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**SENATE BILL 5682**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Saldaña, Hasegawa, Chase, Conway, Cleveland, Hunt, McCoy, Keiser, and Kuderer

AN ACT Relating to interpreter services; amending RCW 39.26.100, 41.56.030, and 41.56.510; adding a new section to chapter 39.26 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  It is the intent of the legislature to centralize and consolidate the procurement of spoken language interpreter services and expand the use of language access providers, thereby reducing administrative costs while protecting consumers. The legislature further intends to exclude interpreter services for sensory impaired persons from the provisions of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 39.26 RCW to read as follows:

(1) The department of social and health services and the health care authority are each authorized to purchase interpreter services on behalf of limited-English speaking applicants and recipients of public assistance.

(2) The department of labor and industries is authorized to purchase interpreter services for medical and vocational providers authorized to provide services to limited-English speaking injured workers or crime victims.

(3) Upon the expiration of the any contract in effect on the effective date of this section, but no later than September 1, 2020, the department of social and health services, the health care authority, and the department of labor and industries must purchase in-person spoken language interpreter services directly from language access providers, or through contracts with scheduling and coordinating delivery organizations, or both. Each agency must have at least one contract with an entity that provides interpreter services through telephonic and video remote technologies.

(4) Notwithstanding subsection (3) of this section, the department of labor and industries may pay a language access provider directly for the costs of interpreter services when the services are necessary for use by a medical provider for emergency or urgent care, or where the medical provider determines that advanced notice is not feasible.

(5) Upon the expiration of the any contract in effect on the effective date of this section, but no later than September 1, 2020, the department of enterprise services must develop and implement a model that all state agencies must use to procure spoken language interpreter services by purchasing directly from language access providers or through contracts with scheduling and coordinating entities, or both. The department must have at least one contract with an entity that provides interpreter services through telephonic and video remote technologies. If the department of enterprise services determines it is more cost effective or efficient, it may jointly purchase these services with the department of social and health services, the health care authority, and the department of labor and industries as provided in subsection (3) of this section. The department of social and health services, the health care authority, and the department of labor and industries have the authority to procure interpreters through the department of enterprise services if the demand for spoken language interpreters cannot be met through their respective contracts.

(6) All language access providers procured under this section must be certified or authorized by the state, or be nationally certified by the certification commission for health care interpreters or the national board for certification of medical interpreters. When 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 agency needs. Nothing in this subsection precludes providing interpretive services through state employees or employees of medical or vocational providers.

(7) Nothing in this section is intended to address how state agencies procure interpreters for sensory-impaired persons.

(8) For purposes of this section, "state agency" means 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.

**Sec.**  RCW 39.26.100 and 2013 2nd sp.s. c 33 s 2 are each amended to read as follows:

(1) The provisions of this chapter do not apply in any manner to the operation of the state legislature except as requested by the legislature.

(2) The provisions of this chapter do not apply to the contracting for services, equipment, and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility, that are approved by the technology services board or the acquisition of proprietary software, equipment, and information technology services necessary for or part of the provision of services offered by the consolidated technology services agency.

(3) Primary authority for the purchase of specialized equipment, and instructional and research material, for their own use rests with the institutions of higher education as defined in RCW 28B.10.016.

(4) Universities operating hospitals with approval from the director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations if documented to be more cost-effective.

(5) Primary authority for the purchase of materials, supplies, and equipment, for resale to other than public agencies, rests with the state agency concerned.

(6) The authority for the purchase of insurance and bonds rests with the risk manager under RCW 43.19.769, except for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029.

(7) ((~~The authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance rests with the department of social and health services and the health care authority.~~

~~(8)~~)) The provisions of this chapter do not apply to information technology purchases by state agencies, other than institutions of higher education and agencies of the judicial branch, if (a) the purchase is less than one hundred thousand dollars, (b) the initial purchase is approved by the chief information officer of the state, and (c) the agency director and the chief information officer of the state jointly prepare a public document providing a detailed justification for the expenditure.

**Sec.**  RCW 41.56.030 and 2015 2nd sp.s. c 6 s 1 are each amended to read as follows:

As used in this chapter:

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

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

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

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

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

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

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

(8) "Individual provider" means an individual provider as defined in RCW 74.39A.240((~~(4)~~)) (3) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

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

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services ((~~for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department~~)), whether paid by a language access agency, broker, or the respective department: (i) For department of social and health services appointments or medicaid enrollee appointments, or who provided these services on or after January 1, 2011, and before June 10, 2012; (ii) for department of labor and industries authorized medical and vocational providers, or who provided these services on or after January 1, 2016, and before the effective date of this section; or (iii) for state agencies, or who provided these services on or after January 1, 2016, and before the effective date of this section.

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

(11) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

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

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer; or (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order.

**Sec.**  RCW 41.56.510 and 2010 c 296 s 2 are each amended to read as follows:

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

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

(a) ((~~A statewide unit of all language access providers is~~)) The only language access provider units appropriate for purposes of collective bargaining under RCW 41.56.060 are:

(i) A statewide unit for language access providers who provide spoken language interpreter services for department of social and health services appointments, or medicaid enrollee appointments;

(ii) A statewide unit for language access providers who provide spoken language interpreter services for injured workers or crime victims receiving benefits from the department of labor and industries; and

(iii) A statewide unit for language access providers who provide spoken language interpreter services for any state agency through the department of enterprise services, excluding language access providers included in (a)(i) and (ii) of this subsection;

(b) The exclusive bargaining representatives of language access providers in the units specified in (a) of this subsection shall be the representatives chosen in ((~~an~~)) elections conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section are exempt from disclosure under chapter 42.56 RCW. The public employment relations commission may not certify any bargaining unit under (a)(ii) and (iii) of this subsection before January 1, 2018;

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

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

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

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

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

(f) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the public employment relations commission considers the larger unit to be appropriate. If consolidation is appropriate, the public employment relations commission shall certify the employee organization as the exclusive bargaining representative of the new unit;

(g) If a single employee organization is the exclusive bargaining representative for two or more bargaining units, the governor and the employee organization may agree to negotiate a single collective bargaining agreement for all of the bargaining units that the employee organization represents.

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

(4) Each party with whom the department of social and health services, the department of labor and industries, and the department of enterprise services contracts for language access services and each of their subcontractors shall provide to the respective department an accurate list of language access providers, as defined in RCW 41.56.030, including their names, addresses, and other contact information, annually by January 30th, except that initially the lists must be provided within thirty days of ((~~June 10, 2010~~)) the effective date of this section. The departments shall, upon request, provide a list of all language access providers, including their names, addresses, and other contact information, to a labor union seeking to represent language access providers.

(5) 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.

(6) This section does not create or modify:

(a) The ((~~department's~~)) obligation of any state agency to comply with ((~~the~~)) federal statutes and regulations; and

(b) The legislature's right to make programmatic modifications to the delivery of state services under chapter 74.04 or 39.26 RCW or Title 51 RCW. The governor may not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection.

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

((~~(7)~~)) (8) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section may not be submitted by the governor to the legislature unless the request has been:

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

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

((~~(8)~~)) (9) 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, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

((~~(9)~~)) (10) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

((~~(10)~~)) (11) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

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

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. Nothing in this act may restrict an agency's ability to serve limited English proficient clients in a timely manner.

**--- END ---**