

**2SSB 6726 - S AMD 128**

By Senators Keiser, Marr, Kohl-Welles

PULLED 02/15/2010

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION.   **Sec. 1.** (1) No later than thirty days after the  
4 effective date of this section, the office of financial management  
5 shall establish a working group on language access services.

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

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

20       (4) The working group shall develop a plan to improve the  
21 efficiency and effectiveness of language access services. The plan  
22 shall describe the best possible means by which the following criteria  
23 are achieved: Administrative and overhead costs, including brokers and  
24 language access agencies, are reduced; timeliness and flexibility for  
25 medical providers is improved; the pool of qualified interpreters is  
26 stabilized; and fraud and abuse are prevented.

27       (5) The office of financial management shall report the findings of  
28 the working group to the legislature no later than September 30, 2010.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 41.56 RCW  
2 to read as follows:

3        (1) In addition to the entities listed in RCW 41.56.020, this  
4 chapter applies to the governor with respect to language access  
5 providers. Solely for the purposes of collective bargaining and as  
6 expressly limited under subsections (2) and (3) of this section, the  
7 governor is the public employer of language access providers who,  
8 solely for the purposes of collective bargaining, are public employees.  
9 The governor or the governor's designee shall represent the public  
10 employer for bargaining purposes.

11        (2) There shall be collective bargaining, as defined in RCW  
12 41.56.030, between the governor and language access providers, except  
13 as follows:

14        (a) A statewide unit of all language access providers is the only  
15 unit appropriate for purposes of collective bargaining under RCW  
16 41.56.060;

17        (b) The exclusive bargaining representative of language access  
18 providers in the unit specified in (a) of this subsection shall be the  
19 representative chosen in an election conducted pursuant to RCW  
20 41.56.070.

21        Bargaining authorization cards furnished as the showing of interest  
22 in support of any representation petition or motion for intervention  
23 filed under this section are exempt from disclosure under chapter 42.56  
24 RCW;

25        (c) Notwithstanding the definition of "collective bargaining" in  
26 RCW 41.56.030(4), the scope of collective bargaining for language  
27 access providers under this section is limited solely to: (i) Economic  
28 compensation; (ii) rules and procedures regarding payments, work rules,  
29 and reimbursements; (iii) certification procedures, professional  
30 development, and training; (iv) labor-management committees; (v)  
31 grievance procedures; and (vi) other economic matters. Retirement  
32 benefits are not subject to collective bargaining. By such obligation  
33 neither party may be compelled to agree to a proposal or be required to  
34 make a concession unless otherwise provided in this chapter;

35        (d) In addition to the entities listed in the mediation and  
36 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
37 41.56.480, the provisions apply to the governor or the governor's

1 designee and the exclusive bargaining representative of language access  
2 providers, except that:

3 (i) In addition to the factors to be taken into consideration by an  
4 interest arbitration panel under RCW 41.56.465, the panel shall  
5 consider the financial ability of the state to pay for the compensation  
6 and benefit provisions of a collective bargaining agreement;

7 (ii) The decision of the arbitration panel is not binding on the  
8 legislature and, if the legislature does not approve the request for  
9 funds necessary to implement the compensation and benefit provisions of  
10 the arbitrated collective bargaining agreement, the decision is not  
11 binding on the state;

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

13 (3) Language access providers who are public employees solely for  
14 the purposes of collective bargaining under subsection (1) of this  
15 section are not, for that reason, employees of the state for any other  
16 purpose. This section applies only to the governance of the collective  
17 bargaining relationship between the employer and language access  
18 providers as provided in subsections (1) and (2) of this section.

19 (4) Each party with whom the department of social and health  
20 services contracts for language access services and each of their  
21 subcontractors shall provide to the department an accurate list of  
22 language access providers, as defined in RCW 41.56.030, including their  
23 names, addresses, and other contact information, annually by January  
24 30th, except that initially the lists must be provided within thirty  
25 days of the effective date of this section. The department shall, upon  
26 request, provide a list of all language access providers, including  
27 their names, addresses, and other contact information, to a labor union  
28 seeking to represent language access providers.

29 (5) This section does not create or modify:

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

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

37 (6) Upon meeting the requirements of subsection (7) of this  
38 section, the governor must submit, as a part of the proposed biennial

1 or supplemental operating budget submitted to the legislature under RCW  
2 43.88.030, a request for funds necessary to implement the compensation  
3 and benefit provisions of a collective bargaining agreement entered  
4 into under this section or for legislation necessary to implement the  
5 agreement.

