

SENATE No. 1990

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to language access and inclusion.

PETITION OF:

Table with 3 columns: NAME, DISTRICT/ADDRESS, and Date. Lists 17 petitioners including Sal N. DiDomenico, Rebecca L. Rausch, Joanne M. Comerford, Michael D. Brady, Jack Patrick Lewis, Lydia Edwards, Jason M. Lewis, Jacob R. Oliveira, Thomas M. Stanley, Pavel M. Payano, Mike Connolly, Walter F. Timilty, Liz Miranda, Kay Khan, Julian Cyr, Patricia D. Jehlen, James B. Eldridge, and Vanna Howard.

<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/23/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/23/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/2/2023</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>3/15/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/21/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>6/1/2023</i>
<i>Carmin Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>6/13/2023</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>10/4/2023</i>

SENATE No. 1990

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 1990) of Sal N. DiDomenico, Rebecca L. Rausch, Joanne M. Comerford, Michael D. Brady and other members of the General Court for legislation relative to language access and inclusion. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2040 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

An Act relative to language access and inclusion.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Title II of the General Laws, as appearing in the 2020 Official Edition, is
2 hereby amended by inserting after Chapter 6D the following chapter:-

3 CHAPTER 6E. LANGUAGE ACCESS AND INCLUSION

4 Section 1. Definitions. For the purposes of this act, the following terms shall have the
5 following meanings:-

6 “Auxiliary aids and services” mean items, equipment or services that assist effective
7 communication between a deaf or hard-of-hearing individual and an individual who is not deaf
8 or hard of hearing.

9 “Culturally competent” means having a set of congruent behaviors, attitudes and policies
10 that enables effective work in cross-cultural situations, in a manner that respects the beliefs,
11 interpersonal styles, attitudes, language and behaviors of service recipients.

12 “Equal access” means to be informed of, participate in, and benefit from public services
13 offered by a state agency, at a level equal to English-proficient individuals.

14 “Language access plan” means an administrative blueprint by which an agency complies
15 with language access requirements. The plan shall outline the tasks to be undertaken, establish
16 deadlines by which actions will be taken, identify responsible personnel assigned to implement
17 the plan, and establish priorities relative to the implementation of these plans.

18 “Language access services” means oral interpretation services, oral language services,
19 and written translation services, including auxiliary aids and services.

20 “Limited English proficient” or “LEP” individuals means individuals who do not speak
21 English as their primary language and have a limited ability to speak, read, write, or understand
22 English.

23 “Machine translation” means automated translation by computer software which
24 translates a text from the source language into the target language without human intervention.

25 “Oral interpretation” means the act of listening to something in one language (source
26 language) and orally translating it into another (target language).

27 “Oral language services” means various methods of providing verbal information and
28 interpretation through staff interpreters, bilingual or multilingual staff, telephone interpreter
29 services, and private interpreter services.

30 “Outside service providers” include, but are not limited to, an organization that formally
31 or informally contracts with, routinely provides, or administers services the relevant state agency
32 requires, recommends, or to which it refers its clients.

33 “Primary language” means the preferred language of the LEP individual.

34 “Public contact position” means a position determined by the state agency to be one that
35 includes meeting, contacting and dealing with the public in the performance of the agency's
36 functions.

37 “Qualified bilingual employee” means a staff person who is proficient in both the English
38 language and the non-English language to be used. Qualified bilingual employees may be
39 categorized as Tier 1 Bilingual Employees, or Tier 2 Bilingual Employees.

40 “Qualified interpreter” is a person who is fluent in both the English language and the
41 non-English language to be used, and who, either by certification, training or experience, is
42 skilled in simultaneous interpretation.

43 “Qualified multilingual employee” means a staff person who is proficient in the English
44 language and more than one non-English language to be used. Qualified multilingual employees
45 may be categorized as Tier 1 Multilingual Employees, or Tier 2 Multilingual Employees.

46 “Qualified translator” means a person who has a thorough knowledge of writing, reading
47 and proofreading in both the English language and the non-English language to be used, either
48 by certification, training or experience, and thereby is able to render a text from one language
49 into another, maintaining its tone, style and complex meaning, observing the cultural nuances,
50 and remaining impartial to the content.

51 “State agency” means an agency or executive department of state government.

