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

6339

2011-2012 Regular Sessions

I N A S S E M B L Y

March 15, 2011

Introduced by M. of A. CALHOUN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the abolition of office or position

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

Section 1. 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] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, A TRUSTEE, BOARD OF TRUSTEES, BOARD OF EDUCATION OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND ITS EMPLOYEES' COLLECTIVE BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS AND THE RIGHTS OF EMPLOYEES TO RETURN TO VACANT POSITIONS PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. UNTIL SUCH A PROCESS HAS BEEN ESTABLISHED, 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] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, UNTIL A PROCESS IS ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, 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.

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

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3. (a) [If] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, UNTIL A PROCESS IS ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION 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] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, UNTIL A PROCESS IS ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, 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. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE LOCALLY ESTABLISHED PROCESS ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL:

(A) NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF. ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE;

(B) NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF;

(C) ENSURE THAT HIGH QUALITY TEACHERS IN HIGH-NEED SCHOOLS ARE NOT LAID OFF AND THAT HIGH-NEED SCHOOLS DO NOT BEAR A DISPROPORTIONATE SHARE OF WORKFORCE REDUCTIONS IN THE EVENT OF LAYOFFS, PROVIDED HOWEVER, NOTHING SHALL PROHIBIT A DISTRICT FROM ABOLISHING ALL POSITIONS IN A LICENSE AREA. FOR PURPOSES OF THIS SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A SCHOOL IN WHICH AT LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE ELIGIBLE APPLICANTS FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM;

(D) FOR POSITIONS COVERED BY SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE, ANY SUCH LOCALLY DEVELOPED PROCESS SHALL BE BASED ON THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW FOR TEACHERS AND SUPERVISORS PURSUANT TO SUCH SECTION THREE THOUSAND TWELVE-C AND ITS IMPLEMENTING REGULATIONS.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect immediately.