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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 -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, CRESPO, GIBSON, GLICK, HOOPER, LATIMER, PEOPLES-STOKES, PERRY, ROSENTHAL, STIRPE, TITONE, TOWNS -- read once and referred to the Committee on Correction

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:

1 Section 1. Legislative intent. The legislature finds that for purposes  
2 of determining legislative districts, incarcerated persons in correc-  
3 tional facilities in this state have been classified as residents of the  
4 districts where they are incarcerated rather than as residents of their  
5 places of residence prior to incarceration. Article 2, section 4 of the  
6 New York constitution requires that for the purpose of voting, no person  
7 shall be deemed to have gained or lost a residence while confined in any  
8 public prison. Likewise, subdivision 1 of section 5-104 of the election  
9 law directs that for the purpose of registering and voting no person  
10 shall be deemed to have gained or lost a residence while confined in any  
11 public prison. Despite these provisions, the legislature finds that the  
12 decennial census does not provide the information necessary to allocate  
13 incarcerated persons to their residences prior to incarceration. This  
14 legislation is intended to facilitate the proper allocation of incarcer-  
15 ated persons to their residences prior to incarceration for purposes of  
16 determining legislative districts, without requiring revision of the  
17 enumeration of the decennial census.

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

20 8. (A) IN EACH YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN BUT  
21 IN WHICH THE UNITED STATES BUREAU OF THE CENSUS DOES NOT REPORT INCAR-  
22 CERATED PERSONS AT EACH SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO  
23 INCARCERATION, THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL BY JULY  
24 FIRST OF THAT SAME YEAR DELIVER TO THE LEGISLATIVE TASK FORCE ON DEMO-

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

LBD15664-02-0

1 GRAPHIC RESEARCH AND REAPPORTIONMENT THE FOLLOWING INFORMATION FOR EACH  
2 INCARCERATED PERSON SUBJECT TO THE JURISDICTION OF THE DEPARTMENT:

3 (I) A UNIQUE IDENTIFIER, NOT INCLUDING THE NAME, FOR EACH SUCH PERSON  
4 LOCATED IN THIS STATE ON THE DATE FOR WHICH THE DECENNIAL CENSUS REPORTS  
5 POPULATION FOR THOSE INCLUDED IN ANY REPORT PROVIDED TO CENSUS OFFI-  
6 CIALS, IF THE FORM, RESPONSE, OR REPORT INDICATES THAT THE PERSON  
7 RESIDES AT THE CORRECTIONAL FACILITY;

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

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

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

14 (B) THE DEPARTMENT SHALL PROVIDE THE INFORMATION SPECIFIED IN PARA-  
15 GRAPH (A) OF THIS SUBDIVISION IN SUCH FORM AS THE LEGISLATIVE TASK FORCE  
16 ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT SHALL SPECIFY.

17 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE INFORMATION  
18 REQUIRED TO BE PROVIDED PURSUANT TO THIS SUBDIVISION SHALL NOT INCLUDE  
19 THE NAME OF ANY INCARCERATED PERSON AND SHALL NOT ALLOW FOR THE IDEN-  
20 TIFICATION OF ANY SUCH PERSON THEREFROM. THE SAME SHALL BE TREATED AS  
21 CONFIDENTIAL AND SHALL NOT OTHERWISE BE DISCLOSED EXCEPT AS AGGREGATED  
22 BY CENSUS BLOCK FOR PURPOSES SPECIFIED IN SUBDIVISION THIRTEEN OF  
23 SECTION EIGHTY-THREE-M OF THE LEGISLATIVE LAW.

