

SUBJECT: DPS calculating overtime for officers based on eight-hour day

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 19 ayes — Zerwas, Longoria, Capriglione, S. Davis, Dean, Giddings, Gonzales, González, Koop, Miller, Muñoz, Perez, Phelan, Roberts, J. Rodriguez, Sheffield, Simmons, VanDeaver, Wu

2 nays — Howard, Rose

6 absent — Ashby, G. Bonnen, Cospers, Dukes, Raney, Walle

SENATE VOTE: On final passage, May 1 — 30-1 (Hall)

WITNESSES: *On House companion bill, HB 483:*
For — Richard Jankovsky III, DPSOA; (*Registered, but did not testify:*
Deborah Ingersoll, Texas State Troopers Association)

Against — None

On — David Baker, Texas Department of Public Safety

BACKGROUND: Government Code, sec. 411.016 governs supplemental pay at the Department of Public Safety (DPS). The section applies to commissioned officers who are not employed in positions that the agency director has declared to be administrative, executive, or professional. If, during a calendar week, a commissioned officer's hours worked plus the number of hours of leave taken equal more than 40, the excess hours are overtime.

Government Code, sec. 659.015 governs overtime compensation for certain state employees who are subject to the federal Fair Labor Standards Act. Under sec. 659.015(c) employees who are required to work hours in excess of 40 hours in a workweek are entitled to compensation either by:

- the agency allowing or requiring the employee to take compensatory time off at the rate of 1-1/2 hours off for each hour of overtime; or
- at the discretion of the employing agency, in cases in which granting compensatory time off is impractical, the employee receiving pay for the overtime at the rate equal to 1-1/2 times the employee's regular rate of pay.

The provisions of Government Code, sec. 659.015 were enacted to comply with federal law and are used by DPS to calculate overtime pay instead of the DPS-specific provisions in Government Code, sec. 411.016.

DIGEST:

SB 297 would revise the way compensatory time is calculated and paid for certain Department of Public Safety (DPS) commissioned officers. Any hours worked in excess of eight hours in a 24-hour period would be considered overtime. In addition, hours worked in excess of 40 hours per week would be considered overtime.

DPS would be authorized to compensate an officer for overtime by:

- allowing or requiring the officer to take compensatory leave at the rate of 1-1/2 hours of leave for each hour of overtime earned; or
- paying the officers for the overtime hours earned at the rate of 1-1/2 times the officer's regular hourly pay.

The section would apply to commissioned officers who were not employed in positions that the agency director has declared to be administrative, executive, or professional.

The bill would take effect September 1, 2017, and would prevail if there were a conflict with Government Code 659.015 provisions covering overtime compensation for state employees subject to the Federal Fair Labor Standards Act.

**SUPPORTERS
SAY:**

SB 297 would give DPS more flexibility in how it pays certain officers for their overtime, which would allow the agency to better compensate these

valuable public servants. DPS officers are unique among state employees because their standard workweek is assumed to be 50 hours.

The bill would allow DPS to calculate overtime for commissioned officers at the rank of major and below based on an eight-hour day, rather than a 40-hour week. Currently, an officer must work 40 hours before being paid for any overtime. This means that an officer who worked three, 10-hour days and then took two days of sick or personal leave would not receive any overtime pay. The bill would allow officers to take sick or other leave without losing overtime pay that they have earned.

The bill would institute a fair policy to compensate officers that would be similar to policies used at some other law enforcement agencies. Ensuring that, if funds were available, officers could be paid for their overtime on a daily basis would help DPS retain and recruit employees.

The bill would not cost the state additional money. Currently, the state budget funds a 50-hour workweek for DPS-commissioned law enforcement officers. DPS would continue to use these funds to pay officers for their overtime, and the bill would change only the calculation of when those funds were paid. If, after the enactment of the bill, the overtime funds were depleted, the agency would continue to use its current policy under which officers accumulate compensatory time.

The bill would be permissive and would allow DPS to craft a policy that best fits its need, allowing either payment for overtime or allowing officers to take compensatory leave. The bill would remove from the statute obsolete DPS-specific language about calculating overtime pay based on a percentage of officer's salaries and about supplemental pay. This language is not used because it was superseded by language in Government Code, sec. 659.015 that covers overtime compensation for state employees subject to federal law. The fiscal note for the bill estimates that the bill would have a positive but undetermined fiscal impact for the state.

OPPONENTS

SB 297 could upset the balance among state law enforcement officers by

SAY: creating a non-standard way of calculating overtime at one agency. The Legislature has been trying to bring parity among these officers, and the bill could disrupt that effort.

OTHER
OPPONENTS
SAY: SB 297 could lead to other state agencies making similar requests and could leave out other important, hardworking employees who might also deserve to be paid overtime based on an eight-hour day. It may be better to study such a change before making it for one agency.

NOTES: According to the Legislative Budget Board, providing the Department of Public Safety with the option of compensating law enforcement officers for overtime worked with compensatory leave, rather than payment, could spare payroll costs and thus have a positive, if undetermined, fiscal impact.