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2011-2012 Regular Sessions

I N  A S S E M B L Y

February 1, 2011

Introduced by M. of A. GABRYSZAK -- Multi-Sponsored by -- M. of A. WEISENBERG -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to granting additional credit to volunteer firefighters in competitive examinations and authorizing a preference in retention upon the abolition of certain positions

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

Section 1. The civil service law is amended by adding a new section 85-d to read as follows:

S 85-D. ADDITIONAL CREDIT ALLOWED VOLUNTEER FIREFIGHTERS IN COMPETITIVE EXAMINATIONS; PREFERENCE IN RETENTION UPON ABOLITION OF POSITIONS. 1. DEFINITIONS. THE TERM "VOLUNTEER FIREFIGHTER", AS USED IN THIS SECTION, SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO THE TERM "VOLUNTEER FIREMAN" IN SECTION THREE OF THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW.

2. ADDITIONAL CREDITS IN COMPETITIVE EXAMINATIONS FOR ORIGINAL APPOINTMENT OR PROMOTION. (A) ON ALL ELIGIBLE LISTS RESULTING FROM COMPETITIVE EXAMINATIONS, THE NAMES OF ELIGIBLES SHALL BE ENTERED IN THE ORDER OF THEIR RESPECTIVE FINAL EARNED RATINGS ON EXAMINATION, WITH THE NAME OF THE ELIGIBLE WITH THE HIGHEST FINAL EARNED RATING AT THE HEAD OF SUCH LIST; PROVIDED, HOWEVER, THAT, FOR THE PURPOSE OF DETERMINING FINAL EARNED RATINGS, VOLUNTEER FIREFIGHTERS SHALL BE ENTITLED TO RECEIVE, IN A COMPETITIVE EXAMINATION FOR ORIGINAL APPOINTMENT, AN ADDITIONAL TWO POINTS FOR TEN YEARS OF SERVICE AS A VOLUNTEER FIREFIGHTER, FOUR POINTS FOR TWENTY YEARS OF SUCH SERVICE, AND FIVE POINTS FOR TWENTY-FIVE YEARS OR MORE OF SUCH SERVICE; AND, IN A COMPETITIVE EXAMINATION FOR PROMOTION, AN ADDITIONAL ONE POINT FOR TEN YEARS OF SERVICE AS A VOLUNTEER FIREFIGHTER, TWO POINTS FOR TWENTY YEARS OF SUCH SERVICE, AND TWO AND ONE-HALF POINTS FOR TWENTY-FIVE YEARS OR MORE OF SUCH SERVICE.

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

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(B) SUCH ADDITIONAL CREDIT SHALL BE ADDED TO THE FINAL EARNED RATING OF SUCH VOLUNTEER FIREFIGHTER AFTER HE OR SHE HAS QUALIFIED IN THE COMPETITIVE EXAMINATION AND SHALL BE GRANTED ONLY AT THE TIME OF ESTABLISHMENT OF THE RESULTING ELIGIBLE LIST.

3. APPLICATION FOR ADDITIONAL CREDIT; PROOF OF ELIGIBILITY; ESTABLISHMENT OF ELIGIBLE LIST. ANY CANDIDATE, BELIEVING HIMSELF OR HERSELF ENTITLED TO ADDITIONAL CREDIT IN A COMPETITIVE EXAMINATION AS PROVIDED IN THIS SECTION, MAY MAKE APPLICATION FOR SUCH ADDITIONAL CREDIT AT ANY TIME BETWEEN THE DATE OF HIS OR HER APPLICATION FOR EXAMINATION AND THE DATE OF THE ESTABLISHMENT OF THE RESULTING ELIGIBLE LIST. A CANDIDATE SHALL BE ALLOWED A PERIOD OF NOT LESS THAN TWO MONTHS FROM THE DATE OF THE FILING OF HIS OR HER APPLICATION FOR EXAMINATION IN WHICH TO ESTABLISH, BY APPROPRIATE DOCUMENTARY PROOF, HIS OR HER ELIGIBILITY TO RECEIVE ADDITIONAL CREDIT UNDER THIS SECTION. AT ANY TIME AFTER TWO MONTHS HAVE ELAPSED SINCE THE FINAL DATE FOR FILING APPLICATIONS FOR A COMPETITIVE EXAMINATION FOR ORIGINAL APPOINTMENT OR PROMOTION, THE ELIGIBLE LIST RESULTING FROM SUCH EXAMINATION MAY BE ESTABLISHED, NOTWITHSTANDING THE FACT THAT A VOLUNTEER FIREFIGHTER WHO HAS APPLIED FOR ADDITIONAL CREDIT HAS FAILED TO ESTABLISH HIS OR HER ELIGIBILITY TO RECEIVE SUCH ADDITIONAL CREDIT. A CANDIDATE WHO FAILS TO ESTABLISH, BY APPROPRIATE DOCUMENTARY PROOF, HIS OR HER ELIGIBILITY TO RECEIVE ADDITIONAL CREDIT BY THE TIME AN ELIGIBLE LIST IS ESTABLISHED SHALL NOT THEREAFTER BE GRANTED ADDITIONAL CREDIT ON SUCH ELIGIBLE LIST.

