

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** HB914

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron:** Wampler

**3. Committee:** Committee Referral Pending

**4. Title:** Legal holidays; Clerk of Court Day.

**5. Summary:** Establishes the second Friday of August as a state holiday, in recognition of the clerks of the courts of the Commonwealth.

**6. Budget Amendment Necessary:** See item #8.

**7. Fiscal Impact Estimates:** Indeterminate; see Item 8.

**8. Fiscal Implications:** The impact of creating an additional legal holiday is indeterminate. The impact is expected to primarily be felt by those agencies that operate 24 hours per day, seven days per week. State policy requires agencies to give salaried employees who are required to work on a holiday compensatory leave equivalent to the number of hours that they work. Consequently, requiring these employees to work on a holiday usually does not result in payment of overtime wages.

Salaried employees who are not exempt from the Fair Labor Standards Act (FLSA) must either be paid time and one-half or equivalent overtime compensatory leave when they work overtime hours. The FLSA exemption tests are two-pronged (a duties test and a salary rate test) with the current FLSA exemption rate threshold being \$35,568. Therefore, agencies determine on a position-by-position basis which positions are exempt and which are nonexempt.

When essential nonexempt employees take the compensatory leave that they have earned for working a holiday, other staff are required to provide coverage. In some cases, this results in the replacement staff working sufficient hours during the workweek, or work cycle, to be eligible for overtime for the extra hours. Agencies typically try to design work schedules to avoid overtime liability whenever possible. Agencies have the option to compensate employee overtime with equivalent leave until an employee has accrued a certain number of hours (480 hours for law enforcement, fire protection, and emergency response personnel or 240 hours for others), after which the employee must be paid for any additional overtime hours worked. It is currently unknown how many employees would receive overtime pay or the equivalent overtime compensatory leave.

Almost all wage positions (excludes classified) are not exempt from the FLSA and must be

paid for any overtime work, as they are not eligible for holiday or other leave. Alternatively, because they are wage employees, agencies are not required to pay for hours that are not worked. This means that agencies may avoid the cost of hours that would have otherwise been worked by those in wage positions if they are not required to work during a holiday.

Agencies usually will not incur a cost for the portion of the state workforce that is exempt from the FLSA. Exempt employees required to work on a holiday earn an equivalent amount of compensatory time for the hours they work, which must be used within a year. There is no overtime payment liability for the exempt employees; however, one exception would be if the employee left state government or transferred from one state agency to another. In such cases, both exempt and nonexempt employees are required to be paid for any unused compensatory time earned.

**9. Specific Agency or Political Subdivisions Affected:** All state agencies.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill would establish the 13<sup>th</sup> holiday recognized by the Commonwealth.