Senate

General Assembly

File No. 454

February Session, 2022

Substitute Senate Bill No. 471

Senate, April 13, 2022

The Committee on Government Administration and Elections reported through SEN. FLEXER of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ELECTIONS AND STATE VOTING RIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2023*) As used in this section and sections 2 to 8, inclusive, of this act:

(1) "Alternative method of election" means a method of electing candidates to the legislative body of a municipality other than an at-large method of election or a district-based method of election, and includes ranked-choice voting, cumulative voting and limited voting;

(2) (A) "At-large method of election" means a method of electing candidates to the legislative body of a municipality (i) in which all such candidates are voted upon by all electors of such municipality, (ii) in which, for municipalities divided into districts, a candidate for any such district is required to reside in such district and all candidates for all districts are voted upon by all electors of such municipality, or (iii) that combines the methods described in subparagraph (A)(i) or (A)(ii) of this

subdivision with a district-based method of election;

(B) "At-large method of election" does not include any alternative method of election;

(3) "District-based method of election" means a method of electing candidates to the legislative body of a municipality in which, for municipalities divided into districts, a candidate for any such district is required to reside in such district and candidates for such district are voted upon by only the electors of such district;

(4) "Language minority group" has the same meaning as provided in 52 USC 10503, as amended from time to time;

(5) "Legislative body" means the board of aldermen, council, board of burgesses, board of education, district committee, association committee or other similar body, as applicable, of a municipality;

(6) "Municipality" means any town, city or borough, whether consolidated or unconsolidated, any school district, any district, as defined in section 7-324 of the general statutes, or any other district authorized under the general statutes;

(7) "Protected class" means a class of citizens who are members of a race, color or language minority group, as referenced in 52 USC 10301(a), as amended from time to time; and

(8) "Racially polarized voting" means voting in which there is a difference between the candidate or electoral choice preferred by protected class electors and the candidate or electoral choice preferred by all other electors.

Sec. 2. (NEW) (*Effective January 1, 2023*) (a) (1) No qualification for eligibility to be an elector or other prerequisite to voting, and no ordinance, regulation or other law regarding the administration of elections, or any related standard, practice, procedure or policy, may be enacted or implemented in a manner that results in the denial or abridgement of the right to vote for any protected class individual.

(2) Any impairment of the ability of protected class electors to elect candidates of their choice or otherwise influence the outcome of elections, based on the totality of the circumstances, shall constitute a violation of subdivision (1) of this subsection.

(3) In determining whether a violation of subdivision (1) of this subsection has occurred, the superior court for the judicial district in which the municipality is located may consider the extent to which protected class electors (A) have been elected to office in the state or the municipality in which such violation is alleged, and (B) vote at lower rates than other electors in the state or the municipality in which such violation is alleged.

(b) (1) No method of election may have the effect of impairing the ability of protected class electors to elect candidates of their choice or otherwise influence the outcome of elections as a result of abridging the right to vote for such electors or diluting the vote of such electors.

(2) (A) The following shall constitute a violation of subdivision (1) of this subsection:

(i) Any municipality that employs an at-large method of election and in which (I) racially polarized voting by protected class electors occurs, or (II) based on the totality of the circumstances, the ability of such electors to elect candidates of their choice or otherwise influence the outcome of elections is impaired; or

(ii) Any municipality that employs a district-based method of election or an alternative method of election, in which the candidates or electoral choices preferred by protected class electors would usually be defeated and in which (I) racially polarized voting by protected class electors occurs, or (II) based on the totality of the circumstances, the ability of such electors to elect candidates of their choice or otherwise influence the outcome of elections is impaired.

(B) Any use of race, color, language minority group or any characteristic that serves as a proxy for race, color or language minority

group for the purpose of districting or redistricting shall presumptively constitute a violation of subdivision (1) of this subsection, provided a municipality may rebut this presumption by demonstrating that race, color, language minority group or any characteristic that serves as a proxy for race, color or language minority group was so used only to the extent necessary to comply with the provisions of sections 1 to 8, inclusive, of this act, the federal Voting Rights Act of 1965, P.L. 89-110, as amended from time to time, the Constitution of Connecticut or the Constitution of the United States.

