

# STATE OF NEW YORK

6678--B

2021-2022 Regular Sessions

## IN ASSEMBLY

March 25, 2021

Introduced by M. of A. WALKER, DICKENS, FRONTUS, CRUZ, REYES, SIMON, L. ROSENTHAL, FORREST, SILLITTI, DINOWITZ, GALLAGHER, JEAN-PIERRE, MAMDANI, HUNTER, KELLES, EPSTEIN, MEEKS, BENEDETTO, COOK, O'DONNELL, ZINERMAN, KIM, LAVINE, MITAYNES, CARROLL, THIELE, ANDERSON, ABBATE, SEAWRIGHT, OTIS, TAYLOR, BURDICK, BICHOTTE HERMELYN, BURGOS, GOTTFRIED, PAULIN, ENGLEBRIGHT, HYNDMAN, FERNANDEZ, RAJKUMAR, SEPTIMO, HEVESI, GIBBS, McDONALD, JACKSON, DE LOS SANTOS, NIOU, RAMOS, LUNSFORD, GLICK, GALEF, TAPIA, FAHY, PRETLOW, GONZALEZ-ROJAS, DAVILA, BRONSON, ABINANTI, SOLAGES -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Election Law in accordance with Assembly Rule 3, sec. 2 -- 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

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

LBD02423-08-2

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

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

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

6 TITLE 2

7 JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

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

9 17-202. Interpretation of laws related to elective franchise.

10 17-204. Definitions.

11 17-206. Rights of action.

12 17-208. Assistance for language-minority groups.

13 17-210. Preclearance commission.

14 17-212. Preclearance.

15 17-214. Right of action against voter intimidation, deception or  
16 obstruction.

17 17-216. Authority to issue subpoenas.

18 17-218. Expedited judicial proceedings and preliminary relief.

19 17-220. Attorneys' fees.

20 17-222. Applicability.

21 17-224. Severability.

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

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

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

37 § 17-202. Interpretation of laws related to elective franchise. In  
38 further recognition of the protections for the right to vote provided by  
39 the constitution of the state of New York, statutes, rules and regu-  
40 lations, and local laws or ordinances related to the elective franchise  
41 shall be construed liberally in favor of (a) protecting the right to  
42 cast an effective ballot; (b) ensuring that eligible voters are not  
43 impaired in registering to vote or voting including having their votes  
44 counted, and (c) ensuring equitable access with regard to race, color,  
45 and language-minority groups to opportunities to register to vote and to  
46 vote. The authority to prescribe or maintain voting or elections poli-  
47 cies and practices cannot be so exercised as to unnecessarily deny or  
48 abridge the right to vote. Policies and practices that burden the right  
49 to vote must be narrowly tailored to promote a compelling policy justi-  
50 fication that must be supported by substantial evidence.

51 § 17-204. Definitions. For the purposes of this title:

52 1. "At-large" method of election means a method of electing members to  
53 the governing body of a political subdivision: (a) in which all of the  
54 voters of the entire political subdivision elect each of the members to

1 the governing body; (b) in which the candidates are required to reside  
2 within given areas of the political subdivision and all of the voters of  
3 the entire political subdivision elect each of the members to the  
4 governing body; or (c) that combines at-large elections with district-  
5 based elections, unless the only member of the governing body of a poli-  
6 tical subdivision elected at-large holds exclusively executive responsi-  
7 bilities. At-large method of election does not include ranked-choice  
8 voting, cumulative voting, and limited voting.

9 2. "District-based" method of election means a method of electing  
10 members to the governing body of a political subdivision using a  
11 districting or redistricting plan in which each member of the governing  
12 body resides within a district or ward that is a divisible part of the  
13 political subdivision and is elected only by voters residing within that  
14 district or ward, except for a member of the governing body that holds  
15 exclusively executive responsibilities.

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

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

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

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

36 7. "Federal voting rights act" means the federal Voting Rights Act of  
37 1965, 52 U.S.C. § 10301 et seq.

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

40 9. "Government enforcement action" means a denial of administrative or  
41 judicial preclearance by the state or federal government, pending liti-  
42 gation filed by a federal or state entity, a final judgment or adjudi-  
43 cation, a consent decree, or similar formal action.

44 10. "Preclearance commission" means the commission formed by this  
45 title to make determinations as to preclearance, informed by the recom-  
46 mendations of the civil rights bureau.

47 11. "Deceptive or fraudulent device, contrivance, or communication"  
48 means one that contains false information pertaining to: (a) the time,  
49 place, and manner of any election; (b) the qualifications or  
50 restrictions on voter eligibility for such election; or (c) a statement  
51 of endorsement by any specifically named person, political party, or  
52 organization.

