

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 7, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Papay - Excused
Senator Reynolds - Excused

Committee staff present: Julian Efird, Legislative Research Department
Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Susan Seltsam, Secretary of Administration
Nancy Echols, Div. of Personnel Services
Rick Robards, Director of Human Resources, University of
Kansas Medical Center
William E. Richards, Retired State Employee

Others attending: See attached list

Chairman Ramirez called the meeting to order at 1:45 p.m. The first item on the agenda was **SB 778**--rules and regulations pertaining to overtime compensation for state employees.

The first conferee was Secretary Susan Seltsam, appearing in support of the bill. She stated that the proposed legislation requires that the state only consider hours actually worked in determining if the employee receives overtime. This would result in a reduction of the state's overtime liability by eliminating a provision in the pay practices not required by federal law. (Attachment 1)

Secretary Seltsam was asked if the Department of Administration pays overtime to supervisors. She replied in the affirmative and said that it depends upon their job description. Federal regulations are more stringent for government than they are for private enterprise.

In reply to the question is overtime mandatory, the Secretary replied that in most cases they try to avoid overtime. In response to the question of how this bill will affect the Highway Patrol and the Department of Corrections, the Secretary responded that if they are drawing a substantial amount of overtime because of the in-pay- status regulation, they will see a decrease in overtime.

Nancy Echols, Division of Personnel Services appeared in support of the bill. She referred to in-pay-status. This term refers to all hours of work; all hours of paid leave such as vacation, sick, holiday, and funeral leave; as well as any compensatory time off. She stated that nearly 90% of all positions within the state are classified as non-exempt, and therefore, overtime eligible. She commented it makes little sense to continue a policy that exceeds the requirements of FLSA. (Attachment 2) She ended her testimony by encouraging the committee's favorable consideration of the bill.

Ms. Echols and the Secretary were asked to provide information on how much overtime unclassified and professional people are being paid.

Rick Robards, University of Kansas Medical Center, spoke in support of the bill. Although the Medical Center has not been able to precisely determine the fiscal impact, it would experience substantial savings. Salaries and benefits represent nearly two-thirds of the center's operating budget. Overtime expenses represent additional overhead. (Attachment 3)

Mr. Robards stated they are disadvantaged by regulations and policies that go beyond what is required by federal law in terms of employees being compensated differently than other competing hospitals.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N
Statehouse, at 1:30 p.m. on March 7, 1994.

Staff said in 1986 amendments were added to make the current version of the rules and regulations.

Ms. Echols replied to a questions on the nurses and stated they are unclassified, but still fall under the FLSA.

Mr. Robards stated the Medical Center does pay the nurses overtime. The FLSA would probably support a professional exemption for a professional nurse, however, the marketplace simply will not allow hospitals to make their nurses salaried staff.

The committee turned to **SB 791**--State Civil Service; vacancies or new positions; certification of lists; lists of persons eligible for employment.

Nancy Echols stated that this bill changes the "rule of five" applicant selection criteria. She stated how the system is now and how it will work under the bill. The list will go from five names to five scores. (Attachment 4) If the list has more names, agencies will have a large pool of applicants to consider for a vacancy. This will give candidates an opportunity to be placed on more lists and could make it easier for agencies to meet affirmative action goals. Ms. Echols ended her testimony by asking support for the bill.

Ms. Nichols went through the procedure of hiring: When a person applies for employment, they take an examination of some type; there is a passing point of 100 and some persons would have 100 and some 70. Using accountants as an example, Ms. Nichols said that maybe 25 would apply for the test. Of that 25 maybe 15 passed the test and are put on the eligible list. When the agency has a vacancy they asked for the top five scores. They send them more names than five in case someone has decided they do not want to work for the state and has dropped out. Of the top five scores, they could range from 100 to 70. The agency does not have to take the 100 score, it could take the 70 score. This bill will group the scores. There could be ten 100 scores or ten 70 scores, each score would count as one and this would enlarge the list by many persons.

The Chairman asked if there was anyone else who would like to appear on the bill.

William E. Richards, state employee, asked to make a few brief comments. He stated that the thing that seems to be implicit in what is being recommended is the opportunity for someone to exercise favoritism. He does not see this legislation as conforming to the merit system that the state currently has.

The chairman thanked Mr. Richards and adjourned the meeting.

