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# A BILL FOR AN ACT

RELATING TO LANGUAGE ACCESS.

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

1           SECTION 1. The legislature finds that the effective  
2 maintenance and development of a free and democratic society  
3 depends on the right and ability of its citizens or residents,  
4 and government to communicate with each other.

5           The legislature further finds that substantial numbers of  
6 people who live, work, and pay taxes in this state are unable to  
7 communicate effectively with their government, either because  
8 they do not speak or write English, or because their primary  
9 language is not English. Likewise, employees of state and local  
10 government agencies are often unable to communicate with these  
11 individuals who require their services. Consequently, a  
12 significant portion of our population is essentially denied the  
13 rights and benefits which they would otherwise receive.

14           The legislature further finds that while federal Executive  
15 Order No. 13166 affirmed that Title VI of the Civil Rights Act  
16 of 1964 required federally funded programs to provide language-  
17 accessible services, many departments and state agencies are not  
18 in compliance with this order. The legislature finds that all

1 state agencies and departments must comply with federal  
2 Executive Order No. 13166.

3 The purpose of this Act is to provide for effective and  
4 timely communication between all levels of government and  
5 individuals who are precluded from using public services due to  
6 language barriers.

7 SECTION 2. Chapter 371, Hawaii Revised Statutes, is  
8 amended by adding a new part to be appropriately designated and  
9 to read as follows:

10 **"PART . LANGUAGE ACCESS**

11 **§371-A Definitions.** Whenever used in this part, unless  
12 a different meaning clearly appears from the context:

13 "Access or participate" means to be informed of,  
14 participate in, and benefit from public services, programs, and  
15 activities offered by a covered entity at a level equal to  
16 English-proficient individuals.

17 "Covered entity" means any state government unit, including  
18 the executive, legislative, and judicial branches of government,  
19 and all state departments, agencies, or programs that furnish  
20 information or render services, programs, or activities directly  
21 to the public or contracts with other entities, either directly

1 or indirectly, to conduct or provide programs, services, or  
2 activities to the public.

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

6 "Language access director" means the official of the  
7 department of labor and industrial relations who, pursuant to  
8 section 371-F(b), coordinates and supervises the activities of  
9 any state government unit, department, agency, or program  
10 undertaken in compliance with the provisions of this chapter.

11 "Limited or no-English proficiency" means an individual who  
12 identifies as being or is unable to adequately understand or to  
13 express oneself in the spoken or written English language.

14 "Oral language services" means the free provision of oral  
15 information necessary to enable limited or no-English  
16 proficiency persons to access or participate in programs or  
17 services offered by a covered entity. The term "oral language  
18 services" may include:

19 (1) The placement of competent, experienced, and trained  
20 bilingual or interpreter staff in public contact  
21 positions;



- 1 (2) Arranging or contracting for the use of a telephone
- 2 interpreter service;
- 3 (3) Contracting with an outside interpreter service for
- 4 trained and competent interpreters; and
- 5 (4) Arranging formally for the services of voluntary
- 6 community interpreters who are trained and competent
- 7 in the skill of interpreting.

8 "Vital documents" means:

- 9 (1) Applications and corresponding instructional
- 10 materials;
- 11 (2) Written notices of rights, denial, loss, or decreases
- 12 in benefits or services, and parole or other hearing
- 13 notices;
- 14 (3) Notices that require:
  - 15 (A) A direct response for the participant; or
  - 16 (B) The participant to appear for an interview or
  - 17 submit documentation;
- 18 (4) Notices regarding the rights of participants to a
- 19 conference, a fair hearing, or an appeal;
- 20 (5) Notices describing regulation changes that affect
- 21 benefits;
- 22 (6) Legal contracts;



- 1 (7) Written tests that do not assess English-language  
2 competency, but test competency for a particular  
3 license or skill for which knowledge of written  
4 English is not required;
- 5 (8) Complaint forms;
- 6 (9) Written documents that have the potential for  
7 important consequences for the individual seeking  
8 services; and
- 9 (10) Outreach materials published by a covered entity in a  
10 tangible format that inform individuals about the  
11 services offered, their rights, or eligibility  
12 requirements for benefits and participation, including  
13 notices advising persons of free language assistance.

14 **§371-B Oral language services.** (a) A covered entity  
15 shall provide timely oral language services to a person with  
16 limited or no English proficiency who seeks to access or  
17 participate, whether by phone or in person, the services,  
18 programs, or activities offered by the covered entity.

19 (b) The covered entity shall inform the public about the  
20 availability of these services as follows:



- 1           (1) Upon initial contact, whether in person or by phone,  
2           all covered entities shall inform individuals of their  
3           right to free language assistance services; and
- 4           (2) All covered entities with recorded telephonic messages  
5           about their services or operations shall maintain  
6           multilingual messages that, at a minimum, include  
7           business hours, office location(s), and the  
8           availability of free language assistance services.
- 9           (c) A covered entity shall, at least once a year,  
10          determine the type of oral language services needed based on:
- 11          (1) The number or proportion of limited or no-English  
12          proficient persons of the population served or  
13          encountered, or likely to be served or encountered by  
14          the covered entity;
- 15          (2) The frequency with which limited or no-English  
16          proficient individuals come into contact with the  
17          covered entity;
- 18          (3) The points of contact in the program or activity where  
19          language assistance is likely to be needed;
- 20          (4) The importance of the service provided by the covered  
21          entity; and

1 (5) The resources available to the covered entity to  
2 provide effective language assistance.

