

STATE OF NEW YORK

6678--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 25, 2021

Introduced by M. of A. WALKER, DICKENS, FRONTUS, PERRY, CRUZ, RICHARDSON, REYES, SIMON, L. ROSENTHAL -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, establishing and maintaining a statewide database of voting and election data, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "John R.
2 Lewis Voting Rights Act of New York (NYVRA)".
3 § 2. Sections 17-100 through 17-170 of article 17 of the election law
4 are designated title 1 and a new title heading is added to read as
5 follows:

6 VIOLATIONS OF THE ELECTIVE FRANCHISE

7 § 3. The article heading of article 17 of the election law is amended
8 to read as follows:

9 [~~VIOLATIONS OF~~] PROTECTING THE ELECTIVE FRANCHISE

10 § 4. Article 17 of the election law is amended by adding a new title 2
11 to read as follows:

12 TITLE 2
13 JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets
[~~-~~] is old law to be omitted.

LBD02423-06-1

Section 17-200. Legislative purpose and statement of public policy.

17-202. Interpretation of laws related to elective franchise.

17-204. Definitions.

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17-210. Assistance for language-minority groups.

17-212. Preclearance.

17-214. Right of action against voter intimidation, deception or obstruction.

17-216. Authority to issue subpoenas.

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17-220. Attorneys' fees.

17-222. Applicability.

17-224. Severability.

§ 17-200. Legislative purpose and statement of public policy. In recognition of the protections for the right to vote provided by the constitution of the state of New York, which substantially exceed the protections for the right to vote provided by the constitution of the United States, and in conjunction with the constitutional guarantees of equal protection, freedom of expression, and freedom of association under the law and against the denial or abridgement of the voting rights of members of a race, color, or language-minority group, it is the public policy of the state of New York to:

1. Encourage participation in the elective franchise by all eligible voters to the maximum extent; and

2. Ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.

§ 17-202. Interpretation of laws related to elective franchise. In further recognition of the protections for the right to vote provided by the constitution of the state of New York, statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right to cast an effective ballot; (b) ensuring that eligible voters are not impaired in registering to vote or voting including having their votes counted, and (c) ensuring equitable access with regard to race, color, and language-minority groups to opportunities to register to vote and to vote.

§ 17-204. Definitions. For the purposes of this title:

1. "At-large" method of election means a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; (b) in which the candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the governing body; or (c) that combines at-large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities. At-large method of election does not include ranked-choice voting, cumulative voting, and limited voting.

2. "District-based" method of election means a method of electing members to the governing body of a political subdivision using a districting or redistricting plan in which each member of the governing body resides within a district or ward that is a divisible part of the political subdivision and is elected only by voters residing within that

1 district or ward, except for a member of the governing body that holds
2 exclusively executive responsibilities.

3 3. "Alternative" method of election means a method of electing members
4 to the governing body of a political subdivision using a method other
5 than at-large or district-based, including, but not limited to, ranked-
6 choice voting, cumulative voting, and limited voting.

7 4. "Political subdivision" means a geographic area of representation
8 created for the provision of government services, including, but not
9 limited to, a county, city, town, village, school district, or any other
10 district organized pursuant to state or local law.

11 5. "Protected class" means a class of eligible voters who are members
12 of a race, color, or language-minority group, as referenced and defined
13 in the federal voting rights act.

14 6. "Racially polarized voting" means voting in which there is a
15 difference in the candidate or electoral choice preferred by members in
16 a protected class, and the candidate or electoral choice preferred by
17 the rest of the electorate. The methodologies for estimating group
18 voting behavior as approved in applicable federal cases to enforce the
19 federal voting rights act to establish racially polarized voting may be
20 used for purposes of this subdivision to prove that elections are char-
21 acterized by racially polarized voting, but those methodologies shall
22 not be the exclusive means of proving racially polarized voting.

23 7. "Federal voting rights act" means the federal Voting Rights Act of
24 1965, 52 U.S.C. § 10301 et seq.

25 8. The "civil rights bureau" means the civil rights bureau of the
26 office of the attorney general.

27 § 17-206. Rights of action. 1. Right of action against voter
28 suppression. (a) No voting qualification, prerequisite to voting, law,
29 ordinance, standard, practice, procedure, regulation, or policy shall be
30 enacted or implemented by any board of elections or political subdivi-
31 sion in a manner that results in a denial or abridgement of the right of
32 any member of a protected class to vote.

33 (b) A violation is established if, based on the totality of the
34 circumstances, the ability of members of the protected class to elect
35 candidates of their choice or influence the outcome of elections is
36 impaired.

37 (c) For political subdivisions where either the primary or general
38 election is held on a date that is not concurrent with the primary or
39 general election dates for state, county, or city office as established
40 in section eight of article three or section eight of article thirteen
41 of the constitution, and in state law, there shall be a presumption that
42 the date of election results in the denial or abridgement of the right
43 to vote where for three consecutive general elections in which there is
44 at least one contested race for an office, the number of actual voters
45 in each contested election is less than twenty-five percent of the total
46 number of votes cast in the most recent general election for the presi-
47 dency of the United States by voters in the political subdivision, or in
48 which, for any protected class consisting of at least twenty-five thou-
49 sand citizens of voting age or whose members comprise at least ten
50 percent of the citizen voting age population, the percent of members of
51 that protected class that are actual voters is at least twenty-five
52 percent lower than the percent of citizens of voting age that are not
53 members of that protected class that are actual voters.