(C) In determining whether racially polarized voting by protected class electors in a municipality occurs or whether candidates or electoral choices preferred by protected class electors would usually be defeated, the superior court for the judicial district in which the municipality is located (i) shall consider elections held prior to the filing of an action pursuant to this section as more probative than elections conducted after such filing, (ii) shall consider evidence concerning elections for members of the legislative body of such municipality as more probative than evidence concerning elections for other municipal officials, (iii) shall consider statistical evidence as more probative than nonstatistical evidence, (iv) in the case of evidence that two or more protected classes of electors are politically cohesive in such municipality, may combine electors of such protected classes, (v) shall not require evidence concerning the intent of electors, elected officials or such municipality to discriminate against protected class electors, (vi) shall not consider evidence of explanations for voting patterns and election outcomes other than racially polarized voting, including, but not limited to, partisanship, (vii) shall not consider evidence that subgroups of protected class electors have different voting patterns, (viii) shall not consider evidence concerning whether protected class electors are geographically compact or concentrated, but may use such evidence to appropriately remedy a violation of subdivision (1) of this subsection, and (ix) shall not consider evidence concerning projected changes in population or demographics, but may use such evidence to appropriately remedy a violation of said subdivision.

(c) (1) In determining whether, based on the totality of the circumstances, the ability of protected class electors to elect candidates of their choice or otherwise influence the outcome of elections is impaired, the superior court for the judicial district in which a municipality is located may consider (A) the history of discrimination in the municipality or state, (B) the extent to which protected class electors have been elected to office in the municipality, (C) the use of any qualification for eligibility to be an elector or other prerequisite to voting, or any statute, ordinance, regulation or other law regarding the administration of elections, or any related standard, practice, procedure or policy, by the municipality that may enhance the dilutive effects of the method of election in such municipality, (D) the denial of access of protected class electors or candidates to election administration or campaign finance processes that determine which candidates will receive access to the ballot or financial or other support in a given election in the municipality, (E) the extent to which protected class individuals in the municipality make expenditures, as defined in section 9-601b of the general statutes, at lower rates than other individuals in such municipality, (F) the 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, (G) the extent to which protected class individuals in the municipality are disadvantaged in areas such as education, employment, health, criminal justice, housing, land use or environmental protection, (H) the extent to which protected class individuals in the municipality are disadvantaged in other areas that may hinder their ability to participate effectively in the political process, (I) the use of overt or subtle racial appeals in political campaigns in the municipality, (J) a significant lack of responsiveness by elected officials of the municipality to the particularized needs of protected class individuals, and (K) whether the municipality has a compelling policy justification for employing its particular method of election or its particular ordinance, regulation or other law regarding the administration of elections, or any related standard, practice, procedure or policy.

(2) No item for consideration described in subdivision (1) of this

subsection shall be dispositive or required for a finding of the existence of racially polarized voting. Evidence of such items concerning the state, private actors or other surrounding municipalities may be considered, but shall be less probative than evidence concerning the municipality itself.

(d) Any aggrieved person, any organization whose membership includes or is likely to include aggrieved persons, any organization whose mission would be frustrated by a violation of this section, any organization that would expend resources in order to fulfill such organization's mission as a result of a violation of this section or the Secretary of the State may file an action pursuant to this section in the superior court for the judicial district in which such municipality is located.

(e) (1) Notwithstanding any provision of title 9 of the general statutes and any special act, charter or home rule ordinance, whenever the superior court for the judicial district in which a municipality is located finds a violation of any provision of this section, such court shall order appropriate remedies that are tailored to address such violation in such municipality, including, but not limited to, (A) a district-based method of election, (B) an alternative method of election, (C) new or revised districting or redistricting plans, (D) elimination of staggered elections so that all members of the legislative body are elected at the same time, (E) increasing the size of the legislative body, (F) additional voting hours, (G) additional polling locations, (H) ordering of special elections, (I) requiring expanded opportunities for admission of electors, (J) requiring additional elector education, or (K) the restoration or addition of persons to registry lists.

(2) Such court may only order a remedy if such remedy will not diminish the ability of protected class electors to participate in the political process and elect their preferred candidates or otherwise influence the outcome of elections. Such court shall consider remedies proposed by any parties to an action filed pursuant to this section and by other interested persons who are not such parties. In considering a

proposed remedy by a municipality, such court shall not give any deference or priority to such remedy.

(f) (1) In the case of any proposal for a municipality to enact and implement (A) a new method of election to replace such municipality's at-large method of election with either a district-based method of election or an alternative method of election, or (B) a new districting or redistricting plan, the legislative body of such municipality shall act in accordance with the provisions of subdivision (2) of this subsection if any such proposal was made after the receipt of a notification letter described in subsection (g) of this section or after the filing of a claim pursuant to this section or the federal Voting Rights Act of 1965, P.L. 89-110, as amended from time to time.

