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I N   A S S E M B L Y

(PREFILED)

January 6, 2010

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Introduced by M. of A. NOLAN, BENEDETTO, CYMBROWITZ, DeMONTE, ENGLE-BRIGHT, FIELDS, GALEF, GLICK, GUNTHER, HOYT, HYER-SPENCER, JAFFEE, KOON, LANCMAN, MAISEL, MAYERSOHN, PAULIN, PHEFFER, STIRPE, TITONE, WEISENBERG, SCHIMEL, GABRYSZAK -- Multi-Sponsored by -- M. of A. DESTITO, MAGEE, SWEENEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to removing public officials from office who are convicted of certain misdemeanor offenses

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

1     Section 1. Subdivision 1 of section 30 of the public officers law, as  
2     amended by chapter 209 of the laws of 1954, paragraph e as amended by  
3     chapter 454 of the laws of 1987 and paragraph f as amended by chapter  
4     550 of the laws of 1978, is amended to read as follows:  
5     1. Every office shall be vacant upon the happening of one of the  
6     following events before the expiration of the term thereof:  
7     a. The death of the incumbent;  
8     b. His OR HER resignation;  
9     c. His OR HER removal from office;  
10    d. His OR HER ceasing to be an inhabitant of the state, or if he OR  
11    SHE be a local officer, of the political subdivision, or municipal  
12    corporation of which he OR SHE is required to be a resident when chosen;  
13    e. His OR HER conviction of a felony, OR A MISDEMEANOR OFFENSE AGAINST  
14    ANOTHER PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT OR  
15    INTIMIDATION, or a crime involving a violation of his OR HER oath of  
16    office, provided, however, that a non-elected official may apply for  
17    reinstatement to the appointing authority upon reversal or the vacating  
18    of such conviction where the conviction is the sole basis for the vacan-  
19    cy. After receipt of such application, the appointing authority shall  
20    afford such applicant a hearing to determine whether reinstatement is  
21    warranted. The record of the hearing shall include the final judgment of  
22    the court which reversed or vacated such conviction and may also include

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

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1 the entire employment history of the applicant and any other submissions  
2 which may form the basis of the grant or denial of reinstatement  
3 notwithstanding the reversal or vacating of such conviction. Notwith-  
4 standing any law to the contrary, after review of such record, the  
5 appointing authority may, in its discretion, reappoint such non-elected  
6 official to his OR HER former office, or a similar office if his OR HER  
7 former office is no longer available. In the event of such rein-  
8 statement, the appointing authority may, in its discretion, award salary  
9 or compensation in full or in part for the period from the date such  
10 office became vacant to the date of reinstatement or any part thereof;

11 f. The entry of a judgment or order of a court of competent jurisdic-  
12 tion declaring him OR HER to be incompetent;

13 g. The judgment of a court, declaring void his OR HER election or  
14 appointment, or that his OR HER office is forfeited or vacant;

15 h. His OR HER refusal or neglect to file his OR HER official oath or  
16 undertaking, if one is required, before or within thirty days after the  
17 commencement of the term of office for which he OR SHE is chosen, if an  
18 elective office, or if an appointive office, within thirty days after  
19 notice of his OR HER appointment, or within thirty days after the  
20 commencement of such term; or to file a renewal undertaking within the  
21 time required by law, or if no time be so specified, within thirty days  
22 after notice to him OR HER in pursuance of law, that such renewal under-  
23 taking is required. The neglect or failure of any state or local officer  
24 to execute and file his OR HER oath of office and official undertaking  
25 within the time limited therefor by law, shall not create a vacancy in  
26 the office if such officer was on active duty in the armed forces of the  
27 United States and absent from the county of his OR HER residence at the  
28 time of his OR HER election or appointment, and shall take his OR HER  
29 oath of office and execute his OR HER official undertaking within thirty  
30 days after receipt of notice of his OR HER election or appointment, and  
31 provided such oath of office and official undertaking be filed within  
32 ninety days following the date it has been taken and subscribed, any  
33 inconsistent provision of law, general, special, or local to the contra-  
34 ry, notwithstanding.

35 S 2. This act shall take effect immediately.