

THE CLASS OF 1964 POLICY RESEARCH SHOP

# VERMONT MINIMUM WAGE AND OVERTIME EXEMPTIONS



PRESENTED TO CHAIR, COMMITTEE ON GENERAL, HOUSING, AND MILITARY AFFAIRS

**Rep. Thomas Stevens, Vermont House of Representatives**

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# TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1 INTRODUCTION	2
2 PROBLEM STATEMENT	2
3 METHODOLOGY	2
3.1 ANALYSIS OF CURRENT LAW	3
3.2 LEGISLATIVE HISTORY	3
3.3 NEWSPAPER COVERAGE	3
4 CURRENT LAW	4
4.1 CURRENT MINIMUM WAGE LAW AND EXEMPTIONS	4
TABLE 4.1.1 MINIMUM WAGE EXEMPTIONS	5
4.2 CURRENT OVERTIME PAY LAW AND EXEMPTIONS	5
TABLE 4.2.1 OVERTIME PAY EXEMPTIONS	6
5 FINDINGS	6
5.1 LEGISLATIVE HISTORY: THE 1957 MINIMUM WAGE LAW	6
5.2 NEWSPAPER COVERAGE: 1957	8
5.3 LEGISLATIVE HISTORY: THE 1967 MINIMUM WAGE AND OVERTIME LAW	9
5.4 NEWSPAPER COVERAGE: 1967	12
6 CONCLUSION	13
REFERENCES	14

## EXECUTIVE SUMMARY

Vermont law has, in addition to those outlined in federal law, a number of exemptions to both its standard minimum wage and overtime pay requirements. As the House Committee on General, Housing, and Military affairs is reconsidering the current exemptions on the books, this report explores the context behind them with a focus on possible discriminatory intent. The ultimate goal is to help inform the committee in determining whether to modify or repeal any of the exemptions. The research team utilized two methodologies to fulfill this goal: (1) a historical analysis of the statutes using committee records from the law's original passage and (2) examining relevant newspaper coverage from the same time period. Due to the Rockefeller Center Policy Research Shop's nonpartisan status, the research team cannot take a stance on whether discriminatory intent was at play in the passage of the original statutes. However, notable context was uncovered that will likely be of interest to the Committee as it performs its evaluation.

# 1 INTRODUCTION

The cost of living for Vermont citizens has increased significantly in recent years. According to the Bureau of Economic Analysis, an agency of the U.S. Department of Commerce, the average annual cost of living in the state, measured in personal consumption expenditures per capita, increased to \$50,761 in 2021, a 10.4 percent increase from 2020.<sup>1</sup> Additionally, according to data reported by the Council for Community and Economic Research, Vermont ranks 42<sup>nd</sup> in the cost of living index for the 50 states plus Puerto Rico and the District of Columbia, meaning the state is quite expensive relative to the rest of the country.<sup>2</sup> With the recent inflation spike, the problem is only getting worse. As a result, the Vermont minimum wage, indexed to inflation and the Consumer Price Index, has increased in 2023 by five percent from \$12.55 to \$13.18.<sup>3</sup> However, these increases may not be felt by all workers, as various minimum wage exemptions exist in both federal and Vermont law. Additionally, in response to the tight labor market, many employees in Vermont have faced pressure to work more overtime than they would otherwise. Normally, state and federal law would mandate additional overtime pay for workers beyond 40 hours per week, but various exemptions to this provision exist as well. The analysis in this report will further explore minimum wage and overtime exemptions in Vermont state law, describing their current extent, and the history and context of their original implementation.

# 2 PROBLEM STATEMENT

The minimum wage and overtime laws in Vermont—contained in 21 V.S.A. § 383 and 384—have a number of exemptions, or categories of workers to which they do not apply. Many of these exemptions have existed since the origin of the statute itself, while others were amended as recently as a couple of years ago.<sup>4</sup> The exemptions have invited controversy over their perceived fairness, potential discriminatory impact due to the classes of workers covered, and assumed benefit to employers at the potential expense of employees and their ability to afford an increasingly higher cost of living in the state.

The controversy over the exemptions' potential discriminatory impact was what spurred this investigation, in addition to confusion as to why certain exemptions were passed in the first place. This report seeks to investigate the origins of minimum wage and overtime laws in Vermont by seeking additional context to the existing statutes and searching for evidence of discriminatory intent behind the exemptions included in the final laws passed in 1957 and 1967. The findings of this report should be informative to the current legislature should it seek to revise current labor law to advance the well-being of Vermonters of all origins.

