

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:

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.

26 461. EMPLOYMENT OF BILINGUAL PERSONS.

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

LBD03943-01-1

1 462. IMPLEMENTATION.
2 463. TRANSLATION OF MATERIALS EXPLAINING SERVICES AVAILABLE.
3 464. DISTRIBUTION OF WRITTEN MATERIALS IN NON-ENGLISH LANGUAGE
4 BY STATE AGENCY.
5 465. EXCLUSIONS.
6 466. FUNDING.
7 467. TELEPHONE BASED INTERPRETATION SERVICES.
8 468. SURVEY.
9 469. EXEMPTIONS.
10 470. ESTABLISHMENT OF BILINGUAL POSITIONS.

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

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

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

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

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

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

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

52 S 462. IMPLEMENTATION. AN EMPLOYEE OF A STATE OR LOCAL PUBLIC AGENCY,
53 AS THOSE TERMS ARE USED IN SECTION FOUR HUNDRED SIXTY-ONE OF THIS ARTI-
54 CLE, MAY NOT BE DISMISSED TO CARRY OUT THE PURPOSES OF THIS ARTICLE. A
55 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 TWELVE.

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, 2012.