

HOUSE No. 2539

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon and Michael D. Brady

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the civil service law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/20/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>1/20/2023</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>1/25/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/25/2023</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>1/25/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/25/2023</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>1/26/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2023</i>

HOUSE No. 2539

By Representative Gordon of Bedford and Senator Brady, a joint petition (accompanied by bill, House, No. 2539) of Kenneth I. Gordon, Michael D. Brady and others relative to the civil service law. Public Service.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to the civil service law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 31 is hereby amended by inserting at the beginning of
2 subsection (e) of the third paragraph, in the definition of “basic merit principles”, the phrase
3 “notwithstanding potential remedies provided by any other laws that prohibit discrimination in
4 employment,”; and in said subsection striking the word “handicap” and inserting in place thereof
5 the following:- “military status, disability, sexual orientation, gender identity” before the words
6 “or religion”.

7 SECTION 2. Section 2 of chapter 31 is hereby amended by inserting, after subsection
8 (f), the following section:-

9 (f)(1) To award reasonable attorneys’ fees and costs to an appellant who prevails in an
10 appeal brought under this chapter, upon an express finding of either bad faith on the part of the
11 appointing authority or an egregious or willfully repeated violation of this chapter, unless special
12 circumstances would render such an award in full unjust;

13 SECTION 3. Section 2 of chapter 31 is hereby amended by inserting, after subsection
14 (f), the following:-

15 (f)(2) To take such action and enter such orders as in the considered judgment of the
16 commission will effectuate the purposes of this chapter, including, but not limited to, orders to
17 vacate appointments, or to appoint, reinstate, or promote appellants, with or without retroactive
18 compensation;

19 SECTION 4. Section 2 of chapter 31 is hereby amended by inserting, after subsection
20 (g), the following:-

21 (h) To close all or a portion of a hearing or proceeding conducted pursuant to this
22 chapter, and to make such orders deemed necessary to protect the privacy of a person's health or
23 other acutely sensitive or confidential information.

24 SECTION 5. Section 2(b) of chapter 31 is hereby amended by striking out the third
25 paragraph and inserting in place thereof the following paragraph:-

26 The appeal shall be accompanied by such form as the commission may prescribe
27 containing a statement of the allegations which form the basis of the aggrieved person's appeal
28 with specific reference to the provisions of this chapter or the rules of the administrator or basic
29 merit principles which have been violated, together with an explanation of how the person has
30 been harmed.

31 SECTION 6. Section 2(b) of chapter 31 is hereby amended by striking the fourth
32 paragraph and inserting in place thereof the following paragraph:-

33 Hearings on any appeal pending before the commission may be held before any member
34 thereof, who shall report his or her findings of fact and recommendations to the commission for
35 its action. Alternatively, the chair of the commission may appoint as hearing officer any other
36 disinterested person who is experienced in adjudication or well-versed in the provisions of this
37 chapter; provided that, upon the conclusion of any such hearing, and consistent with the
38 provisions governing tentative decisions set forth in the Standard Adjudicatory Rules of Practice
39 and Procedure, the assigned hearing officer shall report his or her findings of fact and
40 recommendations to the commission for its action.

41 SECTION 7. Section 2(c) of chapter 31 is hereby amended by inserting after the words
42 “section 8 of chapter 31A” the following:- or in accordance with the provisions of this chapter.

43 SECTION 8. Section 16 of chapter 31 is hereby amended by inserting, after the first
44 sentence of the first paragraph, the following:-

45 Promotional and entry examinations shall be conducted annually. Municipalities with a
46 population of greater than 100,000 residents may select to opt out of an annual examination, but
47 must participate in entry and promotional examinations no less than once every two years.

48 SECTION 9. Section 16 of chapter 31 is hereby amended by inserting, at the end of the
49 second paragraph, the following:-

50 Any applicant for examination for original appointment may be eligible to sit for the civil
51 service examination no earlier than 12 months prior to turning the minimum age necessary to
52 hold the particular civil service position that is the subject of the examination.

53 SECTION 10. Section 25 of chapter 31 is hereby amended by striking the words “last
54 examination taken” in the second paragraph and inserting in place thereof the following:- highest
55 examination score achieved.

