

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB966

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Peake

3. Committee: Senate Committee on Rehabilitation and Social Services

4. Title: Compensation for cost of incarceration

5. Summary: The bill requires that local jails be compensated for the actual cost of incarcerating convicted felons at the rate calculated in the Compensation Board's annual jail cost report. Current law provides for jails to be compensated for the cost of incarceration of convicted felons as provided for in the general appropriation act.

6. Budget Amendment Necessary: Yes, Item 73.

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

8. Fiscal Implications: Currently, as set out in the Appropriation Act, the Compensation Board reimburses local and regional jails \$15 per day for each state-responsible inmate housed in the jails. The reimbursement rate is the same for all groups of state-responsible inmates: those for whom Department of Corrections (DOC) has not received a final sentencing order; those for whom 60 days has not elapsed since DOC received the final order; and out-of-compliance inmates (those who have been housed in a jail post-sentencing for more than 90 days). The bill provides that compensation for inmates housed in jails for more than 60 days 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 is set out. According to the Compensation Board, there are several definitions, discussed below, that could be used to project the potential cost of the bill.

Under the provisions of the bill, payment for state-responsible inmates who have been in a jail post-sentencing for 60 days or less would not change from current payment practice (\$15 per day). For those who have been in jail for more than 60 days, the annual fiscal impact of the legislation could range from \$532,170 to \$18.2 million general fund, depending on which definition is used. 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 2022, by the Compensation Board. The data contained in the Report is based on FY 2021 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 \$107.09 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 \$59.03.
- 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 \$17.70.

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

	Total Cost	Local Cost	Direct Inmate Cost
Number of out-of-compliance inmates daily (July-Dec 2022 average)	540	540	540
Daily reimbursement rate	\$107.09	\$59.03	\$17.70
Number of Days	365	365	365
Total	\$21,107,439	\$ 11,634,813	\$3,488,670
Less: Current state expenditure	(\$2,956,500)		(\$2,956,500)
Net Fiscal Impact	\$18,150,939	\$ 11,634,813	\$532,170

In addition to increased per diem costs, the Compensation Board estimates that it would cost at least \$100,000 general fund to update its computerized systems to comply with the proposed bill. The Compensation Board estimates that due to vendor programmatic changes, the necessary systems modifications could not be implemented until July 1, 2024, at the earliest and potentially as late as January 1, 2025.

Finally, a language amendment to the budget would be needed to allow the purpose of this bill to be realized. 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: No

11. Other Comments: None