STATE OF NEW YORK

1046--D

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FELDER, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- 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, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

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

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

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

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

LBD02423-19-2

VIOLATIONS OF THE ELECTIVE FRANCHISE

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

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

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

TITLE 2

JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

Section 17-200. Legislative purpose and statement of public policy.
17-202. Interpretation of laws related to elective franchise.
17-204. Definitions.
17-206. Rights of action.
17-208. Assistance for language-minority groups.
17-210. Preclearance commission.
17-212. Preclearance.
17-214. Right of action against voter intimidation, deception or obstruction.
17-216. Authority to issue subpoenas.
17-218. Expedited judicial proceedings and preliminary relief.
17-220. Attorneys' fees.
17-222. Applicability.
17-224. Severability.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. "Government enforcement action" means a denial of administrative or judicial preclearance by the state or federal government, pending litigation filed by a federal or state entity, a final judgment or adjudication, a consent decree, or similar formal action.

10. "Preclearance commission" means the commission formed by this title to make determinations as to preclearance, informed by the recommendations of the civil rights bureau.

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

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

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

(c) For political subdivisions where either the primary or general election is held on a date that is not concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution, and in state law, there shall be a presumption that the date of election results in the denial or abridgement of the right to vote where, for any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population, the percent of members of that protected class that are actual voters is at least twenty-five percent lower than the percent of citizens of voting age that are not members of that protected class that are actual voters.

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

(b) A violation of this subdivision shall be:

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

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

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

officials, or the political subdivision to discriminate against a protected class is not required; (vi) evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered; (vii) evidence that sub-groups within a protected class have different voting patterns shall not be considered; (viii) evidence concerning whether members of a protected class are geographically compact or concentrated shall not be considered, but may be a factor in determining an appropriate remedy; and (ix) evidence concerning projected changes in population or demographics shall not be considered, but may be a factor, in determining an appropriate remedy.

3. Evaluation of totality of the circumstances. In assessing whether, under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired without a compelling policy justification, factors that may be considered shall include, but not be limited to: (a) the history of discrimination in the political subdivision, geographic region, or the state; (b) the extent to which members of the protected class have been elected to office in the political subdivision; (c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme; (d) denial of access of either eligible voters or candidates who are members of the protected class to those processes determining which groups of candidates will receive access to the ballot, financial support, or other support in a given election; (e) the extent to which members of the protected class contribute to political campaigns at lower rates; (f) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate; (g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection; (h) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process; (i) the use of overt or subtle racial appeals in political campaigns; (j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and (k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy. No factor is dispositive or necessary to establish the existence of racially polarized voting. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.

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

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

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

(i) a district-based method of election;

(ii) an alternative method of election;

(iii) new or revised districting or redistricting plans;

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

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

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

(vii) transferring authority for conducting the political subdivision's elections to the board of elections for the county in which the political subdivision is located;

(viii) additional voting hours or days;

(ix) additional polling locations;

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

(xi) ordering of special elections;

(xii) requiring expanded opportunities for voter registration;

(xiii) requiring additional voter education;

(xiv) modifying the election calendar;

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

(xvi) retaining jurisdiction for such period of time on a given matter as the court may deem appropriate, during which no redistricting plan shall be enforced unless and until the court finds that such plan does not have the purpose of diluting the right to vote on the basis of protected class membership, or in contravention of the voting guarantees set forth in this title, except that the court's finding shall not bar a subsequent action to enjoin enforcement of such redistricting plan.

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

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

(a) Before drawing a draft districting or redistricting plan or plans of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-Engl-

ish-speaking communities, to explain the districting or redistricting process and to encourage public participation.

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

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

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

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

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

(c) If the governing body of a political subdivision lacks the authority under this title or applicable state law or local laws to enact or implement a remedy identified in a NYVRA resolution within ninety days after the passage of the NYVRA resolution, or if the political subdivi-

sion is a covered entity as defined under section 17-212 of this title, the governing body of the political subdivision may undertake the steps enumerated in the following provisions upon passage of a NYVRA resolution:

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

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

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

(iv) Within sixty days of receipt of a NYVRA proposal, the preclearance commission shall either grant or deny approval of the NYVRA proposal.

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

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

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

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

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

(e) If, pursuant to a process commenced by a NYVRA notification letter, a political subdivision enacts or implements a remedy or the

civil rights bureau grants approval to a NYVRA proposal, a prospective plaintiff who sent the NYVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the NYVRA proposal, demand reimbursement for the cost of the work product generated to support the NYVRA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree. The cumulative amount of reimbursements to all prospective plaintiffs, except for actions brought by the attorney general, shall not exceed forty-three thousand dollars, as adjusted annually to the consumer price index for all urban consumers, United States city average, as published by the United States department of labor. To the extent a prospective plaintiff who sent the NYVRA notification letter and a political subdivision are unable to come to a mutual agreement, either party may file a declaratory judgment action to obtain a clarification of rights.

