

4583

2011-2012 Regular Sessions

I N   S E N A T E

April 12, 2011

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Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the military law and the civil service law, in relation to abolition of positions occupied by public employees absent on military duty

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

1     Section 1. Subdivision 11 of section 243 of the military law, as added  
2 by chapter 420 of the laws of 1953, is amended to read as follows:  
3     11. [Preferred] ELIMINATION OF POSITIONS AND PREFERRED lists.  
4 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO PUBLIC  
5 EMPLOYER SHALL ABOLISH A POSITION OCCUPIED BY A PUBLIC EMPLOYEE ENGAGED  
6 IN THE PERFORMANCE OF MILITARY DUTY, EXCEPT AS HEREINAFTER PROVIDED:  
7     (A) IF A PUBLIC EMPLOYER FIRST ABOLISHES ALL SIMILAR POSITIONS, THE  
8 EMPLOYER MAY ABOLISH A POSITION OCCUPIED BY A PUBLIC EMPLOYEE ENGAGED IN  
9 THE PERFORMANCE OF MILITARY DUTY. IF TWO OR MORE PUBLIC EMPLOYEES IN ANY  
10 SIMILAR POSITION ARE ENGAGED IN THE PERFORMANCE OF MILITARY DUTY, AND  
11 THE FOREGOING ACTION WOULD RESULT IN THE ELIMINATION OF AT LEAST ONE  
12 POSITION OCCUPIED BY A PUBLIC EMPLOYEE, THE ELIMINATION OF THE POSITION  
13 OR POSITIONS HELD BY THE PUBLIC EMPLOYEES ENGAGED IN THE PERFORMANCE OF  
14 MILITARY DUTY SHALL BE MADE IN ORDER OF SENIORITY, COMMENCING WITH THE  
15 LEAST SENIOR PUBLIC EMPLOYEE.  
16     (B) If the position occupied by a public employee is abolished prior  
17 to the termination of his military duty IN THE MANNER SET FORTH IN PARA-  
18 GRAPH (A) OF THIS SUBDIVISION, his OR HER name shall be placed forthwith  
19 upon a preferred list, as herein provided. Public employees in the  
20 competitive class of the civil service shall have their names placed  
21 upon a preferred eligible list, pursuant to the provisions of section  
22 [thirty-one] EIGHTY-ONE of the civil service law and public employees  
23 subject to section twenty-five hundred [thirty-five] EIGHTY-FIVE of the

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

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1 education law shall have their names placed upon a preferred list as  
2 provided in such [section] SECTIONS.

3 (C) FOR PURPOSES OF THIS SUBDIVISION "SIMILAR POSITION" SHALL MEAN A  
4 POSITION IN THE AREA FOR THE PERFORMANCE OF DUTIES SIMILAR TO THOSE  
5 PERFORMED IN THE POSITION HELD BY THE PUBLIC EMPLOYEE ENGAGED IN THE  
6 PERFORMANCE OF MILITARY DUTY.

7 S 2. Subdivision 3 of section 243 of the military law, as added by  
8 chapter 420 of the laws of 1953, is amended to read as follows:

9 3. Substitutes. A position held by a public employee who is absent on  
10 military duty shall[, so far as practicable,] be continued in existence,  
11 AS PROVIDED IN SUBDIVISION ELEVEN OF THIS SECTION, but shall be deemed  
12 temporarily vacant and shall be filled only when the public interest so  
13 requires. Any appointment to fill such vacancy shall be designated as a  
14 substitute appointment and the request for certification, the certif-  
15 ication and the indicia of appointment shall show that the person is  
16 being appointed as a substitute. Any public employee, who accepts  
17 appointment as a substitute shall be granted a leave of absence from his  
18 former position until the termination of such appointment and the tempo-  
19 rary vacancy resulting from such leave of absence shall be filled in  
20 like manner only when the public interest so requires and any appoint-  
21 ment to such position shall also be designated as a substitute appoint-  
22 ment and the request for certification, the certification and the indi-  
23 cia of appointment shall show that the person is being appointed to such  
24 position as a substitute. Every such substitute appointment shall be for  
25 a period not exceeding the leave of absence of the former incumbent and  
26 shall be made in accordance with the provisions of law applicable to  
27 such position, provided, however, that such substitute appointment may  
28 be continued for a period in excess of one year, notwithstanding the  
29 provisions of section [fifteen] SIXTY-FOUR of the civil service law.  
30 Such substitute employee shall acquire no right to permanent appointment  
31 or tenure by virtue of his service as a substitute and such service may  
32 be terminated at any time in the discretion of the appointing officer or  
33 body. His rights, if any, with respect to appointment or tenure, shall  
34 not, however, be impaired in any way by his acceptance of an appointment  
35 as a substitute and his name shall remain on any eligible or other list  
36 and he shall be certified as eligible for any other appointment author-  
37 ized by law during the existence of such list.

