

Overtime Worked by State Employees



*Legislative Counsel
Bureau*

*Bulletin No.
95-14*

September 1994

**STUDY OF THE COMMITTEE
ON OVERTIME WORKED BY STATE EMPLOYEES
SENATE CONCURRENT RESOLUTION 55**

BULLETIN NO. 95-14

**LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU**

September, 1994

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SUMMARY OF RECOMMENDATIONS

The Legislative Commission's Committee on Overtime Worked by State Employees has developed the following recommendations and findings. The recommendations and findings are based upon: (1) testimony presented to the committee at its public hearings; (2) a review of written information and comments provided to the committee; and (3) the experience and knowledge of the members of the committee.

The committee recommends:

1. That the Department of Personnel conduct a thorough analysis of all state employee position classifications affected by officer-of-the-day or standby shift requirements and approach the 1995 Legislature with suggested compensation alternatives to address these requirements.
2. That existing statutes be amended to ensure that board and commission members are not entitled to compensation for overtime. **(BDR 23-351)**.
3. That new positions recommended in The 1995-97 Executive Budget in agencies that experience significant overtime accrual be thoroughly justified and demonstrate the cost effectiveness of adding new positions in lieu of compensating earned overtime.
4. That the Department of Administration request and collect, on a quarterly basis, statistics on overtime accrual from the University System (classified employees) and the Public Employees Retirement System.

FINDINGS

Additionally, the committee reports the following findings and observations:

1. That the Department of Administration's and the Department of Personnel's joint identification of issues of concern, suggested options and alternatives regarding current overtime provisions, as well as the Department of Personnel's proposal to seek approval from the 1995 Legislature for the authority to conduct a comprehensive study of the state's personnel system, is acknowledged and made part of this report.

2. That executive department agencies are encouraged to enter into agreements with organizations representative of state employees or with individual employees for the provision of compensatory vacation time instead of monetary payment for overtime.
3. That the committee has reviewed and discussed the application of the "short" duties test versus the "long" duties test utilized by the Department of Personnel in determining whether or not an employee is entitled to compensation for overtime. And, that the use of the "short" test by the Department of Personnel appears acceptable and that the use of the "long" test would not appreciably alter the determination process.

**REPORT OF THE LEGISLATIVE COMMISSION'S
INTERIM COMMITTEE ON
OVERTIME WORKED BY STATE EMPLOYEES
TO THE MEMBERS OF THE 68TH SESSION
OF THE NEVADA LEGISLATURE**

I. INTRODUCTION

The 67th Session of the Nevada Legislature, in 1993, adopted Senate Concurrent Resolution 55 (File Number 167, Statutes of Nevada, 1993) which directed the Legislative Commission to study overtime worked by state employees and the methods of complying with the Fair Labor Standards Act. The Legislative Commission appointed an interim committee to conduct the study.

The members of the committee appointed to conduct the study were:

Senator William J. Raggio, Chairman
Senator Bob Coffin
Assemblywoman Chris Giunchigliani
Assemblyman Dean A. Heller
Senator William R. O'Donnell
Assemblyman Larry L. Spitler

Legislative Counsel Bureau staff services for the committee were provided by Larry L. Peri, Program Analyst; Steven J. Coburn, Senior Deputy Legislative Counsel and Connie Davis, Secretary, Fiscal Analysis Division.

The committee held four meetings, all in Carson City and conducted its study through the public hearing process. Two of the four meetings were teleconferenced to Las Vegas which allowed members of the committee and state agency representatives in Las Vegas to participate in the meetings and provide testimony. The committee received considerable testimony and reviewed a great deal of information concerning overtime worked by state employees. The committee has attempted, in this report, to present its findings and recommendations briefly and concisely. All supporting documents and meeting minutes are available from the Fiscal Analysis Division of the Legislative Counsel Bureau. The committee wishes to recognize and thank the many individuals who attended and testified at its meetings for their cooperation and assistance in providing valuable information about overtime worked by state employees in Nevada (see Appendix N, page 90).

This report, submitted in compliance with Senate Concurrent Resolution Number 55, is transmitted to the members of the 68th Session of the Nevada Legislature for their consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. J. Raggio", is written over a horizontal line.

Senator William J. Raggio, Chairman
Committee on Overtime Worked by
State Employees

II. BACKGROUND AND HISTORY OF OVERTIME ISSUES IN NEVADA STATE GOVERNMENT

A. Fair Labor Standards Act

The adoption of Senate Concurrent Resolution 55 (Appendix A, page 32), as well as Senate Bill 362 by the 1993 Legislature, was preceded by several key issues surrounding public employers and their compliance with Fair Labor Standards Act (FLSA) regulations. As mentioned earlier, Senate Concurrent Resolution 55 was adopted by the 1993 Legislature to study overtime worked by state employees and the state's compliance with the Fair Labor Standards Act. Senate Bill 362, was adopted primarily to revise the State Personnel System so that it would be in compliance with FLSA requirements.

The Fair Labor Standards Act, enacted in 1938, is essentially comprised of two components which were intended to deal with problems that surfaced during the Great Depression. First, in order to provide employees a reasonable living wage, the FLSA provided for a guaranteed minimum wage. Secondly, in order to encourage employers to spread work among more employees, the Act provided that an employee be paid a premium wage for time worked over a certain number of hours. Today, that premium wage is generally the rate of time and one half of an employee's regular wage for hours worked in excess of forty hours in a week.

While the two major components of the FLSA are still fundamentally the same, nearly 1,000 pages of regulations have been adopted by the U.S. Department of Labor to clarify the act, and volumes of interpretive rulings have been issued over the years by the Department of Labor to clarify those regulations. The complexities of the FLSA have led to a tremendous amount of litigation in the United States and have resulted in conflicting decisions among federal district and appellate courts.

While the FLSA regulations are indeed complex, for simplicity purposes, employees may be grouped into two major categories. Those that are exempt from the premium wage requirement and those employees who are subject to the premium wage requirement. In order to determine which category an employee may fit into, two "tests" apply to an individual employee. The

first test is called the "duties test" and the second is called the "salary basis test."

Some employees are categorized as administrative, executive or professional and may be exempt from the premium wage requirements of the FLSA. To be exempt, an employee must perform certain duties ("duties test"). For example, one of the tests for an executive employee is that they must regularly supervise two or more employees. The other requirement for exemption is that the employee must be paid on a "salary basis." This requires that the amount of compensation paid to an employee does not vary based on variations in the quantity or quality of work performed during a pay period.

If employees meet both the "duties test" and "salary basis test" and are determined to be exempt from the premium wage requirement, they are not entitled to be compensated for hours worked in excess of forty hours per week. If employees do not meet the tests and are determined to be subject to the premium wage requirement, they are entitled to be compensated at time and one half for hours worked in excess of forty hours per week.

B. The Abshire Decision

One of the first major court cases that ultimately affected public employers including the State of Nevada was Abshire v. County of Kern, 908 F. 2d 483 (9th Circuit, 1990). Abshire held that where an employee's compensation is "subject to reduction" for a part-day absence, he is, therefore, not a salaried employee, but is an hourly wage earner who does not meet the salary basis test and, therefore, is not exempt from the time and one half premium wage requirement of the FLSA.

Because at the time Abshire was decided, most public employers did not pay employees for not working and commonly required that absences be accounted for by use of leave without pay, Abshire had serious implications for public employers.

C. Legislation-1991 Legislative Session

The 1991 Legislature passed Assembly Bill 576 to address the requirements in the Abshire decision. The bill specifically attempted to bring the State of Nevada into compliance with the FLSA salary basis test requirement, as enunciated in Abshire, by

stating that reductions in compensation of otherwise exempt public employees must not occur when such an employee has a part-day absence from work.

The Nevada Legislature also made the statute retroactive to 1986, the date that Congress made the FLSA effective for public employers. Shortly after the passage of Assembly Bill 576 by the 1991 Legislature in June, 1991, the Department of Labor began considering the adoption of regulations which would relieve public employers of the Abshire part-day absence liability. While the Department of Labor was obtaining public comment on and reviewing the proposed regulations, a ninety-day moratorium was placed on the adoption of federal regulations in January, 1992.

During this delay in amending the Department of Labor's regulations, several key cases were decided in federal district courts that provided salary basis test requirements which were not directly held in Abshire and which were not addressed by the Nevada Legislature in enacting Assembly Bill 576. Specifically, those cases included Service Employees International Union Local 102 v. County of San Diego, 784 F. Supp. 1503 (S.D. Cal. 1992), Alex v. State of California, No. CIV, 5-89-0032 (E.D. Cal. March 20, 1992) and Brown v. City of Sparks, CV-B-91-86-HDM (Nev. 1992) (April 3, 1992).

D. Benzler v. State of Nevada

In early 1991, numerous State of Nevada employees filed the Benzler v. State of Nevada lawsuit, alleging in general terms, violations of the FLSA and the salary basis test. Shortly after the Brown v. City of Sparks decision noted above, the Benzler plaintiffs, on April 16, 1992, filed a motion for summary judgment, citing the Service Employees, Alex and Brown cases as authority. Opposition and replies on the motion were completed in May, 1992, and in July, 1992, an order was issued in favor of the plaintiffs, adopting virtually all of their theories of liability.

Post-judgment settlement negotiations resulted in the plaintiffs abandoning certain appealable issues and agreeing to allow postponement of their monetary award until the convening of the 1993 Legislature. The state also agreed not to appeal. Due to the overwhelming Ninth Circuit case authority against the state

on appeal and because of the state's serious financial difficulties, the settlement was considered to be in the best interest of the state.

The 1993 Legislature approved Assembly Bill 316 (Appendix B page 33), which appropriated \$3,445,141 from the State General Fund and \$346,155 from the State Highway Fund to the Board of Examiners for the settlement of the Benzler v. State of Nevada case. The legislation provided the general fund appropriation for certain overtime costs incurred prior to FY 1993 (\$2,263,619) and for time and one half costs incurred in FY 1993 (\$1,166,522). Also appropriated was \$15,000 in general fund for payment of the plaintiffs' attorneys' fees.

The amount of \$346,155 appropriated from the State Highway Fund was for certain overtime costs incurred prior to FY 1993. Payment for certain overtime costs in FY 1993 was required to be made from funds appropriated from the State Highway Fund to various highway funded agencies by the 1991 Legislature.

As of the close of Fiscal Year 1993, \$3,340,866 in general fund expenditures had been recorded as payments from the original appropriated amount of \$3,445,141 (includes the \$15,000 in attorneys' fees). Out of the original amount of \$346,155 appropriated from the State Highway Fund, \$324,732 had been recorded as expended by the close of Fiscal Year 1993.

III. PROPOSALS FOR COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT

A. Exempt Merit Classification System Proposal

In response to the Benzler decision, and the need for the State of Nevada to comply with the Fair Labor Standards Act, the Department of Administration proposed, to the 1993 Legislature, the Exempt Merit Classification System. This new personnel system, also referred to as the three-tiered personnel system, proposed to discontinue the present classified and unclassified service and create a new system with three distinct categories of employees: the Exempt Appointed Service; the Exempt Merit Service; and the Non-Exempt Merit Service.

It should be noted that the proposal was developed by the Department of Personnel, in conjunction with the Department of

Administration and was based upon a report prepared by the consulting firm of KPMG Peat Marwick. The State of Nevada Budget Office requested the assistance of Peat Marwick to: (1) develop a process to determine which classifications would be eligible for overtime and which would not be eligible for overtime under the Fair Labor Standards Act provisions; and, (2) identify the potential alternatives for implementing changes to the Personnel System to incorporate the redefined eligibility status for overtime compensation. This report is on file in the Fiscal Analysis Division of the Legislative Counsel Bureau and is available for review upon request.

Included in this report as Appendix C, page 34, is a chart developed by the Department of Personnel, which provides a comparison of the application of the major merit principles in the Personnel System prior to the Benzler decision to the proposed three-tiered system. A review of this chart shows how the merit principles of classification, compensation, attendance and leave, discipline and retention and the selection or hiring process would have been modified under the implementation of the three-tiered personnel system.

Additionally, Exhibit 1, also prepared by the Department of Personnel, provides a comparison of the total number of position classes in state service that were exempt or non-exempt from compensation for overtime after the Benzler decision to the number of position classes that would have been exempt or non-exempt from compensation for overtime with the implementation of the three-tiered personnel system.

The same comparison is provided in Exhibit 2, although this chart shows the number of state positions which would have been affected versus the number of position classes. Both charts are footnoted and indicate that they do not include classes or positions in either the University System or the Public Employees Retirement System.

The three-tiered personnel system proposal was introduced in the 1993 Legislative Session as Senate Bill 362, which provided, in skeleton form, for the revision of the State Personnel System. Also, the 1993-95 Executive Budget included a recommendation to approve both general fund and highway fund salary adjustment amounts to implement the new three-tiered personnel system and establish FLSA compliant exempt classifications.

COMPARISON OF NON-EXEMPT AND EXEMPT CLASSES							
	PRE-GARCIA (2/19/85)	PRE-BENZLER (7/22/92)	POST-BENZLER (1/2/93)	PROPOSED 3-TIERED (4/2/93)			S.B. 362 (7/1/93)
				EXEMPT MERIT	EXEMPT APPOINTED	SUB-TOTAL	
EXEMPT							
Classified	661 (40%)	574 (35%)	14 (1%)	448 (27%)		448 (27%)	51 (3%)
Unclassified	310 (18%)	302 (18%)	86 (5%)	239 (16%)	37 (2%)	296 (18%)	296 (18%)
Total	971 (58%)	876 (53%)	100 (6%)	707 (43%)	37 (2%)	744 (45%)	347 (21%)
NON-EXEMPT							
Classified	662 (40%)	749 (45%)	1,309 (79%)			875 (53%)	1,272 (76%)
Unclassified	27 (2%)	35 (2%)	251 (15%)			41 (2%)	41 (3%)
Non-Exempt Total	689 (42%)	784 (47%)	1,560 (94%)			916 (55%)	1,313 (79%)
TOTAL EXEMPT & NON-EXEMPT							
Exempt Total	971 (58%)	876 (53%)	100 (6%)			744 (45%)	347 (21%)
Non-Exempt Total	<u>689 (42%)</u>	<u>784 (47%)</u>	<u>1,560 (94%)</u>			<u>916 (55%)</u>	<u>1,313 (79%)</u>
Total Classes	1,660 (100%)	1,660 (100%)	1,660 (100%)			1,660 (100%)	1,660 (100%)

* Classes totals (used for every scenario) were retrieved from the 7/13/93 Class Series Review. This report does not include positions from the University or Retirement Systems.

COMPARISON OF NON-EXEMPT AND EXEMPT POSITIONS							
	PRE-GARCIA (2/19/85)	PRE-BENZLER (7/22/92)	POST-BENZLER (1/2/93)	PROPOSED 3-TIERED (4/2/93)			S.B. 362 (7/1/93)
				EXEMPT MERIT	EXEMPT APPOINTED	SUB-TOTAL	
EXEMPT							
Classified	4,470 (32%)	3,306 (23.5%)	97 (0.5%)	2,366 (17.0%)		2,366 (17.0%)	168 (1%)
Unclassified	709 (5%)	529 (4.0%)	203 (1.5%)	500 (3.6%)	58 (0.4%)	558 (0.4%)	558 (4%)
Total	5,179 (37%)	3,835 (27.5%)	300 (2.0%)	2,866 (20.6%)	58 (0.4%)	2,924 (21.0%)	726 (5%)
NON-EXEMPT							
Classified	8,720 (62%)	9,884 (71.0%)	13,093 (94%)			10,824 (77.5%)	13,022 (93.0%)
Unclassified	65 (1%)	245 (1.5%)	571 (4%)			216 (1.5%)	216 (1.5%)
Non-Exempt Total	8,785 (63%)	10,129 (72.5%)	13,664 (98%)			11,040 (79.0%)	13,238 (95.0%)
TOTAL EXEMPT & NON-EXEMPT							
Exempt Total	5,179 (37%)	3,835 (27.5%)	300 (2.0%)			2,924 (21.0%)	726 (5.0%)
Non-Exempt Total	<u>8,785 (63%)</u>	<u>10,129 (72.5%)</u>	<u>13,664 (98.0%)</u>			<u>11,040 (79.0%)</u>	<u>13,238 (95.0%)</u>
Total Positions	13,964 (100%)	13,964 (100%)	13,964 (100%)			13,964 (100%)	13,964 (100%)

- Positions totals (used for every scenario) were retrieved from the 7/13/93 Class Series Review. This report does not include positions from the University or Retirement Systems.

