

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate  
3 Bill No. 298 entitled “An act relating to creating the Vermont Voting Rights  
4 Act” respectfully reports that it has considered the same and recommends that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 \* \* \* Vermont Voting Rights Act \* \* \*

8 Sec. 1. 17 V.S.A. chapter 59 is added to read:

9 CHAPTER 59. VERMONT VOTING RIGHTS ACT

10 Subchapter 1. Definitions; Rights of Voters; Democracy Canon

11 § 2801. DEFINITIONS

12 As used in this chapter:

13 (1) “Election policy or practice” means any qualification to be a voter,  
14 prerequisite to voting, method of election, or any other law, statute, ordinance,  
15 resolution, charter or code provision, regulation, rule, policy, practice,  
16 procedure, standard, or any other action with respect to voting, electoral or  
17 jurisdictional boundaries, or the administration or schedule of elections.

18 (2) “Individuals with limited English proficiency” or “voters with  
19 limited English proficiency” means an individual or voter who self-reports  
20 not speaking English as the individual’s primary language and who speaks,  
21 reads, or understands the English language less than “very well,” in  
22 accordance with U.S. Census Bureau data or data of comparable quality

1 collected by a governmental entity, including as self-reported by such  
2 persons to a governmental entity.

3 (3) “Method of election” means the manner or mechanism by which  
4 candidates are elected to a governmental body of a municipality, and  
5 includes any at-large, district-based, proportional, semi-proportional, or other  
6 mechanism of election, as well as any districting or redistricting plan used to  
7 elect candidates to the governmental body.

8 (4) “Municipality” means a town, city, village, school district, or  
9 other municipality that holds public elections.

10 (5) “Polling location” means any location designated by the  
11 Secretary of State or the applicable board of civil authority for the casting of  
12 ballots, including, but not limited to, election day voting sites, ballot drop  
13 box locations, and early or absentee voting sites.

14 (6) “Protected class” means any group of individuals who are  
15 members of any race, color or language minority, including, but not limited  
16 to a class of two or more such groups, and includes individuals who are  
17 members of a minimum reporting category recognized presently or  
18 previously by the United States Census Bureau.

19 (7) “Racially polarized voting” means voting in which there is a  
20 divergence in the candidate preferences, political preferences, or electoral  
21 choices of members in a protected class, including the combined preferences  
22 of a protected class comprised of two or more groups of voters, from the

1 candidate preferences, political preferences, or electoral choices of members  
2 of another protected class or set of protected classes.

3 (8) “Voting age population” means the resident population of  
4 persons who are 18 years of age or older, as determined by the most recent  
5 U.S. Census Bureau’s American Community Survey data available at the  
6 time any change to a covered practice is published.

7 § 2802. VOTER SUPPRESSION; VOTE DILUTION

8 (a) Prohibition of voter suppression. No municipality or state agency may  
9 engage in voter suppression as set forth in this subsection.

10 (1) No municipality or state agency may implement, impose, or enforce  
11 any election policy or practice that results in, is likely to result in, or is  
12 motivated in whole or in part by the intent to result in, voter suppression.

13 (2) A violation of subdivision (1) of this subsection (a) is established if  
14 the following is present:

15 (A) A material disparity affecting protected class members in voter  
16 participation, access to voting opportunities, or the opportunity or ability to  
17 participate in any stage of the political process, as a result of the policy or  
18 practice; or

19 (B) Based on the totality of circumstances, an impairment of the  
20 equal opportunity or ability of protected class members to participate in any  
21 stage of the political process.

1           (3) There is no violation under subdivision (2)(A) of this subsection (a)  
2           if the municipality or state agency demonstrates by clear and convincing  
3           evidence that:

4                   (A) The election policy or practice is necessary to significantly  
5                   further a compelling and particularized governmental interest; and

6                   (B) There is no reasonable alternative election policy or practice that  
7                   comparably furthers the compelling and particularized governmental interest  
8                   and results in a smaller disparity between protected class members and other  
9                   members of the electorate.

10           (b) Prohibition of vote dilution. No municipality may engage in vote  
11           dilution as set forth in this subsection.

12                   (1) No municipality may employ any method of election that has the  
13                   effect, will likely have the effect, or is motivated in part by the intent, of  
14                   diluting the vote of protected class members.

15                   (2) A violation of subdivision (1) of this subsection (b) is established if

16                           (A) either:

17                                   (i) elections in the municipality exhibit racially polarized voting  
18                                   resulting in an impairment of the equal opportunity or ability of protected class  
19                                   members to nominate or elect candidates of their choice; or

20                                   (ii) based on the totality of circumstances, the equal opportunity or  
21                                   ability of protected class members to nominate or elect candidates of their  
22                                   choice is impaired; and

1           (B) another method of election or change to the existing method of  
2           election exists that could be constitutionally adopted or ordered under  
3           subsection 2841(f) of this title would likely mitigate the impairment.

4           (3)(A) To evaluate whether elections in the municipality exhibit racially  
5           polarized voting resulting racially polarized voting in determining if a  
6           violation under this section has occurred, the following factors may be  
7           relevant:

8                   (i) election results, which may include, but are not limited to,  
9                   elections for offices of the municipality; elections held in the municipality for  
10                   other offices, such as state or federal offices; and

11                   (ii) other electoral choices that bear on the rights and privileges of  
12                   the protected class.

13           (B) No set number or combination of elections is required to  
14           establish the existence of racially polarized voting.

15           (C) Evidence of non-racially polarized voting in elections for offices  
16           outside the municipality shall not preclude a finding of racially polarized  
17           voting based on elections for offices of the municipality.

18                   (ii) Non-statistical or non-quantitative evidence shall not preclude  
19                   a finding of racially polarized voting based on statistical or quantitative  
20                   evidence.

21                   (iii) Low or high turnout or registration rates among protected  
22                   class members shall not preclude a finding of racially polarized voting.

