
OLR Bill Analysis

sSB 1226

AN ACT CONCERNING STATE VOTING RIGHTS IN RECOGNITION OF JOHN R. LEWIS.

SUMMARY

This bill generally codifies into state law several aspects of the federal Voting Rights Act of 1965 (“VRA,” see BACKGROUND), 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.

The bill prohibits applying or enacting any municipal elector qualifications; voting prerequisites; other election administration ordinances, regulations, or laws; or standards, practices, procedures, or policies that result in impairing a protected class member’s right to vote. “Vote” or “voting” under the bill is any action needed to cast a ballot and make the ballot effective in an election or primary. 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 (§ 2).

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 the Superior Court for the Hartford judicial district (J.D.) (§ 2).

It 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 (§ 3).

Similar to the federal VRA, the bill requires municipalities to provide

language-related assistance in voting and elections for limited English proficient individuals if they comprise a minimum threshold of the municipality's voting-age residents (§ 4).

It also subjects certain jurisdictions to preclearance by SOTS or the 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 (§ 5).

Generally, the bill prohibits engaging in intimidating, deceptive, or obstructive acts that affect the right to vote (§ 6).

It specifies that any voting statute, regulation, special act, home rule ordinance, or other state or municipal enactment must be construed liberally in favor of (1) protecting the right to vote and having the vote be valid and counted, (2) ensuring qualified individuals may register to vote, (3) providing voting access to qualified individuals, and (4) ensuring equal access for protected class members (§ 7).

Additionally, nothing in the bill may be construed to limit the powers of the (1) Commission on Human Rights and Opportunities or (2) State Elections Enforcement Commission's (SEEC's) attempts to secure voluntary compliance in remedying election-related violations (§ 8).

Lastly, the bill authorizes the 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. The filing is considered to have prevailed if, because of the litigation, the other party yielded much or all the relief sought in the court action. 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 (§ 9).

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: July 1, 2023, except that provisions on the statewide elections database and language-related assistance are effective January 1, 2024, and the provisions regarding preclearance are effective January 1, 2025.

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

The bill prohibits municipalities from applying or enacting any of the following in a way that impairs a protected class member’s right to vote: (1) municipal eligibility qualifications; (2) election methods; (3) ordinances, regulations, or other laws on election administration; or (4) related standards, practices, procedures, or policies. More specifically, the bill makes it a violation if it:

1. results, or will result, in a disparity among protected class members’ electoral or political participation or voting access or
2. impairs their ability to participate in the political process, elect their chosen candidates, or otherwise influence an election’s outcome, based on the totality of the circumstances (i.e., a legal standard that considers all relevant facts and circumstances rather than specific factors).

Prohibited Election Methods

Additionally, the bill prohibits implementing any election method that has the effect, or is motivated in part, to dilute protected class members’ votes and impair their ability or opportunity to participate in the political process, elect their chosen candidates, or otherwise influence the elections’ outcome.

More specifically, it makes it a violation if a municipality has:

1. an at-large election method or a district-based or alternative election method (e.g., ranked-choice voting, cumulative voting, and limited voting), in which protected class electors’ preferred candidates or electoral choices would usually be defeated and

2. (a) racially polarized voting by protected class members (i.e., their preferred candidate or electoral choice differs from that of non-protected class members electors) or (b) based on the totality of the circumstances, these electors' ability to participate in the political process, elect their chosen candidates, or otherwise influence election outcomes is impaired.

Under the bill, an "at-large method of election" is a way of electing candidates to the municipal legislative body in which all municipal electors vote upon the candidates. A "district-based method of election" is a way of electing candidates to a municipal legislative body in which, for municipalities divided into districts, a candidate for any district must reside in the district and candidates representing or seeking to represent the district are voted upon by only the electors of that district.

An "alternative method of election" is a way of electing candidates to a municipal legislative body other than an at-large method of election or a district-based method of election. It includes proportional ranked-choice voting, cumulative voting, and limited voting. (It is unclear whether existing law allows a municipality to 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.")

Under the bill, a "municipality" or "municipal" is any town, city, or borough, whether consolidated or unconsolidated; any local or regional school district; fire district; water district; sewer district; fire and sewer district; lighting district; village, beach, or improvement association; other district wholly within a town that can make appropriations or tax; or any other district authorized under the general statutes. The "legislative body" is a municipality's board of aldermen, council, board of burgesses, representative town meeting, board of education, district committee, association committee, or other similar body, as applicable.

