

STATE OF NEW YORK

4185

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. FERNANDEZ, CRUZ, GOTTFRIED, NIOU -- read once and referred to the Committee on Election Law

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to sections 1, 5 and 7 of article 2 of the constitution, in relation to the right to vote for a non-citizen lawfully admitted for permanent residence in the United States; and proposing an amendment to sections 4, 5 and 5-a of article 3 of the constitution and section 6 of article 5 of the constitution, in relation to replacing the term alien with non-citizen

Section 1. Resolved (if the Senate concur), That section 1 of article 2 of the constitution be amended to read as follows:

Section 1. Every citizen and, in the case of non-federal elections, every non-citizen lawfully admitted for permanent residence in the United States, shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen or such permanent resident is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

§ 2. Resolved (if the Senate concur), That section 5 of article 2 of the constitution be amended to read as follows:

§ 5. Laws shall be made for ascertaining, by proper proofs, the citizens or permanent residents who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law.

§ 3. Resolved (if the Senate concur), That section 7 of article 2 of the constitution be amended to read as follows:

§ 7. All elections by the citizens or permanent residents, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD89062-01-1

1 provided that secrecy in voting be preserved. The legislature shall
2 provide for identification of voters through their signatures in all
3 cases where personal registration is required and shall also provide for
4 the signatures, at the time of voting, of all persons voting in person
5 by ballot or voting machine, whether or not they have registered in
6 person, save only in cases of illiteracy or physical disability.

7 § 4. Resolved (if the Senate concur), That sections 4, 5 and 5-a of
8 article 3 of the constitution be amended to read as follows:

9 § 4. (a) Except as herein otherwise provided, the federal census taken
10 in the year nineteen hundred thirty and each federal census taken decen-
11 nially thereafter shall be controlling as to the number of inhabitants
12 in the state or any part thereof for the purposes of the apportionment
13 of members of assembly and readjustment or alteration of senate and
14 assembly districts next occurring, in so far as such census and the
15 tabulation thereof purport to give the information necessary therefor.
16 The legislature, by law, shall provide for the making and tabulation by
17 state authorities of an enumeration of the inhabitants of the entire
18 state to be used for such purposes, instead of a federal census, if the
19 taking of a federal census in any tenth year from the year nineteen
20 hundred thirty be omitted or if the federal census fails to show the
21 number of [aliens] non-citizens or Indians not taxed. If a federal
22 census, though giving the requisite information as to the state at
23 large, fails to give the information as to any civil or territorial
24 divisions which is required to be known for such purposes, the legisla-
25 ture, by law, shall provide for such an enumeration of the inhabitants
26 of such parts of the state only as may be necessary, which shall super-
27 sede in part the federal census and be used in connection therewith for
28 such purposes. The legislature, by law, may provide in its discretion
29 for an enumeration by state authorities of the inhabitants of the state,
30 to be used for such purposes, in place of a federal census, when the
31 return of a decennial federal census is delayed so that it is not avail-
32 able at the beginning of the regular session of the legislature in the
33 second year after the year nineteen hundred thirty or after any tenth
34 year therefrom, or if an apportionment of members of assembly and read-
35 justment or alteration of senate districts is not made at or before such
36 a session. At the regular session in the year nineteen hundred thirty-
37 two, and at the first regular session after the year nineteen hundred
38 forty and after each tenth year therefrom the senate districts shall be
39 readjusted or altered, but if, in any decade, counting from and includ-
40 ing that which begins with the year nineteen hundred thirty-one, such a
41 readjustment or alteration is not made at the time above prescribed, it
42 shall be made at a subsequent session occurring not later than the sixth
43 year of such decade, meaning not later than nineteen hundred thirty-six,
44 nineteen hundred forty-six, nineteen hundred fifty-six, and so on;
45 provided, however, that if such districts shall have been readjusted or
46 altered by law in either of the years nineteen hundred thirty or nine-
47 teen hundred thirty-one, they shall remain unaltered until the first
48 regular session after the year nineteen hundred forty. No town, except
49 a town having more than a full ratio of apportionment, and no block in a
50 city inclosed by streets or public ways, shall be divided in the forma-
51 tion of senate districts. In the reapportionment of senate districts, no
52 district shall contain a greater excess in population over an adjoining
53 district in the same county, than the population of a town or block
54 therein adjoining such district. Counties, towns or blocks which, from
55 their location, may be included in either of two districts, shall be so

1 placed as to make said districts most nearly equal in number of inhabit-
2 ants, excluding [~~aliens~~] non-citizens.

