HB 1868 / SB 5751: Safe Staffing Legislation

Bill Summary

Safe staffing legislation has been introduced in both the House and Senate. These are companion bills, meaning the bill language is exactly the same in both the House and Senate version. Most components of the bill go into effect after it is passed. The exception to this is the implementation of safe staffing standards which is delayed to provide time for related workforce development provisions to go into effect (and rural critical access and sole community hospitals would be given extra time to meet the safe staffing standards).

The bill has four critical pieces: 1) safe staffing standards; 2) improves staffing committee functions and accountability mechanisms; 3) improves enforcement of existing laws including meal and rest breaks and mandatory overtime; and, 4) provides a private right of action, allowing individual nurses and health care workers or their union to utilize the legal system as another means of accountability. The bill also moves implementation and enforcement of the staffing provisions under the Department of Labor & Industries.

Safe Staffing Standards

- Says direct care registered nurses shall not be assigned more than a certain number of patients for any shift – nurse-to-patient numbers are listed by unit (see p. 4 of this document for those numbers and/or p. 2, line 20 in the bill)
- Says direct care CNAs shall not be assigned more than a certain number of patients for any shift, also listed by unit.
- Nothing in this section precludes a hospital from assigning fewer patients to a direct care RN or direct care CNA than the limits established in this section.
- The limits established in this section do not decrease any nurse-to-patient staffing levels in effect pursuant to a collective bargaining agreement or hospital's staffing plan in effect on the effective date of this section.
- RNs and CNAs may not be assigned to a nursing unit or clinical area unless that individual has first received orientation in that clinical area sufficient to provide competent care to patients in that area and has demonstrated current competence in providing care in that area.
- Safe staffing standards for hospitals go into effect two years after the effective date of the bill – or four years after the effective date of the bill for critical access hospitals, acute care hospitals with fewer than 25 beds, and sole community hospitals.

Staffing Committees

- Adds ancillary direct care staff to the hospital staffing committee and requires 50 percent of the staffing committee to consist of nonsupervisory/nonmanagerial nurses and ancillary staff. The other 50 percent consists of administration, including the CFO and CNO.
- Hospital staffing plans must be in a uniform form or format provided by L&I.
- Requires the staffing plan to meet the safe staffing standards included in the bill.
- Requires the CEO to provide feedback on the staffing plan but requires the staffing committee to adopt the plan (i.e., removes the current CEO veto power).
- Sets a $10,000 per day fine for each day that the staffing plan is not adopted by the staffing committee ($100 per day for critical access, fewer than 25 acute care beds, and sole community hospitals), and directs that the previous staffing plan remain in effect until the new staffing plan is adopted.
- Clarifies that all complaints submitted to the staffing committee must be reviewed, regardless of the format of the complaint.
- Requires each hospital staffing committee to operate under a charter with specified requirements (p. 9, line 10).
- Says L&I must investigate complaints.
    - L&I will not find hospitals in violation if the hospital shows: 1) there were unforeseeable emergency circumstances; or 2) the hospital, after consultation with the hospital staffing committee, documents that the hospital has made reasonable efforts to obtain and retain staffing to meet required personnel assignments but has been unable to do so.
    - No later than 30 days after a hospital deviates from its staffing plan, the hospital incident command shall report to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergency circumstance and the hospital's plan to address those identified staffing needs.
    - Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergency circumstance.
    - The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee.
- Updates the definition of unforeseeable emergency circumstance to mean:
    - Any unforeseen national, state, or municipal emergency; or
    - When a hospital disaster plan is activated.
- Sets a $10,000 per day fine for each day that the hospital fails to submit or follow a corrective action plan for a violation ($100 per day for critical access, fewer than 25 acute care beds, and sole community hospitals). Civil penalties apply until the hospital submits a corrective action plan and follows the corrective action plan for 90 days (after 90 days, the fine may be reduced).
- L&I must report violations on its website.
- Removes the previous requirement for a report to the legislature.

Enforcement of Existing Laws

Staffing Law

- Requires L&I to review each submitted hospital staffing plan.
- Failure to submit the staffing plan or a staffing committee charter to L&I by the appropriate deadline will result in a violation and civil penalty of $25,000.

Meal and Rest Breaks & Mandatory Overtime

- Points to the updated definition of unforeseeable emergency circumstance.
- Says pre-scheduled on-call is not to exceed 20 hours per week.
- Clarifies that employers must use reasonable efforts to obtain and retain staff – and says that an employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages that persist longer than three months.
- Says L&I shall investigate complaints and shall issue either a citation and notice of assessment or a closure letter, within 90 days after the date on which the department received the complaint.
- The maximum penalty is $1,000 for each violation up to three violations; four or more violations for a health care facility, then employer is subject to a civil penalty of $2,500 for the fourth violation, and $5,000 for each subsequent violation.
- Provides an appeals process for employers (consistent with other L&I appeals processes).
- Gives L&I rulemaking authority including, but not limited to, protecting employees from retaliation for filing complaints under this chapter.

Private Right of Action

- Gives health care workers and their unions the right to file a civil lawsuit over violations of this act.
- The court may award to a prevailing plaintiff:
    - An amount not less than $100 and not greater than $10,000 per violation per day;
    - Reasonable attorneys' fees and litigation costs;
    - Any other relief, including equitable and declaratory relief, that the court deems appropriate.
- These remedies are in addition to any administrative enforcement under this chapter.

WSNA WASHINGTON STATE NURSES ASSOCIATION

Registered Nurse Safe Staffing Standards in HB 1868 / SB 5751

Hospital Unit	HB 1868 / SB 5751
Critical Care/ICU	1:2, or 1:1 depending on the stability of the patient as assessed by the RN
Neonatal ICU	1:2, or 1:1 depending on the stability of the patient as assessed by the RN
Labor & Delivery	1:2, or 1:1 for active labor or all stages of labor for patients with complications
Antepartum	1:3 (couplets)
Postpartum	1:3 (couplets)
Well-Baby Nursery	1:3 (couplets)
Postanesthesia (PACU)	1:2
Emergency Department	1:3 non-trauma
Trauma	1:1
Operating Room	1:1
Pediatrics	1:3
Psychiatric	1:6
Stepdown	1:3
Telemetry	1:3
Medical/Surgical	1:4