## 6544

2009-2010 Regular Sessions

IN ASSEMBLY

March 6, 2009

Introduced by M. of A. ORTIZ, ESPAILLAT, COOK, WEISENBERG -- Multi-Sponsored by -- M. of A. DIAZ, ROBINSON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to bilingual services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-BLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "bilingual 2 services act".

3 S 2. Legislative intent. The legislature hereby finds and declares 4 that the effective maintenance and development of a free and democratic 5 society depends on the right and ability of its citizens and residents 6 to communicate with their government and the right and ability of the 7 government to communicate with them.

8 The legislature further finds and declares that substantial numbers of persons who live, work and pay taxes in this state are unable, 9 either because they do not speak or write English at all, or because their primary language is other than English, to effectively communicate with 10 11 12 their government. The legislature further finds and declares that state and local agency employees frequently are unable to communicate with 13 14 persons requiring their services because of this language barrier. As a consequence, substantial numbers of persons presently are being denied 15 rights and benefits to which they would otherwise be entitled. 16

17 It is the intent of the legislature in enacting this legislation to 18 provide for effective communication between all levels of government in 19 this state and the people of this state who are precluded from utilizing 20 public services because of language barriers.

S 3. The executive law is amended by adding a new article 19-E to read 22 as follows:

## ARTICLE 19-E BILINGUAL SERVICES

25 SECTION 460. DEFINITIONS.

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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10012-01-9