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

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

30 (B) UPON RECEIPT OF SUCH INFORMATION FOR EACH INCARCERATED PERSON  
31 SUBJECT TO THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONAL SERVICES,  
32 THE TASK FORCE SHALL DETERMINE THE CENSUS BLOCK CORRESPONDING TO THE  
33 STREET ADDRESS OF EACH SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCAR-  
34 CERATION (IF ANY), AND THE CENSUS BLOCK CORRESPONDING TO THE STREET  
35 ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS HELD  
36 SUBJECT TO THE JURISDICTION OF SUCH DEPARTMENT. UNTIL SUCH TIME AS THE  
37 UNITED STATES BUREAU OF THE CENSUS SHALL REPORT EACH SUCH INCARCERATED  
38 PERSON AT SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCARCERATION, THE  
39 TASK FORCE SHALL USE SUCH DATA TO DEVELOP A DATABASE IN WHICH ALL INCAR-  
40 CERATED PERSONS SHALL BE REMOVED FROM THE RESPECTIVE CENSUS BLOCKS  
41 CORRESPONDING TO THE STREET ADDRESSES OF THE CORRECTIONAL FACILITIES IN  
42 WHICH THEY ARE HELD SUBJECT TO THE JURISDICTION OF SUCH DEPARTMENT, AND  
43 WHERE POSSIBLE, ALLOCATED TO THE POPULATION COUNTS PROVIDED BY THE  
44 UNITED STATES BUREAU OF THE CENSUS FOR REDISTRICTING PURPOSES, SUCH THAT  
45 EACH GEOGRAPHIC UNIT REFLECTS INCARCERATED POPULATIONS AT THEIR RESPEC-  
46 TIVE RESIDENTIAL ADDRESSES PRIOR TO INCARCERATION RATHER THAN AT THE  
47 ADDRESSES OF SUCH CORRECTIONAL FACILITIES. THE TASK FORCE SHALL DEVELOP  
48 AND MAINTAIN THIS AMENDED POPULATION DATA SET AND SHALL MAKE SUCH AGGRE-  
49 GATED DATA SET AVAILABLE FOR THE DRAWING OF ASSEMBLY AND SENATE  
50 DISTRICTS. THE TASK FORCE ALSO SHALL MAKE SUCH AGGREGATED DATA SET  
51 AVAILABLE TO LOCAL GOVERNMENTS, AS DEFINED IN SUBDIVISION EIGHT OF  
52 SECTION TWO OF THE MUNICIPAL HOME RULE LAW.

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

1 (i.) The plan shall provide substantially equal weight for [all] the  
2 [voters] POPULATION of that local government in the allocation of repre-  
3 sentation in the local legislative body.

4 (c.) As used in this subparagraph the term "population" shall mean  
5 residents, citizens, or registered voters. FOR THESE PURPOSES, NO PERSON  
6 SHALL BE DEEMED TO HAVE GAINED OR LOST A RESIDENCE BY REASON OF HIS OR  
7 HER PRESENCE OR ABSENCE, OR TO HAVE BECOME A RESIDENT OF A LOCAL GOVERN-  
8 MENT, AS DEFINED IN SUBDIVISION EIGHT OF SECTION TWO OF THIS CHAPTER, BY  
9 REASON OF HIS OR HER PRESENCE, WHILE SUBJECT TO THE JURISDICTION OF THE  
10 DEPARTMENT OF CORRECTIONAL SERVICES. A population base for such a plan  
11 of apportionment shall utilize the latest statistical information  
12 obtainable from an official enumeration done at the same time for all  
13 the residents, citizens, or registered voters of the local government.  
14 Such a plan may allocate, by extrapolation or any other rational method,  
15 such latest statistical information to representation areas or units of  
16 local government, provided that any plan containing such an allocation  
17 shall have annexed thereto as an appendix, a detailed explanation of the  
18 allocation.

19 S 5. Severability. If any section, subdivision, paragraph, subpara-  
20 graph, clause or other part of this act or its application is held to be  
21 invalid by final judgment of a court of competent jurisdiction, such  
22 invalidity shall not be deemed to impair or otherwise affect the validi-  
23 ty of the remaining provisions or applications of this act that can be  
24 given effect without such invalid provision or application, but such  
25 invalidity shall be confined to the section, subdivision, paragraph,  
26 subparagraph, clause or other part of this act or its application  
27 directly held invalid thereby, which are declared to be severable from  
28 the remainder of this act. It is declared to be the intent of the legis-  
29 lature that this act would have been enacted but for any such invalid  
30 provision or application thereof.

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