

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB165

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

2. Patron: Peake

3. Committee: Senate Finance and Appropriations

4. Title: Compensation for cost of incarceration

5. Summary: The proposed bill provides for local jails to 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)

8. Fiscal Implications: Currently, 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 Department of Corrections (DOC) has not received a final sentencing order, and those for whom sixty days has not elapsed since DOC received the final order. The proposed bill 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 is set out. According to the Compensation Board, 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 \$5 million to \$106.7 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 2021, by the Compensation Board. The data contained in the Report is based on FY 2020 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 \$100.32 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 \$55.30.

- **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 \$16.21.

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 (Jul-Dec 2021 average)	3,310	3,310	3,310
Daily reimbursement rate	\$100.32	\$55.30	\$16.21
Number of Days	365	365	365
Total	\$121,201,608	\$ 66,810,695	\$19,584,112
Less: Current state expenditure	(14,497,800)		(14,497,800)
Net Fiscal Impact	\$106,703,808	\$ 66,810,695	\$5,086,312

In addition to increased per diem costs, the Compensation Board estimates that it would cost at least \$85,000 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, 2023, at the earliest and potentially as late as January 1, 2024.

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