3 No county shall have four or more senators unless it shall have a full
4 ratio for each senator. No county shall have more than one-third of all
5 the senators; and no two counties or the territory thereof as now organ-
6 ized, which are adjoining counties, or which are separated only by
7 public waters, shall have more than one-half of all the senators.

8 (b) The independent redistricting commission established pursuant to
9 section five-b of this article shall prepare a redistricting plan to
10 establish senate, assembly, and congressional districts every ten years
11 commencing in two thousand twenty-one, and shall submit to the legisla-
12 ture such plan and the implementing legislation therefor on or before
13 January first or as soon as practicable thereafter but no later than
14 January fifteenth in the year ending in two beginning in two thousand
15 twenty-two. The redistricting plans for the assembly and the senate
16 shall be contained in and voted upon by the legislature in a single
17 bill, and the congressional district plan may be included in the same
18 bill if the legislature chooses to do so. The implementing legislation
19 shall be voted upon, without amendment, by the senate or the assembly
20 and if approved by the first house voting upon it, such legislation
21 shall be delivered to the other house immediately to be voted upon with-
22 out amendment. If approved by both houses, such legislation shall be
23 presented to the governor for action.

24 If either house shall fail to approve the legislation implementing the
25 first redistricting plan, or the governor shall veto such legislation
26 and the legislature shall fail to override such veto, each house or the
27 governor if he or she vetoes it, shall notify the commission that such
28 legislation has been disapproved. Within fifteen days of such notifica-
29 tion and in no case later than February twenty-eighth, the redistricting
30 commission shall prepare and submit to the legislature a second redis-
31 tricting plan and the necessary implementing legislation for such plan.
32 Such legislation shall be voted upon, without amendment, by the senate
33 or the assembly and, if approved by the first house voting upon it, such
34 legislation shall be delivered to the other house immediately to be
35 voted upon without amendment. If approved by both houses, such legis-
36 lation shall be presented to the governor for action.

37 If either house shall fail to approve the legislation implementing the
38 second redistricting plan, or the governor shall veto such legislation
39 and the legislature shall fail to override such veto, each house shall
40 introduce such implementing legislation with any amendments each house
41 of the legislature deems necessary. All such amendments shall comply
42 with the provisions of this article. If approved by both houses, such
43 legislation shall be presented to the governor for action.

44 All votes by the senate or assembly on any redistricting plan legis-
45 lation pursuant to this article shall be conducted in accordance with
46 the following rules:

47 (1) In the event that the speaker of the assembly and the temporary
48 president of the senate are members of two different political parties,
49 approval of legislation submitted by the independent redistricting
50 commission pursuant to subdivision (f) of section five-b of this article
51 shall require the vote in support of its passage by at least a majority
52 of the members elected to each house.

53 (2) In the event that the speaker of the assembly and the temporary
54 president of the senate are members of two different political parties,
55 approval of legislation submitted by the independent redistricting
56 commission pursuant to subdivision (g) of section five-b of this article

1 shall require the vote in support of its passage by at least sixty
2 percent of the members elected to each house.

3 (3) In the event that the speaker of the assembly and the temporary
4 president of the senate are members of the same political party,
5 approval of legislation submitted by the independent redistricting
6 commission pursuant to subdivision (f) or (g) of section five-b of this
7 article shall require the vote in support of its passage by at least
8 two-thirds of the members elected to each house.

9 (c) Subject to the requirements of the federal constitution and stat-
10 utes and in compliance with state constitutional requirements, the
11 following principles shall be used in the creation of state senate and
12 state assembly districts and congressional districts:

13 (1) When drawing district lines, the commission shall consider whether
14 such lines would result in the denial or abridgement of racial or
15 language minority voting rights, and districts shall not be drawn to
16 have the purpose of, nor shall they result in, the denial or abridgement
17 of such rights. Districts shall be drawn so that, based on the totality
18 of the circumstances, racial or minority language groups do not have
19 less opportunity to participate in the political process than other
20 members of the electorate and to elect representatives of their choice.

21 (2) To the extent practicable, districts shall contain as nearly as
22 may be an equal number of inhabitants. For each district that deviates
23 from this requirement, the commission shall provide a specific public
24 explanation as to why such deviation exists.

25 (3) Each district shall consist of contiguous territory.

26 (4) Each district shall be as compact in form as practicable.

27 (5) Districts shall not be drawn to discourage competition or for the
28 purpose of favoring or disfavoring incumbents or other particular candi-
29 dates or political parties. The commission shall consider the mainte-
30 nance of cores of existing districts, of pre-existing political subdivi-
31 sions, including counties, cities, and towns, and of communities of
32 interest.

