

# **AFSCME3\_Support\_SB827**

Uploaded by: Gilmore, Denise

Position: FAV



190 West Ostend St., #201  
Baltimore, MD 21230  
Phone: 410.547.1515  
Fax: 410.837.5436

Patrick Moran - President

**Testimony**  
**SB 827 – State Personnel –**  
**Employee Compensation – Overtime Pay**  
**Support**

AFSCME Council 3 supports SB 827. This legislation would begin compensating state employees who work an excess of 100 hours in a standard two-week, 80-hour, pay period at twice their regular rate of pay (or double-time). The state already has a precedent to provide this type of compensation to essential employees when there is a state closure and are required to remain at work due to a declared state of emergency. SB 827 extends this state of emergency pay to state employees earning cash overtime who are required to work more than 20 hours of overtime in a pay period.

**The State’s Staffing Crisis is a State of Emergency**

According to DLS, since 2014 vacancy rates across the executive branch have increased by 46% (7.6% to 11.1%). On average there is a 13% vacancy in the agencies involving Public Safety, Health and Human and Juvenile Services. With thousands of unfilled positions, state government has had to increasingly rely on staff overtime to cover critical shifts and maintain services. For state employees working in our 24/7 institutions this often means being required to work 16-hour double shifts, multiple times in a week, and often on short notice. In addition to the disruption that these extended hours have on the employee’s personal life, safety and the quality of services the state is charged with providing is also compromised. To employees working these long hours, it makes little difference if the cause is due to a weather emergency or a staffing emergency.

**Overtime Spending Exceeds Amount to Recruit and Retain Additional Staff**

The DLS reported in the Fall of 2019 that,

*“In these agencies, the State is expected to spend at least \$239.1 million in overtime costs in fiscal 2020, with more than half of that amount attributable to the Department of Public Safety and Correctional Services (DPSCS) (\$122 million). Given that actual overtime spending in fiscal 2018 totaled over \$255 million and vacancy rates for DPSCS and several other key agencies have continued to increase, it is likely that the fiscal 2020 allowance for overtime spending is underfunded.”*

Every AFSCME Maryland State and University contract guarantees a right to union representation.  
An employee has the right to a union representative if requested by the employee.  
800.492.1996

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Assuming an average salary of \$42,000 annually, \$255M could provide a \$10,000 salary increase to all of our frontline state employees, and those hit hardest by the staffing crisis, and have money left over to fill over 2,000 PINS.

**Excessive Overtime Should be the Exception, Not the Norm**

SB 827 recognizes that there will always be some amount of overtime. The first 20 hours of overtime a state employee works will still be compensated at the regular overtime rate of time-and-a-half. When an employee works an excessive amount of overtime however, SB 827 would provide for additional compensation in those circumstances and would help to ensure that this reliance on excessive overtime is the exception and does not become the norm.

For all of these reasons, we urge the committee to provide a favorable report. Thank you.

**Exhibit 1**  
**State Overtime Costs**  
**Fiscal 2017-2020 Allowance**

<u>Department/Service Area</u>	<u>2017 Actual</u>	<u>2018 Actual</u>	<u>2019 Working</u>	<u>2020 Allowance</u>
Public Safety	\$84,406,780	\$110,372,010	\$118,374,938	\$121,953,373
Transportation	51,427,927	65,057,784	44,758,306	46,930,853
Police and Fire Marshal	24,820,050	27,287,281	19,184,754	25,627,469
Health	21,505,924	24,964,477	20,936,525	19,601,284
Juvenile Services	12,178,942	12,010,595	12,439,200	13,114,230
Human Services	9,294,258	9,605,075	8,068,908	8,064,153
Natural Resources	1,328,094	1,131,316	989,327	989,577
General Services	927,636	879,772	837,256	797,623
Labor	603,550	613,174	276,012	520,759
Financial and Revenue Administration	677,257	542,197	398,963	499,030
Legislature	228,898	230,116	249,000	249,000
Education	833,820	1,013,649	186,527	197,734
Environment	0	0	182,000	182,000
Executive and Administrative Control	1,307,931	1,057,893	174,072	173,482
Budget and Management and Information Technology	167,428	114,757	76,320	111,320
Retirement	64,653	64,582	55,595	61,332
Agriculture	103,426	117,019	52,000	53,910
Commerce	5,918	14,163	6,250	6,250
Legal (excluding Judiciary)	29,427	32,231	5,000	5,000
Housing and Community Development	36,432	43,845	0	0
<b>Total</b>	<b>\$209,948,351</b>	<b>\$255,151,936</b>	<b>\$227,250,953</b>	<b>\$239,138,379</b>

