WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

---

ENROLLED

Com. Sub. for

HOUSE BILL No. HB 93...

(By Delegate S. McKinley, L. White, Higgins, Lindsay, Britett and Varner)

---

Passed March 12, 1994

In Effect From Passage

© 1993 - 2023 West Virginia Legislature
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4493
(By Delegates McKinley, L. White, Higgins, Lindsey, Tribett and Varner)
[Passed March 12, 1994; in effect from passage.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; to amend and reenact section three, article one, chapter twenty-five; and to amend and reenact section five, article twenty, chapter thirty-one of said code, all relating to creating a pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; creation of the commission for distribution of surplus foods; powers and duties; definitions; program maintenance; authorizing the executive director of the regional jail and prison authority and the commissioner of the division of corrections to serve on the commission and implement the pilot program.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen; that section three, article one, chapter twenty-five be amended and reenacted; and that section five, article twenty, chapter thirty-one of said code be amended and reenacted, all to read as follows:
CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-17. Pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; commission for distribution of surplus foods; powers and duties; definitions; program continuance.

(a) The purpose of the Legislature in enacting this section is to establish a framework for the distribution of excess and leftover foods in West Virginia public school cafeterias and in correctional facilities to community agencies that serve homeless and needy people in this state and to address findings that:

(1) Many homeless, destitute and needy people are without sufficient food to meet minimum requirements for daily living;

(2) Many school cafeterias and prison cafeterias prepare a large number of meals each day;

(3) Despite state and federal policies and guidelines and proper efforts of personnel at such institutions which attempt to eliminate or minimize the waste of unserved prepared food at such public institutions, that some surplusage of leftover food does in fact occur; and

(4) Various community agencies are trying to feed the homeless and needy people and that leftover foods from the aforesaid public institutions is an obvious resource to help provide food for the homeless and needy people of the state.

(b) For purposes of this section the following terms shall have the following meanings:

(1) "Leftover food" means food prepared for immediate human consumption but not served, that cannot be refrigerated or preserved to be served at a later time, nor used in the preparation of other foods, or unopened packaged foods, unopened cartons of milk and parcels of whole fruit which are taken by consumers at the institution, but not eaten, or is not subject to being reserved according to policies or rules governing the
(2) "Agency" means any nonprofit, religious or charitable organization which is exempt from taxation pursuant to 26 U.S.C. §501(c) (3) or (4) whose purposes include the feeding of homeless and needy persons.

(3) "Commission" means the commission distribution of surplus food established in subsection (c) of this section.

(c) There is hereby established a commission for the distribution of surplus prepared foods. The superintendent of the state board of education, or his or her designee, shall serve as chair of the commission. The executive director of the regional jail and prison authority, or his or her designee, and the commissioner of the division of corrections, of the department of public safety, or his or her designee, shall serve as members of the commission.

(d) The commission shall develop and establish a pilot program in Ohio County for the distribution of leftover foods from secondary school cafeterias, the county jail in Ohio County and the regional jail located in Marshall County to community agencies in Ohio County to be distributed to homeless and needy persons in Ohio County, consistent with the goals and purposes established in this section. The pilot program shall provide that an agency pay any cost of transporting the leftover food. In no event may the pilot program provide that the state bear any of the cost of transporting the leftover food.

(e) The commission shall have the following powers and duties in carrying out the provisions of this section:

(1) Propose for promulgation legislative rules in accordance with article three, chapter twenty-nine-a of this code which are necessary to carry out the purposes of this section;

(2) Suggest modification of policies and propose amendments to current rules of the state board of education, the division of corrections and the regional jail authority which are in conflict with the purpose and
goals of this section, only as such are applicable to the
public institutions included in this pilot program;

(3) Coordinate and cooperate with all appropriate
federal agencies, including, but not limited to, the
United States department of agriculture to approve the
distribution of leftover foods under controlled
conditions;

(4) Draft cooperative and mutually beneficial agree-
ments between the respective agencies and the local
school or district or correctional facilities;

(5) Develop a comprehensive plan of food distribution
to agencies including consideration of any input or
suggestions from agencies interested in participation in
the plan; such plan shall address the care of environ-
mental resources and human needs. Any plan or
program for food distribution shall require that the cost
of transporting the food is to be paid by a community
agency. The commission has no authority to develop a
comprehensive plan of food distribution which would
provide that the state pay all or any part of the cost of
transporting the food to be distributed.

