

SENATE BILL REPORT

HB 1290

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, March 17, 2011
Ways & Means, March 29, 2011

Title: An act relating to the prohibition on mandatory overtime for certain health care employees.

Brief Description: Concerning mandatory overtime for certain health care employees.

Sponsors: Representatives Green, Cody, Van De Wege, Sells, Kenney and Reykdal.

Brief History: Passed House: 3/03/11, 97-0.

Committee Activity: Labor, Commerce & Consumer Protection: 3/14/11, 3/17/11 [DP-WM].

Ways & Means: 3/24/11, 3/29/11 [DPA, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

Staff: Ingrid Mungia (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Holmquist Newbry, Keiser, Kohl-Welles, Pflug, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Honeyford and Schoesler.

Staff: Richard Ramsey (786-7412)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Both federal and Washington state 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 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 prohibition on mandatory overtime, 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. Institutions operated by the DOC are not licensed under the statutes specified in the overtime prohibition law.

Summary of Bill (Recommended Amendments): State or local correctional institutions that provide health care services to adult inmates are added to the list of health care facilities covered under the prohibition on mandatory overtime for certain registered and licensed practical nurses.

The bill is contingent on funding in the 2011-13 omnibus appropriations act.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): A null and void clause is added, making the bill contingent on funding in the 2011-13 omnibus appropriations act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection): PRO: Mandatory overtime is outlawed in the private sector. It is very difficult to recruit and retain nurses in the public sector with these working conditions. The DOC wants to stop having mandatory overtime. I believe the fiscal note will not bear out. We need to give these people a quality of life. Being tired around violent offenders can cost you your life. Health care workers in DOC facilities are working around violent offenders. One of the main medical errors is giving the wrong amount of medication. There is no time for error, especially when inmates are on psychiatric drugs. This impacts the state of Washington on many levels. The better we can do our job, the less it is going to cost the state. When nurses are exhausted, we break down and have to go out on leave. Safety is always something we need to be conscious of. We need to abolish mandatory overtime so we

can be safe at our work and take care of our patients. Safety is always something we need to be on the alert for when working with inmates. The average age of a nurse in DOC is 45 to 60 years old. Most other groups have been able to take care of this issue through collective bargaining. We have not been able to address this issue through collective bargaining.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Representative Green, prime sponsor; Jim Smith, Terry Hutchins, Lynn Kunkle, Anna Jancewicz, Teamsters 117.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: Being tired around violent offenders could cost you your life. Nursing staff have stressful and challenging jobs of providing health care to convicted murders, rapists and child molesters. It is an aging work force. Working around violent offenders allows no room for error. They cannot afford to be fatigued on the job. The Legislature has already recognized this with respect to community health nurses and should extend this to nurses in correctional facilities. Access to health care is one of the primary reasons for riot and inmate assaults. DOC health services overtime in 2009 and 2010 was 122,000 hours; of this 108,000 hours were for RNs and LPNs.

We get informed about mandatory overtime usually two hours or less before the end of your shift – which means we'll have to work an additional 8-hour shift, then return for your next scheduled shift. This makes you tired; tired makes you unsafe; unsafe can cause mistakes; mistakes lead to lawsuits and L&I costs.

DOC already hires contract nurses because there's little incentive for DOC-employee nurses to remain with the agency given hardships brought on by mandatory overtime. At one facility we have the expression "8 and gate -- be safe." If we were able to have job share or have part-time nursing with a working pool, then health care costs could decrease.

Safety is priority for Corrections this year. Mandatory overtime is required by sickness, or a death in family. However, working overtime has a domino effect, exhausted staff is more likely to get sick and require an overtime replacement in their absence. Agency nurses are an older population, many of whom have health issues. The bill does not prohibit voluntary overtime and mandatory overtime is allowed under emergent circumstances. I worked five mandatory overtime shifts in a three week period; a colleague worked 17 mandatory overtime shifts in a 31 day month.

CON: DOC operates five prison health care facilities with 24/7 inpatient nursing coverage. Mandatory overtime is required to meet minimum staffing needs and constitutionally protected medical care needs of offenders. It is a necessary management tool given the unique circumstances of the DOC. Contract nursing is a high-cost model. Bill does not allow exceptions.

Persons Testifying (Ways & Means): PRO: Jim Smith, Teamsters 117; Lynn Kunkle, DOC Nurse Monroe; Steve Ford, DOC Nurse; Anna Janciezicz, Teamsters 117.

CON: Julie Murray, Office of Financial Management.