

CS

V E T O # 99

CHAPTER _____

LAWS OF 20 05

SENATE BILL 3004

ASSEMBLY BILL _____

STATE OF NEW YORK

3004

2005-2006 Regular Sessions

IN SENATE

March 3, 2005

Introduced by Sen. LARKIN -- 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 temporary appointments

A2142 - KARBEN

DATE RECEIVED BY GOVERNOR:

SEP 22 2005

ACTION MUST BE TAKEN BY:

OCT -4 2005

DATE GOVERNOR'S ACTION TAKEN:

OCT 04 2005

000001

SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

000002



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

TO THE SENATE:

I am returning herewith, without my approval, the following bill: OCT 04 2005

V E T O # 99 Senate Bill Number 3004, entitled:

"AN ACT to amend the civil service law, in relation to temporary appointments"

NOT APPROVED

This bill would amend the Civil Service Law to prohibit the temporary appointment of members of the Security Services collective bargaining unit (SSU). Members of the SSU include State correction officers, safety and security officers and seasonal lifeguards. This bill would take effect immediately.

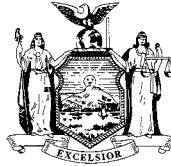
Temporary appointments generally are used to fill critical vacancies while an applicant search is underway, or during emergency situations of short duration, or when no list candidates are interested in permanent appointment to a particular vacancy. For example, I am advised by the Department of Correctional Services (DOCS) that it uses temporary appointments when personnel are called to active military duty or on an extended sick leave. Thus, DOCS believes that this bill would hinder its ability to quickly and effectively respond to emergency staffing needs that arise and, therefore, recommends disapproval. A number of other State agencies, including the Office of Mental Health, Office of the Mental Retardation and Developmental Disabilities, the State Education Department and the Office of Parks, Recreation and Historic Preservation, raise similar objections and also urge my disapproval of the bill. In addition, the Department of Civil Service recommends disapproval, contending that this legislation would have a significant, detrimental effect on the ability of the State to manage its programs and employees.

I also note that this bill is defective in that it fails to provide an exemption for departments and agencies that do not have an adequate eligible list of candidates interested in permanent appointment to competitive class positions. Therefore, under the bill, an agency that must fill a vacancy in a SSU-designated competitive class position, but has no list-eligible candidates willing to accept permanent appointment would have no alternative but to leave the job unfilled, which could jeopardize public safety. Based on these defects, I am constrained to disapprove the bill.

The bill is disapproved.

000003

S3004



THE SENATE
STATE OF NEW YORK

WILLIAM J. LARKIN, JR.
SENATOR, 39TH DISTRICT
CHAIRMAN
MAJORITY STEERING COMMITTEE

PLEASE RESPOND TO:
□ ROOM 612
LEGISLATIVE OFFICE BLDG.
ALBANY, NY 12247
(518) 455-2770

□ 1093 LITTLE BRITAIN ROAD
NEW WINDSOR, NY 12553
(845) 567-1270

INTERNET ADDRESS:
LARKIN@SENATE.STATE.NY.US

WEB ADDRESS:
WWW.SENATORBILLLARKIN.COM

CHAIRMAN
RACING, GAMING &
WAGERING COMMITTEE
COMMITTEES
ELECTIONS
FINANCE
HEALTH
HOUSING, CONSTRUCTION & COMMUNITY
DEVELOPMENT
INSURANCE
MENTAL HEALTH & DEVELOPMENTAL DISABILITIES
VETERANS, HOMELAND SECURITY & MILITARY
AFFAIRS

July 20, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Platkin

I would like to take this opportunity to bring Senate Bill 3004 to your attention and to urge the Governor to sign this measure into law. This bill prohibits the making of temporary appointments with respect to members of the Security Services collective bargaining unit.

While temporary appointments may serve the immediate and short term needs of an agency making such an appointment, these actions can have a detrimental effect on the individual appointed. For example, with respect to employees of the Department of Correctional Services (the primary employer of Security Services unit members), a temporarily appointed Sergeant cannot receive a permanent appointment to the Sergeant position based solely on his or her experience in the appointed position.

