

5771

2011-2012 Regular Sessions

I N S E N A T E

June 15, 2011

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Introduced by Sen. McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil service law and the public authorities law, in relation to suspension or demotion upon the abolition or reduction of positions for labor class and noncompetitive titles; and to repeal section 80-a of the civil service law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1, 1-a, 1-b, 1-c, 2, 6, 7 and 9 of section 80  
2 of the civil service law, subdivision 1 as amended and subdivisions 6  
3 and 7 as added by chapter 283 of the laws of 1972, subdivision 1-a as  
4 added by chapter 312 of the laws of 1976, subdivision 1-b as added by  
5 chapter 653 of the laws of 1978, subdivision 1-c as added by chapter 334  
6 of the laws of 1994, subdivision 2 as amended by chapter 376 of the laws  
7 of 1977, subdivisions 6 and 7 as renumbered by chapter 360 of the laws  
8 of 1985, and subdivision 9 as added by chapter 470 of the laws of 1988,  
9 are amended to read as follows:

10 1. Suspension or demotion. Where, because of economy, consolidation or  
11 abolition of functions, curtailment of activities or otherwise, posi-  
12 tions in the competitive, *NONCOMPETITIVE*, OR LABOR class are abolished  
13 or reduced in rank or salary grade, suspension or demotion, as the case  
14 may be, among incumbents holding the same or similar positions shall be  
15 made in the inverse order of original appointment on a permanent basis  
16 in the classified service in the service of the governmental jurisdic-  
17 tion in which such abolition or reduction of positions occurs, subject  
18 to the provisions of subdivision seven of section eighty-five of this  
19 chapter; provided, however, that the date of original appointment of any  
20 such incumbent who was transferred to such governmental jurisdiction  
21 from another governmental jurisdiction upon the transfer of functions  
22 shall be the date of original appointment on a permanent basis in the  
23 classified service in the service of the governmental jurisdiction from

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

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1 which such transfer was made. Notwithstanding the provisions of this  
2 subdivision, however, upon the abolition or reduction of positions in  
3 the competitive, NONCOMPETITIVE OR LABOR class, incumbents holding the  
4 same or similar positions who have not completed their probationary  
5 service shall be suspended or demoted, as the case may be, before any  
6 permanent incumbents, and among such probationary employees the order of  
7 suspension or demotion shall be determined as if such employees were  
8 permanent incumbents.

9 1-a. Notwithstanding the provisions of subdivision one of this  
10 section, the members of a police or paid fire department in the city of  
11 Buffalo shall be subject to the following procedure. Where, because of  
12 economy, consolidation or abolition of functions, curtailment of activ-  
13 ities or otherwise, positions in the competitive, NONCOMPETITIVE OR  
14 LABOR class are abolished or reduced in rank or salary grade, suspension  
15 or demotion, as the case may be, among incumbents holding the same or  
16 similar positions shall be made in the inverse order of original  
17 appointment on a permanent basis in the grade or title in the service of  
18 the governmental jurisdiction in which such abolition or reduction of  
19 positions occurs, subject to the provisions of subdivision seven of  
20 section eighty-five of this chapter. Notwithstanding the provisions of  
21 this subdivision, however, upon the abolition or reduction of positions  
22 in the competitive class, incumbents holding the same or similar posi-  
23 tions who have not completed their probationary service shall be  
24 suspended or demoted, as the case may be, before any permanent incum-  
25 bents, and among such probationary employees the order of suspension or  
26 demotion shall be determined as if such employees were permanent incum-  
27 bents.

28 1-b. Notwithstanding the provisions of subdivision one of this  
29 section, employees of secure detention facilities in the city of New  
30 York and of the alternatives to secure detention facilities program in  
31 such city who are performing functions which were assumed by the depart-  
32 ment of social services of the city of New York on the tenth day of  
33 November, nineteen hundred seventy-one and who, upon such assumption  
34 were transferred to said department, shall be subject to the following  
35 procedure. Where, because of economy, consolidation or abolition of  
36 function, curtailment of activities or otherwise, positions in the  
37 competitive, NONCOMPETITIVE OR LABOR class are abolished, or reduced in  
38 rank or salary grade, suspension or demotion, as the case may be, among  
39 incumbents holding the same or similar positions shall be made in the  
40 inverse order of original appointment on a permanent basis in the clas-  
41 sified service in the service of the governmental jurisdiction in which  
42 such abolition or reduction of positions occurs, subject to the  
43 provisions of subdivision seven of section eighty-five of this chapter;  
44 provided, however, that if any person so employed and so transferred was  
45 employed on a permanent basis in such a facility or such program prior  
46 to the thirtieth day of December, nineteen hundred sixty-seven, for  
47 purposes of this subdivision regarding priority of retention and for no  
48 other purpose, the date of original appointment of any such person shall  
49 be deemed to be the date such permanent employment commenced prior to  
50 the said thirtieth day of December, nineteen hundred sixty-seven.