53 § 17-206. Rights of action. 1. Right of action against voter  
54 suppression. (a) No voting qualification, prerequisite to voting, law,  
55 ordinance, standard, practice, procedure, regulation, or policy shall be  
56 enacted or implemented by any board of elections or political subdivi-

1 sion in a manner that results in a denial or abridgement of the right of  
2 any member of a protected class to vote.

3 (b) A violation is established if, based on the totality of the  
4 circumstances, the ability of members of the protected class to elect  
5 candidates of their choice or influence the outcome of elections is  
6 impaired.

7 (c) For political subdivisions where either the primary or general  
8 election is held on a date that is not concurrent with the primary or  
9 general election dates for state, county, or city office as established  
10 in section eight of article three or section eight of article thirteen  
11 of the constitution, and in state law, there shall be a presumption that  
12 the date of election results in the denial or abridgement of the right  
13 to vote where for three consecutive general elections in which there is  
14 at least one contested race for an office, the number of actual voters  
15 in each contested election is less than twenty-five percent of the total  
16 number of votes cast in the most recent general election for the presi-  
17 dency of the United States by voters in the political subdivision, or in  
18 which, for any protected class consisting of at least twenty-five thou-  
19 sand citizens of voting age or whose members comprise at least ten  
20 percent of the citizen voting age population, the percent of members of  
21 that protected class that are actual voters is at least twenty-five  
22 percent lower than the percent of citizens of voting age that are not  
23 members of that protected class that are actual voters.

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

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

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

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

45 (c) In assessing whether voting patterns of members of the protected  
46 class within the political subdivision are racially polarized or whether  
47 candidates or electoral choices preferred by members of the protected  
48 class would usually be defeated: (i) elections conducted prior to the  
49 filing of an action pursuant to this subdivision are more probative than  
50 elections conducted after the filing of the action; (ii) evidence  
51 concerning elections for members of the governing body of the political  
52 subdivision are more probative than evidence concerning other elections;  
53 (iii) statistical evidence is more probative than non-statistical  
54 evidence; (iv) where there is evidence that more than one protected  
55 class of eligible voters are politically cohesive in the political  
56 subdivision, members of each of those protected classes may be combined;

1 (v) evidence concerning the intent on the part of the voters, elected  
2 officials, or the political subdivision to discriminate against a  
3 protected class is not required; (vi) evidence that voting patterns and  
4 election outcomes could be explained by factors other than racially  
5 polarized voting, including but not limited to partisanship, shall not  
6 be considered; (vii) evidence that sub-groups within a protected class  
7 have different voting patterns shall not be considered; (viii) evidence  
8 concerning whether members of a protected class are geographically  
9 compact or concentrated shall not be considered, but may be a factor in  
10 determining an appropriate remedy; and (ix) evidence concerning project-  
11 ed changes in population or demographics shall not be considered, but  
12 may be a factor, in determining an appropriate remedy.

13 3. Evaluation of totality of the circumstances. In assessing whether,  
14 under the totality of the circumstances, the ability of members of the  
15 protected class to elect candidates of their choice or influence the  
16 outcome of elections is impaired without a compelling policy justifica-  
17 tion, factors that may be considered shall include, but not be limited  
18 to: (a) the history of discrimination in the political subdivision,  
19 geographic region, or the state; (b) the extent to which members of the  
20 protected class have been elected to office in the political subdivi-  
21 sion; (c) the use of any voting qualification, prerequisite to voting,  
22 law, ordinance, standard, practice, procedure, regulation, or policy  
23 that may enhance the dilutive effects of the election scheme; (d) denial  
24 of access of either eligible voters or candidates who are members of the  
25 protected class to those processes determining which groups of candi-  
26 dates will receive access to the ballot, financial support, or other  
27 support in a given election; (e) the extent to which members of the  
28 protected class contribute to political campaigns at lower rates; (f)  
29 the extent to which members of a protected class in the state or poli-  
30 tical subdivision vote at lower rates than other members of the elector-  
31 ate; (g) the extent to which members of the protected class are disad-  
32 vantaged in areas including but not limited to education, employment,  
33 health, criminal justice, housing, land use, or environmental  
34 protection; (h) the extent to which members of the protected class are  
35 disadvantaged in other areas which may hinder their ability to partic-  
36 ipate effectively in the political process; (i) the use of overt or  
37 subtle racial appeals in political campaigns; (j) a significant lack of  
38 responsiveness on the part of elected officials to the particularized  
39 needs of members of the protected class; and (k) whether the political  
40 subdivision has a compelling policy justification for adopting or main-  
41 taining the method of election or the voting qualification, prerequisite  
42 to voting, law, ordinance, standard, practice, procedure, regulation, or  
43 policy. No factor is dispositive or necessary to establish the exist-  
44 ence of racially polarized voting. Evidence of these factors concerning  
45 the state, private actors, or other political subdivisions in the  
46 geographic region may be considered but is less probative than evidence  
47 concerning the political subdivision itself.

