

Department of Planning and Budget 2011 Fiscal Impact Statement

1. Bill Number: HB 1678

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

2. Patron: Englin

3. Committee: Appropriations

4. Title: Overtime compensation of correctional officers

5. Summary:

Current state law sets out requirements for overtime compensation of fire protection employees and law enforcement employees of local governments and political subdivisions. The proposed legislation would expand the definition of “law enforcement employee” to include correctional officers in state and local correctional facilities.

6. Budget Amendment Necessary: None.

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

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2012	\$1,215,260	General
2013	\$1,215,260	General
2014	\$1,215,260	General
2015	\$1,215,260	General
2016	\$1,215,260	General
2017	\$1,215,260	General

8. Fiscal Implications:

If the proposed legislation is adopted, it could have a fiscal impact on the Department of Corrections (DOC). The fiscal impact will result from a complex interplay of federal law, state law, and DOC policy decisions.

The federal Fair Labor Standards Act (FLSA) requires that employers provide nonexempt employees overtime compensation, either in actual pay or compensatory leave time, at a rate of one and one-half times their normal pay. For most nonexempt employees that are covered

by the act, a normal work period, after which overtime compensation must be provided, is 40 hours physically (actually) worked over a 7-day period. However, the FLSA, in statute and regulations, recognized the unusual situation of firefighters and law-enforcement personnel and provided some flexibility to state and local governments. (For purposes of the FLSA, corrections officers are included in the definition of “law enforcement personnel”.) The law allows the public entity to establish a work period for these groups of personnel that can range from seven up to twenty-eight days. The number of hours that an employee can work in a work period before being eligible for overtime compensation varies with the length of the period. For the maximum work period of 28 days, after physically working 171 hours, a law enforcement officer would be eligible for overtime compensation.

DOC has adopted the 28-day work period for correctional officers, but has elected, by policy to pay certified corrections officers time and a half for each hour over 160 worked in that work period because the salaries of corrections officers were set based on the hourly rate for this equivalent time period. It was the practice to pay overtime based on that hourly rate prior to the state being covered by FLSA. This practice remains in compliance with FLSA today. If the proposed legislation is passed, it is anticipated that DOC will incur significant increased costs as the result of two aspects of the bill.

The first effect relates to newly hired correction officers during their training period. The work period for these officers is 171 hours in a 28 day cycle. Therefore, no overtime compensation is required for hours 160 between 171 as it is for certified officers. This practice is allowed under the federal FLSA regulations because the trainees must complete mandated basic training to remain employed. This proposed legislation could require time and a half payment of those hours between 160 and 171 during the training period. To avoid this situation, DOC could define the number of hours to be worked by corrections officers in training in a 28-day work period as 171, as allowed under federal law and Section 9.1-702 of the Code of Virginia.

Second, and most importantly, the proposed legislation would have an effect on DOC by changing the definition of which hours should be counted in determining whether a corrections officer would be eligible for overtime compensation.

Section 9.1-703 of the Code of Virginia requires that all hours that a local firefighter or law enforcement employee is in a paid status during his or her regularly scheduled work hours shall be counted as hours of work for the purposes of computing overtime compensation eligibility. The effect of this provision is that, if such an employee is on paid annual or sick leave and returns to work before the end of a work period, those hours that he was on leave must be counted toward determining whether he worked any overtime during that period.

Currently, in accordance with FLSA in determining whether a correctional officer is eligible for time and a half overtime compensation, DOC counts the number of hours actually/physically worked during the applicable work period, not the number of hours he or she was in a paid status, whether or not actually at work. DOC estimates its cost would be

\$1.2 million annually to change the method of calculating overtime from time worked to time in paid status. DOC could provide compensatory leave instead of pay, thereby avoiding the additional cost. However, that approach would not be a practical one for the agency. When the officers would take their additional time off, their posts would still need to be staffed. To keep its security posts adequately staffed, DOC would then need to either hire additional officers or pay overtime to other officers.

Because the current law is limited to law enforcement officers, by broadening that definition to include local correctional officers, the bill would also affect cities and counties that employ deputy sheriffs who function solely as jailers, as well as regional jails.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments:

Section 9.1-706 of the Code of Virginia, which is in the same article as the section that would be amended by the proposed legislation, states that the sovereign immunity of the Commonwealth and of any state agency “is hereby reserved.” It is not clear what effect this provision would have on the requirement that would be placed on the Department of Corrections by the proposed legislation.

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