

STATE OF NEW YORK

1046--A

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, BENJAMIN, BIAGGI, BROUK, COMRIE, COONEY, FELDER, GIANARIS, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, MAY, MAYER, PARKER, RIVERA, SALAZAR, SANDERS, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. This act shall be known and may be cited as the "John R.
2 Lewis Voting Rights Act of New York (NYVRA)".

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

6 VIOLATIONS OF THE ELECTIVE FRANCHISE

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

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

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

LBD02423-05-1

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

3 TITLE 2

4 JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

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

6 17-202. Interpretation of laws related to elective franchise.

7 17-204. Definitions.

8 17-206. Rights of action.

9 17-208. Maintenance of voting and election data.

10 17-210. Assistance for language-minority groups.

11 17-212. Preclearance.

12 17-214. Right of action against voter intimidation, deception or
13 obstruction.

14 17-216. Authority to issue subpoenas.

15 17-218. Expedited judicial proceedings and preliminary relief.

16 17-220. Attorneys' fees.

17 17-222. Applicability.

18 17-224. Severability.

19 § 17-200. Legislative purpose and statement of public policy. In
20 recognition of the protections for the right to vote provided by the
21 constitution of the state of New York, which substantially exceed the
22 protections for the right to vote provided by the constitution of the
23 United States, and in conjunction with the constitutional guarantees of
24 equal protection, freedom of expression, and freedom of association
25 under the law and against the denial or abridgement of the voting rights
26 of members of a race, color, or language-minority group, it is the
27 public policy of the state of New York to:

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

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

34 § 17-202. Interpretation of laws related to elective franchise. In
35 further recognition of the protections for the right to vote provided by
36 the constitution of the state of New York, statutes, rules and regu-
37 lations, and local laws or ordinances related to the elective franchise
38 shall be construed liberally in favor of (a) protecting the right to
39 cast an effective ballot; (b) ensuring that eligible voters are not
40 impaired in registering to vote or voting including having their votes
41 counted, and (c) ensuring equitable access with regard to race, color,
42 and language-minority groups to opportunities to register to vote and to
43 vote.

44 § 17-204. Definitions. For the purposes of this title:

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

1 2. "District-based" method of election means a method of electing
2 members to the governing body of a political subdivision using a
3 districting or redistricting plan in which each member of the governing
4 body resides within a district or ward that is a divisible part of the
5 political subdivision and is elected only by voters residing within that
6 district or ward, except for a member of the governing body that holds
7 exclusively executive responsibilities.

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

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

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

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

28 7. "Federal voting rights act" means the federal Voting Rights Act of
29 1965, 52 U.S.C. § 10301 et seq.

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

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

38 (b) A violation is established if, based on the totality of the
39 circumstances, the ability of members of the protected class to elect
40 candidates of their choice or influence the outcome of elections is
41 impaired.

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

1 percent lower than the percent of citizens of voting age that are not
2 members of that protected class that are actual voters.

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

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

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

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

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

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

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

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

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

- 46 (i) a district-based method of election;
- 47 (ii) an alternative method of election;
- 48 (iii) new or revised districting or redistricting plans;
- 49 (iv) elimination of staggered elections so that all members of the
50 governing body are elected on the same date;
- 51 (v) increasing the size of the governing body;
- 52 (vi) moving the dates of elections to be concurrent with the primary
53 or general election dates for state, county, or city office as estab-
54 lished in section eight of article three or section eight of article
55 thirteen of the constitution;
- 56 (vii) additional voting hours or days;

- 1 (viii) additional polling locations;
- 2 (ix) additional means of voting such as voting by mail;
- 3 (x) ordering of special elections;
- 4 (xi) requiring expanded opportunities for voter registration;
- 5 (xii) requiring additional voter education;
- 6 (xiii) modifying the election calendar; or
- 7 (xiv) the restoration or addition of persons to registration lists.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 bureau may grant approval to the NYVRA proposal notwithstanding any
2 other provision of law, including any other state or local law.