54 2. Right of action against vote dilution. (a) A method of election,
55 including at-large, district-based, or alternative, shall not have the
56 effect of impairing the ability of members of a protected class to elect

1 candidates of their choice or influence the outcome of elections, as a
2 result of the dilution or the abridgment of the rights of members of the
3 protected class.

4 (b) A violation of this subdivision shall be:

5 (i) established if a political subdivision uses an at-large method of
6 election and it is shown that either: (A) voting patterns of members of
7 the protected class within the political subdivision are racially polar-
8 ized; or (B) under the totality of the circumstances, the ability of
9 members of the protected class to elect candidates of their choice or
10 influence the outcome of elections is impaired; or

11 (ii) established if a political subdivision uses a district-based or
12 alternative method of election and it is shown that candidates or elec-
13 toral choices preferred by members of the protected class would usually
14 be defeated, and either: (A) voting patterns of members of the protected
15 class within the political subdivision are racially polarized; or (B)
16 under the totality of the circumstances, the ability of members of the
17 protected class to elect candidates of their choice or influence the
18 outcome of elections is impaired; or

19 (iii) presumptively established if it is shown that the political
20 subdivision used race, color, or language-minority group, or another
21 characteristic that serves as a proxy for race, color, or language-mi-
22 nority group, for the purpose of districting or redistricting. A poli-
23 tical subdivision shall only rebut this presumption by showing that
24 race, color, or language-minority group, or another characteristic that
25 serves as a proxy for race, color, or language-minority group, was used
26 to the extent necessary to comply with this title, the federal voting
27 rights act, the constitution, or the constitution of the United States.

28 (c) In assessing whether voting patterns of members of the protected
29 class within the political subdivision are racially polarized or whether
30 candidates or electoral choices preferred by members of the protected
31 class would usually be defeated: (i) elections conducted prior to the
32 filing of an action pursuant to this subdivision are more probative than
33 elections conducted after the filing of the action; (ii) evidence
34 concerning elections for members of the governing body of the political
35 subdivision are more probative than evidence concerning other elections;
36 (iii) statistical evidence is more probative than non-statistical
37 evidence; (iv) where there is evidence that more than one protected
38 class of eligible voters are politically cohesive in the political
39 subdivision, members of each of those protected classes may be combined;
40 (v) evidence concerning the intent on the part of the voters, elected
41 officials, or the political subdivision to discriminate against a
42 protected class is not required; (vi) evidence that voting patterns and
43 election outcomes could be explained by factors other than racially
44 polarized voting, including but not limited to partisanship, shall not
45 be considered; (vii) evidence that sub-groups within a protected class
46 have different voting patterns shall not be considered; (viii) evidence
47 concerning whether members of a protected class are geographically
48 compact or concentrated shall not be considered, but may be a factor in
49 determining an appropriate remedy; and (ix) evidence concerning project-
50 ed changes in population or demographics shall not be considered, but
51 may be a factor, in determining an appropriate remedy.

52 3. Evaluation of totality of the circumstances. In assessing whether,
53 under the totality of the circumstances, the ability of members of the
54 protected class to elect candidates of their choice or influence the
55 outcome of elections is impaired, factors that may be considered shall
56 include, but not be limited to: (a) the history of discrimination in the

1 political subdivision, geographic region, or the state; (b) the extent
2 to which members of the protected class have been elected to office in
3 the political subdivision; (c) the use of any voting qualification,
4 prerequisite to voting, law, ordinance, standard, practice, procedure,
5 regulation, or policy that may enhance the dilutive effects of the
6 election scheme; (d) denial of access of either eligible voters or
7 candidates who are members of the protected class to those processes
8 determining which groups of candidates will receive access to the
9 ballot, financial support, or other support in a given election; (e) the
10 extent to which members of the protected class contribute to political
11 campaigns at lower rates; (f) the extent to which members of a protected
12 class in the state or political subdivision vote at lower rates than
13 other members of the electorate; (g) the extent to which members of the
14 protected class are disadvantaged in areas including but not limited to
15 education, employment, health, criminal justice, housing, land use, or
16 environmental protection; (h) the extent to which members of the
17 protected class are disadvantaged in other areas which may hinder their
18 ability to participate effectively in the political process; (i) the use
19 of overt or subtle racial appeals in political campaigns; (j) a signif-
20 icant lack of responsiveness on the part of elected officials to the
21 particularized needs of members of the protected class; and (k) whether
22 the political subdivision has a compelling policy justification for
23 adopting or maintaining the method of election or the voting qualifica-
24 tion, prerequisite to voting, law, ordinance, standard, practice, proce-
25 dure, regulation, or policy. No factor is dispositive or necessary to
26 establish the existence of racially polarized voting. Evidence of these
27 factors concerning the state, private actors, or other political subdi-
28 visions in the geographic region may be considered but is less probative
29 than evidence concerning the political subdivision itself.

30 4. Standing. Any aggrieved person, organization whose membership
31 includes or is likely to include aggrieved persons, organization whose
32 mission would be frustrated by a violation of this section, organization
33 that would expend resources in order to fulfill its mission as a result
34 of a violation of this section, or the attorney general may file an
35 action pursuant to this section in the supreme court of the county in
36 which the political subdivision is located.