1           (C) When assessing the combined candidate preferences, political  
2           preferences, or electoral choices of a protected class comprised of two or more  
3           groups of voters, there is no requirement that it be statistically shown that each  
4           group or subgroup be separately polarized from those of other voters.

5           (D) The causes of racially polarized voting are not relevant, and the  
6           existence of alternative explanations, including partisan explanations, does not  
7           preclude a finding of racially polarized voting.

8           (4) Whether protected class members typically elect candidates of their  
9           choice to the legislative body in approximate proportion to their total number  
10           or share of the population may be relevant under this subsection (b).

11           (5) For the purpose of finding a violation of this subsection (b), it is not  
12           necessary for the total number or share of protected class members to exceed  
13           any numerical threshold in any district or in the municipality as a whole.

14           (c) Evaluating voter suppression and vote dilution.

15           (1)(A) To evaluate the totality of circumstances in determining if a  
16           violation under this section has occurred, the following factors may be  
17           relevant:

18           (i) the history of discrimination with respect to the protected class  
19           at issue;

20           (ii) the extent to which members of the relevant protected class are  
21           disadvantaged or otherwise bear the effects of public or private discrimination  
22           in areas such as education, employment, health, criminal justice, housing,

1 transportation, land use, or environmental protection;

2 (iii) the use of any election policy or practice that may enhance  
3 the discriminatory or dilutive effects of the relevant election policy or practice  
4 or method of election in the municipality;

5 (iv) the extent to which members of the relevant protected class  
6 vote or register to vote at lower rates;

7 (v) the extent to which members of the relevant protected class  
8 have historically made campaign contributions at lower rates;

9 (vi) the extent to which candidates who are members of the  
10 relevant protected class members have faced hostility or barriers with respect  
11 to campaigning, getting on the ballot, receiving financial support, or receiving  
12 any other support for an election;

13 (vii) the use of overt or subtle racial appeals, whether in the course  
14 of political campaigns or by government officials, including racial appeals  
15 made in public discourse or in connection with the adoption or maintenance of  
16 the election policy or practice;

17 (viii) the extent to which the members of the relevant protected  
18 class have been elected to office;

19 (ix) the lack of responsiveness by elected officials to the particular  
20 needs of members of the relevant protected class or a community of members  
21 of the relevant protected class;

22 (x) whether the election policy or practice is necessary to

1 significantly further a compelling and particularized governmental interest;

2 (xi) the process that led to the adoption of the election policy or  
3 practice; and

4 (xii) other factors deemed relevant.

5 (B) There is no requirement that a set number or combination of  
6 these factors shall be met to determine that a violation occurred.

7 (C) There is no requirement that evidence shall affect all individuals  
8 or groups within a protected class to be relevant.

9 (D) For alleged violations pertaining to a particular municipality,  
10 evidence of these factors may be deemed more probative if it relates to the  
11 municipality in which the alleged violation occurred, but evidence related to  
12 the State of Vermont, and the states of Connecticut, Maine, Massachusetts,  
13 New Hampshire, Rhode Island, and New York, may also be probative. The  
14 probative value of the evidence relevant to the particular municipality shall not  
15 be reduced by the fact that similar or worse circumstances may exist in other  
16 municipalities.

17 (2) A violation under this section may also be established through direct  
18 or circumstantial evidence of intentional discrimination; however, evidence of  
19 intentional discrimination, including evidence concerning the intent of  
20 legislative bodies of a municipalities or election officials to discriminate  
21 against protected class members is not required.

22 (3) The following circumstances are shall not be considered relevant:

1           (i) the absolute number or share of protected class members on  
2           whom the election policy or practice imposes a material burden is small;

3           (ii) the degree to which the election policy or practice has a long  
4           pedigree or was in widespread use at an earlier date;

5           (iii) The use of an identical or similar election policy or practice in  
6           other states or municipalities; or

7           (iv) The availability of forms of voting unimpacted by the election  
8           policy or practice.

9           (4) A governmental interest in preventing voter fraud or bolstering voter  
10          confidence in the integrity of elections is irrelevant unless there is substantial  
11          evidence that criminal activity by individual electors has occurred in the  
12          municipality in substantial numbers and the connection between the election  
13          policy or practice and a state interest in preventing that type of criminal  
14          activity or bolstering voter confidence in the integrity of elections is supported  
15          by substantial evidence.

16          § 2803. CONSTRUCTION; EXERCISE OF DISCRETION.

17          (a) Construction. Any provision of state law, regulation, charter,  
18          ordinance, or other enactment of the state or any municipality relating to voting  
19          or the right to vote shall be construed in a manner as to promote the purposes  
20          enumerated in this section.

21          (1) Making voting, the fundamental right to vote and ability to  
22          participate in the democratic process more accessible to eligible voters;

1           (2) Safeguarding and vindicating, to the fullest extent possible by law,  
2           the voting rights of protected class members, including, but not limited to,  
3           equitable access to opportunities to register to vote and vote, and the equal  
4           opportunity to elect candidates of choice; and

5           (3) Ensuring protected class members have full access to relief from  
6           discrimination in voting.

7           (b) Exercise of discretion. To the extent courts are afforded discretion on  
8           any issue, including questions concerning discovery, procedure, admissibility  
9           of evidence, or remedies, courts shall exercise that discretion, and weigh other  
10           equitable discretion, in favor of the purposes enumerated in subdivision (1)–(3)  
11           of subsection (a).

12                           Subchapter 2. Assistance in Voting and Elections

13           § 2811. LANGUAGE ASSISTANCE IN VOTING AND ELECTIONS

14           (a) Applicability.

15           (1) Every two years, the Secretary of State shall designate one or more  
16           languages, other than English, for which a municipality is required to provide  
17           language assistance to individuals with limited English proficiency for  
18           elections.

19           (A) A municipality shall provide “Level 1” language assistance in  
20           a language if either:

21                           (i) more than 1 percent of the voting age population of a

1 municipality, but no fewer than 100 individuals, speak a particular shared  
2 language other than English and are individuals with limited English  
3 proficiency; or

4 (ii) more than 500 of the voting age population of such  
5 municipality are members of a single language minority and are individuals  
6 with limited English proficiency.

