
OLR Bill Analysis

sSB 471

AN ACT CONCERNING ELECTIONS AND STATE VOTING RIGHTS.

SUMMARY

This bill generally codifies into state law several aspects of the federal Voting Rights Act of 1965 (“VRA,” see BACKGROUND), which banned discrimination in voting and elections and established a mechanism for certain jurisdictions with a history of discrimination against racial and language minorities to seek preapproval before changing their election laws.

The bill prohibits the following from being enacted or implemented in a way that denies or abridges the right to vote of a protected class individual: (1) a qualification for elector eligibility or other voting prerequisite; (2) an ordinance, regulation, or other election administration law; or (3) a related standard, practice, procedure, or policy. Under the bill, a “protected class” is a class of citizens who are members of a race, color, or language minority group as referenced in the federal VRA. The bill also authorizes the secretary of the state (SOTS) and certain parties aggrieved due to an alleged violation to file a civil action in Superior Court.

It establishes a statewide information database in SOTS to help (1) evaluate whether, and to what extent, election laws and practices are consistent with the bill’s provisions; (2) implement best practices in election administration to further the bill’s purposes; and (3) investigate potential infringements upon voting rights.

Like the federal VRA, the bill requires municipalities to provide language-related assistance in voting and elections if members of a single-language minority group (i.e., persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage) comprise a minimum threshold of the municipality’s voting-age residents. It also

subjects certain jurisdictions (“covered jurisdictions”) to preclearance by SOTS or the Superior Court before enacting or implementing certain elections policies or requirements (a “covered policy”). The bill authorizes court action to prevent enacting or implementing a covered policy without preclearance and to seek sanctions against the covered jurisdiction involved.

The bill prohibits any person from engaging in acts of intimidation, deception, or obstruction that affect the exercise of one’s voting rights. It allows certain aggrieved parties and the State Elections Enforcement Commission (SEEC) to file an action in Superior Court to civilly enforce its provisions and makes violators liable for damages. The bill also authorizes SEEC, in any associated action or investigation and under ordinary civil procedure rules, to examine witnesses; receive oral and documentary evidence; determine material facts; and issue subpoenas (§ 7).

Lastly, the bill authorizes the Superior Court to award reasonable attorney’s fees and litigation costs to a prevailing party, except the state or a municipality, that filed an action to enforce the bill’s provisions. A prevailing party that did not file the action cannot receive any costs unless the court finds the action is frivolous, unreasonable, or without foundation (§ 8).

In general, under existing law, SOTS administers, interprets, and implements election laws and ensures fair and impartial elections, and SEEC has broad authority to enforce election laws (see BACKGROUND).

EFFECTIVE DATE: January 1, 2023, except the preclearance provisions are effective January 1, 2024.

§§ 1 & 2 — PROHIBITION ON DENYING OR ABRIDGING THE VOTING RIGHTS OF PROTECTED CLASS INDIVIDUALS

The bill prohibits any qualification for elector eligibility or other voting prerequisite, and any ordinance, regulation, or other law on election administration, or any related standard, practice, procedure, or policy, from being enacted or implemented in a way that denies or

abridges a protected class individual's right to vote. It specifies that a violation includes impairing these electors' ability to elect their chosen candidates or to otherwise influence the elections' outcome, based on the totality of the circumstances, which is a legal standard that considers all relevant facts and circumstances rather than specific factors.

Prohibited Election Methods

The bill prohibits an election method from impairing protected class electors' ability to elect their chosen candidates or otherwise influence election outcomes by abridging their right to vote or diluting their vote. More specifically, it makes it a violation if:

1. in a municipality with an at-large election method,
 - a. racially polarized voting by protected class electors occurs (i.e., their preferred candidate or electoral choice differs from that of all other electors) or
 - b. based on the totality of the circumstances, these electors' ability to elect their chosen candidates or otherwise influence election outcomes is impaired or
2. in a municipality with a district-based or alternative election method (e.g., ranked-choice voting, cumulative voting and limited voting), protected class electors' preferred candidates or electoral choices would usually be defeated and
 - a. racially polarized voting by protected class electors occurs or
 - b. based on the totality of the circumstances, the ability of these electors to elect their chosen candidates or otherwise influence election outcomes is impaired.