(2) (A) Prior to drawing a draft districting or redistricting plan or plans of the proposed boundaries of the districts, the municipality shall hold at least two public hearings, within a period of not more than thirty days of each other, at which members of the public may provide input regarding the composition of such districts. In advance of such hearings, the municipality shall conduct outreach to members of the public, including to language minority communities, to explain the districting or redistricting process and to encourage such input.

(B) After all such draft districting or redistricting plans are drawn, the municipality shall publish and make available for public dissemination at least one such plan and include the potential sequence of elections in the event the members of the legislative body of such municipality would be elected for staggered terms under such plan. The municipality shall hold at least two public hearings, within a period of not more than forty-five days of each other, at which members of the public may provide input regarding the content of such plan or plans and, if applicable, such potential sequence of elections. Such plan or plans shall be published at least seven days prior to consideration at each such hearing. If such plan or plans are revised at or following any such hearing, the municipality shall publish and make available for public dissemination such revised plan or plans at least seven days prior to any

adoption of such revised plan or plans.

(C) In determining the sequence of elections in the event the members of the legislative body of such municipality would be elected for staggered terms under any such districting or redistricting plan or plans, such legislative body shall give special consideration to the purposes of sections 1 to 8, inclusive, of this act and take into account the preferences expressed by electors in the districts.

(g) (1) Prior to filing an action against a municipality pursuant to this section, any party described in subsection (d) of this section shall send by certified mail, return receipt requested, a notification letter to the clerk of such municipality asserting that such municipality may be in violation of the provisions of sections 1 to 8, inclusive, of this act.

(2) (A) No such party may file an action pursuant to this section earlier than fifty days after sending such notification letter to such municipality.

(B) Prior to receiving a notification letter, or not later than fifty days after any such notification letter is sent to a municipality, the legislative body of such municipality may pass a resolution (i) affirming such municipality's intention to enact and implement a remedy for a potential violation of the provisions of sections 1 to 8, inclusive, of this act, (ii) setting forth specific measures such municipality will take to facilitate approval and implementation of such a remedy, and (iii) providing a schedule for the enactment and implementation of such a remedy. No party described in subsection (d) of this section may file an action pursuant to this section earlier than ninety days after passage of any such resolution by such legislative body.

(C) If, under the laws of the state, the legislative body of a municipality lacks authority to enact or implement a remedy identified in any such resolution within ninety days after the passage of such resolution, or if such municipality is a covered jurisdiction as described in section 5 of this act, such legislative body may take the following measures upon such passage:

(i) The municipality shall hold at least one public hearing on any proposal to remedy any potential violation of the provisions of sections 1 to 8, inclusive, of this act, at which members of the public may provide input regarding any such proposed remedies. In advance of such hearing, the municipality shall conduct outreach to members of the public, including to language minority communities, to encourage such input.

(ii) The legislative body of such municipality may approve any such proposed remedy that complies with the provisions of sections 1 to 8, inclusive, of this act and submit such proposed remedy to the Secretary of the State.

(iii) Notwithstanding any provision of title 9 of the general statutes and any special act, charter or home rule ordinance, the Secretary of the State shall, not later than sixty days after submission of such proposed remedy by such municipality, approve or reject such proposed remedy in accordance with the provisions of this clause. The Secretary may only approve such proposed remedy if the Secretary concludes (I) such municipality may be in violation of the provisions of sections 1 to 8, inclusive, of this act, (II) the proposed remedy would address any such potential violation, (III) the proposed remedy is unlikely to violate the Constitution of Connecticut or any federal law, (IV) the proposed remedy will not diminish the ability of protected class electors to participate in the political process and elect their preferred candidates to office, and (V) implementation of the proposed remedy is feasible.

(iv) Notwithstanding any provision of title 9 of the general statutes and any special act, charter or home rule ordinance, if the Secretary of the State approves the proposed remedy, such proposed remedy shall be enacted and implemented immediately. If the municipality is a covered jurisdiction as described in section 5 of this act, such municipality shall not be required to obtain preclearance for such proposed remedy.

