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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 912 Session of  
2009

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

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
SEPTEMBER 29, 2010

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AN ACT

1 Amending the act of June 1, 1945 (P.L.1232, No.427), entitled  
2 "An act providing for and regulating the appointment,  
3 promotion and reduction in rank, suspension and removal of  
4 paid operators of fire apparatus in boroughs, incorporated  
5 towns and townships of the first class; creating a civil  
6 service commission in each borough, incorporated town and  
7 township of the first class; defining the duties of such  
8 civil service commission; imposing certain duties and  
9 expenses on boroughs, incorporated towns and townships of the  
10 first class; imposing penalties; and repealing inconsistent  
11 laws," further providing for general provisions relating to  
12 examinations, for rejection of applicant and hearing, for  
13 manner of filling appointments, for probationary period, FOR ←  
14 PROMOTIONS and for physical examinations.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. Section 11 of the act of June 1, 1945 (P.L.1232,  
18 No.427), entitled "An act providing for and regulating the  
19 appointment, promotion and reduction in rank, suspension and  
20 removal of paid operators of fire apparatus in boroughs,  
21 incorporated towns and townships of the first class; creating a  
22 civil service commission in each borough, incorporated town and  
23 township of the first class; defining the duties of such civil

1 service commission; imposing certain duties and expenses on  
2 boroughs, incorporated towns and townships of the first class;  
3 imposing penalties; and repealing inconsistent laws," amended  
4 October 17, 1980 (P.L.1078, No.180), is amended to read:

5 Section 11. General Provisions Relating to Examinations.--

6 (a) Each commission shall make rules and regulations to be  
7 approved, as provided in section six hereof, providing for the  
8 examinations of applicants for positions as fire apparatus  
9 operators and for promotion thereof, which rules and regulations  
10 shall prescribe the minimum qualifications of all applicants to  
11 be examined and passing grades. All examinations for promotions,  
12 or positions as fire apparatus operators of any municipality,  
13 shall be practical in character and shall relate to such  
14 matters, and include such inquiries as will test the merit and  
15 fitness of the persons examined to discharge the duties of the  
16 employment sought by them.

17 All examinations shall be open to all applicants who have the  
18 minimum qualifications required by the rules and regulations.

19 Each applicant for examination shall:

20 (1) be subject to the regulations adopted by the commission  
21 [and shall be required to submit to a physical examination  
22 either before or after being admitted to the regular examination  
23 held by the commission.];

24 (2) either before or after the written examination, be  
25 required to submit to a physical fitness or agility examination  
26 that is job-related and consistent with business necessity; and

27 (3) if made a conditional offer of employment, be given a  
28 physical and psychological medical examination in accordance  
29 with section nineteen of this act.

30 (b) Public notice of the time and place of every

1 examination, together with the information as to the kind of  
2 position or place to be filled, shall be given by publication,  
3 once in a newspaper of general circulation in the municipality,  
4 or in a newspaper circulating generally in the municipality at  
5 least two weeks prior to each examination, and a copy of the  
6 notice shall be prominently posted in the office of the  
7 commission or other public place.

8 (c) The commission shall post in its office the [eligible] ←  
9 ELIGIBILITY list containing the names and grades of those who  
10 have passed the examination for A position. ←

11 [Under this act, soldiers as defined by the act, approved the  
12 fifth day of August, one thousand nine hundred forty-one  
13 (Pamphlet Laws, eight hundred seventy-two), who have  
14 successfully passed the examination shall be given the  
15 additional credits provided for by said act.]

