

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1138  
Appropriations

(Delegate Haynes, *et al.*)

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State Personnel - Employee Compensation - Overtime Pay

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This bill generally requires a State employee in the Executive Branch, including units with independent personnel systems, and an employee of a hospital or domiciliary care facility for the ill, aged, or disabled to be paid two times the employee's regular hourly rate of pay for working in excess of 100 hours in a two-week work period. An employee who works at least 80 hours but not more than 100 hours earns one and one-half times the employee's regular hourly pay rate. The bill does not apply to law enforcement and civilian employees of the Department of State Police who participate in a specified modified workday program.

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Fiscal Summary

**State Effect:** State expenditures (all funds) increase significantly, by at least several million dollars, beginning in FY 2021 due to increased overtime costs, as discussed below. Revenues are not materially affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Generally, a State employee whom the Secretary of Budget and Management has authority to pay who works more than 40 hours in a workweek earns one and one-half times the employee's regular hourly pay rate. All employees subject to overtime pay are entitled to the greater of State overtime benefits or the benefits required by the federal Fair Labor Standards Act (FLSA).

An employee of a hospital or domiciliary care facility for the ill, aged, or disabled earns one and one-half times the employee's regular hourly rate of pay for working more than 80 hours in a two-week work period or working in excess of 8 hours in any workday.

By regulations consistent with the federal FLSA, the Secretary of Budget and Management may provide for employees who otherwise would be entitled to overtime payment to elect to receive compensatory time instead. The Secretary may designate those bona fide administrative, executive, and professional employees who may not receive payment for overtime work, but who may be granted compensatory time for overtime work. An employee who is included in the Executive Pay Plan at a pay grade of (ES) 6 or above is not entitled to accrue any compensatory time other than as provided under statute for overtime work.

### *Federal Fair Labor Standards Act*

Similar to State law, FLSA generally requires that workers be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. However, Section 13(a)(1) of FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684 per week. Job titles do not determine exempt status.

**State Expenditures:** Under the bill, State employees who work in excess of 100 hours in a two-week period earn two times the employees' regular rate of pay. Thus, the bill likely substantially increases overtime costs, especially for agencies with 24/7 operations, such as the Department of Public Safety and Correctional Services, the Maryland Department of Health, and the Department of Juvenile Services. For example, the Department of Budget and Management advises that approximately 3,900 State employees within the State Personnel Management System (SPMS) worked in excess of 100 hours in one two-week period over a recent 12-month span, although it is not clear whether this practice is routine or how many hours over that threshold are worked, on average. The Maryland Department of Transportation (MDOT) also has many employees who earn overtime. Many of these employees in SPMS and MDOT are currently subject to collective bargaining agreements that include provisions for the payment of overtime. This analysis assumes that, if enacted, the bill supersedes existing collective bargaining agreements as it likely provides higher overtime compensation than is provided under the agreements. Additionally, other agencies with independent personnel systems, such as Towson University, may incur additional overtime costs, as well as costs associated with tracking the overtime.

The Department of Legislative Services advises that the impact of the bill on State expenditures cannot be reliably quantified without additional data. However, it does increase expenditures (all funds) significantly beginning in fiscal 2021. *For illustrative purposes only*, if all 3,900 SPMS employees identified above worked, on average, 120 hours in a two-week pay period, then 20 of those hours would be paid at the higher rate under the bill. Assuming their normal hourly wage was \$36, the bill would result in an additional \$1.4 million in expenditures for that one pay period alone. The impact depends on whether and to what extent agencies are able to limit the use of overtime (or would start to do so under the bill) and likely varies significantly from year to year. Some agencies, such as the Department of Housing and Community Development and the Maryland Department of Aging, do not have any nonexempt employees who routinely work in excess of 100 hours in a two-week period. Also, as salaries increase in future years, the impact increases.

The Office of Administrative Hearings can train administrative law judges and conduct and track personnel hearings related to overtime pay stemming from the bill with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 827 (Senators McCray and Hayes) - Finance.

**Information Source(s):** Maryland Department of Aging; Department of Commerce; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Disabilities; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Veterans Affairs; Department of Legislative Services

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