STATE OF NEW YORK

10841

IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Walker) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to establishing the New York Voting Rights Act, 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:

Section 1. This act shall be known and may be cited as the "New York Voting Rights Act".

§ 2. Sections 17-100 through 17-170 of article 17 of the election law are designated title 1 and a new title heading is added to read as follows:

VIOLATIONS OF THE ELECTIVE FRANCHISE

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

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

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

TITLE 2

NEW YORK VOTING RIGHTS ACT

Section 17-200. Legislative purpose and statement of public policy.
17-202. Interpretation of laws related to elective franchise.
17-204. Definitions.
17-206. Rights of action.
17-208. Maintenance of voting and election data.

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

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17-210. Assistance for language-minority groups.
17-212. Preclearance.
17-214. Civil liability for voter intimidation.
17-216. Attorney's fees.
17-218. Applicability.
17-220. 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, ethnicity, 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, ethnic, 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 related to the elective franchise shall be construed liberally in favor of protecting the right to cast an effective ballot.

§ 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 an apportionment 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 district or ward, except for a member of the governing body that holds exclusively executive responsibilities.

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

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

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

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

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

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

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

(b) A violation is established if, based on the totality of the circumstances, members of a protected class have less opportunity than other members of the electorate to participate in the political process or elect candidates or electoral choices preferred by members of the protected class.

(c) Circumstances that may be considered include, but are not limited to, the extent to which members of a protected class have been elected to office in the state or political subdivision and the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate.

(d) For political subdivisions where either the primary or general election is held on a date that is not concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution, and in state law, there shall be a presumption that the date of election results in the denial or abridgement of the right to vote where for three consecutive general elections in which there is at least one contested race for an office, the number of actual voters in each contested election is less than twenty-five percent of the total number of votes cast in the most recent general election for the presidency of the United States by voters in the political subdivision, or in which, for any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population, the percent of members of that protected class that are actual voters is at least twenty-five percent lower than the percent of citizens of voting age that are not members of that protected class that are actual voters.

2. Right of action against vote dilution. (a) A method of election, including at-large, district-based, or alternative, shall not have the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of the dilution or the abridgment of the rights of members of the protected class.

(b) A violation of this subdivision shall be:

(i) established if a political subdivision uses an at-large method of election and it is shown that either: (A) voting patterns of members of the protected class within the political subdivision are racially polar-

ized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.

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

(iii) presumptively established if it is shown that the political subdivision used race, ethnicity, or language-minority group, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group, for the purpose of apportionment. A political subdivision shall only rebut this presumption by showing that race, ethnicity, or language-minority group, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group, was used to the extent necessary to comply with this title, the federal voting rights act, the constitution, or the constitution of the United States.

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

(d) In assessing whether, under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired, factors that may be considered shall include, but not be limited to: (i) the history of discrimination in the political subdivision, geographic region, or the state; (ii) the extent to which members of the protected class have been elected to office in the political subdivision; (iii) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme; (iv) denial of access of either eligible voters or candidates who are members of the protected class to those processes determining which groups of candidates will receive

access to the ballot, financial support, or other support in a given election; (v) the extent to which members of the protected class contribute to political campaigns at lower rates; (vi) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate; (vii) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection; (viii) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process; (ix) the use of overt or subtle racial appeals in political campaigns; (x) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and (xi) whether the political subdivision has a compelling policy justification for adopting or maintaining the method of election. No factor is dispositive or necessary to establish the existence of racially polarized voting. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.

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

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

(i) a district-based method of election;

(ii) an alternative method of election;

(iii) new or revised apportionment plans;

(iv) elimination of staggered elections so that all members of the governing body are elected on the same date;

(v) increasing the size of the governing body;

(vi) moving the dates of elections to be concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution;

(vii) additional voting hours or days;

(viii) additional polling locations;

(ix) additional means of voting such as voting by mail;

(x) ordering of special elections;

(xi) requiring expanded opportunities for voter registration;

(xii) requiring additional voter education;

(xiii) modifying the election calendar; or

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

(b) The court shall only adopt a remedy that will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office. The court shall consider proposed remedies by any parties and interested non-parties, and shall not provide deference or priority to a proposed remedy because it is proposed by the political subdivision. This title gives the court

authority to implement remedies notwithstanding any other provision of state or local law.

