

# STATE OF NEW YORK

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8837--A

## IN SENATE

May 23, 2018

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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.