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

7810

I N S E N A T E

June 11, 2014

Introduced by Sen. GOLDEN -- 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, in relation to provisional employees of certain public employers; to amend chapter 5 of the laws of 2008 amending the civil service law relating to provisional employees of certain public employers, in relation to extensions of certain negotiated agreements and extending the provisions of such chapter; and to amend part I of chapter 56 of the laws of 2008 amending the civil service law relating to excess provisional employees of a city having a population of one million or more, in relation to extending the provisions thereof

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

Section 1. Statement of legislative findings and intent. The legislature hereby finds that the city of New York and other employers for which the New York city department of citywide administrative services ("DCAS") manages civil service appointments ("the DCAS employers") have made substantial progress in reducing the number of provisional appointments. Aspects of the original plan developed by DCAS in accordance with chapter 5 of the laws of 2008 to reduce provisional appointments could not be fully implemented during the period of effectiveness of such plan, and a limited revision and extension are now necessary in order to implement further actions in an appropriate timeframe that preserves the quality and effectiveness of governmental operations. The legislature therefore additionally finds that the constitutional mandate of making appointments and promotions "according to merit and fitness" would be furthered by maintaining, for an additional defined period, the orderly planning and implementation process, including review by the state civil service commission, originally established by chapter 5 of the laws of 2008. The legislature further finds that during such period, limited waivers of selected applicable time limitations, as well as the authorization of certain negotiated disciplinary procedures for provisional employees, are also appropriate. These actions are authorized only in

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

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the unique context of continuing to implement a remedy for the specific problem faced by the city and other DCAS employers.

S 2. Subdivision 5 of section 65 of the civil service law is amended by adding a new paragraph (c-1) to read as follows:

(C-1) REVISED PLAN FOR PROVISIONAL EMPLOYEES. WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH, THE DCAS EMPLOYERS SHALL BE REQUIRED TO SUBMIT TO THE STATE COMMISSION FOR ITS APPROVAL A SINGLE COMPREHENSIVE REVISION OF THE PLAN PREPARED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, TO BE IMPLEMENTED BY NOVEMBER FIRST, TWO THOUSAND SIXTEEN, TO FURTHER REDUCE THE NUMBER OF PROVISIONAL APPOINTMENTS THAT HAVE CONTINUED BEYOND THE PERIODS PERMITTED BY SUBDIVISIONS ONE, TWO, THREE AND FOUR OF THIS SECTION. SUCH REVISED PLAN MAY CONTAIN ANY ELEMENTS OR MEANS OF IMPLEMENTATION AUTHORIZED BY PARAGRAPH (B) OF THIS SUBDIVISION. THE REVISED PLAN SHALL BE SUPPORTED BY APPROPRIATE DOCUMENTATION AND EXPLANATION, AND THE INFORMATION CONTAINED IN THE PLAN SHALL BE CONFIRMED BY THE COMMISSIONER OF DCAS AS ACCURATE TO THE BEST OF HIS OR HER KNOWLEDGE, BASED ON A REASONABLE INQUIRY BY DCAS INTO THE FACTS SET FORTH THEREIN. WITHIN SIXTY DAYS OF THE SUBMISSION OF SUCH PLAN, THE STATE COMMISSION SHALL APPROVE THE REVISED PLAN, WITH OR WITHOUT RECOMMENDED CHANGES, OR DISAPPROVE IT. THE APPROVAL PROCESS SHALL OTHERWISE CONFORM TO THE TIMEFRAMES AND PROCEDURES SET FORTH IN PARAGRAPH (C) OF THIS SUBDIVISION. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SUBDIVISION, THIS SUBDIVISION SHALL NO LONGER BE IN FORCE AND EFFECT IF NO REVISED PLAN HAS BEEN APPROVED BY THE STATE COMMISSION WITHIN EIGHTEEN MONTHS FROM THE EFFECTIVE DATE OF THIS PARAGRAPH.

S 3. Paragraphs (d), (f) and (g) of subdivision 5 of section 65 of the civil service law, as added by chapter 5 of the laws of 2008, are amended to read as follows:

