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

7410

I N S E N A T E

May 9, 2012

Introduced by Sen. BALL -- (at request of the Division of Homeland Security and Emergency Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the civil service law, the county law, the executive law and the general municipal law, in relation to making technical corrections

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

Section 1. Section 58-a of the civil service law, as added by chapter 369 of the laws of 1976, subdivisions 1 and 5 as amended by chapter 225 of the laws of 1979, is amended to read as follows:

S 58-a. Requirements for provisional or permanent appointment of certain fire fighters. 1. Notwithstanding any other provision of this law or any general, special or local law to the contrary, no person shall be eligible for provisional or permanent appointment in the competitive class of the civil service as a fire fighter unless he OR SHE shall satisfy the basic requirements for education, health and physical fitness established by the [governor pursuant to section one hundred fifty-nine-d] STATE FIRE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED FIFTY-EIGHT of the executive law.

2. Notwithstanding the provisions of subdivision one of this section, upon the request of a municipal commission having jurisdiction over a fire department and upon a showing by such municipal commission and a determination by the state commission that aggravated recruitment difficulties are causing a serious shortage of fire fighters in such fire department and that such municipal commission and all appropriate authorities are making diligent efforts, including payment of adequate compensation, to overcome such recruitment difficulties, the state commission, with the approval of the [fire fighting personnel standards and education commission] STATE FIRE ADMINISTRATOR, may change the educational, health and physical fitness requirements for provisional and permanent appointment as a fire fighter in such fire department for a period not exceeding two years from the date of such determination.

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

LBD14465-01-2

Such changes may be authorized for an additional period not exceeding two years, upon a showing and a determination similar to that required hereunder for the original authorization.

3. The provisions of this section shall not prevent the establishment of more restrictive local requirements for eligibility for fire fighters.

4. For the purposes of this section fire fighter means a member of a fire department whose duties include fire service as the phrase fire service is defined in paragraph d of subdivision eleven of section three hundred two of the retirement and social security law.

5. Any person whose name was on an eligible list for appointment in the competitive class of the civil service as a fire fighter on the date educational, health and physical fitness requirements for fire fighters are promulgated by the [governor pursuant to section one hundred fifty-nine-d] STATE FIRE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED FIFTY-EIGHT of the executive law, shall continue to remain eligible for appointment from such list during the life of such list without satisfying such requirements provided he OR SHE would otherwise have remained eligible for appointment from such list if this section had not been enacted.

6. The provisions of this section shall not apply to appointments made by any county, city, town, village or fire district which employs five or fewer fire fighters.

S 2. Section 236-b of the county law, as added by chapter 339 of the laws of 2009, is amended to read as follows:

S 236-b. County electrical inspector licensing. 1. Notwithstanding any inconsistent general, special, or local law to the contrary, the county of Westchester is hereby authorized to establish a Westchester county board of examiners for electrical inspectors and to empower such board to assume all licensing duties within the county of Westchester with respect to the licensure of electrical inspectors. The county of Westchester shall provide for electrical inspectors' duties and responsibilities with respect to applications for a license or renewal in accordance with the local law of such county. A local law enacted pursuant to this section establishing county licensure of electrical inspectors shall provide standards for licensure which shall include, at a minimum, a provision that no person shall obtain a license unless such person shall have received training in the inspection of electrical components, equipment and systems used in buildings and structures which is at least equivalent to the training in the inspection of electrical components, equipment and systems used in buildings and structures required for code enforcement personnel under the rules and regulations promulgated by the [governor pursuant to article six-C] SECRETARY OF STATE PURSUANT TO SECTION THREE HUNDRED SEVENTY-SIX-A of the executive law.

2. A local law enacted pursuant to this section establishing county licensure of electrical inspectors shall supersede any provision requiring electrical inspectors to also obtain a local license promulgated by a city, town or village in the county pursuant to any general, special or local law. Nothing in this section shall be deemed to supersede any of the powers, functions and duties of the [fire fighting and code enforcement personnel standards and education commission, as set forth in article six-C] SECRETARY OF STATE PURSUANT TO SECTION THREE HUNDRED SEVENTY-SIX-A of the executive law.

