

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
BILL ANALYSIS



2009 MAY -7 PM 6:03
Date: May 7, 2009

Bill Number: AB 781

Bill Author: Jeffries

DEPARTMENT INFORMATION

Contact: Claudia Burgos, District 5, 238-7051
cburgos@oaklandnet.com

RECOMMENDED POSITION: OPPOSE

Summary of the Bill:

Provides that city, county, or state governmental entities shall not discriminate against an employee or an applicant for employment on the basis of the ability of the employee or applicant to speak a language other than English, unless an ability to speak a language other than English constitutes a bona fide occupational qualification.

Per the author's bill fact sheet: "The City of Oakland adopted a bilingual hiring requirement (Ordinance # 12324, May 2001) for "Public Contact Positions" when there are at least 10,000 limited English speaking City residents who speak a shared language other than English. The problem with the Oakland ordinance, and California law, is three-fold: 1) it does not provide specific methodology guidance for bilingual hiring when more than one shared language population is no less than 10,000, 2) it pits different ethnic groups against each other, and 3) it discriminates against California residents who only speak English." This bill would in essence overturn our Equal Access Ordinance.

Positive Factors for Oakland
NONE

Negative Factors for Oakland

Existing Law: Government Code Section 7293. Every local public agency, as defined in Section 54951, serving a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person. The determination of what constitutes a substantial number of non-English-speaking people and a sufficient number of qualified bilingual persons shall be made by the local agency.

Item: _____
Rules & Legislation Comte.
May 14, 2009

On May 8, 2001, the City of Oakland became the first city in the nation to pass an Equal Access to Service ordinance with the purpose of removing language barriers for limited English speakers attempting to access City services. City of Oakland departments are required to provide language access for residents who are limited English speakers through the availability of bilingual staff and translated written outreach materials.

AB 781, if passed, would require Oakland to repeal our Equal Access Ordinance and would negatively impact our residents by preventing them from accessing essential city services.

There are over 125 languages and dialects spoken in Oakland and we are recognized across the country for our diversity. In an effort to meet the needs of our very diverse population, Oakland adopted its Equal Access Ordinance which established the City's commitment to serve all of its communities, regardless of one's ability to speak English. It is of paramount importance that all residents regardless of their ability or proficiencies in English have access to City programs, support, and services. Oakland is the only City in California with an Equal Access Ordinance and this is a direct attack on our ordinance.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical (top priority for City lobbyist, city position required ASAP)**
- Very Important (priority for City lobbyist, city position necessary)**
- Somewhat Important (City position desirable if time and resources are available)**
- Minimal or** **None (do not review with City Council, position not required)**

Known support:
California State NAACP

Known Opposition:
None on File

Respectfully Submitted,

**Vice Mayor De La Fuente,
Councilmember Jean Quan,
Councilmember Pat Kernighan**

Prepared By Claudia Burgos

AB 781 Fact Sheet

Author – Assembly Member Kevin Jeffries (District 66)

ISSUE

Title VII of the Civil Rights Act of 1964, 42 USC 2000e, makes it unlawful for an employer to hire or discharge any individual, or otherwise to discriminate against any individual with respect to terms, conditions or privileges of employment, because of an individual's race, color, religion, sex or national origin.

While California law (Dymally-Alatorre Bilingual Services Act of 1973) appropriately provides for access to government services to Limited English Proficiency (LEP) residents, it fails to ensure that local and state government hiring practices do not have a disparate impact on equal employment opportunities, or, subject job applicants to discrimination based on race, color, religion, sex or national origin.

The City of Oakland adopted a bilingual hiring requirement (Ordinance # 12324, May 2001) for "Public Contact Positions" when there are at least 10,000 limited English speaking City residents who speak a shared language other than English.

The problem with the Oakland ordinance, and California law, is three-fold: 1) it does not provide specific methodology guidance for bilingual hiring when more than one shared language population is no less than 10,000, 2) it pits different ethnic groups against each other, and 3) it discriminates against California residents who only speak English.

Federal and state policy both express a commitment to improving the accessibility of government services to eligible LEP persons, however, California must strike a healthy balance in promoting equal access to government services, and preserving equal employment opportunities.

EXISTING LAW

Government Code Section 7293. Every local public agency, as defined in Section 54951, serving a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person. The determination of what constitutes a substantial number of non-English-speaking people and a sufficient number of qualified bilingual persons shall be made by the local agency.

The California Constitution, Article 3, Sec 6 (c) provides that the Legislature shall make no law which diminishes the role of English as the common language.

THIS BILL

Provides that city, county, or state governmental entities shall not discriminate against an employee or an applicant for employment on the basis of the ability of the employee or

AB 781 Fact Sheet

Author – Assembly Member Kevin Jeffries (District 66)

applicant to speak a language other than English, unless an ability to speak a language other than English constitutes a bona fide occupational qualification.

SUMMARY

The opportunity to seek and obtain employment without discrimination is a civil right.

One hundred years ago, the National Association for the Advancement of Colored People (NAACP) was founded to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination

Recognizing the importance and sensitivity of equal access to government services, this bill is sponsored by the California State NAACP to foster strategies, programs, and policies that promote intercultural understanding, dialogue and solutions in our multicultural state.

