

SENATE No. 2040

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:

NAME:	DISTRICT/ADDRESS:	
Sal N. DiDomenico	Middlesex and Suffolk	
Christina A. Minicucci	14th Essex	2/23/2021
Joseph W. McGonagle, Jr.	28th Middlesex	2/25/2021
Kay Khan	11th Middlesex	2/25/2021
Kay Khan	11th Middlesex	2/25/2021
James B. Eldridge	Middlesex and Worcester	3/2/2021
Jason M. Lewis	Fifth Middlesex	3/4/2021
Joanne M. Comerford	Hampshire, Franklin and Worcester	3/4/2021
Rebecca L. Rausch	Norfolk, Bristol and Middlesex	3/8/2021
John F. Keenan	Norfolk and Plymouth	3/9/2021
Nick Collins	First Suffolk	3/12/2021
Susan L. Moran	Plymouth and Barnstable	3/15/2021
Michael D. Brady	Second Plymouth and Bristol	3/18/2021
Walter F. Timilty	Norfolk, Bristol and Plymouth	3/31/2021
Maria Duaiame Robinson	6th Middlesex	4/2/2021
Jack Patrick Lewis	7th Middlesex	4/7/2021

SENATE No. 2040

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 2040) of Sal N. DiDomenico, Christina A. Minicucci, Joseph W. McGonagle, Jr., Kay Khan and other members of the General Court for legislation relative to language access and inclusion. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2018 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 or
8 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 which 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 must 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 “Low incidence language” means languages spoken by populations in a state agency’s
24 service area, but represent less than 3% of the entire population the state agency serves as
25 determined by a state agency’s language access survey, outlined in Section 3(a)(2), or the most
26 recent United States Census data.

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

29

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

32 “Oral language services” means various methods of providing verbal information and
33 interpretation through staff interpreters, bilingual staff, telephone interpreter services, and private
34 interpreter services.

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

38 “Primary language” means preferred language of the LEP individual. The official
39 national language of an LEP individual’s country of origin may differ from their preferred
40 language.

41 “Public contact position” means a position determined by the state agency to be one
42 which emphasizes meeting, contacting and dealing with the public in the performance of the
43 agency's functions.

44 “Qualified bilingual employee” means a staff person who is proficient in both the English
45 language and the non-English language to be used. Being bilingual, by itself, does not qualify
46 someone to serve as an interpreter. As defined in Section 4(b), qualified bilingual employees
47 may be categorized as Tier 1 Bilingual Employees, or Tier 2 Bilingual Employees.

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

51 “State agency” means, for the purposes of this act, an agency or executive office included
52 in Section 9.

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

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

59 Section 2. Communications with the Public.

60 A State agency shall take steps to ensure equal access to services, programs, and
61 activities serving limited English proficient individuals in a timely fashion, including:

62 (a) Oral interpretation

63 1. A state agency shall provide timely, culturally competent oral language services to
64 LEP individuals who seek to access services, programs, or activities. State agencies may,
65 utilizing existing funds, contract with telephone-based interpretation services or community-
66 based organizations that provide interpretation to LEP individuals, in addition to utilizing
67 qualified Tier 1 bilingual employees, as defined in Section 4(b)(3)(i).

68 2. A state agency shall notify every recipient of services of their right to timely oral
69 interpretation.

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 languages that constitute the
75 primary language of at least 10,000 or ½ of 1% of all residents of the commonwealth, whichever
76 includes more languages.

77 2. A state agency shall issue all notices and materials explaining services in low
78 incidence languages.

79 3. A state agency that significantly relies on outside service providers to fulfill the
80 agency’s responsibilities to the public shall ensure the implementation of the requirements of
81 Section 2(b)(1) and Section 2(b)(2) by the outside service provider.

82 (c) Websites

83 1. Content: If a state agency maintains one or more websites for use by the public,
84 the agency shall provide the content of the website in each language that is spoken by an LEP
85 population constituting at least 0.5% of the overall population within the commonwealth, as
86 determined by the agency’s language access survey, outlined in Section 3(a)(2) or the most
87 recent United States Census data. The state agency shall make best efforts to ensure that its
88 websites are mobile compatible.

89 2. Machine translation: A state agency shall make best efforts to avoid machine
90 translation. When translation cannot be avoided, the agency shall utilize the services of a
91 qualified interpreter as defined in Section 1, or a Tier 1 bilingual employee as defined in Section
92 4(b)(3)(1), to review the content for the non-English primary languages spoken by 3% or more of
93 the service population for accuracy. If machine translation services are used, the state agency
94 shall conspicuously post a disclaimer on its website stating that machine translation has been
95 used for translation and that accuracy cannot be ensured.

96 3. Complaints: A state agency that maintains one or more websites for use by the
97 public shall provide forms and processes for submitting complaints of alleged violations of this
98 Act on the homepage of the website. The forms and processes shall be translated into the
99 languages that constitute the non-English primary language of at least 3% of the population in
100 the state agency's service area.

