

**SUBSTITUTE FOR
SENATE BILL NO. 401**

A bill to create a state voting rights act; to provide for the powers and duties of certain state and local governmental officers and entities; to provide for a court-appointed monitor under certain circumstances; to prohibit certain discriminatory activity and to prescribe civil sanctions; to create a fund; to provide remedies; to prescribe penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "state voting rights
2 act".

3 Sec. 2. In recognition of legislative findings regarding the
4 protections for the right to vote provided by the state
5 constitution of 1963, and in conjunction with the constitutional



1 guarantees of equal protection and the freedoms of speech,
2 assembly, consultation, instruction, and petition under the law and
3 against the denial and abridgement of the voting rights of members
4 of a racial, color, or language minority group, it is the public
5 policy of this state to do all of the following:

6 (a) Encourage participation in the elective franchise by all
7 eligible electors to the maximum extent.

8 (b) Ensure that eligible electors who are members of a racial,
9 color, or language minority group have an equal opportunity to
10 participate in the political processes of this state and to
11 exercise the elective franchise.

12 Sec. 3. As used in this act:

13 (a) "Alternative method of election" means a method of
14 electing candidates to the legislative body of a local government
15 other than an at-large method of election or a district-based
16 method of election and includes, but is not limited to,
17 proportional ranked-choice voting, cumulative voting, or limited
18 voting that incorporate aspects of at-large and district-based
19 methods of election.

20 (b) "At-large method of election" means a method of electing
21 candidates to the legislative body of a local government in which
22 candidates are voted on by all electors of the local government.
23 At-large method of election does not include any alternative method
24 of election.

25 (c) "Disparity" means any statistically significant variance
26 that is supported by validated methodologies.

27 (d) "District-based method of election" means a method of
28 electing candidates to the legislative body of a local government
29 in which, for local governments divided into districts, a candidate



1 for any district is required to reside in the district and
2 candidates representing or seeking to represent the district are
3 voted on by only the electors of the district.

4 (e) "Federal voting rights act" means the federal voting
5 rights act of 1965, 52 USC 10301 to 10314, 10501 to 10508, and
6 10701 to 10702.

7 (f) "Government official" mean any individual who is elected
8 or appointed to an office in this state or a local government or
9 who is authorized to act in an official capacity on behalf of this
10 state or a local government.

11 (g) "Language minority group" means that term as defined in 52
12 USC 10503.

13 (h) "Local government" means any of the following:

14 (i) A county.

15 (ii) A city.

16 (iii) A township.

17 (iv) A village.

18 (v) A public school as that term is defined in section 5 of
19 the revised school code, 1976 PA 451, MCL 380.5.

20 (vi) A public community college.

21 (vii) A district library.

22 (viii) Any other political subdivision of this state, authority,
23 or other public body corporate that has an elected governing body.

24 (i) "Protected class" means individuals who are members of a
25 racial, color, or language minority group, or 2 or more racial,
26 color, or language minority groups, and includes any of the
27 following:

28 (i) Individuals who are members of a racial, color, or language
29 minority group that has been subject to protection under a consent



1 decree ordered by a federal court in this state in a suit alleging
2 a violation of section 2 of the federal voting rights act, 52 USC
3 10302.

4 (ii) Individuals who are members of a minimum reporting
5 category that has ever been officially recognized by the United
6 States Census Bureau.

7 (j) "Racially polarized voting" means voting in which the
8 candidate or electoral choice preferred by a protected class
9 diverges from the candidate or electoral choice preferred by other
10 electors.

11 (k) "Vote" or "voting" include any action necessary to cast a
12 ballot and make that ballot count in any election, including, but
13 not limited to, registering as an elector, applying for an absent
14 voter ballot, or any other action required by law as a prerequisite
15 to casting a ballot and having that ballot counted, canvassed,
16 certified, and included in the appropriate totals of votes cast
17 with respect to an election.

18 (l) "Voting eligible population" and "eligible electors" mean
19 those United States citizens who have attained the age of 18 years,
20 who have resided in this state for 30 days, and who meet the
21 requirements of local residence as required by law.

22 Sec. 4. Notwithstanding any other provision of law to the
23 contrary, anything required by this act to be done on a day
24 certain, if that day falls on a Saturday, Sunday, or legal holiday,
25 may be done within the same time limits on the next business day.

26 Sec. 5. The provisions of this act must be construed liberally
27 in favor of all of the following, and the provisions of all other
28 statutes, rules and regulations, local laws, and ordinances related
29 to the right to vote may be construed in favor of all of the



1 following:

2 (a) Protecting the right to cast a ballot and make that ballot
3 effective.

4 (b) Ensuring that qualified individuals who are registered
5 electors, or who seek to be admitted as registered electors to vote
6 in an election, are not impaired in voting or registering to vote.

7 (c) Ensuring that each registered elector is not impaired in
8 voting, including, but not limited to, having the elector's vote
9 counted.

10 (d) Making the fundamental right to vote more accessible to
11 qualified electors.

12 (e) Ensuring equitable access for protected class members to
13 opportunities to be admitted as electors and to vote.

14 (f) Ensuring that protected class members have equitable
15 opportunities to elect candidates of the protected class members'
16 choice.

17 Sec. 7. (1) Subject to section 10, a local government, state
18 agency, or state or local government official shall not impose any
19 qualification for eligibility to be an elector, impose any other
20 prerequisite to voting, impose any ordinance, regulation, or other
21 law regarding the administration of elections, impose any standard,
22 practice, procedure, or policy, or take or fail to take any other
23 action, in a manner that results in, will result in, or is intended
24 to result in, either of the following:

25 (a) A disparity in voter participation, access to voting
26 opportunities, or the equal opportunity or ability to participate
27 in the political process between a protected class and other
28 members of the electorate.

29 (b) Based on the totality of the circumstances, an impairment



1 of the equal opportunity or ability of members of a protected class
2 to participate in the political process and nominate or elect
3 candidates of the protected class members' choice.

