

SF3994 - 0 - Minnesota Voting Rights Act

Chief Author: **Bobby Joe Champion**
 Committee: **Elections**
 Date Completed: **3/5/2024 4:28:04 PM**
 Lead Agency: **Secretary of State**
 Other Agencies:
 Administrative Hearings Attorney General
 Supreme Court

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.
 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Attorney General	-	-	-	-	-
General Fund	-	-	-	-	-
Secretary of State					
General Fund	-	-	144	21	21
State Total					
Administrative Hearings	-	-	-	-	-
General Fund	-	-	144	21	21
Total	-	-	144	21	21
Biennial Total			144		42

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Attorney General	-	-	-	-	-
General Fund	-	-	-	-	-
Secretary of State					
General Fund	-	-	1.45	.1	.1
Total	-	-	1.45	.1	.1

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Alyssa Holterman Rosas **Date:** 3/5/2024 4:28:04 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	-	-	-	-
Attorney General	-	-	-	-	-	-
General Fund	-	-	-	-	-	-
Secretary of State						
General Fund	-	-	144	21	21	
Total	-	-	144	21	21	
Biennial Total			144		42	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	12	-	-	-
Attorney General	-	-	-	-	-	-
General Fund						
Expenditures	-	10	10	10	10	10
Absorbed Costs	-	(10)	(10)	(10)	(10)	(10)
Secretary of State						
General Fund	-	-	144	21	21	
Total	-	-	156	21	21	
Biennial Total			156		42	
2 - Revenues, Transfers In*						
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	12	-	-	-
Attorney General	-	-	-	-	-	-
General Fund	-	-	-	-	-	-
Secretary of State						
General Fund	-	-	-	-	-	-
Total	-	-	12	-	-	
Biennial Total			12		-	

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Chief Author: **Bobby Joe Champion**
 Committee: **Elections**
 Date Completed: **3/5/2024 4:28:04 PM**
 Agency: **Secretary of State**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.
 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Dollars in Thousands					
General Fund	-	-	144	21	21
Total	-	-	144	21	21
Biennial Total			144		42

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	1.45	.1	.1
Total	-	-	1.45	.1	.1

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Susan Nelson **Date:** 3/1/2024 4:14:58 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026
					FY2027
General Fund		-	-	144	21
Total		-	-	144	21
Biennial Total				144	42
1 - Expenditures, Absorbed Costs*, Transfers Out*					
General Fund		-	-	144	21
Total		-	-	144	21
Biennial Total				144	42
2 - Revenues, Transfers In*					
General Fund		-	-	-	-
Total		-	-	-	-
Biennial Total				-	-

Bill Description

This bill establishes the Minnesota Voting Rights Act, which bear some similarities to the federal Voting Rights Act of 1965 (FVRA) but is different in several ways.

- Sections 1 and 2 set out the title of the act and the relevant legislative findings.
- Sections 3 and 4 define the relevant terms of the act and, unlike the FVRA, require that any state or local law related to the right to vote be construed liberally in favor of the right to vote.
- Sections 5, 6, and 8 permit the attorney general, any aggrieved person, and certain entities to bring suit against any political subdivision or government entity that adopts any law, rule, ordinance, method of election, or other practice related to election administration if such action would (1) cause a disparity between members of a protected class and other members of the electorate regarding voter participation, access to voting opportunities, or the opportunity to participate in the political process; (2) deny, or impair protected class members' ability to vote or participate in the political process; or (3) inhibit or impair the equal opportunity or ability of protected class members to nominate or elect candidates of their choice. While the claims available under this act are similar to those under the FVRA, claims under this act are easier to prove than under the FVRA. Furthermore, it is much easier to obtain preliminary relief under this act compared to the FVRA. While the FVRA allows a plaintiff to obtain preliminary relief only in those rare cases where there is a substantial likelihood the plaintiff is likely to succeed and there is proof a person will suffer irreparable harm, a plaintiff can obtain preliminary relief under this act merely by showing they are more likely than not to succeed and that there is a remedy that can be implemented.
- Section 7 contains a presuit notice program that is not available under the FVRA. This section requires that a plaintiff, subject to certain exceptions, give notice to the political subdivision or government entity of their claim to work that entity to resolve the matter before filing suit under this act. Entities that lack authority to implement an appropriate remedy in response to the notice may submit a proposed remedy to the secretary of state for review. The secretary of state may approve and order the remedy be implemented if the secretary finds that the subdivision or entity may have violated this act; the proposed remedy would address the violation; and implementation of the remedy is feasible. The secretary of state may enact rules to implement this section. Plaintiffs are entitled to reasonable costs if the subdivision or entity implements a remedy after receiving notice.
- Sections 9 and 10 gives courts the authority to order any remedy that is best tailored to mitigate any violation of this act and requires courts to award reasonable fees and costs to any plaintiff who prevails on at least some of their action and to award reasonable fees and costs to any defendant if the action was frivolous. The fees and costs standard is easier for plaintiffs to satisfy under this act compared to the FVRA, which typically requires the plaintiff to show they prevailed on a significant issue and gives courts substantial discretion in assessing whether costs and fees are appropriate.