Initiating Court Action

The bill authorizes SOTS, an aggrieved person, or an organization whose membership includes or likely includes aggrieved persons to file

actions for violations under the bill with the Superior Court for the Hartford J.D. Members of two or more protected classes may jointly file if they are politically cohesive in the municipality.

Notification Letter Before Filing Action

Before filing a court action against a municipality for an alleged violation, the bill requires an aggrieved party to send a notification letter asserting a violation to the municipality’s clerk by certified mail, return receipt requested. The bill prohibits the party from filing an action earlier than 50 days after sending this letter.

Municipal Response to Notice of 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 within 90 days after the resolution’s passage. Thus, if the municipality does not pass a resolution within 50 days after receiving a notification letter, the aggrieved party may file an action at that time. If the municipality passes a resolution before the 50-day deadline, the aggrieved party must wait until 90 days after the resolution passes to file a court action.

If under state law, town charter, or home rule ordinance, 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 hold at least one public hearing on any proposed remedy to the potential violation. (Under the bill, it is unclear whether the public hearing provision is mandatory or permissive.) Before the hearing, the municipality must conduct public outreach, including to language minority groups, to encourage input. The municipality’s 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 within 90 days after entering into the agreement and (2) municipality will either (a) enact and implement a remedy that complies with the bill's provisions or (b) pass a resolution as described above and submit it to SOTS. If the party declines to enter into an agreement, it may file an action at any time, presumably regardless of the timelines described above.

SOTS Approval

The bill requires SOTS to approve or reject the proposed remedy within 90 days after the municipality submits it. She may make a determination independent 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 require the municipalities or any other party to provide additional information on the proposed remedy.

The secretary may only approve the proposed remedy if she concludes that the municipality may be violating the bill's requirements and the proposed remedy (1) would address any potential violation, (2) does not violate the state constitution or federal law, and (3) can be implemented without disrupting an ongoing or imminent election.

If approved, the proposed remedy must be enacted and implemented immediately, unless implementing would disrupt an imminent or ongoing election, in which case it must be implemented as soon as possible. If the municipality is a covered jurisdiction, it does not have to get the proposed remedy precleared (see below).

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

SOTS's decision to approve, deny, or not act on a remedy is final and not subject to review except as provided in the state constitution.

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 a 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 municipal voting patterns.

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 \$50,000 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 the Hartford J.D. for a declaratory ruling.

Superior Court Determination

The bill requires the court to consider certain factors as more probative (i.e., tending to prove or disprove a point in issue) than others when determining whether (1) racially polarized voting by protected class electors in a municipality occurs or (2) based on the totality of circumstances, protected class members' ability to participate in the political process or election of their choice candidates is impaired. Specifically, the court must consider:

1. elections held before the action's filing as more probative than elections conducted afterward,
2. evidence about elections for municipal office as more probative

than evidence about elections for other offices, and

3. statistical evidence as more probative than nonstatistical evidence.

The bill prohibits the court from requiring evidence of the (1) electors', elected officials', or municipality's intent to discriminate against protected class electors and (2) causes or reasons for racially polarized voting.

Under the bill, if two or more protected classes bring claims, the court must combine the classes if they are politically cohesive in the municipality. The court cannot require evidence that each class is separately polarized from other electors.

The bill allows the court to consider the following when determining, based on the totality of the circumstances, whether an impairment of protected class members' voting rights, ability to elect their chosen candidates, or otherwise influence elections' outcomes has occurred:

1. the municipality's or state's history of discrimination;
2. the extent to which protected class members were elected to municipal office;
3. the municipality's use of any (a) elector 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. any history of unequal access of protected class members or candidates to election administration or campaign finance processes that determine which candidates will receive ballot access or financial or other support for municipal office;
5. the extent to which protected class members in the municipality or state historically make campaign expenditures at lower rates than other individuals in the municipality or state;

6. the extent to which protected class members in the municipality or state vote at lower rates than other individuals in the municipality or state, as applicable;
7. the extent to which protected class members in the municipality are disadvantaged, or otherwise bear the effects of discrimination in education, employment, health, criminal justice, housing, transportation, land use, environmental protection, or other areas that may hinder their ability to participate effectively in the political process;
8. the use of overt or subtle racial appeals in political campaigns in the municipality, or surrounding the adoption or maintenance of challenged practices;
9. the extent of hostility or barriers faced by protected class members while campaigning;
10. a significant or recurring lack of responsiveness of elected municipal officials to protected class members' needs (responsiveness does not include compliance with a court order); and
11. whether a valid and substantial state interest exists for a particular (a) election method; (b) ordinance, regulation, or other law on election administration; or (c) related standard, practice, procedure, or policy.