The author and the California NAACP hope to effect statutory changes relating to bilingual hiring requirements in local and state government, and constructively address the implications for employment discrimination against qualified job applicants.

FAQs

In Development

SUPPORT

California State NAACP (Sponsor)

STATUS

Set for hearing in Assembly Judiciary Committee on May 12, 2009

FOR MORE INFORMATION

Malaki Seku-Amen
Legislative Advocate
California State NAACP
(916) 498-1898

BILL NUMBER: AB 781 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 13, 2009

INTRODUCED BY Assembly Member Jeffries

FEBRUARY 26, 2009

~~An act relating to bilingual hiring.~~ An act to add Chapter 13 (commencing with Section 3650) to Division 4 of Title 1 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 781, as amended, Jeffries. ~~Employment: bilingual hiring requirements.~~ Public employment: language.

Existing law deems the opportunity to seek and obtain employment without discrimination, as specified, to be a civil right. Existing law prohibits an employer from refusing to hire a person, or taking certain other actions, based on specified characteristics, unless based on a bona fide occupational qualification.

This bill would ~~express the intent of the Legislature to enact legislation supporting the strategies, programs, and policies that promote intercultural understanding and dialogue, and to effect statutory changes relating to bilingual hiring requirements in local and state government, as specified~~ prohibit a city, county, or state governmental entity from discriminating against an employee or an applicant for employment on the basis of the ability of the employee or applicant to speak a language other than English, unless an ability to speak a language other than English constitutes a bona fide occupational qualification.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 13 (commencing with Section 3650) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 13. DISCRIMINATION IN PUBLIC EMPLOYMENT

3650. A city, county, or state governmental entity shall not discriminate against an employee or an applicant for employment on the basis of the ability of the employee or applicant to speak a language other than English, unless an ability to speak a language other than English constitutes a bona fide occupational qualification.

~~SECTION 1. It is the intent of the Legislature to enact legislation supporting strategies, programs, and policies that promote intercultural understanding and dialogue, and to effect statutory changes relating to bilingual hiring requirements in local and state government and the implications for employment discrimination against qualified job applicants.~~

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

Barbara J. Park
City Attorney

2009 MAY -8 AM 10:28

OAKLAND CITY COUNCIL

REVISED

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR IGNACIO DE LA FUENTE, COUNCILMEMBER JEAN QUAN,
COUNCILMEMBER PATRICIA KERNIGHAN

**Resolution Opposing Assembly Bill 781 (JEFFRIES), "Public Employment:
Language" Relating to Bilingual Hiring Requirements In Local and State
Government**

WHEREAS, On May 8, 2001, the Oakland City Council passed the "Equal Access to Services" Ordinance; and

WHEREAS, the "Equal Access to Services" Ordinance requires city departments to offer bilingual services and materials if a substantial portion of the public utilizing city services does not speak English effectively because it is not their primary language; and

WHEREAS, the City Council made a policy decision eight years ago to establish a form of government that is truly inclusive of all its residents, and

WHEREAS, the City of Oakland is committed to the delivery of effective, courteous and responsive services, and

WHEREAS, California Government Code Section 7290, also known as the Dymally-Altorre Bilingual Services Act, requires that every local public agency serving a substantial number of non-English speaking people, employ a sufficient number of qualified bilingual persons in public contact positions, and

WHEREAS, the City Council determined that the public safety, health, convenience, comfort, property, and general welfare would be furthered by the provisions of the Equal Access to Services Ordinance which established standards and procedures with respect to access to City programs and services by residents who are not fluent in English; and

WHEREAS, on May 8, 2001, the Oakland City Council declared that there are substantial numbers of persons who live, work, and pay taxes in Oakland are unable to communicate effectively in English because their primary language is not English; and

WHEREAS, Oakland's Equal Access Ordinance is consistent with and supplements California's Dymally-Alatorre Bilingual Services Act, Government Code 7290 which requires state and local public agencies serving a substantial number of limited English-speaking people to provide services and materials in the language(s) spoken by those persons; and

WHEREAS, AB 781 is a direct attack on Oakland's Equal Access Ordinance; and

WHEREAS, the AB781 fact sheet states: The problem with the Oakland ordinance, and California law, is three-fold: 1) it does not provide specific methodology guidance for bilingual hiring when more than one shared language population is no less than 10,000, 2) it pits different ethnic groups against each other, and 3) it discriminates against California residents who only speak English; and

WHEREAS, AB 781 would amend state law to allow city, county and state governments to establish bilingual hiring requirements for a job only if the ability to speak a language other than English is a "bona fide occupational qualification" for the job; and

WHEREAS, Oakland's Equal Access Ordinance has been in place for over eight years and has never been legally challenged; and

WHEREAS, Oakland's Equal Access Ordinance specifically states: "This article shall ' be interpreted and applied so as to be consistent with Title VII of the Civil Rights Act of 1964, California's Fair Employment and Housing Act, Americans with Disabilities Act, and any article of the City of Oakland's Charter and so as not to impede or impair the City's obligations to comply with any court order or consent decree;" now, therefore be it

RESOLVED: The City of Oakland declares its opposition for AB 781 (Jeffries); and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, , 200__
PASSED BY THE FOLLOWING VOTE:

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
 AND PRESIDENT BRUNNER

NOES –

ABSENT –

ABSTENTION-

Attest: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California