S T A T E O F N E W Y O R K

7346

I N S E N A T E

March 31, 2010

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

AN ACT to amend the education law, in relation to the retaining quality teachers and teachers in shortage subject areas when teaching positions are eliminated in city school districts of cities having one million or more inhabitants; and to repeal certain provisions of the education law relating thereto

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

Section 1. This act shall be known and may be cited as "the keep effective and excellent professionals in the classroom act."

S 2. The section heading of section 2588 of the education law, as added by chapter 521 of the laws of 1976, is amended to read as follows:

Seniority, retention and displacement rights in connection with abolition of positions in city school districts of cities having [more than] one million inhabitants OR MORE.

S 3. Subdivision 3 of section 2588 of the education law is REPEALED and a new subdivision 3 is added to read as follows:

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING OR SUPERVISORY POSITIONS CITYWIDE AS A RESULT OF A CITYWIDE BUDGET REDUCTION IN ACCORDANCE WITH PARAGRAPH B OF SUBDIVISION FIVE-A OF SECTION TWENTY-FIVE HUNDRED SEVENTY-SIX OF THIS ARTICLE AND THE MAINTENANCE OF EFFORT REQUIREMENTS APPLICABLE TO THE CITY OF NEW YORK.

(I) DECISIONS CONCERNING WHICH POSITIONS WITHIN INDIVIDUAL SCHOOLS ARE TO BE ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF, SHALL BE MADE BY THE PRINCIPAL, CONSISTENT WITH GUIDANCE PROMULGATED BY THE CHANCELLOR PURSUANT TO THIS SECTION. THE PRINCIPAL SHALL MAKE THE DECISION AFTER CONSIDERING THE RECOMMENDATIONS OF A SCHOOL-BASED COMMITTEE COMPRISED OF TEACHERS, ADMINISTRATORS AND PARENTS. THE FOLLOWING FACTORS SHALL BE CONSIDERED IN DETERMINING WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF: (A) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND (B) WHEN MORE THAN

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

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ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE AREA: SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON; RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB; OFFICE OR SCHOOL NEEDS, INCLUDING: CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON.

(II) IN THE CASE OF TEACHERS OR SUPERVISORS WHO ARE ASSIGNED TO POSITIONS THAT ARE NOT WITHIN INDIVIDUAL SCHOOLS, OR WHO HAVE BEEN DISCIPLINED PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER AND ARE NOT ASSIGNED TO A FULL-TIME POSITION, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING OR SUPERVISORY POSITIONS AT INDIVIDUAL SCHOOLS IN ORDER TO MEET SCHOOL BUDGETARY NEEDS, REORGANIZE FUNCTIONS, OR FOR OTHER COMPELLING REASONS, OUTSIDE OF A CITYWIDE REDUCTION IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION, DECISIONS CONCERNING WHICH POSITIONS ARE TO BE ABOLISHED SHALL BE MADE BY THE PRINCIPAL, CONSISTENT WITH GUIDANCE PROMULGATED BY THE CHANCELLOR PURSUANT TO THIS SECTION. THE PRINCIPAL SHALL MAKE THE DECISION AFTER CONSIDERING THE RECOMMENDATIONS OF A SCHOOL-BASED COMMITTEE COMPRISED OF TEACHERS, ADMINISTRATORS AND PARENTS. THE FOLLOWING FACTORS SHALL BE CONSIDERED IN DETERMINING WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF: (I) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND (II) WHEN MORE THAN ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE AREA: SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON; RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB; OFFICE OR SCHOOL NEEDS, INCLUDING: CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON. A TEACHER OR SUPERVISOR WHOSE POSITION IS ABOLISHED PURSUANT TO THIS SUBPARAGRAPH SHALL BE ELIGIBLE TO REMAIN EMPLOYED BY THE DISTRICT WITH NO DIMINUTION IN SALARY OR BENEFITS FOR ONE YEAR FROM THE DATE UPON WHICH THE PERSON'S POSITION WAS ABOLISHED, PROVIDED THAT (A) IF THE PERSON IS A NON-TENURED EMPLOYEE, THE PERSON'S PERFORMANCE HAS BEEN SATISFACTORY; (B) IF THE PERSON IS A TENURED EMPLOYEE, THE PERSON HAS NOT BEEN SUSPENDED WITHOUT PAY OR RECEIVED A PENALTY OF TERMINATION IN PROCEEDINGS PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER; AND (C) SHOULD CITYWIDE LAYOFFS IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT DURING THIS ONE-YEAR PERIOD, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR. NOTWITHSTANDING ANY OTHER LAWS TO THE CONTRARY, INCLUDING BUT NOT LIMITED TO SECTION THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS CHAPTER, AFTER THE EXPIRATION OF ONE YEAR, A TEACHER OR SUPERVISOR WHO REMAINS EMPLOYED BY THE DISTRICT PURSUANT TO THIS SUBPARAGRAPH SHALL BE TERMINATED AUTOMATICALLY UNLESS THE TEACHER OR SUPERVISOR HAS BEEN REGULARLY APPOINTED TO A NON-SUBSTITUTE POSITION IN THE DISTRICT.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING POSITIONS DUE TO THE CLOSURE OR PHASE-OUT OF A SCHOOL, A TEACHER OR SUPERVISOR WHOSE POSITION IS ABOLISHED PURSUANT TO THIS PARAGRAPH SHALL BE ELIGIBLE TO REMAIN EMPLOYED BY THE DISTRICT WITH NO DIMINUTION IN SALARY OR BENEFITS FOR ONE YEAR FROM THE DATE UPON WHICH THE TEACHER'S POSITION WAS ABOLISHED, PROVIDED THAT (I) IF THE PERSON IS A NON-TENURED EMPLOYEE, THE PERSON'S PERFORMANCE HAS BEEN SATISFACTORY; (II) IF THE PERSON IS A TENURED

