Introduced by Sen. GOUNARDES -- (at request of the Citywide Administrative Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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 legislature hereby finds that the city of New York and other employers for which the New York city department of citywide administrative services ("DCAS") manages civil service appointments ("the DCAS employers") have made substantial progress in reducing the number of provisional appointments since the inception of the planning process created by chapter 5 of the laws of 2008. Through its implementation of automated systems for processing civil service examinations and by increasing its staff of professional examiners, DCAS has enhanced its capacity to administer competitive examinations. These technological advancements, together with DCAS's judicious administration of qualified incumbent examinations, as authorized by previous enactments, and the reclassification of titles, as approved by the New York state civil service commission, have led to a steady reduction in the total number of provisional appointees in the New York city government work force, and to a decrease in the number of those appointees who continue in provisional status beyond the 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.
By December 31, 2019, the DCAS employers had reduced the provisional headcount to 15,134, a dramatic decrease from 37,797 provisional appointees in 2008, and the pace of provisional reduction was accelerating. By increasing capacity to administer competitive examinations through the use of automated examination development systems and other measures during 2019, the DCAS employers achieved significant progress, reducing the number of provisional appointees by 10% over the course of 2019. The DCAS employers were steadily approaching and likely to meet the legislative goal of substantial compliance as defined by paragraph (b) of subdivision 5 of section 65 by the end of 2021.

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

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

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

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

(ii) DCAS may administer a QIE only for those titles that are set forth in section four of chapter four hundred sixty-seven of the laws of 2016, [ez] in section five of [the] chapter four hundred nineteen of the laws of two thousand eighteen, or in section five of the chapter of the laws of two thousand twenty-one that amended this subparagraph; provided, however, that DCAS shall not administer more than one 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
(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 the DCAS employers upon the effective date of chapter five of the laws of two thousand eighteen, 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), (c-3) [and] (c-4) and (c-5), 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 eighteen, 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), (c-3) [and] (c-4) and (c-5), of this subdivision, and shall not apply to any provisional employee serving in a position for which an appropriate eligible list has been established pursuant to a plan approved in accordance with this subdivision unless such list is not adequate to fill all positions then held on a provisional basis or is exhausted immediately following its establishment.

(h) (i) If the DCAS employers are not in substantial compliance with the time periods permitted by subdivisions one, two, three and four of this section by December thirty-first, two thousand twenty-one [twenty-one] twenty-three, as set forth in the report submitted by DCAS pursuant to subparagraph (ii) of this paragraph, then an advisory workgroup for provisional appointments in the city of New York ("advisory workgroup") shall be established. The advisory workgroup shall consist of six members, one of whom shall be appointed by the governor, one of whom shall be appointed by the speaker of the assembly, one of whom shall be appointed by the temporary president of the senate, two of whom shall be appointed by the mayor of the city of New York, including one recommended by the citywide bargaining representative, and one of whom shall be appointed by the commissioner of the New York city department of citywide administrative services (DCAS). The advisory workgroup shall be chaired by a member designated by the mayor. The advisory workgroup
shall submit to the governor, the state legislature and the mayor a
single recommended plan for the DCAS employers to substantially comply
with the time periods permitted by subdivisions one, two, three and four
of this section, to be adopted by or pursuant to state legislation. For
the purposes of this paragraph, "substantial compliance" shall have the
same meaning as provided in paragraph (b), as modified by paragraph
(c-5) of this subdivision. Such recommended plan may include, but shall
not be limited to, a schedule for administration of examinations and
establishment of eligible lists, a determination of additional appropri-
ate existing or planned eligible lists that may be used, consolidation
of titles through appropriate reclassification, and any other lawful and
appropriate means of implementation. The recommended plan shall to the
extent practicable be supported by appropriate documentation and expla-
nation.

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

§ 5. The New York city department of citywide administrative services,
acting pursuant to paragraph (c-2) of subdivision 5 of section 65 of the
civil service law, as amended by section two of this act, may administer
qualified incumbent examinations, in addition to examinations authorized
qualified incumbent examinations, in addition to examinations authorized
in connection with appointment to the following titles:

10045 ADMINISTRATIVE SUPERVISOR OF SKILLED TRADES (HA)
21205 ARCHITECTURAL INTERN
31313 ASBESTOS HANDLER
90621 ASSISTANT MEDIA SERVICES TECHNICIAN
40491 ASSISTANT RETIREMENT BENEFITS EXAMINER
21822 ASSOCIATE CHEMIST
60816 ASSOCIATE PUBLIC INFORMATION SPECIALIST
92310 BRIDGE REPAIRER AND RIVETER
90706 CARRIAGE UPHOLSTERER
51018 CONSULTANT PUBLIC HEALTH NURSE (REHABILITATION)
30825 COUNTY DETECTIVE
13633 CYBER SECURITY ANALYST
60210 DEPARTMENT LIBRARIAN
80710 HOUSEKEEPER
80202 HOUSING ASSISTANT (BILINGUAL)
31620 INSPECTOR (BOILERS)
91000 INSTRUMENTATION SPECIALIST TRAINEE
40238 INSURANCE ADVISER (HOUSING AUTHORITY)
21512 LABORATORY ASSOCIATE
10229 LEGAL SECRETARIAL ASSISTANT
91548 MARINE OILER (DC)
91547 MARINE OILER (FERRY OPERATIONS)
91501 MARINER
§ 6. 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 419 of the laws of 2018, are amended to 
read as follows:
§ 3. Any agreement or extension thereof entered into pursuant to para-
graph (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, 2016 
[and], 2018 and 2021, 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 exten-
sion 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 provi-
sional employees that were pending on the effective date of this act.
§ 5. This act shall take effect immediately, and shall expire December 
31, [2021] 2023 when upon such date the provisions of this act shall be 
deemed repealed.
§ 7. 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 419 of 
the laws of 2018, is amended to read as follows:
§ 2. This act shall take effect immediately and shall expire and be 
§ 8. If any section, subdivision, paragraph, clause, sentence, phrase 
or other portion of this act is, for any reason, declared unconstitu-
tional or invalid, in whole or in part, by any court of competent juris-
diction, such portion shall be deemed severable, and such unconstitu-
tionality or invalidity shall not affect the validity of the remaining 
portions of this act, which remaining portions shall continue in full 
force and effect.
§ 9. This act shall take effect immediately; provided that: (i) the 
amendments to subdivision 5 of section 65 of the civil service law made 
by sections two, three and four of this act shall not affect the repeal 
of such subdivision and shall be deemed repealed therewith; (ii) the 
amendments to section 3 of chapter 5 of the laws of 2008 made by section 
six of this act shall not affect the repeal of such section and shall be 
deemed repealed therewith; and (iii) 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 of such provisions.