The amounts recommended in The Executive Budget were a general fund appropriation of \$4,106,880 in FY 1994 and \$5,856,940 in FY 1995, and a highway fund appropriation of \$314,525 in FY 1994, and \$455,126 in FY 1995. These amounts were recommended to provide for modified pay grades without steps, variable merit increases based on job performance and an additional five days of management leave for employees who would have become exempt from the eligibility to earn overtime. The Executive Budget stated that all classifications proposed to be affected by the implementation of the three-tiered personnel system had been frozen for merit salary increases in their respective budget accounts.

The 1993 Legislature did not approve the implementation of the three-tiered personnel system or Senate Bill 362 as initially introduced. Senate Bill 362 was approved by the 1993 Legislature, after substantial amendment and in its final form, requires that certain employees be paid on a salary basis in accordance with federal law. This approach would appear to allow flexibility to adjust state employment policies as federal statutes, regulations or case authority, clarify or change the requirements of the salary basis test included in the FLSA. Senate Bill 362 is included in this report as Appendix D, page 38.

B. Senate Bill 362, 1993 Legislature

Senate Bill 362, as approved by the 1993 Legislature, amended Chapter 284 of the Nevada Revised Statutes and set forth provisions to be utilized by the Department of Personnel in determining which positions in state government would be exempt or non-exempt from overtime requirements. Briefly, employees who meet the criteria set forth in Senate Bill 362 and who are determined to be exempt:

- a. must be paid on a salary basis;
- b. are not entitled to compensation for overtime; and,
- c. are not subject to disciplinary suspensions for less than one week.

The implementation of the criteria contained in Senate Bill 362, through the Department of Personnel's analysis resulted in a total of 347 position classes, consisting of 726 individual

positions becoming exempt from the ability to earn overtime effective July 1, 1993. Exhibits 1 and 2, (shown earlier) display the number of position classes and individual positions that became exempt through the implementation of Senate Bill 362. The charts also provide a comparison of the number of position classes and individual positions that became exempt under Senate Bill 362 as compared to the proposed three-tiered personnel system and after the Benzler decision. As mentioned earlier, the charts do not include the University System or the Public Employees Retirement System.

The 726 individual positions are comprised of 168 classified positions and 558 unclassified positions. The total of 726 positions out of a total of 13,964 positions represents approximately 5 percent of the state workforce (exclusive of the University System classified employees and Public Employees Retirement System employees) that is currently exempt from the ability to earn overtime. The remaining 13,238 employees, or approximately 95 percent of the workforce, are eligible to earn overtime at time and one-half for hours worked in excess of 40 hours per week. Appendix E, page 44 represents a listing of all position classes, both classified and unclassified which were determined by the Department of Personnel to be ineligible for overtime effective July 1, 1993.

The Committee also expressed an interest in reviewing overtime pay practices for exempt employees in other western states. The Committee requested that the Department of Personnel conduct a survey of selected western states regarding their overtime pay practices. Exhibit 3 which follows, details the results of that survey. It should be noted that the Department of Personnel felt that California, Colorado, Oregon and Washington provided the best comparisons to Nevada in that they pay no overtime to exempt employees.

Although Arizona, Idaho, Montana, New Mexico, Utah and Wyoming are utilizing the term exempt, the Department of Personnel advised the Committee that those states are providing either monetary compensation or compensatory time to their exempt employees on a straight-time basis, similar to Nevada prior to the Benzler Decision. The Department of Personnel also suggested that Arizona, Idaho and Montana are in the Ninth Judicial Circuit and could be subject to additional half-time liability if challenged in court.

**FLSA EXEMPT SERVICE SURVEY
WESTERN STATES
MAY 1994**

EMPLOYER	% EXEMPT	OT	AUTHORITY FOR GRANTING OT	EXEMPTION DETERMINED BY:	SHORT TEST VS. LONG TEST	LAWUIT OR COMPLIANCE INVESTIGATIONS
Arizona*	17% ⁽¹⁾	Yes ⁽¹⁾	Statute	Central Personnel	ST	The Department of Public Safety has a settlement pending for an award involving the salary basis test. The total amount of damages has not been calculated. There is the potential for this to spill over into other agencies within the State system.
California*	10%	No	⁽¹⁾	Central Personnel	ST	Two cases involving the salary basis test have resulted in back pay awards of \$6.7 million. Another case involving 1,200 plaintiffs is in process. There have been a number of challenges regarding compliance investigations relating to the duties test which have resulted in settlements. Details of the awards were not readily available.
Colorado	32% ⁽⁹⁾	No ⁽¹⁾	Not Applicable	Agency Personnel	ST	Compliance investigation involving Parole Officers resulted in a back pay award. The amount of the settlement is not readily available. Compliance investigation currently underway involving Engineering Technicians and Physician Assistants.
Idaho*	40% ⁽¹⁰⁾	Yes	Statute	Central Personnel	ST	Compliance investigation of classes in worker's compensation agency - no liability to agency.
Montana*	20% ⁽¹¹⁾	Yes	Regulation	Agency Personnel Agency Management	ST	More than 100 employees from seven agencies have sued claiming a violation of the salary basis test. Five agencies have settled. There are a number of individual actions which have been filed with the Department of Labor which are currently unresolved. A total of \$1.4 million was paid in back pay awards relating to their failure to pay employees on a salary basis or for classes which were converted to non-exempt status.
New Mexico	30%	Yes ⁽⁴⁾	Regulation	Agency Personnel Agency Management	ST	None reported.
Oregon*	22%	No ⁽¹⁾	Not Applicable	Agency Personnel	ST	None reported.
Utah	30%	Yes	Statute	Central Personnel	ST	Compliance investigation resulted in \$3,000,000 settlement in back pay for classes that were inappropriately designated as exempt. They did a complete review of all classes with oversight from Department of Labor at the time of this investigation.
Washington*	17% ⁽¹²⁾	No ⁽¹⁾	Not Applicable	Central Personnel ⁽⁴⁾	LT ⁽⁷⁾	Community Corrections Officers settled out of court for \$1 million. Two cases involving the salary basis test are pending; one dealing with the docking of leave balances for less than a day's absence and the other for disciplinary suspensions.
Wyoming	30%	Yes	Regulation	Agency Management	ST	Compliance investigation for fire safety personnel resulted in \$20,000 award.
Nevada*	5%	No	Not Applicable	Central Personnel ⁽¹⁷⁾	ST	Compliance investigation relating to criminal investigators resulted in \$95,000 back pay award; compliance investigation for Auditors resulted in \$4,390 in back pay. Lawsuit relating to salary basis test resulted in back pay awards in excess of \$6 million.

*States in 9th Circuit subject to ruling in Abshire v. Kern County.

- ⁽¹⁾ Department heads, divisions heads and bureau chiefs are excluded from any compensation for overtime.
- ⁽²⁾ Unrepresented managers and supervisors are excluded from overtime, but may unofficially exchange time with their individual agencies. About 7% of the represented employees who would otherwise be exempt (i.e., engineers, nurses, teachers, scientists and some supervisors) have negotiated agreements that provide for overtime pay at the rate of time and one-half. If overtime was removed from this group of employees, their total exempt work force would be close to 17%.
- ⁽³⁾ Departments may provide administrative time off at the end of a project. Time is not provided on an hour-for-hour basis.
- ⁽⁴⁾ Overtime of exempt employees is an agency by agency decision. Some agencies may provide cash payment or compensatory time, depending on budget restrictions.
- ⁽⁵⁾ There is a long-standing policy of not paying overtime. Payment occurs only on a very rare exception basis.
- ⁽⁶⁾ In process of decentralizing to place responsibility with the agency personnel staff. Central personnel will provide training in the fall for agency's personnel staff.
- ⁽⁷⁾ Take conservative approach and use long test to ensure that class is exempt.
- ⁽⁸⁾ The percentage of employees in the exempt work force was revised effective January 1, 1994 as a result of a classification review which resulted in the reallocation of classes to non-exempt status.
- ⁽⁹⁾ Percentage of exempt revised since November due to more accurate reporting by agencies.
- ⁽¹⁰⁾ Revision from what was previously reported. This represents an estimate as the actual number of employees who are exempt has not been tabulated.
- ⁽¹¹⁾ The percentage of the work force which is considered exempt has been revised from what was reported in November of 1993. The November data was based on a report which contained inaccurate information. They now estimate the percentage of employees who are exempt at 15% to 20% of their work force.
- ⁽¹²⁾ The percentage of the work force which was reported to us in November of 1993 has been revised to 17% based on more reliable information.
- ⁽¹³⁾ The Department of Personnel conducted a training session for agency personnel staff and management on the criteria for exempting employees as executive, administrative or professional employees. The initial determination for exempt status was made by central personnel. Input was requested from agencies and considered before final determinations were made.

**FLSA EXEMPT SERVICE SURVEY
NEVADA EMPLOYERS
MAY 1994**

EMPLOYER	% EXEMPT	OT	AUTHORITY FOR GRANTING OT	EXEMPTION DETERMINED BY:	SHORT TEST VS. LONG TEST	LAWSUIT OR COMPLIANCE INVESTIGATIONS
Clark County	32%	No	⁽¹⁾	⁽²⁾	⁽³⁾	⁽⁴⁾
City of Las Vegas	12% ⁽⁵⁾	No ⁽⁶⁾	Not Applicable	Central Personnel	ST	None reported.
City of Reno	4%	No ⁽⁷⁾	Not Applicable	Central Personnel	ST	Fire Battalion Chiefs lawsuit - \$88,408 awarded in back pay and \$74,075 in attorney fees. Police Deputy Chiefs (formerly Captains) \$66,170 - voluntary settlement.
Washoe County	1%	No	⁽⁸⁾	Central Personnel	ST	None reported.

- ⁽¹⁾ Under bargaining agreements, a small percentage (i.e., 5% to 10%) of the employees who are excluded from overtime receive comp time at a straight time rate.
- ⁽²⁾ Administrative leave may be granted to recognize overtime worked but this is strictly at the discretion of the departments. Time is not provided on an hour-for-hour basis.
- ⁽³⁾ Exempt employees receive no compensation for overtime; however, they may elect to work under some flex-time options.
- ⁽⁴⁾ Reduced from 17% reported in November due to classification and compensation study conducted by Ralph Andersen and Associates.
- ⁽⁵⁾ An additional 20% of their work force meet the duties tests for exempt status but are approved for overtime at time and one-half pursuant to collective bargaining agreements.
- ⁽⁶⁾ Did not respond to this survey.

Senate Bill 362 also contains a number of provisions, that in addition to complying with the FLSA, seek to control the amount of overtime worked by state employees. Section 6 (9) of Senate Bill 362, requires that all overtime must be approved in advance by the appointing authority or his designee and that no officer or employee, other than a director of a department or the chairman of a board, commission or similar body, may authorize overtime for himself. Section 6 (10) of S.B. 362 further requires that 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. Also, that 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. Exhibit 4 represents correspondence from the Director of the Department of Administration to all agency heads regarding management of employee overtime.

The Director's memorandum also references Section 5 of S.B. 362, which, in an effort to assist agency heads in reaching their agency objectives, within available personnel and fiscal resources, allows for the provision of compensatory vacation time instead of monetary payment for overtime. Specifically, Section 5 states that a department, agency or institution within the executive department of state government which is authorized by law to make appointments in the classified or unclassified service may enter into an agreement with an organization representative of state employees which has been designated and recognized pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., for the provision of compensatory vacation time instead of monetary payment for overtime. If an employee is not a member of such an organization, the department, agency or institution may enter into such an agreement with the employee directly.

Appendix F, page 60 compiled by the Department of Administration, lists agencies that as of February, 1994, had entered into compensatory time agreements with the State of Nevada Employees Association (SNEA). Appendix G, page 62, also compiled by the Department of Administration lists agencies that have entered into compensatory time agreements with individual non-SNEA members and the number of agreements

Exhibit 4

BOB MILLER
Governor

STATE OF NEVADA

JOHN P. COMEAUX
Director



ATTACHMENT C

DEPARTMENT OF ADMINISTRATION

Capitol Complex
Carson City, Nevada 89710
Fax (702) 687-3983
(702) 687-4065

All Agency Memo #10-94
February 9, 1994

MEMORANDUM

TO: All Agency Heads

FROM: John P. Comeaux

SUBJECT: MANAGEMENT OF EMPLOYEE OVERTIME

Chapter 284 of the Nevada Revised Statutes was amended by S.B. 362 in the 1993 legislative session. The amendments were designed to conform NRS Chapter 284 to the requirements of the Fair Labor Standards Act of 1938, and to ensure that all state agencies control overtime worked so that it is held to a minimum.

To accomplish that goal, NRS 284.180 (9) states, "All overtime must be approved in advance by the appointing authority or his designee. No officer or employee, other than a director of a department or the chairman of a board, commission or similar body, may authorize overtime for himself. The chairman of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body." (Emphasis added)

In addition, NRS 284.180 (10) states, "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."

To assist you in accomplishing the work of your agency within available personnel and fiscal resources, Chapter 284 contains provisions that allow for flexible work schedules, and Section 5 of S.B. 362 permits agreements with employee organizations authorized pursuant to the Fair Labor Standards Act and individual employees, "...for the provision of compensatory vacation time instead of monetary payment for overtime." The Attorney General's Office has advised that at this time, and under the Benzler decision, the State of Nevada Employees' Association is the only authorized representative for

Exhibit 4

MEMORANDUM

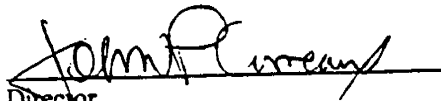
All Agency Heads

February 9, 1994

Page 2

this purpose. Agencies may enter into individual written agreements with employees who are not represented by SNEA to provide for compensatory time off. I encourage you to take advantage of these provisions, as appropriate for you needs.

The budget analyst assigned to your agency will be contacting you in the next week or two to discuss overtime usage of your agency and control measures initiated. The budget division will assist you in anyway possible to attain control of overtime worked, and the associated costs.


Director

with individual employees that the agency had as of February, 1994. Appendix H, page 64 is an updated listing provided by the State of Nevada Employees Association, which shows agencies and divisions that the Association has entered into compensatory time agreements with. Examples of agreements between various state agencies and the State of Nevada Employees Association are on file in the Fiscal Analysis Division and are available for review upon request.

Lastly, S.B. 362 made several appropriations to the State Board of Examiners for the 1993-95 Biennium to meet any deficiencies that may have been created between the appropriated money of the respective departments, commissions and agencies of the State of Nevada, as fixed by the 67th Session of the Legislature, and the requirements of salary of the personnel of those departments, commissions and agencies. The amounts appropriated from the general fund were \$4,106,880 in FY 1994 and \$5,856,940 in FY 1995 and from the state highway fund \$314,525 in FY 1994 and \$455,126 in FY 1995. While these amounts are identical to those proposed by the Administration in The Executive Budget to fund the creation of the recommended three-tiered exempt merit personnel system, the Legislature made several changes for the intended use of these funds.

Specifically, the funds were appropriated:

- a. to meet employee merit increases approved pursuant to Chapter 284 of NRS and not budgeted;
- b. to meet any additional costs of overtime not budgeted or to meet the additional cost of complying with the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.; or,
- c. for all payments for compensatory time balances of the employees who became exempt from the overtime provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.

Senate Bill 362 also specified that the money appropriated for Fiscal Year 1994 and Fiscal Year 1995 is available for both Fiscal Years and may be transferred from one fiscal year to the other with the approval of the Governor upon the

recommendation of the Chief of the Budget Division of the Department of Administration.

As of September 2, 1994, \$3,100,937 in general fund expenditures had been recorded in Fiscal Year 1994 out of the original amount of \$4,106,880 and the entire highway fund appropriation for Fiscal Year 1994 of \$314,525 had been expended. Appendix I, page 66 represents the total distributions made from these appropriations for Fiscal Year 1994.