6 (7) A request for funds necessary to implement the compensation and  
7 benefit provisions of a collective bargaining agreement entered into  
8 under this section may not be submitted by the governor to the  
9 legislature unless the request has been:

10 (a) Submitted to the director of financial management by October  
11 1st prior to the legislative session at which the requests are to be  
12 considered, except that, for initial negotiations under this section,  
13 the request may not be submitted before July 1, 2011; and

14 (b) Certified by the director of financial management as  
15 financially feasible for the state or reflective of a binding decision  
16 of an arbitration panel reached under subsection (2)(d) of this  
17 section.

18 (8) The legislature must approve or reject the submission of the  
19 request for funds as a whole. If the legislature rejects or fails to  
20 act on the submission, any collective bargaining agreement must be  
21 reopened for the sole purpose of renegotiating the funds necessary to  
22 implement the agreement.

23 (9) If, after the compensation and benefit provisions of an  
24 agreement are approved by the legislature, a significant revenue  
25 shortfall occurs resulting in reduced appropriations, as declared by  
26 proclamation of the governor or by resolution of the legislature, both  
27 parties shall immediately enter into collective bargaining for a  
28 mutually agreed upon modification of the agreement.

29 (10) After the expiration date of any collective bargaining  
30 agreement entered into under this section, all of the terms and  
31 conditions specified in the agreement remain in effect until the  
32 effective date of a subsequent agreement, not to exceed one year from  
33 the expiration date stated in the agreement.

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

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

3       As used in this chapter:

4       (1) "Public employer" means any officer, board, commission,  
5 council, or other person or body acting on behalf of any public body  
6 governed by this chapter, or any subdivision of such public body. For  
7 the purposes of this section, the public employer of district court or  
8 superior court employees for wage-related matters is the respective  
9 county legislative authority, or person or body acting on behalf of the  
10 legislative authority, and the public employer for nonwage-related  
11 matters is the judge or judge's designee of the respective district  
12 court or superior court.

13       (2) "Public employee" means any employee of a public employer  
14 except any person (a) elected by popular vote, or (b) appointed to  
15 office pursuant to statute, ordinance or resolution for a specified  
16 term of office as a member of a multimember board, commission, or  
17 committee, whether appointed by the executive head or body of the  
18 public employer, or (c) whose duties as deputy, administrative  
19 assistant or secretary necessarily imply a confidential relationship to  
20 (i) the executive head or body of the applicable bargaining unit, or  
21 (ii) any person elected by popular vote, or (iii) any person appointed  
22 to office pursuant to statute, ordinance or resolution for a specified  
23 term of office as a member of a multimember board, commission, or  
24 committee, whether appointed by the executive head or body of the  
25 public employer, or (d) who is a court commissioner or a court  
26 magistrate of superior court, district court, or a department of a  
27 district court organized under chapter 3.46 RCW, or (e) who is a  
28 personal assistant to a district court judge, superior court judge, or  
29 court commissioner. For the purpose of (e) of this subsection, no more  
30 than one assistant for each judge or commissioner may be excluded from  
31 a bargaining unit.

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

35       (4) "Collective bargaining" means the performance of the mutual  
36 obligations of the public employer and the exclusive bargaining  
37 representative to meet at reasonable times, to confer and negotiate in  
38 good faith, and to execute a written agreement with respect to

1 grievance procedures and collective negotiations on personnel matters,  
2 including wages, hours and working conditions, which may be peculiar to  
3 an appropriate bargaining unit of such public employer, except that by  
4 such obligation neither party shall be compelled to agree to a proposal  
5 or be required to make a concession unless otherwise provided in this  
6 chapter.

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

8 (6) "Executive director" means the executive director of the  
9 commission.