The next meeting is scheduled for March 8, 1994.

GUEST LIST

COMMITTEE:

DATE:

[illegible]

Testimony To The
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

By
Susan M Seltsam, Secretary
Department of Administration

March 7, 1994
Re: SB 778

Mr. Chairperson, members of the committee, thank you for the opportunity to appear before you today in support of Senate Bill 778. The proposed legislation requires that the state only consider hours actually worked in determining if the employee receives overtime. This would result in a reduction of the state's overtime liability by eliminating a provision in our pay practices that is not required by federal law.

The federal Fair Labor Standards Act (FLSA) requires that non-exempt employees be compensated at an overtime rate of one and one half times their regular rate of pay for any hours worked in excess of 40 hours in a workweek. Currently, the state calculates overtime based on all hours in-pay-status, not just the hours worked. Time an employee spends taking compensatory time or annual, sick or any other paid leave, is considered as in-pay-status and is currently counted in determining overtime due and the amount due.

According to a 1993 survey of overtime practices, Kansas is the only state of the eight surrounding states that includes all hours in-pay-status when determining whether overtime is due and the amount due to an employee. The Department of Labor's strict interpretation of FLSA exemptions from overtime eligibility has made many positions within government overtime eligible, including many high paying professional positions. In fact, nearly 90% of all state positions in Kansas have been determined to be eligible for overtime compensation.

Using data for ^{Calendar Year} CY 1993 for classified executive branch employees excluding Regents, the Division of Personnel Services estimated that the effect of the proposed legislation could be to reduce the state's overtime costs by approximately \$2.9 million a year. However, KU Medical Center who also supports the bill, felt it would provide for substantial cost savings for their agency.

When the issue of in-pay-status and overtime was among the recommendations put forth by Legislative Post Audit in a K-GOAL audit of the Department of Administration, I was concerned that this policy change would have an inordinate effect on lower paid state employees. However, when only employees who earn less than the median salary of all classified employees (\$22,212 per year)

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are analyzed, we found that only about 24% of the dollars spent for overtime are being paid to these employees and that less than 35% of the total overtime dollars attributable to the in-pay-status policy are benefiting the lower paid workforce.

It is my belief that the policy of calculating overtime based on hours an employee spends in-pay status is inconsistent with the philosophy of overtime compensation. Employees who work more than the maximum number of hours set for their work period should be compensated accordingly. However, overtime should not apply to an employee who works less than the maximum number of hours set for their work period.

Senate Bill 778 will save the state valuable resources, it will not have a significant impact on the majority of state employees, and it will serve to clarify the state's overtime philosophy. I encourage your favorable consideration of this bill.

Testimony To The
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

By
Nancy M. Echols, Director
Division of Personnel Services
Department of Administration

March 7, 1994
Re: SB 778

Mr. Chairperson, members of the committee, thank you for the opportunity to appear before you today. The Division of Personnel Services supports Senate Bill 778.

Currently the state recognizes all hours in-pay-status within the work period in determining whether an employee has worked overtime. "In-pay-status" refers to all hours of work; all hours of paid leave such as vacation, sick, holiday, and funeral leave; as well as any compensatory time off.

For example, if an employee worked 36 hours in one workweek and also had eight hours of vacation in the same workweek, the employee would have 44 hours of time in-pay-status. Under the current policy that employee would be eligible for four hours of overtime compensation or compensatory time off. This exceeds the requirements of the Fair Labor Standards Act (FLSA). FLSA only requires that hours actually worked be counted in determining if an employee is due overtime. In the example above, the employee actually worked 36 hours in the workweek, and therefore, no overtime would be owed under the proposed legislation. Since the state's policy is currently more liberal than what is required by federal law, the proposed legislation would make the state policy more consistent with FLSA requirements.

Nearly 90% of all positions within the state are classified as non-exempt, and therefore, overtime eligible. Positions that are commonly considered "professional positions" such as Accountants, Social Workers, or classes requiring advanced degrees, often fail to meet the FLSA criteria for professional exemption as interpreted by the Department of Labor.

With such a large percentage of positions within state government overtime eligible, it makes little sense to further restrict management's ability to manage their employees and their budget by continuing a policy that exceeds the requirements of FLSA.