3. In this section, the term "electrical inspector" shall mean any person who now or hereafter inspects electrical components, equipment

and systems used in buildings and structures to determine the compliance of such electrical components, equipment and systems and the installation of such electrical components, equipment and systems with the applicable provisions of the state uniform fire prevention and building code promulgated pursuant to article eighteen of the executive law; provided, however, that the term electrical inspector shall not include any person who performs such inspections as an employee of the state of New York, any agency of the state of New York, or any county, city, town or village. In no event shall any person who now or hereafter performs such inspections as an employee of the state of New York, any agency of the state of New York, or any county, city, town or village be required to obtain a license issued pursuant to this section or pursuant to any local law enacted pursuant to this section.

4. In this section, the term "agency of the state of New York" shall include any department, bureau, commission, board, public authority or other agency of the state of New York; any public benefit corporation whose board of directors includes any member appointed by the governor; any subdivision of any department, bureau, commission, board, public authority or other agency of the state which is easily identifiable and which for most other purposes is treated as an independent state agency; and the office for technology.

S 3. Section 156-a of the executive law, as amended by section 1 of part D of chapter 1 of the laws of 2004, is amended to read as follows:

S 156-a. Establishment of a specialized hazardous materials emergency response training program. 1. The state fire administrator shall[, in his or her discretion, consult with the fire fighting and code enforcement personnel standards and education commission established pursuant to section one hundred fifty-nine-a of this article, to] establish a specialized hazardous materials emergency response training program for individuals responsible for providing emergency response recovery following incidents involving hazardous materials as defined in accordance with section fourteen-f of the transportation law. The state fire administrator shall inform all fire companies, municipal corporations and districts, including agencies and departments thereof and all firefighters, both paid and volunteer, and related officers and employees and police officers of the implementation and availability of the hazardous materials emergency response training program and shall, subject to the availability of an appropriation, conduct such training with sufficient frequency to assure adequate response to incidents involving hazardous materials and protection of responders in all geographic areas of the state.

2. The state fire administrator[, in consultation with the aforementioned commission] shall prescribe the curriculum of the hazardous materials emergency response training program, which shall include, but shall not be limited to:

(a) hands-on training, including information in regard to leak and spill control, product neutralization, pickup and disposal, fire control, decontamination procedures and use and application of foam agents;

(b) hazard assessment with emphasis on incident scene decision-making, including: potential threat to public safety and need for evacuation, calculation of the effect of weather on certain chemicals and evaluation of the result of chemical exposures to air, water, soil, vegetation, lives and property and impact on the personal safety of those working in the accident area;

(c) calibration and use of emergency equipment;

(d) chemical and biological properties of various classes of chemicals, for example, flammables, oxidizers, corrosives, poisons; and

(e) weapons of mass destruction and response to terrorism.

3. The state fire administrator is hereby directed to issue a report to the governor, speaker of the assembly, temporary president of the senate, chairman of the assembly transportation committee and the chairman of the senate transportation committee by [April first] FEBRUARY FIFTEENTH of each year on the operations of the program set forth in this section.

4. The state fire administrator shall promulgate such rules and regulations as are necessary to carry out the provisions of this section.

