
Commerce & Labor Committee

ESSB 6726

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

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

Brief Summary of Engrossed Substitute Bill

- Requires the Office of Financial Management 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.

Hearing Date: 2/19/10

Staff: Jill Reinmuth (786-7134).

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.

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.

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.

Summary of Bill:

The Office of Financial Management (OFM) is required to establish a working group on language access 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 OFM must establish a working group on language access services no later than 30 days after the bill's effective date. The OFM must report the working group's findings to the Legislature 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 centers and providers for underserved and immigrant populations;
- statewide associations of physicians;
- other health care providers who serve Medicaid patients;
- a statewide labor union working with language access providers;

- statewide professional interpreter associations;
- community-based organizations that advocate for persons with limited English proficiency;
- language access providers;
- brokers; and
- representatives of the Department of Social and Health Services (DSHS).

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;
- 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.

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; and (5) grievance procedures. 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 OFM as being feasible financially or it reflects the binding decision of an arbitration panel. A request may not be submitted before July 1, 2011.

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.

Appropriation: None.

Fiscal Note: Requested on February 18, 2010.

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