No combination or number of factors is required for a determination of impairment.

Court Remedies

Under the bill, the court must order appropriately tailored remedies when it finds a municipal violation of the above-prohibited acts, regardless of the state's election laws or any special act, charter, or home rule ordinance, even if otherwise normally precluded by state law. The remedy must (1) not contravene the state constitution or court ruling on a contested election, (2) ensure protected class members can equitably

participate in the political process, (3) not impair protected class members' ability to elect their candidates of choice or otherwise influence the election outcome, (4) be implemented in a way that will not disrupt an imminent or ongoing election, and (5) take into account the ability of election administration officials in the municipality to implement the remedy in an orderly and fiscally sound manner.

These remedies include the following:

1. a district-based or an alternative election method;
2. new or revised districting or redistricting plans;
3. eliminating staggered elections so that legislative body members are simultaneously elected;
4. a reasonable increase in the legislative body's size;
5. additional voting days, voting hours, or polling locations;
6. additional means of voting or opportunities to return ballots;
7. holding special elections;
8. expanded elector admission opportunities;
9. additional elector education; or
10. restoring or adding people to registry lists.

The court may also retain jurisdiction and place a moratorium on implementing any different eligibility qualifications or prerequisites, voting standards, practices, or procedures. The moratorium must remain in place until the court determines whether the qualification, prerequisite, standard, practice, or procedure does not have the purpose, and will not have the effect, of impairing the right to vote based on protected class membership or violating the bill's provisions. The finding cannot preclude a future cause of action preventing enforcement.

The bill requires the court to consider remedies proposed by any involved party and other interested persons but it 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 bill or federal VRA, a municipality must have its legislative body take certain actions on any proposal to enact and implement (1) a new election method to replace an at-large method or (2) a new districting or redistricting plan.

Before drawing a draft districting or redistricting plan, or transitioning to an alternative election method, the bill requires the municipality to hold at least one public hearing to receive input on the draft or proposal. Notice of the hearing must be published at least three weeks before the hearing. The bill also requires the municipality to do public outreach before the hearing, including to language minority groups, to explain the districting or redistricting process and encourage input.

The bill requires the municipality to publish and make available for public dissemination the draft districting or redistricting plans after they are drawn, but at least three weeks before a public hearing. 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 one public hearing to discuss the draft or proposal. It must also publish and make available for public dissemination any plan or plans revised at or after the hearings at least two weeks before adopting them.

Preliminary Election Relief

Under the bill, an aggrieved party may seek preliminary relief from the 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 before they

file. The bill requires the court to grant relief if it determines that the (1) aggrieved party has shown a substantial likelihood of success on the merits and (2) remedy would resolve the alleged violation before the election and not unduly disrupt it.

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 SOTS office to help the state and any municipality (1) evaluate whether, and to what extent, current election laws and practices meet the bill's provisions; (2) implement best practices in election administration to further the bill's purposes; and (3) investigate potential infringements of voting rights. The database must be published on the secretary's website, excluding any data or information that identifies individual voters.

The bill requires the secretary to designate an employee of her office to serve as the database manager. This employee must hold an advanced degree from an accredited college or university, or have equivalent experience, and have expertise in demography, statistical analysis, and electoral systems. The bill allows (1) the manager to operate the database and manage staff as needed to implement and maintain it and (2) SOTS to give nonpartisan technical assistance to municipalities, researchers, and the public on using the database's resources.

Database Contents

Under the bill, the database must electronically maintain, at minimum, the following data and records from at least the last 12 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 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, accounting for population adjustments for incarcerated individuals as required under state law (see BACKGROUND);

2. district level election results for each statewide and municipal election;
3. regularly updated registry lists, geocoded locations for each elector, and voter history files for each election in each municipality;
4. contemporaneous maps, boundary descriptions, and similar items in shapefiles or a comparable electronic format if available;
5. geocoded locations for polling places and absentee ballot drop boxes for each election in the municipality, including a list or description of the location's service area; and
6. any other information the secretary deems advisable to further the bill's purposes.

