

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 mended 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),

(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

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

90778 SUPERVISOR GLAZIER
92376 SUPERVISOR OF IRONWORK
21015 SURVEYOR
91215 TRACTOR OPERATOR
31715 TRAFFIC CONTROL INSPECTOR
13116 TRANSIT MANAGEMENT ANALYST TRAINEE
20822 TRANSIT RAILCAR TECHNOLOGY SPECIALIST (OPERATIONS)
20820 TRANSIT RAILCAR TECHNOLOGY SPECIALIST INTERN
92355 WELDER

91611 CRANE OPERATOR (ANY MOTIVE POWER EXCEPT STEAM)

§ 7. 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, as amended by chapter 467 of the laws of 2016, are amended to read as follows:

§ 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 and subsequently amended in 2014 ~~and~~, 2016 ~~and~~ 2018, 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.

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immediately, and shall expire December 31, ~~2018~~ 2021 when upon such date the provisions of this act shall be deemed repealed.

§ 8. 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, as amended by chapter 467 of the laws of 2016, is amended to read as follows:

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 This act shall take effect immediately and shall expire and be deemed repealed December 31, ~~2018~~ 2021.

§ 9. 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.

§ 10. This act shall take effect immediately; provided, however, that the amendments to subdivision 5 of section 65 of the civil service law made by sections two, three, four and five 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 seven of this act shall not affect the repeal of such section and shall be deemed repealed therewith; and provided further that eligible lists and appointments resulting from the qualified incumbent examinations administered pursuant to paragraph (c-2) of subdivision 5 of section 65 of the civil service law, as amended by section two of this act, shall not be affected by the expiration and repeal of such subdivision.