

Report to the Governor of Hawai`i and the 24th State Legislature
As Required under the Provisions of
Act 290 - Language Access Law, Session Laws of Hawai`i 2006

I. REPORT TO THE GOVERNOR AND LEGISLATURE REQUIRED BY LAW

Act 290 [HB2778 HD2, SD2, CD1] (“Act 290”), Session Laws of Hawai`i 2006, mandates the submission of an annual report to the Governor and Legislature. The report shall detail “compliance, complaints and resolutions, recommendations to enhance compliance, and statutory or administrative changes to further the purposes of [Act 290].”

Act 290 establishes the Office of Language Access (“OLA”), administratively attached to the Department of Labor and Industrial Relations (“DLIR”), and calls for the appointment of an executive director, among other things. As the DLIR is currently engaged in the process leading to the appointment of the OLA’s executive director, the DLIR hereby submits this report as required by Act 290.

II. RELEVANT BACKGROUND OF ACT 290

A. Purpose

“The purpose of this bill [Act 290] is to require the State and covered entities [(i.e., a person or organization receiving state funds for the purpose of rendering services on behalf of the State)] to provide assistance to limited English proficient (“LEP”) persons who are eligible for certain state-provided or state-funded programs.” Conf. Comm. Rep. No. 201-06, at 1 (April 28, 2006). Specifically, Act 290 contemplates, under certain circumstances, “providing oral and written language services to [LEP] persons” to “ensure meaningful access” to state services or state-funded programs. *Id.*

B. Problem Sought to be Remedied

“Persons who do not speak English as a primary language comprise a significant portion of Hawaii’s population. Many of these individuals contribute to our economy, educate their children in our schools, and make valuable contributions to the life of our state. However, many individuals with limited English proficiency sometimes have difficulty obtaining services from state agencies because of their limited ability in the English language.” Conf. Comm. Rep. No. 201-06, at 2; Sen. Stand. Comm. Rep. No. 3032, at 3 (March 22, 2006) (“the English language for persons who are limited in English proficiency can pose a barrier to: (1) Accessing important benefits and services; (2) Understanding and exercising important rights; (3) Complying with applicable legal obligations; and (4) understanding information [regarding] state[-]funded programs and activities.”).

C. Proposed Solution

To approach the long-term goal of providing meaningful access, Act 290 proscribes the following immediate steps: (1) establishment of OLA; (2) establishment of a Language Access Advisory Council to advise OLA's director; and (3) requiring state agencies receiving federal financial assistance to file an initial language access plan with the OLA executive director by July 1, 2007. *See generally* Act 290.

III. PROGRESS IN ESTABLISHING THE OLA

Since enactment of Act 290 on July 10, 2006, the DLIR has taken numerous steps to establish the OLA. The DLIR drafted a preliminary budget and formally requested the release of funds for the OLA from the Department of Budget and Finance ("B&F") on August 28, 2006. On September 22, 2006, B&F released the OLA funding to the DLIR.

Moreover, the DLIR drafted job descriptions and received approval on August 15, 2006, to post the following positions, with salary ranges, for open recruitment:

1. Executive Director (not to exceed \$80,000);
2. Staff Attorney (not to exceed \$60,000);
3. Researcher (2 positions; not to exceed \$47,448 each); and
4. Clerical (2 positions -- one clerk, not to exceed \$25,656, and one clerk typist, not to exceed \$31,212).

On June 30, 2006, the positions were posted for open recruitment with the Department of Human Resource Development ("DHRD"), on the DLIR's website, and on HireNet Hawaii, the state's premier internet job matching system. The open recruitment lasted a total of 13 weeks,¹ and was closed on September 27, 2006.

The DLIR then took steps to locate space for the new agency, and successfully secured office space containing 561 square feet within the DLIR's Office of the Director, on October 1, 2006. The office space also contains one private office for the incoming OLA executive director with ample room for staff offices and equipment.

The DLIR entered into a lease agreement for the OLA office on October 1, 2006, at a cost of \$396 per month. Additionally, office supplies, furniture, computers, phone lines and internet cabling were purchased on December 29, 2006.

Beginning in early October, the DLIR screened the resumes that were submitted for the position of OLA executive director to ensure proper qualifications, and interviewed seven (7) candidates from December 15, 2006 through December 22, 2006. The DLIR is currently compiling a list of recommendations to present to the Governor, in early January 2007, for her final selection. The DLIR expects to continue recruitment for the remaining positions by the end of January 2007.

¹ Resumes were sent to DLIR as soon as the program was established.

IV. ABILITY TO MEET ACT 290 REQUIREMENT FOR SUBMISSION OF INITIAL LANGUAGE ACCESS PLANS

Act 290 requires, among other things, that state agencies receiving federal financial assistance file an initial language access plan with the OLA executive director by July 1, 2007. The DLIR is confident that the OLA can meet this fast approaching deadline for two reasons.

First, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title VI”) (prohibiting discrimination based on national origin) and Presidential Executive Order 13166 (designed to “improve access to . . . federally assisted programs and activities for persons, who as a result of national origin, are limited in their English proficiency), state agencies receiving federal funds have already been effectively directed to develop policies to ensure that LEP persons have meaningful access to services, programs or activities. As Presidential Executive Order 13166 was signed on August 11, 2000, state agencies receiving federal funding have had ample time to develop LEP policies.

Second, the DLIR has developed an LEP Plan that can be employed as a model for other state agencies to follow. In 2006, the DLIR was the first state agency to draft and implement a department-wide LEP Plan as required by federal law. *See* LEP Plan attached hereto.

The DLIR’s LEP Plan is comprised of the following seven (7) components:

- (1) Development of a reporting system designed to obtain key information about the LEP population that use the DLIR’s services;
- (2) Compilation of comprehensive multi-lingual listing of DLIR employees;
- (3) Notice of interpretation/translation services to qualified LEP customers;
- (4) Protocol for providing interpretation/translation services for LEP customers;
- (5) Designation of a LEP Plan Coordinator;
- (6) Training DLIR staff on the implementation of the LEP Plan; and
- (7) Seeking stakeholders’ input and review and revision of the LEP plan.

As part of the LEP Plan, the DLIR developed a poster compiling a list of the twenty-one (21) languages that are likely to be the primary languages of those needing DLIR’s services. *See* Appendix “C” of attached DLIR Plan. The DLIR also developed a written notice, translated into the twenty-one (21) languages, to be affixed to documents that each DLIR division administrator believes is important and/or believes, based on the experiences of his or her division, needs to be translated. *See* Appendix “D” of attached DLIR Plan.

Moreover, the DLIR’s LEP Plan was generally well-received at meetings with stakeholders in the LEP community. Significantly, the DLIR obtained constructive

suggestions regarding how to enhance the LEP Plan. The DLIR is currently reviewing and considering these suggestions.

V. CONCLUSION

Significant strides have been taken to establish the OLA. OLA's executive director is likely to be appointed by the Governor in January 2007. Selection of the OLA's staff should take place shortly thereafter. The DLIR already has secured office space, and secured release of OLA funding from B&F. OLA's office supplies, furniture, computers, phone lines and internet cabling have already been purchased. Given that the DLIR's LEP Plan can be used as a template for other state agencies to follow, meeting the July 1, 2007 deadline for state agencies receiving federal funding to submit an initial language access plan to the OLA's executive director is feasible.