

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 886 (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. In addition, 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 2009 State budget includes \$6.9 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 \$1.5 billion in federal funding.

Small Business Effect: None.

Analysis

Current Law: Maryland law defines limited English proficiency as the inability to adequately understand or express oneself in the spoken or written English language. The U.S. Census Bureau defines an individual with LEP as a person who cannot speak English very well.

Several federal laws and directives mandate language assistance to LEP individuals. These laws and directives are Title VI of the Civil Rights Act of 1964, the Voting Rights Act (VRA), and Executive Order 13166 signed in 2000. Collectively, these laws and directives attempt to provide meaningful language access to voting and government services and combat unlawful discrimination on the basis of national origin. National origin discrimination includes discrimination on the basis of LEP. Maryland enacted legislation in 2002 (Chapter 141) 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 mandates that “[n]o person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 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 may constitute impermissible discrimination on the basis of national origin.

The language provisions of the VRA only apply to so-called “covered jurisdictions” determined by the U.S. Census Bureau after each census. Covered language minorities are limited to American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens. The VRA requires a covered state or political subdivision to ensure that all election information available in English also be available in the minority language. The provisions of Section 203 of the VRA are triggered if more than 10,000 or over 5% of the citizens of voting age in the covered jurisdiction are members of a single-language minority group who do not speak or understand English adequately enough to participate in the electoral process; or if, on an Indian reservation, the language group exceeds 5% of all reservation residents and the illiteracy rate of the group is higher than the national illiteracy rate. The U.S. Census Bureau director is responsible for determining which states and localities are subject to the minority language assistance provisions of the VRA. Montgomery County, the only jurisdiction in Maryland subject to the language assistance provisions of the VRA, 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. Other entities must monitor their operations to determine if reasonable steps are needed to achieve equal access to public services for LEP individuals.

Background: Maryland remains a major destination for both legal and undocumented immigrants, with 130,000 immigrants coming to the State over a six-year period, from 2000 to 2006. Immigration to Maryland is concentrated in the suburban Washington region which includes Frederick, Montgomery, and Prince George's counties. Montgomery County is the most popular locality for immigrants, with nearly 50% of all recent immigrants deciding to live in the county. Immigration has contributed significantly to the State's population growth in recent years, accounting for 41% of population growth between 2000 and 2006.

The number of people who speak a language other than English at home is an indicator of the scope of immigration in Maryland. The U.S. Census Bureau indicates that 780,199 Maryland residents speak a language other than English at home, or 14.9% of the total population. Among all the states, Maryland had the eighteenth highest percentage of residents who speak a language other than English at home in 2006. Nationwide, 19.7% of individuals speak a language other than English at home. A sizeable portion of these individuals are limited English proficient (LEP), which is defined by the U.S. Census Bureau as someone older than five who cannot speak English very well.

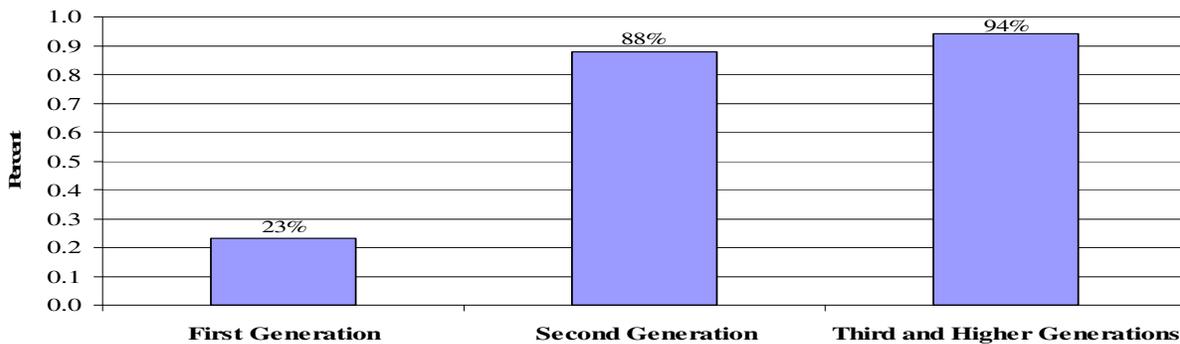
In Maryland, 5.7% of the State's population is LEP compared to 8.7% nationally. The percentage of State residents, who are LEP, ranges from a high of 14.2% in Montgomery County to less than 1% in Allegany County. While Montgomery County has a high

percentage of LEP residents, the percentage is even higher for several surrounding jurisdictions in Northern Virginia; 14.3% in Alexandria, 14.5% in Prince William County, and 15.1% in Fairfax County. **Appendix 1** shows the number of LEP individuals in each jurisdiction and their percentage of the county's population for 1990 and 2000, the most recent data available for all counties. **Appendix 2** provides information for counties included in the U.S. Census Bureau's 2006 American Community Survey.