4. USE OF ADDITIONAL CREDIT. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO PERSON WHO HAS RECEIVED A PERMANENT ORIGINAL APPOINTMENT OR A PERMANENT PROMOTION IN THE CIVIL SERVICE OF THE STATE OR OF ANY CITY OR CIVIL DIVISION THEREOF FROM AN ELIGIBLE LIST ON WHICH HE OR SHE WAS ALLOWED THE ADDITIONAL CREDIT GRANTED BY THIS SECTION AS A VOLUNTEER FIREFIGHTER SHALL THEREAFTER BE ENTITLED TO ANY ADDITIONAL CREDIT UNDER THIS SECTION AS A VOLUNTEER FIREFIGHTER.

(B) WHERE, AT THE TIME OF ESTABLISHMENT OF AN ELIGIBLE LIST, THE POSITION OF A VOLUNTEER FIREFIGHTER ON SUCH LIST HAS NOT BEEN AFFECTED BY THE ADDITION OF CREDITS GRANTED UNDER THIS SECTION, THE APPOINTMENT OR PROMOTION OF SUCH VOLUNTEER FIREFIGHTER FROM SUCH ELIGIBLE LIST SHALL NOT BE DEEMED TO HAVE BEEN MADE FROM AN ELIGIBLE LIST ON WHICH HE OR SHE WAS ALLOWED THE ADDITIONAL CREDIT GRANTED BY THIS SECTION.

(C) IF, AT THE TIME OF APPOINTMENT FROM AN ELIGIBLE LIST, A VOLUNTEER FIREFIGHTER IS IN THE SAME RELATIVE STANDING AMONG THE ELIGIBLES WHO ARE WILLING TO ACCEPT APPOINTMENT AS IF HE OR SHE HAD NOT BEEN GRANTED THE ADDITIONAL CREDITS PROVIDED BY THIS SECTION, HIS OR HER APPOINTMENT FROM AMONG SUCH ELIGIBLES SHALL NOT BE DEEMED TO HAVE BEEN MADE FROM AN ELIGIBLE LIST ON WHICH HE OR SHE WAS ALLOWED SUCH ADDITIONAL CREDITS.

(D) WHERE A VOLUNTEER FIREFIGHTER HAS BEEN ORIGINALLY APPOINTED OR PROMOTED FROM AN ELIGIBLE LIST ON WHICH HE OR SHE WAS ALLOWED ADDITIONAL CREDIT, BUT SUCH APPOINTMENT OR PROMOTION IS THEREAFTER TERMINATED EITHER AT THE END OF THE PROBATIONARY TERM OR BY RESIGNATION AT OR BEFORE THE END OF THE PROBATIONARY TERM, HE OR SHE SHALL NOT BE DEEMED TO HAVE BEEN APPOINTED OR PROMOTED, AS THE CASE MAY BE, FROM AN ELIGIBLE LIST ON WHICH HE OR SHE WAS ALLOWED ADDITIONAL CREDIT, AND SUCH APPOINTMENT OR PROMOTION SHALL NOT AFFECT HIS OR HER ELIGIBILITY FOR ADDITIONAL CREDIT IN OTHER EXAMINATIONS.