4 (2) Except as otherwise provided in this subsection, an
5 impairment may be found to exist under subsection (1)(b) in
6 circumstances that include, but are not limited to, any of the
7 following:

8 (a) A local government closes, moves, or consolidates 1 or
9 more precincts or clerk's offices in a manner that impairs the
10 right to vote of members of a protected class or results in a
11 disparity in geographic access between a protected class and other
12 members of the electorate, unless the changes are necessary to
13 significantly further a compelling governmental interest and there
14 is no alternative that results in a smaller impairment or
15 disparity.

16 (b) A local government closes, moves, or consolidates 1 or
17 more polling places, early voting sites, or absent voter ballot
18 drop boxes in a manner that impairs the right to vote of members of
19 a protected class or results in a disparity in geographic access
20 between a protected class and other members of the electorate,
21 unless the changes are necessary to significantly further a
22 compelling governmental interest and there is no alternative that
23 results in a smaller impairment or disparity.

24 (c) A local government changes the time or date of an election
25 in a manner that impairs the right to vote of members of a
26 protected class, including, but not limited to, making the change
27 without proper notice as required by law.

28 (d) A local government fails to utilize voting or election
29 materials in languages other than English that are provided to the



1 local government by the secretary of state, as required by state
2 law.

3 (3) Implementing a reorganization of a local government that
4 alters which electors are eligible to vote in elections for that
5 local government, including, but not limited to, an annexation,
6 incorporation, dissolution, consolidation, or division of a local
7 government, violates subsection (1) if the reorganization is
8 intended to impair or diminish the equal opportunity or ability of
9 protected class members to nominate or elect candidates of the
10 protected class members' choice, or, based on the totality of the
11 circumstances, the equal opportunity or ability of protected class
12 members to nominate or elect candidates of the protected class
13 members' choice is impaired or diminished as a result of the
14 reorganization.

15 Sec. 9. (1) Subject to section 10, a local government shall
16 not employ or impose any method of election that has the effect of
17 impairing the equal opportunity or ability of protected class
18 members to nominate or elect candidates of the protected class
19 members' choice as a result of diluting the vote of those protected
20 class members.

21 (2) A local government violates subsection (1) if both of the
22 following occur:

23 (a) Either of the following occur:

24 (i) Elections in the local government exhibit racially
25 polarized voting and the candidates or electoral choices preferred
26 by a protected class would usually be defeated.

27 (ii) Based on the totality of the circumstances, the equal
28 opportunity or ability of protected class members to nominate or
29 elect candidates of the protected class members' choice is



1 impaired.

2 (b) One or more changes to the method of election exist that a
3 court could order under section 23 that would likely mitigate the
4 impairment of the equal opportunity or ability of protected class
5 members to nominate or elect candidates of the protected class
6 members' choice.

7 (3) To the extent that a change to the method of election is a
8 proposed district-based plan that provides protected class members
9 with 1 or more reasonably configured districts in which the
10 protected class members would have an equal opportunity or ability
11 to nominate or elect candidates of the protected class members'
12 choice, it is not necessary to show that members of a protected
13 class comprise a majority of the total population, voting age
14 population, voting eligible population, or registered voter
15 population in any district.

16 (4) In determining whether elections in a local government
17 exhibit racially polarized voting under this section, a court shall
18 adhere to all of the following guidelines:

19 (a) Statistical evidence using validated methodologies is more
20 probative than nonstatistical evidence, but nonstatistical evidence
21 may still be afforded probative value. Statistical evidence based
22 on election results, and inferences about racially polarized voting
23 from those election results, is more probative than statistical
24 evidence based on survey data, but statistical evidence based on
25 survey data may still be afforded probative value.

26 (b) In the case of claims brought on behalf of a protected
27 class consisting of 2 or more racial, color, or language minority
28 groups that are similarly situated because those groups are
29 politically cohesive in that local government, members of those



1 racial, color, or language minority groups must be combined to
2 determine whether voting by those combined protected class members
3 is polarized from other electors. It is not necessary to
4 demonstrate that voting by members of each racial, color, or
5 language minority group is separately polarized from other
6 electors. However, empirical evidence may be introduced to show
7 that members of a protected class or 2 or more protected classes do
8 not vote in a politically cohesive manner.

9 (c) Evidence concerning the causes of, or the reasons for, the
10 occurrence of racially polarized voting is not relevant to the
11 determination of whether racially polarized voting occurs, or
12 whether candidates or electoral choices preferred by a protected
13 class would usually be defeated. In particular, evidence concerning
14 alternate explanations for racially polarized voting patterns or
15 election outcomes, including, but not limited to, partisan
16 explanations, must not be considered. However, evidence concerning
17 those factors may be introduced for purposes of considering
18 appropriate remedies or punitive damages.

19 (d) Evidence concerning whether a protected class is
20 geographically compact or concentrated must not be considered in
21 determining liability, but may be considered when determining a
22 remedy for a violation of this section.

23 (e) Evidence concerning projected changes in population or
24 demographics must not be considered in determining liability, but
25 may be considered when determining a remedy for a violation of this
26 section.

27 Sec. 10. Sections 7 and 9 do not apply to the independent
28 citizens redistricting commission established under section 6 of
29 article IV of the state constitution of 1963.



1 Sec. 11. (1) In determining whether, based on the totality of
2 the circumstances, an impairment of the right to vote for any
3 eligible elector who is a protected class member, or of the equal
4 opportunity or ability of eligible electors who are protected class
5 members to participate in the political process and nominate or
6 elect candidates of the eligible electors' choice, has occurred
7 under section 7(1) (b) or (3) or 9(2) (a) (ii), a court may consider
8 factors that include, but are not limited to, any of the following:

9 (a) Whether members of the protected class vote at a lower
10 rate than other electors.

11 (b) The history of discrimination affecting members of the
12 protected class.

13 (c) The extent to which members of the protected class are
14 disadvantaged, or otherwise bear the effects of past public or
15 private discrimination, in any areas that may hinder the members'
16 ability to participate effectively in the political process,
17 including education, employment, health, criminal justice, housing,
18 transportation, land use, or environmental protection.

19 (d) The use of overt or subtle racial appeals by government
20 officials or in political campaigns.

21 (e) The extent to which members of the protected class have
22 been elected to office.