16 Section 2. Sections 13, 14 ~~and 16~~, 16 AND 18 of the act are ←  
17 amended to read:

18 Section 13. Rejection of Applicant; Hearing.--(a) The  
19 commission may refuse to examine any applicant, or if examined,  
20 may refuse to certify, after examination, any person who is  
21 found to lack any of the minimum qualifications for examination  
22 prescribed in the rules and regulations adopted for the position  
23 or employment for which he has applied, or who is physically  
24 [disabled and] unfit for the performance of the duties of the  
25 position to which he seeks employment, or who is [addicted to  
26 the habitual use of intoxicating liquors or drugs,] illegally  
27 using a controlled substance, as defined in section 102 of the  
28 Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802),  
29 or who has been guilty of any crime involving moral turpitude,  
30 or of infamous or notoriously disgraceful conduct, or who has

1 been dismissed from public service for delinquency or misconduct  
2 in office, or who is affiliated with any group whose policies or  
3 activities are subversive to the form of government set forth in  
4 the Constitutions and laws of the United States and  
5 Pennsylvania.

6 (b) If any applicant or person [feels himself] IS aggrieved ←  
7 by [the action] REFUSAL of the commission [in refusing] to ←  
8 examine [him] OR CERTIFY THE APPLICANT, or to certify him as ←  
9 eligible after examination, the commission shall, at the request  
10 of [such person] THE APPLICANT, within ten days, appoint a time ←  
11 and place [where he may appear personally and by council, ←  
12 whereupon] FOR A PUBLIC HEARING, WITH OR WITHOUT COUNSEL, AT ←  
13 WHICH TIME the commission shall [then] TAKE TESTIMONY AND review ←  
14 its refusal to [make such] PROVIDE examination [of] OR ←  
15 certification [and take such testimony as may be offered]. The ←  
16 decision of the commission shall be final.

17 Section 14. Eligibility List and Manner of Filling  
18 Appointments.--(a) At the completion of the testing process,  
19 including any background, physical agility or other  
20 examinations, with the exception of physical and psychological  
21 medical examinations pursuant to section nineteen of this act,  
22 the commission shall rank the candidates who have satisfied the  
23 minimum requirements for appointment on an eligibility list. The  
24 eligibility list shall contain the names of individuals eligible  
25 for appointment listed from highest to lowest based on their  
26 scores on the examinations administered by the commission and  
27 any points for which the applicant was entitled by virtue of 51  
28 Pa.C.S. Ch. 71 (relating to veterans' preference). The  
29 eligibility list shall be valid for one year from the date the  
30 commission ranks all passing applicants, assigns veterans'

1 preference points and formally adopts the eligibility list. The ←  
2 commission may, at its sole discretion before the original  
3 expiration date, by a vote of the majority of the commission at  
4 a duly authorized commission meeting, extend the ← PRIOR TO ←  
5 EXPIRATION OF THE ONE-YEAR PERIOD, THE COMMISSION MAY EXTEND THE  
6 VALIDITY OF THE ELIGIBILITY list for up to an additional twelve  
7 months BY A MAJORITY VOTE OF THE COMMISSION AT A DULY AUTHORIZED ←  
8 COMMISSION MEETING. In the absence of a lawful extension by the  
9 commission, the list shall expire AT THE END OF THE ORIGINAL ←  
10 ONE-YEAR PERIOD.

11 (b) Every position or employment, unless filled by  
12 promotion, reinstatement or reduction, shall be filled only in  
13 the following manner:

14 The appointing officer or body of the municipality shall  
15 notify the commission of any vacancy as a fire apparatus  
16 operator which is to be filled and shall request the  
17 certification of [a list of eligibles] AN ELIGIBILITY LIST. The ←  
18 commission shall certify [for each existing vacancy from the ←  
19 eligible list,] the names of THE three persons [therefrom] ON ←  
20 THE ELIGIBILITY LIST who have received the highest average in  
21 the last preceding examination[, held within a period of one  
22 year next preceding the date of the request for such eligibles]  
23 FOR EACH VACANCY. The appointing officer or body shall ←  
24 [thereupon, with sole reference to the merits and fitness of the ←  
25 candidates,] make [an] a conditional appointment from the three ←  
26 names certified, BASED SOLELY ON THE MERITS AND FITNESS OF THE ←  
27 CANDIDATES, unless [he or they make objections] THE APPOINTING ←  
28 OFFICER OR BODY MAKES AN OBJECTION to the commission [as to] ←  
29 REGARDING one or more of the persons [so certified] ON THE ←  
30 ELIGIBILITY LIST for any reason [stated in] PROVIDED UNDER ←