Additionally, a municipality's use of race, color, language minority group, or any characteristic that serves as a proxy for these for districting or redistricting purposes presumptively constitutes a violation. But a municipality may rebut the presumption by showing that the use was only to the extent needed to comply with the bill's

provisions, the federal VRA, or the state or federal constitutions.

Under the bill, an “at-large method of election” is a method of electing candidates to the municipality’s legislative body (1) in which all candidates are voted upon by all electors of the municipality; (2) in which, for municipalities divided into districts, a candidate for any district must reside in that district, and all candidates for all districts are voted upon by all electors of the municipality; or (3) that combines these two methods with a district-based election method.

An “alternative method of election” is a method of electing candidates to a municipal legislative body other than an at-large or a district-based method of election, such as ranked-choice voting, cumulative voting, and limited voting. However, it is unclear whether a municipality may adopt an alternative method of election, as, for example, CGS § 9-173 provides that, “Unless otherwise provided by law, in all municipal elections a plurality of the votes cast shall be sufficient to elect.”

A “district-based method of election” is a method of electing candidates to a municipality’s legislative body in which, for municipalities divided into districts, a candidate for a district must reside in that district and only the candidates for that district are voted upon by that district’s electors.

Under the bill, a “municipality” is a town, city, or borough (whether consolidated or unconsolidated), school district, or district authorized under state law. The “legislative body” is a municipality’s board of alderman, council, board of burgesses, board of education, district committee, association committee, or other similar body as applicable.

Initiating Court Action

The bill authorizes SOTS and the following aggrieved parties to file an action in Superior Court for an alleged violation: (1) an aggrieved person or organization whose membership includes or likely includes aggrieved persons and (2) an organization whose mission would be frustrated by or require expended resources to fulfill, due to a violation.

These parties must file in a Superior Court with jurisdiction over the municipality's location.

Notification Letter Prior to Filing Action

Before filing the court action against a municipality for an alleged violation, the bill requires an aggrieved party to send a notification letter to the municipality's clerk by certified mail, return receipt requested. The letter must assert that the municipality may be in violation of the bill's provisions. The bill prohibits the party from filing an action earlier than 50 days after sending this letter.

Municipal Resolution to Remedy Violation

Before receiving a notification letter, or within 50 days after a notification letter is sent to a municipality, the municipality's legislative body may pass a resolution to (1) affirm the municipality's intent to enact and implement a remedy for a potential violation, (2) provide specific measures the municipality will take to obtain approval of and implement the remedy, and (3) provide a schedule for enacting and implementing the remedy.

The bill further prohibits an aggrieved party from filing a court action before 90 days after the legislative body passes this resolution.

If under state law a municipal legislative body lacks authority to enact or implement a remedy identified in any resolution within 90 days after its passage, or if the municipality is a covered jurisdiction under the bill, then its legislative body may, upon passing the resolution, hold at least one public hearing on any proposed remedy to the potential violation. Before the hearing the municipality must conduct public outreach, including to language minority communities, to encourage input.

The legislative body may approve any proposed remedy that complies with the bill and submit it to SOTS for approval (see below).

Agreement Between Municipality and Aggrieved Party

The bill allows a municipality that passed a resolution to enter into an agreement with an aggrieved party who sent a notification letter, so

long as the (1) party will not file an action before 90 days after entering into the agreement and (2) municipality either enacts and implements a remedy that complies with the bill's provisions or passes a resolution and submits it to SOTS. If the party declines to enter into an agreement, it may file an action at any time.