38 The appointment of a substitute shall terminate (a) upon the return of  
39 the former incumbent to his position or (b) upon the death or permanent  
40 total disability of the former incumbent or (c) upon failure of the  
41 former incumbent to return to said position within ninety days after the  
42 termination of his military duty or (d) upon the appointment or  
43 promotion of the former incumbent to another position as authorized by  
44 subdivision six of this section, and, upon the happening of any of such  
45 events, said position may then be filled in the manner provided by law.

46 S 3. Subdivision 7 of section 85 of the civil service law, as amended  
47 by chapter 532 of the laws of 1976, is amended to read as follows:

48 7. Preference in retention upon the abolition of positions. In the  
49 event of the abolition or elimination of any position in the civil  
50 service for which eligible lists are established or any position the  
51 incumbent of which is encompassed by section eighty-a of this chapter,  
52 any suspension, demotion or displacement shall be made in the inverse  
53 order of the date of original appointment in the service subject to the  
54 following conditions: (1) blind employees shall be granted absolute  
55 preference in retention; (2) the date of such original appointment for  
56 disabled veterans shall be deemed to be sixty months earlier than the

1 actual date, determined in accordance with section thirty of the general  
2 construction law; (3) the date of such original appointment for non-dis-  
3 abled veterans shall be deemed to be thirty months earlier than the  
4 actual date, determined in accordance with section thirty of the general  
5 construction law; (4) no permanent competitive class employee subject to  
6 the jurisdiction of the civil service commission of the city of New York  
7 who receives an injury in the line of duty, as defined in this para-  
8 graph, which requires immediate hospitalization, and which is not  
9 compensable through workmen's compensation may be suspended, demoted or  
10 displaced pursuant to section eighty of this chapter within three months  
11 of the date of his confinement, provided that medical authorities  
12 approved by such commission shall certify that the employee is not able  
13 to perform the duties of his position; provided further, that such  
14 three-month period may be extended by such commission for additional  
15 periods not to exceed one year each upon the certification of medical  
16 authorities selected by such commission that the employee is, as a  
17 result of his injury, still not able to perform the duties of his posi-  
18 tion. An injury in the line of duty, as used herein, shall be construed  
19 to mean an injury which is incurred as a direct result of the lawful  
20 performance of the duties of the position. In determining whether an  
21 injury was received in the line of duty, such commission shall require  
22 the head of the agency by which the employee is employed to certify that  
23 the injury was received as a direct result of the lawful performance of  
24 the employee's duties; [and] (5) the spouse of a veteran with one  
25 hundred percent service connected disability shall be deemed to be sixty  
26 months earlier than the actual date, determined in accordance with  
27 section thirty of the general construction law, provided, the spouse is  
28 domiciled with the veteran-spouse and is the head of the household; AND  
29 (6) EMPLOYEES ENGAGED IN THE PERFORMANCE OF MILITARY DUTY AT THE TIME OF  
30 ABOLITION OR ELIMINATION OF THEIR POSITION SHALL BE GRANTED PREFERENCE  
31 IN RETENTION, IN THE MANNER PROVIDED FOR IN SUBDIVISION ELEVEN OF  
32 SECTION TWO HUNDRED FORTY-THREE OF THE MILITARY LAW. This section shall  
33 not be construed as conferring any additional benefit upon such employee  
34 other than a preference in retention. Such employee shall be subject to  
35 transfer upon the abolition of his function within his agency or depart-  
36 ment.

37 S 4. This act shall take effect immediately.