HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2778 H.D. 2 S.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO LANGUAGE ACCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 371, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . LANGUAGE ACCESS

§371-A Purpose. Most individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this part is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. In providing the delivery of language accessible services, it is the intent of the legislature that those services be guided by Executive Order

13166 and succeeding provisions of federal law, regulation, or guidance.

§371-B Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Access or participate" means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

"State" means the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

"Covered entity" means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services on behalf of the State. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

"Language" means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

"Limited English proficient" means individuals who, on account of national origin, do not speak English as their primary language and who identify themselves has having a limited ability to read, write, speak, or understand the English language.

"Oral language services" means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities.

"Vital documents":

(1) Means printed documents that provide important information necessary to participate in services, programs, and activities; and

(2) Includes but is not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

§371-C Oral and written language services. (a) Each state agency and all covered entities shall take reasonable

steps to ensure meaningful access to services, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

(1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;

(2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;

(3) The nature and importance of the services, programs, or activities; and

(4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital

1 documents to limited English proficient persons who seek to
2 access services, programs, or activities, as follows:
3 (1) Written translations of vital documents for each
4 eligible limited English proficient group that
5 constitutes five per cent or one thousand, whichever
6 is less, of the population of persons eligible to be
7 served or likely to be affected or encountered; or
8 (2) If there are fewer than fifty persons in a limited
9 English proficient group that reaches the five per
10 cent threshold in paragraph (1), written notice in the
11 primary language to the limited English proficient
12 language group of the right to receive competent oral
13 interpretation of those written materials, free of
14 cost.
15 (d) To the extent that the State requires additional
16 personnel to provide language services based on the
17 determination set forth in this section, the State shall hire
18 qualified personnel who are bilingual to fill existing, budgeted
19 vacant public contact positions.
20 **§371-D Additional obligations.** (a) Each state agency and
21 covered entity shall establish a plan for language access.

(b) Each state agency's plan for language access shall be established in consultation with the executive director of the office of language access and the state agency's coordinator for language access. State agencies receiving federal financial assistance shall file an initial language access plan with the executive director of the office of language access no later than July 1, 2007, and every two years thereafter. All other state agencies shall file a language access plan with the executive director of the office of language access no later than July 1, 2008, and every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the executive director of the office of language access and the language access advisory council.

§371-E Public meetings and public hearings. (a) State agencies to which this part applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section 371-C, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance

of the meeting or hearing. Where the notice of any public meeting or public hearing is posted less than forty-eight hours in advance of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing.

§371-F Executive Director of the Office of Language access; duties. There is established within the department of labor and industrial relations, for administrative purposes only, an office of language access. The head of the office shall be known as the executive director of the office of language access, hereinafter referred to as executive director. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

(1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this part or under any other law, regulation, or guidance;

(2) Provide technical assistance to covered entities in their implementation of this part;

(3) Review and monitor each state agency's language access plan for compliance with this part;

(4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods such as conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;

(5) Consult with language access coordinators, the language access advisory council, and department directors or their equivalent;

(6) Subject to section 371-C, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages in the state, and other languages as needed, informing individuals of their right to free oral language services and inviting them

to identify themselves as persons needing services; and

(7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons.

§371-G Language access advisory council. (a) There is established the language access advisory council within the department of labor and industrial relations for administrative purposes. The council shall consist of the following members to be appointed by the governor:

(1) One representative from the state government;

(2) One representative from a covered entity;

(3) One bilingual case management worker, or an individual who is or has been employed by a state-funded immigrant service agency or program;

(4) One representative of an advocacy organization that provides services to limited English proficient persons;

(5) One member from the limited English proficient population who has an interest in the provision of oral language services;

(6) One representative of the University of Hawaii department of language and linguistics who provides professional training in interpretation and translation;

(7) One representative of a Hawaiian language advocacy organization;

(8) One representative of a professional interpreter's organization;

(9) One representative of a bilingual referral service or program;

(10) The executive director of the Hawaii Civil Rights Commission or authorized representative; and

(11) The executive director, as ex-officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses

for travel, board, and lodging incurred in the performance of council duties.

(c) The language access advisory council shall serve in an advisory capacity to the executive director, providing input on:

(1) Implementation and compliance with this part;

(2) The quality of oral and written language services provided under this chapter; and

(3) The adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited or no-English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters."

SECTION 2. Chapter 371 is amended by designating sections 371-1 to 371-18 as part I and adding a title before section 371-1 to read as follows:

PART I. GENERAL PROVISIONS

SECTION 3. The executive director shall submit a written report annually to the governor and to the legislature no later

than twenty days prior to the convening of each regular session, beginning with the regular session of 2007, detailing compliance, complaints and resolutions, recommendations to enhance compliance, and statutory or administrative changes to further the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $440,000 or so much thereof as may be necessary for fiscal year 2006-2007 to staff and maintain positions at the department of labor and industrial relations for the office of the executive director and language access advisory council.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 5. In codifying the new part added to chapter 371, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2006.

HB NO. 2778 HD2 SD2 CD1

Report Title:
Language Access

Description:
Provides for effective and timely communication between all levels of government and individuals who are precluded from using public services due to language-proficiency barriers. (HB2778 CD1)

HB2778 CD1 HMS 2006-3781