7 (B) A municipality shall provide “Level 2” language assistance in a  
8 language if either:

9 (i) more than three percent of the voting age population of the  
10 municipality speak a shared language other than English and are individuals  
11 with limited English proficiency; or

12 (ii) more than 1,000 of the voting age population of the  
13 municipality speak a shared language other than English and are individuals  
14 with limited English proficiency.

15 (2) The Secretary shall utilize the most recent American Community  
16 Survey census data as measured in five-year increments, or data of  
17 comparable quality collected by a governmental entity, or, if necessary data  
18 is unavailable, estimates derived from available data using validated  
19 methodologies.

20 (3) The Secretary give notice directly to each covered municipality  
21 specifying the language or languages for which the subdivision is covered,  
22 and the corresponding requirements accompanying such coverage.

1           (4) The Secretary publish a list of covered subdivisions and the  
2           languages for which they are required to provide language access on its  
3           website, as well as formal notices to covered subdivisions, no later than 30  
4           days after making such determinations.

5           (b) Language Assistance. The Secretary shall provide competent assistance  
6           and election-related materials both in English and in each language designated  
7           pursuant to this section. The Secretary shall provide materials and assistance  
8           in a way designed to allow voters who speak a particular shared language other  
9           than English to be effectively informed of and participate effectively in voting-  
10          connected activities.

11          (1) Level 1 language assistance. A municipality required to provide  
12          Level 1 language assistance in a particular language other than English  
13          pursuant to subdivision (1)(A) of subsection (a) shall ensure that election  
14          materials and language assistance are provided to individuals with limited  
15          English proficiency in the designated language as follows:

16           (A) Voter registration forms and instructions. Voter registration  
17           forms and instructions shall be provided in the designated language to the  
18           same extent and manner as made available in English, including direct  
19           mailings requested by a voter.

20           (B) Polling location changes and relocation notices. Any  
21           notifications about polling location changes or relocations shall be provided  
22           in the designated language and disseminated in the designated language to

1 the same extent that English-language notices are made available.

2 (C) Notice of in-language assistance availability. In-language  
3 signage identifying the availability of designated language sample ballots  
4 and live over-the-phone interpretation services shall be made available on  
5 the municipality’s website and at polling locations during voting periods.

6 (D) Live interpretation services via telephone. The municipality  
7 shall provide live language interpretation services by telephone, allowing  
8 voters to request and receive real-time assistance in the designated language  
9 during early voting, on election day, and for any voter-related inquiries  
10 year-round.

11 (2) Level 2 language assistance. A municipality required to provide  
12 Level 2 language assistance in a particular language other than English  
13 pursuant to subdivision (1)(B) of subsection (a) shall ensure that election  
14 materials and language assistance are provided to individuals with limited  
15 English proficiency in the designated language as follows:

16 (A) All requirements of subdivision (1) of this subsection (b).

17 (B) Multilingual ballots. All official and sample ballots used on  
18 election day and for absentee or mail voting shall be fully translated into the  
19 designated language and made available to voters in all voting locations and  
20 online.

21 (C) Voting-related notices. All online or in-person public notices  
22 relating to the electoral process, including notices about registration

1 deadlines, polling location changes, voter education materials, and voting  
2 instructions that provide direction during the voting process shall be fully  
3 translated and disseminated in the designated language to the same extent  
4 that English-language notices are made available.

5 (E) In-person bilingual poll workers and interpreters. Covered  
6 subdivisions shall have sufficient trained bilingual poll workers or  
7 interpreters available at each in-person voting site to provide effective  
8 language assistance in the designated language to any voters who need it.  
9 Bilingual services, either in-person or available remotely, shall be easily  
10 identifiable by voters with limited English proficiency. through  
11 prominently displayed signs, badges, or other identifying materials  
12 indicating their bilingual capabilities.

13 (G) Websites. Any information relating to voter registration,  
14 polling locations, official ballots, or other voting related materials and  
15 notifications provided on any website used by a municipality to share  
16 information related to elections and voting shall be made available in the  
17 designated language.

18 (3) When the Secretary creates, produces, or disseminates relevant  
19 physical or online electoral and voting materials for or to municipalities  
20 subject to the requirements of this section, the Secretary shall also comply  
21 with the requirements of this section.

22 (c) Quality of assistance. All materials and notices provided by a

1 municipality as required by this Section in a particular language other than  
2 English shall be of an equal quality to the corresponding English-language  
3 materials and produced at the same time as the corresponding English-  
4 language materials. All provided translated materials shall convey the  
5 intent and essential meaning of the original English language text or  
6 communication. Translated materials produced solely by automated  
7 translation services are presumed to be insufficient to completely convey  
8 intent and essential meaning. Whenever available, language assistance shall  
9 also include interpretation services.

10 (d) Non-written languages and American Sign Language. For  
11 designated languages that do not have a written form or for which use of the  
12 written form is limited, including American Sign Language, the subdivision  
13 shall provide recordings of oral translations or of American Sign Language  
14 translations, or provide taglines or signage indicating how to access oral  
15 translations or American Sign Language translations of required written  
16 assistance.

17 (e) Rulemaking.

18 (1) The Secretary of State shall adopt rules, in accordance with the  
19 provisions of 3 V.S.A. chapter 25, to establish a review process under which  
20 the Secretary shall determine, upon receipt of a request submitted by an  
21 eligible voter, whether a significant and substantial need exists in a  
22 municipality for a language to be designated for additional language access

1 and assistance in voting and elections whenever the need has not been  
2 provided for under subdivision (c) of this section.

3 (2) The Secretary shall include, at a minimum:

4 (A) An opportunity for any person aggrieved by a failure to  
5 provide such assistance to submit a request for the Secretary of State to  
6 consider designating a new language for coverage or providing additional  
7 in-language services. Persons aggrieved by such failure are those who have  
8 standing as defined by subdivision 2841(a) of this title.

