

REVISED

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: SB 342

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Peake

3. Committee: Senate Finance

4. Title: Compensation of jails for housing inmates

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, are usually referred to as “out of compliance” inmates.

The proposed legislation would require DOC to reimburse the jail for “the actual cost” of incarceration, rather than at the rate set out in the Appropriation Act. Furthermore, the legislation would require each locality and regional jail authority to establish its actual cost of incarceration per inmate per day and would prohibit DOC from moving any convicted felon to a local or regional jail until it had entered into an agreement with the jail to pay the actual cost of incarceration as determined by the locality or regional jail authority.

6. Budget Amendment Necessary: Yes. Item 67.

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

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 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, in 2017, there was an

average of 3,241 out-of-compliance inmates held each day in local and regional jails. At a rate of \$12 per day, the state reimbursed jails an estimated \$14,195,580 for housing these inmates.

The legislation does not define “actual cost” and 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 \$1.1 million to \$86.6 million. Those various definitions are discussed below.

The source of data regarding the costs of housing inmates in local and regional jails is the Jail Cost Report, prepared annually by the Compensation Board. The latest data is for FY 2016, released in November 2017. Using this data, “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 \$85.17 per inmate. Because the Commonwealth already pays a per diem for the out-of-compliance inmates, that amount is subtracted from the calculation of the amount needed for “actual cost.”
- **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 \$46.16.
- **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 \$12.97.

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

	Total Cost	Local Cost	Direct Inmate Cost
Avg daily out of compliance	3,241	3,241	3,241
Daily reimbursement rate	\$85.17	\$46.16	\$12.97
Number of days	365	365	365
Total	\$100,753,129	\$54,605,664	\$15,343,056
Current state expenditure	\$14,195,580	\$0	\$14,195,580
Net fiscal impact	\$86,557,549	\$54,605,664	\$1,147,476

In addition to increased per diem costs, the Compensation Board would incur costs to update its systems to account for a different reimbursement rate for out-of-compliance offenders. The proposed legislation seems to imply that each jail would be reimbursed at its individual “actual cost” rather than a statewide average. Until the requirements of the legislation are clarified, it cannot be known the extent of the needed programming changes, or how much time would be needed to make the changes. Nonetheless, the agency estimates that the cost would be at least \$50,000.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Compensation Board
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments:

Because the system used by the Compensation Board to gather information needed to reimburse jails would need to be reprogrammed to implement this legislation, it would not be possible for the change in reimbursement rates to become effective in FY 2019.

Section 4-13.00 of the Appropriation Act provides that the provisions of the Appropriation Act shall prevail over any conflicting provision of any other law. Item 67 of the introduced budget bill sets out a procedures and rates for state reimbursement of jails for housing state-responsible inmates. If the proposed bill were enacted, the provisions of the budget bill would need to be modified accordingly in order for its provisions to be effective.