Assumptions

The Office of the Secretary of State is tasked, in section 7, subdivision 3, with both a rulemaking authority as well as the authority to make findings with respect to proposed remedies suggested in response to the pre-suit notice contemplated by section 7.

The rulemaking is highly likely to be what is described in the current State Rulemaking Manual as a “medium” rule, of up to 49 pages. Typical costs for a medium rulemaking are set forth at <https://www.health.state.mn.us/data/rules/manual/chapters.html> in form cost-inf.

As to the findings and approval process, the secretary of state assumes that this process will be undertaken by internal staff, and that, even though rules have not yet been contemplated, that those rules will include due process protections and an opportunity to be heard, all of which will need to be implemented by staff of the Office of the Secretary of State.

The secretary also assumes that there will be few occasions upon which this process would be implemented, as there have been few cases in Minnesota involving actions under the parallel FVRA in recent memory.

The bill also provides for the payment of fees to prevailing parties, which may encourage more challenges under this bill than have been brought in Minnesota under the FVRA. For purposes of this note, we assume that there would be one challenge per year. Such a challenge would require research and analysis by the OSS legal staff as well as the potential holding of hearings, and the evaluation of written materials submitted by the parties to the challenge. There would also be work required by both elections and legal staff to prepare materials and provide training to local jurisdictions regarding the requirements of this bill. There will also be some staff time spent periodically in consultation with local jurisdictions as they move to comply and implement the bill.

It is possible that an action could be brought under this act against the state in a decennial redistricting, but that event is both too far away in time and too speculative, to estimate costs to the state of such an action. Also, the state already routinely pays attorney fees in redistricting by the courts, as no legislative redistricting has been fully successful in nearly 60 years.

Expenditure and/or Revenue Formula

The cost of a medium rule, as set forth in the most recent Minnesota Rulemaking Manual as cited above is \$133,576. However, the OSS does not incur the Attorney General fees listed in the rulemaking estimate. Further, the Administrative Law Judge rate has been updated to \$12,250. As a result, the total cost for a medium rulemaking for the OSS is \$127,994.

\$127,994 (FY 25)

Findings of Violation and Approval of Remedy

100 hours of OSS legal staff time per challenge at an average rate of salary and benefits of \$77.40/hour

$100 \times \$77.40 = \$7,740.00$

\$7,740 (FY25)

Initial preparation and Communication of Training and Materials with Local Units

60 hours of Elections staff time at \$48.00/hour and 40 hours of legal staff time at \$77.40/hour

$(60 \text{ hours} \times \$48/\text{hour}) + (40 \text{ hours} \times \$77.40/\text{hour}) = \$5,976.00 \text{ (FY25)}$

\$5,976.00 (FY25)

Consultation with local jurisdictions

30 hours of elections staff time at \$40.00/hour, and 15 hours of legal staff time @ \$77.00/hour

$(30 \times \$48) + (15 \times \$77.40) = \$2601.00$ (FY25)

\$2601.00 (FY25)

Total

\$144,311 (FY25)

Long-Term Fiscal Considerations

While the rulemaking costs will not recur, and changes to these rules can be part of the regular periodic rulemaking undertaken by OSS, the expenses for findings of violations and approval of remedies will recur, most likely, once every year into the future, for an average of \$15,480 per biennium. In addition, the consultation costs will recur each year, for an additional cost of \$5,202 per biennium.