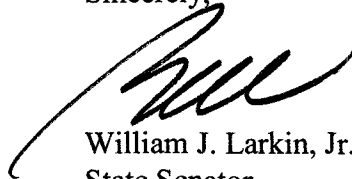
Also, temporary sergeants are not eligible to take the Correction Lieutenant exam. This is because Civil Service sets the minimum qualifications for the exam, and consistently requires candidates for the exam to have at least one year of permanent service as a Sergeant in order to be eligible. As a result, there are individuals who have been in temporarily appointed positions for several years.

000004

Pursuant to Civil Service Law, section 64, temporary appointments are authorized for three months, six months, and one year, depending on the type of temporary appointment. The provisions of Section 64 also allow a temporary appointment to be made from an existing Civil Service list to a position that is vacant due to one or more leaves of absence, in which case the temporary appointment can last as long as the absence. The enactment of this legislation will ensure that any appointment made with respect to Security Services unit members is a permanent appointment. As such, any individual so appointed would not be subject to the negative consequences discussed above.

In light of the foregoing, I respectfully request that the Governor act favorably on this proposal and sign Senate Bill 3004 into law. If you have any questions concerning this matter, please feel free to contact me.

Sincerely,



William J. Larkin, Jr.
State Senator

WJL/fgp
Enc.

000005

8.

33004 A.2142



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RYAN SCOTT KARBEN
Member of Assembly
95TH District

COMMITTEES
Alcoholism & Drug Abuse
Corporations, Authorities &
Commissions
Energy
Insurance
Local Governments
Judiciary

RECEIVED

July 7, 2005

JUL 08 2005

Governor George E. Pataki
State Capitol
Albany, New York 12224

NEW YORK STATE
EXECUTIVE CHAMBER
COUNSEL

Dear Governor Pataki:

I am writing to ask that you sign A.2142/S.3004 into law. This legislation, which was passed unanimously by both the Senate and the Assembly, prohibits the making of temporary appointments with respect to members of the security services collective bargaining unit.

Temporary appointments are currently permitted pursuant to Section 64 of the New York State Civil Service Law. Although temporary appointments may address the immediate needs of an agency making such an appointment, these actions can have a negative effect on the individual appointed. For example, with regard to employees of the Department of Correctional Services, which is the primary employer of Security Services unit members, a temporarily appointed Sergeant cannot receive a permanent appointment to the Sergeant position based solely on his or her experience in the appointed position. Further, temporary sergeants are not eligible to take the Correction Lieutenant exam. This is because Civil Service sets the minimum standards for the exam, and requires candidates to have at least one year of permanent service as a Sergeant in order to be eligible. As a result, there are individuals who have been in temporarily appointed positions for several years, thus delaying any potential career advancement.

This legislation will ensure that any appointment made with respect to Security Services unit members is a permanent appointment. As such, any individual so appointed would not be subject to the negative consequences discussed above.

I urge you to act favorably on this important legislation and sign this bill into law.

Thank you for your consideration and attention to this matter.

Very truly yours,

RYAN SCOTT KARBEN
Member of Assembly

cc: Richard Platkin, Esq.

000006

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S3004

SPONSOR: LARKIN

TITLE OF BILL: An act to amend the civil service law, in relation to temporary appointments

PURPOSE: To prohibit the making of temporary appointments with respect to members of the Security Services collective bargaining unit.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 of the bill amends § 64 of the Civil Service Law by adding a new subdivision 5 to prohibit the making of temporary appointments with respect to members of the Security Services collective bargaining unit.

JUSTIFICATION: Pursuant to Civil Service Law § 64, temporary appointments are authorized for three months, six months, and one year, depending on the type of temporary appointment. The provisions of § 64 also allow a temporary appointment to be made from an existing Civil Service list to a position that is vacant due to one or more leaves of absence, in which case the temporary appointment can last as long as the absence.

While temporary appointments may serve the immediate and short term needs of an agency making such an appointment, these actions can have a detrimental effect on the individual appointed. For example, with respect to employees of the Department of Correctional Services (the primary employer of Security Services unit members), a temporarily appointed Sergeant cannot receive a permanent appointment to the Sergeant position based solely on his or her experience in the appointed position. Moreover, temporary sergeants are not eligible to take the Correction Lieutenant exam. This is because Civil Service sets the minimum qualifications for the exam, and consistently requires candidates for the exam to have at least one year of permanent service as a Sergeant in order to be eligible. As a result, there are individuals who have been in temporarily appointed positions for several years.