37 5. Remedies. (a) Upon a finding of a violation of any provision of
38 this section, the court shall implement appropriate remedies that are
39 tailored to remedy the violation. Remedies may include, but shall not be
40 limited to:

41 (i) a district-based method of election;
42 (ii) an alternative method of election;
43 (iii) new or revised districting or redistricting plans;
44 (iv) elimination of staggered elections so that all members of the
45 governing body are elected on the same date;
46 (v) increasing the size of the governing body;
47 (vi) moving the dates of elections to be concurrent with the primary
48 or general election dates for state, county, or city office as estab-
49 lished in section eight of article three or section eight of article
50 thirteen of the constitution;
51 (vii) additional voting hours or days;
52 (viii) additional polling locations;
53 (ix) additional means of voting such as voting by mail;
54 (x) ordering of special elections;
55 (xi) requiring expanded opportunities for voter registration;
56 (xii) requiring additional voter education;

1 (xiii) modifying the election calendar; or

2 (xiv) the restoration or addition of persons to registration lists.

3 (b) The court shall only adopt a remedy that will not diminish the
4 ability of minority groups to participate in the political process and
5 to elect their preferred candidates to office. The court shall consider
6 proposed remedies by any parties and interested non-parties, and shall
7 not provide deference or priority to a proposed remedy because it is
8 proposed by the political subdivision. This title gives the court
9 authority to implement remedies notwithstanding any other provision of
10 law, including any other state or local law.

11 6. Procedures for implementing new or revised districting or redis-
12 tricting plans. The governing body of a political subdivision with the
13 authority under this title and all applicable state and local laws to
14 enact and implement a new method of election that will replace the poli-
15 tical subdivision's at-large method of election with a district-based or
16 alternative method of election, or enact and implement a new districting
17 or redistricting plan, shall undertake each of the steps enumerated in
18 this subdivision, if proposed subsequent to receipt of a NYVRA notifica-
19 tion letter, as defined in subdivision seven of this section, or the
20 filing of a claim pursuant to this title or the federal voting rights
21 act.

22 (a) Before drawing a draft districting or redistricting plan or plans
23 of the proposed boundaries of the districts, the political subdivision
24 shall hold at least two public hearings over a period of no more than
25 thirty days, at which the public is invited to provide input regarding
26 the composition of the districts. Before these hearings, the political
27 subdivision may conduct outreach to the public, including to non-Engl-
28 ish-speaking communities, to explain the districting or redistricting
29 process and to encourage public participation.

30 (b) After all draft districting or redistricting plans are drawn, the
31 political subdivision shall publish and make available for release at
32 least one draft districting or redistricting plan and, if members of the
33 governing body of the political subdivision will be elected in their
34 districts at different times to provide for staggered terms of office,
35 the potential sequence of the elections. The political subdivision shall
36 also hold at least two additional hearings over a period of no more than
37 forty-five days, at which the public is invited to provide input regard-
38 ing the content of the draft districting or redistricting plan or plans
39 and the proposed sequence of elections, if applicable. The draft
40 districting or redistricting plan or plans shall be published at least
41 seven days before consideration at a hearing. If the draft districting
42 or redistricting plan or plans are revised at or following a hearing, the
43 revised versions shall be published and made available to the public for
44 at least seven days before being adopted.

45 (c) In determining the final sequence of the district elections
46 conducted in a political subdivision in which members of the governing
47 body will be elected at different times to provide for staggered terms
48 of office, the governing body shall give special consideration to the
49 purposes of this title, and it shall take into account the preferences
50 expressed by members of the districts.

51 7. Notification requirement and safe harbor for judicial actions.
52 Before commencing a judicial action against a political subdivision
53 under this section, a prospective plaintiff shall send by certified mail
54 a written notice to the clerk of the political subdivision, or, if the
55 political subdivision does not have a clerk, the governing body of the
56 political subdivision, against which the action would be brought,

1 asserting that the political subdivision may be in violation of this
2 title. This written notice shall be referred to as a "NYVRA notification
3 letter" in this title. For actions against a school district or any
4 other political subdivision that holds elections governed by the educa-
5 tion law, the prospective plaintiff shall also send by certified mail a
6 copy of the NYVRA notification letter to the commissioner of education.

7 (a) A prospective plaintiff shall not commence a judicial action
8 against a political subdivision under this section within fifty days of
9 sending to the political subdivision a NYVRA notification letter.

10 (b) Before receiving a NYVRA notification letter, or within fifty days
11 of mailing of a NYVRA notification letter, the governing body of a poli-
12 tical subdivision may pass a resolution affirming: (i) the political
13 subdivision's intention to enact and implement a remedy for a potential
14 violation of this title; (ii) specific steps it will undertake to facil-
15 itate approval and implementation of such a remedy; and (iii) a schedule
16 for enacting and implementing such a remedy. Such a resolution shall be
17 referred to as a "NYVRA resolution" in this title. If a political subdi-
18 vision passes a NYVRA resolution, a prospective plaintiff shall not
19 commence an action to enforce this section against the political subdi-
20 vision within ninety days of the resolution's passage. For actions
21 against a school district, the commissioner of education may order the
22 enactment of an NYVRA resolution pursuant to the commissioner's authori-
23 ty under section three hundred five of the education law.

