

# STATE OF NEW YORK

8837--A

## IN SENATE

May 23, 2018

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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  
22 maintaining, for an additional defined period, the orderly planning and

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

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1 implementation process, including review by the state civil service  
2 commission, originally established by that chapter and later extended by  
3 chapter 284 of the laws of 2014 and by chapter 467 of the laws of 2016.

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

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

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

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

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

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

55 (d) Modifications of the plan. During the course of implementing the  
56 plan developed, approved and revised in accordance with paragraphs (b),

1 (c), (c-1) [~~and~~], (c-3) and (c-4) of this subdivision, if the DCAS  
2 employers determine that there is a need to modify the plan, they shall  
3 submit a request for modification of the plan to the state commission.  
4 Such request shall detail the circumstances that have arisen necessitat-  
5 ing the request, including but not limited to unforeseen demands upon  
6 resources, unforeseen projected impacts upon the provision of public  
7 services, or a finding that implementation of any part of the plan is  
8 impracticable, unduly burdensome or otherwise likely to prevent the  
9 successful implementation of the plan or any aspect thereof. The state  
10 commission shall act upon the request for modification within sixty  
11 days. The state commission may in its discretion approve the modifica-  
12 tion, approve the modification with recommended changes, or disapprove  
13 the modification; provided, however, that if the state commission takes  
14 no action within such period, it shall be deemed to have approved the  
15 modification, and provided further that if the changes recommended by  
16 the state commission are not accepted by the DCAS employers within thir-  
17 ty days, the modification shall be deemed disapproved. Notwithstanding  
18 any inconsistent provision of this paragraph, where a modification is  
19 insubstantial, and will not materially affect the ability of the DCAS  
20 employers to reduce the number of provisional appointments in accordance  
21 with paragraph (c-1) [~~or~~], (c-3) or (c-4), as applicable, of this subdi-  
22 vision, DCAS may so certify and the modification may be implemented and  
23 shall be filed by DCAS with the state commission within five business  
24 days. In the event that a request for modification is disapproved, the  
25 plan previously in effect shall remain in effect, provided that the DCAS  
26 employers may at any time submit a new proposed modification. Any  
27 modification approved pursuant to this paragraph may extend the duration  
28 of a plan to a date no more than one year beyond the two-year period  
29 authorized by paragraph (c-3) of this subdivision.

30 (f) Time limitation. Notwithstanding any inconsistent provision of  
31 this chapter or any other law or rule to the contrary, the provisions of  
32 subdivision two of this section shall not apply to DCAS employers upon  
33 the effective date of chapter five of the laws of two thousand eight,  
34 and during the timely submission, approval and implementation of a plan  
35 in accordance with paragraphs (b), (c) and (e) of this subdivision, and  
36 of revised plans in accordance with paragraphs (c-1) [~~and~~], (c-3) and  
37 (c-4) of this subdivision. The provisions of subdivision two of this  
38 section shall be applicable to any provisional employee serving in a  
39 position for which an appropriate eligible list has been established  
40 pursuant to such plan or revised plans, unless such list is not adequate  
41 to fill all positions then held on a provisional basis or is exhausted  
42 immediately following its establishment.

43 (g) Agreements governing disciplinary procedures. Notwithstanding any  
44 inconsistent provision of this chapter or any other law or rule to the  
45 contrary, any DCAS employer and an employee organization, as such term  
46 is defined in article fourteen of this chapter, may enter into agree-  
47 ments to provide disciplinary procedures applicable to provisional  
48 appointees or categories thereof who have served for a period of twen-  
49 ty-four months or more in a position which is covered by such an agree-  
50 ment. No such provisional employee shall be deemed to be permanently  
51 appointed under such circumstances, nor may such disciplinary procedures  
52 be deemed to preclude removal of an employee as a result of the estab-  
53 lishment of and appointments from an appropriate eligible list or in  
54 accordance with any other provision of law. Any such agreement may apply  
55 upon the effective date of chapter five of the laws of two thousand  
56 eight, and during the timely submission, approval and implementation of

1 a plan in accordance with paragraphs (b), (c) and (e) of this subdivi-  
2 sion, and of revised plans in accordance with paragraphs (c-1) [~~and~~],  
3 (c-3) and (c-4) of this subdivision, and shall not apply to any provi-  
4 sional employee serving in a position for which an appropriate eligible  
5 list has been established pursuant to a plan approved in accordance with  
6 this subdivision unless such list is not adequate to fill all positions  
7 then held on a provisional basis or is exhausted immediately following  
8 its establishment.

