

BILL TEXT:

## STATE OF NEW YORK

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6229

2007-2008 Regular Sessions

### IN SENATE

June 14, 2007

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Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil service law, in relation to provisional employees of certain public employers; and providing for the repeal of such provisions upon expiration 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 expresses its concern regarding the number of provisional  
3 employees maintained by certain public employers, and finds that the  
4 constitutional mandate of making appointments and promotions "according  
5 to merit and fitness to be ascertained, as far as practicable by exam-  
6 ination which, as far as practicable, shall be competitive," would be  
7 furthered by establishing an orderly and expeditious means for replac-  
8 ing, or otherwise substantially reducing the number of, such provisional  
9 employees. The amendments made by this act would accomplish this goal by  
10 providing a mechanism for a binding plan to be submitted for approval to  
11 the state civil service commission by covered public employers, together  
12 with the applicable municipal commission or the state civil service  
13 department, and for such plan to be fully implemented within five years  
14 of approval, with provision for a limited extension. The legislature  
15 further finds that many of the individuals who have received such  
16 appointments are performing essential public functions, and that it will  
17 take a reasonable period of time for such public employers and the state  
18 civil service department or applicable municipal commission to develop  
19 and administer appropriate competitive examinations and then make

20 appointments from resulting eligible lists. Therefore, in the interim,  
21 in order to maintain continuity in the provision of public services and  
22 harmonious labor relations, it is in the public interest to authorize  
23 limited negotiated disciplinary procedures for provisional employees  
24 within jurisdictions that must implement plans required by this act and

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

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S. 6229

2

1 to waive certain time limitations that would otherwise apply in relation  
2 to provisional appointments in such jurisdictions, but such procedures  
3 and such waiver are intended only to facilitate the orderly implementa-  
4 tion of such plans. Further, the limited period of effectiveness of this  
5 act will permit the legislature and the state civil service commission  
6 to assess the impacts of this act and whether it would further the  
7 purposes and mandate of the state constitution to make permanent the  
8 procedures set forth in this act.

9 § 2. Section 65 of the civil service law is amended by adding a new  
10 subdivision 5 to read as follows:

11 5. Plan for addressing excess provisional appointments. (a) Defini-  
12 tion. For purposes of this subdivision, the term "covered employer"  
13 shall mean any civil division, including but not limited to, any public  
14 authority or public benefit corporation to which this section applies by  
15 virtue of the statute governing such authority or corporation, for which  
16 the state commission, upon application by such civil service division  
17 together with the civil service department or the municipal commission  
18 having jurisdiction, finds that such civil division has, as a percentage  
19 of the employees in the competitive class who are employed by such civil  
20 division, a substantial number of provisional employees who have been  
21 employed in excess of the time period permitted by subdivisions one,  
22 two, three and four of this section; provided that where the covered  
23 employer is a city, county or suburban town with a municipal commission  
24 appointed by one or more officers of such city, county or suburban town,  
25 such municipal commission may act for itself and the covered employer  
26 pursuant to paragraphs (b), (c) and (d) of this subdivision. In the case  
27 of a city, the municipal commission may also act for the city school  
28 district of such city pursuant to such paragraphs. The term "covered  
29 employer" shall not include the state of New York, the Roswell Park  
30 Cancer Institute corporation or the New York state canal corporation.

31 (b) Plan for provisional employees. Within sixty days after a civil  
32 division has been found to be a covered employer pursuant to paragraph  
33 (a) of this subdivision, a covered employer, together with the civil  
34 service department or the municipal commission having jurisdiction,  
35 shall be required to submit to the state commission for its approval a

36 plan, to be implemented within five years of its approval by the state  
37 commission, to replace, or otherwise substantially reduce the number of,  
38 provisional employees who have been employed in excess of the time peri-  
39 od permitted by subdivisions one, two, three and four of this section.  
40 Such plan may include, but shall not be limited to, a schedule for  
41 administration of examinations and establishment of eligible lists, a  
42 determination of additional appropriate existing or planned eligible  
43 lists that may be used, consolidation of titles through appropriate  
44 reclassification, and any other lawful and appropriate means of imple-  
45 mentation. In the event that the civil service department or a municipal  
46 commission has jurisdiction over multiple covered employers, then a  
47 single aggregated plan may be submitted by such department or commission  
48 together with more than one covered employer.  
49 (c) Approval by the state commission. Within sixty days of submission  
50 of a plan by a covered public employer, the state commission shall  
51 approve the plan, approve the plan with recommended changes, or disap-  
52 prove the plan. If the state commission takes no action within such  
53 period, it shall be deemed to have approved the plan. If the changes  
54 recommended by the state commission are not accepted by the submitting  
55 entities within thirty days, the plan shall be deemed disapproved. The  
56 state commission shall approve the plan if its finds that, consistent

S. 6229

3

1 with available resources and the need for continuity in public services,  
2 such submitted plan provides a timely and practicable implementation  
3 schedule in furtherance of the purposes of this subdivision. In the  
4 event that a plan has been disapproved, a new or modified plan shall be  
5 submitted to the state commission within thirty days. The state commis-  
6 sion shall within sixty days thereafter either approve the new or modi-  
7 fied plan, or prescribe a plan for the applicable covered employer that  
8 conforms to the requirements of this subdivision. If the state commis-  
9 sion takes no action within such period, it shall be deemed to have  
10 approved the plan.

