STATE OF NEW YORK

5291

2019-2020 Regular Sessions

IN SENATE

April 23, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, the public authorities law and the military 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:

1    Section 1. Subdivisions 1, 1-a, 1-b, 1-c, 1-d, 2, 4, 5, 6, 7, subpara-2  graph 1 of paragraph (b) of subdivision 7-a and subdivision 9 of section 3 80 of the civil service law, subdivision 1 as amended by chapter 283 of 4 the laws of 1972, subdivision 1-a as added by chapter 312 of the laws of 5 1976, subdivision 1-b as added by chapter 653 of the laws of 1978, 6 subdivision 1-c as added by chapter 334 of the laws of 1994, subdivision 7 1-d as added by chapter 731 of the laws of 2004, subdivision 2 as 8 amended by chapter 376 of the laws of 1977, subdivision 4 as added by 9 chapter 790 of the laws of 1958, subdivisions 6 and 7 as added and 10 subdivision 5 as amended by chapter 283 of the laws of 1972, subdivi-11 sions 4, 5, 6 and 7 as renumbered by chapter 360 of the laws of 1985, 12 subparagraph 1 of paragraph (b) of subdivision 7-a as added by chapter 13 528 of the laws of 2001 and subdivision 9 as added by chapter 470 of the 14 laws of 1988, are amended to read as follows:

1. Suspension or demotion. Where, because of economy, consolidation or 16 abolition of functions, curtailment of activities or otherwise, posi-17 tions in the competitive, noncompetitive or labor class are abolished or 18 reduced in rank or salary grade, suspension or demotion, as the case may 19 be, among incumbents holding the same or similar positions in the same 20 jurisdictional class shall be made in the inverse order of original 21 appointment on a permanent basis in the classified service in the 22 service of the governmental jurisdiction in which such abolition or

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

LBD10954-01-9
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 service of the governmental jurisdiction from 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 in the same jurisdictional class 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 in the same jurisdictional class 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 in the same jurisdictional class 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 in the same jurisdictional class 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.

1-d. Notwithstanding the provisions of subdivision one of this section, the sworn members of the police force of the county of Nassau 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 in the same jurisdictional class 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, those employees 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.

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 or her 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 workers' 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 or her position pursuant to this section, constitute an inter-
ruption of continuous service for the purposes of this section.
4. Units for suspension or demotion in civil divisions. Upon the abol-
itution or reduction of positions in the service of a civil division,
suspension or demotion shall be made from among employees holding the
same or similar positions in the same jurisdictional class in the entire
department or agency within which such abolition or reduction of posi-
tions occurs. In a city having a population of one million or more, the
municipal civil service commission may, by rule, designate as separate
units for suspension and demotion under the provisions of this section
any hospital or institution or any division of any department or agency
under its jurisdiction. Upon the abolition or reduction of positions in
such service, suspension or demotion, as the case may be, shall be made
from among employees holding the same or similar positions in the same
jurisdictional class in the department wherein such abolition or
reduction occurs, except that where such abolition or reduction occurs
in such hospital or institution or division of a department designated
as a separate unit for suspension or demotion, suspension or demotion
shall be made from among incumbents holding the same or similar posi-
tions in the same jurisdictional class in such separate unit.
5. Units for suspension or demotion in the state service. The presi-
dent may, by regulation, designate as separate units for suspension or
demotion under the provisions of this section any state hospital, instit-
tution or facility or any division of any state department or agency or
specified hospitals, institutions and facilities of a single state
department or agency within a particular geographic area as determined
by the president. Upon the abolition or reduction of positions in the
same jurisdictional class in the state service, suspension or demotion,
as the case may be, shall be made from among employees holding the same
or similar positions in the department wherein such abolition or
reduction occurs, except that where such abolition or reduction occurs
in a separate unit for suspension or demotion designated by regulation
of the president, suspension or demotion shall be made from among incum-
bents holding the same or similar positions in such separate unit.
6. Displacement in civil divisions. A permanent incumbent of a posi-
tion 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 subdivi-
ions one and two of this section; provided, however, that no incumbent
shall displace any other incumbent having greater retention standing in
the same jurisdictional class. 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 or she 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 posi-
tions in the title from which he or she 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 in the same jurisdictional class. 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 in the same jurisdictional class. 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 in the same jurisdictional class. 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 or she 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 or she 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 in the same jurisdictional class. 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 in the same jurisdictional class. 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.
(1) Pursuant to such method of payment, such member shall pay, as additional member contributions payable besides the ordinary member contributions due for his or her current service: 
(A) the ordinary member contributions which would have been done for such period of suspension if he or she had actually been in service during such period; and 
(B) (if such member has elected the twenty-year retirement program provided for by section six hundred four-a of the retirement and social security law), the additional member contributions which he or she would have been required to make under the provisions of that section for the period from the starting date of such program to the date next preceding the date on which such member became a participant in such retirement program, if he or she had become such a participant on such starting date; and 
(C) additional member contributions of two per centum of his or her compensation for the period beginning with the first full payroll period which includes the date of enactment of this subdivision and ending on the earlier of his or her date of retirement or his or her completion of thirty years of service.

