CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6726

Chapter 296, Laws of 2010

(partial veto)

61st Legislature 2010 Regular Session

LANGUAGE ACCESS PROVIDERS--COLLECTIVE BARGAINING

EFFECTIVE DATE: 06/10/10

Passed by the Senate March 9, 2010 YEAS 29 NAYS 19

BRAD OWEN

President of the Senate

Passed by the House March 5, 2010 YEAS 58 NAYS 40

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2010, 3:43 p.m., with the exception of Section 1 which is vetoed.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6726** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 2, 2010

Secretary of State State of Washington

CHRISTINE GREGOIRE

Governor of the State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6726

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

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

READ FIRST TIME 02/05/10.

AN ACT Relating to making the governor the public employer of language access providers; amending RCW 41.56.030, 41.56.113, 41.04.810, 43.01.047, and 74.04.025; adding a new section to chapter 4 1.56 RCW; and creating new sections.

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

6 *<u>NEW_SECTION.</u> Sec. 1. (1) No later than thirty days after the 7 effective date of this section, the office of financial management 8 shall establish a working group on language access services.

(2) The working group shall include members that have experience 9 10 and knowledge of language access services in Washington state, including representatives of a statewide association representing 11 12 hospitals, community health centers and providers for underserved and immigrant populations, statewide associations representing physicians, 13 14 other health care providers who serve medicaid patients, a statewide labor union currently working with language access providers, statewide 15 professional interpreter associations, community-based organizations 16 that advocate for persons with limited English proficiency, language 17 18 access providers, language access agencies, brokers, and the department 19 of social and health services.

1 (3) A representative of the office of financial management shall 2 chair the working group, and the department shall provide staff to 3 support the working group's activities.

4 The working group shall develop a plan to improve the (4) 5 efficiency and effectiveness of language access services. The plan shall describe the best possible means by which the following criteria 6 7 are achieved: Administrative and overhead costs, including brokers and language access agencies, are reduced; timeliness and flexibility for 8 9 medical providers is improved; access to services is maintained or improved; the pool of qualified interpreters is stabilized; and fraud 10 11 and abuse are prevented.

(5) The office of financial management shall report the findings of
 the working group to the legislature no later than September 30, 2010.
 *Sec. 1 was vetoed. See message at end of chapter.

14 <u>NEW SECTION.</u> Sec. 2. A new section is added to chapter 41.56 RCW 15 to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this 16 17 chapter applies to the governor with respect to language access 18 providers. Solely for the purposes of collective bargaining and as 19 expressly limited under subsections (2) and (3) of this section, the governor is the public employer of language access providers who, 20 solely for the purposes of collective bargaining, are public employees. 21 22 The governor or the governor's designee shall represent the public 23 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
unit appropriate for purposes of collective bargaining under RCW
41.56.060;

30 (b) The exclusive bargaining representative of language access 31 providers in the unit specified in (a) of this subsection shall be the 32 representative chosen in an election conducted pursuant to RCW 33 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;

(c) Notwithstanding the definition of "collective bargaining" in 1 2 RCW 41.56.030(4), the scope of collective bargaining for language access providers under this section is limited solely to: (i) Economic 3 compensation, such as the manner and rate of payments; (ii) 4 5 professional development and training; (iii) labor-management committees; and (iv) grievance procedures. Retirement benefits are not 6 7 subject to collective bargaining. By such obligation neither party may be compelled to agree to a proposal or be required to make a concession 8 unless otherwise provided in this chapter; 9

10 (d) In addition to the entities listed in the mediation and 11 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 12 41.56.480, the provisions apply to the governor or the governor's 13 designee and the exclusive bargaining representative of language access 14 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;

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

(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 contracts for language access services and each of their subcontractors shall provide to the 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 the effective date of this section. The department 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.

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(5) This section does not create or modify:

5 (a) The department's obligation to comply with the federal statute 6 and regulations; and

7 (b) The legislature's right to make programmatic modifications to 8 the delivery of state services under chapter 74.04 RCW. The governor 9 may not enter into, extend, or renew any agreement under this chapter 10 that does not expressly reserve the legislative rights described in 11 this subsection.

12 (6) Upon meeting the requirements of subsection (7) of this 13 section, the governor must submit, as a part of the proposed biennial 14 or supplemental operating budget submitted to the legislature under RCW 15 43.88.030, a request for funds necessary to implement the compensation 16 and benefit provisions of a collective bargaining agreement entered 17 into under this section or for legislation necessary to implement the 18 agreement.