Source: Department of Legislative Services

**Exhibit 13**  
**Vacancy Rates by Department**  
**January 2020**

<u>Department/Service Area</u>	<u>Positions</u>	<u>January Vacancies</u>	<u>Actual Vacancy Rate</u>
<b>Public Safety, Health and Human Services</b>			
Public Safety and Correctional Services*	9,097	1,657	18.2%
Health	6,347	753	11.9%
Human Services	6,119	606	9.9%
Police and Fire Marshal	2,458	208	8.5%
Juvenile Services	1,987	179	9.0%
<b>Subtotal</b>	<b>26,008</b>	<b>3,403</b>	<b>13.1%</b>
<b>Transportation</b>	<b>9,058</b>	<b>563</b>	<b>6.2%</b>
<b>Other Executive</b>			
Legal (Excluding Judiciary)	1,508	120	8.0%
Executive and Administrative Control	1,608	184	11.4%
Financial and Revenue Administration	2,095	213	10.1%
Budget and Management and DoIT	530	83	15.7%
Retirement	189	28	14.8%
General Services	645	70	10.8%
Natural Resources	1,344	140	10.4%
Agriculture	410	42	10.2%
Labor	1,378	186	13.5%
MSDE and Other Education	1,986	222	11.2%
Housing and Community Development	331	25	7.6%
Commerce	188	26	13.8%
Environment	893	120	13.4%
<b>Subtotal</b>	<b>13,105</b>	<b>1,458</b>	<b>11.1%</b>
<b>Executive Branch</b>	<b>48,172</b>	<b>5,424</b>	<b>11.3%</b>

DoIT: Department of Information Technology  
MSDE: Maryland State Department of Education

\*The fiscal 2021 budget bill includes language that abolishes 521 vacant positions in the Department of Public Safety and Correctional Services. Abolished positions have been removed from this chart.

Source: Department of Budget and Management, Department of Legislative Services

## **CoryMcCray\_FAV\_SB827**

Uploaded by: Senator McCray, Senator McCray

Position: FAV



CORY V. McCRAY  
Legislative District 45  
Baltimore City

ASSISTANT DEPUTY MAJORITY LEADER

Budget and Taxation Committee

Capital Budget Subcommittee

Health and Human Services Subcommittee

Pensions Subcommittee



James Senate Office Building  
11 Bladen Street, Room 221  
Annapolis, Maryland 21401  
410-841-3165 · 301-858-3165  
800-492-7122 Ext. 3165  
Cory.Mccray@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Vote Yes on Senate Bill SB: 827**

**Bill Title: State Personnel - Employee Compensation - Overtime Pay**

**Hearing Date: February 21, 2020 at 12:00 p.m.**

**Chair: Delores G. Kelley, Vice Chair: Brian J. Feldman**

SB 827 would compensate state employees who have to work an excessive amount of overtime at double their regular rate of pay. This legislation defines excessive overtime as working 100 or more hours in a standard two-week, 80-hour, pay period. In other words, once an employee has worked 20 hours of overtime in a pay period at the regular overtime compensation rate of time-and-a-half, overtime hours 21 and above are paid at double time. This legislation only impacts cash overtime eligible employees.