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

11 (h) (i) If the DCAS employers are not in substantial compliance with  
12 the time periods permitted by subdivisions one, two, three and four of  
13 this section by December thirty-first, two thousand twenty-one, as set  
14 forth in the report submitted by DCAS pursuant to subparagraph (ii) of  
15 this paragraph, then an advisory workgroup for provisional appointments  
16 in the city of New York ("advisory workgroup") shall be established. The  
17 advisory workgroup shall consist of six members, one of whom shall be  
18 appointed by the governor, one of whom shall be appointed by the speaker  
19 of the assembly, one of whom shall be appointed by the temporary presi-  
20 dent of the senate, two of whom shall be appointed by the mayor of the  
21 city of New York, including one recommended by the citywide bargaining  
22 representative, and one of whom shall be appointed by the commissioner  
23 of the New York city department of citywide administrative services  
24 (DCAS). The advisory workgroup shall be chaired by a member designated  
25 by the mayor. The advisory workgroup shall submit to the governor, the  
26 state legislature and the mayor a single recommended plan for the DCAS  
27 employers to substantially comply with the time periods permitted by  
28 subdivisions one, two, three and four of this section, to be adopted by  
29 or pursuant to state legislation. For the purposes of this paragraph,  
30 "substantial compliance" shall have the same meaning as provided in  
31 paragraph (b) of this subdivision. Such recommended plan may include,  
32 but shall not be limited to, a schedule for administration of examina-  
33 tions and establishment of eligible lists, a determination of additional  
34 appropriate existing or planned eligible lists that may be used, consol-  
35 idation of titles through appropriate reclassification, and any other  
36 lawful and appropriate means of implementation. The recommended plan  
37 shall to the extent practicable be supported by appropriate documenta-  
38 tion and explanation.

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

51 § 6. The New York city department of citywide administrative services,  
52 acting pursuant to paragraph (c-2) of subdivision 5 of section 65 of the  
53 civil service law, as amended by section two of this act, may administer  
54 qualified incumbent examinations, in addition to examinations authorized  
55 to be administered pursuant to chapter 467 of the laws of 2016, in  
56 connection with appointment to the following titles:

1 10070 ADMINISTRATIVE BENEFITS MANAGER (TRANSIT AUTHORITY)  
2 10054 ADMINISTRATIVE BLASTING INSPECTOR  
3 10014 ADMINISTRATIVE CONSULTANT (EARLY CHILDHOOD EDUCATION)  
4 10028 ADMINISTRATIVE NUTRITIONIST  
5 10029 ADMINISTRATIVE PROBATION OFFICER  
6 82997 ADMINISTRATIVE TRANSIT CUSTOMER SERVICE SPECIALIST  
7 21215 ARCHITECT  
8 91504 ASSISTANT CAPTAIN (FERRY SERVICE)  
9 20210 ASSISTANT CIVIL ENGINEER  
10 20310 ASSISTANT ELECTRICAL ENGINEER  
11 20410 ASSISTANT MECHANICAL ENGINEER  
12 71141 ASSOCIATE FINGERPRINT TECHNICIAN  
13 22508 ASSOCIATE HOUSING DEVELOPMENT SPECIALIST  
14 31640 ASSOCIATE INSPECTOR (BOILERS)  
15 31644 ASSOCIATE INSPECTOR (ELEVATOR)  
16 31647 ASSOCIATE INSPECTOR (HOISTS AND RIGGING)  
17 31695 ASSOCIATE INSPECTOR (HOUSING CONSTRUCTION)  
18 31676 ASSOCIATE INSPECTOR (LOW PRESSURE BOILERS)  
19 31649 ASSOCIATE INSPECTOR (PLUMBING)  
20 21514 ASSOCIATE LABORATORY MICROBIOLOGIST  
21 34193 ASSOCIATE QUALITY ASSURANCE SPECIALIST (FUEL)  
22 34196 ASSOCIATE QUALITY ASSURANCE SPECIALIST (PUPIL TRANSPORTATION)  
23 80122 ASSOCIATE REAL PROPERTY MANAGER  
24 31685 ASSOCIATE REHABILITATION SPECIALIST (HPD)  
25 60866 ASSOCIATE TRANSIT CUSTOMER SERVICE SPECIALIST  
26 92501 AUTO BODY WORKER  
27 20130 AUTOMOTIVE SPECIALIST  
28 92305 BLACKSMITH  
29 92306 BLACKSMITH'S HELPER  
30 90751 BOILER MAKER  
31 91805 BRIDGE PAINTER  
32 91510 CAPTAIN (FERRY)  
33 92605 CAR MAINTAINER - GROUP B  
34 91810 CAR MAINTAINER - GROUP C  
35 90706 CARRIAGE UPHOLSTERER  
36 30726 CLAIM SPECIALIST  
37 91900 COLLECTION SUPERVISOR (REVENUE)  
38 51014 CONSULTANT PUBLIC HEALTH NURSE (COMMUNICABLE DISEASES)  
39 50310 DIETITIAN  
40 40910 ECONOMIST  
41 20302 ELECTRICAL ENGINEERING INTERN  
42 20113 ENGINEERING TECHNICIAN  
43 20123 ESTIMATOR (MECHANICAL)  
44 81560 FERRY TERMINAL SUPERVISOR  
45 71105 FINGERPRINT TECHNICIAN TRAINEE  
46 90716 GLAZIER  
47 91415 GRAPHIC ARTIST  
48 81901 HOSTLER  
49 33995 INSPECTOR (CONSUMER AFFAIRS)  
50 31627 INSPECTOR (HOISTS AND RIGGING)  
51 31690 INSPECTOR (HOUSING CONSTRUCTION)  
52 31671 INSPECTOR (LOW PRESSURE BOILERS)  
53 31629 INSPECTOR (PLUMBING)  
54 31656 INSPECTOR MULTI DISCIPLINE  
55 3165A INSPECTOR MULTI DISCIPLINE ABI L211  
56 91000 INSTRUMENTATION SPECIALIST TRAINEE

