

CHAPTER

73

No. 6

Int. 6

IN SENATE

(Filed)

January 6, 1960

Introduced by Mr. BERKOWITZ—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 rules of municipal
civil service commissions

Notes

Compared by

Meyer, Irish, Jeffers

APPROVED

FEB 23 1960

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Approved

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BUDGET REPORT ON BILLS

Session Year 1960

10 DAY BILL

SENATE

Pr: 6

Int: 6

ASSEMBLY

Pr:

Int:

Introduced by:

Mr. Berkowitz

Law Civil Service

Subject and Purpose (Brief Recapitulation) With respect to rules of municipal civil service commissions, permits terminating the practice of listing competitive class positions and respective salary grade.

Division of the Budget recommendation on the above bill:

Approve: x Veto: _____ No Recommendation: _____ No Objection: _____

This bill is identical to (x) very similar to ()

Civil Service No. 9 which
(department or agency)

was submitted as a departmental bill this year. The points made in our earlier analysis of the departmental bill are still valid and our recommendation is unchanged.

(If the very similar category is checked, list below the changes contained in the bill as passed and discuss them to the required extent.)

T.N. Jurd

Date: February 19, 1960

Examiner: Joseph F. Crook

*Following telephone
conversation 2/10/60
with S. Oliensis re
background of bill
objection withdrawn.*

Sheldon Oliensis
Chairman

The Association of the Bar
of the City of New York

SIXTY-THREE WALL STREET
NEW YORK 5

Committee on State Legislation

February 19, 1960

Re: S. Int. 6, Pr. 6 - Disapproved

Dear Mr. MacCrate:

Answering your inquiry with respect to the above bill, we wish to inform you that we disapprove this measure.

You have requested our opinion with respect to Senate Pr. 6, which would amend Section 20 of the Civil Service Law by adding a sentence providing:

"Nothing in this chapter or any other law shall be construed to require that positions in the competitive class be specifically named or listed in such rules, or that the salary grade to which a position in any jurisdictional class is allocated be specified in such rules."

Section 20 of the Civil Service Law presently provides that each municipal civil service commission shall prescribe rules for carrying into effect its provisions, including rules for the jurisdictional classification (competitive, noncompetitive, exempt, or labor) and position classification of offices and employments. Subdivision 2 of Section 20 provides that such rules and any modification thereof shall be valid and take effect only upon approval by the state civil service commission.

This bill is recommended by the New York State Department of Civil Service. We are advised that the purpose of the bill is to make it unnecessary for municipal civil service commissions to secure formal approval of the state commission with respect to changes in positions in the

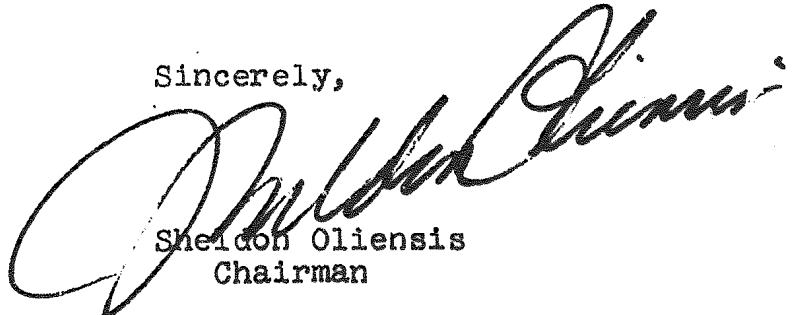
competitive class or salary grades in any class. We are further advised that the state commission presently approves such changes as a matter of course.

We disapprove the bill because it would have substantial effects beyond the limited purpose for which it was intended. Section 20 presently requires that any modification of a rule adopted by a municipal civil service commission may be made only after a public hearing, notice of which has been published for not less than three days. Section 20 further requires that any rules or modifications adopted by a city civil service commission or city personnel officer shall take effect only upon approval of the Mayor or other authority having the general power of appointment of city officers and employees. Enactment of the instant bill would not only make approval by the state commission unnecessary but would also, perhaps inadvertently, abrogate these other requirements.

If it is desired merely to relieve the state commission of the obligation of passing upon matters of the kind dealt in this bill, that purpose can be achieved by a more limited amendment to Section 20.

For the reasons stated, we disapprove the bill.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read 'Sheldon Oliensis', is written over the typed name and title.

