

HOUSE BILL REPORT

2SSB 6245

As Passed House - Amended:
March 1, 2018

Title: An act relating to spoken language interpreter services.

Brief Description: Concerning spoken language interpreter services.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Ranker, Conway, Hasegawa, McCoy, Hunt and Keiser).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/19/18, 2/22/18 [DPA];
Appropriations: 2/24/18, 2/26/18 [DPA(APP w/o LAWS)].

Floor Activity:

Passed House - Amended: 3/1/18, 53-44.

**Brief Summary of Second Substitute Bill
(As Amended by House)**

- Requires the Department of Social and Health Services (DSHS), the Health Care Authority (HCA), and the Department of Labor and Industries (L&I) to purchase interpreter services directly from language access providers or through contracts with scheduling and coordinating delivery organizations, or both.
- Requires the Department of Enterprise Services (DES) to develop a model for state agencies to use to purchase interpreter services from language access providers or through scheduling and coordinating delivery organizations.
- Places limits on when the DSHS may offer spoken language interpreter testing.
- Authorizes language access providers for the DSHS, HCA, L&I, and DES to form three separate statewide collective bargaining units, and requires the agencies to provide a list of language access providers to labor unions.
- Amends the definition of "language access provider" to allow owners of agencies or brokers to be considered language access providers.

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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

Minority Report: Do not pass. Signed by 3 members: Representatives McCabe, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Manweller.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Labor & Workplace Standards. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Kelci Karl-Robinson (786-7116).

Background:

Interpreter Services.

The Department of Social and Health Services (DSHS) and the Health Care Authority (HCA) provide spoken language interpreter services to clients in medical settings and social service programs through contracts with brokers. These brokers schedule and connect clients and service providers with interpreters. In 2018 some programs and services administered by the DSHS will be transferred to the Department of Children, Youth, and Families (DCYF).

Any person seeking to provide interpreter services to the DSHS clients as a contracted interpreter must meet training requirements and pass a skills examination. The Language Testing and Certification Program of the DSHS provides certification and testing services and maintains qualification standards for the DSHS bilingual employees and contracted interpreters. Interpreters must maintain their certification or authorization by, among other things, earning minimum credit hours of continuing education or by retaking the examination if the minimum credit hour requirement has not been met.

Generally, state law provides that the Department of Enterprise Services (DES) establishes the policies and procedures for state agencies to procure goods and services. The authority of the DSHS and the HCA to purchase interpreter services and interpreter brokerage services separate from the DES procedure is an exception to that provision.

Collective Bargaining.

Employees of cities, counties, and other political subdivisions of the state, with limited exception, bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA). Language access providers are defined as independent contractors who provide spoken language interpreter services for the DSHS appointments or Medicaid enrollee appointments. "Language access provider" does not mean an owner, manager, or employee of a broker or language access agency.

Language access providers collectively bargain under the PECBA. For collective bargaining purposes, the public employer of these providers is the Governor, and a single statewide unit exists, consisting of all language access providers. Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in contract negotiations.

Each party contracting with the DSHS for language access services, and each of their subcontractors, must provide the DSHS with the names, addresses, and other contact information of language access providers, by January 30 every year. Upon request, the DSHS must provide a list of all language access providers, including their contact information, to a labor union seeking to represent language access providers.

The Department of Labor and Industries.

As a recipient of federal financial assistance, the Department of Labor and Industries (L&I) is required to take reasonable steps to ensure limited English proficient persons have meaningful access to L&I services. The L&I provides interpreter services for injured workers in the industrial insurance context and to crime victims in the context of administering the Crime Victims Compensation program. For injured workers, the health care or vocational provider determines the need for interpretive services for their own locations and schedules those services at no charge to the worker. To become an interpreter for the L&I, a person must be certified as an interpreter, obtain an L&I provider account number, and submit an application form.

Summary of Amended Bill:

Interpreter Services.

The DSHS, DCYF, HCA, and L&I are authorized to purchase interpreter services for limited English-speaking applicants and recipients of services. By September 1, 2020, those agencies must purchase in-person spoken language interpreter services directly from the language access providers or through contracts with scheduling and coordinating delivery organizations, or both. The L&I is not prohibited from purchasing in-person spoken language interpreter services directly from language access providers or from directly reimbursing language access providers. The L&I may also 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 advance notice is not feasible. Each state agency must have at least one contract with an entity that provides interpreter services through telephonic and video remote technologies.

The DES must develop and implement a model that all state agencies must use to procure spoken language interpreter services by purchasing directly from the language access providers or through contracts with scheduling and coordinating entities, or both. If the DES

determines it is more cost-effective or efficient, it may jointly purchase these services with the DSHS, DCYF, HCA, and L&I. If the demand for services cannot be met through their contracts, the DSHS, DCYF, HCA and L&I may procure interpreters through the DES.

Interpreter services procured by the agencies must be provided by language access providers who are either state or nationally certified. The agencies are not precluded from providing interpreter services through state employees or employees of medical or vocational providers. In addition, the procurement requirement does not apply to the procurement of interpreters for sensory-impaired persons.

