

**ALASKA STATE LEGISLATURE**  
**HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

January 24, 2006

3:09 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Paul Seaton, Vice Chair  
Representative Carl Gatto  
Representative Sharon Cissna  
Representative Vic Kohring  
Representative Berta Gardner

**MEMBERS ABSENT**

Representative Tom Anderson

**COMMITTEE CALENDAR**

HOUSE BILL NO. 357

"An Act updating the terminology in statutes for persons with disabilities; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 271

"An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 357

SHORT TITLE: STATUTORY REFERENCES TO DISABILITIES

SPONSOR(s): REPRESENTATIVE(s) WILSON

01/11/06	(H)	READ THE FIRST TIME - REFERRALS
01/11/06	(H)	HES, FIN
01/24/06	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 271

SHORT TITLE: LIMIT OVERTIME FOR REGISTERED NURSES

SPONSOR(s): REPRESENTATIVE(s) WILSON

04/15/05	(H)	READ THE FIRST TIME - REFERRALS
04/15/05	(H)	L&C, HES, FIN
04/30/05	(H)	L&C AT 1:00 PM CAPITOL 17
04/30/05	(H)	Moved Out of Committee
04/30/05	(H)	MINUTE(L&C)
05/02/05	(H)	L&C RPT 4DP 3NR
05/02/05	(H)	DP: CRAWFORD, LYNN, GUTTENBERG, ANDERSON;
05/02/05	(H)	NR: LEDOUX, ROKEBERG, KOTT
05/03/05	(H)	HES AT 3:00 PM CAPITOL 106
05/03/05	(H)	Heard & Held
05/03/05	(H)	MINUTE(HES)
08/29/05	(H)	HES AT 1:30 PM Anch LIO Conf Rm
08/29/05	(H)	Heard & Held
08/29/05	(H)	MINUTE(HES)
09/23/05	(H)	HES AT 8:00 AM Anch LIO Conf Rm
09/23/05	(H)	Heard & Held
09/23/05	(H)	MINUTE(HES)
01/24/06	(H)	HES AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

JOAN O'KEEFE, Executive Director  
Southeast Alaska Independent Living  
Juneau, Alaska

POSITION STATEMENT: Her testimony supporting HB 357 was read by Representative Peggy Wilson.

GALE SINNOT, Director  
Division of Vocational Rehabilitation  
Department of Labor & Workforce Development (DLWD)  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 357.

KEVIN GADSEY, Independent Living Specialist and Counselor  
Southeast Alaska Independent Living (SAIL)  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 357.

CARRIE PRADEGER, Health and Social Services Planner  
Governor's Council on Disabilities and Special Education  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 357 and suggested revisions.

ROD BETIT, President/CEO

Alaska State Hospital and Nursing Home Association (ASHNHA)  
Juneau, Alaska  
POSITION STATEMENT: Testified in opposition to HB 271.

RUSSELL GRANGE, Chief Human Resources Officer  
Providence Health System Alaska  
Anchorage, Alaska  
POSITION STATEMENT: Testified in opposition to HB 271.

SHARA SUTHERLIN, Chief Nurse Executive  
Providence Alaska Medical Center  
Anchorage, Alaska  
POSITION STATEMENT: Testified in opposition to HB 271.

MILA COSGROVE, Director  
Division of Personnel  
Department of Administration (DOA)  
Juneau, Alaska  
POSITION STATEMENT: Testified on HB 271.

JANET CLARKE, Assistant Commissioner  
Finance and Management Services  
Department of Health & Social Services (DHSS)  
Juneau, Alaska  
POSITION STATEMENT: Expressed concerns with HB 271.

MICHELLE MURPHY, Registered Nurse (RN)  
Providence RN's Union Health and Safety Officer  
Providence Alaska Medical Center  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 271.

KATHLEEN GETTYS, RN  
Progressive Care Unit,  
Providence Alaska Medical Center;  
President of Providence RN's Bargaining Unit;  
Representative, Alaska Nurses Association (ANA)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 271.

STACY ALLEN, RN  
Business Agent  
Laborers Local 341  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 271.