Sheldon Oliensis
Chairman

Hon. Robert MacCrate
Executive Chamber
State Capitol
Albany, New York



ALBERT BERKOWITZ
37th DISTRICT

THE SENATE
STATE OF NEW YORK
ALBANY

86
February 15, 1960

Hon. Robert MacCrate
Executive Chamber
State Capitol
Albany 1, New York

Re: Sen. Int. 6, Pr. 6

Dear Mr. MacCrate:

This bill was prepared under the direction of the New York State Department of Civil Service and introduced at its request. Memorandum is herein enclosed.

Very truly yours,

Albert Berkowitz
Albert Berkowitz

AB/dm
Enc.

*Civil Service
Senator Berkowitz*

*Senate Exr 6
Pr. 6*

CIVIL SERVICE DEPARTMENT BILL NO. 9

AN ACT to amend the civil service law, in relation to rules of municipal civil service commissions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:-

Section 1. Subdivision one of section twenty of the civil service law is hereby amended to read as follows:

1. Scope of rules. Each municipal civil service commission shall prescribe, amend and enforce suitable rules for carrying into effect the provisions of this chapter and of section six of article five of the constitution of the state of New York, including rules for the jurisdictional classification of the offices and employments in the classified service under its jurisdiction, for the position classification of such offices and employments, for examinations therefor and for appointments, promotions, transfers, resignations and reinstatements therein, all in accordance with the provisions of this chapter. Nothing in this chapter or any other law shall be construed to require that positions in the competitive class be specifically named or listed in such rules, or that the salary grade to which a position in any jurisdictional class is allocated be specified in such rules.

§ 2. This act shall take effect immediately.

EXPLANATORY MEMORANDUM

SUBJECT: "AN ACT to amend the civil service law, in relation to rules of municipal civil service commissions".

Purpose of bill:

The purpose of this bill is to add a clarifying amendment to the Civil Service Law to provide expressly that the titles of competitive class positions and the salary grades to which positions in any class are allocated need not be specified in the rules of the municipal civil service commission having jurisdiction. This will permit the City of New York to terminate the practice of specifically listing competitive class positions and the salary grades of all positions in its rules.

Summary of provisions of bill:

The bill amends subdivision 1 of Section 20 of the Civil Service Law, which deals with the scope of rules of municipal civil service commissions, to add a new sentence which provides that neither the Civil Service Law nor any other law shall be construed to require that positions in the competitive class be specifically named or listed in the rules of municipal commissions or that the salary grade to which a position in any jurisdictional class is allocated be specified in such rules.

Arguments in support of bill:

The process of amending the rules of a municipal civil service commission is time-consuming and cumbersome. The municipal commission must first publish for not less than three days a summary of the proposed amendment and notice of a public hearing to be held thereon. After the public hearing the amendment may be adopted by the municipal commission, but must then be approved by the Mayor and lastly must be approved by the State Civil Service Commission before it can become effective. Obviously the rules were intended to cover matters which are truly legislative in character rather than pronouncements or determinations of a routine administrative nature.

Historically, however, the New York City Civil Service Commission has specifically listed in its rules each competitive class title in the city service

and the salary or salary grade of each title, regardless of its jurisdictional class, in the city service. This practice requires frequent amendments to the rules, and has made the rules unduly long and difficult to maintain in up-to-date order. No other municipal commission in the State follows this practice.

There is no worthwhile purpose served in listing competitive class job titles in the rules. By law all positions, other than laborer positions, which are not classified in the rules in the exempt or non-competitive class are classified automatically in the competitive class. Consequently, there is no need to list positions in the rules for the purpose of classifying them in the competitive class. The prescribing of standard titles for competitive class positions is purely an administrative matter and not one that should require the promulgation and amendment of rules.

There is even less reason for specifying the salaries and salary grades of positions in the rules. This is a matter which is exclusively within the authority of the Board of Estimate and not the Municipal Commission. Nevertheless, when the Board of Estimate changes the salary or salary grade of a position, the Municipal Commission amends its rules to reflect the change.

These changes in competitive class job titles and salary grades come to the State Civil Service Commission for approval at the rate, on an average, of about six per month. They are all routinely approved simply because these are not matters which may involve violations of the Civil Service Law or merit system principles. By what right or for what reason should the State Commission veto a salary grade adopted by the Board of Estimate or veto a competitive class job title prescribed by the municipal commission? It makes no sense that these matters should be in the rules and have to be approved by the State Commission.

