



GOV. MSG. NO. 1304

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 03, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

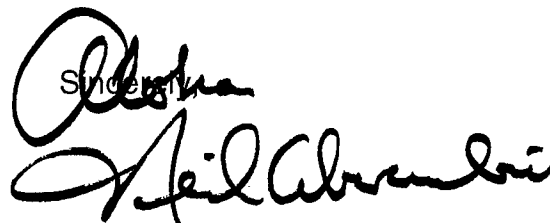
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 03, 2012, the following bill was signed into law:

HB2374 SD1

RELATING TO THE OFFICE OF LANGUAGE
ACCESS.

Act 201 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO THE OFFICE OF LANGUAGE ACCESS.

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

1 SECTION 1. The purpose of this Act is to improve access to
2 government services and programs for limited English proficient
3 individuals by transferring the office of language access, along
4 with all of the functions and duties of this office, from the
5 department of labor and industrial relations to the department
6 of health.

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

10 "CHAPTER

11 OFFICE OF LANGUAGE ACCESS

12 § -1 General purpose; purpose of the office of language
13 access. Many individuals living in Hawaii read, write, speak,
14 and understand English. There are many individuals, however,
15 who are limited English proficient. Language for limited
16 English proficient persons can be a barrier to accessing
17 important benefits or services, understanding and exercising
18 important rights, complying with applicable responsibilities, or



1 understanding other information provided by state-funded
2 programs and activities.

3 The purpose of this chapter is to affirmatively address, on
4 account of national origin, the language access needs of limited
5 English proficient persons. It is the intent of the legislature
6 that these services be guided by Executive Order No. 13166 and
7 succeeding provisions of federal law, regulation, or guidance.

8 The purpose of the office of language access is to address
9 the language access needs of limited English proficient persons
10 and ensure meaningful access to services, programs, and
11 activities offered by the executive, legislative, and judicial
12 branches of state government, including departments, offices,
13 commissions, boards, or other agencies, and all covered
14 entities, for limited English proficient persons.

15 § -2 **Definitions.** As used in this chapter, unless a
16 different meaning clearly appears from the context:

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

20 "Covered entity" means a person or organization receiving
21 state financial assistance, including grants, purchase-of-
22 service contracts, or any other arrangement by which the State



1 provides or otherwise makes available assistance in the form of
2 funds to the person or organization for the purpose of rendering
3 services to the public. It shall not include procurement
4 contracts, state insurance or guaranty contracts, licenses, tax
5 credits, or loan guarantees to private businesses of general
6 concern that do not render services on behalf of the State.

7 "Executive director" means the executive director of the
8 office of language access.

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

12 "Limited English proficient person" means an individual
13 who, on account of national origin, does not speak English as
14 the person's primary language and self identifies as having a
15 limited ability to read, write, speak, or understand the English
16 language.

17 "Oral language services" means the free provision of oral
18 information necessary to enable limited English proficient
19 persons to access or participate in services, programs, or
20 activities of a state agency or covered entity.

21 "Purchase-of-service contract" means any and all types of
22 formal written agreements, regardless of what they may be



1 called, between the State and any person, to purchase or
2 otherwise acquire any service for the purpose of rendering
3 services to the public.

4 "State" or "state agency" means the executive, legislative,
5 or judicial branches of state government, including departments,
6 offices, commissions, boards, or other agencies within the
7 executive, legislative, or judicial branches.

8 "Vital documents" means printed documents that provide
9 important information necessary to access or participate in
10 services, programs, and activities of a state agency or covered
11 entity, including but not limited to applications, outreach
12 materials, and written notices of rights, denials, losses, or
13 decreases in benefits or services.

14 "Written language services" means the free provision of
15 written information necessary to enable limited English
16 proficient persons to access or participate in services,
17 programs, or activities of a state agency or covered entity.

18 § -3 **Oral and written language services.** (a) Each
19 state agency and all covered entities shall take reasonable
20 steps to ensure meaningful access to services, programs, and
21 activities by limited English proficient persons, which will be



1 determined by a totality of circumstances, including the
2 following factors:

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

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

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

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

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

17 (c) Subject to subsection (a), each state agency and
18 covered entity shall provide written translations of vital
19 documents to limited English proficient persons who seek to
20 access services, programs, or activities, as follows:

21 (1) Written translations of vital documents for each
22 eligible limited English proficient group that



1 constitutes five per cent or one thousand, whichever
2 is less, of the population of persons eligible to be
3 served or likely to be affected or encountered; or

4 (2) If there are fewer than fifty persons in a limited
5 English proficient group that reaches the five per
6 cent threshold in paragraph (1), written notice in the
7 primary language to the limited English proficient
8 language group of the right to receive competent oral
9 interpretation of those written materials, free of
10 cost.

