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HOUSE BILL NO. 761

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on January 31, 2020)

(Patron Prior to Substitute—Delegate VanValkenburg)

A BILL to amend the Code of Virginia by adding a section numbered 24.2-304.1:1, relating to elections; preclearance of certain covered practices required.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 24.2-304.1:1 as follows:

§ 24.2-304.1:1. Preclearance of certain covered practices.

A. For purposes of this section:

"Covered jurisdiction" means any county, city, or town that is determined pursuant to subsection E to have a voting age population that contains two or more racial or ethnic groups, each constituting at least 20 percent of its voting age population.

"Covered practice" means:

1. Any change to the method of election of members of a governing body or an elected school board by adding seats elected at large or by converting one or more seats elected from a single-member district to one or more at-large seats or seats from a multi-member district;

2. Any change, or series of changes within a 12-month period, to the boundaries of the covered jurisdiction that reduces by more than five percentage points the proportion of the jurisdiction's voting age population that is composed of members of a single racial or language minority group, as determined by the most recent American Community Survey data;

3. Any change to the boundaries of election districts or wards in the covered jurisdiction or to the boundary lines of the covered jurisdiction;

4. Any change that restricts the ability of any person to provide interpreter services to voters in any language other than English or which limits or impairs the creation or distribution of voting materials in any language other than English; or

5. Any change that reduces the number of or consolidates or relocates polling places in the covered jurisdiction, except where permitted by law in the event of an emergency.

B. Prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any standard, practice, or procedure with respect to voting, that is a covered practice, the governing body of a covered jurisdiction shall either (i) institute an action in the circuit court for the jurisdiction for a declaratory judgment that the covered practice neither has the purpose or effect of denying or abridging the right to vote on account of race or color or membership in a language minority group nor will it result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise or (ii) submit such covered practice to the Office of the Attorney General for issuance of a certification that no objection exists to the enactment or administration by the covered jurisdiction of the covered practice.

The Attorney General, or any aggrieved citizen whose opportunity to vote is affected by a covered practice that has been enacted or administered by a covered jurisdiction, may institute an action in the circuit court of the covered jurisdiction to compel the governing body of such jurisdiction to institute an action for a declaratory judgment or to seek issuance of a certification of no objection pursuant to this subsection.

C. No qualification, prerequisite, standard, practice, or procedure that is a covered practice shall be given effect until the circuit court has entered such judgment or the Attorney General has issued such certification. A certification of no objection shall be deemed to have been issued if the Attorney General does not interpose an objection within 60 days of the governing body's submission, or if, upon good cause shown and to facilitate an expedited approval within 60 days of the governing body's submission, the Attorney General has affirmatively indicated that no such objection will be made.

Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered by the circuit court pursuant to this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event that the Attorney General affirmatively indicates that no objection will be made within the 60-day period following the receipt of the governing body's submission, the Attorney General may reserve the right to reexamine the submission if additional information that would otherwise require objection in accordance with this section comes to his attention during the remainder of the 60-day period.

D. In the event the Attorney General objects to a covered practice submitted by a covered jurisdiction, the governing body of such jurisdiction may file an appeal in the circuit court of the

60 jurisdiction.

61 *In the event the Attorney General issues a certification of no objection to a covered practice*
62 *submitted by a covered jurisdiction, any aggrieved citizen whose opportunity to vote is affected by the*
63 *covered practice may file an action in the circuit court of the jurisdiction to appeal the Attorney*
64 *General's issuance of a certification of no objection.*

65 *In any action filed pursuant to this subsection, the circuit court shall enjoin the enactment or*
66 *administration of the covered practice that is the subject of the action, unless it determines that the*
67 *covered practice neither has the purpose or effect of denying or abridging the right to vote on account*
68 *of race or color or membership in a language minority group nor will it result in the retrogression in*
69 *the position of members of a racial or ethnic group with respect to their effective exercise of the*
70 *electoral franchise.*

71 *E. As early as practicable each calendar year, the Attorney General shall, in consultation with the*
72 *State Board of Elections and other relevant agencies of the executive branch, determine which counties,*
73 *cities, and towns in the Commonwealth have a voting age population that contains two or more racial*
74 *or ethnic groups, each constituting at least 20 percent of the voting age population of the county, city,*
75 *or town, and are therefore subject to the requirements of this section. The Attorney General shall*
76 *publish the list of these counties, cities, and towns on a website established and maintained for this*
77 *purpose. A determination made pursuant to this subsection shall be effective upon publication.*