

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.