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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. JEFFRIES, ESPAILLAT, DINOWITZ, ARROYO, P. RIVERA, HEASTIE, LAVINE, BENJAMIN, KAVANAGH -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, CRESPO, HOOPER, LATIMER, PEOPLES-STOKES, PERRY, ROSENTHAL, TOWNS -- 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:

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

9 Despite these provisions, investigation has shown that many incarcer-
10 ated persons are being classified for purposes of residency as residents
11 of their places of incarceration rather than as residents of their plac-
12 es of residence prior to incarceration. The provisions of this act are
13 necessary to provide procedures and duties to correct these errors.

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

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

20 2. NOT LATER THAN THE NEXT SEPTEMBER FIRST FOLLOWING THE DATE ON
21 WHICH THE TRACT-LEVEL POPULATION COUNTS FOR THIS STATE FROM THE FEDERAL
22 DECENNIAL CENSUS ARE RELEASED BY THE DIRECTOR OF THE BUREAU OF THE
23 CENSUS OF THE UNITED STATES DEPARTMENT OF COMMERCE, THE STATE BOARD OF
24 ELECTIONS SHALL PREPARE AND DISSEMINATE ADJUSTED POPULATION COUNTS FOR

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

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1 EACH GEOGRAPHIC UNIT INCLUDED IN THE CENSUS COUNTS AS PROVIDED BY THIS
2 SECTION.

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

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

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

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

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

24 4. THE STATE BOARD OF ELECTIONS SHALL REQUEST EACH AGENCY THAT OPER-
25 ATES A FEDERAL FACILITY IN THIS STATE THAT INCARCERATES PERSONS
26 CONVICTED OF A CRIMINAL OFFENSE TO PROVIDE THE STATE BOARD OF ELECTIONS
27 WITH A REPORT INCLUDING THE INFORMATION LISTED IN PARAGRAPH (A) OF
28 SUBDIVISION THREE OF THIS SECTION FOR PERSONS CONVICTED OF AN OFFENSE IN
29 THIS STATE.

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

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

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

43 6. UPON THE COMPLETION OF THE COMPILATION OF THE INFORMATION REQUIRED
44 PURSUANT TO THIS SECTION, THE STATE BOARD OF ELECTIONS SHALL PROMPTLY
45 MAKE A REPORT THEREOF AVAILABLE TO THE LEGISLATIVE TASK FORCE ON DEMO-
46 GRAPHIC RESEARCH AND REAPPORTIONMENT, ALL LOCAL BOARDS OF ELECTION, ALL
47 COUNTY LEGISLATIVE BODIES, AND THE PUBLIC. THE LEGISLATIVE TASK FORCE
48 ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT SHALL UTILIZE SUCH INFORMA-
49 TION IN THE CREATION OF CONGRESSIONAL, ASSEMBLY, AND SENATE DISTRICTS.
50 ALL COUNTY LEGISLATIVE BODIES SHALL UTILIZE SUCH INFORMATION IN THE
51 CREATION OF COUNTY LEGISLATIVE BODY DISTRICTS.

52 S 3. This act shall take effect immediately.