

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3994

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| DATE | D-PG | OFFICIAL STATUS |
|------------|-----------------|---|
| 02/20/2024 | 11670 | Introduction and first reading Referred to Elections |
| 02/26/2024 | 11825 | Authors added Kunesh; Boldon |
| 03/11/2024 | 12117a 12143 | Comm report: To pass as amended and re-refer to State and Local Government and Veterans Author added Carlson |
| 03/20/2024 | 12455 | Withdrawn and re-referred to Judiciary and Public Safety |
| 04/02/2024 | 13273a | Comm report: To pass as amended Joint rule 2.03, referred to Rules and Administration See HF4772 |

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 amending Minnesota Statutes 2022, section 412.02, subdivision 6, by adding a

1.8 subdivision; proposing coding for new law in Minnesota Statutes, chapter 200.

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

1.10 Section 1. 200.50 MINNESOTA VOTING RIGHTS ACT.

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

1.12 Sec. 2. 200.52 DEFINITIONS.

1.13 Subdivision 1. Application. As used in sections 200.50 to 200.59, the terms as defined

1.14 in this section have the meanings given.

1.15 Subd. 2. Disparity. "Disparity" means any variance that is supported by validated

1.16 methodologies and, where relevant, is statistically significant.

1.17 Subd. 3. Government official. "Government official" means any individual who is

1.18 elected or appointed to an office in this state or a political subdivision or who is authorized

1.19 to act in an official capacity on behalf of the state or a political subdivision.

1.20 Subd. 4. Language minority group. "Language minority group" means a language

1.21 minority group as that term is defined in the federal Voting Rights Act of 1965, as amended,

1.22 as of the effective date of this act.

2.1 Subd. 5. **Method of election.** (a) "Method of election" means the method by which
2.2 candidates are elected to the legislative body of a political subdivision, and includes at-large
2.3 method of election, district-based method of election, or any alternative method of election.
2.4 Method of election also includes the districting or redistricting plan used to elect candidates
2.5 to the legislative body of a political subdivision.

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

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

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

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

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

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

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

2.30 Subd. 10. **Vote; voting.** "Vote" or "voting" includes any action necessary to cast a ballot
2.31 and make that ballot count in any election, including but not limited to: registering to vote;
2.32 applying for an absentee ballot; and any other action required by law as a prerequisite to

3.1 casting a ballot and having that ballot counted, canvassed, certified, and included in the
 3.2 appropriate totals of votes cast with respect to an election.

3.3 Subd. 11. **Voting eligible population.** "Voting eligible population" means those
 3.4 individuals who are eligible to register and vote, regardless of whether the individuals are
 3.5 registered to vote.

3.6 **Sec. 3. [200.53] CONSTRUCTION AND USE OF AUTHORITY.**

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

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

3.14 (2) ensuring that eligible voters who seek to vote are not impaired in doing so;

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

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

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

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

3.23 **Sec. 4. [200.54] VOTER SUPPRESSION AND VOTE DILUTION PROHIBITED.**

3.24 Subdivision 1. **Voter suppression.** A political subdivision or any other government
 3.25 official or entity responsible for election administration must not adopt or apply a
 3.26 qualification for eligibility to vote or other prerequisite to voting; adopt or apply any law,
 3.27 ordinance, rule, standard, practice, procedure, or policy regarding the administration of
 3.28 elections; or take any other action or fail to take any action that results in, is likely to result
 3.29 in, or is intended to result in:

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

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

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

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

4.13 (1) either:

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

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

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

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

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

5.1 (e) For claims brought on behalf of a protected class, including one consisting of two
 5.2 or more racial, color, Tribal, or language minority groups that are politically cohesive in
 5.3 the political subdivision, the court shall consider only the combined electoral preferences
 5.4 of those racial, color, Tribal, or language minority groups in determining whether voting
 5.5 by the protected class is polarized from other voters. It is not necessary to demonstrate that
 5.6 voting by members of each racial, color, Tribal, or language minority group within a protected
 5.7 class, or by any subgroup within a racial, color, or language minority group, is separately
 5.8 polarized from other voters.