IV. REVIEW OF OVERTIME HOURS WORKED IN STATE AGENCIES - FISCAL YEAR 1991 THROUGH FISCAL YEAR 1994

During the course of the study, the Committee regularly reviewed reports that were jointly compiled by the Department of Administration, Department of Personnel and the Department of Information Services on overtime hours worked by employees in state agencies. The reports proved to be a useful tool in examining overtime accrual by state agencies during the last four fiscal years. Exhibit 5, prepared by the Department of Personnel, provides a comparison of overtime hours worked by state agencies in Fiscal Year 1991 through Fiscal Year 1994 and the corresponding cash value of those overtime hours in each respective fiscal year. It should be noted that the cash value of the overtime hours worked does not necessarily represent the actual dollars paid for overtime. As many employees have the option of receiving cash or compensatory vacation time for overtime worked, the actual dollars paid to state employees would most likely be less than the cash value of all overtime hours worked shown in Exhibit 5. At this time, the summary of all overtime hours worked and the corresponding dollar value of those hours remains as one of the better methods of examining trends in overtime accrual by state agencies.

The State of Nevada currently has five separate payroll centers consisting of Central Payroll, the Department of Transportation, the State Industrial Insurance System, the University and Community College System and the Public Employees Retirement System. Historically, overtime usage figures for the University System and the Public Employees Retirement System have not been collected. The Committee recommended that the Department of Administration begin to collect overtime data from these two entities and work is currently underway by the Department to pursue this information.

OVERTIME HOURS & CASH VALUE				
	FY 91	FY 92	FY 93	FY 94
SIIS*				
Hours	48,020	55,157	49,679	51,896
Cash Value	\$600,444	\$568,354	\$457,170	\$894,209
Employees on 6/30	878	978	1,104	1,099
DOT				
Hours	133,558	136,856	184,719	137,215
Cash Value	\$2,889,567**	\$3,148,985**	\$4,739,056**	\$3,290,987
Employees on 6/30	1,472	1,488	1,486	1,498
CENTRAL PAYROLL				
Hours	597,841	650,218	658,531	545,898
Cash Value	\$13,091,832	\$15,133,697	\$15,868,418	\$12,764,405
Employees on 6/30	9,062	9,571	9,313	9,865
TOTAL				
Hours	779,419	842,231	892,929	735,009
Cash Value	\$16,581,843	\$18,851,336	\$21,064,644	\$16,949,601
Employees on 6/30	11,412	12,037	11,903	12,462

Employees on 6/30 taken from Employee Turnover Reports. Reflects positions occupied by an employee during the fiscal year.

*SIIS figures do not include the cash value for all of the compensatory time.

**Amended per letter from Department of Transportation dated March 1, 1994.

PH:ts

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10/25/94

Data obtained from the remaining three payroll centers, shown in Exhibit 5, provides a comparison of overtime accrual and its cash value for Fiscal Year 1993 versus Fiscal Year 1994. As mentioned earlier, Senate Bill 362, in addition to complying with the FLSA by exempting certain employees from the ability to earn overtime and requiring state agencies to approve all overtime in advance, also directed the Department of Administration to monitor overtime usage and report that information to the State Board of Examiners on a quarterly basis. The combination of these items appears to have had an impact on overtime accrual and its corresponding cash value.

Exhibit 5 shows 892,929 total overtime hours earned in Fiscal Year 1993 for Central Payroll, the Department of Transportation and the State Industrial Insurance System with a cash value of \$21,064,644. For Fiscal Year 1994, the chart shows a total of 735,009 overtime hours worked with a cash value of \$16,949,601. This represents a decrease in Fiscal Year 1994 compared to Fiscal Year 1993 of 157,820 overtime hours (-17.7%) and \$4,115,043 (-19.5%)

While historical figures for the University System and the Public Employees Retirement System were not available, Exhibit 6 provides a comparison for these two agencies for Fiscal Year 1993 versus Fiscal Year 1994. The Public Employees Retirement System reports total overtime hours worked in Fiscal Year 1993 as 2,444 hours with a cash value of \$65,727. For Fiscal Year 1994, 1,730.50 hours of overtime worked are reported with a cash value of \$48,204. The comparison demonstrates a decrease of 713.50 overtime hours worked in FY 1994 (-29%) and a decrease in the cash value of \$17,523 (-26.7%).

A similar comparison for the University System shows 49,914 hours of overtime in FY 1993 with a paid overtime value of \$966,826 compared to FY 1994 where overtime hours paid totaled 51,360 (+1,446 hours) with a paid overtime value of \$946,638 (-\$20,188). (The University System figures only include overtime hours earned for pay and do not include data on compensatory time earned in lieu of cash paid.)

With the exception of Business Center North within the University System, it appears that overall, the State of Nevada is experiencing a reduction in overtime hours for Fiscal Year 1994 compared to Fiscal Year 1993. Data will continue to be collected and refined by the Department of Administration to gain a more reliable indication of overtime accrual in Nevada State Government.

Exhibit 6

University and Community College System of Nevada

Actual Overtime Payments*

<u>Business Center North</u>	<u>FY 1993</u>	<u>FY 1994</u>
Hours of Overtime	29,261	32,617
Payments	\$530,433	\$566,097
Number of classified employees	1,142	1,352
 <u>Business Center South</u>		
Hours of Overtime	20,653	18,743
Payments	\$436,393	\$380,541
Number of classified employees	671	678
 <u>Total</u>		
Hours of Overtime	49,914	51,360
Payments	\$966,826	\$946,638
Number of classified employees	1,813	2,030

*Data regarding Overtime worked for Compensatory Time was not available for FY 1993 or FY 1994.

Public Employees Retirement System

Actual Overtime Hours Worked

<u>Overtime for Cash</u>	<u>FY 1993</u>	<u>FY 1994</u>
Hours of Overtime	1,711.50	1,213.50
Dollar Value	\$43,063	\$30,995
 <u>Overtime for Comp</u>		
Hours of Overtime	732.50	517
Dollar Value	\$22,664	\$17,209
 <u>Total Overtime Worked</u>		
Hours of Overtime	2,444	1,730.50
Dollar Value	\$65,727	\$48,204

The Public Employees Retirement System had 36 FTE authorized positions in both FY 1993 and FY 1994.

V. ISSUES, RECOMMENDATIONS AND FINDINGS

During the Committee's final meeting and work session, the following topics were considered by the Committee for potential recommendations and findings. The listing of topics represents a compilation of issues developed by the Committee during its three earlier meetings. From the listing, the Committee adopted a total of four recommendations and identified three findings.

Listing of Topics

- A. Officer-of-the-day Compensation Issues.
- B. Ability of Board and Commission members to earn overtime.
- C. Amendment of Chapter 284 of NRS regarding the possible increase or decrease of the percentage of exempt employees.
- D. Consideration of the Three-Tiered Exempt Merit Service Proposal.
- E. Limits on overtime accrual by state agencies.
- F. Development of a formula regarding the cost effectiveness of compensating accrued overtime versus adding new positions.
- G. Amendment of Chapter 284 of NRS regarding ability of State Employees Organizations to enter into agreements with agencies for compensatory vacation time in lieu of monetary payment for overtime.
- H. Reporting of Overtime Usage by University System and Public Employees Retirement System.

I. Joint Suggestions of Department of Administration and Department of Personnel.

1. Short Term:

- Recommend a grade level cut-off for exempt personnel in the classified service for uniformity.
- Possibly provide administrative leave for exempt employees.
- Add staff to those agencies where it can be clearly demonstrated that staffing is the cause of overtime.

2. Long Term:

- Recommend a comprehensive study of the Personnel System, including legislative authority to conduct pilot projects with selected agencies.

J. Suggestions of Service Employees International Union.

- Adopt the "long" duties test.
- Do not support the Three-Tiered Exempt Merit Service Proposal.
- Support additional compensation and benefits for Exempt personnel.
- Provide more adequate staffing.

K. Suggestions of State of Nevada Employees Association.

- Suggest that no changes be made to the current overtime law.
- Do not support the use of definitions that allow the State, as an employer, to determine who is eligible for overtime and who is not.

RECOMMENDATIONS

Officer-of-the-Day Compensation

This issue was brought to the Committee's attention by the Department of Prisons and involved the loss of standby pay by Prison medical personnel due to the implementation of Senate Bill 362. Prior to the implementation of Senate Bill 362, certain Physicians employed by the Department of Prisons received compensation equivalent to 5 percent of their hourly rate of pay for the period of time between their normal work shifts. The Physicians received this compensation for being "on call" in the event of medical emergencies which would require them to respond to telephone inquiries or return to an institution after normal working hours.

This type of hourly compensation for additional work is no longer appropriate for professional employees under the salary basis test requirements of Senate Bill 362. Effective July 1, 1993, the Department of Prisons was no longer able to compensate certain Physicians for required standby duty with this method of compensation. Information provided by the Department of Prisons to the Department of Administration and the Department of Personnel stated that these Physicians were indispensable to the Department of Prisons for compliance with certain consent decrees concerning the provision of medical care to inmates. Further, the Physicians expressed their concerns as to a reduction in their total compensation, even though they were still expected to remain on call for emergencies after their normal shifts.

As a compromise, the Department of Prisons was allowed to utilize the Officer-of-the-Day payment mechanism employed by the Division of Mental Hygiene and Mental Retardation to compensate their Physicians for similar on-call requirements. Under this agreement, MH/MR Physicians are paid \$60 for each weekday and \$100 per each weekend day of on-call service provided. Flat compensation amounts of this type are considered to be shift work and are not considered to be in violation of the salary basis test contained in the Fair Labor Standards Act regulations. Officer-of-the-Day pay has been, for sometime, included in The Executive Budget and approved by the Legislature as an acceptable method of compensating MH/MR Physicians. (It should be noted that this compromise for Department of Prisons' Physicians is viewed as a temporary solution until the convening of the 1995 Legislature.)

The Committee, in reviewing this issue, identified two potential alternatives to compensate Prison Physicians:

1. Recommending that Officer-of-the-Day pay be included in The Executive Budget or;
2. Increasing the base salary of Prison Physicians and identifying on-call duties as part of the position's responsibilities. In discussing this issue with the Department of Personnel on several occasions, it became apparent that there may be other groups of affected employees who similarly have on-call responsibilities and are no longer able to be compensated for these responsibilities. The Committee preferred not to make a recommendation based solely on Prison Physicians but instead on all groups of employees affected by this requirement. Additionally, due to time constraints, the Department of Personnel was unable to contact and identify all employees performing on-call duties.

Therefore, the Committee recommended:

1. **That the Department of Personnel conduct a thorough analysis of all state employee position classifications affected by Officer-of-the-Day or standby shift requirements and approach the 1995 Legislature with suggested compensation alternatives to address these requirements.**

Board and Commission Members - Overtime Compensation

This issue was discussed at several Committee meetings and revolved around the eligibility of members of Boards and Commissions to earn overtime. Committee members agreed that the intent of Senate Bill 362 was to ensure that members of Boards and Commissions were not entitled to earn overtime. However, the Committee received considerable testimony on this issue, some of it conflicting and of differing opinion, so that it was unable to conclusively come to a consensus that members of Boards and Commissions could not earn overtime.

Further, Senate Bill 362 amended NRS 284.180 by requiring that "all overtime must be approved in advance by the appointing authority, or his designee. No officer or employee, other than a director of a department or the chairman of a board, commission, or similar body,

may authorize overtime for himself. The chairman of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body." This language would seem to imply that board and commission members could earn overtime. Acting on advice from the Committee's legal counsel, the committee felt that an appropriate solution to this uncertainty would be to specifically address each board and commission and prohibit members from being able to earn overtime. Therefore, the Committee recommends:

2. **That existing statutes be amended to ensure that board and commission members are not entitled to compensation for overtime. (BDR 23-351, Appendix J, page 69).**

Justification for New Positions

The Committee discussed, on several occasions, the potential to add new positions in agencies that were consistently accruing significant amounts of overtime. Testimony provided to the Committee centered around the cost effectiveness of potentially adding new positions in an agency that regularly accrued large amounts of overtime. The Committee also discussed alternatives such as placing limits on overtime accrual in agencies and developing formulas that could be utilized to make decisions regarding paying overtime costs versus adding new positions.

The Committee also reviewed various overtime reports on compensatory time earned in various state agencies compared to compensatory time used for the same period. As an example, data provided for agencies served by central payroll for the third quarter of Fiscal Year 1994 (January through March, 1994) indicates that while employees earned the equivalent of 44,097.82 hours of compensatory time in the quarter, a total of 46,337.66 hours of compensatory time were used.

The Committee noted if an agency that accrues a significant amount of overtime is also able to allow its employees to take off considerable amounts of compensatory time during the same period, new positions may not necessarily be the remedy. A delicate balance would appear to exist between overtime an agency is able to pay for in cash, overtime that an agency is able to allow employees to take off as compensatory vacation time and the need for new positions. While the Committee took no action on overtime limits or new position formulas, the Committee did agree to recommend:

3. **That new positions recommended in The 1995-97 Executive Budget in agencies that experience significant overtime accrual be thoroughly justified and demonstrate the cost effectiveness of adding new positions in lieu of compensating earned overtime.**

University System and Public Employees Retirement System - Overtime Data

As mentioned earlier in this report, overtime data for the University and Community College System and the Public Employees Retirement System is not regularly collected by the Department of Administration. Since the University System is a significant employer of state classified employees and because Senate Bill 362, Section 6 (10) requires that the Budget Division review all overtime worked by the employees of the Executive Department, the Committee recommended:

4. **That the Department of Administration request and collect, on a quarterly basis, statistics on overtime accrual from the University System (classified employees) and the Public Employees Retirement System.**

FINDINGS

While the following items did not result in specific recommendations, the Committee felt that the issues described were important and worthy of mention.

Further Study of the State Personnel System

Prior to its final meeting and work session, the Committee requested input, suggestions or comments on current overtime policies from the Department of Administration, the Department of Personnel, the State of Nevada Employees Association and the Service Employees International Union. The Department of Administration and the Department of Personnel provided a joint response to the Committee (Appendix K, page 75) while the State of Nevada Employees Association (Appendix L, page 86) and the Service Employees International Union (Appendix M, page 88) responded separately.

The Committee had asked the Administration, at an earlier meeting, if it was their intent to re-introduce the three-tiered personnel system in the 1995 Legislative Session. The joint response provided by the

Department of Administration and the Department of Personnel indicated they would not pursue the three-tiered system in the next biennium. The response stated that while the Administration felt that system was an excellent proposal, it dealt with much more than the overtime issue, specifically, civil service reform for exempt employees and although civil service reform is taking hold nationwide, and is an issue Nevada needs to seriously consider, the Administration felt it was premature at this time.

The joint response did, however, identify a number of issues of concern to the Administration as well as various options in addressing each issue and alternatives which could be employed with the identified options. This information, while not included in the body of this report, is contained in the Administration's complete response as Appendix K. Continuing, the response also indicated that the Administration was considering requesting authority from the 1995 Legislature to implement pilot projects in agencies to "test" new concepts in personnel administration. Additionally, that the Administration will consider proposing, to the 1995 Legislature, that a comprehensive study of the state's personnel system be undertaken.

While no action was taken on the Administration's suggestions, the Committee agreed:

- 1. That the Department of Administration's and the Department of Personnel's joint identification of issues of concern, suggested options and alternatives regarding current overtime provisions, as well as the Department of Personnel's proposal to seek approval from the 1995 Legislature for the authority to conduct a comprehensive study of the state's personnel system, is acknowledged and made part of this report.**

Compensatory Time Agreements

As discussed earlier in this report, Senate Bill 362, Section 5 states that a department, agency or institution within the Executive Department of State Government which is authorized by law to make appointments in the classified or unclassified service may enter into an agreement with an organization representative of state employees which has been designated and recognized pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., for the provision of compensatory vacation time instead of monetary payment for

overtime. If an employee is not a member of such an organization, the department, agency or institution may enter into such an agreement with the employee directly. The Committee heard testimony during the course of the study which suggested some state agencies were reluctant to enter into compensatory time agreements. While the Committee declined to mandate that all agencies enter into these agreements, the Committee agreed to suggest:

2. **That Executive Department agencies are encouraged to enter into agreements with organizations representative of state employees or with individual employees for the provision of compensatory vacation time instead of monetary payment for overtime.**

Fair Labor Standards Act Duties Test

One of the primary criteria contained in the Fair Labor Standards Act, utilized to determine an employee's eligibility for overtime compensation is called the duties test. The duties test is applied when defining whether an employee is considered to be an executive, administrative or professional employee. The employee must first be considered as a "salaried" employee before the exemptions for executive, administrative or professional employee may be pursued. If an employee meets the salary basis test, then an employer may utilize either the "long" or "short" duties test in determining if an employee meets the FLSA definition of executive, administrative or professional. Both the "long" and "short" tests are permissible under FLSA regulations.