Except for data, information, or estimates that identify individual electors, this information must be made publicly available in electronic format at no cost. Under the bill, any prepared estimate under this section must use the most advanced, peer-reviewed, and validated methodologies. The bill also 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 abridgment of protected classes' voting rights.

The bill requires municipal election administrators to transmit any election-specific information listed above in electronic format to SOTS after certifying election results and completing the post-election voter history file. Additionally, on an annual basis, or as requested by SOTS, the Criminal Justice Information Systems Governing Board and any other state entity identified by SOTS must transmit any data, statistics, or information that the office requires to carry out its duties and

responsibilities.

Once the secretary is prepared to administer the database, she must certify this in a report to the Government Administration and Elections Committee. Within 90 days after this certification, and then at least annually, 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 each municipality must do it. The secretary must also distribute this information to each municipality.

§ 4 — LANGUAGE-RELATED ASSISTANCE

Assistance Requirements

The bill requires a municipality to provide language-related assistance in voting and elections if SOTS determines a significant and substantial need exists based on ACS information or data of comparable quality. Under the bill, a need exists if a certain percentage or number of the population are limited English proficient individuals (i.e., someone who does not speak English as his or her primary language and who speaks, reads, or understands the English language less than “very well,” in accordance with U.S. Census Bureau data or data of comparable quality collected by a governmental entity).

Under the bill, SOTS must find that a significant need exists if:

1. more than 2% of the municipality’s voting-age citizens, but at least 100 people, are limited English proficient individuals;
2. more than 4,000 of the municipality’s voting-age citizens are limited English proficient individuals; or
3. for a municipality with part of a Native American reservation, more than 2% of the reservation’s Native American voting-age citizens are limited English proficient individuals (“Native American” includes anyone recognized as “American Indian” by the U.S. Census Bureau or the state of Connecticut).

It is unclear if the thresholds apply cumulatively to all limited English proficient individuals regardless of which language they speak.

Starting by January 15, 2024, SOTS must annually publish on its website a list of municipalities that must provide language assistance and which languages they each must cover. (The bill also requires her to do this within 90 days of certifying that she is ready to administer the statewide elections information database (see above); presumably, both deadlines apply.) SOTS must also give this information to every impacted municipality. The secretary's determinations for placement on this list are final and not subject to review except as provided in the state constitution.

Under the bill, these municipalities must give electors who are limited English proficient individuals voting materials in English and each designated language, including registration or voting notices, forms, instructions, assistance, ballots, or other materials or information about the electoral process. The requirement does not apply for a language minority group whose language is oral or unwritten, allowing the municipality to provide the information orally.

The translated materials must be of equal quality as the English materials and convey the intent and essential meaning of the original text or communication, including live translation whenever available. A municipality may not rely solely on an automatic translation service.

The bill allows aggrieved individuals or an organization that includes them to file an action in the Superior Court for the Hartford J.D. for violations of these provisions.

Review Process

The bill requires SOTS, through regulation, to establish a review process for determining whether a significant or substantial need for language assistance exists. This process must include:

1. accepting requests for SOTS to consider designating a language from (a) electors, (b) organizations that include or likely include electors, (c) organizations whose mission would be frustrated if language assistance was not provided, or (d) organizations that would expend resources to rectify a lack of language assistance;

2. an opportunity for public comment; and
3. allowing SOTS, as part of this determination process, to designate a language-assistance need for any municipality after considering the request and public comment.

(It is unclear whether this review process is distinct from SOTS's determination of need based on the thresholds described above or required as part of all determinations.)

§ 5 — PRECLEARANCE OF COVERED POLICIES BY COVERED JURISDICTIONS

The bill subjects certain jurisdictions (see below) to preclearance by SOTS or the Superior Court for the Hartford J.D. before enacting or implementing certain election- or voting-related actions or policies ("covered policies," see below). Jurisdictions may be covered if subject to court orders or government enforcement actions.

Under the bill, government enforcement actions include (1) any denial of administrative or judicial preclearance by the state or federal government, (2) pending litigation filed by a state or federal entity, (3) final judgment or adjudication, (4) a consent decree, or (5) a similar enforcement action.