S 4. Subdivision 8 of section 156-c of the executive law, as amended by chapter 583 of the laws of 2006, is amended to read as follows:

8. a. To enforce the provisions of this section, the commissioner of taxation and finance and the [secretary of state] STATE FIRE ADMINISTRATOR may take administrative action imposing the civil penalties and suspensions authorized by subdivision five of this section. In addition, the attorney general may bring an action on behalf of the people of the state of New York to enjoin acts in violation of this section and to recover any civil penalties unless civil penalties have been previously recovered in such administrative proceedings.

b. Any enforcement officer as defined in section thirteen hundred ninety-nine-t of the public health law shall have the power to impose upon any retail dealer the civil penalties authorized by subdivision five of this section, following a hearing conducted in the same manner as hearings conducted under article thirteen-E of the public health law.

c. To enforce the provisions of this section, the commissioner of taxation and finance and the [secretary of state] STATE FIRE ADMINISTRATOR, or their duly authorized representatives, are hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes in any such premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, is hereby directed and required to give the commissioner of taxation and finance and the [secretary of state] STATE FIRE ADMINISTRATOR, and their duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

d. Whenever any police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four and subdivision seventy-nine pertaining to the [Department of State's] Office of Fire Prevention and Control, of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes which have not been marked in the manner required by subdivision six of this section, such officer is hereby authorized and empowered to seize and take possession of such cigarettes. Such seized cigarettes shall be turned over to the commissioner of taxation and finance, and shall be forfeited to the state. Cigarettes seized pursuant to this section shall be destroyed.

e. The [secretary of state] STATE FIRE ADMINISTRATOR and the commissioner of taxation and finance are hereby authorized to promulgate such regulations as are deemed necessary to implement the provisions of this section.

S 5. Subdivision 2 of section 159 of the executive law, as added by section 29-b of part B of chapter 56 of the laws of 2010, is amended to read as follows:

2. The council shall be composed of the state fire administrator, as chair, or his or her designee, and twelve other members appointed as follows: six members appointed by the governor; two members appointed by the temporary president of the senate; one member appointed by the minority leader of the senate; two members appointed by the speaker of the assembly; one member appointed by the minority leader of the assembly. [Members of the fire safety advisory board, the arson board and the firefighting and code enforcement personnel standard and education commission may be appointed to this advisory council.]

S 6. Subdivision 2 of section 711 of the executive law, as added by section 2 of part B of chapter 1 of the laws of 2004, is amended to read as follows:

2. The [director] COMMISSIONER shall appear and give testimony before the annual legislative hearing on public protection held jointly by the assembly committee on ways and means and the senate finance committee as provided for in section three of article VII of the New York state constitution and section thirty-one of the legislative law.

S 7. Section 209-e of the general municipal law, as amended by chapter 225 of the laws of 1979, subdivisions 1 and 2 as amended by section 45 of part B of chapter 56 of the laws of 2010, subdivision 8 as added by chapter 827 of the laws of 1987, is amended to read as follows:

S 209-e. Fire mobilization and mutual aid plan. 1. Plan. The state fire administrator shall prepare a state fire mobilization and mutual aid plan which may provide for the establishment of fire mobilization and mutual aid zones of the state. Upon filing of the plan in the office of fire prevention and control such plan shall become the state fire mobilization and mutual aid plan. Such plan may be amended from time to time in the same manner as originally adopted.

2. Regional fire administrators. The state fire administrator may appoint and remove a regional fire administrator for each fire mobilization and mutual aid zone established pursuant to the state fire mobilization and mutual aid plan. Before he OR SHE enters on the duties of the office, each regional fire administrator shall take and subscribe before an officer authorized by law to administer oaths the constitutional oath of office, which shall be administered and certified by the officer taking the same without compensation and shall be filed in the office of [fire prevention and control] THE SECRETARY OF STATE.

3. Regulations. The state fire administrator may make regulations and issue orders which he OR SHE may deem necessary to implement the state fire mobilization and mutual aid plan and carry out the purposes of this section.

4. Powers. Whenever a county, city, town, village or fire district shall request, or whenever the governor shall determine that the public interest so requires, the state fire administrator shall possess and exercise the powers, functions and duties set forth in the state fire mobilization and mutual aid plan.

5. Standard thread. The state fire mobilization and mutual aid plan shall prescribe a standard hose thread for the state, and each county, city, town, village or fire district not equipped with the same may be required either to recut its threads to such standard or provide adapters whereby the same may be brought to such standards.