51 1-c. Notwithstanding the provisions of subdivision one of this  
52 section, sworn employees of the Monroe county sheriff's department shall  
53 be subject to the following procedure. Where, because of economy,  
54 consolidation or abolition of function, curtailment of activities or  
55 otherwise, positions in the competitive, NONCOMPETITIVE OR LABOR class  
56 are abolished, or reduced in rank or salary grade, suspension or

1 demotion, as the case may be, among incumbents holding the same or simi-  
2 lar positions shall be made in the inverse order of original appointment  
3 on a permanent basis in the grade or title in the service of the govern-  
4 mental jurisdiction in which such abolition or reduction of positions  
5 occurs, subject to the provisions of subdivision seven of section eight-  
6 y-five of this chapter; provided, however, that if any person so  
7 employed was employed in such person's current title prior to the first  
8 day of April, nineteen hundred ninety-three, for purposes of this subdivi-  
9 sion regarding priority of retention and for no other purpose, the  
10 date of original appointment of any such person shall be deemed to be  
11 the date such employment commenced prior to the said first day of April,  
12 nineteen hundred ninety-three.

13 2. Continuous service. Except as otherwise provided herein, for the  
14 purposes of this section the original appointment of an incumbent shall  
15 mean the date of his first appointment on a permanent basis in the clas-  
16 sified service followed by continuous service in the classified service  
17 on a permanent basis up to the time of the abolition or reduction of the  
18 competitive, NONCOMPETITIVE OR LABOR class positions. An employee who  
19 has resigned and who has been reinstated or reappointed in the service  
20 within one year thereafter shall, for the purposes of this section, be  
21 deemed to have continuous service. An employee who has been terminated  
22 because of a disability resulting from occupational injury or disease as  
23 defined in the workmen's compensation law and who has been reinstated or  
24 reappointed in the service thereafter shall be deemed to have continuous  
25 service. A period of employment on a temporary or provisional basis, or  
26 in the unclassified service, immediately preceded and followed by perma-  
27 nent service in the classified service, shall not constitute an inter-  
28 ruption of continuous service for the purposes of this section; nor  
29 shall a period of leave of absence without pay pursuant to law or the  
30 rules of the civil service commission having jurisdiction, or any period  
31 during which an employee is suspended from his position pursuant to this  
32 section, constitute an interruption of continuous service for the  
33 purposes of this section.

34 6. Displacement in civil divisions. A permanent incumbent of a posi-  
35 tion in a civil division in a specific title to which there is a direct  
36 line of promotion who is suspended or displaced pursuant to this  
37 section, together with all other such incumbents suspended or displaced  
38 at the same time, shall displace, in the inverse order of the order of  
39 suspension or demotion prescribed in subdivisions one and two of this  
40 section, incumbents serving in positions in the same lay-off unit in the  
41 next lower occupied title in direct line of promotion who shall be  
42 displaced in the order of suspension or demotion prescribed in subdivi-  
43 sions one and two of this section; provided, however, that no incumbent  
44 shall displace any other incumbent having greater retention standing. If  
45 a permanent incumbent of a position in a civil division is suspended or  
46 displaced from a position in a title for which there are no lower level  
47 occupied positions in direct line of promotion, he shall displace the  
48 incumbent with the least retention right pursuant to subdivisions one  
49 and two of this section who is serving in a position in the title in  
50 which the displacing incumbent last served on a permanent basis prior to  
51 service in one or more positions in the title from which he is suspended  
52 or displaced, if: (1) the service of the displacing incumbent while in  
53 such former title was satisfactory and (2) the position of the junior  
54 incumbent is in (a) the competitive, NONCOMPETITIVE OR LABOR class, (b)  
55 the layoff unit from which the displacing incumbent was suspended or  
56 displaced, and (c) a lower salary grade than the position from which the