A. 6544

<ul> <li>462. IMPLEMENTATION.</li> <li>463. TRANSLATION OF MATERIALS EXPLAINING SERVICES AVAILABLE.</li> <li>464. DISTRIBUTION OF WRITTEN MATERIALS IN NON-ENGLISH LANGUAG BY STATE AGENCY.</li> <li>465. EXCLUSIONS.</li> <li>466. FUNDING.</li> <li>466. FUNDING.</li> <li>467. TELEPHONE BASED INTERPRETATION SERVICES.</li> <li>468. SURVEY.</li> <li>469. EXEMPTIONS.</li> <li>470. ESTABLISHMENT OF BILINGUAL POSITIONS.</li> <li>S 460. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS A DIFFERENT MEAN</li> <li>ING IS CLEARLY REQUIRED BY THE CONTEXT:</li> <li>1. "BILINGUAL PERSON" MEANS A PERSON WHO IS PROFICIENT IN BOTH TH</li> <li>ENGLISH LANGUAGE AND THE FOREIGN LANGUAGE TO BE USED.</li> <li>2. "SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING PEOPLE" MEANS MEMBER</li> <li>OF A GROUP WHO ELTHER DO NOT SPEAK ENCLISH, OR WHO ARE UNABLE TO EFFECT</li> <li>TIVELY COMMUNICATE IN ENGLISH BECAUSE IT IS NOT THEIR NATIVE LANGUAGE</li> <li>AND WHO COMPRISE FIVE PERCENT OR MORE OF THE PEOPLE SERVED BY ANY LOCA</li> <li>OFFICE OR FACILITY OF A STATE AGENCY.</li> <li>3. "SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS IN PUBLIC CONTAC</li> <li>POSITIONS" MEANS THE NUMBER REQUIRED TO PROVIDE THE SAME LEVEL O</li> <li>SERVICES TO NON-ENGLISH SPEAKING PERSONS AS IS AVAILABLE TO ENGLISH</li> <li>SPEAKING PERSONS SEEKING SUCH SERVICES! PROVIDED, HOWEVER, THAT WHER</li> <li>THE LOCAL OFFICE OR FACILITY OF THE STATE EMPLOYS IT HE EQUIVALENT O</li> <li>SERVICES TO ASSIST THOSE IN SUCH POSITIONS, TO PROVIDE TH</li> <li>SAME LEVEL OF SECURES THE ASHLORY PROSUNS AS IS AVAILABLE TO ENGLISH</li> <li>SPEAKING PERSONS SEEKING SUCH SERVICES FROM SUCH OFFICE O</li> <li>TWENTY-FIVE OR FEWER REGULAR, FULL-TIME EMPLOYEES, IT SHALL CONSTITUT</li> <li>COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE IF A SUFFICIENT NUMBER</li> <li>OF ALLITY.</li> <li>4. "PUBLIC CONTACT POSITION" MEANS A POSITION DETERMINED BY THE AGENCY</li> <li>THE ENF</li></ul>	1	461. EMPLOYMENT OF BILINGUAL PERSONS.
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<ul> <li>TO THE PUBLIC WHEREBY CONTACT IS MADE WITH A SUBSTANTIAL NUMBER OF NON</li> <li>ENGLISH SPEAKING PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIE</li> <li>BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS TO ENSURE PROVISION O</li> <li>INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL</li> <li>ISH SPEAKING PERSONS.</li> <li>EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING</li> </ul>	37	DEFINED IN SECTION ONE HUNDRED FORTY-FIVE OF THIS CHAPTER, DIRECTLY
<ul> <li>40 ENGLISH SPEAKING PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIE</li> <li>41 BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS TO ENSURE PROVISION O</li> <li>42 INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL</li> <li>43 ISH SPEAKING PERSONS.</li> <li>44 2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN</li> </ul>	38	INVOLVED IN THE FURNISHING OF INFORMATION OR THE RENDERING OF SERVICES
<ul> <li>41 BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS TO ENSURE PROVISION O</li> <li>42 INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL</li> <li>43 ISH SPEAKING PERSONS.</li> <li>44 2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN</li> </ul>	39	TO THE PUBLIC WHEREBY CONTACT IS MADE WITH A SUBSTANTIAL NUMBER OF NON-
<ul> <li>42 INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL</li> <li>43 ISH SPEAKING PERSONS.</li> <li>44 2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN</li> </ul>	40	ENGLISH SPEAKING PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIED
<ul> <li>43 ISH SPEAKING PERSONS.</li> <li>44 2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN</li> </ul>	41	BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS TO ENSURE PROVISION OF
<ul> <li>43 ISH SPEAKING PERSONS.</li> <li>44 2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ON</li> <li>45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN</li> </ul>	42	INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL-
45 OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKIN	43	
·	44	2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ONE
·	45	
	46	PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS
47 IN PUBLIC CONTACT POSITIONS OR AS INTERPRETERS TO ASSIST THOSE IN SUC	47	IN PUBLIC CONTACT POSITIONS OR AS INTERPRETERS TO ASSIST THOSE IN SUCH
48 POSITIONS, TO ENSURE PROVISION OF INFORMATION AND SERVICES IN TH	48	POSITIONS, TO ENSURE PROVISION OF INFORMATION AND SERVICES IN THE
	49	LANGUAGE OF THE NON-ENGLISH SPEAKING PERSONS. THE DETERMINATION OF WHAT
	50	
51 SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS SHALL BE MADE BY TH	51	SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS SHALL BE MADE BY THE
52 LOCAL AGENCY.	52	
		S 462. IMPLEMENTATION. AN EMPLOYEE OF A STATE OR LOCAL PUBLIC AGENCY,
	54	AS THOSE TERMS ARE USED IN SECTION FOUR HUNDRED SIXTY-ONE OF THIS ARTI-
54 AS THOSE TERMS ARE USED IN SECTION FOUR HUNDRED SIXTY-ONE OF THIS ARTI	55	CLE, MAY NOT BE DISMISSED TO CARRY OUT THE PURPOSES OF THIS ARTICLE. A
	56	STATE OR LOCAL PUBLIC AGENCY NEED ONLY IMPLEMENT THIS ARTICLE BY FILLING

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6 BY THE AGENCY. WHENEVER NOTICE OF THE AVAILABILITY OF MATERIALS EXPLAIN-ING SERVICES AVAILABLE IS GIVEN, ORALLY OR IN WRITING, IT SHALL BE GIVEN 7 8 IN ENGLISH AND IN THE NON-ENGLISH LANGUAGE INTO WHICH ANY MATERIALS HAVE BEEN TRANSLATED. THE DETERMINATION OF WHEN THOSE MATERIALS ARE NECESSARY 9 10 WHEN DEALING WITH LOCAL AGENCIES SHALL BE LEFT TO THE DISCRETION OF THE 11 LOCAL AGENCY.

