
SECOND SUBSTITUTE HOUSE BILL 3062

State of Washington

61st Legislature

2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Conway, Pettigrew, Upthegrove, Cody, Hunt, Williams, Green, Lias, Appleton, Sells, Ormsby, Kenney, Simpson, White, Goodman, Jacks, Darneille, and Hudgins)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to making the governor the public employer of
2 language access providers; amending RCW 41.56.030, 41.56.113,
3 41.04.810, 43.01.047, and 74.04.025; adding a new section to chapter
4 41.56 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) No later than thirty days after the
7 effective date of this section, the office of financial management
8 shall establish a working group on language access services.

9 (2) The working group shall include members that have experience
10 and knowledge of language access services in Washington state,
11 including representatives of a statewide association representing
12 hospitals, community health providers, a statewide association
13 representing physicians and physician assistants, a statewide labor
14 union currently working with language access providers, statewide
15 professional interpreter associations, community-based organizations
16 that advocate for persons with limited English proficiency, and
17 language access providers.

18 (3) The working group shall develop a plan to improve the
19 efficiency and effectiveness of language access services. The plan

1 shall describe the best possible means by which the following criteria
2 are achieved: Administrative and overhead costs, including brokers and
3 language access agencies, are reduced by at least fifty percent;
4 timeliness and flexibility for medical providers is improved; the pool
5 of qualified interpreters is stabilized; and fraud and abuse are
6 prevented.

7 (4) The office of financial management shall report the findings of
8 the working group to the legislature and the governor no later than
9 September 30, 2010.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW
11 to read as follows:

12 (1) In addition to the entities listed in RCW 41.56.020, this
13 chapter applies to the governor with respect to language access
14 providers. Solely for the purposes of collective bargaining and as
15 expressly limited under subsections (2) and (3) of this section, the
16 governor is the public employer of language access providers who,
17 solely for the purposes of collective bargaining, are public employees.
18 The governor or the governor's designee shall represent the public
19 employer for bargaining purposes.

20 (2) There shall be collective bargaining, as defined in RCW
21 41.56.030, between the governor and language access providers, except
22 as follows:

23 (a) A statewide unit of all language access providers is the only
24 unit appropriate for purposes of collective bargaining under RCW
25 41.56.060;

26 (b) The exclusive bargaining representative of language access
27 providers in the unit specified in (a) of this subsection shall be the
28 representative chosen in an election conducted pursuant to RCW
29 41.56.070.

30 Bargaining authorization cards furnished as the showing of interest
31 in support of any representation petition or motion for intervention
32 filed under this section are exempt from disclosure under chapter 42.56
33 RCW;

34 (c) Notwithstanding the definition of "collective bargaining" in
35 RCW 41.56.030(4), the scope of collective bargaining for language
36 access providers under this section is limited solely to: (i) Economic
37 compensation; (ii) rules and procedures regarding payments, work rules,

1 and reimbursements; (iii) certification procedures, professional
2 development, and training; (iv) labor-management committees; (v)
3 grievance procedures; and (vi) other economic matters. Retirement
4 benefits are not subject to collective bargaining. By such obligation
5 neither party may be compelled to agree to a proposal or be required to
6 make a concession unless otherwise provided in this chapter;

7 (d) In addition to the entities listed in the mediation and
8 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
9 41.56.480, the provisions apply to the governor or the governor's
10 designee and the exclusive bargaining representative of language access
11 providers, except that:

12 (i) In addition to the factors to be taken into consideration by an
13 interest arbitration panel under RCW 41.56.465, the panel shall
14 consider the financial ability of the state to pay for the compensation
15 and benefit provisions of a collective bargaining agreement;

16 (ii) The decision of the arbitration panel is not binding on the
17 legislature and, if the legislature does not approve the request for
18 funds necessary to implement the compensation and benefit provisions of
19 the arbitrated collective bargaining agreement, the decision is not
20 binding on the state;

21 (e) Language access providers do not have the right to strike.

22 (3) Language access providers who are public employees solely for
23 the purposes of collective bargaining under subsection (1) of this
24 section are not, for that reason, employees of the state for any other
25 purpose. This section applies only to the governance of the collective
26 bargaining relationship between the employer and language access
27 providers as provided in subsections (1) and (2) of this section.

28 (4) Each party with whom the department of social and health
29 services contracts for language access services and each of their
30 subcontractors shall provide to the department an accurate list of
31 language access providers, as defined in RCW 41.56.030, including their
32 names, addresses, and other contact information, annually by January
33 30th, except that initially the lists must be provided within thirty
34 days of the effective date of this section. The department shall, upon
35 request, provide a list of all language access providers, including
36 their names, addresses, and other contact information, to a labor union
37 seeking to represent language access providers.