23 (f) The extent to which members of the protected class have
24 faced barriers with respect to accessing the ballot, receiving
25 financial support, or receiving any other support for an election.

26 (g) The extent to which members of the protected class
27 contribute to political campaigns at lower rates.

28 (h) The extent to which candidates face hostility or barriers
29 while campaigning due to the candidate's membership in the



1 protected class.

2 (i) Any statute, ordinance, regulation, or other law regarding
3 the administration of elections, or any standard, practice,
4 procedure, or policy, that tends to impair the right to vote for
5 any protected class members, or that tends to impair the equal
6 opportunity or ability of protected class members to participate in
7 the political process and nominate or elect candidates of the
8 protected class members' choice.

9 (j) The presence of racially polarized voting.

10 (k) The lack of responsiveness by elected officials to the
11 particularized needs of protected class members or a community of
12 protected class members.

13 (l) Whether the challenged method of election, ordinance,
14 resolution, rule, policy, standard, regulation, procedure, or law
15 was designed to advance, and does materially advance, a compelling
16 state interest that is substantiated and supported by evidence.

17 (m) The extent to which protected class members suffer the
18 effects of historical housing segregation or benefit from housing
19 policies to implement fair housing goals.

20 (n) The extent to which officials have undertaken efforts to
21 remedy racial disparities that have yielded improvements for
22 protected class voters. If the efforts to remedy racial disparities
23 and any improvements are inadequate, those efforts may still be
24 considered.

25 (2) In determining whether a violation of section 7 or 9 has
26 occurred, a court shall not consider any of the following factors:

27 (a) The total number or share of members of a protected class
28 on whom a challenged method of election, ordinance, resolution,
29 rule, policy, standard, regulation, procedure, or law does not



1 impose a material burden. However, evidence may be introduced
2 showing a challenged method of election, ordinance, resolution,
3 rule, policy, standard, regulation, procedure, or law does not
4 affect qualified electors who are protected class members more than
5 qualified electors who are not protected class members.

6 (b) The degree to which the challenged method of election,
7 ordinance, resolution, rule, policy, standard, regulation,
8 procedure, or law has a long pedigree or was in widespread use at
9 some earlier date, but this factor may be considered for
10 determining a remedy or punitive damages.

11 (c) The use of an identical or similar challenged method of
12 election, ordinance, resolution, rule, policy, standard,
13 regulation, procedure, or law in another local government, unless
14 the other local government adopted or implemented that method of
15 election, ordinance, resolution, rule, policy, standard,
16 regulation, procedure, or law to remedy a violation under this act
17 or another law, rule, or regulation affecting voting rights or to
18 enhance voting rights of a protected class.

19 (d) The availability of other forms of voting unimpacted by
20 the challenged method of election, ordinance, resolution, rule,
21 policy, standard, regulation, procedure, or law to all members of
22 the electorate, including members of the protected class.

23 (e) A prophylactic impact on potential criminal activity by
24 individual electors, if those crimes have not occurred in the local
25 government in substantial numbers, or if the connection between the
26 challenged policy and any claimed prophylactic effect is not
27 supported by substantial evidence.

28 (f) Mere invocation of interests in voter confidence or
29 prevention of fraud. However, evidence may be introduced to show



1 the challenged practices were implemented to address actual
2 instances of voter fraud in the local government or in the vicinity
3 of the local government, that those practices were narrowly
4 tailored to prevent a recurrence of those instances of voter fraud,
5 and that, before implementing the practices, the local government
6 considered and took reasonable measures to prevent or minimize the
7 possible adverse impacts on protected classes.

8 (g) A lack of evidence concerning the intent of electors,
9 elected officials, or public officials to discriminate against
10 protected class members. However, written evidence of the intent of
11 electors, elected officials, or public officials, and any oral
12 statements of those electors, elected officials, or public
13 officials that augment the written evidence, may be introduced,
14 particularly to address whether punitive damages are appropriate or
15 in evaluating claims of discriminatory intent.

16 (3) Evidence that the court determines is not probative of the
17 adverse impact of a challenged method of election, ordinance,
18 resolution, rule, policy, standard, regulation, procedure, or law
19 may be introduced for the purpose of determining the appropriate
20 remedies, particularly to address whether punitive damages are
21 appropriate.

22 (4) A particular combination or number of factors under
23 subsection (1) is not required for a court to determine that an
24 impairment occurred. The court shall consider a particular factor
25 only if and to the extent evidence pertaining to that factor is
26 introduced.

27 (5) To the extent a claim involves a local government,
28 evidence of the factors under subsection (1) is most probative if
29 the evidence relates to the local government in which the alleged



1 violation occurred, but still holds probative value if the evidence
2 relates to the geographic region in which that local government is
3 located or to this state.

4 Sec. 13. (1) Except as otherwise provided in subsection (6),
5 before commencing an action against a local government alleging a
6 violation of section 7 or 9, a prospective plaintiff must send by
7 certified mail a notification letter to the clerk and chief
8 administrative officer of the local government asserting that the
9 local government may be in violation of section 7 or 9. The
10 notification letter must explain in detail each alleged violation
11 of section 7 or 9 and must propose a remedy for each alleged
12 violation. Any individual aggrieved by a violation of section 7 or
13 9, any entity whose membership includes individuals aggrieved by a
14 violation of section 7 or 9, any entity whose mission would be
15 frustrated by a violation of section 7 or 9, or any entity that
16 would expend resources in order to fulfill its mission as a result
17 of a violation of section 7 or 9 may be a prospective plaintiff.

18 (2) Within 30 days after receiving a notification letter under
19 subsection (1), the clerk of the local government and the chief
20 administrative officer or chief executive officer of that local
21 government, along with legal counsel or any other individuals the
22 local government wishes to attend, may meet with the prospective
23 plaintiff or the prospective plaintiff's representatives to prepare
24 and agree on a plan to address the alleged violations of section 7
25 or 9. If the local government does not meet with the prospective
26 plaintiff, the prospective plaintiff may seek the remedies provided
27 under subsections (4) and (6). If the local government agrees to
28 meet with the prospective plaintiff to prepare and agree on a plan
29 to address the alleged violations of section 7 or 9, the



1 prospective plaintiff or the prospective plaintiff's
2 representatives must participate in the meeting. The plan described
3 in this subsection must be in writing, be approved by a resolution
4 of the governing body of the local government, and do all of the
5 following:

6 (a) Identify each alleged violation of section 7 or 9 by the
7 local government.

