
HOUSE BILL 2701

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Sells, Green, Appleton, Reykdal, Stanford,
Upthegrove, Ormsby, and Santos

Read first time 01/25/12. Referred to Committee on Labor & Workforce
Development.

1 AN ACT Relating to the governor as the public employer of language
2 access providers; amending RCW 41.56.030 and 41.56.510; and creating a
3 new section.

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

5 **Sec. 1.** RCW 41.56.030 and 2011 1st sp.s. c 21 s 11 are each
6 amended to read as follows:

7 As used in this chapter:

8 (1) "Adult family home provider" means a provider as defined in RCW
9 70.128.010 who receives payments from the medicaid and state-funded
10 long-term care programs.

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

14 (3) "Child care subsidy" means a payment from the state through a
15 child care subsidy program established pursuant to RCW 74.12.340 or
16 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
17 program.

18 (4) "Collective bargaining" means the performance of the mutual
19 obligations of the public employer and the exclusive bargaining

1 representative to meet at reasonable times, to confer and negotiate in
2 good faith, and to execute a written agreement with respect to
3 grievance procedures and collective negotiations on personnel matters,
4 including wages, hours and working conditions, which may be peculiar to
5 an appropriate bargaining unit of such public employer, except that by
6 such obligation neither party shall be compelled to agree to a proposal
7 or be required to make a concession unless otherwise provided in this
8 chapter.

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

10 (6) "Executive director" means the executive director of the
11 commission.

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

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

23 (9) "Institution of higher education" means the University of
24 Washington, Washington State University, Central Washington University,
25 Eastern Washington University, Western Washington University, The
26 Evergreen State College, and the various state community colleges.

27 (10)(a) "Language access provider" means any independent contractor
28 who provides spoken language interpreter services, whether paid by a
29 language access agency, broker, or the respective department: (i) For
30 department of social and health services appointments or medicaid
31 enrollee appointments, or who provided these services on or after
32 January 1, 2009, and before June 10, 2010(~~(, whether paid by a broker,~~
33 language access agency, or the department)); or (ii) for department of
34 labor and industries appointments, or who provided these services on or
35 after January 1, 2011, and before the effective date of this section.

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

1 (11) "Public employee" means any employee of a public employer
2 except any person (a) elected by popular vote, or (b) appointed to
3 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 (c) whose duties as deputy, administrative
7 assistant or secretary necessarily imply a confidential relationship to
8 (i) the executive head or body of the applicable bargaining unit, or
9 (ii) any person elected by popular vote, or (iii) any person appointed
10 to office pursuant to statute, ordinance or resolution for a specified
11 term of office as a member of a multimember board, commission, or
12 committee, whether appointed by the executive head or body of the
13 public employer, or (d) who is a court commissioner or a court
14 magistrate of superior court, district court, or a department of a
15 district court organized under chapter 3.46 RCW, or (e) who is a
16 personal assistant to a district court judge, superior court judge, or
17 court commissioner. For the purpose of (e) of this subsection, no more
18 than one assistant for each judge or commissioner may be excluded from
19 a bargaining unit.

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

29 (13) "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 70.48.020(9),
36 by a county with a population of seventy thousand or more, and who are
37 trained for and charged with the responsibility of controlling and
38 maintaining custody of inmates in the jail and safeguarding inmates

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

12 **Sec. 2.** RCW 41.56.510 and 2010 c 296 s 2 are each amended to read
13 as follows:

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

22 (2) There shall be collective bargaining, as defined in RCW
23 41.56.030, between the governor and language access providers, except
24 as follows:

25 (a) (~~A statewide unit of all language access providers is~~) The
26 only units appropriate for purposes of collective bargaining under RCW
27 41.56.060 are:

28 (i) A statewide unit for language access providers who provide
29 spoken language interpreter services for department of social and
30 health services appointments or medicaid enrollee appointments; and

