SENATE, No. 2997

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2022

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)
Senator JOSEPH P. CRYAN
District 20 (Union)

Co-Sponsored by:
Senators Zwicker, Burgess and Singleton

SYNOPSIS

Establishes “John R. Lewis Voting Rights Act of New Jersey.”

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/27/2023)

AN ACT establishing the "John R. Lewis Voting Rights Act of New Jersey" and supplementing Title 19 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "John R. Lewis Voting Rights Act of New Jersey."

2. a. In recognition of the protections for the right to vote provided by the Constitution of the United States, the Constitution of the State of New Jersey, and under the laws of New Jersey, 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 Jersey 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 Jersey, and especially to exercise the elective franchise.

b. In further recognition of the protections for the right to vote provided by the Constitution of the State of New Jersey, all statutes, rules, and regulations, including all local laws or ordinances related to the elective franchise shall be construed liberally in favor of:

(1) protecting the right of voters to have their ballot cast and counted;

(2) ensuring that eligible voters are not impaired in registering to vote; and

(3) 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.

c. The authority to prescribe or maintain voting or elections policies and practices shall not be so exercised as to unnecessarily deny or abridge the right to vote. Policies and practices that burden the right to vote shall be narrowly tailored to promote a compelling policy justification that shall be supported by substantial evidence.

3. As used in this act, P.L. , c. (C.)(pending before the Legislature as this bill):

"Deceptive or fraudulent device, contrivance, or communication" means one that contains false information pertaining to:

(1) the time, place, and manner of any election;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

(2) the qualifications or restrictions on voter eligibility for such election; or

(3) a statement of endorsement by any specifically named person, political party, or organization.

"Division on Civil Rights" means the Division on Civil Rights in the New Jersey Department of Law and Public Safety.

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

"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.

"Language minorities" or "language-minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

"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, borough, school district, or any other district organized pursuant to State or local law.

"Preclearance" means the process of obtaining prior approval from the Division on Civil Rights or a court of this State of any changes related to election procedures in a political subdivision.

"Protected class" means a class of eligible voters who are members of a race, color, or language-minority group.

"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.

"State voting rights act" means the "John R. Lewis Voting Rights Act of New Jersey" established pursuant to P.L. , c. (C.)(pending before the Legislature as this bill).

4. No voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy shall be enacted or implemented by any county board of elections or political subdivision in a manner that results in a denial or abridgement of the right of members of a protected class to vote.

A violation of this section shall be established 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.

5. a. No county 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 this section shall be established upon a showing that during the conduct of an election in a political subdivision:

(1) (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

(2) the 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.

c. For the purposes of demonstrating that a violation of this section has occurred, evidence shall be weighed and considered as follows:

(1) elections conducted prior to the filing of an action pursuant to this act are more probative than elections conducted after the filing of the action;

(2) evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections;

(3) statistical evidence is more probative than non-statistical evidence;

(4) 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;

(5) evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class shall be not required;

(6) 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;

(7) evidence that sub-groups within a protected class have different voting patterns shall not be considered;

(8) 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

(9) evidence concerning projected changes in population or demographics shall not be considered, but may be a factor, in determining an appropriate remedy.

6. a. In determining whether, under the totality of the circumstances, a violation of sections 4 and 5 of this act, P.L. , c.

(C. and C.)(pending before the Legislature as this bill), has occurred, factors that may be considered shall include, but not be limited to:

(1) the history of discrimination in or affecting the political subdivision;

(2) the extent to which members of the protected class have been elected to office in the political subdivision;

(3) 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;

(4) 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;

(5) the extent to which members of the protected class contribute to political campaigns at lower rates;

(6) 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;

(7) the extent to which members of the protected class are disadvantaged in areas including, but not limited to, education, employment, health, public safety, housing, land use, or environmental protection;

(8) 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;

(9) the use of overt or subtle racial appeals in political campaigns;

(10) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and

(1l) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining a particular process of the election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.

b. Nothing in this section 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.