8 (b) Identify a specific remedy for each alleged violation of
9 section 7 or 9 by the local government or state that the parties
10 agree no remedy is appropriate for 1 or more of the alleged
11 violations.

12 (c) Affirm the local government's intent to enact and
13 implement the remedy.

14 (d) Establish specific measures that the local government must
15 take to facilitate any needed approvals to implement each specific
16 remedy.

17 (e) Provide a schedule for the necessary approvals and the
18 implementation of each specific remedy. The schedule must provide a
19 sufficient amount of time for all needed steps to obtain
20 authorization for the remedy, including, as necessary, from a court
21 under section 23(5).

22 (3) If a prospective plaintiff and the local government agree
23 on a written plan that complies with subsection (2), and that
24 written plan is approved by a resolution of the governing body of
25 the local government, no action may be filed by the prospective
26 plaintiff unless the local government fails to comply with the
27 requirements of the written plan. If a prospective plaintiff and
28 the local government do not agree on a written plan as described
29 under subsection (2) within 60 days after the prospective plaintiff



1 and the local government first meet under subsection (2), the
2 prospective plaintiff may seek the remedies as provided under
3 subsections (4) and (6).

4 (4) If a prospective plaintiff complies with subsections (1)
5 and (2), that prospective plaintiff may file a complaint with the
6 secretary of state as provided in this subsection or may file an
7 action as provided under subsection (6). A complaint filed with the
8 secretary of state must be in writing in a form required by the
9 secretary of state and must include the notification letter to the
10 local government as required under subsection (1). After receiving
11 a written complaint, the secretary of state shall send by certified
12 mail a written request to the local government for a written
13 response to the complaint from the local government. Within 21 days
14 after receiving the written request from the secretary of state,
15 the local government shall send by certified mail to the secretary
16 of state a detailed written response to each alleged violation of
17 section 7 or 9 and explain why the local government was unable to
18 reach an agreement with the prospective plaintiff on a plan to
19 address each alleged violation of section 7 or 9. After receiving
20 the written response from the local government, the secretary of
21 state shall investigate the complaint, including, but not limited
22 to, conferring with the prospective plaintiff and the local
23 government as considered necessary, to address the complaint with a
24 written plan as provided under subsection (2), to find that there
25 was no violation of section 7 or 9, or to make a determination that
26 the local government is violating section 7 or 9. If the secretary
27 of state determines that the local government is violating section
28 7 or 9 and the local government will not agree to a written plan to
29 remedy each violation that is acceptable to the secretary of state,



1 the secretary of state shall make a written referral to the
2 attorney general and notify the prospective plaintiff of that
3 determination. A prospective plaintiff who files a complaint with
4 the secretary of state under this subsection shall not commence an
5 action against the local government under subsection (6) until 1 of
6 the following occurs:

7 (a) The secretary of state determines that there is no
8 violation of section 7 or 9.

9 (b) The secretary of state determines the local government is
10 violating section 7 or 9 and the local government will not agree on
11 a written plan to remedy each violation that is acceptable to the
12 secretary of state.

13 (c) Ninety days or more have elapsed since the date the
14 secretary of state received the local government's response to the
15 written complaint.

16 (5) The secretary of state may adopt rules under the
17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328, in accordance with state law to effectuate the purposes of
19 subsection (4).

20 (6) A party may bring an action as provided under section 21
21 for a violation of section 7 or 9 under any of the following
22 circumstances:

23 (a) The party filed a complaint as provided under subsection
24 (4) and 1 of the following occurs:

25 (i) The secretary of state determines that there is no
26 violation of section 7 or 9.

27 (ii) The secretary of state determines that the local
28 government is violating section 7 or 9 and the local government
29 will not agree on a written plan to remedy each violation that is



1 acceptable to the secretary of state.

2 (iii) Ninety days or more have elapsed since the secretary of
3 state received the local government's response to a written
4 complaint filed under subsection (4).

5 (b) Another party has already submitted a notification letter
6 under subsection (1) alleging a substantially similar violation and
7 that party is eligible to bring an action under this subsection.

8 (c) Following the party's submission of a notification letter
9 under subsection (1), the local government failed to implement a
10 written plan as provided under subsection (2).

11 (d) The party is seeking preliminary relief with respect to an
12 upcoming election in accordance with section 27.

13 (e) The party is seeking preliminary relief with respect to an
14 action about which notice is required under section 653c(1) or (2)
15 of the Michigan election law, 1954 PA 116, MCL 168.653c.

16 (f) The party sent the notification letter as required under
17 subsection (1) and the local government did not meet or approve a
18 written plan as required under subsection (2).

19 Sec. 15. (1) The Michigan voting rights assistance fund is
20 created in the state treasury.

21 (2) The state treasurer shall deposit money and other assets
22 received from charitable contributions or from any other source in
23 the Michigan voting rights assistance fund. The state treasurer
24 shall direct the investment of money in the Michigan voting rights
25 assistance fund and credit interest and earnings from the
26 investments to the Michigan voting rights assistance fund.

27 (3) Money in the Michigan voting rights assistance fund at the
28 close of the fiscal year remains in the fund and does not lapse to
29 the general fund.



1 (4) The department of state is the administrator of the
 2 Michigan voting rights assistance fund for audits of the Michigan
 3 voting rights assistance fund.

4 (5) The department of state shall expend money from the
 5 Michigan voting rights assistance fund only for the purpose of
 6 reimbursing prospective plaintiffs and local governments for
 7 certain expenses incurred in accordance with both of the following:

8 (a) Section 17.

9 (b) Section 8 of the language assistance for elections act.