Recent studies indicate that immigrants are willing to learn and speak English. A recent report by the Pew Hispanic Center indicates that the fluency in spoken English increases across generations of Hispanic families. For example, while 23% of first generation Hispanics are able to speak English very well, the percentage increases to 88% of second generation Hispanics and 94% of third and higher generation Hispanics (**Exhibit 1**). The study also indicates that the use of Spanish at home by Hispanics declines for each future generation:

- While 52% of foreign born Hispanics speak only Spanish at home, the percentage decreases to 11% for their adult children and 6% for the children of U.S. born Hispanics.
- While half of the adult children of Hispanic immigrants speak some Spanish at home, by the third and future generations, the percentage falls to one in four.

Exhibit 1
English Proficiency Across Hispanic Generations
Percentage Who Speak English Very Well



Source: The Pew Hispanic Center

Official English Laws in Maryland

In November 2006, the Taneytown City Council approved a nonbinding resolution establishing English as the official city language. All official municipal business must be conducted in English only, 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 30 states as shown in **Exhibit 2**. The U.S. government has not established an official language.

Exhibit 2 **States with Official English Laws**

Alabama (1990)	Illinois (1969)	Nebraska (1920)
Alaska (1998)	Indiana (1984)	New Hampshire (1995)
Arizona (2006)	Iowa (2002)	North Carolina (1987)
Arkansas (1987)	Kansas (2007)	North Dakota (1987)
California (1986)	Kentucky (1984)	South Carolina (1987)
Colorado (1988)	Louisiana (1811)	South Dakota (1995)
Florida (1988)	Massachusetts (1975)	Tennessee (1984)
Georgia (1986,1996)	Mississippi (1987)	Utah (2000)
Hawaii (1978)	Missouri (1998)	Virginia (1981,1996)
Idaho (2007)	Montana (1995)	Wyoming (1996)

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 10 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.

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 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.

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

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 federal funding for Temporary Assistance to Needy Families (TANF) grants and federal food stamps. Federal funding for entitlement programs will total \$3.3 billion in fiscal 2009 (\$122.7 million in foster care payments, \$462.1 million in assistance payments, and \$2.7 billion in Medical Assistance).

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 antidiscrimination 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: Since 1995, eight bills designating English as the official language of Maryland and two bills establishing such designations for Baltimore County have been introduced as shown in **Exhibit 4**. In 1995, the General Assembly approved legislation (HB 657) that would have established English as the official State language; however, Governor Schaefer vetoed the legislation for policy reasons. Since that time, most bills establishing English as an official language have been voted down by legislative committees. There have been a few exceptions including in 1998 when HB 443 received a favorable with amendments report from the House Commerce and Government Matters Committee and was approved by the House of Delegates; however, the bill was not reported out of the Senate Economic and Environmental Affairs Committee. Also in 1998, SB 236 received a favorable with amendments report from the Senate Economic and Environmental Affairs Committee, but the bill was recommitted to the committee with no subsequent action being taken.

Exhibit 4 Legislation Establishing English as the Official Language of Maryland

<u>Year</u>	<u>Bill Number</u>
2007	SB 943, HB 885, HB 771*
2006	HB 1335, HB 1337*
2005	HB 1152
1998	SB 236, HB 443
1996	SB 632
1995	HB 657

*Designation applies only to Baltimore County.
Source: Department of Legislative Services

Cross File: None.

Information Source(s): Department of Human Resources, Department of Budget and Management, Office of the Attorney General, U.S. Census Bureau, U.S. Department of Justice, Department of Legislative Services

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Appendix 1
Demographics – Limited English Proficient Individuals

Limited English Proficient Individuals				Ranking by Number of Individuals		Ranking by Percent of Population	
<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: U.S. Census Bureau

Appendix 2
Language Spoken at Home – Limited English Proficient Individuals
2006

County	Population 5 Years +	Speak Language Other than English	Percent of Population	Limited English Proficient	Percent of Population
Anne Arundel	475,687	41,087	8.6%	13,161	2.8%
Baltimore City	586,620	49,333	8.4%	20,145	3.4%
Baltimore	740,825	82,799	11.2%	30,890	4.2%
Frederick	208,110	23,668	11.4%	9,412	4.5%
Harford	226,552	12,089	5.3%	3,344	1.5%
Howard	254,890	49,415	19.4%	18,308	7.2%
Montgomery	866,247	307,739	35.5%	123,361	14.2%
Prince George's	780,849	154,141	19.7%	65,532	8.4%
Maryland	5,247,226	780,199	14.9%	299,736	5.7%

Note: The *American Community Survey* does not provide information on limited English proficiency for the other counties in Maryland

Source: 2006 *American Community Survey*, U.S. Census Bureau