

# STATE OF NEW YORK

11241

## IN ASSEMBLY

June 16, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Abbate) --  
read once and referred to the Committee on Governmental Employees

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:

1 Section 1. Statement of legislative findings and intent. The legisla-  
2 ture hereby finds that the city of New York and other employers for  
3 which the New York city department of citywide administrative services  
4 ("DCAS") manages civil service appointments ("the DCAS employers") have  
5 made substantial progress in reducing the number of provisional appoint-  
6 ments since the inception of the planning process created by chapter 5  
7 of the laws of 2008. Through its implementation of automated systems for  
8 processing civil service examinations and by increasing its staff of  
9 professional examiners, DCAS has enhanced its capacity to administer  
10 competitive examinations. These technological advancements, together  
11 with DCAS's judicious administration of qualified incumbent examina-  
12 tions, as authorized by chapter 467 of the laws of 2016, and the reclas-  
13 sification of titles, as approved by the New York state civil service  
14 commission, has led to a steady and continuing reduction in the total  
15 number of provisional appointees in the New York city government work  
16 force, and to a decrease in the number of those appointees who continue  
17 in provisional status beyond the time limits set forth in section 65 of  
18 the civil service law. The legislature finds that the constitutional  
19 mandate of making appointments and promotions "according to merit and  
20 fitness to be ascertained, as far as practicable, by examinations which,  
21 as far as practicable, shall be competitive," would be furthered by

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

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1 maintaining, for an additional defined period, the orderly planning and  
2 implementation process, including review by the state civil service  
3 commission, originally established by that chapter and later extended by  
4 chapter 284 of the laws of 2014 and by chapter 467 of the laws of 2016.

5 Despite the progress DCAS has made, the difficulties created by the  
6 large number of affected titles and employees, and the potential opera-  
7 tional and budgetary dislocation, as well as potential difficulties in  
8 labor relations, that would be caused by rapid turnover in the many  
9 remaining titles, require that DCAS continue to further the constitu-  
10 tional mandate by the means authorized by chapter 467 of the laws of  
11 2016. In particular, thousands of provisional employees have crucial  
12 experience in implementing and directing key initiatives that benefit  
13 the public. Therefore, in addition to the substantial regimen of compet-  
14 itive testing that was contained in previous plans as well as proposed  
15 reclassification of titles where appropriate, DCAS is authorized to  
16 continue to administer an examination to provisional employees with  
17 specified qualifications and experience. This examination, in the  
18 context of the present plan, will facilitate lawful appointment of these  
19 employees to permanent competitive class positions, and thereby acceler-  
20 ate the transition of the DCAS employers to a system that does not  
21 require substantial use of provisional appointments.

22 § 2. Subparagraph (ii) of paragraph (c-2) of subdivision 5 of section  
23 65 of the civil service law, as added by chapter 467 of the laws of  
24 2016, is amended to read as follows:

25 (ii) DCAS may administer a QIE only for those titles that are set  
26 forth in section four of [~~the~~] chapter four hundred sixty-seven of the  
27 laws of two thousand sixteen, or in section five of the chapter of the  
28 laws of two thousand eighteen that [~~added~~] amended this [~~paragraph~~]  
29 subparagraph.

30 § 3. Subdivision 5 of section 65 of the civil service law is amended  
31 by adding a new paragraph (c-4) to read as follows:

32 (c-4) Additional plan revision for provisional employees. Within sixty  
33 days after the effective date of this paragraph, the DCAS employers  
34 shall be required to submit to the state commission for its approval a  
35 single comprehensive revision of the plan prepared pursuant to paragraph  
36 (b) of this subdivision, to be implemented by December thirty-first, two  
37 thousand twenty-one, to further reduce the number of provisional  
38 appointments that have continued beyond the periods otherwise permitted  
39 by this section. Such revised plan may additionally contain any elements  
40 or means of implementation authorized by paragraph (b) of this subdivi-  
41 sion. The revised plan shall be supported by appropriate documentation  
42 and explanation, and the information contained in the plan shall be  
43 confirmed by the commissioner of DCAS as accurate to the best of his or  
44 her knowledge, based on a reasonable inquiry by DCAS into the facts set  
45 forth therein. Within sixty days of the submission of such plan, the  
46 state commission shall approve the revised plan, with or without recom-  
47 mended changes, or disapprove it. The approval process shall otherwise  
48 conform to the timeframes and procedures set forth in paragraph (c) of  
49 this subdivision. Notwithstanding any inconsistent provision of this  
50 subdivision, this subdivision shall no longer be in force and effect if  
51 no revised plan has been approved by the state commission within eigh-  
52 teen months from the effective date of this paragraph.