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 otherwise, 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 in the same jurisdictional class 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 in the same jurisdictional class 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.

§ 2. Section 80-a of the civil service law is REPEALED.
§ 3. Subdivision 1 of section 81 of the civil service law, as amended by chapter 152 of the laws of 2011, 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 title 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. An employee whose name was placed on the preferred list and at the time of such placement was on active duty with the armed forces of the United States, as pursuant to title ten, fourteen or thirty-two of the United States code, shall not be eligible for employment reinstatement for a period longer than four years after the date of termination of military duty.

§ 4. 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
§ 5. 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.

§ 6. 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 para-
§ 5291

1 graph, which requires immediate hospitalization, and which is not
2 compensable through [workmen's] workers' compensation may be suspended,
3 demoted or displaced pursuant to section eighty of this chapter within
4 three months of the date of his confinement, provided that medical
5 authorities approved by such commission shall certify that the employee
6 is not able to perform the duties of his position; provided further,
7 that such three-month period may be extended by such commission for
8 additional periods not to exceed one year each upon the certification of
9 medical authorities selected by such commission that the employee is, as
10 a result of his injury, still not able to perform the duties of his
11 position. An injury in the line of duty, as used herein, shall be
12 construed to mean an injury which is incurred as a direct result of the
13 lawful performance of the duties of the position. In determining whether
14 an injury was received in the line of duty, such commission shall
15 require the head of the agency by which the employee is employed to
16 certify that the injury was received as a direct result of the lawful
17 performance of the employee's duties; and (5) the spouse of a veteran
18 with one hundred percent service connected disability shall be deemed to
19 be sixty months earlier than the actual date, determined in accordance
20 with section thirty of the general construction law, provided, the
21 spouse is domiciled with the veteran-spouse and is the head of the
22 household. This section shall not be construed as conferring any addi-
23 tional benefit upon such employee other than a preference in retention.
24 Such employee shall be subject to transfer upon the abolition of his
25 function within his agency or department.

§ 7. Paragraph (a) of subdivision 3 of section 131 of the civil
27 service law, as amended by chapter 733 of the laws of 1979, is amended
28 to read as follows:
29 (a) If such an employee is demoted, or displaced to a position in a
30 lower grade pursuant to [sections] section eighty [or eighty-a] of this
31 chapter, or is appointed, transferred or reinstated to a position in a
32 lower grade, he shall, upon such demotion, displacement, appointment,
33 transfer, or reinstatement, receive the rate of compensation which
34 corresponds with the number of annual increments and the percentage
35 value of performance advances actually received in the salary grades
36 from which and to which he is demoted, displaced, appointed, transferred
37 or reinstated, as the case may be.

§ 8. Paragraph (e) of subdivision 11 and paragraph (f) of subdivision
39 13 of section 3556 of the public authorities law, as added by chapter 5
40 of the laws of 1997, are amended to read as follows:
41 (e) Notwithstanding any other provision of this title, the corporation
42 may disqualify for reinstatement and remove from a reemployment roster
43 the name of any otherwise eligible person who, by reason of physical or
44 mental incapacity, is found to be unable to satisfactorily perform the
45 duties of the position for which such roster has been established, or
46 who has engaged in such misconduct as would warrant his or her dismissal
47 from public employment, except that a person who is not completely phys-
48 ically incapacitated and who is suspended or demoted pursuant to section
49 eighty [or eighty-a] of the civil service law because his or her posi-
50 tion has been abolished or reduced, but who is certified for rein-
51statement to any position having the same physical requirements as the
52 position from which such person was suspended or demoted, shall not be
53 disqualified because of his or her incapacity, unless upon medical exam-
54 ination his or her incapacity has worsened to a degree that he or she
55 would not be able to satisfactorily perform in such position. No person
56 shall be disqualified pursuant to this subdivision unless he or she is
S. 5291  10

first given a written statement of the reasons therefor and an opportu-

nity 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 represen-
tation 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 rede-
ployed 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 appropri-
ate, in accordance with the provisions of subdivision eight of this
section.