The state already has a precedent of paying double time in situations where essential employees are required to report to work when the state closes and a state of emergency is declared. This type of pay is called state of emergency pay, and it's paid out in recognition of the hardship that's caused on the employee when they are stuck in a 24/7 institution for extended periods of time. In our state prisons, juvenile detention centers, and state hospitals, there is a staffing crisis emergency. SB 827 would allow this state of emergency pay to be extended to staff who are also stuck working excessive amounts of overtime in our 24/7 institutions because there simply is not enough staff.

This legislation is now more important than ever. There are thousands of vacant state positions, and in FY 2018, the state spent \$255 million on overtime costs. For less money than they're spending on overtime annually, the state could increase state worker wages and hire a thousand new positions. SB 827 will serve as an important motivator to work towards filling positions, rather than relying on tired, overworked, staff to cover critical shifts in state government. We urge you to provide a favorable report on SB 827.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Cory V. McCray'.

Cory V. McCray  
State Senator

**MDOT TSO\_UNF\_SB0827**

Uploaded by: TSO, MDOT

Position: UNF



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February 21, 2020

The Honorable Delores Kelley  
Chair, Senate Finance Committee  
3 East Miller Senate Office Building  
Annapolis MD 21401

***Re: Letter of Opposition – Senate Bill 827 – State Personnel – Employee Compensation – Overtime Pay***

Dear Chair Kelley and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 827 due to its significant fiscal and operational impact.

Senate Bill 827 expands the overtime provisions in the State Personnel and Pensions Article by requiring payment for overtime be made (one and one-half times the employees' regular hourly rate) for time worked in excess of 80 hours, up to and including 100 hours in a two-week period. Additionally, for time worked in excess of 100 hours in a two-week period, the payment for overtime must be made at two times the employee's regular hourly rate. The proposed legislation does not base overtime pay on the 40-hour work week, but instead bases overtime pay on an 80-hour pay period.

Senate Bill 827 conflicts with the Fair Labor Standards Act (FLSA) which requires that covered employees receive overtime pay for time worked in excess of 40 hours in a work week and that overtime pay must be based on an 80-hour pay period.

It is estimated that the implementation of Senate Bill 827 would cost MDOT approximately \$5 million in overtime for Transportation Service employees per year. If the bill applies to the MDOT Maryland Transit Administration (MDOT MTA) union employees, it is estimated that it will cost an additional \$6 million per year. These fiscal estimates are conservative insofar as they were based off a year where the State experienced minimal inclement weather and emergency situations. With respect to the MDOT MTA unions, each union negotiates a collective bargaining agreement (CBA) that establishes the union employee wages, hours, and working conditions. Per the CBAs, all MDOT MTA union employees are paid on a weekly basis. Calculating overtime based on an 80-hour pay period, instead of a 40-hour work week would cause MDOT MTA union employees to receive inaccurate weekly pay checks in violation of the FLSA and Maryland wage laws.

The Honorable Delores Kelley  
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For the above reasons, the Maryland Department of Transportation respectfully requests an unfavorable report on Senate Bill 827.

Respectfully submitted,

Judy Slater  
Director of Office of Human Resources  
Maryland Department of Transportation  
410-865-1185

Jeff Tosi  
Director of Government Affairs  
Maryland Department of Transportation  
410-841-2850

**DBM.UNF.SB 827**

Uploaded by: Wilkins, Barbara

Position: UNF



LARRY HOGAN  
*Governor*

BOYD K. RUTHERFORD  
*Lieutenant Governor*

DAVID R. BRINKLEY  
*Secretary*

MARC L. NICOLE  
*Deputy Secretary*

## **SENATE BILL 827 State Personnel – Employee Compensation – Overtime Pay (McCray and Hayes)**

**POSITION: OPPOSE**

**DATE: February 21, 2019**

**COMMITTEE: Senate Finance Committee**

**SUMMARY OF BILL:** SB 827 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.

**For information contact: Barbara Wilkins at 410-260-6371  
or [Barbara.Wilkins1@maryland.gov](mailto:Barbara.Wilkins1@maryland.gov)**