12 2. EVERY STATE AGENCY WHICH SERVES A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING PEOPLE AND WHICH PROVIDES MATERIALS IN ENGLISH EXPLAINING 13 14 SERVICES SHALL ALSO PROVIDE THE SAME TYPE OF MATERIALS IN ANY NON-ENGL-15 ISH LANGUAGE SPOKEN BY A SUBSTANTIAL NUMBER OF THE PUBLIC SERVED BY THE AGENCY. WHENEVER NOTICE OF THE AVAILABILITY OF MATERIALS EXPLAINING 16 17 SERVICES AVAILABLE IS GIVEN, ORALLY OR IN WRITING, IT SHALL BE GIVEN IN 18 ENGLISH AND IN THE NON-ENGLISH LANGUAGE INTO WHICH ANY MATERIALS HAVE 19 BEEN TRANSLATED. THIS SUBDIVISION SHALL NOT BE INTERPRETED TO REQUIRE 20 VERBATIM TRANSLATIONS OF ANY MATERIALS PROVIDED IN ENGLISH BY A STATE 21 AGENCY.

22 S 464. DISTRIBUTION OF WRITTEN MATERIALS IN NON-ENGLISH LANGUAGE BY STATE AGENCY. WHENEVER A STATE AGENCY FINDS THAT THE FACTORS LISTED IN 23 24 SUBDIVISIONS ONE AND THREE OR TWO AND THREE OF THIS SECTION EXIST, IT 25 SHALL DISTRIBUTE THE APPLICABLE WRITTEN MATERIALS IN THE APPROPRIATE 26 NON-ENGLISH LANGUAGE THROUGH ITS LOCAL OFFICES OR FACILITIES TO NON-ENGLISH SPEAKING PERSONS, OR, AS AN ALTERNATIVE, THE STATE AGENCY 27 28 MAY INSTEAD ELECT TO FURNISH TRANSLATION AIDS, TRANSLATION GUIDES, OR PROVIDE ASSISTANCE AT SUCH LOCAL OFFICES IN COMPLETING ENGLISH FORMS OR 29 QUESTIONNAIRES AND IN UNDERSTANDING ENGLISH FORMS, LETTERS OR NOTICES. 30

1. THE WRITTEN MATERIALS, WHETHER FORMS, APPLICATIONS, QUESTIONNAIRES, 31 32 LETTERS OR NOTICES, SOLICIT OR REQUIRE THE FURNISHING OF INFORMATION FROM AN INDIVIDUAL OR PROVIDE THAT INDIVIDUAL WITH INFORMATION. 33

34 2. THE INFORMATION SOLICITED, REQUIRED OR FURNISHED AFFECTS OR MAY 35 AFFECT THE INDIVIDUAL'S RIGHTS, DUTIES OR PRIVILEGES WITH REGARD TO THAT 36 AGENCY'S SERVICES OR BENEFITS.

37 3. THE LOCAL OFFICE OR FACILITY OF THE AGENCY WITH WHICH THE INDIVID-38 UAL IS DEALING, SERVES A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING 39 PERSONS.

40 S 465. EXCLUSIONS. THE PROVISIONS OF THIS ARTICLE ARE NOT APPLICABLE TO SCHOOL DISTRICTS, BOARDS OF EDUCATION OR THE OFFICE OF A SUPERINTEN-41 42 DENT OF SCHOOLS.

43 S 466. FUNDING. THE PROVISIONS OF THIS ARTICLE SHALL BE IMPLEMENTED TO 44 THE EXTENT THAT LOCAL, STATE OR FEDERAL FUNDS ARE AVAILABLE, AND TO THE 45 EXTENT PERMISSIBLE UNDER FEDERAL LAW AND THE PROVISIONS OF THE CIVIL SERVICE LAW GOVERNING STATE AND LOCAL AGENCIES. 46

47 S 467. TELEPHONE BASED INTERPRETATION SERVICES. STATE AGENCIES MAY, 48 UTILIZING EXISTING FUNDS, CONTRACT FOR TELEPHONE BASED INTERPRETATION 49 SERVICES IN ADDITION TO EMPLOYING BILINGUAL PERSONS IN PUBLIC CONTACT 50 POSITIONS.