7. a. Upon a finding of a violation of any provision of this act, a court of this State 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:

(1) alternative processes to conduct an election;

(2) new or revised apportionment or redistricting plans;

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

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

(5) moving the date of an election, if consistent with federal and State law, to be concurrent with the primary or general election dates for State, county, or local public office;

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

(7) additional voting hours or days;

(8) additional polling locations;

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

(10) ordering of special elections;

(11) requiring expanded opportunities for voter registration;

(12) requiring additional voter education;

(13) modifying the election calendar;

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

(15) retaining jurisdiction for such period of time on a given matter as a court of this State may deem appropriate, during which no apportionment or redistricting plan shall be enforced unless and until a court of this State 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 act, except that the court's finding shall not bar a subsequent action to enjoin enforcement of such apportionment or redistricting plan.

b. A court of this State 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 inconsistent provision of law would preclude the court from ordering an otherwise appropriate remedy in such matter.

8. a. The governing body of a political subdivision with the authority under this act and all applicable State and local laws to conduct an election, or enact and implement a new apportionment or redistricting plan, shall undertake each of the steps enumerated in this section concerning draft apportionment or redistricting plans and, if applicable, NJVRA notification letters, as defined in section 9 of P.L. , c. (C.)(pending before the Legislature as this bill), or the filing of a claim pursuant to this act or the federal voting rights act.

b. Before drawing a draft apportionment or redistricting plan or plans of the proposed boundaries of the districts, the political subdivision shall hold at least three public hearings, at which the public is invited to provide input regarding the composition of the

districts. Before these public hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the apportionment or redistricting process and to encourage public participation.

c. After all draft apportionment or redistricting plans are drawn, the political subdivision shall publish and make available for release at least one draft apportionment 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, at which the public shall be invited to provide input regarding the content of the draft apportionment or redistricting plan or plans and the proposed sequence of elections, if applicable. The draft apportionment or redistricting plan or plans shall be published at least seven days before consideration at a hearing. If the draft apportionment 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.

d. 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 act, and it shall take into account the preferences expressed by members of the districts.

9. a. 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 act. This written notice shall be referred to as a "NJVRA notification letter" in this act. For actions against a school district, the prospective plaintiff shall also send by certified mail a copy of the NJVRA notification letter to the Commissioner of Education.

b. A prospective plaintiff shall not commence a judicial action against a political subdivision under this section within 50 days of sending to the political subdivision a NJVRA notification letter.

c. Before receiving a NJVRA notification letter, or within 50 days of mailing of a NJVRA notification letter, the governing body of a political subdivision may pass a resolution affirming:

(1) the political subdivision's intention to enact and implement a remedy for a potential violation of this act;

(2) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and

(3) a schedule for enacting and implementing such a remedy.

Such a resolution shall be referred to as a "NJVRA resolution" in this act. If a political subdivision passes a NJVRA resolution, such political subdivision shall have 90 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 NJVRA resolution.

d. If the governing body of a political subdivision lacks the authority under this act or applicable State law or local laws to enact or implement a remedy identified in a NJVRA resolution, or fails to enact or implement a remedy identified in a NJVRA resolution, within 90 days after the passage of the NJVRA resolution, or if the political subdivision is a covered entity as defined under subsection c. of section 11 of this act, P.L. , c. (C.)(pending before the Legislature as this bill), the governing body of the political subdivision shall undertake the steps enumerated in the following provisions:

(1) the governing body of the political subdivision may approve a proposed remedy that complies with this act and submit such a proposed remedy to the Division on Civil Rights. Such a submission shall be referred to as a "NJVRA proposal" in this act;

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

(3) within 45 days of receipt of a NJVRA proposal, the Division on Civil Rights shall grant or deny approval of the NJVRA proposal; and

(4) the Division on Civil Rights shall only grant approval to the NJVRA proposal if it concludes that:

(a) the political subdivision may be in violation of this act;

(b) the NJVRA proposal would remedy any potential violation of this act;

(c) the NJVRA proposal is unlikely to violate the United States Constitution, New Jersey Constitution, or any federal or State law;

(d) the NJVRA 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 NJVRA proposal is feasible;

(5) if the Division on Civil Rights grants approval, the NJVRA proposal shall be enacted and implemented immediately, notwithstanding any other law, rule, or regulation to the contrary;

(6) if the political subdivision is a covered entity as defined under subsection c. of section 11 of this act, the political

subdivision shall not be required to obtain preclearance for the NJVRA proposal pursuant to such section upon approval of the NJVRA proposal by the Division on Civil Rights;

(7) if the Division on Civil Rights denies approval, the NJVRA proposal shall not be enacted or implemented, and the Division on Civil Rights shall explain the basis for such denial and may, in its discretion, make recommendations for an alternative remedy for which it would grant approval; and

