

House Bill 751

In The House

February 13, 1981	Introduced and referred to Committee on Labor and Industry.
February 16, 1981	Fiscal note requested.
February 19, 1981	Committee recommend bill do pass as amended. Bill printed and placed on members' desks.
February 20, 1981	Fiscal note returned.
February 21, 1981	Second reading do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading passed.

In The Senate

March 3, 1981	Introduced and referred to Committee on Finance and Claims.
March 10, 1981	Committee recommend bill not concurred.

In The House

March 11, 1981	Returned from Senate not concurred.
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1 NEW SECTION. Section 3. Compensatory time not to
 2 exceed one hundred twenty hours -- compensation upon
 3 termination. (1) A state employee eligible for overtime
 4 compensation under Title 39, chapter 3, part 4, whether a
 5 member of a collective bargaining unit or not, may not
 6 accrue more than 120 hours of compensatory time off. Each
 7 hour of overtime worked that would, if credited towards
 8 compensatory time off, cause the employee's accumulation to
 9 exceed 120 hours is overtime and subject to 39-3-405.

10 (2) Upon termination from employment, for whatever
 11 cause, an employee, whether a member of a collective
 12 bargaining unit or not, shall be compensated for accrued
 13 compensatory time off, not to exceed 120 hours, at a rate of
 14 not less than 1 1/2 times the hourly rate at which he had
 15 been employed.

16 Section 4. Section 39-3-406, MCA, is amended to read:

17 "39-3-406. Exclusions. (1) The provisions of 39-3-404
 18 and 39-3-405 shall not apply with respect to:

19 (a) students participating in a distributive education
 20 program established under the auspices of an accredited
 21 educational agency;

22 (b) persons employed in private homes whose duties
 23 consist of menial chores such as baby sitting, mowing lawns,
 24 cleaning sidewalks;

25 (c) persons employed directly by the head of a

1 household to care for children dependent upon the head of
 2 the household;

3 (d) immediate members of the family of an employer or
 4 persons dependent upon an employer for half or more of their
 5 support in the customary sense of being a dependent;

6 (e) any persons not regular employees thereof who
 7 voluntarily offer their services to a nonprofit organization
 8 on a fully or partially reimbursed basis;

9 (f) handicapped workers engaged in work which is
 10 incidental to training or evaluation programs or whose
 11 earning capacity is so severely impaired that they are
 12 unable to engage in competitive employment;

13 (g) apprentices or learners, who may be exempted by
 14 the commissioner for a period not to exceed 30 days of their
 15 employment;

16 (h) learners under the age of 18 who are employed as
 17 farm workers, provided that such exclusion shall not exceed
 18 a period of 180 days from their initial date of employment
 19 and further provided that during this exclusion period wages
 20 paid such learners may not be less than 50% of the minimum
 21 wage rate established in this part;

22 (i) retired or semiretired persons performing
 23 part-time incidental work as a condition of their residence
 24 on a farm or ranch;

25 (j) any individual employed in a bona fide executive,

1 administrative, or professional capacity as these terms are
2 defined and delimited by regulations of the commissioner;

3 (k) any individual employed by the United States of
4 America.

5 (2) The provisions of 39-3-405 do not apply to:

6 (a) an employee with respect to whom the United States
7 Secretary of Transportation has power to establish
8 qualifications and maximum hours of service pursuant to the
9 provisions of 49 U.S.C. 304;

10 (b) an employee of an employer subject to the
11 provisions of part I of the Interstate Commerce Act;

12 (c) an individual employed as an outside buyer of
13 poultry, eggs, cream, or milk, in their raw or natural
14 state;

15 (d) a salesman, partsman, or mechanic paid on a
16 commission or contract basis and primarily engaged in
17 selling or servicing automobiles, trucks, mobile homes,
18 recreational vehicles, or farm implements if he is employed
19 by a nonmanufacturing establishment primarily engaged in the
20 business of selling such vehicles or implements to ultimate
21 purchasers;

22 (e) a salesman primarily engaged in selling trailers,
23 boats, or aircraft if he is employed by a nonmanufacturing
24 establishment primarily engaged in the business of selling
25 trailers, boats, or aircraft to ultimate purchasers;

1 (f) an employee employed as a driver or driver's
2 helper making local deliveries who is compensated for such
3 employment on the basis of trip rates, or other delivery
4 payment plan, if the commissioner finds that such plan has
5 the general purpose and effect of reducing hours worked by
6 such employees to or below the maximum workweek applicable
7 to them under 39-3-405;

8 (g) an employee employed in agriculture or in
9 connection with the operation or maintenance of ditches,
10 canals, reservoirs, or waterways not owned or operated for
11 profit and not operated on a sharecrop basis and which are
12 used exclusively for supply and storing of water for
13 agricultural purposes;

14 (h) an employee with respect to his employment in
15 agriculture by a farmer, notwithstanding other employment of
16 such employee in connection with livestock auction
17 operations in which such farmer is engaged as an adjunct to
18 the raising of livestock, either on his own account or in
19 conjunction with other farmers, if such employee is:

20 (i) primarily employed during his workweek in
21 agriculture by such farmer; and

22 (ii) paid for his employment in connection with such
23 livestock auction operations at a wage rate not less than
24 that prescribed by 39-3-404;

25 (i) an employee of an establishment commonly

1 recognized as a country elevator, including an establishment
 2 which sells products and services used in the operation of a
 3 farm, if no more than five employees are employed by the
 4 establishment;