5. Procedures for implementing new or revised apportionment plans. The governing body of a political subdivision with the authority under this title and all applicable state and local laws to enact and implement a new method of election that will replace the political subdivision's at-large method of election with a district-based or alternative method of election, or enact and implement a new apportionment plan, shall undertake each of the steps enumerated in this subdivision, if proposed subsequent to receipt of a NYVRA notification letter, as defined in subdivision six of this section, or the filing of a claim pursuant to this title or the federal voting rights act.

(a) Before drawing a draft apportionment plan or plans of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the apportionment process and to encourage public participation.

(b) After all draft apportionment plans are drawn, the political subdivision shall publish and make available for release at least one draft apportionment plan and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than forty-five days, at which the public is invited to provide input regarding the content of the draft apportionment plan or plans and the proposed sequence of elections, if applicable. The draft apportionment plan or plans shall be published at least seven days before consideration at a hearing. If the draft apportionment plan or plans are revised at or following a hearing, the revised versions shall be published and made available to the public for at least seven days before being adopted.

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

6. Notification requirement and safe harbor for judicial actions. Before commencing a judicial action against a political subdivision under this section, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision, or, if the political subdivision does not have a clerk, the governing body of the political subdivision, against which the action would be brought, asserting that the political subdivision may be in violation of this title. This written notice shall be referred to as a "NYVRA notification letter" in this title. For actions against a school district or any other political subdivision that holds elections governed by the education law, the prospective plaintiff shall also send by certified mail a copy of the NYVRA notification letter to the commissioner of education.

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

(b) Before receiving a NYVRA notification letter, or within fifty days of mailing of a NYVRA notification letter, the governing body of a political subdivision may pass a resolution affirming: (i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (ii) specific steps it will undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy. Such a resolution shall be referred to as a "NYVRA resolution" in this title. If a political subdivision passes a NYVRA resolution, a prospective plaintiff shall not commence an action to enforce this section against the political subdivision within ninety days of the resolution's passage. For actions against a school district, the commissioner of education may order the enactment of an NYVRA resolution pursuant to the commissioner's authority under section three hundred five of the education law.

(c) If the governing body of a political subdivision lacks the authority under this title or applicable state law or local laws to enact or implement a remedy identified in a NYVRA resolution within ninety days after the passage of the NYVRA resolution, or if the political subdivision is a covered entity as defined under section 17-212 of this title, the governing body of the political subdivision may undertake the steps enumerated in the following provisions upon passage of a NYVRA resolution:

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

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

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

(iv) The civil rights bureau shall only grant approval to the NYVRA proposal if it concludes that: (A) the political subdivision may be in violation of this title; (B) the NYVRA proposal would remedy any potential violation of this title; (C) the NYVRA proposal is unlikely to violate the constitution or any federal law; (D) the NYVRA proposal will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office; and (E) implementation of the NYVRA proposal is feasible. The civil rights bureau may grant approval to the NYVRA proposal notwithstanding any other provision of state or local law.

(v) If the civil rights bureau grants approval, the NYVRA proposal shall be enacted and implemented immediately, notwithstanding any other provision of state or local law. If the political subdivision is a covered entity as defined under section 17-212 of this title, there shall be no need for the political subdivision to also obtain preclearance for the NYVRA proposal pursuant to such section.

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

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

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

(e) If, pursuant to a process commenced by a NYVRA notification letter, a political subdivision enacts or implements a remedy or the civil rights bureau grants approval to a NYVRA proposal, a prospective plaintiff who sent the NYVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the NYVRA proposal, demand reimbursement for the cost of the work product generated to support the NYVRA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within forty-five days of receiving the written demand, except that if more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent NYVRA notification letters and the forty-five day time period described herein shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs, except for actions brought by the attorney general, shall not exceed forty-three thousand dollars, as adjusted annually to the consumer price index for all urban consumers, United States city average, as published by the United States department of labor.

