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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3527

02/12/2024 Authored by Greenman, Frazier, Freiberg and Hollins
The bill was referred to the Committee on Elections Finance and Policy

1.1 A bill for an act
1.2 relating to elections; establishing the Minnesota Voting Rights Act; making
1.3 legislative findings; prohibiting certain actions by political subdivisions or other
1.4 officials or entities with responsibilities related to election administration that
1.5 result in voter suppression or vote dilution; establishing a civil cause of action for
1.6 violations; requiring notice prior to a claim in certain cases; establishing remedies;
1.7 proposing coding for new law in Minnesota Statutes, chapter 200.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. [200.50] MINNESOTA VOTING RIGHTS ACT.

1.10 Sections 200.50 to 200.59 may be cited as the "Minnesota Voting Rights Act."

1.11 Sec. 2. [200.51] LEGISLATIVE FINDINGS.

1.12 (a) The legislature finds:

1.13 (1) that there is a history in Minnesota, as in the United States overall, of public and
1.14 private discrimination against individuals who are members of racial, color, or language
1.15 minority groups;

1.16 (2) that the history of discrimination in Minnesota includes but is not limited to the
1.17 imposition of qualifications to be an elector or other prerequisites to voting; ordinances,
1.18 regulations, and other laws regarding the administration of elections; standards, practices,
1.19 procedures, and policies; and other actions, or failures to take action, that have resulted in
1.20 impairment of the equal opportunity or ability of individuals who are members of racial,
1.21 color, or language minority groups to participate in the political process and nominate or
1.22 elect candidates of their choice. For example, that:

2.1 (i) the state constitution of 1857 limited the right to vote to white residents and Native
2.2 American voters "who have adopted the customs and habits of civilization";

2.3 (ii) the state constitution of 1857 invoked a cultural purity test for Native American
2.4 residents, requiring only Native American applicants to appear before a district court to
2.5 determine whether each individual was "capable of enjoying the rights of citizenship within
2.6 the State";

2.7 (iii) the Minnesota state legislature twice rejected expanding suffrage to Black residents,
2.8 voting down proposed constitutional amendments to do so in 1865 and again in 1867;

2.9 (iv) the state only granted nonwhite men the right to vote in 1868, three years after the
2.10 end of the Civil War;

2.11 (v) individuals who are members of racial, color, or language minority groups have
2.12 faced voter intimidation and disinformation in Minnesota, and that, for example, voters of
2.13 color in 2020 in the cities of Minneapolis and St. Paul were targeted by a plan to hire and
2.14 deploy armed para-militia to polling locations, an attempt that was enjoined by a federal
2.15 district court judge; and

2.16 (vi) civil rights plaintiffs and the federal government have filed litigation and taken other
2.17 action against political subdivisions in Minnesota under the Federal Voting Rights Act of
2.18 1965, as amended, alleging violations of section 2 of that act;

2.19 (3) that there are significant racial disparities in political participation in Minnesota,
2.20 which are an indication of unequal barriers to the franchise in this state. For example:

2.21 (i) that, according to data published by the United States Census Bureau, 84.1 percent
2.22 of non-Hispanic white citizens in Minnesota were registered to vote as of the November
2.23 2020 election. According to the same Census Bureau data, only 79.4 percent of Asian
2.24 citizens, 74.7 percent of Latino citizens, and 70.5 percent of Black citizens in Minnesota
2.25 were registered to vote as of that election; and

2.26 (ii) that, according to data published by the United States Census Bureau, 79.9 percent
2.27 of non-Hispanic white citizens in Minnesota voted in the November 2020 election. According
2.28 to the same Census Bureau data, only 66.1 percent of Black citizens, 64 percent of Asian
2.29 citizens, and 62.7 percent of Latino citizens in Minnesota voted in that election;

2.30 (4) that the history of discrimination in Minnesota includes but is not limited to
2.31 discrimination in housing, including the use of redlining, racially restrictive covenants on
2.32 housing deeds, and predatory lending practices;

3.1 (5) that the history of discrimination in Minnesota includes but is not limited to
 3.2 discrimination in education, employment, health, criminal justice, public works,
 3.3 transportation, land use, environmental protection, and other areas of life; and

3.4 (6) that, as a result of this history, individuals who are members of racial, color, or
 3.5 language minority groups in Minnesota are disadvantaged or otherwise bear the effects of
 3.6 discrimination in areas that hinder their ability to participate effectively in the political
 3.7 process.