53 § 4. Paragraphs (d), (f) and (g) of subdivision 5 of section 65 of the  
54 civil service law, as amended by chapter 467 of the laws of 2016, are  
55 amended to read as follows:

(d) Modifications of the plan. During the course of implementing the plan developed, approved and revised in accordance with paragraphs (b), (c), (c-1) ~~[and]~~, (c-3) and (c-4) 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 reduce the number of provisional appointments in accordance with paragraph (c-1) ~~[or]~~, (c-3) or (c-4), as applicable, 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 two-year period authorized by paragraph (c-3) 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 chapter five of the laws of two thousand 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 revised plans in accordance with paragraphs (c-1) ~~[and]~~, (c-3) and (c-4) 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 plans, 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 chapter five of the laws of two thousand 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 revised plans in accordance with paragraphs (c-1) ~~[and]~~, (c-3) and (c-4) 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.

§ 5. Subdivision 5 of section 65 of the civil service law is amended by adding a new paragraph (h) to read as follows:

(h) (i) If the DCAS employers are not in substantial compliance with the time periods permitted by subdivisions one, two, three and four of this section by December thirty-first, two thousand twenty-one, as set forth in the report submitted by DCAS pursuant to subparagraph (ii) of this paragraph, then an advisory workgroup for provisional appointments in the city of New York ("advisory workgroup") shall be established. The advisory workgroup shall consist of six members, one of whom shall be appointed by the governor, one of whom shall be appointed by the speaker of the assembly, one of whom shall be appointed by the temporary president of the senate, two of whom shall be appointed by the mayor of the city of New York, including one recommended by the citywide bargaining representative, and one of whom shall be appointed by the commissioner of the New York city department of citywide administrative services (DCAS). The advisory workgroup shall be chaired by a member designated by the mayor. The advisory workgroup shall submit to the governor, the state legislature and the mayor a single recommended plan for the DCAS employers to substantially comply with the time periods permitted by subdivisions one, two, three and four of this section, to be adopted by or pursuant to state legislation. For the purposes of this paragraph, "substantial compliance" shall have the same meaning as provided in paragraph (b) of this subdivision. Such recommended plan may include, but shall not be limited to, a schedule for administration of examinations and establishment of eligible lists, a determination of additional appropriate existing or planned eligible lists that may be used, consolidation of titles through appropriate reclassification, and any other lawful and appropriate means of implementation. The recommended plan shall to the extent practicable be supported by appropriate documentation and explanation.

(ii) DCAS shall submit a progress report to the governor, speaker of the assembly, temporary president of the senate and the mayor of the city of New York no later than December thirty-first, two thousand twenty. Such report shall contain numbers that are as current as practicable and shall include the total number of provisional appointments remaining, the number of provisional appointments that have been reduced, the number of provisional appointments that still need to be reduced in order to achieve substantial compliance as provided by paragraph (b) of this subdivision, and a statement of whether DCAS believes substantial compliance with the timeframes permitted by this section as provided by paragraph (b) of this subdivision can be achieved by December thirty-first, two thousand twenty-one.

§ 6. The New York city department of citywide administrative services, acting pursuant to paragraph (c-2) of subdivision 5 of section 65 of the civil service law, as amended by section two of this act, may administer qualified incumbent examinations, in addition to examinations authorized

1 to be administered pursuant to chapter 467 of the laws of 2016, in  
2 connection with appointment to the following titles:

