

SENATE BILL REPORT

ESSB 6726

As Amended by House, March 5, 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: 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: Labor, Commerce & Consumer Protection: 2/02/10, 2/04/10 [DPS-WM, DNP].

Ways & Means: 2/09/10 [DP2S, DNP, w/oRec].

Passed Senate: 2/15/10, 29-19.

Passed House: 3/05/10, 58-40.

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)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6726 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Honeyford and Schoesler.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell, Hewitt, Parlette and Pflug.

Staff: Steve Jones (786-7440)

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 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 Engrossed Substitute Bill: 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; and (5) grievance procedures. 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.

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 (Labor, Commerce & Consumer Protection): 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 (Labor, Commerce & Consumer Protection): 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.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: Foreign language interpreters speak for those who cannot speak for themselves. The goal of the legislation is to eliminate the duplication of administrative functions in the delivery of foreign language services. The current bidding process is very inefficient. The system is broken. Almost half of the state's payments is spent on administrative overhead. This bill will save money that is currently spent on gatekeepers and middlemen. Interpreters' compensation is declining and the pool of available vendors is getting smaller. This bill enacts a collective bargaining model that is used by several other state vendors. Interpreters need a voice in the system. Budget reductions in this program will result in doctors refusing to see patients.

CON: The current brokerage system saves money by avoiding waste and fraud; otherwise, interpreters have a conflict of interest when they book and bill for their own services. The brokerage system was implemented to provide cost controls and it has been working successfully and is a nationally recognized model. This bill is a step backward.

OTHER: The goal of this bill, to increase the efficiency in this program, is admirable, but this bill may not be the right answer. The current bidding process is inefficient.

Persons Testifying (Ways & Means): PRO: Narcissa Hodges, Interpreters United; Kate White Tudor, Washington Association of Community & Migrant Health Centers; Cynthia Roat, independent consultant; Dennis Eagle, Washington Federation of State Employees; Susie Tracy, Washington State Medical Association.

CON: David Bake, ParaTransit Services; Ginny Dimmick, Human Services Council; Mary Anne Lindenblad, Department of Social & Health Services.

OTHER: Chris Van Dyk, Association of Language Service Providers.

House Amendment(s): Adds language access agencies to the members of the working group. Includes access to services among the criteria to be considered by the working group in developing a plan to improve the efficiency and effectiveness of language access services. The items subject to bargaining are modified by removing: rules and procedures regarding payments, work rules, and reimbursements; and certification procedures. Provides for payments of dues to an exclusive bargaining representative if the state does not make payments directly to a provider. If a language access provider provides written authorization or the collective bargaining

agreement includes a union security provision, the state must require through contracts with third parties that dues be deducted from payments to language access providers and records showing that dues have been deducted be provided to the state. Restores language providing that bilingual services be provided through contracts with local agencies and other community resources and retains the addition of language access providers to this list. Removes the requirement that DSHS certify providers in a manner consistent with a collective bargaining agreement and modifies the requirement that DSHS certify providers as needed to maintain an adequate pool of providers.