(v) If the Secretary of the State denies the proposed remedy, (I) such proposed remedy shall not be enacted or implemented, (II) the Secretary

shall set forth the objections to such proposed remedy and explain the basis for such denial, and (III) the Secretary may recommend another proposed remedy that the Secretary would approve.

(vi) If the Secretary of the State does not approve or reject such proposed remedy within sixty days after the submission of such proposed remedy by the municipality, the proposed remedy shall not be enacted or implemented.

(D) A municipality that has passed a resolution described in subparagraph (B) of this subdivision may enter into an agreement with any party who sent a notification letter described in subdivision (1) of this subsection providing that such party shall not file an action pursuant to this section earlier than ninety days after entering into such agreement. If such party agrees to so enter into such an agreement, such agreement shall require that the municipality either enact and implement a remedy that complies with the provisions of sections 1 to 8, inclusive, of this act or pass such a resolution and submit such resolution to the Secretary of the State. If such party declines to so enter into such an agreement, such party may file an action pursuant to this section at any time.

(E) If, pursuant to the provisions of this subsection, a municipality enacts or implements a remedy or the Secretary of the State approves a proposed remedy, a party who sent a notification letter described in subdivision (1) of this subsection may, not later than thirty days after such enactment, implementation or approval, submit a claim for reimbursement from such municipality for the costs associated with producing and sending such notification letter. Such party shall submit such claim in writing and substantiate such claim with financial documentation, including a detailed invoice for any demography services or analysis of voting patterns in such municipality. Upon receipt of any such claim, such municipality may request additional financial documentation if that which has been provided by such party is insufficient to substantiate such costs. Such municipality shall reimburse such party for reasonable costs claimed or for an amount to

which such party and such municipality agree, except that the cumulative amount of any such reimbursements to all such parties other than the Secretary of the State shall not exceed forty-three thousand dollars, adjusted in accordance with any change in the consumer price index for all urban consumers as published by the United States Department of Labor, Bureau of Labor Statistics. If any such party and such municipality fail to agree to a reimbursement amount, either such party or such municipality may file an action for a declaratory judgment with the superior court for the judicial district in which such municipality is located for a clarification of rights.

(F) (i) Notwithstanding the provisions of this subsection, a party described in subsection (d) of this section may seek preliminary relief for a regular election held in a municipality by filing an action pursuant to this section during the one hundred twenty days prior to such regular election. Not later than the filing of such action, such party shall send a notification letter described in subdivision (1) of this subsection to such municipality. In the event any such action is withdrawn or dismissed as being moot as a result of such municipality's enactment or implementation of a remedy, or the approval by the Secretary of the State of a proposed remedy, any such party may only submit a claim for reimbursement in accordance with the provisions of subparagraph (E) of this subdivision.

(ii) In the case of preliminary relief sought pursuant to subparagraph (F)(i) of this subdivision by a party described in subsection (d) of this section, the superior court for the judicial district in which such municipality is located shall grant such relief if such court determines that (I) such party is more likely than not to succeed on the merits, and (II) it is possible to implement an appropriate remedy that would resolve the violation alleged under this section prior to such election.

Sec. 3. (NEW) (*Effective January 1, 2023*) (a) There is established in the office of the Secretary of the State a state-wide database of information necessary to assist the state and any municipality in (1) evaluating whether and to what extent current laws and practices related to

election administration are consistent with the provisions of sections 1 to 8, inclusive, of this act, (2) implementing best practices in election administration to further the purposes of said sections, and (3) investigating any potential infringement upon the right to vote.

(b) The Secretary of the State shall designate an employee of the office of the Secretary of the State to serve as manager of the state-wide database. Such employee shall hold an advanced degree from an accredited college or university and have expertise in demography, statistical analysis and electoral systems. Such employee shall be responsible for the operation of such state-wide database and shall manage such staff as is necessary to implement and maintain such state-wide database.

(c) The state-wide database shall maintain in electronic format the following data and records, at a minimum, for no fewer than the prior twelve years:

(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 district level for each municipality, based on information from the United States Census Bureau, including from the American Community Survey, or information of comparable quality collected by a similar governmental agency;

(2) Election results at the district level for each state-wide election and each election in each municipality;

(3) Contemporaneous registry lists and voter history files for each election in each municipality;

(4) Contemporaneous maps, descriptions of boundaries and other similar items, whether in paper or electronic format, for each district;

(5) Polling place locations, including, but not limited to, lists of districts associated with such polling locations;

(6) Districting or redistricting plans for each election in each

municipality; and

(7) Any other information the Secretary of the State deems advisable to maintain in furtherance of the purposes of sections 1 to 8, inclusive, of this act.