6. Records. The state fire administrator shall keep a permanent public record of the activations of the state fire mobilization and mutual aid

plan, showing how, when and where it was activated and when such activation was terminated.

7. Reimbursement of assisting municipal corporations or fire districts. Whenever the governor activates the state fire mobilization and mutual aid plan pursuant to subdivision four of this section, claims submitted by an assisting municipal corporation or fire district for expenses allowed by subdivision two of section two hundred nine-g of this article made in performance of its duties on behalf of a receiving municipality or fire district pursuant to such plan may be reimbursed in the first instance by the state from any local assistance appropriation established for such purpose. Reimbursements of such claims from such appropriation may be made only upon certification of such claim by the state fire administrator to the state comptroller and audit of such claim by the state comptroller prior to payment. Expenditures for such reimbursements from such appropriation shall be considered a liability for outside aid as described in section two hundred nine-g of this article and shall be repaid by the municipality or fire district receiving assistance pursuant to the state fire mobilization and mutual aid plan.

8. Hazardous materials incident plan. The state fire administrator shall prepare a hazardous materials incident plan which shall complement and become a part of the plan required by subdivision one of this section. The plan shall provide for the mobilization and coordination of fire service resources in response to emergencies which involve or may involve hazardous materials and shall establish hazardous materials incidents response zones and criteria for recognized regional hazardous materials incidents response teams. The office of fire prevention and control, by and through the state fire administrator or his duly authorized officers and employees, is authorized to approve grants of funds from monies allocated and appropriated therefor for expenditures of municipal corporations for hazardous materials incidents planning and equipment, pursuant to applicable rules and regulations promulgated by the [secretary of state] STATE FIRE ADMINISTRATOR and approved by the director of the budget.

S 8. Section 209-w of the general municipal law, as added by chapter 369 of the laws of 1976, subdivisions 1 and 5 as amended by chapter 225 of the laws of 1979, is amended to read as follows:

S 209-w. Permanent appointment of fire fighters; completion of training program. 1. Notwithstanding the provisions of any general, special, or local law or charter to the contrary, no person shall, after the effective date of regulations adopted by the [governor pursuant to section one hundred fifty-nine-d] STATE FIRE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED FIFTY-EIGHT of the executive law, receive an original appointment on a permanent basis as a fire fighter of any county, city, town, village, or fire district unless such person has previously been awarded a certificate by the state fire administrator attesting to his OR HER satisfactory completion of an approved fire basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a fire fighter of any county, city, town, village or fire district shall forfeit his OR HER position as such unless he OR SHE previously has satisfactorily completed, or within the time prescribed by regulations promulgated by the [governor pursuant to section one hundred fifty-nine-d] STATE FIRE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED FIFTY-EIGHT of the executive law, satisfactorily completes, a fire basic training program for temporary or probationary fire fighters and is awarded a certificate by the state fire administrator attesting thereto.

2. The term fire fighter, as used in this section, shall mean a member of a fire department whose duties include fire service as the phrase fire service is defined in paragraph d of subdivision eleven of section three hundred two of the retirement and social security law.

3. Nothing in this section shall be construed to exempt any fire fighter or other officer or employee from the provisions of the civil service law.

4. The provisions of this section shall not prevent the establishment of more restrictive local requirements for appointment of fire fighters.

5. Any person whose name was on an eligible list for appointment in the competitive class of the civil service as a fire fighter on the effective date of any rules and regulations promulgated by the [governor pursuant to section one hundred fifty-nine-d] STATE FIRE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED FIFTY-EIGHT of the executive law shall continue to remain eligible for permanent appointment from such list during the life of such list without satisfying the requirements set forth in subdivision one of this section, provided he OR SHE would otherwise have remained eligible for permanent appointment from such list if this section had not been enacted.

6. The provisions of this section shall not apply to appointments made by any county, city, town, village or fire district which employs five or fewer fire fighters.

S 9. This act shall take effect immediately.