

5771--A

Cal. No. 1004

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 -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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1 such incumbent who was transferred to such governmental jurisdiction  
2 from another governmental jurisdiction upon the transfer of functions  
3 shall be the date of original appointment on a permanent basis in the  
4 classified service in the service of the governmental jurisdiction from  
5 which such transfer was made. Notwithstanding the provisions of this  
6 subdivision, however, upon the abolition or reduction of positions in  
7 the competitive, NONCOMPETITIVE OR LABOR class, incumbents holding the  
8 same or similar positions who have not completed their probationary  
9 service shall be suspended or demoted, as the case may be, before any  
10 permanent incumbents, and among such probationary employees the order of  
11 suspension or demotion shall be determined as if such employees were  
12 permanent incumbents.

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

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

55 1-c. Notwithstanding the provisions of subdivision one of this  
56 section, sworn employees of the Monroe county sheriff's department shall

1 be subject to the following procedure. Where, because of economy,  
2 consolidation or abolition of function, curtailment of activities or  
3 otherwise, positions in the competitive, NONCOMPETITIVE OR LABOR class  
4 are abolished, or reduced in rank or salary grade, suspension or  
5 demotion, as the case may be, among incumbents holding the same or simi-  
6 lar positions shall be made in the inverse order of original appointment  
7 on a permanent basis in the grade or title in the service of the govern-  
8 mental jurisdiction in which such abolition or reduction of positions  
9 occurs, subject to the provisions of subdivision seven of section eight-  
10 y-five of this chapter; provided, however, that if any person so  
11 employed was employed in such person's current title prior to the first  
12 day of April, nineteen hundred ninety-three, for purposes of this subdi-  
13 vision regarding priority of retention and for no other purpose, the  
14 date of original appointment of any such person shall be deemed to be  
15 the date such employment commenced prior to the said first day of April,  
16 nineteen hundred ninety-three.

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

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

1 such former title was satisfactory and (2) the position of the junior  
2 incumbent is in (a) the competitive, NONCOMPETITIVE OR LABOR class, (b)  
3 the layoff unit from which the displacing incumbent was suspended or  
4 displaced, and (c) a lower salary grade than the position from which the  
5 displacing incumbent is suspended or displaced; provided, however, that  
6 no incumbent shall displace any other incumbent having greater retention  
7 standing. Refusal of appointment to a position afforded by this subdivi-  
8 sion constitutes waiver of rights under this subdivision with respect to  
9 the suspension or displacement on account of which the refused appoint-  
10 ment is afforded. The municipal civil service commission shall promul-  
11 gate rules to implement this subdivision including rules which may  
12 provide adjunctive opportunities for displacement either to positions in  
13 direct line of promotion or to formerly held positions; provided, howev-  
14 er, that no such rule shall permit an incumbent to displace any other  
15 incumbent having greater retention standing. For the purpose of acquir-  
16 ing preferred list rights, displacement pursuant to this subdivision is  
17 the equivalent of suspension or demotion pursuant to subdivision one of  
18 this section.

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

1 9. Certain suspensions or demotions in the city of Niagara Falls.  
2 Notwithstanding the provisions of subdivision one of this section, the  
3 members of a paid fire department in the city of Niagara Falls shall be  
4 subject to the following procedure. Where, because of economy, consol-  
5 idation or abolition of functions, curtailment of activities or other-  
6 wise, positions in the competitive class are abolished or reduced in  
7 rank or salary grade, suspension or demotion, as the case may be, among  
8 incumbents holding the same or similar positions shall be made in the  
9 inverse order of original appointment on a permanent basis in the grade  
10 or title in the service of the governmental jurisdiction in which such  
11 abolition or reduction of positions occurs, subject to the provisions of  
12 subdivision seven of section eighty-five of this chapter. Notwithstand-  
13 ing the provisions of this subdivision, however, upon the abolition or  
14 reduction of positions in the competitive, NONCOMPETITIVE OR LABOR  
15 class, incumbents holding the same or similar positions who have not  
16 completed their probationary service shall be suspended or demoted, as  
17 the case may be, before any permanent incumbents, and among such proba-  
18 tionary employees the order of suspension or demotion shall be deter-  
19 mined as if such employees were permanent incumbents.

