

SENATE BILL REPORT

SB 5368

As Reported By Senate Committee On:
Health & Long-Term Care, February 24, 2005

Title: An act relating to revising the mandatory overtime prohibition applicable to nurses, but only with respect to increasing the types of health care facilities that are subject to the prohibition from requiring nurses to perform overtime work and limiting the exceptions from the prohibition related to prescheduled on-call time and completion of patient care procedures.

Brief Description: Modifying the nurse mandatory overtime prohibition.

Sponsors: Senators Keiser, Benton, Kastama, Thibaudeau, Franklin, McAuliffe and Rasmussen.

Brief History:

Committee Activity: Health & Long-Term Care: 2/7/05, 2/24/05 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5368 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Thibaudeau, Vice Chair; Franklin, Kastama, Kline and Poulsen.

Minority Report: Do not pass.

Signed by Senators Benson and Brandland.

Minority Report: That it be referred without recommendation.

Signed by Senators Johnson and Parlette.

Staff: Jonathan Seib (786-7427)

Background: Both federal and Washington minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over 40 hours per week. Another state law requires overtime compensation for certain full-time employees, including nursing staff, of state institutions under the control of the Department of Social and Health Services (DSHS) or the Department of Corrections (DOC) after eight hours of work in a work day or 40 hours of work in a work week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception enacted in 2002 prohibits covered health care facilities from requiring overtime, except in limited circumstances, for registered nurses and licensed practical nurses who are involved in direct patient care and paid an hourly wage. For this overtime prohibition law, overtime means work in excess of an agreed upon, regularly scheduled shift of not more

than 12 hours in a 24 hour period or 80 hours in a 14 day period. A health care facility means a facility that is licensed under specified laws as a hospital, a hospice, a rural health care facility, or a psychiatric hospital. A nursing home or a home health agency is considered part of a health care facility if the nursing home or home health agency is operating under the license of the health care facility.

The state psychiatric hospitals and other institutions operated by DSHS or DOC are not licensed under the statutes specified in the overtime prohibition law. Home health agencies are not authorized to operate under a license of a health care facility.

Summary of Substitute Bill: The following entities are added to the list of health care facilities covered by the overtime prohibition law for certain registered and licensed practical nurses:

- state hospitals that are operated and maintained by the state for the care of the mentally ill including Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center;
- residential habilitation centers established to provide services to persons with developmental disabilities including Lakeland Village, Rainier School, Yakima Valley School, Fircrest School, Frances Haddon Morgan Children's Center, Interlake School, and facilities at Harrison Memorial Hospital;
- state veterans' homes including the Washington Soldiers' Home, the Washington Veterans' Home, and the Eastern Washington Veterans' Home;
- state or local correctional institutions with respect to facilities owned and operated by the state or by local governments that provide health care services to adult inmates; and
- facilities that provide health care in an institution for juveniles committed to the custody of DSHS or in a county detention facility where juveniles are confined.

Overtime requirements for certain employees of DSHS or DOC who are entitled to overtime compensation are subject to the overtime prohibition law if they are covered employees of a health care facility under that law.

Substitute Bill Compared to Original Bill: The substitute bill removes the section which narrowed the existing "on-call" exceptions to the prohibition on mandatory overtime for nurses.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The same standards should apply to the state facilities as apply to private facilities. The current law hinders recruitment at public facilities. Some facilities have implemented mandatory on-call rather than overtime. This bill would not prohibit voluntary overtime. Increased demands on nurses are making the field less desirable and are

contributing to a nursing shortage. Higher medical errors occur as a result of having to work longer hours; this is a patient safety issue.

Testimony Against: The narrowing of the exceptions is concerning, and continuing to limit the exceptions will lead to problems in access to patient care. Having the opportunity to quickly respond to unexpected surges in demand is critical. Pre-scheduled on call is sometimes necessary for rural hospitals to manage patient census fluctuation and surgical procedure scheduling. This issue should be negotiated on local levels between hospitals and unions.

Who Testified: PRO: Sharon Ness, UFCW; Mike Dyer, SEIU 1199 NW; Kim Armstrong, Washington State Nurses Association.

CON: Lisa Thatcher, Taya Briley, Washington State Hospital Association; Craig Wilson, Kittitas Valley Community Hospital.