

## **Department of Planning and Budget 2020 Fiscal Impact Statement**

**1. Bill Number:** SB189E

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Peake

**3. Committee:** Rehabilitation and Social Services

**4. Title:** Compensation of local jails for cost of incarceration.

**5. Summary:** Current law directs that offenders convicted of a felony and given a sentence of one year or more be committed to the Department of Corrections (DOC), which shall receive these offenders within 60 days after receiving the final sentencing order. These offenders are commonly referred to as “state-responsible offenders.” If DOC is unable to receive state responsible offenders from a jail, the law directs the agency to compensate the jail for the cost of incarceration as provided in the Appropriation Act, beginning on the sixty-first day following the date of receipt of the final sentencing order. This group of offenders, for whom compensation is paid, is usually referred to as “out of compliance” inmates.

The proposed legislation requires DOC to reimburse the jail for “the actual cost” of incarceration as calculated by the Compensation Board’s annual jail cost report, rather than at the rate set out in the Appropriation Act.

**6. Budget Amendment Necessary:** Yes. Item 69.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** As set out in the Appropriation Act, the Compensation Board reimburses local and regional jails \$12 per day for each state-responsible inmate housed in the jails. The reimbursement rate is the same for all groups of state-responsible inmates: out-of-compliance inmates, those for whom DOC has not received a final sentencing order, and those for whom sixty days has not elapsed since DOC received the final order.

According to DOC, there was an average of 2,791 out-of-compliance inmates held each day in local and regional jails in FY 2019. At a rate of \$12 per day, the state reimbursed jails an estimated \$12.2 million for housing these offenders. The legislation states that compensation is to be based on “actual cost of incarceration as calculated in the jail cost report prepared annually by the Compensation Board,” but is not specific as to where in the report this cost is set out. There are several definitions that could be used to project the potential cost of the bill.

Depending on which definition is used, the annual fiscal impact of the legislation could range from \$2.6 million to \$76.6 million. The various definitions are discussed below. The data regarding the costs of housing inmates in local and regional jails are from the latest Jail Cost Report, (the Report) released in November 2019, by the Compensation Board. The data contained in the Report is based on FY 2018 expenditure data. Using data from the Report, “actual cost” could be defined and calculated in one of the following ways:

- **Total cost** --The total average daily cost of operating local and regional jails was \$87.20 per inmate. Because the Commonwealth already pays a per diem for the out-of-compliance inmates, the amount currently expended by the state is subtracted from the calculation of the amount needed for “actual cost” in the table below.
- **Local cost** --Localities and regional jail authorities receive revenue from several sources, including the Commonwealth and, in some cases, the federal government, to help offset the costs of operating jails. Therefore, “actual cost” could be interpreted to mean the cost that localities or regional jails incurred themselves in housing out-of-compliance inmates. That average daily cost per inmate was \$48.05.
- **Direct inmate cost**--Because the overhead costs of jail administration and security personnel are minimally affected, if at all, by the addition or removal of individual inmates, the “actual costs” of incarcerating out-of-compliance inmates could be viewed as being only the marginal costs, commonly referred to as “direct inmate costs,” incurred by those inmates individually. The largest components of direct inmate costs are food and medical services. The average daily cost of food and medical services per inmate was \$14.48.

The following table shows the estimated fiscal impact of each different method of measuring actual cost:

	<b>Total Cost</b>	<b>Local Cost</b>	<b>Direct Inmate Cost</b>
Number of out-of-compliance inmates daily (2019 average)	2,791	2,791	2,791
Daily reimbursement rate	\$87.20	\$48.05	\$14.48
Number of days	365	365	365
<b>Total</b>	<b>\$88,831,948</b>	<b>\$48,949,256</b>	<b>\$14,750,993</b>
Less Current state expenditure	(\$12,200,000)	\$0	(\$12,200,000)
<b>Net fiscal impact</b>	<b>\$76,631,948</b>	<b>\$48,949,256</b>	<b>\$2,550,993</b>

In addition to increased per diem costs, the Compensation Board estimates that it would cost at least \$50,000 to update its computerized systems to comply with the proposed legislation.

Finally, since the appropriation act supersedes statutory law, the existing language in the appropriation act that establishes these payments would need to be modified to match this legislation. Otherwise, this legislation may have no effect.

- 9. Specific Agency or Political Subdivisions Affected:** Compensation Board, Department of Corrections, local and regional jails

- 10. Technical Amendment Necessary:** None

- 11. Other Comments:** The Engrossed version of this bill includes an enactment clause stating that the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2020 by the General Assembly that becomes law.