(f) Notwithstanding the provisions of this subdivision, if the first day for designating petitions for a political subdivision's next regular election to select members of its governing board has begun or is scheduled to begin within thirty days, or if a political subdivision is scheduled to conduct any election within one hundred twenty days, a plaintiff alleging that the mode of election or apportionment plan in effect for that election will violate this title may commence a judicial action against a political subdivision under this section, provided that the relief sought by such a plaintiff includes preliminary relief for that election. Prior to or concurrent with commencing such a judicial action, any such plaintiff shall also submit a NYVRA notification letter to the political subdivision. If a judicial action commenced under this provision is withdrawn or dismissed for mootness because the political subdivision has enacted or implemented a remedy or the civil rights bureau has granted approval of a NYVRA proposal pursuant to a process commenced by a NYVRA notification letter, any such plaintiff may only demand reimbursement pursuant to this subdivision.

7. Expedited judicial proceedings and preliminary relief. Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials,

actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference. In any action alleging a violation of this section in which a plaintiff party seeks preliminary relief with respect to an upcoming election, the court shall grant relief if it determines that: (a) plaintiffs are more likely than not to succeed on the merits; and (b) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

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

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

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

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

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

(b) Election results at the election district level for every statewide election and every election in every political subdivision.

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

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

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

(f) Apportionment plans for every election in every political subdivision.

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

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

6. Data on race, ethnicity, and language-minority groups. The statewide database shall prepare any estimates made pursuant to this section

by applying the most advanced, peer-reviewed, and validated methodologies.

7. Calculation and publication of political subdivisions required to provide assistance to language-minority groups. On or before February twenty-eighth, two thousand twenty-one and every third year thereafter, the statewide database shall publish on its web site and transmit to the state board of elections for dissemination to the county boards of elections and for the state education department a list of political subdivisions required pursuant to this section to provide assistance to members of language-minority groups and each language in which those political subdivisions are required to provide assistance. The boards of elections shall transmit the list described herein to all political subdivisions within their jurisdiction.

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

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

10. Presumption of validity. The data, information, and estimates maintained by the statewide database shall be granted a rebuttable presumption of validity by any court concerning any claim brought pursuant to this title.

§ 17-210. Assistance for language-minority groups. 1. Political subdivisions required to provide language assistance. A board of elections or a political subdivision that administers elections shall provide language-related assistance in voting and elections to a language-minority group in a political subdivision if the director determines, based on data from the American community survey, or data of comparable quality collected by a public office, that:

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

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

(c) in the case of a political subdivision that contains all or any part of a Native American reservation, more than two percent of the Native American citizens of voting age within the Native American reservation are members of a single language-minority group and speak English "less than very well" according to the American community survey. For the purposes of this paragraph, "Native American" is defined to include

any persons recognized by the United States census bureau or New York as "American Indian" or "Alaska Native".

2. Language assistance to be provided. When the director determines that a board of elections or political subdivision shall provide language assistance to a particular minority group, such board of elections or political subdivision shall provide voting materials in the covered language of an equal quality of the corresponding English language materials, including registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots. Whenever any such board of elections or political subdivision provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in a covered political subdivision, it shall provide them in the language of the applicable minority group as well as in the English language, provided that where the language of the applicable minority group is oral or unwritten or in the case of some American Indians, if the predominant language is historically unwritten, the board of elections or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

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

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

2. Covered policies. A "covered policy" shall include any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning any of the following topics:

(a) Apportionment;

(b) Method of election;

(c) Form of government;

(d) Annexation of a political subdivision;

(e) Incorporation of a political subdivision;

(f) Consolidation or division of political subdivisions;

(g) Removal of voters from enrollment lists or other list maintenance activities;

(h) Number, location, or hours of any election day or early voting poll site;

(i) Dates of elections and the election calendar, except with respect to special elections;

(j) Registration of voters;

(k) Assignment of election districts to election day or early voting poll sites;

(l) Assistance offered to members of a language-minority group;

(m) Changes to the governmental powers of elected officials; and

(n) The civil rights bureau may designate additional topics for inclusion in this list pursuant to a rule promulgated under the state administrative procedure act, if it determines that a new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning such topics may have the effect of denying or abridging the right to vote on account of race, ethnicity, or language-minority group.