10 Sec. 17. (1) Subject to subsection (4), if, pursuant to a
 11 process commenced by a notification letter under section 13 or 24,
 12 a local government enacts or implements a remedy to a potential
 13 violation of this act, or to a potential violation of a state or
 14 federal law involving, in whole or in part, the rights of disabled
 15 electors as provided under section 24, the department of state
 16 shall reimburse the prospective plaintiff who sent the notification
 17 letter from the Michigan voting rights assistance fund, or, if
 18 there is insufficient money in the Michigan voting rights
 19 assistance fund, from other money appropriated to the department of
 20 state for this purpose, for the reasonable costs to generate the
 21 notification letter under section 13.

22 (2) If a local government enacts or implements a remedy to a
 23 potential violation of this act, or to a potential violation of a
 24 state or federal law involving, in whole or in part, the rights of
 25 disabled electors as provided under section 24, either in response
 26 to a notification letter received under section 13 or 24 or on its
 27 own volition, the department of state shall reimburse that local
 28 government from the Michigan voting rights assistance fund, or, if
 29 there is insufficient money in the Michigan voting rights



1 assistance fund, from other money appropriated to the department of
2 state for this purpose, for the reasonable costs to evaluate
3 whether the remedy was necessary to prevent a potential violation
4 of this act, or to a potential violation of a state or federal law
5 involving, in whole or in part, the rights of disabled electors as
6 provided under section 24.

7 (3) The department of state shall reimburse a local government
8 from the Michigan voting rights assistance fund, or, if there is
9 insufficient money in the Michigan voting rights assistance fund,
10 from other money appropriated to the department of state for this
11 purpose, for the reasonable costs incurred to evaluate whether a
12 remedy is necessary to prevent a possible violation of this act, or
13 to a potential violation of a state or federal law involving, in
14 whole or in part, the rights of disabled electors as provided under
15 section 24. The department shall provide reimbursement under this
16 subsection only if both of the following requirements are met:

17 (a) The costs were incurred by the local government in
18 response to a notification letter received under section 13 or 24.

19 (b) The department of state determines, on request from the
20 local government, that a reasonable plaintiff, with reasonable
21 investigation before sending the notification letter, would have
22 known the allegations in the notification letter lacked legal or
23 factual merit.

24 (4) Subject to subsection (6), the amount of reimbursement
25 provided under subsection (1), (2), or (3) must not exceed
26 \$50,000.00. This amount must be adjusted annually by an amount
27 determined by the state treasurer to reflect the cumulative annual
28 percentage increase in the United States Consumer Price Index for
29 the immediately preceding calendar year and rounded to the nearest



1 \$100.00 increment.

2 (5) A request for reimbursement made by a prospective
 3 plaintiff or a local government under subsection (1) or (2) must be
 4 transmitted to the department of state not later than 90 days after
 5 the enactment or implementation of the remedy. A request for
 6 reimbursement made by a local government under subsection (3) must
 7 be transmitted to the department of state not later than 90 days
 8 after the local government receives a determination by the
 9 department of state that the allegations in the notification letter
 10 lacked legal or factual merit. The request for reimbursement must
 11 be substantiated with financial documentation, including, as
 12 applicable, detailed invoices for expert analysis and reasonable
 13 attorney fees calculated using a lodestar methodology. The
 14 department of state may deny a request for reimbursement made under
 15 subsection (1) or (2) if the remedy was not necessary to prevent a
 16 potential violation of this act. A prospective plaintiff or local
 17 government that does not receive satisfactory reimbursement within
 18 120 days after the request for reimbursement may file a declaratory
 19 judgment action to obtain a clarification of rights.

20 (6) A local government may seek reimbursement only under
 21 subsection (2) or (3), not subsections (2) and (3), regarding a
 22 notification letter.

23 (7) As used in this section, "United States Consumer Price
 24 Index" means the United States Consumer Price Index for all urban
 25 consumers as defined and reported by the United States Department
 26 of Labor, Bureau of Labor Statistics.

27 Sec. 21. (1) Any individual or entity identified in section
 28 13(6) or the attorney general may file an action in the circuit
 29 court of the county in which the local government is located or in



1 the court of claims to compel compliance with and seek an
2 appropriate remedy under this act.

3 (2) In an action involving a districting or redistricting
4 plan, any individual with standing to challenge any single district
5 has standing to challenge the districting or redistricting plan as
6 a whole.

7 Sec. 23. (1) In any action brought in any court under this act
8 or under the state constitution of 1963, the court has broad
9 authority to order adequate remedies that are tailored to best
10 mitigate the violation and are reasonably necessary to remedy the
11 violation. To the extent a court is choosing between various
12 potential remedies, the court may consider each of the protections
13 provided in section 5, any impact to how disruptive the remedies
14 will be to the local government's leadership, the services provided
15 within the local government, home rule, any local charter or
16 ordinances, state law, the local government's electors, and other
17 aspects of the local government's operations, and the extent to
18 which the remedy is inconsistent with any local charter or
19 ordinance or state law. Subject to subsection (5), adequate
20 remedies include, but are not limited to, any of the following:

21 (a) Drawing new or revised districting or redistricting plans.
22 The court shall specify the election at which the new or revised
23 districting or redistricting plan will take effect. If needed to
24 give effect to the new or revised districting or redistricting
25 plan, the court may shorten or lengthen terms of the current office
26 holders who will be affected by the new or revised districting or
27 redistricting plan.

28 (b) Adopting a different method of election, including
29 adopting a district-based method of election or alternative method



1 of election, or reasonably increasing the size of the legislative
2 body.

3 (c) Adding or changing voting days or hours.

4 (d) Adding polling places, early voting sites, or absent voter
5 ballot drop boxes.

6 (e) Eliminating staggered elections so that all members of the
7 legislative body are elected at the same time. To the extent
8 reasonably possible, in a local government where staggered terms
9 exist, a remedy under this subdivision may provide for 1 election
10 at which all officers are elected at the same time, but future
11 elections provide for staggered terms.

12 (f) Ordering a special election either on a regular election
13 date as provided under the Michigan election law, 1954 PA 116, MCL
14 168.1 to 168.992, or on another date if reasonably required to
15 remedy a violation.

16 (g) Restoring or adding individuals to a voter registration
17 list or requiring expanded opportunities for registering electors
18 and enabling those electors to vote.

