

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 4) TO AMEND THE VOTING RIGHTS ACT OF 1965 TO REVISE THE CRITERIA FOR DETERMINING WHICH STATES AND POLITICAL SUBDIVISIONS ARE SUBJECT TO SECTION 4 OF THE ACT, AND FOR OTHER PURPOSES; PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENT TO THE BILL (H.R. 3684) TO AUTHORIZE FUNDS FOR FEDERAL-AID HIGHWAYS, HIGHWAY SAFETY PROGRAMS, AND TRANSIT PROGRAMS, AND FOR OTHER PURPOSES; AND PROVIDING FOR THE ADOPTION OF THE CONCURRENT RESOLUTION (S. CON. RES. 14) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2022 AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2023 THROUGH 2031; AND FOR OTHER PURPOSES

AUGUST 24 (legislative day of AUGUST 23), 2021.—Referred to the House Calendar and ordered to be printed

Mr. NEGUSE (CO), from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 594]

The Committee on Rules, having had under consideration House Resolution 594, by a record vote of 8 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4, the John R. Lewis Voting Rights Advancement Act of 2021, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary or their respective designees. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment printed in this report shall be considered as adopted and the bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution provides one motion to recommit. The resolution provides that the chair of the Committee on the Judiciary may insert in the Congressional Record such material as he may deem explanatory of H.R. 4 not later than August 24, 2021. The resolution provides for consideration of the Senate amendment to H.R. 3684, the Infrastructure Investment and Jobs Act. The resolution makes in order a motion offered by

the chair of the Committee on Transportation and Infrastructure or his designee that the House concur in the Senate amendment to H.R. 3684. The resolution waives all points of order against consideration of the Senate amendment and the motion. The resolution provides that the Senate amendment and the motion shall be considered as read. The resolution provides one hour of debate on the motion equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure or their designees. The resolution provides that Senate Concurrent Resolution 14 is hereby adopted. The resolution provides that rule XXVIII shall not apply with respect to the adoption by the House of a concurrent resolution on the budget for fiscal year 2022.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 4 includes a waiver of clause 12 of rule XXI, which prohibits consideration of a bill pursuant to a special order of business reported by the Committee on Rules that has not been reported by a committee.

Although the rule waives all points of order against provisions in H.R. 4, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of the motion to concur in the Senate amendment to H.R. 3684 includes waivers of the following:

Clause 4 of rule XXI, which prohibits reporting a bill carrying an appropriation from a committee not having jurisdiction to report an appropriation.

Clause 6 of rule XXII, which provides that a Senate amendment carrying a tax or tariff measure in violation of clause 5(a) of rule XXI may not be agreed to.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 141

Motion by Mr. Cole to report an open rule for H.R. 4 and the Senate Amendment to H.R. 3684. Defeated: 4–7

Majority Members	Vote	Minority Members	Vote
Mrs. Torres		Mr. Cole	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mr. Reschenthaler	Yea
Ms. Scanlon		Mrs. Fischbach	Yea
Mr. Morelle	Nay		
Mr. DeSaulnier	Nay		
Ms. Ross	Nay		
Mr. Neguse	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 142

Motion by Mr. Burgess to strike from the rule the section that deems S. Con. Res. 14 and provide for consideration of S. Con. Res.

14 under a closed rule with 2 hours of debate for the Committee on the Budget and 30 minutes of debate of the Joint Economic Committee with time equally controlled by both the majority and minority. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mrs. Torres	Mr. Cole	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mr. Reschenthaler	Yea
Ms. Scanlon	Nay	Mrs. Fischbach	Yea
Mr. Morelle	Nay		
Mr. DeSaulnier	Nay		
Ms. Ross	Nay		
Mr. Neguse	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 143

Motion by Rep. Neguse to report the rule. Adopted: 8–4

Majority Members	Vote	Minority Members	Vote
Mrs. Torres	Mr. Cole	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay
Mr. Raskin	Yea	Mr. Reschenthaler	Nay
Ms. Scanlon	Yea	Mrs. Fischbach	Nay
Mr. Morelle	Yea		
Mr. DeSaulnier	Yea		
Ms. Ross	Yea		
Mr. Neguse	Yea		
Mr. McGovern, Chairman	Yea		

SUMMARY OF THE AMENDMENT TO H.R. 4 CONSIDERED AS ADOPTED

1. Nadler (NY): Makes a number of clarifying edits to sections 2, 3, 5, and 10 of the bill as introduced and adds a new provision that establishes an administrative bail-out procedure for political subdivisions to remove themselves quickly from preclearance coverage in appropriate circumstances.

TEXT OF AMENDMENT TO H.R. 4 CONSIDERED AS ADOPTED

Page 3, line 6, strike “or (e)” and insert “or (f)”.

Page 3, line 15, insert after “To prevail” the following: “in demonstrating that a representational, districting, or apportionment scheme results in vote dilution”.

Page 3, line 22, strike “generally politically aligned” and insert “politically cohesive”.

Page 3, line 24, insert after “protected class” the following: “usually”.

