

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 885 (Delegate McDonough, *et al.*)
Health and Government Operations

English Language - Formal Recognition

This bill establishes English as the official language of government in Maryland. State and local governments must write and publish each official document in English and conduct each meeting and other official oral communication in English.

Fiscal Summary

State Effect: Establishing English as the official language of government should not affect State operations. Plus, State agencies must still comply with federal laws prohibiting discrimination based on national origin.

Federal laws mandate that recipients of federal funds, including State and local governments, take reasonable steps to ensure that individuals with limited English proficiency (LEP) have meaningful access to government programs and activities. In certain circumstances, State and local governments are required to provide language assistance to LEP individuals. Failure to comply with federal LEP requirements could result in the loss of federal funding. The proposed FY 2008 State budget includes \$6.7 billion in federal funding.

Local Effect: None. Local governments must comply with federal laws prohibiting discrimination based on national origin. Failure to comply with federal LEP requirements could result in the loss of federal funding. Local government receives over \$1.4 billion in federal funding.

Small Business Effect: None.

Analysis

Current Law: The U.S. Census Bureau defines an individual with LEP as a person who cannot speak English very well. Both the federal government and the State of Maryland have enacted laws that assist LEP individuals with accessing government programs and activities. Federal laws include Title VI of the Civil Rights Act of 1964, the Voting Rights Act as amended, and Executive Order 13166. Maryland enacted legislation in 2002 that requires State agencies to take reasonable steps in providing equal access to public services for LEP individuals.

Federal Requirements

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, and national origin in programs receiving federal financial assistance. National origin discrimination includes discrimination on the basis of LEP. According to the U.S. Department of Justice, in certain circumstances, failing to ensure that LEP individuals can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP individuals is national origin discrimination.

The Voting Rights Act as amended in 1975 generally requires State and local governments to provide language assistance to voters if more than 10,000 or over 5% of the voting age citizens are members of a single-language minority group who do not speak or understand English adequately enough to participate in the electoral process. The U.S. Census Bureau Director has the responsibility to determine which states and localities are subject to the minority language assistance provisions. Montgomery County, the only jurisdiction in Maryland subject to these provisions, must provide language assistance to Spanish speaking individuals.

Executive Order 13166, signed in 2000, requires federal agencies to establish guidelines on how entities can provide meaningful access to LEP individuals in compliance with Title VI of the Civil Rights Act of 1964. Recipients of federal funds, including State and local governments, must take reasonable steps to ensure that LEP individuals have meaningful access to government programs and activities.

State Requirements

Chapter 141 of 2002 requires State agencies to take reasonable steps to provide equal access to public services for LEP individuals. Equal access is defined as the provision of oral language services for individuals who cannot adequately understand or express themselves in spoken or written English and the translation of vital documents ordinarily provided to the public into any language spoken by any LEP population that constitutes

3% of the overall State population within the geographic area served by a local office of a State program as measured by the U.S. Census.

Pursuant to this statute, 35 State agencies, departments, and commissions must take reasonable steps to provide equal access to public services to LEP individuals. **Exhibit 1** lists the agencies and the time period during which they must comply with the equal access requirement. Other State departments, agencies, or programs not listed in the exhibit must monitor their operations to determine if reasonable steps are needed to achieve equal access to public services for LEP individuals.

Exhibit 1
Equal Access Compliance Deadline for State Agencies

<u>July 1, 2003</u>	<u>July 1, 2004</u>	<u>July 1, 2005</u>	<u>July 1, 2006</u>
Human Resources	Aging	Comptroller	Agriculture
Labor, Licensing, and Regulation	Public Safety and Correctional Services	Housing and Community Development	Business and Economic Development
Juvenile Justice	Transportation (MDOT)	Natural Resources	Veteran Affairs
Health and Mental Hygiene	Human Relations Commission	Maryland State Department of Education	5 independent agencies, boards, and commissions
Workers' Compensation Commission	State Police	Attorney General	Environment
	5 independent agencies, boards, and commissions	Maryland Transit Administration (MDOT)	
		5 independent agencies, boards, and commissions	

Background: Maryland continues to be a popular destination for legal immigrants and is ranked among the top 10 states for persons obtaining legal permanent resident status. Since fiscal 1996, almost 200,000 individuals have legally immigrated to Maryland. This has increased the number of LEP individuals living in Maryland. Since the 1990 Census, the number of LEP individuals living in Maryland has doubled, from 148,500 in 1990 to almost 300,000 in 2005. Based on the U.S. Census Bureau's 2005 American Community Survey, 14.5% of Marylanders older than five speak a language other than English at home and 5.9% are LEP. Nationally, 19.4% of Americans speak a language other than English at home and 8.6% are LEP. Spanish is the dominant language spoken by these individuals.

Montgomery and Prince George’s counties are home to 65.1% of LEP individuals in Maryland. In Montgomery County, 14.4% of county residents are LEP, the highest percentage in the State. **Appendix 1** shows the number of LEP individuals in each jurisdiction and their percentage of the county’s population. **Appendix 2** provides information for counties included in the U.S. Census Bureau’s 2005 American Community Survey.

