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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. In providing the delivery of  
6 language accessible services, it is the intent of the  
7 legislature that those services be guided by Executive Order No.  
8 13166 and succeeding provisions of federal law, regulation, or  
9 guidance.

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

17 § -2 **Definitions.** As used in this chapter, unless a  
18 different meaning clearly appears from the context:

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

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

10 "Executive director" means the executive director of the  
11 office of language access.

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

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

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

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1 "Purchase-of-service contract" means any and all types of  
2 formal written agreements, regardless of what they may be  
3 called, between the State and any person, to purchase or  
4 otherwise acquire any service for the purpose of rendering  
5 services to the public.

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

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

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

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

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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  
23 constitutes five per cent or one thousand, whichever

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1 is less, of the population of persons eligible to be  
2 served or likely to be affected or encountered; or  
3 (2) If there are fewer than fifty persons in a limited  
4 English proficient group that reaches the five per  
5 cent threshold in paragraph (1), written notice in the  
6 primary language to the limited English proficient  
7 language group of the right to receive competent oral  
8 interpretation of those written materials, free of  
9 cost.

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

15 § -4 **Additional obligations.** (a) Each state agency  
16 and covered entity shall establish a plan for language access.

17 (b) Each state agency's plan for language access shall be  
18 established in consultation with the executive director and the  
19 state agency's coordinator for language access. State agencies  
20 receiving federal financial assistance that did not file an  
21 initial language access plan pursuant to section 371-34(b) by  
22 July 1, 2007, shall file an initial language access plan with  
23 the executive director no later than July 1, 2013, and every two

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

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

13 § -5 **Public meetings and public hearings.** (a) State  
14 agencies to which this chapter applies shall not be required to  
15 translate meeting notices, agendas, or minutes.

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

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1           §     -6 Office of language access; established.

2     (a) There is established within the department of health, for  
3 administrative purposes only, the office of language access.

4 The head of the office shall be known as the executive director  
5 of the office of language access. The executive director shall  
6 be appointed by the governor without regard to chapter 76. The  
7 executive director shall:

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

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

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

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

19 Where the language access barrier cannot be eliminated  
20 by informal methods, the executive director shall  
21 submit a written report with the executive director's  
22 opinion and recommendation to the state agency or the  
23 covered entity. The executive director may request

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1 the state agency or the covered entity to notify the  
2 executive director, within a specified time, of any  
3 action taken on the executive director's  
4 recommendation;

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

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

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

18 § -9 **Language access advisory council.** (a) There is  
19 established the language access advisory council, which shall be  
20 within the department the health for administrative purposes  
21 only. The council shall consist of the following members to be  
22 appointed by the governor:

23 (1) One representative from the state government;

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

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- 1           (12) One representative residing in the county of Maui who  
2           has shown interest in language access);
- 3           (13) One representative residing in the city and county of  
4           Honolulu who has shown interest in language access;
- 5           (14) One member-at-large;
- 6           (15) The executive director of the Hawaii civil rights  
7           commission or authorized representative, as an ex-  
8           officio member;
- 9           (16) One representative from the disability and  
10           communication access board, as an ex-officio member;  
11           and
- 12           (17) The executive director, as an ex-officio member.
- 13           (b) Members shall be appointed in accordance with section  
14 26-34. The terms of the members shall be for four years;  
15 provided that the governor may reduce the terms of those  
16 initially appointed so as to provide, as nearly as can be, for  
17 the expiration of an equal number of terms at intervals of one  
18 year. The council shall select one of its members to serve as  
19 chair. No member of the council shall receive any compensation  
20 for council services, but shall be allowed necessary expenses  
21 for travel, board, and lodging incurred in the performance of  
22 council duties.

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

3 (1) Implementation and compliance with this chapter;

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

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

14 SECTION 3. Part II of chapter 371, Hawaii Revised  
15 Statutes, is repealed.

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

20 SECTION 5. All officers and employees whose functions are  
21 transferred by this Act shall be transferred with their  
22 functions and shall continue to perform their regular duties

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1 upon their transfer, subject to the state personnel laws and  
2 this Act.

3 No officer or employee of the State having tenure shall  
4 suffer any loss of salary, seniority, prior service credit,  
5 vacation, sick leave, or other employee benefit or privilege as  
6 a consequence of this Act, and such officer or employee may be  
7 transferred or appointed to a civil service position without the  
8 necessity of examination; provided that the officer or employee  
9 possesses the minimum qualifications for the position to which  
10 transferred or appointed; and provided that subsequent changes  
11 in status may be made pursuant to applicable civil service and  
12 compensation laws.

