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Capitol Contact

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Confusion Over the Ability of Public Employers to Offer Comp Time to Employees

ACTION: Contact House Appropriations and Senate Finance and Appropriations Members to Support Clarifying Budget Language in the Special Session

[HB 2063 \(Mullin\)](#) as enacted during the 2021 Special Session I by the General Assembly requires an employer to compensate certain employees at a rate not less than one and one-half times the employee's regular rate of pay, defined in the bill, for any hours worked in excess of 40 hours in any one workweek. The bill includes provisions for calculating overtime premiums due to fire protection and law-enforcement employees by certain public sector employers. Confusion over this bill will likely require action by the General Assembly during the upcoming summer special session.

When this bill was heard by the General Assembly, it was consistently presented by the patron as merely conforming Virginia Code with the existing provisions of the federal Fair Labor Standards Act (FLSA) to allow workers to pursue overtime claims against their employers in state court, as opposed to having to go through the time and expense of seeking restitution in federal court. The legislation had no major fiscal impact.

The Virginia Department of Labor and Industry (DOLI) published FAQ's ([#11](#)) post-session that interpret the bill to eliminate the long standing FLSA provision that allows

state and local public employers the flexibility to provide “comp time” to employees as compensation for overtime work, and instead requires payment of cash wages. VACo contacted the Northam Administration to seek clarification on this view. We have received confirmation that the Office of the Attorney General agrees with the DOLI interpretation, though there is no written opinion or formal legal reasoning available. VACo encourages members to consult with their county attorneys as to the interpretation of the legislation.

Interpreting the legislation to end the ability of public employers to award comp time in lieu of wages for overtime would have major fiscal and scheduling implications for both state and local governments. The fallout from not being able to provide comp time may cause local governments and the state to adopt major overhauls of their use of overtime which will impact their ability to deliver vital services and provide flexibility to their employees. VACo has been in contact with Delegate Mullin and has confirmed that this was not the intent of the legislation.

Please contact members of the House Appropriations Committee and Senate Finance and Appropriations Committee to urge them to **support** a budget amendment during the upcoming General Assembly Special Session that would clarify and preserve the ability of public employers to continue to award comp time to eligible employees.

VACo has also asked counties for information regarding number of employees impacted and fiscal impact for FY 2022 if they were to follow DOLI’s interpretation of the bill.

KEY CONTACTS

Senate Finance and Appropriations

[Senator Howell](#), [Senator Saslaw](#), [Senator Norment](#), [Senator Hanger](#), [Senator Lucas](#), [Senator Newman](#), [Senator Ruff](#), [Senator Vogel](#), [Senator Barker](#), [Senator Edwards](#), [Senator Deeds](#), [Senator Locke](#), [Senator Petersen](#), [Senator Marsden](#), [Senator Ebbin](#), [Senator McClellan](#)

House Appropriations

[Delegate Torian](#), [Delegate Sickles](#), [Delegate Plum](#), [Delegate Tyler](#), [Delegate Bulova](#), [Delegate McQuinn](#), [Delegate Carr](#), [Delegate Krizek](#), [Delegate Aird](#), [Delegate Hayes](#), [Delegate Hurst](#), [Delegate Jones](#), [Delegate Reid](#), [Delegate Cox](#), [Delegate Knight](#), [Delegate Morefield](#), [Delegate Fariss](#), [Delegate Rush](#), [Delegate Davis](#), [Delegate Austin](#), [Delegate Bloxom](#), [Delegate Brewer](#)

VACo Contacts: [Jeremy R. Bennett](#) and [Phyllis Errico, Esq.](#)