52 “Vital document” means a document containing information which, if not provided
53 accurately or in a timely manner, would have adverse consequences for the intended recipient,
54 including, but not limited to, documents that affect or relate to legal rights, privileges, or duties,
55 as well as applications, informational materials, notices, and complaint forms.

56 “Written translation” means the replacement of a written text from one language (source
57 language) into an equivalent written text into another language (the target language).

58 Section 2. Communications with the Public.

59 A state agency shall provide equal access to services, programs, and activities serving
60 limited English proficient individuals in a reasonable timeframe, including:

61 (a) Oral interpretation

62 1. A state agency shall provide timely, culturally competent oral language services
63 to all LEP individuals who seek to access services, programs, or activities. State agencies may,
64 utilizing existing funds, contract with telephone-based interpretation services or community-
65 based organizations that provide interpretation to LEP individuals, in addition to utilizing
66 qualified Tier 1 bilingual or multilingual employees.

67 2. A state agency shall notify every person inquiring about services, every applicant,
68 and every recipient of services of their right to timely oral interpretation in their primary
69 language.

70 3. A state agency that significantly relies on outside service providers to fulfill the
71 agency's responsibilities to the public shall ensure the implementation of the requirements of
72 Section 2(a)(1) and Section 2(a)(2) within those outside organizations' policies and practices.

73 (b) Written translation

74 1. A state agency shall issue vital documents in the following languages: Arabic,
75 Cape Verdean Creole, Chinese (Simplified and Traditional), French, Haitian Creole, Khmer,
76 Korean, Portuguese, Russian, Spanish, Vietnamese and any other languages deemed necessary
77 by the agency's language access survey.

78 2. A state agency shall translate all notices and materials that explain its services in
79 the languages stated above.

80 3. A state agency shall utilize qualified translators or Tier 1 bilingual or multilingual
81 employees, to translate notices, materials, and vital documents. Agencies shall not rely solely on
82 machine translation of notices, materials, and vital documents. A state agency that significantly
83 relies on outside service providers to fulfill the agency's responsibilities to the public shall
84 ensure the implementation of the requirements of Section 2(b)(1) and Section 2(b)(2) by the
85 outside service provider.

86 4. LEP individuals whose primary language is not covered under Section 2(b)(1) or
87 Section 2(b)(2) are entitled to the oral interpretation of vital documents into their primary
88 language.

89 (c) Websites

90 1. If a state agency maintains one or more websites for use by the public, the agency
91 shall provide the website in the following languages: Arabic, Cape Verdean Creole, Chinese
92 (Simplified and Traditional), French, Haitian Creole, Khmer, Korean, Portuguese, Russian,
93 Spanish, Vietnamese and any other languages deemed necessary by the agency's language
94 access survey. The state agency shall ensure that its websites and online application materials are
95 mobile compatible and that they satisfy or exceed the official Federal Plain Language
96 Guidelines, March 2011, Rev. 1, May 2011 for the Plain Writing Act of 2010.

97 2. Agencies shall not rely solely on machine translation for the translation of its
98 websites. A state agency shall utilize qualified translators or Tier 1 bilingual or multilingual
99 employees to translate its websites.

100 3. A state agency that maintains one or more websites for use by the public shall
101 provide forms and processes for submitting complaints of alleged violations of this act on the
102 homepage of the website. The forms and processes shall be translated into the languages stated
103 above.

104 Section 3. Language Access Plans

105 (a) Requirements of language access plans

106 1. A state agency shall develop a language access plan to implement protocols for
107 providing services to LEP individuals and deaf or hard-of-hearing individuals in accordance with
108 this act. After the language access plan is implemented, the agency shall update its language
109 access plan every two years based upon the most recent language access survey. The language
110 access plan shall include:

111 i. The state agency shall conduct a needs assessment that includes data on the
112 language composition of the population served by the agency, including American Sign
113 Language. The agency shall determine the percentage of the eligible service population who are
114 non-English speakers, LEP, or deaf or hard of hearing; the frequency with which the agency
115 provides services to non-English speakers and LEP and deaf or hard of hearing individuals; and
116 the primary languages used by non-English or LEP individuals in the agency’s service area. The
117 needs assessment shall also identify all points of contact between the agency and the public, and
118 all potential language or language-related barriers to services and programs, including the
119 location of offices.

