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Office

S.B. 47
134th General Assembly

Final Fiscal Note & Local Impact Statement

[Click here for S.B. 47's Bill Analysis](#)

Primary Sponsors: Sens. Brenner and Peterson

Local Impact Statement Procedure Required: No

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Highlights

- The overtime compensation exemption provisions of the bill do not appear to have any fiscal impact on the state and political subdivisions based on current federal and state law and administrative policies governing work hours and compensation for state and local government employees.
- State laws and regulations concerning overtime compensation are overseen by the Bureau of Wage and Hour Administration, part of the Industrial Compliance Division within the Department of Commerce. The bill does not appear to affect the operations of the Bureau.
- The procedural change that would require employees to opt-in as opposed to opt-out of class actions for overtime violations does not appear to have a discernible ongoing fiscal impact on courts of common pleas with jurisdiction over these matters.

Detailed Analysis

Overtime compensation exemption

The bill appears to have no direct fiscal effect on the state or local political subdivisions, largely because of the way it interacts with the federal Fair Labor Standards Act (FLSA) and current administrative policies at the state and local level. The bill exempts an employer from Ohio's requirement to pay overtime wages to an employee for any time an employee spends (1) walking, riding, or traveling to or from the actual place of performance of the principal activity or activities that the employee is employed to perform, (2) activities that are preliminary or postliminary to the principal activity or activities, and (3) activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours. Exceptions under the bill include when an employee performs the task during the regular work day or during prescribed hours and when the employee performs the task at the employer's specific direction.

Additionally, the bill specifies that the bill's exemptions from the overtime requirement do not apply to any of the activities listed above under either of the following circumstances: (1) when the employee performs the activity pursuant to a contract between the employee, or the employee's agent or collective bargaining representative, and the employee's employer, or (2) when the employee performs the activity pursuant to a custom or practice at the employee's place of employment and the custom or practice is not inconsistent with a contract described above. The federal Portal-to-Portal Act of 1947 includes exemptions to the FLSA that are similar to the exemptions under S.B. 47.

The bill does not appear to change the current policies that state and local government employers have in place concerning overtime work. On the state level, employees of the state or employees of state-supported colleges or universities are not authorized for overtime pay unless approved by the administrative authority which employs them.¹ And on the local level, for example, the city of Columbus has a policy to avoid overtime work except upon emergency conditions as determined by the appointing authority or its designee, and overtime work must be expressly approved.²

The bill does not appear to affect the way that laws on overtime are enforced by the Ohio Department of Commerce, specifically the Bureau of Wage and Hour Administration within the Division of Industrial Compliance. The Bureau investigates complaints and, upon making determinations, collects back wages and penalties owed to workers. In FY 2021, the Bureau completed 412 investigations. About 82.3% were minimum wage investigations, conducted on employers who allegedly did not pay workers minimum wage or overtime. Oversight costs incurred by the Bureau are paid from the Industrial Compliance Fund (Fund 5560).

Collective actions for state overtime violations

The bill does not appear to have a discernible ongoing fiscal effect on the courts of common pleas. It prohibits an employee from joining as a party plaintiff in a lawsuit that is brought for a violation of Ohio's overtime laws unless that employee first gives written consent to become a party plaintiff and that consent is filed with the court in which the lawsuit is brought.

The prohibition, in effect, is a procedural change that would require employees to opt in as opposed to opt out of lawsuits for overtime violations. This mirrors the procedure applicable to lawsuits brought for minimum wage violations under Ohio law. This procedural change will not necessarily impact the number of cases filed, but rather the size, and potentially, the complexity and outcome of such cases. Generally, opt-out classes are much larger than opt-in classes and that individual litigation by excluded class members is rare.

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¹ R.C. 124.18(A) and DAS Directive on Overtime Compensation: <https://das.ohio.gov/Portals/0/DAS/Divisions/DirectorsOffice/pdf/policies/humanresources/HR-D-06.pdf>.

² City of Columbus Management Compensation Plan, posted on city of Columbus website at: <https://www.columbus.gov/WorkArea/DownloadAsset.aspx?id=66622>.