The Department of Personnel testified that they have consistently utilized the "short" test in determining if an employee was exempt from the ability to earn overtime. The Department stated that they have studied the concept of the duties test and have applied the "short" duties test very conservatively. If any questions existed as to whether an employee was to be considered exempt or non-exempt, the Department chose to favor the employee and classify the position as able to earn overtime compensation. The Department felt that the use of the "long" duties test in their analysis of positions in state government would not result in any benefit to the process. Therefore, it was agreed:

3. **That the Committee has reviewed and discussed the application of the "short" duties test versus the "long" duties test utilized by the Department of Personnel in**

determining whether or not an employee is entitled to compensation for overtime. And, that the use of the "short" test by the Department of Personnel appears acceptable and that the use of the "long" test would not appreciably alter the determination process.

VI. APPENDICES

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Appendix A

Senate Concurrent Resolution No. 55—Committee on Finance

FILE NUMBER.....¹⁶⁷

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study of the overtime worked by state employees and the methods of complying with the Fair Labor Standards Act.

WHEREAS, The State of Nevada classifies its employees within the executive department as being either classified or unclassified, and the rights and benefits of a state employee are dependent upon his classification; and

WHEREAS, The federal Fair Labor Standards Act designates specific categories of employees for the purposes of the Act, including the payment of overtime to those employees; and

WHEREAS, A recent federal court case found that this state's method for the payment of overtime to certain state employees in accordance with state's system of classification was in violation of the Fair Labor Standards Act; and

WHEREAS, Overtime not only affects the quality of life of the state employees required to work the overtime by limiting the time they can spend with family and friends, but it costs this state millions of dollars each year; and

WHEREAS, Nevada must develop a system of classification of its personnel which would improve the efficiency of the government services to the residents of this state by effectively utilizing the manpower of the state employees while minimizing the amount of overtime that these employees must work; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study concerning the system of classification of state employees and the payment of overtime to those employees; and be it further

RESOLVED, That the study include, but not be limited to, an examination, review and evaluation of:

1. The system for the classification of state employees;
 2. The methods by which those state employees are being paid overtime;
 3. Alternative methods of classifying and paying overtime to state employees to determine the most efficient methods that could be utilized in this state; and
 4. The compliance of any proposed system of classification of state employees with the Fair Labor Standards Act;
- and be it further

RESOLVED, That the Legislative Commission report the results of the study and any recommended legislation to the 68th session of the Nevada Legislature.

Appendix B

Assembly Bill No. 316—Committee on Ways and Means

CHAPTER. 246...

AN ACT making appropriations to the board of examiners for settlement of a claim on behalf of certain state employees; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the state general fund to the state board of examiners the sum of \$3,445,141 to be allocated as follows:

(a) For certain overtime costs incurred before fiscal year 1992-93 by certain classes of employees who were eligible for overtime compensation at time and one-half as determined in the *Benzler v. State of Nevada* case, \$2,263,619.

(b) For time and one-half costs incurred in fiscal year 1992-93 by certain classes of employees who were eligible for overtime compensation at time and one-half as determined in the *Benzler v. State of Nevada* case, \$707,610.

(c) For certain overtime costs incurred in fiscal year 1992-93 by certain classes of employees who were eligible for overtime compensation at time and one-half as determined in the *Benzler v. State of Nevada* case, \$458,912.

(d) For the payment of the plaintiffs' attorneys' fees in the *Benzler v. State of Nevada* case, \$15,000.

2. The sums appropriated by paragraphs (b) and (c) of subsection 1 of this section are for any deficiencies which may be created between the appropriated money of the respective departments, commissions and agencies of the State of Nevada as fixed by the 66th session of the legislature and the payments made by those departments, commissions and agencies to satisfy the *Benzler* settlement provisions.

3. There is hereby appropriated from the state highway fund to the state board of examiners the sum of \$346,155 for certain overtime costs incurred before fiscal year 1992-93 by certain classes of employees of the department of motor vehicles and public safety, the public service commission of Nevada and the attorney general's office who were eligible for overtime compensation at time and one-half as determined in the *Benzler v. State of Nevada* case.

4. Payment for certain overtime costs incurred in fiscal year 1992-93 by classes of employees of the department of motor vehicles and public safety, the public service commission of Nevada and the attorney general's office who were eligible for overtime compensation at time and one-half as determined in the *Benzler v. State of Nevada* case and whose salaries are paid from the state highway fund must be made from the appropriated money of those respective agencies as fixed by the 66th session of the legislature.

Sec. 2. Any remaining balance of the appropriations made by section 1 of this act must not be committed for expenditure after June 30, 1994, and reverts to the fund from which the money was appropriated as soon as all payments of money committed have been made.

Sec. 3. This act becomes effective upon passage and approval.

NEW THREE-TIERED PERSONNEL SYSTEM PROPOSAL

MAJOR MERIT PRINCIPLE	PERSONNEL SYSTEM (Pre Benzler)		PROPOSED SYSTEM		
	UNCLASSIFIED	CLASSIFIED	EXEMPT APPOINTED (CURRENTLY UNCLASSIFIED)	EXEMPT MERIT (NEW FROM CLASSIFIED AND UNCLASSIFIED)	NON-EXEMPT MERIT (CURRENTLY CLASSIFIED)
Classification - Provide equity	No classification System.	Comprehensive system of position classification which identifies grade levels based on job duties, KSA's and MQ's. Meets equal pay for equal work requirement. (Compares with non-exempt merit.)	No classification system.	Will have a classification system that meets the tenet of equal pay for equal work. May include using "broadband" or generic categories for classification allowing managers more flexibility in assigning duties and may reduce the amount of reclassification activity that now occurs.	Comprehensive system of position classification which identifies grade levels based on job duties, KSA's, and MQ's. Meets equal pay for equal work requirement.
Compensation (Pay) Provide adequate compensation	Set by Legislature. Appointing authority determines salary up to maximum set by Legislature. Eligible for overtime at time and one-half or straight time rate resulting in accrual of compensatory time off or cash payment. Some positions limited by statute to 80 hours.	By statute, salaries are set by Legislature based on: labor market survey, recruitment difficulty and turnover and cost of living information. Grade levels are comprised of 15 steps. Progression through grade is based on standard performance. Generally, employees at grade 33 and above eligible for overtime on a straight time basis resulting in accrual of compensatory time off or cash payment.	Will be set by Legislature. Elected Official determines salary up to maximum set by Legislature. Not eligible for overtime compensation.	Salary bands approved by Legislature based on labor market and cost of living information. Administrators will have flexibility to adjust salaries based on performance and availability of funds. Will meet FLSA salary test. No recognition of overtime. Will require new performance evaluation system.	By statute, salaries are set by Legislature based on: labor market survey, recruitment difficulty and turnover and cost of living information. Grade levels are comprised of 15 steps. Progression through grade is based on standard performance. Does not meet salary and/or duties test under FLSA, therefore receives time and one-half overtime compensation.

	PERSONNEL SYSTEM (Pre Benzler)		PROPOSED SYSTEM		
MAJOR MERIT PRINCIPLE	UNCLASSIFIED	CLASSIFIED	EXEMPT APPOINTED (CURRENTLY UNCLASSIFIED)	EXEMPT MERIT (NEW FROM CLASSIFIED AND UNCLASSIFIED)	NON-EXEMPT MERIT (CURRENTLY CLASSIFIED)
Compensation (Pay) (cont.)		Employees at grade 32 and below eligible for overtime at time and a half resulting in accrual of compensatory time off or cash payment. Individual classes and/or positions at grade 33 and above reviewed as requested for eligibility for time and a half.			
(Attendance and Leave)	Rates of accrual of sick and annual leave set by statute.	Rates of accrual of sick and annual leave set by statute. (Compares with non-exempt merit.)	No provision for leave of any type. No recordkeeping required.	Rates of accrual will remain the same as for non-exempt merit employees. May provide for one week of management leave (used or paid). Reduced recordkeeping for purposes of attendance and leaves.	Rates of accrual of sick and annual leave set by statute.

PERSONNEL SYSTEM (Pre Benzler)			PROPOSED SYSTEM		
MAJOR MERIT PRINCIPLE	UNCLASSIFIED	CLASSIFIED	EXEMPT APPOINTED (CURRENTLY UNCLASSIFIED)	EXEMPT MERIT (NEW FROM CLASSIFIED AND UNCLASSIFIED)	NON-EXEMPT MERIT (CURRENTLY CLASSIFIED)
<p>Discipline and Retention</p> <p><i>Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.</i></p>	<p>Unclassified employed at will.</p>	<p>By statute, management has the right to exercise progressive discipline leading to termination. Employees have right to formally appeal or grieve performance evaluations, alleged injustices and disciplinary actions through external administrative appeals processes.</p> <p>An employee whose job classification is affected by layoff is either laid off or "bumps down" based on seniority when a reduction in work force is implemented. Re-employment rights are extended for one year. (Compares with non-exempt merit.)</p>	<p>Employed at will.</p>	<p>Per merit principles employees must be retained, disciplined, and terminated based on the adequacy of their performance. Final review/decision on grievances and disciplinary actions may be limited to department head level.</p> <p>No suspensions, of less than one week, without pay.</p> <p>Layoff determination may be based on seniority and performance. "Bumping" and re-employment may occur within the exempt or non-exempt service for employees who are currently classified.</p>	<p>By statute, management has the right to exercise progressive discipline leading to termination. Employees have right to formally appeal or grieve performance evaluations, alleged injustices and disciplinary actions through external administrative appeals processes.</p> <p>An employee whose job classification is affected by layoff is either laid off or "bumps down" based on seniority when a reduction in work force is implemented. Re-employment rights are extended for one year.</p>

	PERSONNEL SYSTEM (Pre Benzler)		PROPOSED SYSTEM		
MAJOR MERIT PRINCIPLE	UNCLASSIFIED	CLASSIFIED	EXEMPT APPOINTED (CURRENTLY UNCLASSIFIED)	EXEMPT MERIT (NEW FROM CLASSIFIED AND UNCLASSIFIED)	NON-EXEMPT MERIT (CURRENTLY CLASSIFIED)
Selection <i>Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including open consideration of all qualified applicants for initial appointment.</i>	No state requirements other than those specified by statute for a given position.	By statute and regulation, requires strict guidelines on promotional and open competitive opportunities and ranking for purposes of hiring, i.e., top five candidates are eligible for appointment. Considerable administration of formal examinations (i.e., written tests). (Compares with non-exempt merit.)	No state requirements (department heads and personal staff serving at the pleasure of elected official).	Will meet merit principle which requires recruitment, selection and advancement be based on the relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment. Allow greater flexibility in selecting employees to include: decentralizing the selection process to interested agencies with personnel staff, implementing less formal testing procedures as appropriate and expanding the number of eligible candidates for appointment.	By statute and regulation, requires strict guidelines on promotional and open competitive opportunities and ranking for purposes of hiring, i.e., top five candidates are eligible for appointment. Considerable administration of formal examinations (i.e., written tests).

RJ:akb
11/30/93
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Appendix D

Senate Bill No. 362—Committee on Finance

CHAPTER.508...

AN ACT relating to state personnel; revising the state personnel system in compliance with federal law; making appropriations; and providing other matters properly relating thereto.

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

Section 1. NRS 281.100 is hereby amended to read as follows:

281.100 1. Except as otherwise provided in this section and NRS 284.180, the services and employment of all persons who are [now, or may hereafter be,] employed by the State of Nevada, or by any county, city, town, township or [any] other political subdivision thereof, are [hereby limited and restricted] *limited* to not more than 8 hours in any 1 calendar day and not more than 40 hours in any 1 week.

2. The period of daily employment mentioned in this section commences from the time the employee takes charge of any equipment of the employer or acts as an assistant or helper to a person who is in charge of any equipment of the employer, or enters upon or into any conveyance of or operated by or for the employer at any camp or living quarters provided by the employer for the transportation of employees to the place of work.

3. [Nothing in this section applies] *This section does not apply to:*

(a) Officials of the State of Nevada or of any county, city, town, township or other political subdivision thereof [.] , *or employees of the state whose employment is governed by section 4 of this act.*

(b) Employees of the State of Nevada or of any county, city, town, township or other political subdivision thereof who:

(1) Are engaged as employees of a fire department, or to nurses in training or working in hospitals, or to police, deputy sheriffs or jailers;

(2) Chose and are approved for a variable workday or variable 80-hour work schedules within a biweekly pay period;

(3) Work more than 8 hours but not more than 10 hours in any 1 workday or 40 hours in any 1 work week;

(4) Are executive, administrative, professional or supervisory employees; or

(5) Are covered by a collective bargaining agreement which establishes hours of service.

(c) Employees of the legislative counsel bureau.

(d) Work done directly by any public utility company pursuant to an order of the public service commission of Nevada or other public authority.

4. Any employee whose hours are limited by subsection 1 may be permitted, or in case of emergency where life or property is in imminent danger may be required, at the discretion of the officer responsible for his employment, *but subject to any agreement made pursuant to section 5 of this act*, to work more than the number of hours limited. If so permitted or required, he is entitled to receive, at the discretion of the responsible officer:

(a) Compensatory vacation time; or

(b) Overtime pay.

5. Any officer or agent of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof, whose duty it is to employ, direct or control the services of an employee covered by this section, who violates any of the provisions of this section as to the hours of employment of labor as provided in this section, is guilty of a misdemeanor.

Sec. 2. NRS 281.1275 is hereby amended to read as follows:

281.1275 1. [The] *Except as permitted by the federal Family and Medical Leave Act of 1993, the salary of a public officer or employee of the state or any agency thereof, or of a political subdivision or any agency thereof, who is not entitled pursuant to federal or state law, local ordinance, or policy or contract of employment to earn overtime at the rate of time and one-half, must not be reduced for an absence from work for part of a day.*

2. *[A part-day absence of an officer or employee who is not entitled to earn overtime at the rate of time and one-half must be accounted for by use of accrued leave appropriate to the absence or compensatory time or, where no such leave or compensatory time is available, by administrative leave with pay.*

3.] *The provisions of this section do not apply to an officer or employee of the legislative branch of government, except an officer or employee of the legislative library.*

Sec. 3. Chapter 284 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this act.

Sec. 4. 1. *An employee in the unclassified service who is an elected officer, on the personal staff of an elected officer, or an appointed head of a department or division who serves at the pleasure or discretion of an elected officer, or who is an executive, administrative or professional employee within the meaning of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.:*

(a) *Must be paid on a salary basis, within a maximum amount established by law;*

(b) *Is not entitled to compensation for overtime; and*

(c) *Is not subject to disciplinary suspensions for less than 1 week.*

2. *An employee in the classified service who is an executive, administrative or professional employee within the meaning of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and who is either a head of a department, division or bureau, or a doctoral level professional:*

(a) *Must be paid on a salary basis;*

(b) *Is not entitled to compensation for overtime; and*

(c) *Is not subject to disciplinary suspensions for less than 1 week.*

3. *Unless otherwise specified by statute, the department shall determine which positions in the classified and unclassified service are subject to the provisions of this section.*

Sec. 5. *A department, agency or institution within the executive department of state government which is authorized by law to make appointments in the classified or unclassified service may enter into an agreement with an organization representative of state employees which has been designated and recognized pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§*

201 et seq., for the provision of compensatory vacation time instead of monetary payment for overtime. If an employee is not a member of such an organization, the department, agency or institution may enter into such an agreement with the employee directly.

