

Department of Planning and Budget 2018 Fiscal Impact Statement

1. **Bill Number:** HB1109

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

2. **Patron:** Tran

3. **Committee:** Commerce and Labor

4. **Title:** Overtime compensation; penalties.

5. **Summary:** Requires an employer to compensate its employees who are entitled to overtime compensation under the federal Fair Labor Standards Act at a rate (i) not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek and (ii) not less than twice the employee's regular rate of pay for (a) any hours worked in excess of 12 hours in one workday and (b) any hours worked on the seventh day of work in any workweek to the extent that the hours worked on such day exceed 40 hours worked in such week. The sanctions for an employer's failure to pay such overtime wages, including civil and criminal penalties, are the same as currently provided for failing to pay wages generally.

6. **Budget Amendment Necessary:** Yes, Item 112 (Department of Labor and Industry) and Item 391 (Department of Corrections) (HB30/SB30). See Item 8, below.

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

7a. Expenditure Impact to the Department of Labor and Industry:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018	0	0	n/a
2019	\$403,571	4.0	GF
2020	\$403,571	4.0	GF
2021	\$403,571	4.0	GF
2022	\$403,571	4.0	GF
2023	\$403,571	4.0	GF
2024	\$403,571	4.0	GF

Expenditure Impact to the Department of Corrections:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018	0	0	n/a
2019	\$50,000	0	GF
2020	0	0	n/a
2021	0	0	n/a
2022	0	0	n/a
2023	0	0	n/a
2024	0	0	n/a

- 8. Fiscal Implications:** This bill would establish higher standards for overtime pay than currently required by the U.S. Department of Labor. The Department of Labor and Industry (DOLI) would begin enforcement of the new overtime wage for Virginia employees July 1, 2018, and would need three additional officer positions to conduct inspections and one assistant compliance officer to assist and support the inspection activities. Currently, DOLI's Labor Law Division receives over 1000 contacts a year about overtime but refers them to the federal Wage and Hour Division for enforcement. DOLI would be required to conduct investigations into many of the allegations covered under this bill as well as the federal maximum hour provisions. DOLI can refer some claimants to the federal Wage and Hour Division but expects to conduct 500 to 600 inspections annually out of the contacts DOLI currently receives per year about overtime.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to § 30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 836 of the 2017 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill. Revenue from any fines is deposited to the Literary Fund and is indeterminate.

The penalty for willfully and with intent to defraud or refuses to pay wages in violation of the bill's provisions is a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than \$10,000. The penalty is a Class 6 felony if the value of the wages earned and not paid is \$10,000 or more, or regardless of the value of the wages earned and not paid, if the conviction is a second or subsequent conviction under the provisions of this bill. The punishment for conviction of a Class 6 felony is a term of imprisonment of up to 5 years, or confinement in jail for up to 12 months and a fine of up to \$2,500, either or both. The punishment for a Class 1 misdemeanor is confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Labor and Industry; Corrections; courts; jails.

10. Technical Amendment Necessary: No.

11. Other Comments: None.