5 (j) a driver employed by an employer engaged in the
 6 business of operating taxicabs;

7 (k) an employee who is employed with his spouse by a
 8 nonprofit educational institution to serve as the parents of
 9 children who are orphans or one of whose natural parents is
 10 deceased or who are enrolled in such institution and reside
 11 in residential facilities of the institution so long as the
 12 children are in residence at the institution and so long as
 13 such employee and his spouse reside in such facilities and
 14 receive, without cost, board and lodging from the
 15 institution and are together compensated, on a cash basis,
 16 at an annual rate of not less than \$10,000; or

17 (l) an employee employed in planting or tending trees;
 18 cruising, surveying, or felling timber; or transporting logs
 19 or other forestry products to a mill, processing plant,
 20 railroad, or other transportation terminal if the number of
 21 employees employed by his employer in such forestry or
 22 lumbering operations does not exceed eight;

23 ~~(m) an employee of the state that has established a~~
 24 ~~different workperiod through collective bargaining as~~
 25 ~~provided in [section 1]; or~~

1 ~~(n) overtime hours that an employee of the state has~~
 2 ~~chosen to be credited to compensatory time off in lieu of~~
 3 ~~overtime compensation as provided in [section 2]."~~

-End-

STATE OF MONTANA

REQUEST NO. 390-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, 19 81, there is hereby submitted a Fiscal Note for House Bill 751 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to allow work periods other than 40 hours a week to be established by collective bargaining agents; to provide for the option of overtime or compensatory time for employees covered by collective bargaining and for non-exempt employees who are non-bargaining; to provide for limit of 120 hours of compensatory time accumulated; to provide for compensation at termination for accrued compensating time-off.

Assumptions

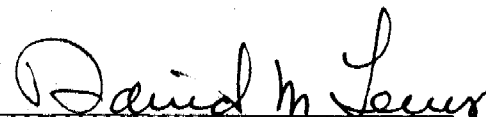
1. This bill does not allow for negotiation of work week (period) of less than 40 hours, and for any given employee the average work week would still be 40 hours. As an example, the employee could negotiate a two week work period but would work 80 hours total. Overtime pay would be calculated on any hours worked over 80 hours in those two (2) weeks.
2. Compensatory time would be awarded in accordance with agency policy or negotiated agreement, but it is assumed here that it would be at a straight time rate.

Fiscal Impact

The fiscal impact is undeterminable because of a lack of data, and because the outcome of collective bargaining is unpredictable.

Comments

1. The bargained for adjusted work period for overtime comutation would probably have little impact since the few people affected would most likely not accept a condition which would cause them to lose money.
2. While some monetary savings can be realized by substituting compensatory time-off for overtime pay, the effect of time-off may require the hiring of additional employees to cover work stations where employees are off on comp. time.
3. There would be an increased burden on affected agencies for record keeping in the areas of leave accounting and payroll reporting.
4. The termination payouts would place increased burden on agency budgets. Terminations are not predictable.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/21/81

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 751

INTRODUCED BY MEYER, P. RYAN, QUILICI

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WORKPERIODS
OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE
BARGAINING BETWEEN THE STATE AND ITS EMPLOYEES' COLLECTIVE
BARGAINING AGENTS; TO PROVIDE FOR OVERTIME PAYMENT OR
COMPENSATORY TIME OFF FOR OVER 40 HOURS' AVERAGED WORKWEEKS
AND OTHER SITUATIONS; ALLOWING NONEXEMPT STATE EMPLOYEES TO
ELECT TO RECEIVE COMPENSATORY TIME OFF IN LIEU OF OVERTIME
COMPENSATION; AMENDING SECTION 39-3-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Establishment of a state
government employee workperiod through collective
bargaining. (1) The state and a collective bargaining agent
for employees of the state may, by agreement, establish a
workperiod other than the workweek provided in 39-3-405 for
determining when an employee must be paid overtime.

(2) The workperiod must be expressed in multiples of
weeks.

(3) An employee who works in excess of 40 hours a week
averaged through the established workperiod must be
compensated for those hours at a rate of not less than 1 1/2
times the hourly rate at which he is employed or in

accordance with any compensating COMPENSATORY time-off
provisions of the agreement.

(4) The agreement may provide for overtime benefits in
addition to those required by subsection (3). The benefits,
including monetary compensation, compensatory time off, or a
combination of both, may be provided for hours worked during
other determinable situations, including hours:

- (a) in excess of an established workday;
- (b) during scheduled days off; and
- (c) on holidays.

NEW SECTION. Section 2. Compensatory time off for
nonexempt state employees who are nonbargaining. (1) State
employees eligible for overtime compensation under Title 39,
chapter 3, part 4, who are not members of a collective
bargaining unit, may elect to receive compensatory time off
in lieu of overtime compensation. Compensatory time off may
be accumulated and expended beyond the workweek.

(2) An election to receive compensatory time off shall
be made by the employee on the employee's individual time
reporting sheet. Each workweek the employee shall have the
option of electing to allocate all, any, or none of the
overtime hours worked that workweek towards compensatory
time off. Overtime hours worked by the employee that he has
not specifically elected to be treated as compensatory time
off are overtime and subject to the provisions of 39-3-405.

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 2 exceed one-hundred-twenty 80 hours -- compensation upon
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 4 persons dependent upon an employer for half or more of their
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13 (g) apprentices or learners, who may be exempted by
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16 (h) learners under the age of 18 who are employed as
 17 farm workers, provided that such exclusion shall not exceed
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 19 and further provided that during this exclusion period wages
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