

# STATE OF NEW YORK

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7935

2021-2022 Regular Sessions

## IN ASSEMBLY

June 1, 2021

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Introduced by 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 previous enactments, and the reclassification of  
13 titles, as approved by the New York state civil service commission, have  
14 led to a steady reduction in the total number of provisional appointees  
15 in the New York city government work force, and to a decrease in the  
16 number of those appointees who continue in provisional status beyond the  
17 time limits set forth in section 65 of the civil service law.

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

LBD11739-01-1

1 By December 31, 2019, the DCAS employers had reduced the provisional  
2 headcount to 15,134, a dramatic decrease from 37,797 provisional  
3 appointees in 2008, and the pace of provisional reduction was accelerat-  
4 ing. By increasing capacity to administer competitive examinations  
5 through the use of automated examination development systems and other  
6 measures during 2019, the DCAS employers achieved significant progress,  
7 reducing the number of provisional appointees by 10% over the course of  
8 2019. The DCAS employers were steadily approaching and likely to meet  
9 the legislative goal of substantial compliance as defined by paragraph  
10 (b) of subdivision 5 of section 65 by the end of 2021.

11 Since March 2020, the city's ability to make more progress in the  
12 reduction of provisional appointments has been severely impaired by the  
13 COVID-19 state of emergency. Due to COVID-19 related restrictions on  
14 gathering, the city has been unable to administer in-person tests for  
15 competitive class titles. At the same time, a hiring freeze resulting  
16 from fiscal impacts of the pandemic has required agencies to continue  
17 provisional appointments past the nine-month statutory limit to ensure  
18 the delivery of essential services.

19 In light of these circumstances, the legislature finds that the  
20 constitutional mandate of making appointments and promotions "according  
21 to merit and fitness to be ascertained, as far as practicable, by exam-  
22 ination which, as far as practicable, shall be competitive," would be  
23 furthered by maintaining, for an additional defined period, the orderly  
24 planning and implementation process, including review by the state civil  
25 service commission, originally established by chapter 5 of the laws of  
26 2008 and later extended by the legislature. The difficulties created by  
27 the large number of affected titles and employees, and the potential  
28 operational and budgetary dislocation that would be caused by rapid  
29 turnover in the many remaining titles, require that DCAS continue to  
30 further the constitutional mandate by the means authorized by recent  
31 enactments. In particular, thousands of provisional employees have  
32 crucial experience in implementing and directing key initiatives that  
33 benefit the public. Therefore, in addition to the substantial regimen of  
34 competitive testing that was contained in previous plans, as well as  
35 proposed reclassification of titles where appropriate, DCAS is author-  
36 ized to continue to administer examinations to provisional employees  
37 with specified qualifications and experience. These examinations, in  
38 the context of the present plan, will facilitate lawful appointment of  
39 these employees to permanent competitive class positions, and thereby  
40 accelerate the transition of the DCAS employers to a system that does  
41 not require substantial use of provisional appointments.

42 The legislature further finds that it is appropriate to adjust the  
43 statutory goal for the reduction of provisional appointments exceeding  
44 statutory limits in light of the shrinking municipal workforce in New  
45 York city and the challenges presented by recent developments, as  
46 described in these findings.

47 § 2. Subparagraph (ii) of paragraph (c-2) of subdivision 5 of section  
48 65 of the civil service law, as amended by chapter 419 of the laws of  
49 2018, is amended to read as follows:

50 (ii) DCAS may administer a QIE only for those titles that are set  
51 forth in section four of chapter four hundred sixty-seven of the laws of  
52 two thousand sixteen, [~~or~~] in section five of [~~the~~] chapter four hundred  
53 nineteen of the laws of two thousand eighteen, or in section five of the  
54 chapter of the laws of two thousand twenty-one that amended this subpar-  
55 agraph; provided, however, that DCAS shall not administer more than one  
56 QIE per title.

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

(c-5) Additional plan revision for provisional employees. Within sixty days after the effective date of the chapter of the laws of two thousand twenty-one that added this paragraph, the DCAS employers shall be required to submit to the state commission for its approval a single comprehensive revision of the plan prepared pursuant to paragraph (b) of this subdivision, to be implemented by December thirty-first, two thousand twenty-three, to further reduce the number of provisional appointments that have continued beyond the periods otherwise permitted by this section, provided that the percentage goal for substantial compliance otherwise specified in such paragraph shall be six and one-half percent. Such revised plan may additionally contain any elements or means of implementation authorized by paragraph (b) of this subdivision. The revised plan shall be supported by appropriate documentation and explanation, and the information contained in the plan shall be confirmed by the commissioner of DCAS as accurate to the best of his or her knowledge, based on a reasonable inquiry by DCAS into the facts set forth therein. Within sixty days of the submission of such plan, the state commission shall approve the revised plan, with or without recommended changes, or disapprove it. The approval process shall otherwise conform to the timeframes and procedures set forth in paragraph (c) of this subdivision. Notwithstanding any inconsistent provision of this subdivision, this subdivision shall no longer be in force and effect if no revised plan has been approved by the state commission within eighteen months from the effective date of this paragraph.

