

JAN 19 2012

---

---

# A BILL FOR AN ACT

RELATING TO LANGUAGE ACCESS.

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

1           SECTION 1. Chapter 346, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                                   **"PART . LANGUAGE ACCESS**

5           **§346-A Purpose.** Most individuals living in Hawaii read,  
6 write, speak, and understand English. There are many  
7 individuals, however, who are limited English proficient.  
8 Language for limited English proficient persons can be a barrier  
9 to accessing important benefits or services, understanding and  
10 exercising important rights, complying with applicable  
11 responsibilities, or understanding other information provided by  
12 state-funded programs and activities.

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



1 13166 and succeeding provisions of federal law, regulation, or  
2 guidance.

3 **§346-B Definitions.** Whenever used in this part, unless a  
4 different meaning clearly appears from the context:

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

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

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

20 "Limited English proficient" means individuals who, on  
21 account of national origin, do not speak English as their  
22 primary language and who identify themselves as having a limited



1 ability to read, write, speak, or understand the English  
2 language.

3 "Oral language services" means the free provision of oral  
4 information necessary to enable limited English proficient  
5 persons to access or participate in services, programs, or  
6 activities of a state agency or covered entity.

7 "Purchase-of-service contract" means any and all types of  
8 formal written agreements, regardless of what they may be  
9 called, between the State and any person, to purchase or  
10 otherwise acquire any service for the purpose of rendering  
11 services to the public.

12 "State" or "state agency" means the executive, legislative,  
13 or judicial branches of state government, including departments,  
14 offices, commissions, boards, or other agencies within the  
15 executive, legislative, or judicial branches.

16 "Vital documents" means printed documents that provide  
17 important information necessary to access or participate in  
18 services, programs, and activities of a state agency or covered  
19 entity, including but not limited to applications, outreach  
20 materials, and written notices of rights, denials, losses, or  
21 decreases in benefits or services.



1 "Written language services" means the free provision of  
2 written information necessary to enable limited English  
3 proficient persons to access or participate in services,  
4 programs, or activities of a state agency or covered entity.

5 **§346-C Oral and written language services.** (a) Each  
6 state agency and all covered entities shall take reasonable  
7 steps to ensure meaningful access to services, programs, and  
8 activities by limited English proficient persons, which will be  
9 determined by a totality of circumstances, including the  
10 following factors:

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

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

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

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

21 (b) Subject to subsection (a), each state agency and  
22 covered entity shall provide competent, timely oral language



1 services to limited English proficient persons who seek to  
2 access services, programs, or activities.

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

7 (1) Written translations of vital documents for each  
8 eligible limited English proficient group that  
9 constitutes five per cent or one thousand, whichever  
10 is less, of the population of persons eligible to be  
11 served or likely to be affected or encountered; or

12 (2) If there are fewer than fifty persons in a limited  
13 English proficient group that reaches the five per  
14 cent threshold in paragraph (1), written notice in the  
15 primary language to the limited English proficient  
16 language group of the right to receive competent oral  
17 interpretation of those written materials, free of  
18 cost.

19 (d) To the extent that the State requires additional  
20 personnel to provide language services based on the  
21 determination set forth in this section, the State shall hire



1 qualified personnel who are bilingual to fill existing, budgeted  
2 vacant public contact positions.

3       **§346-D Additional obligations.** (a) Each state agency  
4 and covered entity shall establish a plan for language access.

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

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

20       **§346-E Public meetings and public hearings.** (a) State  
21 agencies to which this part applies shall not be required to  
22 translate meeting notices, agendas, or minutes.



1 (b) Subject to section 346-C, oral language services for  
2 public meetings or public hearings held by the legislature shall  
3 be provided if requested at least forty-eight hours in advance  
4 of the meeting or hearing. Where the notice of any public  
5 meeting or public hearing is posted less than forty-eight hours  
6 in advance of the meeting or hearing, oral language services  
7 shall be provided if requested at least twenty-four hours in  
8 advance of the meeting or hearing.

9 **§346-F Executive director of the office of language**

10 **access; duties.** There is established within the department of  
11 human services, for administrative purposes only, an office of  
12 language access. The head of the office shall be known as the  
13 executive director of the office of language access, hereinafter  
14 referred to as executive director. The executive director shall  
15 be appointed by the governor without regard to chapter 76. The  
16 executive director shall:

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

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



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

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

6 Where the language access barrier cannot be eliminated  
7 by informal methods, the executive director shall  
8 submit a written report with the executive director's  
9 opinion and recommendation to the state agency or the  
10 covered entity. The executive director may request  
11 the state agency or the covered entity to notify the  
12 executive director, within a specified time, of any  
13 action taken on the executive director's  
14 recommendation;

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

18 (6) Subject to section 346-C, create, distribute to the  
19 State, and make available to covered entities  
20 multilingual signage in the more frequently  
21 encountered languages in the State, and other  
22 languages as needed, informing individuals of their





1 right to free oral language services and inviting them  
2 to identify themselves as persons needing services;  
3 and