1 displacing incumbent is suspended or displaced; provided, however, that  
2 no incumbent shall displace any other incumbent having greater retention  
3 standing. Refusal of appointment to a position afforded by this subdivi-  
4 sion constitutes waiver of rights under this subdivision with respect to  
5 the suspension or displacement on account of which the refused appoint-  
6 ment is afforded. The municipal civil service commission shall promul-  
7 gate rules to implement this subdivision including rules which may  
8 provide adjunctive opportunities for displacement either to positions in  
9 direct line of promotion or to formerly held positions; provided, howev-  
10 er, that no such rule shall permit an incumbent to displace any other  
11 incumbent having greater retention standing. For the purpose of acquir-  
12 ing preferred list rights, displacement pursuant to this subdivision is  
13 the equivalent of suspension or demotion pursuant to subdivision one of  
14 this section.

15 7. Displacement in the state service. A permanent incumbent of a posi-  
16 tion in the state service in a specific title to which there is a direct  
17 line of promotion who is suspended or displaced pursuant to this  
18 section, together with all other such incumbents suspended or displaced  
19 at the same time, shall displace, in the inverse order of the order of  
20 suspension or demotion prescribed in subdivisions one and two of this  
21 section, incumbents serving in positions in the same layoff unit in the  
22 next lower occupied title in direct line of promotion who shall be  
23 displaced in the order of suspension or demotion prescribed in subdivi-  
24 sions one and two of this section; provided, however, that no incumbent  
25 shall displace any other incumbent having greater retention standing. If  
26 a permanent incumbent of a position in the state service is suspended or  
27 displaced from a position in a title for which there are no lower level  
28 occupied positions in direct line of promotion, he shall displace the  
29 incumbent with the least retention right pursuant to subdivisions one  
30 and two of this section who is serving in a position in the title in  
31 which the displacing incumbent last served on a permanent basis prior to  
32 service in one or more positions in the title from which he is suspended  
33 or displaced, if: (1) the service of the displacing incumbent while in  
34 such former title was satisfactory and (2) the position of the junior  
35 incumbent is in (a) the competitive, NONCOMPETITIVE OR LABOR class, (b)  
36 the layoff unit from which the displacing incumbent was suspended or  
37 displaced, and (c) a lower salary grade than the position from which the  
38 displacing incumbent is suspended or displaced; provided, however, that  
39 no incumbent shall displace any other incumbent having greater retention  
40 standing. Refusal of appointment to a position afforded by this subdivi-  
41 sion constitutes waiver of rights under this subdivision with respect to  
42 the suspension or displacement on account of which the refused appoint-  
43 ment is afforded. The state civil service commission shall promulgate  
44 rules to implement this subdivision including rules which may provide  
45 adjunctive opportunities for displacement either to positions in direct  
46 line of promotion or to formerly held positions; provided, however, that  
47 no such rule shall permit an incumbent to displace any other incumbent  
48 having greater retention standing. For the purpose of acquiring  
49 preferred list rights, displacement pursuant to this subdivision is the  
50 equivalent of suspension or demotion pursuant to subdivision one of this  
51 section.

52 9. Certain suspensions or demotions in the city of Niagara Falls.  
53 Notwithstanding the provisions of subdivision one of this section, the  
54 members of a paid fire department in the city of Niagara Falls shall be  
55 subject to the following procedure. Where, because of economy, consol-  
56 idation or abolition of functions, curtailment of activities or other-

1 wise, positions in the competitive class are abolished or reduced in  
2 rank or salary grade, suspension or demotion, as the case may be, among  
3 incumbents holding the same or similar positions shall be made in the  
4 inverse order of original appointment on a permanent basis in the grade  
5 or title in the service of the governmental jurisdiction in which such  
6 abolition or reduction of positions occurs, subject to the provisions of  
7 subdivision seven of section eighty-five of this chapter. Notwithstand-  
8 ing the provisions of this subdivision, however, upon the abolition or  
9 reduction of positions in the competitive, NONCOMPETITIVE OR LABOR  
10 class, incumbents holding the same or similar positions who have not  
11 completed their probationary service shall be suspended or demoted, as  
12 the case may be, before any permanent incumbents, and among such proba-  
13 tionary employees the order of suspension or demotion shall be deter-  
14 mined as if such employees were permanent incumbents.