1 section thirteen of this act. Should [such objections] AN ←  
2 OBJECTION be sustained by the commission, as provided in [said] ←  
3 section THIRTEEN OF THIS ACT, or if the conditional appointee is ←  
4 determined to be unqualified in accordance with the procedures ←  
5 set forth in section nineteen of this act, the [commissioner] ←  
6 COMMISSION shall [thereupon] strike the name of [such] THE ←  
7 person from the [eligible] ELIGIBILITY list and certify the next ←  
8 highest name for each name stricken [~~off-~~] FROM THE ELIGIBILITY ←  
9 LIST. As each subsequent vacancy occurs in the same or another  
10 position precisely the same procedure shall be followed.

11 Section 16. Probationary Period.--All original appointments  
12 to positions as fire apparatus operators shall be for a  
13 probationary period of six months, but during the probationary  
14 period an appointee may be dismissed only for a cause specified  
15 in section thirteen of this act or because of incapacity for  
16 duty due to the use of alcohol or drugs. If at the close of the  
17 probationary period the conduct or fitness of the probationer  
18 has not been satisfactory to the appointing body or officer, the  
19 probationer shall be notified in writing that he will not  
20 receive a permanent appointment[. Thereupon his], AND THE ←  
21 appointment shall cease[, otherwise,]. IF THE PROBATIONER IS NOT ←  
22 NOTIFIED OR DISMISSED IN ACCORDANCE WITH THIS SECTION his  
23 retention shall be equivalent to a permanent appointment.

24 SECTION 18. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON MERITS ←  
25 TO BE ASCERTAINED BY EXAMINATION TO BE PRESCRIBED BY THE  
26 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE  
27 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT  
28 AND FITNESS OF PERSONS SEEKING PROMOTION. THE APPOINTING OFFICER  
29 OR BODY SHALL NOTIFY THE COMMISSION OF A VACANCY IN THE POLICE  
30 FORCE WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE

1 CERTIFICATION OF ~~A LIST OF ELIGIBLES~~ AN ELIGIBILITY LIST. THE ←  
2 COMMISSION SHALL CERTIFY FOR EACH EXISTING VACANCY, ~~FROM THE~~ ←  
3 ~~ELIGIBLE LIST,~~ THE NAMES OF THE THREE PERSONS ON THE ELIGIBILITY ←  
4 LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE SCORE IN THE LAST ←  
5 PRECEDING ~~PROMOTIONAL~~ PROMOTION EXAMINATION HELD WITHIN A PERIOD ←  
6 OF TWO YEARS ~~NEXT~~ PRECEDING THE DATE OF THE REQUEST FOR ←  
7 ~~ELIGIBLES~~ THE ELIGIBILITY LIST. IF THREE NAMES ARE NOT ←  
8 AVAILABLE, THE COMMISSION SHALL CERTIFY THE NAMES REMAINING ON  
9 THE ELIGIBILITY LIST. THE APPOINTING OFFICER OR BODY SHALL ~~THEN,~~ ←  
10 ~~WITH SOLE REFERENCE TO THE MERITS AND FITNESS OF THE CANDIDATES,~~  
11 MAKE AN APPOINTMENT FROM THE NAMES CERTIFIED BASED SOLELY ON THE ←  
12 MERITS AND FITNESS OF THE CANDIDATE UNLESS THE APPOINTING  
13 OFFICER OR BODY MAKES OBJECTIONS TO THE COMMISSION ~~AS TO ONE OR~~ ←  
14 ~~MORE OF THE PERSONS SO CERTIFIED~~ REGARDING ANY OF THE PERSONS ON ←  
15 THE ELIGIBILITY LIST FOR ANY REASON PROVIDED UNDER SECTION  
16 THIRTEEN OF THIS ACT.