3.8 (b) In recognition of these findings and of the protections for the right to vote provided
 3.9 by the state constitution, and in conjunction with the constitutional guarantees of equal
 3.10 protection and the freedoms of speech, assembly, consultation, instruction, and petition
 3.11 under the law and against the denial and abridgement of the voting rights of members of a
 3.12 racial, color, or language minority group, the legislature enacts the Minnesota Voting Rights
 3.13 Act and affirms that it is the public policy of this state to:

3.14 (1) encourage participation in the elective franchise by all eligible voters to the maximum
 3.15 extent; and

3.16 (2) ensure that eligible voters who are members of a racial, color, or language minority
 3.17 group have an equal opportunity to participate in the political processes of this state and to
 3.18 exercise the elective franchise.

3.19 **Sec. 3. [200.52] DEFINITIONS.**

3.20 Subdivision 1. **Application.** As used in sections 200.50 to 200.59, the terms as defined
 3.21 in this section have the meanings given.

3.22 Subd. 2. **Disparity.** "Disparity" means any variance that is supported by validated
 3.23 methodologies and, where relevant, is statistically significant.

3.24 Subd. 3. **Government official.** "Government official" means any individual who is
 3.25 elected or appointed to an office in this state or a political subdivision or who is authorized
 3.26 to act in an official capacity on behalf of the state or a political subdivision.

3.27 Subd. 4. **Language minority group.** "Language minority group" means a language
 3.28 minority group as that term is defined in the federal Voting Rights Act of 1965, as amended,
 3.29 as of the effective date of this act.

3.30 Subd. 5. **Method of election.** (a) "Method of election" means the method by which
 3.31 candidates are elected to the legislative body of a political subdivision, and includes at-large
 3.32 method of election, district-based method of election, or any alternative method of election.

4.1 Method of election also includes the configuration of any districts used to elect candidates
4.2 to the legislative body of a political subdivision.

4.3 (b) "At-large method of election" means a method of electing candidates to the legislative
4.4 body of a political subdivision in which candidates are voted on by all voters of the political
4.5 subdivision or that combines at-large with district-based elections. At-large method of
4.6 election does not include any alternative method of election.

4.7 (c) "District-based method of election" means a method of electing candidates to the
4.8 legislative body of a political subdivision in which, for political subdivisions divided into
4.9 districts, a candidate for any district is required to reside in the district and candidates
4.10 representing or seeking to represent the district are voted on by only the voters who reside
4.11 in the district. District-based method of election does not include any alternative method of
4.12 election.

4.13 (d) "Alternative method of election" means a method of electing candidates to the
4.14 legislative body of a political subdivision other than an at-large method of election or a
4.15 district-based method of election and includes but is not limited to cumulative voting, limited
4.16 voting, and proportional ranked choice voting.

4.17 Subd. 6. **Political subdivision.** "Political subdivision" means a county, city, town, or
4.18 school district.

4.19 Subd. 7. **Politically cohesive.** "Politically cohesive" means that members of a group
4.20 tend to prefer the same candidates, electoral choices, or policies.

4.21 Subd. 8. **Protected class.** "Protected class" means a class of citizens who are members
4.22 of a racial, color, or language minority group, or who are members of a federally recognized
4.23 Indian Tribe, including a class of two or more such groups.