DIANNE O'CONNELL, Executive Director and Labor Director

Alaska Nurses Association  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 271.

MIKE ALEXANDER, RN  
Alaska Psychiatric Institute (API)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 271.

CATHY FEASTER, Supervising Nurse Practitioner  
Division of Community Health Services  
Department of Health and Human Services  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 271.

#### **ACTION NARRATIVE**

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at [3:09:37 PM](#). Representatives Wilson, Gatto, Seaton, Cissna, and Gardner were present at the call to order. Representative Kohring arrived as the meeting was in progress.

#### HB 357-STATUTORY REFERENCES TO DISABILITIES

[3:09:53 PM](#)

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 357, "An Act updating the terminology in statutes for persons with disabilities; and providing for an effective date."

[CHAIR WILSON passed the gavel to Vice Chair Seaton, for the duration of the meeting.]

[3:13:42 PM](#)

CHAIR WILSON, speaking as the prime sponsor of HB 357, paraphrased from the following written sponsor statement [original punctuation provided]:

After the Americans with Disabilities Act of 1990, most states modified their statutes to reflect a positive reference- changing the word "handicapped" to "person with a disability". This bill changes all Alaska State Statues to rid them of this archaic reference that has negative and demoralizing

connotations in reference to a person's ability and potential. Using "a person with a disability" reflects language that is in Federal legislation- the Federal Workforce Investment Act, the American's with Disabilities Act, the Civil Rights Act of 1991; The Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973 as amended in 1992 and 1998.

These changes are being proposed in consultation with the Department of Labor, other state agencies, and along with the Governor's Council on Disabilities and Special Education. There is support for this bill from numerous other organizations such as the South-East Alaska Independent Living Center, which represent people with disabilities. This bill is not designed to modify any existing requirements or exemptions, nor will it be changing any existing requirements or exemptions with the new terminology. This bill is designed to serve the constituents of everyone across the state that are affected by this existing negative and demeaning terminology.

I ask for your support of HB 357 to update and modernize the language that is in our Alaska Statutes.

[3:16:14 PM](#)

CHAIR WILSON paraphrased a letter submitted by Joan O'Keefe, Executive Director, Southeast Alaska Independent Living, [original punctuation provided]:

We strongly urge the removal of the word "handicap" from the legal vocabulary, noting it as a slur and reference to begging for food (cap in hand) as our people had to do less than 100 years ago. Other terms such as "mental disabilities" and "emotionally disturbed" can be described differently and positively as "cognitive disabilities" and "emotional disabilities."

American culture consistently redefines itself through language and sub-cultures often use language to redefine themselves. Negroes became blacks then African-Americans. Homosexuals chose the term "gay" for themselves. People with disabilities have done

the same during the years, attempting to fight stereotypes and negative imagery.

Through all the changes, person-first language has become the most effective and descriptive of all choices. As the House Bill 357 passes from committee to committee, please keep in mind that we are all people first. Some people have red hair, some blue eyes; some are persons with developmental disabilities and some are persons who experience low vision. Yet underneath it all, we are simply human beings. It is in this vein we urge your support of House Bill 357.

[3:17:55 PM](#)

GALE SINNOT, Director, Division of Vocational Rehabilitation, Department of Labor & Workforce Development (DLWD), stated support for HB 357. She named the various state agencies that would benefit from HB 357, and said that the word handicapped is an archaic term which invokes a negative response versus terminology which reflects abilities. In response to questions, she explained why the term "handicapped" is considered archaic and provided the root of its meaning. She related that "persons with disabilities" would not like to be referred to as "handicapped."

[3:23:03 PM](#)

KEVIN GADSEY, Independent Living Specialist and Counselor, Southeast Alaska Independent Living (SAIL), expressed his support of HB 357 stating that it represents the best option of terminology available. He requested additional changes as follows: page 2, line 6, replace "emotionally disturbed" with "emotional disability"; page 2, line 20, replace "mental retardation" with "developmental or cognitive disability"; page 17, line 28, replace "emotionally disturbed" with "emotional disability". He emphasized that [Alaska's State Statute] terminology needs to be contemporary across the board and utilize the standard that is used throughout the nation and preferred by the people characterized by its usage. In response to a question, he stated that the rule of thumb is to be as specific as possible in the description [of the disability] and when possible to name the limitation. He highlighted the importance of being recognized as a person prior to being categorized by terminology. He said that misuse of language may also cause stereotypes.

