

COURT REPORTER FAIR LABOR AMENDMENTS OF 1995

AUGUST 1, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

R E P O R T

[To accompany H.R. 1225]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 1225) to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Court Reporter Fair Labor Amendments of 1995".

SEC. 2. LIMITATION ON OVERTIME COMPENSATION FOR COURT REPORTERS.

Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

“(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if—

“(A) such employee is paid at a per-page rate which is not less than—

“(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

“(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

“(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

“(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee’s attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.”.

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 shall apply after the date of the enactment of this Act and with respect to actions brought in a court after the date of the enactment of this Act.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

PURPOSE

The purpose of H.R. 1225, the Court Reporter Fair Labor Amendments of 1995, is to limit the overtime compensation for official court reporters when being paid at a per-page rate outside of the hours such employee performs other work pursuant to the employment relationship with the court.

COMMITTEE ACTION

H.R. 1225 was introduced by Representative Harris Fawell on March 14, 1995. There were 4 original cosponsors. The Subcommittee on Workforce Protections held a hearing on H.R. 1225 on July 11, 1995. At that hearing, testimony was received from Ms. Paula Laws, President-elect, National Court Reporters Association.

On July 20, 1995, the Committee on Economic and Educational Opportunities approved H.R. 1225, as amended, on a voice vote, and, by a voice vote, ordered the bill favorably reported.

COMMITTEE STATEMENT AND VIEWS

Background

State and local official court reporters are typically employed by the court at an annual salary, which is set by the court and/or the State or local government. The reporter’s primary duties while working for the court are to record and read back court proceedings. While working in this capacity, the court reporter is clearly an employee of the court and is entitled to overtime compensation for work in excess of forty hours in a given work week.

In addition to their in-court duties, court reporters are usually required, often by law, to prepare and certify transcripts of their records for attorneys, litigants, and others. Typically, the court reporter bills the entity for whom the transcript is prepared directly and collects a per page fee set by law or court rule for such work.

The current payment system for official court reporters has been in place in most State and local courts since long before the Fair Labor Standards Act (FLSA) was extended to cover public employees. The ramifications of the extension of the overtime requirements of the FLSA to the relatively unique compensation system under which most court reporters operate were not considered by the Congress when it extended the Act to public employees. Indeed,

until 1993, the obligations imposed by the FLSA with regard to court reporters while engaged in preparing transcripts of court proceedings were not generally understood.

On March 18, 1993, and August 26, 1994, the Department of Labor expressed its view to State court administrators in Indiana and Oregon that the time court reporters spent preparing transcripts generally must be counted in calculating the employer's overtime obligation to the reporter. Since that time, both employers and associations representing court reporters have expressed the view that where reporters perform transcription preparation duties on their own time, and are compensated on a per-page basis for that work, that time should not be counted for purposes of determining the employer's overtime obligation to the reporter.

The interest of employers in exempting certain transcription preparation duties from overtime calculations is self evident. That the ostensible beneficiaries of the policy, the court reporters, should also seek to exempt certain duties from the overtime calculation is more interesting. Though the amount of income an official reporter derives from per-page compensation for transcription services varies from jurisdiction to jurisdiction and from reporter to reporter, it can be substantial and is generally in excess of what the reporter would otherwise receive if compensated solely on a time-and-a-half basis. If the courts are required to include all time spent by a reporter in preparing transcripts for purposes of calculating overtime, notwithstanding the fact that the reporter is otherwise being compensated by the party for whom the transcript is prepared on a per-page basis, and must compensate the reporter accordingly, the courts have a powerful incentive to alter the traditional means by which reporters are compensated for transcription preparation duties.

On May 22, 1995, the Department of Labor further elaborated its view in a letter from Maria Echaveste, Administrator of the Wage and Hour Division, to Mike Ochs, Manager of State Relations of the National Court Reporters Association.

In our review, we considered it significant that often the responsibility of the court reporter to perform transcription services for third parties is imposed by statute or ordinance, rather than the court system. We believe a distinction should be drawn between situations imposed by statute or ordinance and situations where additionally the court exercises a supervisory role. Even with such a distinction there exist a number of different scenarios in which court reporters could still be considered to be employees of the court or judge when preparing transcripts for outside or indigent parties.