4.24 Subd. 9. **Polarized voting.** "Polarized voting" means voting in which the candidate or
4.25 electoral choice preferred by a protected class diverges from the candidate or electoral choice
4.26 preferred by other voters.

4.27 Subd. 10. **Vote; voting.** "Vote" or "voting" includes any action necessary to cast a ballot
4.28 and make that ballot count in any election, including but not limited to: registering to vote;
4.29 applying for an absentee ballot; and any other action required by law as a prerequisite to
4.30 casting a ballot and having that ballot counted, canvassed, certified, and included in the
4.31 appropriate totals of votes cast with respect to an election.

5.1 Subd. 11. **Voting eligible population.** "Voting eligible population" means those
 5.2 individuals who are eligible to register and vote, regardless of whether the individuals are
 5.3 registered to vote.

5.4 **Sec. 4. [200.53] CONSTRUCTION AND USE OF AUTHORITY.**

5.5 Subdivision 1. **Construction of laws.** A law, rule, local law, charter provision, local
 5.6 ordinance, or local code relating to the right to vote shall be construed liberally in favor of
 5.7 the factors listed in this section. To the extent a court is afforded discretion on an issue,
 5.8 including but not limited to discovery, procedure, admissibility of evidence, or remedies,
 5.9 the court shall exercise that discretion and weigh other equitable discretion, in favor of the
 5.10 following:

5.11 (1) protecting the right to cast a ballot and make that ballot effective;

5.12 (2) ensuring that qualified individuals who seek to vote are not impaired in doing so;

5.13 (3) ensuring that each voter is not impaired in voting, including but not limited to having
 5.14 the voter's vote counted;

5.15 (4) making the fundamental right to vote more accessible to qualified individuals; and

5.16 (5) ensuring protected class members have equitable access to opportunities to vote.

5.17 Subd. 2. **Use of authority.** An authority provided by law to prescribe or maintain voting
 5.18 or elections policies and practices must not be exercised to unnecessarily deny or abridge
 5.19 the right to vote. A policy or practice that burdens the right to vote must be narrowly tailored
 5.20 to promote a compelling policy justification that is supported by substantial evidence.

5.21 **Sec. 5. [200.54] VOTER SUPPRESSION AND VOTE DILUTION PROHIBITED.**

5.22 Subdivision 1. **Voter suppression.** A political subdivision or any other government
 5.23 official or entity responsible for election administration must not adopt or enforce a
 5.24 qualification for eligibility to vote or other prerequisite to voting; adopt or enforce any law,
 5.25 ordinance, rule, standard, practice, procedure, or policy regarding the administration of
 5.26 elections; or take any other action or fail to take any action that results in, is likely to result
 5.27 in, or is intended to result in:

5.28 (1) a disparity in voter participation, access to voting opportunities, or the opportunity
 5.29 or ability to participate in the political process between a protected class and other members
 5.30 of the electorate; or

6.1 (2) based on the totality of the circumstances, a denial or impairment of the opportunity
6.2 or ability of members of a protected class to vote or participate in the political process.

6.3 Subd. 2. **Vote dilution.** (a) A political subdivision or any other government official or
6.4 entity responsible for election administration must not adopt or enforce any method of
6.5 election, or cause an annexation, incorporation, dissolution, consolidation, or division of a
6.6 political subdivision, that has the effect of impairing the equal opportunity or ability of
6.7 members of a protected class to nominate or elect candidates of their choice as a result of
6.8 diluting the vote of members of that protected class.

6.9 (b) A violation of paragraph (a) exists when it is shown that:

6.10 (1) either:

6.11 (i) elections in a political subdivision exhibit polarized voting resulting in an impairment
6.12 of the equal opportunity or ability of protected class members to nominate or elect candidates
6.13 of their choice; or

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

6.16 (2) one or more new methods of election or changes to the existing method of election
6.17 exist that the court could order pursuant to section 200.58 would likely mitigate the
6.18 impairment.