Local Fiscal Impact

Local units of government bear the greatest fiscal burden of this bill, as the legal actions are generally brought against them, and because of their own legal and administrative costs as well as the fees that can be awarded pursuant to section 7, subd. 5 and section 10. This includes fees where plaintiffs partially prevail as well as the costs of preparing the pre-suit notice contemplated by section 7, which are due if there is action taken by the jurisdiction or a remedy approved by the secretary of state, in response to the pre-suit notice. However, it is impossible to know in advance the complexity of the actions that might be the subject of a pre-suit notice or that might ultimately be brought in the judicial system, or the rates of the attorneys involved, and their litigation costs. However, it is likely that these costs will be substantial. Again, the fact that few cases have been brought under the FVRA may indicate that such actions will be infrequent against any single jurisdiction.

References/Sources

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Agency Fiscal Note Coordinator Signature: Adam Hansen

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SF3994 - 0 - Minnesota Voting Rights Act

Chief Author: **Bobby Joe Champion**
 Committee: **Elections**
 Date Completed: **3/5/2024 4:28:04 PM**
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.
 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Dollars in Thousands					
Administrative Hearings	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Chloe Burns **Date:** 3/4/2024 3:40:46 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	-		12	-	-
Total	-	-		12	-	-
Biennial Total				12		-
2 - Revenues, Transfers In*						
Administrative Hearings	-	-		12	-	-
Total	-	-		12	-	-
Biennial Total				12		-

Bill Description

HF3527/SF3994 establishes the Minnesota Voting Rights Act which in part prohibits government entities and political subdivisions from engaging in voter suppression and vote dilution and establishes a cause of action for allegations of voter suppression and vote dilution. The bill authorizes the Office of the Secretary of State (OSS) to conduct rulemaking pursuant to Section 7, Subd. 3, Secretary of State Authorized to Approve Remedies.

Assumptions

The Office of Administrative Hearings (OAH) in consultation with Minnesota Management and Budget (MMB) assesses agencies the cost of services rendered to them. All agencies shall include in their budgets provisions for such assessments.

OAH has used OSS's assumption that a medium rulemaking will be required to meet the requirements of Sec. 7, Subd. 3. Based on past practices, OAH assumes that a medium rulemaking under chapter 14 will require an estimated 50 hours of administrative law judge (ALJ) time for activity related to rulemaking procedures.

OAH currently bills ALJ time for rulemaking at the MMB-approved billable rate of \$245 per hour (see Minn. Stat. § 16A.126, subd. 1 (2022)).

Expenditure and/or Revenue Formula

Estimated 50 hours of ALJ time for rulemaking activities in FY25 related to implementing the requirements of Sec. 7, Subd. 3: 50 hours x \$245/hr = \$12,250 charged to OSS in FY2025 pursuant to the requirements of Minn. Stat. § 14.53.

Long-Term Fiscal Considerations

Costs associated with the rulemaking activities are a one-time occurrence.

Local Fiscal Impact**References/Sources**

Agency Contact: Denise Collins

Agency Fiscal Note Coordinator Signature: Denise Collins

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Date: 3/4/2024 1:51:57 PM

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SF3994 - 0 - Minnesota Voting Rights Act

Chief Author: **Bobby Joe Champion**
 Committee: **Elections**
 Date Completed: **3/5/2024 4:28:04 PM**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Dollars in Thousands					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Alyssa Holterman Rosas **Date:** 3/5/2024 4:27:49 PM
Phone: 651-284-6439 **Email:** alyssa.holterman.rosas@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures		-	10	10	10	10
Absorbed Costs		-	(10)	(10)	(10)	(10)
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
General Fund						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

The bill amends Minnesota law relating to elections and provides protections similar to those under the federal Voting Rights Act. The bill prohibits government entities from engaging in voter suppression and vote dilution, and creates new causes of action that individuals belonging to protected classes can bring against government entities and officials responsible for administering elections for interfering with voting rights.

Sections 7-9 create a cause of action that either the Attorney General or affected individuals can bring against political subdivisions and other election officials alleging voter suppression or vote dilution. Section 8 specifically contemplates such an action being brought to challenge a plan for congressional or legislative district boundaries.