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

55 5. Remedies. (a) Upon a finding of a violation of any provision of  
56 this section, the court shall implement appropriate remedies that are

1 tailored to remedy the violation. Remedies may include, but shall not be  
2 limited to:

3 (i) a district-based method of election;

4 (ii) an alternative method of election;

5 (iii) new or revised districting or redistricting plans;

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

8 (v) increasing the size of the governing body;

9 (vi) moving the dates of elections to be concurrent with the primary  
10 or general election dates for state, county, or city office as estab-  
11 lished in section eight of article three or section eight of article  
12 thirteen of the constitution;

13 (vii) transferring authority for conducting the political subdivi-  
14 sion's elections to the board of elections for the county in which the  
15 political subdivision is located;

16 (viii) additional voting hours or days;

17 (ix) additional polling locations;

18 (x) additional means of voting such as voting by mail;

19 (xi) ordering of special elections;

20 (xii) requiring expanded opportunities for voter registration;

21 (xiii) requiring additional voter education;

22 (xiv) modifying the election calendar; or

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

24 (b) The court shall only adopt a remedy that will not diminish the  
25 ability of minority groups to participate in the political process and  
26 to elect their preferred candidates to office. The court shall consider  
27 proposed remedies by any parties and interested non-parties, and shall  
28 not provide deference or priority to a proposed remedy because it is  
29 proposed by the political subdivision. This title gives the court  
30 authority to implement remedies notwithstanding any other provision of  
31 law, including any other state or local law.

32 6. Procedures for implementing new or revised districting or redis-  
33 tricting plans. The governing body of a political subdivision with the  
34 authority under this title and all applicable state and local laws to  
35 enact and implement a new method of election that will replace the poli-  
36 tical subdivision's at-large method of election with a district-based or  
37 alternative method of election, or enact and implement a new districting  
38 or redistricting plan, shall undertake each of the steps enumerated in  
39 this subdivision, if proposed subsequent to receipt of a NYVRA notifica-  
40 tion letter, as defined in subdivision seven of this section, or the  
41 filing of a claim pursuant to this title or the federal voting rights  
42 act.

43 (a) Before drawing a draft districting or redistricting plan or plans  
44 of the proposed boundaries of the districts, the political subdivision  
45 shall hold at least two public hearings over a period of no more than  
46 thirty days, at which the public is invited to provide input regarding  
47 the composition of the districts. Before these hearings, the political  
48 subdivision may conduct outreach to the public, including to non-Engl-  
49 ish-speaking communities, to explain the districting or redistricting  
50 process and to encourage public participation.

51 (b) After all draft districting or redistricting plans are drawn, the  
52 political subdivision shall publish and make available for release at  
53 least one draft districting or redistricting plan and, if members of the  
54 governing body of the political subdivision will be elected in their  
55 districts at different times to provide for staggered terms of office,  
56 the potential sequence of the elections. The political subdivision shall

1 also hold at least two additional hearings over a period of no more than  
2 forty-five days, at which the public is invited to provide input regard-  
3 ing the content of the draft districting or redistricting plan or plans  
4 and the proposed sequence of elections, if applicable. The draft  
5 districting or redistricting plan or plans shall be published at least  
6 seven days before consideration at a hearing. If the draft districting  
7 or redistricting plan or plans are revised at or following a hearing,  
8 the revised versions shall be published and made available to the public  
9 for at least seven days before being adopted.

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

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

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

31 (b) Before receiving a NYVRA notification letter, or within fifty days  
32 of mailing of a NYVRA notification letter, the governing body of a poli-  
33 tical subdivision may pass a resolution affirming: (i) the political  
34 subdivision's intention to enact and implement a remedy for a potential  
35 violation of this title; (ii) specific steps it will undertake to facil-  
36 itate approval and implementation of such a remedy; and (iii) a schedule  
37 for enacting and implementing such a remedy. Such a resolution shall be  
38 referred to as a "NYVRA resolution" in this title. If a political subdi-  
39 vision passes a NYVRA resolution, a prospective plaintiff shall not  
40 commence an action to enforce this section against the political subdi-  
41 vision within ninety days of the resolution's passage. For actions  
42 against a school district, the commissioner of education may order the  
43 enactment of an NYVRA resolution pursuant to the commissioner's authori-  
44 ty under section three hundred five of the education law.