9 (B) A timeline specifying when requests for additional in-  
10 language services may be submitted to be considered timely for the next  
11 election.

12 (C) Consideration of the following, if provided by the requester:

13 (i) community based evidence indicating the need for in-  
14 language services including school enrollment data, public health or social  
15 service records, language-specific outreach from community-based  
16 organizations, and other reliable evidence;

17 (ii) testimony or affidavits from individuals or entities  
18 representing or serving the language minority community, including  
19 impacted voters; and

20 (iii) evidence of structural, procedural, or informational barriers  
21 that disproportionately impact limited-English proficient voters in the  
22 language group, including low turnout rates, high provisional ballot use, or

1 lack of access to translated materials.

2 (2) Upon receipt of any such request the Secretary of State shall:

3 (A) Respond in writing within 30 days of receipt of any such  
4 request;

5 (B) Provide an opportunity for public comment following the  
6 publication of a proposed determination.

7 (C) Shall issue a written decision that includes all factors  
8 considered. All final decisions shall be published on the Secretary of  
9 State’s website. Personal and identifying information received or produced  
10 by this process are exempt from public inspection and copying under the  
11 Public Records Act and shall be kept confidential.

12 (3) Implementation of newly granted language services shall  
13 correspond to the next scheduled election in the relevant covered  
14 municipality. If a request is granted too close to an election to allow for  
15 meaningful implementation, the designation shall take effect for the  
16 following election.

17 (f) Municipal solicitation of feedback.

18 (1) Municipalities providing language services in accordance with  
19 this section shall hold public meetings to solicit feedback about:

20 (A) the quality of in-language materials and services; and

21 (B) barriers to voting and registration for limited-English  
22 proficient voters and communities.

1           (2) These meetings shall be advertised at least one month in advance  
2           and include live translation services in any designated language.

3           (3) Municipalities providing Level 1 language assistance shall hold a  
4           meeting following an election in which language services are provided, but  
5           shall not be required to hold a meeting more than once per year.

6           (4) Municipalities providing Level 2 language assistance shall hold  
7           such a meeting at least twice per year.

8           § 2812. ASSISTANCE FOR CERTAIN VOTERS; PENALTIES

9           (a) Any voter 65 years of age or older or any voter who is physically  
10          disabled may request and then shall be handed a printed ballot by an election  
11          officer outside the polling place but within 150 feet of the entrance to the  
12          polling place. The voter shall mark the printed ballot in the officer's presence  
13          but in a secret manner and, obscuring the voter's vote, return the ballot to the  
14          officer. The officer shall immediately return to the polling place and shall  
15          deposit the ballot in accordance with section 2570 of this title.

16          (b)(1) Any qualified voter who requires assistance to vote by reason of  
17          physical disability or inability to read or write may, if the voter so requests, be  
18          assisted in voting. The voter may designate an officer of election or any other  
19          person to assist the voter.

20          (2) The election officer or other person so designated shall not enter the  
21          booth with the voter unless:

1           (A) the voter signs a request stating that the voter requires assistance  
2           by reason of physical disability or inability to read or write; and

3           (B) the election officer or other person signs a statement that the  
4           officer or other person will act in accordance with the requirements of this  
5           section.

6           (3) The request and statement shall be on a single form furnished by the  
7           Secretary of State. If the voter is unable to sign the request, the voter's own  
8           mark acknowledged by the voter before an election officer shall be a sufficient  
9           signature, provided no mark shall be required of a voter who is blind. An  
10           election officer shall advise the voter and any person assisting the voter of the  
11           requirements of this section and record the name of the voter and the name and  
12           address of the person assisting the voter.

13           (4) The election officer or other person so designated shall assist the  
14           qualified voter in the preparation of the voter's ballot in accordance with the  
15           voter's instructions and without soliciting the voter's vote or in any manner  
16           attempting to influence the voter's vote and shall not in any manner divulge or  
17           indicate, by signs or otherwise, how the voter voted on any office or question.  
18           The officer shall immediately deposit the ballot in accordance with section  
19           2570 of this title.

20           (c) If the voter requires assistance in a language other than English and has  
21           not designated a person to assist the voter, an election officer may assist as an

1 interpreter but shall first inquire of the present election officials whether there  
2 is an election official of a party or candidate of the voter’s preference available  
3 who can interpret for the voter. One representative interpreter for each party or  
4 candidate, insofar as available, shall be permitted to observe the officer of  
5 election communicate with the voter. In any municipality designated as a  
6 covered municipality pursuant to section 2811 of this title, the local board of  
7 civil authority shall ensure that interpretation services in the language of the  
8 applicable minority group are available and easily accessible to voters needing  
9 assistance pursuant to this subsection. The voter may designate one of the  
10 volunteer party or candidate interpreters to provide assistance. A person so  
11 designated by the voter shall meet all the requirements of this section for a  
12 person providing assistance.

13 Subchapter 3. Changes to Election Practices

14 § 2821. CHANGES NOT TO BE EFFECTUATED WITHIN 60 DAYS  
15 PRECEDING A GENERAL ELECTION

16 No change in any local election district, ward, or polling place shall take  
17 effect within 60 days preceding any general election.

18 § 2822. COVERED PRACTICES; ACTIONS REQUIRED PRIOR TO  
19 ENACTMENT OR ADMINISTRATION

20 (a) Covered practice. For the purposes of this chapter a “covered practice”  
21 is:

1           (A) any change to the method of election of members of a legislative  
2           body or an elected school board, including by adding seats or removing seats;

3           (B) any change, or series of changes within a 12-month period, to the  
4           boundaries of the municipality that reduces by more than five percentage  
5           points the proportion of the municipality’s voting age population that is  
6           composed of members of a single racial or language minority group, as  
7           determined by the most recent U.S. Census Bureau’s American Community  
8           Survey data;

9           (C) any change to the boundaries of election districts or wards in the  
10          municipality, including changes made pursuant to a decennial redistricting  
11          measure;

12          (D) any change that restricts the ability of any person to provide  
13          interpreter services to voters in any language other than English or that limits  
14          or impairs the creation or distribution of voting or election materials in any  
15          language other than English;

16          (E) any change that reduces the number of or consolidates or  
17          relocates polling places in the municipality, except where permitted by law in  
18          the event of an emergency; or

19          (F) any change that reduces the number of hours or consolidates or  
20          reduces the number of locations that a ballot may be delivered for early or  
21          absentee voting pursuant to 17 V.S.A. chapter 51, subchapter 6.