(d) All data, estimates or other information maintained in the state-wide database shall be published on the Internet web site of the office of the Secretary of the State and made available to members of the public at no cost, provided no such data, estimate or other information may identify any individual elector.

(e) Each estimate concerning race, color or language minority group prepared pursuant to this section shall be so prepared using the most advanced, peer-reviewed and validated methodologies.

(f) At the time the Secretary of the State is prepared to commence administration of the state-wide database established under this section, the Secretary shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to elections, in accordance with the provisions of section 11-4a of the general statutes, certifying such fact. Not later than ninety days after such certification, and every third year thereafter, the Secretary shall publish on the Internet web site of the office of the Secretary of the State (1) a list of each municipality required under section 4 of this act to provide assistance to members of language minority groups, and (2) each language in which such municipalities are so required to provide such assistance. The Secretary shall also distribute such information to each municipality.

(g) Upon the certification of election results and the completion of the voter history file after each election, each municipality shall transmit, in electronic format, copies of (1) such election results at the district level, (2) contemporaneous registry lists, (3) voter history files, (4) maps, descriptions of boundaries and other similar items, and (5) lists of polling place locations and lists, descriptions or other information for each district associated with any such polling place location.

(h) The office of the Secretary of the State may provide nonpartisan technical assistance to municipalities, researchers and members of the public seeking to use the resources of the state-wide database.

(i) In each action filed pursuant to section 2 of this act, there shall be a rebuttable presumption that the data, estimates or other information maintained in the state-wide database is valid.

Sec. 4. (NEW) (*Effective January 1, 2023*) (a) A municipality shall provide language-related assistance in voting and elections to a language minority group in such municipality if the Secretary of the State determines, based on information from the American Community Survey, that:

(1) More than two per cent of the citizens of voting age of such municipality are members of a single language minority group and speak English "less than very well" according to said survey;

(2) More than four thousand of the citizens of voting age of such municipality are members of a single language minority group and speak English "less than very well" according to said survey; or

(3) In the case of a municipality that contains any portion of a Native American reservation, more than two per cent of the Native American citizens of voting age on such Native American reservation are members of a single language minority group and speak English "less than very well" according to said survey. As used in this subdivision, "Native American" includes any person recognized by the United States Census Bureau as "American Indian".

(b) Whenever the Secretary of the State determines that a municipality is required to provide language assistance to a particular language minority group, such municipality shall provide voting materials (1) in English, and (2) in the language of each such language minority group of an equal quality to the corresponding English materials, including registration or voting notices, forms, instructions, assistance, ballots or other materials or information relating to the

electoral process, except that in the case of a language minority group where the language of such language minority group is oral or unwritten, including historically unwritten as may be the case for some Native Americans, such municipality may provide only oral instructions, assistance or other information relating to the electoral process to such language minority group.

(c) In the case of any municipality described in this section, which seeks to provide only English materials despite a determination by the Secretary of the State under this section that such municipality is required to provide language assistance to a particular language minority group, such municipality may file an action for a declaratory judgment in the superior court for the judicial district in which such municipality is located for permission to provide only English materials. Such court shall enter such declaratory judgment in the municipality's favor if such court finds that the Secretary's determination was unreasonable or an abuse of discretion.

(d) Any elector who is a member of a language minority group in a municipality described in this section may file an action in the superior court for the judicial district in which such municipality is located to enforce the provisions of this section.

Sec. 5. (NEW) (*Effective January 1, 2024*) (a) The enactment or implementation of a covered policy, as described in subsection (b) of this section, by a covered jurisdiction, as described in subsection (c) of this section, shall be subject to preclearance by the Secretary of the State or the superior court for the judicial district in which such covered jurisdiction is located.

(b) A covered policy includes any new or modified qualification for admission as an elector, prerequisite to voting or ordinance, regulation, standard, practice, procedure or policy concerning:

(1) Districting or redistricting;

(2) Method of election;

(3) Form of government;

(4) Annexation, incorporation, dissolution, consolidation or division of a municipality;

(5) Removal of individuals from registry lists or enrollment lists and other activities concerning any such list;

(6) Admission of electors;

(7) Location or hours of any polling place or number of polling places;

(8) Assignment of districts to polling place locations;

(9) Assistance offered to protected class individuals; or

(10) Any additional subject matter the Secretary of the State may identify for inclusion in this subsection, pursuant to a regulation adopted by the Secretary in accordance with the provisions of chapter 54 of the general statutes, if the Secretary determines that any qualification for admission as an elector, prerequisite to voting or ordinance, regulation, standard, practice, procedure or policy concerning such subject matter may have the effect of denying or abridging the right to vote of any protected class elector.