SOTS Approval

The bill requires SOTS to approve or reject the proposed remedy within 60 days after its submission by the municipality. The secretary must do so regardless of the state's election laws or any special act, charter, or home rule ordinance. But if she does not act on it within this period, the bill prohibits the proposed remedy from being enacted or implemented.

The secretary may only approve the proposed remedy if she concludes that the municipality may violate the bill's requirements and the proposed remedy:

1. would address any potential violation,
2. is unlikely to violate the Connecticut Constitution or federal law,
3. will not diminish the ability of protected class electors to participate in the political process and elect their preferred candidates, and
4. is feasible to implement.

If approved, the bill requires the proposed remedy to be enacted and implemented immediately. If the municipality is a covered jurisdiction, then it does not have to get the proposed remedy precleared (see below).

If the secretary denies the proposed remedy, then it cannot be enacted or implemented. In addition, she must give her objections and explain the basis for the denial and may recommend another proposed remedy that she would approve.

Cost Reimbursement

Under the bill, if a municipality enacts or implements a remedy or

SOTS approves a proposed remedy, then an aggrieved party who sent a notification letter may submit a municipal reimbursement claim for the costs associated with producing and sending the letter. The party must (1) submit this claim in writing within 30 days after the remedy's enactment, implementation, or approval and (2) substantiate it with financial documentation, including a detailed invoice for any demography services or analysis of voting patterns in the municipality.

Upon receiving a claim, the municipality may ask for additional financial documentation if the provided information is insufficient to substantiate the costs. The bill requires the municipality to reimburse the party for reasonable costs claimed or for an amount to which the party and municipality agree, but it caps the total reimbursement amount to all involved parties, other than SOTS, at \$43,000, adjusted to any change in the consumer price index for all urban consumers. If a party and municipality fail to agree to a reimbursement amount, either one may file an action in Superior Court for a declaratory ruling on the matter.

Superior Court Determination

In determining whether a violation occurred, the bill authorizes the Superior Court in the jurisdiction where the municipality is located to consider the extent to which protected class electors (1) have been elected to office in the state or the municipality of the alleged violation and (2) vote at lower rates than other electors in the state or that municipality.

Additionally, in determining whether (1) racially polarized voting by protected class electors in a municipality occurs or (2) a protected class electors' preferred candidates or electoral choices would usually be defeated, the Superior Court must consider the following:

1. elections held before the action's filing as more probative (i.e., tending to prove or disprove a point in issue) than elections conducted afterward;
2. evidence about elections for members of the municipal legislative

body as more probative than evidence about elections for other municipal officials; and

3. statistical evidence as more probative than nonstatistical evidence.

Under the bill, the court may combine two or more protected classes of electors that are proven by evidence to be politically cohesive in the municipality. The bill prohibits the court from requiring evidence about the electors', elected officials', or municipality's intent to discriminate against protected class electors. It also prohibits the court from considering the following evidence in making its determination:

1. voting patterns and election outcomes explanations other than racially polarized voting, including partisanship;
2. different voting patterns of subgroups of protected class electors;
3. whether protected class electors are geographically compact or concentrated (but this may be used to remedy the violation); and
4. projected changes in population or demographics (but they may also be used to remedy the violation).

In determining whether the ability of protected class electors to elect their chosen candidates or otherwise influence elections' outcomes is impaired, based on the totality of the circumstances, the bill allows the Superior Court to consider the following:

1. municipality's or state's history of discrimination;
2. extent to which protected class electors were elected to municipal office;
3. municipality's use of any (a) elector eligibility qualification or other voting prerequisite; (b) statute, ordinance, regulation, or other law on election administration; or (c) related standard, practice, procedure, or policy that may enhance dilutive effects of its election method;