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

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

5.16 **Sec. 5. [200.55] RELEVANT FACTORS FOR DETERMINING VIOLATION.**

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

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

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

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

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

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

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

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

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

6.6 (9) the extent of polarized voting;

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

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

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

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

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

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

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

6.29 Subd. 5. **Factors that must be excluded.** In determining whether a violation of section
6.30 200.54 has occurred, a court shall not consider any of the following:

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

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

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

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

7.8 (5) an impact on potential criminal activity by individual voters, if those crimes have
 7.9 not occurred in the political subdivision in substantial numbers, or if the connection between
 7.10 the challenged policy and any claimed prophylactic effect is not supported by substantial
 7.11 evidence; or

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

7.13 **Sec. 6. [200.56] PRESUIT NOTICE.**

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

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

7.26 Subd. 3. **Approval of remedies.** (a) If an administrative deadline prevents a political
 7.27 subdivision from enacting or implementing an identified remedy, the political subdivision
 7.28 may nonetheless enact or implement the remedy upon authorization by the secretary of
 7.29 state. Notwithstanding the applicable deadline, the secretary of state may provide this
 7.30 authorization upon determining that the political subdivision may otherwise be in violation
 7.31 of this act, that the identified remedy would address the potential violation, and that
 7.32 implementation of the identified remedy is feasible. The secretary of state's authorization
 7.33 does not bar an action to challenge the remedy. The secretary of state may adopt rules

8.1 necessary to implement this paragraph, including but not limited to rules identifying specific
8.2 administrative deadlines to which this paragraph applies, and to provide for notice and
8.3 comment procedures that must be followed by political subdivisions prior to implementing
8.4 a remedy.

8.5 (b) If the political subdivision lacks authority to enact or implement an identified remedy,
8.6 including a remedy subject to paragraph (a), the political subdivision may nonetheless enact
8.7 and implement the remedy upon approval by the district court. To seek approval, the political
8.8 subdivision must file a petition in district court that identifies with specificity the law or
8.9 other authority that prevents the remedy from being enacted or implemented. The venue
8.10 for a petition under this paragraph is in the district court of the county where the challenged
8.11 act or practice occurred, or in the District Court of Ramsey County. The district court may
8.12 authorize the political subdivision to implement or enact the identified remedy
8.13 notwithstanding the applicable law or authority to the contrary, if the court determines that
8.14 the prospective plaintiff is likely to succeed in a lawsuit on the merits of the alleged violation;
8.15 that the proposed remedy would address the alleged violation; and that the proposed remedy
8.16 is narrowly tailored to that purpose.

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

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

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

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

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

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

8.28 Subd. 5. **Cost sharing.** (a) If a political subdivision enacts or implements a remedy in
8.29 response to a notice letter submitted under subdivision 1, the political subdivision and the
8.30 party who sent the notice letter must mutually agree on a reimbursement amount to be paid
8.31 by the political subdivision to that party. The reimbursement amount must reflect the
8.32 reasonable costs associated with producing and sending the letter and any accompanying
8.33 evidence, subject to the limitations of this subdivision.

9.1 (b) To be eligible for a reimbursement, the party who submitted the notice letter must
9.2 submit a request to the political subdivision in writing. The request must:

9.3 (1) be received by the political subdivision within 30 days of its enactment or adoption
9.4 of the remedy; and

9.5 (2) be substantiated with financial documentation including, as applicable, detailed
9.6 invoices for expert analysis and reasonable attorney fees.

9.7 (c) The cumulative amount of reimbursements to all parties must not exceed \$40,000.
9.8 Reimbursement amounts for attorney fees are limited to amounts calculated using a lodestar
9.9 methodology.

9.10 (d) To the extent a party requests reimbursement for a purported notice letter that fails
9.11 to comply with the requirements in subdivision 1, or the request fails to comply with this
9.12 subdivision, the political subdivision may dismiss the request. If the request is dismissed,
9.13 the political subdivision must notify the party in writing of the reasons for the dismissal.

9.14 **Sec. 7. [200.57] RIGHT OF ACTION; VENUE; PRELIMINARY RELIEF.**

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

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

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

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

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

10.1 Sec. 8. **[200.58] REMEDIES.**

10.2 Notwithstanding any other law, if the court finds a violation of any provision of section
10.3 200.54, the court has authority to order remedies that are tailored to best mitigate the
10.4 violation. Any remedy ordered by the court must be constructed in favor of the factors listed
10.5 in section 200.53, subdivision 1. The court may consider, among others, any remedy that
10.6 has been ordered by a federal court or the court of another state jurisdiction, including
10.7 through a court-approved consent decree or settlement adopted in the context of similar
10.8 facts or to remedy a similar violation. The court shall consider remedies proposed by any
10.9 parties and may consider remedies proposed by interested nonparties. The court may not
10.10 provide deference or priority to a proposed remedy offered by a defendant or political
10.11 subdivision simply because the remedy has been proposed by the defendant or political
10.12 subdivision.