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

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

(a) The covered entity shall submit the covered policy in writing to the civil rights bureau of the office of the attorney general. If the covered entity is a county or city board of elections, it shall contemporaneously provide a copy of the covered policy to the state board of elections.

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

(i) For any covered policy concerning the designation of poll sites or the assignment of election districts to poll sites, whether for election day or early voting, the civil rights bureau shall grant or deny preclearance within thirty days following the receipt of submission. If

the civil rights bureau grants preclearance, it may, in its discretion, designate preclearance as "preliminary" in which case the civil rights bureau may deny preclearance within sixty days following the receipt of submission of the covered policy.

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

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

(c) The civil rights bureau shall grant preclearance only if it determines that the covered policy will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office. If the civil rights bureau grants preclearance, the covered entity may enact or implement the covered policy immediately.

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

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

(f) Appeal of any denial 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 may promulgate such rules and regulations pursuant to the state administrative procedure act as are necessary to effectuate the purposes of this subdivision.

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

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

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

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

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

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

(f) Appeal of any denial 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.

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.

§ 17-214. Civil liability for voter intimidation. 1. Voter intimidation prohibited. No person, whether acting under color of law or otherwise, shall use or threaten to use any force, violence or restraint, or inflict or threaten to inflict any injury, damage, harm or loss, or in any other manner practice intimidation that causes any person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters; or to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election.

2. Voter deception prohibited. No person, whether acting under color of law or otherwise, shall by abduction, duress or any forcible or fraudulent device or contrivance impede, prevent or otherwise interfere with the free exercise of the elective franchise by any person eligible to vote with the purpose of interfering with the free exercise of the elective franchise in any way, including registering to vote; voting; or declining to vote; or voting for or against any particular candidate or proposition; or declining to vote for or against any particular candidate or proposition. No person acting under color of law shall use any fraudulent device or contrivance that causes interference with the free exercise of the elective franchise by any person eligible to vote without regard to the intent underlying the use of the fraudulent device or contrivance.

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

4. Remedies. Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies that are tailored to remedy the violation, including but not limited to providing for additional time to cast a ballot that may be counted in the election at issue. This title gives the court authority to implement remedies notwithstanding any other provision of state or local law.

§ 17-216. Attorney's fees. In any action to enforce any provision of this title, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee, litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A plaintiff will be deemed to have prevailed when, as a result of litigation, the political subdivision yields much or all of the relief sought in the suit. Prevailing

defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

§ 17-218. Applicability. The provisions of this title shall apply to all elections for any elected office or electoral choice within the state or any political subdivision. The provisions of this title shall apply notwithstanding any other provision of law, including any other state law or local law.

§ 17-220. Severability. If any provision of this title or its application to any person, political subdivision, or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 5. This act shall take effect immediately; provided, however, that sections 17-208 and 17-210 of the election law as added by section four of this act shall take effect three years after it shall have become a law; and provided further, however, that section 17-212 of the election law, as added by section four of this act, shall take effect one year after the attorney general certifies that the office of the attorney general is prepared to execute the duties assigned in section four of this act, if after the expiration of one year the attorney general requires more time to certify that the office of the attorney general is prepared to execute the duties assigned in section four of this act, the attorney general, may, for good cause shown, apply to the governor for such an extension of time. The governor may grant or deny an extension of up to one year according to his or her discretion. The attorney general shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section four of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.