

SENATE BILL REPORT

SB 6726

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 4, 2010

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: Senators Marr, Kohl-Welles, Ranker, Murray, McDermott, Keiser, Prentice, Kauffman, Kline, Kilmer, Fraser and Pridemore.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/02/10, 2/04/10 [DPS-WM, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6726 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Honeyford and King.

Staff: Kathleen Buchli (786-7488)

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 (LEP), are deaf, deaf-blind, or hard of hearing. State law also requires 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, DSHS may be required to employ bilingual personnel or contract with interpreters, local agencies, or other community resources.

DSHS provides spoken language interpreter services through contracts with brokers who schedule and link clients and service providers with interpreters. Sign language interpreter

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services are provided through contracts with interpreter referral agencies and interpreters. Spoken language interpreters are certified by 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. Interpreters also may become authorized or qualified by DSHS to provide such services. Sign language interpreters are certified by national organizations.

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 PECBA.

Under 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, PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation.

Summary of Bill (Recommended Substitute): The Department of Social and Health Services (DSHS) must establish a working group on language access services. The working group must include members that have experience and knowledge of language access services in Washington State. The working group is to develop a plan to improve the efficiency and effectiveness of language access services. Findings must be reported to the Legislature and the Governor by September 30, 2010.

Upon expiration of the brokerage contracts in effect on January 1, 2010, DSHS must 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. Solely for purposes of collective bargaining, language access providers are public employees and the Governor is the public employer. Language access providers are independent contractors who provide spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments, whether paid by a broker, foreign language agency, or DSHS. Owners, managers, or employees of a broker or language access agency are not included in the definition of language access provider.

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. 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. Contractors and subcontractors must provide to DSHS a list of providers, including contact information, and DSHS must provide that information to a labor union seeking to represent providers.

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.

The request for funds to implement the initial collective bargaining agreement may not be submitted to Office of Financial Management before July 1, 2010. The Governor must submit a request to the Legislature for any funds or legislation necessary to implement the compensation and benefit provisions of a collective bargaining agreement covering language access providers. 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, the collective bargaining agreement is reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

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

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.

DSHS must certify, authorize and qualify providers in a manner consistent with any collective bargaining agreement as needed to maintain a pool of certified, authorized, and qualified providers.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The working group's membership is modified to specify that it includes members that have experience and knowledge of language access services and adds representatives of statewide professional interpreter associations. The brokerage system is discontinued upon expiration of brokerage contracts in effect on January 1, 2010, and does not require that interpreter services, scheduling, and reimbursements be provided directly by DSHS. The definition of language access provider is modified to include only independent contractors who provide spoken

language interpreter services and to exclude employees of brokers and language access agencies. Contractors and subcontractors must provide to DSHS a list of providers, including contact information and DSHS must provide that information to a labor union seeking to represent providers. The request for funds to implement the initial collective bargaining agreement may not be submitted to the Office of Financial Management before July 1, 2010. DSHS must certify, authorize and qualify providers in a manner consistent with any collective bargaining agreement.

Appropriation: None.

Fiscal Note: Preliminary available on Original Bill.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: We have a very emergent problem in the Governor's budget which is the proposed suspension or elimination of state funding for DSHS interpreters; this will result in the loss of federal funding. A way to save the interpreter program is to achieve some savings. The current broker system is cumbersome and is losing more dollars on middlemen than what is being spent on interpreters. We need to make the system work better because there is no centralized consistent system across state agencies to provide for interpreter services. Interpreters for different agencies are paid different rates. Talented interpreters gravitate to other systems that pay better. Because of the broker system, almost half of the costs are diverted into administrative costs and these would be better put into services. Reimbursement rates for DSHS interpreters are low and many interpreters are not taking DSHS appointments. There are critical times in medical cases where interpreters must be used to get good medical outcomes; it is imperative that people be able to speak with their doctors and nurses. Providers do not like the system because it is unresponsive and inconvenient; there is a six-step process for each appointment. Interpreters do not like the system because they are paid significantly less due to brokers and language agencies being paid along the way. The Governor's budget asks the physicians to absorb \$16 million a year in costs and they will decline patients because of this. This will result in patients being seen by fewer facilities and this will include emergency rooms which will result in higher health care costs. This will also result in costs to patients and the use of ad hoc interpreters, such as family and friends. There are negative outcomes due to untrained interpreters.

We support a working group to help improve the system and agencies that provide interpreters should be included in the working group.

Persons Testifying: PRO: Senator Marr, prime sponsor; Bill Daley, Washington Community Action Network; Amal Abdulrahman, Monica Salas, Narscisa Hodges, citizens; Cindi Roat, Dennis Eagle, Washington Federation of State Employees; Susie Tracey, Washington State Medical Association; Liz Dunbar, Tacoma Community House; Chris Van Dyk, Association of Language Service Providers.