(8) if the Division on Civil Rights does not respond, the NJVRA proposal shall not be enacted or implemented.

e. A political subdivision that has passed a NJVRA 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 90 days. Such agreement shall include a requirement that either the political subdivision shall enact and implement a remedy that complies with this act or the political subdivision shall pass a NJVRA proposal and submit it to the Division on Civil Rights.

f. If, pursuant to a process commenced by a NJVRA notification letter, a political subdivision enacts or implements a remedy or the Division on Civil Rights grants approval to a NJVRA proposal, a prospective plaintiff who sent the NJVRA notification letter may, within 30 days of the enactment or implementation of the remedy or approval of the NJVRA proposal, demand reimbursement for the cost of the work product generated to support the NJVRA 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 $43,000, 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 NJVRA 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.

g. Notwithstanding the provisions of this section, 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 30 days, or in the event that a political subdivision is scheduled to conduct any election within 120 days, a plaintiff alleging any violation of

this act 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 NJVRA notification letter to the political subdivision. In the event that a judicial action commenced under this section is withdrawn or dismissed for mootness because the political subdivision has enacted or implemented a remedy or the Division on Civil Rights has granted approval of a NJVRA proposal pursuant to a process commenced by a NJVRA notification letter, any such plaintiff may only demand reimbursement pursuant to this section.

h. Members of different protected classes may file an action jointly pursuant to this act in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.

10. a. A county 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 United States Census Bureau American Community Survey, or data of comparable quality collected by a public office, that:

(1) more than two percent, but in no instance fewer than 300 individuals, of the citizens of voting age of a political subdivision are members of a single language-minority group and are limited English proficient; or

(2) more than 4,000 of the citizens of voting age of such political subdivision are members of a single language-minority group and are limited English proficient.

b. A county board of elections or political subdivision required to provide language assistance to a particular 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 county board of elections or political subdivision shall only be required to furnish oral instructions, assistance, or other information relating to registration and voting.

c. A county 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. A court of this State shall grant the requested relief if it finds that the determination was unreasonable or an abuse of discretion.

11. a. 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 this section, shall be subject to preclearance by the Division on Civil Rights or by a designated court as set forth in this section.

b. 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:

(1) method of election;

(2) form of government;

(3) annexation of a political subdivision;

(4) incorporation of a political subdivision;

(5) consolidation or division of political subdivisions;

(6) removal of voters from enrollment lists or other list maintenance activities;

(7) number, location, or hours of any election day or early voting poll site;

(8) dates of elections and the election calendar, except with respect to special elections;

(9) registration of voters;

(10) assignment of election districts to election day or early voting poll sites;

(11) location of ballot drop boxes;

(12) assistance offered to members of a language-minority group; and

(13) any additional topics designated by the Attorney General pursuant to a rule promulgated under the "Administrative Procedure Act," P.L.1968, c.140 (C.52:14B-1 et seq.), upon a determination by the Division on Civil Rights 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.

c. A "covered entity" shall include:

(1) any political subdivision which, within the previous 25 years, has become subject to a court order or government enforcement action based upon a finding of any violation of this act, the federal voting rights act, the 15th amendment to the United States Constitution, or a voting-related violation of the 14th amendment to the United States Constitution;

(2) any political subdivision which, within the previous 25 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 14th amendment to the United States Constitution concerning discrimination against members of a protected class;

(3) any county in which, based on data provided by the Division of Criminal Justice in the New Jersey Department of Law and Public Safety, the combined crime and criminal offense arrest rate of members of any protected class consisting of at least 10,000 citizens of voting age or whose members comprise at least 10 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 20 percent at any point within the previous 10 years; or

(4) 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 25,000 citizens of voting age or whose members comprise at least 10 percent of the citizen voting age population of the political subdivision, is in excess of 50 with respect to non-Hispanic white citizens of voting age within the political subdivision at any point within the previous 10 years.

If any covered entity is a political subdivision in which a county board of elections has been established, that county board of elections shall also be deemed a covered entity. If any political subdivision in which a county board of elections has been established contains a covered entity fully within its borders, that political subdivision and that county board of elections shall both be deemed a covered entity.

