

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4206-01
Bill No.: HB 1090
Subject: Department of Corrections; State Employees
Type: Original
Date: January 17, 2014

Bill Summary: This proposal permits any Department of Corrections employee who has accrued overtime hours to use those hours as compensatory leave time and changes the calculation of compensatory time.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Corrections (DOC)** state the new language in subsection 3 could have a fiscal impact on their agency.

The first part of the second sentence, "Compensatory time shall be considered accrued upon completion of time worked in excess of such employee's normal assigned shift,..." reflects the recent ruling by the Western District in Missouri Corrections Officers Association v. Missouri Department of Corrections, WD 75418, which held, in essence, that a corrections officer's compensatory time accrues at the end of the shift in which he has worked excess time, and not at the end of the workweek. The Department is already aware of the need to modify our procedures as they are affected by the court case. However, we note that the court's opinion only applies to corrections officers, whereas the language of the bill would apply to every nonexempt DOC employee in the state. The remaining language, "and will be the employee's decision whether to take the time off or request payment for such hours," appears to be broader than the court decision and conflicts with subsection 1/the first sentence of subsection 3. These parts qualify the employee's choice of using leave or receiving pay by adding the language, "provided that the leave time is available and agreed upon by such employee and his or her supervisor."

The first sentence in the new language, "Any nonexempt Missouri department of corrections employee who has accrued any overtime hours may choose to use those hours as compensatory leave time" appears to conflict with subsection 7 of the statute. The new language appears to allow ALL nonexempt DOC employees to be paid for their comp time, which is not how the DOC has interpreted 105.935, RSMo. Per subsection 7, DOC construes that only Code 2 institutional employees who work in posts that must be covered 24/7 are authorized to request and receive compensatory time payouts (i.e. Corrections Officer I and II, and Probation and Parole Assistant I and II).

The new language has the potential to increase the accrual of compensatory time as well as increase the number of payments required to all Code 2 DOC state employees who accrue more than 20 hours of compensatory time.

Passage of this bill has the potential to negatively fiscally impact the DOC, however the amount cannot be estimated.

ASSUMPTION (continued)

Officials from the **Office of Administration - Personnel Division (OA)** state the proposed language in Section 105.935.3 would have little impact on the Office of Administration, Division of Personnel as it is not one of the agencies listed as covered under this Section.

However, currently the SAM II HR Timekeeping functionality is not set up to automatically pay out any compensatory time balances which exceed 80 hours. SAM II also does not compute compensatory time on a daily basis. Like the Fair Labor Standards Act (FLSA), SAM II calculates compensatory time on the basis of the employee's assigned work week. Agency timekeeping staff would be required to manually compute and regularly pay off comp. hours of employees covered by Section 105.935, RSMo. In the alternative, significant modifications would need to be made to the SAM II payroll system in order to automate this process.

It is also unclear whether proposed language in subsection 3 of HB 1090 requires that the compensatory time considered accrued upon completion of time worked in excess of an employee's normal assigned shift should be paid out at the rate of time and one-half or at the employee's straight rate of pay. Additionally, while FLSA does not mandate daily calculations, it seems that this bill may mandate that approach.

OA states there could be significant fiscal impact for the agencies covered by the proposed legislation; however, it would be difficult to predict with any certainty or accuracy how many hours of compensatory time would be accrued and the pay rates of the staff involved; therefore fiscal impact is unknown.

Officials from the **Department of Social Services** assumes this proposal only applies to DOC employees, and therefore, would not have a fiscal impact on their agency.

Officials from the **Department of Mental Health (DMH)** state if the proposal is not applicable to their agency, then the bill would not create a fiscal impact. However, if the language does apply to DMH, the department would need to reassess and calculate the financial impact.

Officials from the **Missouri Veterans Commission (VET)** state if this bill pertains to any nonexempt state employees, please note that the VET is required to provide nursing services to ensure that there is a minimum direct care nurse staffing per patient per 24 hours, 7 days per week. The fiscal impact for 1,1000 FTE (direct care staff) for 4 hours per week for 52 weeks (at an average of \$21.20 per hour) would be \$4.24 million.

Oversight will assume the proposal pertains only to the Department of Corrections and therefore, would not fiscally impact other state agencies.

RAS:LR:OD

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
---	---------------------	---------	---------

GENERAL REVENUE

<u>Cost - Department of Corrections - overtime for state employees</u>	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
--	--	--	--

ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
---	--	--	--

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

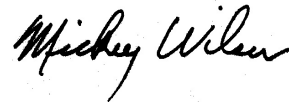
FISCAL DESCRIPTION

This proposal allows any nonexempt employee within the Department of Corrections who has any accrued overtime hours to use those hours as compensatory time if the leave time is available and agreed upon by the employee and his or her supervisor. An employee may retain up to 80 hours of compensatory time at any time during the year.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Office of Administration - Division of Personnel
Department of Mental Health
Department of Social Services
Missouri Veterans Commission



Mickey Wilson, CPA
Director
January 17, 2014

Ross Strope
Assistant Director
January 17, 2014