§ 70. Transfers. 1. General provisions. Except as provided in subdivisions four, six and seven of this section no employee shall be transferred to a position for which there is required by this chapter or the rules established hereunder an examination involving essential tests or qualifications different from or higher than those required for the position held by such employee. The state and municipal commissions may adopt rules governing transfers between positions in their respective jurisdictions and may also adopt reciprocal rules providing for the transfer of employees from one governmental jurisdiction to another. No employee shall be transferred without his or her consent except as provided in subdivision six or seven of this section or upon the transfer of functions as provided in subdivision two of this section.

2. Transfer of personnel upon transfer of functions. Upon the transfer of a function (a) from one department or agency of the state to another department or agency of the state, or (b) from one department or agency of a civil division of the state to another department or agency of such civil division, or (c) from one civil division of the state to another civil division of the state, or (d) from a civil division of the state to the state, or vice versa, provision shall be made for the transfer of necessary officers and employees who are substantially engaged in the performance of the function to be transferred. As soon as practicable after the adoption of a law, rule, order or other action directing such a transfer of function, but not less than twenty days prior to the effective date of such transfer, the head of the department or agency from which such function is to be transferred shall certify to the head of the department or agency to which such function is to be transferred a list of the names and titles of those employees substantially engaged in the performance of the function to be transferred, and shall cause copies of such certified list to be publicly and conspicuously posted in the offices of the department or agency from which such function is to be transferred, along with copies of this subdivision. Any employee of the department or agency from which such function is to be transferred may, prior to the effective date of such transfer, protest his or her inclusion in or exclusion from such list by giving notice of such protest in writing addressed to the heads of the respective departments or agencies from which and to which transfer is to be made, which notice

shall state the reasons for the protest. The head of the department or agency to which such function is to be transferred shall review the protest and after consultation with the head of the department or agency from which such function is to be transferred notify the protestor within ten days from the receipt of such protest of the determination with respect to such protest. Such determination shall be a final administrative determination. Failure to make such protest shall be deemed to constitute consent to inclusion in or exclusion from, as the case may be, the certified list of employees engaged in the function to be transferred. Officers and employees so transferred shall be transferred without further examination or qualification, and shall retain their respective civil service classifications and status. For the purpose of determining the officers and employees holding permanent appointments in competitive class positions to be transferred, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and non-disabled veterans. Any employee who fails to respond to or accept a written offer of transfer from the department or agency to which such function is to be transferred within ten days after receipt of such offer shall be deemed to have waived entitlement to such transfer. All officers and employees so transferred shall, thereafter, be subject to the rules of the civil service commission having jurisdiction over the agency to which transfer is made. Officers and employees holding permanent appointments in competitive class positions who are not so transferred shall have their names entered upon an appropriate preferred list for reinstatement to the same or similar positions in the service of the governmental jurisdiction from which transfer is made and in the office or agency to which such function is transferred. Officers and employees transferred to another governmental jurisdiction pursuant to the provisions of this subdivision shall be entitled to full seniority credit for all purposes for service rendered prior to such transfer in the governmental jurisdiction from which transfer is made. Except where such transferred officers and employees are entitled, pursuant to a special law or a rule adopted pursuant to law, to credit upon transfer for their unused vacation or annual leave and sick leave, the officer or body having authority to adopt provisions governing vacation or annual

leave and sick leave applicable to the department or agency to which transfer is made may, after giving due consideration to the similarities and differences between the provisions governing vacation or annual leave and sick leave in the respective jurisdictions from which and to which transfer is made, allow employees transferred hereunder credit for all or part of the unused vacation or annual leave and sick leave standing to their credit at the time of transfer, as may be determined equitable, but not in excess of the maximum accumulation permitted in the jurisdiction to which transfer is made. Unused vacation or annual leave not credited by the jurisdiction to which transfer is made may be compensated for to the extent, if any, such compensation is authorized by other law.

4. Transfer and change of title. Notwithstanding the provisions of subdivision one of this section or any other provision of law, any permanent employee in the competitive class who meets all of the requirements for a competitive examination, and is otherwise qualified as determined by the state civil service commission or the municipal civil service commission, as the case may be, shall be eligible for participation in a non-competitive examination in a different position classification, provided, however, that such employee is holding a position in a similar grade.

5. (a) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, a police department of any county, city, town, village, district, commission, authority or public benefit corporation is dissolved or abolished and the functions of such department are assumed by another police agency by contractual agreement or payment or taxation therefor, the provisions of this section shall apply.

(b) For the purposes of this subdivision:

(1) The term "police agency" shall mean any agency or department of a county, city, town, village, district, commission, authority or public benefit corporation having responsibility for enforcing the criminal laws of the state.

(2) The term "police agency" or "police department" shall not be construed to include the police department of a city of one million or

more persons, the police department of a housing authority of a city of one million or more persons, or the police department established pursuant to the provisions of section one thousand two hundred four of the public authorities law.

6. Transfer of personnel. Notwithstanding the provisions of subdivision one of this section or any other provision of law, any city having a population of one million or more may by agreement negotiated between such city and an employee organization pursuant to article fourteen of this chapter provide for the involuntary transfer of employees between city agencies. For purposes of this subdivision, the term "city agency" shall include any school district, public authority, commission or other instrumentality of government on whose behalf such city is authorized to negotiate collective bargaining agreements.

7. Transfer of Suffolk county park officers levels I-IV to the positions of Suffolk county police officers. Notwithstanding the provisions of subdivision one of this section or any other provision of law, the county of Suffolk may, by agreement negotiated between such county and an employee organization pursuant to article fourteen of this chapter, provide for the transfer of now existing Suffolk county parks police officers levels I-IV to positions of Suffolk county police officers. The transfer of now existing positions may be effectuated without regard to any eligible lists or preferred lists for reinstatement.