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

248--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil service law, in relation to implementing a state policy of setting salaries on the basis of equivalent value of work

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

Section 1. Section 115 of the civil service law, as added by chapter 790 of the laws of 1958, is amended to read as follows:

S 115. Policy of the state. IT IS THE POLICY OF NEW YORK STATE TO COMPLY WITH THE LETTER AND SPIRIT OF THE FEDERAL "EQUAL PAY ACT OF 1963," PUB. L. 88-38 (29 U.S.C. S 206) WHICH REQUIRES THAT EMPLOYEES OF BOTH SEXES RECEIVE EQUAL PAY FOR EQUAL WORK, THE FEDERAL "CIVIL RIGHTS ACT OF 1964," PUB. L. 88-352 (42 U.S.C. S 2000E-2) WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF SEX, RACE, AND NATIONAL ORIGIN IN ALL TERMS OF EMPLOYMENT, ARTICLE FIFTEEN OF THE EXECUTIVE LAW AND SECTION FORTY-C OF THE CIVIL RIGHTS LAW, WHICH PROHIBIT DISCRIMINATION ON THE BASIS OF SEX, RACE OR NATIONAL ORIGIN IN ALL TERMS OF EMPLOYMENT. CONSISTENT WITH THESE LAWS, IT IS THE POLICY OF THE STATE TO ENSURE A FAIR, NON-BIASED WAGE STRUCTURE FOR ITS EMPLOYEES IN WHICH SEX, RACE, OR NATIONAL ORIGIN IS NOT A CONSIDERATION EITHER DIRECTLY OR INDIRECTLY IN DETERMINING THE PROPER WAGES FOR A TITLE IN STATE SERVICE, NOR IN DETERMINING THE PAY FOR ANY INDIVIDUAL OR GROUP OF EMPLOYEES. FOR THE PURPOSE OF THIS CHAPTER, THE TERMS "WAGES" AND WAGE "RATES" SHALL INCLUDE ALL COMPENSATION, IN ANY FORM, THAT AN EMPLOYER PROVIDES TO EMPLOYEES IN PAYMENT FOR WORK DONE OR SERVICES RENDERED, INCLUDING BUT

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

LBD01541-03-2

NOT LIMITED TO BASE PAY, BONUSES, COMMISSIONS, AWARDS, TIPS, OR VARIOUS FORMS OF NON-MONETARY COMPENSATION IF PROVIDED IN LIEU OF OR IN ADDITION TO MONETARY COMPENSATION AND THAT HAVE ECONOMIC VALUE TO AN EMPLOYEE. In order to attract unusual merit and ability to the service of the state of New York, to stimulate higher efficiency among the personnel, to provide skilled leadership in administrative departments, to reward merit and to insure to the people and the taxpayers of the state of New York the highest return in services for the necessary costs of government, it is [hereby declared to be] the policy of the state to provide equal pay for equal AND SIMILAR work AND FOR EQUIVALENT VALUE OF WORK, and regular increases in pay in proper proportion to increase of ability, increase of output and increase of quality of work demonstrated in service.

S 2. Paragraph (c) of subdivision 1 of section 118 of the civil service law, as added by chapter 790 of the laws of 1958, is amended and two new paragraphs (d) and (e) are added to read as follows:

(c) The principle of fair and equal pay for similar work AND FOR EQUIVALENT VALUE OF WORK shall be followed in the classification and reclassification and the allocation and reallocation of positions pursuant to this article and all positions having the same title shall be allocated to the same salary grade. EQUIVALENT VALUE OF WORK SHALL MEAN TITLES OR POSITION CLASSIFICATIONS THAT ARE EQUAL WITHIN THE MEANING OF THE EQUAL PAY ACT OF 1963, 29 U.S.C. 206(D), OR TITLES OR POSITION CLASSIFICATIONS THAT ARE DISSIMILAR BUT WHOSE REQUIREMENTS ARE EQUIVALENT, WHEN VIEWED AS A COMPOSITE OF SKILLS, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS. THE PRINCIPLE OF FAIR AND EQUAL PAY FOR EQUIVALENT VALUE OF WORK REQUIRES THAT CONSIDERATION OF SEX, RACE OR NATIONAL ORIGIN SHALL NOT INFLUENCE DIRECTLY OR INDIRECTLY THE ESTABLISHMENT OF WAGES.

(D) IT SHALL NOT BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER TO PAY DIFFERENT WAGE RATES TO EMPLOYEES, WHERE SUCH PAYMENTS ARE MADE PURSUANT TO:

(1) A BONA FIDE SENIORITY OR MERIT SYSTEM;

(2) THE GEOGRAPHIC LOCATION OF THE JOB; OR

(3) ANY OTHER BONA FIDE FACTOR OTHER THAN SEX, RACE OR NATIONAL ORIGIN, PROVIDED HOWEVER, THAT SUCH FACTOR DOES NOT RESULT IN DISCRIMINATION BASED ON SEX, RACE OR NATIONAL ORIGIN.