3 10070 ADMINISTRATIVE BENEFITS MANAGER (TRANSIT AUTHORITY)  
4 10054 ADMINISTRATIVE BLASTING INSPECTOR  
5 10014 ADMINISTRATIVE CONSULTANT (EARLY CHILDHOOD EDUCATION)  
6 10028 ADMINISTRATIVE NUTRITIONIST  
7 10029 ADMINISTRATIVE PROBATION OFFICER  
8 82997 ADMINISTRATIVE TRANSIT CUSTOMER SERVICE SPECIALIST  
9 21215 ARCHITECT  
10 91504 ASSISTANT CAPTAIN (FERRY SERVICE)  
11 20210 ASSISTANT CIVIL ENGINEER  
12 20310 ASSISTANT ELECTRICAL ENGINEER  
13 20410 ASSISTANT MECHANICAL ENGINEER  
14 71141 ASSOCIATE FINGERPRINT TECHNICIAN  
15 22508 ASSOCIATE HOUSING DEVELOPMENT SPECIALIST  
16 31640 ASSOCIATE INSPECTOR (BOILERS)  
17 31644 ASSOCIATE INSPECTOR (ELEVATOR)  
18 31647 ASSOCIATE INSPECTOR (HOISTS AND RIGGING)  
19 31695 ASSOCIATE INSPECTOR (HOUSING CONSTRUCTION)  
20 31676 ASSOCIATE INSPECTOR (LOW PRESSURE BOILERS)  
21 31649 ASSOCIATE INSPECTOR (PLUMBING)  
22 21514 ASSOCIATE LABORATORY MICROBIOLOGIST  
23 34193 ASSOCIATE QUALITY ASSURANCE SPECIALIST (FUEL)  
24 34196 ASSOCIATE QUALITY ASSURANCE SPECIALIST (PUPIL TRANSPORTATION)  
25 80122 ASSOCIATE REAL PROPERTY MANAGER  
26 31685 ASSOCIATE REHABILITATION SPECIALIST (HPD)  
27 60866 ASSOCIATE TRANSIT CUSTOMER SERVICE SPECIALIST  
28 92501 AUTO BODY WORKER  
29 20130 AUTOMOTIVE SPECIALIST  
30 92305 BLACKSMITH  
31 92306 BLACKSMITH'S HELPER  
32 90751 BOILER MAKER  
33 91805 BRIDGE PAINTER  
34 91510 CAPTAIN (FERRY)  
35 92605 CAR MAINTAINER - GROUP B  
36 91810 CAR MAINTAINER - GROUP C  
37 90706 CARRIAGE UPHOLSTERER  
38 30726 CLAIM SPECIALIST  
39 91900 COLLECTION SUPERVISOR (REVENUE)  
40 51014 CONSULTANT PUBLIC HEALTH NURSE (COMMUNICABLE DISEASES)  
41 50310 DIETITIAN  
42 40910 ECONOMIST  
43 20302 ELECTRICAL ENGINEERING INTERN  
44 20113 ENGINEERING TECHNICIAN  
45 20123 ESTIMATOR (MECHANICAL)  
46 81560 FERRY TERMINAL SUPERVISOR  
47 71105 FINGERPRINT TECHNICIAN TRAINEE  
48 90716 GLAZIER  
49 91415 GRAPHIC ARTIST  
50 81901 HOSTLER  
51 33995 INSPECTOR (CONSUMER AFFAIRS)  
52 31627 INSPECTOR (HOISTS AND RIGGING)  
53 31690 INSPECTOR (HOUSING CONSTRUCTION)  
54 31671 INSPECTOR (LOW PRESSURE BOILERS)  
55 31629 INSPECTOR (PLUMBING)  
56 31656 INSPECTOR MULTI DISCIPLINE

1	3165A	INSPECTOR MULTI DISCIPLINE ABI L211
2	91000	INSTRUMENTATION SPECIALIST TRAINEE
3	40235	INSURANCE ADVISOR
4	12752	LABOR RELATIONS ANALYST TRAINEE
5	21513	LABORATORY MICROBIOLOGIST
6	21306	LANDSCAPE ARCHITECTURAL INTERN
7	30081	LEGAL COORDINATOR
8	1022A	LEGAL SECRETARIAL ASSISTANT AL 2-3-4 ONLY
9	91825	LETTERER AND SIGN PAINTER
10	90723	LOCKSMITH
11	91878	MAINTENANCE SUPERVISOR (ELEVATORS AND ESCALATORS)
12	91882	MAINTENANCE SUPERVISOR (POWER ELECTRONICS)
13	91883	MAINTENANCE SUPERVISOR (SIGNALS)
14	91886	MAINTENANCE SUPERVISOR (STRUCTURES-GROUP A-CARPENTRY)
15	91888	MAINTENANCE SUPERVISOR (STRUCTURES-GROUP C-IRON WORK)
16	91891	MAINTENANCE SUPERVISOR (STRUCTURES-GROUP F-PAINTING)
17	91894	MAINTENANCE SUPERVISOR (TELEPHONES)
18	91544	MARINE ENGINEER (DC)
19	92587	MARINE MAINTENANCE MECHANIC
20	20403	MECHANICAL ENGINEERING INTERN
21	91225	METAL WORK MECHANIC
22	30505	MORTGAGE TAX EXAMINER
23	91210	MOTOR GRADER OPERATOR
24	91232	MOTOR VEHICLE SUPERVISOR
25	22401	MULTIPLE DWELLING SPECIALIST (BUILDINGS)
26	91237	OIL BURNER SPECIALIST
27	90610	PHOTOGRAPHER
28	91752	POWER ELECTRONIC MAINTAINER
29	91738	POWER MAINTAINER, GROUP B
30	71165	PRINCIPAL FINGERPRINT TECHNICIAN
31	22402	PRINCIPAL MULTIPLE DWELLING SPECIALIST (BUILDINGS)
32	92123	PRINTING PRESS OPERATOR
33	51800	PROBATION ASSISTANT
34	51801	PROBATION OFFICER TRAINEE
35	60621	PROGRAM PRODUCER
36	51195	PUBLIC HEALTH ADVISOR (SCHOOL HEALTH)
37	81805	PUBLIC HEALTH ASSISTANT
38	81815	PUBLIC HEALTH ASSISTANT (SCHOOL HEALTH)
39	34172	QUALITY ASSURANCE SPECIALIST (AUTOMOTIVE EQUIPMENT)
40	34176	QUALITY ASSURANCE SPECIALIST (FOODS)
41	34183	QUALITY ASSURANCE SPECIALIST (PUPIL TRANSPORTATION)
42	34170	QUALITY ASSURANCE SPECIALIST TRAINEE
43	80102	REAL PROPERTY ASSISTANT
44	90736	RUBBER TIRE REPAIRER
45	21538	SCIENTIST (WATER ECOLOGY)
46	20131	SENIOR AUTOMOTIVE SPECIALIST
47	51638	SENIOR CONSULTANT (PUBLIC HEALTH SOCIAL WORK)
48	51263	SENIOR MENTAL HEALTH WORKER
49	12176	SENIOR SALVAGE APPRAISER
50	51239	STAFF AUDIOLOGIST
51	91840	STRUCTURE MAINTAINER - GROUP F
52	91845	STRUCTURE MAINTAINER - GROUP G
53	92170	SUPERVISING BOOKBINDER
54	81660	SUPERVISING DOCKMASTER
55	51196	SUPERVISING PUBLIC HEALTH ADVISOR (SCHOOL HEALTH)
56	51193	SUPERVISING PUBLIC HEALTH ADVISOR

