

SENATE BILL NO. 188—SENATORS HORSFORD AND SETTELMAYER

FEBRUARY 22, 2011

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to the work schedules of certain employees of the Department of Corrections. (BDR 23-699)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the Department of Corrections; requiring certain employees of institutions and facilities of the Department to work a nontraditional workweek under certain circumstances; revising the calculation of overtime for such employees to account for nontraditional workweeks; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 207(k), as
2 amended, an employee in law enforcement activities may be required to work
3 85 1/2 hours within a biweekly pay period before being entitled to overtime
4 compensation. The Fair Labor Standards Act specifically includes security
5 personnel in correctional institutions as employees in law enforcement activities,
6 regardless of their rank, and excludes those persons who are considered "civilian"
7 employees of correctional institutions. (29 C.F.R. § 553.211(f) and (g)) Under
8 existing state law, with limited exceptions, employees of the State of Nevada or of
9 any county, city, town, township or other political subdivision thereof are only
10 authorized to work 8 hours in any 1 calendar day and 40 hours in any 1 workweek.
11 (NRS 281.100) Employees are entitled to overtime compensation when they work
12 more than 8 hours in 1 workday, 8 hours in any 16-hour period or 40 hours in 1
13 workweek. (NRS 284.180) **Section 1** of this bill authorizes the warden of each
14 institution and the manager of each facility of the Department of Corrections to
15 require that at least 65 percent of the employees of the institution or facility in law
16 enforcement activities are scheduled for 84-hour work schedules within a 14-day
17 pay period composed of 12-hour shifts. **Section 1** also provides that, under the
18 84-hour work schedule, those employees are not entitled to overtime compensation
19 unless they work more than 12 hours in one shift or more than 84 hours in a 14-day
20 pay period.



Section 2 of this bill requires the Department to study the feasibility of implementing 12-hour shifts for all employees of institutions and facilities of the Department who are in law enforcement activities.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 284.180 is hereby amended to read as follows:

284.180 1. The Legislature declares that since uniform salary and wage rates and classifications are necessary for an effective and efficient personnel system, the pay plan must set the official rates applicable to all positions in the classified service, but the establishment of the pay plan in no way limits the authority of the Legislature relative to budgeted appropriations for salary and wage expenditures.

2. Credit for overtime work directed or approved by the head of an agency or the representative of the head of the agency must be earned at the rate of time and one-half, except for those employees described in NRS 284.148.

3. Except as otherwise provided in ~~subsections 4, 6, 7 and 9,~~ **this section**, overtime is considered time worked in excess of:

- (a) Eight hours in 1 calendar day;
- (b) Eight hours in any 16-hour period; or
- (c) A 40-hour week.

4. Firefighters who choose and are approved for a 24-hour shift shall be deemed to work an average of 56 hours per week and 2,912 hours per year, regardless of the actual number of hours worked or on paid leave during any biweekly pay period. A firefighter so assigned is entitled to receive 1/26 of the firefighter's annual salary for each biweekly pay period. In addition, overtime must be considered time worked in excess of:

- (a) Twenty-four hours in one scheduled shift; or
- (b) Fifty-three hours average per week during one work period for those hours worked or on paid leave.

➤ The appointing authority shall designate annually the length of the work period to be used in determining the work schedules for such firefighters. In addition to the regular amount paid such a firefighter for the deemed average of 56 hours per week, the firefighter is entitled to payment for the hours which comprise the difference between the 56-hour average and the overtime threshold of 53 hours average at a rate which will result in the equivalent of overtime payment for those hours.

5. The Commission shall adopt regulations to carry out the provisions of subsection 4.



6. *The warden of each institution and the manager of each facility may require that at least 65 percent of the employees at the institution or facility who are in law enforcement activities, as described in 29 C.F.R. § 553.211(f), are scheduled to work not less than three consecutive 12-hour shifts and not less than seven 12-hour shifts during each 14-day pay period. Overtime for such employees must be considered time worked in excess of:*

(a) *Twelve hours in any one shift; or*

(b) *Eighty-four hours in a 14-day pay period.*

7. For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week.

~~7-1~~ 8. Employees who are eligible under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., to work a variable 80-hour work schedule within a biweekly pay period and who choose and are approved for such a work schedule will be considered eligible for overtime only after working 80 hours biweekly, except those eligible employees who are approved for overtime in excess of one scheduled shift of 8 or more hours per day.

~~8-1~~ 9. An agency may experiment with innovative workweeks upon the approval of the head of the agency and after majority consent of the affected employees. ~~The~~ *Except as otherwise provided in subsections 4 and 6, the* affected employees are eligible for overtime only after working 40 hours in a workweek.

~~9-1~~ 10. This section does not supersede or conflict with existing contracts of employment for employees hired to work 24 hours a day in a home setting. Any future classification in which an employee will be required to work 24 hours a day in a home setting must be approved in advance by the Commission.

~~10-1~~ 11. All overtime must be approved in advance by the appointing authority or the designee of the appointing authority. No officer or employee, other than a director of a department or the chair of a board, commission or similar body, may authorize overtime for himself or herself. The chair of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body.

~~11-1~~ 12. The Budget Division of the Department of Administration shall review all overtime worked by employees of the Executive Department to ensure that overtime is held to a minimum. The Budget Division shall report quarterly to the State Board of Examiners the amount of overtime worked in the quarter within the various agencies of the State.

13. *As used in this section:*

(a) *“Facility” has the meaning ascribed to it in NRS 209.065.*



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1 ***(b) "Institution" has the meaning ascribed to it in***
2 ***NRS 209.071.***

3 ***(c) "Manager" has the meaning ascribed to it in NRS 209.075***

4 ***(d) "Warden" has the meaning ascribed to it in NRS 209.085.***

5 **Sec. 2.** 1. The Department of Corrections shall study the
6 feasibility of implementing 12-hour shifts for all employees of
7 institutions and facilities of the Department who are in law
8 enforcement activities. The study must include, without limitation,
9 an analysis of the fiscal and operational impacts of implementing
10 12-hour shifts for all such employees.

11 2. On or before December 31, 2011, the Director of the
12 Department of Corrections shall submit the study required pursuant
13 to subsection 1 to the Director of the Legislative Counsel Bureau
14 and the Board of State Prison Commissioners.

15 3. As used in this section:

16 (a) "Facility" has the meaning ascribed to it in NRS 209.065.

17 (b) "Institution" has the meaning ascribed to it in
18 NRS 209.071.

19 **Sec. 3.** This act becomes effective on July 1, 2011.

