

HOUSE BILL REPORT

HB 2830

As Passed House:
April 11, 2012

Title: An act relating to language access providers.

Brief Description: Addressing language access providers.

Sponsors: Representative Hunter; by request of Governor Gregoire.

Brief History:

Committee Activity:

Ways & Means: 4/4/12 [DP].

First Special Session

Floor Activity:

Passed House: 4/6/12, 53-41.

Second Special Session

Floor Activity:

Passed House: 4/11/12, 56-42.

Brief Summary of Bill

- Provides for collective bargaining under the Public Employees' Collective Bargaining Act (PECBA) between the Governor and language access providers who provide services for Department of Labor and Industries medical appointments beginning in 2014.
- Excludes interpreters in legal proceedings and the Medicaid Administrative Match program from the PECBA.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 15 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier,

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Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Parker, Ross, Schmick and Wilcox.

Staff: Alexa Silver (786-7190) and Erik Cornellier (786-7116).

Background:

Collective Bargaining Rights of Language Access Providers.

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 (PERC). Individual providers (home care workers), family child care providers, adult family home providers, and certain language access providers also have collective bargaining rights under the PECBA.

Under the 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, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach an impasse and cannot be resolved through mediation. Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations.

In 2010 Engrossed Substitute Senate Bill 6726 (ESSB 6726) granted collective bargaining rights under the PECBA to language access providers. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for Department of Social and Health Services (DSHS) appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies. Mandatory subjects of bargaining are limited to: (1) economic compensation, such as the manner and rate of payments; (2) professional development and training; (3) labor-management committees; and (4) grievance procedures. Retirement benefits are not subject to collective bargaining.

Following the enactment of ESSB 6726, a dispute arose regarding the eligibility of two categories of interpreters: interpreters in the Medicaid Administrative Match (MAM) program and interpreters who work in legal settings. The PERC determined in November 2011 that the statewide unit of language access providers under the PECBA includes interpreters who work in the MAM program, as well as those who work in legal settings.

Interpreters in the MAM Program.

The MAM program provides matching federal funds to local health jurisdictions, public hospitals, schools, and tribes that provide outreach to Medicaid recipients. The federal government provides matching funds to the local entity through the Health Care Authority, the designated state Medicaid agency. The MAM program covers costs for indirect medical services, including interpreter services. Public hospitals and local health jurisdictions may have interpreters on staff or may contract with language access agencies for interpreter services.

Interpreters in Legal Proceedings.

When an interpreter is appointed to assist in a legal proceeding, the entity that appointed the interpreter, whether it is a court, state agency, or other governmental entity, must appoint a certified or qualified interpreter. The cost of providing an interpreter in legal proceedings is borne by the governmental entity that initiated the proceedings if the non-English-speaking person is a party or is compelled to appear. Subject to the availability of appropriated funds, the Administrative Office of the Courts must reimburse the governmental entity for up to half the cost of providing an interpreter under certain circumstances.

The DSHS, with the assistance of the Office of the Attorney General (AGO), initiates dependency proceedings, for which it must provide interpreters. Depending on the county, interpreters in dependency proceedings may be arranged for and paid by the DSHS, the AGO, or the court.

The DSHS is separately required to provide interpreters for non-English-speaking applicants and recipients. The agency certifies, authorizes, and qualifies language access providers to maintain an adequate pool.

Summary of Bill:

Collective Bargaining Rights of Language Access Providers.

Collective bargaining rights under the Public Employees' Collective Bargaining Act are granted to language access providers who provide spoken interpreter services for Department of Labor and Industries (L&I) medical appointments. This does not include legal proceedings of any nature, including criminal, civil, or administrative proceedings.

Two separate statewide bargaining units are created for language access providers: one unit for L&I interpreters and one unit for Department of Social and Health Services (DSHS) and Medicaid interpreters. If one exclusive bargaining representative represents both units, then one agreement must be negotiated on behalf of all language access providers in both units.

The parties with whom the L&I contracts for language access services must provide a list of language access providers to the L&I within 30 days of July 1, 2013. The Public Employment Relations Commission may not certify the L&I bargaining unit before July 1, 2013.

For initial negotiations for the L&I bargaining unit, a request for funds to implement the collective bargaining agreement must be submitted to the Office of Financial Management no earlier than July 1, 2014.

The L&I is obligated to comply with federal law. The Legislature has the right to make programmatic modifications to the workers' compensation laws.