15 S 2. Section 80-a of the civil service law is REPEALED.

16 S 3. Subdivisions 2 and 4 of section 78 of the civil service law, as  
17 added by chapter 29 of the laws of 1996, are amended to read as follows:

18 2. Order of certification of names from transfer list. a. The names of  
19 persons on a transfer list established to fill vacancies in the same  
20 position or a position in a lower grade in line of promotion shall be  
21 certified therefrom in the order of their original appointments, in  
22 accordance with the provisions of subdivision three of section eighty[,  
23 subdivision three of section eighty-a] and subdivision seven of section  
24 eighty-five of this chapter.

25 b. The names of persons on a transfer list established to fill vacan-  
26 cies in a comparable position shall be certified therefrom with equal  
27 ranking for appointment.

28 4. Relative seniority. Where a preferred list exists containing the  
29 names of persons who have been suspended or demoted from a position in  
30 the same title to which an appointment is to be made, the relative  
31 seniority, determined in accordance with the provisions of subdivision  
32 three of section eighty[, subdivision three of section eighty-a] and  
33 subdivision seven of section eighty-five of this chapter, of the person  
34 certified first on such preferred list willing to accept appointment and  
35 the person certified first on the transfer list willing to accept  
36 appointment shall be compared and the person with the greater seniority  
37 shall be certified first.

38 S 4. Paragraphs a, b and e of subdivision 1 of section 79 of the civil  
39 service law, as added by chapter 315 of the laws of 1995, are amended to  
40 read as follows:

41 a. Where, and to the extent that, an agreement between the state and  
42 an employee organization entered into pursuant to article fourteen of  
43 this chapter so provides, upon notification to the department that an  
44 employee in the state service is to be suspended or demoted in accord-  
45 ance with the provisions of section eighty [or eighty-a] of this article  
46 by reason of the state's exercise of its right to contract out for goods  
47 and services, and receipt of the information required pursuant to  
48 section eighty-one-a of this article for purposes of establishing reem-  
49 ployment rosters, at least ninety days prior to the suspension or  
50 demotion of an affected employee, the department shall place the name of  
51 the employee upon a redeployment list. Such redeployment list shall be  
52 certified for filling positions in the same title or in any comparable  
53 title, as determined by the department, before certification is made  
54 from any other eligible list, placement roster, reemployment roster or  
55 preferred list. The director of state operations is authorized to rede-  
56 ploy such employees to positions in appointing authorities of the execu-

1 tive branch. The department may extend the right to be placed on a rede-  
2 ployment list, in accordance with the provisions of this section, to  
3 employees not subject to the provisions of such agreement.

4 b. Orders of certification of names from a redeployment list. The  
5 names of persons on a redeployment list shall be certified therefrom for  
6 appointment in the order of their original appointments, in accordance  
7 with the provisions of subdivision three of section eighty [and subdivi-  
8 sion three of section eighty-a] of this article.

9 e. Termination of eligibility for appointment. Eligibility for  
10 appointment of an employee whose name appears on a redeployment list  
11 shall terminate at such time as the employee is redeployed pursuant to  
12 the provisions of this section to a position in the same salary grade as  
13 the position from which he or she has been suspended or demoted, or has  
14 exercised his or her reemployment rights pursuant to the provisions of  
15 section eighty-one or eighty-one-a of this article, provided, however,  
16 that eligibility for appointment shall terminate no later than six  
17 months following the suspension or demotion of such employee in accord-  
18 ance with the provisions of section eighty [or eighty-a] of this arti-  
19 cle. Upon such employee's suspension or demotion, the department shall  
20 place the name of such employee upon a preferred list, and a reemploy-  
21 ment roster, as appropriate, in accordance with the provisions of  
22 sections eighty-one and [eight-one-a] EIGHTY-ONE-A of this article.