In summary, we conclude that transcription preparation for outside private parties, not connected with the state or local government that employs the court reporter, may be considered "independent contractor" work so long as the work is totally divorced from the employment relationship. Thus *none* of the private work may be performed during working hours. The fact that the reporter is required by statute or ordinance to perform the work would not by itself render the court the employer. The court may continue

to perform the ministerial role of prescribing format and certifying the accuracy of the completed transcript, by may not be involved in setting fees, approving the hiring of assistants, or disciplining the reporter through the employment relationship if the work is not properly or timely performed. (Emphasis in the original, footnotes omitted.)

Though in part acceding to the desire of reporters and their employers that time spent preparing transcripts not be included in the overtime calculation, a substantial amount of transcription preparation duties would remain subject to the requirements of FLSA. For example, where a public defender and the court reporter are employed by the same county government, transcription preparation duties performed on behalf and at the request of the public defender are performed at the request of the employer and, therefore, are part of the employment relationship. Further, distinguishing between transcription preparation duties that may be part of the employment relationship, and therefore subject to the overtime requirements of the FLSA, and those that are not may not be easy. The point at which the court's fulfillment of its ministerial function, for example, transgresses into something less than a total divorce from the employment relationship may not be readily recognizable.

For the aforesaid reasons, both court reporters and their public employers have continued to seek legislation to clarify the applicability of the Fair Labor Standards Act to circumstances in which a court reporter performs transcription preparation duties on his or her own time and is compensated for such duties on a per-page basis. The Committee concurs that, given the historical methods of compensating reporters for such work and within the parameters established by "The Court Reporter Fair Labor Amendments of 1995" as reported, the protection afforded employees by Section 7(a) of the Fair Labor Standards Act (29 U.S.C. Section 207(a)) is, in this instance, unnecessary.

Legislative Remedy

H.R. 1225, The Court Reporter Fair Labor Amendments of 1995, introduced by Representative Harris Fawell, as amended, seeks to clarify that time spent by official court reporters preparing transcripts for a per-page fee during "off hours" shall not be considered "hours worked" for purposes of Section 7(a) of the Fair Labor Standards Act (FLSA). In particular, the legislation provides that where court reporters are being compensated on a per-page basis for transcription work performed on the court reporter's own time, the time spent on that work need not be counted as hours worked for purposes of determining the employer's overtime obligation to that reporter.

The transcription preparation duties will not be considered "hours worked" as long as the official court reporter is being paid a per-page rate which is either the maximum rate established by law in the jurisdiction, the maximum rate in effect July 1, 1995 if the rate is administratively established by judicial or administrative officer, or a rate freely negotiated between the court reporter and the party requesting the transcript.

The per-page rates charged by official court reporters are generally set by law or regulation in each jurisdiction. Sometimes the rate is fixed, but many jurisdictions prescribe a maximum rate, allowing the court reporter and the party requesting the transcript to negotiate a lower amount. The bill enables the parties to do this as long as the court reporter is not constrained by the court or any other party in his or her ability to negotiate a rate that is acceptable to the official court reporter.

Where the transcription is being prepared for the judge who presided over the proceedings being transcribed, the maximum per page rate must be paid for the bill's provisions to apply. If a rate lower than the maximum or no per page rate is being paid for a transcript prepared for the presiding judge, the time spent by the official court reporter preparing the transcript will continue to be considered hours worked for purposes of Section 7(a) of the Fair Labor Standards Act.

To be clear, the legislation has no effect in situations where an official court reporter is not paid on a per-page basis for transcription preparation duties. The legislation only applies in cases where a per-page rate has been established by state law or local ordinance, or otherwise established by a judicial or administrative officer and in effect on July 1, 1995. Though court reporters may freely negotiate to be compensated for transcription preparation duties below the maximum rate otherwise permitted, where a jurisdiction acts administratively, and not by law or ordinance, to reduce rates below those in effect on July 1, 1995, all transcription preparation duties must be counted for purposes of calculating overtime. In cases where there is no per-page rate in effect on July 1, 1995, and the court desires to establish one, the legislation provides that the per-page rate must be established by state law or local ordinance for the jurisdiction of such public agency in order for the provisions of this legislation to be applicable.

Under Section 7(o)(6)(B) of the FLSA as amended by the bill, the exemption from "hours worked" only applies to situations where the official court reporter is preparing transcripts on his or her own time. If the work is being performed while the official court reporter's attendance at the courthouse or some other location is required as part of the employment relationship, the time spent preparing the transcript in that location will continue to be considered "hours worked" for purposes of the Fair Labor Standards Act.