The enactment of this legislation will ensure that any appointment made with respect to Security Services unit members is a permanent appointment. As such, any individual so appointed would not be subject to the negative consequences discussed above.

PRIOR LEGISLATIVE HISTORY: A.10208 of 2003-2004.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.

000007



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

Legislative Bureau

TO: COUNSEL TO THE GOVERNOR

Re: SENATE 3004

ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

ELIOT SPITZER
ATTORNEY GENERAL

Date: August 3, 2005

000008

SENATE:
No. 3004

Introduced by:
Senator Larkin

ASSEMBLY:
No.

Law: Civil Service Law

Sections: 64

Division of the Budget recommendation on the above bill:

Approve: _____ Veto: X No Objection: _____ No Recommendation: _____

1-2. Subject, Purpose and Summary of Provisions:

Section 64 of the Civil Service Law authorizes the State to make temporary appointments to provide important and urgent services of limited duration (e.g., seasonal life-guard services); to fill-in for permanent employees on official leave of absence (e.g., military leave); and to prepare for the phasing-out of governmental functions (e.g., closing of XYZ Psychiatric Center).

Effective immediately, this bill would add a new subdivision 5 to Section 64 of the Civil Service Law, which would prohibit the making of temporary appointments with respect to members of the Security Services collective bargaining unit (e.g., Correction Officers, Safety & Security Officers, Lifeguards). This restriction would not apply to any temporary appointment made prior to enactment.

3. Legislative History:

An identical bill, A.10208 of 2003, was passed in the Assembly, but stalled in the Senate.

4. Arguments in Support:

Proponents argue that temporary appointments have a detrimental effect on the individual appointed because they do not ultimately result in permanent appointments or promotion eligibility. For example, a temporarily appointed Correction Sergeant cannot receive a permanent appointment based solely on his/her work experience. Additionally, a temporarily appointed Correction Sergeant is not eligible to take the Correction Lieutenant exam because the minimum qualifications consistently require candidates to have at least one year of permanent service in the Sergeant position. Accordingly, proponents contend that certain employees have been inappropriately restricted to temporarily appointed positions for several years.

5. Arguments in Opposition:

This bill is highly objectionable because it would substantially limit the collectively negotiated management rights of the Executive Branch by restricting the way it may hire employees and

the manner in which it directs, deploys and utilizes the workforce. The result could be disastrous, as temporary appointments are essential to the State's ability to respond to temporary and emergency needs and maintain the efficient and effective operation of State facilities.

Several major State agencies temporarily appoint security service employees to achieve urgent objectives, including the Department of Correctional Services; the Office of Mental Health; and the Office of Parks, Recreation and Historic Preservation. Undoubtedly, passage of this legislation would severely affect the ability of agency managers to effectively manage prisons, psychiatric centers and beaches/parks, and would put at risk the safety and security of all persons in their scope. Should temporary appointments be prohibited for this bargaining unit, these agencies would encounter negative impacts, including:

- Inability to meet minimum shift and staffing requirements, jeopardizing both safety and security and potential Federal revenues;
- Increased use and expense of overtime, including mandatory overtime, to cover shifts of permanent staff out on leave, including sick leave, maternity leave, Workers' Compensation leave and military leave;
- Difficulties in providing coverage during peak vacation and holiday periods, and resultant negative impact on staff morale when requested leave must be denied by management in order to ensure that minimum shift and staffing requirements are met;
- Loss of qualified candidates, since temporary appointments are occasionally used to hire qualified individuals expected to be appointed from a permanent list, when there are delays in completing the required physical and medical examinations that are necessary for permanent appointment; and
- Difficulty in maintaining the promised level of services to the public -- e.g., availability of safe park and beach access during peak periods -- under the constraints imposed by the bill.

In particular, the bill is totally unreasonable from the perspective of the Office of Parks, Recreation and Historic Preservation because it would prohibit the agency from temporarily appointing seasonal lifeguards and park rangers. Instead, OPRHP would be required to permanently appoint employees and then lay off and rehire such employees as necessary. The Department of Correctional Services would be unable to respond to a prison's emergency needs since it could no longer rely upon Sick Leave and Military Leave Replacement pools.