24 (c) If the governing body of a political subdivision lacks the author-
25 ity under this title or applicable state law or local laws to enact or
26 implement a remedy identified in a NYVRA resolution within ninety days
27 after the passage of the NYVRA resolution, or if the political subdivi-
28 sion is a covered entity as defined under section 17-212 of this title,
29 the governing body of the political subdivision may undertake the steps
30 enumerated in the following provisions upon passage of a NYVRA resol-
31 ution:

32 (i) The governing body of the political subdivision may approve a
33 proposed remedy that complies with this title and submit such a proposed
34 remedy to the civil rights bureau. Such a submission shall be referred
35 to as a "NYVRA proposal" in this title.

36 (ii) Prior to passing a NYVRA proposal, the political subdivision
37 shall hold at least one public hearing, at which the public is invited
38 to provide input regarding the NYVRA proposal. Before this hearing, the
39 political subdivision may conduct outreach to the public, including to
40 non-English-speaking communities, to encourage public participation.

41 (iii) Within sixty days of receipt of a NYVRA proposal, the civil
42 rights bureau shall either grant or deny approval of the NYVRA proposal.

43 (iv) The civil rights bureau shall only grant approval to the NYVRA
44 proposal if it concludes that: (A) the political subdivision may be in
45 violation of this title; (B) the NYVRA proposal would remedy any poten-
46 tial violation of this title; (C) the NYVRA proposal is unlikely to
47 violate the constitution or any federal law; (D) the NYVRA proposal will
48 not diminish the ability of minority groups to participate in the poli-
49 tical process and to elect their preferred candidates to office; and (E)
50 implementation of the NYVRA proposal is feasible. The civil rights
51 bureau may grant approval to the NYVRA proposal notwithstanding any
52 other provision of law, including any other state or local law.

53 (v) If the civil rights bureau grants approval, the NYVRA proposal
54 shall be enacted and implemented immediately, notwithstanding any other
55 provision of law, including any other state or local law. If the poli-
56 tical subdivision is a covered entity as defined under section 17-212 of

1 this title, there shall be no need for the political subdivision to also
2 obtain preclearance for the NYVRA proposal pursuant to such section.

3 (vi) If the civil rights bureau denies approval, the NYVRA proposal
4 shall not be enacted or implemented. The civil rights bureau shall
5 interpose objections explaining its basis and may, in its discretion,
6 indicate another NYVRA proposal for which it would grant approval.

7 (vii) If the civil rights bureau does not respond, the NYVRA proposal
8 shall not be enacted or implemented.

9 (d) A political subdivision that has passed a NYVRA resolution may
10 enter into an agreement with a prospective plaintiff who sends a NYVRA
11 notification letter providing that such a prospective plaintiff shall
12 not commence an action to enforce this section against the political
13 subdivision for an additional ninety days. This written agreement may be
14 referred to as a "NYVRA extension agreement". The NYVRA extension agree-
15 ment shall include a requirement that either the political subdivision
16 shall enact and implement a remedy that complies with this title or the
17 political subdivision shall pass a NYVRA proposal and submit it to the
18 civil rights bureau.

19 (e) If, pursuant to a process commenced by a NYVRA notification
20 letter, a political subdivision enacts or implements a remedy or the
21 civil rights bureau grants approval to a NYVRA proposal, a prospective
22 plaintiff who sent the NYVRA notification letter may, within thirty days
23 of the enactment or implementation of the remedy or approval of the
24 NYVRA proposal, demand reimbursement for the cost of the work product
25 generated to support the NYVRA notification letter. A prospective plain-
26 tiff shall make the demand in writing and shall substantiate the demand
27 with financial documentation, such as a detailed invoice for demography
28 services or for the analysis of voting patterns in the political subdi-
29 vision. A political subdivision may request additional documentation if
30 the provided documentation is insufficient to corroborate the claimed
31 costs. A political subdivision shall reimburse a prospective plaintiff
32 for reasonable costs claimed, or in an amount to which the parties mutu-
33 ally agree. The cumulative amount of reimbursements to all prospective
34 plaintiffs, except for actions brought by the attorney general, shall
35 not exceed forty-three thousand dollars, as adjusted annually to the
36 consumer price index for all urban consumers, United States city aver-
37 age, as published by the United States department of labor. To the
38 extent a prospective plaintiff who sent the NYVRA notification letter
39 and a political subdivision are unable to come to a mutual agreement,
40 either party may file a declaratory judgment action to obtain a clarifi-
41 cation of rights.

42 (f) Notwithstanding the provisions of this subdivision, if the first
43 day for designating petitions for a political subdivision's next regular
44 election to select members of its governing board has begun or is sched-
45 uled to begin within thirty days, or if a political subdivision is sche-
46 duled to conduct any election within one hundred twenty days, a plain-
47 tiff alleging any violation of this title may commence a judicial action
48 against a political subdivision under this section, provided that the
49 relief sought by such a plaintiff includes preliminary relief for that
50 election. Prior to or concurrent with commencing such a judicial action,
51 any such plaintiff shall also submit a NYVRA notification letter to the
52 political subdivision. If a judicial action commenced under this
53 provision is withdrawn or dismissed for mootness because the political
54 subdivision has enacted or implemented a remedy or the civil rights
55 bureau has granted approval of a NYVRA proposal pursuant to a process

1 commenced by a NYVRA notification letter, any such plaintiff may only
2 demand reimbursement pursuant to this subdivision.