120 ii. The state agency shall identify available language resources and staff to deliver
121 services, programs, and activities to LEP individuals and deaf or hard-of-hearing individuals who
122 require auxiliary aids and services, including existing staff who can provide linguistically,
123 culturally, and technically proficient interpretation services. The language resources assessment
124 shall detail the language services available under existing state contracts for in-person
125 interpretation, telephone interpretation, and translation, and determine the steps needed to make
126 these services available for staff use, including equipment and training.

127 iii. Language service protocols shall provide staff with procedures and instructions
128 for securing or procuring language services, and designed for ease of use, with minimal approval
129 or documentation required.

130 2. To complete its needs assessment and language resources assessment, a state
131 agency shall conduct a language survey of each of its statewide and local offices every three
132 years to provide the following:

133 i. a calculation of the percentage of LEP individuals served by the agency's central
134 and local offices, categorized by primary language.

135 ii. a determination of whether the use of oral language services and written
136 translation is reliably serving the language needs of the individuals served by the agency.

137 iii. a determination of whether the use of auxiliary aids and services is reliably
138 serving the language needs of the individuals served by the agency.

139 iv. an evaluation of whether contracted interpreter services are working effectively.

140 v. an evaluation of the effectiveness of annual language access training.

141 vi. a description of the agency's procedures for identifying language needs at central
142 and local offices and assigning qualified bilingual or multilingual employees to those offices.

143 vii. a description of agency procedures for recruiting and retaining qualified bilingual
144 or multilingual employees in central and local offices.

145 viii. the number of qualified bilingual or multilingual employees, in public contact
146 positions in each central and local office, and the languages they speak other than English.

147 ix. a description of any training the agency provides to its staff on the provision of
148 services to LEP and deaf or hard of hearing individuals, frequency of training, and date of most
149 recent training.

150 x. a description of complaints regarding language access received by the agency
151 since submitting its most recent report under Section 6, and the agency's procedures for
152 accepting and resolving these complaints.

153 xi. a description of the agency's procedures for identifying vital documents for
154 translation.

155 Section 4. Personnel.

156 Coordinators

157 1. A state agency shall designate a language access coordinator whose sole
158 responsibility is to focus upon language access needs and the agency's compliance with this act,
159 in consultation with the language access advisory board. State agencies with multiple offices or
160 divisions shall designate regional language access coordinators who shall address the language
161 access needs of the relevant region and train the regions' staff on compliance with this act.

162 Regional language access coordinators shall report to the language access coordinator.

163 2. Language access coordinators shall maintain a centralized, electronic, searchable
164 language access database containing the following data, which shall be submitted to the office of
165 access and opportunity, and to the language access advisory board, including:

166 i. all formal and informal requests for language access services and the status of
167 those requests;

168 ii. all language access-related complaints, including complaints of language
169 discrimination and/or disability discrimination in cases of the deaf or hard of hearing;

170 iii. the status and progress of all such requests and complaints;

171 iv. the resolution of all such requests and complaints, including decisions by the
172 regional and central offices;

- 173 v. the reasons for full and partial denials of requests for language services;
174 vi. the office(s) handling the relevant case/service.

175 (b) Staffing

176 1. A state agency shall employ a sufficient number of qualified bilingual or
177 multilingual employees in public contact positions or as interpreters to assist employees in public
178 contact positions, to ensure provision of information and services in a person's preferred
179 languages.

180 2. A bilingual or multilingual staff member shall not provide interpretation in
181 adversarial proceedings when the state agency that employs the bilingual staff member is a party
182 to the proceedings.

183 3. A bilingual or multilingual staff member may provide language services to LEP
184 individuals and those who are deaf or hard of hearing, in accordance with their skill level as
185 determined by the applicable regional language access coordinator. A bilingual employee shall
186 be classified into one of the following two tiers, and shall provide interpretation in accordance
187 with that tier.

188 i. Tier 1 bilingual or multilingual employee: Tier 1 employees must have formal
189 certification, training in interpretation, or sufficient experience with interpreting in the specific
190 subject matter. If the employer does not regularly employ a person that may be classified as a
191 Tier 1 employee, the employer must hire a third-party contractor or service to fulfill these
192 interpreting needs.

