

HOUSE BILL REPORT

SSB 5046

As Passed House - Amended:

April 11, 2017

Title: An act relating to providing public notices of public health, safety, and welfare in a language other than English.

Brief Description: Providing public notices of public health, safety, and welfare in a language other than English.

Sponsors: Senate Committee on Local Government (originally sponsored by Senators Hasegawa, Chase, Darneille and Rolfes).

Brief History:

Committee Activity:

Public Safety: 3/13/17, 3/28/17 [DPA];
Appropriations: 4/3/17, 4/4/17 [DPA(PS)].

Floor Activity:

Passed House - Amended: 4/11/17, 52-45.

Brief Summary of Substitute Bill (As Amended by House)

- Requires state agencies providing life safety information during an emergency or disaster, and political subdivisions during proclaimed emergencies, to provide life safety information in a language or manner that can be understood by significant population segments of the affected area with limited English proficiency, unless technologically infeasible.
- Requires local organizations and joint local organizations for emergency management to include communication plans, as part of local comprehensive emergency management plans, that address emergency notification of life safety information to significant population segments with limited English proficiency.
- Requires the Military Department to submit a report to the Legislature every five years containing local communication plans.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

Majority Report: Do pass as amended. Signed by 6 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Appleton, Chapman, Orwall and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Holy.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 18 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Condotta, Haler, Manweller, Nealey, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 2 members: Representatives Harris and Tharinger.

Staff: Linda Merelle (786-7092).

Background:

Limited English Proficiency.

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write in, or understand English may be considered to have limited English proficiency. Services for persons with limited English proficiency may include interpreters, translation, and other services.

By executive order, each federal agency is required to examine the services it provides and develop and implement a system by which persons with limited English proficiency can meaningfully access those services. The executive order also requires that federal agencies ensure that recipients of federal financial assistance provide meaningful access to their limited English proficiency applicants and beneficiaries, in accordance with Title VI of the Civil Rights Act of 1964. Many state agencies are among the recipients of federal funds expected to provide limited English proficiency access.

Local Emergency Management Organizations.

Each political subdivision of the state must establish or jointly create a local organization for carrying out emergency management functions in accordance with the State Comprehensive Emergency Management Plan. Each local emergency management organization must develop its own written comprehensive emergency management plan addressing all natural

and manmade emergencies and disasters to which the jurisdiction is vulnerable. Each plan must contain a functional description of several elements, including warning and emergency public information systems. When a disaster occurs, political subdivisions may enter into contracts and incur obligations necessary to provide emergency assistance to disaster victims.

An "emergency or disaster," as described in statute, is an event or set of circumstances which demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or reaches such a dimension or degree of destructiveness as to warrant the Governor declaring a state of emergency.

Summary of Amended Bill:

State agencies, when providing life safety information during an emergency or disaster, and political subdivisions during proclaimed emergencies, must provide life safety information in a language or manner that can be understood by significant population segments unless technologically infeasible. If life safety information is not provided during an emergency or disaster due to a state agency or political subdivision's determination of technological infeasibility, the state agency or political subdivision must report to the Legislature within 30 days. The report must describe the nature of the technological infeasibility and a plan to remedy the issue.

"Significant population segments" include those limited English proficient groups comprising five percent, or 1,000 residents, whichever is less, of the affected population, as determined using the Office of Financial Management's limited English proficiency population estimates. "Life safety information" is information or instruction provided to people to reduce their risk of harm and to keep them safe in response to life-threatening events, such as information regarding evacuation, sheltering and sheltering in place, facility lockdown, and where to obtain food and water.

As part of local comprehensive emergency management plans, local organizations and joint local organizations for emergency management must include communication plans addressing emergency notification of life safety information to significant population segments. In developing communication plans, local organizations and joint organizations are encouraged to consult with affected community organizations and are provided a list of factors to consider in determining the extent of the obligation to provide emergency notification to significant population segments. These factors include: the number or proportion of persons with limited English proficiency who are eligible to be served or likely to be encountered; the frequency with which persons with limited English proficiency come in contact with the emergency notification; the nature and importance of the emergency notification, service, or program to people's lives; and the resources available to the political subdivision to provide emergency notifications.

