

# HOUSE BILL REPORT

## ESHB 1753

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**As Passed House:**  
March 11, 2013

**Title:** An act relating to interpreter services.

**Brief Description:** Regulating interpreter services.

**Sponsors:** House Committee on Government Operations & Elections (originally sponsored by Representatives Jinkins, Hunt, Cody, Goodman, Freeman, Stanford, Fitzgibbon, Bergquist, Sawyer, Green, Ryu, Hope, Moscoso, Liias, Haler, Hudgins, Sullivan, Appleton and Pollet).

**Brief History:**

**Committee Activity:**

Government Operations & Elections: 2/20/13, 2/21/13 [DPS];  
Appropriations: 2/26/13, 2/28/13 [DP2S(w/o sub GOE)].

**Floor Activity:**

Passed House: 3/11/13, 55-42.

**Brief Summary of Engrossed Substitute Bill**

- Authorizes the Department of Labor and Industries to purchase spoken language interpreter services.
- Requires the departments of Social and Health Services, Labor and Industries, and Enterprise Services and the Health Care Authority to purchase spoken language interpreter services directly from language access providers through scheduling and coordinating delivery organizations.
- Allows the departments of Social and Health Services and Labor and Industries, and the Health Care Authority to integrate the purchase of interpreter services through one centralized system.
- Requires language access providers to be certified or authorized by the state, or nationally certified.
- Establishes the Spoken Language Interpreter Advisory Group.
- Allows for statewide collective bargaining units for language access providers who provide spoken language interpreter services for the Department of Labor and Industries and for other state agencies through the Department of Enterprise Services.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Carlyle, Fitzgibbon, Orwall and Van De Wege.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Kristiansen and Manweller.

**Staff:** Marsha Reilly (786-7135).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Government Operations & Elections. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Pedersen, Pettigrew, Seaquist, Springer and Sullivan.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dahlquist, Fagan, Haler, Harris, Parker, Pike, Ross, Schmick and Taylor.

**Staff:** Erik Cornellier (786-7116).

### **Background:**

#### Interpreter Services.

Federal laws prohibit discrimination based on an individual's race, color, national origin, handicap, religion, or sex by any entity that receives federal financial assistance. Pursuant to these and other laws, the Department of Social and Health Services (DSHS) provides equal access to social service and medical programs for all persons, including persons who have limited English proficiency.

State law also requires the DSHS to ensure that bilingual services are provided to non-English speaking applicants for, and recipients of, public assistance. In community service offices, depending on the circumstances, the DSHS may be required to employ bilingual personnel or contract with interpreters, local agencies, or other community resources.

The DSHS and the Health Care Authority (HCA) provide spoken language interpreter services through contracts with brokers who schedule and link clients and service providers with interpreters. Spoken language interpreters are certified by the DSHS with the use of standardized tests. These tests measure language proficiency and interpreting skills, and evaluate interpreters providing oral interpretation services to social service programs and in

medical settings. Interpreters also may become authorized or qualified by the DSHS to provide such services.

#### Public Employee Collective Bargaining.

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission. Individual providers (home care workers), family child care providers, adult family home providers, and certain language access providers also have collective bargaining rights under the PECBA.

Under the PECBA, the employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions). For uniformed personnel, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation. Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations.

In 2010 Engrossed Substitute Senate Bill 6726 granted collective bargaining rights under the PECBA to language access providers. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies. Mandatory subjects of bargaining are limited to: (1) economic compensation, such as the manner and rate of payments; (2) professional development and training; (3) labor-management committees; and (4) grievance procedures. Retirement benefits are not subject to collective bargaining.

#### **Summary of Engrossed Substitute Bill:**

##### Interpreter Services.

The Department of Labor and Industries (L&I) is authorized to purchase spoken language interpreter services for medical and vocational providers authorized to provide services to limited-English speaking or sensory-impaired injured workers or crime victims.

By September 1, 2015, the L&I, the DSHS, the HCA, and the Department of Enterprise Services (DES) must each purchase spoken language interpreter services directly from language access providers through no more than three contracts with scheduling and coordinating delivery organizations. Each of the departments must be able to provide spoken language interpreter services through telephonic and video remote technologies.

The DES may jointly purchase spoken language interpreter services with the DSHS, the HCA, or the L&I if it is more cost effective or efficient to do so, and the DSHS, the HCA, and the L&I may use the DES contracts if the demand for interpreters cannot be met through their respective contracts. The DSHS, the HCA, and the L&I may integrate procurement of spoken language interpreter services through a single centralized system if they determine that it is more cost effective or efficient to do so.

