
SUBSTITUTE HOUSE BILL 3062

State of Washington

61st Legislature

2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Pettigrew, Upthegrove, Cody, Hunt, Williams, Green, Lias, Appleton, Sells, Ormsby, Kenney, Simpson, White, Goodman, Jacks, Darneille, and Hudgins)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to making the governor the public employer of
2 language access providers; amending RCW 41.56.030, 41.56.113,
3 41.04.810, 43.01.047, and 74.04.025; adding a new section to chapter
4 74.04 RCW; adding a new section to chapter 41.56 RCW; and creating new
5 sections.

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

7 NEW SECTION. **Sec. 1.** (1) No later than thirty days after the
8 effective date of this section, the department of social and health
9 services shall establish a working group on language access services.
10 (2) The working group shall include members that have experience
11 and knowledge of language access services in Washington state,
12 including representatives of a statewide association representing
13 hospitals, community health providers, a statewide association
14 representing physicians and physician assistants, a statewide labor
15 union currently working with language access providers, statewide
16 professional interpreter associations, community-based organizations
17 that advocate for persons with limited English proficiency, and
18 language access providers.

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

9 (4) The department of social and health services shall report the
10 findings of the working group to the legislature and the governor no
11 later than September 30, 2010.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.04 RCW
13 to read as follows:

14 Upon expiration of the brokerage contracts in effect on January 1,
15 2010, the department shall discontinue using a brokerage system for the
16 delivery of language services.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW
18 to read as follows:

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

27 (2) There shall be collective bargaining, as defined in RCW
28 41.56.030, between the governor and language access providers, except
29 as follows:

30 (a) A statewide unit of all language access providers is the only
31 unit appropriate for purposes of collective bargaining under RCW
32 41.56.060;

33 (b) The exclusive bargaining representative of language access
34 providers in the unit specified in (a) of this subsection shall be the
35 representative chosen in an election conducted pursuant to RCW
36 41.56.070.

1 Bargaining authorization cards furnished as the showing of interest
2 in support of any representation petition or motion for intervention
3 filed under this section are exempt from disclosure under chapter 42.56
4 RCW;

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

15 (d) In addition to the entities listed in the mediation and
16 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
17 41.56.480, the provisions apply to the governor or the governor's
18 designee and the exclusive bargaining representative of language access
19 providers, except that:

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

24 (ii) The decision of the arbitration panel is not binding on the
25 legislature and, if the legislature does not approve the request for
26 funds necessary to implement the compensation and benefit provisions of
27 the arbitrated collective bargaining agreement, the decision is not
28 binding on the state;

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

30 (3) Language access providers who are public employees solely for
31 the purposes of collective bargaining under subsection (1) of this
32 section are not, for that reason, employees of the state for any other
33 purpose. This section applies only to the governance of the collective
34 bargaining relationship between the employer and language access
35 providers as provided in subsections (1) and (2) of this section.

36 (4) Each party with whom the department of social and health
37 services contracts for language access services and each of their
38 subcontractors shall provide to the department an accurate list of

1 language access providers, as defined in RCW 41.56.030, including their
2 names, addresses, and other contact information, annually by January
3 30th, except that initially the lists must be provided within thirty
4 days of the effective date of this section. The department shall, upon
5 request, provide a list of all language access providers, including
6 their names, addresses, and other contact information, to a labor union
7 seeking to represent language access providers.

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

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

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

16 (6) Upon meeting the requirements of subsection (7) of this
17 section, the governor must submit, as a part of the proposed biennial
18 or supplemental operating budget submitted to the legislature under RCW
19 43.88.030, a request for funds necessary to implement the compensation
20 and benefit provisions of a collective bargaining agreement entered
21 into under this section or for legislation necessary to implement the
22 agreement.

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

27 (a) Submitted to the director of financial management by October
28 1st prior to the legislative session at which the requests are to be
29 considered, except that, for initial negotiations under this section,
30 the request may not be submitted before July 1, 2010; and

31 (b) Certified by the director of financial management as
32 financially feasible for the state or reflective of a binding decision
33 of an arbitration panel reached under subsection (2)(d) of this
34 section.

35 (8) The legislature must approve or reject the submission of the
36 request for funds as a whole. If the legislature rejects or fails to
37 act on the submission, any collective bargaining agreement must be

1 reopened for the sole purpose of renegotiating the funds necessary to
2 implement the agreement.

3 (9) If, after the compensation and benefit provisions of an
4 agreement are approved by the legislature, a significant revenue
5 shortfall occurs resulting in reduced appropriations, as declared by
6 proclamation of the governor or by resolution of the legislature, both
7 parties shall immediately enter into collective bargaining for a
8 mutually agreed upon modification of the agreement.

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

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

19 **Sec. 4.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
20 as follows:

21 As used in this chapter:

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

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

1 (i) the executive head or body of the applicable bargaining unit, or
2 (ii) any person elected by popular vote, or (iii) any person appointed
3 to office pursuant to statute, ordinance or resolution for a specified
4 term of office as a member of a multimember board, commission, or
5 committee, whether appointed by the executive head or body of the
6 public employer, or (d) who is a court commissioner or a court
7 magistrate of superior court, district court, or a department of a
8 district court organized under chapter 3.46 RCW, or (e) who is a
9 personal assistant to a district court judge, superior court judge, or
10 court commissioner. For the purpose of (e) of this subsection, no more
11 than one assistant for each judge or commissioner may be excluded from
12 a bargaining unit.

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

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

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

27 (6) "Executive director" means the executive director of the
28 commission.