Local organizations and joint local organizations must submit their communication plans to the Military Department Emergency Management Division (EMD). An initial plan must be submitted with the next update of the local emergency management plan, and subsequent reviews must be undertaken according to the EMD's schedule. The EMD must submit a

report to the Legislature every five years, beginning December 1, 2019, containing the local communication plans.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Public Safety):

(In support) Emergency notification when life is in danger is a basic service of government that should not depend on language barriers. There have been issues in the past in this state associated with wildfires and storms that could have been avoided through emergency notifications. During a recent event, communities were burning charcoal inside homes during a power outage. In another instance, a water system broke at a dairy, resulting in flooding of homes and well contamination with manure and nitrates. In disasters that have occurred, there has been inconsistent or insufficient communication with monolingual, non-English proficient communities. This can undermine response efforts and create safety risks. The changes in this bill will promote effective, nondiscriminatory allocation of resources.

This bill has been amended to be less constraining. Emergency management services and the Military Department have data available that could be used for implementing this bill, and the significant segment threshold was amended to mirror federal standards. Ideally, communities would have preplanning in place that can be implemented to protect limited English proficient communities.

(Opposed) This bill imposes extremely costly unfunded mandates. Counties already dedicate 75 percent of their budgets to public safety. There are concerns with addressing this through a null and void clause, because even if a dollar is appropriated the bill goes into effect and counties are burdened. Some counties can prerecord emergency notices in other languages, but it takes one hour per 1,000 messages, which will not work in practice. It costs \$100,000 for the county that uses this system to maintain the system. Please keep in mind the costs associated with this bill.

(Other) There are jurisdictions with 90 or more languages spoken and represented. Important changes were made in the substitute bill, including offering the alternative means of communicating "in a language or a manner." It is appreciated that the companion bill addresses preplanning and having a plan in place that can be updated, rather than having to rely on something that may not be achievable in the moment. It may be advisable to extend the timeframe for those plans and to add a null and void clause. Requirements will necessitate new resources, so funding should be located and identified. The 5 percent or 1,000 residents threshold, while in the federal register, does not currently apply to local jurisdictions and may need further work.

Much of this bill is outside of the emergency management statutes, so the limited liability that applies in those statutes does not apply to the new requirements. It is also concerning that these requirements apply to all jurisdictions. There are hundreds of cities with small populations that would be expected to follow these provisions regardless of ability to do so.

It is already a federal grant requirement to provide services to and be able to communicate with limited English proficient populations. The Military Department has worked with local jurisdictions to enhance communications with limited English communities. Certain provisions of the bill should be amended to avoid application to specific alert systems and internal reports and briefings. There should be specificity around what demographic data set is to be used in implementing the bill. The federal register has a good definition of limited English proficient populations, and there is language about factors agencies should use in providing services, including the nature and importance of the program or service to lives, as well as the associated costs.

Staff Summary of Public Testimony (Appropriations):

(In support) Ensuring that communities are informed of an emergency can mean the difference between safety and facing life and death circumstances. During one of the recent wildfires, there were individuals who did not understand messages that were being broadcast. As a result, they fled toward the fire, rather than away from it. Under this bill, non-English-speaking populations will have equal access to information during an emergency.

(Opposed) None.

(Other) Much of the work of providing equal access can be done in advance of an emergency and not in the heat of the moment. This way, some of the costs can be managed. Under this bill, cities and towns must provide safety information during an emergency, which will be difficult. Washington residents need to be informed of an emergency before, during, and after. The reporting requirements for local jurisdictions should be removed. The fiscal impact of this legislation on counties results in a very expensive mandate.

Persons Testifying (Public Safety): (In support) Senator Hasegawa, prime sponsor; Mynor Lopez, Commission on Hispanic Affairs; and Marsha Chien, Office of the Attorney General.

(Opposed) Juliana Roe, Washington State Association of Counties.

(Other) Victoria Lincoln, Association of Washington Cities; Doug Levy, Cities of Renton, Everett, and Kent; and Jason Marquiss, Emergency Management Division, Washington Military Department.

Persons Testifying (Appropriations): (In support) Anita Ahumada, Commission on Hispanic Affairs and Washington Coalition for Language Access.

(Opposed) None.

(Other) Nancy Bickford, Washington Military Department; Victoria Lincoln, Association of Washington Cities; and Juliana Roe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.