10 (7) "Uniformed personnel" means: (a) Law enforcement officers as  
11 defined in RCW 41.26.030 employed by the governing body of any city or  
12 town with a population of two thousand five hundred or more and law  
13 enforcement officers employed by the governing body of any county with  
14 a population of ten thousand or more; (b) correctional employees who  
15 are uniformed and nonuniformed, commissioned and noncommissioned  
16 security personnel employed in a jail as defined in RCW  
17 70.48.020(~~(+5)~~) (9), by a county with a population of seventy thousand  
18 or more, and who are trained for and charged with the responsibility of  
19 controlling and maintaining custody of inmates in the jail and  
20 safeguarding inmates from other inmates; (c) general authority  
21 Washington peace officers as defined in RCW 10.93.020 employed by a  
22 port district in a county with a population of one million or more; (d)  
23 security forces established under RCW 43.52.520; (e) firefighters as  
24 that term is defined in RCW 41.26.030; (f) employees of a port district  
25 in a county with a population of one million or more whose duties  
26 include crash fire rescue or other firefighting duties; (g) employees  
27 of fire departments of public employers who dispatch exclusively either  
28 fire or emergency medical services, or both; or (h) employees in the  
29 several classes of advanced life support technicians, as defined in RCW  
30 18.71.200, who are employed by a public employer.

31 (8) "Institution of higher education" means the University of  
32 Washington, Washington State University, Central Washington University,  
33 Eastern Washington University, Western Washington University, The  
34 Evergreen State College, and the various state community colleges.

35 (9) "Home care quality authority" means the authority under chapter  
36 74.39A RCW.

37 (10) "Individual provider" means an individual provider as defined

1 in RCW 74.39A.240(4) who, solely for the purposes of collective  
2 bargaining, is a public employee as provided in RCW 74.39A.270.

3 (11) "Child care subsidy" means a payment from the state through a  
4 child care subsidy program established pursuant to RCW 74.12.340 or  
5 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor  
6 program.

7 (12) "Family child care provider" means a person who: (a) Provides  
8 regularly scheduled care for a child or children in the home of the  
9 provider or in the home of the child or children for periods of less  
10 than twenty-four hours or, if necessary due to the nature of the  
11 parent's work, for periods equal to or greater than twenty-four hours;  
12 (b) receives child care subsidies; and (c) is either licensed by the  
13 state under RCW 74.15.030 or is exempt from licensing under chapter  
14 74.15 RCW.

15 (13) "Adult family home provider" means a provider as defined in  
16 RCW 70.128.010 who receives payments from the medicaid and state-funded  
17 long-term care programs.

18 (14)(a) "Language access provider" means any independent contractor  
19 who provides spoken language interpreter services for department of  
20 social and health services appointments or medicaid enrollee  
21 appointments, or provided these services on or after January 1, 2009,  
22 and before the effective date of this section, whether paid by a  
23 broker, foreign language agency, or the department.

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

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

28 (1) Upon the written authorization of an individual provider, a  
29 family child care provider, ~~((or))~~ an adult family home provider, or a  
30 language access provider within the bargaining unit and after the  
31 certification or recognition of the bargaining unit's exclusive  
32 bargaining representative, the state as payor, but not as the employer,  
33 shall, subject to subsection (3) of this section, deduct from the  
34 payments to an individual provider, a family child care provider,  
35 ~~((or))~~ an adult family home provider, or a language access provider the  
36 monthly amount of dues as certified by the secretary of the exclusive

1 bargaining representative and shall transmit the same to the treasurer  
2 of the exclusive bargaining representative.

3 (2) If the governor and the exclusive bargaining representative of  
4 a bargaining unit of individual providers, family child care providers,  
5 ~~((or))~~ adult family home providers, or language access providers enter  
6 into a collective bargaining agreement that:

7 (a) Includes a union security provision authorized in RCW  
8 41.56.122, the state as payor, but not as the employer, shall, subject  
9 to subsection (3) of this section, enforce the agreement by deducting  
10 from the payments to bargaining unit members the dues required for  
11 membership in the exclusive bargaining representative, or, for  
12 nonmembers thereof, a fee equivalent to the dues; or

13 (b) Includes requirements for deductions of payments other than the  
14 deduction under (a) of this subsection, the state, as payor, but not as  
15 the employer, shall, subject to subsection (3) of this section, make  
16 such deductions upon written authorization of the individual provider,  
17 family child care provider, ~~((or))~~ adult family home provider, or  
18 language access provider.

19 (3)(a) The initial additional costs to the state in making  
20 deductions from the payments to individual providers, family child care  
21 providers, ~~((and))~~ adult family home providers, and language access  
22 providers under this section shall be negotiated, agreed upon in  
23 advance, and reimbursed to the state by the exclusive bargaining  
24 representative.

