
HOUSE BILL 3062

State of Washington

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2010 Regular Session

By Representatives Conway, Pettigrew, Upthegrove, Cody, Hunt, Williams, Green, Liias, Appleton, Sells, Ormsby, Kenney, Simpson, White, Goodman, Jacks, Darneille, and Hudgins

Read first time 01/22/10. Referred to Committee on Commerce & Labor.

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 new sections to chapter
4 74.04 RCW; adding a new section to chapter 41.56 RCW; and creating a
5 new section.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.04 RCW
8 to read as follows:

9 (1) No later than thirty days after the effective date of this act,
10 the department shall establish a working group on language access
11 services.

12 (2) The working group shall include representatives of the
13 Washington state hospital association, the Washington state medical
14 association, the community health network of Washington, the Washington
15 federation of state employees, language access providers, and the
16 language access community.

17 (3) The working group shall develop a plan to improve the
18 efficiency and effectiveness of language access services. The plan
19 shall describe the best possible means by which the following criteria

1 are achieved: Administrative and overhead costs, including brokers and
2 language access agencies, are reduced by at least fifty percent;
3 timeliness and flexibility for medical providers is improved; the pool
4 of qualified interpreters is stabilized; and fraud and abuse are
5 prevented.

6 (4) The department shall report the findings of the working group
7 to the legislature and the governor no later than September 30, 2010.

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

10 After January 1, 2011, the department shall discontinue using a
11 brokerage system for the delivery of language services. Interpretation
12 services, scheduling of interpretation visits, and reimbursements for
13 the cost of interpretation services must be provided by the department
14 directly.

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

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

25 (2) There shall be collective bargaining, as defined in RCW
26 41.56.030, between the governor and language access providers, except
27 as follows:

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

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

35 Bargaining authorization cards furnished as the showing of interest

1 in support of any representation petition or motion for intervention
2 filed under this section are exempt from disclosure under chapter 42.56
3 RCW;

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

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

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

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

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

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

35 (4) This section does not create or modify:

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

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

6 (5) Upon meeting the requirements of subsection (6) of this
7 section, the governor must submit, as a part of the proposed biennial
8 or supplemental operating budget submitted to the legislature under RCW
9 43.88.030, a request for funds necessary to implement the compensation
10 and benefit provisions of a collective bargaining agreement entered
11 into under this section or for legislation necessary to implement the
12 agreement.

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

17 (a) Submitted to the director of financial management by October
18 1st prior to the legislative session at which the requests are to be
19 considered; and

20 (b) Certified by the director of financial management as
21 financially feasible for the state or reflective of a binding decision
22 of an arbitration panel reached under subsection (2)(d) of this
23 section.

24 (7) The legislature must approve or reject the submission of the
25 request for funds as a whole. If the legislature rejects or fails to
26 act on the submission, any collective bargaining agreement must be
27 reopened for the sole purpose of renegotiating the funds necessary to
28 implement the agreement.

29 (8) If, after the compensation and benefit provisions of an
30 agreement are approved by the legislature, a significant revenue
31 shortfall occurs resulting in reduced appropriations, as declared by
32 proclamation of the governor or by resolution of the legislature, both
33 parties shall immediately enter into collective bargaining for a
34 mutually agreed upon modification of the agreement.

35 (9) After the expiration date of any collective bargaining
36 agreement entered into under this section, all of the terms and
37 conditions specified in the agreement remain in effect until the

1 effective date of a subsequent agreement, not to exceed one year from
2 the expiration date stated in the agreement.

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

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

10 As used in this chapter:

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

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

1 than one assistant for each judge or commissioner may be excluded from
2 a bargaining unit.

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

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

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

17 (6) "Executive director" means the executive director of the
18 commission.

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

1 several classes of advanced life support technicians, as defined in RCW
2 18.71.200, who are employed by a public employer.

3 (8) "Institution of higher education" means the University of
4 Washington, Washington State University, Central Washington University,
5 Eastern Washington University, Western Washington University, The
6 Evergreen State College, and the various state community colleges.

7 (9) "Home care quality authority" means the authority under chapter
8 74.39A RCW.

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

12 (11) "Child care subsidy" means a payment from the state through a
13 child care subsidy program established pursuant to RCW 74.12.340 or
14 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
15 program.

16 (12) "Family child care provider" means a person who: (a) Provides
17 regularly scheduled care for a child or children in the home of the
18 provider or in the home of the child or children for periods of less
19 than twenty-four hours or, if necessary due to the nature of the
20 parent's work, for periods equal to or greater than twenty-four hours;
21 (b) receives child care subsidies; and (c) is either licensed by the
22 state under RCW 74.15.030 or is exempt from licensing under chapter
23 74.15 RCW.