3 (d) In determining the type of oral language services  
4 needed under subsection (c), the covered entity may consider  
5 reviewing the following sources of information:

6 (1) Federal census data, including the United States  
7 Census Bureau's most current report entitled "Language  
8 Use and English Ability, Linguistic Isolation" or any  
9 successor report;

10 (2) Census language data, indicating that individuals  
11 speak English "less than very well";

12 (3) Local census data relating to language use and  
13 English-language ability;

14 (4) Other governmental data, including intake and service  
15 data collected by other covered entities; and

16 (5) Data collected and made available by the language  
17 access advisory council.

18 (e) Beginning the first fiscal year after the effective  
19 date of this Act, the databases and tracking applications of a  
20 covered entity shall contain fields that capture information  
21 relating to the number or proportion of limited or no-English  
22 proficient persons of the population served or encountered, or



1 likely to be served or encountered by the covered entity, and  
2 the languages spoken. If it is demonstrated to the language  
3 access director that this requirement is not feasible due to  
4 budgetary constraints, a covered entity shall make all due  
5 efforts to comply with this subsection by the beginning of the  
6 next fiscal year. All information collected under subsection  
7 (c) shall be provided to the language access director and be  
8 made available to the public upon request; provided that no  
9 information shall be disclosed that identifies an individual.

10 (f) To the extent that a covered entity requires  
11 additional personnel to provide oral language services based on  
12 the determination set forth in this section, the covered entity  
13 shall hire bilingual personnel to fill existing, budgeted vacant  
14 public contact positions.

15 **§371-C Written language services.** (a) A covered entity  
16 shall provide timely translations of vital documents into any  
17 non-English language spoken by a limited or no-English  
18 proficient population that constitutes three per cent or five  
19 hundred individuals, whichever is less, of the population served  
20 or encountered, or likely to be served or encountered, by the  
21 covered entity.





1 (b) Notwithstanding subsection (a), a covered entity with  
2 fewer than one hundred persons in a language group who are  
3 eligible to be served or likely to be directly affected by the  
4 covered entity's program is not required to translate written  
5 materials, but shall provide written notice of the right to  
6 receive competent oral translation of written materials in the  
7 primary language of the limited or no-English proficient group.

8 (c) A covered entity shall post conspicuous multilingual  
9 signs in all offices in which services are provided to the  
10 public to inform individuals of their right to free language  
11 assistance services and invite them to identify themselves as  
12 persons needing services.

13 (d) If the provisions of this part are contractually  
14 imposed on a non-covered entity, this section shall apply.

15 **§371-D Additional obligations.** (a) A covered entity  
16 shall establish a plan for language access as provided by  
17 administrative rules adopted by the department of labor and  
18 industrial relations pursuant to chapter 91.

19 (b) Each plan for language access shall be established in  
20 consultation with the language access director, the language  
21 access advisory council, and the entity's coordinator for  
22 language access. Each language access plan shall be updated



1 every two years and shall set forth, at a minimum, the  
2 following:

3 (1) The types of oral language services that the entity  
4 will provide and how the determination was reached;

5 (2) The titles of translated documents that the entity  
6 will provide and how the determination was reached;

7 (3) The number of public contact positions in the entity  
8 and the number of bilingual employees and competent  
9 interpreters in public contact positions, together  
10 with a list of languages covered;

11 (4) An evaluation and assessment of the adequacy of the  
12 translation and interpreter services to be provided;  
13 and

14 (5) A description of the funding and budgetary sources  
15 upon which the covered entity intends to rely to  
16 implement its language access plan.

17 (c) In establishing and updating the language access plan,  
18 the entity shall consult the sources of data set forth in  
19 section 371-B (d).

20 (d) A covered entity shall designate a language access  
21 coordinator who shall report directly to the director of the  
22 entity and shall:

- 1 (1) Establish and implement the entity's plan for language
- 2 access in consultation with the language access
- 3 director and the language access advisory council;
- 4 (2) Conduct periodic public meetings with appropriate
- 5 advance notice to the public; and
- 6 (3) Develop a plan to conduct outreach to communities with
- 7 limited or no-English proficient populations about
- 8 their plan for language access and the benefits and
- 9 services to be offered under this part.

10 **§371-E Public meetings and hearings.** (a) The

11 legislature, boards, commissions, departments, or other covered

12 entities to which this part applies shall not be required to

13 translate meeting notices, agendas, or minutes.

14 (b) Oral interpretation for any public meeting or hearing

15 held by the legislature, boards or commissions, departments, or

16 other covered entities shall be provided if requested at least

17 forty-eight hours in advance of the meeting or hearing.