5. WITHDRAWAL OF APPLICATION; ELECTION TO RELINQUISH ADDITIONAL CREDIT. AN APPLICATION FOR ADDITIONAL CREDIT IN A COMPETITIVE EXAMINATION UNDER THIS SECTION MAY BE WITHDRAWN BY THE APPLICANT AT ANY TIME PRIOR TO THE ESTABLISHMENT OF THE RESULTING ELIGIBLE LIST. AT ANY TIME DURING THE TERM OF EXISTENCE OF AN ELIGIBLE LIST RESULTING FROM A COMPETITIVE

EXAMINATION IN WHICH A VOLUNTEER FIREFIGHTER HAS RECEIVED THE ADDITIONAL CREDIT GRANTED BY THIS SECTION, SUCH VOLUNTEER FIREFIGHTER MAY ELECT, PRIOR TO PERMANENT ORIGINAL APPOINTMENT OR PERMANENT PROMOTION, TO RELINQUISH THE ADDITIONAL CREDIT THERETOFORE GRANTED TO HIM OR HER AND ACCEPT THE LOWER POSITION ON SUCH ELIGIBLE LIST TO WHICH HE OR SHE WOULD OTHERWISE HAVE BEEN ENTITLED; PROVIDED, HOWEVER, THAT SUCH ELECTION SHALL THEREAFTER BE IRREVOCABLE. SUCH ELECTION SHALL BE IN WRITING, SIGNED BY THE VOLUNTEER FIREFIGHTER, AND TRANSMITTED TO THE STATE CIVIL SERVICE DEPARTMENT OR THE APPROPRIATE MUNICIPAL CIVIL SERVICE COMMISSION.

6. ROSTER. THE STATE CIVIL SERVICE DEPARTMENT AND EACH MUNICIPAL COMMISSION SHALL ESTABLISH AND MAINTAIN IN ITS OFFICE A ROSTER OF ALL VOLUNTEER FIREFIGHTERS APPOINTED OR PROMOTED AS A RESULT OF ADDITIONAL CREDITS GRANTED BY THIS SECTION TO POSITIONS UNDER ITS JURISDICTION. THE APPOINTMENT OR PROMOTION OF A VOLUNTEER FIREFIGHTER AS A RESULT OF ADDITIONAL CREDITS SHALL BE VOID IF SUCH VOLUNTEER FIREFIGHTER, PRIOR TO SUCH APPOINTMENT OR PROMOTION, HAD BEEN APPOINTED OR PROMOTED AS A RESULT OF ADDITIONAL CREDITS GRANTED BY THIS SECTION.

