

Legislative Analysis



EQUAL LANGUAGE ACCESS

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<http://www.house.mi.gov/hfa>

Senate Bill 382 as passed by the Senate
Sponsor: Sen. Stephanie Chang

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 383 as passed by the Senate
Sponsor: Sen. Mary Cavanagh

House Committee: Government Operations
Senate Committee: Housing and Human Services
Complete to 10-13-23

SUMMARY:

Senate Bill 382 would create a new act called the Equal Language Access to State Services Act to require that state departments, agencies, and entities take reasonable steps to provide access to state services by individuals with limited English proficiency and to require biennial reports on equal language access.

Senate Bill 373 would create the Statewide Equal Language Access Coordination Act to provide for statewide coordination of equal access to state services by individuals with limited English proficiency and a process for submitting complaints and obtaining remedies for lack of equal language access or denial of equal access based on national origin.

Senate Bill 382 would require every state department, agency, and entity to take *reasonable steps* to provide *equal language access* to public services for individuals with *limited English proficiency*.

Equal language access would mean the ability to receive information and participate in and benefit from public services offered by a state department, agency, or entity at a level equal to English-proficient individuals.

Limited English proficiency would mean an individual's inability to understand or effectively express themselves in spoken or written English because they have not developed fluency in the English language as a result of their national origin.

Reasonable steps

For purposes of the above requirement, *reasonable steps* would include all of the following:

- Providing individuals with limited English proficiency with face-to-face, in-house or telephonic *oral language services* (which would include various methods to provide verbal information and interpretation, such as staff interpreters, bilingual staff, telephone interpreter programs, televideo interpretation services, and private interpreter programs). The services would have to be provided through means, and by individuals, with demonstrated competency in the appropriate language. Oral language services provided by a relative, friend, or bystander would not meet the requirements of the bill or substitute for the duty to provide access to oral language services. However, an individual with limited English proficiency could, at their expense, use

- an interpreter of their choice instead of or in addition to the oral language services the state department, agency, or entity must provide.
- Having appropriate oral language services sufficiently available to provide equal language access based on reliable data documenting the proportion of individuals with limited English proficiency eligible to be served or encountered by the department, agency, or entity and the frequency of encounters in the geographic area served, and taking into consideration the nature and importance of the program, activity, or service provided.
 - Translating *vital documents* ordinarily provided to the public into all of the following languages and providing those translated documents to local offices of the state department, agency, or entity as necessary:
 - Every language spoken by a population with limited English proficiency that, based on reliable data, constitutes 3% or more of the overall population in the geographic area of the state department, agency, or entity.
 - Every language spoken by a population with limited English proficiency that meets a threshold of 500 or more individuals served by a local office or 3% or more of those served by a local office, based on reliable data. The bill would also encourage, but not require, local offices to translate vital documents into other languages for populations of less than those thresholds, based on knowledge of the local community served.
 - Designating a language access liaison who will report to the individual designated by the Office of Global Michigan (OGM)¹ in the Department of Labor and Economic Opportunity (LEO) as responsible for statewide language access coordination under SB 383.
 - Any additional means necessary to achieve equal language access to public services.

Vital documents would mean printed or electronic documents that provide important information necessary to access or participate in services, programs, and activities of a state department, agency, or entity, including applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

A state department, agency, or entity could not charge individuals with limited English proficiency for the use of oral language services or translation.

Report

At least every two years, every state department, agency, or entity would have to develop and submit to the OGM a report with information and plans concerning implementation of equal language access to its services. The report would have to include at least all of the following:

- The number of bilingual staff who are available to facilitate equal language access and the languages they facilitate.
- The number of bilingual staff determined to be needed for each language to provide equal language access for the population with limited English proficiency it serves.
- A plan to address any insufficiency in its ability to provide equal language access.
- A list of vital documents it has had translated and the language of the translation.
- Designation of an employee as its language access coordinator.

