

STATE OF NEW YORK

1046

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

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

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

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

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

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

6 VIOLATIONS OF THE ELECTIVE FRANCHISE

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

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

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

12 TITLE 2
13 JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK
14 Section 17-200. Legislative purpose and statement of public policy.
15 17-202. Interpretation of laws related to elective franchise.
16 17-204. Definitions.
17 17-206. Rights of action.
18 17-208. Maintenance of voting and election data.

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

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1 17-210. Assistance for language-minority groups.

2 17-212. Preclearance.

3 17-214. Right of action against voter intimidation, deception or
4 obstruction.

5 17-216. Attorneys' fees.

6 17-218. Applicability.

7 17-220. Severability.

8 § 17-200. Legislative purpose and statement of public policy. In
9 recognition of the protections for the right to vote provided by the
10 constitution of the state of New York, which substantially exceed the
11 protections for the right to vote provided by the constitution of the
12 United States, and in conjunction with the constitutional guarantees of
13 equal protection, freedom of expression, and freedom of association
14 under the law and against the denial or abridgement of the voting rights
15 of members of a race, ethnicity, or language-minority group, it is the
16 public policy of the state of New York to:

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

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

23 § 17-202. Interpretation of laws related to elective franchise. In
24 further recognition of the protections for the right to vote provided by
25 the constitution of the state of New York, statutes, rules and regu-
26 lations, and local laws or ordinances related to the elective franchise
27 shall be construed liberally in favor of (a) protecting the right to
28 cast an effective ballot; (b) ensuring that eligible voters are not
29 impaired in registering to vote or voting including having their votes
30 counted, and (c) ensuring equitable access with regard to race, ethnici-
31 ty, and language-minority groups to opportunities to register to vote
32 and to vote.

33 § 17-204. Definitions. For the purposes of this title:

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

45 2. "District-based" method of election means a method of electing
46 members to the governing body of a political subdivision using a
47 districting or redistricting plan in which each member of the governing
48 body resides within a district or ward that is a divisible part of the
49 political subdivision and is elected only by voters residing within that
50 district or ward, except for a member of the governing body that holds
51 exclusively executive responsibilities.

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

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

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

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

17 7. "Federal voting rights act" means the federal Voting Rights Act of
18 1965, 52 U.S.C. § 10301 et seq.

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

21 § 17-206. Rights of action. 1. Right of action against voter
22 suppression. (a) No voting qualification, prerequisite to voting, law,
23 ordinance, standard, practice, procedure, regulation, or policy shall be
24 enacted or implemented by any board of elections or political subdivi-
25 sion in a manner that results in a denial or abridgement of the right of
26 any member of a protected class to vote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (e) If, pursuant to a process commenced by a NYVRA notification
20 letter, a political subdivision enacts or implements a remedy or the
21 civil rights bureau grants approval to a NYVRA proposal, a prospective
22 plaintiff who sent the NYVRA notification letter may, within thirty days
23 of the enactment or implementation of the remedy or approval of the
24 NYVRA proposal, demand reimbursement for the cost of the work product
25 generated to support the NYVRA notification letter. A prospective plain-
26 tiff shall make the demand in writing and shall substantiate the demand
27 with financial documentation, such as a detailed invoice for demography
28 services or for the analysis of voting patterns in the political subdivi-
29 sion. A political subdivision may request additional documentation if
30 the provided documentation is insufficient to corroborate the claimed
31 costs. A political subdivision shall reimburse a prospective plaintiff
32 for reasonable costs claimed, or in an amount to which the parties mutu-
33 ally agree, within forty-five days of receiving the written demand,
34 except that if more than one prospective plaintiff is entitled to
35 reimbursement, the political subdivision shall reimburse the prospective
36 plaintiffs in the order in which they sent NYVRA notification letters
37 and the forty-five day time period described herein shall apply only to
38 reimbursement of the first prospective plaintiff who sent a written
39 notice. 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.

