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

5271

2011-2012 Regular Sessions

I N A S S E M B L Y

February 15, 2011

Introduced by M. of A. GALEF, CLARK, SCHIMMINGER, PAULIN, LATIMER, DINOWITZ, CASTRO, SPANO, SCHROEDER, CALHOUN, GIGLIO, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CONTE, CORWIN, CROUCH, DUPREY, JORDAN, KOLB, J. MILLER, MOLINARO, OAKS, RAIA, REILICH, SAYWARD, TEDISCO, THIELE, TOBACCO -- read once and referred to the Committee on Governmental Operations

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 3 of the constitution, in relation to creating a non-partisan apportionment commission

Section 1. Resolved (if the Senate concur), That sections 4 and 5 of article 3 of the constitution be amended, and a new section 5-b be added to read as follows:

S 4. Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. [The legislature] AN APPORTIONMENT COMMISSION, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the [legislature] COMMISSION, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The [legislature] COMMISSION, by law, may

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

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provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and IN NO CASE SHALL A DISTRICT HAVE A POPULATION WHICH VARIES FROM THE AVERAGE POPULATION OF ALL DISTRICTS, UNLESS A POPULATION VARIANCE IS NECESSARY TO COMPLY WITH ONE OF THE OTHER STANDARDS SET FORTH IN THIS SECTION, AND IN NO CASE SHALL A SINGLE DISTRICT HAVE A POPULATION WHICH VARIES MORE THAN FIVE PERCENT FROM THE AVERAGE POPULATION OF ALL DISTRICTS. CONGRESSIONAL DISTRICTS SHALL HAVE POPULATIONS AS NEARLY EQUAL AS IS PRACTICABLE BASED ON THE POPULATION REPORTED IN THE FEDERAL CENSUS TAKEN IN EACH YEAR ENDING IN ZERO. NO DISTRICT FOR ELECTION OF MEMBERS TO THE UNITED STATES HOUSE OF REPRESENTATIVES SHALL HAVE A POPULATION WHICH VARIES BY MORE THAN ONE PERCENT FROM THE AVERAGE POPULATION OF ALL CONGRESSIONAL DISTRICTS IN THE STATE.

SUCH DISTRICTS SHALL be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined[, and]. THE DISTRICTS OF A HOUSE SHALL BE AS COMPACT AS POSSIBLE, CONSISTENT WITH THE STANDARDS LISTED ABOVE. IN NO CASE SHALL THE AGGREGATE LENGTH OF THE BOUNDARIES OF ALL THE DISTRICTS OF A HOUSE EXCEED BY MORE THAN FIVE PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH OF ALL THE DISTRICTS UNDER ANY OTHER PLAN FOR THE SAME HOUSE THAT IS CONSISTENT WITH THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION. IN THE CASE OF A LOCAL POLITICAL SUBDIVISION THAT HAS A POPULATION SUFFICIENT TO ESTABLISH TWO OR MORE DISTRICTS FOR ANY ONE HOUSE, THE AGGREGATE LENGTH OF THE BOUNDARIES OF ALL DISTRICTS FOR THAT HOUSE ENTIRELY WITHIN THE POLITICAL SUBDIVISION SHALL NOT EXCEED BY MORE THAN FIVE PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH OF THE DISTRICTS WITHIN THE POLITICAL SUBDIVISION UNDER ANY OTHER PLAN THAT IS CONSISTENT WITH THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION.

SUCH DISTRICTS shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such

district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

SUCH DISTRICTS SHALL NOT BE DRAWN FOR THE PURPOSE OF FAVORING ANY POLITICAL PARTY, INCUMBENT LEGISLATOR OR OTHER PERSON OR GROUP. IN PREPARING A PLAN, THE COMMISSION SHALL NOT CONSIDER OR TAKE INTO ACCOUNT THE ADDRESS OF INDIVIDUAL PERSONS, INCLUDING INCUMBENT LEGISLATORS. THE COMMISSION SHALL NOT USE THE POLITICAL AFFILIATIONS OF REGISTERED VOTERS, PREVIOUS ELECTION RESULTS, ADDRESSES OF INCUMBENT LEGISLATORS, ADDRESSES OF INDIVIDUAL PERSONS AND DEMOGRAPHIC INFORMATION OTHER THAN POPULATION HEAD COUNTS FOR THE PURPOSE OF FAVORING ANY POLITICAL PARTY, INCUMBENT LEGISLATOR OR OTHER PERSON OR GROUP.