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

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

§ 17-208. Assistance for language-minority groups. 1. Political subdivisions required to provide language assistance. A board of elections or a political subdivision that administers elections shall provide language-related assistance in voting and elections to a language-minority group in a political subdivision if, based on data from the American community survey, or data of comparable quality collected by a public office, that:

(a) more than two percent, but in no instance fewer than three hundred individuals, of the citizens of voting age of a political subdivision are members of a single language-minority group and are limited English proficient.

(b) more than four thousand of the citizens of voting age of such political subdivision are members of a single language-minority group and are limited English proficient.

(c) in the case of a political subdivision that contains all or any part of a Native American reservation, more than two percent of the Native American citizens of voting age within the Native American reservation are members of a single language-minority group and are limited English proficient. For the purposes of this paragraph, "Native American" is defined to include any persons recognized by the United States census bureau or New York as "American Indian" or "Alaska Native".

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

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

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

5. This section shall not apply to special districts as defined by section one hundred two of the real property tax law.

§ 17-210. Preclearance commission. 1. Preclearance commission. There is hereby established within the department of law, a preclearance commission. Such entity shall be responsible for making determinations on preclearance and other matters as enumerated under this title. Such determinations shall be based upon the provisions of this title and the recommendations of the civil rights bureau. This commission shall hereinafter be referred to as the "preclearance commission" or "commission" in this title. The commission shall operate and maintain a website for posting preclearance submissions and decisions to ensure that they are accessible to the public.

2. Preclearance commission structure and membership. (a) The commission shall consist of three members to be selected as set forth in this section and shall have and exercise the powers and duties set forth in this title.

(b) The governor shall select one member, and the attorney general shall select one member. Upon their selection both members shall therein jointly select one member to serve on such commission.

(c) To be eligible to serve as a member of the commission an individual must:

(i) be a resident of New York state;

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

(iii) have experience working with members of protected classes, as defined in this title, in voting in elections in the state of New York,

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

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

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

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

(e) Members of the commission shall serve staggered terms. The first member shall be chosen by the attorney general and shall serve a term of five years, the second member shall be chosen by the governor and shall serve a term of four years and the third member chosen by the first two members shall serve a term of three years. All subsequent members of the commission shall be selected and appointed as described in this section and shall serve a term of five years, unless selected and appointed to complete a vacant term.

(f) The commission by a majority vote shall elect a chairperson from among its members to preside over its meetings, other proceedings, and votes. The chairperson shall serve a one year term.

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

(h) Members of the commission shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

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

(j) Any vacancy occurring on the commission shall be filled within thirty days of its occurrence, by those who selected the member in such seat, to complete the vacant term.

(k) Nothing in this article shall prevent a member from serving a second consecutive term unless such person has previously been removed for cause from said commission.

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

2. Covered policies. A "covered policy" shall include any new or modified voting qualification, prerequisite to voting, law, ordinance, stan-

dard, practice, procedure, regulation, or policy concerning any of the following topics:

(a) Method of election;

(b) Form of government;

(c) Annexation of a political subdivision;

(d) Incorporation of a political subdivision;

(e) Consolidation or division of political subdivisions;

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

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

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

(i) Registration of voters;

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

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

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

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

4. Preclearance by the attorney general and the preclearance commission. A covered entity may obtain preclearance for a covered policy from the preclearance commission pursuant to the following process:

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

(b) Upon submission of a covered policy for preclearance, as soon as practicable but no later than within ten days, the commission shall publish the submission on its website.

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

(d) Upon submission of a covered policy for preclearance, the civil rights bureau shall review the submission and shall, within the time periods set forth below, provide a report and recommendation to the commission, which shall include a recommendation as to whether, under this title, preclearance should be granted or denied to the covered policy. Such time period shall run concurrent with the time periods for public comment. The civil rights bureau may not submit its report and recommendation until the period for public comment is closed. The civil rights bureau may request more information from a jurisdiction submitting a covered policy at any time during its review to aid in developing its report and recommendation. The failure to timely comply with reasonable requests for more information may be grounds for the denial of preclearance. The civil rights bureau's reports and recommendation shall be posted publicly on the preclearance commission's website promptly after they are received by the commission. Provided, however, such communications between the civil rights bureau and the commission or its members other than the civil rights bureau's report and recommendation shall be exempt from public disclosure under article six of the public officers law. The civil rights bureau may instead opt to grant or deny preclearance directly without sending a recommendation to the commission.