Section 10 permits a plaintiff that prevails in a suit under the statute to recover its litigation costs in bringing the suit. It further provides that a defendant cannot recover costs unless the claim is frivolous.

Assumptions

The bill will potentially require expenditures by the Attorney General's Office in two ways: First, the office provides legal representation to the Secretary of State. If the Secretary is named as a defendant in a lawsuit under the new statute, the office would represent the Secretary. Second, the office would expend resources to investigate and, if appropriate, bring claims on the Attorney General's behalf alleging voter suppression or vote dilution by county and local governments.

While the nature of litigation is difficult to predict, we assume that the number of claims in either category would be low: historically, lawsuits against Minnesota government entities under the similar federal Voting Rights Act have been rare. Similarly, while the Secretary has historically been named in redistricting litigation to establish decennial district boundaries, the Secretary has typically been a nominal party and the prospect of that type of litigation does not change under the bill.

The level of investigation and litigation that the office conducts under the new statute will be a discretionary decision for the Attorney General and will depend on actions by future county and local governments that affect voting rights. Because

Minnesota county and local governments have not recently been sued under the federal Voting Rights Act, it does not seem likely that the Attorney General will bring substantial litigation under the new statute in the near future.

Absent a major and unforeseen lawsuit, we estimate that legal work related to analyzing potential claims (both on the plaintiff and the defense side) will require approximately 50 hours of attorney time per year. Within the redistricting litigation that has reliably occurred during the early years of each decade, we expect that claims under the statute will add an additional 10 hours of attorney work in each of those years to the time already being expended on redistricting litigation. This raises the overall hours estimate to 520 hours per decade, or 52 hours per year.

Section 10 of the bill permits the office to recoup litigation costs (especially as a plaintiff) in actions under the statute in which the state prevails. It does not seem likely, however, that such recoveries will constitute a predictable or reliable revenue stream.

For these reasons, the Attorney General's Office estimates that it will expend 52 hours of attorney time and 10 hours of legal assistant time per fiscal year, and that the time can be absorbed within existing staffing.

No costs to partner agency: the Secretary of State is a constitutional officer and is not billed.

Expenditure and/or Revenue Formula

	Hourly Billing Rate	Hours	Total Cost to AGO [hours x billing rate]
Attorney, Commerce, Elections, and Trades Division	\$163	52	\$8,476
Legal assistant	\$103	10	\$1,030
Total			\$9,506

Long-Term Fiscal Considerations

n/a

Local Fiscal Impact

n/a

References/Sources

n/a

Agency Contact: Laura Sayles

Agency Fiscal Note Coordinator Signature: Laura Capuana

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Date: 3/4/2024 8:54:00 AM

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SF3994 - 0 - Minnesota Voting Rights Act

Chief Author: **Bobby Joe Champion**
 Committee: **Elections**
 Date Completed: **3/5/2024 4:28:04 PM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.
 Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-
Biennial Total			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note has been reviewed and meets the LBO requirements for compliance with the fiscal note Uniform Standards and Procedures. This proposed legislation has a fiscal impact; however, an accurate fiscal impact cannot be determined due to a lack of data.

LBO Signature: Karen McKey **Date:** 3/4/2024 4:11:59 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

The bill adds new statutes at sections 200.50-200.59 entitled the Voting Rights Act, which prohibits voter suppression and vote dilution and gives the attorney general, any individual aggrieved by a violation of this act, any entity whose membership includes individuals aggrieved by a violation of this act, any entity whose mission would be frustrated by a violation of this act, or any entity that would expend resources in order to fulfill its mission as a result of a violation of this act, may file an action in the district court for the county where the challenged act or practice has occurred, or in Ramsey County District Court.

Assumptions

It is assumed that the provisions of this bill will increase case filings. Any potential increase cannot be calculated with any certainty.

Expenditure and/or Revenue Formula

Although the potential impact of the bill is unknown, the bill is not anticipated to have a significant fiscal impact on the judicial branch.

Long-Term Fiscal Considerations**Local Fiscal Impact****References/Sources****Agency Contact:**

Agency Fiscal Note Coordinator Signature: Callie Lehman

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