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

5771

2011-2012 Regular Sessions

I N S E N A T E

June 15, 2011

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

AN ACT to amend the civil service law and the public authorities law, in relation to suspension or demotion upon the abolition or reduction of positions for labor class and noncompetitive titles; and to repeal section 80-a of the civil service law relating thereto

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

Section 1. Subdivisions 1, 1-a, 1-b, 1-c, 2, 6, 7 and 9 of section 80 of the civil service law, subdivision 1 as amended and subdivisions 6 and 7 as added by chapter 283 of the laws of 1972, subdivision 1-a as added by chapter 312 of the laws of 1976, subdivision 1-b as added by chapter 653 of the laws of 1978, subdivision 1-c as added by chapter 334 of the laws of 1994, subdivision 2 as amended by chapter 376 of the laws of 1977, subdivisions 6 and 7 as renumbered by chapter 360 of the laws of 1985, and subdivision 9 as added by chapter 470 of the laws of 1988, are amended to read as follows:

1. Suspension or demotion. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive, NONCOMPETITIVE, OR LABOR class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that the date of original appointment of any such incumbent who was transferred to such governmental jurisdiction from another governmental jurisdiction upon the transfer of functions shall be the date of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction from

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

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which such transfer was made. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive, NONCOMPETITIVE OR LABOR class, incumbents holding the same or similar positions who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

1-a. Notwithstanding the provisions of subdivision one of this section, the members of a police or paid fire department in the city of Buffalo shall be subject to the following procedure. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive, NONCOMPETITIVE OR LABOR class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order 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 of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive class, incumbents holding the same or similar positions who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

1-b. Notwithstanding the provisions of subdivision one of this section, employees of secure detention facilities in the city of New York and of the alternatives to secure detention facilities program in such city who are performing functions which were assumed by the department of social services of the city of New York on the tenth day of November, nineteen hundred seventy-one and who, upon such assumption were transferred to said department, shall be subject to the following procedure. Where, because of economy, consolidation or abolition of function, curtailment of activities or otherwise, positions in the competitive, NONCOMPETITIVE OR LABOR class are abolished, or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that if any person so employed and so transferred was employed on a permanent basis in such a facility or such program prior to the thirtieth day of December, nineteen hundred sixty-seven, for purposes of this subdivision regarding priority of retention and for no other purpose, the date of original appointment of any such person shall be deemed to be the date such permanent employment commenced prior to the said thirtieth day of December, nineteen hundred sixty-seven.

1-c. Notwithstanding the provisions of subdivision one of this section, sworn employees of the Monroe county sheriff's department shall be subject to the following procedure. Where, because of economy, consolidation or abolition of function, curtailment of activities or otherwise, positions in the competitive, NONCOMPETITIVE OR LABOR class are abolished, or reduced in rank or salary grade, suspension or

demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order 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 of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that if any person so employed was employed in such person's current title prior to the first day of April, nineteen hundred ninety-three, for purposes of this subdivision regarding priority of retention and for no other purpose, the date of original appointment of any such person shall be deemed to be the date such employment commenced prior to the said first day of April, nineteen hundred ninety-three.

2. Continuous service. Except as otherwise provided herein, for the purposes of this section the original appointment of an incumbent shall mean the date of his first appointment on a permanent basis in the classified service followed by continuous service in the classified service on a permanent basis up to the time of the abolition or reduction of the competitive, NONCOMPETITIVE OR LABOR class positions. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter shall, for the purposes of this section, be deemed to have continuous service. An employee who has been terminated because of a disability resulting from occupational injury or disease as defined in the workmen's compensation law and who has been reinstated or reappointed in the service thereafter shall be deemed to have continuous service. A period of employment on a temporary or provisional basis, or in the unclassified service, immediately preceded and followed by permanent service in the classified service, shall not constitute an interruption of continuous service for the purposes of this section; nor shall a period of leave of absence without pay pursuant to law or the rules of the civil service commission having jurisdiction, or any period during which an employee is suspended from his position pursuant to this section, constitute an interruption of continuous service for the purposes of this section.

6. Displacement in civil divisions. A permanent incumbent of a position in a civil division in a specific title to which there is a direct line of promotion who is suspended or displaced pursuant to this section, together with all other such incumbents suspended or displaced at the same time, shall displace, in the inverse order of the order of suspension or demotion prescribed in subdivisions one and two of this section, incumbents serving in positions in the same lay-off unit in the next lower occupied title in direct line of promotion who shall be displaced in the order of suspension or demotion prescribed in subdivisions one and two of this section; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. If a permanent incumbent of a position in a civil division is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, he shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in the title from which he is suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive, NONCOMPETITIVE OR LABOR class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the

displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. Refusal of appointment to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment is afforded. The municipal civil service commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement either to positions in direct line of promotion or to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.