3 § 17-208. Maintenance of voting and election data. 1. Establishment
4 of a statewide database. There shall be established within the state
5 university of New York a repository of the data necessary to assist the
6 state and all political subdivisions with evaluating whether and to what
7 extent existing laws and practices with respect to voting and elections
8 are consistent with the public policy expressed in this title, imple-
9 menting best practices in voting and elections to achieve the purposes
10 of this title, and to investigate potential infringements upon the right
11 to vote. This repository shall be referred to as the "statewide data-
12 base" in this title.

13 2. Director of the statewide database. The operation of the statewide
14 database shall be the responsibility of the director of the statewide
15 database, hereinafter referred to in this title as the "director", who
16 shall be a member of the faculty of the state university of New York
17 with doctoral-level expertise in demography, statistical analysis, and
18 electoral systems. The director shall be appointed by the governor.

19 3. Statewide database staff. The director shall appoint such staff as
20 are necessary to implement and maintain the statewide database.

21 4. Data, information, and estimates maintained. The statewide database
22 shall maintain in electronic format at least the following data and
23 records for at least the previous twelve year period:

24 (a) Estimates of the total population, voting age population, and
25 citizen voting age population by race, color, and language-minority
26 group, broken down to the election district level on a year-by-year
27 basis for every political subdivision in the state, based on data from
28 the United States census bureau, American community survey, or data of
29 comparable quality collected by a public office.

30 (b) Election results at the election district level for every state-
31 wide election and every election in every political subdivision.

32 (c) Contemporaneous voter registration lists, voter history files,
33 election day poll site locations, and early voting site locations, for
34 every election in every political subdivision.

35 (d) Contemporaneous maps, descriptions of boundaries, and shapefiles
36 for election districts.

37 (e) Election day or early voting poll sites including, but not limited
38 to, lists of election districts assigned to each polling place, if
39 applicable.

40 (f) Districting or redistricting plans for every election in every
41 political subdivision.

42 (g) Any other data that the director deems advisable to maintain in
43 furtherance of the purposes of this title.

44 5. Public availability of data. Except for any data, information, or
45 estimates that identifies individual voters, the data, information, and
46 estimates maintained by the statewide database shall be posted online
47 and made available to the public at no cost.

48 6. Data on race, color, and language-minority groups. The statewide
49 database shall prepare any estimates made pursuant to this section by
50 applying the most advanced, peer-reviewed, and validated methodologies.

51 7. Calculation and publication of political subdivisions required to
52 provide assistance to language-minority groups. On or before February
53 twenty-eighth, two thousand twenty-three and every third year thereaft-
54 er, the statewide database shall publish on its web site and transmit to
55 the state board of elections for dissemination to the county boards of
56 elections and for the state education department a list of political

1 subdivisions required pursuant to this section to provide assistance to
2 members of language-minority groups and each language in which those
3 political subdivisions are required to provide assistance. The boards of
4 elections shall transmit the list described herein to all political
5 subdivisions within their jurisdiction.

6 8. Duty to send data and information to statewide database. Upon the
7 certification of election results and the completion of the voter histo-
8 ry file after each election, each election authority shall transmit
9 copies of: (a) election results at the election district level; (b)
10 contemporaneous voter registration lists; (c) voter history files; (d)
11 maps, descriptions, and shapefiles for election districts; and (e) lists
12 of election day poll site and early voting sites and lists, shapefiles,
13 or descriptions of the election districts assigned to each election day
14 poll site or early voting site. As used in this subdivision, the term
15 "election authority" refers to the agency primarily responsible for
16 maintaining the records listed in subdivision four of this section and
17 include any board of election, as well as general purpose local govern-
18 ments or special purpose local governments that administer their own
19 elections or maintain their own voting and election records.

20 9. Technical assistance to political subdivisions. Staff at the state-
21 wide database may provide non-partisan technical assistance to political
22 subdivisions, scholars, and the general public seeking to use the
23 resources of the statewide database.

24 10. Presumption of validity. The data, information, and estimates
25 maintained by the statewide database shall be granted a rebuttable
26 presumption of validity by any court concerning any claim brought pursu-
27 ant to this title.

28 § 17-210. Assistance for language-minority groups. 1. Political subdi-
29 visions required to provide language assistance. A board of elections or
30 a political subdivision that administers elections shall provide
31 language-related assistance in voting and elections to a language-minor-
32 ity group in a political subdivision if the director determines, based
33 on data from the American community survey, or data of comparable quali-
34 ty collected by a public office, that:

35 (a) more than two percent of the citizens of voting age of a political
36 subdivision are members of a single language-minority group and speak
37 English "less than very well" according to the American community
38 survey;

39 (b) more than four thousand of the citizens of voting age of such
40 political subdivision are members of a single language-minority group
41 and speak English "less than very well" according to the American commu-
42 nity survey; or

43 (c) in the case of a political subdivision that contains all or any
44 part of a Native American reservation, more than two percent of the
45 Native American citizens of voting age within the Native American reser-
46 vation are members of a single language-minority group and speak English
47 "less than very well" according to the American community survey. For
48 the purposes of this paragraph, "Native American" is defined to include
49 any persons recognized by the United States census bureau or New York as
50 "American Indian" or "Alaska Native".

