S T A T E O F N E W Y O R K

4461

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

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

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

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

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

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

ARTICLE 19-E

BILINGUAL SERVICES

SECTION 460. DEFINITIONS.

461. EMPLOYMENT OF BILINGUAL PERSONS.

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

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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 MEANING 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 EFFECTIVELY 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-ENGLISH 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 ARTICLE, 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

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

S 463. TRANSLATION OF MATERIALS EXPLAINING SERVICES AVAILABLE. 1. ANY MATERIALS EXPLAINING SERVICES AVAILABLE SHALL BE TRANSLATED INTO ANY NON-ENGLISH LANGUAGE SPOKEN BY A SUBSTANTIAL NUMBER OF THE PUBLIC SERVED BY THE AGENCY. WHENEVER NOTICE OF THE AVAILABILITY OF MATERIALS EXPLAINING SERVICES AVAILABLE IS GIVEN, ORALLY OR IN WRITING, IT SHALL BE GIVEN IN ENGLISH AND IN THE NON-ENGLISH LANGUAGE INTO WHICH ANY MATERIALS HAVE BEEN TRANSLATED. THE DETERMINATION OF WHEN THOSE MATERIALS ARE NECESSARY WHEN DEALING WITH LOCAL AGENCIES SHALL BE LEFT TO THE DISCRETION OF THE LOCAL AGENCY.

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

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

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

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

3. THE LOCAL OFFICE OR FACILITY OF THE AGENCY WITH WHICH THE INDIVIDUAL IS DEALING, SERVES A SUBSTANTIAL NUMBER OF NON-ENGLISH SPEAKING PERSONS.

S 465. EXCLUSIONS. THE PROVISIONS OF THIS ARTICLE ARE NOT APPLICABLE TO SCHOOL DISTRICTS, BOARDS OF EDUCATION OR THE OFFICE OF A SUPERINTENDENT OF SCHOOLS.

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

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

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

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

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

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

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

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

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

2. THE SURVEY RESULTS SHALL BE REPORTED ON FORMS PROVIDED BY THE STATE DIVISION OF HUMAN RIGHTS, AND DELIVERED TO THE DIVISION NOT LATER THAN MARCH THIRTY-FIRST OF EVERY EVEN-NUMBERED YEAR BEGINNING WITH TWO THOUSAND TWELVE.

3. THE RESULTS OF THE SURVEY SHALL BE COMPILED BY THE STATE DIVISION OF HUMAN RIGHTS AND PROVIDED IN A REPORT TO BOTH HOUSES OF THE LEGISLATURE EVERY TWO YEARS.

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

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

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

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

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

S 4. This act shall take effect January 1, 2012.