

1428--B

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I N A S S E M B L Y

January 7, 2011

Introduced by M. of A. CASTELLI, BURLING, N. RIVERA, STEVENSON, KATZ, McDONOUGH, McLAUGHLIN, WEPRIN, ABBATE, RAMOS, MALLIOTAKIS, DenDEKKER, ORTIZ, SCHIMEL, M. MILLER, RUSSELL, NOLAN -- Multi-Sponsored by -- M. of A. CALHOUN, CROUCH, GIGLIO, HAWLEY, McKEVITT, J. MILLER, MURRAY, REILICH -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 and a new subdivision
3 10-b is added to read as follows:
4 10-B. IF A PUBLIC EMPLOYER CONSOLIDATES, ABOLISHES, DISPLACES, OR
5 DEMOTES A POSITION, IN ACCORDANCE WITH SECTION EIGHTY, EIGHTY-A OR
6 EIGHTY-FIVE OF THE CIVIL SERVICE LAW, WHICH IS OCCUPIED BY A PUBLIC
7 EMPLOYEE CURRENTLY ON ACTIVE DUTY WITH THE ARMED FORCES OF THE UNITED
8 STATES, AS PURSUANT TO TITLE TEN, FOURTEEN OR THIRTY-TWO OF THE UNITED
9 STATES CODE, SUCH EMPLOYER SHALL COMPLY WITH SUBDIVISIONS ELEVEN AND
10 TWELVE OF THIS SECTION AND, UPON THE TERMINATION OF THE PUBLIC EMPLOY-
11 EE'S ACTIVE DUTY, AS DEFINED IN TITLE TEN, FOURTEEN OR THIRTY-TWO OF THE
12 UNITED STATES CODE, SUCH PUBLIC EMPLOYER SHALL PROVIDE FULL RE-EMPLOY-
13 MENT RIGHTS WARRANTED TO SUCH EMPLOYEE UNDER THE FEDERAL UNIFORMED
14 SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994, PROVIDED,
15 HOWEVER, THE RIGHT OF RE-EMPLOYMENT UNDER THIS SUBDIVISION DOES NOT
16 ENTITLE SUCH EMPLOYEE TO DISPLACEMENT RIGHTS OVER ANY PERSON WITH GREAT-
17 ER SENIORITY. SUCH PUBLIC EMPLOYER SHALL NOT ABOLISH ANY POSITION OR
18 POSITIONS SOLELY BASED UPON THE FACT THAT THE POSITION OR POSITIONS ARE
19 CURRENTLY FILLED BY AN INDIVIDUAL OR INDIVIDUALS ENGAGED IN MILITARY
20 DUTY.

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

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1 11. Preferred lists. If the position occupied by a public employee is
2 abolished prior to the termination of his military duty his name shall
3 be placed forthwith upon a preferred list, as herein provided. Public
4 employees in the competitive class of the civil service shall have their
5 names placed upon a preferred eligible list, pursuant to the provisions
6 of section [thirty-one] EIGHTY-ONE of the civil service law and public
7 employees subject to [section twenty-five hundred thirty-five] SECTIONS
8 TWENTY-FIVE HUNDRED TEN, TWENTY-FIVE HUNDRED EIGHTY-FIVE AND TWENTY-FIVE
9 HUNDRED EIGHTY-EIGHT of the education law shall have their names placed
10 upon a preferred list as provided in such section.

11 S 2. Subdivision 1 of section 81 of the civil service law, as amended
12 by chapter 283 of the laws of 1972, is amended to read as follows:

13 1. Establishment of preferred lists; general provisions. The head of
14 any department, office or institution in which an employee is suspended
15 or demoted in accordance with the provisions of sections eighty and
16 eighty-a of this [chapter] TITLE shall, upon such suspension or
17 demotion, furnish the state civil service department or appropriate
18 municipal commission, as the case may be, a statement showing his name,
19 title or position, date of appointment, and the date of and reason for
20 suspension or demotion. It shall be the duty of such civil service
21 department or commission, as the case may be, forthwith to place the
22 name of such employee upon a preferred list, together with others who
23 may have been suspended or demoted from the same or similar positions in
24 the same jurisdictional class, and to certify such list, as hereinafter
25 provided, for filling vacancies in the same jurisdictional class; first,
26 in the same or similar position; second, in any position in a lower
27 grade in line of promotion; and third, in any comparable position. Such
28 preferred list shall be certified for filling a vacancy in any such
29 position before certification is made from any other list, including a
30 promotion eligible list, notwithstanding the fact that none of the
31 persons on such preferred list was suspended from or demoted in the
32 department or suspension and demotion unit in which such vacancy exists.
33 No other name shall be certified from any other list for any such posi-
34 tion until such preferred list is exhausted. The eligibility for rein-
35 statement of a person whose name appears on any such preferred list
36 shall not continue for a period longer than four years from the date of
37 separation or demotion. AN EMPLOYEE WHOSE NAME WAS PLACED ON THE
38 PREFERRED LIST AND AT THE TIME OF SUCH PLACEMENT WAS ON ACTIVE DUTY WITH
39 THE ARMED FORCES OF THE UNITED STATES, AS PURSUANT TO TITLE TEN, FOUR-
40 TEEN OR THIRTY-TWO OF THE UNITED STATES CODE, SHALL NOT BE ELIGIBLE FOR
41 EMPLOYMENT REINSTATEMENT FOR A PERIOD LONGER THAN FOUR YEARS AFTER THE
42 DATE OF TERMINATION OF MILITARY DUTY.

43 S 3. The civil service law is amended by adding a new section 88 to
44 read as follows:

45 S 88. PROHIBITION AGAINST DISCRIMINATION AGAINST PUBLIC EMPLOYEES
46 SERVING IN THE ARMED FORCES. NO PUBLIC EMPLOYER, AS DEFINED IN SUBDIVI-
47 SION SIX OF SECTION TWO HUNDRED ONE OF THIS CHAPTER, SHALL DENY EMPLOY-
48 MENT, RE-EMPLOYMENT OR ANY BENEFIT OF EMPLOYMENT TO ANY PERSON OR
49 EMPLOYEE BASED ON PROSPECTIVE, CURRENT OR PAST ENLISTMENT, APPOINTMENT
50 OR COMMISSION WITH THE ARMED FORCES OF THE UNITED STATES. SUCH PERSON OR
51 EMPLOYEE SHALL BE AFFORDED FULL ENFORCEMENT RIGHTS UNDER THE LAWS OF
52 THIS STATE AND OF THE UNITED STATES, INCLUDING THE FEDERAL UNIFORMED
53 SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.

54 S 4. This act shall take effect immediately.