

HOUSE BILL REPORT

ESSB 6726

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: 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 History:

Committee Activity:

Commerce & Labor: 2/19/10, 2/23/10 [DPA];

Ways & Means: 2/27/10 [DPA(CL)].

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- 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.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. 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).

Background:

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.

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.

Summary of Amended 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;
- language access agencies;
- 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.

Amended Bill Compared to Engrossed Substitute Bill:

Representatives of language access agencies are added to the working group.

Appropriation: None.

Fiscal Note: Requested on February 18, 2010.

Effective Date of Amended 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) There have been three major changes to the bill. The working group has been moved from the Department of Social and Health Services to the Office of Financial Management. The scope of bargaining has been narrowed. The timeline for submitting a request for funds has been changed.

The reason for the bill is the proposal to eliminate \$4 million in state funding and forego \$12 million in federal funding. Under the current system, the state pays \$59 per occurrence, and the interpreter makes \$27.30 per occurrence. There is 42 percent overhead. Eighty percent of certified interpreters refuse to take Medicaid appointments. The system is not working.

The interpreters are independent contractors, but their business livelihood is determined by the state and its agents. As their wages are going down, they are voting with their feet and leaving the system. Many qualified interpreters will not serve Medicaid patients. Collective bargaining is important because it means having a voice, and being a part of the team.

It is important to restore funding, cut overhead costs, and provide collective bargaining rights to interpreters to negotiate minimum standards and fair pay. By decreasing overhead, the state can increase pay. One option would be to use technology to schedule interpreters like the court system does.

The interpreters are essential. Otherwise, children may have to serve as interpreters for their parents. One child missed school and ultimately had to tell her parents that her father would die soon.

Health care providers that serve Medicaid patients are required to provide interpreter services, but are already losing money. If the state did not pay for these costs, it could result in a lack of access to health care.

There is support for preserving funding for interpreter services in the budget, and for preserving that status quo while working on improving the system.

The working group is an excellent idea. Nonprofit brokers are committed to fiscal accountability. The current system has saved the state \$84 million over the last seven years.

(In support with concerns) Language access agencies dispatch 250,000 interpreters each year. Brokers turn to language access agencies to find interpreters.

The working group should include language access agencies. The working group should make clear that interpreters are independent contractors and not employees.

The definition of language access provider is limited to those who provide spoken language interpreter services. This limitation is discriminatory, and should be removed.

(Opposed) An impartial review is needed before the system is changed. In addition to finding efficiencies, it is important to make sure there is a quality system. The services need to be of high quality. There is no continuing education for interpreters.

Persons Testifying: (In support) Senator Marr, prime sponsor; Dennis Eagle, Washington Federation of State Employees; Leroy Mould and Johnny Voogt, Interpreters United; Bill Daley and Amal Abdulrahman, Washington Community Action Network; Susie Tracy, Washington State Medical Association; Kate White Tudor, Washington Association of Community and Migrant Health Centers; and Christie Scheffer, Paratransit Services.

(In support with concerns) Chris Van Dyk and Louisa Benitez, Association of Language Access Agencies.

(Opposed) Madelyn Carlson, People for People.

Persons Signed In To Testify But Not Testifying: (In support) Anne Kennedy, Paratransit Services.

(Opposed) Ginny Dimick, Human Services Council.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Commerce & Labor. Signed by 14 members: Representatives Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest and Seaquist.

Minority Report: Do not pass. Signed by 8 members: Representatives Linville, Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Ross and Schmick.

Staff: David Pringle (786-7310).

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

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) Interpreters are independent contractors in this state, but their livelihoods are dictated by the state. At the hands of the state, they are being paid less, and have no ability to negotiate or contest the terms of their employment. Experienced translators are leaving the industry, and corrective action needs to be taken. If these individuals are left as independent contractors, they will never have the chance to improve their lot – this bill offers them that chance. At the last hearing on this bill the chair asked why we need collective bargaining. We have not had a raise in 10 years. We are paid half of what other interpreters are paid, and much of the payment stream is being lost to middlemen. We cannot call when there are cancellations or other eventualities, and ultimately we need a union to deal with the huge state agency that is the Department of Social and Health Services. I love serving Medicaid clients, but largely work for the court system instead because the pay is so much better. Years ago, we all called travel agents to get our airline tickets, but does anyone do that today? The system for language access providers is just as outdated. Thank you so much for restoring funding for the program in the budget. To maintain quality, qualified interpreters, please pass this bill. Many people rely on interpreters to get critical services delivered properly for themselves and their families. We support this bill to improve overall services offered through the program.

(In support with concerns) We are interested in several simple technical amendments to clarify the issue about keeping the agencies separate.

(Opposed) None.

Persons Testifying: (In support) Dennis Eagle, Washington Federation of State Employees; Milena Caldieri-Waldron, Interpreters United; Louise Morehead, Interpreters United; Fatima Morales, Washington Community Action Network; and Kate White-Tudor, Washington Association of Community and Migrant Health Centers.

(In support with concerns) Cindy Laws, Association of Language Access Agencies.

Persons Signed In To Testify But Not Testifying: None.