38 (5) This section does not create or modify:

1 (a) The department's obligation to comply with the federal statute
2 and regulations; and

3 (b) The legislature's right to make programmatic modifications to
4 the delivery of state services under chapter 74.04 RCW. The governor
5 may not enter into, extend, or renew any agreement under this chapter
6 that does not expressly reserve the legislative rights described in
7 this subsection.

8 (6) Upon meeting the requirements of subsection (7) of this
9 section, the governor must submit, as a part of the proposed biennial
10 or supplemental operating budget submitted to the legislature under RCW
11 43.88.030, a request for funds necessary to implement the compensation
12 and benefit provisions of a collective bargaining agreement entered
13 into under this section or for legislation necessary to implement the
14 agreement.

15 (7) A request for funds necessary to implement the compensation and
16 benefit provisions of a collective bargaining agreement entered into
17 under this section may not be submitted by the governor to the
18 legislature unless the request has been:

19 (a) Submitted to the director of financial management by October
20 1st prior to the legislative session at which the requests are to be
21 considered, except that, for initial negotiations under this section,
22 the request may not be submitted before July 1, 2011; and

23 (b) Certified by the director of financial management as
24 financially feasible for the state or reflective of a binding decision
25 of an arbitration panel reached under subsection (2)(d) of this
26 section.

27 (8) The legislature must approve or reject the submission of the
28 request for funds as a whole. If the legislature rejects or fails to
29 act on the submission, any collective bargaining agreement must be
30 reopened for the sole purpose of renegotiating the funds necessary to
31 implement the agreement.

32 (9) If, after the compensation and benefit provisions of an
33 agreement are approved by the legislature, a significant revenue
34 shortfall occurs resulting in reduced appropriations, as declared by
35 proclamation of the governor or by resolution of the legislature, both
36 parties shall immediately enter into collective bargaining for a
37 mutually agreed upon modification of the agreement.

1 (10) After the expiration date of any collective bargaining
2 agreement entered into under this section, all of the terms and
3 conditions specified in the agreement remain in effect until the
4 effective date of a subsequent agreement, not to exceed one year from
5 the expiration date stated in the agreement.

6 (11) In enacting this section, the legislature intends to provide
7 state action immunity under federal and state antitrust laws for the
8 joint activities of language access providers and their exclusive
9 bargaining representative to the extent the activities are authorized
10 by this chapter.

11 **Sec. 3.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
12 as follows:

13 As used in this chapter:

14 (1) "Public employer" means any officer, board, commission,
15 council, or other person or body acting on behalf of any public body
16 governed by this chapter, or any subdivision of such public body. For
17 the purposes of this section, the public employer of district court or
18 superior court employees for wage-related matters is the respective
19 county legislative authority, or person or body acting on behalf of the
20 legislative authority, and the public employer for nonwage-related
21 matters is the judge or judge's designee of the respective district
22 court or superior court.

23 (2) "Public employee" means any employee of a public employer
24 except any person (a) elected by popular vote, or (b) appointed to
25 office pursuant to statute, ordinance or resolution for a specified
26 term of office as a member of a multimember board, commission, or
27 committee, whether appointed by the executive head or body of the
28 public employer, or (c) whose duties as deputy, administrative
29 assistant or secretary necessarily imply a confidential relationship to
30 (i) the executive head or body of the applicable bargaining unit, or
31 (ii) any person elected by popular vote, or (iii) any person appointed
32 to office pursuant to statute, ordinance or resolution for a specified
33 term of office as a member of a multimember board, commission, or
34 committee, whether appointed by the executive head or body of the
35 public employer, or (d) who is a court commissioner or a court
36 magistrate of superior court, district court, or a department of a
37 district court organized under chapter 3.46 RCW, or (e) who is a

1 personal assistant to a district court judge, superior court judge, or
2 court commissioner. For the purpose of (e) of this subsection, no more
3 than one assistant for each judge or commissioner may be excluded from
4 a bargaining unit.

5 (3) "Bargaining representative" means any lawful organization which
6 has as one of its primary purposes the representation of employees in
7 their employment relations with employers.

8 (4) "Collective bargaining" means the performance of the mutual
9 obligations of the public employer and the exclusive bargaining
10 representative to meet at reasonable times, to confer and negotiate in
11 good faith, and to execute a written agreement with respect to
12 grievance procedures and collective negotiations on personnel matters,
13 including wages, hours and working conditions, which may be peculiar to
14 an appropriate bargaining unit of such public employer, except that by
15 such obligation neither party shall be compelled to agree to a proposal
16 or be required to make a concession unless otherwise provided in this
17 chapter.

18 (5) "Commission" means the public employment relations commission.

19 (6) "Executive director" means the executive director of the
20 commission.

