

SPONSOR: Rep. K. Williams & Sen. Paradee
Reps. Morrison, Osienski, D. Short, Yearick, Bush; Sens. Hoffner, Townsend, Sokola

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 9
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO GOVERNMENTAL COMPENSATION POLICY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5821, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5821. ~~Findings~~ Findings; definitions.

(a) There are numerous ~~elected state officials and other paid appointed officials~~ elected or appointed officials who are also employed by state agencies, educational and other institutions, and ~~other jurisdictions of government within the State.~~ political subdivisions of this State.

(b) The ~~members of the~~ General Assembly ~~believe~~ believes that the taxpayers of ~~Delaware~~ this State should not pay an individual more than once for coincident hours of the workday.

(c) ~~The~~ This State should have in place clear policies and procedures to ensure that the taxpayers of ~~the~~ this State as a whole, and of ~~its~~ the various ~~governmental jurisdictions,~~ political subdivisions of this State, are not paying ~~employees or officials~~ elected or appointed officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.

(d) As used in this subchapter:

(1) "Commission" means the Public Integrity Commission.

(2) "Dual compensation" means the receipt of compensation for coincident hours of work as an elected or appointed official and as an employee.

(3) "Dual employment" means simultaneously serving as an elected or appointed official and as an employee.

(4) "Elected or appointed official" means an individual elected or appointed to a paid office of this State or a political subdivision of this State.

(5) "Employee" means an individual employed by a state agency or political subdivision of this State other than as an elected or appointed official.

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(6) "Institution of higher education" means any public or private educational institution located in this State which provides a program of education beyond the high school level and awards an associate's, bachelor's, or advanced degree and that receives moneys from this State, including by an appropriation in the annual appropriations act.

(7) "Political subdivision of this State" means a county, municipality, school district, authority, or other similar entity of this State authorized by law to impose taxes or spend public funds. "Political subdivision of this State" does not include an institution of higher education.

(8) "Public funds" means moneys appropriated by this State or any political subdivision of this State.

(9) "State agency" means as defined in § 5804 of this title. "State agency" does not include an institution of higher education.

(10) "Workday" means as follows:

a. For a state agency, as defined by other law or policy of this State.

b. For a political subdivision of this State, as defined by a law or policy adopted by the political subdivision of this State.

Section 2. Amend § 5822, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5822. ~~Policy.~~ Governmental compensation policy on dual employment.

(a) ~~Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.~~ The pay of an employee must be reduced on a prorated basis for any workday time missed due to service as an elected or appointed official.

(b) ~~Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.~~ The immediate supervisor of an employee who is also an elected or appointed official shall verify a time record stating specifically the number of hours the elected or appointed official worked as an employee. The immediate supervisor shall conduct this verification at least once each pay period.

(c) ~~All time records, so verified, shall be kept by the~~ An immediate supervisor who verifies a time record under subsection (b) of this section shall keep the verified time record until ~~such time as they are required by the State Auditor.~~ the record is requested by the State Auditor under § 5823 of this title.

(d) ~~No employee shall be permitted to~~ A state agency or political subdivision of this State that has an elected or appointed official as an employee may permit the elected or appointed official to make up time during hours other than the ~~normal~~ workday for purposes of compensation. ~~A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.~~ The immediate supervisor of an employee who is also an elected or appointed official shall verify a time record stating specifically the number of hours the employee made up during hours other than during the workday.

(e) ~~Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter~~. An elected or appointed official who is also an employee may use vacation, personal, or compensatory time to which the elected or appointed official is otherwise entitled to make up for missed workday time related to service as an elected or appointed official.

(f) ~~School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter.~~ This subchapter applies to a school administrator who is also an elected or appointed official. If a school administrator ~~shall have no~~ does not have an immediate supervisor, the school administrator's time record ~~shall~~ must be verified by the ~~appropriate~~ school administrator's school board at ~~its~~ the school board's next regular or special ~~meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position.~~ meeting.

Section 3. Amend § 5823, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5823. Audits; penalty.

(a) The State Auditor shall conduct an annual audit of the time records which have been kept by ~~the supervisors~~ an elected or appointed official's immediate supervisor or school board ~~in accordance with~~ under § ~~5822(b) and (c)~~ 5822 of this title to determine whether ~~or not an employee~~ the elected or appointed official was paid from more than 1 tax-funded source for working coincident hours of the day.

(b) ~~Any discrepancy found by~~ If the State Auditor finds a discrepancy in the records kept under § 5822 of this title, the State Auditor shall ~~be reported to the Public Integrity Commission~~ report the discrepancy to the Commission, for investigation ~~pursuant to~~ under § 5810 of this ~~title and/or to the Office of the Attorney General~~ title, and to the Department

of Justice, for ~~possible~~ prosecution under § 876 of Title 11 (tampering with public records in the first degree) ~~and any other appropriate section.~~ or any other law of this State.

Section 4. Amend Subchapter III, Chapter 58, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5824. Disclosure of dual employment; audit.

(a) An elected or appointed official who is also an employee shall disclose the dual employment to the Commission within 15 days after the commencement of the dual employment.

(b) The disclosure under subsection (a) of this section must be made in a format prescribed by the Commission and must include information prescribed by the Commission to determine that sufficient measures or circumstances are in place to avoid dual compensation.

(c) After the disclosure under subsection (a) of this section, an elected or appointed official only has a duty to report to the Commission within 15 days after one of the following occurs:

(1) The elected or appointed official's dual employment ends.

(2) The elected or appointed official begins employment with a different state agency or political subdivision of this State.

(d) If the Commission believes an elected or appointed official is receiving dual compensation, the Commission may request an audit by the State Auditor.

(e) If an employee is found to have received dual compensation in violation of this subchapter, the violation must be reported to the employer for corrective action under the employer's applicable governing policies or law.

(f) Nothing in this section relieves an elected or appointed official of the elected or appointed official's duty to file an annual financial disclosure statement with the Commission under § 5813 of this title.

Section 5. An individual serving as an elected or appointed official of this State or a political subdivision of this State on the effective date of this Act shall disclose dual employment, as defined in § 5821 of Title 29 of the Delaware Code, as contained in Section 1 of this Act, within 15 days after the enactment of this Act.

Section 6. This Act takes effect 1 year after the Act's enactment into law.