45 (c) If the governing body of a political subdivision lacks the author-  
46 ity under this title or applicable state law or local laws to enact or  
47 implement a remedy identified in a NYVRA resolution within ninety days  
48 after the passage of the NYVRA resolution, or if the political subdivi-  
49 sion is a covered entity as defined under section 17-212 of this title,  
50 the governing body of the political subdivision may undertake the steps  
51 enumerated in the following provisions upon passage of a NYVRA resolu-  
52 tion:

53 (i) The governing body of the political subdivision may approve a  
54 proposed remedy that complies with this title and submit such a proposed  
55 remedy to the preclearance commission. Such a submission shall be  
56 referred to as a "NYVRA proposal" in this title.

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

6 (iii) Within forty-five days of receipt of a NYVRA proposal, the civil  
7 rights bureau shall submit a report and recommendation to the preclear-  
8 ance commission as to whether the preclearance commission should grant  
9 or deny approval of the NYVRA proposal.

10 (iv) Within sixty days of receipt of a NYVRA proposal, the preclear-  
11 ance commission shall either grant or deny approval of the NYVRA  
12 proposal.

13 (v) The preclearance commission shall only grant approval to the NYVRA  
14 proposal if it concludes that: (A) the political subdivision may be in  
15 violation of this title; (B) the NYVRA proposal would remedy any poten-  
16 tial violation of this title; (C) the NYVRA proposal is unlikely to  
17 violate the constitution or any federal law; (D) the NYVRA proposal will  
18 not diminish the ability of minority groups to participate in the poli-  
19 tical process and to elect their preferred candidates to office; and (E)  
20 implementation of the NYVRA proposal is feasible. The preclearance  
21 commission may grant approval to the NYVRA proposal notwithstanding any  
22 other provision of law, including any other state or local law.

23 (vi) If the preclearance commission grants approval, the NYVRA  
24 proposal shall be enacted and implemented immediately, notwithstanding  
25 any other provision of law, including any other state or local law. If  
26 the political subdivision is a covered entity as defined under section  
27 17-212 of this title, there shall be no need for the political subdivi-  
28 sion to also obtain preclearance for the NYVRA proposal pursuant to such  
29 section.

30 (vii) If the preclearance commission denies approval, the NYVRA  
31 proposal shall not be enacted or implemented. The preclearance commis-  
32 sion shall interpose objections explaining its basis and may, in its  
33 discretion, indicate another NYVRA proposal for which it would grant  
34 approval.

35 (viii) If the preclearance commission does not respond, the NYVRA  
36 proposal shall not be enacted or implemented.

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

47 (e) If, pursuant to a process commenced by a NYVRA notification  
48 letter, a political subdivision enacts or implements a remedy or the  
49 civil rights bureau grants approval to a NYVRA proposal, a prospective  
50 plaintiff who sent the NYVRA notification letter may, within thirty days  
51 of the enactment or implementation of the remedy or approval of the  
52 NYVRA proposal, demand reimbursement for the cost of the work product  
53 generated to support the NYVRA notification letter. A prospective plain-  
54 tiff shall make the demand in writing and shall substantiate the demand  
55 with financial documentation, such as a detailed invoice for demography  
56 services or for the analysis of voting patterns in the political subdivi-

1 vision. A political subdivision may request additional documentation if  
2 the provided documentation is insufficient to corroborate the claimed  
3 costs. A political subdivision shall reimburse a prospective plaintiff  
4 for reasonable costs claimed, or in an amount to which the parties mutu-  
5 ally agree. The cumulative amount of reimbursements to all prospective  
6 plaintiffs, except for actions brought by the attorney general, shall  
7 not exceed forty-three thousand dollars, as adjusted annually to the  
8 consumer price index for all urban consumers, United States city aver-  
9 age, as published by the United States department of labor. To the  
10 extent a prospective plaintiff who sent the NYVRA notification letter  
11 and a political subdivision are unable to come to a mutual agreement,  
12 either party may file a declaratory judgment action to obtain a clarifi-  
13 cation of rights.

14 (f) Notwithstanding the provisions of this subdivision, if the first  
15 day for designating petitions for a political subdivision's next regular  
16 election to select members of its governing board has begun or is sched-  
17 uled to begin within thirty days, or if a political subdivision is sche-  
18 duled to conduct any election within one hundred twenty days, a plain-  
19 tiff alleging any violation of this title may commence a judicial action  
20 against a political subdivision under this section, provided that the  
21 relief sought by such a plaintiff includes preliminary relief for that  
22 election. Prior to or concurrent with commencing such a judicial action,  
23 any such plaintiff shall also submit a NYVRA notification letter to the  
24 political subdivision. If a judicial action commenced under this  
25 provision is withdrawn or dismissed for mootness because the political  
26 subdivision has enacted or implemented a remedy or the civil rights  
27 bureau has granted approval of a NYVRA proposal pursuant to a process  
28 commenced by a NYVRA notification letter, any such plaintiff may only  
29 demand reimbursement pursuant to this subdivision.