7. PREFERENCE IN RETENTION UPON THE ABOLITION OF POSITIONS. IN THE EVENT OF THE ABOLITION OR ELIMINATION OF ANY POSITION IN THE CIVIL SERVICE FOR WHICH ELIGIBLE LISTS ARE ESTABLISHED OR ANY POSITION THE INCUMBENT OF WHICH IS ENCOMPASSED BY SECTION EIGHTY-A OF THIS CHAPTER, ANY SUSPENSION, DEMOTION, OR DISPLACEMENT SHALL BE MADE IN THE INVERSE ORDER OF THE DATE OF ORIGINAL APPOINTMENT IN THE SERVICE SUBJECT TO THE FOLLOWING CONDITIONS: (A) BLIND EMPLOYEES SHALL BE GRANTED ABSOLUTE PREFERENCE IN RETENTION; (B) THE DATE OF SUCH ORIGINAL APPOINTMENT FOR VOLUNTEER FIREFIGHTERS SHALL BE DEEMED TO BE SIXTY MONTHS EARLIER THAN THE ACTUAL DATE, DETERMINED IN ACCORDANCE WITH SECTION THIRTY OF THE GENERAL CONSTRUCTION LAW; (C) NO PERMANENT COMPETITIVE CLASS EMPLOYEE, SUBJECT TO THE JURISDICTION OF THE CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, WHO RECEIVES AN INJURY IN THE LINE OF DUTY, AS DEFINED IN THIS SUBDIVISION, WHICH REQUIRES IMMEDIATE HOSPITALIZATION, AND WHICH IS NOT COMPENSABLE THROUGH WORKERS' COMPENSATION, MAY BE SUSPENDED, DEMOTED, OR DISPLACED PURSUANT TO SECTION EIGHTY OF THIS CHAPTER WITHIN THREE MONTHS OF THE DATE OF HIS OR HER CONFINEMENT; PROVIDED THAT MEDICAL AUTHORITIES APPROVED BY SUCH COMMISSION SHALL CERTIFY THAT THE EMPLOYEE IS NOT ABLE TO PERFORM THE DUTIES OF HIS OR HER POSITION; PROVIDED FURTHER THAT SUCH THREE-MONTH PERIOD MAY BE EXTENDED BY SUCH COMMISSION FOR ADDITIONAL PERIODS NOT TO EXCEED ONE YEAR EACH UPON THE CERTIFICATION OF MEDICAL AUTHORITIES SELECTED BY SUCH COMMISSION THAT THE EMPLOYEE IS, AS A RESULT OF HIS OR HER INJURY, STILL NOT ABLE TO PERFORM THE DUTIES OF HIS OR HER POSITION. AN INJURY IN THE LINE OF DUTY, AS USED IN THIS SUBDIVISION, SHALL BE CONSTRUED TO MEAN AN INJURY WHICH IS INCURRED AS A DIRECT RESULT OF THE LAWFUL PERFORMANCE OF THE DUTIES OF THE POSITION. IN DETERMINING WHETHER AN INJURY WAS RECEIVED IN THE LINE OF DUTY, SUCH COMMISSION SHALL REQUIRE THE HEAD OF THE AGENCY BY WHICH THE EMPLOYEE IS EMPLOYED TO CERTIFY THAT THE INJURY WAS RECEIVED AS A DIRECT RESULT OF THE LAWFUL PERFORMANCE OF THE EMPLOYEE'S DUTIES; AND (D) THE DATE OF SUCH ORIGINAL APPOINTMENT FOR THE SPOUSE OF A VOLUNTEER FIREFIGHTER SHALL BE DEEMED TO BE SIXTY MONTHS EARLIER THAN THE ACTUAL DATE, DETERMINED IN ACCORDANCE WITH SECTION THIRTY OF THE GENERAL CONSTRUCTION LAW; PROVIDED THAT THE SPOUSE IS DOMICILED WITH THE VOLUNTEER FIREFIGHTER-SPOUSE AND IS THE HEAD OF THE HOUSEHOLD. THIS SECTION SHALL NOT BE CONSTRUED AS CONFERRING ANY ADDITIONAL BENEFIT UPON SUCH EMPLOYEE OTHER THAN A PREFERENCE IN RETENTION. SUCH EMPLOYEE SHALL

BE SUBJECT TO TRANSFER UPON THE ABOLITION OF HIS OR HER FUNCTION WITHIN HIS OR HER AGENCY OR DEPARTMENT.

8. ADDITIONAL DEFINITIONS. FOR THE PURPOSE OF SUBDIVISION SEVEN OF THIS SECTION, THE TERMS "DATE OF ORIGINAL APPOINTMENT" AND "DATE OF ORIGINAL APPOINTMENT IN THE SERVICE" SHALL MEAN, FOR PERSONS SUBJECT TO SUBDIVISION ONE-A OF SECTION EIGHTY OF THIS CHAPTER, THE DATE OF ORIGINAL APPOINTMENT ON A PERMANENT BASIS IN THE GRADE OR TITLE IN THE SERVICE OF THE GOVERNMENTAL JURISDICTION IN WHICH SUCH ABOLITION OR REDUCTION OCCURS.

9. PENALTY FOR DENIAL OF PREFERENCE IN RETENTION. A REFUSAL TO ALLOW THE PREFERENCE IN RETENTION PROVIDED FOR IN THIS SECTION TO ANY VOLUNTEER FIREFIGHTER OR A REDUCTION OF HIS OR HER COMPENSATION INTENDED TO BRING ABOUT HIS OR HER RESIGNATION IS DEEMED A MISDEMEANOR, AND ANY SUCH VOLUNTEER FIREFIGHTER SHALL HAVE A RIGHT OF ACTION THEREFOR IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES AND FOR RIGHTING THE WRONG.

S 2. This act shall take effect immediately.