

# HOUSE BILL REPORT

## HB 3062

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### As Reported by House Committee On:

Commerce & Labor  
Ways & Means

**Title:** An act relating to making the governor the public employer of language access providers.

**Brief Description:** Making the governor the public employer of language access providers.

**Sponsors:** Representatives Conway, Pettigrew, Upthegrove, Cody, Hunt, Williams, Green, Liias, Appleton, Sells, Ormsby, Kenney, Simpson, White, Goodman, Jacks, Darneille and Hudgins.

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/26/10, 2/2/10 [DPS];  
Ways & Means: 2/8/10, 2/9/10 [DP2S(w/o sub CL)].

#### Brief Summary of Second Substitute Bill

- Requires the Office of Financial Management (OFM) to establish a working group on language access services.
- Provides for collective bargaining between the Governor and a statewide unit of language access providers under the Public Employees' Collective Bargaining Act.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

**Staff:** Jill Reinmuth (786-7134).

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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.*

## **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 provides spoken language interpreter services through contracts with brokers who schedule and link clients and service providers with interpreters. (The brokerage model was anticipated in the 2002 supplemental operating budget and implemented in 2003.)

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. (The certification program was initiated in 1991.) 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, and adult family home 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.

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## **Summary of Substitute Bill:**

The Department of Social and Health Services (DSHS) is required to establish a working group on language access services. The DSHS is also required to discontinue using a brokerage system for delivery of language services. The Public Employees' Collective

Bargaining Act (PECBA) is amended to apply to the Governor with respect to language access providers, and to govern collective bargaining between the Governor and the providers' exclusive bargaining representative.

#### Working Group.

The DSHS must establish a working group on language access services no later than 30 days after the bill's effective date. The DSHS must report the working group's findings to the Legislature and the Governor no later than September 30, 2010.

The working group must include members that have experience and knowledge of language access services. The members shall include representatives of:

- a statewide association of hospitals;
- community health providers;
- a statewide association of physicians and physician assistants;
- a statewide labor union working with language access providers;
- statewide professional interpreter associations;
- community-based organizations that advocate for persons with limited English proficiency; and
- language access providers.

The working group must develop a plan to improve language access services. The plan must describe the best possible means by which the following criteria are achieved:

- administrative and overhead costs are reduced by at least 50 percent;
- timeliness and flexibility for medical providers are improved;
- the pool of qualified interpreters is stabilized; and
- fraud and abuse are prevented.

#### Interpreter Services.

The DSHS must provide bilingual services through contracts with language access providers (instead of interpreters, local agencies, or other community resources) in certain circumstances in community service offices.

The DSHS must certify, authorize, and qualify language access providers in a manner consistent with any collective bargaining agreement as needed to maintain a pool of providers. The DSHS may accept alternative certifications that meet or exceed its standards, but may not use lower standards to expand the pool.

The DSHS must discontinue using a brokerage system for delivery of language services upon expiration of the brokerage contracts in effect on January 1, 2010.

#### Public Employees and Employer.

Solely for purposes of collective bargaining, language access providers are "public employees." Language access providers are independent contractors who provide spoken

language interpreter services for the DSHS appointments or Medicaid enrollee appointments, or provided these services on or after January 1, 2009. Language access providers are not owners, managers, or employees of brokers or language access agencies. Solely for purposes of collective bargaining, the Governor is the "public employer."

#### Bargaining Unit and Representative.

The only appropriate bargaining unit is a statewide unit of all language access providers.

The exclusive bargaining representative of the language access providers is determined in an election conducted in the manner specified in the PECBA. Bargaining authorization cards furnished as the showing of interest are exempt from public disclosure.

Contractors and subcontractors must provide to the DSHS a list of the names and addresses of language access providers. Upon request, the DSHS must provide a list of these providers to a labor union seeking to represent them.

#### Mandatory Subjects of Bargaining.

The exclusive bargaining representative of the language access providers and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Mandatory subjects are limited to: (1) economic compensation; (2) rules and procedures regarding payments, work rules, and reimbursements; (3) certification procedures, professional development, and training; (4) labor-management committees; (5) grievance procedures; and (6) other economic matters. Retirement benefits are not subject to collective bargaining.

#### Requests for Funds and Legislative Changes.

The Governor must submit a request to the Legislature for any funds and legislation necessary to implement a collective bargaining agreement covering language access providers. A request must not be submitted by the Governor to the Legislature unless it has been certified by the Director of the Office of Financial Management as being feasible financially or it reflects the binding decision of an arbitration panel. A request may not be submitted before July 1, 2010.

