

Department of Legislative Services  
 Maryland General Assembly  
 2005 Session

FISCAL AND POLICY NOTE

House Bill 310 (Delegate Nathan-Pulliam, *et al.*)  
 Economic Matters

Labor and Employment - Payment of Overtime - Registered Nurses

This bill entitles a registered nurse providing direct patient care to payment of an overtime wage.

Fiscal Summary

**State Effect:** Department of Labor, Licensing, and Regulation (DLLR) general fund expenditures could increase by \$51,700 in FY 2006 for start-up. Future year expenditures reflect annualization, the termination of a part-time contractual position, and inflation. No effect on DLLR revenues. Department of Health and Mental Hygiene (DHMH) general fund expenditures and revenues could increase in FY 2006 and subsequent years, depending on the number of registered nurses in local health departments opting for overtime pay as a result of this bill.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	-	-	-	-	-
GF Expenditure	51,700	44,500	47,200	50,200	53,400
Net Effect	(\$51,700)	(\$44,500)	(\$47,200)	(\$50,200)	(\$53,400)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Expenditures for all counties could increase in FY 2006 and thereafter depending on the number of registered nurses employed by local health departments who would opt for overtime pay as a result of this bill. No effect on local health department revenues. **Although DHMH advises that it would pay for a majority of the costs this bill imposes on counties, this bill may impose a mandate on a unit of local government.**

**Small Business Effect:** This bill would prevent employers from reclassifying registered nurses as professional staff, thereby ensuring their eligibility for overtime pay.

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## Analysis

**Current Law:** A State employee who works more than the normal work week is eligible for overtime payment or compensatory time. Statutes regulating wages and hours do not apply to an individual who is considered to be in an administrative, executive, or professional position. Each employer must pay an overtime wage of at least 1.5 times the usual hourly wage, with certain exceptions.

This requirement does not apply to an employer that is: (1) subject to federal rail laws; (2) a hotel or motel; (3) a restaurant; (4) a gasoline service station; (5) a bona fide private country club; (6) a nonprofit entity primarily engaged in providing temporary at-home care services, such as companionship or delivery of prepared meals, to aged or sick individuals with disabilities, or individuals with a mental disorder; (7) a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or (8) specified amusement or recreational establishments.

It also does not apply to: (1) an employee for whom the U.S. Secretary of Transportation may set qualifications and maximum hours of service under federal law; (2) a mechanic, partsperson, or salesperson, under certain conditions; or (3) a driver if the employer is a taxicab operator.

The University of Maryland campuses may enter into agreements or understandings with employees who are eligible for overtime compensation under federal law that the employees instead will receive voluntary compensatory time off according to the federal Fair Labor Standards Amendments of 1985.

Under the Fair Labor Standards Act (FLSA), certain registered nurses who meet the requirements for the FLSA learned profession exemption, and if they are paid a salary of at least \$455 per week, may be classified as exempt from being eligible to receive overtime pay.

**Background:** At the end of 2004, there were 60,579 active licensed registered nurses working in Maryland. Most registered nurses employed by the State or by State-hired contractors already receive overtime pay for the hours they work over 40 hours per week.

### *Department of Health and Mental Hygiene*

DHMH's Community Health Administration (CHA) reports that local health departments utilize nurses classified as "registered nurses" and nurses classified as "community health nurses" who generally do not receive overtime pay because most of them are classified as professionals. These nurses earn one hour of compensatory time for every hour that they work past 40 hours per week instead of receiving overtime pay.

Of the 15 local health departments (out of 24 statewide) reporting back to CHA, there are 778 nurses who would be included in this legislation, 665 of whom currently earn compensatory time instead of receiving overtime pay. The remaining nurses already receive overtime pay (\$34.85 per overtime hour). Collectively, those 665 nurses earned an estimated 13,758 hours of compensatory time (an average of 21 hours each annually) in fiscal 2004. This assumes that all of these nurses are considered to provide "direct patient care." Using this as a base, CHA estimates that there may be 1,064 registered nurses employed by all 24 local health departments who could be affected by this bill.

### *Department of Labor, Licensing, and Regulation*

The fiscal 2006 budget request contains no funds for DLLR's Division of Labor and Industry's Employment Standards Services, which is now responsible for investigating complaints by Maryland workers who believe they are due unpaid wages from their employer for service performed.

**State Fiscal Effect:** Most State agencies, including the University System of Maryland, already pay direct care registered nurses overtime pay if they work more than 40 hours per week. This bill would prevent the State from prohibiting a registered nurse from being eligible to receive overtime pay.

### *Department of Labor, Licensing, and Regulation*

DLLR general fund expenditures could increase by an estimated \$51,730 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one investigator to investigate complaints of nurses providing direct care not receiving overtime pay. DLLR assumes it will receive 350 complaints of nonpayment of overtime annually from registered nurses. The estimate also includes the cost of hiring one part-time contractual administrator to explain the new law and how it ties into other State and federal laws. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$29,806
Contractual Administrator	14,538
Operating Expenses	<u>7,386</u>
<b>Total FY 2006 State Expenditures</b>	<b>\$51,730</b>

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover for the investigator; (2) the termination of the contractual administrator position at the end of fiscal 2006; and (3) 1% annual increases in ongoing operating expenses. No effect on DLLR general fund revenues.

*Department of Health and Mental Hygiene*

For illustrative purposes only, if 1,064 registered nurses employed by the local health departments were to opt to receive overtime pay instead of compensatory time, total expenditures could increase by an estimated \$276,958 in fiscal 2006 (\$184,639 in general funds for the State share/\$92,319 paid by the counties). The counties' portion for the overtime pay would be reimbursed to the State general fund. This accounts for the bill's October 1, 2005 effective date. The information and assumptions used in calculating the estimate are stated below:

- 1,064 registered nurses employed by local health departments could be eligible for overtime pay;
- these nurses could work 22,013 hours of overtime annually;
- the regular hourly registered nurse salary is \$23.23 per hour and nurses working overtime earn \$34.85 per overtime hour;
- fringe benefits for the registered nurses would increase \$113,598 annually as a result of the nurses being paid overtime; and
- the State would pay two-thirds of the overtime costs with the local health departments paying one-third of the overtime costs.

However, it is unlikely that all registered nurses would opt for overtime pay; some would likely choose to continue receiving compensatory time instead.

**Local Fiscal Effect:** If 1,064 registered nurses employed by the local health departments were to receive overtime pay instead of compensatory time, total expenditures for the

counties could increase by an estimated \$92,319 in fiscal 2006, the amount reimbursed to the State general fund for the overtime pay. This accounts for the bill's October 1, 2005 effective date. However, it is unlikely that all registered nurses would opt for overtime pay; some would likely choose to continue receiving compensatory time instead.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 307 (Senator Hollinger) – Finance.

**Information Source(s):** Maryland State Department of Education; Department of Disabilities; Department of Health and Mental Hygiene; Department of Aging; University System of Maryland; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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