

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6726

61st Legislature
2010 Regular Session

Passed by the Senate March 9, 2010
YEAS 29 NAYS 19

President of the Senate

Passed by the House March 5, 2010
YEAS 58 NAYS 40

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6726** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6726

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Marr, Kohl-Welles, Ranker, Murray, McDermott, Keiser, Prentice, Kauffman, Kline, Kilmer, Fraser, and Pridemore)

READ FIRST TIME 02/05/10.

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 centers and providers for underserved and
13 immigrant populations, statewide associations representing physicians,
14 other health care providers who serve medicaid patients, a statewide
15 labor union currently working with language access providers, statewide
16 professional interpreter associations, community-based organizations
17 that advocate for persons with limited English proficiency, language
18 access providers, language access agencies, brokers, and the department
19 of social and health services.

1 (3) A representative of the office of financial management shall
2 chair the working group, and the department shall provide staff to
3 support the working group's activities.

4 (4) The working group shall develop a plan to improve the
5 efficiency and effectiveness of language access services. The plan
6 shall describe the best possible means by which the following criteria
7 are achieved: Administrative and overhead costs, including brokers and
8 language access agencies, are reduced; timeliness and flexibility for
9 medical providers is improved; access to services is maintained or
10 improved; the pool of qualified interpreters is stabilized; and fraud
11 and abuse are prevented.

12 (5) The office of financial management shall report the findings of
13 the working group to the legislature no later than September 30, 2010.

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

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

24 (2) There shall be collective bargaining, as defined in RCW
25 41.56.030, between the governor and language access providers, except
26 as follows:

27 (a) A statewide unit of all language access providers is the only
28 unit appropriate for purposes of collective bargaining under RCW
29 41.56.060;

30 (b) The exclusive bargaining representative of language access
31 providers in the unit specified in (a) of this subsection shall be the
32 representative chosen in an election conducted pursuant to RCW
33 41.56.070.

34 Bargaining authorization cards furnished as the showing of interest
35 in support of any representation petition or motion for intervention
36 filed under this section are exempt from disclosure under chapter 42.56
37 RCW;

1 (c) Notwithstanding the definition of "collective bargaining" in
2 RCW 41.56.030(4), the scope of collective bargaining for language
3 access providers under this section is limited solely to: (i) Economic
4 compensation, such as the manner and rate of payments; (ii)
5 professional development and training; (iii) labor-management
6 committees; and (iv) grievance procedures. Retirement benefits are not
7 subject to collective bargaining. By such obligation neither party may
8 be compelled to agree to a proposal or be required to make a concession
9 unless otherwise provided in this chapter;

10 (d) In addition to the entities listed in the mediation and
11 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
12 41.56.480, the provisions apply to the governor or the governor's
13 designee and the exclusive bargaining representative of language access
14 providers, except that:

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

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

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

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

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

1 request, provide a list of all language access providers, including
2 their names, addresses, and other contact information, to a labor union
3 seeking to represent language access providers.

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

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

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

12 (6) Upon meeting the requirements of subsection (7) of this
13 section, the governor must submit, as a part of the proposed biennial
14 or supplemental operating budget submitted to the legislature under RCW
15 43.88.030, a request for funds necessary to implement the compensation
16 and benefit provisions of a collective bargaining agreement entered
17 into under this section or for legislation necessary to implement the
18 agreement.

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

23 (a) Submitted to the director of financial management by October
24 1st prior to the legislative session at which the requests are to be
25 considered, except that, for initial negotiations under this section,
26 the request may not be submitted before July 1, 2011; and

27 (b) Certified by the director of financial management as
28 financially feasible for the state or reflective of a binding decision
29 of an arbitration panel reached under subsection (2)(d) of this
30 section.

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

36 (9) If, after the compensation and benefit provisions of an
37 agreement are approved by the legislature, a significant revenue
38 shortfall occurs resulting in reduced appropriations, as declared by

1 proclamation of the governor or by resolution of the legislature, both
2 parties shall immediately enter into collective bargaining for a
3 mutually agreed upon modification of the agreement.