33 (6) In drawing senate districts, towns or blocks which, from their
34 location may be included in either of two districts, shall be so placed
35 as to make said districts most nearly equal in number of inhabitants.
36 The requirements that senate districts not divide counties or towns, as
37 well as the 'block-on-border' and 'town-on-border' rules, shall remain
38 in effect.

39 During the preparation of the redistricting plan, the independent
40 redistricting commission shall conduct not less than one public hearing
41 on proposals for the redistricting of congressional and state legisla-
42 tive districts in each of the following (i) cities: Albany, Buffalo,
43 Syracuse, Rochester, and White Plains; and (ii) counties: Bronx, Kings,
44 New York, Queens, Richmond, Nassau, and Suffolk. Notice of all such
45 hearings shall be widely published using the best available means and
46 media a reasonable time before every hearing. At least thirty days prior
47 to the first public hearing and in any event no later than September
48 fifteenth of the year ending in one or as soon as practicable thereaft-
49 er, the independent redistricting commission shall make widely available
50 to the public, in print form and using the best available technology,
51 its draft redistricting plans, relevant data, and related information.
52 Such plans, data, and information shall be in a form that allows and
53 facilitates their use by the public to review, analyze, and comment upon
54 such plans and to develop alternative redistricting plans for presenta-
55 tion to the commission at the public hearings. The independent redis-

1 tricting commission shall report the findings of all such hearings to
2 the legislature upon submission of a redistricting plan.

3 (d) The ratio for apportioning senators shall always be obtained by
4 dividing the number of inhabitants, excluding [~~aliens~~] non-citizens, by
5 fifty, and the senate shall always be composed of fifty members, except
6 that if any county having three or more senators at the time of any
7 apportionment shall be entitled on such ratio to an additional senator
8 or senators, such additional senator or senators shall be given to such
9 county in addition to the fifty senators, and the whole number of
10 senators shall be increased to that extent.

11 The senate districts, including the present ones, as existing imme-
12 diately before the enactment of a law readjusting or altering the senate
13 districts, shall continue to be the senate districts of the state until
14 the expirations of the terms of the senators then in office, except for
15 the purpose of an election of senators for full terms beginning at such
16 expirations, and for the formation of assembly districts.

17 (e) The process for redistricting congressional and state legislative
18 districts established by this section and sections five and five-b of
19 this article shall govern redistricting in this state except to the
20 extent that a court is required to order the adoption of, or changes to,
21 a redistricting plan as a remedy for a violation of law.

22 A reapportionment plan and the districts contained in such plan shall
23 be in force until the effective date of a plan based upon the subsequent
24 federal decennial census taken in a year ending in zero unless modified
25 pursuant to court order.

26 § 5. The members of the assembly shall be chosen by single districts
27 and shall be apportioned pursuant to this section and sections four and
28 five-b of this article at each regular session at which the senate
29 districts are readjusted or altered, and by the same law, among the
30 several counties of the state, as nearly as may be according to the
31 number of their respective inhabitants, excluding [~~aliens~~] non-citizens.
32 Every county heretofore established and separately organized, except the
33 county of Hamilton, shall always be entitled to one member of assembly,
34 and no county shall hereafter be erected unless its population shall
35 entitle it to a member. The county of Hamilton shall elect with the
36 county of Fulton, until the population of the county of Hamilton shall,
37 according to the ratio, entitle it to a member. But the legislature may
38 abolish the said county of Hamilton and annex the territory thereof to
39 some other county or counties.

40 The quotient obtained by dividing the whole number of inhabitants of
41 the state, excluding [~~aliens~~] non-citizens, by the number of members of
42 assembly, shall be the ratio for apportionment, which shall be made as
43 follows: One member of assembly shall be apportioned to every county,
44 including Fulton and Hamilton as one county, containing less than the
45 ratio and one-half over. Two members shall be apportioned to every other
46 county. The remaining members of assembly shall be apportioned to the
47 counties having more than two ratios according to the number of inhabit-
48 ants, excluding [~~aliens~~] non-citizens. Members apportioned on remainders
49 shall be apportioned to the counties having the highest remainders in
50 the order thereof respectively. No county shall have more members of
51 assembly than a county having a greater number of inhabitants, excluding
52 [~~aliens~~] non-citizens.

53 The assembly districts, including the present ones, as existing imme-
54 diately before the enactment of a law making an apportionment of members
55 of assembly among the counties, shall continue to be the assembly
56 districts of the state until the expiration of the terms of members then

1 in office, except for the purpose of an election of members of assembly
2 for full terms beginning at such expirations.