The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, a collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement. If the Legislature approves the submission and a significant revenue shortfall occurs, as declared by a proclamation of the Governor or a resolution of the Legislature, the parties must immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

#### Mediation and Arbitration; No Right to Strike.

Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. For uniformed personnel subject to this requirement, the

interest arbitration panel must consider: the employer's authority; the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost-of-living. For language access providers, the interest arbitration panel must consider the financial ability of the state to pay for the compensation and benefit provisions of the agreement. The interest arbitration panel's decision is not binding on the Legislature, and if the Legislature does not approve the funding, it is not binding on the state.

Language access providers do not have the right to strike.

#### Union Dues.

The state must deduct monthly union dues from a language access provider's payments upon written authorization of the language access provider and after certification or recognition of an exclusive bargaining representative of the language access providers. If a union security clause is included in the agreement, the state must deduct the dues or equivalent fees from the payments made to all language access provider bargaining unit members.

#### State Action Immunity.

The Legislature intends to provide state action immunity under antitrust laws for the joint activities of language access providers and their exclusive bargaining representative.

#### Other Provisions.

The DSHS is obligated to comply with the federal statute and regulations.

The Legislature has the right to make programmatic modifications.

#### **Substitute Bill Compared to Original Bill:**

The working group's membership is modified to specify that it include members that have experience and knowledge of language access services. Associations and organizations that must be represented are described (instead of named). Representatives of statewide professional interpreter associations are added to the working group.

The Department of Social and Health Services (DSHS) is not required to provide directly interpreter services, scheduling, and reimbursements.

The definition of "language access provider" is modified to include only independent contractors who provide spoken language interpreter services. In addition, employees of brokers and language access agencies are excluded.

Contractors and subcontractors are required to provide lists of providers to the DSHS, and upon request, the DSHS is required to provide a list to a labor union seeking to represent providers.

The request for funds to implement the initial collective bargaining agreement may not be submitted before July 1, 2010.

The DSHS must certify, authorize, and qualify language access providers in a manner consistent with any collective bargaining agreement.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2010. New fiscal note on the substitute bill requested on February 2, 2010.

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

**Staff Summary of Public Testimony:**

(In support) The interpreter services program should be saved. The Governor has proposed eliminating the program, which would have a devastating effect on patients and medical providers. The state would forfeit \$12 million in federal funds to save \$4 million in state funds. Washington is one of 13 states that receive Medicaid match for interpreter services; six other states have pending legislation. Language access providers are the only link between non-English speaking Medicaid patients and their doctors.

A less expensive model should be used. The Department of Social and Health Services (DSHS) currently contracts with brokers who contract with language agencies who contract with interpreters. The overhead costs are nearly half of the program budget. The DSHS should contract directly with interpreters or use an online scheduling system. The same number of people would be served for less cost. The provider network would be kept intact. The quality of care would remain solid. More qualified interpreters would be willing to take the DSHS appointments.

The language access providers should be given collective bargaining rights. There are no substantive changes to the process for certification or bargaining. Another category of providers is simply added.

The medical providers and the interpreters dislike the brokerage system. The providers cannot request a specific interpreter and it takes 72 hours to schedule an appointment. The interpreters have seen their earnings go down. Only the DSHS likes the system. The working group will come up with a better system that makes sense for providers, interpreters, and most importantly, patient care.

The physicians who receive federal Medicaid funds must provide interpreters for non-English speaking patients. If the interpreter service program is eliminated, fewer providers will be willing to treat Medicaid patients. Alternatives to interpreters can present difficulties. For example, family members may be unwilling or unable to translate bad news.

Interpreters are needed so that patients can understand doctors and doctors can understand patients. Qualified interpreters who are able to translate complicated medical terminology

are important. Interpreters are necessary so that non-English speaking patients can be healthy for themselves and their children.

(In support with concerns) The working group will help develop solutions. There is a need for a system that supports and provides access to services for limited English speakers. There should be better compensation for interpreters and translators. There should be fewer cost redundancies. There could be bidding on the costs of administrative services only (and not on the rates for interpreters).

Language referral agencies want to be part of the working group and part of the solution. They are a vital part of the system. They provide convenience (e.g., one number for scheduling and billing purposes); administration (e.g., project management, voucher verification, invoicing, and scheduling); and fraud prevention. They are different than brokers.

The bill would require the state to replicate what language referral agencies already do. The agencies are efficient and lean. They have the technology to schedule hundreds of thousands of appointments. The state cannot efficiently provide the services that agencies already provide.

The brokerage system provides interpreters for community service offices, aging and adult services, and other DSHS programs. Those services are not explicitly cut out of the budget.

