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

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I N A S S E M B L Y

February 3, 2010

Introduced by M. of A. JEFFRIES, ESPAILLAT, DINOWITZ, ARROYO, P. RIVERA, HEASTIE, LAVINE, BENJAMIN, KAVANAGH, KELLNER, LUPARDO, McENENY, PEOPLES-STOKES, CAMARA, TITUS, WRIGHT, PRETLOW, JAFFEE, MAISEL, BARRON, J. RIVERA, HOYT -- Multi-Sponsored by -- M. of A. ALESSI, BOYLAND, BRENNAN, CHRISTENSEN, CLARK, COLTON, CRESPO, FARRELL, GIBSON, GLICK, GOTTFRIED, HEVESI, HOOPER, LANCMAN, LATIMER, LENTOL, LIFTON, MILLMAN, PERRY, ROBINSON, ROSENTHAL, SCHIMEL, STIRPE, TITONE, TOWNS -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, the legislative law, and the municipal home rule law, in relation to the collection of census data

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

Section 1. Legislative intent. The legislature finds that for purposes of determining legislative districts, incarcerated persons in correctional facilities in this state have been classified as residents of the districts where they are incarcerated rather than as residents of their places of residence prior to incarceration. Article 2, section 4 of the New York constitution requires that 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 directs that 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, the legislature finds that the decennial census does not provide the information necessary to allocate incarcerated persons to their residences prior to incarceration in the manner that the foregoing provisions of the constitution and laws of this state require. This legislation is intended to facilitate the proper allocation of incarcerated persons to their residences prior to incarceration for purposes of determining legislative districts, without requiring revision of the enumeration of the decennial census.

S 2. Section 71 of the correction law is amended by adding a new subdivision 8 to read as follows:

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

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8. (A) IN EACH YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN BUT IN WHICH THE UNITED STATES BUREAU OF THE CENSUS DOES NOT IMPLEMENT A POLICY OF REPORTING INCARCERATED PERSONS AT EACH SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCARCERATION, THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL BY JULY FIRST OF THAT SAME YEAR DELIVER TO THE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT THE FOLLOWING INFORMATION FOR EACH INCARCERATED PERSON SUBJECT TO THE JURISDICTION OF THE DEPARTMENT AND LOCATED IN THIS STATE ON THE DATE FOR WHICH THE DECENNIAL CENSUS REPORTS POPULATION:

(I) A UNIQUE IDENTIFIER, NOT INCLUDING THE NAME, FOR EACH SUCH PERSON;

(II) THE STREET ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS INCARCERATED AT THE TIME OF SUCH REPORT;

(III) THE RESIDENTIAL ADDRESS OF SUCH PERSON PRIOR TO INCARCERATION (IF ANY); AND

(IV) ANY ADDITIONAL INFORMATION AS THE TASK FORCE MAY SPECIFY PURSUANT TO LAW.

(B) THE DEPARTMENT SHALL PROVIDE THE INFORMATION SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION IN SUCH FORM AS THE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT SHALL SPECIFY.

S 3. Section 83-m of the legislative law is amended by adding a new subdivision 13 to read as follows:

13. (A) THE TASK FORCE SHALL SPECIFY THE FORM IN WHICH THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL PROVIDE SUCH INFORMATION REQUIRED TO BE REPORTED TO THE TASK FORCE PURSUANT TO SUBDIVISION EIGHT OF SECTION SEVENTY-ONE OF THE CORRECTION LAW.