7. Displacement in the state service. A permanent incumbent of a position in the state service in a specific title to which there is a direct line of promotion who is suspended or displaced pursuant to this section, together with all other such incumbents suspended or displaced at the same time, shall displace, in the inverse order of the order of suspension or demotion prescribed in subdivisions one and two of this section, incumbents serving in positions in the same layoff unit in the next lower occupied title in direct line of promotion who shall be displaced in the order of suspension or demotion prescribed in subdivisions one and two of this section; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. If a permanent incumbent of a position in the state service is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, he shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in the title from which he is suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive, NONCOMPETITIVE OR LABOR class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. Refusal of appointment to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment is afforded. The state civil service commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement either to positions in direct line of promotion or to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.

9. Certain suspensions or demotions in the city of Niagara Falls. Notwithstanding the provisions of subdivision one of this section, the members of a paid fire department in the city of Niagara Falls shall be subject to the following procedure. Where, because of economy, consolidation or abolition of functions, curtailment of activities or other-

wise, positions in the competitive class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order 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 of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive, NONCOMPETITIVE OR LABOR class, incumbents holding the same or similar positions who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

S 2. Section 80-a of the civil service law is REPEALED.

S 3. Subdivisions 2 and 4 of section 78 of the civil service law, as added by chapter 29 of the laws of 1996, are amended to read as follows:

2. Order of certification of names from transfer list. a. The names of persons on a transfer list established to fill vacancies in the same position or a position in a lower grade in line of promotion shall be certified therefrom in the order of their original appointments, in accordance with the provisions of subdivision three of section eighty[, subdivision three of section eighty-a] and subdivision seven of section eighty-five of this chapter.

b. The names of persons on a transfer list established to fill vacancies in a comparable position shall be certified therefrom with equal ranking for appointment.

4. Relative seniority. Where a preferred list exists containing the names of persons who have been suspended or demoted from a position in the same title to which an appointment is to be made, the relative seniority, determined in accordance with the provisions of subdivision three of section eighty[, subdivision three of section eighty-a] and subdivision seven of section eighty-five of this chapter, of the person certified first on such preferred list willing to accept appointment and the person certified first on the transfer list willing to accept appointment shall be compared and the person with the greater seniority shall be certified first.

S 4. Paragraphs a, b and e of subdivision 1 of section 79 of the civil service law, as added by chapter 315 of the laws of 1995, are amended to read as follows:

a. Where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of this chapter so provides, upon notification to the department that an employee in the state service is to be suspended or demoted in accordance with the provisions of section eighty [or eighty-a] of this article by reason of the state's exercise of its right to contract out for goods and services, and receipt of the information required pursuant to section eighty-one-a of this article for purposes of establishing reemployment rosters, at least ninety days prior to the suspension or demotion of an affected employee, the department shall place the name of the employee upon a redeployment list. Such redeployment list shall be certified for filling positions in the same title or in any comparable title, as determined by the department, before certification is made from any other eligible list, placement roster, reemployment roster or preferred list. The director of state operations is authorized to redeploy such employees to positions in appointing authorities of the execu-

tive branch. The department may extend the right to be placed on a redeployment list, in accordance with the provisions of this section, to employees not subject to the provisions of such agreement.

b. Orders of certification of names from a redeployment list. The names of persons on a redeployment list shall be certified therefrom for appointment in the order of their original appointments, in accordance with the provisions of subdivision three of section eighty [and subdivision three of section eighty-a] of this article.

e. Termination of eligibility for appointment. Eligibility for appointment of an employee whose name appears on a redeployment list shall terminate at such time as the employee is redeployed pursuant to the provisions of this section to a position in the same salary grade as the position from which he or she has been suspended or demoted, or has exercised his or her reemployment rights pursuant to the provisions of section eighty-one or eighty-one-a of this article, provided, however, that eligibility for appointment shall terminate no later than six months following the suspension or demotion of such employee in accordance with the provisions of section eighty [or eighty-a] of this article. Upon such employee's suspension or demotion, the department shall place the name of such employee upon a preferred list, and a reemployment roster, as appropriate, in accordance with the provisions of sections eighty-one and [eight-one-a] EIGHTY-ONE-A of this article.