3:29:51 PM

REPRESENTATIVE GATTO asked whether pregnant women/mothers with toddlers should be legally allowed to use parking spaces designated for the handicapped.

MR. GADSEY opined that pregnancy could be seen as a temporary disability. To further questions, he clarified his recommended terminology changes for HB 357, and added that the words "serious" or "severe" should be changed to "significant". He said that in using terminology it is important to find common ground when addressing people of any disposition.

3:39:02 PM

CARRIE PRADEGER, Health and Social Services Planner, Governor's Council on Disabilities and Special Education, Department of Health and Social Services, stated support ("Council") for HB 357 and requested that the bill also include language that would respectfully address seniors, mental health patients, and substance abusers. She noted that the committee packet should include a letter from Kathleen Fitzgerald, Chair, Governor's Council on Disabilities and Special Education, DHSS, which specifies the proposed changes.

VICE CHAIR SEATON stated that the changes are included in the committee packet in the form of a conceptual amendment. He reviewed the terms being discussed for change as follows: "mentally disturbed" changed to "emotional disability"; "those who are ill" changed to "with an infirmity"; and "mental retardation" changed to either "cognitive disability" or "developmental disability". He also reviewed the pages and lines where the terms "aged," "infirm," or "alcoholics" and "drug addicts" appear in HB 357. He then asked for the Council's preferred replacement for "infirm".

MS. PRADEGER clarified that the Council suggests that "infirm" be changed to "someone with an illness". However, she conceded that additional "wordsmithing" may be necessary.

3:45:12 PM

REPRESENTATIVE GARDNER suggested that when referring to a person who is frail, or with constricted movement, the term "infirmity" might be appropriate rather than "ill."

MS. PRADEGER agreed, and pointed out that "aged" should be "seniors," and putting "person" before the defining term is the Council's primary concern such that the language would read: "persons with developmental disabilities"; "persons who are blind"; "persons with mental illness"; and "persons with substance abuse disorders" or "persons with behavioral health/substance abuse issues".

REPRESENTATIVE CISSNA suggested that it may be helpful to have a written source for the acceptable language commonly in use in this arena, which would be helpful to avoid conflicts when implementing the appropriate terminology.

[3:49:06 PM](#)

CHAIR WILSON pointed out that [the bill packet] includes an example of how Minnesota has dealt with updating its statutes to reflect the currently preferred terms. She highlighted the unanimity in having the word "person" preceding any defining term, but stated that there does not seem to be a strict standard, as every state deals with it slightly different. In response to a question, she stated that it would be important to comply with federal terminology, especially regarding the use of the term "disorder," to avoid unnecessary conflict resulting in program funding issues.

[3:52:00 PM](#)

CHAIR WILSON moved to adopt Amendment 1, which read [original punctuation provided]:

Page 2, line 3: "(A) itinerant outreach services to students who are deaf, deaf-blind, mentally.. "

Page 2, line 6: "... disturbed (and) or students with multiple disabilities;"

Page 9, line 3 & 4 "... and usable by persons with disabilities (and by the aged,) seniors or (infirm) those who are ill."

Page 9, line 12 & 13: " ... a person with a disability (or an) a (aged) senior citizen or (infirm) ill passenger..."

Page 9, line 22:" (aged) seniors or( infirm) ill passengers."

Page 9, line 25: "...disabilities and by (aged) seniors or (infirm) ill passengers,..."

Page 10, line 4: "...aged or (infirm) ill."

Page 13, line 6, 7 & 8: "... services designed to meet the (special) needs of children with disabilities, (the aged) seniors, (the) persons with (developmentally) developmental (disabled) disabilities, (the blind) persons who are blind, (the mentally ill) persons with mental illness, person with physical disabilities, and (alcoholics and drug addicts) persons with substance abuse disorders."