19 (7) A request for funds necessary to implement the compensation and 20 benefit provisions of a collective bargaining agreement entered into 21 under this section may not be submitted by the governor to the 22 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.

31 (8) The legislature must approve or reject the submission of the 32 request for funds as a whole. If the legislature rejects or fails to 33 act on the submission, any collective bargaining agreement must be 34 reopened for the sole purpose of renegotiating the funds necessary to 35 implement the agreement.

36 (9) If, after the compensation and benefit provisions of an 37 agreement are approved by the legislature, a significant revenue 38 shortfall occurs resulting in reduced appropriations, as declared by

1 proclamation of the governor or by resolution of the legislature, both 2 parties shall immediately enter into collective bargaining for a 3 mutually agreed upon modification of the agreement.

4 (10) After the expiration date of any collective bargaining 5 agreement entered into under this section, all of the terms and 6 conditions specified in the agreement remain in effect until the 7 effective date of a subsequent agreement, not to exceed one year from 8 the expiration date stated in the agreement.

9 (11) In enacting this section, the legislature intends to provide 10 state action immunity under federal and state antitrust laws for the 11 joint activities of language access providers and their exclusive 12 bargaining representative to the extent the activities are authorized 13 by this chapter.

14 Sec. 3. RCW 41.56.030 and 2007 c 184 s 2 are each amended to read 15 as follows:

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As used in this chapter:

17 (1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body 18 19 governed by this chapter, or any subdivision of such public body. For 20 the purposes of this section, the public employer of district court or 21 superior court employees for wage-related matters is the respective 22 county legislative authority, or person or body acting on behalf of the 23 legislative authority, and the public employer for nonwage-related 24 matters is the judge or judge's designee of the respective district 25 court or superior court.

26 (2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to 27 office pursuant to statute, ordinance or resolution for a specified 28 term of office as a member of a multimember board, commission, or 29 committee, whether appointed by the executive head or body of the 30 31 public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to 32 (i) the executive head or body of the applicable bargaining unit, or 33 (ii) any person elected by popular vote, or (iii) any person appointed 34 to office pursuant to statute, ordinance or resolution for a specified 35 36 term of office as a member of a multimember board, commission, or 37 committee, whether appointed by the executive head or body of the

1 public employer, or (d) who is a court commissioner or a court 2 magistrate of superior court, district court, or a department of a 3 district court organized under chapter 3.46 RCW, or (e) who is a 4 personal assistant to a district court judge, superior court judge, or 5 court commissioner. For the purpose of (e) of this subsection, no more 6 than one assistant for each judge or commissioner may be excluded from 7 a bargaining unit.

8 (3) "Bargaining representative" means any lawful organization which 9 has as one of its primary purposes the representation of employees in 10 their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual 11 obligations of the public employer and the exclusive bargaining 12 13 representative to meet at reasonable times, to confer and negotiate in 14 good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, 15 16 including wages, hours and working conditions, which may be peculiar to 17 an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal 18 or be required to make a concession unless otherwise provided in this 19 20 chapter.

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

22 (6) "Executive director" means the executive director of the 23 commission.

24 (7) "Uniformed personnel" means: (a) Law enforcement officers as 25 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 26 27 enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who 28 are uniformed and nonuniformed, commissioned and noncommissioned 29 security personnel employed in a jail as defined 30 in RCW 70.48.020(((5))) (9), by a county with a population of seventy thousand 31 32 or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the 33 jail and 34 safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a 35 port district in a county with a population of one million or more; (d) 36 37 security forces established under RCW 43.52.520; (e) firefighters as 38 that term is defined in RCW 41.26.030; (f) employees of a port district

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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; or (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.

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

11 (9) "Home care quality authority" means the authority under chapter 12 74.39A RCW.

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

16 (11) "Child care subsidy" means a payment from the state through a 17 child care subsidy program established pursuant to RCW 74.12.340 or 18 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor 19 program.

(12) "Family child care provider" means a person who: (a) Provides 20 21 regularly scheduled care for a child or children in the home of the 22 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 23 24 parent's work, for periods equal to or greater than twenty-four hours; 25 (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 26 27 74.15 RCW.

(13) "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.

31 (14)(a) "Language access provider" means any independent contractor 32 who provides spoken language interpreter services for department of 33 social and health services appointments or medicaid enrollee 34 appointments, or provided these services on or after January 1, 2009, 35 and before the effective date of this section, whether paid by a 36 broker, language access agency, or the department.

37 (b) "Language access provider" does not mean an owner, manager, or 38 employee of a broker or a language access agency.