1       (b) Notice and public comment. Prior to enacting or administering any  
2       voting qualification or prerequisite to voting, or any rule, standard, practice, or  
3       procedure with respect to voting, that is a covered practice, the legislative body  
4       of the municipality shall cause to be published on the official website for the  
5       municipality the proposed covered practice and general notice of opportunity  
6       for public comment on the proposed covered practice, including the process for  
7       submitting public comment. The legislative body shall also publicize the  
8       notice through press releases and such other media as will best serve the  
9       purpose and subject involved. Such notice shall be made at least 45 days in  
10       advance of the last date prescribed in the notice for public comment.

11       (2) Public comment shall be accepted for a period of not fewer than 30  
12       days. During this period, the legislative body shall afford interested persons an  
13       opportunity to submit data, views, and arguments in writing by mail, fax, or  
14       email, or through an online public comment forum on the official website for  
15       the municipality if one has been established. The legislative body shall  
16       conduct at least one public hearing during this period to receive public  
17       comment on the proposed covered practice.

18       (3) The legislative body may make changes to the proposed covered  
19       practice in response to public comment received. If doing so, the revised  
20       covered practice shall be published and public comment shall be accepted in

1 accordance with this subsection, except the public comment period shall be not  
2 fewer than 15 days.

3 (4) Following the public comment period or periods prescribed in  
4 subdivision (2) of this subsection (b), the legislative body shall publish the  
5 final covered practice, which shall include a plain English description of the  
6 practice and the text of an ordinance giving effect to the practice, maps of  
7 proposed boundary changes, or other relevant materials, and notice that the  
8 covered practice will take effect in 30 days.

9 (5)(A) During the 30-day waiting period described in subdivision (4) of  
10 this subsection (b), any individual who will be subject to or affected by the  
11 covered practice or any organizations who represent voters, organizations  
12 whose mission would be frustrated by disenfranchising voters, and  
13 organizations whose membership includes person who will be subject to or  
14 affected by the covered practice, may challenge in the Superior Court of the  
15 municipality where the covered practice is to be implemented the covered  
16 practice as:

17 (i) having the purpose or effect of suppressing or diluting the right  
18 to vote on the basis of race or color or membership in a language minority  
19 group; or

1                   (ii) resulting in the retrogression in the position of members of a  
2                   racial or ethnic group with respect to their effective exercise of the electoral  
3                   franchise.

4                   (B) The court may, in its discretion, award costs, including the costs  
5                   of experts and studies, and reasonable attorneys' fees to a plaintiff who  
6                   prevails in an action brought under this subsection.

7                   (6)(A) The legislative body of a municipality seeking to administer or  
8                   implement a covered practice shall notify the Secretary of State of each notice  
9                   and meeting requirement described in subdivision (1)-(4) of the this subsection  
10                  (b) 10 days in advance of the requirement. Each notice shall include a  
11                  description of the covered practice, all relevant dates including any public  
12                  hearings at which the covered practice will be discussed, all relevant materials,  
13                  and any dispositions or changes to the covered practice since initial  
14                  publication.

15                  (B) The Secretary shall establish a process for municipality to submit  
16                  the information required pursuant to subdivision (A) of this subdivision (6),  
17                  and shall maintain and publish on its official website a public record of  
18                  municipalities seeking to administer or implement a covered practice,  
19                  including a description of the covered practice all relevant dates including any  
20                  public hearings at which the covered practice will be discussed, all relevant  
21                  materials, and any dispositions or changes to the covered practice since initial

1 publication, for the current year and for all years prior for which it has such  
2 records.

3 (c) Certification of No Objection.

4 (1) For the purposes of this chapter, “Certification of No Objection”  
5 means a certification issued by the Attorney General stating that there is no  
6 objection to the enactment or administration of a covered practice by a  
7 municipality because the covered practice neither has the purpose or effect of  
8 suppressing or diluting the right to vote based on race or color or  
9 membership in a language minority group nor will result in the retrogression  
10 in the position of members of a racial or ethnic group with respect to their  
11 effective exercise of the electoral franchise, and that there is a legitimate and  
12 emergent need for the municipality to enact or administer the covered  
13 practice in advance of an election which will take place before the public  
14 comment and waiting periods as provided by subsection (b) of this section.

15 (2) Where there is a legitimate and emergent need for the municipality  
16 to enact or administer a covered practice in advance of an election which will  
17 take place before the public comment and waiting periods as provided by  
18 subsection (b) of this section will have run, the legislative body of a  
19 municipality seeking to administer or implement the covered practice, in  
20 addition to following the provisions of subsection (b) of this section as  
21 feasible within the time available prior to the election, may submit the  
22 proposed covered practice to the Office of the Attorney General for issuance

1 of a certification of no objection.

2 (3)(A) A covered practice shall not be given effect until the Attorney  
3 General has issued such certification.

4 (B) A certification of no objection shall be deemed to have been  
5 issued if the Attorney General does not interpose an objection within 60 days  
6 of the legislative body's submission or if, upon good cause shown and to  
7 facilitate an expedited approval within 60 days of the legislative body's  
8 submission, the Attorney General has affirmatively indicated that no such  
9 objection will be made.

10 (C) An affirmative indication by the Attorney General that no  
11 objection will be made or the absence of an objection to the covered practice  
12 by the Attorney General shall not bar a subsequent action to enjoin  
13 enforcement of such qualification, prerequisite, standard, practice, or  
14 procedure.