Other significant objections to the bill include:

- This bill is unnecessary as the Department of Civil Service enforces rigorous controls to ensure that appointments made to temporary positions are appropriate and used sparingly. The sponsor's main argument focuses on the negative impact of current law on temporarily appointed Correction Sergeants. Yet, out of 1,300 Correction Sergeants, only 50, or approximately 3.8% percent, are appointed to temporary positions. Similarly, the

Office of Mental Health employs 1,200 security service unit employees, with only 26, or approximately 2 percent, involving temporary appointments. It is noteworthy that agency temporarily-appointed employees are usually apprised of both the pros and cons of accepting such positions prior to appointment.

- The bill represents an attempt to micro-manage and intrude upon State agency management functions, rights and responsibilities that are appropriately the purview of the Executive Branch.
- Since the legislation treats security service employees differently from other unionized employees, enactment of this bill would set a precedent that would have similarly disruptive effects if it were extended to other groups and employees.

6. Other State Agencies Interested:

Several agencies oppose this bill, including the Governor's Office of Employee Relations; the Department of Correctional Services; the Office of Parks, Recreation and Historic Preservation; the Office of Mental Health; and the State University of New York.

Other interested agencies include the Department of Civil Service, the Office of Mental Retardation and Developmental Disabilities, and the Department of Environmental Conservation.

7. Other Interested Groups:

The New York State Correctional Officers and Police Benevolent Association and Council 82 represent the State's security services employees and would support passage of this bill. Other unions, including PEF and CSEA, would be interested in this bill.

8. Budget Implications:

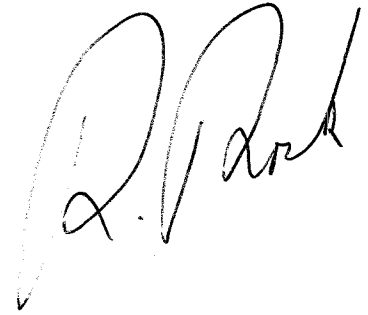
Prohibiting temporary appointments of security service employees would unnecessarily cost the State millions in permanently increased payroll, overtime, fringe benefit and administrative (i.e., layoff and rehiring) costs. (The Department of Correctional Services alone reports this bill will drive \$36,000 in weekly overtime costs for an annual total of \$1.9 million.)

9. Recommendation: Veto

This bill would prohibit the making of temporary appointments with respect to members of the Security Services collective bargaining unit (e.g., Correction Officers, Safety & Security Officers, and Lifeguards).

This bill is highly objectionable because it would substantially limit the collectively negotiated management rights of the Executive Branch by restricting the way employees are hired and the manner in which it directs, deploys and utilizes the workforce. The result could be disastrous, as temporary appointments are essential to the State's ability to respond to

temporary and emergency needs -- often involving life-threatening risks -- and maintain the efficient and effective operation of State facilities. Undoubtedly, passage of this legislation would: 1) severely affect the ability of agency managers to safely manage prisons, psychiatric centers and beaches/parks; 2) unnecessarily cost the State millions in permanently increased payroll, overtime, fringe benefit and administrative (i.e., layoff and rehiring) costs; and 3) undermine the ability of agencies to deliver promised services and programs to the public. Accordingly, we recommend veto.

A handwritten signature in black ink, appearing to read "R. V. Rank", is located on the right side of the page.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Chief of Staff
Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

July 26, 2005

TO: Counsel to Governor

FROM: Kathy A. Ahearn

SUBJECT: S.3004

RECOMMENDATION: Disapproval

REASON FOR RECOMMENDATION:

This bill would add a new subdivision 5 to § 64 of the Civil Service Law to prohibit the temporary appointment of members of the Security Services collective negotiating unit.

The State Education Department recommends disapproval of this bill because it would impair the ability of State agencies to hire staff needed to maintain security. A security threat or emergency may require prompt hiring of additional security staff when an eligible employee is not readily available. This bill would prevent the State from hiring additional security personnel in such circumstances because there would be no provision in the Civil Service Law for their temporary appointment in an emergency.