23 S 5. Subdivision 1 of section 81 of the civil service law, as amended  
24 by chapter 283 of the laws of 1972, is amended to read as follows:

25 1. Establishment of preferred lists; general provisions. The head of  
26 any department, office or institution in which an employee is suspended  
27 or demoted in accordance with the provisions of [sections] SECTION  
28 eighty [and eighty-a] of this chapter shall, upon such suspension or  
29 demotion, furnish the state civil service department or appropriate  
30 municipal commission, as the case may be, a statement showing his name,  
31 title or position, date of appointment, and the date of and reason for  
32 suspension or demotion. It shall be the duty of such civil service  
33 department or commission, as the case may be, forthwith to place the  
34 name of such employee upon a preferred list, together with others who  
35 may have been suspended or demoted from the same or similar positions in  
36 the same jurisdictional class, and to certify such list, as hereinafter  
37 provided, for filling vacancies in the same jurisdictional class; first,  
38 in the same or similar position; second, in any position in a lower  
39 grade in line of promotion; and third, in any comparable position. Such  
40 preferred list shall be certified for filling a vacancy in any such  
41 position before certification is made from any other list, including a  
42 promotion eligible list, notwithstanding the fact that none of the  
43 persons on such preferred list was suspended from or demoted in the  
44 department or suspension and demotion unit in which such vacancy exists.  
45 No other name shall be certified from any other list for any such posi-  
46 tion until such preferred list is exhausted. The eligibility for rein-  
47 statement of a person whose name appears on any such preferred list  
48 shall not continue for a period longer than four years from the date of  
49 separation or demotion.

50 S 6. Subdivisions 1 and 5 of section 81-a of the civil service law,  
51 subdivision 1 as amended by chapter 140 of the laws of 1993 and subdivi-  
52 sion 5 as added by chapter 239 of the laws of 1992, are amended to read  
53 as follows:

54 1. Establishment of reemployment rosters in the state service; general  
55 provisions. The head of any department, office or institution from which  
56 an employee in the state service is to be suspended or demoted in

1 accordance with the provisions of section eighty [or eighty-a] of this  
2 article, shall, at least twenty days prior to such suspension or  
3 demotion, furnish the state civil service department with a statement  
4 showing such employee's name, title or position, date of appointment,  
5 and the date of and reason for suspension or demotion. Upon such employ-  
6 ee's suspension or demotion, it shall be the duty of the department to  
7 place the name of such employee upon a reemployment roster for filling  
8 vacancies in any comparable position as determined by the department,  
9 except that employees suspended or demoted from positions in the non-  
10 competitive and labor classes may not be certified to fill vacancies in  
11 the competitive class. Such reemployment roster shall be certified for  
12 filling a vacancy in any such position before certification is made from  
13 any other list, including a promotion eligible list, but not prior to a  
14 preferred list. Eligibility for reinstatement of a person whose name  
15 appears on any such reemployment roster shall not continue for a period  
16 longer than four years from the date of suspension or demotion provided,  
17 however, in no event shall eligibility for reinstatement from a reem-  
18 ployment roster continue once the person is no longer eligible for rein-  
19 statement from a preferred list.

20 5. Notwithstanding any other provision of this chapter, the department  
21 may disqualify for reinstatement and remove from a reemployment roster  
22 the name of any otherwise eligible person who, by reason of physical or  
23 mental incapacity, is found to be unable to satisfactorily perform the  
24 duties of the position for which such roster has been established, or  
25 who has engaged in such misconduct as would warrant his or her dismissal  
26 from public employment, except that a person who is not completely phys-  
27 ically incapacitated and who is suspended or demoted pursuant to section  
28 eighty [or eighty-a] of this article because his or her position has  
29 been abolished or reduced, but who is certified for reinstatement to any  
30 position having the same physical requirements as the position from  
31 which such person was suspended or demoted, shall not be disqualified  
32 because of his or her incapacity, unless upon medical examination his or  
33 her incapacity has worsened to a degree that he or she would not be able  
34 to satisfactorily perform in such position. No person shall be disquali-  
35 fied pursuant to this subdivision unless he or she is first given a  
36 written statement of the reasons therefor and an opportunity to be heard  
37 at a hearing at which satisfactory proof of such reasons must be estab-  
38 lished by appropriate evidence, and at which such person may present  
39 independent evidence and be entitled to representation by counsel. The  
40 department shall designate a person to hold such hearing and report  
41 thereon.

