STATE OF NEW YORK

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, HINCHY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- 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 -- 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)”.

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

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.
17-204. Definitions.
17-206. Prohibitions on voter disfranchisement.
17-208. Assistance for language-minority groups.
17-212. Prohibition against voter intimidation, deception or obstruction.
17-214. Authority to issue subpoenas.
17-216. Expedited judicial proceedings and preliminary relief.
17-218. Attorneys' fees.
17-220. Applicability.
17-222. 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 the elective franchise. In further recognition of the protections for the right to vote provided by the constitution of the state of New York, all 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 of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting. 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 of 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 of 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. For the purposes of this title, 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.
5-a. "Language minorities" or "language-minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.
6. "Racially polarized voting" means voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate.
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. "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. Prohibitions on voter disenfranchisement. 1. Prohibition 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 abridge-
ment of the right of members of a protected class to vote.
(b) A violation of paragraph (a) of this subdivision shall be estab-
lished upon a showing that, based on the totality of the circumstances,
members of a protected class have less opportunity than the rest of the
electorate to elect candidates of their choice or influence the outcome
of elections.
2. Prohibition against vote dilution. (a) No board of elections or
political subdivision shall use any method of election, having 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 vote dilution.
(b) A violation of paragraph (a) of this subdivision shall be estab-
lished upon a showing that a political subdivision:
(i) used an at-large method of election and either: (A) voting
patterns of members of the protected class within the political subdivi-
sion are racially polarized; or (B) under the totality of the circum-
stances, the ability of members of the protected class to elect candi-
dates of their choice or influence the outcome of elections is impaired;

(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
(c) For the purposes of demonstrating that a violation of paragraph
(a) of this subdivision has occurred, evidence shall be weighed and
considered as follows: (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. In determining whether, under the totality of the circumstances, a
violation of subdivision one or two of this section has occurred,
factors that may be considered shall include, but not be limited to: (a)
the history of discrimination in or affecting the political subdivision;
(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) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates 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. Nothing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred.

4. Remedies. (a) Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process, which 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 regular 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, unless the budget in such political subdivision is subject to direct voter approval pursuant to part two of article five or article forty-one of the education law;
(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;
(xii) ordering of special elections;
(xiii) requiring expanded opportunities for voter registration;
(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 consider proposed remedies by any parties and
interested non-parties, but shall not provide deference or priority to a
proposed remedy offered by the political subdivision. The court shall
have the power to require a political subdivision to implement remedies
that are inconsistent with any other provision of law where such inconsis-
tent provision of law would preclude the court from ordering an
otherwise appropriate remedy in such matter.

6. Procedures for implementing new or revised 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 would 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
NVRA 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-Eng-
lish-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 would be elected in their
districts at different times to provide for staggered terms of office,
the potential sequence of such 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 shall be invited to
provide input regarding the content of the draft districting or redis-
tecting plan or plans and the proposed sequence of elections, if appli-
cable. 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 "NVYRA notification
letter" in this title. For actions against a school district or any
other political subdivision that holds elections governed by the educa-
tion law, the prospective plaintiff shall also send by certified mail a
copy of the NVYRA 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 NVYRA notification letter.
(b) Before receiving a NVYRA notification letter, or within fifty days
of mailing of a NVYRA notification letter, the governing body of a poli-
tical 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 re-
medy; and (iii) a schedule for enacting and implementing such a remedy.
Such a resolution shall be referred to as a "NVYRA resolution" in this
title. If a political subdivision passes a NVYRA resolution, such poli-
tical 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 subdi-
vision. For actions against a school district, the commissioner of
education may order the enactment of a NVYRA resolution pursuant to the
commissioner's authority under section three hundred five of the educa-
tion law.
(c) If the governing body of a political subdivision lacks the author-
ity under this title or applicable state law or local laws to enact or
implement a remedy identified in a NVYRA resolution, or fails to enact
or implement a remedy identified in a NVYRA resolution, within ninety
days after the passage of the NVYRA resolution, or if the political
subdivision is a covered entity as defined under section 17-210 of this
title, the governing body of the political subdivision shall undertake
the steps enumerated in the following provisions:
(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. Such a submission shall be referred
to as a "NVYRA proposal" in this title.
(ii) Prior to passing a NVYRA proposal, the political subdivision
shall hold at least one public hearing, at which the public shall be
invited to provide input regarding the NVYRA 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 NVYRA proposal, the civil
rights bureau shall grant or deny approval of the NVYRA proposal.
(iv) The civil rights bureau shall only grant approval to the NVRA proposal if it concludes that: (A) the political subdivision may be in violation of this title; (B) the NVRA proposal would remedy any potential violation of this title; (C) the NVRA proposal is unlikely to violate the constitution or any federal law; (D) the NVRA 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 NVRA proposal is feasible.

(v) If the civil rights bureau grants approval, the NVRA proposal shall be enacted and implemented immediately, notwithstanding any other provision of law, including any other state or local law.

(vi) If the political subdivision is a covered entity as defined under section 17-210 of this title, the political subdivision shall not be required to obtain preclearance for the NVRA proposal pursuant to such section upon approval of the NVRA proposal by the civil rights bureau.

(vii) If the civil rights bureau denies approval, the NVRA proposal shall not be enacted or implemented. The civil rights bureau shall explain the basis for such denial and may, in its discretion, make recommendations for an alternative remedy for which it would grant approval.