4. denial of access of protected class electors or candidates to election administration or campaign finance processes that determine which candidates will receive ballot access or financial or other support in a given election in the municipality;
5. extent to which protected class individuals in the municipality make campaign expenditures at lower rates than other individuals in the municipality;
6. extent to which protected class electors in the municipality or state vote at lower rates than other electors in the municipality or state, as applicable;
7. extent to which protected class individuals in the municipality are disadvantaged in education, employment, health, criminal justice, housing, land use, environmental protection, or other areas that may hinder their ability to participate effectively in the political process;
8. use of overt or subtle racial appeals in political campaigns in the municipality;
9. a significant lack of responsiveness by elected municipal officials to the particular needs of protected class individuals; and
10. whether the municipality has a compelling policy reason for using its particular (a) election method; (b) ordinance, regulation, or other law on election administration; or (c) related standard, practice, procedure, or policy.

The bill specifies that none of the above items are dispositive or required for finding that racially polarized voting exists. It also allows the court to consider evidence of these items concerning the state, private actors, or surrounding municipalities, but it makes that evidence less probative than evidence concerning the municipality itself.

Court Remedies

Under the bill, the court must order appropriately tailored remedies

when it finds a violation of the above prohibited acts, regardless of the state's election laws or any special act, charter, or home rule ordinance. These remedies include the following:

1. a district-based or an alternative election method;
2. new or revised districting or redistricting plans;
3. elimination of staggered elections so that legislative body members are simultaneously elected;
4. an increase in the legislative body size;
5. additional voting hours or polling locations;
6. an order for special elections or requirements for (a) expanded elector admission opportunities or (b) additional elector education; or
7. restoration or addition of people to registry lists.

The bill allows the court-ordered remedy only if it will not diminish the ability of protected class electors to participate in the political process and elect their preferred candidates or otherwise influence election outcomes. It requires the court to consider remedies proposed by any party to the filed action and other interested persons but prohibits giving deference or priority to a municipality's proposed remedy.

Proposals After Letter or Court Filing

Under the bill, after receiving a notification letter or the filing of a court action alleging a violation of the above actions or the federal VRA, a municipality must have its legislative body take certain actions. This includes providing public input opportunities to enact and implement either a new election method to replace an at-large method or a new districting or redistricting plan.

Before drawing a draft districting or redistricting plan, or plans of proposed district boundaries, the bill requires the municipality to hold

at least two public hearings within the prior 30-day period. It requires the municipality to do public outreach before the hearings, including to language minority communities, to explain the districting or redistricting process and encourage input.

The bill requires the municipality to publish and make available for public dissemination at least one draft districting or redistricting plan or plans after they are drawn but at least seven days before a public hearing on them. The information must include the potential election sequence if the municipality's legislative body members will be elected to staggered terms under the plan.

The bill requires the municipality to hold at least two public hearings within a maximum 45-day period. It must also publish and make available for public dissemination any plan or plans revised at or after the hearings at least seven days before adopting them.

In determining the elections' sequence if the municipality's legislative body members would be elected for staggered terms under any districting or redistricting plan, the legislative body must give special consideration to the bill's purposes and consider preferences expressed by the districts' electors.

Preliminary Election Relief

Under the bill, an aggrieved party may seek preliminary relief in Superior Court for an upcoming regular election held in a municipality by filing an action during the 120 days before the election. To do so, the party must also send a notification letter to the municipality by the court filing date. The bill requires the court to grant relief if it determines that (1) the party is more likely than not to succeed on the merits and (2) it is possible to implement an appropriate remedy to resolve the alleged violation before the election.

If the action is withdrawn or dismissed as moot due to the municipality enacting or implementing a remedy or SOTS approving a proposed remedy, then the party may only submit a reimbursement claim for costs associated with the notification letter (see above).

§ 3 — STATEWIDE ELECTIONS INFORMATION DATABASE

The bill establishes a statewide information database in the office of the secretary of the state to help the state and any municipality (1) evaluate whether, and to what extent, current election laws and practices are consistent with the bill's provisions; (2) implement best practices in election administration to further the bill's purposes; and (3) investigate a potential infringement on the right to vote.