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

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

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

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

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

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

46 a. Where, and to the extent that, an agreement between the state and  
47 an employee organization entered into pursuant to article fourteen of  
48 this chapter so provides, upon notification to the department that an  
49 employee in the state service is to be suspended or demoted in accord-  
50 ance with the provisions of section eighty [or eighty-a] of this article  
51 by reason of the state's exercise of its right to contract out for goods  
52 and services, and receipt of the information required pursuant to  
53 section eighty-one-a of this article for purposes of establishing reem-  
54 ployment rosters, at least ninety days prior to the suspension or  
55 demotion of an affected employee, the department shall place the name of  
56 the employee upon a redeployment list. Such redeployment list shall be

certified for filling positions in the same title or in any comparable title, as determined by the department, before certification is made from any other eligible list, placement roster, reemployment roster or preferred list. The director of state operations is authorized to redeploy such employees to positions in appointing authorities of the executive branch. The department may extend the right to be placed on a redeployment list, in accordance with the provisions of this section, to employees not subject to the provisions of such agreement.

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

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

S 5. Subdivision 1 of section 81 of the civil service law, as amended by chapter 152 of the laws of 2011, is amended to read as follows:

1. Establishment of preferred lists; general provisions. The head of any department, office or institution in which an employee is suspended or demoted in accordance with the provisions of [sections] SECTION eighty [and eighty-a] of this title shall, upon such suspension or demotion, furnish the state civil service department or appropriate municipal commission, as the case may be, a statement showing his name, title or position, date of appointment, and the date of and reason for suspension or demotion. It shall be the duty of such civil service department or commission, as the case may be, forthwith to place the name of such employee upon a preferred list, together with others who may have been suspended or demoted from the same or similar positions in the same jurisdictional class, and to certify such list, as hereinafter provided, for filling vacancies in the same jurisdictional class; first, in the same or similar position; second, in any position in a lower grade in line of promotion; and third, in any comparable position. Such preferred list shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, notwithstanding the fact that none of the persons on such preferred list was suspended from or demoted in the department or suspension and demotion unit in which such vacancy exists. No other name shall be certified from any other list for any such position until such preferred list is exhausted. The eligibility for reinstatement of a person whose name appears on any such preferred list shall not continue for a period longer than four years from the date of separation or demotion. An employee whose name was placed on the preferred list and at the time of such placement was on active duty with the armed forces of the United States, as pursuant to title ten, four-

teen or thirty-two of the United States code, shall not be eligible for employment reinstatement for a period longer than four years after the date of termination of military duty.

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

1. Establishment of reemployment rosters in the state service; general provisions. The head of any department, office or institution from which an employee in the state service is to be suspended or demoted in accordance with the provisions of section eighty [or eighty-a] of this article, shall, at least twenty days prior to such suspension or demotion, furnish the state civil service department with a statement showing such employee's name, title or position, date of appointment, and the date of and reason for suspension or demotion. Upon such employee's suspension or demotion, it shall be the duty of the department to place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the department, except that employees suspended or demoted from positions in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such reemployment roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list. Eligibility for reinstatement of a person whose name appears on any such reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion provided, however, in no event shall eligibility for reinstatement from a reemployment roster continue once the person is no longer eligible for reinstatement from a preferred list.