6.19 (c) To the extent that a new method of election or change to the existing method of
6.20 election that is presented under paragraph (b), clause (2), is a proposed district-based plan
6.21 that provides protected class members with one or more reasonably configured districts in
6.22 which the protected class members would have an equal opportunity or ability to nominate
6.23 or elect candidates of the protected class members' choice, it is not necessary to show that
6.24 members of a protected class comprise a majority of the total population, voting age
6.25 population, voting eligible population, or registered voter population in any such district or
6.26 districts.

6.27 (d) The fact that members of a protected class are not geographically compact does not
6.28 preclude a finding of a violation of this subdivision but may be a factor in determining an
6.29 appropriate remedy.

6.30 (e) For claims brought on behalf of a protected class, including one consisting of two
6.31 or more racial, color, Tribal, or language minority groups that are politically cohesive in
6.32 the political subdivision, the court shall consider only the combined electoral preferences
6.33 of those racial, color, Tribal, or language minority groups in determining whether voting

7.1 by the protected class is polarized from other voters. It is not necessary to demonstrate that
 7.2 voting by members of each racial, color, Tribal, or language minority group within a protected
 7.3 class, or by any subgroup within a racial, color, or language minority group, is separately
 7.4 polarized from other voters.

7.5 (f) Evidence concerning the causes of, or the reasons for, the occurrence of polarized
 7.6 voting is not relevant to the determination of whether polarized voting occurs, or whether
 7.7 candidates or electoral choices preferred by a protected class would usually be defeated.
 7.8 Evidence concerning alternate explanations for polarized voting patterns or election
 7.9 outcomes, including but not limited to partisan explanations, must not be considered.

7.10 (g) Evidence concerning projected changes in population or demographics may only be
 7.11 considered when determining a remedy for a violation of this subdivision.

7.12 **Sec. 6. [200.55] RELEVANT FACTORS FOR DETERMINING VIOLATION.**

7.13 Subdivision 1. **Factors established.** In determining whether, under the totality of the
 7.14 circumstances, a violation of section 200.54 has occurred with respect to a protected class,
 7.15 a court may consider any of the following factors:

7.16 (1) the history of discrimination affecting members of the protected class;

7.17 (2) the extent to which members of the protected class are disadvantaged, or otherwise
 7.18 bear the effects of past public or private discrimination, in any areas that may hinder their
 7.19 ability to participate effectively in the political process, including education, employment,
 7.20 health, criminal justice, housing, transportation, land use, or environmental protection;

7.21 (3) whether members of the protected class vote at a lower rate than other voters;

7.22 (4) the extent to which members of the protected class contribute to political campaigns
 7.23 at lower rates;

7.24 (5) the use of overt or subtle racial appeals in political campaigns or by government
 7.25 officials;

7.26 (6) the extent to which members of the protected class have been elected to office;

7.27 (7) the extent to which members of the protected class have faced barriers with respect
 7.28 to accessing the ballot, receiving financial support, or receiving any other support for their
 7.29 candidacies for elective office;

7.30 (8) the extent to which candidates who are members of a protected class face hostility
 7.31 or barriers while campaigning due to the protected class membership;

8.1 (9) the extent of polarized voting;

8.2 (10) the use of any standard, practice, procedure, or policy that may enhance the dilutive
8.3 effects of a challenged method of election;

8.4 (11) the lack of responsiveness by elected officials to the particularized needs of protected
8.5 class members or a community of protected class members;

8.6 (12) whether the challenged method of election, ordinance, resolution, rule, policy,
8.7 standard, regulation, procedure, or law was designed to advance, and does materially advance,
8.8 a compelling state interest that is substantiated and supported by evidence; and

8.9 (13) other factors the court may deem relevant.