# 3 METHODOLOGY

Three methodologies were utilized to carry out this project, with the goal to discern the intent behind the statutes. Section 4.1 covers the initial fact-finding to map the current state of minimum wage and

overtime law in the state and how it relates to federal law. Section 4.2 covers an analysis of the legislative records behind the Vermont minimum wage and overtime pay exemptions contained in the Vermont State Archives. Section 4.3 details research into newspaper coverage of the passage of the minimum wage and overtime laws in 1957 and 1967, respectively.

### 3.1 ANALYSIS OF CURRENT LAW

In order to make the charts contained in Section 4, researchers gathered information from numerous websites, primarily those of the State of Vermont or the US Department of Labor, to ascertain the status and impact of all the exemptions that are in effect in Vermont. For clarity, federal exemptions that are not duplicated by Vermont law, and therefore effectively nullified by Vermont's higher minimum wage requirement for those classes of workers, were excluded from these charts.

### 3.2 LEGISLATIVE HISTORY

Legislative history encompasses the committee records maintained by the Vermont State Archives that relate to the 1957 and 1967 bills that became Vermont's minimum wage and overtime laws. The state archives possessed records from both the Senate General Committee and House Committee on General and Military Affairs, which had jurisdiction over labor legislation and were involved in the passage of both bills. The researchers traveled to the state archives to view the microfilm which contains these records and took photos of each page. The researchers then turned those photos into four documents, one for the House files and one for the Senate files for both the 1957 and 1967 bills. These documents were then examined to uncover the legislative intent behind the implementation of the exemptions and to look for evidence of potential discriminatory or racist intent. Due to the sensitive nature of this analysis and the nonpartisan status of the Dartmouth Rockefeller Center Policy Research Shop, the researchers do not issue any recommendations nor a definitive conclusion on whether there was discriminatory or racist intent behind the laws. What this report does is provide the evidence that presented itself when the archival files were reviewed. Making a conclusion about intent is left to the Vermont legislature.

### 3.3 NEWSPAPER COVERAGE

Newspaper coverage on both the minimum wage and overtime bills was obtained from the database Newspapers.com, a subsidiary of Ancestry.com. For the minimum wage bill, researchers limited search results to newspapers located in Vermont, limited articles to those published in 1957, and used the keywords "minimum wage" and "discrimination." This search resulted in 26 articles, all of which were analyzed in their entirety. A small number of articles that were found to be irrelevant were not included in the analysis for this report.

This process was repeated for the 1967 overtime bill, substituting the keywords "overtime" and "discrimination," and articles were limited to those published in 1967 instead of 1957. The search for overtime articles yielded 34 results, which were also analyzed in their entirety. The 1967 results were

mostly unrelated articles that had to be discarded, but there were three that were relevant. A broader search for simply “overtime” and “pay” in 1967 articles from Vermont newspapers yielded close to 1,000 results, which was not feasible to analyze. Therefore, readers should note that the review of 1967 news coverage may have missed some aspects of the overtime law’s passage and should not be considered a definitive analysis thereof.

## 4 CURRENT LAW

Preliminary analysis focused on clarifying the complex patchwork of current federal and state law relating to the minimum wage and overtime laws. There are numerous exemptions and conditions attached to these laws, most of which are based on certain classifications of workers. Generally, the standard that is higher is the one that takes effect, regardless of whether it is state or federal. Sections 3.1 and 3.2 use this rule to seek to clarify where the law now stands and how it is enforced in practice.

### 4.1 CURRENT MINIMUM WAGE LAW AND EXEMPTIONS

Federal law, as defined by the Fair Labor Standards Act, currently provides for a minimum wage of \$7.25 an hour, while Vermont law, under Title 21 of the Vermont state code, specifies a minimum wage of \$13.18.<sup>5</sup> Table 4.1.1 details the various exemptions and how they interact with one another. The general rule is that if a worker is exempt from the Vermont minimum wage, the federal minimum wage applies. Note that some federal exemptions that are made irrelevant by state minimum wage law have been excluded from the tables. A note on a specific exemption usually indicates there are exceptions or other complicating details.

