



S.6495/A.9463

COMMITTEE ON STATE & FEDERAL LEGISLATION  
NEW YORK CITY COUNCIL

TESTIMONY BY COMMISSIONER MARTHA K. HIRST  
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
JANUARY 9, 2008

Good morning Chair Baez and Members of the Committee on State & Federal Legislation. I am Martha Hirst, Commissioner of the Department of Citywide Administrative Services (DCAS). Thank you for this opportunity to discuss S.6495/A.9463, a bill before you today for a Home Rule Message; the bill will amend the New York State Civil Service Law in relation to provisional employees. On October 17, 2007, I testified before this Committee regarding this critical legislation, and I thank you for your previous action on this State Legislation Resolution. Because the Home Rule Message expired before the State Legislature acted on this bill last year, I am here to respectfully request your re-adoption of the Home Rule.

To reiterate, the purpose of this legislation is to address issues raised by the New York Court of Appeals decision in City of Long Beach v. Civil Service Employees Association, 8 NY3d 465 (2007). In this case, the Court concluded that the terms of a collective bargaining agreement that gave tenure rights to provisional employees of the City of Long Beach, Long Island, after one year of service were contrary to New York statute. The terms paralleled closely the terms in the City's Citywide Agreement which provided contractual disciplinary rights to employees serving provisionally for more than two years. The Court also observed that policy considerations warrant strict compliance with the time limitations imposed by Civil Service Law § 65 with respect to filling vacancies, holding examinations and removing provisional employees from positions in titles for which examinations should be held.

In recognition of the Court's ruling, it is critical that New York City be authorized to establish an orderly and expeditious means for complying with the time periods set forth in the Civil Service Law by, for example, filling positions now held by such provisional employees with employees appointed from appropriate eligible lists or reclassifying positions where appropriate. This legislation would provide for a mechanism for the creation of a binding plan to be submitted for approval to the State Civil Service Commission by the City. Specifically, this legislation would amend the Civil Service Law § 65 to authorize DCAS, the City's "municipal civil service commission," to develop a five-year plan, by the end of which the City would need to be in substantial compliance with the time periods permitted by the Civil Service Law regarding provisional appointments.

Provisional employees are performing essential public services, and it will take a reasonable period of time for the City to develop and administer competitive examinations and to make appointments from resulting eligible lists in a manner that ensures the continued quality and effectiveness of governmental operations. In the interim, in order to maintain continuity in the provision of essential public services and to afford some protection to provisional employees who have not had an opportunity to take exams for the titles in which they are serving, it is in the public interest to allow for disciplinary procedures for provisional employees and to waive the time limitations that would otherwise apply in relation to provisional employment.

Finally, we note that this legislative proposal is the product of a collaborative effort among the City, the City's largest municipal employee union, DC37, the Governor's Office, and the State Civil Service Commission, all of which are committed to addressing the substantial number of provisional employees currently maintained by the City in a manner consistent with state statutory and decisional law, yet mindful of

the need to ensure the continued quality and effectiveness of governmental operations.

Once again, the Administration urges the City Council to pass this Home Rule Message today in order that the State Legislature can act on the legislation next week.

Thank you.