

6544

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 6, 2009

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

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.

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

23                    ARTICLE 19-E  
24                    BILINGUAL SERVICES

25    SECTION 460. DEFINITIONS.

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

LBD10012-01-9

461. EMPLOYMENT OF BILINGUAL PERSONS.
462. IMPLEMENTATION.
463. TRANSLATION OF MATERIALS EXPLAINING SERVICES AVAILABLE.
464. DISTRIBUTION OF WRITTEN MATERIALS IN NON-ENGLISH LANGUAGE  
BY STATE AGENCY.
465. EXCLUSIONS.
466. FUNDING.
467. TELEPHONE BASED INTERPRETATION SERVICES.
468. SURVEY.
469. EXEMPTIONS.
470. ESTABLISHMENT OF BILINGUAL POSITIONS.

S 460. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS A DIFFERENT MEAN-  
ING IS CLEARLY REQUIRED BY THE CONTEXT:

1. "BILINGUAL PERSON" MEANS A PERSON WHO IS PROFICIENT IN BOTH THE  
ENGLISH LANGUAGE AND THE FOREIGN LANGUAGE TO BE USED.

2. "SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING PEOPLE" MEANS MEMBERS  
OF A GROUP WHO EITHER DO NOT SPEAK ENGLISH, OR WHO ARE UNABLE TO EFFEC-  
TIVELY COMMUNICATE IN ENGLISH BECAUSE IT IS NOT THEIR NATIVE LANGUAGE,  
AND WHO COMPRISE FIVE PERCENT OR MORE OF THE PEOPLE SERVED BY ANY LOCAL  
OFFICE OR FACILITY OF A STATE AGENCY.

3. "SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS IN PUBLIC CONTACT  
POSITIONS" MEANS THE NUMBER REQUIRED TO PROVIDE THE SAME LEVEL OF  
SERVICES TO NON-ENGLISH SPEAKING PERSONS AS IS AVAILABLE TO ENGLISH  
SPEAKING PERSONS SEEKING SUCH SERVICES; PROVIDED, HOWEVER, THAT WHERE  
THE LOCAL OFFICE OR FACILITY OF THE STATE EMPLOYS THE EQUIVALENT OF  
TWENTY-FIVE OR FEWER REGULAR, FULL-TIME EMPLOYEES, IT SHALL CONSTITUTE  
COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE IF A SUFFICIENT NUMBER  
OF QUALIFIED BILINGUAL PERSONS ARE EMPLOYED IN PUBLIC CONTACT POSITIONS,  
OR AS INTERPRETERS TO ASSIST THOSE IN SUCH POSITIONS, TO PROVIDE THE  
SAME LEVEL OF SERVICES TO NON-ENGLISH SPEAKING PERSONS AS IS AVAILABLE  
TO ENGLISH SPEAKING PERSONS SEEKING SUCH SERVICES FROM SUCH OFFICE OR  
FACILITY.

4. "PUBLIC CONTACT POSITION" MEANS A POSITION DETERMINED BY THE AGENCY  
TO BE ONE WHICH EMPHASIZES THE ABILITY TO MEET, CONTACT AND DEAL WITH  
THE PUBLIC IN THE PERFORMANCE OF THE AGENCY'S FUNCTIONS.

S 461. EMPLOYMENT OF BILINGUAL PERSONS. 1. EVERY STATE AGENCY, AS  
DEFINED IN SECTION ONE HUNDRED FORTY-FIVE OF THIS CHAPTER, DIRECTLY  
INVOLVED IN THE FURNISHING OF INFORMATION OR THE RENDERING OF SERVICES  
TO THE PUBLIC WHEREBY CONTACT IS MADE WITH A SUBSTANTIAL NUMBER OF NON-  
ENGLISH SPEAKING PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIED  
BILINGUAL PERSONS IN PUBLIC CONTACT POSITIONS TO ENSURE PROVISION OF  
INFORMATION AND SERVICES TO THE PUBLIC, IN THE LANGUAGE OF THE NON-ENGL-  
ISH SPEAKING PERSONS.