30 8. Coalition claims permitted. Members of different protected classes  
31 may file an action jointly pursuant to this chapter if they demonstrate  
32 that the combined voting preferences of the multiple protected classes  
33 are polarized against the rest of the electorate.

34 § 17-208. Assistance for language-minority groups. 1. Political subdivi-  
35 sions 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 4. Standing. Any aggrieved persons, organization whose membership  
28 includes or is likely to include aggrieved persons, organization whose  
29 mission would be frustrated by a violation of this section, organization  
30 that would expend resources in order to fulfill its mission as a result  
31 of a violation of this section, or the attorney general may file an  
32 action pursuant to this section in the supreme court of the county in  
33 which the alleged violation of this section occurred.

34 § 17-210. Preclearance commission. 1. Preclearance commission. There  
35 is hereby established within the department of law, a preclearance  
36 commission, an entity responsible for making determinations as to  
37 preclearance and other matters as enumerated under this title, which  
38 determinations shall be based upon the provisions of this title and the  
39 recommendations of the civil rights bureau. This commission shall be  
40 referred to as the "preclearance commission" or "commission" in this  
41 title.

42 2. Preclearance commission structure and membership. (a) The commis-  
43 sion shall consist of five members who shall be selected as set forth in  
44 this section and shall have and exercise the powers and duties set forth  
45 in this title.

46 (b) The members of the commission shall serve staggered terms to  
47 ensure continuity. For the first class of the commission, the first  
48 member selected and appointed as described in this section shall serve a  
49 term of five years, the second member thus selected and appointed shall  
50 serve a term of four years, the third member thus selected and appointed  
51 shall serve a term of three years, the fourth member thus selected and  
52 appointed shall serve a term of two years, and the fifth member thus  
53 selected and appointed shall serve a term of one year. All subsequent  
54 members of the commission shall be selected and appointed as described  
55 in this section and shall serve a term of five years, unless selected  
56 and appointed to complete a vacant term.

1 (c) The commission by a majority vote shall elect a chairperson from  
2 among its members to preside over its meetings, other proceedings, and  
3 votes, for a term of one year.

4 (d) A majority of the members of the commission, conferring in person,  
5 telephonically, by videoconference, or by other means as agreed by the  
6 commission, shall constitute a quorum, and the commission shall have the  
7 power to act by majority vote of the total number of members of the  
8 commission without vacancy.

9 (e) To be eligible to serve as a member of the commission or be nomi-  
10 nated to serve as a member of the commission, an individual must:

11 (i) be a resident of the state of New York;

12 (ii) be a member of the New York state bar;

13 (iii) have at least five years of legal experience;

14 (iv) have demonstrated experience representing or working on behalf of  
15 members of protected classes, as defined in this title; and

16 (v) have demonstrated an ability to appreciate the experiences of  
17 members of protected classes, as defined in this title, in voting in  
18 elections in the state of New York, or have demonstrated an appreciation  
19 for or commitment to the diversity of the state of New York.

20 (f) No individual shall be eligible to serve as a member of the  
21 commission who:

22 (i) is currently serving in any elected governmental office or has  
23 within the last five years served in any elected governmental office;

24 (ii) is currently serving on any board of elections; or

25 (iii) is currently holding any official position for a political  
26 party.

27 (g) Members of the commission shall be compensated at an hourly rate  
28 based on the rate equivalent to an assistant attorney general of similar  
29 experience for time actually spent in the performance of the member's  
30 duties under this section, and, in addition thereto, shall be reimbursed  
31 for all reasonable expenses actually and necessarily incurred by the  
32 member in the performance of the member's duties under this section.  
33 Commissioners shall provide invoices to the department of law, account-  
34 ing for time spent to the tenth of an hour and detailing their activity  
35 to the degree of specificity required for the recovery of attorneys'  
36 fees and expenses in federal civil rights cases.

37 (h) Members of the commission may be removed for cause by majority  
38 vote of the commission for substantial neglect of duty, misconduct in  
39 office, or inability to discharge the powers or duties of office, after  
40 written notice and opportunity for a reply.

41 (i) Any vacancy occurring on the commission shall be filled within  
42 thirty days of its occurrence, in the same manner as a member is  
43 initially selected, to complete the vacant term.

44 (j) A commissioner who has completed one or more terms on the commis-  
45 sion, including any partial term which the commissioner was selected to  
46 complete upon a vacancy, shall be eligible to apply for and be selected  
47 for further service on the commission, unless removed for cause.

48 3. Nominating committee. (a) There is hereby established a nominating  
49 committee of organizational nominators responsible for identifying and  
50 nominating candidates who are qualified under this section to serve as  
51 commissioners on the preclearance commission. This committee of organ-  
52 izational nominators shall be referred to as the "nominating committee"  
53 or "committee" in this title and shall have and exercise the powers and  
54 duties set forth herein.