000013



STATE OF NEW YORK

GEORGE E. PATAKI
GOVERNOR

DEPARTMENT OF CIVIL SERVICE
THE STATE CAMPUS
ALBANY, NEW YORK 12239
www.cs.state.ny.us

DANIEL E. WALL
COMMISSIONER

JOHN F. BARR
EXECUTIVE
DEPUTY COMMISSIONER

MEMORANDUM

TO: Honorable Richard Platkin
Counsel to the Governor

FROM: Brian S. Reichenbach
Counsel

SUBJECT: S.3004 (Introduced by Senator Larkin)

DATE: August 9, 2005

STATUTES INVOLVED: Section 64 (5) of the Civil Service Law (New)

EFFECTIVE DATE: Immediately

RECOMMENDATION: DISAPPROVAL

DISCUSSION:

This bill would prohibit any temporary appointment of any members of the Security Services Collective Bargaining Unit (SSU). Agencies transact temporary appointments under a variety of circumstances and to a variety of positions in different jurisdictional classes. While the memorandum in support of the bill focuses on a single example – Correction Sergeants – it does not consider the implications of the statute on jobs in agencies other than the DOCS (there are as many as 1400 temporary Security Services Unit-designated employees in a range of agencies). A large number of these short duration jobs in the SSU are appropriately filled through temporary appointments – the list includes Lifeguards and Supervising Lifeguards as well as Park Rangers, and other security titles. This legislation would have a significant, detrimental effect on departments' and agencies' ability to manage their programs.

000014

The bill provides no option for departments and agencies that do not have an adequate eligible list of candidates interested in permanent appointment to competitive class SSU positions. Temporary appointments are routinely used to fill critical vacancies during the list canvassing process (which may take up to 60 days), or during emergency situations of short duration, or even when no list candidates are interested in permanent appointment to a particular vacancy. Under the provisions of the bill, an agency that must fill a vacancy in a SSU-designated competitive class position and has no eligible list or has no list-eligible candidates willing to accept permanent appointment would have no alternative but to leave the job unfilled. Leaving Security Service jobs vacant is not a viable option.

The memorandum in support cites the negative consequences of long-term temporary status for temporary Corrections Sergeants. It is not clear that mandating permanent appointments would benefit those current long-term temporary sergeants. In order to be eligible for a permanent appointment (or contingent permanent appointments to an encumbered vacancy [see §4.11 4NYCRR]), the candidate must be reached on an appropriate eligible list. The memorandum in support does not demonstrate or claim that the current temporary sergeants are indeed eligible for permanent appointment. Consequently, the bill fails in one of its intentions (as expressed in the memorandum of support): to provide promotion opportunities for long-term temporary Corrections Sergeants to the position of Correction Lieutenant. Permanent status is required to qualify for promotion examinations. Instead of making such temporary appointments permanent, the bill would prohibit any such temporary assignments.

For all the above stated reasons, the Department of Civil Service recommends disapproval of this bill.



State of New York
Governor's Office of Employee Relations
Legal Division
2 Empire State Plaza, 13th Floor, Albany, New York 12223
(518) 473-4596 • (518) 486-7303 (Facsimile)

George E. Pataki, Governor

George H. Madison
Director

John V. Currier
Executive Deputy Director

July 30, 2005

Mr. Richard Platkin
Counsel to the Governor
Executive Chambers
The Capitol
Albany, New York 12224

Subject: S.3004/A.2142 Prohibits Temporary Appointments with Respect to Members of Security Services Bargaining Unit.

Dear Mr. Platkin:

Pursuant to your request, I have reviewed the above referenced legislation. It would prohibit temporary appointments made to Security Services Unit members.

This office is opposed to the legislation for the reasons outlined below. This legislation would limit the way in which the State directs assignments to a particular group of employees, a management function. The legislature is attempting to direct an executive function, thereby disrupting the traditional separation of powers. Additionally, this legislation would treat one particular unit different than every other unit of state employee's.

The State has an operational need to have the temporary appointments made with respect to this unit of employees in order to carry out the mission of at least one agency.

It should also be noted that this unit is currently in negotiations with the State and this particular issue could be dealt with in respect to other issues brought forth by the unit. It should be noted that this office does not concede that this issue is negotiable.