(f) The pilot program shall commence no later than
the first day of September, one thousand nine hundred
ninety-four, and continue until the first day of July, one
thousand nine hundred ninety-seven, unless sooner
terminated by the Legislature. On the first Wednesday
after the second Monday of each January, the commis-
sion shall report to the governor and the Legislature on
the progress of the program whether it should be
continued or discontinued, any recommended modifica-
tions in the program’s scope and mission and whether
any action is necessary by the Legislature to improve the
success of the program. At the end of the pilot program,
the commission shall make a final report to the governor
and the Legislature as to whether the findings in this
section are being addressed and recommend whether or
not the program shall be expanded statewide, with
specific recommendations for program support and
administration, development and other relevant policy
issues.
CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and human resources and state board of health; establishment of work and study release units; civil service coverage.

The commissioner of corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his jurisdiction or control:

1. West Virginia Penitentiary at Moundsville;
2. West Virginia State Prison for Women at Pence Springs;
3. West Virginia Medium Security Prison at Huttonsville;
4. West Virginia Industrial Home for Girls at Salem;
5. West Virginia Industrial Home for Boys at Grafton;
6. Davis Center (formerly the West Virginia Forestry Camp for Boys at Davis);
7. Leckie Center (formerly the West Virginia Forestry Camp for Boys at Leckie); and
8. Anthony Center (formerly the Anthony Correctional Center).

Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the department of health and human resources, which shall be the custodian of all deeds and other muniments of title to such property and shall cause such as are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the commissioner of health and human resources.

The commissioner is hereby authorized to establish
work and study release units as extensions and subsidi-
aries of those state institutions under his or her control
and authority. Such work and study release units may
be coeducational and shall be managed, directed and
controlled as provided for in this article.

The commissioner is hereby authorized to serve as a
member of the commission for distribution of surplus
foods and exercise all powers and authority otherwise
granted to him or her in this article to implement the
pilot program for delivery of leftover prepared foods at
any institution under his or her control and supervision,
pursuant to section seventeen, article two, chapter
eighteen of this code.

Any person employed by the office of public institu-
tions who on the effective date of this article is a
classified civil service employee shall, within the limits
contained in section two, article six, chapter twenty-nine
of this code, remain in the civil service system as a
covered employee.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON
AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding
procedures.

The regional jail and correctional facility authority
shall complete a comprehensive study of all correctional
facilities and jail facilities in the state of West Virginia
no later than the first day of July, one thousand nine
hundred eighty-six. This study shall include an assess-
ment of the physical conditions of confinement within
the institutions and the relative need for the institutions
when considering other available institutions of confine-
ment located within the state.

After completing this study, the authority shall
submit a plan to the governor on the establishment of
regional jails in this state and the acquisition, construc-
tion or renovation of facilities for correctional facilities.
The authority shall specify groups of counties within the
state to be formed into regions for the establishment of
such regional jails. Within each region a local jail commission shall be established and have the powers and duties as set forth in section six of this article.

The authority shall consider, but not be limited to, the following when creating the plan establishing regions:

1. The relative physical condition of the correctional facilities and jail facilities located within the state;

2. The transportation costs associated with the establishment of centralized jail services, including, but not limited to, the costs of transporting persons incarcerated in regional jails to court appearances, to interviews with their attorneys, and to have visitation with their families and friends, all in any county seat of a county served by the regional facility. Provided, That consideration of such costs in the creation of the plan shall not be construed to require the transportation of inmates to interviews with their attorneys or to have visitation with their families and friends when visitation facilities and schedules are established in regional jails;

3. The availability of medical services and educational and recreational opportunities;

4. Information received from public hearings;

5. The relative efficiency in the cost of jail services caused by establishment of regional jail facilities;

6. Available facilities which may be used as regional jails or correctional facilities including, but not limited to, existing county and state owned properties. Provided, That if the authority determines that an existing facility meets the standards or could reasonably be made to meet the standards for a regional jail or other correctional facility, the authority may proceed to acquire such existing facility and compensate the owner thereof in an amount not less than any local share expended by the owner as matching moneys for the receipt of federal funds. Provided, however, That if the authority determines that an existing facility does not meet the standards or could not reasonably be made to meet the standards for a regional jail or other correctional facility, the authority shall provide the owner with a
written statement setting forth the reasons supporting such determination;

(7) The cost of acquiring, constructing, renovating, operating and maintaining local jail facilities for use as local holding facilities in each county and regional jail facilities for each county and the financing provided by this article;

(8) The leasing of any available portion of any regional jail space and the leasing of available facilities of any regional jail to the West Virginia department of corrections for the keeping and detaining of prisoners sentenced to serve terms of incarceration under the custody of the West Virginia department of corrections for nonviolent crimes and to contract with the department of corrections for the providing of food, clothing, shelter and any and all incidental costs in the care, control and maintenance of such prisoners: Provided, That such leasing does not restrict space or facilities needed for the detention of county prisoners;

(9) The advisability and cost effectiveness of acquiring, constructing, renovating, operating and maintaining work farms serving one or more counties or regions; and

(10) The proximity of possible sites for the regional jail facilities to residential areas, schools, churches and other public buildings and facilities.

