A BILL FOR AN ACT

CONCERNING THE "COLORADO ACCURATE RESIDENCE FOR REDISTRICTING ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

For purposes of the census, the federal census bureau counts prisoners in the correctional facility in which they were housed as of April 1 of the year in which the census was taken. For redistricting purposes, the bill reassigns those persons to their last known residence in Colorado prior to incarceration. If the last known residence is outside of Colorado or the last known residence is unknown, the prisoners are not
counted for purposes of redistricting.

The bill requires the department of corrections (department) to begin collecting and maintaining specified information on inmates to be able to provide that information following a federal census. It directs the department to report the information to the legislative council staff and the office of legislative legal services (nonpartisan staff) and nonpartisan staff to develop a database of population to be used in all redistricting.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Colorado Accurate Residence for Redistricting Act".

SECTION 2. In Colorado Revised Statutes, add 2-2-902 as follows:

2-2-902. Accurate census data - electronic record of prisoner home address - adjustment of census data - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Decennial census day" means April 1 of the year 2020 and every year ending in zero thereafter.

(b) "Department" means the department of corrections.

(c) "Necessary census data" means the federal decennial Pub.L. 94-171 data published for the state by the United States Census Bureau and adjusted by the general assembly's nonpartisan staff to reflect the changes pursuant to subsections (5) and (6) of this section.

(d) "Nonpartisan staff" means the staff of the legislative council and office of legislative legal services, or any successor offices.

(2) (a) Starting as soon as practicable after the effective date of this section, the department shall collect and maintain an electronic record of the legal residence, presumptively
OUTSIDE OF THE CORRECTIONAL FACILITY, AND OTHER DEMOGRAPHIC DATA, FOR ANY PERSON ENTERING ITS CUSTODY. AT A MINIMUM, THIS RECORD MUST CONTAIN THE LAST KNOWN COMPLETE STREET ADDRESS PRIOR TO INCARCERATION, THE PERSON'S RACE, WHETHER THE PERSON IS OF HISPANIC OR LATINO ORIGIN, AND WHETHER THE PERSON IS OVER EIGHTEEN YEARS OF AGE. TO THE DEGREE POSSIBLE, THE DEPARTMENT SHALL ALSO ALLOW THE LEGAL RESIDENCE TO BE UPDATED AS APPROPRIATE.

(b) ON OR BEFORE MAY 1 OF EACH YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN AND IN WHICH THE UNITED STATES CENSUS BUREAU COUNTS INCARCERATED PERSONS AS RESIDENTS OF CORRECTIONAL FACILITIES, THE DEPARTMENT SHALL DELIVER TO NONPARTISAN STAFF A REPORT THAT INCLUDES, FOR EACH PERSON INCARCERATED IN A FACILITY OPERATED BY OR UNDER CONTRACT WITH THE DEPARTMENT:

(I) A UNIQUE IDENTIFIER, NOT INCLUDING THE NAME OF THE PERSON OR THE STATE OFFENDER IDENTIFICATION NUMBER. THE UNIQUE IDENTIFIER MUST ENABLE NONPARTISAN STAFF TO ADDRESS INQUIRIES ABOUT SPECIFIC ADDRESS RECORDS TO THE DEPARTMENT WITHOUT MAKING IT POSSIBLE FOR ANYONE OUTSIDE OF THE DEPARTMENT TO IDENTIFY THE PERSON TO WHOM THE ADDRESS RECORD PERTAINS.

(II) THE STREET ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS INCARCERATED ON THE DECENNIAL CENSUS DAY;

(III) THE LAST KNOWN ADDRESS OF SUCH PERSON PRIOR TO INCARCERATION OR OTHER LEGAL RESIDENCE, IF KNOWN;

(IV) THE PERSON'S RACE, WHETHER THE PERSON IS OF HISPANIC OR
LATINO ORIGIN, AND WHETHER THE PERSON IS OVER EIGHTEEN YEARS OF
AGE, IF KNOWN; AND

(V) ANY ADDITIONAL INFORMATION NONPARTISAN STAFF MAY
REQUEST PURSUANT TO LAW.