(c) A covered jurisdiction includes:

(1) Any municipality that, within the prior twenty-five years, has been subject to any court order or government enforcement action based upon a finding of any violation of the provisions of sections 1 to 8, inclusive, of this act, the federal Voting Rights Act of 1965, P.L. 89-110, as amended from time to time, any state or federal civil rights law, the fifteenth amendment to the United States Constitution or the fourteenth amendment to the United States Constitution concerning the right to vote or discrimination against any protected class;

(2) Any municipality that, within the prior five years, has failed to comply with such municipality's obligations to provide data or information to the state-wide database pursuant to section 3 of this act;

(3) Any municipality in which during the prior ten years, based on data from criminal justice information systems, as defined in section 54-142q of the general statutes, the combined misdemeanor and felony arrest rate of any protected class consisting of at least one thousand citizens of voting age, or whose members comprise at least ten per cent of the citizen voting age population of such municipality, has exceeded the arrest rate of the entire citizen voting age population of such municipality by at least twenty per cent; or

(4) Any municipality in which during the prior ten years, based on data from the United States Census Bureau, the dissimilarity index of any protected class consisting of at least two thousand five hundred citizens of voting age, or whose members comprise at least ten per cent of the citizen voting age population of such municipality, has exceeded fifty per cent with respect to white, non-Hispanic, citizens of voting age within such municipality.

(d) (1) If a covered jurisdiction seeks preclearance from the Secretary of the State for the adoption or implementation of any covered policy, such covered jurisdiction shall submit, in writing, such covered policy to the Secretary and may obtain such preclearance in accordance with the provisions of this subsection.

(2) When the Secretary of the State receives any such submission of a covered policy:

(A) In the case of any covered policy concerning the location of polling places, the Secretary shall grant or deny preclearance not later than thirty days after such receipt, except that if the Secretary grants such preclearance the Secretary may do so preliminarily and reserve the right to subsequently deny such preclearance not later than sixty days after such receipt; and

(B) In the case of any other covered policy, the Secretary shall grant or deny such preclearance not later than sixty days after such receipt, except that in the case of any such covered policy described in this subparagraph that concerns the implementation of a district-based

method of election or an alternative method of election, districting or redistricting plans or a change to a municipality's form of government, the Secretary may extend, up to two times, and by ninety days each such time, the time by which to grant or deny such preclearance.

(3) Prior to granting or denying such preclearance, the Secretary of the State shall publish notice of the proceedings for making such determination and shall provide an opportunity for any interested party to submit written comments concerning the covered policy and such determination.

(4) The Secretary of the State may grant preclearance to a covered policy only if it is determined that such covered policy will not diminish the ability of protected class electors to participate in the electoral process or elect their preferred candidates, and upon such grant the covered jurisdiction may enact and implement such covered policy.

(5) (A) If the Secretary of the State denies preclearance to a covered policy, (i) such covered policy shall not be enacted or implemented, and (ii) the Secretary shall set forth the objections to such covered policy and explain the basis for such denial.

(B) Any denial under subparagraph (A) of this subdivision may be appealed, in accordance with the provisions of chapter 54 of the general statutes, to the superior court for the judicial district in which the covered jurisdiction is located. Any such appeal shall be privileged with respect to assignment for trial.

(6) If the Secretary of the State does not grant or deny such preclearance within the applicable time specified in subdivision (2) of this subsection, such covered policy shall be deemed precleared and the covered jurisdiction may enact and implement such covered policy.

(e) (1) If a covered jurisdiction seeks preclearance from the superior court for the judicial district in which such covered jurisdiction is located for the adoption or implementation of any covered policy, such covered jurisdiction shall submit, in writing, such covered policy to such

court and may obtain such preclearance in accordance with the provisions of this subsection, provided (A) such covered jurisdiction shall also contemporaneously transmit to the Secretary of the State a copy of such submission, and (B) failure to so provide such copy shall result in an automatic denial of such preclearance. Notwithstanding the transmission to the Secretary of a copy of any such submission, the court shall exercise exclusive jurisdiction over such submission.