19 (h) Imposing nominal or compensatory damages.

20 (i) Subject to this subdivision, imposing punitive damages in
21 the form of a civil fine. The civil fine must be deposited into the
22 Michigan voting rights assistance fund created in section 15. When
23 imposing punitive damages, the court shall take into consideration
24 the severity of the violations, the number of violations, whether
25 the defendant has previous violations, and any other factors the
26 court considers appropriate. If the defendant is a local
27 government, the court shall also take into consideration the number
28 of registered electors in the local government and the local
29 government's ability to pay the punitive damages. The court shall



1 provide, in any order requiring payment of punitive damages, an
2 explanation of why the payment of punitive damages was required and
3 how the court determined the amount of punitive damages to be paid.
4 The court shall impose punitive damages under this subdivision only
5 if the court finds any of the following:

6 (i) The violation is intentional.

7 (ii) If the defendant is a local government, the local
8 government or the officials in that local government demonstrated a
9 disregard for the voting rights of qualified electors within the
10 local government's jurisdiction.

11 (iii) If the defendant is a local government, when notified of
12 an alleged violation under section 13(1), the local government
13 failed to take any action required under section 13.

14 (iv) The defendant violated a court order issued under this
15 act, article II of the state constitution of 1963, or another law
16 applicable to or affecting voting rights.

17 (v) After addressing any violation of this act, article II of
18 the state constitution of 1963, or another law applicable to or
19 affecting voting rights, the defendant subsequently violated this
20 act, article II of the state constitution of 1963, or another law
21 applicable to or affecting voting rights.

22 (vi) Punitive damages are otherwise reasonably necessary to
23 ensure compliance with this act.

24 (j) Any other form of declaratory or injunctive relief that,
25 in the court's judgment, is tailored to address the violation.

26 (k) Retaining jurisdiction for a period of time the court
27 considers appropriate.

28 (2) Except as otherwise provided in this subsection, in any
29 action in which a court finds a violation of this act, the federal



1 voting rights act, the state constitution of 1963 concerning the
2 right to vote for protected class members, the fourteenth amendment
3 of the United States Constitution concerning the right to vote, the
4 fifteenth amendment of the United States Constitution, or any other
5 state or federal law concerning the right to vote for protected
6 class members, in addition to the remedies available under
7 subsection (1), the court may retain jurisdiction and require that,
8 for a period of up to 10 years, the local government obtain a court
9 order before enacting any voting-related policy. When considering
10 this remedy, the court shall take into consideration the severity
11 of the violation, whether the violation was intentional, the number
12 of violations, and whether the local government has any previous
13 violations. A court must retain jurisdiction for a violation
14 described in this subsection if the court finds that the violation
15 is susceptible to repetition, the remedy is susceptible to
16 circumvention, there is evidence of intentional discrimination by
17 the local government, or the local government failed to adopt broad
18 prophylactic measures that prevent any future violations. A request
19 for judicial preapproval submitted to a court under this subsection
20 may be granted only if the court concludes that the proposed
21 voting-related policy will not diminish, in relation to the status
22 quo before the enactment or implementation of the voting-related
23 policy, the equal opportunity or ability of members of a protected
24 class whose voting rights are implicated by the voting-related
25 policy and that the proposed voting-related policy is unlikely to
26 violate any of the provisions of this act. In any request for
27 judicial preapproval, the local government must indicate the
28 position of each party as to whether the proposed voting-related
29 policy complies with standards for preapproval as described in this



1 subsection. The parties may submit a stipulated order for judicial
2 preapproval for the court's consideration. To the extent a local
3 government subject to the judicial preapproval procedures under
4 this subsection must make emergency changes to locations of polling
5 places, early voting sites, or absent voter ballot drop boxes
6 within 7 days before an election due to exigent circumstances that
7 are outside of the local government's control, the local government
8 may implement the emergency changes without first obtaining
9 judicial preapproval under this subsection, as long as that local
10 government notifies, in writing, the court and all parties to the
11 action of the emergency changes before implementing those changes
12 and explains in detail the exigent circumstances that made the
13 emergency changes necessary. Any party to the action may request
14 that the court subject emergency changes to the judicial
15 preapproval process under this subsection. To the extent a local
16 government intends to maintain any emergency changes beyond that
17 election, the local government must obtain judicial preapproval for
18 those changes as provided under this subsection. The local
19 government bears the burden of proof in a proceeding involving
20 judicial preapproval under this subsection. As used in this
21 subsection, "voting-related policy" includes, but is not limited
22 to, any of the following:

23 (a) Enacting or seeking to administer any voting qualification
24 or prerequisite to voting.

25 (b) Enacting or seeking to administer any standard, practice,
26 or procedure with respect to voting.

27 (3) In any action brought under this act or under article II
28 of the state constitution of 1963, the court may order a remedy
29 only if the remedy will not impair the equal opportunity or ability



1 of protected class members to participate in the political process
2 and nominate or elect the protected class members' preferred
3 candidates.

4 (4) In any action brought under this act or under article II
5 of the state constitution of 1963, the court shall consider
6 remedies proposed by any parties and interested nonparties and
7 shall not provide deference or priority to a proposed remedy
8 offered by the defendant or the local government simply because the
9 remedy has been proposed by the defendant or the local government.

10 (5) Notwithstanding subsection (1) and any other provision of
11 law to the contrary, in any action brought under this act or under
12 article II of the state constitution of 1963, the court has the
13 authority to order remedies that may be inconsistent with other
14 provisions of state or local law, when the inconsistent provisions
15 of law would otherwise preclude the court from ordering an adequate
16 remedy.

17 (6) In any action brought under this act, the court may order
18 the parties to enter mediation under MCR 2.411 at any time during
19 the proceedings.

20 Sec. 24. (1) Before commencing an action in the circuit court
21 of the county in which the local government is located seeking the
22 appointment of a monitor of compliance with the rights of disabled
23 electors for future elections conducted by that local government,
24 or for another appropriate remedy for a violation of the rights of
25 disabled electors, a prospective plaintiff must send a notification
26 letter to the clerk and chief administrative officer of the local
27 government asserting that the local government may be in violation
28 of a state or federal law involving, in whole or in part, the
29 rights of disabled electors. The notification letter must explain



1 in detail each alleged violation and must propose a remedy for each
 2 alleged violation. A disabled elector or an organization whose
 3 mission includes advocating on behalf of disabled electors may be a
 4 prospective plaintiff.