All language access providers must be certified or authorized by the state, or be nationally certified by the Certification Commission for Healthcare Interpreters or the National Board for Certification of Medical Interpreters. In the event a nationally certified, state-certified, or authorized language access provider is not available, a state agency is authorized to contract with a spoken language interpreter with other certifications or qualifications deemed to meet state standards.

Interpretive services may be provided by state employees or employees of medical or vocational providers.

For purposes of procurement of spoken language interpreter services, state agency is defined as any state office or activity of the executive branch of state government, including state agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions, but excludes institutions of higher education, as defined in RCW 28B.10.016, the School for the Blind, and the Center for Childhood Deafness and Hearing Loss.

The DSHS, the HCA, the L&I, and the DES may not impose reimbursement rates or obligations established through collective bargaining in contracts with entities that do not provide interpreter services through language access providers

#### Advisory Group.

The DSHS must establish the Spoken Language Interpreter Advisory Group (Advisory Group) to advise the DSHS, the L&I, the DES, and the HCA on the policies, rules, and regulations governing certification and authorization of spoken language interpreters. The Director of the DSHS, in consultation with the directors of the other departments, must make appointments to the Advisory Group. The duties of the Advisory Group include developing and recommending policies to enhance the quality of interpreters and evaluating and making recommendations to the certification standards, including the code of ethics, used by the DSHS.

#### Public Employee Collective Bargaining.

Collective bargaining rights under the PECBA are granted to language access providers who provide spoken language interpreter services for the L&I appointments and for state agencies through the DES, or who provided these services on or after January 1, 2012, and before the bill's effective date.

For purposes of collective bargaining, “language access provider” means any independent contractor who provides spoken language interpreter services, whether paid by a language access agency, broker, or the respective department as follows:

- for the DSHS appointments or Medicaid enrollee appointments, or who provided these services on or after January 1, 2009, and before June 10, 2010;
- for the L&I authorized medical and vocational providers, or who provided these services on or after January 1, 2012, and before the effective date of this section; or
- for state agencies, or who provided these services on or after January 1, 2012, and before the effective date of this section.

A “language access provider” does not mean an owner, manager, or employee of a broker or a language access agency, an interpreter who provides services through telephonic or video remote technologies from outside the state of Washington, an interpreter under the Medicaid Administrative Match Program, or an interpreter appointed or required in a court proceeding pursuant to RCW 2.43.030 or when required by a federal consent decree or settlement agreement.

The DSHS appointments do not include court proceedings, and Medicaid enrollee appointments do not include Medicaid Administrative Match Program appointments or any other service provided under that program.

The Public employment Relations Commission (PERC) may not certify any bargaining unit for the L&I or the DES before January 1, 2014. If a single employee organization is the exclusive bargaining representative for two or more language access provider units, upon petition by the employee organization, the units may be consolidated into a single larger unit as the exclusive bargaining representative of the new unit if the PERC considers the consolidation to be appropriate.

If a language access provider cannot be procured through a bargaining unit, a state agency is authorized to contract with any spoken language interpreter provider.

State agencies are obligated to comply with the federal statute and regulations. The Legislature has the right to make programmatic modifications to the workers' compensation laws.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Government Operations & Elections):**

(In support) Several years ago a bill was passed that changed the process for procurement of interpreters within the DSHS. Before the bill was passed, nearly half the money for interpreter services was spent on the brokers and the schedulers and less than half on the actual interpreters. After the bill passed, 75 percent of the money was spent compensating the interpreters. The purpose of the bill is to extend this model to the rest of state government. The L&I is allowed to ease into this model over the next year. After a time, the L&I will centralize with the HCA and the DSHS. The substitute bill allows the use of technology which will save money for travel and time spent traveling. It also insures that interpreters are certified and able to provide the services needed. In 2010 a bill passed to change interpreter services for Medicaid appointments, which has saved the state \$13 million by cutting out the schedulers. The L&I currently spends \$13 million on interpreter services and middlemen take 47 percent plus the payments for mileage. If questioned about the travel money, an interpreter will not receive future appointments. This bill insures high quality interpreter services. Interpreters are independent contractors hired by the state to help people

with limited-English proficiency. The current procurement method is wasteful. The costs for interpreter services have decreased under the Medicaid program from \$23 million to \$10 million in a biennium. Wages for interpreters went from \$21 to \$32 per hour. This bill extends the reforms to the rest of state government. The bill is flexible and gives the departments flexibility. The substitute bill incorporates input from stakeholders. The advisory committee is very important. Medicaid is expanding in Washington and doctors need processes that are simple and reliable. The bill streamlines the process. The creation of an advisory group is needed to advise the DSHS regarding the certification of spoken language interpreters. The DSHS has provided interpreters that have failed the written test, but are still being certified. This practice endangers people. This model for providing interpreter services has already saved millions of dollars.