56 SECTION 11. Section 27 of chapter 31 is hereby amended by inserting a new first
57 sentence in the first paragraph:-

58 If the administrator or an appointing authority delegated by the administrator, applying
59 the “3n+1” formula set out in the rules of the administrator, certifies from an eligible list the
60 names of persons who are qualified, and willing to accept, an original appointment, the
61 appointing authority, pursuant to the civil service law and rules, may appoint only from among
62 such persons; provided, however, for each such person, if any, who is bypassed or withdraws
63 from the application process, the appointing authority may appoint from among a group that
64 includes the next highest-ranked person on the certification; and provided further, that the
65 Administrator or an appointing authority delegated by the Administrator, shall not include the
66 name of any person who has been so bypassed on any future certification from the same original
67 appointment eligible list unless directed to do so by the Commission.

68 SECTION 12. Section 27 of chapter 31 is hereby amended by striking out the second
69 paragraph and inserting in place thereof the following:-

70 If an appointing authority makes an original or promotional appointment from a
71 certification of any qualified person other than the qualified person whose name appears highest,
72 and the person whose name ranks highest on the certification is willing to accept such
73 appointment, the appointing authority shall immediately provide to the person who ranked
74 highest a written statement of the reasons for appointing the person whose name was not highest

75 and such appointment shall be effective only when such statement of reasons has been provided.
76 This written statement shall notify the bypassed individual of his or her right to appeal to the
77 Commission, should the reasons proffered not be deemed sound and sufficient, within sixty (60)
78 days of issuance of the statement of reasons. In response to a public records request, the
79 appointing authority shall make a copy of such statement available for inspection.

80 SECTION 13. Section 42 of chapter 31 is hereby amended by striking out the
81 penultimate sentence of the first paragraph and inserting in place thereof the following:-

82 If the commission finds that the appointing authority has failed to follow said
83 requirements and that the rights of said person have been prejudiced thereby, the commission
84 may order the appointing authority to restore said person to his employment immediately with or
85 without loss of compensation or other rights and may issue such other orders as the commission
86 may deem appropriate to restore and protect the rights provided to such person under this
87 chapter.

88 SECTION 14. Section 43 of chapter 31 is hereby amended by striking out the first two
89 sentences in the first paragraph and inserting in place thereof the following:-

90 If a person aggrieved by a decision of an appointing authority made pursuant to section
91 forty-one shall, within ten days after receiving written notice of such decision, appeal in writing
92 to the commission, he shall be given a preliminary hearing before a member of the commission
93 or some other disinterested person designated by the chair of the commission. Said preliminary
94 hearing shall occur within sixty (60) days after docketing the appeal and, if required, a full
95 evidentiary hearing shall commence within one hundred eighty (180) days after docketing the

96 appeal, unless the parties otherwise agree or unless a commission member determines, as a
97 matter of discretion, that a continuance is necessary.

98 SECTION 15. Section 43 of chapter 31 is hereby amended by striking out the first
99 sentence of the second paragraph and inserting in place thereof the following:-

100 If the commission by a preponderance of the evidence determines that there was just
101 cause for an action taken against such person it shall affirm the action of the appointing authority
102 and deny the appeal; otherwise, it shall reverse said action and allow the appeal, in whole or in
103 part, and the person concerned may be returned to his position with or without loss of
104 compensation or other benefits and subject to such other orders as the commission may deem
105 appropriate to restore and protect the rights provided to such person under this chapter; provided,
106 further, if the preponderance of the evidence establishes that said action was based upon harmful
107 error in the application of the appointing authority's procedure, an error of law, or upon any
108 factor or conduct on the part of the employee not reasonably related to the fitness of the
109 employee to perform in his position, the commission shall allow the appeal, in whole or in part,
110 and the person concerned may be returned to his position with or without loss of compensation
111 or other benefits and subject to such other orders as the commission may deem appropriate to
112 restore and protect the rights provided to such person under this chapter.

113 SECTION 16. Section 45 of chapter 31 is hereby amended by striking the first paragraph
114 and inserting in place thereof the following:-

115 Each aggrieved individual who has prevailed in any appeal brought under this chapter
116 shall be reimbursed by the local appointing authority or, if aggrieved by action or inaction of a
117 state official, by the comptroller of the Commonwealth, the following expenditures: (1) the filing

118 fee paid to the Commission; (2) an amount not to exceed \$1,500 for attorney's fees actually
119 incurred in conjunction with each of the following: (a) an appointing authority hearing; (b) a
120 hearing before the Commission; and (c) an action for judicial review pursuant to section 44; and
121 (3) an amount not to exceed \$500 for summons to witnesses and any other expenses actually
122 incurred in such successful appeal.