(c) THE DEPARTMENT SHALL PROVIDE THE DATA SPECIFIED IN
SUBSECTION (2)(b) OF THIS SECTION IN AN ELECTRONIC FORMAT AS
SPECIFIED BY NONPARTISAN STAFF.

(d) THE INFORMATION REQUIRED TO BE PROVIDED TO
NONPARTISAN STAFF PURSUANT TO THIS SUBSECTION (2) MUST NOT
INCLUDE THE NAME OF ANY INCARCERATED PERSON AND MUST NOT
ALLOW FOR THE IDENTIFICATION OF ANY SUCH PERSON EXCEPT TO THE
DEPARTMENT. NOTWITHSTANDING THE "COLORADO OPEN RECORDS ACT",
PART 2 OF ARTICLE 72 OF TITLE 24, OR ANY OTHER PROVISION OF LAW, THE
INFORMATION IS CONFIDENTIAL AND NONPARTISAN STAFF OR ANY OTHER
STATE AGENCY OR LOCAL GOVERNMENT ENTITY SHALL NOT DISCLOSE ANY
INFORMATION FROM THE REPORT EXCEPT AS REDISTRICTING DATA
AGGREGATED BY CENSUS BLOCK FOR PURPOSES SPECIFIED IN SUBSECTION
(4) OF THIS SECTION.

(3) NONPARTISAN STAFF SHALL REQUEST EACH AGENCY THAT
OPERATES A FEDERAL FACILITY IN THIS STATE THAT INCARCERATES
PERSONS CONVICTED OF A CRIMINAL OFFENSE TO PROVIDE IT WITH A
REPORT INCLUDING THE INFORMATION LISTED IN SUBSECTION (2)(b) OF
THIS SECTION.

(4) PURSUANT TO SUBSECTION (5) OF THIS SECTION, NONPARTISAN
STAFF SHALL PREPARE REDISTRICTING POPULATION DATA TO REFLECT
INCARCERATED PERSONS AT THEIR RESIDENTIAL ADDRESSES RATHER THAN
THEIR PLACE OF INCARCERATION. THIS DATA PREPARED BY NONPARTISAN
STAFF IS THE NECESSARY CENSUS DATA PROVIDED TO AND TO BE USED BY
THE INDEPENDENT LEGISLATIVE AND CONGRESSIONAL REDISTRICTING
COMMISSIONS ESTABLISHED PURSUANT TO SECTIONS 44 AND 46 OF
ARTICLE V OF THE STATE CONSTITUTION. THE DATA IS THE POPULATION
BASE OF CONGRESSIONAL DISTRICTS, STATE HOUSE OF REPRESENTATIVE
DISTRICTS, STATE SENATE DISTRICTS, AND ALL LOCAL GOVERNMENTAL
DISTRICTS THAT ARE BASED ON POPULATION. NONPARTISAN STAFF SHALL
MAKE THIS CENSUS DATA AVAILABLE TO THE INDEPENDENT LEGISLATIVE
AND CONGRESSIONAL REDISTRICTING COMMISSIONS AND TO MEMBERS OF
THE PUBLIC AND ANY COUNTY OR LOCAL GOVERNMENTAL ENTITY OF
COLORADO UPON REQUEST.

(5) (a) FOR EACH PERSON INCLUDED IN A REPORT RECEIVED
PURSUANT TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION,
NONPARTISAN STAFF SHALL DETERMINE THE GEOGRAPHIC UNITS FOR
WHICH POPULATION COUNTS ARE REPORTED IN THE FEDERAL DECENNIAL
CENSUS THAT CONTAIN THE FACILITY OF INCARCERATION AND THE LEGAL
RESIDENCE AS LISTED IN THE REPORT.