Page 17, line 27: " hearing, deaf, speech impaired, visually (disabled) impaired, seriously..."

CHAIR WILSON indicated the need to take more time to review the changes encompassed in Amendment 1. [The committee treated the motion to adopt Amendment 1 as withdrawn.]

VICE CHAIR SEATON asked for agreement to change the language "emotionally disturbed" to "a person with emotional disability," and "or infirm" to "a person with an infirmity," as indicated in the amendment.

[3:54:24 PM](#)

REPRESENTATIVE GATTO questioned whether inserting the word "senior" in place of "aged" provides a useful characterization, because the term "senior" affords various opportunities, and is based on differing ages. He pointed out that the term "senior" is not defined in the legislation.

REPRESENTATIVE GARDNER stated that if the change were being made from "infirm" to "people with an infirmity," perhaps the word "senior" could be omitted. Therefore, able-bodied seniors would not fall under the statute.

[3:57:23 PM](#)

VICE CHAIR SEATON directed the committee's attention to each line of HB 357 that was being amended [all pages and lines previously annotated in this text]. He requested committee consensus on the terms that were suggested for consideration from the Governor's Council and SAIL for the amendment re-write,

and he asked for any other observations and suggestions from the committee.

REPRESENTATIVE GATTO pointed out that on page 17, line 27, of the amendment, the word "disabled" is removed and substituted with "impaired", but in the bill "handicapped" is removed and "disabled" is substituted.

CHAIR WILSON explained that in narrowing the area down to visual problems the preferred term is "visually impaired" versus "visually disabled", as submitted by the Governor's Council on Disabilities and Special Education, but she said that she would check on behalf of the committee for clarity.

VICE CHAIR SEATON stated his intent to have HB 357 before the committee again, with the suggested re-writes, on Thursday [January 26, 2006].

HB 271-LIMIT OVERTIME FOR REGISTERED NURSES

4:01:18 PM

VICE CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 271 "An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

CHAIR WILSON, speaking as the prime sponsor of HB 271, paraphrased from the following sponsor statement [original punctuation provided]:

This bill will prohibit an employer from assigning mandatory overtime and from threatening or retaliating against a nurse who refuses overtime. It will also give the nurse the latitude to make the judgment call about whether they are safe to practice (work overtime) or not. The bill assigns the administration of implementation and enforcement to the Commissioner of Department of Labor.

Mandatory overtime hours are those hours above an agreed upon, predetermined, regularly scheduled shift, which the employer makes compulsory (as opposed to voluntary). The threat of reprisals includes but is not limited to discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in

some cases licensure removal, retaliatory reporting, and charges of "patient abandonment."

Mandatory overtime contributes to poor quality patient care because fatigue and loss of concentration, which results from excessive overtime, increases the likelihood of errors. According to a study by the National Institute for Occupational Safety and Health (NIOSH), when staff plans to work additional shifts on a volunteer basis, they are more likely to be prepared and get plenty of rest immediately prior to working the extended shift. However, when an employer mandates overtime, this occurs with little or no prior notice. The result is high levels of fatigue and thus increased errors.

For nurses, these errors or mistakes may cause life-threatening situations for both the patient and the nurse. These situations run the gamut from back injuries for the nurse to patient medication errors to even death. The evidence is very strong that prolonged work hours and fatigue affect worker performance.

Emergency situations and Critical Access Hospitals are exempt from this bill.

[4:05:33 PM](#)

REPRESENTATIVE GATTO asked whether this bill would make it illegal to allow a nurse to work overtime even if the nurse is willing and able.

CHAIR WILSON explained that this bill protects nurses from being required to work overtime when they know that they are too tired to continue but fear possible employer retribution. In answer to further questions, she stated that being able to hire an adequate nurse work force will continue to become more difficult with the expected nursing shortage, which is expected to impact state and private facilities. To further questions, she answered that this bill would not penalize or prohibit a nurse from working planned, consensual overtime.