(e) Upon receipt of the civil rights bureau's report and recommendation regarding a covered policy submitted for preclearance, the preclearance commission shall review the covered policy, the civil rights bureau's report and recommendation, and any public comment, and shall, within the time periods set forth below, deny or grant preclearance. In determining whether to deny or grant preclearance, the commission shall give deference to the civil rights bureau's recommendation under an "arbitrary and capricious" standard of review. In any determination as to preclearance, the commission shall identify in writing whether it is approving or rejecting the civil rights bureau's recommendation. If the preclearance commission grants preclearance, it may, in its discretion, designate preclearance as "preliminary" in which case the commission may deny preclearance within sixty days following the receipt of submission of the covered policy.

(i) The commission shall grant preclearance only if it determines, upon review of the civil rights bureau's recommendation, that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred

candidates to office. If the commission grants preclearance, the covered entity may enact or implement the covered policy immediately.

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

(iii) If the commission fails to respond within the time for response as established in this section, the civil rights bureau's recommendation on the covered policy shall govern.

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

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

(i) For any covered policy concerning the designation or selection of poll sites or the assignment of election districts to poll sites, whether for election day or early voting, the period for public comment shall be five business days. The civil rights bureau shall submit its report and recommendation to the commission within ten days following the receipt of such submission and a single commissioner, assigned on a rotating basis, shall review the submission, the civil rights bureau's recommendation, and any public comment. Within five days such commissioner shall, either: (A) approve the civil rights bureau's recommendation; or (B) refer the submission and the civil rights bureau's recommendation to the full commission for a determination as to whether preclearance shall be denied or granted.

(ii) Upon a showing of good cause, the civil rights bureau may receive an extension of up to twenty days to submit its report and recommendation to the commission. If the commissioner initially assigned refers the submission and the civil rights bureau's recommendation to the commission for a determination, the commission shall deny or grant preclearance within five days from the date of referral.

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

(iv) The civil rights bureau is hereby authorized to promulgate rules for an expedited, emergency preclearance process in the event of a covered policy occurring during or imminently preceding an election as a result of any disaster within the meaning of section 3-108 of this chapter or other exigent circumstances. Any preclearance granted under this provision shall be designated "preliminary" and the commission may deny preclearance within sixty days following receipt of the covered policy.

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

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

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

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

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

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

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

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

6. Preclearance by public notice and comment. A covered entity may obtain preclearance for a covered policy through the use of a public notice and comment period pursuant to the following process:

(a) Prior to enacting or seeking to administer any covered policies under subdivision two of this section the covered entity shall publish the proposed covered policy change on its official website, along with an explanation for how the change would not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office, and publish general notice of opportunity for public comment on the proposed covered practice. The covered entity shall also publicize the notice through press releases and such other media. The covered entity shall notify the civil rights bureau and the preclearance commission of its intent to use the notice and comment process to preclear a proposed change.

(b) Such notice shall be made at least forty-five days in advance of the last date prescribed in the notice for public comment.

(c) Public comment shall be accepted for a period of no fewer than thirty days. During this period, the covered entity shall afford interested persons an opportunity to submit data, views, and arguments in

writing by mail, fax, or email, or through an online public comment portal on the official website for the locality if one has been established.

(d) The covered entity shall conduct at least one public hearing during this period to receive public comment on the proposed covered practice.

(e) The covered entity may make changes to the proposed covered practice in response to public comment received. In doing so, the revised covered practice shall be published and public comment shall be accepted in accordance with this subsection, except the public comment period shall be no fewer than fifteen days.

(f) Following the public comment period or periods prescribed, the covered entity shall publish the final covered practice, which shall include a plain English description of the practice and the text of an ordinance if applicable, giving effect to the practice, maps of proposed boundary changes, or other relevant materials, and notice that the covered practice will take effect in thirty days.

(g) During this thirty-day waiting period, any person who will be subject to, or affected by, the covered practice may challenge, in the supreme court of the locality where the covered practice is to be implemented, the covered practice as having the purpose or effect of diminishing the ability of protected class members to participate in the political process and to elect their preferred candidates to office.

(h) The preclearance commission or the civil rights bureau may assert jurisdiction over the proposed change upon receiving notice of the covered entity's intent to use the notice and comment process any time before the close of the public comment period. A single member may assert jurisdiction.

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

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

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

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

(d) Upon receipt of a covered policy for lookback review, the commission or civil rights bureau shall publish the submission on its website. The schedule and procedures for receiving public comment and evaluating a submission through lookback review shall reflect the schedule and procedures provided by paragraph (f) of subdivision four of this

section, based on the type of policy that is the subject of the submission.

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

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

(b) A violation of this subdivision shall be:

(i) established if a person uses or threatens to use any force, violence, restraint, abduction or duress, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election; to place or refrain from placing their name upon a registry of voters; or to request or refrain from requesting an absentee ballot; or

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

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

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

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

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

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

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

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

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

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