2. EVERY LOCAL PUBLIC AGENCY, AS DEFINED IN SECTION FOUR HUNDRED ONE  
OF THIS CHAPTER, SERVING A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING  
PEOPLE, SHALL EMPLOY A SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS  
IN PUBLIC CONTACT POSITIONS OR AS INTERPRETERS TO ASSIST THOSE IN SUCH  
POSITIONS, TO ENSURE PROVISION OF INFORMATION AND SERVICES IN THE  
LANGUAGE OF THE NON-ENGLISH SPEAKING PERSONS. THE DETERMINATION OF WHAT  
CONSTITUTES A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING PEOPLE AND A  
SUFFICIENT NUMBER OF QUALIFIED BILINGUAL PERSONS SHALL BE MADE BY THE  
LOCAL AGENCY.

S 462. IMPLEMENTATION. AN EMPLOYEE OF A STATE OR LOCAL PUBLIC AGENCY,  
AS THOSE TERMS ARE USED IN SECTION FOUR HUNDRED SIXTY-ONE OF THIS ARTI-  
CLE, MAY NOT BE DISMISSED TO CARRY OUT THE PURPOSES OF THIS ARTICLE. A  
STATE OR LOCAL PUBLIC AGENCY NEED ONLY IMPLEMENT THIS ARTICLE BY FILLING

1 EMPLOYEE PUBLIC CONTACT POSITIONS MADE VACANT BY RETIREMENT OR NORMAL  
2 ATTRITION.

3 S 463. TRANSLATION OF MATERIALS EXPLAINING SERVICES AVAILABLE. 1. ANY  
4 MATERIALS EXPLAINING SERVICES AVAILABLE SHALL BE TRANSLATED INTO ANY  
5 NON-ENGLISH LANGUAGE SPOKEN BY A SUBSTANTIAL NUMBER OF THE PUBLIC SERVED  
6 BY THE AGENCY. WHENEVER NOTICE OF THE AVAILABILITY OF MATERIALS EXPLAIN-  
7 ING SERVICES AVAILABLE IS GIVEN, ORALLY OR IN WRITING, IT SHALL BE GIVEN  
8 IN ENGLISH AND IN THE NON-ENGLISH LANGUAGE INTO WHICH ANY MATERIALS HAVE  
9 BEEN TRANSLATED. THE DETERMINATION OF WHEN THOSE MATERIALS ARE NECESSARY  
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  
13 SPEAKING PEOPLE AND WHICH PROVIDES MATERIALS IN ENGLISH EXPLAINING  
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  
16 AGENCY. WHENEVER NOTICE OF THE AVAILABILITY OF MATERIALS EXPLAINING  
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  
23 STATE AGENCY. WHENEVER A STATE AGENCY FINDS THAT THE FACTORS LISTED IN  
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  
27 NON-ENGLISH SPEAKING PERSONS, OR, AS AN ALTERNATIVE, THE STATE AGENCY  
28 MAY INSTEAD ELECT TO FURNISH TRANSLATION AIDS, TRANSLATION GUIDES, OR  
29 PROVIDE ASSISTANCE AT SUCH LOCAL OFFICES IN COMPLETING ENGLISH FORMS OR  
30 QUESTIONNAIRES AND IN UNDERSTANDING ENGLISH FORMS, LETTERS OR NOTICES.

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

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  
41 TO SCHOOL DISTRICTS, BOARDS OF EDUCATION OR THE OFFICE OF A SUPERINTEN-  
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  
46 SERVICE LAW GOVERNING STATE AND LOCAL AGENCIES.

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

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

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

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

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  
11 DIVISION OF HUMAN RIGHTS, AND DELIVERED TO THE DIVISION NOT LATER THAN  
12 MARCH THIRTY-FIRST OF EVERY EVEN-NUMBERED YEAR BEGINNING WITH TWO THOU-  
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  
18 STATE AGENCIES FROM THE REQUIREMENTS OF SECTION FOUR HUNDRED SIXTY-EIGHT  
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  
28 PETITION THE STATE DIVISION OF HUMAN RIGHTS FOR THE EXEMPTION AND  
29 RECEIVE APPROVAL IN WRITING. AN AGENCY MAY NOT RECEIVE AN EXEMPTION FOR  
30 MORE THAN THREE CONSECUTIVE YEARS.

31 S 470. ESTABLISHMENT OF BILINGUAL POSITIONS. THE PROVISIONS OF THIS  
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  
35 UNABLE TO COMMUNICATE EFFECTIVELY, AS DETERMINED APPROPRIATE BY THE  
36 STATE OR LOCAL AGENCY. THIS ARTICLE IS NOT INTENDED TO REQUIRE THAT ALL  
37 PUBLIC CONTACT POSITIONS BE FILLED WITH BILINGUAL PERSONS.

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