51 2. Language assistance to be provided. When the director determines
52 that a board of elections or political subdivision shall provide
53 language assistance to a particular minority group, such board of
54 elections or political subdivision shall provide voting materials in the
55 covered language of an equal quality of the corresponding English
56 language materials, including registration or voting notices, forms,

1 instructions, assistance, or other materials or information relating to
2 the electoral process, including ballots. Whenever any such board of
3 elections or political subdivision provides any registration or voting
4 notices, forms, instructions, assistance, or other materials or informa-
5 tion relating to the electoral process, including ballots, in a covered
6 political subdivision, it shall provide them in the language of the
7 applicable minority group as well as in the English language, provided
8 that where the language of the applicable minority group is oral or
9 unwritten or in the case of some American Indians, if the predominant
10 language is historically unwritten, the board of elections or political
11 subdivision is only required to furnish oral instructions, assistance,
12 or other information relating to registration and voting.

13 3. Action for declaratory judgment for English-only voting materials.
14 A board of elections or political subdivision that shall provide
15 language assistance to a particular minority group, which seeks to
16 provide English-only materials notwithstanding the determination of the
17 director, may file an action against the state for a declaratory judg-
18 ment permitting such provision. The court shall grant the requested
19 relief if it finds that the determination of the director was unreason-
20 able or an abuse of discretion.

21 § 17-212. Preclearance. 1. Preclearance. To ensure that the right to
22 vote is not denied or abridged on account of race, color, or language-
23 minority group, as a result of the enactment or implementation of a
24 covered policy, as defined in subdivision two of this section, after the
25 effective date of this section, the enactment or implementation of a
26 covered policy by a covered entity, as defined in subdivision three of
27 this section, shall be subject to preclearance by the civil rights
28 bureau or by a designated court as set forth in this section.

29 2. Covered policies. A "covered policy" shall include any new or modi-
30 fied voting qualification, prerequisite to voting, law, ordinance, stan-
31 dard, practice, procedure, regulation, or policy concerning any of the
32 following topics:

- 33 (a) Districting or redistricting;
- 34 (b) Method of election;
- 35 (c) Form of government;
- 36 (d) Annexation of a political subdivision;
- 37 (e) Incorporation of a political subdivision;
- 38 (f) Consolidation or division of political subdivisions;
- 39 (g) Removal of voters from enrollment lists or other list maintenance
40 activities;
- 41 (h) Number, location, or hours of any election day or early voting
42 poll site;
- 43 (i) Dates of elections and the election calendar, except with respect
44 to special elections;
- 45 (j) Registration of voters;
- 46 (k) Assignment of election districts to election day or early voting
47 poll sites;
- 48 (l) Assistance offered to members of a language-minority group; and
- 49 (m) The civil rights bureau may designate additional topics for inclu-
50 sion in this list pursuant to a rule promulgated under the state admin-
51 istrative procedure act, if it determines that a new or modified voting
52 qualification, prerequisite to voting, law, ordinance, standard, prac-
53 tice, procedure, regulation, or policy concerning such topics may have
54 the effect of denying or abridging the right to vote on account of race,
55 color, or language-minority group.

1 3. Covered entity. A "covered entity" shall include: (a) any political
2 subdivision which, within the previous twenty-five years, has become
3 subject to a court order or government enforcement action based upon a
4 finding of any violation of this title, the federal voting rights act,
5 the fifteenth amendment to the United States constitution, or a voting-
6 related violation of the fourteenth amendment to the United States
7 constitution; (b) any political subdivision which, within the previous
8 five years, has failed to comply with its obligations to provide data or
9 information to the statewide database, as stated in section 17-208 of
10 this title; (c) any political subdivision which, within the previous
11 twenty-five years, has become subject to at least three court orders or
12 government enforcement actions based upon a finding of any violation of
13 any state or federal civil rights law or the fourteenth amendment to the
14 United States constitution concerning discrimination against members of
15 a protected class; (d) any county in which, based on data provided by
16 the division of criminal justice services, the combined misdemeanor and
17 felony arrest rate of members of any protected class consisting of at
18 least ten thousand citizens of voting age or whose members comprise at
19 least ten percent of the citizen voting age population of the county,
20 exceeds that of the citizen voting age population of the county as a
21 whole by at least twenty percent at any point within the previous ten
22 years; or (e) any political subdivision in which, based on data made
23 available by the United States census, the dissimilarity index of any
24 protected class consisting of at least twenty-five thousand citizens of
25 voting age or whose members comprise at least ten percent of the citizen
26 voting age population of the political subdivision, is in excess of
27 fifty with respect to non-Hispanic white citizens of voting age within
28 the political subdivision at any point within the previous ten years. If
29 any covered entity is a political subdivision in which a board of
30 elections has been established, that board of elections shall also be
31 deemed a covered entity. If any political subdivision in which a board
32 of elections has been established contains a covered entity fully within
33 its borders, that political subdivision and that board of elections
34 shall both be deemed a covered entity.

35 4. Preclearance by civil rights bureau. A covered entity may obtain
36 preclearance for a covered policy from the civil rights bureau pursuant
37 to the following process:

38 (a) The covered entity shall submit the covered policy in writing to
39 the civil rights bureau of the office of the attorney general. If the
40 covered entity is a county or city board of elections, it shall contem-
41 poraneously provide a copy of the covered policy to the state board of
42 elections.

43 (b) The civil rights bureau shall grant or deny preclearance within
44 the following time periods:

45 (i) For any covered policy concerning the designation of poll sites or
46 the assignment of election districts to poll sites, whether for election
47 day or early voting, the civil rights bureau shall grant or deny
48 preclearance within thirty days following the receipt of submission. If
49 the civil rights bureau grants preclearance, it may, in its discretion,
50 designate preclearance as "preliminary" in which case the civil rights
51 bureau may deny preclearance within sixty days following the receipt of
52 submission of the covered policy.