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

27 (14) "Language access provider" means a provider who is an
28 independent contractor and who has interpreted for department of social
29 and health services appointments or medicaid enrollee appointments in
30 the past year whether paid by a broker, a foreign language agency, or
31 the department, but does not mean an owner or manager of a broker or a
32 language access agency.

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

35 (1) Upon the written authorization of an individual provider, a
36 family child care provider, ~~((or))~~ an adult family home provider, or a
37 language access provider within the bargaining unit and after the

1 certification or recognition of the bargaining unit's exclusive
2 bargaining representative, the state as payor, but not as the employer,
3 shall, subject to subsection (3) of this section, deduct from the
4 payments to an individual provider, a family child care provider,
5 ~~((or))~~ an adult family home provider, or a language access provider the
6 monthly amount of dues as certified by the secretary of the exclusive
7 bargaining representative and shall transmit the same to the treasurer
8 of the exclusive bargaining representative.

9 (2) If the governor and the exclusive bargaining representative of
10 a bargaining unit of individual providers, family child care providers,
11 ~~((or))~~ adult family home providers, or language access providers enter
12 into a collective bargaining agreement that:

13 (a) Includes a union security provision authorized in RCW
14 41.56.122, the state as payor, but not as the employer, shall, subject
15 to subsection (3) of this section, enforce the agreement by deducting
16 from the payments to bargaining unit members the dues required for
17 membership in the exclusive bargaining representative, or, for
18 nonmembers thereof, a fee equivalent to the dues; or

19 (b) Includes requirements for deductions of payments other than the
20 deduction under (a) of this subsection, the state, as payor, but not as
21 the employer, shall, subject to subsection (3) of this section, make
22 such deductions upon written authorization of the individual provider,
23 family child care provider, ~~((or))~~ adult family home provider, or
24 language access provider.

25 (3)(a) The initial additional costs to the state in making
26 deductions from the payments to individual providers, family child care
27 providers, ~~((and))~~ adult family home providers, and language access
28 providers under this section shall be negotiated, agreed upon in
29 advance, and reimbursed to the state by the exclusive bargaining
30 representative.

31 (b) The allocation of ongoing additional costs to the state in
32 making deductions from the payments to individual providers, family
33 child care providers, ~~((or))~~ adult family home providers, or language
34 access providers under this section shall be an appropriate subject of
35 collective bargaining between the exclusive bargaining representative
36 and the governor unless prohibited by another statute. If no
37 collective bargaining agreement containing a provision allocating the
38 ongoing additional cost is entered into between the exclusive

1 bargaining representative and the governor, or if the legislature does
2 not approve funding for the collective bargaining agreement as provided
3 in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing
4 additional costs to the state in making deductions from the payments to
5 individual providers, family child care providers, ~~((or))~~ adult family
6 home providers, or language access providers under this section shall
7 be negotiated, agreed upon in advance, and reimbursed to the state by
8 the exclusive bargaining representative.

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

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

19 Individual providers, as defined in RCW 74.39A.240, and family
20 child care providers, ~~((as defined in RCW 41.56.030, and))~~ adult family
21 home providers, and language access providers, all as defined in RCW
22 41.56.030, are not employees of the state or any of its political
23 subdivisions and are specifically and entirely excluded from all
24 provisions of this title, except as provided in RCW 74.39A.270,
25 41.56.028, and 41.56.029.

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

28 RCW 43.01.040 through 43.01.044 do not apply to individual
29 providers under RCW 74.39A.220 through 74.39A.300, family child care
30 providers under RCW 41.56.028, or adult family home providers under RCW
31 41.56.029, or language access providers under section 3 of this act.

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

34 (1) The department and the office of administrative hearings shall
35 ensure that bilingual services are provided to non-English speaking

1 applicants and recipients. The services shall be provided to the
2 extent necessary to assure that non-English speaking persons are not
3 denied, or unable to obtain or maintain, services or benefits because
4 of their inability to speak English.

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

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

16 (4) The department shall certify and authorize language access
17 providers as needed to maintain a pool of qualified providers. The
18 department may accept alternative certifications that meet or exceed
19 department standards. The department may not use lower standards as a
20 means of expanding the pool of authorized language access providers.

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

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

36 ~~((+6))~~ (7) As used in this section, "primary languages" includes
37 but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and
38 Chinese.

1 NEW SECTION. **Sec. 9.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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

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