

## HB0271S03 compared with HB0271S02

~~text~~ shows text that was in HB0271S02 but was deleted in HB0271S03.

text shows text that was not in HB0271S02 but was inserted into HB0271S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Karianne Lisonbee proposes the following substitute bill:

### LAW ENFORCEMENT EMPLOYEE OVERTIME AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses overtime pay for certain state and local employees.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ subject to certain exceptions, modifies provisions relating to the number of hours that a state employee engaged in law enforcement activities must work to qualify for overtime pay;
- ▶ authorizes a city or county employing an individual engaged in law enforcement activities to compensate that individual for overtime pay in accordance with the modification described above; and
- ▶ makes technical and conforming changes.

## HB0271S03 compared with HB0271S02

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447

### ENACTS:

**10-3-1109.5, Utah Code Annotated 1953**

**17-33-11.7, Utah Code Annotated 1953**

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section ~~63A-17-502 is amended to read:~~

~~10-3-1109.5~~ is enacted to read:

**10-3-1109.5. Overtime for law enforcement personnel.**

(1) As used in this section:

(a) "Nonexempt employee" means a municipal employee who is nonexempt under the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(b) "Overtime" means hours worked in excess of a nonexempt employee's work period.

(c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives for hours worked during a work period.

(d) "Work period" means the maximum number of hours, within a specified number of consecutive days, that a nonexempt employee may work before the nonexempt employee is compensated for overtime.

(2) The governing body of a municipality that employs a nonexempt employee engaged in law enforcement activities may, except as otherwise required by a contract or a collective bargaining agreement, enact an ordinance or pass a resolution that:

(a) designates a work period for the nonexempt employee that is the same as, or equivalent to, a work period described in Subsection 63A-17-502(2); and

(b) compensates the nonexempt employee for overtime at a rate of one and one-half times the nonexempt employee's regular hourly rate.

## HB0271S03 compared with HB0271S02

Section 2. Section 17-33-11.7 is enacted to read:

### 17-33-11.7. Overtime for law enforcement personnel -- Exception.

(1) As used in this section:

(a) "Nonexempt employee" means an county employee who is nonexempt under the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(b) "Overtime" means hours worked in excess of a nonexempt employee's work period.

(c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives for hours worked during a work period.

(d) "Work period" means the maximum number of hours, within a specified number of consecutive days, that a nonexempt employee may work before the nonexempt employee is compensated for overtime.

(2) This section does not apply to a county subject to Chapter 30a, Peace Officer Merit System in Counties of the First Class Act.

(3) The legislative body of a county that employs a nonexempt employee engaged in law enforcement activities may, except as otherwise required by a contract or a collective bargaining agreement, enact an ordinance or pass a resolution that:

(a) designates a work period for the nonexempt employee that is the same as, or equivalent to, a work period described in Subsection 63A-17-502(2); and

(b) compensates the nonexempt employee for overtime at a rate of one and one-half times the nonexempt employee's regular hourly rate.

Section 3. Section 63A-17-502 is amended to read:

### **63A-17-502. Overtime policies for state employees.**

(1) As used in this section:

(a) "Accrued overtime hours" means:

(i) for a nonexempt ~~[employees]~~ employee, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and

(ii) for an exempt ~~[employees]~~ employee, overtime hours earned during an overtime year.

(b) "Appointed official" means:

(i) each department executive director and deputy director, each division director, and

## HB0271S03 compared with HB0271S02

each member of a board or commission; and

(ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:

(A) is paid a salary by the state; and

(B) who exercises managerial, policy-making, or advisory responsibility.

(c) "Department" means, except as otherwise provided in this section, the Department of Government Operations, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Services, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the Department of Natural Resources, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Cultural and Community Engagement, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the State Auditor, Department of Veterans and Military Affairs, and the Board of Pardons and Parole.

(d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.

(e) "Exempt employee" means a state employee who is exempt as defined by the [~~Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq~~] FLSA.

(f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(g) "FLSA agreement" means the agreement authorized by the [~~Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.~~] FLSA by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.

(h) "Nonexempt employee" means a state employee who is nonexempt as defined by the division applying FLSA requirements.

(i) "Overtime" means actual time worked in excess of [~~the~~] an employee's defined work period.

(j) "Overtime year" means the year determined by a department under Subsection [~~(4)(b)~~] (5)(b) at the end of which an exempt employee's accrued overtime lapses.