VICE CHAIR SEATON expressed concern for a facility's ability to function because, if it is unable to retain an adequate nursing staff, available personnel may be required to work overtime.

4:12:29 PM

ROD BETIT, President/CEO, Alaska State Hospital and Nursing Home Association (ASHNHA), presented a written statement opposing HB 271. He directed attention to page 1, which lists the hospitals and nursing homes that would be effected by the adoption of HB 271, and expressed his membership's regret in not being able to support this bill. Despite his work with the sponsor during the interim, the bill is still considered inadequate by his constituency, he related. He said that mandatory overtime is not an issue at non-state facilities, but is an issue at state-run facilities.

MR. BETIT stated that the nursing situation in Alaska has improved with the various statewide programs that are available to train and support nursing staff. Due to these programs position vacancies are minimized, which has reduced the need to locate/hire temporary nursing staff; a heretofore common and expensive practice. He related that his research has indicated the most frequent complaints of mandatory overtime abuse stem from the Alaska Psychiatric Institute (API). Such complaints may be occurring at API because of the following: 1. Inadequate number of filled nursing positions to provide patient care due to hiring difficulties caused by non-competitive salaries and the stress of the job leading to higher turnover than in general acute care facilities. 2. An overall expectation for API to take all patients who need hospitalization regardless of available staff, given that API is the sole provider of certain specialty nursing needs. 3. Inadequate provisions, in state employee contracts, to allow API to request a market survey to validate salary disparities with the private health care market, and permission to increase salaries to be competitive throughout the year without legislative review. 4. Inadequate funding in API's operating budget to actually pay higher salaries and hire staff as soon as it deems there to be a problem developing without budget authority from the legislature, which generally cannot come in time to head off a serious problem.

MR. BETIT stated that HB 271 would provide punishment for excessive use of mandatory overtime without putting measures in place to break the cycle of overtime use in state facilities. In addition, he opined, the bill creates a burden in regard to reporting and monitoring overtime, which ASHNHA does not support, given the lack of evidence of any problem with use of mandatory nurse overtime in non-state facilities.

MR. BETIT suggested 5 alternative solutions to curb mandatory overtime issues at state facilities, paraphrasing from his prepared statement [original punctuation provided]:

1. Immediately authorize managers to offer higher salary levels, as validated by market surveys, so that they can hire additional nurses sooner contemporary with market conditions.

2. Consider providing API funding for an ongoing nurse preceptor program that will help newly hired nurses gain advanced skills to provide care in an inpatient psychiatric setting. With competitive pay, mentorship, preceptor training and periodic respite from intense nursing demands in an inpatient psychiatric setting, API will have more success attracting and keeping the nursing staff they need.

3. Help API create a pool of temporary nurses that can be hired during staffing crises to fill gaps, in the specialized area of psychiatric care.

4. Consider establishing a separate bargaining unit for essential health care related staff separate from other employees to allow special procedures to be developed that will address these problems in the future. Ongoing market surveys of nursing salaries should be a routine part of this program.

5. Create a work group to find other solutions to this problem.

MR. BETIT concluded his prepared statement reading:

We think the solutions outlined above have merit, but more importantly recommend a work group be convened to support the sponsor's efforts to figure out how to place state facilities on a more solid footing so they do not have to resort to excessive mandatory overtime for lack of other options.

[4:21:53 PM](#)

VICE CHAIR SEATON asked how a pool of specialty nurses is generated.

MR. BETIT suggested various means to accomplish this goal: retired nurses in a given community could be retained for these specialty purposes; alert nursing organizations, that provide temporary staffing, to specific needs in a given area; and provide a financial incentive to encourage prospects. In answer to another question, he clarified that, when speaking of the need for a separate union bargaining unit, it is the state operated facilities that are critical. He suggested that problems arise in unions supporting nurses when they are made part of a larger bargaining group outside of the profession. However, he opined, that there are enough allied health care professionals impacted to warrant creating a separate bargaining entity for their benefit. In answering whether the legislature would have to create such a unit or if it would be handled by the union structure, he responded that he did not know. He reiterated that mandatory overtime is not an issue in non-state facilities.