42 S 7. Subdivision 1 of section 81-b of the civil service law, as  
43 amended by chapter 140 of the laws of 1993, is amended to read as  
44 follows:

45 1. Establishment of placement rosters in the state service; general  
46 provisions. The head of any department, office or institution from  
47 which an employee in the state service is to be suspended or demoted in  
48 accordance with the provisions of section eighty [or eighty-a] of this  
49 article, shall, no later than the date on which he or she furnishes the  
50 state civil service department with the employee information required  
51 pursuant to section eighty-one-a of this article for purposes of estab-  
52 lishing reemployment rosters, furnish the state civil service department  
53 with a statement showing such employee's name, title or position, date  
54 of appointment, and the anticipated date of and reason for suspension or  
55 demotion. Upon receiving such information, it shall be the duty of the  
56 department forthwith to place the name of such employee upon a placement

1 roster for filling vacancies in the same title or in any comparable  
2 position as determined by the department, except that employees  
3 suspended or demoted from positions in the non-competitive and labor  
4 classes may not be certified to fill vacancies in the competitive class.  
5 Such placement roster shall be certified for filling a vacancy in any  
6 such position before certification is made from any other list, includ-  
7 ing a promotion eligible list, but not prior to a preferred list or a  
8 reemployment roster. Eligibility for appointment of an employee whose  
9 name appears on any such placement roster shall terminate at such time  
10 as the employee is suspended or demoted in accordance with the  
11 provisions of section eighty [or eighty-a] of this article. Upon such  
12 employee's suspension or demotion, the department shall place the name  
13 of such employee upon a preferred list, and a reemployment roster as  
14 appropriate, in accordance with the provisions of sections eighty-one  
15 and eighty-one-a of this article.

16 S 8. Subdivision 7 of section 85 of the civil service law, as amended  
17 by chapter 532 of the laws of 1976, is amended to read as follows:

18 7. Preference in retention upon the abolition of positions. In the  
19 event of the abolition or elimination of any position in the civil  
20 service [for which eligible lists are established or any position the  
21 incumbent of which is encompassed by section eighty-a of this chapter],  
22 any suspension, demotion or displacement shall be made in the inverse  
23 order of the date of original appointment in the service subject to the  
24 following conditions: (1) blind employees shall be granted absolute  
25 preference in retention; (2) the date of such original appointment for  
26 disabled veterans shall be deemed to be sixty months earlier than the  
27 actual date, determined in accordance with section thirty of the general  
28 construction law; (3) the date of such original appointment for non-dis-  
29 abled veterans shall be deemed to be thirty months earlier than the  
30 actual date, determined in accordance with section thirty of the general  
31 construction law; (4) no permanent competitive class employee subject to  
32 the jurisdiction of the civil service commission of the city of New York  
33 who receives an injury in the line of duty, as defined in this para-  
34 graph, which requires immediate hospitalization, and which is not  
35 compensable through workmen's compensation may be suspended, demoted or  
36 displaced pursuant to section eighty of this chapter within three months  
37 of the date of his confinement, provided that medical authorities  
38 approved by such commission shall certify that the employee is not able  
39 to perform the duties of his position; provided further, that such  
40 three-month period may be extended by such commission for additional  
41 periods not to exceed one year each upon the certification of medical  
42 authorities selected by such commission that the employee is, as a  
43 result of his injury, still not able to perform the duties of his posi-  
44 tion. An injury in the line of duty, as used herein, shall be construed  
45 to mean an injury which is incurred as a direct result of the lawful  
46 performance of the duties of the position. In determining whether an  
47 injury was received in the line of duty, such commission shall require  
48 the head of the agency by which the employee is employed to certify that  
49 the injury was received as a direct result of the lawful performance of  
50 the employee's duties; and (5) the spouse of a veteran with one hundred  
51 percent service connected disability shall be deemed to be sixty months  
52 earlier than the actual date, determined in accordance with section  
53 thirty of the general construction law, provided, the spouse is domi-  
54 ciled with the veteran-spouse and is the head of the household. This  
55 section shall not be construed as conferring any additional benefit upon  
56 such employee other than a preference in retention. Such employee shall

1 be subject to transfer upon the abolition of his function within his  
2 agency or department.