§ 9. Subdivision 10-b of section 243 of the military law, as added by
chapter 152 of the laws of 2011, is amended to read as follows:
10-b. If a public employer consolidates, abolishes, displaces, or
demotes a position, in accordance with section eighty[or eighty-a] or
eighty-five of the civil service law, which is occupied by a public
employee currently on active duty with the armed forces of the United
States, as pursuant to title ten, fourteen or thirty-two of the United
States code, such employer shall comply with subdivisions eleven and
twelve of this section and, upon the termination of the public employ-
ee's active duty, as defined in title ten, fourteen or thirty-two of the
United States code, such public employer shall provide full re-employ-
ment rights warranted to such employee under the Federal Uniformed
Services Employment and Reemployment Rights Act of 1994, provided,
however, the right of re-employment under this subdivision does not
entitle such employee to displacement rights over any person with great-
er seniority. Such public employer shall not abolish any position or
positions solely based upon the fact that the position or positions are
currently filled by an individual or individuals engaged in military
duty.

§ 10. Nothing in this act shall be construed to impede, infringe, or
diminish any rights or benefits relating to the suspension or demotion
upon the abolition or reduction of positions for employees in the non-
competitive class or the labor class which employees are afforded
through a bona fide collective bargaining agreement, or otherwise dimin-
ish the integrity of existing or future collective bargaining agreements
and other past practices.

§ 11. This act shall take effect on the ninetieth day after it shall
have become a law.
NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S5291

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the civil service law, the public authorities law and the military 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.

PURPOSE:
Amend the Civil service law, the public authorities law and the military 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.

SUMMARY OF PROVISIONS:
This bill amends subdivision 1, 1-a, 1-b, 1-c, 2, 6, 7, and 9 of Section 80; repeals Section 80-a; amends Subdivision 1 of Section 81; amends Subdivision 1 and 5 of Section 81-a; amends Subdivision 1 of Section 81-b and amends subdivision 7 of Section 85 of the Civil Service Law.

JUSTIFICATION:
This bill would give recall rights to labor class employees and local government non-competitive employees.

Reduction in Force provisions that cover public sector positions should not be restricted to the Competitive Class or the Non-Competitive class in only the State’s Executive Branch. These protections should be extended to cover all employees who are appointed permanently to a position in the Competitive, Non-Competitive or Labor Jurisdictional Classifications.

When the State and or Local Governments decide to fill vacancies after a reduction in force has occurred, permanent employees who were displaced via the reduction in force should be given preference in filling these vacancies before any other eligible list (in the case of the Competitive Class) eligible or other non-competitive class candidates are appointed.

This bill sets up the current reduction in force and recall procedure for non-competitive and labor class employees who work for the State Executive Branch or a local government employer.

The application of these protections to Non-Competitive and Labor class employees in State and Local governments are long overdue.

Employees who have longer permanent service with their employer should have greater retention rights than those employees who are subsequently hired to positions in the same title.
**EXISTING LAW:**

Section 80 currently provides reduction in force provisions for permanent employees occupying competitive jurisdictional class positions.

Section 80-a provides reduction in force protection for State Executive Branch employees who are appointed permanently in positions designated in the Non-Competitive Jurisdictional Classification. These provisions do not currently apply to local government employees.

Currently there is no provision in the New York State Civil Service Law that covers employees who are permanently appointed to positions designated by the Local Government Classified Civil Service Rules as in the Labor Jurisdictional Classification.

Sections 81, 81-a, and 81-b currently provide preferred list, certification and reinstatement provisions for employees who were displaced from State or local government competitive class positions and State executive branch employees who were displaced from Non-Competitive Class positions.

Section 85 currently provides preference in retention during State and local government reductions in force. This section also provides preference in retention for certain employees who are permanently appointed to noncompetitive class positions in the State's Executive Branch only.

**IMPACT ON STATE AND LOCAL GOVERNMENT CIVIL SERVICE RULES AND REGULATIONS:**

This bill will require the State and Local Civil Service administrations to adopt new or revise current provisions of their Rules for the Classified Service regarding reduction in force procedures.

The State Executive Branch and many but not all local government employers already provide at least some reduction in force and or recall procedures and protections to employees in the Non-Competitive and Labor Jurisdictional Classification. This protection is typically provided via collective bargaining agreements, which currently exist between certain local government employers and employees represented by labor unions.

**FISCAL IMPLICATIONS:**

None

**EFFECTIVE DATE:**

This act shall take effect on the ninetieth day after it shall have become a law.