11 (d) Modifications of the plan. During the course of implementing the  
12 plan developed and approved in accordance with paragraphs (b) and (c) of  
13 this subdivision, if a covered public employer and the civil service  
14 department or the municipal commission having jurisdiction determine  
15 that there is a need to modify a plan, such employer and department or  
16 commission shall submit a request for modification of the plan to the  
17 state commission. Such request shall detail the circumstances that have  
18 arisen necessitating the request, including but not limited to unfore-  
19 seen demands upon the resources of such department or commission,  
20 unforeseen projected impacts upon the provision of public services, or a  
21 finding that implementation of any part of the plan is impracticable  
22 unduly burdensome or otherwise likely to prevent the successful imple-  
23 mentation of the plan or any aspect thereof. The state commission shall

24 act upon the request for modification within thirty days. The state  
25 commission may approve the modification, approve the modification with  
26 recommended changes, or disapprove the modification; provided, however,  
27 that if the state commission takes no action within such period, it  
28 shall be deemed to have approved the modification, and provided further  
29 that if the changes recommended by the state commission are not accepted  
30 by the submitting entities, the modification shall be deemed disap-  
31 proved. In the event that a request for modification is disapproved, the  
32 plan previously in effect shall remain in effect, provided that the  
33 submitting entities may at any time submit a new proposed modification.  
34 Any modification approved pursuant to this paragraph may extend the  
35 duration of a plan to a date no more than one year beyond the five-year  
36 period authorized by paragraph (b) of this subdivision.

37 (e) Plan implementation. Upon approval of a plan or any modification  
38 thereof, such plan or modification shall be binding upon, and shall be  
39 implemented by, the covered employer and the civil service department or  
40 the municipal commission having jurisdiction.

41 (f) Waiver of time limitation. Notwithstanding any inconsistent  
42 provision of this chapter or any other law or rule to the contrary, the  
43 provisions of subdivision two of this section shall be waived upon  
44 designation by the state commission of a covered employer in accordance  
45 with paragraph (a) of this subdivision, and during the development,  
46 approval and implementation of a plan in accordance with paragraphs (b),  
47 (c) and (e) of this subdivision. Such a waiver shall not be applicable  
48 to any provisional employee serving in a position for which an appropri-  
49 ate eligible list has been established pursuant to such plan, unless  
50 such list is not adequate to fill all positions then held on a provi-  
51 sional basis or is exhausted immediately following its establishment.

52 (g) Agreements governing disciplinary procedures. Notwithstanding any  
53 inconsistent provision of this chapter or any other law or rule to the  
54 contrary, a covered employer and an employee organization, as such term  
55 is defined in article fourteen of this chapter, may enter into agree-  
56 ments to provide disciplinary procedures applicable to provisional

S. 6229

4

1 appointees or categories thereof who have served for a period of twen-  
2 ty-four months or more in a position which is covered by such an agree-  
3 ment. No such provisional employee shall be deemed to be permanently  
4 appointed under such circumstances, nor may such disciplinary procedures  
5 be deemed to preclude removal of an employee as a result of the estab-  
6 lishment of and appointments from an appropriate eligible list or in  
7 accordance with any other provision of law. Any such agreement may apply  
8 upon designation by the state commission of a covered employer in  
9 accordance with paragraph (a) of this subdivision, and during the period  
10 of development, approval and implementation of a plan in accordance with  
11 paragraphs (b), (c) and (e) of this subdivision, and shall not apply to

12 any provisional employee serving in a position for which an appropriate  
13 eligible list has been established pursuant to a plan approved in  
14 accordance with this subdivision unless such list is not adequate to  
15 fill all positions then held on a provisional basis or is exhausted  
16 immediately following its establishment.

17 § 3. Any agreement entered into pursuant to paragraph (g) of subdivi-  
18 sion 5 of section 65 of the civil service law, as added by section two  
19 of this act, may include protections for provisional employees who were  
20 covered, prior to the effective date of this act, by agreements similar  
21 to those authorized by such paragraph. Any agreement entered into pursu-  
22 ant to such paragraph may include, but shall not be limited to, the  
23 appropriate arbitration, adjudication or other disposition of discipli-  
24 nary or other matters concerning provisional employees that were pending  
25 on the effective date of this act.

26 § 4. If any section, subdivision, paragraph, clause, sentence, phrase  
27 or other portion of this act is, for any reason, declared unconstitu-  
28 tional or invalid, in whole or in part, by any court of competent juris-  
29 diction, such portion shall be deemed severable, and such unconstitu-  
30 tionality or invalidity shall not affect the validity of the remaining  
31 portions of this act, which remaining portions shall continue in full  
32 force and effect.

33 § 5. This act shall take effect immediately, and shall expire July 1,  
34 2014 when upon such date the provisions of this act shall be deemed  
35 repealed.