Page 4, line 9, strike “The extent the history” and inserting “The extent of any history”.

Page 4, line 11, insert before the period at the end the following: “that affected the right of members of the protected class to register, to vote, or otherwise to participate in the political process”.

Page 4, beginning on line 20, strike “prohibitions against bullet-voting, and majority vote requirements” and insert “majority vote requirements, anti-single shot provisions, or other qualifications, prerequisites, standards, practices, or procedures that may enhance the opportunity for discrimination against the members of the protected class”.

Page 5, beginning on line 3, strike “in such areas as education, employment, and health” and insert “, both public or private, in such areas as education, employment, health, housing, and transportation”.

Page 5, line 20, insert after “the particularized needs of the members of the protected class” the following: “, including a lack of concern for or responsiveness to the requests and proposals of the members of the protected class, except that compliance with a court order may not be considered evidence of responsiveness on the part of the jurisdiction”.

Page 5, line 24, insert after “practice or procedure is tenuous.” the following:

“In making this determination, a court shall consider whether the qualification, prerequisite, standard, practice, or procedure in question was designed to advance and materially advances a valid and substantiated State interest.”.

Page 6, strike line 8 and all that follows through line 15, and insert the following:

“(c)(1) A violation of subsection (a) resulting in vote denial or abridgment is established if the challenged qualification, prerequisite, standard, practice, or procedure—

“(A) results or will result in members of a protected class facing greater costs or burdens in participating in the political process than other voters; and”.

Page 6, line 16 , strike “difficulty is” and insert “costs or burdens are”.

Page 6, insert after line 20 the following:

“In determining the existence of a burden for purposes of subparagraph (A), the absolute number or the percent of voters affected or the presence of voters who are not members of a protected class in the affected area shall not be dispositive, and the affected area may be smaller than the jurisdiction to which the qualification, prerequisite, standard, practice, or procedure applies.”.

Page 6, line 23, strike “burden” and insert “result”.

Page 6, line 24, strike “a pre-existing burden” and insert “pre-existing burdens or costs”.

Page 7, line 5, insert “extent of any” before “history”.

Page 7, line 6, insert before the period at the end the following: “that affected the right of members of the protected class to register, to vote, or otherwise to participate in the political process”.

Page 7, line 15, strike “may”.

Page 7, beginning on line 19, strike “in areas such as education, employment, and health,” and insert “, both public or private, in areas such as education, employment, health, housing, and transportation,”.

Page 8, line 8, insert “, including a lack of concern for or responsiveness to the requests and proposals of the group, except that compliance with a court order may not be considered evidence of responsiveness on the part of the jurisdiction” before the period at the end.

Page 8, line 12, insert “In making a determination under this clause, a court shall consider whether the qualification, prerequisite, standard, practice, or procedure in question was designed

to advance and materially advances a valid and substantiated State interest.” after the period at the end.

Page 9, strike lines 1 through 4 and redesignate succeeding subparagraphs accordingly.

Page 9, line 21, strike “ A prophylactic” and all that follows through line 24, and insert the following: “Unsubstantiated defenses that the qualification, prerequisite, standard, practice, or procedure is necessary to address criminal activity.”.

Page 10, strike lines 1 through 2.

Page 11, line 6, insert after “subsection (b) or (c).” the following:

“(e) For purposes of this section, the term ‘affected area’ means any geographic area, in which members of a protected class are affected by a qualification, prerequisite, standard, practice, or procedure allegedly in violation of this section, within a State (including any Indian lands).”.

Page 11, strike line 7 and all that follows through line 20, and insert the following:

SEC. 3. RETROGRESSION.

Section 2 of the Voting Rights Act of 1965 (52 U.S.C. 10301 et seq.), as amended by section 2 of this Act, is further amended by adding at the end the following:

“(f) A violation of subsection (a) is established when a State or political subdivision enacts or seeks to administer any qualification or prerequisite to voting or standard, practice, or procedure with respect to voting in any election that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to participate in the electoral process or elect their preferred candidates of choice. This subsection applies to any action taken on or after January 1, 2021, by a State or political subdivision to enact or seek to administer any such qualification or prerequisite to voting or standard, practice or procedure.

“(g) Notwithstanding the provisions of subsection (f), final decisions of the United States District Court of the District of Columbia on applications or petitions by States or political subdivisions for preclearance under section 5 of any changes in voting prerequisites, standards, practices, or procedures, supersede the provisions of subsection (f).”.

Page 15, line 24, insert “serious” before “question”.

Page 18, line 17, insert after “State” the following: “or subdivision”.