101 Section 3. Language Access Plans.

102 (a) Requirements of language access plans

103 1. A state agency shall develop a language access plan to implement protocols for
104 providing services to LEP individuals and deaf or hard of hearing individuals in accordance with
105 this Act. After the language access plan is implemented, the agency shall update its language
106 access plan every two years based upon the most recent language access survey, as detailed in
107 Section 3(a)2. The language access plan shall include:

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

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

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

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

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

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

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

138 iv. An evaluation of whether contracted interpreter services are working effectively.

139 v. An evaluation of the effectiveness of annual language access training, as detailed
140 in Section 4(c).

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

143 vii. A detailed description of agency procedures for recruiting and retaining qualified
144 bilingual employees in central and local offices.

145 viii. The number of qualified bilingual employees, as defined in Section 4(b)(3), in
146 public contact positions in each central and local office, and the languages they speak other than
147 English.

148 ix. A detailed description of any training the agency provides to its staff on the
149 provision of services to LEP and deaf or hard of hearing individuals, frequency of training, and
150 date of most recent training, as required by Section 4(c).

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

154 xi. A detailed description of the agency's procedures for identifying vital documents
155 for translation.

156 Section 4. Personnel.

157 (a) Coordinators

158 1. A state agency shall designate a language access coordinator whose sole
159 responsibility is to focus upon language access needs and the agency’s compliance with this Act,
160 in consultation with the language access advisory board set forth in Section 5. State agencies
161 with multiple offices or divisions shall designate regional language access coordinators who shall
162 address the language access needs of the relevant region and train the regions’ staff on
163 compliance with this Act. Regional language access coordinators shall report to the language
164 access coordinator.

165 2. Language access coordinators shall maintain a centralized, electronic, searchable
166 language access database containing the following data, which shall be submitted to the office of
167 access and opportunity within the executive office for administration and finance, and to the
168 language access advisory board, including:

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

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

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

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

176 v. the reasons for full and partial denials of requests for language services;

177 vi. the office(s) handling the relevant case/service.

178 (b) Staffing

179 1. A state agency shall employ a sufficient number of qualified bilingual employees
180 in public contact positions or as interpreters to assist employees in public contact positions, to
181 ensure provision of information and services in the languages that constitute the non-English
182 primary language of at least 3% of the population in the agency's service area, as determined by
183 the agency's language access survey under Section 3(a)(2), or the most recent United States
184 Census data.

185 2. A bilingual staff member shall not provide interpretation in adversarial
186 proceedings when the state agency that employs the bilingual staff member is a party to the
187 proceedings.

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

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

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

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

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

208 (c) Training

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

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

218 Section 5. Language Access Advisory Board.

219 (a) Establishment

220 1. There is established, for oversight and the provision of technical assistance, a
221 language access advisory board to ensure equal access to services, programs, and activities

222 offered by a state agency for LEP and deaf or hard of hearing individuals. The board shall be co-
223 chaired by a staff member from the office of access and opportunity, and one other member of
224 the advisory board voted upon by the board itself. The members of the advisory board
225 established under Section 5(b) shall be appointed within 90 days after the effective date of this
226 Act, and shall serve 2-year terms. Members whose terms have expired may serve until a
227 successor is duly chosen. The board shall meet no less than 4 times annually.

228 (b) Composition

229 The language access advisory board shall include:

- 230 1. One member appointed by the governor;
- 231 2. one member appointed by the office of access and opportunity, within the
232 executive office for administration and finance;
- 233 3. one member appointed by the president of the Massachusetts state senate
- 234 4. one member appointed by the speaker of the Massachusetts house of
235 representatives;
- 236 5. one member appointed by the office of the attorney general's civil rights division;
- 237 6. one member appointed by the Massachusetts commission against discrimination;
- 238 7. one member appointed by the Massachusetts commission for the deaf and hard of
239 hearing;
- 240 8. one member from each of the five most prevalent LEP populations within
241 Massachusetts, as determined by the most recent United States Census data, who has an interest

242 in language access reform, appointed by the Massachusetts Immigrant and Refugee Advocacy
243 Coalition;

244 9. one member from the deaf or hard of hearing community who has an interest in
245 language access reform, appointed by the Disability Law Center;

246 10. one member appointed by the Massachusetts Law Reform Institute;

247 11. one member appointed by the Massachusetts Appleseed Center for Law &
248 Justice;

249 12. one member appointed by the Massachusetts Language Access Coalition;

250 13. one member appointed by Greater Boston Legal Services;

251 14. one member appointed by the Justice Center of Southeast Massachusetts;

252 15. one member appointed by MetroWest Legal Services;

253 16. one member appointed by the Central West Justice Center; and

254 17. one member appointed by the Northeast Justice Center

255 (c) Advisory board responsibilities

256 The advisory board shall support the relevant state agencies to achieve compliance with
257 this Act by:

258 1. providing guidance and technical assistance to the state agencies;

259 2. advising language access coordinators of the state agencies in the development
260 and review of their language access plan;

261 3. developing helpful materials and resources for language access coordinators to
262 meet the training requirements detailed in Section 4(c);

263 4. reviewing biennial reports from the state agencies as required in Section 6, and
264 making recommendations for steps toward compliance.