21 (7) "Uniformed personnel" means: (a) Law enforcement officers as
22 defined in RCW 41.26.030 employed by the governing body of any city or
23 town with a population of two thousand five hundred or more and law
24 enforcement officers employed by the governing body of any county with
25 a population of ten thousand or more; (b) correctional employees who
26 are uniformed and nonuniformed, commissioned and noncommissioned
27 security personnel employed in a jail as defined in RCW
28 70.48.020(~~(+5)~~) (9), by a county with a population of seventy thousand
29 or more, and who are trained for and charged with the responsibility of
30 controlling and maintaining custody of inmates in the jail and
31 safeguarding inmates from other inmates; (c) general authority
32 Washington peace officers as defined in RCW 10.93.020 employed by a
33 port district in a county with a population of one million or more; (d)
34 security forces established under RCW 43.52.520; (e) firefighters as
35 that term is defined in RCW 41.26.030; (f) employees of a port district
36 in a county with a population of one million or more whose duties
37 include crash fire rescue or other firefighting duties; (g) employees
38 of fire departments of public employers who dispatch exclusively either

1 fire or emergency medical services, or both; or (h) employees in the
2 several classes of advanced life support technicians, as defined in RCW
3 18.71.200, who are employed by a public employer.

4 (8) "Institution of higher education" means the University of
5 Washington, Washington State University, Central Washington University,
6 Eastern Washington University, Western Washington University, The
7 Evergreen State College, and the various state community colleges.

8 (9) "Home care quality authority" means the authority under chapter
9 74.39A RCW.

10 (10) "Individual provider" means an individual provider as defined
11 in RCW 74.39A.240(4) who, solely for the purposes of collective
12 bargaining, is a public employee as provided in RCW 74.39A.270.

13 (11) "Child care subsidy" means a payment from the state through a
14 child care subsidy program established pursuant to RCW 74.12.340 or
15 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
16 program.

17 (12) "Family child care provider" means a person who: (a) Provides
18 regularly scheduled care for a child or children in the home of the
19 provider or in the home of the child or children for periods of less
20 than twenty-four hours or, if necessary due to the nature of the
21 parent's work, for periods equal to or greater than twenty-four hours;
22 (b) receives child care subsidies; and (c) is either licensed by the
23 state under RCW 74.15.030 or is exempt from licensing under chapter
24 74.15 RCW.

25 (13) "Adult family home provider" means a provider as defined in
26 RCW 70.128.010 who receives payments from the medicaid and state-funded
27 long-term care programs.

28 (14)(a) "Language access provider" means any independent contractor
29 who provides spoken language interpreter services for department of
30 social and health services appointments or medicaid enrollee
31 appointments, or provided these services on or after January 1, 2009,
32 and before the effective date of this section, whether paid by a
33 broker, foreign language agency, or the department.

34 (b) "Language access provider" does not mean an owner, manager, or
35 employee of a broker or a language access agency.

36 **Sec. 4.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
37 as follows:

1 (1) Upon the written authorization of an individual provider, a
2 family child care provider, ~~((or))~~ an adult family home provider, or a
3 language access provider within the bargaining unit and after the
4 certification or recognition of the bargaining unit's exclusive
5 bargaining representative, the state as payor, but not as the employer,
6 shall, subject to subsection (3) of this section, deduct from the
7 payments to an individual provider, a family child care provider,
8 ~~((or))~~ an adult family home provider, or a language access provider the
9 monthly amount of dues as certified by the secretary of the exclusive
10 bargaining representative and shall transmit the same to the treasurer
11 of the exclusive bargaining representative.

12 (2) If the governor and the exclusive bargaining representative of
13 a bargaining unit of individual providers, family child care providers,
14 ~~((or))~~ adult family home providers, or language access providers enter
15 into a collective bargaining agreement that:

16 (a) Includes a union security provision authorized in RCW
17 41.56.122, the state as payor, but not as the employer, shall, subject
18 to subsection (3) of this section, enforce the agreement by deducting
19 from the payments to bargaining unit members the dues required for
20 membership in the exclusive bargaining representative, or, for
21 nonmembers thereof, a fee equivalent to the dues; or

22 (b) Includes requirements for deductions of payments other than the
23 deduction under (a) of this subsection, the state, as payor, but not as
24 the employer, shall, subject to subsection (3) of this section, make
25 such deductions upon written authorization of the individual provider,
26 family child care provider, ~~((or))~~ adult family home provider, or
27 language access provider.

28 (3)(a) The initial additional costs to the state in making
29 deductions from the payments to individual providers, family child care
30 providers, ~~((and))~~ adult family home providers, and language access
31 providers under this section shall be negotiated, agreed upon in
32 advance, and reimbursed to the state by the exclusive bargaining
33 representative.

