

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

3

SENATE BILL 963
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
5/16/07
House Committee Substitute Favorable 7/10/08

Short Title: City Firefighters/Overtime Pay. (Public)

Sponsors:

Referred to:

March 20, 2007

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO THE HOURS OF LABOR AND OVERTIME
3 COMPENSATION OF MEMBERS OF MUNICIPAL FIRE DEPARTMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 160A of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 14A.

8 "Municipal Firefighters.

9 "§ 160A-295. Definitions.

10 As used in this Article, the following terms mean:

- 11 (1) Compensatory time. – Time off with regular compensation in lieu of
12 immediate overtime premium pay when a fire department, under
13 certain conditions, compensates the firefighter for overtime hours
14 worked.
- 15 (2) Firefighter. – A full-time, paid employee of an employer, maintaining
16 a fire department certified by the North Carolina Department of
17 Insurance, who is actively serving in a position with assigned primary
18 duties and responsibilities for the prevention, detection, and
19 suppression of fire.
- 20 (3) Supervisory personnel. – An individual employed by a public safety
21 employer who (i) has the authority in the interest of the employer to
22 hire, direct, assign, promote, reward, transfer, furlough, lay off, recall,
23 suspend, discipline, or remove public safety officers, or to adjust their
24 grievances or effectively recommend an adjustment, provided that the
25 exercise of the authority is not merely routine or clerical in nature, but
26 requires consistent exercise of independent judgment; and (ii) devotes
27 a majority of time at work exercising that authority.

1 (4) Trade time. – The time one individual substitutes for another during
2 scheduled work hours in performance of work in the same capacity
3 when two individuals are employed in any occupation by the same fire
4 department, as agreed to solely at the individual's option and with the
5 approval of the management of the fire department. The hours worked
6 are excluded by the employer in the calculation of the hours for which
7 the substituting employee would otherwise be entitled to overtime
8 compensation under this Article. Where one employee substitutes for
9 another, the employee being substituted for is credited as if he or she
10 had worked his or her normal work schedule for that shift.

11 **"§ 160A-295.1. Municipal firefighters; hours of labor; overtime pay.**

12 (a) A firefighter or a member of a fire department who provides emergency
13 medical services, other than supervisory personnel, and who is required or permitted to
14 work, on average, more than 53 hours in a seven-day work period or up to the number
15 of hours that bears the same ratio to 212 hours as the number of days in the work period
16 bears to 28 days is considered to have worked overtime. A person included under this
17 subsection is entitled to be compensated for the overtime as provided by subsection (d)
18 of this section.

19 (b) A member of a fire department, other than supervisory personnel, who does
20 not fight fires or provide emergency medical services, including a mechanic, clerk,
21 investigator, inspector, fire marshal, fire alarm dispatcher, or maintenance worker, and
22 who is required or permitted to average more hours in a week than the number of hours
23 in a normal workweek of the majority of the employees of the municipality other than
24 firefighters, emergency medical service personnel, and police officers, is considered to
25 have worked overtime. A person included under this subsection is entitled to be
26 compensated for the overtime as provided by subsection (d) of this section.

27 (c) In computing the hours worked in a workweek or the average number of
28 hours worked in a workweek during a work cycle of a firefighter or other member of a
29 fire department covered by this section, all hours are counted during which the
30 firefighter or other member of a fire department is required to remain on call on the
31 employer's premises or so close to the employer's premises that the person cannot use
32 those hours effectively for that person's own purposes. Hours in which the firefighter or
33 other member of a fire department is required only to leave a telephone number at
34 which that person may be reached or to remain accessible by radio or pager are not to be
35 used in computing the hours worked. In computing the hours in a workweek or the
36 average number of hours in a workweek during a work cycle of a firefighter or a
37 member of a fire department who provides emergency medical services, vacation, sick
38 time, holidays, time in lieu of holidays, compensatory time, or trade time may be
39 excluded as hours worked.

40 (d) A firefighter or other member of a fire department may be required or
41 permitted to work overtime. A firefighter, other than supervisory personnel, who is
42 required or permitted to work overtime as provided by subsection (a) of this section is
43 entitled to be paid overtime for the excess hours worked without regard to the number
44 of hours worked in any one week of the work cycle. Overtime hours as computed under

1 this Article are to be paid at a rate equal to one and one-half times the compensation
2 paid to the firefighter or member of the fire department for regular hours. To the extent
3 that the municipality complies with the requirements of section 7(o) of the Fair Labor
4 Standards Act (29 U.S.C. § 207(o)), it may compensate firefighters for their overtime
5 hours with compensatory time in lieu of pay. A member of a fire department included
6 under subsection (b) of this section shall be paid overtime in the same manner as other
7 employees of the municipality entitled to overtime pay, excluding firefighters.

8 **"§ 160A-295.2. Authority of Department of Labor.**

9 The Department of Labor shall have the authority to enforce the provisions of this
10 Article to the extent that these provisions are not subject to enforcement under the Fair
11 Labor Standards Act (29 U.S.C. § 207).

12 **"§ 160A-295.3. Applicability.**

13 This Article applies only to full-time paid firefighters and other full-time paid
14 members of a fire department of a municipality that employs five or more employees in
15 fire protection during the workweek."

16 **SECTION 2.** This act becomes effective when 29 U.S.C. § 207(k) is
17 repealed or is no longer enforceable.