Page 22, insert after line 13 the following:

(c) ADMINISTRATIVE BAILOUT.—

(1) IN GENERAL.—Section 4 of the Voting Rights Act of 1965 (52 U.S.C. 10303) is amended by adding at the end the following:

“(g) ADMINISTRATIVE BAILOUT.—

“(1) DETERMINATION OF ELIGIBILITY.—

“(A) IN GENERAL.—After making a determination under subsection (b)(1)(A) that the provisions of subsection (a) apply with respect to a State and all political subdivisions within the State, the Attorney General shall determine if any political subdivision of the State is eligible for an exemption under this subsection, and shall publish, in the

Federal Register, a list of all such political subdivisions. Any political subdivision included on such list is not subject to any requirement under section 5 until the date on which any application under this section has been finally disposed of or no such application may be made.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to provide—

“(i) that the determinations made pursuant to the creation of the list shall have any binding or preclusive effect; or

“(ii) that inclusion on the list—

“(I) constitutes a final determination by the Attorney General that the listee is eligible for an exemption pursuant to this subsection or that, in the case of the listee, the provisions of subparagraphs (A) through (F) of subsection (a)(1) are satisfied; or

“(II) entitles the listee to any exemption pursuant to this subsection.

“(2) ELIGIBILITY.—A political subdivision that submits an application under paragraph (3) shall be eligible for an exemption under this subsection only if, during the ten years preceding the filing of the application, and during the pendency of such application—

“(A) no test or device referred to in subsection (a)(1) has been used within such political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees of subsection (f)(2);

“(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such political subdivision or that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

“(C) no Federal examiners or observers under this Act have been assigned to such political subdivision;

“(D) such political subdivision and all governmental units within its territory have complied with section 5 of this Act, including compliance with the requirement that no change covered by section 5 has been enforced without preclearance under section 5, and have repealed all changes covered by section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

“(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 5, and no such submissions or declaratory judgment actions are pending; and

“(F) such political subdivision and all governmental units within its territory—

“(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

“(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under this Act; and

“(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

“(3) APPLICATION PERIOD.—Not later than 90 days after the publication of the list under paragraph (1), a political subdivision included on such list may submit an application, containing such information as the Attorney General may require, for an exemption under this subsection. The Attorney General shall provide notice in the Federal Register of such application.

“(4) COMMENT PERIOD.—During the 90-day period beginning on the date that notice is published under paragraph (3), the Attorney General shall give interested persons an opportunity to submit objections to the issuance of an exemption under this subsection to a political subdivision on the basis that the political subdivision is not eligible under paragraph (2) to the Attorney General. During the 1 year period beginning on the effective date of this subsection, such 90-day period shall be extended by an additional 30 days. The Attorney General shall notify the political subdivision of each objection submitted and afford the political subdivision an opportunity to respond.

“(5) DETERMINATION AS TO OBJECTIONS.—In the case of a political subdivision with respect to which an objection has been submitted under paragraph (4), the following shall apply:

“(A) CONSIDERATION OF OBJECTIONS.—The Attorney General shall consider and respond to each such objection (and any response of the political subdivision thereto) during the 60 day period beginning on the day after the comment period under paragraph (4) concludes.

“(B) JUSTIFIED OBJECTIONS.—If the Attorney General determines that any such objection is justified, the Attorney General shall publish notice in the Federal Register denying the application for an exemption under this subsection.

“(C) UNJUSTIFIED OBJECTIONS.—If the Attorney General determines that no objection submitted is justified, each person that submitted such an objection may, not later than 90 days after the end of the period established under subparagraph (A), file, in the District Court of the District

of Columbia, an action for judicial review of such determination in accordance with chapter 7 of title 5, United States Code.

“(6) EXEMPTION.—The Attorney General may issue an exemption, by publication in the Federal Register, from the application of the provisions of subsection (a) with respect to a political subdivision that—

“(A) is eligible under paragraph (2); and

“(B) with respect to which no objection under was submitted under paragraph (4) or determined to be justified under paragraph (5).

“(7) JUDICIAL REVIEW.—Except as otherwise explicitly provided in this subsection, no determination under this subsection shall be subject to review by any court, and all determinations under this subsection are committed to the discretion of the Attorney General.

“(8) SAVINGS CLAUSE.—If a political subdivision was not subject to the application of the provisions of subsection (a) by reason of a declaratory judgment entered prior to the effective date of this subsection, and such political subdivision has not violated any eligibility requirement set forth in paragraph (2) at any time thereafter, then that political subdivision shall not be subject to the requirements of subsection (a).”.

(2) CONFORMING AMENDMENT.—

(A) IN GENERAL.—Section 4(a)(1) of the Voting Rights Act of 1965 (52 U.S.C. 10303(a)(1)), as amended by this Act, is further amended by inserting after “the United States District Court for the District of Columbia issues a declaratory judgment under this section” the following: “, or, in the case of a political subdivision, the Attorney General issues an exemption under subsection (g)”.

(B) EXPIRATION OF TIME LIMIT.—On the date that is 1 year after the effective date of this subsection, section 4(g)(3) of the Voting Rights Act of 1965 (52 U.S.C. 10303(g)(3)) is amended by striking “During the 1 year period beginning on the effective date of this subsection, such 90-day period shall be extended by an additional 30 days.”. For purposes of any periods under such section commenced as of such date, the 90-day period shall remain extended by an additional 30 days.

Page 47, line 13, insert “serious” before “question”.