44 (f) Notwithstanding the provisions of this subdivision, if the first
45 day for designating petitions for a political subdivision's next regular
46 election to select members of its governing board has begun or is sched-
47 uled to begin within thirty days, or if a political subdivision is sched-
48 uled to conduct any election within one hundred twenty days, a plain-
49 tiff alleging that the mode of election or districting or redistricting
50 plan in effect for that election will violate this title may commence a
51 judicial action against a political subdivision under this section,
52 provided that the relief sought by such a plaintiff includes preliminary
53 relief for that election. Prior to or concurrent with commencing such a
54 judicial action, any such plaintiff shall also submit a NYVRA notifica-
55 tion letter to the political subdivision. If a judicial action commenced
56 under this provision is withdrawn or dismissed for mootness because the

1 political subdivision has enacted or implemented a remedy or the civil
2 rights bureau has granted approval of a NYVRA proposal pursuant to a
3 process commenced by a NYVRA notification letter, any such plaintiff may
4 only demand reimbursement pursuant to this subdivision.

5 7. Expedited judicial proceedings and preliminary relief. Because of
6 the frequency of elections, the severe consequences and irreparable harm
7 of holding elections under unlawful conditions, and the expenditure to
8 defend potentially unlawful conditions that benefit incumbent officials,
9 actions brought pursuant to this section shall be subject to expedited
10 pretrial and trial proceedings and receive an automatic calendar prefer-
11 ence. In any action alleging a violation of this section in which a
12 plaintiff party seeks preliminary relief with respect to an upcoming
13 election, the court shall grant relief if it determines that: (a) plain-
14 tiffs are more likely than not to succeed on the merits; and (b) it is
15 possible to implement an appropriate remedy that would resolve the
16 alleged violation in the upcoming election.

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

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

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

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

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

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

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

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

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

54 (f) Districting or redistricting plans for every election in every
55 political subdivision.

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

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

7 6. Data on race, ethnicity, and language-minority groups. The state-
8 wide database shall prepare any estimates made pursuant to this section
9 by applying the most advanced, peer-reviewed, and validated methodol-
10 ogies.

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

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

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

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

44 § 17-210. Assistance for language-minority groups. 1. Political subdi-
45 visions required to provide language assistance. A board of elections or
46 a political subdivision that administers elections shall provide
47 language-related assistance in voting and elections to a language-minor-
48 ity group in a political subdivision if the director determines, based
49 on data from the American community survey, or data of comparable quali-
50 ty collected by a public office, that:

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

55 (b) more than four thousand of the citizens of voting age of such
56 political subdivision are members of a single language-minority group

1 and speak English "less than very well" according to the American commu-
2 nity survey; or

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

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

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

37 § 17-212. Preclearance. 1. Preclearance. To ensure that the right to
38 vote is not denied or abridged on account of race, ethnicity, or
39 language-minority group, as a result of the enactment or implementation
40 of a covered policy, as defined in subdivision two of this section,
41 after the effective date of this section, the enactment or implementa-
42 tion of a covered policy by a covered entity, as defined in subdivision
43 three of this section, shall be subject to preclearance by the civil
44 rights bureau or by a designated court as set forth in this section.

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

49 (a) Districting or redistricting;
50 (b) Method of election;
51 (c) Form of government;
52 (d) Annexation of a political subdivision;
53 (e) Incorporation of a political subdivision;
54 (f) Consolidation or division of political subdivisions;
55 (g) Removal of voters from enrollment lists or other list maintenance
56 activities;

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

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

5 (j) Registration of voters;

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

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

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

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

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

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

54 (a) The covered entity shall submit the covered policy in writing to
55 the civil rights bureau of the office of the attorney general. If the
56 covered entity is a county or city board of elections, it shall contem-

1 poraneously provide a copy of the covered policy to the state board of
2 elections.

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

5 (i) For any covered policy concerning the designation of poll sites or
6 the assignment of election districts to poll sites, whether for election
7 day or early voting, the civil rights bureau shall grant or deny
8 preclearance within thirty days following the receipt of submission. If
9 the civil rights bureau grants preclearance, it may, in its discretion,
10 designate preclearance as "preliminary" in which case the civil rights
11 bureau may deny preclearance within sixty days following the receipt of
12 submission of the covered policy.