8.10 Subd. 2. **Necessity of factors.** None of the factors in subdivision 1 are dispositive or
8.11 necessary to establish the existence of a violation of section 200.54, nor shall any specified
8.12 number or combination of factors be required in establishing that such a violation has
8.13 occurred. The court shall consider a particular factor only if and to the extent evidence
8.14 pertaining to that factor is introduced. The absence of evidence as to any factor does not
8.15 preclude a finding of a violation.

8.16 Subd. 3. **Claims involving a political subdivision.** To the extent a claim concerns a
8.17 political subdivision, evidence of the factors in subdivision 1 is most probative if the evidence
8.18 relates to the political subdivision in which the alleged violation occurred, but still holds
8.19 probative value if the evidence relates to the geographic region in which that political
8.20 subdivision is located or to this state.

8.21 Subd. 4. **Evidence of intent.** Evidence concerning the intent of voters, elected officials,
8.22 or the political subdivision to discriminate against members of a protected class is not
8.23 required to find a violation of section 200.54.

8.24 Subd. 5. **Factors that must be excluded.** In determining whether a violation of section
8.25 200.54 has occurred, a court shall not consider any of the following:

8.26 (1) the number of protected class members not burdened by the challenged qualification,
8.27 prerequisite, standard, practice, or procedure;

8.28 (2) the degree to which the challenged qualification, prerequisite, standard, practice, or
8.29 procedure has a long pedigree or was in widespread use at some earlier date;

8.30 (3) the use of an identical or similar qualification, prerequisite, standard, practice, or
8.31 procedure in other states or jurisdictions;

9.1 (4) the availability of other forms of voting unimpacted by the challenged qualification,
9.2 prerequisite, standard, practice, or procedure to all members of the electorate, including
9.3 members of the protected class;

9.4 (5) a prophylactic impact on potential criminal activity by individual voters, if those
9.5 crimes have not occurred in the political subdivision in substantial numbers, or if the
9.6 connection between the challenged policy and any claimed prophylactic effect is not
9.7 supported by substantial evidence; or

9.8 (6) mere invocation of interests in voter confidence or prevention of fraud.

9.9 **Sec. 7. [200.56] PRESUIT NOTICE.**

9.10 Subdivision 1. **Notice required.** Except as provided in this section, before filing an
9.11 action a prospective plaintiff shall send a notice letter to the political subdivision identifying
9.12 the potential violation, the affected protected class, and the type of remedy the potential
9.13 plaintiff believes may address the potential violation. The party may not file an action related
9.14 to the violations described in the notice within 60 days after sending the notice letter.

9.15 Subd. 2. **Responsibility of political subdivision.** The political subdivision shall work
9.16 in good faith with the party that provided notice to implement a remedy that cures the
9.17 potential violation. If the political subdivision adopts a resolution identifying a remedy,
9.18 affirming its intent to enact and implement a remedy, and establishing a timeline and specific
9.19 steps it will take to do so, it shall have 90 days after passing the resolution to enact and
9.20 implement a remedy, during which time the party who sent a notice letter under this section
9.21 may not file an action related to those violations against that political subdivision.

9.22 Subd. 3. **Secretary of state authorized to approve remedies.** If the political subdivision
9.23 lacks authority to enact or implement a remedy identified in a resolution within 90 days
9.24 after its passage, the political subdivision may nonetheless enact and implement a proposed
9.25 remedy upon approval of the secretary of state, who shall only provide approval upon finding
9.26 that the political subdivision may be in violation of this act, the proposed remedy would
9.27 address a potential violation, and implementation of the proposed remedy is feasible. The
9.28 secretary of state's approval of a remedy does not bar an action to challenge the remedy.
9.29 The secretary of state may adopt rules necessary to implement this subdivision, including
9.30 but not limited to rules to provide for notice and comment procedures that must be followed
9.31 by political subdivisions prior to implementing remedies under this act.