Sec. 6. 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 his representative must be earned at the rate of time and one-half, except for those employees [determined by the department to be executive, administrative, professional or supervisory. Executive, administrative, professional and supervisory employees earn credit for overtime at their regular straight time rate.] *described in section 4 of this act.*

3. Except as otherwise provided in subsections 4, 6 and 8, 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. Firemen 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 fireman so assigned is entitled to receive 1/26 of his 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 firemen. In addition to the regular amount paid such a fireman for the deemed average of 56 hours per week, he 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 director, with the approval of the commission, shall adopt regulations to carry out the provisions of subsection 4.

6. For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week. For employees who choose and are approved for a variable 80-hour work schedule within a biweekly pay period, overtime will be considered only after working 80 hours biweekly.

7. An agency may experiment with innovative work weeks upon the approval of the head of the agency and after majority consent of the affected employees.

8. 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.

9. *All overtime must be approved in advance by the appointing authority or his designee. No officer or employee, other than a director of a department or the chairman of a board, commission or similar body, may authorize overtime for himself. The chairman of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body.*

10. *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.*

Sec. 7. NRS 284.385 is hereby amended to read as follows:

284.385 1. An appointing authority may:

(a) Dismiss or demote any permanent classified employee when he considers that the good of the public service will be served thereby.

(b) [Suspend] *Except as otherwise provided in section 4 of this act, suspend* without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days.

2. A dismissal, involuntary demotion or suspension does not become effective until the employee is notified in writing of the dismissal, involuntary demotion or suspension and the reasons therefor. The notice may be delivered personally to the employee or mailed to him at his last known address by registered or certified mail, return receipt requested. If the notice is mailed, the effective date of the dismissal, involuntary demotion or suspension shall be deemed to be the date of delivery or if the letter is returned to the sender, 3 days after mailing.

3. No employee in the classified service [shall] *may* be dismissed for religious or racial reasons.

Sec. 8. NRS 463.080 is hereby amended to read as follows:

463.080 1. The board, with the approval of the commission, may:

(a) Establish, and from time to time alter, such a plan of organization as it may deem expedient.

(b) Acquire such furnishings, equipment, supplies, stationery, books, motor vehicles and [all] other things as it may deem necessary or desirable in carrying out its functions.

(c) Incur such other expenses, within the limit of money available to it, as it may deem necessary.

2. Except as otherwise provided in this chapter, all costs of administration incurred by the board must be paid out on claims from the state general fund in the same manner as other claims against the state are paid.

3. The board shall, within the limits of legislative appropriations or authorizations, employ and fix the salaries of or contract for the services of such

professional, technical and operational personnel and consultants as the execution of its duties and the operation of the board and commission may require.

4. The members of the board and all the personnel of the board, except clerical employees [,] *and employees described in section 4 of this act*, are exempt from the provisions of chapter 284 of NRS. They are entitled to such leaves of absence as the board prescribes, [,] but such leaves must not be of lesser duration than those provided for other state employees pursuant to chapter 284 of NRS. *Employees described in section 4 of this act are subject to the limitations specified in that section.*

5. Clerical employees of the board are in the classified service but are exempt from the provisions of chapter 284 of NRS for purposes of removal. They are entitled to receive an annual salary which must be fixed in accordance with the pay plan adopted under the provisions of that chapter.

6. The board and the commission shall, by suitable regulations, establish a comprehensive plan governing employment, job classifications and performance standards, and retention or discharge of employees to assure that termination or other adverse action is not taken against such employees except for cause. The regulations must include provisions for hearings in personnel matters and for review of adverse actions taken in those matters.

Sec. 9. NRS 284.183 is hereby repealed.

Sec. 10. 1. There is hereby appropriated from the state general fund to the state board of examiners for the fiscal years beginning July 1, 1993, and ending June 30, 1994, and beginning July 1, 1994, and ending June 30, 1995, the sums of \$4,106,880 and \$5,856,940, respectively, to meet any deficiencies that may be created between the appropriated money of the respective departments, commissions and agencies of the State of Nevada, as fixed by the 67th session of the legislature, and the requirements for salary of the personnel of those departments, commissions and agencies necessary:

(a) To meet employee merit increases approved pursuant to chapter 284 of NRS and not budgeted;

(b) To meet any additional costs of overtime not budgeted or to meet the additional cost of complying with the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.; or

(c) For all payments for compensatory time balances of the employees who become exempt from the overtime provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.

2. There is hereby appropriated from the state highway fund to the state board of examiners for the fiscal years beginning July 1, 1993, and ending June 30, 1994, and beginning July 1, 1994, and ending June 30, 1995, the sums of \$314,525 and \$455,126 respectively, to meet any deficiencies which may be created between the appropriated money of the department of motor vehicles and public safety, the public service commission of Nevada, and the attorney general's office, as fixed by the 67th session of the legislature, and the requirements for salary of the personnel of those departments, commissions and agencies necessary:

(a) To meet employee merit increases approved pursuant to chapter 284 of NRS and not budgeted;

(b) To meet any additional costs of overtime not budgeted or to meet the additional cost of complying with the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.; or

(c) For all payments for compensatory time balances of the employees who become exempt from the overtime provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.

3. The state board of examiners, upon the recommendation of the director of the department of administration, may allocate and disburse to the various departments, commissions and agencies of the State of Nevada, out of the money appropriated by this section, such sums of money as may from time to time be required, which when added to the money otherwise appropriated or available equals the amount of money required to pay the salaries of the employees of the respective departments, commissions and agencies for the purposes stated in subsections 1 and 2 of this section.

4. The money appropriated for fiscal years 1993-1994 and 1994-1995 in this section is available for both fiscal years 1993-1994 and 1994-1995, and may be transferred from one fiscal year to the other with the approval of the governor upon the recommendation of the chief of the budget division of the department of administration. Any balance of that money must not be committed for expenditure after June 30, 1995, and reverts to the fund from which it was appropriated as soon as all payments of money committed have been made.

Sec. 11. This act becomes effective on July 1, 1993.

Appendix E

CLASSES INELIGIBLE FOR OVERTIME EFFECTIVE 7/1/93

CLASS CODE	TITLE	GRADE
4.103	Director NSLA (State Librarian)	43
5.210	Administrator Comm. on Postsecondary Education	42
6.204	Assistant Transportation Director	47
6.205	Asst. Director of Planning & Program Development	46
6.902	Chief Engineer Colorado River Commission	47
6.907	Chief Power Marketing Administrator	45
7.215	Administrative Services Officer IV	44
7.303	Purchasing Administrator	41
7.508	Industrial Organizational Psychologist	41
9.601	Administrator Division of Buildings & Grounds	41
9.701	Supt. St. Printing & Micrographics Division	43
10.109	Senior Psychiatrist (Range A)	*
10.110	Senior Psychiatrist (Range B)	*
10.111	Senior Psychiatrist (Range C)	*
10.127	Director of Forensic Services	43
10.124	Supervisory Psychologist	42
10.126	Principal Psychologist	41
10.170	Psychologist - MH/MR	41
10.135	Mental Health Counselor V	41
10.137	Mental Health Counselor IV	39
10.203	State Health Officer (Range A)	*
10.204	State Health Officer (Range B)	*
10.202	State Health Officer (Range C)	*
10.211	Senior Physician (Range A)	*
10.212	Senior Physician (Range B)	*
10.219	Senior Physician (Range C)	*

CLASS CODE	TITLE	GRADE
10.221	Medical Director (State Laboratory)	*
10.251	Senior Institutional Dentist (Range A)	*
10.252	Senior Institutional Dentist (Range B)	*
10.282	Veterinary Epidemiologist	*
10.284	Supervisor Animal Disease Laboratory	*
10.285	Senior Veterinary Diagnostician	*
10.286	Veterinary Diagnostician	*
10.287	Veterinarian	37
10.503	State Epidemiologist	40
11.100	Chief Nevada Highway Patrol	45
11.280	Chief. Investigations Division	44
11.350	Assistant Director. Equal Rights Commission	39
11.403	Chief Drivers Licensing	40
11.406	Chief Motor Vehicle Registration	40
12.103	Employment Service Administrator	43
12.104	Unemployment Insurance Administrator	43
12.305	Deputy Administrator Program & Field Operations	43
12.310	Deputy Administrator Nevada Medicaid	44
12.402	Deputy Administrator Rehabilitation Division	41
12.404	Rehabilitation Chief	40
12.500	Assistant Director of Prison Operations	45
12.502	Assistant Director of Prison Industries	45
12.503	Assistant Director of Prison Support Services	45
12.501	Warden	44
12.603	Deputy Chief Parole & Probation	41
12.611	Director of Juvenile Correctional Services	41

CLASS CODE	TITLE	
OFFICE OF THE GOVERNOR:		
U4906	Executive Assistant	
U4903	Executive Assistant	
U4909	Executive Assistant	
U3916	Employee Relations Officer	
U4905	Regulatory Analyst	
U3901	Executive Assistant	
U4908	Executive Assistant	
U4913	Executive Assistant	
U3609	Administrative Assistant	
U3302	Secretary To Governor	
U2705	Administrative Secretary (Each)	
OFFICE OF THE LIEUTENANT GOVERNOR		
U2706	Assistant To The Lieutenant Governor (Each)	
U2711	Administrative Secretary	
OFFICE OF THE SECRETARY OF STATE		
U3701	Chief Deputy	
U3608	Coordinator. Corporate Filing	
U2903	Chief. Annual List Division	
U3610	Deputy Secretary of State. Securities Division	
U3611	Deputy Secretary of State. Elections	
OFFICE OF THE STATE TREASURER		

CLASS CODE	TITLE	
U4107	Chief Deputy State Treasurer	
U4002	Deputy State Treasurer. Operations	
U4009	Deputy State Treasurer. Investments	
U4000	Deputy State Treasurer. Cash Management	
OFFICE OF THE STATE CONTROLLER		
U4003	Chief Deputy Controller	
U3700	Assistant Controller	
OFFICE OF THE ATTORNEY GENERAL		
(A) ATTORNEY GENERAL'S OFFICE		
U0927	Assistant Attorney General	
U0928	Chief Deputy Attorney General - Las Vegas	
U0920	Chief Deputy Attorney General (Each)	
U0934	Senior Deputy Attorney General (Each)	
U0963	Deputy Attorney General (Each)	
U0903	Chief Investigator	
U0904	Administrative Assistant	
U0935	Supervisor. Office Services	
U0910	Capital Case Coordinator	
U0901	Chief Workers' Compensation Fraud Investigator	
U0902	Senior Workers' Compensation Fraud Investigator (Each)	

CLASS CODE	TITLE	
(B) OFFICE OF ADVOCATE FOR CUSTOMERS OF PUBLIC UTILITIES		
U4805	Consumer's Advocate	
U4712	State Counsel	
U4413	Economist	
U4414	Senior Regulatory Analyst	
U4415	Assistant Staff Counsel	
U4416	Regulatory Analyst	
U4418	Engineer	
(C) CRIME PREVENTION		
U3204	Crime Prevention Coordinator	
DEPARTMENT OF ADMINISTRATION		
U4902	Director	
U4305	Deputy Budget Administrator	
U4530	Senior Appeals Officer	
U4508	Appeals Officer, Hearings (Each)	
U4214	Chief Assistant, Planning	
U3203	Director, Clear Creek	
U3207	Risk Manager	
DEPARTMENT OF COMMERCE		
U4800	Director	
U4311	Commissioner of Financial Institutions	
U4210	Deputy Commissioner, Financial Institutions (Each)	
U4211	Certified Public Accountant, Financial Institutions	

CLASS CODE	TITLE	
U3809	Administrator. Housing Division	
U4203	State Fire Marshal	
U3915	Administrator. Manufactured Housing Division	
U4306	Administrator. Real Estate Division	
U4219	Administrator. Unclaimed Property	
U3914	Deputy Administrator. Real Estate Division (LV)	
U4213	Commissioner of Consumer Affairs	
U3710	Deputy Administrator. Housing Division	
U3513	Chief Accountant. Housing Division	
U3711	Deputy Director. Commerce	
STATE DEPARTMENT OF CONSERVATION & NATURAL RESOURCES		
U4901	Director	
U4509	Administrator. Division of Environmental Protection	
U4708	State Engineer (Division of Water Resources)	
U4204	State Forester Fire Warden	
U4202	Administrator. Division of State Parks	
U4206	Administrator. Division of State Lands	
U3702	District Supervisor. Water Commission. Division of Water Resources	
U3821	Executive Director. Heil Wild Horse Bequest	
U3822	Director of Tahoe Land Acquisition	
U4208	Administrator. Division of Water Planning	
DEPARTMENT OF DATA PROCESSING		
U4910	Director	
U4514	Chief. Systems and Programming	
U4513	Chief. Planning Division	

CLASS CODE	TITLE	
U4200	Chief. Facility Management	
DEPARTMENT OF EDUCATION		
U4802	Superintendent of Public Instruction	
U4506	Deputy Superintendent of Public Instruction	
U4302	Deputy Superintendent For Administration	
STATE GAMING CONTROL BOARD		
U4801	Chairman. Gaming Control Board	
U4503	Member. Gaming Control Board (Each)	
U1008	Chief. Investigation	
U1014	Chief. Enforcement	
U1019	Chief. Audit	
U1041	Chief. Corporate Securities	
U1005	Chief. Tax and License	
U1007	Chief. Administration	
U1024	Chief Deputy, Administration	
U4507	Executive Secretary, Gaming Commission	
U1061	Manager. Electronics Laboratory	
U1062	Chief Electronics	
U1030	Electronics Engineer (Each)	
U1026	Industrial Production Engineer	
U1043	Digital Circuits Engineer	
U1010	Coordinator. Applicant Services	
U1015	Chief Deputy. Enforcement (Each)	
U1020	Chief Deputy, Audit (Each)	
U1009	Chief Deputy, Investigations (Each)	
U1063	Senior Programmer Analyst (Each)	

CLASS CODE	TITLE	
U1031	Hearings Officer	
U1064	Administrative Coordinator	
U1000	Business Manager	
U1058	Systems Programmer (Each)	
U1004	Supervisor. Investigations (Each)	
U1001	Supervisor. Enforcement (Each)	
U1042	Supervisor. Corporate Securities	
U1029	Supervisor. Audit (Each)	
U1047	Supervisor. Tax and License	
U1033	Management Analyst (Each)	
U1051	District Office Manager	
U1065	Manager, Systems and Programming	
U1032	Training Officer	
U1021	Senior Agent. Audit (Each)	
U1022	Agent II. Audit (Each)	
U1054	Technical Services Manager	
U1034	Senior Research Analyst	
U1057	Research Coordinator	
U1060	Programmer Analyst (Each)	
DEPARTMENT OF GENERAL SERVICES		
U4707	Director	
U3814	Administrator. Motor Pool	
DEPARTMENT OF PERSONNEL		
U4604	Director	
U4607	Equal Employment Opportunity Officer	

CLASS CODE	TITLE	
DEPARTMENT OF HUMAN RESOURCES		
U4900	Director	
U4608	Depury Director	
U4603	Administrator, Health Division	
U5302	Medical Program Coordinator, NMHI	
U5304	Medical Program Coordinator, SNMHS	
U5300	Administrator, Mental Hygiene/Mental Retardation Division	
U4806	State Welfare Administrator	
U4907	Deputy Administrator, Mental Hygiene/Mental Retardation Division (Each)	
U4511	Administrator, Rehabilitation Division	
U4543	Chief, Alcohol and Drug Abuse	
U4545	Chief, Services To The Blind	
U4547	Chief, Vocational Rehabilitation	
U4108	Administrator, Child & Family Services Division	
U4119	Deputy Administrator, Child & Family Services Division	
U4117	Deputy Administrator, Child & Family Services Division	
U4218	Administrator, Aging Services Division	
U4114	Deputy Administrator, Aging Services Division (LV)	
U4115	Deputy Administrator, Aging Services Division (CC)	
U4118	Chief, Elder Rights	
U4106	Superintendent, Youth Training Center	
U4105	Superintendent, Caliente Training	

