STATE OF NEW YORK

7080

2017-2018 Regular Sessions

IN ASSEMBLY

April 4, 2017

Introduced by M. of A. SKARTADOS -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to providing all veterans with the opportunity to score additional points on civil service exams and providing that military service be weighed in the veteran's favor when applying for a non-classified civil service position

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 89 to read as follows:

§ 89. Additional credit allowed veterans for non-classified civil service positions; preference in retention upon abolition of positions. 1. Definitions. As used in this section:

(a) "veteran" means a member of the armed forces of the United States, who was honorably discharged or released under honorable circumstances from such service, who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and who is a resident of the state of New York at the time of application for appointment or promotion or at the time of retention, as the case may be; and

(b) "military service" means service as an officer or enlisted person in the armed forces of the United States in time of armed conflict or peace.

2. A veteran's military service shall be formally considered and weighted in the hiring process for non-classified civil service positions.

3. (a) Except as herein otherwise provided, no person who has received a permanent original appointment or a permanent promotion in a non-classified or classified position in the civil service of the state or of any city or civil division thereof from an eligible list on which he or

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

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she was allowed the additional credit granted by this article, as a veteran, shall thereafter be entitled to any additional consideration under this section as a veteran.

(b) Where a veteran or disabled veteran has been originally appointed or promoted to a non-classified position or a classified position 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, and such appointment or promotion shall not affect his eligibility for additional consideration or credit in other examinations.

4. The state civil service department and each municipal commission shall establish and maintain in its office a roster of all veterans appointed or promoted as a result of additional consideration granted by this section to positions under its jurisdiction. The appointment or promotion of a veteran as a result of additional consideration shall be void if such veteran, prior to such appointment or promotion, had been appointed or promoted as a result of additional consideration granted by this section or credit granted by this article.

5. In the event of the abolition or elimination of any non-classified position in the civil service, 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 veterans shall be deemed to be thirty months earlier than the actual date, determined in accordance with section thirty of the general construction law; (3) 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 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 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 (4) 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 or her function within his or her agency or department. For the purpose of this subdivision, the terms "date of

original appointment" and "date of original appointment in the service" shall mean, for persons subject to subdivisions one-a and one-c 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 deduction occurs.

6. Penalty for denial of preference in retention. A refusal to allow the preference in retention provided for in this section to any veteran, or a reduction of his or her compensation intended to bring about his or her resignation shall be deemed a misdemeanor, and any such veteran shall have a right of action therefor in any court of competent jurisdiction for damages and for righting the wrong.

§ 2. Section 85 of the civil service law, as added by chapter 790 of the laws of 1958, paragraph (a) of subdivision 1 as amended by chapter 333 of the laws of 1993, paragraph (b) of subdivision 1 as amended by chapter 661 of the laws of 1983, subparagraph 2 of paragraph (b) of subdivision 1 as amended by chapter 616 of the laws of 1995, subparagraph 3 of paragraph (b) and paragraph (c) of subdivision 1 as amended by chapter 467 of the laws of 1991, subparagraph 4 of paragraph (c) of subdivision 1 as amended by chapter 179 of the laws of 2006, paragraph (c) of subdivision 4 as amended by chapter 15 of the laws of 1971, subdivision 7 as amended by chapter 532 of the laws of 1976 and subdivision 7-a as amended by chapter 334 of the laws of 1994, is amended to read as follows:

§ 85. Additional credit allowed veterans in competitive examinations; preference in retention upon abolition of positions. 1. Definitions. (a) The [~~terms~~] term "veteran" [~~and "non-disabled veteran" mean~~] means a member of the armed forces of the United States who served therein in time of war or peace, who was honorably discharged or released under honorable circumstances from such service, who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and who is a resident of the state of New York at the time of application for appointment or promotion or at the time of retention, as the case may be.

[~~(b) The term "disabled veteran" means a veteran who is certified by the United States veterans' administration or a military department as entitled to receive disability payments upon the certification of such veterans' administration or a military department for a disability incurred by him in time of war and in existence at the time of application for appointment or promotion or at the time of retention, as the case may be. Such disability shall be deemed to be in existence at the time of application for appointment or promotion or at the time of retention, as the case may be, if the certificate of such veterans' administration shall state affirmatively that such veteran has been examined by a medical officer of such veterans' administration on a date within one year of either the date of filing application for competitive examination for original appointment or promotion or the date of the establishment of the resulting eligible list or within one year of the time of retention, as the case may be; that at the time of such examination the war-incurred disability described in such certificate was found to exist; and that such disability is rated at ten per centum or more. Such disability shall also be deemed to be in existence at such time if the certificate of such veterans' administration shall state affirmatively that a permanent stabilized condition of disability exists to an extent of ten per centum or more, notwithstanding the fact that such veteran has not been examined by a medical officer of such veterans' administration within one year of either the time of application for~~