## HB0271S03 compared with HB0271S02

(k) "State employee" means every person employed by a department who is not:

(i) an appointed official;

(ii) an elected official; or

(iii) a member of a board or commission who is paid only for per diem or travel expenses.

(l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

~~[(m) "Work period" means:]~~

~~[(i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;]~~

~~[(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and]~~

~~[(iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.]~~

(m) "Work period" means:

(i) for a nonexempt employee, except a nonexempt law enforcement or hospital employee, a consecutive seven day, 24 hour work period of 40 hours;

(ii) for an exempt employee, a 14 day, 80 hour payroll cycle;

(iii) for a nonexempt hospital employee, the period the division establishes by rule according to the requirements of the FLSA; or

(iv) for a nonexempt law enforcement employee:

(A) who is employed by the Department of Natural Resources, the period the division establishes by rule according to the requirements of the FLSA; or

(B) who is employed by a department other than the Department of Natural Resources, the period the division establishes by rule in accordance with Subsection (2).

(2) Except for the Department of Natural Resources, the division shall require each department employing a nonexempt law enforcement employee to designate one of the following work periods applicable to that employee:

(a) 80 hours in a 14 consecutive day payroll cycle; or

(b) 160 hours in a 28 consecutive day payroll cycle.

~~[(2)]~~ (3) Each department shall compensate each state employee who works overtime

## HB0271S03 compared with HB0271S02

by complying with the requirements of this section.

~~[(3)]~~ (4) (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.

(b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:

(i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or

(ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.

(c) ~~[Any]~~ A nonexempt employee who elects to take time off under this Subsection ~~[(3)]~~ (4) shall be paid for any overtime worked in excess of the cap established by the division.

(d) Before working any overtime, ~~[each]~~ a nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.

(e) Each department shall:

(i) for ~~[employees who elect]~~ an employee who elects to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and

(ii) for ~~[employees who elect]~~ an employee who elects to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

(f) If a department pays a nonexempt employee for overtime, that department shall charge that payment to that department's budget.

(g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.

~~[(4)]~~ (5) (a) (i) Except as provided in Subsection ~~[(4)(a)(ii)]~~ (5)(a)(ii), each department shall compensate ~~[exempt employees who work]~~ each exempt employee who works overtime by granting ~~[them]~~ the employee time off at the rate of one hour off for each hour of overtime worked.

(ii) The director of the division may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay ~~[employees]~~ an employee for overtime worked at the rate per hour that the employee receives for nonovertime

## HB0271S03 compared with HB0271S02

work, if that department has funds available.

(b) (i) Each department shall:

(A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and

(B) communicate the uniform annual date to its employees.

(ii) If any department fails to establish a uniform annual date as required by this Subsection ~~[(4)]~~ (5), the director of the division, in conjunction with the director of the Division of Finance, shall establish the date for that department.

~~[(c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.]~~

~~[(ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.]~~

~~[(d)]~~ (c) The overtime authorized for an exempt employee under this Subsection (5) is not an entitlement, a benefit, or a vested right.

(d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:

(i) any of an exempt employee's overtime that is more than the maximum established by division rule lapses; and

(ii) unless authorized by the director of the division under Subsection ~~[(4)(a)(ii)]~~ (5)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

(e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.

(f) If a department pays an exempt employee for overtime under authorization from the director of the division, that department shall charge that payment to that department's budget in the pay period earned.

~~[(5)]~~ (6) The division shall:

(a) ensure that the provisions of the FLSA and this section are implemented throughout state government;

## HB0271S03 compared with HB0271S02

(b) determine, for each state employee, whether ~~[that]~~ the employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;

(c) in coordination with modifications to the systems operated by the Division of Finance, make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) establishing procedures for recording overtime worked that comply with FLSA requirements;

(ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;

(iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;

(iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;

(v) subject to the FLSA and Subsection (2), establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;

(vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of ~~[any FLSA determinations]~~ an FLSA determination made by the division as required by this section;

(d) monitor departments for compliance with the FLSA; and

(e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

~~[(6)]~~ (7) (a) In coordination with the procedures for recording overtime worked established in rule by the division, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.

(b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, ~~[any]~~ an employee who is aggrieved by the FLSA designation made by the division as required by this section may appeal that determination to the director of the division by following the procedures and requirements established in division rule.



## **HB0271S03 compared with HB0271S02**

(c) Upon receipt of an appeal under this section, the director shall notify the executive director of the employee's department that the appeal has been filed.

(d) If the employee is aggrieved by the decision of the director, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Section ~~2~~4. **Effective date.**

This bill takes effect on July 1, 2024.