TABLE 4.1.1 MINIMUM WAGE EXEMPTIONS

WORKER CATEGORY	FEDERAL EXEMPTION? <sup>6</sup>	STATE EXEMPTION? <sup>7</sup>	WHAT MINIMUM WAGE APPLIES?
Farmworkers	No <sup>8</sup>	Yes	\$7.25
Taxicab Drivers	No	Yes	\$7.25
Newspaper Deliverers	No <sup>9</sup>	Yes	\$7.25
Publicly Supported Nonprofit Employees	No	Yes <sup>10</sup>	\$7.25
Domestic Service Workers in a Private Home	No	Yes	\$7.25
Tipped Service Workers	Yes	Yes	\$6.28 <sup>11</sup>
Federal Government Employees	No	Yes	\$15.00 <sup>12</sup>
Youth and High School Students	Yes <sup>13</sup>	Yes <sup>14</sup>	\$4.25 or \$7.25
Outside Salespersons	No	Yes	\$7.25
Professional/Salaried	Yes <sup>15</sup>	Yes	N/A

## 4.2 CURRENT OVERTIME PAY LAW AND EXEMPTIONS

Both Vermont and federal law provide for 1.5 times wage overtime pay for hours worked beyond 40 hours per week.<sup>16</sup> However, as with the minimum wage, there are exemptions from these requirements, which are laid out in Table 4.2.1. Note that some federal exemptions made ineffective by state overtime law have been excluded. A note on a specific exemption usually indicates there are exceptions or other complicating details.

TABLE 4.2.1 OVERTIME PAY EXEMPTIONS

WORKER CATEGORY	FEDERAL EXEMPTION? <sup>17</sup>	STATE EXEMPTION? <sup>18</sup>	IS OVERTIME OWED?
Farmworkers	Yes <sup>19</sup>	Yes	No
Retail and Service Employees	No <sup>20</sup>	Yes	Yes
Seasonal Amusement Park and Recreation Establishment Employees	Yes	Yes <sup>21</sup>	No
Hotel, Motel, and Restaurant Employees	No	Yes	Yes
Vermont Local Government Employees	No <sup>22</sup>	Yes	Yes
Certain Employees in the Healthcare Sector	No <sup>23</sup>	Yes <sup>24</sup>	Yes
Transportation Employees	Yes <sup>25</sup>	Yes <sup>26</sup>	No
Professional/Salaried Employees	Yes <sup>27</sup>	Yes	No

## 5 FINDINGS

Sections 5.1 and 5.3 cover the legislative history contained in the Vermont State Archives files on the minimum wage and overtime bills, respectively. Sections 5.2 and 5.4 cover the newspaper coverage of those bills.

### 5.1 LEGISLATIVE HISTORY: THE 1957 MINIMUM WAGE LAW

The 1957 minimum wage law originated in the Senate as S. 125 and was sponsored by Senator John Boylan, an influential Republican legislator who served for about two decades, including time as chair of the Appropriations Committee and Senate President.<sup>28</sup> Note that the records for the 1957 bill in both the Senate and House are not direct transcripts of the hearings, rather they are notes taken by the committee's staff during the hearing along with any written testimony submitted to the record. Therefore, it is likely that some aspects of what went on during the hearings are no longer known.

The Senate record indicates that the bill was drafted after reviewing material from 33 other states. Boylan felt it was necessary to establish a minimum wage in Vermont law to protect low-income individuals. He was supported by a representative of Vermont labor unions, who noted both parties at the time supported the concept of a minimum wage, although they disagreed on whether it should be \$1 or \$1.25 per hour.



Senator Boylan made clear that he did not intend the bill to impose hardship on businesses, but that he felt it was “necessary to the people of Vermont.” Nonetheless, many business owners or their representatives came to testify against the bill at the Senate hearing. Their complaints were numerous. Some testified that they thought the bill as proposed would put them out of business, especially because they predicted that the minimum wage would thereafter be raised faster than the cost of living.

Others thought it was an attempt to increase the political and economic power of unions, claiming that the bodies that would be established to oversee the law would inevitably be run by someone from organized labor who would be biased against businesses. They also noted concerns that the bill would lead to frivolous investigations by the government at the behest of labor unions to harass businesses, or at the very least to “snoop” on them.

There were further complaints arguing that a minimum wage was arbitrary and wouldn't allow employers to pay workers according to the value of their labor. These complaints indicated that a minimum wage would make it very hard for businesses to hire seasonal workers, who according to one testifier may be older and not especially productive. They also noted that it would be hard on the marginal worker, as employers may be less willing to hire them because the expense may make them simply prefer to try to get by without the additional worker. Another complaint indicated that the bill might lead to wage compression, where workers with higher seniority get paid at the same rate as new hires after the minimum wage is increased. While this can be avoided if employers further boost the wages of senior workers above that of junior workers, this would cost them more money.

The House, which heard the bill after the Senate, had a very short record that focuses on addressing loose ends left over from the Senate. It contains the testimony of a few legislators who thought it was supported by their constituents and would bring Vermont in line with its neighbors. A representative of Middlebury College also spoke in favor of the bill, saying it would benefit Vermont's economy.