29 (7) "Uniformed personnel" means: (a) Law enforcement officers as
30 defined in RCW 41.26.030 employed by the governing body of any city or
31 town with a population of two thousand five hundred or more and law
32 enforcement officers employed by the governing body of any county with
33 a population of ten thousand or more; (b) correctional employees who
34 are uniformed and nonuniformed, commissioned and noncommissioned
35 security personnel employed in a jail as defined in RCW
36 70.48.020(~~(+5)~~) (9), by a county with a population of seventy thousand
37 or more, and who are trained for and charged with the responsibility of
38 controlling and maintaining custody of inmates in the jail and

1 safeguarding inmates from other inmates; (c) general authority
2 Washington peace officers as defined in RCW 10.93.020 employed by a
3 port district in a county with a population of one million or more; (d)
4 security forces established under RCW 43.52.520; (e) firefighters as
5 that term is defined in RCW 41.26.030; (f) employees of a port district
6 in a county with a population of one million or more whose duties
7 include crash fire rescue or other firefighting duties; (g) employees
8 of fire departments of public employers who dispatch exclusively either
9 fire or emergency medical services, or both; or (h) employees in the
10 several classes of advanced life support technicians, as defined in RCW
11 18.71.200, who are employed by a public employer.

12 (8) "Institution of higher education" means the University of
13 Washington, Washington State University, Central Washington University,
14 Eastern Washington University, Western Washington University, The
15 Evergreen State College, and the various state community colleges.

16 (9) "Home care quality authority" means the authority under chapter
17 74.39A RCW.

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

21 (11) "Child care subsidy" means a payment from the state through a
22 child care subsidy program established pursuant to RCW 74.12.340 or
23 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
24 program.

25 (12) "Family child care provider" means a person who: (a) Provides
26 regularly scheduled care for a child or children in the home of the
27 provider or in the home of the child or children for periods of less
28 than twenty-four hours or, if necessary due to the nature of the
29 parent's work, for periods equal to or greater than twenty-four hours;
30 (b) receives child care subsidies; and (c) is either licensed by the
31 state under RCW 74.15.030 or is exempt from licensing under chapter
32 74.15 RCW.

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

36 (14)(a) "Language access provider" means any independent contractor
37 who provides spoken language interpreter services for department of
38 social and health services appointments or medicaid enrollee

1 appointments, or provided these services on or after January 1, 2009,
2 and before the effective date of this section, whether paid by a
3 broker, foreign language agency, or the department.

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

6 **Sec. 5.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
7 as follows:

8 (1) Upon the written authorization of an individual provider, a
9 family child care provider, ~~((or))~~ an adult family home provider, or a
10 language access provider within the bargaining unit and after the
11 certification or recognition of the bargaining unit's exclusive
12 bargaining representative, the state as payor, but not as the employer,
13 shall, subject to subsection (3) of this section, deduct from the
14 payments to an individual provider, a family child care provider,
15 ~~((or))~~ an adult family home provider, or a language access provider the
16 monthly amount of dues as certified by the secretary of the exclusive
17 bargaining representative and shall transmit the same to the treasurer
18 of the exclusive bargaining representative.

19 (2) If the governor and the exclusive bargaining representative of
20 a bargaining unit of individual providers, family child care providers,
21 ~~((or))~~ adult family home providers, or language access providers enter
22 into a collective bargaining agreement that:

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

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

35 (3)(a) The initial additional costs to the state in making
36 deductions from the payments to individual providers, family child care
37 providers, ~~((and))~~ adult family home providers, and language access

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

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

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

28 **Sec. 6.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
29 as follows:

30 Individual providers, as defined in RCW 74.39A.240, and family
31 child care providers, (~~(as defined in RCW 41.56.030, and)~~) adult family
32 home providers, and language access providers, all as defined in RCW
33 41.56.030, are not employees of the state or any of its political
34 subdivisions and are specifically and entirely excluded from all
35 provisions of this title, except as provided in RCW 74.39A.270,
36 41.56.028, and 41.56.029.

1 **Sec. 7.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
2 as follows:

3 RCW 43.01.040 through 43.01.044 do not apply to individual
4 providers under RCW 74.39A.220 through 74.39A.300, family child care
5 providers under RCW 41.56.028, or adult family home providers under RCW
6 41.56.029, or language access providers under section 3 of this act.

7 **Sec. 8.** RCW 74.04.025 and 1998 c 245 s 143 are each amended to
8 read as follows:

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

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

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

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

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

34 ~~((+5))~~ (6) To the extent all written communications directed to
35 applicants or recipients are not in the primary language of the
36 applicant or recipient, the department and the office of administrative
37 hearings shall include with the written communication a notice in all

1 primary languages of applicants or recipients describing the
2 significance of the communication and specifically how the applicants
3 or recipients may receive assistance in understanding, and responding
4 to if necessary, the written communication. The department shall
5 assure that sufficient resources are available to assist applicants and
6 recipients in a timely fashion with understanding, responding to, and
7 complying with the requirements of all such written communications.

8 ((+6)) (7) As used in this section((7)):

9 (a) "Language access provider" means any independent contractor who
10 provides spoken language interpreter services for department
11 appointments or medicaid enrollee appointments, or provided these
12 services on or after January 1, 2009, and before the effective date of
13 this section, whether paid by a broker, foreign language agency, or the
14 department. "Language access provider" does not mean an owner,
15 manager, or employee of a broker or a language access agency.

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

18 NEW SECTION. Sec. 9. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 10. If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state, the conflicting part of
25 this act is inoperative solely to the extent of the conflict and with
26 respect to the agencies directly affected, and this finding does not
27 affect the operation of the remainder of this act in its application to
28 the agencies concerned. Rules adopted under this act must meet federal
29 requirements that are a necessary condition to the receipt of federal
30 funds by the state.

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