25 (b) The allocation of ongoing additional costs to the state in  
26 making deductions from the payments to individual providers, family  
27 child care providers, ~~((or))~~ adult family home providers, or language  
28 access providers under this section shall be an appropriate subject of  
29 collective bargaining between the exclusive bargaining representative  
30 and the governor unless prohibited by another statute. If no  
31 collective bargaining agreement containing a provision allocating the  
32 ongoing additional cost is entered into between the exclusive  
33 bargaining representative and the governor, or if the legislature does  
34 not approve funding for the collective bargaining agreement as provided  
35 in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing  
36 additional costs to the state in making deductions from the payments to  
37 individual providers, family child care providers, ~~((or))~~ adult family



1 home providers, or language access providers under this section shall  
2 be negotiated, agreed upon in advance, and reimbursed to the state by  
3 the exclusive bargaining representative.

4 (4) The governor and the exclusive bargaining representative of a  
5 bargaining unit of family child care providers may not enter into a  
6 collective bargaining agreement that contains a union security  
7 provision unless the agreement contains a process, to be administered  
8 by the exclusive bargaining representative of a bargaining unit of  
9 family child care providers, for hardship dispensation for license-  
10 exempt family child care providers who are also temporary assistance  
11 for needy families recipients or WorkFirst participants.

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

14 Individual providers, as defined in RCW 74.39A.240, and family  
15 child care providers, (~~as defined in RCW 41.56.030, and~~) adult family  
16 home providers, and language access providers, all as defined in RCW  
17 41.56.030, are not employees of the state or any of its political  
18 subdivisions and are specifically and entirely excluded from all  
19 provisions of this title, except as provided in RCW 74.39A.270,  
20 41.56.028, and 41.56.029.

21 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read  
22 as follows:

23 RCW 43.01.040 through 43.01.044 do not apply to individual  
24 providers under RCW 74.39A.220 through 74.39A.300, family child care  
25 providers under RCW 41.56.028, or adult family home providers under RCW  
26 41.56.029, or language access providers under section 3 of this act.

27 **Sec. 7.** RCW 74.04.025 and 1998 c 245 s 143 are each amended to  
28 read as follows:

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

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

7 (3) Regardless of the applicant or recipient caseload of any  
8 community service office, each community service office shall ensure  
9 that bilingual services required to supplement the community service  
10 office staff are provided through contracts with ~~((interpreters, local  
11 agencies, or other community resources))~~ language access providers.

12 (4) The department shall certify, authorize, and qualify language  
13 access providers in a manner consistent with any collective bargaining  
14 agreement entered into pursuant to section 3 of this act as needed to  
15 maintain a pool of certified, authorized, and qualified providers.

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

20 ~~((+5))~~ (6) To the extent all written communications directed to  
21 applicants or recipients are not in the primary language of the  
22 applicant or recipient, the department and the office of administrative  
23 hearings shall include with the written communication a notice in all  
24 primary languages of applicants or recipients describing the  
25 significance of the communication and specifically how the applicants  
26 or recipients may receive assistance in understanding, and responding  
27 to if necessary, the written communication. The department shall  
28 assure that sufficient resources are available to assist applicants and  
29 recipients in a timely fashion with understanding, responding to, and  
30 complying with the requirements of all such written communications.

31 ~~((+6))~~ (7) As used in this section~~((7))~~:

32 (a) "Language access provider" means any independent contractor who  
33 provides spoken language interpreter services for department  
34 appointments or medicaid enrollee appointments, or provided these  
35 services on or after January 1, 2009, and before the effective date of  
36 this section, whether paid by a broker, foreign language agency, or the  
37 department. "Language access provider" does not mean an owner,  
38 manager, or employee of a broker or a language access agency.

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

3       NEW SECTION.   **Sec. 8.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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

**2SSB 6726** - S AMD

By Senators Keiser, Marr, Kohl-Welles

**PULLED 02/15/2010**

16       On page 1, line 1 of the title, after "providers;" strike the  
17 remainder of the title and insert "amending RCW 41.56.030, 41.56.113,  
18 41.04.810, 43.01.047, and 74.04.025; adding a new section to chapter  
19 41.56 RCW; and creating new sections."

EFFECT:       The Office of Financial Management 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 by September 30, 2010.

Language access providers are defined as 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.

Language access providers are permitted to collectively bargain with the Governor over: (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.

Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations.

The request for funds to implement the initial collective bargaining agreement may not be submitted to the Office of Financial Management before July 1, 2011. 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.

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