There were only two direct references to discrimination in the Senate record. The first comes from a then-former legislator who is noted to have claimed he “saw discrimination in every section,” although no context is given as to what he felt was discriminatory. He had previously testified that he opposed the bill because he felt it would give the government a limitless mandate to interfere in business affairs. The second came from a proponent of the bill, union representative Frank Dumas, who noted that he felt the included exemptions were wrong because employers “are ignoring the principles of human morality, either by discrimination or exploitation because they know they are exempted from the Wage and Hour Law as outlined in the Fair Labor Standards Act.”

The record did contain other statements that may be interpreted as discriminatory. All come from opponents of the bill. One claimed that men should be excluded from the minimum wage because in his opinion they did not need legal protection and were excluded in other states' laws. Another statement from a business owner comes to the opposite conclusion, claiming wives and students are the ones who do not need a minimum wage. They claim they should be able to pay these workers less

because both students and wives are “dependents” that are supported by the men in their families. Another statement on the topic of students claims that if they are given a minimum wage it will lead to non-student workers demanding raises so they stay at a higher wage than students. A final testifier claimed that the bill was unnecessary because they argue no workers in Vermont are being exploited and that those who want minimum wages are both un-American and paternalistic.

Opponents of the bill in the House briefly restated the basic case that minimum wage requirements would force them to reduce the number of hours their workers could work. New content dealt mainly with the exemptions, although the record does not include much detail. One business owner testified that wanted the bill to include some way to take into account employee discounts, room and board, and other benefits as part of the compensation counted towards the minimum wage. Amendments were made to the bill shortly thereafter to include language regarding such benefits. A representative of the Vermont Independent Telephone Association argued for and obtained amendments that dealt with switchboard operators, who the representative claimed worked a schedule that makes a minimum wage difficult to manage. One business owner is recorded as opposing certain exemptions and saying that he doesn’t think the bill would be enforceable. But no mention is made as to which exemptions he opposed or why.

## 5.2 NEWSPAPER COVERAGE: 1957

Newspaper coverage of the 1957 minimum wage law added limited context to what was contained in the hearing records. The coverage conveys that the issue played a significant role in the 1956 state elections, despite the bipartisan agreement on the need for some sort of minimum wage policy.<sup>29</sup> Almost all of the news articles mentioned what classes of workers were to be exempt from the new minimum wage, but none added significant context about why the exemptions were included. There were a few notable exceptions, however.

The database contained an identical article from the Vermont Press Bureau published on the same day by four different newspapers focused on union representative Frank Dumas’ comments to the legislature, mentioned earlier, in which he claims business owners are responsible for discrimination and exploitation in the workforce.<sup>30</sup> However, the article does not add any context that would clarify the type of discrimination to which he was referring.

Other 1957 news coverage adds context that explains that the hotel industry felt that the structure of the exemptions as written in the bill at the time was “discrimination” against them in favor of motels.<sup>31</sup> The controversy appears to have come about because the bill exempted businesses with fewer than four employees, which was claimed to have the potential to give motels a competitive advantage over hotels. This may explain some of the arguments about discrimination contained in the record but which were not elaborated on in any detail there. Senator Willey, who felt strongly about this controversy was quoted in several news articles as seeking to “eliminate what he called ‘discrimination’” and “tried to amend the bill so that all resorts, hotels, motels, and tourist cabin operations would be exempt from the minimum wage.”<sup>32</sup> He simultaneously tried to remove the

exemption for businesses with fewer than four employees, claiming it discriminated against employees of such firms. Both his amendment attempts were unsuccessful.

### 5.3 LEGISLATIVE HISTORY: THE 1967 MINIMUM WAGE AND OVERTIME LAW

In 1967, the Vermont state legislature revisited its minimum wage statutes when Senator Delaney introduced S. 1012. While the primary purpose of the bill was to increase the minimum wage to \$1.40, the legislation also included brand new provisions requiring mandatory overtime pay, along with a framework for exemptions to those overtime requirements for certain types of employees. The bill was referred to the Senate General Committee, which held several hearings on the bill. The committee records from 1967 are far more robust than those from 1957, and include transcribed and typed hearing transcripts in addition to many letters from constituents and affected industries. While, evidently, a snowstorm during one of the hearings and an illness at another kept Delaney, the principal sponsor, from testifying or speaking on the record very frequently, the available materials do reflect the discourse and debate surrounding the overtime exemptions. While establishing Delaney or the committee's full legislative intent would be nearly impossible without speculation, the research team can at least establish the information and testimony the legislators were hearing and considering to add more clarity and context.

Most of the available hearing transcripts and records regarding S. 1012 reflect testimony from various industry representatives voicing concerns about what mandatory overtime pay would mean for the viability of firms in their fields. Since amendments to the final senate bill ultimately included many of these industries in the listed overtime exemptions, this testimony offers a look into why some current exemptions may have been originally promulgated.