Public hearings pursuant to this section shall be held by the authority in convenient locations throughout the state. No less than ten public hearings shall be held for public comment on the establishment of regional jails. The authority shall cause to be published at least two weeks in advance of a hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof. The publication area shall be each county which may be included in a region for the purposes of a regional jail with the county in which the public hearing is held.

In addition to the hearing requirements above, before
beginning construction of a new facility for use as a regional jail or correctional facility or before beginning renovation or acquisition of an existing facility for use as a regional jail facility, which existing facility is not already a jail, correctional facility or secure facility for the detention of juveniles or persons otherwise involuntarily committed or confined, the authority shall hold a hearing for comment by all members of the public on all aspects relating to the advisability of the use of the site for that regional jail facility. The authority shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings, which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(a) To acquire, own, hold and dispose of property, real and personal, tangible and intangible.

(b) To lease property, whether as lessee or lessor.

(c) To mortgage or otherwise grant security interests in its property.

(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation at public or private hearings, on any matter relevant to this article and necessary for information on the construction or renovation of any correctional facility or the establishment of any correctional facility industries project.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(f) To apply to the circuit court having venue of such offense to have punished for contempt any witness who
refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear.

(g) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(h) To adopt, use and alter at will a corporate seal.

(i) To make bylaws for the management and regulation of its affairs pursuant to article three, chapter twenty-nine-a of this code.

(j) To appoint officers, agents and employees.

(k) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article.

(l) Without in any way limiting any other subdivision of this section, to accept grants from and enter into contracts and other transactions with any federal agency.

(m) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes: Provided, That no bond or other obligation may be issued or incurred unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used.

(n) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article.

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds
available to the authority therefor; and the authority
may issue its bonds, security interests or notes in such
principal amounts as it considers necessary to provide
funds for any purposes under this article, including:

(1) The payment, funding or refunding of the principal
of, interest on or redemption premiums on, any
bonds, security interests or notes issued by it whether
the bonds, security interests, notes or interest to be
funded or refunded have or have not become due.

(2) The establishment or increase of reserves to secure
or to pay bonds, security interests, notes or the interest
thereon and all other costs or expenses of the authority
incident to and necessary or convenient to carry out its
corporate purposes and powers. Any bonds, security
interests or notes may be additionally secured by a
pledge of any revenues, funds, assets or moneys of the
authority from any source whatsoever.

(p) To issue renewal notes or security interests, to
issue bonds to pay notes or security interests and,
whenever it considers refunding expedient, to refund
any bonds by the issuance of new bonds, whether the
bonds to be refunded have or have not matured except
that no such renewal notes shall be issued to mature
more than ten years from date of issuance of the notes
renewed and no such refunding bonds may be issued to
mature more than twenty-five years from the date of
issuance.

(q) To apply the proceeds from the sale of renewal
notes, security interests or refunding bonds to the
purchase, redemption or payment of the notes, security
interests or bonds to be refunded.

(r) To accept gifts or grants of property, funds,
security interests, money, materials, labor, supplies or
services from the United States of America or from any
governmental unit or any person, firm or corporation,
and to carry out the terms or provisions of, or make
agreements with respect to, or pledge, any gifts or
grants, and to do any and all things necessary, useful,
desirable or convenient in connection with the procur-
ing, acceptance or disposition of gifts or grants.
(s) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note or contract or agreement of any kind to which the authority is a party.

(t) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note revenues.

(u) To promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law.

(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The authority shall provide for the transportation of inmates between the regional jails and local holding facilities for court appearances.

(w) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of regional jails and correctional facilities.

(x) To cooperate with the commission for distribution of surplus foods and to authorize the executive director to exercise all power and authority provided in this section necessary to implement the pilot program for delivery of leftover prepared foods at the regional jail located in Marshall County, pursuant to section seventeen, article two, chapter eighteen of this code.

Notwithstanding any other provision of this section, the regional jail and correctional facility authority shall no later than the first day of November, one thousand nine hundred eighty-nine, submit a plan to the joint
committee on government and finance of the Legislature detailing the means by which the authority will comply with the mandates of the supreme court of appeals as to the structural and internal conditions and programs of the correctional facilities in this state. In preparing such plan, the authority is to allow for and consider any input from the public.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Donald L. Kopf
Chair of the House of Delegates

Matt Beatty
President of the Senate

Ann Selkin
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/94
Time 4:15 PM