The bill requires the secretary to designate an employee of her office to serve as the database manager who is responsible for its operation. This employee must hold an advanced degree from an accredited college or university and have expertise in demography, statistical analysis, and electoral systems. The bill allows (1) the manager to manage staff as necessary to implement and maintain the database and (2) SOTS to provide nonpartisan technical assistance to municipalities, researchers, and the public on using database's resources as described below.

Database Contents

Under the bill, the database must electronically maintain, for at least the prior 12 years, at least the following data and records:

1. estimates of total population, voting-age population, and citizen voting-age population by race, color, and language minority group, broken down annually to the municipal district level, based on information from the U.S. Census Bureau, including from the American Community Survey (ACS), or information of comparable quality collected by a similar governmental agency;
2. district level election results for each statewide and municipal election;
3. contemporaneous registry lists and voter history files for each election in each municipality;
4. contemporaneous maps, boundary descriptions, and similar items in paper or electronic format for each district;

5. polling place locations, including associated district lists;
6. districting or redistricting plans for each election in each municipality; and
7. any other information the secretary deems advisable to further the bill's purposes.

The bill requires each municipality to transmit the above listed election-specific information in electronic format after certifying election results and completing the post-election voter history file. All data, estimates, or other information maintained in the database must be published on the SOTS website, publicly available at no cost, but it must not identify individual electors.

Once the secretary is prepared to begin administering the database, she must submit a report certifying this to the Government Administration and Elections Committee. Within 90 days after this certification, and then triennially, she must publish on the SOTS website (1) a list of municipalities required to help language minority groups (see below) and (2) the languages for which they must do it. The secretary must then distribute this information to each municipality. Under the bill, any prepared estimate on race, color, or language minority group must be prepared using the most advanced, peer-reviewed, and validated methodologies.

The bill establishes a rebuttable presumption that the data, estimates, or other information maintained in the database is valid in any action due to the denial or abridgement of protected classes' voting rights.

§ 4 — LANGUAGE-RELATED ASSISTANCE

The bill requires a municipality to provide language-related assistance in voting and elections if SOTS determines, based on ACS information, that:

1. greater than 2%, or more than 4,000 people, of its voting-age population are members of a single-language minority group who speak English "less than very well" or

2. for a municipality with part of a Native American reservation in it, more than 2% of the reservation's Native American (i.e., anyone recognized as "American Indian" by the U.S. Census Bureau) voting-age citizens meet these criteria.

Under the bill, these municipalities must provide voting materials in English and in the language of each language minority group (i.e., persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage) of an equal quality to the corresponding English materials, including registration or voting notices, forms, instructions, assistance, ballots, or other materials or information about the electoral process. The bill exempts municipalities from providing these materials to a language minority group whose language is oral or unwritten, instead allowing the municipality to only provide the information orally. It allows an elector belonging to a language minority group in a municipality required to provide their group with assistance, to file an action in Superior Court to enforce this requirement.

The bill allows a municipality that must provide language assistance to seek a declaratory judgment from the Superior Court of the judicial district where the municipality is located for permission to provide English-only materials. The court must decide in the municipality's favor if it finds that the secretary's determination was unreasonable or an abuse of discretion.

§ 5 — PRECLEARANCE OF COVERED POLICIES BY COVERED JURISDICTIONS

The bill subjects certain jurisdictions ("covered jurisdictions," see below) to preclearance by SOTS or the Superior Court where the jurisdiction is located before enacting or implementing certain election or voting related actions or policies ("covered policies," see below). However, while preclearance is mandatory, the process for municipalities to submit covered policies for this preclearance appears to be discretionary, and thus contradicts the requirement.

The bill authorizes the secretary or an aggrieved party under the bill to take court action to enjoin enacting or implementing a covered policy

without this preclearance and to seek sanctions. The bill also allows the secretary to adopt regulations to effectuate its preclearance and look-back review provisions (see below).