31 (ii) A statewide unit for language access providers who provide
32 spoken language interpreter services for department of labor and
33 industries appointments;

34 (b) The exclusive bargaining representatives of language access
35 providers in the units specified in (a) of this subsection shall be the
36 representatives chosen in (~~an~~) elections conducted pursuant to RCW
37 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(~~(, such as)~~) including, but not limited to, the manner and
9 rate of payments and scheduling and distribution of appointments; (ii)
10 health and welfare benefits; (iii) professional development and
11 training and certification requirements; (~~(+iii)~~) (iv) labor-
12 management committees; (~~(and iv)~~) (v) grievance procedures; and (vi)
13 complaints against language access providers including, but not limited
14 to, corrective actions. Retirement benefits are not subject to
15 collective bargaining. By such obligation neither party may be
16 compelled to agree to a proposal or be required to make a concession
17 unless otherwise provided in this chapter;

18 (d) In addition to the entities listed in the mediation and
19 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
20 41.56.480, the provisions apply to the governor or the governor's
21 designee and the exclusive bargaining representatives of language
22 access providers, except that:

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

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

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

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

1 (4) Each party with whom the department of social and health
2 services and the department of labor and industries contract(~~(s)~~) for
3 language access services and each of their subcontractors shall provide
4 to the departments an accurate list of language access providers, as
5 defined in RCW 41.56.030, including their names, addresses, and other
6 contact information, annually by January 30th, except that initially
7 for language access providers as defined in RCW 41.56.030(10)(a)(ii)
8 the lists must be provided within thirty days of (~~June 10, 2010~~) the
9 effective date of this section. The departments shall, upon request,
10 provide a list of all language access providers, including their names,
11 addresses, and other contact information, to a labor union seeking to
12 represent language access providers.

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

14 (a) The (~~department's~~) obligation of the department of social and
15 health services or the department of labor and industries to comply
16 with the federal statute and regulations; and

17 (b) The legislature's right to make programmatic modifications to
18 the delivery of state services under chapter 74.04 RCW or Title 51 RCW.
19 The governor may not enter into, extend, or renew any agreement under
20 this chapter that does not expressly reserve the legislative rights
21 described in this subsection.

22 (6) Upon meeting the requirements of subsection (7) of this
23 section, the governor must submit, as a part of the proposed biennial
24 or supplemental operating budget submitted to the legislature under RCW
25 43.88.030, a request for funds necessary to implement the compensation
26 and benefit provisions of a collective bargaining agreement entered
27 into under this section or for legislation necessary to implement the
28 agreement.

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

33 (a) Submitted to the director of financial management by October
34 1st prior to the legislative session at which the requests are to be
35 considered, except that, for initial negotiations under this section
36 for the unit defined in subsection (2)(a)(ii) of this section, the
37 request (~~may not~~) must be submitted (~~before July 1, 2011~~) by
38 December 1, 2012; and

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

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

10 (9) If, after the compensation and benefit provisions of an
11 agreement are approved by the legislature, a significant revenue
12 shortfall occurs resulting in reduced appropriations, as declared by
13 proclamation of the governor or by resolution of the legislature, both
14 parties shall immediately enter into collective bargaining for a
15 mutually agreed upon modification of the agreement.

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

21 (11) In enacting this section, the legislature intends to provide
22 state action immunity under federal and state antitrust laws for the
23 joint activities of language access providers and their exclusive
24 bargaining representatives to the extent the activities are authorized
25 by this chapter.

26 NEW SECTION. **Sec. 3.** If any part of this act is found to be in
27 conflict with federal requirements that are a prescribed condition to
28 the allocation of federal funds to the state, the conflicting part of
29 this act is inoperative solely to the extent of the conflict and with
30 respect to the agencies directly affected, and this finding does not
31 affect the operation of the remainder of this act in its application to
32 the agencies concerned. Rules adopted under this act must meet federal
33 requirements that are a necessary condition to the receipt of federal
34 funds by the state.

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