Official English Laws in Maryland

In November 2006, the Taneytown City Council approved a resolution establishing English as the official city language. All official municipal business must be conducted in English and in no other language, unless otherwise required by federal or State laws. Taneytown, located in Carroll County, has a population of around 5,500 residents.

States with Official English Laws

English is the official language in 28 states. The U.S. government has not established an official language. **Exhibit 2** lists the states that have enacted official English laws and the year in which the law was enacted.

Exhibit 2
States with Official English Laws

Alabama (1990)	Indiana (1984)	North Carolina (1987)
Alaska (1998)	Iowa (2002)	North Dakota (1987)
Arizona (2006)	Kentucky (1984)	South Carolina (1987)
Arkansas (1987)	Louisiana (1811)	South Dakota (1995)
California (1986)	Massachusetts (1975)	Tennessee (1984)
Colorado (1988)	Mississippi (1987)	Utah (2000)
Florida (1988)	Missouri (1998)	Virginia (1981,1996)
Georgia (1986,1996)	Montana (1995)	Wyoming (1996)
Hawaii (1978)	Nebraska (1920)	
Illinois (1969)	New Hampshire (1995)	

Federal Requirements under Executive Order 13166

In August 2000, the President signed Executive Order 13166 that stipulated that LEP individuals should have meaningful access to federal funded programs and activities. Executive Order 13166 requires each federal agency that provides financial assistance to nonfederal entities (State and local governments) to establish guidelines on how entities can provide meaningful access to LEP individuals in compliance with Title VI of the Civil Rights Act of 1964. Federal agencies must design and implement a plan to ensure such access is provided to LEP individuals. The U.S. Department of Justice submitted guidelines on January 16, 2001 that included a four-factor test that federal agencies and other entities can use in the determination of “meaningful access.” These factors include:

- the number or proportion of LEP individuals eligible to be served or likely to be encountered by the program;
- the frequency with which LEP individuals come in contact with the program;
- the nature and importance of the program, activity, or service provided by the program to individual’s lives; and
- the resources available to the agency and costs.

The Federal Interagency Working Group on Limited English Proficiency was created in 2002 at the request of the Assistant Attorney General for Civil Rights and includes members representing over 35 federal agencies. The purpose of the federal working group is to build awareness of the need and methods to ensure that LEP individuals have meaningful access to important federal and federally assisted programs, and to ensure implementation of language access requirements under Title VI, the Title VI regulations, and Executive Order 13166 in a consistent and effective manner across agencies.

The federal working group has developed a publication entitled *Know Your Rights* that outlines certain examples of possible discrimination by government agencies. The publication, which is available in ten languages, states that “if you are mistreated because you are LEP, it may be national origin discrimination.” **Exhibit 3** lists examples of possible national origin discrimination by government agencies as cited in the publication and examples of good practices.

At a meeting before the federal working group in 2006, The U.S. Assistant Attorney General (U.S. Department of Justice Civil Rights Division) commented that since most federal agencies have successfully completed work on their LEP guidance documents, they will be able to devote more time and attention to issues of compliance and enforcement.

Exhibit 3
Examples of Possible Discrimination and Good Practices
By Government Agencies

Possible Discrimination

You call 911 to report a crime. The operator does not understand you and cannot help you.

Your child's school sends important information or a notice to you in English. The school knows you speak only Spanish. The school refuses to provide the information to you in Spanish and suggests instead that your child interpret the information for you.

You try to apply for food stamps. The application is in English. You do not understand the application. The food stamp office workers tell you to come back with your own interpreter.

Good Practices

The operator connects you quickly to an interpreter who helps you.

Your child's school has many Spanish-speaking parents. The school knows you only speak Spanish. You should receive the important information or notice in Spanish.

The food stamp office has an interpreter, or contacts a telephone interpreter, to help you. An application in your language is given to you.

Source: Federal Interagency Working Group on Limited English Proficiency

Fiscal Affect of Potential Federal Sanctions in Maryland

The federal government places a high level of attention on linguistic access to federal funded services, whether in a State or local government agency. Federal agencies are authorized to monitor any agency that receives federal funding. The Maryland Department of Human Resources (DHR) advises that adopting an official language could result in additional federal auditing and more intense scrutiny of linguistic access throughout the state by the regional civil rights offices of multiple federal agencies.

DHR was audited in fiscal 2005 for linguistic access to services at several local departments of social services by the Regional Office of Civil Rights of the U.S. Department of Health and Human Services. The local departments were found to be in compliance at that time. If DHR and local departments of social services had failed to provide access to their programs and services to LEP individuals, the federal government

could declare the departments out of compliance with federal requirements thus jeopardizing over \$229.1 million in TANF (Temporary Assistance to Needy Families) funding and \$316.3 million in federal food stamps.

The U.S. Department of Justice indicates that State or local governments with English-only laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with English-only laws are certainly not required to accept federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

Official federal government information relating to the requirements under Executive Order 13166 is available online at www.LEP.gov or www.usdoj.gov.