12. a. A covered entity may obtain preclearance for a covered policy from the Division on Civil Rights pursuant to the following process:

(1) The covered entity shall submit the covered policy in writing to the Division on Civil Rights. If the covered entity is a county board of elections, it shall contemporaneously provide a copy of the covered policy to the Secretary of State.

(2) Upon submission of a covered policy for preclearance, as soon as practicable but no later than within 10 days, the Division on Civil Rights shall publish the submission on its website.

(3) After publication of a submission, there shall be an opportunity for members of the public to comment on the submission to the Division on Civil Rights within the time periods set forth in this section. To facilitate public comment, the Division on Civil Rights 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.

(4) Upon submission of a covered policy for preclearance, the Division on Civil Rights shall review the covered policy, and any public comment, and shall, within the time periods set forth in this section, provide a report and determination as to whether, under this act, preclearance should be granted or denied to the covered policy. Such time period shall run concurrent with the time periods for public comment. The Division on Civil Rights shall not make such determination until the period for public comment is closed. The Division on Civil Rights may request additional information 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 Division on Civil Rights reports and determination shall be posted on its website.

(5) In any determination as to preclearance, the Division on Civil Rights shall identify in writing whether it is approving or rejecting the covered policy; provided, however, that the Division on Civil Rights may, in its discretion, designate preclearance as "preliminary" in which case the Division on Civil Rights may deny preclearance within 60 days following the receipt of submission of the covered policy. The Division on Civil Rights 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 Division on Civil Rights grants preclearance, the covered entity may enact or implement the covered policy immediately.

(6) If the Division on Civil Rights denies preclearance, the division shall interpose objections explaining its basis and the covered policy shall not be enacted or implemented.

(7) If the Division on Civil Rights 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.

(8) The time periods for public comment, the Division on Civil Rights review, and the determination of the Division on Civil Rights to grant or deny preclearance on submission shall be as follows:

(a) For any covered policy concerning the designation or selection of polling locations, the assignment of election districts to a polling location, or the location of ballot drop boxes, whether for election day or the early voting period, the period for public comment shall be five business days. The Division on Civil Rights shall review the covered policy, including any public comment, and make a determination to deny or grant preclearance for such covered policy within 15 days following the receipt of such covered policy.

(b) Upon a showing of good cause, the Division on Civil Rights may receive an extension of up to 21 days to make a determination pursuant to this paragraph.

(c) For any other covered policy, the period for public comment shall be 10 business days. The Division on Civil Rights shall review the covered policy, including any public comment, within 55 days following the receipt of such covered policy and make a determination to deny or grant preclearance for such covered policy. The Division on Civil Rights may invoke up to two extensions of 90 days each.

(9) The Attorney General 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 during a state of emergency, public health emergency, or state of local disaster, or other exigent circumstances. Any preclearance granted under this provision shall be designated "preliminary" and the Division on Civil Rights may deny preclearance within 60 days following receipt of the covered policy.

(10) Appeal of any denial by the Division on Civil Rights may be heard in a Superior Court of New Jersey and 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.

b. 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 Division on Civil Rights or any other party with standing to bring an action under this act may bring an action to enjoin the covered policy and to seek sanctions against the political subdivision and officials in violation.

c. The Attorney General, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt such rules and regulations as the commissioner deems necessary to effectuate the provisions of this act.

13. a. (1) 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.

(2) A violation of paragraph (1) this section shall be established if:

(a) 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 public

question 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 a mail-in ballot;

(b) 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 public question 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 a mail-in ballot; or

(c) a person obstructs, impedes, or otherwise interferes with access to any polling place, ballot drop box, 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.

14. a. Any aggrieved persons or 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 act, or the Attorney General may file an action pursuant to this act in the a Superior Court of the county in which the alleged violation of this act occurred.

b. Upon a finding of a violation of any provision of this act, 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 this act 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.

15. a. In any action or investigation to enforce any provision of this act, the Attorney General shall have the authority to take proof and determine relevant facts and to issue subpoenas in accordance with the civil and criminal laws of this State.

b. Given 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 act 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:

(1) plaintiffs are more likely than not to succeed on the merits; and

(2) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

c. In any action to enforce any provision of this act, 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.

16. The provisions of this act shall apply to all elections for any elected public office or electoral choice within the State or any political subdivision. To ensure voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process, the provisions of this act shall apply notwithstanding any other provision of law, rule, or regulation to the contrary.