Regarding the retail and service industries, for example, there seemed to be significant concern that broad overtime requirements would harm smaller businesses. Carl Smith, the Executive Secretary of the Vermont Retail Grocers Association, testified that a "large chain can generate something near \$30.00 of sales per man hour whereas a smaller independent store may average as low as \$15.00 of sales per man hour... If you increase the independent's wage cost you would increase his store overhead and put him out of line with his competition." Apparently, there was concern about retail and grocery store consolidation in Vermont, with Smith noting a 14 percent decrease in food stores throughout the state between 1958 and 1963, according to the US Census Bureau. According to Smith, this disproportionately impacted more rural areas of the state, threatening food access, as "in many small towns there is no immediate food supply other than the small grocer located in that particular town." At least several senators appeared to be receptive to Smith's concerns, with Senator Jeffords claiming, "This time and a half provision might be disastrous for smaller businesses." Smith originally advocated an amendment exempting just retailers with under \$250,000 in business from overtime requirements, but Jeffords commented that writing legislation that way would be "hard." Ultimately, a broad exemption for retailers, not specifying business size, was adopted in the final text.

Regarding seasonal amusement park and recreation establishments, the Senate General Committee heard testimony from representatives of the skiing industry, as well as representatives from the camping sector. One of those testifying on behalf of the latter was Jean Davis, who first noted similar exemption for camps in surrounding states, before describing the possible financial difficulties for her business under broad overtime requirements: “I understand that in New Hampshire camps were able to be excluded from this law. In Massachusetts this was considered seasonal employment and they make an exception. The overtime would increase the problem... If we had to pay that minimum wage plus the time and a half I would have to close my camp. The payroll in my camp was somewhere[sic] near \$17,000 last year and that would be doubled under this law.” Among those testifying on behalf of the skiing industry were Preston Smith, founder of Killington Ski Resort, and Henry Simoneau. According to Simoneau: “Our business is almost an act of God. Either we have snow and we have business or we don’t. We have to maintain a core of people to run our business. Now last week we lost all of our snow and we had to maintain 350 people on the payroll. My feeling is this—if this time and a half is left in [the bill], it would be a hardship.” Smith reasserted the challenges that ski resorts, as well as other seasonal businesses, could face with mandatory overtime pay: “A seasonal business such as we have... derive[s] the majority of our income out of only two or three months of the year, and this calls for added overtime... Trying to develop the ski areas and trying to develop payrolls is a real burden and this could actually thwart the growth of many small businesses.” In this respect, the issue of overtime exemptions was once again framed as a threat to small business, and legislators seemed to understand this testimony as necessitating a specific overtime exemption for seasonal establishments. For instance, Reid LeFebvre, a House member representing ski resorts in Bromley, Stratton, Mountain, and Magic Mountain, commented in the Senate hearing that “(t)heir greatest concern is not the minimum wage but the problem of trying to cope with the hours.” Perhaps this explains why seasonal industries ultimately received an exemption from overtime requirements in a subsequent amendment, while not receiving an exemption from minimum wage requirements.

There was also considerable testimony about the possible effect of broad overtime requirements on the hotel and motel sector, as well as on the restaurant industry. Borden Avery, a representative of the Hotel and Motel Association, testified that the overtime requirement represented a “real ball of fire.” Additionally, Alden Hull, the manager of the St. Johnsbury House, wrote in a letter to the committee, “Annually the hotel, motel, and restaurant group look forward with fear and apprehension to each meeting of the legislature—not without reason.” Essentially, as Hull claimed, “Our industry pays out 40 percent or more of its gross income in wages—our biggest single cost,” and any provision to mandate increased overtime wages would harm the industry, already “not a prosperous one.” Avery even claimed that restaurants would “have a tougher time” than hotels and motels adjusting to overtime requirements, while several members noted that many restaurant workers also received tips to supplement wages. Ultimately, an overtime exemption for workers in hotels, motels, and restaurants would appear in the final senate bill.

For hospitals and other health agencies, a letter from the Vermont Hospital Association to the committee argued, “Hospitals are not in the same category as other employers for many reasons. First,

it is an operation that is seven days a week, day and night. Secondly, the availability of qualified personnel has always been a problem, and, thirdly, because of the limited availability of qualified personnel, the maximum use must be made of the qualified personnel employed.” Additionally, several witnesses noted that many hospital employees, such as nurses, typically followed an “Eight and Eighty” working plan, where individuals would work eight hours a day for a period of ten days before a break of four days off. In other words, on average these employees would work forty hours a week, but with a lopsided distribution which would, under the proposed framework for overtime pay, require overtime pay. A record of a committee meeting on February 14 states that Richard Young of the Vermont Hospital Association and a Mr. Taplin, of St. Johnsbury testified they were “concerned about the time-and-a-half provision in the bill” for this specific reason, and “urged an amendment which would exclude hospitals.” This would ultimately appear in the final bill as well.