(E) NOTHING SET FORTH IN THIS SECTION SHALL BE CONSTRUED TO IMPEDE, INFRINGE OR DIMINISH THE RIGHTS AND BENEFITS WHICH ACCRUE TO EMPLOYEES THROUGH COLLECTIVE BARGAINING AGREEMENTS, OR OTHERWISE DIMINISH THE INTEGRITY OF THE EXISTING COLLECTIVE BARGAINING RELATIONSHIP.

S 3. The civil service law is amended by adding a new section 119 to read as follows:

S 119. EQUIVALENT VALUE OF WORK; SEGREGATED JOB TITLES REVIEWED AND ADJUSTED. 1. THE LEGISLATURE FINDS THAT DESPITE THE POLICY OF NEW YORK STATE AS DECLARED IN SECTION ONE HUNDRED FIFTEEN OF THIS ARTICLE, JOB TITLES WHICH ARE SEGREGATED BY SEX, RACE, OR NATIONAL ORIGIN MAY HAVE BEEN UNDERVALUED AND ASSIGNED WAGES WHICH DO NOT REFLECT THE RELATIVE WORTH OF THE JOB. IT IS THE INTENT OF THE LEGISLATURE TO REMEDY SUCH UNDERVALUATION AND TO CORRECT SUCH DISPARITIES.

2. THE CIVIL SERVICE COMMISSION SHALL PROMULGATE REGULATIONS SPECIFYING THE METHODOLOGY FOR DETERMINING EQUIVALENT VALUE OF WORK BASED ON SKILL, EFFORT, RESPONSIBILITY, AND WORKING CONDITIONS. ANY METHODOLOGY PRESCRIBED BY THE COMMISSION, SUCH AS A SYSTEMATIC POINT FACTOR JOB EVALUATION SYSTEM, SHALL ENSURE THAT COMPARISON SYSTEMS DO NOT IGNORE OR UNDERVALUE THE WORTH OF JOBS WHERE WOMEN AND MINORITIES ARE DISPROPORTIONATELY REPRESENTED. FOR THE PURPOSES OF THIS CHAPTER, A SEGREGATED

TITLE SHALL CONSTITUTE ANY TITLE IN WHICH THE TOTAL PERCENTAGE OF EMPLOYEES OF A PARTICULAR SEX, RACE OR NATIONAL ORIGIN IN THE TITLE IS EQUAL TO OR GREATER THAN ONE HUNDRED TWENTY PERCENT OF THE PERCENTAGE OF THAT SEX, RACE OR NATIONAL ORIGIN IN THE STATE SERVICE.

3. THE PRESIDENT SHALL, BY JANUARY FIRST, TWO THOUSAND THIRTEEN, AND EVERY FIVE YEARS THEREAFTER, SUBMIT TO THE LEGISLATURE AND THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS, A LIST SHOWING, BY NEGOTIATING UNIT AND FOR MANAGEMENT/CONFIDENTIAL EMPLOYEES, THOSE SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF THE WORK. THE PRESIDENT SHALL ALSO SUBMIT TO THE LEGISLATURE, THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS AND THE DIVISION OF BUDGET ALONG WITH THE LIST, AN ESTIMATE OF THE APPROPRIATION NECESSARY TO CORRECT SUCH DISPARITIES. WHEN THE DEPARTMENT CREATES NEW TITLES OR, BECAUSE OF MERGES OR TAKEOVERS, TRANSFERS STATE WORKFORCE FROM ONE TITLE TO ANOTHER TITLE, THE PRESIDENT SHALL RE-SUBMIT SUCH LIST OF ANY SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF WORK AND SHALL SUBMIT TO THE LEGISLATURE, THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS AND THE DIVISION OF BUDGET WITH SUCH LIST AN ESTIMATE OF THE APPROPRIATION NECESSARY TO CORRECT SUCH DISPARITIES.

4. BEGINNING WITH THE BUDGET REQUESTS FOR THE FIRST FISCAL YEAR COMMENCING AFTER THE EFFECTIVE DATE OF THIS SECTION, THE GOVERNOR SHALL INCLUDE THE APPROPRIATION NECESSARY TO ENSURE THAT WAGES ARE SET IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION AND SECTION ONE HUNDRED FIFTEEN AND PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

5. THE PRESIDENT SHALL NOT, IN ORDER TO COMPLY WITH THIS SECTION, REDUCE THE WAGES OF ANY EMPLOYEE OR REDUCE THE WAGE RATE FOR ANY POSITION.

S 4. This act shall take effect immediately.