CLASS CODE	TITLE	
DEPARTMENT OF INDUSTRIAL RELATIONS		
U4516	Director	
U4405	Assistant Director	
U4517	Attorney	
U4301	Administrator. Division of Industrial Insurance Reg.	
U4207	Administrator. Division of Industrial Safety & Health Enforcement	
U4505	Administrator. Division of Preventative Safety	
U4007	Administrator. Division of Mine Inspection	
OFFICE OF THE LABOR COMMISSIONER		
U4205	Labor Commissioner	
U3503	Deputy	
DEPARTMENT OF THE MILITARY		
U4307	Adjutant General	
U3703	Director. Division of Emergency Management	
DEPARTMENT OF MINERALS		
U4706	Director	
U3918	Deputy Director	
U3926	Chief. Las Vegas Office	
U3919	Administrator For Dangerous Mines	
U3930	Administrator For Regulation	

CLASS CODE	TITLE	
DEPARTMENT OF MUSEUMS AND HISTORY		
U4220	Director	
U4223	Assistant Director	
U3905	Director. Nevada State Museum	
U3906	Director. Nevada State Museum - Las Vegas	
U3500	Director. Nevada Historical Society	
U3517	Development Coordinator	
U3519	Assistant Administrator. Railroad Operations	
STATE BOARD OF PAROLE COMMISSIONERS		
U3910	Chairman	
U3911	Parole Board Member (Each)	
OFFICE OF THE STATE PUBLIC DEFENDER		
U4502	State Public Defender	
U4004	Supervising Public Defender (Office)	
U4005	Supervising Public Defender (Trial)	
U4006	Supervising Public Defender (Appeals)	
U3907	Deputy Public Defender	
U3909	Deputy Public Defender (Prison)	
U3922	Deputy Appellate	
PUBLIC SERVICE COMMISSION		
U4702	Chairman	
U4501	Public Service Commissioner (Each)	
U4308	Deputy Commissioner	

CLASS CODE	TITLE	
U4216	Senior Auditor (Each)	
U4406	Financial Analyst	
U4407	Utility Operations & Rate Specialist (Each)	
U4008	Auditor (Each)	
U3903	Staff Counsel	
U3811	Assistant Staff Counsel (Each)	
U3904	Director. Consumer Affairs	
U3902	Public Education & Statistical Analyst	
U3507	Commissioner Assistant (2 Positions) (Each)	
U3601	Commissioner Assistant (3 Positions) (Each)	
U3705	Utility Rate & Tariff Specialist (Each)	
U4911	Manager. Engineering Services	
U4408	Engineer. Communications	
U4409	Engineer. Water	
U4410	Engineer. Electric	
U4401	Senior Gas Pipeline Engineer	
U4411	Engineer. Gas Pipeline	
U4417	Senior Engineering Analyst	
U4605	Chief Auditor	
U4804	Director Regulatory Operations	
U4225	Systems Analyst	
U4310	Manager. Rates & Tariffs	
U4420	Hearings Officer	
U4531	Chief Transportation Inspector (Each)	
U4312	Manager. Transportation	
U3813	Specialist In Transportation Rates and Tariffs	
U4226	Senior Analyst (Each)	
U3713	Manager. Consumer Affairs Office	

CLASS CODE	TITLE	
U4912	Legal Counsel	
U4520	Secretary of Policy	
U4412	Assistant Legal Counsel	
U4515	Economist	
U4525	Supervising Economist	
U4526	Resource Planning Engineer	
U4534	Assistant General Counsel - Transportation	
U4535	Senior Auditor - Transportation	
U4527	Financial Specialist	
U4528	Systems Supervisor	
DEPARTMENT OF TAXATION		
U4701	Executive Director	
U4300	Deputy Executive Director	
U4116	Deputy Executive Director	
U3908	Deputy Executive Director	
COMMISSION ON TOURISM		
U4807	Executive Director	
U4521	Director Of Marketing	
U4227	Public Information Officer	
U4113	Business Manager	
U4228	Development Specialist, Tourism (Each)	
U4540	Development Specialist (Each)	
U4403	Editor Publisher, Nevada Magazine	
U3708	Managing Editor, Division of Publications	
U3305	Business Manager, Nevada Magazine	
U4810	Production Manager	

CLASS CODE	TITLE	
U3210	Art Director	
COMMISSION ON ECONOMIC DEVELOPMENT		
U4808	Executive Director	
U4809	Deputy Director	
U4814	Supervisor, Grant Projects (Each)	
U4818	Chief Associate, Small Business	
U4519	Director, Film	
U4811	Senior Associate, Film (Each)	
U4812	Associate, Film (Each)	
HIGH LEVEL NUCLEAR WASTE		
U4609	Director	
U4522	Chief, Technical Programs	
U4313	Chief of Planning	
U4230	Planner	
U3820	Planner/Researcher	
U3824	Technical Coordinator	
DEPARTMENT OF INSURANCE		
U4303	Commissioner	
U4315	Deputy Commissioner (Each)	
U4314	Consumer Advocate	
U4316	Executive Director, Comm. For Hospital Patients	
MISCELLANEOUS DEPTS., COMMISSIONS & OTHER AGENCIES		
U5000	Director, Department of Transportation	
U4705	Deputy Director, Department of Transportation	

CLASS CODE	TITLE	
U4602	Director. Dept. Motor Vehicles & Public Safety	
U4704	Director. Department of Prisons	
U4717	Medical Director. Department of Prisons	
U4720	Mental Health Coordinator. Department of Prisons	
U4703	Manager, State Public Works Board	
U4600	Executive Director, Employment Security Department	
U4803	Director, Colorado River Commission	
U4700	Executive Director, State Department of Agriculture	
U4710	Administrator, Veterinary Medical Services	
U5010	Director, Plant Industry Program	
U4404	Chief Parole & Probation Officer	
U4504	Depury Manager, State Public Works Board	
U4714	Depury Manager, State Public Works Board	
U4304	Director, Department of Wildlife	
U4715	Deputy Director. Department of Wildlife	
U4904	Comm. Local Government Employee - Management Relations Board.	
U4201	Executive Director. State Dairy Commission	
U4103	Taxicab Administrator	
U5020	Deputy Taxicab Administrator	
U4102	Director. State Job Training Office	
U4101	Deputy Director. Dept. Motor Vehicles & Pub. Safety	
U4109	Drug Program Coordinator	
U3504	Director. Office Of Community Services	
U3803	Executive Director. Equal Rights Commission	
U4001	Deputy Director. Colorado River Commission	
U3812	Director. State Occupational Info. Coord. Committee	
U3706	Chairman. Committee To Hire The Handicapped	
U3502	Executive Secretary, Nevada Athletic Commission	

CLASS CODE	TITLE	
U3808	Executive Director, Nevada Indian Commission	
U3603	Executive Director, Council On The Arts	
U3401	Director, Division Of Brand Inspection	
U3400	Nevada Commissioner For Veteran Affairs	
U3200	Nevada Deputy Commissioner For Veteran Affairs	
U4510	Attorney For Injured Workers	
U3917	Deputy Attorney For Injured Workers	
U3709	Deputy Attorney For Injured Workers (Each)	
U3912	Deputy Attorney For Injured Workers (Each)	
U3935	Literacy Coordinator, State Library	
U3920	Director, WICHE	
U3924	Director, Rural Housing	
U3936	Climatologist (1/4 Position)	
U4914	Technology Advisor	
RACING COMMISSION		
U6000	Executive Director	
U6002	Veterinarian	
ELECTED OFFICIALS		
E1020	Governor	
E1030	Attorney General	
E1040	Secretary of State	
E1050	Controller	
E1060	Treasurer	
E1070	Lieutenant Governor	

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Appendix F

AGENCIES WITH COMPENSATORY TIME AGREEMENTS WITH SNEA

Department of Administration

- Administrative Services
- Buildings and Grounds
- Motor Pool Division
- Public Works Board
- Purchasing Division

Office of the Attorney General

Department of Business and Industry

- Agricultural Division
- Attorney for Injured Workers
- Financial Institutions Division
- Housing Division
- Industrial Relations
- Insurance Division
- Labor Commission
- Postsecondary Education
- Real Estate Division
- Unclaimed Property Division

Department of Conservation and Natural Resources

- Conservation and Natural Resources
- Nuclear Projects/Nuclear Waste Project Office
- Wildlife Division

Office of the Controller

Commission on Economic Development

Department of Education

- Employment Training and Rehabilitation
- Job Training Office

Gaming Control Board

Department of Human Resources

- Human Resources
- Public Defender's Office

Department of Information Services

Military Department

Department of Motor Vehicle and Public Safety
Division of Emergency Management
Fire Marshal Division
Commission for Veteran Affairs

Museum, Library and Arts
Library and Archives
Museums and History Division

Parole Board

Department of Personnel

Department of Prisons

Public Service Commission of Nevada

Secretary of State's Office

Department of Taxation

Commission on Tourism
Commission on Tourism
Nevada Magazine

Appendix G

AGENCIES WITH COMPENSATORY TIME AGREEMENTS WITH NON-SNEA MEMBERS

Administrations, Department of	
Budget and Planning Division	8
Internal Audit Division	4
Pubic Works Board	20
Risk Management Division	10
Attorney General *	73
Business and Industry	
Agriculture/Animal Industry	7
Agriculture/Brand Inspection	6
Agriculture/Plant Industry	25
Energy Office	4
Financial Institutions	10
Housing Division *	13
Insurance *	34
Manufactured Housing	14
Real Estate Division *	13
Unclaimed Property	2
Conservation and Natural Resources	
Environmental Protection	96
Wildlife	107
Gaming Control Board *	242
Nevada Historical Society	5
Human Resources	
Aging Services	40
Child and Family Services	18
Director's Office	3
Health	31
Mental Hygiene/Mental Retardation	10
Welfare	104

Information Services	
Facility Management *	16
Systems & Programming, Planning & Research, Telecommunications, and Communications *	46
Department of Motor Vehicles and Public Safety	
Commissioned Officers *	152
Personnel	51
Commission on Postsecondary Education	1
P.A.R.C.	10
NCOT	
Nevada Magazine	3



State of Nevada Employees Association

709 East Robinson Street/P.O. Box 1016
Carson City, Nevada 89701

OFFICE: (702) 882-3910
FAX: (702) 882-1202

The State of Nevada Employees Association currently has "Comp time" agreements with the following agencies and divisions:

Administrative Services Div. of the Dept. of Administration
Agriculture Division of the Dept. of Business & Industry
Office of the Attorney for Injured Workers
Office of the Attorney General
Buildings and Grounds Division of the Dept. of Administration
Commission on Post Secondary Education
Office of Community Services
Department of Conservation and Natural Resources
Office of the State Controller
Dairy Commission
Data-Processing (Informational Services)
Economic Development
Department of Education
Division of Emergency Management
Division of Financial Institutions
Fire Marshal Division
Gaming Control Board
Housing Division
Department of Human Resources
Industrial Relations
Insurance Division

Job Training Office
Office of the Labor Commissioner
State Library and Archives
Military Department
Motor Pool Division
Museums
Nevada Agency for Nuclear Projects
Parole Board
Department of Personnel
Department of Prisons
State Public Defender
Public Employee Retirement System
Public Service Commission
Public Works Board
Purchasing Division
Real Estate Division
Office of the Secretary of State
State Industrial Insurance System
Department of Taxation
Department of Transportation
Commission on Tourism
Unclaimed Property Division
Commission for Veterans Affairs
Wildlife Division

(Currently under negotiations are agreements with the Department of Business and Industry, The Department of Employment, Training and Rehabilitation and the Department of Motor Vehicles and Public Safety. Copies of representative agreements are attached.)

Appendix I

General Fund

Budget Account Name	Unbudgeted MSI	Exempt Comp Time Payoff	Unbudgeted Overtime
Adult Basic Education	470		200
Aging Services	3,116	6,207	
Alcoholism & Drug Rehab	11,286	1,497	
Arts Council		834	
Attorney General	7,323	38,048	
Budget Division	12,669	45,965	
Bureau of Community Health	3,822		
Caliente Youth Center	9,697	1,863	4,500
Carlin Conservation Camp			35,000
Child and Family Services	182,465	367,525	
Child Care Services	4,398		
Clear Creek		2,296	
Committee to Hire Handicapped		461	
Conservation		2,437	
Consumer Affairs Division		2,544	
Consumer Protection	29,462		
Crippled Children's Services	12,610		
DMV Investigation Division	9,291	1,351	
Economic Development		3,498	
Education State Programs	2,476	3,965	15,707
Ely State Prison	18,853		
Emergency Management	3,036		
Equal Rights		4,746	
Facility for Mental Offenders	6,174	1,735	
Film Division		943	
Financial Institutions		976	
Fire Marshall		919	
Food Stamp Program	7,089		
Forestry	1,951		
Forestry Honor Camps	2,704		
Gaming Control Board	1,185	134,314	
Governors Office		13,338	
Historical Prevention	1,385		
Human Resources/Director's Office	3,193	4,738	
Humboldt Conservation Camp			30,000
Indian Commission	2,183		
Indian Springs Conservation Camp	2,921		
Insurance Regulation	6,295	3,166	
Lab & Research	3,344		
Labor Commission	1,521	2,011	2,000
Lands		892	
Law Enforcement Highway Patrol		3	
Library	8,910	1,539	
Medicaid	9,795		
MH/MR		2,140	

General Fund			
Budget Account Name	Unbudgeted MSI	Exempt Comp Time Payoff	Unbudgeted Overtime
Military	1,635		
Museums & History		153	
Nevada Mental Health Inst.	45,214	101	
Nevada State Prison	9,733	1,148	195,357
Nevada State Railroad Museum	9,530		
Nevada Women's Correctional Center	9,117	1,409	61,506
Nevada Youth Training Center	25,560	423	
No. Nevada Mental Retardation	30,212	325	
No. Nevada Child & Adolescent	21,268	307	
No. Nevada Correctional Center	5,461		49,531
Nutrition Education	162		
Occupational Education	1,369		
P.O.S.T.	790		
Parks	18,613	1,614	
Parole & Probation	52,151	143,103	
Pioche Conservation Camp			14,242
Plant Industry	10,914	1,125	
Post Secondary Education	5,316		
Predatory Animal & Rodent Control	3,337		
Prison Director's Office	46,489	13,572	31,000
Prison Medical	201,633	31,023	
Proficiency Testing	4,466		
Public Defender	5,072	16,398	
Public Works Board	14,689	1,101	
Real Estate Division	6,735		
Residential Placement	4,381		
Restitution Center North	8,156		
Restitution Center South	8,112		
Rural Clinics	24,694	8,456	
Secretary of State	5,220	3,062	
Secretary of State - Securities	6,001		
Services to the Blind	1,534		
Sexually Transmitted Diseases	5,622		
Silver Springs Conservation Camp	2,130		
Small Business & Procurement		41	
So. Nevada Adult Mental Health	33,643	1,751	
So. Nevada Mental Retardation	29,141	4,118	
So. Desert Correctional Center	6,001	357	375,000
So. Nevada Child & Adolescent	71,833	448	
So. Nevada Correctional Center	4,443		3,884
Special Children's Clinic	16,818		
State Health Officer	11,723	6,806	
State Museum, Carson City		723	
State Museum, Las Vegas	3,300		
State Treasurer		14,561	8,750

General Fund

Budget Account Name	Unbudgeted MSI	Exempt Comp Time Payoff	Unbudgeted Overtime
Stewart Conservation Camp			8,291
Taxation	80,905	6,105	
TB Control	4,600		
Tonopah Conservation Camp			5,000
Veterans Affair		4,188	
Veterinary Medical Services		2,980	
Vital Statistics	2,677		
Vocational Rehabilitation	9,931		
W.I.C.H.E. Administration		74	
Water/Mining	5,067		
Water Planning	5,663	3,460	
Water Resources	34,961	9,366	
Welfare Administration	40,874	4,258	
Work Incentive	1,942		
TOTAL	1,328,462	932,507	839,968
TOTAL DISTRIBUTION			3,100,937
TOTAL GENERAL FUND APPROPRIATION			4,106,880
REMAINING BALANCE			1,005,943

Highway Fund

Budget Account Name	Unbudgeted MSI	Exempt Comp Time Payoff	Unbudgeted Overtime	FLSA Compliance
DMV/ Administration	2,518			
DMV/Automation	11,169			
DMV/Director's Office	11,619	2,126		
DMV/Registration	22,308			
DMV/Drivers License	13,251	403		
Highway Patrol/Hazardous Material	2,046			
Law Enforcement/Highway Patrol	27,151	304	182,205	
Motor Carrier Section	20,426			
Public Service Commission	3,674	14,824		
Traffic Safety	501			
TOTAL	114,663	17,657	182,205	
TOTAL DISTRIBUTION			314,525	
TOTAL HIGHWAY FUND APPROPRIATION			314,525	
REMAINING BALANCE			-	

Appendix J

SUGGESTED LEGISLATION

SUMMARY--Prohibits certain members of state boards and commissions from working overtime. (BDR 23-351)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public servants; prohibiting certain members of state boards and commissions from working overtime; and providing other matters properly relating thereto.