(d) Modifications of the plan. During the course of implementing the plan developed [and], approved AND REVISED in accordance with paragraphs (b) [and], (c) AND (C-1) of this subdivision, if the DCAS employers determine that there is a need to modify the plan, they shall submit a request for modification of the plan to the state commission. Such request shall detail the circumstances that have arisen necessitating the request, including but not limited to unforeseen demands upon resources, unforeseen projected impacts upon the provision of public services, or a finding that implementation of any part of the plan is impracticable, unduly burdensome or otherwise likely to prevent the successful implementation of the plan or any aspect thereof. The state commission shall act upon the request for modification within sixty days. The state commission may in its discretion approve the modification, approve the modification with recommended changes, or disapprove the modification; provided, however, that if the state commission takes no action within such period, it shall be deemed to have approved the modification, and provided further that if the changes recommended by the state commission are not accepted by the DCAS employers within thirty days, the modification shall be deemed disapproved. Notwithstanding any inconsistent provision of this paragraph, where a modification is insubstantial, and will not materially affect the ability of the DCAS employers to [achieve timely substantial compliance with the time periods permitted by this section] REDUCE THE NUMBER OF PROVISIONAL APPOINTMENTS IN ACCORDANCE WITH PARAGRAPH (C-1) OF THIS SUBDIVISION, DCAS may so certify and the modification may be implemented and shall be filed by DCAS with the state commission within five business days. In the event that a request for modification is disapproved, the plan previously in effect shall remain in effect, provided that the DCAS employers may at

any time submit a new proposed modification. [Any modification approved pursuant to this paragraph may extend the duration of a plan to a date no more than one year beyond the five-year period authorized by paragraph (b) of this subdivision.]

(f) Time limitation. Notwithstanding any inconsistent provision of this chapter or any other law or rule to the contrary, the provisions of subdivision two of this section shall not apply to DCAS employers upon the effective date of the chapter of the laws of two thousand seven which added this subdivision, and during the timely submission, approval and implementation of a plan in accordance with paragraphs (b), (c) and (e) of this subdivision, AND OF A REVISED PLAN IN ACCORDANCE WITH PARAGRAPH (C-1) OF THIS SUBDIVISION. The provisions of subdivision two of this section shall be applicable to any provisional employee serving in a position for which an appropriate eligible list has been established pursuant to such plan OR REVISED PLAN, unless such list is not adequate to fill all positions then held on a provisional basis or is exhausted immediately following its establishment.

(g) Agreements governing disciplinary procedures. Notwithstanding any inconsistent provision of this chapter or any other law or rule to the contrary, any DCAS employer and an employee organization, as such term is defined in article fourteen of this chapter, may enter into agreements to provide disciplinary procedures applicable to provisional appointees or categories thereof who have served for a period of twenty-four months or more in a position which is covered by such an agreement. No such provisional employee shall be deemed to be permanently appointed under such circumstances, nor may such disciplinary procedures be deemed to preclude removal of an employee as a result of the establishment of and appointments from an appropriate eligible list or in accordance with any other provision of law. Any such agreement may apply upon the effective date of [the] chapter FIVE of the laws of two thousand [seven which added this subdivision] EIGHT, and during the timely submission, approval and implementation of a plan in accordance with paragraphs (b), (c) and (e) of this subdivision, AND OF A REVISED PLAN IN ACCORDANCE WITH PARAGRAPH (C-1) OF THIS SUBDIVISION, and shall not apply to any provisional employee serving in a position for which an appropriate eligible list has been established pursuant to a plan approved in accordance with this subdivision unless such list is not adequate to fill all positions then held on a provisional basis or is exhausted immediately following its establishment.

S 4. Sections 3 and 5 of chapter 5 of the laws of 2008, amending the civil service law relating to provisional employees of certain public employers, is amended to read as follows:

S 3. Any agreement OR EXTENSION THEREOF entered into pursuant to paragraph (g) of subdivision 5 of section 65 of the civil service law, as added by section two of this act, may include protections for provisional employees who were covered, prior to the effective date of this act, by agreements similar to those authorized by such paragraph. Any agreement OR EXTENSION THEREOF entered into pursuant to such paragraph may include, but shall not be limited to, the appropriate arbitration, adjudication or other disposition of disciplinary or other matters concerning provisional employees that were pending on the effective date of this act.

S 5. This act shall take effect immediately, and shall expire December 31, [2014] 2016 when upon such date the provisions of this act shall be deemed repealed.

S 5. Section 2 of part I of chapter 56 of the laws of 2008, amending the civil service law relating to excess provisional employees of a city having a population of one million or more, is amended to read as follows:

S 2. This act shall take effect immediately and shall expire and be deemed repealed December 31, [2014] 2016.

S 6. If any section, subdivision, paragraph, clause, sentence, phrase or other portion of this act is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this act, which remaining portions shall continue in full force and effect.

S 7. This act shall take effect immediately; provided that the amendments to subdivision 5 of section 65 of the civil service law made by sections two and three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; and provided further, that the amendments to section 3 of chapter 5 of the laws of 2008 made by section four of this act shall not affect the repeal of such section and shall be deemed repealed therewith.