15 (4) The Attorney General shall establish a process for municipalities to  
16 submit the proposed covered practice and shall maintain and cause to be  
17 published on their office's official website a public record of submissions,  
18 including a description of the covered practice, all relevant dates including  
19 any public hearings at which the covered practice will be discussed, all  
20 relevant materials, any changes to the covered practice since initial  
21 submission, and any dispositions by the Attorney General as to the  
22 submission, for the current year and for all years prior for which their office

1 has such records.

2 § 2823. JUDICIAL BAIL-IN

3 (a) Except as otherwise provided in this subsection, any municipality that  
4 has been subject in any court to a judicial finding of a violation of this chapter,  
5 the federal Voting Rights Act or Civil Rights Act concerning the right to vote  
6 of protected class members, the First, Fourteenth, or Fifteenth Amendments to  
7 the United States Constitution concerning the right to vote for protected class  
8 members, or any other state or federal law or constitutional provision  
9 concerning the right to vote for protected class members, the municipality  
10 shall, within the previous 10 years since the date of the most recent final order  
11 entered in such an action, obtain preapproval from the Attorney General’s  
12 office prior to enacting or administering any covered practice.

13 (b) A request for preapproval submitted by a municipality shall only be  
14 granted if:

15 (1) the election policy or practice will not diminish, in relation to the  
16 status quo before the enactment or implementation of the election policy or  
17 practice, the equal opportunity or ability of members of a protected class  
18 whose voting rights are implicated by the election policy or practice; and

19 (2) the election policy or practice is unlikely to violate any of the  
20 provisions of this chapter.

21 (c) The Attorney General shall adopt rules, in accordance with the

1 provisions of 3 V.S.A. chapter 25, to establish a process and timeline for a  
2 municipality to submit requests for preapproval for changes to covered  
3 practices. Such process shall include procedures for public comment and  
4 transparency regarding preapproval requests, and require the municipality to, at  
5 a minimum, indicate its position as to whether the proposed election policy or  
6 practice complies with standards for preapproval as described in subsection (b)  
7 of this section, and submit evidence in support of its position. The  
8 municipality bears the burden of demonstrating the proposed election policy or  
9 practice complies with standards for preapproval as described in subsection (b)  
10 of this section.

11 (d) To the extent a municipality subject to the preapproval procedures  
12 under this subsection shall make emergency changes to locations of polling  
13 places, early voting sites, or absent voter ballot drop boxes within 14 days  
14 before an election due to exigent circumstances that are outside of the  
15 municipality’s control, the municipality may implement the emergency  
16 changes without first obtaining preapproval under this subsection, as long as  
17 that municipality notifies, in writing, the Attorney General of the emergency  
18 changes before implementing those changes and explains in detail the exigent  
19 circumstances that made the emergency changes necessary. To the extent a  
20 municipality intends to maintain any emergency changes beyond that election,  
21 the municipality shall obtain preapproval for those changes as provided under

1 this section.

2 (e) The Attorney General shall annually review which municipalities  
3 remain or have become subject to the preapproval requirements of this  
4 subsection pursuant to a qualifying violation under subsection (a) of this  
5 section and publish a list of all such municipalities.

6 (f) The Attorney General shall maintain and publish on the Attorney  
7 General's Office's official website an updated list of municipalities subject to  
8 this subsection, including all relevant judicial findings providing the basis for  
9 coverage. The Attorney General shall also maintain and publish all requests  
10 for preapproval submitted by municipalities subject to this subsection,  
11 including a description of the covered practice and all relevant materials; the  
12 timeline for public comments for each request for preapproval; all public  
13 comments that have been submitted regarding each request for preapproval;  
14 the dates of any public hearings scheduled regarding request for preapproval;  
15 any changes to the covered practice since initial request for preapproval; and  
16 any dispositions by the Attorney General as to the request for preapproval.

17 § 2824. NOTICE REQUIREMENTS

18 (a) In addition to the requirements set forth in section 2822 of this title,  
19 notice shall be published prior to enactment in a newspaper having general  
20 circulation in the election district or ward once a week for two successive

1 weeks. The published notice shall state where descriptions and maps of  
2 proposed boundary and polling place changes may be inspected.

3 (b) Notice of any adopted change in any election district, ward, or polling  
4 place shall be mailed to all registered voters whose election district, ward, or  
5 polling place is changed at least 15 days prior to the next general, special, or  
6 primary election in which the voters will be voting in the changed election  
7 district, ward, or polling place.

8 (c) Each municipality shall comply with the applicable requirements of law  
9 and send copies of enacted changes, including a geographic information  
10 system (GIS) map showing the new boundaries of the districts or wards, to the  
11 Secretary of State. Any municipality that does not have GIS capabilities may  
12 request the Secretary of State to create on its behalf a GIS map showing the  
13 boundaries of the new districts or wards, and the Secretary of State shall create  
14 such a map.

15 Subchapter 4. Election Interference

16 § 2831. INTIMIDATION OF ELECTION OFFICERS; CIVIL CAUSE OF  
17 ACTION

18 It shall be unlawful for any person who, by bribery, intimidation, threats,  
19 coercion, or other means in violation of the election laws, willfully hinders or  
20 prevents, or attempts to hinder or prevent, an election officer at any polling  
21 place from holding an election.

1        § 2832. INTIMIDATION OF VOTERS; CIVIL CAUSE OF ACTION

2            (a) It shall be unlawful for any person who intimidates, threatens, or  
3            coerces, or attempts to intimidate, threaten, or coerce, any other person in  
4            giving the person’s vote or ballot or who intimidates, threatens, or coerces, or  
5            attempts to intimidate, threaten, or coerce, a voter to deter or prevent the voter  
6            from voting, or intimidates, threatens, or coerces, or attempts to intimidate,  
7            threaten, or coerce any person or entity for urging or aiding any person to vote.

8            (b) This section applies to any election and to any method used by a  
9            political party for selection of its nominees and for selection of delegates to its  
10           conventions and meetings.

11           (c) Nothing in this Section, nor in its enforcement pursuant to Section  
12           2841(f) and 2841(g), shall be construed to prohibit any activity protected under  
13           the Constitution of the United States.