(viii) If the civil rights bureau does not respond, the NVRA proposal shall not be enacted or implemented.

(d) A political subdivision that has passed a NVRA resolution may enter into an agreement with the prospective plaintiff providing that such prospective plaintiff shall not commence an action pursuant to this section against the political subdivision for an additional ninety days. Such 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 NVRA proposal and submit it to the civil rights bureau.

(e) If, pursuant to a process commenced by a NVRA notification letter, a political subdivision enacts or implements a remedy or the civil rights bureau grants approval to a NVRA proposal, a prospective plaintiff who sent the NVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the NVRA proposal, demand reimbursement for the cost of the work product generated to support the NVRA 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 NVRA 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, in the event that 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 in the event
that 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 NVRA notification letter to the political subdivision. In the
event that 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 NVRA proposal pursuant to a process commenced by a NVRA notifica-
tion 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 title in the event that 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 subdiv-
isions 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-minor-
ity 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 reserv-
ation are members of a single language-minority group and are limited
English proficient. For the purposes of this paragraph, "Native Ameri-
can" 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. A board of elections or pol-
itical subdivision required to provide language assistance to a partic-
ular language-minority group pursuant to this section 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. 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, shall be provided
in the language of the applicable language-minority group as well as in
the English language, provided that where the language of the applicable
language-minority group is historically oral or unwritten, the board of
elections or political subdivision shall only be required to furnish
oral instructions, assistance, or other information relating to regis-
tration and voting.
3. Action for declaratory judgment for English-only voting materials. A board of elections or political subdivision subject to the requirements of this section 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 aggrieved persons or members of a protected class, organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by 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. 1. Preclearance. To ensure that the right to vote is not denied or abridged on account of race, color, or language-minority group, the enactment or implementation of a covered policy by a covered entity, as defined in subdivisions two and three of this section respectively, 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, standard, 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) Assignment of election districts to election day or early voting poll sites;
(j) Assistance offered to members of a language-minority group; and

(1) Any additional topics designated by the civil rights bureau pursuant to a rule promulgated under the state administrative procedure act, upon a determination by the civil rights bureau 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 any 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 citi-
zen 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 estab-
lished, 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. A covered entity may obtain
pre clearance for a covered policy from the civil rights bureau pursuant
to the following process:

(a) The covered entity shall submit the covered policy in writing to
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 civil rights bureau
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 civil rights bureau 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 covered policy, and any public comment,
and shall, within the time periods set forth below, provide a report and
determination 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 shall not make such determination until the period for public
comment is closed. The civil rights bureau may request additional infor-
mation from a covered entity 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 determina-
tion shall be posted publicly on its website.

(e) In any determination as to preclearance, the civil rights bureau
shall identify in writing whether it is approving or rejecting the
covered policy; provided, however, that the civil rights bureau may, in
its discretion, designate preclearance as "preliminary" in which case
the civil rights bureau may deny preclearance within sixty days follow-
ing the receipt of submission of the covered policy.

(i) The civil rights bureau shall grant preclearance only if it deter-
mines that the covered policy will not diminish the ability of protect-
class members to participate in the political process and to elect their
preferred candidates to office. If the civil rights bureau grants
preclearance, the covered entity may enact or implement the covered
policy immediately.

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

(iii) If the civil rights bureau fails to respond within the required
time frame as established in this section, the covered policy shall be
deemed precleared and the covered entity may enact or implement such
covered policy.

(f) The time periods for public comment, civil rights bureau review,
and the determination of the civil rights bureau 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 polling places, whether
for election day or on-call voting, the period for public comment shall
be five business days. The civil rights bureau shall review the covered
policy, including any public comment, and make a determination to deny
or grant preclearance for such covered policy within fifteen days
following the receipt of such covered policy.

(ii) Upon a showing of good cause, the civil rights bureau may receive
an extension of up to twenty days to make a determination pursuant to
this paragraph.

(iii) For any other covered policy, the period for public comment
shall be ten business days. The civil rights bureau shall review the
covered policy, including any public comment, within fifty-five days
following the receipt of such covered policy and make a determination to
deny or grant preclearance for such covered policy. The civil rights
bureau 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 chap-
ter or other exigent circumstances. Any preclearance granted under this
provision shall be designated “preliminary” and the civil rights bureau
may deny preclearance within sixty days following receipt of the covered
policy.

(g) Appeal of any denial by the civil rights bureau may be heard in
the supreme court for the county of New York or the county of Albany in
a proceeding commenced against the civil rights bureau, 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 proce-
dure. 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 prefer-
ence on appeal.

6. 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 san-
tions against the political subdivision and officials in violation.

7. Rules and regulations. The civil rights bureau may promulgate such
rules and regulations as are necessary to effectuate the purposes of
this section.

§ 17-212. Prohibition 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 paragraph (a) this subdivision shall be established
if:
(i) 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) a person knowingly uses any deceptive or fraudulent device,
contrivance or communication, that impedes, prevents or otherwise inter-
feres 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) 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 aggrieved persons or members of a protected class, organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by 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. 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 for damages, including nominal damages for any violation, and compensatory or punitive damages for any intentional violation.

§ 17-214. 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.

§ 17-216. 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 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.

§ 17-218. 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.

§ 17-220. 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; provided, however, that school districts and libraries shall continue to conduct their elections under the education law, subject to and not inconsistent with the provisions of this title, to ensure voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.
§ 17-222. 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 17-210 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, 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.