1 90776 SUPERVISOR BOILER MAKER  
2 91871 SUPERVISOR BRIDGE PAINTER  
3 90778 SUPERVISOR GLAZIER  
4 92376 SUPERVISOR OF IRONWORK  
5 21015 SURVEYOR  
6 91215 TRACTOR OPERATOR  
7 31715 TRAFFIC CONTROL INSPECTOR  
8 13116 TRANSIT MANAGEMENT ANALYST TRAINEE  
9 20822 TRANSIT RAILCAR TECHNOLOGY SPECIALIST (OPERATIONS)  
10 20820 TRANSIT RAILCAR TECHNOLOGY SPECIALIST INTERN  
11 92355 WELDER  
12 91611 CRANE OPERATOR (ANY MOTIVE POWER EXCEPT STEAM)

13 § 7. Sections 3 and 5 of chapter 5 of the laws of 2008, amending the  
14 civil service law relating to provisional employees of certain public  
15 employers, as amended by chapter 467 of the laws of 2016, are amended to  
16 read as follows:

17 § 3. Any agreement or extension thereof entered into pursuant to para-  
18 graph (g) of subdivision 5 of section 65 of the civil service law, as  
19 added by section two of this act and subsequently amended in 2014 ~~and~~,  
20 2016 ~~and~~ 2018, may include protections for provisional employees who  
21 were covered, prior to the effective date of this act, by agreements  
22 similar to those authorized by such paragraph. Any agreement or exten-  
23 sion thereof entered into pursuant to such paragraph may include, but  
24 shall not be limited to, the appropriate arbitration, adjudication or  
25 other disposition of disciplinary or other matters concerning provi-  
26 sional employees that were pending on the effective date of this act.

27 § 5. This act shall take effect immediately, and shall expire December  
28 31, ~~2018~~ 2021 when upon such date the provisions of this act shall be  
29 deemed repealed.

30 § 8. Section 2 of part I of chapter 56 of the laws of 2008, amending  
31 the civil service law relating to excess provisional employees of a city  
32 having a population of one million or more, as amended by chapter 467 of  
33 the laws of 2016, is amended to read as follows:

34 § 2. This act shall take effect immediately and shall expire and be  
35 deemed repealed December 31, ~~2018~~ 2021.

36 § 9. If any section, subdivision, paragraph, clause, sentence, phrase  
37 or other portion of this act is, for any reason, declared unconstitu-  
38 tional or invalid, in whole or in part, by any court of competent juris-  
39 diction, such portion shall be deemed severable, and such unconstitu-  
40 tionality or invalidity shall not affect the validity of the remaining  
41 portions of this act, which remaining portions shall continue in full  
42 force and effect.

43 § 10. This act shall take effect immediately; provided, however, that  
44 the amendments to subdivision 5 of section 65 of the civil service law  
45 made by sections two, three, four and five of this act shall not affect  
46 the repeal of such subdivision and shall be deemed repealed therewith;  
47 and provided further that the amendments to section 3 of chapter 5 of  
48 the laws of 2008 made by section seven of this act shall not affect the  
49 repeal of such section and shall be deemed repealed therewith; and  
50 provided further that eligible lists and appointments resulting from the  
51 qualified incumbent examinations administered pursuant to paragraph  
52 (c-2) of subdivision 5 of section 65 of the civil service law, as  
53 amended by section two of this act, shall not be affected by the expira-  
54 tion and repeal of such subdivision.