14        § 2833. COMMUNICATION OF FALSE INFORMATION TO  
15           REGISTERED VOTER; CIVIL CAUSE OF ACTION

16           (a) It shall be unlawful for any person to recklessly communicate to a  
17           registered voter, by any means, false information, impedes the voter in the  
18           exercise of the voter’s right to vote. The provisions of this section shall apply  
19           to information only about the date, time, and place of the election, or the  
20           voter’s ward, polling place, or voter registration status, or how to register to  
21           vote.



1     § 2841. ENFORCEMENT

2           (a) Standing. An action to cure a violation of this chapter may be brought  
3     by any individual or entity aggrieved by a violation of this chapter or by the  
4     Attorney General.

5           (1) An entity aggrieved by a violation of this chapter includes, but is not  
6     limited to, any entity:

7           (A) whose membership includes individuals aggrieved by a violation  
8     of this Act; or

9           (B) whose mission would be frustrated by a violation of this chapter,  
10    including but not limited to an entity that would expend or divert resources to  
11    fulfill its mission as a result of such violation or who shall expend greater  
12    resources or efforts to advocate before an elected body that is less responsive  
13    to the entity or its members due to the alleged violation.

14          (2) An entity shall not be compelled to disclose the identity of any  
15    specific member to pursue a claim on behalf of its members.

16          (3) This section shall be construed liberally to confer standing as  
17    broadly as the Vermont Constitution permits.

18          (b) Safe harbor for municipalities. Except as provided in subdivision (3) of  
19    this subsection (b), before filing an action against a municipality under this  
20    chapter, a party described in subdivision (a), except for the Attorney General,  
21    shall send a notice letter to the municipality identifying the potential violations

1 and the type of remedy the party believes may address the potential violations.

2 The party may not file an action within 50 days after sending the notice letter.

3 (1) The municipality may work with the party that provided notice to  
4 implement a remedy that cures the potential violations. If the legislative body  
5 of the municipality adopts a resolution identifying a remedy, affirming its  
6 intent to enact and implement a remedy, and establishing a timeline and  
7 specific steps it will take to do so, the party may not file an action within 120  
8 days after sending the notice letter.

9 (2) In response to a notice letter, the municipality may adopt a resolution  
10 denying that a violation exists, or otherwise formally deny a violation, which  
11 will abrogate the 50-day waiting period described in this subsection (b) and  
12 permit the party who sent a notice letter to file an action immediately.

13 (3) Notwithstanding any county, city, or municipal charter, or any other  
14 provision of law, general or special, the legislative body of a municipality may  
15 enact and implement a remedy voluntarily in response to a notice letter  
16 pursuant to subdivision (1) of this subsection (b), as a part of a voluntary  
17 agreement to settle litigation of an alleged violation of this chapter, or in  
18 response to an order by a court finding a violation and ordering a remedy  
19 pursuant to subsection (f) of this section.

20 (4) Following the party's submission of a notice letter, the party may file  
21 an action if the municipality has not enacted or implemented a remedy within

1 the time periods designated by this Subsection or the municipality has enacted  
2 or implemented a remedy that would not remedy the violation identified in the  
3 party's notice letter.

4 (5) A party with standing pursuant to subsection (a) of this section may  
5 file an action against a municipality under this chapter, notwithstanding this  
6 subsection (b) if:

7 (A) the party is seeking preliminary relief with respect to an  
8 upcoming election;

9 (B) another party has already submitted a notice letter alleging a  
10 substantially similar violation, and that party is eligible to file an action under  
11 this section; or

12 (C) the prospect of obtaining relief under subdivision (1) of this  
13 subsection (b) would be futile.

14 (c) Venue. All actions authorized by this subchapter shall be initiated in  
15 the Superior Court in the county in which the alleged violation has occurred.

16 (d) Expedited Review. Actions brought pursuant to this chapter shall be  
17 subject to expedited pretrial and trial proceedings and receive an automatic  
18 calendar preference.

19 (e) Preliminary Relief. In any action alleging a violation of this chapter in  
20 which a party seeks preliminary relief with respect to an upcoming election, a  
21 court shall grant relief if it determines that:

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

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

4           (f) Remedies. Upon finding a violation of any provision of this chapter, a  
5 court shall order appropriate civil and equitable remedies, notwithstanding any  
6 other law to the contrary.

7           (1) The court has authority to order remedies that are tailored to best  
8 mitigate the violation, including any and all forms of preliminary and  
9 injunctive relief, nominal damages, compensatory damages, or punitive  
10 damages for any willful violation.

11           (2) The court may consider, among others, any remedy that is available  
12 to a federal court or the court of another state jurisdiction, including through a  
13 court-approved consent decree or settlement adopted in the context of similar  
14 facts or to remedy a similar violation.

15           (3) The court shall consider proposed remedies by any parties and  
16 interested non-parties.

17           (4) The court shall not give deference or priority to a remedy proposed  
18 by the municipality.

19           (5) A remedy ordered under this section shall be implemented in the  
20 next relevant election, scheduled or ordered, wherever possible.

1        (g) Cause of action only under State law. This chapter provides rights and  
2        remedies under state law to enforce state constitutional rights or statutory  
3        rights and does not enforce any rights established under the U.S. Constitution  
4        or federal law. Nothing in this chapter may be construed to create a cause of  
5        action under federal law. Persuasive use of relevant federal legal standards,  
6        precedents, or evidentiary frameworks to aid in the interpretation or application  
7        of this chapter should not be construed to give rise to a federal question.  
8        Moreover, use of such federal legal standards, precedent, or evidentiary  
9        frameworks may be persuasive, but is not necessary to the interpretation or  
10       application of this chapter.

11       (h) Laches. Defendants in actions under this chapter may not assert the  
12       doctrine of laches as a defense to claims brought under this chapter.  
13       Municipalities may not assert that plaintiffs have failed to comply with any  
14       notice, exhaustion, or other procedural requirements under State law, other  
15       than the requirements in this Section, as a defense to claims brought under this  
16       Section.