§ 4. Paragraphs (d), (f), (g) and (h) of subdivision 5 of section 65 of the civil service law, paragraphs (d), (f) and (g) as amended and paragraph (h) as added by chapter 419 of the laws of 2018, are 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), (c-3) ~~[and]~~, (c-4) and (c-5) 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), (c-3) ~~[or]~~, (c-4) or (c-5), 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

1 modification is disapproved, the plan previously in effect shall remain  
2 in effect, provided that the DCAS employers may at any time submit a new  
3 proposed modification. Any modification approved pursuant to this para-  
4 graph may extend the duration of a plan to a date no more than one year  
5 beyond the two-year period authorized by paragraph (c-3) of this subdivi-  
6 sion.

7 (f) Time limitation. Notwithstanding any inconsistent provision of  
8 this chapter or any other law or rule to the contrary, the provisions of  
9 subdivision two of this section shall not apply to the DCAS employers  
10 upon the effective date of chapter five of the laws of two thousand  
11 eight, and during the timely submission, approval and implementation of  
12 a plan in accordance with paragraphs (b), (c) and (e) of this subdivi-  
13 sion, and of revised plans in accordance with paragraphs (c-1), (c-3)  
14 ~~[and]~~, (c-4) and (c-5) of this subdivision. The provisions of subdivi-  
15 sion two of this section shall be applicable to any provisional employee  
16 serving in a position for which an appropriate eligible list has been  
17 established pursuant to such plan or revised plans, unless such list is  
18 not adequate to fill all positions then held on a provisional basis or  
19 is exhausted immediately following its establishment.

20 (g) Agreements governing disciplinary procedures. Notwithstanding any  
21 inconsistent provision of this chapter or any other law or rule to the  
22 contrary, any DCAS employer and an employee organization, as such term  
23 is defined in article fourteen of this chapter, may enter into agree-  
24 ments to provide disciplinary procedures applicable to provisional  
25 appointees or categories thereof who have served for a period of twen-  
26 ty-four months or more in a position which is covered by such an agree-  
27 ment. No such provisional employee shall be deemed to be permanently  
28 appointed under such circumstances, nor may such disciplinary procedures  
29 be deemed to preclude removal of an employee as a result of the estab-  
30 lishment of and appointments from an appropriate eligible list or in  
31 accordance with any other provision of law. Any such agreement may apply  
32 upon the effective date of chapter five of the laws of two thousand  
33 eight, and during the timely submission, approval and implementation of  
34 a plan in accordance with paragraphs (b), (c) and (e) of this subdivi-  
35 sion, and of revised plans in accordance with paragraphs (c-1), (c-3)  
36 ~~[and]~~, (c-4) and (c-5) of this subdivision, and shall not apply to any  
37 provisional employee serving in a position for which an appropriate  
38 eligible list has been established pursuant to a plan approved in  
39 accordance with this subdivision unless such list is not adequate to  
40 fill all positions then held on a provisional basis or is exhausted  
41 immediately following its establishment.

42 (h) (i) If the DCAS employers are not in substantial compliance with  
43 the time periods permitted by subdivisions one, two, three and four of  
44 this section by December thirty-first, two thousand ~~[twenty-one]~~ twen-  
45 ty-three, as set forth in the report submitted by DCAS pursuant to  
46 subparagraph (ii) of this paragraph, then an advisory workgroup for  
47 provisional appointments in the city of New York ("advisory workgroup")  
48 shall be established. The advisory workgroup shall consist of six  
49 members, one of whom shall be appointed by the governor, one of whom  
50 shall be appointed by the speaker of the assembly, one of whom shall be  
51 appointed by the temporary president of the senate, two of whom shall be  
52 appointed by the mayor of the city of New York, including one recom-  
53 mended by the citywide bargaining representative, and one of whom shall  
54 be appointed by the commissioner of the New York city department of  
55 citywide administrative services (DCAS). The advisory workgroup shall be  
56 chaired by a member designated by the mayor. The advisory workgroup