[4:26:43 PM](#)

RUSSELL GRANGE, Chief Human Resources Officer, Providence Health System Alaska ("Providence"), said he is unable to support HB 271. He emphasized that minimizing mandatory overtime relates directly to employee satisfaction. He expressed concern with the bill, in that it may cause an adverse impact if the 900 nurses, of Providence, decide their own overtime; unit managers are paid to make overtime judgment calls and it is important that they retain that authority/capacity. He also expressed concern that ambiguity in the language of HB 271 may create administrative problems in interpreting certain overtime-allowable situations, resulting in penalties being impugned on the facility.

[4:34:07 PM](#)

SHARA SUTHERLIN, Chief Nurse Executive, Providence Alaska Medical Center, announced her opposition to HB 271 and stated support for a task force or special entity to be initiated, as proposed by Mr. Betit's statement [suggestion 4]. She opined that a separate bargaining unit could bring focus where needed. Moreover, she opined, a statewide resource-nursing group could be helpful. Referencing the suggestions proposed in Mr. Betit's statement, she underlined the need to: utilize market analysis; expand preceptor programs statewide; and assist facilities in establishing intern/extern and fellowship programs, as currently implemented at Providence. She added that, in terms of recruitment and retention the focus should be on the issues at

large: keeping patients safe; understanding the impact of the Institute of Medicine (IOM) reports and Institute of Health Care Improvement (IHI) initiatives; and support for night shifts and critical response workers by instituting IHI's "Best Practice" model for a rapid response team. She opined that by implementing these suggestions, and through statewide coordination, overtime issues might be minimized. She pointed out that, under her management, volunteers for overtime are primarily utilized and "on-call specialty teams" are carefully rotated/managed for optimal reduction of overtime hours. Responding to how much overtime is used at Providence, Ms. Sutherlin stated that, given the nebulous definition of mandatory overtime, providing for the rotation of on-call teams, and considering the staff that request overtime, she would estimate less than 1 to 2 percent [of hours worked represent overtime].

[4:39:42 PM](#)

VICE CHAIR SEATON inquired as to the impact on the recruitment process, at Providence, if overtime is required.

MR. GRANGE opined that an excess of amount of mandatory overtime would have a significant impact on hiring practices. He pointed out that many of Providence's employees are hired via employee referral, which reflects Providence's reputation as a good place to work, with a high level of employee satisfaction. Upon committee request, he agreed to provide mandatory overtime hours to the committee, and reiterated the difficulty in defining mandatory versus volunteer overtime for purposes of HB 271.

[4:42:48 PM](#)

MILA COSGROVE, Director, Division of Personnel, Department of Administration (DOA), stated her intention to report on what actions the state has been taking to proactively address the recruitment and retention issues in the area of professional nursing. She pointed out that difficulties in meeting nursing needs are a nationwide concern and projections indicate that this trend will continue. In response to a question, she clarified that her statements today will be focused on state-run facilities.

MS. COSGROVE explained that DOA has reviewed state statutes and regulations that apply to the state's ability to compensate employees. She projected that in the next fiscal year the new policy and administrative guidelines, with regard to

compensation, will be in place. In addition, various strategies have been undertaken in conjunction with the Department of Health and Social Services (DHSS), and the Department of Corrections. She stated that DOA now has a position dedicated to professional recruitment, which includes entrance and exit surveys and workplace environment modifications to boost retention. The department is also reviewing how hiring managers present the state benefits package, as it differs from private sector benefits. She reported that, in partnership with the other departments, an on-call pool of nurses is being developed to address shortages and specialty nursing needs as well as a retention strategy that assists employees with transfers between state facilities.

[4:48:35 PM](#)

REPRESENTATIVE GARDNER asked Ms. Cosgrove to describe how she expects the new retirement system to effect the recruitment/retention issue.

MS. COSGROVE responded that the proof will ultimately be in the numbers. However, she opined, that it would be prudent to consider a portable retirement plan, noting, "All workplace trends indicate that employees are not so much loyal to employers as they are to their careers." She stated that being able to provide a portable retirement package may provide a broader range of recruits, although the impacts to retention remain to be seen.

