

# SENATE BILL REPORT

## SB 5344

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As of March 1, 2019

**Title:** An act relating to nursing fatigue.

**Brief Description:** Concerning nursing fatigue. [**Revised for 1st Substitute:** Concerning staffing committees and limiting the total number of hours nurses can work across all health care settings to sixty hours in a week.]

**Sponsors:** Senators Cleveland, O'Ban, Hobbs, Takko, Mullet, Palumbo, Rivers, Wellman and Hunt.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 2/15/19, 2/19/19 [DPS-WM, DNP, w/oRec].

**Ways & Means:** 2/27/19.

**Brief Summary of First Substitute Bill**

- Requires nurse staffing plans to include a regular review of data on missed meal and rest breaks and nurse call-back rates.
- Requires the Department of Health to investigate substantiated complaints a hospital failed to respond to a pattern of missed meal and rest breaks.
- Limits registered nurses to a cumulative 60 hours of direct clinical nursing care work per week.

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**SENATE COMMITTEE ON HEALTH & LONG TERM CARE**

**Majority Report:** That Substitute Senate Bill No. 5344 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; O'Ban, Ranking Member; Bailey, Becker, Rivers and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Randall, Vice Chair; Conway and Frockt.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Dhingra and Keiser.

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*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.*

**Staff:** Greg Attanasio (786-7410)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Amanda Cecil (786-7460)

**Background:** Hospitals are required to establish nurse staffing committees to develop and oversee an annual patient care unit and shift-based nurse staffing plan; conduct a semi-annual review of the nurse staffing plan; and review, assess, and respond to staffing concerns. Nurse staffing plans must consider such factors as:

- patient census, including total patients by unit and shift;
- level of intensity of patients and the nature of the care to be delivered on each shift;
- skill mix;
- level of experience of nurses providing care;
- the need for specialized or intensive equipment;
- the physical design of the patient care unit;
- staffing guidelines adopted by national nursing associations, specialty associations, and other health professional associations;
- the availability of other personnel supporting nursing services on the unit; and
- strategies to enable nurses to take meal and rest breaks.

Hospitals are required to implement the nurse staffing plan, and assign nursing personnel in accordance with the plan. Nurses may report personnel assignments that are not in accordance with the nurse staffing plan to the nurse staffing committee. The Department of Health (DOH) must investigate complaints of a failure to form a nurse staffing committee; conduct a semi-annual review of the nurse staffing plan; submit a nurse staffing plan on an annual basis; or follow the nurse staffing plan's personnel assignments.

Registered nurses who work on an hourly basis in acute care hospitals cannot be required to work overtime in excess of the established schedules or agreed-upon work week.

**Summary of Bill (First Substitute):** Nurse staffing plans must include a regular review of aggregate data on missed meal and rest breaks and a regular review of call-back rates for nurses activated and called in to work during prescheduled on-call shifts.

A registered nurse may report to the nurse staffing committee instances of missed meal and rest breaks. Nurse staffing committees must develop a process to examine and respond to data submitted by registered nurses.

After determining that evidence indicates a continuing pattern of unresolved violations and was not caused by an unforeseeable emergency, DOH must investigate complaints of a hospital's failure to collect and review aggregate data on meal and rest breaks or appropriately respond to complaints regarding a pattern of missed meal and rest breaks.

A registered nurse may not perform direct clinical nursing care for compensation for more than a cumulative 60 hours per week across all health care settings where they are employed, except in the event of an unforeseeable emergency circumstance or if the work is performed by a nurse who is employed as a flight nurse. An unforeseeable emergency circumstance is

an unforeseen national, state, or municipal emergency; any time a hospital disaster plan is activated; or any unforeseen disaster that substantially affects the need for health care services.

A registered nurse must attest at the time of licensure and license renewal that they will not work more than a cumulative 60 hours per week providing direct clinical nursing care except in emergency circumstances.

**EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE (First Substitute):**

- Amends the title to “An act relating to staffing committees and limiting the total number of hours nurses can work across all health care settings to 60 hours in a week”
- Removes provision requiring a health care facility to make reasonable efforts to find a replacement for an employee who has been active to an on-call shift immediately before or after a regular shift if that employee indicates they are fatigued.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2020.

**Staff Summary of Public Testimony on Proposed Substitute (Health & Long Term Care):** *The committee recommended a different version of the bill than what was heard.*

PRO: The foundation of the bill is based on current law requiring hospitals to form nurse staffing committees. The bill strengthens the authority of the committee by providing a complaint process for missed meal and rest breaks. The bill allows for flexibility on the hospital level to address meal and rest breaks in a way that works for that hospital. The bill is a balanced approach and the changes are necessary for patient safety and safety of the nurses.

CON: Fatigue occurs on a day to day basis, and a nurse working more than a 12-hour shift is more prone to make mistakes. Breaks should be uninterrupted. The bill fails to hold hospitals accountable for missed breaks and does not address fatigue and rest breaks for hospital employees.

**Persons Testifying (Health & Long Term Care):** PRO: Senator Annette Cleveland, Prime Sponsor; Cassie Sauer, CEO, Washington State Hospital Association; Ian Corbridge, Director, Safety and Quality, Washington State Hospital Association; Barb James, Director, Women's and Children's Services, PeaceHealth Southwest Medical; Laura Hutchison, Staff Nurse, PeaceHealth Southwest Medical Center; Tracey Kasnic, Chief Nursing Officer, Confluence, Central Washington Hospital; Lisa Thatcher, Washington State Hospital Association.

CON: Wes McMahan, Registered Nurse; Bret Percival, United Food and Commercial Workers 21; Sally Watkins, Washington State Nurses Association; Jane Hopkins, Service Employees International Union Healthcare 1199NW; Dawn Morell, Washington State Nurses Association; Patricia Brown, United Food and Commercial Workers 21; Samantha Grad, United Food and Commercial Workers 21.

**Persons Signed In To Testify But Not Testifying (Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: This builds on the existing staffing committee structure that is working. It makes the staffing plans include information on missed breaks and nurse call-back rates and allows DOH to investigate and hold hospitals accountable. This keeps health care affordable. It does not require nurses work 60 hours of overtime, but limits the overtime. This is an alternative to SB 5190.

CON: Nurses should not work more than 60 hours, but this does not address the underlying issues that SB 5190 does.

**Persons Testifying (Ways & Means):** PRO: Patrick Ahearne, COO/CNO, St. Clare Hospital; Darcy Jaffe, SVP, Safety and Quality, Washington State Hospital Association; Lisa Thatcher, Washington State Hospital Association.

CON: Melissa Johnson, Washington State Nurses Association.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.