1 40235 INSURANCE ADVISOR  
2 12752 LABOR RELATIONS ANALYST TRAINEE  
3 21513 LABORATORY MICROBIOLOGIST  
4 21306 LANDSCAPE ARCHITECTURAL INTERN  
5 30081 LEGAL COORDINATOR  
6 1022A LEGAL SECRETARIAL ASSISTANT AL 2-3-4 ONLY  
7 91825 LETTERER AND SIGN PAINTER  
8 90723 LOCKSMITH  
9 91878 MAINTENANCE SUPERVISOR (ELEVATORS AND ESCALATORS)  
10 91882 MAINTENANCE SUPERVISOR (POWER ELECTRONICS)  
11 91883 MAINTENANCE SUPERVISOR (SIGNALS)  
12 91886 MAINTENANCE SUPERVISOR (STRUCTURES-GROUP A-CARPENTRY)  
13 91888 MAINTENANCE SUPERVISOR (STRUCTURES-GROUP C-IRON WORK)  
14 91891 MAINTENANCE SUPERVISOR (STRUCTURES-GROUP F-PAINTING)  
15 91894 MAINTENANCE SUPERVISOR (TELEPHONES)  
16 91544 MARINE ENGINEER (DC)  
17 92587 MARINE MAINTENANCE MECHANIC  
18 20403 MECHANICAL ENGINEERING INTERN  
19 91225 METAL WORK MECHANIC  
20 30505 MORTGAGE TAX EXAMINER  
21 91210 MOTOR GRADER OPERATOR  
22 91232 MOTOR VEHICLE SUPERVISOR  
23 22401 MULTIPLE DWELLING SPECIALIST (BUILDINGS)  
24 91237 OIL BURNER SPECIALIST  
25 90610 PHOTOGRAPHER  
26 91752 POWER ELECTRONIC MAINTAINER  
27 91738 POWER MAINTAINER, GROUP B  
28 71165 PRINCIPAL FINGERPRINT TECHNICIAN  
29 22402 PRINCIPAL MULTIPLE DWELLING SPECIALIST (BUILDINGS)  
30 92123 PRINTING PRESS OPERATOR  
31 51800 PROBATION ASSISTANT  
32 51801 PROBATION OFFICER TRAINEE  
33 60621 PROGRAM PRODUCER  
34 51195 PUBLIC HEALTH ADVISOR (SCHOOL HEALTH)  
35 81805 PUBLIC HEALTH ASSISTANT  
36 81815 PUBLIC HEALTH ASSISTANT (SCHOOL HEALTH)  
37 34172 QUALITY ASSURANCE SPECIALIST (AUTOMOTIVE EQUIPMENT)  
38 34176 QUALITY ASSURANCE SPECIALIST (FOODS)  
39 34183 QUALITY ASSURANCE SPECIALIST (PUPIL TRANSPORTATION)  
40 34170 QUALITY ASSURANCE SPECIALIST TRAINEE  
41 80102 REAL PROPERTY ASSISTANT  
42 90736 RUBBER TIRE REPAIRER  
43 21538 SCIENTIST (WATER ECOLOGY)  
44 20131 SENIOR AUTOMOTIVE SPECIALIST  
45 51638 SENIOR CONSULTANT (PUBLIC HEALTH SOCIAL WORK)  
46 51263 SENIOR MENTAL HEALTH WORKER  
47 12176 SENIOR SALVAGE APPRAISER  
48 51239 STAFF AUDIOLOGIST  
49 91840 STRUCTURE MAINTAINER - GROUP F  
50 91845 STRUCTURE MAINTAINER - GROUP G  
51 92170 SUPERVISING BOOKBINDER  
52 81660 SUPERVISING DOCKMASTER  
53 51196 SUPERVISING PUBLIC HEALTH ADVISOR (SCHOOL HEALTH)  
54 51193 SUPERVISING PUBLIC HEALTH ADVISOR  
55 90776 SUPERVISOR BOILER MAKER  
56 91871 SUPERVISOR BRIDGE PAINTER

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

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

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

25 § 5. This act shall take effect immediately, and shall expire December  
26 31, ~~2018~~ 2021 when upon such date the provisions of this act shall be  
27 deemed repealed.

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

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

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

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