Additional Information

Prior Introductions: Legislation to establish English as the official State language was introduced at the 2006, 2005, 1998, and 1995 sessions:

- HB 1335 of 2006 and HB 1152 of 2005 received an unfavorable report by the House Health and Government Operations Committee.
- SB 236 of 1998 received a favorable with amendments report by the Senate Economic and Environmental Affairs Committee; however, the bill was recommitted to the committee and no subsequent action was taken on the bill.
- HB 443 of 1998 received a favorable with amendments report from the House Commerce and Government Matters Committee and was approved by the House. The Senate Economic and Environmental Affairs Committee did not take action on the bill.
- HB 657 of 1995 was approved by the General Assembly but was vetoed by the Governor.

Cross File: SB 943 (Senator Hooper, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Federal Interagency Working Group on Limited English Proficiency, U.S. Census Bureau, U.S. Department of Commerce, U.S. Department of Health and Human Services, U.S. Department of Justice, Department of Human Resources, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2007
ncs/jr

Analysis by: Hiram L. Burch Jr.

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix 1
Limited English Proficient Individuals in Maryland

<u>Limited English Proficient Individuals</u>				<u>Ranking by Number of Individuals</u>		<u>Ranking by Percent of Population</u>	
<u>County</u>	<u>1990</u>	<u>2000</u>	<u>% Chg.</u>	<u>County</u>	<u>2000</u>	<u>County</u>	<u>2000</u>
Allegany	435	585	34.5%	1. Montgomery	105,001	1. Montgomery	12.9%
Anne Arundel	7,315	11,416	56.1%	2. Prince George's	53,743	2. Prince George's	7.2%
Baltimore City	15,616	18,113	16.0%	3. Baltimore	25,526	3. Howard	4.8%
Baltimore	16,158	25,526	58.0%	4. Baltimore City	18,113	4. Baltimore	3.6%
Calvert	371	774	108.6%	5. Anne Arundel	11,416	5. Baltimore City	3.0%
Caroline	213	614	188.3%	6. Howard	11,063	6. Wicomico	2.9%
Carroll	937	1,737	85.4%	7. Harford	3,413	7. Anne Arundel	2.5%
Cecil	652	862	32.2%	8. Frederick	2,939	8. Caroline	2.2%
Charles	972	1,928	98.4%	9. Wicomico	2,324	9. Kent	2.0%
Dorchester	403	419	4.0%	10. Charles	1,928	10. St. Mary's	1.9%
Frederick	1,378	2,939	113.3%	11. Carroll	1,737	11. Worcester	1.9%
Garrett	328	276	-15.9%	12. St. Mary's	1,525	12. Talbot	1.8%
Harford	2,426	3,413	40.7%	13. Washington	1,318	13. Charles	1.7%
Howard	4,510	11,063	145.3%	14. Cecil	862	14. Harford	1.7%
Kent	462	367	-20.6%	15. Worcester	858	15. Frederick	1.6%
Montgomery	60,308	105,001	74.1%	16. Calvert	774	16. Queen Anne's	1.5%
Prince George's	31,091	53,743	72.9%	17. Caroline	614	17. Dorchester	1.4%
Queen Anne's	307	562	83.1%	18. Talbot	591	18. Somerset	1.4%
St. Mary's	1,381	1,525	10.4%	19. Allegany	585	19. Carroll	1.2%
Somerset	288	333	15.6%	20. Queen Anne's	562	20. Calvert	1.1%
Talbot	303	591	95.0%	21. Dorchester	419	21. Cecil	1.1%
Washington	1,217	1,318	8.3%	22. Kent	367	22. Washington	1.1%
Wicomico	924	2,324	151.5%	23. Somerset	333	23. Garrett	1.0%
Worcester	498	858	72.3%	24. Garrett	276	24. Allegany	0.8%
Maryland	148,493	246,287	65.9%			Maryland	5.0%
United States	13,982,502	21,320,407	52.5%			United States	8.1%

Source: United States Census Bureau

Appendix 2
Languages Spoken at Home – Limited English Proficient Individuals
2005 American Community Survey

County	Population 5 Years +	Speak Language Other than English	Percent of Population	Limited English Proficient	Percent of Population
Anne Arundel	460,273	39,588	8.6%	15,467	3.4%
Baltimore City	561,390	44,926	8.0%	16,077	2.9%
Baltimore	720,453	76,844	10.7%	29,160	4.0%
Frederick	199,981	19,303	9.7%	6,613	3.3%
Harford	222,599	15,390	6.9%	4,400	2.0%
Howard	247,602	43,187	17.4%	14,055	5.7%
Montgomery	850,108	293,961	34.6%	122,745	14.4%
Prince George's	762,651	150,823	19.8%	72,162	9.5%
Maryland	5,079,545	735,245	14.5%	299,182	5.9%
United States	268,110,961	51,934,850	19.4%	23,142,029	8.6%

Source: U.S. Census Bureau