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

6 **§346-G Language access advisory council.** (a) There is  
7 established the language access advisory council within the  
8 department of human services for administrative purposes. The  
9 council shall consist of the following members to be appointed  
10 by the governor:

- 11 (1) One representative from the state government;
- 12 (2) One representative from a covered entity;
- 13 (3) One bilingual case management worker, or an individual  
14 who is or has been employed by a state-funded  
15 immigrant service agency or program;
- 16 (4) One representative of an advocacy organization that  
17 provides services to limited English proficient  
18 persons;
- 19 (5) One member from the limited English proficient  
20 population who has an interest in the provision of  
21 oral language services;



- 1           (6) One representative of the University of Hawaii
- 2           department of language and linguistics who provides
- 3           professional training in interpretation and
- 4           translation;
- 5           (7) One representative of a Hawaiian language advocacy
- 6           organization;
- 7           (8) One representative of a professional interpreter's
- 8           organization;
- 9           (9) One representative of a bilingual referral service or
- 10          program;
- 11          (10) One representative residing in the county of Hawaii
- 12          who has an interest in language access;
- 13          (11) One representative residing in the county of Kauai who
- 14          has an interest in language access;
- 15          (12) One representative residing in the county of Maui who
- 16          has an interest in language access;
- 17          (13) One representative residing in the city and county of
- 18          Honolulu who has an interest in language access;
- 19          (14) The executive director of the Hawaii civil rights
- 20          commission or authorized representative, as ex-officio
- 21          member;



1           (15) One representative from the disability and  
2                       communication access board, as an ex-officio member;  
3                       and

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

5           (b) Members shall be appointed in accordance with section  
6 26-34. The terms of the members shall be for four years;  
7 provided that the governor may reduce the terms of those  
8 initially appointed so as to provide, as nearly as can be, for  
9 the expiration of an equal number of terms at intervals of one  
10 year. The council shall select one of its members to serve as  
11 chair. No member of the council shall receive any compensation  
12 for council services, but shall be allowed necessary expenses  
13 for travel, board, and lodging incurred in the performance of  
14 council duties.

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

- 17           (1) Implementation and compliance with this part;
- 18           (2) The quality of oral and written language services  
19                       provided under this part; and
- 20           (3) The adequacy of a state agency or covered entity's  
21                       dissemination and training of its employees likely to  
22                       have contact with limited or no-English proficient



1 persons, its policies and procedures for language  
2 services, its competency in working effectively with  
3 in-person and telephone interpreters, and its  
4 understanding of the dynamics of interpretation  
5 between clients, providers, and interpreters."

6 SECTION 2. Chapter 371, part II, Hawaii Revised Statutes,  
7 is repealed.

8 SECTION 3. In codifying the new sections added by section  
9 1 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12 SECTION 4. All rights, powers, functions, and duties of  
13 the office of language access are transferred to the department  
14 of human services.

15 All officers and employees whose functions are transferred  
16 by this Act shall be transferred with their functions and shall  
17 continue to perform their regular duties upon their transfer,  
18 subject to the state personnel laws and this Act.

19 No officer or employee of the State having tenure shall  
20 suffer any loss of salary, seniority, prior service credit,  
21 vacation, sick leave, or other employee benefit or privilege as  
22 a consequence of this Act, and such officer or employee may be



1 transferred or appointed to a civil service position without the  
2 necessity of examination; provided that the officer or employee  
3 possesses the minimum qualifications for the position to which  
4 transferred or appointed; and provided that subsequent changes  
5 in status may be made pursuant to applicable civil service and  
6 compensation laws.

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

16 If an office or position held by an officer or employee  
17 having tenure is abolished, the officer or employee shall not  
18 thereby be separated from public employment, but shall remain in  
19 the employment of the State with the same pay and classification  
20 and shall be transferred to some other office or position for  
21 which the officer or employee is eligible under the personnel



1 laws of the State as determined by the head of the department or  
2 the governor.

3 SECTION 5. All appropriations, records, equipment,  
4 machines, files, supplies, contracts, books, papers, documents,  
5 maps, and other personal property heretofore made, used,  
6 acquired, or held by the department of labor and industrial  
7 relations relating to the functions transferred to the  
8 department of human services shall be transferred with the  
9 functions to which they relate.

10 SECTION 6. All rules, policies, procedures, guidelines,  
11 and other material adopted or developed by the department of  
12 labor and industrial relations for the office of language access  
13 shall remain in full force and effect until amended or repealed  
14 by the department of human services pursuant to chapter 91,  
15 Hawaii Revised Statutes. In the interim, every reference to the  
16 department of labor and industrial relations in those rules,  
17 policies, procedures, guidelines, and other material is amended  
18 to refer to the department of human services, as appropriate.

19 SECTION 7. This Act shall take effect on July 1, 2013.  
20

INTRODUCED BY: Frankie Chun Oakland  
By Request



# S.B. NO. 2141

**Report Title:**

Office of Language Access; Department of Human Services

**Description:**

Transfers authority over the Office of Language Access from the Department of Labor and Industrial Relations to the Department of Human Services. Effective July 1, 2013.

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