123 In addition to the amounts stated above, the Commission may award such additional
124 reasonable attorneys' fees and costs to an appellant who prevails in an appeal brought under this
125 chapter, upon an express finding of either bad faith on the part of the appointing authority or an
126 egregious or willfully repeated violation of this chapter, unless special circumstances would
127 render such additional award unjust.

128 SECTION 17. Section 58 of Chapter 31 of the General Laws is hereby amended by
129 inserting at the end thereof the following:-

130 For the purposes of this section only, and pursuant to such rules as the administrator
131 elects to promulgate, "resident" of any specific municipality may include residents of any other
132 nearby city or town whose official borders lie within fifteen miles of said specific municipality.

133 SECTION 18. Section 72 of chapter 31 is hereby amended by inserting, in the third
134 sentence of the second paragraph, after the words "recommend to", the following words "or
135 order", and is hereby further amended by inserting the words "or orders" at the end of said
136 sentence.

137 SECTION 19. Section 72 of chapter 31 is hereby amended by inserting in the first
138 sentence of the third paragraph, after the words "summon witnesses," the words "demand to
139 inspect documents," before the phrase "administer oaths".

140 SECTION 20. Section 73 of chapter 31 is hereby amended by inserting in the first
141 sentence of the first paragraph, the words “the commission or” before the word “administrator”
142 where it first appears.

143 SECTION 21. Section 77 of chapter 31 is hereby amended by inserting the words
144 “commission or” before the word “administrator”

145 SECTION 22. Section 1 of chapter 31 is hereby amended by striking out the word
146 “handicap” as it appears in the fourth and twenty-second paragraphs and inserting in place
147 thereof the following:- disability

148 SECTION 23. Section 5 of chapter 31 is hereby amended by striking out the word
149 “handicapped” as it appears in the seventh and eighth paragraphs and inserting in place thereof
150 the following:- persons with disabilities

151 SECTION 24. Section 47A of chapter 31 is hereby amended by striking out the word
152 “handicapped” in the fourth paragraph and inserting in place thereof the following:- disabled

153 SECTION 25. Section 48 of chapter 31 is hereby amended by striking out the word
154 “selectmen” in the fifth paragraph and inserting in place thereof the following:- select boards;
155 and in said section by striking out the word “men” in the twentieth paragraph and inserting in
156 place thereof the following:- persons

157 SECTION 26. Section 53 of chapter 31 is hereby amended by striking out the phrase
158 “board of selectmen” in the second sentence of subsection (b) and inserting in place thereof the
159 following:- select board

160 SECTION 27. Section 60A of chapter 31 is hereby amended by striking out the word
161 “selectmen” in subsection (a) and inserting in place thereof the following:- select board

162 SECTION 28. Section 63 of chapter 31 is hereby amended by striking out the word
163 “handicapping” in the final paragraph and in place thereof the following:- disabling

164 SECTION 29. Section 74 of chapter 31 is hereby amended by striking out the word
165 “alderman” in the third paragraph and inserting the phrase “board of alders”; and in said section
166 by striking out the word “councilman” in the second paragraph and inserting the phrase “city
167 council”; and in said section by striking out the word “aldermen” in the fourth paragraph and
168 inserting the phrase “board of alders”; and further by striking out the word “selectmen” in the
169 fourth paragraph and inserting the phrase “select board.”

170 SECTION 30. Section 75 of chapter 31 is hereby amended by striking out the word
171 “aldermen” and inserting the word “alders”; and further by striking out the word “selectmen” and
172 inserting the words “select board.”

173 SECTION 31. Section 4I of chapter 7 is hereby amended by striking out the word
174 “chairman” as it appears and inserting the word “chair”; and in said section by striking out the
175 word “selectman” and inserting the word “selectperson”; and further by replacing the words
176 “his” and “him” with the phrases “his or her” and “him or her,” respectively.

177 SECTION 32. Section 2 of chapter 31 is hereby amended by striking out the word
178 “chairman” in the sixth paragraph and inserting in place thereof the word “chair.”

179 SECTION 33. Section 41A of chapter 31 is hereby amended by striking out the word
180 “chairman” in the first sentence and inserting in place thereof the word “chair.”