The implementation of Senate Bill 778 would result in dollar savings for the state. Using Calendar Year 1993 data for classified executive branch employees from selected agencies, excluding Regents, it was estimated that the effect of the proposed legislation could be to reduce the state's overtime costs by

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approximately \$2.9 million a year including the cost of fringe benefits (\$340,000).

This dollar estimate was derived from a model applied to individual employee pay data for each pay period in CY 1993 for selected agencies that are considered heavy overtime users. The model only considers paid overtime for the calendar year, the liability for accrual of compensatory time was not included in the cost savings estimate.

Because of the way that employee time and leave data is reported and stored, we cannot identify specifically which hours of paid leave resulted in additional overtime payments. The payroll data available is based on leave use for the entire pay period and does not include specific pay and leave detail for each work period.

In this estimate, the total number of paid leave hours for each employee with overtime hours in the pay period was compared to the total overtime hours for that employee. If the paid leave hours were equal to, or less than, the number of overtime hours then only the cost of overtime hours equal to the number of paid leave hours was attributed to our current in-pay-status policy. For example, if an employee had four hours of sick leave and was paid for 8 hours of overtime in a single pay period, the model would only consider the cost of four hours of overtime.

If the paid leave hours were greater than the number of overtime hours in the pay period, the total cost of overtime in the pay period was attributed to the current in-pay-status policy. For example, if an employee had 10 hours of sick and vacation leave, and was paid for 8 hours of overtime in a single pay period, the model would include all 8 hours of overtime in the estimate.

Under the provisions of Senate Bill 778 state employees who work more than 40 hours in a workweek will still receive overtime compensation or compensatory time off. Only employees who work less than 40 hours but who are in-pay-status over 40 hours in a workweek because of paid leave will be affected.

I believe that the cost savings associated with this legislation far outweigh any impact on selected employees and I encourage your favorable consideration of the bill.

TESTIMONY GIVEN BY RICK ROBARDS
IN FRONT OF THE
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
CONCERNING SENATE BILL NO. 778
MARCH 7, 1994

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS RICK ROBARDS, AND I AM THE DIRECTOR OF HUMAN RESOURCES AT THE UNIVERSITY OF KANSAS MEDICAL CENTER, IN KANSAS CITY. I WANT TO THANK YOU FOR THE OPPORTUNITY OF PROVIDING OUR AGENCY'S PERSPECTIVE REGARDING THE IMPACT OF SENATE BILL NO. 778.

THE FAIR LABOR STANDARDS ACT (FLSA), IS FEDERAL LEGISLATION GOVERNING MINIMUM WAGE AND ELIGIBILITY FOR OVERTIME. THE (FLSA) ENTITLES EMPLOYEES TO BE COMPENSATED FOR "OVERTIME" ON THE BASIS OF ALL HOURS ACTUALLY WORKED IN EXCESS OF 40 IN EACH APPLICABLE WORK WEEK. THE STATE OF KANSAS EMPLOYS A MORE GENEROUS STANDARD WITH RESPECT TO HOURS INCLUDED IN DETERMINING "OVERTIME". THE STATE CURRENTLY COMPENSATES EMPLOYEES FOR OVERTIME BASED UPON ALL HOURS "IN PAY STATUS". THESE TWO METHODS DIFFER IN THAT THE STATE PERMITS EMPLOYEES' PAID VACATION, HOLIDAY, JURY DUTY, SICK LEAVE, AND OTHER TYPES OF PAID TIME TO BE INCLUDED WHEN DETERMINING ELIGIBILITY FOR OVERTIME.

ACTUAL OVERTIME IN FY93 AT THE UNIVERSITY OF KANSAS MEDICAL CENTER, WAS \$1.4 MILLION.[↑] *when the employee also used some other form of paid leave.* A MAJORITY OF THE OVERTIME WORKED OCCURED IN THE ACUTE CARE HOSPITAL, AND WAS DUE TO FLUCTUATING PATIENT CENSUS, BECAUSE OF OUR 24-HOUR/365 DAY OPERATION, AND PURSUANT TO THE NEED TO FILL STAFF SLOTS RESULTING FROM ABSENTEEISM AND VACANT POSITIONS. ALTHOUGH WE HAVE NOT BEEN ABLE TO PRECISELY DETERMINE THE FISCAL IMPACT, WE ESTIMATE THAT BY ADOPTING THE METHOD PROPOSED IN SENATE BILL NO. 778, WHICH IS CONSISTENT WITH FEDERAL LAW, THE MEDICAL CENTER WOULD EXPERIENCE SUBSTANTIAL SAVINGS.

