

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 908 Session of 2009

INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND WOZNIAK, JUNE 5, 2009

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 10, 2010

AN ACT

1 Amending the act of June 23, 1931 (P.L.932, No.317), entitled
2 "An act relating to cities of the third class; and amending,
3 revising, and consolidating the law relating thereto,"in
4 civil service, further providing for rules and regulations
5 and examinations and for selection of appointee from a
6 certified list of applicants PROVIDING FOR PHYSICAL AND
7 PSYCHOLOGICAL MEDICAL EXAMINATIONS; FURTHER PROVIDING FOR
8 GRADING FOR DISCHARGED SERVICEMEN AND FOR SELECTION OF
9 APPOINTEE; AND PROVIDING FOR PROMOTIONS OF CIVIL SERVICE
10 APPLICANTS.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of June 23, 1931 (P.L.932, No.317), known
14 as The Third Class City Code, reenacted and amended June 28,
15 1951 (P.L.662, No.164), is amended by adding a section to read:

16 Section 4404.1. Physical and Psychological Medical
17 Examinations.--(a) A board may require that an applicant
18 conditionally appointed in accordance with section 4406 of this
19 act undergo a physical or psychological medical examination as a
20 condition of permanent appointment. Physical medical
21 examinations, if required, shall be under the direction of a

1 physician or other qualified medical professional. Psychological
2 medical examinations, if required, shall be under the direction
3 of a psychiatrist or psychologist.

4 (b) A physician, other qualified medical professional,
5 psychiatrist or psychologist shall be appointed by council and
6 shall render an opinion as to whether the conditional appointee
7 has a physical or mental condition which calls into question his
8 or her ability to perform all of the essential functions of the
9 position for which he or she was conditionally appointed.

10 (c) If the opinion rendered by the physician, other
11 qualified medical professional, psychiatrist or psychologist
12 calls into question the conditional appointee's ability to
13 perform all essential functions of a position, the director of
14 the department within which the position is to be filled shall
15 meet with the conditional appointee for the purpose of having
16 one or more interactive discussions focused on the issue of
17 whether the conditional appointee can, with or without
18 reasonable accommodation, perform all the essential functions of
19 the position.

20 (d) If, at the conclusion of the interactive discussion
21 process, the department director determines that the conditional
22 appointee is not qualified, the department director shall give
23 written notice to the conditional appointee and the board.

24 (e) Nothing in this act shall be construed as authorizing
25 physical or psychological medical examinations prior to
26 conditional appointment in accordance with section 4406 of this
27 act.

28 (f) As used in this section, the following definitions shall
29 apply:

30 "Medical examination" shall mean any examination, procedure,

1 inquiry or test designed to obtain information about medical
2 history or a physical or mental condition which might disqualify
3 an applicant if it would prevent the applicant from performing,
4 with or without reasonable accommodation, all of the essential
5 functions of the position.

6 "Physician" shall have the meaning given to it in 1 Pa.C.S. §
7 1991 (relating to definitions).

8 "Qualified medical professional" shall mean an individual, in
9 collaboration with or under the supervision or direction of a
10 physician, as may be required by law, who is licensed:

11 (1) as a physician assistant pursuant to the act of December
12 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act
13 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),
14 known as the "Osteopathic Medical Practice Act"; or

15 (2) as a certified registered nurse practitioner pursuant to
16 the act of May 22, 1951 (P.L.317, No.69), known as "The
17 Professional Nursing Law."

18 SECTION 2. SECTION 4405 OF THE ACT IS AMENDED TO READ: ←

19 SECTION 4405. GRADING FOR DISCHARGED SERVICEMEN.--WHEN ANY
20 PERSON WHO WAS ENGAGED IN THE MILITARY SERVICE OF THE UNITED
21 STATES DURING ANY MILITARY ENGAGEMENT IN WHICH THE UNITED STATES
22 PARTICIPATED, AND HAS AN HONORABLE DISCHARGE THEREFROM, SHALL
23 TAKE ANY EXAMINATION FOR APPOINTMENT [OR PROMOTION], HIS
24 EXAMINATION SHALL BE MARKED OR GRADED IN THE SAME MANNER AS
25 PROVIDED FOR ALL OTHER EXAMINATIONS. WHEN THE EXAMINATION OF ANY
26 SUCH PERSON IS COMPLETED AND GRADED, IF THE GRADE IS PASSING,
27 THEN SUCH GRADING OR PERCENTAGE AS THE EXAMINATION MERITS SHALL
28 BE INCREASED BY FIFTEEN PER CENTUM, AND SUCH TOTAL MARK OR GRADE
29 SHALL REPRESENT THE FINAL GRADE OR CLASSIFICATION OF SUCH PERSON
30 AND SHALL DETERMINE HIS OR HER ORDER OF STANDING ON THE ELIGIBLE

1 LIST. FOR THE PURPOSE OF THIS ARTICLE, THE MILITARY SERVICE
2 MEANS THE ARMY, NAVY, MARINES, AIR FORCE, COAST GUARD, AND ANY
3 BRANCH OR UNIT THEREOF; AND SERVICEMEN MEANS THE MEMBERS
4 THEREOF, INCLUDING WOMEN; AND MILITARY ENGAGEMENT INCLUDES LAND,
5 NAVAL AND AIR ENGAGEMENTS.

