Testimony for the Joint Senate Appropriations and Labor and Industry Committee Meeting

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Department of General Services

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Thank you Chairpersons Browne, Hughes, Baker, and Tartaglione and members of both committees for the opportunity to be with you today.

I'll be discussing the Department of General Services' initial view of the impact of recent changes in federal wage, hour & overtime regulations on state contracts.

A review of the Federal Register rule and regulations at 29 CFR Part 541, table 29 on page 32497 describes the estimated Annual Transfers and Costs as a Percent of Payroll and Revenue by Region for fiscal 2017. The analysis suggests that employers in the Northeast should anticipate an increase in direct employee costs of 0.002% and transfer costs of 0.003% on revenue. The Bureau of Procurement selected a dataset for fiscal 2014-2015 to include all services covered by UNSPSC (United Nations Standard Products and Services Code) families 70000000 – 90000000.

The dataset covers approved invoices for all agencies as recorded in SAP/SRM. The dataset did not cover PENNDOT construction spending. The dataset also did not include purchases of services under the small procurement (P-card) threshold of $10k. The sample covered nearly 6000 invoices and a cumulative value of $1.2 bil of COPA spend.

Of course, Commonwealth spend is tantamount to vendor *revenue*. Applying the federal formula to our spend estimates an impact of just over $60k. Please bear in mind that this represents costs to the vendor and so are appropriately subject to benefits, other organizational overhead, and profit multipliers. So, let's up this to an arbitrary value of $120k.

As the circumspect spenders of taxpayer funds, we have attempted to employ our own methodology to attempt to verify the federal formula.

First the list of services needs to be significantly pared down. The Commonwealth utilizes a truly diverse universe of services. Many of which will not be affected by the FLSA revision. Blue collar services will not be impacted by the new rule. Services provided by 'trades' including plumbing, electrical, HVAC as well as laundry, custodial, landscaping/lawn care/snow removal, security, refuse collection, etc. should be removed from our affected list. Similarly, non-hourly blue collar services such as freight, vehicle rental, postal fees, water treatment services, etc. should also be discounted. This represents $434 mil of the $1.2 bil spend.

Next, we need to exclude services provided by independent contractors. These services included dead animal disposal, denominational services, interpreters, educators/trainers, musicians, and passenger transport to name the most common. Independent contractor services amounted to $18 mil of our sample data.

Similarly, licensed professionals and those unlicensed providers who likely exceed the new threshold of $47.5k or $52.2k (with allowable bonus/incentive/commissions) should be set aside. The Commonwealth consumed $111 mil for legal, medical, audit, architectural, engineering, and investment services.

Finally, the last segment to be set aside includes services for which overtime is routinely unnecessary. Indeed, in some cases, our contract terms prevent the vendor from engaging in overtime. Such services include routine equipment calibration, routine safety inspections, analytical/testing services, cellular/telecom/IT services, newswire, document destruction, consulting, staff augmentation, advertising, court reporting, legal/other subscription based research (Westlaw, Lexis/Nexis), etc. This segment has an estimated value of $631 mil.

Our final value remaining for consideration of the impact analysis stands at $16 mil. The largest portions of which are concerned with call centers and unlicensed medical services. We have actual overtime information on the medical services for a very recent 12 month period. Vendor 'A' reported 178,826 straight time hours worked; 9,455 on-call professional hours worked; and 0 hours of overtime by unlicensed staff. Vendor 'B' reported 517,772 straight time hours worked; and 24 hrs. of overtime by unlicensed staff. However, the wages of those working the overtime were between $28 and $29 per hour, thereby exceeding the proposed threshold of $22.83 per hour.

On the call center example, white collar supervisors cover extended shifts and travel between sites. Their pay is currently below the proposed threshold. The employer could either "gross up" their earnings to exceed the proposed threshold (Method 1) or submit to paying the newly required overtime (Method 2) premium. Without disclosing actual wages and assuming 2 hours of overtime every working day, Method 1 would likely result in additional costs of just over $14k. Method 2 would result in a heftier $154k increase. However, as compared to the annual value of the contract, the incremental increase ranges from .07% to .77%.

Applying these rates to our entire affected population of spend would result in an annual impact ranging from $12k - $125k. You will recall that the estimated impact using the federal formula and our rough-cut overhead and profit additions yielded a $120k impact.

Given that we began our review of $1.2 bil in services spend, the projected impact does appear to be minimal.

Naturally, there are a few caveats.

1) Should the need for emergency response suddenly increase and/or be prolonged (i.e., response to a pandemic), there would likely be a commensurate increase in overtime needs for certain services.
2) Very seldom do vendors provide data on the actual wages and work habits of their employees.
3) Even if they did, the Commonwealth's systems are not prepared to capture the detail data from an invoice for purposes of analysis like this.

Thank you once again for the opportunity to appear before you today. I'm pleased to take questions you may have.