55 (b) The nominating committee shall consist of at least five, and no  
56 more than fifteen, organizations certified by the chief of the civil

1 rights bureau as meeting all of the qualifications in this subdivision.  
2 An organizational nominator, to be eligible for certification to the  
3 nominating committee, shall:

4 (i) be a registered 501(c)(3) nonprofit entity incorporated in New  
5 York state that has been in continuous operation for at least the last  
6 twenty years;

7 (ii) have demonstrated a commitment to the purposes of this title and  
8 specifically to securing the voting rights of protected class members as  
9 defined in this title, which commitment may be demonstrated by (A)  
10 reference to such protected class members in the organization's mission  
11 statement; or (B) participation in ten or more lawsuits in federal court  
12 or the courts of the state of New York on behalf of one or more members  
13 of a protected class on issues related to this title; and

14 (iii) be registered with the charities bureau of the New York state  
15 office of the attorney general; and

16 (c) The nominating committee by majority vote shall elect a chair from  
17 among its member organizations for a term of one year.

18 (d) A majority of the nominating committee shall constitute a quorum,  
19 and the committee shall have the power to act by majority vote of the  
20 total number of members of the committee without vacancy.

21 (e) The civil rights bureau shall establish a process and procedures  
22 by which to solicit and review, on a rolling or intermittent basis,  
23 applications for inclusion in the nominating committee. Within a reason-  
24 able time from the effective date of this section, the chief of the  
25 civil rights bureau shall certify up to fifteen organizations that meet  
26 the qualifications of paragraph (b) of this subdivision as members of  
27 the nominating committee. Within thirty days of the certification by the  
28 chief of the civil rights bureau of at least five organizations for  
29 inclusion in the nominating committee, the nominating committee shall  
30 adopt processes and procedures by which it will meet on a regular or  
31 as-needed basis to solicit and review the applications of candidates for  
32 service on the preclearance commission. These processes and procedures  
33 shall include the following requirements:

34 (i) The nominating committee shall solicit applications statewide from  
35 candidates for service on the commission;

36 (ii) From the applications received for membership on the commission,  
37 the nominating committee shall select a pool of thirty qualified candi-  
38 dates for inclusion in a nominee pool, provided that, if the nominating  
39 committee finds, after due diligence, that there are fewer than thirty  
40 qualified applicants to be commissioners, the nominating committee may  
41 reduce the nominee pool's size by a three-fifths vote to a lower number  
42 so that the commission's membership may be filled;

43 (iii) Only candidates who meet the qualifications set forth in this  
44 section for service on the preclearance commission shall be included in  
45 the nominee pool;

46 (iv) Three-fifths of the nominating committee's member organizations  
47 must agree and vote in support of any candidate's inclusion in the nomi-  
48 nee pool; and

49 (v) The nominating committee shall maintain the qualified candidate  
50 pool so that subsequent vacancies may be filled in the manner specified  
51 in subdivision four of this section.

52 (f) The nominating committee's members shall neither be public offi-  
53 cers nor be subject to the requirements of the public officers law.  
54 Notwithstanding which, the nominating committee and its members shall be  
55 entitled to representation, indemnification, and to be held harmless to  
56 the same extent as any other person employed in service of the state and

1 entitled to such coverage under sections seventeen and nineteen of the  
2 public officers law.

3 (g) A member of the nominating committee may be removed for cause by  
4 majority vote of the nominating committee for substantial neglect of  
5 duty, misconduct, or inability to discharge the powers or duties of the  
6 committee, after written notice and opportunity for a reply.

7 (h) Notwithstanding the provisions of article seven of the public  
8 officers law, no meeting or proceeding of the nominating committee shall  
9 be open to the public.

10 4. Selection of commissioners by lot from nominee pool by chief  
11 judge. Within thirty days of the date by which the nominating committee  
12 has identified and nominated a pool of candidates who are qualified to  
13 serve as members of the preclearance commission under this section, the  
14 chief judge of the court of appeals shall select by lot from the indi-  
15 viduals nominated to the nominee pool by the nominating committee a  
16 number of candidates equal to the number of vacancies on the commission,  
17 who shall be appointed as commissioners. At the expiration of each  
18 commissioner's term or upon any vacancy, the chief judge shall select by  
19 lot from the pool of qualified candidates available at that time.

20 § 17-212. Preclearance. 1. Preclearance. To ensure that the right to  
21 vote is not denied or abridged on account of race, color, or language-  
22 minority group, as a result of the enactment or implementation of a  
23 covered policy, as defined in subdivision two of this section, after the  
24 effective date of this section, the enactment or implementation of a  
25 covered policy by a covered entity, as defined in subdivision three of  
26 this section, shall be subject to preclearance by the civil rights  
27 bureau or by a designated court as set forth in this section.