EMPLOYEE, THE PERSON HAS NOT BEEN SUSPENDED WITHOUT PAY OR RECEIVED A PENALTY OF TERMINATION IN PROCEEDINGS PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER; AND (III) SHOULD CITYWIDE LAYOFFS IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT DURING THIS ONE-YEAR PERIOD, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR. NOTWITHSTANDING ANY OTHER LAWS TO THE CONTRARY, INCLUDING BUT NOT LIMITED TO SECTION THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS CHAPTER, AFTER THE EXPIRATION OF ONE YEAR, A TEACHER OR SUPERVISOR WHO REMAINS EMPLOYED BY THE DISTRICT PURSUANT TO THIS PARAGRAPH SHALL BE TERMINATED AUTOMATICALLY UNLESS THE TEACHER OR SUPERVISOR HAS BEEN REGULARLY APPOINTED TO A NON-SUBSTITUTE POSITION IN THE DISTRICT.

S 4. Subdivision 4 of section 2588 of the education law is REPEALED and a new subdivision 4 is added to read as follows:

4. WHENEVER A TEACHING POSITION IS ABOLISHED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, SHOULD A VACANCY OCCUR IN THE SAME POSITION AT THE SAME SCHOOL OR ADMINISTRATIVE OFFICE WITHIN ONE YEAR OF THE DATE WHEN THE POSITION WAS ABOLISHED, THE PRINCIPAL, OR THE CHANCELLOR OR DESIGNEE, SHALL OFFER THE POSITION TO THE PERSON WHO HELD THE POSITION BEFORE IT WAS ABOLISHED. IF THE PERSON REJECTS THE OFFER, OR FAILS TO RESPOND TO THE OFFER WITHIN THIRTY DAYS, THE PERSON SHALL NO LONGER HAVE A RIGHT TO RETURN TO THE POSITION. IF MORE THAN ONE POSITION WAS ABOLISHED IN THE SAME LICENSE AREA AT THE SAME SCHOOL OR ADMINISTRATIVE OFFICE, AND THERE ARE FEWER VACANCIES IN THE SAME LICENSE AREA THAN PERSONS WHOSE POSITIONS WERE ABOLISHED, THE PRINCIPAL, THE CHANCELLOR OR DESIGNEE, SHALL HAVE DISCRETION TO DETERMINE WHICH PERSON SHOULD BE OFFERED THE POSITION FIRST.

S 5. Subdivision 7 of section 2588 of the education law is REPEALED.

S 6. Section 3013 of the education law, as added by chapter 737 of the laws of 1992, is amended to read as follows:

S 3013. Abolition of office or position. 1. [If] EXCEPT IN THE CASE OF TEACHING OR SUPERVISORY POSITIONS IN CITY SCHOOL DISTRICTS IN CITIES WITH ONE MILLION INHABITANTS OR MORE, IF a trustee, board of trustees, board of education or board of cooperative educational services abolishes an office or position and creates another office or position for the performance of duties similar to those performed in the office or position abolished, the person filling such office or position at the time of its abolishment shall be appointed to the office or position thus created without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled.

2. [Whenever] EXCEPT IN THE CASE OF TEACHING OR SUPERVISORY POSITIONS IN CITY SCHOOL DISTRICTS IN CITIES WITH ONE MILLION INHABITANTS OR MORE, WHENEVER a trustee, board of [trustee] TRUSTEES, board of education or board of cooperative educational services abolishes a position under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued.

3. (a) [If] EXCEPT IN THE CASE OF TEACHING OR SUPERVISORY POSITIONS IN CITY SCHOOL DISTRICTS IN CITIES WITH ONE MILLION INHABITANTS OR MORE, IF an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in

salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled. The persons on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions in the order of their length of service in the system at any time within seven years from the date of abolition or consolidation of such office or position.

(b) The persons on such preferred list shall be reinstated, in accordance with the terms of paragraph (a) of this subdivision, to such substitute positions of five months or more in duration, as may from time to time occur without losing their preferred status on such list. Declination of such reinstatement shall not adversely affect the persons' preferred eligibility status.

4. IN CITY SCHOOL DISTRICTS OF CITIES WITH ONE MILLION INHABITANTS OR MORE, ABOLITION OF TEACHING OR SUPERVISORY OFFICES OR POSITIONS SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION TWO THOUSAND FIVE HUNDRED EIGHTY-EIGHT OF THIS CHAPTER.

S 7. This act shall take effect immediately.