S 5. Subdivision 1 of section 81 of the civil service law, as amended by chapter 283 of the laws of 1972, is amended to read as follows:

1. Establishment of preferred lists; general provisions. The head of any department, office or institution in which an employee is suspended or demoted in accordance with the provisions of [sections] SECTION eighty [and eighty-a] of this chapter shall, upon such suspension or demotion, furnish the state civil service department or appropriate municipal commission, as the case may be, a statement showing his name, title or position, date of appointment, and the date of and reason for suspension or demotion. It shall be the duty of such civil service department or commission, as the case may be, forthwith to place the name of such employee upon a preferred list, together with others who may have been suspended or demoted from the same or similar positions in the same jurisdictional class, and to certify such list, as hereinafter provided, for filling vacancies in the same jurisdictional class; first, in the same or similar position; second, in any position in a lower grade in line of promotion; and third, in any comparable position. Such preferred list shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, notwithstanding the fact that none of the persons on such preferred list was suspended from or demoted in the department or suspension and demotion unit in which such vacancy exists. No other name shall be certified from any other list for any such position until such preferred list is exhausted. The eligibility for reinstatement of a person whose name appears on any such preferred list shall not continue for a period longer than four years from the date of separation or demotion.

S 6. Subdivisions 1 and 5 of section 81-a of the civil service law, subdivision 1 as amended by chapter 140 of the laws of 1993 and subdivision 5 as added by chapter 239 of the laws of 1992, are amended to read as follows:

1. Establishment of reemployment rosters in the state service; general provisions. The head of any department, office or institution from which an employee in the state service is to be suspended or demoted in

accordance with the provisions of section eighty [or eighty-a] of this article, shall, at least twenty days prior to such suspension or demotion, furnish the state civil service department with a statement showing such employee's name, title or position, date of appointment, and the date of and reason for suspension or demotion. Upon such employee's suspension or demotion, it shall be the duty of the department to place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the department, except that employees suspended or demoted from positions in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such reemployment roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list. Eligibility for reinstatement of a person whose name appears on any such reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion provided, however, in no event shall eligibility for reinstatement from a reemployment roster continue once the person is no longer eligible for reinstatement from a preferred list.

5. Notwithstanding any other provision of this chapter, the department may disqualify for reinstatement and remove from a reemployment roster the name of any otherwise eligible person who, by reason of physical or mental incapacity, is found to be unable to satisfactorily perform the duties of the position for which such roster has been established, or who has engaged in such misconduct as would warrant his or her dismissal from public employment, except that a person who is not completely physically incapacitated and who is suspended or demoted pursuant to section eighty [or eighty-a] of this article because his or her position has been abolished or reduced, but who is certified for reinstatement to any position having the same physical requirements as the position from which such person was suspended or demoted, shall not be disqualified because of his or her incapacity, unless upon medical examination his or her incapacity has worsened to a degree that he or she would not be able to satisfactorily perform in such position. No person shall be disqualified pursuant to this subdivision unless he or she is first given a written statement of the reasons therefor and an opportunity to be heard at a hearing at which satisfactory proof of such reasons must be established by appropriate evidence, and at which such person may present independent evidence and be entitled to representation by counsel. The department shall designate a person to hold such hearing and report thereon.

S 7. Subdivision 1 of section 81-b of the civil service law, as amended by chapter 140 of the laws of 1993, is amended to read as follows:

1. Establishment of placement rosters in the state service; general provisions. The head of any department, office or institution from which an employee in the state service is to be suspended or demoted in accordance with the provisions of section eighty [or eighty-a] of this article, shall, no later than the date on which he or she furnishes the state civil service department with the employee information required pursuant to section eighty-one-a of this article for purposes of establishing reemployment rosters, furnish the state civil service department with a statement showing such employee's name, title or position, date of appointment, and the anticipated date of and reason for suspension or demotion. Upon receiving such information, it shall be the duty of the department forthwith to place the name of such employee upon a placement

roster for filling vacancies in the same title or in any comparable position as determined by the department, except that employees suspended or demoted from positions in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such placement roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list or a reemployment roster. Eligibility for appointment of an employee whose name appears on any such placement roster shall terminate at such time as the employee is suspended or demoted in accordance with the provisions of section eighty [or eighty-a] of this article. Upon such employee's suspension or demotion, the department shall place the name of such employee upon a preferred list, and a reemployment roster as appropriate, in accordance with the provisions of sections eighty-one and eighty-one-a of this article.

