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I N S E N A T E

February 1, 2010

Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public officers law and the legislative law, in relation to the automatic expulsion of a public officer upon conviction for an egregious class A misdemeanor committed after taking the oath to public office

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 AFTER TAKING THE OATH OF OFFICE AND before the expira-
7 tion of the term thereof:
8 a. The death of the incumbent;
9 b. His OR HER resignation;
10 c. His OR HER removal from office;
11 d. His OR HER ceasing to be an inhabitant of the state, or if he OR
12 SHE be a local officer, of the political subdivision, or municipal
13 corporation of which he OR SHE is required to be a resident when chosen;
14 e. His OR HER COMMISSION OF A CRIME RESULTING IN conviction of a felo-
15 ny, ANY OF THE FOLLOWING EGREGIOUS CLASS A MISDEMEANORS, AS CODIFIED IN
16 THE PENAL LAW AS: (1) SECTION 120.00 (ASSAULT IN THE THIRD DEGREE); (2)
17 SECTION 130.20 (SEXUAL MISCONDUCT); (3) SECTION 130.60 (SEXUAL ABUSE IN
18 THE SECOND DEGREE); (4) SECTION 150.01 (ARSON IN THE FIFTH DEGREE); (5)
19 SECTION 260.10 (ENDANGERING THE WELFARE OF A CHILD); (6) SECTION 260.25
20 (ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED
21 PERSON); AND (7) SUBDIVISION THREE OF SECTION 240.30, RELATING TO AGGRA-
22 VATED HARASSMENT IN THE SECOND DEGREE INVOLVING SUCH PHYSICAL CONTACT AS
23 DESCRIBED IN SUCH SUBDIVISION, or a crime involving a violation of his
24 OR HER oath of office, AS SET FORTH ABOVE IN THIS PARAGRAPH, provided,
25 however, that a non-elected official may apply for reinstatement to the

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

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1 appointing authority upon reversal or the vacating of such conviction
2 where the conviction is the sole basis for the vacancy. After receipt of
3 such application, the appointing authority shall afford such applicant a
4 hearing to determine whether reinstatement is warranted. The record of
5 the hearing shall include the final judgment of the court which reversed
6 or vacated such conviction and may also include the entire employment
7 history of the applicant and any other submissions which may form the
8 basis of the grant or denial of reinstatement notwithstanding the
9 reversal or vacating of such conviction. Notwithstanding any law to the
10 contrary, after review of such record, the appointing authority may, in
11 its discretion, reappoint such non-elected official to his OR HER former
12 office, or a similar office if his OR HER former office is no longer
13 available. In the event of such reinstatement, the appointing authority
14 may, in its discretion, award salary or compensation in full or in part
15 for the period from the date such office became vacant to the date of
16 reinstatement or any part thereof;

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

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

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

41 S 2. Section 3 of the legislative law is amended to read as follows:

42 S 3. Expulsion of members. Each house has the power to expel any of
43 its members[, after the report of a committee to inquire into the charg-
44 es against him shall have been made] UPON CONVICTION OF A FELONY OR AN
45 EGREGIOUS CLASS A MISDEMEANOR, AS SUCH CRIMES ARE DESCRIBED IN PARAGRAPH
46 E OF SUBDIVISION ONE OF SECTION THIRTY OF THE PUBLIC OFFICERS LAW.

47 S 3. This act shall take effect immediately.