193 ii. Tier 2 bilingual or multilingual employee: Tier 2 employees have the skill and
194 capacity to communicate directly with clients regarding routine or common business matters.
195 Tier 2 employees need not have formal certification, but shall be proficient in the non-English
196 language.

197 iii. Tier 1 and Tier 2 employees must be capable of communicating both receptively
198 and expressively in English and the non-English language, and be without interest in the matter
199 or outcome. Qualified bilingual or multilingual employees shall agree in writing to, the ethical
200 and confidentiality requirements associated with interpreting pursuant to the American
201 Translators Association Code of Ethics and Professional Practice.

202 4. Any employee who is regularly acting as an interpreter or translator must be
203 reasonably compensated for that additional work.

204 (c) Training

205 1. Regional language access coordinators and the language access coordinators shall
206 train all employees of a state agency to effectively obtain and utilize the services of language
207 interpreters and translators. A state agency may provide language access trainings for outside
208 service providers they have engaged; provided that the outside service providers lack sufficient
209 resources or capacity to hold such trainings independently.

210 2. Regional language access coordinators, in conjunction with the language access
211 coordinator, shall conduct training for every new hire and for every employee annually thereafter
212 on the language access plan, and provide any materials necessary for staff to readily access the
213 language access plan as needed.

214 Section 5. Language Access Advisory Board.

215 (a) There is established, for oversight and the provision of technical assistance, a
216 language access advisory board to ensure equal access to services, programs, and activities
217 offered by a state agency for LEP and deaf or hard of hearing individuals. The board shall be co-
218 chaired by a staff member from the office of access and opportunity, and one other member of
219 the advisory board voted upon by the board itself. The members of the advisory board shall be
220 appointed within 90 days after the effective date of this act, and shall serve 4-year terms.
221 Members whose terms have expired may serve until a successor is duly chosen. The board shall
222 meet no less than 4 times annually.

223 (b) Composition

224 The language access advisory board shall include:

- 225 1. three members appointed by the Massachusetts Immigrant and Refugee Advocacy
226 Coalition from prevalent LEP populations within Massachusetts, as determined by the most
227 recent United States Census data, who has an interest in language access reform;
- 228 2. one member from the deaf or hard of hearing community who has an interest in
229 language access reform, appointed by the Disability Law Center;
- 230 3. one member appointed by the Massachusetts Law Reform Institute;
- 231 4. one member appointed by the Massachusetts Appleseed Center for Law &
232 Justice;
- 233 5. one member appointed by the Massachusetts Language Access Coalition;

- 234 6. one member appointed by Greater Boston Legal Services;
- 235 7. one member appointed by the Justice Center of Southeast Massachusetts;
- 236 8. one member appointed by MetroWest Legal Services;
- 237 9. one member appointed by the Central West Justice Center;
- 238 10. one member appointed by the Northeast Justice Center; and
- 239 11. one member appointed by the New England Translators Association, or by a
- 240 similar professional association promoting best practices in translation and interpretation, who is
- 241 a translation or interpretation specialist.

242 (c) Advisory board responsibilities

243 The advisory board shall support the relevant state agencies to achieve compliance with

244 this act by:

245 providing guidance and technical assistance to the state agencies;

246 advising language access coordinators of the state agencies in the development and

247 review of their language access plan;

248 reviewing biennial reports from the state agencies, and make recommendations for steps

249 toward compliance.

250 disseminating recommendations to state agencies to reduce identified barriers for serving

251 the LEP and deaf or hard of hearing population. The language access advisory board, in

252 formulating its recommendations, shall take into account the best practices and policies in other
253 states and jurisdictions; and

254 other activities to help state agencies achieve compliance with this act.

255 Section 6. Reporting.

256 (a) Reporting requirements

257 1. Every 3 years following a state agency's full implementation of this act, the State
258 agency shall submit to the joint committee on ways and means, the joint committee on state
259 administration and regulatory oversight, the language access advisory board and the office of
260 access and opportunity, a report on the data collected under Section 3(a)(2).

261 2. The report shall be disaggregated and cross-tabulated by:

262 i. primary language;

263 ii. disability status;

264 iii. race;

265 iv. ethnicity;

266 v. age;

267 vi. gender; and

268 vii. low-income status

269 3. The report shall be publicly available in multiple languages, and be provided in
270 plain language that community members can understand; and

271 4. The report shall be presented in a manner that protects the privacy of individuals.