51 468. SURVEY. 1. EACH STATE AGENCY SHALL CONDUCT A SURVEY OF EACH OF S 52 ITS LOCAL OFFICES EVERY TWO YEARS TO DETERMINE ALL OF THE FOLLOWING:

(A) THE NUMBER OF PUBLIC CONTACT POSITIONS IN EACH LOCAL OFFICE. 53

54 (B) THE NUMBER OF BILINGUAL EMPLOYEES IN PUBLIC CONTACT POSITIONS, AND 55 THE LANGUAGES THEY SPEAK, OTHER THAN ENGLISH.

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(C) THE NUMBER AND PERCENTAGE OF NON-ENGLISH SPEAKING PEOPLE SERVED BY 1 EACH LOCAL OFFICE, BROKEN DOWN BY NATIVE LANGUAGE. 2 3

(D) THE NUMBER OF ANTICIPATED VACANCIES IN PUBLIC CONTACT POSITIONS.

4 (E) WHETHER THE USE OF CONTRACTED TELEPHONE BASED INTERPRETATION 5 SERVICES IN ADDITION TO BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS IS 6 SERVING THE LANGUAGE NEEDS OF THE PEOPLE SERVED BY THE AGENCY.

7 (F) EACH AGENCY SHALL CALCULATE THE PERCENTAGE OF NON-ENGLISH SPEAKING 8 PEOPLE SERVED BY EACH LOCAL OFFICE BY ROUNDING THE PERCENTAGE ARRIVED AT 9 TO THE NEAREST WHOLE PERCENTAGE POINT.

10 2. THE SURVEY RESULTS SHALL BE REPORTED ON FORMS PROVIDED BY THE STATE DIVISION OF HUMAN RIGHTS, AND DELIVERED TO THE DIVISION NOT LATER 11 THAN MARCH THIRTY-FIRST OF EVERY EVEN-NUMBERED YEAR BEGINNING WITH TWO THOU-12 13 SAND TEN.

14 3. THE RESULTS OF THE SURVEY SHALL BE COMPILED BY THE STATE DIVISION 15 OF HUMAN RIGHTS AND PROVIDED IN A REPORT TO BOTH HOUSES OF THE LEGISLA-16 TURE EVERY TWO YEARS.

17 S 469. EXEMPTIONS. 1. THE STATE DIVISION OF HUMAN RIGHTS MAY EXEMPT STATE AGENCIES FROM THE REOUIREMENTS OF SECTION FOUR HUNDRED SIXTY-EIGHT 18 19 OF THIS ARTICLE WHERE THE DIVISION DETERMINES THAT ANY OF THE FOLLOWING 20 CONDITIONS APPLY:

21 (A) THE AGENCY DOES NOT FURNISH INFORMATION OR RENDER SERVICES TO THE 22 PUBLIC.

23 (B) THE AGENCY HAS CONSISTENTLY RECEIVED SUCH LIMITED PUBLIC CONTACT 24 WITH THE NON-ENGLISH SPEAKING PUBLIC THAT IT HAS NOT BEEN REQUIRED TO 25 EMPLOY BILINGUAL STAFF UNDER SECTION FOUR HUNDRED SIXTY-ONE OF THIS 26 ARTICLE.

27 2. IN ORDER TO RECEIVE AN EXEMPTION, EACH STATE AGENCY MUST ANNUALLY PETITION THE STATE DIVISION OF HUMAN RIGHTS FOR THE EXEMPTION AND 28 RECEIVE APPROVAL IN WRITING. AN AGENCY MAY NOT RECEIVE AN EXEMPTION FOR 29 MORE THAN THREE CONSECUTIVE YEARS. 30

S 470. ESTABLISHMENT OF BILINGUAL POSITIONS. THE PROVISIONS OF THIS 31 32 ARTICLE ARE NOT INTENDED TO PROHIBIT THE ESTABLISHMENT OF BILINGUAL 33 POSITIONS, OR PRINTING OF MATERIALS, OR USE OF INTERPRETERS, WHERE LESS 34 THAN FIVE PERCENT OF THE PEOPLE SERVED DO NOT SPEAK ENGLISH OR ARE UNABLE TO COMMUNICATE EFFECTIVELY, AS DETERMINED APPROPRIATE BY THE 35 STATE OR LOCAL AGENCY. THIS ARTICLE IS NOT INTENDED TO REQUIRE THAT ALL 36 37 PUBLIC CONTACT POSITIONS BE FILLED WITH BILINGUAL PERSONS.

38 S 4. This act shall take effect January 1, 2010.