3 S 9. Section 86 of the civil service law, as amended by chapter 283 of  
4 the laws of 1972, is amended to read as follows:

5 S 86. Transfer of veterans or exempt volunteer firemen upon abolition  
6 of positions. If the position in the non-competitive or in the labor  
7 class held by any honorably discharged veteran of the armed forces of  
8 the United States who served therein in time of war as defined in  
9 section eighty-five of this chapter, or by an exempt volunteer fireman  
10 as defined in the general municipal law, shall become unnecessary or be  
11 abolished for reasons of economy or otherwise, the honorably discharged  
12 veteran or exempt volunteer fireman holding such position shall not be  
13 discharged from the public service but shall be transferred to a similar  
14 position wherein a vacancy exists, and shall receive the same compen-  
15 sation therein. It is hereby made the duty of all persons clothed with  
16 the power of appointment to make such transfer effective. The right to  
17 transfer herein conferred shall continue for a period of one year  
18 following the date of abolition of the position, and may be exercised  
19 only where a vacancy exists in an appropriate position to which transfer  
20 may be made at the time of demand for transfer. Where the positions of  
21 more than one such veteran or exempt volunteer fireman are abolished and  
22 a lesser number of vacancies in similar positions exist to which trans-  
23 fer may be made, the veterans or exempt volunteer firemen whose posi-  
24 tions are abolished shall be entitled to transfer to such vacancies in  
25 the order of their original appointment in the service. Nothing in this  
26 section shall be construed to apply to the position of private secre-  
27 tary, cashier or deputy of any official or department. [This section  
28 shall have no application to persons encompassed by section eighty-a of  
29 this chapter.]

30 S 10. Paragraph (a) of subdivision 3 of section 131 of the civil  
31 service law, as amended by chapter 733 of the laws of 1979, is amended  
32 to read as follows:

33 (a) If such an employee is demoted, or displaced to a position in a  
34 lower grade pursuant to [sections] SECTION eighty [or eighty-a] of this  
35 chapter, or is appointed, transferred or reinstated to a position in a  
36 lower grade, he shall, upon such demotion, displacement, appointment,  
37 transfer, or reinstatement, receive the rate of compensation which  
38 corresponds with the number of annual increments and the percentage  
39 value of performance advances actually received in the salary grades  
40 from which and to which he is demoted, displaced, appointed, transferred  
41 or reinstated, as the case may be.

42 S 11. Paragraph (e) of subdivision 11 and paragraph (f) of subdivision  
43 13 of section 3556 of the public authorities law, as added by chapter 5  
44 of the laws of 1997, are amended to read as follows:

45 (e) Notwithstanding any other provision of this title, the corporation  
46 may disqualify for reinstatement and remove from a reemployment roster  
47 the name of any otherwise eligible person who, by reason of physical or  
48 mental incapacity, is found to be unable to satisfactorily perform the  
49 duties of the position for which such roster has been established, or  
50 who has engaged in such misconduct as would warrant his or her dismissal  
51 from public employment, except that a person who is not completely phys-  
52 ically incapacitated and who is suspended or demoted pursuant to section  
53 eighty [or eighty-a] of the civil service law because his or her posi-  
54 tion has been abolished or reduced, but who is certified for rein-  
55 statement to any position having the same physical requirements as the  
56 position from which such person was suspended or demoted, shall not be

1 disqualified because of his or her incapacity, unless upon medical exam-  
2 ination his or her incapacity has worsened to a degree that he or she  
3 would not be able to satisfactorily perform in such position. No person  
4 shall be disqualified pursuant to this subdivision unless he or she is  
5 first given a written statement of the reasons therefor and an opportu-  
6 nity to be heard at a hearing at which satisfactory proof of such  
7 reasons must be established by appropriate evidence, and at which such  
8 person may present independent evidence and be entitled to represen-  
9 tation by counsel. The corporation shall designate a person to hold such  
10 hearing and report thereon.

11 (f) Eligibility for appointment of an employee whose name appears on a  
12 redeployment list shall terminate at such time as the employee is rede-  
13 ployed pursuant to the provisions of this section to a position in the  
14 same salary grade as the position from which he or she has been  
15 suspended or demoted, or has exercised his or her reemployment rights  
16 pursuant to the provisions of section eighty-one or eighty-one-a of the  
17 civil service law, provided, however, that eligibility for appointment  
18 shall terminate no later than six months following the suspension or  
19 demotion of such employee in accordance with the provisions of section  
20 eighty [or eighty-a] of the civil service law. Upon such employee's  
21 suspension or demotion, the corporation shall place the name of such  
22 employee upon a preferred list, and a reemployment roster, as appropri-  
23 ate, in accordance with the provisions of subdivision eight of this  
24 section.

25 S 12. This act shall take effect immediately.