000016

The Executive should not approve this legislation. The Governor's Office of Employee Relations is strongly opposed to this proposal. Thank you for the opportunity to convey the analysis of this office.

Very truly yours,

James E. Walsh, Esq.
Assistant Director

000017



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GLENN S. GOORD
COMMISSIONER

July 29, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S3004/A2142

Dear Mr. Platkin:

With regard to the above-referenced bill, S3004/A2142, the Department of Correctional Services strongly requests that the Governor veto this bill, which would prohibit the Department from making temporary appointments of any member of the collective negotiating unit designated security services. After a careful review of this bill, the Department finds that if this bill is signed into law, it would negatively impact on both management and union members themselves, causing a multitude of problems for all concerned.

Temporary appointments are essential to ensure the safety, security and efficient operation of the Department's correctional facilities. A prime example of this would be our Security Supervisor Sick Leave and Military Leave Replacement Pools. This bill would make it impossible to utilize these replacement pools. We would no longer be able to be responsive to a particular facility's temporary or emergency needs, since, under present practice, the replacement pools provide relief to facilities that may have supervisors out on extended leaves for various reasons.

Without being able to utilize these replacement pools, facilities would be forced to operate at levels that could possibly jeopardize their safety and security. It could also cause severe morale problems as members of our supervisory personnel would be forced to work overtime. It would be extremely impractical either to leave these items vacant or fill them permanently as the bill requires. The latter scenario would lead to innumerable layoff/displacement scenarios when the incumbents would return from their extended leaves.

Additionally, there is also the matter of supervisory items with multiple holds. The Department of Civil Service currently has a prohibition against making anything other than a temporary appointment to a position which has been designated as a permanent hold or a contingent permanent hold for another employee. If this policy is continued and this bill becomes a law, then coverage of these posts would have to be accomplished through overtime, which in turn would have a fiscal impact on the Department.

000018

Honorable Richard Platkin
Page 2
July 29, 2005

Currently, of the 1,300 Correction Sergeants, all but approximately 50 have permanent or contingent permanent status. The appointments of the 50 temporary sergeants were for one of two reasons: either there were already multiple holds on the vacant item, or, the appointment was to provide temporary relief to a facility with a supervisor absent on extended leave. There are approximately 20 supervisors who are out on sick leave at any given time. These supervisors' items obviously need coverage and temporary replacements pending the return of said supervisors from sick leave, workers' compensation leave or military leave. In lieu of temporary appointments, overtime for current supervisors to replace these absent supervisors is calculated at approximately \$36,000 per week, (this figure is based upon coverage for one week of 20 Sergeants.

Lastly, it should also be noted that whenever the Department makes temporary appointments, every candidate is provided with an extensive explanation of what the benefits are in taking the appointment, and also anything that might possibly negatively impact him or her.

In conclusion, the Department would be greatly hampered in its managerial prerogatives to ensure the safe and secure operation of its 70 facilities and there would also be a serious fiscal impact if this bill were to become law. For all the foregoing reasons, it is respectfully requested that the Governor veto this bill.

God Bless America,

Glenn S. Goord
Commissioner

cc: John R. Patterson, Jr., Executive Deputy Commissioner
Anthony J. Annucci, Deputy Commissioner & Counsel

000019



STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694
www.omr.state.ny.us

August 26, 2005

Honorable Richard Platkin, Esq.
Counsel to the Governor
State Capitol Building
Executive Chamber
Albany, NY 12224

Re: S.3004 – amends the Civil Service Law to require that all Security Services Unit appointments be permanent

Dear Mr. Platkin:

The Office of Mental Retardation and Developmental Disabilities (“OMRDD”) has reviewed the above referenced bill awaiting executive action.

Please be advised that OMRDD recommends that this bill be disapproved as it would prohibit the use of temporary appointments for Security Services Unit (“SSU”) positions. The bill directly affects the Safety and Security Officer title series currently used by OMRDD to provide security services at its facilities. The bill would unnecessarily limit the flexibility which OMRDD’s management currently has to make a temporary hire when needed, particularly when a permanent SSU employee may be out on long term medical or other leave. For these reasons, OMRDD respectfully requests that this bill be disapproved.

Thank you for the opportunity to comment on this legislation.