There were also a variety of additional constituent letters which the committee kept and possibly referenced in their examination of the overtime issue. Most were in opposition to broad overtime requirements. One, a letter from Fred Whittemore, owner of the Dorset Inn, went so far as to argue that the General Assembly was becoming a “dictatorship” and that “it won’t be long before there will be open rebellion... Straight time we might live with, but not time and a half for over 40 hours.” Some thought that Vermont should not issue its own overtime requirements, and instead leave it to federal law. For example, one letter states that, “The 1½ overtime provisions do impose a hardship as outlined in S. 1012... The small businessman finds himself surrounded with laws and regulations which make it increasingly harder to run a small business today. I suggest that the Federal law amply takes care of the wage and hour problem.” However, there were some people who argued that several of the wage and proposed overtime exemptions might lead to continued abuse. For example, Malvine Cole argued in a letter that her son, a 17-year-old busboy who worked 12-14 hours a day, who was exempt from minimum wage and the proposed overtime requirements, had been “exploited.”

The bill ultimately passed the Senate with overtime exemptions for the preceding industries on March 9, 1967, after amendments were added the previous day. When the bill was referred to the House Committee on General and Military affairs on March 14, the final text was for the most part unchanged. However, there was testimony from Bob Fitzgerald, Executive Manager of the Vermont Truck and Bus Association, and Mr. Wadhams, Treasurer of the Lake Champlain Transportation Company of Burlington, on March 29, in which they advocated an additional overtime exemption for certain employees in the transportation sector who were not covered by federal law. According to the committee report on this proposed amendment to the Senate bill, which was ultimately adopted, “In 1966, Congress substantially amended the Fair Labor Standards Act after two years of deliberations and hearings. After reviewing the exemption from overtime pay provisions referable to certain transportation employees, the exemption was preserved intact... Vermont should adopt the overtime exemptions contained in the Federal Act particularly since Congress has so recently and exhaustively reviewed the exemption and approved its continuation.”

It's important to note, however, that not all overtime provisions appeared to have a specific rationale stated in the records. For example, the exemption for employees of public-supported nonprofit organizations was mentioned in Senate testimony by Mr. Lavin, the Industrial Relations Commissioner, but not described any further. Additionally, there appeared to be no one from the farming industry who testified before either House or Senate committee, even though an overtime exemption for agricultural workers was adopted nonetheless. However, since exemptions incorporating all of the industries that had individuals testifying ultimately appeared in the final text of the bill, it is safe to assume at least a correlation between the content of their testimony and the legislative intent behind the exemptions.

The House record for the 1967 bill did not contain much new information. It did contain a quote from Borden Avery claiming that he felt giving student workers overtime would not address any potential exploitation of those workers, and he advocated an exemption for them. He admits, however, that allegations of exploitation of student workers are “probably true in some isolated cases.” The House heard further testimony from smaller retailers arguing that overtime requirements would harm their businesses and make them uncompetitive, along with similar remarks from management at transportation companies. Some of them mention federal exemptions from overtime for their industries and advocate that Vermont follow that precedent. The committee chair at one point scolded a representative of the Vermont Retail Grocers Association for his opposition to the bill because, as the chair claims, grocery workers make less than what they would receive if they just collected unemployment benefits. Economic considerations were paramount, just as in the Senate hearings.

The first notable remark from the House records is a comment from a committee member who suggested the state exemption for retail and service establishments came out of a deference to the language of federal law. There is also an extensive debate about an exemption for workers with disabilities. Some on the committee raised concerns that not having such an exemption would lead to higher unemployment among the disabled, while others opposed it and directly stated they think the exemption would constitute discrimination. Vermont has since removed its exemption for disabled workers, so this debate is largely moot today.<sup>33</sup> It clearly demonstrates that discrimination concerns did come up in at least this instance, however.

#### 5.4 NEWSPAPER COVERAGE: 1967

Newspaper coverage of the 1967 overtime bill did not reveal much of significance. Of the three articles found that were relevant, all either focused on the minimum wage increase that went along with the overtime provision or were extremely short and lacking in detail. One article was notable, however. It stated that the Senate General Committee “endorsed an amendment [to the bill] which would direct the industrial relations commissioner to investigate the employment of students and if there have been abuses or problems in the student exemption from the Vermont minimum wage statute.” The article continues to say that the amendment “would also direct the commissioner to investigate all other industries for this purpose.”<sup>34</sup> This perhaps indicates that the committee was concerned about abuses regarding other exempt workers, but does not clarify anything beyond that.