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

Section 1. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, a member of a board or commission in the executive branch of state government shall not serve in that capacity, or serve in that capacity together with any period of service for the state in any other capacity, in excess of:

- (a) Eight hours in any single calendar day;*
- (b) Eight hours in any 16-hour period; or*
- (c) Forty hours in any single week.*

2. This section does not apply to any person whose service for the state is solely in capacities governed by NRS 284.148.

Sec. 2. NRS 281.100 is hereby amended to read as follows:

281.100 1. Except as otherwise provided in this section and NRS 284.180, the services and employment of all persons who are employed by the State of Nevada, or by any county, city, town, township or other political subdivision thereof, are limited to not more than 8 hours in any 1 calendar day and not more than 40 hours in any 1 week.

2. The period of daily employment mentioned in this section commences from the time the employee takes charge of any equipment of the employer or acts as an assistant or helper to a person who is in charge of any equipment of the employer, or enters upon or into any conveyance of or operated by or for the employer at any camp or living quarters provided by the employer for the transportation of employees to the place of work.

3. This section does not apply to:

(a) Officials of the State of Nevada or of any county, city, town, township or other political subdivision thereof, or employees of the state whose employment is governed by NRS 284.148.

(b) Employees of the State of Nevada or of any county, city, town, township or other political subdivision thereof who:

(1) Are engaged as employees of a fire department, or to nurses in training or working in hospitals, or to police, deputy sheriffs or jailers;

(2) Chose and are approved for a variable-workday or variable 80-hour work schedules within a biweekly pay period;

(3) Work more than 8 hours but not more than 10 hours in any 1 workday or 40 hours in any 1 work week;

(4) Are executive, administrative, professional or supervisory employees;
or

(5) Are covered by a collective bargaining agreement which establishes hours of service.

(c) Employees of the legislative counsel bureau.

(d) *Services performed as a member of a board or commission in the executive branch of state government.*

(e) Work done directly by any public utility company pursuant to an order of the public service commission of Nevada or other public authority.

4. Any employee whose hours are limited by subsection 1 may be permitted, or in case of emergency where life or property is in imminent danger may be required, at the discretion of the officer responsible for his employment, but subject to any agreement made pursuant to NRS 284.181, to work more than the number of hours limited. If so permitted or required, he is entitled to receive, at the discretion of the responsible officer:

(a) Compensatory vacation time; or

(b) Overtime pay.

5. Any officer or agent of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof, whose duty it is to employ, direct or control the services of an employee covered by this section, who violates any of the provisions of this section as to the hours of employment of labor as provided in this section, is guilty of a misdemeanor.

Sec. 3. 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 his representative 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 and 8, 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. Firemen 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 fireman so assigned is entitled to receive 1/26 of his 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 firemen. In addition to the regular amount paid such a fireman for the deemed average of 56 hours per week, he 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 director, with the approval of the commission, shall adopt regulations to carry out the provisions of subsection 4.

6. For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week. For employees who choose and are approved for a variable 80-hour work schedule within a biweekly pay period, overtime will be considered only after working 80 hours biweekly.

7. An agency may experiment with innovative work weeks upon the approval of the head of the agency and after majority consent of the affected employees.

8. 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.

9. All overtime must be approved in advance by the appointing authority or his designee. No officer or employee, other than a director of a department

or the chairman of a board, commission or similar body, may authorize overtime for himself. The chairman of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body. *This subsection does not authorize any chairman to allow the performance of any services in violation of section 1 of this act.*

10. 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.

Sec. 4. This act becomes effective upon passage and approval.

Appendix K

BOB MILLER
Governor

STATE OF NEVADA

BARBARA S. WELLS
Director



DEPARTMENT OF PERSONNEL

**209 E. Musser Street
Carson City, Nevada 89710
(702) 687-4050**

June 23, 1994

The Honorable William J. Raggio, Chairman
SCR 55 Committee on Overtime Worked by State Employees
Legislative Building
401 South Carson Street
Carson City, Nevada 89710

Dear Senator Raggio:

We appreciate this opportunity to convey our suggestions regarding the state's current overtime policies to the Committee. During the last year since the provisions of SB 362 became effective, we have had the opportunity to examine the overtime issue and the effects of SB 362. During this examination, as outlined in this letter, we have noted some areas which we believe warrant further legislative action.

At the last hearing on SCR55, we were asked whether the Administration would be reintroducing the three-tiered personnel system. That system, which we believe was an excellent proposal, dealt with much more than the overtime issue. In fact, it amounted to civil service reform albeit for just exempt employees. Although civil service reform is taking hold nationwide, and is an issue Nevada needs to seriously consider, we believe it is premature at this time.

When the three-tiered system was developed, there was virtually no opportunity to consult with agencies or employees. We believe their input is critical in order to determine if it is in fact the best proposal. Also, with the ongoing implementation and fine-tuning of reorganization, a new personnel system would be unduly disruptive. We have therefore focused our immediate attention on developing other potential alternatives to address the overtime issue.

While it appears that the implementation of SB 362 has resulted in a reduction in the amount of overtime hours worked, there continues to be issues of concern. These issues, some which have previously been discussed during Committee meetings, are summarized in this letter. We have also outlined various options for the Committee's consideration along with our suggestions, both short-term and long-term.

I. SB 362 - ISSUES OF CONCERN

- A. SB 362 impacted positions in the unclassified service to a much greater extent than those in the classified service. One hundred percent of the positions in the unclassified service that meet the FLSA criteria are exempt from receiving overtime compensation. Only 7% of the classified positions that could be exempt have been exempted. As a result there is a significant disparity between the classified and unclassified service, where like positions are treated differently for purposes of overtime.
- B. Prevailing practice shows the State of Nevada exempts a much smaller percentage of our employees than other states.
- C. There are exempt employees who are working many additional hours with little or no opportunity to exercise the flexibility in adjusting their work schedules that was intended (i.e., time off during a workday to take care of personal business). This can lead to morale problems, increased turnover, and possibly increased use of sick leave.
- D. The loss of overtime for some exempt employees may create salary compaction with their non-exempt subordinates, whereby the subordinates are earning more than their supervisors. Situations also exist where non-exempt employees are supervising subordinates who are exempt.
- E. There is a belief that a benefit has been taken away from those employees who are now exempt, without it being replaced with something comparable. Though complaints have been minimal, this could be attributed to the small number of affected classified employees coupled with their relatively high level within the organization. Unclassified employees would generally be less likely to complain, given the absence of employment protection afforded classified employees.
- F. FLSA issues are still mired in legal quicksand. For example, the 9th Circuit recently found that the City of Novato's informal policy of deducting partial day absences from exempt employees' pay does not violate the salary basis provision of FLSA. (*Barner v. City of Novato*, March 8, 1994). This is in contrast to the *Benzler* decision which found that the use of leave time for partial day absences was a violation of the salary basis provision.

II. OPTIONS

Three main options of addressing the overtime issue have been examined. These are: 1) leaving SB 362 as is; 2) exempting all employees who qualify under FLSA standards; and 3) establishing a grade level cutoff point in the classified service for the purpose of designating all qualifying classes at or above that grade as exempt. The pros and cons of each option have been identified.

In conjunction with suggesting one of these options, additional alternatives to supplement the suggested option are presented for consideration.

A. Leave SB 362 as is.

1. Pros:

It works to the satisfaction of most classified employees since they receive an additional benefit of overtime at the rate of time and one-half.

2. Cons:

It does not address any of the identified issues of concern.

B. Exempt all positions which qualify under FLSA standards.

1. Pros:

Addresses the disparity between the classified and unclassified service, the small percentage of exempt employees, and salary compaction issues (*issues I-A, B, D*).

2. Cons:

Could exacerbate the consequences of limited opportunities to adjust work schedules, perceived reduction in benefits, and ever changing court rulings (*issues I-C, E, F*). May also result in recruitment difficulties for certain classes, such as nurses, for which the prevailing industry practice is to pay overtime.

C. Designate all classes at or above a specific grade level in the classified service which meet the FLSA criteria as exempt. For example, if qualifying classes at grade 40 and above were exempt, the number of exempt positions would increase by 256 for a total of 424 exempt positions in the classified service (includes classified medical positions). This would result in exempting 18% of the classified positions that meet the FLSA criteria. A listing of qualifying classes at grade 40 and above is attached.

1. Pros

The impact on the classified service would be minimal and correct the most glaring inequities. Classes determined to be equivalent on the basis of classification would be treated in the same manner. This option would partially address the disparity between the unclassified and classified service, and the small percentage of exempt employees (*issues I-A, B*).

2. Cons

This option does not address the consequences of limited opportunities to adjust work schedules, salary compaction issues, or perceived reduction in benefits (*issues I-C, D, E*). May result in higher turnover and recruitment difficulties for certain classes for which the prevailing industry practice is to pay overtime.

The following alternatives could be used in conjunction with any of the above options to address the overtime issue.

1. Provide administrative leave or some other form of leave to recognize exempt employees who work an excessive number of hours. Leave could be granted in full-day increments at the discretion of the appointing authority. A maximum could be established so that leave for this purpose could not exceed, for example, five days a year.

a. Pros

Addresses the consequences of limited opportunities to adjust work schedules and perceived reduction in benefits (*issues I-C, E*).

Allows managers the flexibility to staff appropriately while at the same time providing an opportunity to recognize employees who are frequently required to work overtime.

b. Cons

The cost associated with paid time off. The impact should be minimal however, since appointing authorities would only be granting leave to employees who work an excessive amount of overtime.

2. Provide additional compensation to exempt employees.

For example, additional compensation could be in the form of a percentage increase to base salary for all exempt employees or simply a flat dollar amount paid annually to employees who are frequently required to work overtime.

a. Pros

Partially addresses the salary compaction issue and perceived reduction in benefits (*issues I-D, E*).

b. Cons

The financial cost associated with providing an increase to base salary or flat dollar amount. The financial impact could be controlled in various ways (i.e., by the method selected, percentage or dollar amount of increase allowed).

3. Provide officer-of-the-day pay to wardens.

a. Pros

Addresses the issue of perceived reduction in benefits (*issue I-E*). Provides recognition to employees for time spent in standby status subject to call.

b. Cons

Providing officer-of-the-day pay to wardens could have a rippling effect in that other classes may expect similar treatment.

4. Add positions to those agencies where staffing is the cause of excessive overtime.

a. Pros

The cost of government programs would be more accurately reflected and therefore more easily controlled. Managers would have more flexibility to hire the appropriate number and level of staff to administer and operate their programs. Plans could be made to hire temporary employees during peak workload periods. Adequate staff at the appropriate level would eliminate the need for professional employees to perform clerical functions, for example.

b. Cons

The financial cost associated with additional positions may exceed the cost of overtime in some situations. The cost could be minimized through proper analysis and planning for staffing needs at the agency level.

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III. SUGGESTIONS

All things considered, it is our suggestion that any **immediate changes** to SB 362 be moderate and address only critical areas. We suggest that the Committee consider:

- (a) Establishing a grade level cutoff point in the classified service for the purpose of designating all classes at or above that grade which meet FLSA criteria as exempt (*II-C*) except when prevailing industry practice is to pay overtime.
- (b) Providing administrative leave or some other form of leave to recognize exempt employees who work an excessive number of hours (*II-1.*).
- (c) Adding positions to those agencies where inadequate staffing has been determined to be the cause of excessive overtime (*II-4*).

We wish to reserve suggestions concerning compensation for exempt employees until the 1994 salary survey has been completed.

Working through the overtime problem has also caused us to scrutinize other areas. For example, the average employee is using 11.8 days of sick leave a year. This appears to be a least one driving force behind the need for overtime. It is also recognized that other public employers and virtually all private employers have personnel systems in place which treat exempt employees differently than non-exempt employees. These are only two examples which illustrate the continuing need to evaluate the State's personnel system and propose improvements as necessary.

In response to these issues, we plan to request authority from the next legislative session for the Department of Personnel to implement pilot projects in agencies to "test" some of the new concepts in personnel administration that are surfacing elsewhere. This would also allow Nevada to develop and try its own innovative solutions to some vexing problems such as high sick leave usage. As envisioned, the proposed elements and parameters of a pilot project would be agreed to by the pilot agency and presented to both the Personnel Commission and the Interim Finance Committee for prior approval.

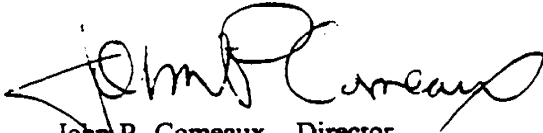
Additionally, there is a need to study and evaluate the comprehensive civil service reform efforts which are underway throughout the country. Even though the concept of civil service reform is broader than the overtime issue there are both direct and indirect relationships. Civil service reform efforts are aimed at streamlining and simplifying governmental personnel systems while still ensuring that the civil service is free from undue political influence and that it provides some degree of security and continuity even as administrations change.

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Therefore, we also plan to propose to the next legislative session that a comprehensive study of the State's personnel system be undertaken. Such a study could be handled several ways, such as by a task force of subject matter experts in the field of personnel administration coupled with representatives of the Legislature, State agencies, employees, and the private sector in developing recommendations for change. The first priority for this task force, which is directly linked to the overtime issue, could be how we classify and compensate our employees.

Thank you for the opportunity to convey our suggestions on this important matter. We look forward to the Committee's June 27th meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Comeaux". The signature is fluid and cursive, with a large initial "J" and "P".

John P. Comeaux - Director
Department of Administration

A handwritten signature in black ink, appearing to read "Barbara Willis". The signature is cursive and elegant, with a large initial "B".

