

By: Eiland

H.B. No. 4099

A BILL TO BE ENTITLED

1 AN ACT
2 relating to authorizing payment to FSLA-exempt and FSLA-nonexempt
3 state employees for unused compensatory time accrued during a
4 disaster declared by the governor under Section 418.014, Government
5 Code.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 659.015, Government Code, is amended by
8 amending Subsection (g) and adding Subsection (i) to read as
9 follows:

10 Sec. 659.015. OVERTIME COMPENSATION FOR EMPLOYEES SUBJECT
11 TO FAIR LABOR STANDARDS ACT. (a) This section applies only to a
12 state employee who is subject to the overtime provisions of the
13 federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et
14 seq.) and who is not an employee of the legislature, including an
15 employee of the lieutenant governor, or of a legislative agency.

16 (b) The employee is entitled to compensation for overtime as
17 provided by federal law and this section. To the extent that this
18 section and federal law prescribe a different rule for the same
19 circumstance, federal law controls without regard to whether this
20 section or federal law prescribes a stricter rule.

21 (c) An employee who is required to work hours in excess of 40
22 hours in a workweek is entitled to compensation for the excess hours
23 either by:

24 (1) the agency allowing or requiring the employee to

1 take compensatory time off at the rate of 1-1/2 hours off for each
2 hour of overtime; or

3 (2) at the discretion of the employing agency, in
4 cases in which granting compensatory time off is impractical, the
5 employee receiving pay for the overtime at the rate equal to 1-1/2
6 times the employee's regular rate of pay.

7 (d) Holidays or other paid leave taken during a workweek are
8 not counted as hours worked in computing the number of overtime
9 hours under Subsection (c) or (e).

10 (e) An employee may not accumulate more than 240 hours of
11 overtime credit that may be taken as compensatory leave under
12 Subsection (c)(1), except that an employee engaged in a public
13 safety activity, an emergency response activity, or a seasonal
14 activity may accumulate, in accordance with 29 U.S.C. Section
15 207(o)(3)(A), not more than 480 hours of overtime credit that may be
16 taken as compensatory leave under Subsection (c)(1). An employee
17 must be paid at the rate prescribed by Subsection (c)(2) for the
18 number of overtime hours the employee works that cause the employee
19 to exceed the amount of overtime credit the employee may
20 accumulate. In this Subsection, "overtime credit" means the number
21 of hours that is computed by multiplying the number of overtime
22 hours worked by 1-1/2.

23 (f) When an employee does not work more than 40 hours in a
24 workweek but the number of hours worked plus the number of hours of
25 holiday or other paid leave taken during the workweek exceeds 40
26 hours, the employee is entitled to compensatory time off at the rate
27 of one hour off for each of the excess hours. When an employee does

1 work 40 or more hours in a workweek and in addition takes holiday or
2 other paid leave during the workweek, and the total number of hours
3 worked still exceeds 40 after subtracting the hours compensable
4 under Subsections (c)-(e), the employee is entitled to compensatory
5 time off at the rate of one hour off for each of the remaining hours
6 in excess of 40. When an employee does not work more than 40 hours
7 in a workweek and the number of hours worked plus the number of
8 hours of holiday or other paid leave taken during the week does not
9 exceed 40 hours, the employee may not accrue compensatory time for
10 the week under this section.

11 (g) Compensatory time off to which an employee is entitled
12 under Subsection (f) must be taken during the 12-month period
13 following the end of the workweek in which the compensatory time was
14 accrued or it lapses. An employee may not be paid for that
15 compensatory time, except as provided by this subsection and
16 Subsection (i). An [~~However, an~~] employee of an institution of
17 higher education as defined by Section 61.003, Education Code, or
18 an employee engaged in a public safety activity, including highway
19 construction and maintenance or an emergency response activity, may
20 be paid at the employee's regular rate of pay for that compensatory
21 time if the employer determines that taking the compensatory time
22 off would disrupt normal teaching, research, or other critical
23 functions.

24 (h) Exceptions to the workweek overtime computation for
25 public safety, emergency response, or seasonal situations shall be
26 made in accordance with the federal Fair Labor Standards Act of 1938
27 (29 U.S.C. Section 201 et seq.).

1 (i) A state employee who is subject to the overtime
2 provisions of the federal Fair Labor Standards Act of 1938 (29
3 U.S.C. Section 201 et seq.) may be paid for any unused compensatory
4 time that was accrued under Subsection (f):

5 (1) for overtime work performed during a disaster declared
6 by the governor under Section 418.014; or

7 (2) in the case of a person employed by a state mental health
8 or mental retardation facility, when the employing agency
9 determines that the taking of regular compensatory time off would
10 be disruptive to normal business functions.