(B) UPON RECEIPT OF SUCH INFORMATION FOR EACH INCARCERATED PERSON SUBJECT TO THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONAL SERVICES, THE TASK FORCE SHALL DETERMINE THE CENSUS BLOCK CORRESPONDING TO THE STREET ADDRESS OF EACH SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCARCERATION (IF ANY), AND THE CENSUS BLOCK CORRESPONDING TO THE STREET ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS HELD SUBJECT TO THE JURISDICTION OF SUCH DEPARTMENT. UNTIL SUCH TIME AS THE UNITED STATES BUREAU OF THE CENSUS SHALL IMPLEMENT A POLICY OF REPORTING EACH SUCH INCARCERATED PERSON AT SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCARCERATION, THE TASK FORCE SHALL USE SUCH DATA TO DEVELOP A DATABASE IN WHICH ALL INCARCERATED PERSONS SHALL BE, WHERE POSSIBLE, ALLOCATED FOR REDISTRICTING PURPOSES, SUCH THAT EACH GEOGRAPHIC UNIT REFLECTS INCARCERATED POPULATIONS AT THEIR RESPECTIVE RESIDENTIAL ADDRESSES PRIOR TO INCARCERATION RATHER THAN AT THE ADDRESSES OF SUCH CORRECTIONAL FACILITIES. FOR ALL INCARCERATED PERSONS WHOSE RESIDENTIAL ADDRESS PRIOR TO INCARCERATION WAS OUTSIDE OF THE STATE, OR FOR WHOM THE TASK FORCE CANNOT IDENTIFY THEIR PRIOR RESIDENTIAL ADDRESS, AND FOR ALL PERSONS CONFINED IN A FEDERAL CORRECTIONAL FACILITY ON CENSUS DAY, THE TASK FORCE SHALL CONSIDER THOSE PERSONS TO HAVE BEEN COUNTED AT AN ADDRESS UNKNOWN AND PERSONS AT SUCH UNKNOWN ADDRESS SHALL NOT BE INCLUDED IN SUCH DATA SET CREATED PURSUANT TO THIS PARAGRAPH. THE TASK FORCE SHALL DEVELOP AND MAINTAIN SUCH AMENDED POPULATION DATA SET AND SHALL MAKE SUCH AMENDED DATA SET AVAILABLE TO LOCAL GOVERNMENTS, AS DEFINED IN SUBDIVISION EIGHT OF SECTION TWO OF THE MUNICIPAL HOME RULE LAW, AND FOR THE DRAWING OF ASSEMBLY AND SENATE DISTRICTS. THE ASSEMBLY AND SENATE DISTRICTS SHALL BE DRAWN USING SUCH AMENDED POPULATION DATA SET.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE INFORMATION REQUIRED TO BE PROVIDED PURSUANT TO SUBDIVISION EIGHT OF SECTION SEVENTY-ONE OF THE CORRECTION LAW SHALL BE TREATED AS CONFIDENTIAL AND SHALL

NOT BE DISCLOSED BY THE TASK FORCE EXCEPT AS AGGREGATED BY CENSUS BLOCK FOR PURPOSE SPECIFIED IN THIS SUBDIVISION.

S 4. The opening paragraph, subclause (i.) of clause (a.) and clause (c.) of subparagraph 13 of paragraph a of subdivision 1 of section 10 of the municipal home rule law, as added by chapter 834 of the laws of 1969, are amended to read as follows:

The apportionment of its legislative body and, only in connection with such action taken pursuant to this subparagraph, the composition and membership of such body, the terms of office of members thereof, the units of local government or other areas from which representatives are to be chosen and the voting powers of individual members of such legislative body. [The] EXCEPT FOR THE EQUAL APPORTIONMENT REQUIREMENTS IN SUBCLAUSE (I.) OF CLAUSE (A.) AND CLAUSE (C.) OF THIS SUBPARAGRAPH, WHICH SHALL APPLY GENERALLY TO ANY LOCAL GOVERNMENT, THE power granted by this subparagraph shall be in addition to and not in substitution for any other power and the provisions of this subparagraph shall apply only to local governments which adopt a plan of apportionment thereunder.

(i.) The plan shall provide substantially equal weight for [all] the [voters] POPULATION of that local government in the allocation of representation in the local legislative body.

(c.) As used in this subparagraph the term "population" shall mean residents, citizens, or registered voters. FOR SUCH PURPOSES, NO PERSON SHALL BE DEEMED TO HAVE GAINED OR LOST A RESIDENCE, OR TO HAVE BECOME A RESIDENT OF A LOCAL GOVERNMENT, AS DEFINED IN SUBDIVISION EIGHT OF SECTION TWO OF THIS CHAPTER, BY REASON OF BEING SUBJECT TO THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONAL SERVICES AND PRESENT IN A STATE CORRECTIONAL FACILITY PURSUANT TO SUCH JURISDICTION. A population base for such a plan of apportionment shall utilize the latest statistical information obtainable from an official enumeration done at the same time for all the residents, citizens, or registered voters of the local government. Such a plan may allocate, by extrapolation or any other rational method, such latest statistical information to representation areas or units of local government, provided that any plan containing such an allocation shall have annexed thereto as an appendix, a detailed explanation of the allocation.

S 5. Severability. If any section, subdivision, paragraph, subparagraph, clause or other part of this act or its application is held to be invalid by final judgment of a court of competent jurisdiction, such invalidity shall not be deemed to impair or otherwise affect the validity of the remaining provisions or applications of this act that can be given effect without such invalid provision or application, but such invalidity shall be confined to the section, subdivision, paragraph, subparagraph, clause or other part of this act or its application directly held invalid thereby, which are declared to be severable from the remainder of this act. It is declared to be the intent of the legislature that this act would have been enacted but for any such invalid provision or application thereof.

S 6. This act shall take effect immediately; provided, however, that the amendments to section 83-m of the legislative law made by section three of this act shall not affect the repeal of such section and shall be deemed repealed therewith.