53 (ii) For any other covered policy, the civil rights bureau shall grant
54 or deny preclearance within sixty days following the receipt of
55 submission of the covered policy.

1 (iii) For any covered policy concerning the establishment of a
2 district-based or alternative method of election, districting or redis-
3 tricting plans, or a change to the form of government of a political
4 subdivision, the civil rights bureau may invoke up to two extensions of
5 ninety days.

6 (c) The civil rights bureau shall provide an opportunity for any
7 interested party to submit written comments concerning any covered poli-
8 cy prior to granting or denying preclearance.

9 (d) The civil rights bureau shall grant preclearance only if it deter-
10 mines that the covered policy will not diminish the ability of minority
11 groups to participate in the political process and to elect their
12 preferred candidates to office. If the civil rights bureau grants
13 preclearance, the covered entity may enact or implement the covered
14 policy immediately.

15 (e) If the civil rights bureau denies preclearance, the civil rights
16 bureau shall interpose objections explaining its basis and the covered
17 policy shall not be enacted or implemented.

18 (f) If the civil rights bureau fails to respond within the time for
19 response as established in this section, the covered policy shall be
20 deemed precleared and the covered entity may enact or implement the
21 covered policy.

22 (g) Appeal of any denial by the civil rights bureau may be heard in
23 the supreme court for the county of New York, from which appeal may be
24 taken according to the ordinary rules of appellate procedure. Due to the
25 frequency and urgency of elections, actions brought pursuant to this
26 section shall be subject to expedited pretrial and trial proceedings and
27 receive an automatic calendar preference on appeal.

28 5. Preclearance by a designated court. A covered entity may obtain
29 preclearance for a covered policy from a court pursuant to the following
30 process:

31 (a) The covered entity shall submit the covered policy in writing to
32 the following designated court in the judicial department within which
33 the covered entity is located: (i) first judicial department: New York
34 county; (ii) second judicial department: Westchester county; (iii)
35 third judicial department: Albany county; and (iv) fourth judicial
36 department: Erie county. If the covered entity is a county or city
37 board of elections, it shall contemporaneously provide a copy of the
38 covered policy to the state board of elections.

39 (b) The covered entity shall contemporaneously provide a copy of the
40 covered policy to the civil rights bureau. The failure of the covered
41 entity to provide a copy of the covered policy to the civil rights
42 bureau will result in an automatic denial of preclearance.

43 (c) The court shall grant or deny preclearance within sixty days
44 following the receipt of submission of the covered policy.

45 (d) The court shall grant preclearance only if it determines that the
46 covered policy will not diminish the ability of minority groups to
47 participate in the political process and to elect their preferred candi-
48 dates to office. If the court grants preclearance, the covered entity
49 may enact or implement the covered policy immediately.

50 (e) If the court denies preclearance, or fails to respond within sixty
51 days, the covered policy shall not be enacted or implemented.

52 (f) Appeal of any denial may be taken according to the ordinary rules
53 of appellate procedure. Due to the frequency and urgency of elections,
54 actions brought pursuant to this section shall be subject to expedited
55 pretrial and trial proceedings and receive an automatic calendar prefer-
56 ence on appeal.

6. Failure to seek or obtain preclearance. If any covered entity enacts or implements a covered policy without seeking preclearance pursuant to this section, or enacts or implements a covered policy notwithstanding the denial of preclearance, either the civil rights bureau or any other party with standing to bring an action under this title may bring an action to enjoin the covered policy and to seek sanctions against the political subdivision and officials in violation.

7. Lookback review. (a) For a period of one hundred eighty days beginning on the effective date of this section, the civil rights bureau may, in its discretion, initiate a lookback review in which it may deny clearance to certain covered policies that had been previously enacted by covered jurisdictions.

(b) The civil rights bureau may only initiate a lookback review of covered policies that were enacted or implemented by a covered jurisdiction on or after the date on which this title takes effect and prior to the effective date of this section.

(c) In order to initiate a lookback review, the civil rights bureau must provide notice to a covered entity of its decision to review a covered policy enacted or implemented by that covered entity. Upon receipt of such notice, the covered entity shall submit the covered policy in writing to the civil rights bureau within thirty days.

(d) Upon receipt of the covered policy, the civil rights bureau may deny clearance to the covered policy within ninety days if it determines that the covered policy is likely to diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office.

(e) If the civil rights bureau denies clearance to a covered policy pursuant to this subdivision, the civil rights bureau shall interpose objections explaining its basis and the covered policy shall not be enacted or implemented; however, denial of clearance shall not provide a basis to invalidate any elections previously conducted pursuant to the covered policy.

(f) Appeal of any denial of clearance by the civil rights bureau may be heard in the supreme court for the county of New York, from which appeal may be taken according to the ordinary rules of appellate procedure. Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.

(g) The civil rights bureau shall provide opportunity for any interested party to submit written comments concerning any covered policy during the lookback period.

8. Rules and regulations. The civil rights bureau may promulgate such rules and regulations pursuant to the state administrative procedure act as are necessary to effectuate the purposes of this section.

§ 17-214. Right of action against voter intimidation, deception or obstruction. 1. (a) No person, whether acting under color of law or otherwise, may engage in acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise.