Covered Policies

Under the bill, a “covered policy” subject to preclearance includes any new or modified qualification for admission as an elector, voting prerequisite, or an ordinance, regulation, standard, practice, procedure, or policy concerning:

1. districting or redistricting;
2. election method;
3. form of government;
4. annexation, incorporation, dissolution, consolidation, or division of a municipality;
5. removal of individuals from registry or enrollment lists and other activities concerning the lists;
6. admission of electors;
7. number, location, or hours of polling places;
8. district assignment to polling place locations;
9. assistance offered to protected class individuals; or
10. any additional subject matter the secretary identifies for inclusion, under a regulation she adopts, if she determines that it may have the effect of denying or abridging a protected class elector’s right to vote.

However, municipalities do not have authority to establish policies and procedure for many of these aspects of elections which are instead set forth in the Connecticut Constitution, state laws, or are under SOTS authority. For example, the qualifications for admission as an elector are set forth in the state Constitution and Title 9 and only the General

Assembly has authority over the annexation, incorporation, dissolution, or consolidation of a municipality (see BACKGROUND).

Covered Jurisdictions

Under the bill, a “covered jurisdiction” is a municipality:

1. that, within the prior 25 years, was subject to a court order or government enforcement action based on a finding of a violation of the bill’s provisions, the federal VRA, a state or federal civil rights law, or the U.S. Constitution’s 15th or 14th Amendments concerning the right to vote or discrimination against a protected class;
2. in which during the prior 10 years, based on data from the:
 - a. state criminal justice information systems, the combined misdemeanor and felony arrest rate of any protected class with at least 1,000 voting-age citizens, or whose members comprise at least 10% of the municipality’s voting-age citizen population, exceeded the arrest rate of the entire municipality’s voting-age citizen population by at least 20% or
 - b. U.S. Census Bureau, the dissimilarity index (see BACKGROUND) of any protected class with at least 2,500 voting-age citizens, or whose members comprise at least 10% of the municipality’s voting-age citizen population, exceeded 50% with respect to white, non-Hispanic voting-age citizens; or
3. that, within the prior five years, failed to comply with its obligations to provide data or information to the statewide database (see above).

The bill does not specify who is responsible for determining which jurisdictions are subject to preclearance, or how the jurisdictions are informed of this determination.

SOTS Preclearance

The bill allows, rather than requires, a covered jurisdiction to submit to SOTS in writing a covered policy to obtain preclearance to adopt and implement it. It deems the covered policy precleared if the secretary does not act on it within these timeframes:

1. within 30 days after receiving a covered policy on polling place locations, except that she may preliminarily grant, and reserve the right to subsequently deny, the preclearance within 60 days after receiving it, and
2. within 60 days after receiving any other covered policy, except that she may extend this timeframe by 90 days, up to two times, for any policy to implement a district-based or alternative election method; districting or redistricting plans; or a change to a municipality's form of government.

Before granting or denying the preclearance, the secretary must publish notice of the proceedings and provide an opportunity for interested parties to submit written comments on the covered policy and the determination (although the bill does not establish timeframes for doing so, presumably the secretary could do so through the regulations). The bill allows the secretary to grant preclearance to a covered policy only if she determines that it will not diminish the protected class electors' ability to participate in the electoral process or elect their preferred candidates.

The bill prohibits covered jurisdictions from enacting or implementing a policy that is denied preclearance. If the secretary denies preclearance to a covered policy, then she must provide the objections and explain the basis for denial. The bill allows a denial to be appealed to Superior Court in accordance with the Uniform Administrative Procedures Act (UAPA), which must be prioritized in trial assignment.

Superior Court Preclearance

Alternatively, the bill allows, rather than requires, a covered

jurisdiction to seek preclearance of a covered policy from the Superior Court. The covered jurisdiction must submit the policy to the court in writing and simultaneously give a copy of the submission to SOTS. Failing to provide this copy results in automatic denial. Despite copying to the secretary, the bill gives the court exclusive jurisdiction of the submission.