The definition of "language access provider" is amended to allow an owner of a broker or language access agency to be considered a language access provider.

Testing and Certification.

Except as needed to certify and authorize bilingual employees, the DSHS will only offer spoken language interpreter testing in the following manner:

- to interpreters of languages for which 10 percent or more of the requests for interpreter services in the prior year for DSHS employees and the HCA on behalf of limited English-speaking clients went unfilled through the procurement process established in the bill;
- to interpreters who were decertified or de-authorized due to noncompliance with continuing education requirements; and
- to current DSHS certified or authorized spoken language interpreters wanting to gain additional certification or authorization.

Collective Bargaining.

The definition of "language access providers" under the PECBA is expanded to include language access providers for the L&I and for state agencies, regardless of whether they were paid by a broker, language access agency, or by the agency. Language access providers providing spoken language interpreter services may form three separate statewide units, as follows:

- providers who provide services for DSHS appointments, DCYF appointments, or Medicaid enrollee appointments;
- providers who provide spoken language interpreter services for injured workers or crime victims receiving benefits from L&I; and
- providers who provide services for any other state agency through the DES.

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 deems it appropriate. If a single employee organization is the exclusive bargaining representative for two or more units, the Governor and the employee organization may agree to negotiate a single collective bargaining agreement for all of the units represented by the organization.

Each party that contracts with the DSHS, HCA, L&I, and DES for language access services, including subcontractors, must provide to the respective agency the names, addresses, and other contact information of language access providers, annually by January 30. An initial list must be provided within 30 days of the effective date of the bill. Upon request, the

agencies must provide a list of all language access providers, including their contact information, to a labor union seeking to represent language access providers.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 6 and 8, relating to collective bargaining, which take effect July 1, 2018.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) This bill is about the procurement of interpreter services. The state agencies make over a thousand appointments a day and it is in the state's interest to have an efficient scheduling system. The HCA currently uses a web-based scheduling system that allows the language company to keep a certain percentage under the contract and the rest is paid to the interpreter. It is efficient and saves money. This bill will allow the L&I to use the same type of system used by the HCA, which will allow for more compensation to interpreters. Overhead savings from this new procurement process will be passed on to the interpreters. The HCA model has a high fill rate. Problems with filling interpreter services is about a broader issue and not about how interpreters are scheduled. This bill is about streamlining the scheduling process. The system L&I uses is outdated and inefficient. Agencies will still be able to directly contract with interpreters.

(Opposed) The current L&I policy allows for medical providers to choose and schedule interpreters. They work directly with interpreters. A third-party administrator will be an unnecessary expense for the L&I. Before implementing this bill, the state needs more information about the actual access people have to interpreter services. There are serious gaps in the availability of interpreters and in the quality of language services. More information is needed to help guide the state in making the best plan. The state should fund a study to understand the language access needs in each state agency before passing this bill. This bill will harm communities by not providing enough interpreters in certain regions. The state needs to take a strategic and well-informed approach to providing interpreter services. There is a difference between scheduling, which is a computer issue, and the actual services provided. This bill would take away business from small businesses and interpreters who are working with providers directly. It will have a negative impact on small companies. This bill is trying to solve a problem that does not exist.

Staff Summary of Public Testimony (Appropriations):

(In support) Prior to 2010, spoken language interpreter services for over 300,000 Medicaid appointments were scheduled through intermediaries, which led to high administrative costs. The Health Care Authority (HCA) and the Department of Social and Health Services (DSHS) contracts with a private company to schedule appointments through a web-based scheduling tool, which has led to decreased administrative costs and increased wages to providers. The collective bargaining section of the bill would allow medical interpreters to create a bargaining unit if they desire. The medical interpreters have worked on amendments

to clarify that this will not change the rates paid to providers. The HCA technology solution collects data on filled versus unfilled appointment requests and cancellations by language and by location. The system allows for automated invoicing and Electronic Funds Transfer payment processing, which diminishes administrative costs. This bill would expand this effective and technology sound model to Labor and Industries and other state agencies. The HCA data has shown that there are certain languages, like Nepali, that have low appointment fill rates and few interpreters. The DSHS should focus on offering language testing that have low appointment fill rates.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): (In support) Senator Saldaña, prime sponsor; Aida Sanchez-Vela and Leroy Mould, Interpreters United Local 1671; Dennis Eagle, Washington Federation of State Employees; and Eric Gonzalez, Washington State Labor Council.

(Opposed) David Kitter, Rehabilitation Institute of Washington; Sarah Leyer and Joanna Ramos, Washington State Coalition for Language Access; Alejandro Ditolla; Juan Medina-Bloise; Andrew Deuchter; Terri Mertens; Sofia Godinez; Juan Pablo Piedrahita; and Logan Pineda.

Persons Testifying (Appropriations): Dennis Eagle, Washington Federation of State Employees; Juan Medina-Bloise, Milena Calderari-Waldron, Interpreters United Local 1672; Phillip Venditti; and Carlos Vallejo.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

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