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

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

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

16 As used in this chapter:

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

26 (2) "Public employee" means any employee of a public employer
27 except any person (a) elected by popular vote, or (b) appointed to
28 office pursuant to statute, ordinance or resolution for a specified
29 term of office as a member of a multimember board, commission, or
30 committee, whether appointed by the executive head or body of the
31 public employer, or (c) whose duties as deputy, administrative
32 assistant or secretary necessarily imply a confidential relationship to
33 (i) the executive head or body of the applicable bargaining unit, or
34 (ii) any person elected by popular vote, or (iii) any person appointed
35 to office pursuant to statute, ordinance or resolution for a specified
36 term of office as a member of a multimember board, commission, or
37 committee, whether appointed by the executive head or body of the

1 public employer, or (d) who is a court commissioner or a court
2 magistrate of superior court, district court, or a department of a
3 district court organized under chapter 3.46 RCW, or (e) who is a
4 personal assistant to a district court judge, superior court judge, or
5 court commissioner. For the purpose of (e) of this subsection, no more
6 than one assistant for each judge or commissioner may be excluded from
7 a bargaining unit.

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

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

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

22 (6) "Executive director" means the executive director of the
23 commission.

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

1 in a county with a population of one million or more whose duties
2 include crash fire rescue or other firefighting duties; (g) employees
3 of fire departments of public employers who dispatch exclusively either
4 fire or emergency medical services, or both; or (h) employees in the
5 several classes of advanced life support technicians, as defined in RCW
6 18.71.200, who are employed by a public employer.

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

11 (9) "Home care quality authority" means the authority under chapter
12 74.39A RCW.

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

16 (11) "Child care subsidy" means a payment from the state through a
17 child care subsidy program established pursuant to RCW 74.12.340 or
18 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
19 program.

20 (12) "Family child care provider" means a person who: (a) Provides
21 regularly scheduled care for a child or children in the home of the
22 provider or in the home of the child or children for periods of less
23 than twenty-four hours or, if necessary due to the nature of the
24 parent's work, for periods equal to or greater than twenty-four hours;
25 (b) receives child care subsidies; and (c) is either licensed by the
26 state under RCW 74.15.030 or is exempt from licensing under chapter
27 74.15 RCW.

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

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

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

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

3 (1) This subsection (1) applies only if the state makes the
4 payments directly to a provider.

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

16 ~~((2))~~ (b) If the governor and the exclusive bargaining
17 representative of a bargaining unit of individual providers, family
18 child care providers, ~~((or))~~ adult family home providers, or language
19 access providers enter into a collective bargaining agreement that:

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

27 ~~((b))~~ (ii) Includes requirements for deductions of payments other
28 than the deduction under (a)(i) of this subsection, the state, as
29 payor, but not as the employer, shall, subject to (c) of this
30 subsection ~~((3) of this section)),~~ make such deductions upon written
31 authorization of the individual provider, family child care provider,
32 ~~((or))~~ adult family home provider, or language access provider.

33 ~~((3)(a))~~ (c)(i) The initial additional costs to the state in
34 making deductions from the payments to individual providers, family
35 child care providers, ~~((and))~~ adult family home providers, and language
36 access providers under this section shall be negotiated, agreed upon in
37 advance, and reimbursed to the state by the exclusive bargaining
38 representative.

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

18 ~~((4))~~ (d) The governor and the exclusive bargaining
19 representative of a bargaining unit of family child care providers may
20 not enter into a collective bargaining agreement that contains a union
21 security provision unless the agreement contains a process, to be
22 administered by the exclusive bargaining representative of a bargaining
23 unit of family child care providers, for hardship dispensation for
24 license- exempt family child care providers who are also temporary
25 assistance for needy families recipients or WorkFirst participants.

26 (2) This subsection (2) applies only if the state does not make the
27 payments directly to a provider.