11 SECTION 2. Section 659.016, Government Code, is amended by
12 amending Subsection (i) and adding Subsection (j) to read as
13 follows:

14 Sec. 659.016. OVERTIME COMPENSATION FOR EMPLOYEES NOT
15 SUBJECT TO FAIR LABOR STANDARDS ACT; REDUCTIONS IN PAY. (a) This
16 section applies only to a state employee who is not subject to the
17 overtime provisions of the federal Fair Labor Standards Act of 1938
18 (29 U.S.C. Section 201 et seq.) and who is not an employee of the
19 legislature, including an employee of the lieutenant governor, or
20 of a legislative agency.

21 (b) When the sum of hours worked plus holiday or other paid
22 leave taken by a full-time employee during a workweek exceeds 40
23 hours, and not otherwise, the employee may be allowed to accrue
24 compensatory time for the number of hours that exceeds 40 hours.
25 When the sum of hours worked plus holiday or other paid leave taken
26 by a part-time employee during a workweek exceeds the number of
27 hours that the part-time employee is designated to work during the

1 workweek, and not otherwise, the employee may be allowed to accrue
2 compensatory time for the number of hours that exceeds the number of
3 hours that the employee is designated to work during the workweek.

4 (c) An employee who is exempt as an executive, professional,
5 or administrative employee under 29 U.S.C. Section 213(a)(1) may be
6 allowed compensatory time off during the 12-month period following
7 the end of the workweek in which the time that exceeds 40 hours
8 under Subsection (b) was accrued, at a rate not to exceed one hour
9 of compensatory time off for each hour of time that exceeds 40 hours
10 under Subsection (b) accrued.

11 (d) In accordance with 29 C.F.R. Section 541.118 and subject
12 to that section's exceptions as described by this section, an
13 employee who is exempt as an executive, professional, or
14 administrative employee under 29 U.S.C. Section 213(a)(1) is
15 entitled to receive full salary for any week in which the employee
16 performs work without regard to the number of days and hours worked.
17 This is also subject to the general rule that an employee need not
18 be paid for any workweek in which the employee performs no work.

19 (e) A deduction may be made from the salary of an employee
20 who is exempt as an executive, professional, or administrative
21 employee under 29 U.S.C. Section 213 (a)(1) if:

22 (1) the employee is not at work for a full day or
23 longer for personal reasons other than sickness, accident, jury
24 duty, attendance as a witness at a judicial proceeding, or
25 temporary military leave;

26 (2) the employee is not at work for a full day or
27 longer because of sickness or disability, including sickness or

1 disability covered by workers' compensation benefits, and the
2 employee's paid sick leave or workers' compensation benefits have
3 been exhausted;

4 (3) the deduction is a penalty imposed for a violation
5 of a significant safety rule relating to prevention of serious
6 danger in the workplace to other persons, including other
7 employees; or

8 (4) in accordance with the special provisions
9 applicable to executive, professional, or administrative employees
10 of public agencies set forth in 29 C.F.R. Section 541.5d, the
11 employee is not at work for less than one day for personal reasons
12 or because of illness or injury and accrued leave is not used by the
13 employee because:

14 (A) permission to use accrued leave was not
15 sought or was denied;

16 (B) accrued leave has been exhausted; or

17 (C) the employee chooses to use leave without
18 pay.

19 (f) In accordance with 29 C.F.R. Section 541.5d, a deduction
20 from the pay of an executive, professional, or administrative
21 employee because of an absence from work caused by a furlough
22 related to the budget does not affect the employee's status as an
23 employee paid on a salary basis, except for any workweek in which
24 the furlough occurs and for which the employee's pay is accordingly
25 reduced.

26 (g) If a deduction is made from an employee's salary in
27 violation of United States Department of Labor regulations, the

1 employee is entitled to reimbursement of the amount that should not
2 have been deducted.

3 (h) An employee who is not subject to the federal Fair Labor
4 Standards Act of 1938 under 29 U.S.C. Section 203(e)(2)(C) because
5 the employee is a staff member, appointee, or immediate adviser of
6 an elected officeholder may be allowed compensatory time off under
7 the terms and conditions determined by the officeholder.

8 (i) Except as provided by Subsection (j), an [An] employee
9 covered by this section may not be paid for any unused compensatory
10 time.

11 (j) An employee who is exempt as an executive, professional,
12 or administrative employee under 29 U.S.C. Section 213(a)(1) may be
13 paid for any unused compensatory time that was accrued under
14 Subsection (b):

15 (1) for overtime work performed during a disaster declared
16 by the governor under Section 418.014; or

17 (2) in the case of a person employed by a state mental health
18 or mental retardation facility, when the employing agency
19 determines that the taking of regular compensatory time off would
20 be disruptive to normal business functions.

21 Section 3. This Act takes effect September 1, 2009.