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HOUSE BILL 1138 State Personnel – Employee Compensation – Overtime Pay (Haynes, et al)

POSITION: OPPOSE

DATE: March 3, 2020

COMMITTEE: House Appropriations Committee

SUMMARY OF BILL: HB 1138 increases the payment for State employees overtime work from time and a half to double time for time worked in excess of 100 hours in a two-week pay period. The change in overtime pay compensation applies to all units in the Executive Branch, including the Maryland Department of Transportation and the University System of Maryland. The change would not apply to law enforcement and civilian employees of the Department of State Police who participate in the modified workday program established in accordance with Public Safety Article, Section 2-411. The bill is effective October 1, 2020.

EXPLANATION OF POSITION: The Department recognizes and appreciates the intent of the bill, which is to increase the overtime compensation of employees who work in excess of 100 hours of overtime in a pay period. However, the Department has significant fiscal and operational concerns. It is important to explain current work rules that allow for overtime payments to employees, even while an employee is on leave and not on the job working.

- **Overtime Pay Includes Hours While on Paid Leave.** COMAR 17.04.11.02B(1)(b) defines “work time” as including paid time off. Therefore, employees currently are paid time and a half for hours exceeding 80 within the two-week pay period. However, the employee could have taken paid leave for a portion or all of the 80 hours, so long as they actually were on the job after that 80 hours was reached. This is a generous benefit, the cost of which, in both dollars and productivity, is exacerbated by paying double time for “work time” in excess of 100 hours as required by the legislation.

There is an inherent unfairness in this legacy work rule to Employee A who is actually on the job for the full work week and works overtime. Employee A’s actual work hours will exceed that of Employee B who took paid leave during the same two-week period, although their cumulative hours are the same – both employees receive overtime pay.

- **Overtime Costs Will Increase Substantially.** The bill’s double time requirement is estimated to cost \$4.1 million more per pay period and \$106.4 million annually more than the normal paid overtime cost, which is paid at time and one-half. This amount is based on the average actual overtime worked in excess of 100 hours for the period of October 1, 2018 through October 1, 2019. Emergency situations and 24-hour facilities typically experience the greatest use of overtime. Again, the “work time” rule exacerbates the cost of double time when employees are not required to actually be on the job for all of their base 80 hours.
- **Potential to Increase Use of Mandated Overtime.** Facilities currently staff shifts using a mix of voluntary overtime and mandated overtime. Passage of this legislation could result in more mandated overtime as facilities distribute overtime hours among more employees to avoid paying double time. Mandating overtime has a negative impact on morale.

Matters involving employees’ pay require collective bargaining between the State and the exclusive representatives of bargaining unit employees. The State has not had the opportunity to bargain over the type of change proposed by this bill and urges the Committee to allow the collective bargaining process to work.

For all of these reasons, the Department respectfully requests an unfavorable report.

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