11 (d) To the extent that the State requires additional
12 personnel to provide language services based on the
13 determination set forth in this section, the State shall hire
14 qualified personnel who are bilingual to fill existing, budgeted
15 vacant public contact positions.

16 § -4 **Additional obligations.** (a) Each state agency
17 and covered entity shall establish a plan for language access.

18 (b) Each state agency's plan for language access shall be
19 established in consultation with the executive director and the
20 state agency's coordinator for language access. State agencies
21 receiving federal financial assistance that did not file an
22 initial language access plan pursuant to former section 371-



1 34(b) by July 1, 2007, shall file an initial language access
2 plan with the executive director no later than July 1, 2013, and
3 every two years thereafter. All other state agencies that did
4 not file a language access plan pursuant to former section 371-
5 34(b) by July 1, 2008, shall file a language access plan with
6 the executive director no later than July 1, 2014, and every two
7 years thereafter. Agencies that filed initial language access
8 plans pursuant to former section 371-34(b) by July 1, 2007, and
9 July 1, 2008, shall continue to file their plans with the
10 executive director every two years thereafter.

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

15 § -5 **Public meetings and public hearings.** (a) State
16 agencies to which this chapter applies shall not be required to
17 translate meeting notices, agendas, or minutes.

18 (b) Subject to section -3, oral language services for
19 public meetings or public hearings held by the legislature shall
20 be provided if requested at least forty-eight hours in advance
21 of the meeting or hearing. When the notice of any public
22 meeting or public hearing is posted less than forty-eight hours



1 in advance of the meeting or hearing, oral language services
2 shall be provided if requested at least twenty-four hours in
3 advance of the meeting or hearing.

4 § -6 Office of language access; established.

5 (a) There is established within the department of health, for
6 administrative purposes only, the office of language access.
7 The head of the office shall be known as the executive director
8 of the office of language access. The executive director shall
9 be appointed by the governor without regard to chapter 76. The
10 executive director shall:

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

15 (2) Provide technical assistance to covered entities in
16 their implementation of this chapter;

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

19 (4) Where reasonable access is not provided, endeavor to
20 eliminate the barrier using informal methods such as
21 conference, conciliation, mediation, or persuasion.

22 Where the language access barrier cannot be eliminated



1 by informal methods, the executive director shall
2 submit a written report with the executive director's
3 opinion and recommendation to the state agency or the
4 covered entity. The executive director may request
5 the state agency or the covered entity to notify the
6 executive director, within a specified time, of any
7 action taken on the executive director's
8 recommendation;

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

12 (6) Subject to section -3, create, distribute to the
13 State, and make available to covered entities
14 multilingual signage in the more frequently
15 encountered languages in the State, and other
16 languages as needed, informing individuals of their
17 right to free oral language services and inviting them
18 to identify themselves as persons needing services;
19 and

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



1 § -7 **Language access advisory council.** (a) There is
2 established the language access advisory council, which shall be
3 placed within the department of health for administrative
4 purposes only. The council shall consist of the following
5 members to be appointed by the governor:

- 6 (1) One representative from the state government;
- 7 (2) One representative from a covered entity;
- 8 (3) One bilingual worker who is or has been employed by a
9 state-funded immigrant service agency or program;
- 10 (4) One representative of an advocacy organization that
11 provides services to limited English proficient
12 persons;
- 13 (5) One member from the limited English proficient
14 population who has an interest in the provision of
15 oral language services;
- 16 (6) One representative from an accredited institution of
17 higher learning who provides professional training in
18 interpretation and translation;
- 19 (7) One representative of a Hawaiian language advocacy
20 organization;
- 21 (8) One representative of a professional interpreter's
22 organization;



- 1 (9) One representative of a bilingual referral service or
- 2 program;
- 3 (10) One representative residing in the county of Hawaii
- 4 who has shown interest in language access;
- 5 (11) One representative residing in the county of Kauai who
- 6 has shown interest in language access;
- 7 (12) One representative residing in the county of Maui who
- 8 has shown interest in language access;
- 9 (13) One representative residing in the city and county of
- 10 Honolulu who has shown interest in language access;
- 11 (14) One member-at-large;
- 12 (15) The executive director of the Hawaii civil rights
- 13 commission or authorized representative, as an ex-
- 14 officio member;
- 15 (16) One representative from the disability and
- 16 communication access board, as an ex-officio member;
- 17 and
- 18 (17) The executive director, as an ex-officio member.
- 19 (b) Members shall be appointed in accordance with section
- 20 26-34. The terms of the members shall be for four years. The
- 21 council shall select one of its members to serve as chair. No
- 22 member of the council shall receive any compensation for council



1 services, but shall be allowed necessary expenses for travel,
2 board, and lodging incurred in the performance of council
3 duties.