10.13 Sec. 9. **[200.59] FEES AND COSTS.**

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

10.21 Sec. 10. Minnesota Statutes 2022, section 412.02, subdivision 6, is amended to read:

10.22 **Subd. 6. Council increased or reduced.** The council may by ordinance adopted at least
10.23 60 days before the next regular city election submit to the voters of the city the question of
10.24 whether the city council should be increased or reduced to seven or five members. The
10.25 ordinance shall include a schedule of elections and terms and ward boundary changes, if
10.26 applicable, to accomplish the change. The proposal shall be voted on at the next city general
10.27 election and, if approved by a majority of those voting on the question, go into effect in
10.28 accordance with the schedule and ward boundaries, if applicable.

10.29 Sec. 11. Minnesota Statutes 2022, section 412.02, is amended by adding a subdivision to
10.30 read:

10.31 **Subd. 7. Wards.** A city may by ordinance provide for the election of city council
10.32 members by ward. The ordinance must designate the boundaries of the wards. The ordinance

11.1 must also state whether the city will otherwise operate as a statutory standard plan city or
11.2 statutory optional plan city, subject to voter approval as may be required under this chapter.

11.3 Sec. 12. LEGISLATIVE FINDINGS.

11.4 (a) The legislature finds that election practices, procedures, and methods that deny or
11.5 impair the equal opportunity of racial, color, or language minority groups and Tribal
11.6 communities to participate in the political process or elect candidates of their choice are
11.7 inconsistent with the fundamental right to vote, and the rights and privileges guaranteed by
11.8 the Minnesota Constitution as well as protections found in the 14th and 15th Amendments
11.9 to the United States Constitution.

11.10 (b) The legislature finds that there is a history in Minnesota, as in the United States
11.11 overall, of discrimination based on race, color, language-minority status, and Tribal
11.12 membership, including in access to the political process. For example, that:

11.13 (1) the state constitution of 1857 limited the right to vote to white residents and Native
11.14 American voters "who have adopted the customs and habits of civilization," and invoked a
11.15 cultural purity test for Native American residents, requiring only Native American applicants
11.16 to appear before a district court to determine whether each individual was "capable of
11.17 enjoying the rights of citizenship within the State";

11.18 (2) Minnesota voters twice rejected expanding suffrage to Black residents, voting down
11.19 proposed constitutional amendments to do so in 1865 and again in 1867, and only granted
11.20 nonwhite men the right to vote in 1868, three years after the end of the Civil War;

11.21 (3) civil rights plaintiffs and the federal government have filed litigation and taken other
11.22 action against political subdivisions in Minnesota under the Federal Voting Rights Act of
11.23 1965, as amended, alleging violations of section 2 of that act;

11.24 (4) individuals who are members of racial, color, or language minority groups have
11.25 faced voter intimidation and disinformation in Minnesota, and that, for example, voters of
11.26 color in 2020 in the cities of Minneapolis and St. Paul were targeted by a plan to hire and
11.27 deploy armed paramilitia to polling locations, an attempt that was enjoined by a federal
11.28 district court judge; and

11.29 (5) the history of discrimination in Minnesota further includes but is not limited to
11.30 discrimination in housing, including the use of redlining, racially restrictive covenants on
11.31 housing deeds, and predatory lending practices; education; employment; health; criminal
11.32 justice; public works; transportation; land use; environmental protection; and other areas
11.33 of life.

12.1 (c) As a result of this history and persistent discrimination and socioeconomic inequities
12.2 that bear on the right to vote, members of racial, color, or language minority groups and
12.3 Tribal communities continue to face unequal barriers in exercising the franchise and
12.4 participating effectively in the political process.

12.5 (d) In light of these conditions, it is the legislature's intent by this act to encourage
12.6 participation in the elective franchise by all eligible voters, and to provide voters in this
12.7 state with a means to secure their constitutional right to vote free from discrimination.

12.8 Sec. 13. **EFFECTIVE DATE.**

12.9 This act is effective the day following final enactment.