17       (i) Attorneys' fees.

18       (1) In such action, the court may, in its discretion, allow a private  
19       plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the  
20       prevailing party. Costs and fees include, but are not limited to, attorneys' fees,  
21       expert witness fees, and all other litigation or pre-litigation fees and costs.

1           (2) A plaintiff will be deemed to have prevailed in an action when, as a  
2           result of a suit or notice letter pursuant to subsection (b) of this section, the  
3           defendant party yields some or all of the relief sought in the action.

4           (j) Severability. If any provision of this chapter or its application to any  
5           person or circumstance is held invalid, such invalidity shall be applied as  
6           narrowly as possible and the remaining provisions and applications shall  
7           remain in effect to the fullest extent possible.

8           (k) Abrogation of legislative privilege. In any action under this chapter or  
9           any other voting-related violation of State or federal law, no sovereign,  
10           governmental, executive, legislative, or deliberative immunities and privileges,  
11           including any evidentiary privileges, may be asserted. However, this section  
12           has no effect on any attorney-client or attorney work-product privileges.

13           \* \* \* Counting Offenders in Reapportionment of Legislative Districts \* \* \*  
14           Sec. 2. 17 V.S.A. § 1913 is added to read:

15           § 1913. COUNTING OF OFFENDERS

16           (a) Department of Corrections determination and sharing of offender  
17           residential information.

18           (1) The Department of Corrections shall:

19           (A) for each offender in the Department's custody, determine the  
20           offender's residential address prior to incarceration; and

1           (B) maintain an electronic record of offenders’ residential addresses  
2           prior to incarceration that shall determine the offenders’ residential addresses  
3           prior to incarceration on the date for which the decennial census reports  
4           population.

5           (2) On or before May 1 of the year following each decennial census  
6           under the authority of Congress and in which the U.S. Census Bureau counts  
7           any offender as a resident of the town in which the offender’s respective  
8           correctional facility is located, the Department of Corrections shall deliver to  
9           the Legislative Apportionment Board, in a form as prescribed by the Board, the  
10           following information as determined on the date for which the decennial  
11           census reports population:

12           (A) a unique identifier for each offender subject to the  
13           jurisdiction of the Department of Corrections;

14           (B) the street address of the correctional facility in which each  
15           offender was incarcerated;

16           (C) for each offender, an indication of whether the offender:

17           (i) has attained 18 years of age; and

18           (ii) is serving a sentence of life imprisonment without the  
19           possibility of release;

1           (D) each offender’s in-state residential address prior to incarceration,  
2           or an indication that the offender’s residential address prior to incarceration  
3           was:

4                   (i) outside Vermont; or

5                   (ii) unknown; and

6           (E) any additional information requested by the Board otherwise  
7           permitted by law.

8           (b) Legislative Apportionment Board use of offender address information.

9                   (1) For each offender included in a report received under subsection (a)  
10           of this section, the Board shall determine the geographic units for which  
11           population counts are reported in the decennial census, which units contain the  
12           address of the correctional facility in which an offender was incarcerated, and  
13           which contain an offender’s residential address prior to incarceration.

14                   (2) If an offender’s residential address prior to incarceration is known  
15           and is located within the State, the Board shall ensure that when creating  
16           proposals for dividing the State into initial districts for the election of the  
17           House of Representatives and the Senate, as described in sections 1905, 1906,  
18           and 1907 of this title, the relevant population counts reported in the decennial  
19           census are adjusted so that an offender is considered to have been residing at  
20           the offender’s residential address prior to incarceration and not at the address  
21           of the correctional facility where the offender was incarcerated.

1           (3) If an offender’s residential address prior to incarceration is unknown  
2           or not in this State, the Board shall ensure that an offender is not represented in  
3           any applicable population count reported in the decennial census for the  
4           geographic units that include the correctional facility in which an offender was  
5           incarcerated.

6           (4) Notwithstanding subdivisions (1)–(3) of this subsection, if an  
7           offender is serving a sentence of life imprisonment without the possibility of  
8           release, the Board shall ensure that an offender is represented in the applicable  
9           population count reported in the decennial census for the geographic units that  
10           include the correctional facility in which an offender was incarcerated.

11           (5) The Board shall prepare and publish such information, both adjusted  
12           and unadjusted, pursuant to this subsection as part of its tentative proposal, as  
13           described in sections 1905 and 1907 of this title, and any subsequent proposals,  
14           including the Board’s final proposal, as described in section 1906 of this title.

15           (c) Confidentiality of offender information. Notwithstanding any other  
16           statute to the contrary, the information required to be provided under this  
17           section shall not include the name of any offender or in any other way allow  
18           for the identification of the individual. This information is exempt from public  
19           inspection and copying under the Public Records Act and shall be kept  
20           confidential, except to the Board for the purposes of subsection (b) of this

1 section or as aggregated by decennial census block for the purposes of  
2 subdivision (b)(5) of this section.

3 (d) Definition. As used in section, “offender” has the same meaning as in  
4 28 V.S.A. § 3(8).

5 \* \* \* Conforming Amendments \* \* \*

6 Sec. 3. REPEALS

7 (a) 17 V.S.A. § 1933 (nonperformance of duty by public officer) is  
8 repealed.

9 (b) 17 V.S.A. § 2569 (assistance to voter) is repealed.

10 Sec. 4. 17 V.S.A. § 2570 is amended to read:

11 § 2570. DEPOSITING BALLOTS

12 \* \* \*

13 (c) Except as provided in section ~~2569~~ 2812 of this title, no election official  
14 or other person shall look at the contents of any ballot.

15 \* \* \* Effective Date \* \* \*

16 Sec. 5. EFFECTIVE DATE

17 This act shall take effect on January 1, 2027.

18

19

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1

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3 (Committee vote: \_\_\_\_\_)

4

\_\_\_\_\_

5

Senator \_\_\_\_\_

6

FOR THE COMMITTEE

NOT EDITED