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

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

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

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

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

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

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

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

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

54 (b) The covered entity shall contemporaneously provide a copy of the
55 covered policy to the civil rights bureau. The failure of the covered

1 entity to provide a copy of the covered policy to the civil rights
2 bureau will result in an automatic denial of preclearance.

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

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

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

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

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

24 § 17-214. Right of action against voter intimidation, deception or
25 obstruction. 1. No person, whether acting under color of law or other-
26 wise, may engage in acts of intimidation, deception, or obstruction that
27 affects the right of voters to access the elective franchise. A
28 violation of this subdivision shall be:

29 (a) established if a person uses or threatens to use any force,
30 violence, restraint, abduction or duress, or inflicts or threatens to
31 inflict any injury, damage, harm or loss, or in any other manner prac-
32 tices intimidation that causes or will reasonably have the effect of
33 causing any person to vote or refrain from voting in general or for or
34 against any particular person or for or against any proposition submit-
35 ted to voters at such election; to place or refrain from placing their
36 name upon a registry of voters; or to request or refrain from requesting
37 an absentee ballot; or

38 (b) established if a person uses any deceptive or fraudulent device,
39 contrivance or communication, that impedes, prevents or otherwise inter-
40 feres with the free exercise of the elective franchise by any person, or
41 that causes or will reasonably have the effect of causing any person to
42 vote or refrain from voting in general or for or against any particular
43 person or for or against any proposition submitted to voters at such
44 election; to place or refrain from placing their name upon a registry of
45 voters; or to request or refrain from requesting an absentee ballot; or

46 (c) established if a person obstructs, impedes, or otherwise inter-
47 feres with access to any polling place or elections office, or
48 obstructs, impedes, or otherwise interferes with any voter in any manner
49 that causes or will reasonably have the effect of causing any delay in
50 voting or the voting process, including the canvassing and tabulation of
51 ballots.

52 2. Standing. Any aggrieved persons, organization whose membership
53 includes or is likely to include aggrieved persons, organization whose
54 mission would be frustrated by a violation of this section, organization
55 that would expend resources in order to fulfill its mission as a result
56 of a violation of this section, or the attorney general may file an

1 action pursuant to this section in the supreme court of the county in
2 which the alleged violation of this section occurred.

3 3. Remedies. Upon a finding of a violation of any provision of this
4 section, the court shall implement appropriate remedies that are
5 tailored to remedy the violation, including but not limited to providing
6 for additional time to cast a ballot that may be counted in the election
7 at issue. This title gives the court authority to implement remedies
8 notwithstanding any other provision of state or local law, including any
9 other state or local law. Any party who shall violate any of the
10 provisions of the foregoing section or who shall aid the violation of
11 any of said provisions shall be liable to any prevailing plaintiff party
12 for damages, including nominal damages for any violation, and compensa-
13 tory or punitive damages for any intentional violation.

14 § 17-216. Attorneys' fees. In any action to enforce any provision of
15 this title, the court shall allow the prevailing plaintiff party, other
16 than the state or political subdivision thereof, a reasonable attorneys'
17 fee, litigation expenses including, but not limited to, expert witness
18 fees and expenses as part of the costs. A plaintiff will be deemed to
19 have prevailed when, as a result of litigation, the defendant party
20 yields much or all of the relief sought in the suit. Prevailing defend-
21 ant parties shall not recover any costs, unless the court finds the
22 action to be frivolous, unreasonable, or without foundation.

23 § 17-218. Applicability. The provisions of this title shall apply to
24 all elections for any elected office or electoral choice within the
25 state or any political subdivision. The provisions of this title shall
26 apply notwithstanding any other provision of law, including any other
27 state law or local law.

28 § 17-220. Severability. If any provision of this title or its applica-
29 tion to any person, political subdivision, or circumstance is held
30 invalid, the invalidity shall not affect other provisions or applica-
31 tions of this title which can be given effect without the invalid
32 provision or application, and to this end the provisions of this title
33 are severable.

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