There are no specific provisions in the Civil Service Law requiring that competitive class job titles and the salary grade of each position be specified in the rules of municipal commissions. However, the courts have taken cognizance of the practice in New York City and held that before a new title or grade may be made effective, it must be adopted in the rules. (Burri v. Kern, 180 Misc. 74, aff'd 266 App.Div. 841, aff'd 291 N.Y. 776; Corrigan v. Joseph, 304 N.Y. 172.) Accordingly, we feel that this legislation is necessary in order to enable the termination of the City's practice of including these matters in the rules of the Municipal Commission.

S-6

STATE DEPARTMENT OF CIVIL SERVICE

February 16, 1960.

SENATE
Int. 6
Pr. 6

Introduced by: Mr. Berkowitz

RECOMMENDATION: Approval.


STATUTES INVOLVED: Civil Service Law Section 20, subd. 1

DISCUSSION:

This bill was introduced at the request of this Department.

Attached hereto is a copy of the memorandum which accompanied this bill when it was submitted to your office last Fall. The memorandum explains the purpose and need of this legislation, and covers all of the points which you requested to be covered in memoranda to you on bills before the Governor for executive action.

Encls.


H. Eliot Kaplan

Memorandum

September 14, 1959.

TO: Robert MacCrate, Counsel to the Governor

FROM: John J. Mooney, Counsel

SUBJECT: Legislative Proposal #9.

1. Purpose of bill:

The purpose of this bill is to add a clarifying amendment to the Civil Service Law to provide expressly that the titles of competitive class positions and the salary grades to which positions in any class are allocated need not be specified in the rules of the municipal civil service commission having jurisdiction. This will permit the City of New York to terminate the practice of specifically listing competitive class positions and the salary grades of all positions in its rules.

2. Summary of provisions of bill:

The bill amends subdivision 1. of Section 20 of the Civil Service Law, which deals with the scope of rules of municipal civil service commissions, to add a new sentence which provides that neither the Civil Service Law nor any other law shall be construed to require that positions in the competitive class be specifically named or listed in the rules of municipal commissions or that the salary grade to which a position in any jurisdictional class is allocated be specified in such rules.

3. Prior legislative history:

None.

4. Arguments in support of bill:

The process of amending the rules of a municipal civil service commission is time-consuming and cumbersome. The municipal commission must first publish for not less than three days a summary of the proposed amendment and notice of a public hearing to be held thereon. After the public hearing the amendment may be adopted by the municipal commission, but must then be approved by the Mayor and lastly must be approved by the State Civil Service Commission before it can become effective. Obviously the rules were intended to cover matters which are truly legislative in character rather than pronouncements or determinations of a routine administrative nature.

Historically, however, the New York City Civil Service Commission has specifically listed in its rules each competitive class title in the city service

and the salary or salary grade of each title, regardless of its jurisdictional class, in the city service. This practice requires frequent amendments to the rules, and has made the rules unduly long and difficult to maintain in up-to-date order. No other municipal commission in the State follows this practice.

There is no worthwhile purpose served in listing competitive class job titles in the rules. By law all positions, other than laborer positions, which are not classified in the rules in the exempt or non-competitive class are classified automatically in the competitive class. Consequently, there is no need to list positions in the rules for the purpose of classifying them in the competitive class. The prescribing of standard titles for competitive class positions is purely an administrative matter and not one that should require the promulgation and amendment of rules.

There is even less reason for specifying the salaries and salary grades of positions in the rules. This is a matter which is exclusively within the authority of the Board of Estimate and not the Municipal Commission. Nevertheless, when the Board of Estimate changes the salary or salary grade of a position, the Municipal Commission amends its rules to reflect the change.

These changes in competitive class job titles and salary grades come to the State Civil Service Commission for approval at the rate, on an average, of about six per month. They are all routinely approved simply because these are not matters which may involve violations of the Civil Service Law or merit system principles. By what right or for what reason, for example, should the State Commission veto a salary grade adopted by the Board of Estimate or veto a competitive class job title prescribed by the municipal commission? It makes no sense that these matters should be in the rules and have to be approved by the State Commission.