Sincerely,

/s/

Cynthia E. McDonough
Associate Attorney

cc: Paul Kietzman

000020



OFFICE OF MENTAL HEALTH

COUNSEL

Sharon E. Carpinello, RN, Ph.D.
Commissioner

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229
(518) 474-1331 \$ FAX (518) 473-7863 \$ TDD (518) 473-2714

JOHN V. TAURIELLO
Deputy Commissioner and Counsel

July 30, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol Building
Albany, NY 12224

RE: S.3004

Dear Mr. Platkin:

The Office of Mental Health (OMH) strongly opposes the above bill, which is before the Governor for Executive action. The purpose of this legislation is to amend section 64 of the Civil Service Law to prohibit temporary appointments of State employees in the collective bargaining unit designated security services. OMH has over 1,200 employees in this bargaining unit, 689 of these are in the Safety Officer title series and 548 are in the Security Hospital Treatment Assistant (SHTA) title series. These employees provide vital services which protect the health and well being of patients, staff, and visitors at OMH operated psychiatric facilities. They enable clinical treatment to take place in a safe and therapeutic environment. Currently only 26, or approximately two percent, of these positions involve temporary appointments. Although relatively few, such appointments are necessary to the effective and efficient management of OMH facilities.

Temporary appointments in many title series are a part of normal operations in State agencies and are authorized in section 64 of the Civil Service Law. They provide for flexibility needed to meet critical staffing needs on a temporary basis without incurring overtime or permanently increasing payroll. Further, controls have been established and are rigorously enforced by the Department of Civil Service to ensure that appointments made pursuant to section 64 are appropriate.

Should temporary appointments be prohibited for this bargaining unit, OMH would encounter negative impacts, including:

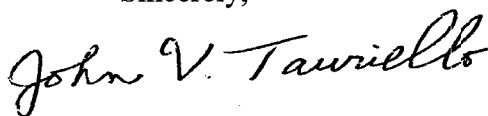
000021

- A) Risk to the health and safety of patients, staff, and visitors and risk to the security of physical plant and equipment at OMH operated facilities, should minimum shift and staffing requirements go unmet;
- B) Increased use and expense of overtime, including mandatory overtime, in the estimated amount of \$450,000 per year, to cover shifts of permanent staff out on leave, including sick leave, maternity leave, Workers Compensation leave, and military leave;
- C) Difficulties in providing coverage during peak vacation and holiday periods, and resultant negative impact on staff morale when requested leave at these times must be denied by management in order to ensure that minimum shift and staffing requirements are met; and
- D) Loss of qualified candidates. Temporary appointments are occasionally used to hire qualified individuals expected to be appointed soon from a permanent list, when there are delays in completing the required physical and medical examinations that are necessary for permanent appointment.

We note the recent settlement of a suit brought against the State by the union representing the security services bargaining unit. The union, in the case of Harcrow, et.al. v. State of New York, contended that temporary appointments to SHTA positions at OMH's Mid-Hudson Forensic Psychiatric Center violated the collective bargaining agreement and provisions of section 64 of the Civil Service Law. In a June 2005 decision, the court determined that these temporary appointments met the requirements of section 64 and did not violate the collective bargaining agreement. We also note that OMH has not received any employee grievances based upon temporary appointment status. For all these reasons we recommend veto of this bill.

Thank you for the opportunity to comment on this legislation.

Sincerely,



John V. Tauriello
Deputy Commissioner and Counsel

New York State Office of Parks, Recreation and Historic Preservation
The Governor Nelson A. Rockefeller Empire State Plaza
Agency Building 1, Albany, New York 12238
Bernadette Castro, Commissioner

M E M O R A N D U M

DATE: July 20, 2005

TO: Richard Platkin
Counsel to the Governor

FROM: Paul J. Laudato
Counsel
Office of Parks, Recreation and Historic
Preservation

RE: S.3004/A.2142

POSITION: Oppose

This bill would amend the Civil Service Law to prohibit the temporary appointment of members of the collective negotiating unit designated security services.

