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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**HB 900 - Employment Standards – Firefighters
Payment of Overtime and Payroll Information
February 28, 2024**

House Appropriations Committee

Chair Barnes, Vice Chair Chang, Colleagues, thank you for the opportunity to present on my bill HB 900. This legislation amends the Maryland Labor and Employment Code to conform to the Federal Fair Labor Standards Act (FLSA) ensuring Maryland firefighters are paid in an appropriate and timely manner and corrects a major gap in the FLSA to ensure that our professional firefighters are not unduly overworked and ultimately compensated fairly for their overtime.

HB 900 intends to fix two problems:

1. First, it intends to require Maryland governmental employers of firefighters to pay overtime after an average workweek of 42 hours.
2. Second, it intends to make clear that Maryland governmental employers are required to pay their employees on time and give them notice of any changes in their pay rates. It also intends to subject the Maryland governmental employers to the penalties and enforcement mechanisms that it imposes on all other Maryland employers for violations of the wage laws.

As it currently stands, at the federal level, firefighters have little protections in terms of reasonable work hours and overtime. According to the FLSA, the threshold for a firefighter receiving overtime is 52 hours a week. At the state level, we also have no reasonable standard for the hours of professional firefighters, though all but four jurisdictions already provide the reasonable protection of a 42-hour work week through collective bargaining.

It's unfortunate that as we face a critical shortage of professional firefighters across the state, our first responders have to fight for reasonable work schedule protections. We know that substantial data and experience have demonstrated that firefighter's health, well-being, and work life

balance are negatively impacted by working longer hours than those of the general work population at large. As I mentioned, the vast majority of our local firefighter unions in Maryland have secured a 42-hour work week, demonstrating that such a schedule can be responsibly staffed, while providing opportunities for firefighters to achieve better health, avoidance of fatigue, and strike a better work life balance.

This legislation requires a cap of 168 hours over a 28-day work period – amounting to a standard weekly schedule of 42 hours – before a firefighter must receive overtime pay. It would be beneficial to all firefighters in the State of Maryland to have protection from unreasonable work schedules that is not provided by the FLSA. This legislation would also ensure that counties do not go backwards, using their weekly work schedules as a bargaining chip in contract negotiations or cost cutting measures. It is important to note that this legislation would not prevent a firefighter from working more than 42 hours, but it would require fair overtime compensation, hopefully motivating local jurisdictions to increase their staffing.

As to the second part of the legislation, there is currently ambiguity in Maryland case law regarding whether governmental employers are subject to the entirety of the Maryland Wage and Hour Law (MWHL), MD Code, Labor and Employment Article, § 3-401. The Maryland legislature explicitly made governmental employers in Maryland subject to the new minimum wage requirements found at MWHL § 3-415. This new law, passed in 2017, requires employers to pay an increasingly higher minimum wage, capping out in 2025 at \$15.00 per hour. However, MWHL also contains requirements related to the payment of overtime for employees working more than forty hours per week, as also found in the Fair Labor Standards Act (FLSA), 29 U.S.C., § 201 *et seq.* There is similar ambiguity regarding whether Maryland Wage Payment and Collection Law (MWPCCL) applies to governmental employers. This law supplements the MWHL by requiring employers to pay employees on time and to give them notice of changes to their wages.

Over the years, local governments have argued that they are not subject to the MWHL or to the MWPCCL, claiming that they are not within the definition of “employer” as that term was used in those statutes. However, in *Newell v Runnels*, 407 Md. 578, 967 A.2d, 729 (2009) the Maryland Supreme Court held that Caroline County Maryland could be found liable for violations of both the MWHL and the MWPCCL for failing to pay employees overtime.

Despite that decision, the Federal Courts have muddied the waters. In an unreported decision, a trial judge, the Honorable Theodore Chuang found that the definition of “employer” did not include governmental employers and, therefore, a Prince George’s County employee could not recover overtime from her County employer under those statutes.

In short, the current state of the law is unclear. The Federal Courts have consistently refused to hold Maryland governmental employers responsible for complying with the MWHL or the MWPCCL. Yet, the Supreme Court of Maryland acknowledged that the Counties are subject to those laws in *Newell v. Runnels* and that decision was cited by the Maryland Appellate Court as recently as 1/11/2023. *Qun Lin v. Cruz*, No. 914, Sept. Term, 2021, 2023 WL 154674, at *11 (Md. Ct. Spec. App. Jan. 11, 2023) in a case involving the definition of the term “employer.”

Our hope with this legislation is to clarify the law and end the dispute once and for all for firefighters in our state and ensure they can get the accurate information they deserve about their pay and compensation. According to the fiscal note, this policy change will not cost any additional money and can be handled with current resources.

Over the last decade, the General Assembly has regularly legislated protections and additional rights for our first responders. The policies in this legislation represent an important step forward in protecting our firefighters who risk life and limb to serve our communities. Thank you for your consideration and I urge a favorable report for HB 900.