13 An officer or employee of the State who does not have  
14 tenure and who may be transferred or appointed to a civil  
15 service position as a consequence of this Act shall become a  
16 civil service employee without the loss of salary, seniority,  
17 prior service credit, vacation, sick leave, or other employee  
18 benefits or privileges and without the necessity of examination;  
19 provided that such officer or employee possesses the minimum  
20 qualifications for the position to which such officer or  
21 employee is transferred or appointed.

22 If an office or position held by an officer or employee  
23 having tenure is abolished, the officer or employee shall not

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1 thereby be separated from public employment, but shall remain in  
2 the employment of the State with the same pay and classification  
3 and shall be transferred to some other office or position for  
4 which the officer or employee is eligible under the personnel  
5 laws of the State as determined by the director of human  
6 resources development.

7 SECTION 6. All council members serving on the language  
8 access advisory council on the day prior to the effective date  
9 of this Act shall continue as members of the council and their  
10 terms shall be unaffected by this Act.

11 SECTION 7. All appropriations, records, equipment,  
12 machines, files, supplies, contracts, books, papers, documents,  
13 maps, and other personal property heretofore made, used,  
14 acquired, or held by the department of labor and industrial  
15 relations, its agencies, divisions, or offices relating to the  
16 office of language access as determined by both the department  
17 of labor and industrial relations and the office of language  
18 access, which is transferred to the department of health shall  
19 be transferred with the functions to which they relate.

20 SECTION 8. All rules, policies, procedures, guidelines,  
21 and other material adopted or developed by the office of  
22 language access to implement provisions of part II of chapter  
23 371, Hawaii Revised Statutes, that are made applicable to the

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1 office of language access established by this Act, shall remain  
2 in full force and effect until amended or repealed by the office  
3 of language access established by this Act pursuant to chapter  
4 91, Hawaii Revised Statutes.

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

10 SECTION 10. All relocation cost or expenses associated  
11 with transferring the office of language access to the  
12 department of health shall be borne by the appropriations  
13 allocation to the office of language access or the department of  
14 health with no liabilities or liens arising from such relocation  
15 activity accruing to the department of labor and industrial  
16 relations.

17 SECTION 11. All privileges and benefits as provided by the  
18 department of labor and industrial relations, including parking,  
19 and currently enjoyed by the office of language access shall be  
20 forfeited and returned to the providing department upon transfer  
21 of the office of language access to the department of health.

22 SECTION 12. There shall be a transition period to  
23 facilitate the transfer of the office of language access from

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1 the department of labor and industrial relations to the  
2 department of health. The year following July 1, 2012, shall  
3 serve as a transition period, in which the state agencies  
4 affected by this Act shall assist the executive director in  
5 implementing the transfer under this Act.

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

8 SECTION 14. All acts passed by the legislature during this  
9 regular session of 2012, whether enacted before or after the  
10 effective date of this Act, shall be amended to conform to this  
11 Act unless such acts specifically provide that this Act is being  
12 amended.

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

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INTRODUCED BY:

Calvin K. Ray

BY REQUEST

JAN 23 2012

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**Report Title:**

Office of Language Access

**Description:**

Transfers the Office of Language Access to the Department of Health, as an administratively attached agency.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF LANGUAGE ACCESS.

PURPOSE: Transfer the Office of Language Access (OLA) from the Department of Labor and Industrial Relations to the Department of Health.

MEANS: Add a new chapter to the Hawaii Revised Statutes and repeal part II of chapter 371, Hawaii Revised Statutes.

JUSTIFICATION: This bill is a step in the implementation of the third focus of the New Day Plan: "to transform State government into an efficient and effective enterprise," and is in line with the New Day objective "to protect the human and civil rights of all regardless of categories." By transferring the functions and duties of OLA from the Department of Labor and Industrial Relations to the Department of Health, this bill will help align state functions and improve the State's delivery of vital language services to its 140,000 limited English proficient population and provide them better access to needed government services, protect their rights, and enable them to become more active participants and contributing members to society.

The transfer will enable OLA to more effectively and efficiently use its resources and perform its functions without being tied up to DLIR's employment-focused core functions and priorities. Being located in an agency that performs similar functions will result in better collaboration and sharing of resources, thereby making OLA more responsive to the community and the state and state-funded agencies it serves. Better language access means better customer service thereby

helping raise public awareness and confidence in government and our processes.

Impact on the public: The public will have greater and better access to government services and programs.

Impact on the department and other agencies: There will be better coordination of services and collaborative use of resources.

GENERAL FUND: Revenue neutral. DLIR funds appropriated for OLA will be transferred to the Department of Health.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LBR 316.

OTHER AFFECTED  
AGENCIES: Department of Health.

EFFECTIVE DATE: July 1, 2012.