

STATE OF NEW YORK

7528

IN SENATE

January 23, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

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:

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

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 NEW YORK VOTING RIGHTS ACT

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

15 17-202. Interpretation of laws related to elective franchise.

16 17-204. Definitions.

17 17-206. Rights of action.

18 17-208. Maintenance of voting and election data.

EXPLANATION--Matter in italics (underscoring) 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-

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

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

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

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

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

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

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

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

32 (i) a district-based method of election;
33 (ii) an alternative method of election;
34 (iii) new or revised apportionment plans;
35 (iv) elimination of staggered elections so that all members of the
36 governing body are elected on the same date;
37 (v) increasing the size of the governing body;
38 (vi) moving the dates of elections to be concurrent with the primary
39 or general election dates for state, county, or city office as estab-
40 lished in section eight of article three or section eight of article
41 thirteen of the constitution;
42 (vii) additional voting hours or days;
43 (viii) additional polling locations;
44 (ix) additional means of voting such as voting by mail;
45 (x) ordering of special elections;
46 (xi) requiring expanded opportunities for voter registration;
47 (xii) requiring additional voter education;
48 (xiii) modifying the election calendar; or
49 (xiv) the restoration or addition of persons to registration lists.

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

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

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

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

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

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

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

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

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

15 (c) If the governing body of a political subdivision lacks the author-
16 ity under this title or applicable state law or local laws to enact or
17 implement a remedy identified in a NYVRA resolution within ninety days
18 after the passage of the NYVRA resolution, or if the political subdivi-
19 sion is a covered entity as defined under section 17-212 of this title,
20 the governing body of the political subdivision may undertake the steps
21 enumerated in the following provisions upon passage of a NYVRA resol-
22 ution:

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

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

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

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

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

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

54 (vii) If the civil rights bureau does not respond, the NYVRA proposal
55 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

1 by applying the most advanced, peer-reviewed, and validated methodol-
2 ogies.

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

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

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

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

36 § 17-210. Assistance for language-minority groups. 1. Political subdi-
37 visions required to provide language assistance. A board of elections or
38 a political subdivision that administers elections shall provide
39 language-related assistance in voting and elections to a language-minor-
40 ity group in a political subdivision if the director determines, based
41 on data from the American community survey, or data of comparable quali-
42 ty collected by a public office, that:

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

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

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

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

3 2. Language assistance to be provided. When the director determines
4 that a board of elections or political subdivision shall provide
5 language assistance to a particular minority group, such board of
6 elections or political subdivision shall provide voting materials in the
7 covered language of an equal quality of the corresponding English
8 language materials, including registration or voting notices, forms,
9 instructions, assistance, or other materials or information relating to
10 the electoral process, including ballots. Whenever any such board of
11 elections or political subdivision provides any registration or voting
12 notices, forms, instructions, assistance, or other materials or informa-
13 tion relating to the electoral process, including ballots, in a covered
14 political subdivision, it shall provide them in the language of the
15 applicable minority group as well as in the English language, provided
16 that where the language of the applicable minority group is oral or
17 unwritten or in the case of some American Indians, if the predominant
18 language is historically unwritten, the board of elections or political
19 subdivision is only required to furnish oral instructions, assistance,
20 or other information relating to registration and voting.

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

29 § 17-212. Preclearance. 1. Preclearance. To ensure that the right to
30 vote is not denied or abridged on account of race, ethnicity, or
31 language-minority group, as a result of the enactment or implementation
32 of a covered policy, as defined in subdivision two of this section,
33 after the effective date of this section, the enactment or implementa-
34 tion of a covered policy by a covered entity, as defined in subdivision
35 three of this section, shall be subject to preclearance by the civil
36 rights bureau or by a designated court as set forth in this section.

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

- 41 (a) Apportionment;
- 42 (b) Method of election;
- 43 (c) Form of government;
- 44 (d) Annexation of a political subdivision;
- 45 (e) Incorporation of a political subdivision;
- 46 (f) Consolidation or division of political subdivisions;
- 47 (g) Removal of voters from enrollment lists or other list maintenance
48 activities;
- 49 (h) Number, location, or hours of any election day or early voting
50 poll site;
- 51 (i) Dates of elections and the election calendar, except with respect
52 to special elections;
- 53 (j) Registration of voters;
- 54 (k) Assignment of election districts to election day or early voting
55 poll sites;
- 56 (l) Assistance offered to members of a language-minority group;

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

2 (n) The civil rights bureau may designate additional topics for inclu-
3 sion in this list pursuant to a rule promulgated under the state admin-
4 istrative procedure act, if it determines that a new or modified voting
5 qualification, prerequisite to voting, law, ordinance, standard, prac-
6 tice, procedure, regulation, or policy concerning such topics may have
7 the effect of denying or abridging the right to vote on account of race,
8 ethnicity, or language-minority group.

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

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

46 (a) The covered entity shall submit the covered policy in writing to
47 the civil rights bureau of the office of the attorney general. If the
48 covered entity is a county or city board of elections, it shall contem-
49 poraneously provide a copy of the covered policy to the state board of
50 elections.

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

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

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

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

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

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

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

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

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

31 (g) The civil rights bureau may promulgate such rules and regulations
32 pursuant to the state administrative procedure act as are necessary to
33 effectuate the purposes of this subdivision.

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

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

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

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

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

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

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

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

15 § 17-214. Civil liability for voter intimidation. 1. Voter intimid-
16 ation prohibited. No person, whether acting under color of law or
17 otherwise, shall use or threaten to use any force, violence or
18 restraint, or inflict or threaten to inflict any injury, damage, harm or
19 loss, or in any other manner practice intimidation that causes any
20 person to place or cause to be placed or refrain from placing or causing
21 to be placed his name upon a registry of voters; or to vote or refrain
22 from voting in general or for or against any particular person or for or
23 against any proposition submitted to voters at such election.

24 2. Voter deception prohibited. No person, whether acting under color
25 of law or otherwise, shall by abduction, duress or any forcible or frau-
26 dulent device or contrivance impede, prevent or otherwise interfere with
27 the free exercise of the elective franchise by any person eligible to
28 vote with the purpose of interfering with the free exercise of the elec-
29 tive franchise in any way, including registering to vote; voting; or
30 declining to vote; or voting for or against any particular candidate or
31 proposition; or declining to vote for or against any particular candi-
32 date or proposition. No person acting under color of law shall use any
33 fraudulent device or contrivance that causes interference with the free
34 exercise of the elective franchise by any person eligible to vote with-
35 out regard to the intent underlying the use of the fraudulent device or
36 contrivance.

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

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

50 § 17-216. Attorney's fees. In any action to enforce any provision of
51 this title, the court shall allow the prevailing plaintiff party, other
52 than the state or political subdivision thereof, a reasonable attorney's
53 fee, litigation expenses including, but not limited to, expert witness
54 fees and expenses as part of the costs. A plaintiff will be deemed to
55 have prevailed when, as a result of litigation, the political subdivi-
56 sion yields much or all of the relief sought in the suit. Prevailing

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

3 § 17-218. Applicability. The provisions of this title shall apply to
4 all elections for any elected office or electoral choice within the
5 state or any political subdivision. The provisions of this title shall
6 apply notwithstanding any other provision of law, including any other
7 state law or local law.

8 § 17-220. Severability. If any provision of this title or its applica-
9 tion to any person, political subdivision, or circumstance is held
10 invalid, the invalidity shall not affect other provisions or applica-
11 tions of this title which can be given effect without the invalid
12 provision or application, and to this end the provisions of this title
13 are severable.

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