There are no specific provisions in the Civil Service Law requiring that competitive class job titles and the salary grade of each position be specified in the rules of municipal commissions. However, the courts have taken cognizance of the practice in New York City and held that before a new title or grade may be made effective, it must be adopted in the rules. (Burri v. Kern, 180 Misc. 74, aff'd 266 App. Div. 841, aff'd 291 N. Y. 776; Corrigan v. Joseph, 304 N. Y. 172.) Accordingly, we feel that this legislation is necessary in order to enable the termination of the City's practice of including these matters in the rules of the Municipal Commission.

5. Possible objections to bill:

This bill may be opposed by employees or employee groups in New York City who, largely through a lack of understanding of the situation, may believe and urge that approval of the State Civil Service Commission should continue to be required for job titles and salary grades as a check against abuses and arbitrary action and as a forum for appeal from decisions made by the City in connection with such matters. Proponents of this argument fail to understand that the State Commission can have no reasonable basis for disapproving a job title or salary grade adopted by the City. These are matters which should be within the exclusive jurisdiction and authority of the City.

Furthermore, it should be kept in mind that New York City has a number of strong, alert and often vociferous public employee organizations, as well as two civil service newspapers. Also, the Municipal Civil Service Commission is under the watchful eye of several active civic organizations and the press. These elements are ample insurance against abuses and arbitrary action by the Municipal Commission.

6. Known position of others respecting bill:

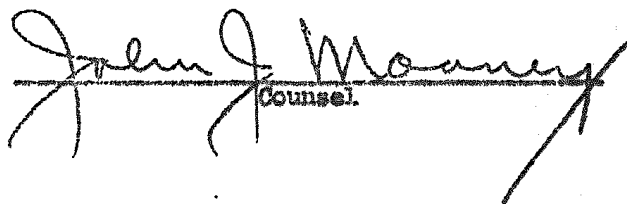
The Director of Personnel of New York City, who is also Chairman of the Municipal Civil Service Commission, has indicated that he will support the bill.

It is possible, although by no means certain, that some New York City employees or employee organizations may oppose the bill.

7. Budget implications:

None.

JJM:MBG


Counsel.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

S-6

MEMORANDUM FOR THE GOVERNOR

Re: Senate Int. 6, Pr. 6

The purpose of this bill is to make it clear that the rules of municipal civil service commissions need not contain lists of positions in the competitive class, or specify the salary grades of positions in any class.

I am informed that Civil Service Law, § 20(1), which authorizes each municipal service commission to promulgate rules for "position classification", has been construed by most such commissions as not requiring such listing and specification as part of the rules. But New York City has engaged in the practice, and is thus burdened with the delaying and cumbersome process of making frequent amendments to the rules in order to reflect changes in job classifications and salary grades from time to time.

The addition of clarifying language to § 20(1) should resolve the existing doubts as to what the law now requires in this regard (see Matter of Corrigan v. Joseph, 304 N. Y. 172, 185 [1952], and Matter of Burri v. Kern, 180 Misc. 74, 79-80 [Sup. Ct. 1943], affd. 266 App. Div. 841 [1st Dept., 1943], affd. 291 N. Y. 776 [1944]).

I find no legal objection to this bill.

Dated: February 17, 1960

Respectfully submitted,


LOUIS J. LEFKOWITZ
Attorney General

Civil Service Reform Association

315 Fifth Avenue
New York 16, N. Y.
MUrray Hill 9-3544

*A non-partisan citizens' organization
working to improve governmental personnel
administration in New York,*

Founded in 1877

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MRS. ROBERT WINTERNITZ

February 15, 1960

Hon. Robert MacCrate
Executive Chamber
Albany 1, N.Y.

Dear Sir:

We have your request for our opinion on the
Berkowitz bill, S. Int. 6, Pr. 6.

We are in accord with the desire of the
State Civil Service Commission to clarify Section
21, Subdivision 1, of the Civil Service Law by the
addition of the language embodied in this bill.

We urge its approval.

Very truly yours,

Cecil C. Hoode
Executive Director

The Civil Service Employees Association, Inc.

JOHN T. DeGRAFF, Counsel
JOHN E. HOLT-HARRIS, JR.

