MEMORANDUM IN SUPPORT

The proposed bill would amend and update Labor Law Section 167, which generally prohibits employers from requiring nurses to work mandatory overtime.

Mandatory overtime is extremely disruptive to the work and family times of nurses and contributes to job dissatisfaction and turnover of nursing staff. Mandatory overtime is an abusive practice that allows hospitals and nursing homes to operate with barebones staffing that undermines working conditions. Preventing mandatory overtime will help to keep nurses working at the bedside and stem their exodus from the workforce.

The legislation would correct loopholes in the law by limiting the ability of employers to use emergency exceptions to suspend the law and use mandatory overtime to fill scheduling gaps on a regular basis. The law would cap the length of time that a hospital could rely on emergency situations to order nurses to work mandatory overtime:

• the exception for local emergency situations (such as mass casualty events, accidents, natural disasters, etc.) would be limited to no more than three days;
• the exception for federal, state, or local declarations of a state of emergency would be capped at no longer than 30 days, allowing time for the employer to adjust to the new situation and preventing open ended use of mandatory overtime to meet ongoing staffing needs;
• routine and foreseeable absences of nurses (due to sick leave or FMLA, etc.) would not be grounds for an “emergency” suspension of the prohibition of mandatory overtime;
• the Governor would still be empowered to suspend the law temporarily upon a finding and declaration of a state of emergency under existing executive powers.

The legislation also creates defined penalties for employer violations of the law, including the following provisions:

• Fines of up to $1,000 for a first violation occurring within three years;
• Fines of up to $2,000 for a second violation occurring within three years;
• Fines of up to $5,000 for each subsequent violation occurring within three years;
• Payment of a penalty to the employee equal to 15% of the total overtime payment received for working mandatory overtime.

NYSNA strongly supports passage of this bill to correct shortcomings in the current mandatory overtime law and improve recruitment and retention of nurse to the workforce.

Note: It is our understanding that the Senate version of A8774B is in the process of being modified to conform to the Assembly bill. We urge the Senate to modify S8063 and both houses to pass this urgent legislation.