

9834--A

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:

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 in the  
14 manner that the foregoing provisions of the constitution and laws of  
15 this state require. This legislation is intended to facilitate the prop-  
16 er allocation of incarcerated persons to their residences prior to  
17 incarceration for purposes of determining legislative districts, without  
18 requiring revision of the enumeration of the decennial census.

19 S 2. Section 71 of the correction law is amended by adding a new  
20 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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1 8. (A) IN EACH YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN BUT  
2 IN WHICH THE UNITED STATES BUREAU OF THE CENSUS DOES NOT IMPLEMENT A  
3 POLICY OF REPORTING INCARCERATED PERSONS AT EACH SUCH PERSON'S RESIDEN-  
4 TIAL ADDRESS PRIOR TO INCARCERATION, THE DEPARTMENT OF CORRECTIONAL  
5 SERVICES SHALL BY JULY FIRST OF THAT SAME YEAR DELIVER TO THE LEGISLA-  
6 TIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT THE FOLLOW-  
7 ING INFORMATION FOR EACH INCARCERATED PERSON SUBJECT TO THE JURISDICTION  
8 OF THE DEPARTMENT AND LOCATED IN THIS STATE ON THE DATE FOR WHICH THE  
9 DECENNIAL CENSUS REPORTS POPULATION:

10 (I) A UNIQUE IDENTIFIER, NOT INCLUDING THE NAME, FOR EACH SUCH PERSON;  
11 (II) THE STREET ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH  
12 PERSON WAS INCARCERATED AT THE TIME OF SUCH REPORT;  
13 (III) THE RESIDENTIAL ADDRESS OF SUCH PERSON PRIOR TO INCARCERATION  
14 (IF ANY); AND  
15 (IV) ANY ADDITIONAL INFORMATION AS THE TASK FORCE MAY SPECIFY PURSUANT  
16 TO LAW.

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

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

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

26 (B) UPON RECEIPT OF SUCH INFORMATION FOR EACH INCARCERATED PERSON  
27 SUBJECT TO THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONAL SERVICES,  
28 THE TASK FORCE SHALL DETERMINE THE CENSUS BLOCK CORRESPONDING TO THE  
29 STREET ADDRESS OF EACH SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR TO INCAR-  
30 CERATION (IF ANY), AND THE CENSUS BLOCK CORRESPONDING TO THE STREET  
31 ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS HELD  
32 SUBJECT TO THE JURISDICTION OF SUCH DEPARTMENT. UNTIL SUCH TIME AS THE  
33 UNITED STATES BUREAU OF THE CENSUS SHALL IMPLEMENT A POLICY OF REPORTING  
34 EACH SUCH INCARCERATED PERSON AT SUCH PERSON'S RESIDENTIAL ADDRESS PRIOR  
35 TO INCARCERATION, THE TASK FORCE SHALL USE SUCH DATA TO DEVELOP A DATA-  
36 BASE IN WHICH ALL INCARCERATED PERSONS SHALL BE, WHERE POSSIBLE, ALLO-  
37 CATED FOR REDISTRICTING PURPOSES, SUCH THAT EACH GEOGRAPHIC UNIT  
38 REFLECTS INCARCERATED POPULATIONS AT THEIR RESPECTIVE RESIDENTIAL  
39 ADDRESSES PRIOR TO INCARCERATION RATHER THAN AT THE ADDRESSES OF SUCH  
40 CORRECTIONAL FACILITIES. FOR ALL INCARCERATED PERSONS WHOSE RESIDENTIAL  
41 ADDRESS PRIOR TO INCARCERATION WAS OUTSIDE OF THE STATE, OR FOR WHOM THE  
42 TASK FORCE CANNOT IDENTIFY THEIR PRIOR RESIDENTIAL ADDRESS, AND FOR ALL  
43 PERSONS CONFINED IN A FEDERAL CORRECTIONAL FACILITY ON CENSUS DAY, THE  
44 TASK FORCE SHALL CONSIDER THOSE PERSONS TO HAVE BEEN COUNTED AT AN  
45 ADDRESS UNKNOWN AND PERSONS AT SUCH UNKNOWN ADDRESS SHALL NOT BE  
46 INCLUDED IN SUCH DATA SET CREATED PURSUANT TO THIS PARAGRAPH. THE TASK  
47 FORCE SHALL DEVELOP AND MAINTAIN SUCH AMENDED POPULATION DATA SET AND  
48 SHALL MAKE SUCH AMENDED DATA SET AVAILABLE TO LOCAL GOVERNMENTS, AS  
49 DEFINED IN SUBDIVISION EIGHT OF SECTION TWO OF THE MUNICIPAL HOME RULE  
50 LAW, AND FOR THE DRAWING OF ASSEMBLY AND SENATE DISTRICTS. THE ASSEMBLY  
51 AND SENATE DISTRICTS SHALL BE DRAWN USING SUCH AMENDED POPULATION DATA  
52 SET.

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

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

3 S 4. The opening paragraph, subclause (i.) of clause (a.) and clause  
4 (c.) of subparagraph 13 of paragraph a of subdivision 1 of section 10 of  
5 the municipal home rule law, as added by chapter 834 of the laws of  
6 1969, are amended to read as follows:

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

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

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

36 S 5. Severability. If any section, subdivision, paragraph, subpara-  
37 graph, clause or other part of this act or its application is held to be  
38 invalid by final judgment of a court of competent jurisdiction, such  
39 invalidity shall not be deemed to impair or otherwise affect the validi-  
40 ty of the remaining provisions or applications of this act that can be  
41 given effect without such invalid provision or application, but such  
42 invalidity shall be confined to the section, subdivision, paragraph,  
43 subparagraph, clause or other part of this act or its application  
44 directly held invalid thereby, which are declared to be severable from  
45 the remainder of this act. It is declared to be the intent of the legis-  
46 lature that this act would have been enacted but for any such invalid  
47 provision or application thereof.

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