(With concerns) This bill is more expansive from the bill introduced last year. It may have unintended consequences, such as how court interpreters are organized. It is not clear how telephonic and video interpreters will work and if they will be included in collective bargaining. Video and telephonic interpreters are needed, particularly in emergency situations. The needs for different types of interpreters are different for each agency.

(Opposed) The bill should be amended to specifically state that it applies to spoken language interpreters only and not to American Sign Language (ASL) interpreters. Taking the negotiation and coordination of ASL interpreters out of the hands of the Office of the Deaf and Hard-of-Hearing (ODHH) for Medicaid related medical appointments has caused serious harm to deaf, hard-of-hearing and deaf-blind people by effectively denying communication access and thereby threatening their health. Deaf, hard-of-hearing and deaf-blind people need qualified interpreters. The HCA has failed to serve deaf people. Since the implementation of the new contract in September, the fill-rate has only worsened. Management of these services requires subject matter expertise and the ability to serve the entire state. Video interpreters are not late, and there is no travel. Video interpreters are invaluable in emergency cases because there is no scheduling requirement, and they are available 24 hours a day. Consideration should be given to technology as opposed to on-site visits. Middlemen do a lot of work to find the right person for the job. For example, some instances require a female interpreter rather than a male. It can be difficult to fill positions. The 2010 program that reformed interpreter services for Medicaid also extended collective bargaining to interpreters in the Medicaid Administrative Match Program, even though the supporters of that legislation indicated that it would not apply. But because the funds are pass-through, it does apply. Hospitals use a mix of interpreters. The Medicaid Administrative Match Program needs to be exempted from the bill, and the substitute bill does take it out. The bill, as written, would require in-person interpreting. In-person interpreting requires 48 hours advance notice for appointments, which does not work for emergency situations. Video interpreters are on time, and there is no risk of transmitting disease as there is for in-person interpreting. Video interpreters are also useful in situations for providing interpretation in prison populations. Video interpreting must be allowed to be used in state agencies. It costs 60 percent less than in-person interpreting.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) A few years ago in the Department of Social and Health Services (DSHS) and the Health Care Authority (HCA), the for-profit brokers and schedulers were costing about

42 percent of all interpreter dollars that the state was spending. Through this reform, it is now less than 15 percent and this money is going where it should go, which is to pay for interpreter services for people who need them. The intent is to extend this reform further into state government and generate cost savings. The bill also adds the additional reform of going to video interpreting so the state will pay less for travel and more for services.

The bill encourages direct contracting with interpreters. The procurement model saves money for the state. Interpreters are independent contractors, small business owners, and sole proprietors.

The fiscal note is puzzling because the Administrative Office of the Courts does a great job for \$3,000 per year and it is staffed by a manager that oversees education compliance and manages the reimbursement program.

This bill will save money. In 2010 the Legislature passed a law to reform interpreter services for Medicaid appointments. Thanks to that law, the state stopped for-profit middle-men from taking up to 50 percent in scheduling fees. That reform saved the state \$13 million, bringing \$23 million in costs down to \$10 million.

The savings are proven. It is intuitive: instead of using a myriad of expensive low-tech middlemen, use competitive contacting process, Lean management standards, and readily available technology to do it for less. Under Medicaid, savings are documented in the contract negotiated with the state. The costs of the program have gone down. The fiscal note is based on flawed assumptions. Look at the proof in the pudding. The Medicaid program saved money and the state can save elsewhere. In this day and age it is silly to spend that many taxpayer dollars on mere scheduling of independent contractors.

The state should not be spending so much on scheduling. It is currently \$25 per hour. Telephonic and video remote interpretation services are available for less than half the cost. This would cut the fiscal note in half.

The Department of Labor and Industries (L&I) currently spends \$13.5 million on interpreter services each year, and 47 percent goes to middlemen, schedulers, and overhead fees. This is a gross misuse of public funds. This outrageous practice must stop.