1 shall submit to the governor, the state legislature and the mayor a  
2 single recommended plan for the DCAS employers to substantially comply  
3 with the time periods permitted by subdivisions one, two, three and four  
4 of this section, to be adopted by or pursuant to state legislation. For  
5 the purposes of this paragraph, "substantial compliance" shall have the  
6 same meaning as provided in paragraph (b), as modified by paragraph  
7 (c-5) of this subdivision. Such recommended plan may include, but shall  
8 not be limited to, a schedule for administration of examinations and  
9 establishment of eligible lists, a determination of additional appropri-  
10 ate existing or planned eligible lists that may be used, consolidation  
11 of titles through appropriate reclassification, and any other lawful and  
12 appropriate means of implementation. The recommended plan shall to the  
13 extent practicable be supported by appropriate documentation and expla-  
14 nation.

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

27 § 5. The New York city department of citywide administrative services,  
28 acting pursuant to paragraph (c-2) of subdivision 5 of section 65 of the  
29 civil service law, as amended by section two of this act, may administer  
30 qualified incumbent examinations, in addition to examinations authorized  
31 to be administered pursuant to chapter 467 of the laws of 2016 and chap-  
32 ter 419 of the laws of 2018, in connection with appointment to the  
33 following titles:

34 10045 ADMINISTRATIVE SUPERVISOR OF SKILLED TRADES (HA)  
35 21205 ARCHITECTURAL INTERN  
36 31313 ASBESTOS HANDLER  
37 90621 ASSISTANT MEDIA SERVICES TECHNICIAN  
38 40491 ASSISTANT RETIREMENT BENEFITS EXAMINER  
39 21822 ASSOCIATE CHEMIST  
40 60816 ASSOCIATE PUBLIC INFORMATION SPECIALIST  
41 92310 BRIDGE REPAIRER AND RIVETER  
42 90706 CARRIAGE UPHOLSTERER  
43 51018 CONSULTANT PUBLIC HEALTH NURSE (REHABILITATION)  
44 30825 COUNTY DETECTIVE  
45 13633 CYBER SECURITY ANALYST  
46 60210 DEPARTMENT LIBRARIAN  
47 80710 HOUSEKEEPER  
48 80202 HOUSING ASSISTANT (BILINGUAL)  
49 31620 INSPECTOR (BOILERS)  
50 91000 INSTRUMENTATION SPECIALIST TRAINEE  
51 40238 INSURANCE ADVISER (HOUSING AUTHORITY)  
52 21512 LABORATORY ASSOCIATE  
53 10229 LEGAL SECRETARIAL ASSISTANT  
54 91548 MARINE OILER (DC)  
55 91547 MARINE OILER (FERRY OPERATIONS)  
56 91501 MARINER

1 22425 PROJECT MANAGER INTERN  
2 51181 PUBLIC HEALTH EPIDEMIOLOGIST  
3 34171 QUALITY ASSURANCE SPECIALIST  
4 34173 QUALITY ASSURANCE SPECIALIST (BUILDING REPAIRS)  
5 30827 SENIOR DETECTIVE INVESTIGATOR  
6 33765 SERVICE INSPECTOR (DOT)  
7 52315 SUPERVISOR OF CHILD CARER  
8 92073 SUPERVISOR SHIP CARPENTER  
9 20247 TELECOMMUNICATIONS ASSOCIATE (VOICE)  
10 40482 WORKERS' COMPENSATION BENEFITS EXAMINER

11 § 6. 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 419 of the laws of 2018, 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, 2016  
18 ~~and~~, 2018 ~~and~~ 2021, may include protections for provisional employees  
19 who 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, ~~2021~~ 2023 when upon such date the provisions of this act shall be  
27 deemed repealed.

28 § 7. 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 419 of  
31 the laws of 2018, is amended to read as follows:

32 § 2. This act shall take effect immediately and shall expire and be  
33 deemed repealed December 31, ~~2021~~ 2023.

34 § 8. 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 § 9. This act shall take effect immediately; provided that: (i) the  
42 amendments to subdivision 5 of section 65 of the civil service law made  
43 by sections two, three and four of this act shall not affect the repeal  
44 of such subdivision and shall be deemed repealed therewith; (ii) the  
45 amendments to section 3 of chapter 5 of the laws of 2008 made by section  
46 six of this act shall not affect the repeal of such section and shall be  
47 deemed repealed therewith; and (iii) eligible lists and appointments  
48 resulting from the qualified incumbent examinations administered pursu-  
49 ant to paragraph (c-2) of subdivision 5 of section 65 of the civil  
50 service law, as amended by section two of this act, shall not be  
51 affected by the expiration of such provisions.