~~appointment or promotion or the date of filing application for competitive examination for original appointment or promotion, or within one year of the time of retention, as the case may be. The term "disabled veteran" shall also mean:~~

~~(1) A veteran who served in world war I, who continued to serve in the armed forces of the United States after the eleventh day of November, nineteen hundred eighteen, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service on or before the second day of July, nineteen hundred twenty-one.~~

~~(2) A veteran who served in world war II, who continued to serve in the armed forces of the United States after the second day of September, nineteen hundred forty-five, or who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service on or before the date that world war II is declared terminated.~~

~~(3) A veteran who served during hostilities participated in by the military forces of the United States subsequent to June twenty-seventh, nineteen hundred fifty, and who continued to serve in the armed forces of the United States after the thirty-first day of January, nineteen hundred fifty-five, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service.~~

~~(c) The term "time of war" shall include the following wars and hostilities for the periods and based upon the evidence herein set forth:~~

~~(1) World war I, from the sixth day of April, nineteen hundred seventeen, to and including the eleventh day of November, nineteen hundred eighteen.~~

~~(2) World war II, from the seventh day of December, nineteen hundred forty-one, to and including the thirty-first day of December, nineteen hundred forty-six.~~

~~(3) Hostilities participated in by the military forces of the United States, from the twenty-seventh day of June, nineteen hundred fifty, to and including the thirty-first day of January, nineteen hundred fifty-five.~~

~~(4) Hostilities participated in by the military forces of the United States, from the twenty-eighth day of February, nineteen hundred sixty-one to the seventh day of May, nineteen hundred seventy-five.~~

~~(5) Hostilities participated in by the military forces of the United States in Lebanon, from the first day of June, nineteen hundred eighty-three to the first day of December, nineteen hundred eighty-seven, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.~~

~~(6) Hostilities participated in by the military forces of the United States in Grenada, from the twenty-third day of October, nineteen hundred eighty-three to the twenty-first day of November, nineteen hundred eighty-three, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.~~

~~(7) Hostilities participated in by the military forces of the United States in Panama, from the twentieth day of December, nineteen hundred eighty-nine to the thirty-first day of January, nineteen hundred ninety, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.~~

~~(8) Hostilities participated in by the military forces of the United States in the Persian Gulf, from the second day of August, nineteen hundred ninety to the end of such hostilities.~~

~~(d)~~] **(b)** The term "time of application for original appointment or promotion" shall mean the date of the establishment of an eligible list resulting from a competitive examination for original appointment or promotion, as the case may be, which date shall be the date on which the term of such eligible list commences.

[~~(e)~~] **(c)** The term "time of retention" shall mean the time of abolition or elimination of positions.

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, [~~(1) Disabled~~] veterans shall be entitled to receive ten points additional in a competitive examination for original appointment and five points additional credit in a competitive examination for promotion[~~, and~~

~~(2) Non-disabled veterans shall be entitled to receive five points additional credit in a competitive examination for original appointment and two and one-half points additional credit in a competitive examination for promotion~~].

(b) Such additional credit shall be added to the final earned rating of such [~~disabled veteran or non-disabled~~] veteran, [~~as the case may be,~~] 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 herein, 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. Such candidates 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 veteran [~~or disabled veteran~~] 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 herein otherwise provided, 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, [~~either~~] as a veteran [~~or disabled veteran~~], shall thereafter be entitled to any additional credit under this section either as a veteran [~~or a disabled veteran~~].

(b) Where, at the time of establishment of an eligible list, the position of a veteran [~~or disabled veteran~~] on such list has not been affected by the addition of credits granted under this section, the appointment or promotion of such veteran [~~or disabled veteran, as the case may be,~~] 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 veteran [~~or disabled veteran~~] 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 veteran [~~or disabled veteran~~] 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 veteran [~~or disabled veteran~~] has received the additional credit granted by this section, such veteran [~~or disabled veteran~~] 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 and signed by the veteran [~~or disabled veteran~~], 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 veterans [~~and disabled veterans~~] appointed or promoted as a result of additional credits granted by this section to positions under its jurisdiction. The appointment or promotion of a veteran [~~or disabled veteran~~] as a result of additional credits shall be void if such veteran [~~or disabled veteran~~], 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: (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)~~] **(3)** 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 **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 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)~~] **(4)** the spouse of a veteran with one hundred percent service connected disabili-

ty 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 **or her** function within his **or her** agency or department.

7-a. 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 subdivisions one-a and one-c 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.

8. Penalty for denial of preference in retention. A refusal to allow the preference in retention provided for in this section to any veteran [~~or disabled veteran~~], or a reduction of his **or her** compensation intended to bring about his **or her** resignation shall be deemed a misdemeanor, and any such veteran [~~or disabled veteran~~] shall have a right of action therefor in any court of competent jurisdiction for damages and for righting the wrong.

§ 3. This act shall take effect immediately.