A covered jurisdiction is subject to preclearance if, within the past 25 years, it:

1. has had three or more court orders or government enforcement actions for violating the bill's provisions, the federal VRA, a state or federal civil rights law, or the U.S. Constitution's 14th or 15th Amendments, on the right to vote or a pattern, practice, or policy of discrimination against a protected class or
2. has been subject to a court order or government enforcement action on districting, redistricting, or election methods.

SOTS may also adopt regulations to implement these preclearance procedures. The bill also authorizes the secretary or an aggrieved party under the bill to bring an action to the Superior Court for the Hartford

J.D. to enjoin enacting or implementing a covered policy without this preclearance and to seek sanctions.

Covered Policies

Under the bill, a “covered policy” includes any municipal eligibility qualifications, election methods, ordinances, regulations, or other laws on election administration, or related standards, practices, procedures, or policies, regarding:

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. polling place hours and the number and location of polling places and absentee ballot drop boxes;
7. district assignment of polling places and absentee ballot drop box locations;
8. assistance offered to protected class members; or
9. any additional subject matter the secretary identifies for inclusion, under a regulation she adopts, if she determines that it may diminish a protected class elector’s right to vote or violate the bill’s provisions.

The bill specifies that SOTS’s decision to include or not include additional subject matter is final and is not subject to review except as provided in the state constitution.

(Municipalities do not have the authority to establish policies and procedures for many of these aspects of elections which are instead

outlined in the state constitution or laws or are under SOTS's authority. For example, the qualifications for admission as an elector are outlined 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

The bill requires SOTS, at least annually, to identify and publish a list of "covered jurisdictions" that becomes effective upon publication (it is unclear what effect placement on this list has; covered jurisdictions appear only to be subject to preclearance as described above). A covered jurisdiction is a municipality:

1. that, within the last 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 14th or 15th Amendments concerning the right to vote or a pattern, practice, or policy of discrimination against a protected class;
2. that, within the last three years, failed to comply with its obligations to provide data or information to the statewide database (see above), excluding inadvertent or unavoidable delays communicated to SOTS and corrected in a reasonable time;
3. in which protected class members (1) makeup 10% of eligible voters or (2) have at least 1,000 eligible electors, and in which during the last 10 years,
 - a. based on data from the state criminal justice information systems, the combined misdemeanor and felony arrest rate for any protected class exceeded the combined arrest rate of the municipality's population by at least 20%, excluding municipalities that are school districts; or
 - b. the voter turnout rate of protected class members for general elections was at least 10% lower than the

percentage of all voters; or

4. that enacted or implemented a covered policy during the last 10 years without obtaining preclearance under the bill (this appears to include municipalities regardless of whether they were subject to preclearance requirements).

Any estimates prepared to identify a covered jurisdiction must use the most advanced, peer-reviewed, and validated methodologies. Additionally, a determination by SOTS for inclusion as a covered jurisdiction may be appealed under the Uniform Administrative Procedure Act (UAPA) and all appeals to Superior Court must be for the Hartford J.D. and privileged for trial assignment.

SOTS Preclearance

Under the bill, when a municipality submits a policy for preclearance, the covered jurisdiction bears the burden of proof. As soon as practicable, but within 10 days after receiving the submission, SOTS must publish the submitted covered policy on her website.

Preclearance Public Comment and Review Period. Before granting or denying the preclearance, the secretary must allow interested parties to submit written comments on the covered policy and the subsequent determination. SOTS must provide a means for the public to receive notifications or alerts of preclearance submissions.

The bill also sets a deadline for SOTS to render a decision on a submission. The comment period and SOTS decision period run concurrently, and vary depending on the type of policy submitted, as outlined in the table below.

Table: Preclearance Comment and SOTS Decision Periods

<i>General Policy</i>	<i>Comment Period</i>	<i>SOTS Review and Decision Period</i>
Location of polling places or absentee ballot drop boxes	10 business days	Within 30 days after submission; may extend up to 20 additional days

General Policy	Comment Period	SOTS Review and Decision Period
District-based election methods, districting or redistricting plans, or a change to the municipality's form of government	20 business days	Within 90 days after submission; may extend up to 90 additional days twice
All other policies	10 business days	Within 90 days after submission; may extend up to 90 additional days twice

During the review period, SOTS may request that the covered jurisdiction provide any additional information necessary for SOTS determination. Failure to provide this information may be grounds for preclearance denial.