1 **Sec. 4.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read 2 as follows:

3 (1) <u>This subsection (1) applies only if the state makes the</u>
4 <u>payments directly to a provider.</u>

(a) Upon the written authorization of an individual provider, a 5 family child care provider, ((or)) an adult family home provider, or a 6 7 language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive 8 bargaining representative, the state as payor, but not as the employer, 9 10 shall, subject to (c) of this subsection $\left(\frac{(3)}{-of} - \frac{1}{his} - \frac{1}{section}\right)$, deduct from the payments to an individual provider, a family child care 11 12 provider, ((or)) an adult family home provider, or a language access 13 provider the monthly amount of dues as certified by the secretary of 14 the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative. 15

16 (((2))) (b) If the governor and the exclusive bargaining 17 representative of a bargaining unit of individual providers, family 18 child care providers, ((or)) adult family home providers, or language 19 <u>access providers</u> enter into a collective bargaining agreement that:

20 (((a))) <u>(i)</u> Includes a union security provision authorized in RCW 21 41.56.122, the state as payor, but not as the employer, shall, subject 22 to (c) of this subsection (((3) - of - this - section)), enforce the 23 agreement by deducting from the payments to bargaining unit members the 24 required for membership in the exclusive dues bargaining 25 representative, or, for nonmembers thereof, a fee equivalent to the 26 dues; or

27 (((b))) <u>(ii)</u> Includes requirements for deductions of payments other 28 than the deduction under (a)<u>(i)</u> of this subsection, the state, as 29 payor, but not as the employer, shall, subject to <u>(c) of this</u> 30 subsection (((3) of this section)), make such deductions upon written 31 authorization of the individual provider, family child care provider, 32 ((or)) adult family home provider, or language access provider.

33 (((3)(a))) (c)(i) The initial additional costs to the state in 34 making deductions from the payments to individual providers, family 35 child care providers, ((and)) adult family home providers<u>, and language</u> 36 <u>access providers</u> under this section shall be negotiated, agreed upon in 37 advance, and reimbursed to the state by the exclusive bargaining 38 representative.

((((b))) (<u>ii)</u> The allocation of ongoing additional costs to the 1 2 state in making deductions from the payments to individual providers, family child care providers, ((or)) adult family home providers, or 3 language access providers under this section shall be an appropriate 4 subject of collective bargaining between the exclusive bargaining 5 representative and the governor unless prohibited by another statute. б 7 If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive 8 bargaining representative and the governor, or if the legislature does 9 not approve funding for the collective bargaining agreement as provided 10 in RCW 74.39A.300, 41.56.028, ((or)) 41.56.029, <u>or section 2</u> of this 11 12 <u>act</u>, as applicable, the ongoing additional costs to the state in making 13 deductions from the payments to individual providers, family child care 14 providers, ((or)) adult family home providers, or language access providers under this section shall be negotiated, agreed upon in 15 advance, and reimbursed to the state by the exclusive bargaining 16 17 representative.

18 the (((++)))(d) The governor and exclusive bargaining representative of a bargaining unit of family child care providers may 19 not enter into a collective bargaining agreement that contains a union 20 21 security provision unless the agreement contains a process, to be 22 administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for 23 24 license- exempt family child care providers who are also temporary 25 assistance for needy families recipients or WorkFirst participants.

26 (2) This subsection (2) applies only if the state does not make the
 27 payments directly to a provider.

28 (a) Upon the written authorization of a language access provider 29 within the bargaining unit and after the certification or recognition 30 of the bargaining unit's exclusive bargaining representative, the state 31 shall require through its contracts with third parties that:

32 (i) The monthly amount of dues as certified by the secretary of the 33 exclusive bargaining representative be deducted from the payments to 34 the language access provider and transmitted to the treasurer of the 35 exclusive bargaining representative; and

36 (ii) A record showing that dues have been deducted as specified in
37 (a)(i) of this subsection be provided to the state.

1 (b) If the governor and the exclusive bargaining representative of 2 the bargaining unit of language access providers enter into a 3 collective bargaining agreement that includes a union security 4 provision authorized in RCW 41.56.122, the state shall enforce the 5 agreement by requiring through its contracts with third parties that:

6 (i) The monthly amount of dues required for membership in the 7 exclusive bargaining representative as certified by the secretary of 8 the exclusive bargaining representative, or, for nonmembers thereof, a 9 fee equivalent to the dues, be deducted from the payments to the 10 language access provider and transmitted to the treasurer of the 11 exclusive bargaining representative; and

12 (ii) A record showing that dues or fees have been deducted as 13 specified in (a)(i) of this subsection be provided to the state.