17 THE APPOINTING BODY OR OFFICER SHALL HAVE POWER TO DETERMINE  
18 WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A PROMOTION.

19 Section 3. Section 19 the of the act, amended October 17,  
20 1980 (P.L.1078, No.180), is amended to read:

21 Section 19. Physical and Psychological Medical  
22 Examinations.--[All applicants for examination shall undergo a  
23 physical examination as provided in section 11 which shall be  
24 conducted under the supervision of a doctor of medicine  
25 appointed by the civil service commission. No person shall be  
26 eligible for appointment until said doctor certifies that the  
27 applicant is free from any bodily or mental defects, deformity,  
28 or disease that might incapacitate him from the discharge of the  
29 duties of the position desired.](a) An applicant selected from  
30 the eligibility list shall receive a conditional offer of

1 employment. The offer of employment shall be conditioned upon  
2 the conditional appointee undergoing a physical and  
3 psychological medical examination and a determination that the  
4 conditional appointee is capable of performing all the essential  
5 functions of the position. Physical medical examinations shall  
6 be under the direction of a physician or other qualified medical  
7 professional. Psychological medical examinations shall be under  
8 the direction of a psychiatrist or psychologist.

9 (b) The physician or other qualified medical professional  
10 and the psychiatrist or psychologist shall be appointed by  
11 council and shall render an opinion as to whether the  
12 conditional appointee has a physical or mental condition which  
13 calls into question ~~his or her~~ THE PERSON'S ability to perform ←  
14 all of the essential functions of the position for which ~~he or~~ ←  
15 ~~she~~ THE PERSON was conditionally appointed. ←

16 (c) If the opinion rendered by the physician, other  
17 qualified medical professional, psychiatrist or psychologist  
18 calls into question the conditional appointee's ability to  
19 perform all essential functions of a position, a person ~~or~~ ←  
20 ~~persons~~ designated by the appointing officer or body shall meet  
21 with the conditional appointee for the purpose of having one or  
22 more interactive discussions ~~focused on the issue of~~ ON whether ←  
23 the conditional appointee can, with or without reasonable  
24 accommodation, perform all the essential functions of the  
25 position.

26 (d) If, at the conclusion of the interactive discussion  
27 ~~process~~ UNDER SUBSECTION (C), the appointing officer or body ←  
28 determines that the conditional appointee is not qualified, the  
29 appointing officer or body shall give written notice to the  
30 conditional appointee and the commission.

1 (e) Nothing in this act shall be construed as authorizing TO ←  
2 AUTHORIZE physical or psychological medical examinations prior  
3 to conditional appointment.

4 (f) As used in this section, the following definitions shall  
5 apply:

6 "Medical examination" shall mean an examination, procedure,  
7 inquiry or test designed to obtain information about medical  
8 history or a physical or mental condition which might disqualify  
9 an applicant if it would prevent the applicant from performing,  
10 with or without a reasonable accommodation, all of the essential  
11 functions of the position.

12 "Physician" shall have the meaning given to it in 1 Pa.C.S. §  
13 1991 (relating to definitions).

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

17 (1) as a physician assistant pursuant to the act of December  
18 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act  
19 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),  
20 known as the "Osteopathic Medical Practice Act"; or

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

24 Section 4. Nothing contained in the amendment of section 11,  
25 13, 14, 16, 18 or 19 of the act shall affect the validity of any ←  
26 civil service appointments OR PROMOTIONS made prior to the ←  
27 effective date of this section. ~~NOTHING CONTAINED IN THE~~ ←  
28 ~~AMENDMENT OF SECTION 18 OF THE ACT SHALL AFFECT THE VALIDITY OF~~  
29 ~~ANY CIVIL SERVICE PROMOTIONS MADE PRIOR TO THE EFFECTIVE DATE OF~~  
30 ~~THIS SECTION.~~

1 Section 5. This act shall take effect immediately.