¹ <https://www.michigan.gov/ogm>

- A staff training plan related to equal language access. The plan would have to include specific implementation information, including the specific types of language services available and how the state department, agency, or entity will do all of the following:
 - Obtain language services internally or from vendors.
 - Respond to individuals with limited English proficiency who contact staff by telephone, by written communication, or in person.
 - Ensure competency of interpreters and translation services.
 - Collect preferred language data for all unique public encounters.
 - Indicate limited English proficiency status in data and information systems.
 - Communicate information to the language access coordinator about perceived changes in language services needed by the population served and when that information will be communicated.
- A plan to increase public awareness of the equal language access services provided.

Legislative intent

The bill states that it is the intent of the legislature that each state department, agency, or entity be guided in implementing the new act by federal Executive Order No. 13166 and related provisions of federal law, regulation, and guidance in providing language access services, regardless of whether that department, agency, or entity receives federal funding.²

Senate Bill 383 would require the Office of Global Michigan to do all of the following:

- Coordinate steps taken by state departments, agencies, and entities throughout Michigan to provide equal language access to public services under Senate Bill 382.
- Designate at least one language access liaison to work with state departments, agencies, and entities to train staff, develop resources, inform the public of available language services, and facilitate compliance with Senate Bill 382.
- Create a complaint form and process for members of the public to report instances of noncompliance with Senate Bill 382 and pursue a remedy for them. The complaint form would be subject to the translation requirements for vital documents described in Senate Bill 382.
- In collaboration with the Department of Civil Rights and consistent with section 602 of the Elliott-Larsen Civil Rights Act,³ create a complaint process through which individuals who believe they have been denied full and equal access to a state department, agency, or entity because of their national origin can submit a complaint and seek a remedy against the department, agency, or entity. An individual who believes they were denied full and equal access to a state department, agency, or entity because of their national origin would also have to have the right to separately seek a remedy with the Department of Civil Rights through this complaint process.

Each bill would take effect 90 days after it is enacted. However, neither would take effect unless both were enacted.

The bills are identical to House Bills 4721 and 4720, respectively.

² Text of Executive Order 13166: <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>
 2000 policy guidance document: <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20867.pdf>
 Current U.S. Department of Justice information: <https://www.justice.gov/crt/executive-order-13166>

³ Section 602 generally prescribes the powers and duties of the Department of Civil Rights:
<http://legislature.mi.gov/doc.aspx?mcl-37-2602>

FISCAL IMPACT:

Senate Bill 382 would increase costs to state departments, agencies, and entities by an indeterminate amount and would have no fiscal impact on local units of government. The bill requires that these state entities provide equal language access to public services, including face-to-face, in-house, or telephonic oral language services to individuals with limited English proficiency. Because most state departments and agencies are currently allocating funding for translation and interpretation services, it is expected that the increased cost of the bill's provisions would not be significant and current funding would be repurposed to help fund the bill's requirements.

Senate Bill 383 would increase costs to the Office of Global Michigan within the Department of Labor and Economic Opportunity by an indeterminate amount and would have no fiscal impact on local units of government. The bill requires that the OGM staff work with state departments, agencies, and entities to provide staff training, develop resources, and conduct outreach activities, as well as other administrative responsibilities. The amount of additional costs to LEO would be related to increased administrative expenses needed for these requirements.

In FY 2022-23, the OGM received \$700,000 additional one-time funding and the authorization for 2.0 additional FTE positions for the implementation of a statewide language access program. Part of this additional appropriation will be used to provide the needed funding to implement the bill's requirements so that any increased costs are expected to be funded with current appropriations. In FY 2023-24, the OGM is appropriated \$39.9 million and has authorization for 15.0 FTE positions.

There is also a potential fiscal impact to the Michigan Department of Civil Rights (MDCR) depending on whether Senate Bill 383 would significantly increase the number of civil rights complaint cases submitted to and investigated by the MDCR and whether ongoing complaint investigation staff levels would be able to accommodate the increase. The annual FTE cost for a civil rights investigator position is \$161,000.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.