## 6 CONCLUSION

As stated earlier, the research team cannot make a definitive conclusion on whether or not discriminatory intent was at play in the creation of Vermont's minimum wage and overtime exemptions. What it can confirm is that there was heated debate about these new requirements and the exemptions that went along with them. It also adds context as to why some of the exemptions may have been passed. The record presents a very mixed picture of the considerations at play, although economic concerns were the most frequently discussed. Some statements made in the record hint at motivations that may concern modern Vermont legislators, but none of them provide blatant evidence of discriminatory intent. Ultimately, it is up to the Vermont legislature to review the evidence contained in this report in conjunction with their assessment of the current impact of the law to decide if changes are warranted. Given these exemptions impact lower-income individuals who are more likely to be economically vulnerable than others, the utmost care should be taken to ensure that the law treats them appropriately.

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<sup>6</sup> U.S. Department of Labor, “Compliance Assistance Resources: Fair Labor Standards Act Advisor,” accessed October 30, 2022, <https://webapps.dol.gov/elaws/whd/flsa/screen75.asp#:~:text=Executive%2C%20administrative%2C%20professiona%20and%20outside,overtime%20provisions%20of%20the%20FLSA>.

<sup>7</sup> Vermont General Assembly, “21 V.S.A. § 383,” The Vermont Statutes Online; Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online.

<sup>8</sup> Farmworkers must be paid at least the federal minimum wage except in limited circumstances where the farm utilized less than 500 man-days of agricultural labor in any quarter of the preceding calendar year. A man-day is defined as any day a worker performs at least 1 hour of agricultural labor. U.S. Department of Labor Wage and Hour Division, “Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA),” last modified January 2020, accessed October 30, 2022, <https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture>.

<sup>9</sup> Minors who perform newspaper delivery are exempt from the federal minimum wage, but not adults. U.S. Department of Labor, “Newspaper Delivery,” accessed October 30, 2022, <https://www.dol.gov/general/topic/youthlabor/newspaper>.

<sup>10</sup> Does not include laundry employees, nurses’ aides, or practical nurses. Vermont Department of Labor Wage and Hour Program, “A Summary of Vermont Wage and Hour Laws,” last modified June 2019, accessed October 30, 2022, [https://labor.vermont.gov/sites/labor/files/doc\\_library/WH-13-Wage-and-Hour-Laws-2019%20.pdf](https://labor.vermont.gov/sites/labor/files/doc_library/WH-13-Wage-and-Hour-Laws-2019%20.pdf).

<sup>11</sup> This is the Vermont Basic Tipped Wage, which is the minimum employers can pay if the employee’s wage and tips combined equal or exceed the standard minimum wage of \$12.55. If the employee makes less than \$12.55 per hour with tips, the employer must pay the difference. Federal law contains a similar provision except the basic tipped wage equivalent is only \$2.13. Vermont Department of Labor Wage and Hour Program, “A Summary of Vermont Wage and Hour Laws”; U.S. Department of Labor Wage and Hour Division, “Questions and Answers About the Minimum Wage,” accessed October 30, 2022, <https://www.dol.gov/agencies/whd/minimum-wage/faq>

<sup>12</sup> The minimum wage for federal government employees and contractors is effectively \$15 per hour due to executive action. U.S. Office of Personnel Management, “Release: OPM Announces \$15 Minimum Wage for U.S. Federal Civilian Employees,” January 21, 2022, <https://www.opm.gov/news/releases/2022/01/release-opm-announces-dollar15-minimum-wage-for-us-federal-civilian-employees/>.

<sup>13</sup> Federal law exempts employees under 20 from the minimum wage for work performed for the first 90 days of employment. They must be paid at least \$4.25 during this period instead. U.S. Department of Labor Wage and Hour Division, “Fact Sheet #32: Youth Minimum Wage - Fair Labor Standards Act,” last modified July 2008, accessed October 30, 2022, <https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/whdfs32.pdf>.

<sup>14</sup> Full-time high school students are exempt from the Vermont minimum wage. Vermont Department of Labor Wage and Hour Program, “A Summary of Vermont Wage and Hour Laws.”

<sup>15</sup> See Fact Sheet #17D for full details about applicability. U.S. Department of Labor Wage and Hour Division, Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA), last modified September 2019, accessed October 31, 2022, <https://www.dol.gov/agencies/whd/fact-sheets/17d-overtime-professional>.