Under the bill, the court must grant or deny the preclearance within 60 days after receiving the submission. It may grant preclearance only if it determines that the policy will not diminish the protected class electors' ability to participate in the electoral process or elect their preferred candidates.

As with a SOTS preclearance denial, if the court denies preclearance or does not decide on it within 60 days, the covered policy cannot be enacted or implemented. The bill allows a denial to be appealed in accordance with the ordinary rules of appellate procedure, and it must be prioritized in appeal assignment.

SOTS Look-Back Review

The bill authorizes the secretary of the state to (1) conduct a look-back review for a period of 120 days after the provision's effective date (January 1, 2024, to April 30, 2024) and (2) deny preclearance to any covered policy enacted by a covered jurisdiction between January 1, 2023, and January 1, 2024.

Under the bill, the look-back review begins when the secretary notifies a covered jurisdiction of her decision to review its enacted or implemented covered policy. The covered jurisdiction must submit the policy in writing within 30 days after receiving the notice. The bill requires the secretary to decide whether the covered jurisdiction may further implement the policy within 90 days after the submission.

Before deciding, the secretary must publish notice of the proceedings and provide an opportunity for interested parties to submit written comments about the covered policy and the decision (although the bill does not establish timeframes for doing so, presumably the secretary

could do so through regulations). She must deny further implementation of the covered policy if she determines that it is likely to diminish the protected class electors' ability to participate in the political process or elect their preferred candidates. But the bill specifies that a denial is not a basis for invalidating an election held under it.

When denying a previously enacted covered policy, the secretary must state her objections to it and explain the basis for denial. The bill allows a covered policy denial during the look-back review to be appealed to the Superior Court where the covered jurisdiction is located in accordance with the UAPA, which must be prioritized for trial assignment.

§ 6 — ACTS OF INTIMIDATION, DECEPTION, OR OBSTRUCTION

Prohibited Acts

The bill prohibits anyone, whether acting in an official governmental capacity or otherwise, from engaging in intimidating, deceptive, or obstructive acts that affect a voter's right to exercise his or her electoral privileges. Specifically, the bill bans intimidation or deception that cause or reasonably have the effect of causing an elector to (1) vote or not vote, (2) vote for or against a particular candidate or question, (3) apply or not apply for admission as an elector, or (4) apply or not apply for an absentee ballot. It also bans obstructive acts that cause or reasonably have the effect of causing a delay in voting or the voting process, including canvassing or tabulating ballots.

Under the bill, these prohibited acts are:

1. using or threatening to use force, violence, restraint, abduction, or duress; inflicting or threatening to inflict injury, damage, harm, or loss; or any other type of intimidation;
2. using a deceptive or fraudulent device, contrivance, or communication that impedes, prevents, or otherwise interferes with an elector's privileges or that causes or will reasonably have the effect of causing an elector to (a) vote or not vote; (b) vote for or against a particular candidate or question; (c) apply or not

apply for admission as an elector; or (d) apply or not apply for an absentee ballot; or

3. obstructing, impeding, or otherwise interfering with (a) access to a polling place or an election official's office or (b) an elector in any manner.

Court Action

The bill allows SEEC and the following parties to bring an action in the Superior Court in the judicial district of the alleged violation: (1) an aggrieved person or organization whose membership includes or likely includes aggrieved persons and (2) an organization whose mission would be frustrated by the violation or would require expended resources to fulfill due to the violation.

The bill requires the court, when finding a violation of these provisions, regardless of state election laws, any special act, charter, or home rule ordinance, to order appropriately tailored remedies to address it, such as additional time to vote at an election, primary, or referendum. It makes violators of these provisions, and anyone who helps commit them, liable for court-awarded damages, including nominal damages and compensatory or punitive damages for willful violations.