Barbara Willis - Director
Department of Personnel

BW:akb
Attachment

FLSA EXEMPT
CLASSES GRADE 40 AND ABOVE WHICH MEET FLSA DUTIES TEST
AS EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL

EXCL. CLASS	CLASS/ CODE	TITLE	EXEMPT CODE	GRADE
*	10.286	VETERINARY DIAGNOSTICIAN	P	**
*	10.285	SENIOR VETERINARY DIAGNOSTICIAN	E	**
*	10.284	SUPVR. ANIMAL DISEASE LABORATORY	E	**
*	10.282	VETERINARY EPIDEMIOLOGIST	P	**
*	10.252	SENIOR INSTITUTIONAL DENTIST (RANGE B)	P	**
*	10.251	SENIOR INSTITUTIONAL DENTIST (RANGE A)	P	**
*	10.221	MEDICAL DIRECTOR (STATE LABORATORY)	P	**
*	10.219	SENIOR PHYSICIAN (RANGE C)	P	**
*	10.212	SENIOR PHYSICIAN (RANGE B)	P	**
*	10.211	SENIOR PHYSICIAN (RANGE A)	P	**
*	10.204	STATE HEALTH OFFICER (RANGE B)	P	**
*	10.203	STATE HEALTH OFFICER (RANGE A)	P	**
*	10.202	STATE HEALTH OFFICER (RANGE C)	P	**
*	10.111	SENIOR PSYCHIATRIST (RANGE C)	P	**
*	10.110	SENIOR PSYCHIATRIST (RANGE B)	P	**
*	10.109	SENIOR PSYCHIATRIST (RANGE A)	P	**
*	6.902	CHIEF ENGINEER COLORADO RIVER COMM	E	47
*	6.204	ASSISTANT TRANSPORTATION DIRECTOR	E	47
*	6.205	ASST DIR PLANNING & PROGRAM DEV	E	46
*	12.503	ASST DIRECTOR OF PRISON SUPPORT SVCS	E	45
*	12.502	ASSISTANT DIRECTOR OF PRISON INDUS	E	45
*	12.500	ASSISTANT DIRECTOR OF PRISON OPER	E	45
*	11.100	CHIEF NEVADA HIGHWAY PATROL	E	45
*	6.907	CHIEF POWER MARKETING ADMINR	E	45
*	6.221	ADMINISTRATOR II, REGISTERED PROF ENG	E	45
*	12.501	WARDEN	E	44
*	12.310	DEPUTY ADMINR, NEVADA MEDICAID	E	44
*	11.280	CHIEF, INVESTIGATIONS DIVISION	E	44
*	10.120	CLINIC DIRECTOR II	E	44
*	7.215	ADMINISTRATIVE SERVICES OFFICER IV	E	44
*	6.802	ENVIRONMENTAL PROGRAMS MANAGER	E	44
*	6.751	CONSTRUCTION PROJECT MANAGER	E	44
*	6.704	PROJECT ARCHITECT III	E	44
*	6.404	ASSISTANT STATE ENGINEER	E	44
*	12.305	DEPUTY ADMINR, PROGRAM & FIELD OPER	E	43
*	12.104	UNEMPLOYMENT INSURANCE ADMINR	E	43
*	12.103	EMPLOYMENT SERVICE ADMINISTRATOR	E	43
*	11.101	HIGHWAY PATROL MAJOR	E	43
*	10.127	DIRECTOR OF FORENSIC SERVICES	E	43
*	9.701	SUPT., STATE PRINTING & MICRO DIV	E	43
*	9.303	EQUIPMENT SUPERINTENDENT	E	43
*	7.703	ACTUARY III	P	43

**Salary Set by Legislature

EXCL. CLASS	CLASS/ CODE	TITLE	EXEMPT CODE	GRADE
	7.403	CHIEF RIGHT OF WAY AGENT	E	43
	6.805	CHIEF, PUBLIC HEALTH ENGINEERING	E	43
	6.803	ENVIRONMENTAL SERVICES MANAGER	E	43
	6.223	ADMINISTRATOR I, REGISTERED PROF ENG	E	43
*	4.103	DIRECTOR NSLA (STATE LIBRARIAN)	E	43
	11.405	CHIEF INSURANCE ASSISTANT	E	42
	11.401	CHIEF INSURANCE EXAMINER	E	42
	10.182	MH/MR PROGRAM MANAGER II	E	42
	10.146	CHIEF, EARLY CHILDHOOD SERVICES	E	42
*	10.124	SUPERVISORY PSYCHOLOGIST	E	42
	7.903	DATA PROCESSING MANAGER II	E	42
	7.707	CHIEF ECONOMIST	E	42
	7.406	ASSISTANT CHIEF RIGHT OF WAY AGENT II	E	42
	6.809	BUREAU CHIEF, ENVIRONMENTAL PROG	E	42
	6.714	CHIEF OF PLANNING AND DEVELOPMENT	E	42
	6.706	PROJECT ARCHITECT II	P	42
	6.202	MANAGER II, REGISTERED PROF. ENGINEER	E	42
	6.106	CHIEF ENGINEER, PLANT OPERATIONS	E	42
	6.101	REGISTERED PROFESSIONAL ENGINEER	P	42
*	5.210	ADMINR COMM ON POSTSECONDARY EDUC	E	42
*	12.611	DIRECTOR OF JUVENILE CORREC SVCS	E	41
*	12.603	DEPUTY CHIEF PAROLE & PROBATION	E	41
	12.602	PAROLE & PROBATION DISTRICT ADMINR III	E	41
*	12.402	DEPUTY ADMINISTRATOR, REHAB DIV	E	41
	12.307	SOCIAL WELFARE MANAGER V	E	41
	12.300	SOCIAL WELFARE PROGRAM CHIEF III	E	41
	12.255	CHIEF BENEFIT SERVICES	E	41
	11.370	CHIEF OF SECURITIES ENFORCEMENT	E	41
	11.282	DEPUTY CHIEF, INVESTIGATIONS DIVISION	E	41
	11.102	HIGHWAY PATROL CAPTAIN	E	41
	10.703	CHIEF PHARMACIST	E	41
	10.702	MEDICAID PROG PHARM CONSULTANT	P	41
*	10.170	PSYCHOLOGIST-MH/MR	P	41
*	10.135	MENTAL HEALTH COUNSELOR V	P	41
*	10.126	PRINCIPAL PSYCHOLOGIST	P	41
*	9.601	ADMINR, DIV OF BUILDINGS & GROUNDS	E	41
	7.706	ACTUARY II	P	41
	7.705	TRANSPORTATION ANALYST IV	E	41
	7.510	CHIEF PERSONNEL MANAGER	E	41
	7.509	PERSONNEL OFFICER III	A	41
*	7.508	INDUS ORGANIZATIONAL PSYCHOLOGIST	P	41
	7.418	CHIEF DIV OF ASSESSMENT STANDARDS	E	41
*	7.303	PURCHASING ADMINISTRATOR	E	41
	7.223	TAX DIVISION MANAGER	E	41
	7.216	ADMINISTRATIVE SERVICES OFFICER III	E	41
	7.185	CHIEF OF SECURITIES REGIS & LICENSING	P	41
	7.103	CHIEF ACCOUNTANT	E	41
	6.301	MANAGER, RIGHT OF WAY ENGINEERING	A	41

*Excluded Classes

EXCL. CLASS	CLASS/ CODE	TITLE	EXEMPT CODE	GRADE
	6.224	MANAGER I, REGISTERED PROF ENGINEER	E	41
	6.217	CONTRACT COMPLIANCE MANAGER	E	41
	5.216	DIRECTOR SPECIAL EDUCATION	E	41
	5.212	DIRECTOR CHILD NUTRITION PROGRAMS	E	41
	5.211	DIRECTOR PLANNING RESEARCH & EVAL	E	41
	5.207	DIRECTOR ELEM AND SECONDARY EDUC	E	41
	5.205	DIRECTOR FEDERAL AND RELATED PROG	E	41
	5.204	DIRECTOR TEACHER EDUC & LICENSURE	E	41
	5.202	DIRECTOR OCCUP & CONTINUING EDUC	E	41
	12.621	CHIEF YOUTH PAROLE BUREAU	E	40
	12.605	PAROLE & PROBATION DISTRICT ADMINR II	E	40
	12.551	CHIEF OF CLASSIFICATION & PLANNING	E	40
	12.525	SUPERINTENDENT, CHILDREN'S HOME	E	40
*	12.404	REHABILITATION CHIEF	E	40
	12.325	SOCIAL WELFARE MANAGER IV	E	40
	12.302	SOCIAL WELFARE PROGRAM CHIEF II	E	40
	12.254	CHIEF INSURANCE SERVICES	E	40
	12.110	CHIEF APPEALS REFEREE	E	40
	12.107	CHIEF OF BENEFITS	E	40
	12.106	CHIEF OF CONTRIBUTIONS	E	40
	12.105	CHIEF FIELD DIRECTION & MANAGEMENT	E	40
*	11.408	INSURANCE COUNSEL & HEARINGS OFCR	P	40
*	11.406	CHIEF MOTOR VEHICLE REGISTRATION	E	40
*	11.403	CHIEF DRIVERS LICENSING	E	40
	11.278	ASSISTANT CHIEF, VEHICLE ENFORCEMENT	E	40
*	10.503	STATE EPIDEMIOLOGIST	E	40
	10.501	BUREAU CHIEF, HEALTH DIVISION	E	40
	10.374	CHIEF COMMUNITY HEALTH NURSING	E	40
	10.310	CHIEF OF NURSING SERVICES	E	40
	10.300	DIRECTOR OF NURSING SERVICES II	E	40
	7.906	DATA PROCESSING MANAGER I	E	40
	7.905	APPLICATION SYSTEMS & PROG MGR.	E	40
	7.407	ASSISTANT CHIEF RIGHT OF WAY AGENT I	E	40
	6.970	COORD OF COMMUNICATIONS/COMMUN BD	E	40
	6.968	TELECOMMUNICATIONS DIRECTOR	E	40
	6.904	POWER MARKETING ADMINISTRATOR	E	40
	6.729	SUPVNG PARK LANDSCAPE ARCHITECT	E	40
	6.207	SUPERVISOR IV, REGISTERED PROF ENG	E	40
	5.218	ASSISTANT DIRECTOR, SPECIAL EDUC	P	40
	5.213	ASST DIR PLANNING, RESEARCH & EVAL	P	40
	5.208	ASST DIR ELEM AND SECONDARY EDUC	P	40
	5.206	ASST DIR FEDERAL AND RELATED PROG	P	40
	5.203	ASST DIR OCCUP & CONTINUING EDUC	P	40
	4.201	STATE ARCHIVES AND RECORDS ADMINR	E	40
	4.107	ASST DIR.. NSLA FOR PUBLIC & TECH SVCS	E	40
	1.803	ASSISTANT STATE FORESTER	E	40
	1.739	CHIEF CONSERVATION EDUCATION	E	40
	1.708	WILDLIFE DIVISION CHIEF: HABITAT	E	40

*Excluded Classes

EXCL.	CLASS/		EXEMPT	
CLASS	CODE	TITLE	CODE	GRADE
	1.707	CHIEF GAME WARDEN	E	40
	1.706	WILDLIFE DIVISION CHIEF: GAME	E	40
	1.703	WILDLIFE DIVISION CHIEF: FISH	E	40

KM:akb
6/23/94
FILADUTIES1



Appendix L

State of Nevada Employees Association

709 East Robinson Street/P.O. Box 1016
Carson City, Nevada 89701

54 JUN 16 PM 12

OFFICE: (702) 882-3910
FAX: (702) 882-1202

FISCAL AFFAIRS DIVISION

June 15, 1994

Senator Bill Raggio, Chairman
SCR 55 Sub-Committee
% Larry Peri
Legislative Counsel Bureau
401 South Carson
Carson City, Nevada 89710

Dear Senator Raggio:

Thank you for the opportunity to make our feelings known one last time regarding the SCR 55 study.

We have listened to all of the testimony at all of the hearings and in our opinion no changes need to be made to the current overtime law. We believe it is working well and has prevented any new litigation.

When we worked out the details of SB 362, even though it was done within a short time frame, I think that we did a remarkably good job. The law has helped hold down the amount of overtime. Although the law provides few exemptions among classified employees, the same law has led to a reduction in the overall overtime.

We do not support use of definitions that allow the State, as an employer, to determine who is eligible for overtime and who is not. I can guarantee that if you allow the State to make such determinations, there will be additional lawsuits. Remember, we tried to get the State to conform before we ever filed our lawsuits.


As I write to you, there is one unknown factor: the position of the Administration on their 1993 proposal of establishing different classes of employees. Upon your questioning of the Personnel Director at the last meeting, she said she would have an answer at the June meeting. We do not know what that position will

June 15, 1994
Senator Bill Raggio
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be so I can only say that SNEA is till adamantly opposed to the Administration's 1993 proposal or anything similar to it. It is difficult to give specifics, however, when we do not have a proposal to look at.

I will be at the meeting on June 27th and will be prepared to respond in any manner you deem appropriate.

Sincerely,

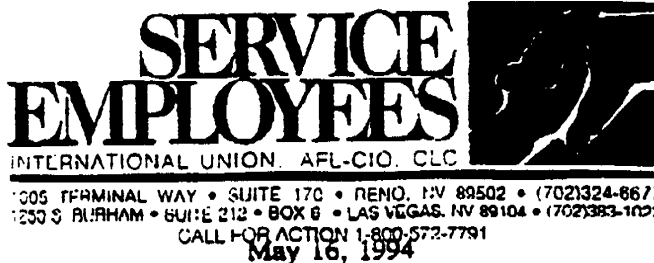
A handwritten signature in black ink, appearing to read "R. Gagnier", written in a cursive style.

ROBERT J. GAGNIER
SNEA Executive Director

RJG:bb

Appendix M

L O C A L 1 8 6 4



MICHAEL PENNI
PROVINCIAL DIRECTOR

TO: Chairman Raggio and Members of the
SCR 55 Committee on Overtime

From: Mike Johansson, SEIU Local 1864

Re: Issues from the previous meeting

I apologize for conveying our comments by memo but I will be unable to appear before the committee on May 18.

We appreciate the work and the research this committee has generated. Several of the questions that were raised during the legislative session have been addressed.

From the testimony and data provided, it appears the amount of overtime paid in by State to its employees is not extraordinary at all. If the figure of some fifteen hours per quarter or just over one hour per week on the average holds true, the amount of overtime incurred by state employees is significantly less than the two and one-half to four hours per week average in the private sector.

The research also confirmed that a certain amount of overtime in law enforcement agencies will always be incurred because of the nature of a twenty-four hour business. On the other hand, the primary source of the extra overtime is the short staffing in many departments, particularly in Clark County, where the workload increases every day. Frankly, I am surprised more overtime is not encouraged at Mental Health/Mental Retardation, Prisons and Welfare to help alleviate the unsafe conditions that have developed because of understaffing.

One area that remains confusing is the interrelated use of the terms; supervisor, administrator and executive. The terms executive and administrator are not used very often among state employees but they are the standard terms used in the FLSA. Under the short test of the FLSA, an administrator and an executive must only supervise two or more employees. The term supervisor among state employees is used regularly but it may mean the department head or a shift leadman. The State has no clear definition of supervisor for its employees. In fact, because of the many layers of supervision in most departments, many supervisors have very little authority to act independently, let alone deal with overtime. NRS 284.180(9) provides that overtime may be approved only by the appointing authority or his designee.

The State has imposed a lengthy definition of supervisor on local governments and school districts through NRS 288.075:

1. Supervisory employee means any individual having the authority in the interest of an employee to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical nature, but requires the use of independent judgement. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday.

2. Nothing in this section shall be construed to mean that an employee who has been given incidental administrative duties shall be classified as a supervisory employee.

We are not suggesting that this is the appropriate definition for state employees but it is obvious the State can adopt a clear definition if it wants to. We should be able to agree on something fairer than simply using the short test. To adopt the short test which makes a crew chief of a three-person crew ineligible for overtime on a job that could not be finished by quitting time is arbitrary and poor policy. While FLSA allows the State to use the short test as a minimum standard for determining exempt employees, we believe the long test should be adopted by the State as a fairer test.

Finally, we can not support the Department of Personnel proposal to establish the Exempt Appointed - Exempt Merit - Non-Exempt Merit Service Plan. We do support the proposal that a differential must given to exempt employees who previously received overtime but five percent and five days off probably is not going to be enough to retain these employees in state service for long.

More troubling is the proposal for the five percent merit pool. Middle management for the State is not ready to responsibly distribute monetary rewards for merit. The politics of each department presently determines promotions, transfers, whose nephew gets a temporary position, which temporary employee gets a permanent position, etc. In fact, it determines who gets overtime. Merit at this level is not creativity, efficiency or effectiveness. It is how well you get on with your supervisor or your supervisor's supervisor. To add merit payments to the present system before middle management can demonstrate it can purge itself of cronyism seems premature.

In closing, we urge the committee to recommend to the State Administration and the Legislature that more adequate staffing is necessary to provide the taxpayers the high quality service they expect, that the long test should be adopted as the standard to determine exempt status and that adoption of the three tier, wide band, merit pool proposal is premature.

Appendix N

Individuals providing testimony to the committee:

Ron Angelone
Department of Prisons

John Bawden
Department of Motor Vehicles and Public Safety

Bill Bible
Gaming Control Board

John P. Comeaux
Department of Administration

Phil Hauck
Department of Personnel

Bob Gagnier
State of Nevada Employees Association

Mike Johaneson
Service Employees International Union

John Neill
Department of Prisons

John Sarb
Division of Child and Family Services

Ray Sparks
Concerned State Employee

James T. Spencer
Office of the Attorney General

Barbara Willis
Department of Personnel

Marilyn Yezek
Department of Employment, Training and Rehabilitation

Jerry Zadny
Division of Mental Hygiene and Mental Retardation