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

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

1. Establishment of placement rosters in the state service; general provisions. The head of any department, office or institution from

1 which an employee in the state service is to be suspended or demoted in  
2 accordance with the provisions of section eighty [or eighty-a] of this  
3 article, shall, no later than the date on which he or she furnishes the  
4 state civil service department with the employee information required  
5 pursuant to section eighty-one-a of this article for purposes of estab-  
6 lishing reemployment rosters, furnish the state civil service department  
7 with a statement showing such employee's name, title or position, date  
8 of appointment, and the anticipated date of and reason for suspension or  
9 demotion. Upon receiving such information, it shall be the duty of the  
10 department forthwith to place the name of such employee upon a placement  
11 roster for filling vacancies in the same title or in any comparable  
12 position as determined by the department, except that employees  
13 suspended or demoted from positions in the non-competitive and labor  
14 classes may not be certified to fill vacancies in the competitive class.  
15 Such placement roster shall be certified for filling a vacancy in any  
16 such position before certification is made from any other list, includ-  
17 ing a promotion eligible list, but not prior to a preferred list or a  
18 reemployment roster. Eligibility for appointment of an employee whose  
19 name appears on any such placement roster shall terminate at such time  
20 as the employee is suspended or demoted in accordance with the  
21 provisions of section eighty [or eighty-a] of this article. Upon such  
22 employee's suspension or demotion, the department shall place the name  
23 of such employee upon a preferred list, and a reemployment roster as  
24 appropriate, in accordance with the provisions of sections eighty-one  
25 and eighty-one-a of this article.

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

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



1 injury was received in the line of duty, such commission shall require  
2 the head of the agency by which the employee is employed to certify that  
3 the injury was received as a direct result of the lawful performance of  
4 the employee's duties; and (5) the spouse of a veteran with one hundred  
5 percent service connected disability shall be deemed to be sixty months  
6 earlier than the actual date, determined in accordance with section  
7 thirty of the general construction law, provided, the spouse is domi-  
8 ciled with the veteran-spouse and is the head of the household. This  
9 section shall not be construed as conferring any additional benefit upon  
10 such employee other than a preference in retention. Such employee shall  
11 be subject to transfer upon the abolition of his function within his  
12 agency or department.

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

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

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

43 (a) If such an employee is demoted, or displaced to a position in a  
44 lower grade pursuant to [sections] SECTION eighty [or eighty-a] of this  
45 chapter, or is appointed, transferred or reinstated to a position in a  
46 lower grade, he shall, upon such demotion, displacement, appointment,  
47 transfer, or reinstatement, receive the rate of compensation which  
48 corresponds with the number of annual increments and the percentage  
49 value of performance advances actually received in the salary grades  
50 from which and to which he is demoted, displaced, appointed, transferred  
51 or reinstated, as the case may be.

52 S 11. Paragraph (e) of subdivision 11 and paragraph (f) of subdivision  
53 13 of section 3556 of the public authorities law, as added by chapter 5  
54 of the laws of 1997, are amended to read as follows:

55 (e) Notwithstanding any other provision of this title, the corporation  
56 may disqualify for reinstatement and remove from a reemployment roster

1 the name of any otherwise eligible person who, by reason of physical or  
2 mental incapacity, is found to be unable to satisfactorily perform the  
3 duties of the position for which such roster has been established, or  
4 who has engaged in such misconduct as would warrant his or her dismissal  
5 from public employment, except that a person who is not completely phys-  
6 ically incapacitated and who is suspended or demoted pursuant to section  
7 eighty [or eighty-a] of the civil service law because his or her posi-  
8 tion has been abolished or reduced, but who is certified for rein-  
9 statement to any position having the same physical requirements as the  
10 position from which such person was suspended or demoted, shall not be  
11 disqualified because of his or her incapacity, unless upon medical exam-  
12 ination his or her incapacity has worsened to a degree that he or she  
13 would not be able to satisfactorily perform in such position. No person  
14 shall be disqualified pursuant to this subdivision unless he or she is  
15 first given a written statement of the reasons therefor and an opportu-  
16 nity to be heard at a hearing at which satisfactory proof of such  
17 reasons must be established by appropriate evidence, and at which such  
18 person may present independent evidence and be entitled to represen-  
19 tation by counsel. The corporation shall designate a person to hold such  
20 hearing and report thereon.

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

35 S 12. This act shall take effect immediately.