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

32 (a) Districting or redistricting;

33 (b) Method of election;

34 (c) Form of government;

35 (d) Annexation of a political subdivision;

36 (e) Incorporation of a political subdivision;

37 (f) Consolidation or division of political subdivisions;

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

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

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

44 (j) Registration of voters;

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

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

48 (m) The civil rights bureau may designate additional topics for inclu-  
49 sion in this list pursuant to a rule promulgated under the state admin-  
50 istrative procedure act, if it determines that a new or modified voting  
51 qualification, prerequisite to voting, law, ordinance, standard, prac-  
52 tice, procedure, regulation, or policy concerning such topics may have  
53 the effect of denying or abridging the right to vote on account of race,  
54 color, or language-minority group.

55 3. Covered entity. A "covered entity" shall include: (a) any political  
56 subdivision which, within the previous twenty-five years, has become

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

33 4. Preclearance by preclearance commission. A covered entity may  
34 obtain preclearance for a covered policy from the preclearance commis-  
35 sion pursuant to the following process:

36 (a) The covered entity shall submit the covered policy in writing to  
37 the preclearance commission. If the covered entity is a county or city  
38 board of elections, it shall contemporaneously provide a copy of the  
39 covered policy to the state board of elections.

40 (b) Upon submission of a covered policy for preclearance, the commis-  
41 sion shall publish the submission on its website.

42 (c) After publication of a submission, there shall be an opportunity  
43 for members of the public to comment on the submission to the civil  
44 rights bureau within the time periods set forth below. To facilitate  
45 public comment, the commission shall provide an opportunity for members  
46 of the public to sign up to receive notifications or alerts regarding  
47 submission of a covered policy for preclearance.

48 (d) Upon submission of a covered policy for preclearance, the civil  
49 rights bureau shall review the submission and shall, within the time  
50 periods set forth below, which shall be concurrent with the time periods  
51 for public comment, provide a report and recommendation to the commis-  
52 sion, which shall include a recommendation as to whether, under this  
53 title, preclearance should be granted or denied to the covered policy.  
54 The civil rights bureau may not submit its report and recommendation  
55 until the period for public comment is closed. The civil rights bureau  
56 may request more information from a jurisdiction submitting a covered

1 policy at any time during its review to aid in developing its report and  
2 recommendation. The failure to timely comply with reasonable requests  
3 for more information may be grounds for the denial of preclearance. The  
4 civil rights bureau's reports and recommendation shall be posted public-  
5 ly on the preclearance commission's website promptly after they are  
6 received by the commission. However, communications between the civil  
7 rights bureau and the commission or its members other than the civil  
8 rights bureau's report and recommendation shall be exempt from public  
9 disclosure under article six of the public officers law.

10 (e) Upon receipt of the civil rights bureau's report and recommenda-  
11 tion regarding a covered policy submitted for preclearance, the  
12 preclearance commission shall review the covered policy, the civil  
13 rights bureau's report and recommendation, and any public comment, and  
14 shall, within the time periods set forth below, deny or grant preclear-  
15 ance. In determining whether to deny or grant preclearance, the commis-  
16 sion shall give deference to the civil rights bureau's recommendation  
17 under an "arbitrary and capricious" standard of review. In any determi-  
18 nation as to preclearance, the commission shall identify in writing  
19 whether it is approving or rejecting the civil rights bureau's recommen-  
20 dation. If the preclearance commission grants preclearance, it may, in  
21 its discretion, designate preclearance as "preliminary" in which case  
22 the commission may deny preclearance within sixty days following the  
23 receipt of submission of the covered policy.

24 (i) The commission shall grant preclearance only if it determines,  
25 upon review of the civil rights bureau's recommendation, that the  
26 covered policy will not diminish the ability of minority groups to  
27 participate in the political process and to elect their preferred candi-  
28 dates to office. If the commission grants preclearance, the covered  
29 entity may enact or implement the covered policy immediately.

30 (ii) If the commission denies preclearance, the commission shall  
31 interpose objections explaining its basis and the covered policy shall  
32 not be enacted or implemented.

33 (iii) If the commission fails to respond within the time for response  
34 as established in this section, the covered policy shall be deemed  
35 precleared, and the covered entity may enact or implement the covered  
36 policy.

37 (iv) If the commission's membership falls below a quorum at any time,  
38 or during any time period that may elapse between the effective date of  
39 this section and the establishment of a quorum on the commission, the  
40 civil rights bureau's recommendation as to whether preclearance should  
41 be granted or denied shall have the force of final preclearance determi-  
42 nation until the commission's quorum is established or restored.