(2) Except as provided in subparagraph (B) of subdivision (1) of this subsection, when such court receives any such submission of a covered policy, such court shall grant or deny such preclearance not later than sixty days after such receipt.

(3) Such court may grant preclearance to a covered policy only if it is determined that such covered policy will not diminish the ability of protected class electors to participate in the electoral process or elect their preferred candidates, and upon such grant the covered jurisdiction may enact and implement such covered policy.

(4) (A) If such court denies preclearance to a covered policy, or does not grant or deny such preclearance within sixty days, such covered policy shall not be enacted or implemented.

(B) Any denial under subparagraph (A) of this subdivision may be appealed in accordance with the ordinary rules of appellate procedure. Any such appeal shall be privileged with respect to assignment for appeal.

(f) If any covered jurisdiction enacts or implements any covered policy without obtaining preclearance for such covered policy in accordance with the provisions of this section, the Secretary of the State or any party described in subsection (d) of section 2 of this act may file an action in the superior court for the judicial district in which such covered jurisdiction is located to enjoin such enactment or implementation and seek sanctions against such covered jurisdiction for violations of this section.

(g) (1) For a period of one hundred twenty days after the effective date of this section, the Secretary of the State may, in accordance with the provisions of subdivision (2) of this subsection, conduct a look-back review and deny preclearance to any covered policy that was previously enacted by a covered jurisdiction.

(2) (A) The Secretary of the State may only initiate a look-back review of any covered policy that was enacted or implemented by a covered jurisdiction on or after January 1, 2023, and prior to January 1, 2024.

(B) A look-back review is initiated when the Secretary of the State provides notice to a covered jurisdiction of the Secretary's decision to review a covered policy enacted or implemented by such covered jurisdiction. Such covered jurisdiction shall submit, in writing, such covered policy not later than thirty days after receipt of such notice.

(C) Not later than ninety days after such submission, the Secretary of the State shall decide whether such covered jurisdiction may further implement such covered policy. Prior to making such decision, the Secretary shall publish notice of the proceedings for making such decision and shall provide an opportunity for any interested party to submit written comments concerning the covered policy and such decision.

(D) (i) The Secretary of the State shall deny further implementation of such covered policy if it is determined that such covered policy is likely to diminish the ability of protected class electors to participate in the political process or elect their preferred candidates. For any such denial, the Secretary shall set forth the objections to such covered policy and explain the basis for such denial. No such denial may provide a basis for the invalidation of any election held under such covered policy.

(ii) Any denial under subparagraph (D)(i) of this subdivision may be appealed, in accordance with the provisions of chapter 54 of the general statutes, to the superior court for the judicial district in which the covered jurisdiction is located. Any such appeal shall be privileged with respect to assignment for trial.

(h) The Secretary of the State may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to effectuate the purposes of this section.

Sec. 6. (NEW) (*Effective January 1, 2023*) (a) No person, whether acting under color of law or otherwise, may engage in acts of intimidation, deception or obstruction that affect the right of electors to exercise their electoral privileges.

(b) The following shall constitute a violation of subsection (a) of this section:

(1) Any person who uses or threatens to use any force, violence, restraint, abduction or duress, who inflicts or threatens to inflict any injury, damage, harm or loss, or who in any other manner practices intimidation that causes or will reasonably have the effect of causing any elector to (A) vote or refrain from voting, (B) vote for or against any particular candidate or question, (C) apply or not apply for admission as an elector, or (D) apply or not apply for an absentee ballot;

(2) Any person who uses any deceptive or fraudulent device, contrivance or communication that impedes, prevents or otherwise interferes with the electoral privileges of any elector or that causes or will reasonably have the effect of causing any elector to (A) vote or refrain from voting, (B) vote for or against any 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) Any person who obstructs, impedes or otherwise interferes with access to any polling place or office of any election official or who obstructs, impedes or otherwise interferes with any elector in any manner that causes or will reasonably have the effect of causing any delay in voting or the voting process, including the canvassing or tabulation of ballots.

(c) Any aggrieved person, any organization whose membership includes or is likely to include aggrieved persons, any organization

whose mission would be frustrated by a violation of this section, any organization that would expend resources in order to fulfill such organization's mission as a result of a violation of this section or the State Elections Enforcement Commission may file an action pursuant to this section in the superior court for the judicial district in which such alleged violation occurred.

