STATE OF NEW YORK

10357

IN ASSEMBLY

May 20, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Walker) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to voting rights; to amend chapter 226 of the laws of 2022 amending the election law relating 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, in relation to making technical changes; and to repeal certain provisions of the election law relating to voting rights

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

Section 1. Subdivision 5 of section 17-204 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

5. "Protected class" means a class of [~~eligible voters~~] **individuals** who are members of a race, color, or language-minority group**, including individuals who are members of a minimum reporting category that has ever been officially recognized by the United States census bureau**.

§ 2. Subdivision 10 of section 17-204 of the election law is REPEALED.

§ 3. Subparagraph (ii) of paragraph (b) of subdivision 2 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(ii) used a district-based or alternative method of election and 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~~]**.**

§ 4. The opening paragraph of subdivision 7 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

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

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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. **The NYVRA notification letter shall specify the potential violation or violations alleged and shall contain a statement of facts to support such allegation; provided, however, that failure to so specify shall not be a basis for dismissal of such judicial action, but may affect the calculation of reimbursement pursuant to paragraph (e) of this subdivision. The prospective plaintiff shall also send by first class mail or email a copy of the NYVRA notification letter to the civil rights bureau.** 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.

§ 5. Paragraph (b) of subdivision 7 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(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 the political subdivision 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, such political subdivision shall have ninety days after such passage to enact and implement such remedy, during which a prospective plaintiff shall not commence an action to enforce this section against the political subdivision. For actions against a school district, the commissioner of education may order the enactment of a NYVRA resolution pursuant to the commissioner's authority under section three hundred five of the education law. **Within seven days of passing a NYVRA resolution, the political subdivision shall send by first class mail or email a copy of the resolution to the civil rights bureau.**

§ 6. Subparagraph (i) of paragraph (c) of subdivision 7 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(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 civil rights bureau **no later than one hundred twenty days after the passage of the NYVRA resolution**. Such a submission shall be referred to as a "NYVRA proposal" in this title.

§ 7. Subparagraph (iii) of paragraph (c) of subdivision 7 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(iii) Within [~~**forty-five**~~] **sixty** days of receipt of a NYVRA proposal, the civil rights bureau shall grant or deny approval of the NYVRA proposal. **The civil rights bureau may invoke an extension of up to twenty days to review the proposal.**

§ 8. Subparagraph (iv) of paragraph (c) of subdivision 7 of section 17-206 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(iv) The civil rights bureau 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 **cited in the NYVRA notification letter and would not give rise to any other violation of this title**; (C) the NYVRA proposal is unlikely to violate the constitution or any **relevant** federal law; **and** (D) [~~the NYVRA proposal would 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.

§ 9. Subdivision 3 of section 17-210 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

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 **voting age** 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~~] **percentage points** 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~~] **individuals** within the political subdivision at any point within the previous ten years[~~. If any covered entity is a~~]**; (e) any** political subdivision in which a board of elections has been established, [~~that board of elections shall also be deemed~~] **if such political subdivision contains** a covered entity[~~. If~~] **fully within its borders; or (f)** any [~~political subdivision in which a~~] board of elections **that** has been established [~~contains a covered entity fully within its borders, that~~] **in a** political subdivision [~~and that board of elections shall both be deemed~~] **that is** a covered entity **pursuant to paragraph (a), (b), (c), (d) or (e) of this subdivision**.

§ 10. Subparagraph (ii) of paragraph (f) of subdivision 4 of section 17-210 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

(ii) [~~Upon a showing of good cause, the~~] **The** civil rights bureau may [~~receive~~] **invoke** an extension of up to twenty days to make a determi-

nation pursuant to this paragraph, if the civil rights bureau determines that good cause exists for such extension.

§ 11. Subdivision 7 of section 17-210 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

7. [~~Rules and regulations. The civil rights bureau may promulgate such rules and regulations as are necessary to effectuate the purposes of this section.~~] Notification. (a) Any political subdivision that becomes subject to a court order or government enforcement action as provided in paragraph (a) or (b) of subdivision three of this section shall notify the civil rights bureau within thirty days of the issuance of such order or enforcement action.

(b) Any political subdivision that becomes involved in litigation concerning voting shall notify the civil rights bureau within thirty days of the commencement of such litigation.

(c) No more than thirty days after publication of a list of covered entities by the civil rights bureau, each covered entity included in such list shall notify the civil rights bureau of the name, email address, and telephone number of an individual with the authority to submit covered policies for preclearance on behalf of the covered entity. Each such covered entity shall notify the civil rights bureau within thirty days of any material change to the information required pursuant to this paragraph.

§ 12. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 17-212 of the election law, as amended by chapter 481 of the laws of 2023, is amended to read as follows:

(ii) a person knowingly uses any deceptive or fraudulent device, contrivance or communication[~~,~~] that (A) pertains to: (1) the time, place, or manner of any election; (2) the qualifications or restrictions on voter eligibility for such election; (3) any voter's eligibility to vote in any election; (4) the consequences for voting or failing to vote in any election; or (5) a statement of endorsement by any specifically named person, political party, or organization; and (B) 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 early mail or absentee ballot; or

§ 13. Section 17-214 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

§ 17-214. Enforcement. 1. Enforcement by the attorney general. If the civil rights bureau concludes that a submission by a political subdivision or any other party is insufficient to complete its review, the civil rights bureau may request that the party provide additional information, and the time periods for review provided in this title shall recommence upon receipt of such information. If such information is not provided, such time periods for review shall not apply.

2. 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.

3. Preclearance. Covered entities shall provide information relevant to preclearance to the civil rights bureau upon request.

§ 14. Section 17-216 of the election law, as added by chapter 226 of the laws of 2022, is amended to read as follows:

§ 17-216. 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~~] **title** 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.

§ 15. The election law is amended by adding a new section 17-219 to read as follows:

§ 17-219. Rules and regulations. The civil rights bureau may promulgate such rules and regulations as may be necessary to effectuate the purposes of this title.

§ 16. Section 5 of chapter 226 of the laws of 2022 amending the election law relating 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, as amended by chapter 169 of the laws of 2023, is amended to read as follows:

§ 5. This act shall take effect July 1, 2023; provided 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 17-210 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, **and further provided that** if after the expiration of one year **following such certification** 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.

§ 17. This act shall take effect immediately; provided, however, that the amendments to section 17-210 of the election law made by sections nine, ten and eleven of this act shall take effect on the same date and in the same manner as such section takes effect pursuant to section 5 of chapter 226 of the laws of 2022; provided, further, that section 17-219 of the election law as added by section fifteen of this act shall be deemed to have been in full force and effect on the same date as chapter 226 of the laws of 2022 took effect; and provided, further, that the amendments to section 5 of chapter 226 of the laws of 2022 made by section sixteen of this act shall be deemed to have been in full force and effect on the same date as such chapter was enacted.