265 5. disseminate recommendations to state agencies to reduce identified barriers for
266 serving the LEP and deaf or hard of hearing population. The language access advisory board, in
267 formulating its recommendations, shall take into account the best practices and policies in other
268 states and jurisdictions;

269 6. submitting a biannual report by December 31 to the chairs of the joint committee
270 on ways and means, and the office of access and opportunity. The report shall include, but not be
271 limited to, the language access advisory board findings and any recommendations for regulatory
272 or legislative action, with a timeline for implementation, cost estimates and finance mechanisms,
273 and shall detail the effectiveness of language access provisions among state agencies across the
274 state, and the progress made toward implementing the language access advisory board's
275 recommendations and any other efforts to address the needs of this population; and

276 7. other activities to help state agencies achieve compliance with this Act.

277 Section 6. Reporting.

278 (a) Reporting requirements

279 1. Every 2 years following a state agency's full implementation of this Act, the
280 agency shall submit to the chairs of the joint committee on ways and means, the language access

281 advisory board and the office of access and opportunity, a report on the data collected under
282 Section 3(a)(2).

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

284 i. primary language;

285 ii. disability status;

286 iii. race;

287 iv. ethnicity;

288 v. age;

289 vi. gender; and

290 vii. low-income status

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

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

294 Section 7. Relief.

295 (a) Relief potentials

296 1. Any person or class of persons claiming to be aggrieved by a state agency for
297 failure to provide language access for benefits or services according to the terms of this Act shall
298 have the right to institute and prosecute a civil action in the district, superior, housing, probate or
299 land court department for injunctive and other appropriate equitable relief including an award of

300 actual and consequential damages. Should the person or persons prevail, they shall be entitled to
301 an award of the costs of the litigation including expert witness fees, reasonable attorneys' fees in
302 an amount to be fixed by the court, and prejudgment and post judgment interest.

303 2. The Massachusetts commission against discrimination may, in like manner, also
304 commence a civil action to seek relief for a violation of this Act.

305 3. The attorney general may, in like manner, also commence a civil action to seek
306 relief for a violation of this Act.

307 Section 8. Implementation.

308 (a) Office of access and opportunity

309 1. There shall be established an office of access and opportunity of the executive
310 office for administration and finance, which shall have the following responsibilities with regard
311 to implementing this statute:

312 i. Accept and investigate complaints submitted to the office of access and
313 opportunity by individuals who have been unable to obtain timely language access services in
314 any state agency.

315 ii. Bi-annually provide copies of all complaints as detailed in Section 8(a)(1)(i) to
316 the language access advisory board.

317 iii. Where an agency does not provide equal access, eliminate the language access
318 barrier using informal methods, including conference, conciliation, mediation, or persuasion.
319 Where the language access barrier cannot be eliminated by informal methods, the office of
320 access and opportunity shall submit written compliance requirements to the state agency. The

321 office of access and opportunity may request the state agency to notify it within a specified time,
322 of any action taken on its requirements. Further, the office of access and opportunity may require
323 a state agency to increase the frequency of the reporting under Section 4(a)(2) every six months,
324 as it deems necessary, or as requested by the language access advisory board.

325 iv. In consultation with the language access advisory board, create multilingual
326 signage informing LEP individuals of their right to free oral language services, for dissemination
327 to state agencies.

328 (b) Conflicting law

329 1. It is the intent of the legislature that the provisions of this Act be guided by Title
330 VI of the Civil Rights Act of 1964, Executive Order No. 13166, and the federal rules and
331 regulations adopted in implementation thereof, except that if the laws of this state prescribe
332 stronger protections and prohibitions, the programs and activities subject to this Act shall be
333 subject to the stronger protections and prohibitions.

334 Section 9. Phase-In.

335 (a) Implementation schedule

336 1. On or before 1 year after this bill is enacted, full implementation by:

337 i. MassHealth

338 ii. the department of children and families

339 iii. the department of early education and care

340 iv. the department of elementary and secondary education

- 341 v. the department of housing and community development
- 342 vi. the department of transitional assistance
- 343 vii. the department of unemployment assistance
- 344 viii. the registry of motor vehicles
- 345 ix. the department of public health
- 346 2. On or before 2 years after this bill is enacted, full implementation by all agencies
- 347 within:
- 348 i. the executive office of education
- 349 ii. the executive office of health and human services
- 350 iii. the executive office of housing and development
- 351 3. On or before 3 years after this bill is enacted, full implementation by all agencies
- 352 within:
- 353 i. the executive office of energy and environmental affairs
- 354 ii. the executive office of labor and workforce development
- 355 iii. the executive office of public safety and security
- 356 4. On or before 4 years after this bill is enacted, full implementation by all agencies
- 357 within:
- 358 i. the executive office for administration and finance

- 359 ii. the executive office of technology services and security
- 360 iii. the Massachusetts office of consumer affairs and business regulation
- 361 5. Additional state agencies may be beholden to this statute as determined by the
- 362 language access advisory board, in consultation with the office of access and opportunity.