(b) A violation of this subdivision shall be:

(i) established if a person uses or threatens to use any force, violence, restraint, abduction or duress, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submit-

1 ted to voters at such election; to place or refrain from placing their
2 name upon a registry of voters; or to request or refrain from requesting
3 an absentee ballot; or

4 (ii) established if a person uses any deceptive or fraudulent device,
5 contrivance or communication, that impedes, prevents or otherwise inter-
6 feres with the free exercise of the elective franchise by any person, or
7 that causes or will reasonably have the effect of causing any person to
8 vote or refrain from voting in general or for or against any particular
9 person or for or against any proposition submitted to voters at such
10 election; to place or refrain from placing their name upon a registry of
11 voters; or to request or refrain from requesting an absentee ballot; or

12 (iii) established if a person obstructs, impedes, or otherwise inter-
13 feres with access to any polling place or elections office, or
14 obstructs, impedes, or otherwise interferes with any voter in any manner
15 that causes or will reasonably have the effect of causing any delay in
16 voting or the voting process, including the canvassing and tabulation of
17 ballots.

18 2. Standing. Any aggrieved persons, organization whose membership
19 includes or is likely to include aggrieved persons, organization whose
20 mission would be frustrated by a violation of this section, organization
21 that would expend resources in order to fulfill its mission as a result
22 of a violation of this section, or the attorney general may file an
23 action pursuant to this section in the supreme court of the county in
24 which the alleged violation of this section occurred.

25 3. Remedies. Upon a finding of a violation of any provision of this
26 section, the court shall implement appropriate remedies that are
27 tailored to remedy the violation, including but not limited to providing
28 for additional time to cast a ballot that may be counted in the election
29 at issue. This title gives the court authority to implement remedies
30 notwithstanding any other provision of state or local law, including any
31 other state or local law. Any party who shall violate any of the
32 provisions of the foregoing section or who shall aid the violation of
33 any of said provisions shall be liable to any prevailing plaintiff party
34 for damages, including nominal damages for any violation, and compensa-
35 tory or punitive damages for any intentional violation.

36 § 17-216. Authority to issue subpoenas. In any action or investigation
37 to enforce any provision of this title, the attorney general shall have
38 the authority to take proof and determine relevant facts and to issue
39 subpoenas in accordance with the civil practice law and rules.

40 § 17-218. Expedited judicial proceedings and preliminary relief.
41 Because of the frequency of elections, the severe consequences and irre-
42 parable harm of holding elections under unlawful conditions, and the
43 expenditure to defend potentially unlawful conditions that benefit
44 incumbent officials, actions brought pursuant to this title shall be
45 subject to expedited pretrial and trial proceedings and receive an auto-
46 matic calendar preference. In any action alleging a violation of this
47 section in which a plaintiff party seeks preliminary relief with respect
48 to an upcoming election, the court shall grant relief if it determines
49 that: (a) plaintiffs are more likely than not to succeed on the merits;
50 and (b) it is possible to implement an appropriate remedy that would
51 resolve the alleged violation in the upcoming election.

52 § 17-220. Attorneys' fees. In any action to enforce any provision of
53 this title, the court shall allow the prevailing plaintiff party, other
54 than the state or political subdivision thereof, a reasonable attorneys'
55 fee, litigation expenses including, but not limited to, expert witness
56 fees and expenses as part of the costs. A plaintiff will be deemed to

1 have prevailed when, as a result of litigation, the defendant party
2 yields much or all of the relief sought in the suit. Prevailing defend-
3 ant parties shall not recover any costs, unless the court finds the
4 action to be frivolous, unreasonable, or without foundation.

5 § 17-222. Applicability. The provisions of this title shall apply to
6 all elections for any elected office or electoral choice within the
7 state or any political subdivision. The provisions of this title shall
8 apply notwithstanding any other provision of law, including any other
9 state law or local law.

10 § 17-224. Severability. If any provision of this title or its applica-
11 tion to any person, political subdivision, or circumstance is held
12 invalid, the invalidity shall not affect other provisions or applica-
13 tions of this title which can be given effect without the invalid
14 provision or application, and to this end the provisions of this title
15 are severable.

16 § 5. This act shall take effect immediately; provided, however, that
17 paragraph (c) of subdivision seven of section 17-206 of the election law
18 as added by section four of this act shall take effect one year after it
19 shall have become a law; and provided further, however, that sections
20 17-208 and 17-210 of the election law as added by section four of this
21 act shall take effect three years after it shall have become a law; and
22 provided further, however, that section 17-212 of the election law, as
23 added by section four of this act, shall take effect one year after the
24 attorney general certifies that the office of the attorney general is
25 prepared to execute the duties assigned in section four of this act, if
26 after the expiration of one year the attorney general requires more time
27 to certify that the office of the attorney general is prepared to
28 execute the duties assigned in section four of this act, the attorney
29 general, may, for good cause shown, apply to the governor for such an
30 extension of time. The governor may grant or deny an extension of up to
31 one year according to his or her discretion. The attorney general shall
32 notify the legislative bill drafting commission upon the occurrence of
33 the enactment of the legislation provided for in section four of this
34 act in order that the commission may maintain an accurate and timely
35 effective data base of the official text of the laws of the state of New
36 York in furtherance of effectuating the provisions of section 44 of the
37 legislative law and section 70-b of the public officers law.