In paying official court reporters the overtime premium of one-and-one-half times the court reporter's "regular rate" as required under Section 7 of the Fair Labor Standards Act, the public agency is not required to include within the "regular rate" any of the per-page fees described in Section 7(o)(6)(A) of the Act as amended by the bill. This exclusion applies regardless of whether the court reporter is performing the work during the hours described in Section 7(o)(6)(B) of the Act as amended by the bill.

Conclusion

This legislation is necessary to head off large and costly disruptions in the state and local court systems. In particular, the legislation will preempt dramatic changes in the way official court reporters are paid and how they perform transcription work.

SUMMARY

H.R. 1225, as amended, would amend the Fair Labor Standards Act (FLSA) to clarify that time spent by official court reporters preparing transcripts for a per-page fee during “off hours” shall not be considered “hours worked” for the public agency at which such employee is employed. The bill is limited in its application to employees of a public agency who perform court reporting transcription duties.

SECTION-BY-SECTION ANALYSIS

Section 1

Provides that the short title of the bill is “The Court Reporter Fair Labor Amendments of 1995.”

Section 2

Clarifies that the hours a court reporter spends performing transcript preparation duties for a per-page rate shall not be considered as hours worked for the public agency at which such employee is employed. The per-page rate cannot be less than either (1) the maximum rate established by State law or local ordinance; (2) the maximum rate otherwise established by judicial or administrative officer and in effect on July 1, 1995; or (3) the rate freely negotiated and agreed to between the court reporter and the party requesting the transcript, other than the judge who presided over the proceedings. In addition, the transcription preparation work must be performed at a time when the employee is not required to be present pursuant to the employment relationship with the court.

Section 3

Specifies that the provisions of the bill shall take effect on the date of enactment.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 1225 will have no significant inflationary impact on prices and costs in the operation of the national economy.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1225.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1225. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch. This bill changes the Department of Labor interpretations of laws applying to State and local court reporters. The Department's interpretation and this bill do not affect legislative branch employees.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The bill does not contain any unfunded mandates.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1225 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 1995.

Hon. WILLIAM F. GOODLING,
*Chairman, Committee on Economic and Educational Opportunities,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1225, the Court Reporter Fair Labor Amendments of 1995, as ordered reported by the Committee on Economic and Educational Opportunities on July 20, 1995. CBO estimates that enactment of H.R. 1225 would have no effect on the federal budget. Enactment of the bill could affect the budgets of state and local governments by limiting the instances in which they must provide compensation to court reporters for overtime work. Because enactment of H.R. 1225 would not affect direct spending or receipts of the federal government, pay-as-you-go procedures would not apply.

H.R. 1225 would amend the Fair Labor Standards Act to limit, under certain conditions, the overtime compensation that courts must pay to court reporters. Specifically, the bill would allow that

if a court reporter is paid at a per-page rate for preparing transcripts for parties other than the courts (such as litigants or lawyers), the hours spent preparing these transcripts would not be considered as hours spent working for the courts. Under current law, state and local courts are required to pay court reporters one-and-one half times their regular rate of pay for all hours worked overtime, even if that time is spent working for other parties. Federal courts are not covered by this provision.

Most state and local courts currently are not incurring overtime costs in these situations because the Department of Labor is not enforcing the overtime provisions. These courts could be liable for such overtime costs, however, if a suit were brought against them. Some courts are paying the overtime compensation, but are limiting costs by restricting the court reporters' abilities to sell their transcripts at per-page rates. If courts are allowed to reduce the number of overtime hours they are required to pay, the bill could prevent the courts from being held liable for overtime pay in the future. CBO has no basis for judging the extent to which future suits on this issue would be forthcoming, and therefore we cannot estimate the extent to which state and local funds that would have been spent on overtime compensation would be saved as a result of this bill.

Because federal courts are not covered by the provision that this legislation seeks to change, enactment of this bill would not affect federal spending.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 7 OF THE FAIR LABOR STANDARDS ACT OF 1938

MAXIMUM HOURS

SEC. 7. (a) * * *

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(o)(1) * * *

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(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if—

(A) such employee is paid at a per-page rate which is not less than—

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

[(6)] (7) For purposes of this subsection—

(A) the term “overtime compensation” means the compensation required by subsection (a), and

(B) the terms “compensatory time” and “compensatory time off” mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

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