SUCH DISTRICTS SHALL NOT BE DRAWN FOR THE PURPOSE OF DILUTING THE VOTING STRENGTH OF ANY LANGUAGE OR RACIAL MINORITY GROUP.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

S 5. The members of the assembly shall be chosen by single districts and shall be apportioned by the [legislature] APPORTIONMENT COMMISSION at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof

respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the [legislature] APPORTIONMENT COMMISSION making an apportionment shall prescribe[, and].

THE APPORTIONMENT COMMISSION SHALL divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, AS REQUIRED UNDER THE PROVISIONS FOR SENATE APPORTIONMENT, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, except a town having more than a ratio of apportionment and one-half over, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

[An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.]

THE STATE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION OVER ANY APPORTIONMENT MATTER. THE COURT SHALL HAVE JURISDICTION TO COMPEL THE COMMISSION OR ANY PERSON TO PERFORM DUTIES REQUIRED OF THE COMMISSION OR THAT PERSON BY THIS SECTION OR ANY LAW ENACTED PURSUANT TO THIS SECTION UPON PETITION OF ANY REGISTERED VOTER. ANY REGISTERED VOTER MAY FILE A PETITION WITH THE COURT CHALLENGING A PLAN OF THE COMMISSION WITHIN FORTY-FIVE DAYS OF THE ADOPTION OF A PLAN. THE COURT MAY CONSOLIDATE ANY OR ALL PETITIONS AND SHALL GIVE ALL PETITIONS REGARDING APPORTIONMENT PRECEDENCE OVER ALL OTHER MATTERS. THE COURT SHALL RENDER ITS DECISION WITHIN SIXTY DAYS AFTER A PETITION IS FILED. IF THE COURT FINDS THAT THE PLAN IS NOT CONSISTENT WITH THE REQUIREMENTS OF ANY FEDERAL OR STATE CONSTITUTIONAL OR STATUTORY PROVISION, THE COURT SHALL DECLARE THE PLAN INVALID IN WHOLE OR IN PART AND SHALL ORDER THE COMMISSION TO PREPARE A NEW PLAN WITHIN SIXTY DAYS.

A REAPPORTIONMENT PLAN SHALL BE IN FORCE UNTIL THE EFFECTIVE DATE OF A PLAN BASED UPON THE FOLLOWING FEDERAL CENSUS TAKEN IN A YEAR ENDING IN ZERO UNLESS MODIFIED PURSUANT TO COURT ORDER. A REAPPORTIONMENT PLAN SHALL NOT BE SUBJECT TO AMENDMENT, APPROVAL OR REPEAL BY INITIATIVE, REFERENDUM OR ACT OF THE LEGISLATURE.

THE LEGISLATURE MAY DEFINE BY LAW ANY OF THE STANDARDS ENUMERATED IN THIS SECTION AND MAY ESTABLISH BY LAW ADDITIONAL STANDARDS, NOT IN CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES OR THIS CONSTITUTION, DESIGNED TO GUARANTEE FAIR AND EFFECTIVE REPRESENTATION FOR ALL CITIZENS. NO LAW ENACTED UNDER THIS SECTION SHALL MODIFY A PLAN IN EFFECT AT THE TIME OF THE EFFECTIVE DATE OF THAT LAW.

S 5-B. IN EACH YEAR ENDING IN ZERO AND AT ANY OTHER TIME OF COURT ORDERED APPORTIONMENT, AN APPORTIONMENT COMMISSION SHALL BE ESTABLISHED TO PREPARE A REAPPORTIONMENT PLAN FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS, NONE OF WHOM MAY BE PAST OR CURRENT PUBLIC OFFICIALS, NOR PAST OR CURRENT OFFICE HOLDERS IN ANY POLITICAL PARTY. THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY SHALL EACH SELECT ONE MEMBER. THE FOUR MEMBERS SO SELECTED SHALL SELECT, BY A VOTE OF AT LEAST THREE MEMBERS, A FIFTH MEMBER WHO SHALL SERVE AS CHAIR. THE LEGISLATURE SHALL ESTABLISH BY LAW QUALIFICATIONS OF COMMISSIONERS AND PROCEDURES FOR THEIR SELECTION AND THE FILLING OF VACANCIES. THE LEGISLATURE SHALL ESTABLISH BY LAW THE DUTIES AND POWERS OF THE COMMISSION AND SHALL APPROPRIATE FUNDS TO ENABLE THE COMMISSION TO CARRY OUT ITS DUTIES.

S 2. Resolved (if the Senate concur), That the foregoing amendments be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.