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

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

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

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

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

48 (f) Notwithstanding the provisions of this subdivision, if the first
49 day for designating petitions for a political subdivision's next regular
50 election to select members of its governing board has begun or is sched-
51 uled to begin within thirty days, or if a political subdivision is sche-
52 duled to conduct any election within one hundred twenty days, a plain-
53 tiff alleging any violation of this title may commence a judicial action
54 against a political subdivision under this section, provided that the
55 relief sought by such a plaintiff includes preliminary relief for that
56 election. Prior to or concurrent with commencing such a judicial action,

1 any such plaintiff shall also submit a NYVRA notification letter to the
2 political subdivision. If a judicial action commenced under this
3 provision is withdrawn or dismissed for mootness because the political
4 subdivision has enacted or implemented a remedy or the civil rights
5 bureau has granted approval of a NYVRA proposal pursuant to a process
6 commenced by a NYVRA notification letter, any such plaintiff may only
7 demand reimbursement pursuant to this subdivision.

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

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

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

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

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

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

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

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

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

45 (f) Districting or redistricting plans for every election in every
46 political subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 39 (a) Districting or redistricting;
40 (b) Method of election;
41 (c) Form of government;
42 (d) Annexation of a political subdivision;
43 (e) Incorporation of a political subdivision;
44 (f) Consolidation or division of political subdivisions;
45 (g) Removal of voters from enrollment lists or other list maintenance
46 activities;
47 (h) Number, location, or hours of any election day or early voting
48 poll site;
49 (i) Dates of elections and the election calendar, except with respect
50 to special elections;
51 (j) Registration of voters;
52 (k) Assignment of election districts to election day or early voting
53 poll sites;
54 (l) Assistance offered to members of a language-minority group; and
55 (m) The civil rights bureau may designate additional topics for inclu-
56 sion in this list pursuant to a rule promulgated under the state admin-

1 istrative procedure act, if it determines that a new or modified voting
2 qualification, prerequisite to voting, law, ordinance, standard, prac-
3 tice, procedure, regulation, or policy concerning such topics may have
4 the effect of denying or abridging the right to vote on account of race,
5 color, or language-minority group.

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

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

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

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

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

1 bureau may deny preclearance within sixty days following the receipt of
2 submission of the covered policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (g) The civil rights bureau shall provide opportunity for any inter-
46 ested party to submit written comments concerning any covered policy
47 during the lookback period.

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

51 § 17-214. Right of action against voter intimidation, deception or
52 obstruction. 1. (a) No person, whether acting under color of law or
53 otherwise, may engage in acts of intimidation, deception, or obstruction
54 that affects the right of voters to access the elective franchise.

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

1 (i) established if a person uses or threatens to use any force,
2 violence, restraint, abduction or duress, or inflicts or threatens to
3 inflict any injury, damage, harm or loss, or in any other manner prac-
4 tices intimidation that causes or will reasonably have the effect of
5 causing any person to vote or refrain from voting in general or for or
6 against any particular person or for or against any proposition submit-
7 ted to voters at such election; to place or refrain from placing their
8 name upon a registry of voters; or to request or refrain from requesting
9 an absentee ballot; or

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

18 (iii) established if a person obstructs, impedes, or otherwise inter-
19 feres with access to any polling place or elections office, or
20 obstructs, impedes, or otherwise interferes with any voter in any manner
21 that causes or will reasonably have the effect of causing any delay in
22 voting or the voting process, including the canvassing and tabulation of
23 ballots.

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

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

42 § 17-216. Authority to issue subpoenas. In any action or investigation
43 to enforce any provision of this title, the attorney general shall have
44 the authority to take proof and determine relevant facts and to issue
45 subpoenas in accordance with the civil practice law and rules.

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

1 and (b) it is possible to implement an appropriate remedy that would
2 resolve the alleged violation in the upcoming election.

3 § 17-220. Attorneys' fees. In any action to enforce any provision of
4 this title, the court shall allow the prevailing plaintiff party, other
5 than the state or political subdivision thereof, a reasonable attorneys'
6 fee, litigation expenses including, but not limited to, expert witness
7 fees and expenses as part of the costs. A plaintiff will be deemed to
8 have prevailed when, as a result of litigation, the defendant party
9 yields much or all of the relief sought in the suit. Prevailing defend-
10 ant parties shall not recover any costs, unless the court finds the
11 action to be frivolous, unreasonable, or without foundation.

12 § 17-222. Applicability. The provisions of this title shall apply to
13 all elections for any elected office or electoral choice within the
14 state or any political subdivision. The provisions of this title shall
15 apply notwithstanding any other provision of law, including any other
16 state law or local law.

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

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