

February 26, 2016

The Honorable Ron Ryckman, Jr., Chairperson
House Committee on Appropriations
Statehouse, Room 111-N
Topeka, Kansas 66612

Dear Representative Ryckman:

SUBJECT: Fiscal Note for HB 2560 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2560 is respectfully submitted to your committee.

HB 2560 would add provisions relating to state employee working conditions governing meal periods, rest periods, lactation periods and hourly workweek limits. State employees who work five hours in a day must receive a meal period of 30 minutes. If a state employee works more than ten hours in a day, she or he must receive two 30-minute meal periods. The periods may be waived by mutual consent of the employee and employer. Any state agency failing to provide a meal period to an employee must pay the employee two hours of compensation at the employee's regular rate for each meal period that was not provided.

State agencies would be required to allow 15-minute rest periods per four hours of work per day. Any state agency failing to provide a rest period to an employee must pay the employee two hours of compensation at the employee's regular rate for each rest period that was not provided.

State agencies also must allow employees time to express breast milk for the employee's infant. To the extent possible, the time must run concurrently with any rest period or meal period. State agencies must make reasonable efforts to provide a private location. Failure by the state agency to provide a lactation period or make reasonable efforts to provide a private area would require the employee to be paid two hours of compensation at the employee's regular rate.

Full-time state employees would not be permitted to work more than 48 hours in a workweek, although employees may volunteer to work longer hours. Part-time employees would be limited to working 25 hours in a workweek. Any state agency that requires an employee to work more than the maximum number of hours or requires employees to volunteer for additional work hours must pay the employee ten times the employee's overtime rate of compensation for each additional hour worked.

Written notices of any denied meal, rest or lactation periods or of working beyond the workweek limits in the bill must be filed with the state agency's human resource department. The Department of Labor would be required to issue a quarterly report of any incidents and the costs related to extra compensation to the Governor, legislative leadership and the Department of Administration. The reports would be posted on the Department's website.

According to the Department of Administration, HB 2560 would have a wide-ranging fiscal effect on Executive Branch agencies and the Department. The fiscal effect would vary from agency to agency based on each agency's specific operations and responsibilities. The primary source of the fiscal effect would be from the requirement to compensate employees for an agency's failure to comply with meal, rest and lactation periods and for having to pay ten times an employee's overtime rate for any time worked in excess of 48 hours per week. While the Department estimates that the fiscal effect for Executive Branch agencies could be large, it is unable to determine the specific costs.

The Department of Administration notes that HB 2560 would greatly reduce agency staffing flexibility and does not make allowances for emergency situations, particularly for agencies such as the Department of Corrections, Adjutant General, Kansas Highway Patrol and the Department of Transportation. Additionally, the bill does not distinguish between hourly and salaried employees. Currently, salaried employees are exempt from overtime requirements of the Fair Labor Standards Act. HB 2560 would prohibit these employees from working in excess of 48 hours without receiving additional compensation. In some cases, the potential cost to the agency to compensate salaried employees for overtime could be large. The Department of Administration indicates that agencies are already subject to federal law for the provisions requiring time and suitable location for lactation periods.

The Department for Children and Families (DCF) specifies that the bill would reduce staffing flexibility for its social workers, protection specialists, protective investigators and Protection Report Center staff. Conducting investigations, responding to reporter inquiries and responding to emergency situations may require employees to work longer than 48 hours per week. The same activities would also limit DCF's ability to meet meal, rest and lactation period requirements in the bill. This would, in turn, cause DCF to pay compensation for any overtime or missed breaks. However, the Department is unable to estimate the precise fiscal effect of the overtime and other sanctions.

The Kansas Department for Aging and Disability Services (KDADS) reports that \$4,450,886 in overtime expenditures were paid by the state hospitals in FY 2015. This included \$3,171,381 for Larned State Hospital, \$1,057,945 for Osawatomie State Hospital, \$169,487 for Parsons State Hospital and Training Center, and \$52,073 for Kansas Neurological Institute. If the total overtime figure from FY 2015 is used, KDADS estimates the provision in the bill requiring employees to be paid ten times their regular overtime rate would cost \$44,508,860 from the State General Fund. Also, KDADS indicates that 8.00 additional FTE positions, which would be allocated to each of the hospitals, would be needed to track the overtime hours and provide reports. The expenditures for the positions would total \$452,200 from the State General Fund. The cost per position is \$56,525, which is equal to the salaries and benefits of a Human Resource Professional II position.

The Commission on Veterans Affairs Office indicates that it would likely incur additional overtime costs of \$3,242,176, which includes \$2,093,136 for the Kansas Veterans Home, \$1,117,040 for the Kansas Soldiers Home and \$32,000 for Veterans Services staff. Also, the Commission estimates that it would need at least 3.00 new FTE positions at a total cost of \$175,000. Two positions would be assigned to the human resource office and each home would receive .5 FTE position to cover breaks and assist with additional responsibilities.

The Department of Corrections believes the bill would have a large fiscal effect on the agency but the Department is unable to determine what that effect would be. Currently, Department security staff does not take breaks for lunch or rest periods and employees must remain at their post for their entire eight-hour shift. The agency states that it does have employees who work over 48 hours and many of them volunteer to do so.

The fiscal effect for the Kansas Highway Patrol (KHP) is also unknown. However, KHP concurs with the Department of Administration's assessment that HB 2560 does not make allowances for any overtime hours that might be required for emergency situations. Because KHP staff regularly work extended hours when responding to emergencies, the fiscal effect to compensate these employees according to the overtime requirements in the bill would likely be large.

The Department of Wildlife, Parks and Tourism estimates that there would be a fiscal effect to agency operations but the agency is unable to estimate the specific dollar amount.

The Kansas Department of Transportation (KDOT) estimates that it could incur additional overtime costs of \$9,755,924 from the provision limiting workweek hours to no more than 48 hours. Because of insufficient data, KDOT is not able to estimate the fiscal effect related to meal, rest and lactation period requirements.

The Kansas Department of Labor (KDOL) anticipates that it would need to hire staff to investigate any claims made by employees and to litigate the claims if they go to court. The staff needed would include 2.00 investigator FTE positions, 1.00 supervisor FTE position, and 2.00 attorney FTE positions. Altogether, KDOL estimates the fiscal effect from the bill would be \$450,000. Included in this amount is \$350,000 for the annual salary and benefits of the five positions plus \$100,000 for associated start-up costs. Any fiscal effect associated with HB 2560 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Ben Cleeves, Transportation
Kim Torrey, Highway Patrol
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