272 Section 7. Relief.

273 (a) Relief potentials

274 1. Any person or class of persons claiming to be aggrieved by a state agency for
275 failure to provide language access for benefits or services according to the terms of this act shall
276 have the right to institute and prosecute a civil action in the district, superior, housing, probate or
277 land court department for injunctive and other appropriate equitable relief including an award of
278 actual and consequential damages. Should the person or persons prevail, they shall be entitled to
279 an award of the costs of the litigation including expert witness fees, reasonable attorneys' fees in
280 an amount to be fixed by the court, and prejudgment and post-judgment interest.

281 2. The Massachusetts commission against discrimination may commence a civil
282 action to seek relief for a violation of this act.

283 3. The attorney general may also commence a civil action to seek relief for a
284 violation of this act.

285 Section 8. Office of access and opportunity.

286 The office of access and opportunity of the executive office for administration and
287 finance shall have the following responsibilities:

288 1. Accept and investigate complaints submitted to the office of access and
289 opportunity by individuals who have been unable to obtain timely language access services in
290 any state agency.

291 2. Annually provide copies of all complaints as detailed in Section 8(a)(1)(i) to the
292 language access advisory board.

293 3. Where an agency does not provide equal access, eliminate the language access
294 barrier using informal methods, including conference, conciliation, mediation, or persuasion.
295 Where the language access barrier cannot be eliminated by informal methods, the office of
296 access and opportunity shall submit written compliance requirements to the state agency. The
297 office of access and opportunity may request the state agency to notify it within a specified time,
298 of any action taken on its requirements. Further, the office of access and opportunity may require
299 a state agency to increase the frequency of the reporting every six months, as it deems necessary,
300 or as requested by the language access advisory board.

301 4. In consultation with the language access advisory board, create multilingual
302 signage informing LEP individuals of their right to free oral language services, for dissemination
303 to state agencies.

304 (a) Conflicting law

305 1. It is the intent of the legislature that the provisions of this act be guided by Title
306 VI of the Civil Rights Act of 1964, Executive Order No. 13166, and the federal rules and
307 regulations adopted in implementation thereof, except that if the laws of the commonwealth
308 prescribe stronger protections and prohibitions, the programs and activities subject to this act
309 shall be subject to the stronger protections and prohibitions.

310 Section 9. Language Access Implementation Schedule

311 1. On or before 1 year after this bill is enacted, there shall be full implementation by:

- 312 i. MassHealth
- 313 ii. the department of children and families
- 314 iii. the department of early education and care
- 315 iv. the department of elementary and secondary education
- 316 v. the department of housing and community development
- 317 vi. the department of transitional assistance
- 318 vii. the department of unemployment assistance
- 319 viii. the registry of motor vehicles
- 320 ix. the department of public health
- 321 x. Massachusetts office for victim assistance
- 322 xi. the department of mental health
- 323 xii. the office of access and opportunity
- 324 2. On or before 2 years after this bill is enacted, there shall be full implementation
- 325 by all agencies or departments within:
- 326 i. the executive office of education
- 327 ii. the executive office of health and human services
- 328 iii. the executive office of housing and economic development
- 329 iv. the department of revenue child support enforcement division

- 330 v. the district attorneys of Massachusetts
- 331 vi. the executive office of public safety and security
- 332 vii. the Massachusetts commission against discrimination
- 333 3. On or before 3 years after this bill is enacted, there shall be full implementation
- 334 by all agencies or departments within:
- 335 i. the executive office for administration and finance
- 336 ii. the executive office of energy and environmental affairs
- 337 iii. the executive office of labor and workforce development
- 338 iv. the executive office of public safety and security
- 339 v. the executive office of technology services and security
- 340 vi. the executive office of transportation and public works
- 341 vii. the department of revenue
- 342 viii. the disabled protection commission
- 343 ix. the sheriffs of Massachusetts
- 344 x. the Massachusetts office of consumer affairs and business regulation
- 345 xi. the cannabis control commission
- 346 4. Additional state agencies may be beholden to this statute as determined by the
- 347 language access advisory board, in consultation with the office of access and opportunity.