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HOUSE BILL NO. 761

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on February 25, 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:

"Certification of no objection" means a certification issued by the Attorney General that there is no objection to the enactment or administration of a covered practice by a covered jurisdiction because 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 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.

"Covered jurisdiction" means any county or city 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;

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.

"Language minority group" means persons who speak one or more languages other than English at home, as determined by the most recent American Community Survey data.

"Racial minority group" means persons who are Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander, or of Spanish heritage.

"Voting age population" means the resident population of persons who are age 18 years or older, as determined by the most recent American Community Survey data.

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 of the City of Richmond 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 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 of no objection.

The Attorney General, or any qualified voter 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 City of Richmond 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 of the City of Richmond 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

60 will be made.

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

69 D. In the event that the Attorney General objects to a covered practice submitted by a covered
70 jurisdiction, the governing body of such jurisdiction may file an appeal in the Circuit Court of the City
71 of Richmond.

72 In the event that the Attorney General issues a certification of no objection to a covered practice
73 submitted by a covered jurisdiction, any qualified voter whose opportunity to vote is affected by the
74 covered practice that has been enacted or administered by a covered jurisdiction may file an action in
75 the Circuit Court of the City of Richmond to appeal the Attorney General's issuance of a certification of
76 no objection.

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

83 E. Each year, not later than six months after the annual release of American Community Survey
84 data, the Attorney General shall utilize such data to determine which counties and cities in the
85 Commonwealth have a voting age population that contains two or more racial or ethnic groups each
86 constituting at least 20 percent of the voting age population of the county or city and are therefore
87 subject to the requirements of this section. All agencies of the Commonwealth shall provide assistance to
88 the Attorney General in making this determination, upon request.

89 The Attorney General shall publish the list of these counties and cities on a website established and
90 maintained for this purpose. A determination made pursuant to this subsection shall be effective upon
91 publication.

92 **2. That the provisions of this act shall become effective on January 1, 2022, except that no locality**
93 **determined to be a covered jurisdiction under the provisions of this act shall be required to**
94 **comply with the provisions of subsection B of § 24.2-304.1:1 of the Code of Virginia, as created by**
95 **this act, for any change made to the boundaries of its election districts or wards until July 1, 2022.**