9.32 Subd. 4. **When presuit notice is not required.** Notwithstanding subdivisions 1 and 2,
9.33 a prospective plaintiff may file an action without first providing a notice letter if:

10.1 (1) the action is commenced within one year after the enactment of the challenged method
10.2 of election, standard, practice, procedure, or policy;

10.3 (2) the party is seeking preliminary relief with respect to an upcoming election in
10.4 accordance with section 200.57;

10.5 (3) another party has already submitted a notice letter alleging a substantially similar
10.6 violation and that party is eligible to file an action under this act;

10.7 (4) following the party's submission of a notice letter, the political subdivision has enacted
10.8 a remedy that would not remedy the violation identified in the party's notice letter; or

10.9 (5) the prospect of obtaining relief would be futile.

10.10 Subd. 5. **Reimbursement of costs.** If a political subdivision enacts or implements a
10.11 remedy or the secretary of state approves a proposed remedy to a potential violation alleged
10.12 in a notice letter under subdivision 1, a party who sent a notice letter under subdivision 1
10.13 is entitled to reimbursement from the political subdivision for the reasonable costs associated
10.14 with producing and sending the notice letter.

10.15 **Sec. 8. [200.57] RIGHT OF ACTION; VENUE; PRELIMINARY RELIEF.**

10.16 Subdivision 1. **Right of action.** (a) The attorney general, any individual aggrieved by
10.17 a violation of this act, any entity whose membership includes individuals aggrieved by a
10.18 violation of this act, any entity whose mission would be frustrated by a violation of this act,
10.19 or any entity that would expend resources in order to fulfill its mission as a result of a
10.20 violation of this act, may file an action in the district court for the county where the
10.21 challenged act or practice has occurred, or in the district court of Ramsey County. Actions
10.22 brought under this act are subject to expedited pretrial and trial proceedings and must receive
10.23 an automatic calendar preference.

10.24 (b) In an action related to a districting or redistricting plan, any individual with standing
10.25 to challenge any single district shall be deemed to have standing to challenge the districting
10.26 or redistricting plan as a whole.

10.27 Subd. 2. **Preliminary relief prior to election.** In any action alleging a violation of this
10.28 act in which a plaintiff seeks preliminary relief with respect to an upcoming election, the
10.29 court shall grant relief if the court determines that:

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

10.31 (2) it is possible to implement appropriate preliminary relief that would address the
10.32 alleged violation before the election.

11.1 Sec. 9. **[200.58] REMEDIES.**

11.2 Notwithstanding any other law, if the court finds a violation of any provision of section
11.3 200.54, the court has broad authority to order remedies that are tailored to best mitigate the
11.4 violation. Any remedy ordered by the court must be constructed in favor of the factors listed
11.5 in section 200.53, subdivision 1. The court may consider, among others, any remedy that
11.6 has been ordered by a federal court or the court of another state jurisdiction, including
11.7 through a court-approved consent decree or settlement adopted in the context of similar
11.8 facts or to remedy a similar violation. The court shall consider remedies proposed by any
11.9 parties and may consider remedies proposed by interested nonparties. The court may not
11.10 provide deference or priority to a proposed remedy offered by a defendant or political
11.11 subdivision simply because the remedy has been proposed by the defendant or political
11.12 subdivision.

11.13 Sec. 10. **[200.59] FEES AND COSTS.**

11.14 In any action brought under this act, the court shall award reasonable attorney fees and
11.15 litigation costs, including expert witness fees and expenses, to the party, other than a state
11.16 or a political subdivision, that filed the action and prevailed in the action. The party that
11.17 filed the action is considered to have prevailed if, as a result of the action, the party against
11.18 whom the action was filed has yielded or was ordered to yield some or all of the relief sought
11.19 in the action. If the party against whom the action was filed prevails in the action, the court
11.20 shall not award that party any costs unless the court finds the action is frivolous.

11.21 Sec. 11. **EFFECTIVE DATE.**

11.22 This act is effective the day following final enactment.