JANET CLARKE, Assistant Commissioner, Finance and Management Services, Department of Health & Social Services (DHSS), said that DHSS has been working on dealing with the symptoms in the system that are causing mandatory overtime. She admitted that hiring and retention is a problem, with vacancy figures ranging from 15-20 percent in state-run facilities. She expressed concern that, despite various strategies, mandatory overtime is still utilized and negative repercussions will occur if HB 271 is adopted as drafted. Because the state facilities are not allowed to refuse patients, she questioned whether a wing at the Alaska Psychiatric Institute (API) would need to be closed to avoid incurring penalties. She stated that the governor has included a one-range salary increase for direct care nurses in the Fiscal Year (FY) 2007 budget. This is in anticipation of providing a market base pay scale, which may help to ease the recruitment/retention situation. Due to the fact that there is only one API, the consequences of passing HB 271 may have significant negative impacts, she said, reiterating her

reservations. She opined that costs may need to be increased at state facilities. She then highlighted fiscal notes provided in the committee packet to illustrate her concerns.

VICE CHAIR SEATON said that since the state system could be in violation as the primary user of mandatory overtime, it would be important to know how the commissioners of the Department of Labor & Workforce Development (DLWD), and DHSS would be expected to handle possible penalties if incurred. He questioned whether the departments would be subject to mutual lawsuit; his attention was called to the legal opinion in the bill packet.

[4:54:33 PM](#)

MICHELLE MURPHY, Registered Nurse (RN), Providence RN's Union Health and Safety Officer, Providence Alaska Medical Center, stated her support for HB 271. She related her understanding that the nursing shortage will continue to increase, along with the need for more nurses, given the population and health care demands. She said the International Council of Nurses (ICN) defines mandatory overtime as "obligatory, compulsory, or imposed by the employer leaving no choice to the employee." With the shortage of nurses growing, mandatory overtime is reportedly being used for staff management on a routine basis versus emergency situations, as it once was. This, she opined, is of major concern given the care that nurses are required to provide. Overtime becomes a dangerous situation, she maintained, when a nurse is required to calculate drug dosages or make other critical decisions with diminished abilities due to overtiredness. To illustrate her point, she related personal accounts of working long shifts which highlighted the physical and mental toll involved in working overtime. She stated that the use of mandatory overtime is detrimental to nurses, dangerous to patients, and does not promote employee recruitment/retention. In response to a question, she stated that Providence does not utilize mandatory overtime, because the union contract provides for regular rest times.

VICE CHAIR SEATON stated that he would like to further understand the ramifications of voluntary overtime versus mandatory overtime and asked why the state should put into law an item that is a negotiating point between a nurses union and a facility.

MS. MURPHY pointed out that not all nursing facilities have the benefit of a union and the nursing staff need protection against mandatory overtime.

[5:03:36 PM](#)

KATHLEEN GETTYS, RN, Progressive Care Unit, Providence Alaska Medical Center; President, Providence RN's Bargaining Unit; Representative, Alaska Nurses Association (ANA), opined that there is great concern regarding mandatory overtime in the nursing profession, which has resulted in strikes across the nation. She reported that by strictly regulating the hours of overtime, the quality of health care is increased and the number of medical errors is reduced. When nurses work 12 or more hours statistics show that errors increase. She pointed out that, unlike other industries for which public safety is a concern, health care is exempt from [federal] regulation limiting the use of mandatory overtime as a staffing tool. Standards have been established to limit the number of hours that pilots, flight attendants, truck drivers, and railroad engineers can safely work before consumer safety is considered endangered. However, she said, no similar limitations exist for our nation's nurses who are caring for patients. Nurses' professional obligations are undermined when they are forced to work mandatory overtime, and outside of collective bargaining, nurses have few avenues to challenge required overtime, she maintained. She called for the legislature to be responsive to its constituents, the nurses and patients, concerning the unethical use of mandatory overtime, and to set new state limits on the ability of health care facilities to impose overtime. She added that there is an available pool of 500,000 trained nurses, across the nation, who have left the profession in direct correlation with their working environment.