3 In any county entitled to more than one member, the board of supervi-
4 sors, and in any city embracing an entire county and having no board of
5 supervisors, the common council, or if there be none, the body exercis-
6 ing the powers of a common council, shall assemble at such times as the
7 legislature making an apportionment shall prescribe, and divide such
8 counties into assembly districts as nearly equal in number of inhabit-
9 ants, excluding [aliens] non-citizens, as may be, of convenient and
10 contiguous territory in as compact form as practicable, each of which
11 shall be wholly within a senate district formed under the same appor-
12 tionment, equal to the number of members of assembly to which such coun-
13 ty shall be entitled, and shall cause to be filed in the office of the
14 secretary of state and of the clerk of such county, a description of
15 such districts, specifying the number of each district and of the inhab-
16 itants thereof, excluding [aliens] non-citizens, according to the census
17 or enumeration used as the population basis for the formation of such
18 districts; and such apportionment and districts shall remain unaltered
19 until after the next reapportionment of members of assembly, except that
20 the board of supervisors of any county containing a town having more
21 than a ratio of apportionment and one-half over may alter the assembly
22 districts in a senate district containing such town at any time on or
23 before March first, nineteen hundred forty-six. In counties having more
24 than one senate district, the same number of assembly districts shall be
25 put in each senate district, unless the assembly districts cannot be
26 evenly divided among the senate districts of any county, in which case
27 one more assembly district shall be put in the senate district in such
28 county having the largest, or one less assembly district shall be put in
29 the senate district in such county having the smallest number of inhab-
30 itants, excluding [aliens] non-citizens, as the case may require. Noth-
31 ing in this section shall prevent the division, at any time, of counties
32 and towns and the erection of new towns by the legislature.

33 An apportionment by the legislature, or other body, shall be subject
34 to review by the supreme court, at the suit of any citizen, under such
35 reasonable regulations as the legislature may prescribe; and any court
36 before which a cause may be pending involving an apportionment, shall
37 give precedence thereto over all other causes and proceedings, and if
38 said court be not in session it shall convene promptly for the disposi-
39 tion of the same. The court shall render its decision within sixty days
40 after a petition is filed. In any judicial proceeding relating to redis-
41 tricting of congressional or state legislative districts, any law estab-
42 lishing congressional or state legislative districts found to violate
43 the provisions of this article shall be invalid in whole or in part. In
44 the event that a court finds such a violation, the legislature shall
45 have a full and reasonable opportunity to correct the law's legal
46 infirmities.

47 § 5-a. For the purpose of apportioning senate and assembly districts
48 pursuant to the foregoing provisions of this article, the term "inhabit-
49 ants, excluding [aliens] non-citizens" shall mean the whole number of
50 persons.

51 § 5. Resolved (if the Senate concur), That section 6 of article 5 of
52 the constitution be amended to read as follows:

53 § 6. Appointments and promotions in the civil service of the state and
54 all of the civil divisions thereof, including cities and villages, shall
55 be made according to merit and fitness to be ascertained, as far as
56 practicable, by examination which, as far as practicable, shall be

1 competitive; provided, however, that any member of the armed forces of
2 the United States who served therein in time of war, and who, at the
3 time of such member's appointment or promotion, is a citizen or [~~an~~
4 ~~alien~~] a non-citizen lawfully admitted for permanent residence in the
5 United States and a resident of this state and is honorably discharged
6 or released under honorable circumstances from such service, shall be
7 entitled to receive five points additional credit in a competitive exam-
8 ination for original appointment and two and one-half points additional
9 credit in an examination for promotion or, if such member was disabled
10 in the actual performance of duty in any war and his or her disability
11 is certified by the United States department of veterans affairs to be
12 in existence at the time of application for appointment or promotion, he
13 or she shall be entitled to receive ten points additional credit in a
14 competitive examination for original appointment and five points addi-
15 tional credit in an examination for promotion. Such additional credit
16 shall be added to the final earned rating of such member after he or she
17 has qualified in an examination and shall be granted only at the time of
18 establishment of an eligible list. No such member shall receive the
19 additional credit granted by this section after he or she has received
20 one appointment, either original entrance or promotion, from an eligible
21 list on which he or she was allowed the additional credit granted by
22 this section, except where a member has been appointed or promoted from
23 an eligible list on which he or she was allowed additional credit for
24 military service and subsequent to such appointment he or she is disa-
25 bled as provided in this section, such member shall be entitled to ten
26 points additional credit less the number of points of additional credit
27 allowed for the prior appointment.

28 § 6. Resolved (if the Senate concur), That the foregoing amendment be
29 referred to the first regular legislative session convening after the
30 next succeeding general election of members of the assembly, and, in
31 conformity with section 1 of article 19 of the constitution, be
32 published for 3 months previous to the time of such election.