Associate Counsel
90 State Street, Albany

JOHN J. KELLY, JR., Associate Counsel

HARRY W. ALBRIGHT, JR., Assistant Counsel
8 Elk Street, Albany



REGIONAL ATTORNEYS

THOMAS H. DYER

Marcellus

WILLIAM J. FRANK

Temporary State Housing Rent Commission, 5 St. Paul Street, Rochester

HAROLD L. HERZSTEIN

37 Wall Street, Suite 1300, New York City

WILLIAM E. NIGHT,

306 Marine Midland Bldg., Binghamton

CHARLES R. SANDLER

1435 Rand Bldg., Buffalo

EDMUND L. SHEA

El Verso Bldg., Ogdensburg

February 12, 1960

S-6

Hon. Robert MacCrate
Executive Chamber
State Capitol
Albany, New York

Re: Berkowitz bill - Senate Int. 6 - Print 6

Dear Mr. MacCrate:

We recommend the approval of the above bill which seems to be a restatement of the current practice in most jurisdictions.

Respectfully yours,

John T. DeGraff, Counsel

JTD:S

BERNARD J. RUGGIERI
ASSISTANT TO THE MAYOR

MANGER DEWITT CLINTON HOTEL
ALBANY, NEW YORK



CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N. Y.

February 18, 1960

MEMORANDUM

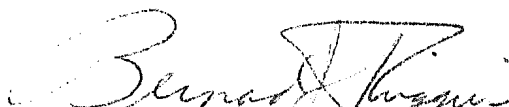
TO: ROBERT MacCRATE, Counsel to the Governor
FROM: BERNARD J. RUGGIERI, Assistant to the Mayor
RE: S-Berkowitz I. 6, Pr. 6

AN ACT To amend the civil service law, in
relation to rules of municipal civil
service commissions

This will acknowledge receipt of the Governor's request for the Mayor's recommendations concerning the above bill which is before the Governor for executive action.

Examination of the bill reveals that it would not have any adverse effect on the property, affairs, government or administration of the City.

Accordingly, the City Administration has no objection to the bill.


Bernard J. Ruggieri
Assistant to the Mayor

60/13a

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Yonkers, N. Y.

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New York City

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Niagara Falls, N. Y.

9th Vice-President
JOHN DUKE
Niagara Falls, N. Y.

10th Vice-President
SAMUEL McWHIRTER
Binghamton, N. Y.

Sergeant-at-Arms
HERBERT E. BETHEL
New York City

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150 Nassau St.
New York 38, N. Y.

Labor Relations Committee
EUGENE J. BYRNE, Chairman
150 Nassau St.
New York 38, N. Y.

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CIVIL SERVICE FORUM

OF THE STATE
FIFTIETH



OF NEW YORK
YEAR

150 Nassau St., New York 38, N. Y.

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TIMOTHY F. DINAN
150 Nassau St.
New York 38, N. Y.

Financial Secretary
WILLIAM T. SCOTT
New York City

Treasurer
DANIEL P. CRONIN
New York City

Feb. 17, 1960.

Hon. Robert MacCrate,
Executive Chamber,
State Capitol,
Albany 1, N. Y.

RE: S. Int. 6, Pr. 6, by Mr. Berkowitz:

Dear Sir:

This organization poses no objection to the provisions of this legislation.

We realize that there is a terrific job involved in specifically naming positions and salary grades in all of the jurisdictional classes every time there is a change in the salary of the incumbents.

However, we do feel that if there is to be a change in the specific classes which are to be included in the coverage under a particular rule, then the specific titles involved should be listed.

If this is to be construed as the legislative intent we see no reason why this bill should not be signed into law.

Very truly yours,

John J. Porter
John J. Porter,
Leg. Chairman.

CARDINAL PRINCIPLES

Extension of the Merit System — Protection Against Unjust Removal — An Equitable Retirement Law —
Mandatory Salary Increments for All Services — Positive Labor Relations



STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

ARTHUR LEVITT
STATE COMPTROLLER

IN REPLYING REFER TO

5-6
February 16, 1960

REPORT TO THE GOVERNOR ON LEGISLATION

To: Hon. Robert MacCrate, Counsel to the Governor

Re: Senate Int. 6, Pr. 6; Introduced by Mr. Berkowitz

DISCUSSION: This legislation does not affect this Department in any manner. We are therefore returning the bill without further comment.

ARTHUR LEVITT
State Comptroller

By

Alfred W. Haight
Alfred W. Haight
First Deputy Comptroller

AWH:mah
Enc.