(d) (1) Notwithstanding any provision of title 9 of the general statutes and any special act, charter or home rule ordinance, whenever such court finds a violation of any provision of this section, such court shall order appropriate remedies that are tailored to address such violation, including, but not limited to, providing for additional time to vote at an election, primary or referendum.

(2) Any person who violates the provisions of this section, or who aids in the violation of any of such provisions, shall be liable for any damages awarded by such court, including, but not limited to, nominal damages for any such violation and compensatory or punitive damages for any such wilful violation.

Sec. 7. (NEW) (*Effective January 1, 2023*) In any action or investigation to enforce the provisions of sections 1 to 6, inclusive, of this act, the State Elections Enforcement Commission may examine witnesses, receive oral and documentary evidence, determine material facts and issue subpoenas in accordance with the ordinary rules of civil procedure.

Sec. 8. (NEW) (*Effective January 1, 2023*) In any action to enforce the provisions of sections 1 to 6, inclusive, of this act, the court may award reasonable attorneys' fees and litigation costs, including, but not limited to, expert witness fees and expenses, to the party that filed such action, other than the state or any municipality, and that prevailed in such action. In the case of a party against whom such action was filed and who prevailed in such action, the court shall not award such party any costs unless such court finds such action to be frivolous, unreasonable or without foundation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*January 1, 2023*	New section
Sec. 2	*January 1, 2023*	New section
Sec. 3	*January 1, 2023*	New section
Sec. 4	*January 1, 2023*	New section
Sec. 5	*January 1, 2024*	New section
Sec. 6	*January 1, 2023*	New section
Sec. 7	*January 1, 2023*	New section
Sec. 8	*January 1, 2023*	New section

Statement of Legislative Commissioners:

In Section 1, "such as" was changed to "and includes" in Subdiv. (1) for clarity and "alderman" was changed to "aldermen" in Subdiv. (5) for accuracy; in Section 2(b)(2), "or" was added after the semi-colon in Subpara. (A)(i)(II) for accuracy, "in which" was added after "and" in Subpara. (A)(ii) for clarity and "such a violation" was rewritten to reference Section 2(b)(1) in Subparas. (C)(viii) and (C)(ix) for clarity and accuracy; and in Section 5(b), "voting, ordinance" was changed to "voting or ordinance" and Subdiv. (7) was rewritten for clarity.

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 $	FY 24 $
Secretary of the State	GF - Cost	Up to 3,540,273	Up to 1,040,273
State Comptroller - Fringe Benefits[1]	GF - Cost	208,840	208,840

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 23 $	FY 24 $
Various Municipalities	Potential Cost	Significant	Significant

Explanation

This bill generally codifies into state law several aspects of the federal Voting Rights Act of 1965 which bans discrimination in voting and elections and establishes a mechanism for certain jurisdictions with a history of discrimination against racial and language minorities to seek preapproval before changing their election laws. This will result in significant costs to the state and municipalities.

The bill, which requires the Secretary of the State (SOTS) to establish and maintain a database containing a range of elections and demographic data, results in a one-time start-up cost for equipment and software of up to $3,000,000 in FY 23 and up to $500,000 annually thereafter. There is also a cost for two additional staff: 1) one Manager

[1]The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

of the statewide database, as required in the bill, with an annual salary of $110,000 and associated fringe of $44,583, and 2) one IT Analyst with an annual salary of $92,372 and associated fringe of $37,438.

The bill also requires SOTS to make determinations of certain municipal plans intended to protect specified classes of electors. This determination process may include various municipalities simultaneously in the years following a redistricting or court litigation. This is estimated to result in an annualized cost to SOTS of $312,901 for four additional staff and associated fringe to the Office of the State Comptroller of $126,819. The staff are anticipated to be one Deputy Elections Director, one Staff Attorney, one Elections Officer, and one Administrative Assistant.

Additionally, the bill requires a municipality to provide language-related assistance in voting and elections if SOTS determines, based on the American Community Survey results, that the municipality meets certain criteria. Additional costs to the SOTS will be dependent on the number of municipalities that meet these criteria and may be up to $25,000 annually. Under Federal law, ten municipalities currently meet these criteria. As the bill expands these criteria, this will likely include more than ten municipalities.

The State Elections Enforcement Commission and certain parties are allowed under this bill to bring an action in the Superior Court in the district of an alleged violation. This is not anticipated to result in a fiscal impact to the state or municipalities.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Core-CT Financial Accounting System

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)