S T A T E O F N E W Y O R K

5946

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. ESPAILLAT, BENJAMIN, PEOPLES, BOYLAND, LAVINE -- Multi-Sponsored by -- M. of A. CLARK, DIAZ, GREENE, HEASTIE, HOOPER, PERRY, ROSENTHAL -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to the residential classification of certain incarcerated persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature notes that section 4 of article II of the constitution provides in pertinent part as follows: "S 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence...while confined in any public prison." Likewise, subdivision 1 of section 5-104 of the election law provides in pertinent part as follows: "For the purpose of registering and voting no person shall be deemed to have gained or lost a residence...while confined in any public prison."

Despite these provisions, investigation has shown that many incarcerated persons are being classified for purposes of residency as residents of their places of incarceration rather than as residents of their places of residence prior to incarceration. The provisions of this act are necessary to provide procedures and duties to correct these errors.

S 2. The election law is amended by adding a new section 3-112 to read as follows:

S 3-112. PRISONER CENSUS ADJUSTMENT. 1. THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO, AND THE INFORMATION OBTAINED PURSUANT TO THIS SECTION SHALL BE USED IN, THE CREATION OF CONGRESSIONAL, ASSEMBLY, SENATE, AND COUNTY LEGISLATIVE BODY DISTRICTS.

2. NOT LATER THAN THE NEXT SEPTEMBER FIRST FOLLOWING THE DATE ON WHICH THE TRACT-LEVEL POPULATION COUNTS FOR THIS STATE FROM THE FEDERAL DECENNIAL CENSUS ARE RELEASED BY THE DIRECTOR OF THE BUREAU OF THE CENSUS OF THE UNITED STATES DEPARTMENT OF COMMERCE, THE STATE BOARD OF

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

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ELECTIONS SHALL PREPARE AND DISSEMINATE ADJUSTED POPULATION COUNTS FOR EACH GEOGRAPHIC UNIT INCLUDED IN THE CENSUS COUNTS AS PROVIDED BY THIS SECTION.

3. (A) NOT LATER THAN JUNE FIRST OF THE YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS CONDUCTED, EACH STATE AGENCY AND LOCAL GOVERNMENTAL ENTITY IN THIS STATE THAT OPERATES A FACILITY FOR THE INCARCERATION OF PERSONS CONVICTED OF A CRIMINAL OFFENSE, INCLUDING A MENTAL HEALTH INSTITUTION FOR THOSE PERSONS, OR THAT PLACES ANY PERSON CONVICTED OF A CRIMINAL OFFENSE IN A PRIVATE FACILITY TO BE INCARCERATED ON BEHALF OF THE STATE AGENCY OR GOVERNMENTAL ENTITY, SHALL SUBMIT A REPORT TO THE STATE BOARD OF ELECTIONS WITH THE FOLLOWING INFORMATION:

(1) THE NAME OF EACH PERSON INCARCERATED IN A FACILITY OPERATED BY THE STATE AGENCY, GOVERNMENTAL ENTITY, OR IN A PRIVATE FACILITY ON BEHALF OF THE STATE AGENCY OR GOVERNMENTAL ENTITY ON THE DATE FOR WHICH THE CENSUS REPORTS POPULATION WHO COMPLETED A CENSUS FORM, RESPONDED TO A CENSUS INQUIRY, OR WAS INCLUDED IN ANY REPORT PROVIDED TO CENSUS OFFICIALS, IF THE FORM, RESPONSE, OR REPORT INDICATED THAT THE PERSON RESIDED AT THE FACILITY ON THAT DATE.

(2) THE AGE, SEX, AND RACE OF EACH PERSON INCLUDED IN THE REPORT.

(3) THE LAST ADDRESS AT WHICH THE PERSON RESIDED BEFORE THE PERSON'S CURRENT INCARCERATION.

(B) EACH GOVERNMENTAL ENTITY REQUIRED TO MAKE A REPORT UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL ENSURE THAT IT COLLECTS AND MAINTAINS THE INFORMATION REQUIRED TO MAKE THE REPORT.

4. THE STATE BOARD OF ELECTIONS SHALL REQUEST EACH AGENCY THAT OPERATES A FEDERAL FACILITY IN THIS STATE THAT INCARCERATES PERSONS CONVICTED OF A CRIMINAL OFFENSE TO PROVIDE THE STATE BOARD OF ELECTIONS WITH A REPORT INCLUDING THE INFORMATION LISTED IN PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION FOR PERSONS CONVICTED OF AN OFFENSE IN THIS STATE.

5. FOR EACH PERSON INCLUDED IN A REPORT RECEIVED UNDER SUBDIVISIONS THREE AND FOUR OF THIS SECTION, THE STATE BOARD OF ELECTIONS SHALL DETERMINE THE GEOGRAPHIC UNITS FOR WHICH POPULATION COUNTS ARE REPORTED IN THE FEDERAL DECENNIAL CENSUS THAT CONTAIN THE LAST ADDRESS AT WHICH THE PERSON RESIDED BEFORE THE PERSON'S INCARCERATION ACCORDING TO THE REPORT AND, IF THAT ADDRESS IS IN THIS STATE:

(A) ADJUST ALL RELEVANT POPULATION COUNTS REPORTED IN THE CENSUS, INCLUDING POPULATIONS BY AGE, SEX, AND RACE, AS IF THE PERSON RESIDED AT THAT ADDRESS ON THE DAY FOR WHICH THE CENSUS REPORTS POPULATION.

(B) ELIMINATE THE PERSON FROM ALL APPLICABLE POPULATION COUNTS REPORTED IN THE FEDERAL DECENNIAL CENSUS FOR THE GEOGRAPHIC UNITS THAT INCLUDE THE FACILITY AT WHICH THE PERSON WAS INCARCERATED ON THE DAY FOR WHICH THE CENSUS REPORTS POPULATION.

6. UPON THE COMPLETION OF THE COMPILATION OF THE INFORMATION REQUIRED PURSUANT TO THIS SECTION, THE STATE BOARD OF ELECTIONS SHALL PROMPTLY MAKE A REPORT THEREOF AVAILABLE TO THE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT, ALL LOCAL BOARDS OF ELECTION, ALL COUNTY LEGISLATIVE BODIES, AND THE PUBLIC. THE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT SHALL UTILIZE SUCH INFORMATION IN THE CREATION OF CONGRESSIONAL, ASSEMBLY, AND SENATE DISTRICTS. ALL COUNTY LEGISLATIVE BODIES SHALL UTILIZE SUCH INFORMATION IN THE CREATION OF COUNTY LEGISLATIVE BODY DISTRICTS.

S 3. This act shall take effect immediately.