*Senate Gov. Org.
Attachment 3
3/7/94*

IN A MANAGED CARE ENVIRONMENT, HOSPITALS MUST PRICE THEIR SERVICES COMPETITIVELY. IN ORDER TO BE SUCCESSFUL AND INCREASE THEIR PATIENT BASE, HOSPITALS MUST CONSTANTLY SEEK TO CONTAIN COSTS AND AVOID UNNECESSARY EXPENSES. A RECENT SURVEY OF HOSPITALS IN THE TOPEKA, WICHITA, AND KANSAS CITY AREAS REVEALS THAT THE VAST MAJORITY OF OTHER HEALTH CARE INSTITUTIONS IN KANSAS AND KANSAS CITY, MISSOURI ARE CALCULATING OVERTIME ON THE BASIS OF HOURS WORKED RATHER THAN HOURS PAID. SALARIES AND BENEFITS REPRESENT NEARLY 2/3 OF THE MEDICAL CENTER'S OPERATING BUDGET, AND OVERTIME EXPENSES REPRESENT ADDITIONAL OVERHEAD. THE CHANGES PROPOSED BY SENATE BILL NO. 778 WOULD REMOVE AN OBSTACLE WHICH HINDERS THE UNIVERSITY OF KANSAS MEDICAL CENTER'S ABILITY TO SUCCESSFULLY COMPETE IN A DYNAMIC AND CHALLENGING MARKETPLACE.

WE WELCOME THE PASSAGE OF THIS BILL AND ANY OTHER LEGISLATION WHICH WILL SUPPORT THE AGENCY'S COMPETITIVE POSTURE AND FURTHER ENHANCE THE MEDICAL CENTER'S POSITION AS ONE OF THE LEADING HEALTH CARE INSTITUTIONS IN THE MIDWEST. THANK YOU FOR YOUR PATIENT ATTENTION AND INTEREST. I WILL BE PLEASED TO STAND FOR ANY QUESTIONS YOU MAY HAVE.

Testimony To The
SENATE GOVERNMENTAL ORGANIZATIONS COMMITTEE

By
Nancy M. Echols
Division of Personnel Services
Department of Administration

Monday, March 7, 1994
RE: Senate Bill 791

Mr. Chairperson, members of the committee, thank you for this opportunity to appear before you today in support of Senate Bill 791.

Senate Bill 791 changes the "Rule of Five" applicant selection criteria. Currently, the Director of Personnel Services certifies from a list of eligible persons the top five names on the list and all eligible persons who have a score equal to that of the fifth eligible person. The proposed legislation would allow the Director to certify from the list of eligible persons the names of all eligible persons who hold the top five scores on the list. This list could include more names than the top five name list if several people received the same score.

Existing language limiting the number of persons certified from a list to the top five names can be restrictive. When agencies have particular needs for a certain position, it can be difficult selecting a person who meets the special criteria when the list is limited to five names. For example, a specific position within a class of positions may benefit from a person who has exceptional writing skills, while another position in that same class of positions may benefit from someone who has exceptional analytical skills.

Finding a person that meets special needs is difficult because when scores on eligible lists are the same or very close, differences between applicants are almost imperceptible. If the certified list is expanded to include more names, agencies have a larger pool of applicants to consider for a vacancy. While this may result in additional administrative costs due to the increased number of applicants to consider, it would enable agencies to filter out applicants who do not meet the special needs for a particular position. It could also make it easier for agencies to meet affirmative action goals.

The benefit to applicants is that they may be placed on more certified lists which gives them a greater opportunity to be hired.

The proposed bill also gives the Secretary of Administration the discretion to establish alternative procedures for the certification of names from an eligible list if it provides more qualified candidates. The proposed changes reflect recommendations

*Sen. Gov. Org.
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from the Legislative Post Audit report, as you may recall, and are an initial improvement to the certification process. Flexibility would make further improvement easier following more comprehensive research and study.

The Department of Administration would appreciate your support for passage of this bill. I would be happy to answer any questions you may have.