34 (b) The allocation of ongoing additional costs to the state in
35 making deductions from the payments to individual providers, family
36 child care providers, ~~((or))~~ adult family home providers, or language
37 access providers under this section shall be an appropriate subject of
38 collective bargaining between the exclusive bargaining representative

1 and the governor unless prohibited by another statute. If no
2 collective bargaining agreement containing a provision allocating the
3 ongoing additional cost is entered into between the exclusive
4 bargaining representative and the governor, or if the legislature does
5 not approve funding for the collective bargaining agreement as provided
6 in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing
7 additional costs to the state in making deductions from the payments to
8 individual providers, family child care providers, (~~(or)~~) adult family
9 home providers, or language access providers under this section shall
10 be negotiated, agreed upon in advance, and reimbursed to the state by
11 the exclusive bargaining representative.

12 (4) The governor and the exclusive bargaining representative of a
13 bargaining unit of family child care providers may not enter into a
14 collective bargaining agreement that contains a union security
15 provision unless the agreement contains a process, to be administered
16 by the exclusive bargaining representative of a bargaining unit of
17 family child care providers, for hardship dispensation for license-
18 exempt family child care providers who are also temporary assistance
19 for needy families recipients or WorkFirst participants.

20 **Sec. 5.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
21 as follows:

22 Individual providers, as defined in RCW 74.39A.240, and family
23 child care providers, (~~(as defined in RCW 41.56.030, and)~~) adult family
24 home providers, and language access providers, all as defined in RCW
25 41.56.030, are not employees of the state or any of its political
26 subdivisions and are specifically and entirely excluded from all
27 provisions of this title, except as provided in RCW 74.39A.270,
28 41.56.028, and 41.56.029.

29 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
30 as follows:

31 RCW 43.01.040 through 43.01.044 do not apply to individual
32 providers under RCW 74.39A.220 through 74.39A.300, family child care
33 providers under RCW 41.56.028, or adult family home providers under RCW
34 41.56.029, or language access providers under section 2 of this act.

1 **Sec. 7.** RCW 74.04.025 and 1998 c 245 s 143 are each amended to
2 read as follows:

3 (1) The department and the office of administrative hearings shall
4 ensure that bilingual services are provided to non-English speaking
5 applicants and recipients. The services shall be provided to the
6 extent necessary to assure that non-English speaking persons are not
7 denied, or unable to obtain or maintain, services or benefits because
8 of their inability to speak English.

9 (2) If the number of non-English speaking applicants or recipients
10 sharing the same language served by any community service office client
11 contact job classification equals or exceeds fifty percent of the
12 average caseload of a full-time position in such classification, the
13 department shall, through attrition, employ bilingual personnel to
14 serve such applicants or recipients.

15 (3) Regardless of the applicant or recipient caseload of any
16 community service office, each community service office shall ensure
17 that bilingual services required to supplement the community service
18 office staff are provided through contracts with (~~(interpreters, local~~
19 ~~agencies, or other community resources)) language access providers.~~

20 (4) The department shall certify, authorize, and qualify language
21 access providers in a manner consistent with any collective bargaining
22 agreement entered into pursuant to section 2 of this act as needed to
23 maintain a pool of certified, authorized, and qualified providers.

24 (5) Initial client contact materials shall inform clients in all
25 primary languages of the availability of interpretation services for
26 non-English speaking persons. Basic informational pamphlets shall be
27 translated into all primary languages.

28 (~~(+5))~~ (6) To the extent all written communications directed to
29 applicants or recipients are not in the primary language of the
30 applicant or recipient, the department and the office of administrative
31 hearings shall include with the written communication a notice in all
32 primary languages of applicants or recipients describing the
33 significance of the communication and specifically how the applicants
34 or recipients may receive assistance in understanding, and responding
35 to if necessary, the written communication. The department shall
36 assure that sufficient resources are available to assist applicants and
37 recipients in a timely fashion with understanding, responding to, and
38 complying with the requirements of all such written communications.

1 ((+6+)) (7) As used in this section((7)):

2 (a) "Language access provider" means any independent contractor who
3 provides spoken language interpreter services for department
4 appointments or medicaid enrollee appointments, or provided these
5 services on or after January 1, 2009, and before the effective date of
6 this section, whether paid by a broker, foreign language agency, or the
7 department. "Language access provider" does not mean an owner,
8 manager, or employee of a broker or a language access agency.

9 (b) "Primary languages" includes but is not limited to Spanish,
10 Vietnamese, Cambodian, Laotian, and Chinese.

11 NEW SECTION. Sec. 8. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. Sec. 9. If any part of this act is found to be in
16 conflict with federal requirements that are a prescribed condition to
17 the allocation of federal funds to the state, the conflicting part of
18 this act is inoperative solely to the extent of the conflict and with
19 respect to the agencies directly affected, and this finding does not
20 affect the operation of the remainder of this act in its application to
21 the agencies concerned. Rules adopted under this act must meet federal
22 requirements that are a necessary condition to the receipt of federal
23 funds by the state.

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