Interpreters in Legal Proceedings and the Medicaid Administrative Match Program.

For purposes of both the collective bargaining rights of language access providers and the requirement that the DSHS provide and certify language access providers, "language access provider" does not include an interpreter appointed or required in legal proceedings or an

interpreter under the Medicaid Administrative Match (MAM) program. "DSHS appointments" do not include legal proceedings of any nature, including criminal, civil, or administrative proceedings. "Medicaid enrollee appointments" do not include MAM appointments or any other service provided pursuant to the MAM program.

Retroactivity.

These changes apply both prospectively and retroactively.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This is a complex technical bill but it comes down to who is in the existing bargaining unit under the law. This bill represents a fair compromise between competing proposals from the regular session. One proposal extended bargaining to interpreters in the Department of Labor and Industries (L&I) and the other excluded interpreters in the Medicaid Administrative Match (MAM) program and legal interpreters. This is a negotiated compromise. The effect of bill is two-fold. Some interpreters will be removed from the existing bargaining unit whether they like it or not. The bill also makes it possible for interpreters in the L&I to be added to the existing unit after several years. There would be a new contract in the 2015-17 biennium. This is a small step forward, but at least it is forward.

The Public Employment Relations Commission (PERC) inappropriately included MAM and legal interpreters in bargaining. The PERC ruling included a few hundred interpreters in the MAM program. The state does not have funds involved in the MAM program, which provides federal funds to match funds from local jurisdictions. The bill is retroactive to deal with the PERC decision.

The intent was to bargain in the medical context, and the bill clarifies this. The bill is both an expansion of bargaining to another agency and a narrowing of what the bargaining unit includes.

The bargained contract from last year increased pay and reduced costs by decreasing payments to middlemen. Now interpreters can make a living wage but not when they are working for the L&I. Most appointments are scheduled by agencies that take 47 percent of the pay. The most qualified interpreters are abandoning the L&I. The L&I has concerns about bargaining and the provider network, but the network does not include interpreters. Interpreters are working to help the L&I decrease waste. It is unfortunate that it will take years to complete bargaining.

(In support with concerns) There are serious problems with the MAM interpreter service program. Some interpreters are not state certified. They failed the oral exam, but the Department of Social and Health Services (DSHS) provisionally authorized them to work in hospitals. This is unacceptable. There is no shortage of interpreters in the state, and the

DSHS certified 8,000 of them. Administrative costs range from 20 to 50 percent. The Legislature should order an audit and reform MAM services to make them safer and more efficient.

(In support with amendment) An amendment to limit bargaining to in-person interpretive services would make the bill more acceptable. Video remote interpreting is a unique service that saves health care providers millions of dollars and brings jobs to Washington. The video remote interpreting business model is different from on-site interpreting. On-site interpreters struggle to find work because of inefficiencies of the system. They have two to three appointments per day as a result of driving, parking, etc. They have hours of unpaid time. Video remote interpreters can work all day. Working as a video remote interpreter means no traveling, parking, scheduling, and exposure to sick clients. Video remote interpreting is more environmentally friendly and 20 percent of the cost. Video remote interpreting should not fall under this legislation. It would disrupt business in unintended ways and impact the ability to provide services in the state. This is an in-state business providing jobs and growing rapidly while creating savings. The bill should be amended so it is limited to in-person interpreter services.

Extending bargaining to the L&I provides a blank check that employers and employees will have to pay in higher workers' compensation premiums. The Office of Financial Management said that bargaining has not gone well but now this bill would extend it. The fiscal note on similar legislation was non-zero but indeterminate. It was a big deal in 2011 when the state did not have to increase workers' compensation rates in 2012. Controlling workers' compensation rates is important to the economic recovery. The supporters characterized this as an agreement, but the business community was excluded from negotiations.

(Opposed) Unionization of interpreters in the L&I will increase costs, delay services, and impact hiring decisions. This impacts time management, time loss, and closing claims. This will result in higher premiums paid by employers and employees.

Persons Testifying: (In support) Julie Murray, Office of Financial Management; and Dennis Eagle and Leroy Mould, Washington Federation of State Employees.

(In support with concerns) Milena Calderari-Waldron, Washington Interpreters and Translators Society; and Gary Smith, Independent Business Association.

(In support with amendment) Jim King and Andrew Drake, In Demand Interpreting.

(Opposed) Amber Carter, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.