14 **Sec. 5.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read 15 as follows:

Individual providers, as defined in RCW 74.39A.240, <u>and</u> family child care providers, ((as defined in RCW 41.56.030, and)) adult family home providers, <u>and language access providers</u>, <u>all</u> as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270, 41.56.028, and 41.56.029.

23 Sec. 6. RCW 43.01.047 and 2007 c 184 s 5 are each amended to read 24 as follows:

25 RCW 43.01.040 through 43.01.044 do not apply to individual 26 providers under RCW 74.39A.220 through 74.39A.300, family child care 27 providers under RCW 41.56.028, or adult family home providers under RCW 28 41.56.029, or language access providers under section 2 of this act.

29 Sec. 7. RCW 74.04.025 and 1998 c 245 s 143 are each amended to 30 read as follows:

(1) The department and the office of administrative hearings shall ensure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because
 of their inability to speak English.

3 (2) If the number of non-English speaking applicants or recipients 4 sharing the same language served by any community service office client 5 contact job classification equals or exceeds fifty percent of the 6 average caseload of a full-time position in such classification, the 7 department shall, through attrition, employ bilingual personnel to 8 serve such applicants or recipients.

9 (3) Regardless of the applicant or recipient caseload of any 10 community service office, each community service office shall ensure 11 that bilingual services required to supplement the community service 12 office staff are provided through contracts with ((interpreters)) 13 <u>language_access_providers</u>, local agencies, or other community 14 resources.

15 (4) <u>The department shall certify, authorize, and gualify language</u>
 16 <u>access providers as needed to maintain an adequate pool of providers.</u>

17 (5) The department shall require compliance with RCW 41.56.113(2)
 18 through its contracts with third parties.

19 (6) Initial client contact materials shall inform clients in all 20 primary languages of the availability of interpretation services for 21 non-English speaking persons. Basic informational pamphlets shall be 22 translated into all primary languages.

(((5))) (7) To the extent all written communications directed to 23 24 applicants or recipients are not in the primary language of the 25 applicant or recipient, the department and the office of administrative 26 hearings shall include with the written communication a notice in all 27 primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants 28 or recipients may receive assistance in understanding, and responding 29 to if necessary, the written communication. The department shall 30 assure that sufficient resources are available to assist applicants and 31 32 recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications. 33

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((++)) (8) As used in this section(+):

35 (a) "Language access provider" means any independent contractor who 36 provides __spoken __language __interpreter __services __for __department 37 appointments __or __medicaid __enrollee __appointments, __or __provided __these 38 services on or after January 1, 2009, and before the effective date of this section, whether paid by a broker, language access agency, or the department. "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

4 (b) "Primary languages" includes but is not limited to Spanish,
5 Vietnamese, Cambodian, Laotian, and Chinese.

6 <u>NEW_SECTION.</u> Sec. 8. If any provision of this act or its 7 application to any person or circumstance is held invalid, the 8 remainder of the act or the application of the provision to other 9 persons or circumstances is not affected.

<u>NEW SECTION.</u> Sec. 9. If any part of this act is found to be in 10 11 conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of 12 this act is inoperative solely to the extent of the conflict and with 13 respect to the agencies directly affected, and this finding does not 14 15 affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal 16 requirements that are a necessary condition to the receipt of federal 17 18 funds by the state.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1, Engrossed Substitute Senate Bill 6726 entitled:

"AN ACT Relating to making the governor the public employer of language access providers."

This bill provides for collective bargaining between the Governor and language access providers. Section 1 creates a new workgroup, directed by the Office of Financial Management, charged with developing a plan to improve the efficiency and effectiveness for interpreter service delivery for the Department of Social and Health Services. The Office of Financial Management is to report the findings of the workgroup to the Legislature no later than September 30, 2010.

Collective bargaining for language access providers working with the Department of Social and Health Services does not require a legislatively mandated workgroup to make recommendations on improvements to the delivery of services. I am directing the Office of Financial Management and the Department of Social and Health Services to conduct an internal review resulting in recommendations to improve administrative efficiency and effectiveness of language access services and, as part of the review, to seek input from the appropriate stakeholders.

ESSB 6726.SL

For these reasons, I have vetoed Section 1 of Engrossed Substitute Senate Bill 6726.

With the exception of Section 1, Engrossed Substitute Senate Bill 6726 is approved."