S 8. Subdivision 7 of section 85 of the civil service law, as amended by chapter 532 of the laws of 1976, is amended to read as follows:

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: (1) blind employees shall be granted absolute preference in retention; (2) the date of such original appointment for disabled veterans shall be deemed to be sixty months earlier than the actual date, determined in accordance with section thirty of the general construction law; (3) the date of such original appointment for non-disabled veterans shall be deemed to be thirty months earlier than the actual date, determined in accordance with section thirty of the general construction law; (4) 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 paragraph, which requires immediate hospitalization, and which is not compensable through workmen's compensation may be suspended, demoted or displaced pursuant to section eighty of this chapter within three months of the date of his confinement, provided that medical authorities approved by such commission shall certify that the employee is not able to perform the duties of his 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 injury, still not able to perform the duties of his position. An injury in the line of duty, as used herein, 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 (5) the spouse of a veteran with one hundred percent service connected disability shall be deemed to be sixty months earlier than the actual date, determined in accordance with section thirty of the general construction law, provided, the spouse is domiciled with the veteran-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 function within his agency or department.

S 9. Section 86 of the civil service law, as amended by chapter 283 of the laws of 1972, is amended to read as follows:

S 86. Transfer of veterans or exempt volunteer firemen upon abolition of positions. If the position in the non-competitive or in the labor class held by any honorably discharged veteran of the armed forces of the United States who served therein in time of war as defined in section eighty-five of this chapter, or by an exempt volunteer fireman as defined in the general municipal law, shall become unnecessary or be abolished for reasons of economy or otherwise, the honorably discharged veteran or exempt volunteer fireman holding such position shall not be discharged from the public service but shall be transferred to a similar position wherein a vacancy exists, and shall receive the same compensation therein. It is hereby made the duty of all persons clothed with the power of appointment to make such transfer effective. The right to transfer herein conferred shall continue for a period of one year following the date of abolition of the position, and may be exercised only where a vacancy exists in an appropriate position to which transfer may be made at the time of demand for transfer. Where the positions of more than one such veteran or exempt volunteer fireman are abolished and a lesser number of vacancies in similar positions exist to which transfer may be made, the veterans or exempt volunteer firemen whose positions are abolished shall be entitled to transfer to such vacancies in the order of their original appointment in the service. Nothing in this section shall be construed to apply to the position of private secretary, cashier or deputy of any official or department. [This section shall have no application to persons encompassed by section eighty-a of this chapter.]

S 10. Paragraph (a) of subdivision 3 of section 131 of the civil service law, as amended by chapter 733 of the laws of 1979, is amended to read as follows:

(a) If such an employee is demoted, or displaced to a position in a lower grade pursuant to [sections] SECTION eighty [or eighty-a] of this chapter, or is appointed, transferred or reinstated to a position in a lower grade, he shall, upon such demotion, displacement, appointment, transfer, or reinstatement, receive the rate of compensation which corresponds with the number of annual increments and the percentage value of performance advances actually received in the salary grades from which and to which he is demoted, displaced, appointed, transferred or reinstated, as the case may be.

S 11. Paragraph (e) of subdivision 11 and paragraph (f) of subdivision 13 of section 3556 of the public authorities law, as added by chapter 5 of the laws of 1997, are amended to read as follows:

(e) Notwithstanding any other provision of this title, the corporation may disqualify for reinstatement and remove from a reemployment roster the name of any otherwise eligible person who, by reason of physical or mental incapacity, is found to be unable to satisfactorily perform the duties of the position for which such roster has been established, or who has engaged in such misconduct as would warrant his or her dismissal from public employment, except that a person who is not completely physically incapacitated and who is suspended or demoted pursuant to section eighty [or eighty-a] of the civil service law because his or her position has been abolished or reduced, but who is certified for reinstatement to any position having the same physical requirements as the position from which such person was suspended or demoted, shall not be

disqualified because of his or her incapacity, unless upon medical examination his or her incapacity has worsened to a degree that he or she would not be able to satisfactorily perform in such position. No person shall be disqualified pursuant to this subdivision unless he or she is first given a written statement of the reasons therefor and an opportunity to be heard at a hearing at which satisfactory proof of such reasons must be established by appropriate evidence, and at which such person may present independent evidence and be entitled to representation by counsel. The corporation shall designate a person to hold such hearing and report thereon.

(f) Eligibility for appointment of an employee whose name appears on a redeployment list shall terminate at such time as the employee is redeployed pursuant to the provisions of this section to a position in the same salary grade as the position from which he or she has been suspended or demoted, or has exercised his or her reemployment rights pursuant to the provisions of section eighty-one or eighty-one-a of the civil service law, provided, however, that eligibility for appointment shall terminate no later than six months following the suspension or demotion of such employee in accordance with the provisions of section eighty [or eighty-a] of the civil service law. Upon such employee's suspension or demotion, the corporation shall place the name of such employee upon a preferred list, and a reemployment roster, as appropriate, in accordance with the provisions of subdivision eight of this section.

S 12. This act shall take effect immediately.