High quality interpretation, which will be achieved with the Spoken Language Advisory Group (Advisory Group), is of the utmost importance. The interpreters must convey complex terminology, and mistakes can affect matters of life-and-death. This requires many skills beyond just being bilingual. Currently there are no training requirements to stay certified or become a medical interpreter, and doctors complain about poor quality. This is an outrage and it puts patients at risk.

Creation of the Advisory Group is long overdue. The DSHS should stop certifying interpreters willy-nilly and work with Advisory Group to do things better.

(Information only) There are three significant errors in the fiscal note that should change the numbers. First, the L&I was looking at the HCA's experience in its procurement. The HCA had eight bidders and the average administrative cost was 15 percent. The L&I assumed that

there would be no change to the current rate structure, but there would be an increase in administrative costs. The HCA was able to remove agencies from the structure and reinvest administrative savings from agencies into wages.

Second, the two-day time loss assumption is not appropriate. The L&I looked at language applying the requirements in the bill to the L&I's providers instead of medical appointments. Under the HCA system for scheduled appointments there are 48 hours or more of lag time for procurement. For anything between zero and 48 hours it is the provider's responsibility to find an interpreter and the provider is not required to go through the bargaining unit. The L&I fiscal note assumed that no service would be provided while patients were waiting 48 hours. If it was clear that this is about scheduling appointments, all of the time loss costs would be removed from the fiscal note.

Third, the assumption that there will be increased costs for the DSHS certification and testing is incorrect. The bill has a requirement that all interpreters get certification through the DSHS. The assumption the DSHS made was that it would have increased demand for certification and testing. There will be costs for the Advisory Group and creating standards, but not for increased testing. There are 9,000 certified interpreters now. It could be that the group is already well-represented.

The experience in the HCA shows that this bill will create some savings. The savings will not be in the millions, but the savings can be reinvested into interpreter services instead of paying agencies.

(Opposed) Businesses are agnostic on the underlying policy, but they are not agnostic on increased costs to the state's workers compensation system. The L&I fiscal note shows significant costs to the workers compensation system from time loss and contracting. The Office of Financial Management and others have stated that the fiscal note may have flaws. Until that is figured out, the Legislature should put a stake in the discussion, and it should decide not to support the bill if there are increased costs.

The bill is not good for taxpayers, patients, or providers. It is not good for taxpayers because it locks in preference for the most costly and least efficient system for agencies. This will increase hospital admissions and state costs. The bill attempts to push aside two other technologies that save 40 to 80 percent compared to in-person interpretation. This is not good for patients because it requires 48-hour advance appointments. Providers cannot schedule an interpreter in an emergency. Video remote and telephonic interpreting do not require scheduling. Those services are available 24 hours a day, 7 days a week, and 365 days a year. The bill is not good for providers because many times they cannot wait 48 hours to properly care for patients. These technologies are used by 28 hospitals and clinics, and the rest of the state should have this option.

Nothing in the fiscal note indicates any savings to the state from the legislation. No agency is saying there will be \$13 million in savings. That is an unsubstantiated number by a proponent. Whether or not the L&I is correct, the fact is that the HCA system delays medical services and that increases time loss. If only half of the \$14 million in time loss costs identified in the fiscal note materialize, it is a significant hit on the workers compensation system. This bill hampers video remote and telephonic services. The HCA offers those



services now, but because of the rate in the federation contract, it is not viable and it is not being used. This bill extends that policy and the state will not have telephonic and video services. If the intent is to increase the use of those technologies it can be done.

**Persons Testifying** (Government Operations & Elections): (In support) Representative Jinkins, prime sponsor; Cesar Garcia, Interpreters United; Dennis Eagle, Washington Federation of State Employees; Katie Kolan, Washington State Medical Association; and Milena Calderan Waldron, Washington Interpreters Society.

(With concerns) Julie Murray, Office of Financial Management.

(Opposed) Theresa Smith, Medical Interpreting Task Force; Jose De La Torre; Shawn Broderick; Glen McComb, Washington State Hospital Association; Gary Smith, Independent Business Association; and Andrew Drake, InDemand Interpreting.

**Persons Testifying** (Appropriations): (In support) Representative Jinkins, prime sponsor; Milena Calderari-Waldron, Washington Interpreters and Translators Society; Tami Lentz and Dennis Eagle, Washington Federation of State Employees; and Ed Zaldebar, e-Interpreters.com.

(Information only) Julie Murray, Office of Financial Management.

(Opposed) Kris Tefft, Association of Washington Business; Jim Ewel and Jim King, In Demand Interpreting; and Jim King, Independent Business Association.

**Persons Signed In To Testify But Not Testifying** (Government Operations & Elections): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.