17. The provisions of this act, P.L. , c. (C.)(pending before the Legislature as this bill), shall be severable and if any section, subsection, paragraph, subparagraph, sentence, or other portion of this act is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional, preempted, or invalid.

18. This act shall take effect on the first day of the 18th month next following the date of enactment, except that the Attorney General may take any anticipatory action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill establishes the “John R. Lewis Voting Rights Act of New Jersey” and is modeled after the “John R. Lewis Voting Rights Act of New York.”

Under the bill, all statutes, rules, and regulations, in this State including all local laws or ordinances related to the elective franchise must be construed liberally in favor of:

(1) protecting the right of voters to have their ballot cast and counted;

(2) ensuring that eligible voters are not impaired in registering to vote; and

(3) 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 bill prohibits the authority to prescribe or maintain voting or elections policies and practices to be so exercised as to unnecessarily deny or abridge the right to vote. The bill also prohibits a county board of elections or political subdivision from using a method of election that has 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. The bill requires any policy and practice that burdens the right to vote must be narrowly tailored to promote a compelling policy justification that must be supported by substantial evidence. The bill provides factors for determining if a violation of the bill has occurred, including if a voter's right to vote has been violated or if the voter has experienced vote dilution.

Under the bill, if a violation of the provision of the bill occurs, the bill provides a remedy process, including for apportionment and redistricting maps. The bill provides that after a New Jersey Voting Rights Act notification letter is mailed from a prospective plaintiff to a political subdivision the political submission may pass a New Jersey Voting Rights Act resolution reaffirming: (1) the political subdivision's intention to enact and implement a remedy for a potential violation of the bill; (2) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and (3) a schedule for enacting and implementing such a remedy.

The bill provides that if the governing body of a political subdivision lacks the authority under this act or applicable State law or local laws to enact or implement a remedy identified in the resolution, or fails to enact or implement a remedy identified in the resolution, within 90 days after the passage of the resolution, or if the political subdivision is a covered entity as defined by the bill, the governing body of the political subdivision must coordinate with the Division on Civil Rights in the New Jersey Department of Law and Public Safety to resolve the violation, including reaffirming that any proposal is unlikely to violate the United States Constitution, New Jersey Constitution, or any federal or State law, would not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office; and is feasible to implement.

Under the bill, the Attorney General and the Division on Civil Rights are provided with certain preclearance powers. The bill provides that if certain political subdivisions that have been the subject to court order or government enforcement action based on violations

of the bill; the federal Voting Rights Act of 1965, as amended; the 15th amendment to the United States Constitution, or a voting-related violation of the 14th amendment to the United States Constitution, may be subject to preclearance, which is the process of obtaining prior approval from the Division on Civil Rights or a court of this State for any changes related to election procedures in that political subdivision.

The bill provides assistance to language-minority groups. Under the bill, a county board of elections or a political subdivision that administers elections must provide language-related assistance in voting and elections to a language-minority group in a political subdivision if, based on data from the United States Census Bureau American Community Survey, or data of comparable quality collected by a public office, that:

(1) more than two percent, but in no instance fewer than 300 individuals, of the citizens of voting age of a political subdivision are members of a single language-minority group and are limited English proficient; or

(2) more than 4,000 of the citizens of voting age of such political subdivision are members of a single language-minority group and are limited English proficient.

The bill further provides that a county board of elections or political subdivision required to provide language assistance to a particular language-minority group pursuant to this section must 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.

Under the bill, any aggrieved persons or 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 bill, or the Attorney General may file an action pursuant to the bill in court. The bill provides that any action or investigation to enforce any provision of this bill, the Attorney General would have the authority to take proof and determine relevant facts and to issue subpoenas in accordance with the civil and criminal laws of this State.

The bill also contains a severability provision. If any section, subsection, paragraph, subparagraph, sentence, or other portion of the bill is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of the bill would not thereby be deemed to be unconstitutional, preempted, or invalid.

The purpose of this bill is to:

(1) encourage participation in the elective franchise by all eligible voters to the maximum extent;

(2) ensure that eligible voters who are members of racial, ethnic, and language minority groups have an equal opportunity to participate

in the political processes of this State and exercise the elective franchise;

(3) improve the quality and availability of demographic and election data; and

(4) protect eligible voters against intimidation and deceptive practices.

This bill would take effect on the first day of the 18th month next following the date of enactment, except that the Attorney General may take any anticipatory action in advance thereof.