<sup>16</sup> Vermont General Assembly, “21 V.S.A. § 383,” The Vermont Statutes Online; Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online; Vermont Department of Labor Wage and Hour Program, “A Summary of Vermont Wage and Hour Laws”; U.S. Department of Labor, “Overtime Pay,” accessed October 30, 2022, <https://www.dol.gov/agencies/whd/overtime>.

<sup>17</sup> U.S. Department of Labor, “Compliance Assistance Resources: Fair Labor Standards Act Advisor,” accessed October 30, 2022.”

<sup>18</sup> Vermont General Assembly, “21 V.S.A. § 383,” The Vermont Statutes Online; Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online; Vermont Department of Labor Wage and Hour Program, “A Summary of Vermont Wage and Hour Laws.”

<sup>19</sup> U.S. Department of Labor Wage and Hour Division, “Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA).”

<sup>20</sup> A limited exemption exists for commissioned sales employees if more than half the employee’s earnings come from exemptions and the employee averages at least 1.5 times the minimum wage for each hour worked. U.S. Department of Labor, “Compliance Assistance Resources: Fair Labor Standards Act Advisor.”

<sup>21</sup> The establishment must either not operate for more than 7 months per calendar year or its average receipts for any 6 months of the preceding calendar year must not have been more than 1/3 of its average receipts for the other 6 months of the year. Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online.

<sup>22</sup> Federal law provides limited exemptions for police officers and firefighters working in departments where there are less than 5 officers or firefighters. U.S. Department of Labor Wage and Hour Division, “Fact Sheet #7: State and Local Governments Under the Fair Labor Standards Act (FLSA),” last modified March 2011, accessed October 30, 2022, <https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/whdfs7.pdf>.

<sup>23</sup> A limited exemption exists for many registered nurses who are paid on a salary of at least \$684 per week. U.S. Department of Labor Wage and Hour Division, “Fact Sheet #17N: Nurses and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA),” Last modified September 2019, accessed October 30, 2022, <https://www.dol.gov/agencies/whd/fact-sheets/17n-overtime-nurses>.

<sup>24</sup> Exempt employees are those of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes. The exemption only applies if the employer has filed relevant paperwork with the Commissioner of Labor, the employee is paid on a biweekly basis, and the employee receives 1.5 times regular wages for any work beyond 8 hours in one day or 80 hours in that biweekly period. In practice this exemption has little material effect. Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online.

<sup>25</sup> Drivers, driver’s helpers, loaders, and mechanics are exempt if they are employed by a motor carrier and their duties affect the safety of operation of vehicles involved in transportation of passengers or property in interstate or foreign commerce. U.S. Department of Labor Wage and Hour Division, “Fact Sheet #19: The Motor Carrier Exemption under the Fair Labor Standards Act (FLSA),” last modified November 2009, accessed October 31, 2022, <https://www.dol.gov/agencies/whd/fact-sheets/19-flsa-motor-carrier>.

<sup>26</sup> The Vermont exemption is explicitly written to be identical to that of the relevant federal exemption. Vermont General Assembly, “21 V.S.A. § 384,” The Vermont Statutes Online.

<sup>27</sup> See Fact Sheet #17D for full details about applicability. U.S. Department of Labor Wage and Hour Division, Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA), last modified September 2019, accessed October 31, 2022, <https://www.dol.gov/agencies/whd/fact-sheets/17d-overtime-professional>.

<sup>28</sup> “John Boylan, Who Guided Budget in Vermont’s Senate, Dies at 73,” *The New York Times*, February 16, 1981, <https://www.nytimes.com/1981/02/16/obituaries/john-boylan-who-guided-budget-in-vermont-s-senate-dies-at-73.html>.

<sup>29</sup> “\$1 Minimum Wage Bill,” *White River Valley Herald*, February 28, 1957.

<sup>30</sup> The article was published by the Burlington Free Press, the Rutland Daily Herald, the Brattleboro Reformer, and the Barre Daily Times. “Union Leader Attacks Large Retail Chains at Minimum Wage Hearing,” *The Burlington Free Press*, April 18, 1957.

<sup>31</sup> Note that this particular piece is an editorial board opinion. “Minimum Wage Problems,” *Rutland Daily Herald*, June 14, 1957.

<sup>32</sup> Vermont Press Bureau, “Senate Votes a Wage Bill,” *Rutland Daily Herald*, June 19, 1957.

<sup>33</sup> Rep. Thomas Stevens, interview by Noah Durham, Dylan Griffith, and Thomas Lane, October 25, 2022.

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<sup>34</sup> Burlington Free Press Capitol Bureau, "Senate Favors \$1.40 Minimum Wage," *The Burlington Free Press*, February 22, 1967.