43 (f) The time periods for public comment, civil rights bureau review,  
44 and the decision of the commission to grant or deny preclearance on  
45 submission shall be as follows:

46 (i) For any covered policy concerning the designation of poll sites or  
47 the assignment of election districts to poll sites, whether for election  
48 day or early voting, the period for public comment shall be five busi-  
49 ness days, the civil rights bureau shall submit its report and recommen-  
50 dation to the commission within twenty-five days following the receipt  
51 of submission, and a single commissioner, assigned on a rotating basis,  
52 shall review the submission, the civil rights bureau's recommendation,  
53 and any public comment, and shall, within five days, either: (A) approve  
54 the civil rights bureau's recommendation; or (B) refer the submission  
55 and the civil rights bureau's recommendation to the commission for a  
56 determination as to whether preclearance shall be denied or granted. If

1 the commissioner initially assigned refers the submission and the civil  
2 rights bureau's recommendation to the commission for a determination,  
3 the commission shall deny or grant preclearance within five days from  
4 the date of referral.

5 (ii) For any covered policy concerning the establishment of a  
6 district-based or alternative method of election, districting or redis-  
7 tricting plans, or a change to the form of government of a political  
8 subdivision, the period for public comment shall be fifteen business  
9 days, the civil rights bureau shall submit its report and recommendation  
10 to the commission within seventy-five days, and a panel of three commis-  
11 sioners, assigned on a rotating basis, shall review the submission, the  
12 civil rights bureau's recommendation, and any public comment, and shall,  
13 within fifteen days, deny or grant preclearance. Subject to the stand-  
14 ards of review and requirement of a written statement identifying the  
15 reasons for approving or rejecting the recommendation of the civil  
16 rights bureau, the vote of any commissioner to deny preclearance shall  
17 be sufficient to deny preclearance. In consultation with the civil  
18 rights bureau, the commission may invoke up to two extensions of ninety  
19 days each.

20 (iii) For any other covered policy, the period for public comment  
21 shall be ten business days, the civil rights bureau shall submit its  
22 report and recommendation to the commission within fifty days, and a  
23 single commissioner, assigned on a rotating basis, shall review the  
24 submission, the civil rights bureau's recommendation, and any public  
25 comment, and shall, within five days, either: (A) approve the civil  
26 rights bureau's recommendation; or (B) refer the submission and the  
27 civil rights bureau's recommendation to the commission for a determi-  
28 nation as to whether preclearance shall be denied or granted. If the  
29 commissioner initially assigned refers the submission and the civil  
30 rights bureau's recommendation to the commission for a determination,  
31 the commission shall deny or grant preclearance within ten days from the  
32 date of referral. In consultation with the civil rights bureau, the  
33 commission may invoke up to two extensions of ninety days each.

34 (g) Appeal of any denial by the preclearance commission may be heard  
35 in the supreme court for the county of New York in a proceeding  
36 commenced against the commission, pursuant to article seventy-eight of  
37 the civil practice law and rules, from which appeal may be taken accord-  
38 ing to the ordinary rules of appellate procedure. Due to the frequency  
39 and urgency of elections, actions brought pursuant to this section shall  
40 be subject to expedited pretrial and trial proceedings and receive an  
41 automatic calendar preference on appeal.

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

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

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

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

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

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

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

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

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

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

31 (c) In order to initiate a lookback review, the commission must  
32 provide notice to a covered entity of its decision to review a covered  
33 policy enacted or implemented by that covered entity. Upon receipt of  
34 such notice, the covered entity shall submit the covered policy in writ-  
35 ing to the preclearance commission within thirty days.

36 (d) Upon receipt of a covered policy for lookback review, the commis-  
37 sion shall publish the submission on its website. The schedule and  
38 procedures for receiving public comment and evaluating a submission  
39 through lookback review shall reflect the schedule and procedures  
40 provided by paragraph (f) of subdivision four of this section, based on  
41 the type of policy that is the subject of the submission.

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

45 § 17-214. Right of action against voter intimidation, deception or  
46 obstruction. 1. (a) No person, whether acting under color of law or  
47 otherwise, may engage in acts of intimidation, deception, or obstruction  
48 that affects the right of voters to access the elective franchise.

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

50 (i) established if a person uses or threatens to use any force,  
51 violence, restraint, abduction or duress, or inflicts or threatens to  
52 inflict any injury, damage, harm or loss, or in any other manner prac-  
53 tices intimidation that causes or will reasonably have the effect of  
54 causing any person to vote or refrain from voting in general or for or  
55 against any particular person or for or against any proposition submit-  
56 ted to voters at such election; to place or refrain from placing their

1 name upon a registry of voters; or to request or refrain from requesting  
2 an absentee ballot; or

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

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

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

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

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

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

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

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

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

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

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