

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Dymally Analyst: Deborah Barrett Bill Number: AB 67
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: December 4, 2006
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies/Bilingual Services

SUMMARY

This bill would add definitions for “qualified bilingual person, employee or interpreter” and would expand the instances in which a state agency may be exempted from the requirements of delivering bilingual services.

PURPOSE OF THE BILL

According to the author’s office, the purpose of this bill is to make it clear that the responsibility for certifying qualified bilingual persons is delegated to the State Personnel Board.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2008, and would be operative as of that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Title VI of the Civil Rights Act of 1964 states that no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination based on race, color, or national origin under any program or activity receiving federal financial assistance. A federal program's failure to assure that people who are not proficient in the English language can effectively participate in and benefit from the federal program or activity may constitute discrimination on the basis of national origin. Based on Executive Order 13166, federal agencies are required to provide services and information to individuals with Limited English Proficiency (LEP) in a manner that ensures meaningful access by the applicants or beneficiaries of those federal agency programs or activities.

Board Position:

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Department Director

Date

Selvi Stanislaus

2/13/07

Current state law requires state agencies directly involved in the furnishing of information or rendering of services to a substantial number of non-English speaking people to employ qualified bilingual persons in public contact positions. State agencies must provide a sufficient number of qualified bilingual persons to enable the agency to provide the same level of services in the language of the non-English speaking person as provided to the English speaking person.

State agencies may furnish non-English written materials or, in the alternative, provide translation services or aids in the local offices to assist their customers in understanding English forms, letters, or notices.

State agencies are required to report to the State Personnel Board, in every even numbered year, a status report on the agency's plan for delivering bilingual services, including training, recruitment, and methods used to identify non-English speaking needs of its customers. State agencies that do not furnish information or render services to the public, or consistently receive limited public contact with the non-English speaking public, may obtain an exemption from the reporting requirement.

THIS BILL

This bill would make clarifying amendments to existing requirements for state agencies to provide bilingual services to their non-English speaking customers who request information or services. The amendments to existing law in this bill would clarify that the information or services subject to the existing requirement includes agencies involving public safety, protection and prevention, access to state benefits and public programs, resources and facilities, and any other state program or activity in which the public good is served. This bill would specify the definition of a "qualified bilingual person, interpreter or employee" to mean someone who is proficient in both the English language and the foreign language to be used, and for state agency purposes, must be one of the following:

- A person who the State Personnel Board has tested and certified,
- A person who was tested and certified by a state agency or other testing authority approved by the State Personnel Board, or
- A person who has met the testing or certification standards establish by the State Personnel Board for outside or contract interpreters.

This bill would allow state agencies that have fewer than the equivalent of 25 full time employees to be exempt from the bilingual services reporting requirement. This bill would allow the exemption to be granted for up to five consecutive implementation plans. Local agencies would be exempted from the bill's requirements.

BACKGROUND

Currently, Franchise Tax Board (FTB) provides bilingual services in over 37 different languages to the taxpayers of California. These translation services are provided primarily by 279 FTB employees self identified as being fluent in foreign languages. Fifty-one of the FTB employees providing bilingual services are certified, primarily in the Spanish language.

In instances where a taxpayer contacts the department in a language not provided, the department would contract with outside agencies for language assistance to service the taxpayer. Because of the diverse bilingualism of FTB employees, both certified and uncertified, the department did not have to contract for outside services in 2006. Employees who use bilingual skills in over 10% of their daily work and are certified receive a pay differential for the use of their bilingual skills. Because of the diversity of California taxpayers, not all bilingual employees use their bilingual skills in over 10% of their work day and do not receive a pay differential.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

By clarifying that a qualified bilingual interpreter must be certified through a specific process, a significant level of service that FTB currently provides to non-English speaking taxpayers by uncertified bilingual employees would be interrupted. FTB would be faced with the following options to meet the requirements of the bill:

1. Require an employee currently utilizing their bilingual skills to become certified regardless of whether their job duties justify a pay differential,
2. Provide each certified bilingual employee with a pay differential, regardless of whether their job duties require them to use the skill, or
3. Contract with outside agents to provide certified bilingual services.

Depending on the solution adopted, the requirements of this bill would increase the department's costs to administer bilingual services to non-English speaking taxpayers.

LEGISLATIVE HISTORY

AB 2408 (Yee, 2003/2004) would have made changes to the staffing requirements of state agencies that provide bilingual services. This bill was vetoed August 27, 2004. In his veto message, Governor Schwarzenegger stated, "...These additional requirements will increase the workload for all state agencies, including SPB, and could result in significant delays in the filling of critical positions by prolonging the hiring process when vacancies need to [be] filled in various state departments and agencies."

SB 987 (Escutia, 2001/2002) would have required state agencies to expand their bilingual services. This bill was vetoed September 30, 2002. In his veto message, Governor Davis stated that while he supported the intent of this legislation, he believed the State's financial situation did not permit enactment.

AB 763 (Shelley, 2001/2002) would have required state agencies to provide, in non-English languages, any existing materials on the Internet that explain state agency services. This bill failed to pass out of the house of origin.

OTHER STATES' INFORMATION

Laws from the states of *Illinois*, *Florida*, *Massachusetts*, *New York*, *Michigan*, and *Minnesota* were reviewed based on their similarities to California's economy, business entity types, and tax laws. *Illinois*, *Michigan* and *Minnesota* require state agencies to assess annually the need for non-English speaking personnel to service constituents with limited English proficiency and provide sufficient service. Similar statutes for *Florida*, *Massachusetts*, and *New York* were not located.

FISCAL IMPACT

If the implementation consideration addressed in this analysis is resolved, the bill would not impact department costs. If only qualified bilingual services, as defined by this bill's provisions may be utilized, the department would be required to contract outside the department for the bilingual services not currently certified. Implementation costs are unknown at this time and will be developed as the bill moves through the legislative process.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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