(Opposed) In 2002 the Legislature laid the foundation for the creation of the brokerage system. The goals were to reduce costs, improve performance, enforce service standards, and prevent fraud and abuse. The brokerage system has been highly successful. It has saved the state \$12 million per year and won an award from the Council of State Governments. It has also helped medical providers know how to use services in the most effective and efficient manner.

Much has been gained from the brokerage system. There have been benefits in service quality and from a fiscal perspective. Brokers ensure that interpreters meet certain standards (e.g., pass background checks, have insurance, follow the interpreter's code of conduct, and deliver proper service).

Brokers should be included in the working group.

**Persons Testifying:** (In support) Marscisa Hodges, Cynthia Roat, and Dennis Eagle, Washington Federation of State Employees; Susie Tracy, Washington State Medical Association; Milena Calderari Waldron, Yolanda Tinoco, and Fatima Morales, Washington Community Action Network; and Fanny Cordino.

(In support with concerns) Chris Van Dyk and Liz Dunbar, Association of Language Service Providers; Sandy Dupleich, Dynamic Language; Elena Lawler, Northwest Interpreters; and Jaye Stover, The Language Exchange.

(Opposed) Ginny Dimick, Human Services Council; and Francois Larrivee, Hopelink.

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

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## HOUSE COMMITTEE ON WAYS & MEANS

**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 Commerce & Labor. Signed by 12 members: Representatives Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler and Pettigrew.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Linville, Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross, Schmick and Seaquist.

**Staff:** David Pringle (786-7310).

### **Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Commerce & Labor:**

The working group on language access services is established by the Office of Financial Management (OFM) in the Ways and Means second substitute bill, as opposed to the Department of Social and Health Services as in the Commerce and Labor substitute bill. The brokerage system is retained in the Ways and Means second substitute bill, and is eliminated in the Commerce and Labor substitute bill following the expiration of brokerage contracts in effect on January 1, 2010. The submission of the initial request to the Director of the OFM to fund a collective bargaining agreement for the language access providers is delayed until no earlier than July 1, 2011, in the Ways and Means second substitute bill, from the date of July 1, 2010, in the Commerce and Labor substitute bill.

**Appropriation:** None.

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

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

### **Staff Summary of Public Testimony:**

(In support) Please restore funding for the program and provide us with collective bargaining rights so that we can have a voice. We are the only link between clients and medical providers. Forty percent overhead is wrong, and that is what the system takes from services right now. This bill will streamline the program and save the state money – and preserve the federal matching funds. Please pass this bill and protect the people we serve. The current model does not work. The recipients of these services are legal residents eligible for Medical Assistance. We need this program restored, as \$4 million in state funds brings in \$12 million in federal funds. These resources need to go to quality service in medical providers' offices. If this bill is cost effective, we support it. If health care providers had to pay for the interpreters directly, they would lose \$127 per visit. I cannot understand why a 75 percent

federal match would be turned away. The collective bargaining piece of the bill – we were approached by the interpreters, and this is a group that is highly motivated. They are getting the shaft now, so this approach is very important. Their wages have gone down. Bargaining will stabilize the group, and provide legal standing for the workers to work with DSHS, ensuring a better working environment.

(Opposed) In other states, the services done by brokers here is done by the providers. Suspending these services altogether would save some money. We have heard concerns about excessive administrative costs – we think about 14 percent goes to the brokers and some additional overhead may be going to the language access provider agencies. The model contemplated in the bill may actually raise administrative costs to the state, however. Our language access brokerage organization is a nonprofit entity, and there have been significant savings to the state generated through the relationship with the brokers. Estimates are that about \$1 million per month has been saved from the elimination of inefficiencies and fraud that existed before the brokerage system was put in place. Our organization receives an encounter fee of between \$7 and \$10 for interpreter services. Paratransit Services is the largest language access broker in Washington. The success of the broker model cannot be overstated. It has saved over \$84 million since the model was put in place. The interpreter service program has worked, and is now being used as an example for reform in other states. Don't abolish the brokers until it is clear that it will save money to do so.

**Persons Testifying:** (In support) Kate White Tudor, Washington Association of Community and Migrant Health Centers; Narscisa Hodges, Interpreters United; Luis DeJesus, Interpreters United; Bill Daley, Washington Community Action Network; Susie Tracy, Washington State Medical Association; and Dennis Eagle, Washington Federation of State Employees.

(Opposed) Ginny Dimick, Human Services Council; David Baker, Paratransit Services; and Mary Ann Lindeblad, Department of Social and Health Services.

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