(b) FOR EACH PERSON INCLUDED IN A REPORT RECEIVED PURSUANT
TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION, IF THE LEGAL RESIDENCE
IS KNOWN AND IN THIS STATE, NONPARTISAN STAFF SHALL:

(I) ENSURE THAT THE PERSON IS NOT INCLUDED IN ANY
POPULATION COUNTS REPORTED BY NONPARTISAN STAFF FOR THE
GEOGRAPHIC UNITS THAT INCLUDE THE FACILITY AT WHICH THE PERSON
WAS INCARCERATED, UNLESS THAT GEOGRAPHIC UNIT ALSO INCLUDES THE
PERSON'S LEGAL RESIDENCE; AND

(II) ENSURE THAT ANY POPULATION COUNTS REPORTED BY
NONPARTISAN STAFF REFLECT THE PERSON’S RESIDENTIAL ADDRESS AS
REPORTED PURSUANT TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION.

   (c) For each person included in a report received pursuant to sub-
   sections (2)(b) and (3) of this section for whom a legal residence
   is unknown or is not in this state, and for all persons reported in
   the census as residing in a federal correctional facility for whom
   a report was not provided, nonpartisan staff shall ensure that the
   person is not included in any population counts reported by nonpar-
   tisan staff for the geographic units that include the facility at which
   the person was incarcerated.

   (6) The data prepared by nonpartisan staff pursuant to this sec-
   tion must be completed and published no later than thirty days after
   the date that federal decennial Pub.L. 94-171 data for the state is
   delivered to the state.

   (7) Nonpartisan staff shall notify local governments that subsection
   (5) of this section requires local governments to use the data prepared
   by them pursuant to this section for redistricting purposes.

   (8) The data prepared by nonpartisan staff pursuant to this section
   shall not be used in the distribution of any state or federal aid.

SECTION 3. In Colorado Revised Statutes, amend 2-2-901 as
follows:

   2-2-901. Population data for redistricting. (1) The general
   assembly hereby finds and declares that:

   (a) Section 44 of article V of the state constitution requires the
   general assembly to divide the state into congressional districts after each
   new apportionment of seats in the United States house of representatives;
and a new apportionment occurs after each federal decennial census;

(b) Section 48 of article V of the state constitution requires that a 
reapportionment commission be appointed after each federal census to 
establish, revise, and alter the state senatorial and representative districts;

c) These sections imply that the general assembly and the 
reapportionment commission must perform their constitutional duty to 
redraw the boundaries of congressional and state legislative districts using 
population data derived from the latest federal census, so that the equal 
population requirements of the federal and state constitutions can be 
satisfied;

d) Federal officials have proposed using statistical sampling 
techniques to modify the traditional headcount of the population;

e) The United States supreme court has held that the federal 
census act prohibits the use of statistically adjusted population data to 
apportion seats in the United States house of representatives among the 
states;

f) Many have argued that statistically adjusted population data 
does not satisfy the requirement of the federal constitution for an "actual 
enumeration" of the population;

g) There is no reason for congress to use one set of population 
data for apportionment of seats in congress and for state redistricting 
authorities to use a different set of data to redraw congressional and state 
legislative district boundaries, and the federal government would incur 
additional costs by furnishing two sets of data to the states;

h) Using different population data for redistricting would subject 
the state of Colorado to the risk of litigation over the appropriate 
population figures, which form the very foundation of any congressional
or state legislative redistricting plan;

(i) It is therefore necessary to establish the intent of the general
assembly that the same population data be used in the congressional and
state legislative redistricting processes as is used for purposes of
apportioning seats in the United States house of representatives among
the states:

(2) For purposes of redrawing the boundaries of congressional,
state senatorial, and state representative districts after the EACH federal
census, in the year 2010, the general assembly and the Colorado
reapportionment commission THE INDEPENDENT LEGISLATIVE AND
CONGRESSIONAL REDISTRICTING COMMISSIONS ESTABLISHED PURSUANT
to sections 44 and 46 of article V of the state constitution shall
use population data supplied by the United States bureau of the census
that has been used to apportion the seats in the United States house of
representatives among the states BUREAU AS ADJUSTED BY THE
LEGISLATIVE COUNCIL STAFF AND OFFICE OF LEGISLATIVE LEGAL
SERVICES, OR ANY SUCCESSOR OFFICES, PURSUANT TO SECTION 2-2-902.