28 (a) Upon the written authorization of a language access provider
29 within the bargaining unit and after the certification or recognition
30 of the bargaining unit's exclusive bargaining representative, the state
31 shall require through its contracts with third parties that:

32 (i) The monthly amount of dues as certified by the secretary of the
33 exclusive bargaining representative be deducted from the payments to
34 the language access provider and transmitted to the treasurer of the
35 exclusive bargaining representative; and

36 (ii) A record showing that dues have been deducted as specified in
37 (a)(i) of this subsection be provided to the state.

1 (b) If the governor and the exclusive bargaining representative of
2 the bargaining unit of language access providers enter into a
3 collective bargaining agreement that includes a union security
4 provision authorized in RCW 41.56.122, the state shall enforce the
5 agreement by requiring through its contracts with third parties that:

6 (i) The monthly amount of dues required for membership in the
7 exclusive bargaining representative as certified by the secretary of
8 the exclusive bargaining representative, or, for nonmembers thereof, a
9 fee equivalent to the dues, be deducted from the payments to the
10 language access provider and transmitted to the treasurer of the
11 exclusive bargaining representative; and

12 (ii) A record showing that dues or fees have been deducted as
13 specified in (a)(i) of this subsection be provided to the state.

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

16 Individual providers, as defined in RCW 74.39A.240, and family
17 child care providers, (~~as defined in RCW 41.56.030, and~~) adult family
18 home providers, and language access providers, all as defined in RCW
19 41.56.030, are not employees of the state or any of its political
20 subdivisions and are specifically and entirely excluded from all
21 provisions of this title, except as provided in RCW 74.39A.270,
22 41.56.028, and 41.56.029.

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

25 RCW 43.01.040 through 43.01.044 do not apply to individual
26 providers under RCW 74.39A.220 through 74.39A.300, family child care
27 providers under RCW 41.56.028, or adult family home providers under RCW
28 41.56.029, or language access providers under section 2 of this act.

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

31 (1) The department and the office of administrative hearings shall
32 ensure that bilingual services are provided to non-English speaking
33 applicants and recipients. The services shall be provided to the
34 extent necessary to assure that non-English speaking persons are not

1 denied, or unable to obtain or maintain, services or benefits because
2 of their inability to speak English.

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

9 (3) Regardless of the applicant or recipient caseload of any
10 community service office, each community service office shall ensure
11 that bilingual services required to supplement the community service
12 office staff are provided through contracts with ~~((interpreters))~~
13 language access providers, local agencies, or other community
14 resources.

15 (4) The department shall certify, authorize, and qualify language
16 access providers as needed to maintain an adequate pool of providers.

17 (5) The department shall require compliance with RCW 41.56.113(2)
18 through its contracts with third parties.

19 (6) Initial client contact materials shall inform clients in all
20 primary languages of the availability of interpretation services for
21 non-English speaking persons. Basic informational pamphlets shall be
22 translated into all primary languages.

23 ~~((+5))~~ (7) To the extent all written communications directed to
24 applicants or recipients are not in the primary language of the
25 applicant or recipient, the department and the office of administrative
26 hearings shall include with the written communication a notice in all
27 primary languages of applicants or recipients describing the
28 significance of the communication and specifically how the applicants
29 or recipients may receive assistance in understanding, and responding
30 to if necessary, the written communication. The department shall
31 assure that sufficient resources are available to assist applicants and
32 recipients in a timely fashion with understanding, responding to, and
33 complying with the requirements of all such written communications.

34 ~~((+6))~~ (8) As used in this section~~((7))~~:

35 (a) "Language access provider" means any independent contractor who
36 provides spoken language interpreter services for department
37 appointments or medicaid enrollee appointments, or provided these
38 services on or after January 1, 2009, and before the effective date of

1 this section, whether paid by a broker, language access agency, or the
2 department. "Language access provider" does not mean an owner,
3 manager, or employee of a broker or a language access agency.

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

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

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

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