This bill if enacted would have dire consequences for the ability of the Office of Parks, Recreation and Historic Preservation to fulfill its core mission of providing the public with safe recreational opportunities. All of the agency's lifeguards and park rangers, which in total number almost 850 positions, are members of the collective negotiating unit designated security services. This bill would prohibit the agency from temporarily appointing lifeguards and park rangers for the summer season. Instead, the bill would require the Office to permanently appoint lifeguards and park rangers even though these positions are clearly seasonal in nature. As a consequence the agency will be forced to lay off these workers at the end of the season, a long and complicated process, which in turn will complicate the re-hiring of these and other seasonal positions for the next season potentially delaying the hiring of qualified applicants for the start of the season.

In many cases, the Office is already challenged by the task of recruiting qualified lifeguards and park rangers in some areas of the state. Adding this unnecessary administrative burden will only complicate matters as the Agency prepares its facilities for the height of the summer season.

000023

The Office of Parks, Recreation and Historic Preservation
strongly opposes the enactment of this bill.

000024

CS

S-3004



New York State Correctional Officers & Police Benevolent Association, Inc.

102 Hackett Boulevard ♦ Albany, NY 12209
Tel. (518) 427-1551 ♦ Fax (518) 426-1635
www.nyscopba.org ♦ nyscopba@nyscopba.org



September 23, 2005

PRESIDENT
Richard Harcrow

EXECUTIVE VICE PRESIDENT
Carl Canterbury

RECORDING SECRETARY
Diane Davis

TREASURER
Dan Stuart

VICE PRESIDENT,
NORTHERN REGION
Lyndon Johnson

VICE PRESIDENT,
MID-HUDSON REGION
Lawrence Flanagan

VICE PRESIDENT,
LAW ENFORCEMENT
Mitzie Altagracia Vilsaint

VICE PRESIDENT,
CENTRAL REGION
Anthony Farda

VICE PRESIDENT,
WESTERN REGION
Grant Marin

VICE PRESIDENT,
SOUTHERN REGION
Paul Mikolajczyk

Hon. Richard Platkin
Counsel To The Governor
Executive Chamber, The Capitol
Albany, New York 12224

Dear Mr. Platkin:

Re: S-3004 By Senator Larkin
AN ACT to amend the civil
service law, in relation to
temporary appointments

This legislation prohibits the making of temporary appointments with respect to members of the Security Services collective negotiating unit.

Pursuant to the Civil Service Law, temporary appointments are authorized for three months, six months, and one year, depending on the type of temporary appointment. The provisions of the civil service law also allow a temporary appointment to be made from an existing Civil Service list to a position that is vacant due to one or more leaves of absence, in which case the temporary appointment can last as long as the absence.

While temporary appointments may serve the immediate and short-term needs of an agency making such an appointment, these actions can have a detrimental effect on the individual appointed. For example, with respect to employees of the Department of Correctional Services (the primary employer of Security Services unit members), a temporarily appointed Sergeant cannot receive a permanent appointment to a Sergeant's position based solely on his or her experience in the appointed position. Moreover, temporary sergeants are not eligible to take the Correction Lieutenant exam. This is because Civil Service sets the minimum qualifications for the exam, and consistently requires candidates for the exam to have at least one year of permanent service as a Sergeant in order to be eligible. As a result, there are individuals who have been in temporarily appointed positions for several years.

000025

The enactment of this legislation will ensure that any appointment made with respect to Security Services unit members is a permanent appointment. As such, any individual so appointed would not be subject to the negative consequences discussed above.

The New York State Correctional Officers & Police Benevolent Association urges the Governor to sign this most important legislation into law.

Respectfully Submitted,



ARTHUR J. KREMER
Legislative Representative

000026

STATE OF NEW YORK

3004

2005-2006 Regular Sessions

IN SENATE

March 3, 2005

Introduced by Sen. LARKIN -- 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 temporary appointments

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

- 1 Section 1. Section 64 of the civil service law is amended by adding a
- 2 new subdivision 5 to read as follows:
- 3 5. Temporary appointments of members of the collective negotiating
- 4 unit designated security services prohibited. Notwithstanding the
- 5 provisions of this chapter or of any other law, a temporary appointment
- 6 of any member of the collective negotiating unit designated security
- 7 services shall be prohibited.
- 8 § 2. This act shall take effect immediately; provided, however, that
- 9 the provisions of this act shall not apply to any temporary appointment
- 10 made prior to the effective date of this act.

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

LBD04149-01-5