

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB2063

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Mullin

3. Committee: Passed both Houses

4. Title: Virginia Overtime Wage Act; 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 not less than one and one-half times the employee's regular rate of pay, defined in the bill, for any hours worked in excess of 40 hours in any one workweek. The bill includes provisions for calculating overtime premiums due to fire protection and law-enforcement employees by certain public sector employers. The penalties provided by the bill 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. The statute of limitations for bringing a claim for a violation of the bill is three years.

6. Budget Amendment Necessary: See item 8.

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

7a. Expenditure Impact: Department of Labor and Industry. Item 120

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	N/A	N/A	N/A
2022	\$205,364	2.0	GF
2023	\$205,364	2.0	GF
2024	\$205,364	2.0	GF
2025	\$205,364	2.0	GF
2026	\$205,364	2.0	GF
2027	\$205,364	2.0	GF

8. Fiscal Implications: This fiscal impact statement includes information provided from state agencies that anticipate requiring additional resources in order to implement the provisions of the bill.

The Department of Labor and Industry (DOLI) anticipates that two additional labor law compliance officers will be necessary to enforce the new overtime law. According to DOLI, there is no state law explicitly allowing collection of overtime pay in Virginia. The number of positions needed is estimated from the annual number of overtime calls DOLI receives

(250-350), and the concomitant number of recommendations the agency makes to claimants to go to the federal Wage and Hour Division for collection of overtime pay. DOLI anticipates that any cost can be absorbed within the appropriation in HB1800/SB1100 as introduced. However, the Conference Report includes an amendment removing \$175,073 the first year and \$500,290 the second year from the general fund for DOLI's Labor Law division. As a result, a budget amendment will be required if this adjustment remains.

According to the Department of Human Resource Management (DHRM), the agency provides guidance to all state agencies in the administration of the overtime provisions of the Fair Labor Standards Act (FLSA). However, the Office of the Attorney General (OAG) determines how the federal law applies to state government and consults with DHRM to ensure policies and practices comply with state and federal law.

According to the Department of Medical Assistance Services (DMAS), this bill is not expected to have an impact on Medicaid consumer-directed personal care attendant costs. DMAS is required to authorize overtime (time and a half for up to 8 hours effective January 1, 2021, and for up to 16 hours effective July 1, 2021) for a single attendant who works more than 40 hours per week for attendants providing Medicaid-reimbursed consumer-directed personal assistance, respite and companion services. Live-in, consumer-directed attendants are exempt from overtime per the FLSA. This proposal could increase costs for other Medicaid providers, which could ultimately impact program costs; however, such projections are indeterminate as there is insufficient data to make an estimate.

This bill expands a misdemeanor offense. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and/or a fine of not more than \$2,500. According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. Any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality; however, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 56 of the Acts of Assembly of 2020 (special session I) requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. The Conference Report includes an amendment providing \$50,000 to the Department of Corrections in FY 2022 for the provisions of this bill.

9. **Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management; Office of the Attorney General; Department of Medical Assistance Services; Department of Labor and Industry; Courts; Department of Corrections; Department of Juvenile Justice; jails; localities

10. Technical Amendment Necessary: No.

11. Other Comments: None.