SECTION 4. In Colorado Revised Statutes, 30-10-306, amend
(1), (2), and (4) as follows:

30-10-306. Commissioners' districts - vacancies. (1) The
board of county commissioners shall divide each county shall be
divided into three compact districts. by the board of county
commissioners. Each district shall MUST be as nearly equal in population
as possible based on the most recent federal census of the United States
minus the number of persons serving a sentence of detention or
confinement in any correctional facility in the county as indicated in the
statistical report of the department of corrections for the most recent fiscal
year AS ADJUSTED BY THE LEGISLATIVE COUNCIL STAFF AND OFFICE OF LEGISLATIVE LEGAL SERVICES, OR ANY SUCCESSOR OFFICES, PURSUANT TO SECTION 2-2-902. Each district shall MUST be numbered consecutively and shall IS not be subject to alteration more often than once every two years.

THE VOTERS OF THE WHOLE COUNTY SHALL ELECT one commissioner shall be elected from each of such districts. by the voters of the whole county. If any commissioner, during his or her THE COMMISSIONER'S term of office, moves from the district in which he or she THE COMMISSIONER resided when elected, his or her THE office shall thereupon become BECOMES vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(2) Each county having a population of seventy thousand or more which THAT has chosen to increase the members of the board of county commissioners from three to five shall MUST be divided into three or five districts by the board of county commissioners according to the method of election described in section 30-10-306.5 (5) or (6) or section 30-10-306.7. The districts shall MUST be as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year AS ADJUSTED BY THE LEGISLATIVE COUNCIL STAFF AND OFFICE OF LEGISLATIVE LEGAL SERVICES, OR ANY SUCCESSOR OFFICES, PURSUANT TO SECTION 2-2-902. Each district shall MUST be numbered consecutively, and shall IS not be subject to alteration more often than once every two years; except that, notwithstanding subsection (3) of this section, the
board may alter the districts to conform to precinct boundaries that are
changed in accordance with section 1-5-103 (1), C.R.S., based on the
division of the state into congressional districts or an approved plan for
reapportionment of the members of the general assembly when necessary
to ensure that no precinct is located in more than one district.
Commissioners shall be elected at large or from districts according
to the method of election described in section 30-10-306.5 (5) or (6) or
section 30-10-306.7. If any commissioner required to be a resident in a
district moves during his term of office from the district in which he resided when elected, his office shall thereupon become vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(4) Notwithstanding subsections (1) to (3) of this section, after each federal census of the United States, each district shall be established, revised, or altered to assure that such districts are as nearly equal in population as possible based on such census minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year as adjusted by the legislative council staff and office of legislative legal services, or any successor offices, pursuant to section 2-2-902. The establishment, revision, or alteration of districts required by this subsection (4) shall be completed by September 30 of the odd-numbered year following such census.

SECTION 5. In Colorado Revised Statutes, 30-10-306.7, amend (5)(a) as follows:
30-10-306.7. Procedure for electing county commissioners.

(5) (a) If a majority of the votes cast on the question are in favor of changing the method of electing the five commissioners or providing for three commissioners, as provided in subparagraph (II) or subparagraph (III) of paragraph (a) of subsection (2) of this section, the board of county commissioners shall change the boundaries of the commissioner districts so as to create three districts as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year as adjusted by the legislative council staff and office of legislative legal services, or any successor offices, pursuant to section 2-2-902. The districts shall be numbered consecutively and shall not be subject to alteration more often than once every two years; except that, notwithstanding section 30-10-306 (3), the board may alter the districts to conform to precinct boundaries that are changed in accordance with section 1-5-103 (1), C.R.S., based on the division of the state into congressional districts or an approved plan for reapportionment of the members of the general assembly when necessary to ensure that no precinct is located in more than one district. All other provisions of sections 1-4-205 (3) (a) C.R.S., and 30-10-306 (2) and (3) relating to the method of electing members, as provided in this paragraph (a), shall be subsection (5)(a), are applicable; except that, when districts are created, such changes shall be completed by July 1 of the odd-numbered year immediately preceding the general election.
SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.