6 Section ~~2~~ 3. Section 4406 of the act, amended October 13, ←
7 1965 (P.L.579, No.300), is amended to read:

8 Section 4406. Selection of Appointee from Certified List of
9 Applicants.--[Said] THE boards shall make and keep, in numerical ←
10 order, a list containing the names of all applicants for civil
11 service positions in said city who may pass the required [mental
12 and physical examinations.] examinations, including any required
13 physical fitness or agility examinations that are job-related
14 and consistent with business necessity. Where more than one
15 person takes examinations for any of said positions at the same
16 time, the names of all those successfully passing such
17 examination shall be entered upon the list of eligible names in
18 the order of their respective percentages, the highest coming
19 first. The board shall furnish to council a certified copy of
20 all lists so prepared and kept. Wherever any vacancy shall occur
21 in any civil service position in said city, the city council
22 shall make written application to the president of the proper
23 board, who shall forthwith certify to the city council, in
24 writing, the three names on the list of applicants for such
25 position having the highest percentage, but if there be less
26 than three eligible names on such list, the board shall certify
27 such name or names. Thereupon the director of the department in
28 which such appointment is to be made shall nominate to the city
29 council a person from the list submitted to fill such vacancy.
30 If the city council approves such nomination, the person

1 nominated shall be conditionally appointed by council to fill
2 such vacancy, and shall be assigned for service in the
3 department[.], subject to any physical or psychological medical
4 examinations that may be required by the appropriate examining
5 board as a condition of permanent appointment in accordance with
6 section 4404.1 of this act. If the council does not approve such
7 nomination, or if the appointee is determined by the medical
8 examination process to be unqualified, then the director of the
9 department in which such appointment is to be made shall submit
10 another nomination for such position from the remaining names,
11 if any, and if such nomination is not approved by the council,
12 or if the appointee is determined by the medical examination
13 process to be unqualified, he shall submit the third name, if
14 any. The person whose nomination by the director is approved by
15 the city council shall be appointed to fill such a position in
16 the department or as building inspector. [In all cases the ←
17 boards may recommend those in the employ of a department for
18 promotion in case the person recommended is competent for the
19 higher position.] The name of the person so appointed shall be ←
20 immediately stricken from the list of said board, and the names
21 of the rejected persons shall immediately be restored to their
22 proper place in said list: Provided, however, That if the name
23 of any applicant has been submitted to the said council and been
24 rejected three times or the appointee has been determined by the
25 medical examination process to be unqualified, then such name
26 shall be stricken from the eligible list. EXAMINATIONS FOR ←
27 PROMOTIONS FOR CIVIL SERVICE POSITIONS IN THE CITY SHALL BE
28 PURSUANT TO SECTION 4406.1. As used in this section, the term
29 "medical examination" shall have the meaning given it in section
30 4404.1 of this act.



1 SECTION 4. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
 2 SECTION 4406.1. PROMOTIONS.--THE CIVIL SERVICE BOARDS MAY
 3 RECOMMEND THOSE IN THE EMPLOY OF A DEPARTMENT FOR PROMOTION IN
 4 CASE THE PERSON RECOMMENDED IS COMPETENT FOR THE HIGHER
 5 POSITION. IF THE PROMOTION WILL BE BY EXAMINATION, THE CITY
 6 COUNCIL SHALL NOTIFY THE APPLICABLE CIVIL SERVICE BOARD OF ANY
 7 CIVIL SERVICE VACANCY IN THE CITY PURSUANT TO THIS ARTICLE WHICH
 8 IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE CERTIFICATION
 9 OF A LIST OF ELIGIBLES. THE BOARD SHALL CERTIFY FOR EACH
 10 EXISTING VACANCY, FROM THE ELIGIBLE LIST, THE NAMES OF THREE
 11 PERSONS ON THE LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE IN THE
 12 LAST PRECEDING PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD OF
 13 TWO YEARS NEXT PRECEDING THE DATE OF THE REQUEST FOR ELIGIBLES.
 14 IF THREE NAMES ARE NOT AVAILABLE, THE BOARD SHALL CERTIFY THE
 15 NAMES REMAINING ON THE LIST. THE CITY COUNCIL SHALL THEN, WITH
 16 SOLE REFERENCE TO THE MERITS AND FITNESS OF THE CANDIDATES, MAKE
 17 AN APPOINTMENT FROM THE NAMES CERTIFIED UNLESS THE CITY COUNCIL
 18 MAKES OBJECTIONS TO THE BOARD AS TO ONE OR MORE OF THE PERSONS
 19 CERTIFIED.

20 THE CITY COUNCIL SHALL HAVE POWER TO DETERMINE IN EACH
 21 INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A
 22 PROMOTION.

23 Section 3. ~~Nothing~~ 5. THE FOLLOWING SHALL APPLY: 

24 (1) NOTHING contained in the addition of section 4404.1
 25 of the act or the amendment of section 4406 of the act shall
 26 affect the validity of any civil service appointments made
 27 prior to the effective date of this section.

28 (2) NOTHING CONTAINED IN THIS ACT SHALL AFFECT THE 
 29 VALIDITY OF ANY CIVIL SERVICE PROMOTIONS MADE PRIOR TO THE
 30 EFFECTIVE DATE OF THIS SECTION.

1 Section 4 6. This act shall take effect immediately.