Chapter 151 of the state's election laws (Title 9) already details prohibited acts and associated criminal penalties. For example, influencing or attempting to influence an elector to stay away from an election by force or threat, bribery, or corrupt, fraudulent, or deliberately deceitful means is a class D felony, punishable by a fine of up to \$5,000, up to five years in prison, or both (CGS § 9-364).

BACKGROUND

Municipal Election Authority

Under longstanding Connecticut Supreme Court precedent, municipalities have no inherent powers (see *Windham Taxpayers Association, et al. v. Board of Selectmen, the Town of Windham, et al.* 234 Conn. 513 (1995)). Thus, for elections, municipalities may exercise only

the specific powers granted to them by the state constitution's Home Rule provision (Article Tenth) and state law (see CGS §§ 7-148 & 7-187 to 7-194). Included in the statutorily enumerated powers are those implied by the law's express powers and those essential to accomplish the municipality's purpose, but neither give municipalities jurisdiction over conducting elections.

Additionally, the law generally requires municipal elections to be held and conducted like state elections (CGS § 9-228). However, some state laws do give municipalities election-related authority. For example, municipalities can determine whether to elect their officials at-large or by districts, where to have polling places, and whether to change the number of voting precincts (see CGS §§ 9-168 & -169).

Dissimilarity Index

The dissimilarity index is the primary measure to assess residential segregation. It represents the percentage of an area's demographic group needing to move to another area to achieve complete integration for the area (i.e., how evenly distributed groups are across a larger area), and ranges from zero (fully integrated) to one (fully segregated).

SOTS

As the state's commissioner of elections, SOTS is charged with administering, interpreting, and implementing election laws and ensuring fair and impartial elections. Under the National Voter Registration Act of 1993, the secretary has the same responsibility for federal elections. She is also designated by the Connecticut Constitution and general statutes as the official keeper of many public records and documents, including the state's online voter registration system.

SEEC

SEEC has broad authority to, among other things, investigate possible violations of election laws; refer evidence of violations to the chief state's attorney or the attorney general; levy civil penalties for elections violations; issue advisory opinions; and make recommendations to the General Assembly about revisions to the state's election laws (CGS §§ 9-7a to 9-7c).

Federal VRA

The federal VRA of 1965 generally prohibits discrimination in voting to enforce rights guaranteed to racial or language minorities by the 14th and 15th Amendments to the U.S. Constitution.

Section 5 of the act is a preclearance requirement, which prohibits certain jurisdictions (determined by a formula prescribed in Section 4) from implementing any change affecting voting without receiving preapproval from the U.S. attorney general or the U.S. District Court for the District of Columbia. Another provision requires jurisdictions with significant language minority populations to provide bilingual ballots and other election materials.

The VRA originally scheduled Section 5 to expire after five years and applied it to jurisdictions with protected class voter registration or turnout rates below 50% in 1964 and “devices,” like literacy tests, to discourage them from voting. On renewal, the law used data from 1968 and 1972 and defined a “device” to include English-only ballots in places where at least 5% of voting-age citizens spoke a single language other than English. Jurisdictions free of voting discrimination for 10 years could be released from coverage by a court, as was the case in Groton, Mansfield, and Southbury, Connecticut.

Shelby County v. Holder

In *Shelby County v. Holder*, (570 U.S. 529 (2013)), the U.S. Supreme Court struck down the federal VRA’s coverage formula (Section 4), which determined the covered jurisdictions subject to preclearance requirements. (It applied to nine states – Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia – and many counties and municipalities in other states, including Brooklyn, Manhattan, and the Bronx.)

Congress had most recently extended the law in 2006 for 25 years but continued to use data from the 1975 reauthorization to determine covered jurisdictions. The Court found that using this data made the formula no longer responsive to current needs and therefore an impermissible burden on federalism and state sovereignty.

Although the Court did not strike down Section 5, it is unenforceable without Section 4's coverage formula or a separate court order. Thus, changes in voting procedures in jurisdictions previously covered by the VRA are now generally subject only to after-the-fact litigation.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12 Nay 5 (03/29/2022)