Preclearance Determinations. After her review, SOTS must publish a report of her determination on the SOTS website. SOTS must provide one of three responses in her determination: approval, denial, or preliminary preclearance.

If preclearance is approved, the jurisdiction may implement the policy. However, SOTS's determination may not be admitted or considered by a court in an action challenging the policy. A covered policy is precleared if the secretary does not act within the required time.

If preclearance is denied, SOTS must provide the objections serving as the basis for denial and the covered policy may not be enacted or implemented. The bill only allows SOTS to deny preclearance to a covered policy if she determines that it will more likely than not (1) diminish protected class members' ability to participate in the political process, elect their choice candidates, or otherwise influence the election or (2) violate the bill's provisions. The bill allows a denial to be appealed to the Superior Court for the Hartford J.D. under the UAPA, which must be prioritized for trial assignment.

The secretary may also designate a policy for preliminary preclearance (i.e., subsequently make a final preclearance decision within 90 days after the original submission). (The status of a policy that

receives preliminary preclearance is unclear.)

The bill also authorizes SOTS to establish regulations for an expedited, emergency preclearance process for covered policies submitted during or immediately preceding an attack, disaster, emergency, or other exigent circumstance. Any policy submitted under these circumstances may only be designated for preliminary preclearance.

Superior Court Preclearance

Alternatively, the bill allows a covered jurisdiction to seek preclearance of a covered policy from the Superior Court for the Hartford J.D. instead of SOTS. The covered jurisdiction must submit the policy to the court in writing and simultaneously copy the secretary. Failing to provide this copy results in automatic denial. The bill gives the court exclusive jurisdiction over the submission despite the requirement to give SOTS a copy. Just as under the preclearance process with SOTS, the covered jurisdiction bears the burden of proof for any preclearance determination.

Under the bill, the court must grant or deny the preclearance within 90 days after receiving the submission. Granting preclearance has the same effect as if SOTS granted it.

However, the court may deny preclearance only if it determines that the policy will more likely than not (1) diminish the protected class members' ability to participate in the political process, elect their choice candidates, or otherwise influence the election or (2) violate the bill's provisions.

If the court denies preclearance or does not decide on it within 90 days, the covered policy cannot be enacted or implemented. The bill allows a denial to be appealed under the ordinary rules of appellate procedure, and it must be prioritized for appeal 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 the right to vote.

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. knowingly using a deceptive or fraudulent device, contrivance, or communication that causes interference; or
3. obstructing, impeding, or otherwise interfering with (a) access to a polling place, absentee ballot drop box, or an election official's office or place of business or (b) an elector or election official.

Court Action

The bill allows (1) SEEC, (2) the attorney general, (3) the state's attorney, (4) an aggrieved individual, or (5) an organization whose membership includes or likely includes aggrieved individuals, to bring an action to the Superior Court for the Hartford J.D. Any complainant must certify they have copied SEEC on the complaint through first-class mail or delivery or will copy SEEC not later than the following business day.

When finding a violation of these provisions, the bill requires the court, regardless of state election laws, any special act, charter, or home rule ordinance, to order appropriately tailored remedies to address the violation, including 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.

The bill's prohibition applies regardless of certain state election law provisions that establish prohibited acts and associated criminal penalties. For example, under these existing laws, 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).

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. The Connecticut Constitution and general statutes also designate her 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 (52 U.S.C. § 10301 et seq.) 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 federal 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. It was applied 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.

Additionally, section 3(c), known as the bail-in provision, authorizes federal courts to impose federal preclearance on jurisdictions. If a federal court determines that violations of the 14th and 15th Amendments justifying equitable relief have occurred, the court must retain jurisdiction for a period it deems appropriate. During that period, the jurisdiction cannot change specified voting laws or practices until the court determines that the change neither has the purpose, nor will have the effect, of denying or abridging the right to vote based on race, color, or language minority status.

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.

Adjustment of Census Data for Incarcerated Individuals

Under state law, U.S. census population data must be adjusted to count most prison inmates at their address before incarceration instead of at their prison address. It requires that this adjusted data, as well as the unadjusted data, be the basis for determining state legislative districts and municipal voting districts. Inmate addresses are not adjusted if the inmate is serving a life sentence without the possibility of release.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12 Nay 6 (03/27/2023)