[5:08:34 PM](#)

STACY ALLEN, RN, Business Agent, Laborers Local 341, stated her support for HB 271, and disputed Mr. Betit's assertion that private institutions do not use mandatory overtime. She explained how she has watched this situation evolve over her tenure as a registered nurse. She said that this bill generates an incentive for creativity in the industry to solve this issue, and provides needed protection for patients and nurses. In answer to a question she stated that, for Laborers Local 341, mandatory overtime has not been a negotiating point, although they are ready to address it should it become necessary.

[5:14:24 PM](#)

DIANNE O'CONNELL, Executive Director and Labor Director, Alaska Nurses Association, stated that the exceptions, listed in section (b), beginning on line 13, page 2, of the CSHB 271, Version Y, do not address staffing shortages due to sick leave and vacation coverage. She testified that, for API, these are the pitfall areas. Although API is working to develop a plan to address these situations, including creating a float pool, there is not one currently in place. She reiterated the suggestions that Mr. Betit made in his statement. Additionally, she pointed out that prescheduled on-call time, in which a nurse volunteers to work overtime, is not covered. This brings up the question as to whether to allow a nurse to work beyond his/her scheduled shift; certainly a pilot could not volunteer for additional flights, and should "we stand in their way" if a nurse is volunteering for an additional shift, she asked. She responded that the 36-hour on-call rotation is not addressed in the bill either, but said that she did not have the appropriate experience to comment or make a suggestion. In emergencies, she maintained, the bill does not say that overtime cannot be used, although it specifies that a penalty will be incurred if used. She opined that HB 271 will provide managers a disincentive to use overtime, and compel them to seek better solutions to meet the needs. She pointed out that allowances in the bill ensure that patients will not be left without care. She echoed earlier testimony that not all nurses are represented by a collective bargaining agreement and HB 271 is needed to provide a foundation for a public policy requiring safety for patients and nurses and to create better working conditions. In response to questions, she stated that Providence Medical Center does have what is termed "mandatory call" and it is used in certain units, but will not be expanded to other areas of the hospital.

[5:22:29 PM](#)

MIKE ALEXANDER, RN, Alaska Psychiatric Institute, stated his support for HB 271. He related his current situation of working mandatory overtime during the holiday season. He also stated that the pay rate is "behind," employees are exhausted, nine staff positions are unfilled, and any time off is nebulous. He added that API lowered the acuity ratings of patients in order to require fewer attending staff per patient, although the patient needs haven't changed. Therefore, unsafe conditions have resulted, he suggested. He opined that job loss is being experienced as well as patient abandonment. In response to a question, he said that the clerks union covers the nurses at API. However, the [union agents] "don't really operate in our realm," he stated, and for them to understand any situation

outside of a standard eight-hour day is difficult. Neither does there seem to be a possibility for the API nursing group to move to a different bargaining unit, in which nurses would be representing nurses. Despite efforts to create an understanding of the nurses needs, he said that the union representation has become unresponsive and somewhat hostile.

[5:30:14 PM](#)

CATHY FEASTER, Supervising Nurse Practitioner, Division of Community Health Services, Department of Health and Human Services, stated support for HB 271, but expressed reservations regarding its possible consequences to the Sexual Assault Response Team (SART). She described how this team is assembled and scheduled to provide around the clock availability, and she offered to work with the bill sponsor to ensure there aren't repercussions on SART. In response to questions, she explained that many of the SART members have full-time jobs, but make a commitment to be on-call for a specified time. The concern is that the language of HB 271 may adversely effect availability, she explained, of SART nurses who are called out after just having completed a full shift at their regular facility.

[5:34:41 PM](#)

CHAIR WILSON assigned a subcommittee to work on HB 271, comprised of the following members: Representatives Wilson, Gardner, Seaton, and invited other committee members to join them. She established February 16, 2006, as a deadline for the subcommittee to have the bill back before the committee.

[5:39:25 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at [5:39:39 PM](#).