jail and Correctional Facility Authority ("Authority") is hereby submitting the attached legislative rule amendments for public comment. The proposed rule amendment is in relation to Title 94, Series 7 of the Legislative Rules and is entitled "Criteria and Procedures for Determination of Projected Cost Per Day for Inmates Incarcerated in Regional Jails Operated by the Authority."

Currently, the Authority charges the counties amounts that reflect the daily costs of incarcerating inmates. Under the current version of the rule, the inmate cost per day (per diem rate) is calculated by a state-wide aggregation of all costs incurred by the Authority in the incarceration of inmates. The current version of the rule does not account for possible reductions to that rate, which could be achieved via other revenue streams generated by the Authority.

Through this rule amendment, the Authority seeks the ability to, in its discretion and when fiscally possible and prudent, reduce the per diem rate charged to the counties through application of other revenue streams and savings from cost efficiency efforts.

This rule change will give the Authority the ability to reduce the total amounts charged to the counties for inmate incarcerations, and thus will reduce the overall financial burden placed on the counties for the same.

FILED

TITLE 94
LEGISLATIVE RULE
REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

2013 JUL 26 AM 11:35

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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. -- This legislative rule applies 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. The enforcement of this rule rests with the Executive Director of the Regional Jail and Correctional Facility Authority. 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. This rule allocates resources and services necessary to protect the public safety by properly funding West Virginia's Regional Jail system.

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

1.3. Filing Date. -- June 5, 2009.

1.4. Effective Date. -- June 15, 2009.

1.5. Amends 94CSR7 which was effective March 28, 2007.

§94-7-2. Calculation of Projected Cost Per Inmate Day.

2.1. The Authority shall establish a uniform statewide per diem for housing persons in the Regional Jail system. The per diem shall be established using the Regional Jail system as a whole of all the regional jails combined.

2.2. Annually, the Regional Jail and Correctional Facility Authority shall establish an expenditure schedule, consistent with the requirements of W. Va. Code §31-20-10a *et seq.* for the operation of the Regional Jail system. This schedule will cover all operational costs including, but not limited to personal services, employee benefits, public employees insurance reserve fund, current expenses, liquidity reassurance reserve, repairs and alterations and assets, as well as budgetary cost adjustments and all requirements of the State Budget Office. In calculating the schedule, the Authority may include moneys for an operational reserve fund: *Provided*, that moneys budgeted for the operational reserve fund may not exceed the amount of actual operational expenditures incurred during a three month period in the preceding fiscal year; *Provided, however*, that such three month period must be the three month period with the lowest operational expenditures for any three month period in the preceding fiscal year.

2.3. The projected expenditure schedule will be divided by the previous fiscal year's billed average daily inmate population to yield the preliminary projected cost per inmate day. The RJA Board will evaluate the preliminary projected cost per inmate day to determine if reductions can be implemented based on other RJA revenues, cash reserves, and cost efficiency efforts. The RJA Board will have discretionary authority to reduce the preliminary projected cost per inmate day based on adopting a fiscally sound annual operating budget.

2.4. The RJA Board approved cost per inmate day shall then become effective as of July 1st of the next physical fiscal year's budget following the October projection.

§94-7-3. Annual Statement of Projected Cost Per Inmate Day.

In October of each year, an annual statement of projected cost per inmate day will be provided, upon request, to any billed entity who has or may have an inmate incarcerated in a regional jail.

§94-7-4. Preparation and Distribution of Monthly Billing Statements.

4.1. The Authority shall prepare a monthly billing statement, which, at a minimum, will include the name of the inmate, incarceration dates, the number of days the inmate was housed in a regional jail during the billing month, and the total charges per entity for inmate maintenance during the month.

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

4.3. 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 per entity.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Criteria and Procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority.

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Regional Jail and Correctional Facility Authority

Address: 1325 Virginia Street East
Charleston, WV 25301

Phone Number: 304-558-2110 Email: tony.e.atkins@wv.gov

Fiscal Note Summary

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

The WV Regional Jail and Correctional Facility Authority would not be fiscally impacted by the proposed rule change.

Fiscal Note Detail

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

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

Rule Title: Criteria and Procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority.

Rule Title: _____

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

MEMORANDUM

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

Date: 06/26/2013

Signature of Agency Head or Authorized Representative

Joe DeLong