

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Jeffries Analyst: Janet Jennings Bill Number: AB 781

Related Bills: See Legislative History Telephone: 845-3495 Amended Date: January 21, 2010

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies/Bilingual Services

SUMMARY

This bill would make specified changes to the Dymally-Alatorre Bilingual Services Act (DABSA).

SUMMARY OF AMENDMENTS

The January 21, 2010, amendments removed language that would preclude discrimination in public employment on the basis of the ability of the employee or applicant for employment to speak a language other than English, unless a bona fide occupational qualification exists, and instead added provisions discussed in this analysis. This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to clarify that state and local governmental entities shall not unlawfully discriminate against an employee or an applicant for employment under the guise of the bilingual services law.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and operative as of that date.

POSITION

Pending.

ANALYSIS

FEDERAL LAW

The 14th Amendment to the U.S. Constitution forbids states from denying to any person within its jurisdiction the equal protection of the laws.

Board Position:

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Department Director

Date

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02/26/10

Title VI of the Civil Rights Act of 1964 states that no person shall on the ground of race, color, or national origin (including language) be excluded from participation in, denied the benefits of, or subjected to discrimination under any public or private program or activity receiving federal financial assistance, including conduct that has a disproportionate effect on persons of limited English proficiency.¹

On August 11, 2000, the President of the United States issued Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency (LEP)." The order requires each federal agency to examine the services it provides to the public and implement a system by which LEP persons can meaningfully access those services.

STATE LAW

Article 1, Section 8 of the California Constitution provides: A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

The Government Code (GC) provides the following provisions related to discrimination in employment:

The state Fair Employment and Housing Act (FEHA) states that it shall be an unlawful employment practice, unless based upon a bona fide occupational qualification for an employer, because of the race, color, national origin (including language) or ancestry, of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.²

The FEHA provides that it is an unlawful employment practice for an employer to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

- The language restriction is justified by a business necessity; and
- The employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.³

The Dymally-Alatorre Bilingual Services Act (DABSA), requires every state agency directly involved in the furnishing of information or the rendering of services to the public, where contact is made with a substantial number of non-English-speaking people, to 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 person.⁴

¹ 42 U.S.C. § 2000 (d).

² Government Code § 12940.

³ Government Code §12951.

⁴ Government Code 7292.

Every local public agency serving a substantial number of non-English-speaking people to 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 person.⁵

An employee of a state or local agency may not be dismissed to carry out the purposes of the DABSA and state and local public agencies need only implement the Act by filling employee public contact positions made vacant by retirement or normal attrition.⁶

Specified assessments, surveys, plans, and reports are to be produced with respect to the obligations under the DABSA.⁷

THIS BILL

This bill would prohibit a state or local agency from imposing or implementing an action or decision pursuant to the DABSA as a pretext for discrimination on the basis of race, national origin, or other unlawful discrimination in employment, including any requirement that an employee be bilingual. This bill would also provide that an action or decision taken for the purpose of fulfilling the DABSA shall not be considered a pretext for discrimination. Additionally, this bill would provide that all information and reports required by this chapter shall be public information, unless otherwise restricted by law.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 292 (Yee, 2003/2004) would have prohibited a state agency from using children as interpreters, except in specific circumstances. This bill failed to pass out of the second house.

AB 2408 (Yee, 2003/2004) would have allowed public agencies to fill newly created positions with bilingual employees and expand the survey conducted by state agencies regarding the Dymally-Alatorre Bilingual Services Act. This bill was vetoed August 27, 2004, by Governor Schwarzenegger. The full veto message can be found in Appendix A.

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.

AB 805 (Shelley, 2001/2002) would have required state agency websites to have a link to non-English information. This bill failed to pass out of the house of origin.

⁵ Government Code § 7293.

⁶ Government Code § 7294.

⁷ Government Code §§ 7299.4-6.

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. The full veto message can be found in Appendix B.

FISCAL IMPACT

The Franchise Tax Board is in compliance with the DABSA, including the State Personnel Board reporting requirement. Accordingly, this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

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

LEGISLATIVE STAFF CONTACT

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Appendix A

BILL NUMBER: AB 2408
VETOED DATE: 08/27/2004

To the Members of the California State Assembly:

I am returning Assembly Bill 2408 without my signature.

I fully support our state government serving the needs of our diverse population in an effective and comprehensive way. One way California does this is by hiring bilingual employees who are able to speak to the public in their own languages.

The Dymally-Alatorre Bilingual Services Act (Act) established clear guidelines for state agencies to recruit and retain bilingual staff for public contact positions. All state agencies are monitored by the State Personnel Board (SPB) for compliance with the guidelines and procedures of the Act and has the authority to ensure compliance. State agencies are currently required to submit an implementation plan every other year to report on their progress towards complying with the Act.

AB 2408 is duplicative of existing law and unnecessarily alters current reporting requirements that will not accurately reflect an agency's progress in complying with the Act. 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.

Additionally, this bill will add a cumbersome and potentially costly exemption process to hire candidates for specified jobs and prolong the current hiring process which may jeopardize the successful and timely implementation of programs designed to improve services to all Californians.

Sincerely,

Arnold Schwarzenegger

Appendix B

BILL NUMBER: SB 987
VETOED DATE: 09/30/2002

SEP 30 2002

To Members of the California State Senate:

I am returning Senate Bill 987 without my signature.

This bill would expand the authority of the State Personnel Board to ensure compliance by State agencies with the Dymally-Alatorre Bilingual Services Act of 1973 (Act). The bill would expand the Act's definition of a "substantial number" of non-English speaking people and would require State agencies to provide additional translated written materials. This bill would also require additional information to be included in each agency's biannual survey of compliance with the Act, and would require agencies to develop implementation plans, as specified.

While I support the intent of this legislation. I cannot ask State agencies to absorb the implementation costs of this bill at this time. Additionally, because of the State's fiscal situation, the funds are not available from the General Fund or Special Funds to augment the departments' budgets for the purposes of this bill.

However, I believe that government has an obligation to meet the changing needs of its citizenry. Our State offices must be able to serve Californians whose primary language is not English. With that in mind, I am directing the State agencies to phase in policies, as time and resources permit, that contain the spirit and intent of this legislation.

Sincerely,

GRAY DAVIS