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

- 6 (1) Implementation and compliance with this chapter;
- 7 (2) The quality of oral and written language services
8 provided under this chapter; and
- 9 (3) The adequacy of a state agency or covered entity's
10 dissemination and training of its employees likely to
11 have contact with limited English proficient persons,
12 its policies and procedures for language services, its
13 competency in working effectively with in-person and
14 telephone interpreters, and its understanding of the
15 dynamics of interpretation between clients, providers,
16 and interpreters."

17 SECTION 3. Part II of chapter 371, Hawaii Revised
18 Statutes, is repealed.

19 SECTION 4. All rights, powers, functions, and duties of
20 the department of labor and industrial relations relating to the
21 office of language access are transferred to the department of
22 health.



1 SECTION 5. All officers and employees whose functions are
2 transferred by this Act shall be transferred with their
3 functions and shall continue to perform their regular duties
4 upon their transfer, subject to the state personnel laws and
5 this Act.

6 All employees who occupy civil service positions and whose
7 functions are transferred to the department of health by this
8 Act shall retain their permanent or temporary civil service
9 status. Employees shall be transferred without loss of salary,
10 seniority, retention points, prior service credit, any vacation
11 and sick leave credits previously earned, and other rights,
12 benefits, and privileges, in accordance with state personnel
13 laws and this Act; provided that the employees possess the
14 minimum qualifications and public employment requirements for
15 the class or position to which transferred or appointed, as
16 applicable; provided further that subsequent changes in status
17 may be made pursuant to applicable civil service and
18 compensation laws.

19 Any employee who, prior to this Act, is exempt from civil
20 service and is transferred as a consequence of this Act may
21 continue to retain the employee's exempt status, but shall not
22 be appointed to a civil service position because of this Act.



1 An exempt employee who is transferred by this Act shall not
2 suffer any loss of prior service credit, any vacation and sick
3 leave credits previously earned, or other employee benefits or
4 privileges as a consequence of this Act; provided that the
5 employees meet legal and public employment requirements for the
6 position to which transferred or appointed, as applicable;
7 provided further that subsequent changes in status may be made
8 pursuant to applicable employment and compensation laws. The
9 director of health may prescribe the duties and qualifications
10 of the exempt employees and fix their salaries without regard to
11 chapter 76, Hawaii Revised Statutes.

12 SECTION 6. All council members serving on the language
13 access advisory council on the day prior to the effective date
14 of this Act shall continue as members of the council and their
15 terms shall be unaffected by this Act.

16 SECTION 7. All appropriations, records, equipment,
17 machines, files, supplies, contracts, books, papers, documents,
18 maps, and other personal property heretofore made, used,
19 acquired, or held by the department of labor and industrial
20 relations, its agencies, divisions, or offices relating to the
21 office of language access as determined by both the department
22 of labor and industrial relations and the office of language



1 access, which is transferred to the department of health shall
2 be transferred with the functions to which they relate.

3 SECTION 8. All rules, policies, procedures, guidelines,
4 and other material adopted or developed by the office of
5 language access to implement provisions of part II of chapter
6 371, Hawaii Revised Statutes, that are made applicable to the
7 office of language access established by this Act, shall remain
8 in full force and effect until amended or repealed by the office
9 of language access established by this Act pursuant to chapter
10 91, Hawaii Revised Statutes.

11 SECTION 9. All deeds, leases, contracts, loans,
12 agreements, permits, or other documents executed or entered into
13 by or on behalf of the office of language access transferred or
14 placed for administrative purposes within the department of
15 health shall remain in full force and effect.

16 SECTION 10. All relocation cost or expenses associated
17 with transferring the office of language access to the
18 department of health shall be borne by the appropriations
19 allocation to the office of language access or the department of
20 health with no liabilities or liens arising from such relocation
21 activity accruing to the department of labor and industrial
22 relations.



1 SECTION 11. All privileges and benefits as provided by the
2 department of labor and industrial relations, including parking,
3 that are currently enjoyed by the office of language access
4 shall be forfeited and returned to the providing department upon
5 transfer of the office of language access to the department of
6 health.

7 SECTION 12. There shall be a transition period to
8 facilitate the transfer of the office of language access from
9 the department of labor and industrial relations to the
10 department of health. The year following July 1, 2012, shall
11 serve as a transition period, in which the state agencies
12 affected by this Act shall assist the executive director in
13 implementing the transfer under this Act. Once the transfer is
14 completed, the department of health shall provide public notice
15 that the transfer is completed in a printed publication or
16 electronic format that is accessible statewide.

17 SECTION 13. The provisions of this Act are to be liberally
18 construed to effectuate its purpose.

19 SECTION 14. All acts passed by the legislature during this
20 regular session of 2012, whether enacted before or after the
21 effective date of this Act, shall be amended to conform to this



1 Act unless such acts specifically provide that this Act is being
2 amended.

3 SECTION 15. This Act shall take effect on July 1, 2012.

APPROVED this 3 day of JUL , 2012

Neil Abernethy

GOVERNOR OF THE STATE OF HAWAII