18 **§371-F Language access director; duties.** (a) The

19 department of labor and industrial relations shall provide

20 oversight, central coordination, and technical assistance to

21 covered entities in their implementation of the provisions of

22 this part to ensure that the provision of services by covered

1 entities meets acceptable standards of translation or  
2 interpretation.

3 (b) There shall be within the department of labor and  
4 industrial relations a language access director to coordinate  
5 and supervise activities under this part. The language access  
6 director shall:

7 (1) Review and monitor each covered entity's plan for  
8 language access for compliance with this part and  
9 Title VI of the Civil Rights Act of 1964, approved  
10 July 2, 1964 (78 Stat. 252; 42 U.S.C. Section 2000d et  
11 seq.), or any other succeeding provision of federal  
12 law, regulation, or guideline;

13 (2) Accept, monitor, and investigate public complaints  
14 regarding language access violations at covered  
15 entities, and, where necessary, issue warning letters  
16 of noncompliance to the covered entities regarding  
17 failures to provide language access;

18 (3) Endeavor to eliminate any language access violations  
19 by informal methods such as conference, conciliation,  
20 mediation, and persuasion;

21 (4) Consult with language access coordinators, the  
22 language access advisory council, and the heads of



1 government offices with limited or no-English  
2 proficient populations; and  
3 (5) Submit a written report annually to the governor and  
4 the legislature no later than twenty days prior to the  
5 convening of each regular session, beginning with the  
6 regular session of 2007, that will include the status  
7 of the program, compliance issues, and proposed  
8 administrative rule changes and legislation to improve  
9 upon and further the purposes of this part.

10 **§371-G Language access advisory council.** (a) There is  
11 established the language access advisory council within the  
12 department of labor and industrial relations for administrative  
13 purposes. The council shall consist of the following members  
14 appointed by the governor:

- 15 (1) One representative from the state government;  
16 (2) A bilingual case management worker, or an individual  
17 who is or has been employed by a state-funded  
18 immigrant service agency or program;  
19 (3) A representative of an advocacy organization that  
20 provides services to limited or non-English-speaking  
21 persons;



1 (4) A member from the limited or no-English proficient  
2 population who has an interest in the provision of  
3 language services;

4 (5) A representative of the University of Hawaii  
5 department of language and linguistics that provides  
6 professional training in interpretation and  
7 translation;

8 (6) A representative of a Hawaiian language advocacy  
9 organization;

10 (7) A representative of a bilingual referral service or  
11 program; and

12 (8) The language access director, who shall serve in an  
13 ex-officio capacity.

14 (b) Members shall be appointed without the necessity of  
15 the advice and consent of the senate. After the initial  
16 formation of the language access advisory council, appointments  
17 to the council shall be for staggered terms of four years each.  
18 The council shall select one of its members to serve as chair.  
19 No member of the council shall receive any compensation for  
20 servicing on the council but shall be allowed necessary expenses  
21 for travel, board, and lodging incurred in the performance of  
22 council duties.



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

4 (1) Implementation and compliance with this part;

5 (2) The quality of oral and written language services  
6 provided by covered entities; and

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

15 SECTION 3. Section 368-1.5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§368-1.5 Programs and activities receiving state**

18 **financial assistance.** (a) No otherwise qualified individual in  
19 the [~~State~~] state shall, solely by reason of his or her  
20 disability, be excluded from the participation in, be denied the  
21 benefits of, or be subjected to discrimination by state or



1 county agencies, or [~~under~~] by any program or activity receiving  
2 state or county financial assistance.

3 (b) No otherwise qualified individual in the state shall,  
4 solely by reason of the individual's inability to adequately  
5 understand others or communicate in spoken or written English,  
6 be excluded from participation in, denied the benefits of, or  
7 subjected to discrimination by any state or county agency, or by  
8 any program or activity receiving state or county financial  
9 assistance.

10 [~~(b)~~] (c) As used in this section[~~, the term~~  
11 "~~disability~~"]:

12 "Disability" means the state of having a physical or mental  
13 impairment which substantially limits one or more major life  
14 activities, having a record of such an impairment, or being  
15 regarded as having such an impairment.

16 [~~(c) As used in this section, "state financial~~  
17 ~~assistance"~~] "State or county financial assistance" means  
18 grants, purchase-of-service contracts, or any other arrangement  
19 by which the State or county provides or otherwise makes  
20 available assistance in the form of funds to an entity for the  
21 purpose of rendering services on behalf of the State[~~-~~] or the  
22 county. It [~~does~~] shall not include procurement contracts,





1 state insurance or guaranty contracts, licenses, tax credits, or  
2 loan guarantees to private businesses of general concern that do  
3 not render services on behalf of the State or county."

4 SECTION 4. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$ or so much  
6 thereof as may be necessary for fiscal year 2006-2007 to staff  
7 and maintain the office of the language access director and  
8 language access advisory council.

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

11 SECTION 5. In codifying the new sections added by section  
12 2 of this Act, the revisor of statutes shall substitute  
13 appropriate section numbers for the letters used in designating  
14 the new sections in this Act.

15 SECTION 6. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect on July 1, 2006.



H.B. NO. 2778

**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 HD2)

HB2778 HD2 HMS 2006-2083