5 (2) Within 30 days after receiving a notification letter under
 6 subsection (1), the clerk of the local government and the chief
 7 administrative officer or the chief executive officer of the local
 8 government, along with legal counsel or any other individuals the
 9 local government wishes to attend, may meet with the prospective
 10 plaintiff and the prospective plaintiff's representatives to
 11 prepare and agree on a plan to address the alleged violations. If
 12 the local government does not meet with the prospective plaintiff,
 13 the prospective plaintiff may immediately file an action under
 14 subsection (4). The plan described in this subsection must be in
 15 writing, be approved by a resolution of the governing body of the
 16 local government, and do all of the following:

17 (a) Identify each alleged violation of state or federal law
 18 involving, in whole or in part, the rights of disabled electors by
 19 the local government.

20 (b) Identify a specific remedy for each alleged violation by
 21 the local government or state that the parties agree no remedy is
 22 appropriate for 1 or more of the alleged violations.

23 (c) Affirm the local government's intent to enact and
 24 implement the remedy.

25 (d) Establish specific measures that the local government must
 26 take to facilitate any needed approvals to implement each specific
 27 remedy.

28 (e) Provide a schedule for the necessary approvals and the
 29 implementation of each specific remedy. The schedule must provide a



1 sufficient amount of time for all needed steps to obtain
2 authorization for the remedy, including, as necessary, from a court
3 under section 23(5).

4 (f) Provide an alternate plan if any necessary amendments to a
5 state statute or local charter are not approved.

6 (3) If a prospective plaintiff and the local government agree
7 on a written plan that complies with subsection (2), and that
8 written plan is approved by a resolution of the governing body of
9 the local government, no action may be filed by the prospective
10 plaintiff unless the local government fails to comply with the
11 requirements of the written plan. If a prospective plaintiff and
12 the local government do not agree on a written plan as described
13 under subsection (2) within 60 days of the parties first meeting
14 under subsection (2), the prospective plaintiff may file an action
15 under subsection (4).

16 (4) The attorney general, or any prospective plaintiff as
17 described in subsection (1), may file an action in the circuit
18 court of the county in which the local government is located
19 seeking the appointment of a monitor for future elections conducted
20 by that local government under any of the following circumstances:

21 (a) The prospective plaintiff gave the written notification
22 required under subsection (1) and the local government did not meet
23 or approve a written plan as provided under subsection (2).

24 (b) Another party has already submitted a notification letter
25 under subsection (1) alleging a substantially similar violation and
26 that party is eligible to bring an action under this subsection.

27 (c) Following the party's submission of a notification letter
28 under subsection (1), the local government failed to implement a
29 written plan as provided in subsection (2).



1 (5) For an action filed under subsection (4), the court shall
2 determine if either of the following occurred:

3 (a) The local government violated a state or federal law
4 involving, in whole or in part, the rights of disabled electors and
5 that violation adversely affected the ability of 1 or more disabled
6 electors to safely, securely, and privately vote at a polling place
7 or in another manner legally available to the electors. It is an
8 affirmative defense to an alleged violation under this subsection
9 that appropriately located polling places that fully comply with
10 federal or state laws, rules, and regulations affecting the
11 accessibility of disabled electors are not reasonably available to
12 the local government despite the local government's reasonable best
13 efforts to provide those fully compliant polling places, provided
14 that the local government has implemented other measures that
15 enable disabled electors to vote in a safe, secure, and private
16 manner.

17 (b) The local government failed to fully remedy a previous
18 violation of a state or federal law involving, in whole or in part,
19 the rights of disabled electors.

20 (6) If the court determines that either of the conditions
21 provided under subsection (5) have been met, the court may order
22 the appointment of a monitor for that local government, at the
23 local government's expense, for a period of up to 10 years. When
24 considering this remedy, the court shall take into consideration
25 the severity of the violation, whether the violation was
26 intentional, the number of violations, and whether the local
27 government has any previous violations. A court must order a
28 monitor under this subsection if the court finds that the violation
29 is susceptible to repetition, the remedy is susceptible to



1 circumvention, there is evidence of intentional discrimination by
2 the local government, or the local government failed to adopt broad
3 prophylactic measures to prevent any future violations. If the
4 court appoints a monitor under this subsection, the monitor's
5 duties include all of the following:

6 (a) Investigating all complaints that are submitted to the
7 circuit court or to the monitor regarding the local government's
8 compliance with a state or federal law that, in whole or in part,
9 involves the rights of disabled electors.

10 (b) If the monitor determines that any complaint indicates
11 that the local government has violated or will likely violate a
12 state or federal law that, in whole or in part, involves the rights
13 of disabled electors, informing the circuit court of the violation
14 or likely violation.

15 (c) If the monitor receives a report of an alleged violation
16 within 40 days before an election, and the report indicates that a
17 disabled elector is unable to vote because of that alleged
18 violation, bringing the issue in the report to the circuit court's
19 immediate attention.

20 (d) Undertaking any investigations or inspections considered
21 reasonably necessary during the 180 days before any election
22 administered by the local government to ensure that the local
23 government is in full compliance with any state or federal law
24 involving, in whole or in part, the rights of disabled electors.

25 (e) No less than 90 days before any election administered by
26 the local government, producing a report to the circuit court
27 regarding the local government's compliance, anticipated
28 compliance, or lack of compliance, with any state or federal law
29 involving, in whole or in part, the rights of disabled electors.



1 (f) On election day, and during the early voting period, being
2 available to receive reports by disabled electors, or any
3 organization representing disabled electors, of any violations of a
4 state or federal law involving, in whole or in part, the rights of
5 disabled electors, and bringing any meritorious reports of
6 violations to the circuit court's immediate attention.

7 (7) If the circuit court is informed of a violation or likely
8 violation as provided under subsection (6) (b), the circuit court
9 shall do both of the following:

10 (a) Order any and all relief that is necessary to remedy the
11 violation.

12 (b) If the circuit court finds that a violation has already
13 occurred, order a penalty of \$1,000.00 payable to an elector whose
14 state or federal rights were violated if that elector reported the
15 violation to the monitor.

16 (8) If the circuit court is informed of an alleged violation
17 as provided under subsection (6) (c), the circuit court shall order
18 a hearing on an emergency basis to ensure that the disabled elector
19 is not disenfranchised. This subsection does not prohibit an
20 elector from filing a separate lawsuit to enforce state or federal
21 law if the state or federal law provides that elector with a cause
22 of action.

23 (9) If the monitor's report required under subsection (6) (e)
24 indicates any concerns that the local government will not comply
25 with any state or federal law involving, in whole or in part, the
26 rights of disabled electors, the circuit court shall hold a hearing
27 to address those concerns and order any relief the circuit court
28 determines necessary to ensure the local government's full
29 compliance with state and federal law. The hearing and any orders



1 resulting from those hearings must occur in sufficient time before
2 the election to ensure that electors are not disenfranchised.

3 (10) If the circuit court is informed of any meritorious
4 reports of violations as provided under subsection (6)(f), and the
5 circuit court finds that a violation of state or federal law has
6 likely occurred or is likely occurring, the circuit court shall
7 issue emergency relief the same day, as necessary, to ensure that
8 the elector is not disenfranchised.

9 (11) If a circuit court orders a remedy under subsection (7),
10 (8), (9), or (10), that remedy must include, if the circuit court
11 determines that a violation of a state or federal law involving, in
12 whole or in part, the rights of disabled electors has occurred,
13 extending the term of the monitor at least through the next
14 election administered by the local government.

15 (12) A monitor appointed by a court under this section must be
16 an individual who meets all of the following requirements:

17 (a) Has extensive knowledge of and experience with the rights
18 of disabled individuals.

19 (b) Has an established history of advocating on behalf of
20 disabled individuals.

21 (c) Has significant knowledge regarding election law.

22 (13) A monitor shall bill the local government for the
23 monitor's time on an hourly basis at a rate that is customary in
24 this state for an individual with the required experience and
25 qualifications, and that is approved by the court.

26 (14) As used in this section:

27 (a) "Disabled elector" means an elector who has a disability
28 as that term is defined under section 103 of the persons with
29 disabilities civil rights act, 1976 PA 220, MCL 37.1103.



1 (b) "State or federal law involving, in whole or in part, the
2 rights of disabled electors" includes, but is not limited to, any
3 of the following:

4 (i) Section 726a of the Michigan election law, 1954 PA 116, MCL
5 168.726a.

6 (ii) The persons with disabilities civil rights act, 1976 PA
7 220, MCL 37.1101 to 37.1607.

8 (iii) The Americans with disabilities act of 1990, Public Law
9 101-336.

10 (iv) The federal voting rights act.

11 (v) The voting accessibility for the elderly and handicapped
12 act, 52 USC 20101 to 20107.

13 (vi) The national voter registration act of 1993, 52 USC 20501
14 to 20511.

15 (vii) The help America vote act of 2002, 52 USC 20901 to 21145.

16 Sec. 26. In any action brought under this act, the court shall
17 award reasonable attorney fees and litigation costs, including
18 expert witness fees and expenses, to a party that filed the action
19 and prevailed in the action. The party that filed the action is
20 considered to have prevailed if, as a result of the action, the
21 party against whom the action was filed has yielded some or all of
22 the relief sought in the action or the court has ordered some or
23 all of the relief sought in the action. If the party against whom
24 the action was filed prevails in the action, the court shall not
25 award that party any costs unless the court finds the action is
26 frivolous.

27 Sec. 27. Because of the frequency of elections, the severe
28 consequences and irreparable harm of holding elections under
29 unlawful conditions, and the expenditure to defend potentially



1 unlawful conditions that benefit incumbent officials, actions
2 brought under this act, section 4 of article II of the state
3 constitution of 1963, or any other law concerning voting rights or
4 elections are subject to expedited pretrial and trial proceedings
5 and must receive an automatic calendar preference. In any action
6 alleging a violation of this act, section 4 of article II of the
7 state constitution of 1963, or any other law concerning voting
8 rights or elections in which a plaintiff party seeks preliminary
9 relief with respect to an upcoming election, the court shall grant
10 relief if the court determines that the plaintiffs are more likely
11 than not to succeed on the merits and it is possible to implement
12 an adequate remedy before an upcoming primary or general election
13 that would resolve the alleged violation.

14 Sec. 28. The secretary of state shall provide guidance to
15 county, city, and township election officials, and to any other
16 local government officials who have obligations under this act,
17 regarding the process for implementing this act. In addition, the
18 secretary of state may provide written guidance to county, city,
19 and township election officials, and to any other local government
20 officials who have obligations under this act, concerning the
21 obligations and responsibilities of those officials under this act
22 that include, but are not limited to, those obligations and
23 responsibilities after receiving a notification letter under
24 section 13. Any county, city, or township election official, or any
25 other local government official who has an obligation under this
26 act, may request guidance in writing at any time from the secretary
27 of state concerning the obligations and responsibilities under this
28 act. Any written request for guidance, and any written guidance
29 issued by the secretary of state, must be promptly posted on the



1 department of state's website. The secretary of state shall update
2 the guidance to reflect any amendments to this act, any updates to
3 voting technology or equipment, or any other changes that the
4 secretary of state determines are necessary. As used in this
5 section, "guidance" includes, but is not limited to, clarifying
6 which local government is responsible for providing the notices
7 required under sections 653c(1) and 653d(1)(a) and (c) of the
8 Michigan election law, 1954 PA 116, MCL 168.653c and 168.653d.

9 Enacting section 1. 1969 PA 161, MCL 691.1031 to 691.1032, is
10 repealed.

11 Enacting section 2. This act does not take effect unless all
12 of the following bills of the 102nd Legislature are enacted into
13 law:

- 14 (a) Senate Bill No. 402.
15 (b) Senate Bill No. 403.
16 (c) Senate Bill No. 404.

