

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 908 Session of  
2009INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND  
WOZNIAK, JUNE 5, 2009AS 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.

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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,

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

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

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

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

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

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

SECTION 4405. GRADING FOR DISCHARGED SERVICEMEN.--WHEN ANY PERSON WHO WAS ENGAGED IN THE MILITARY SERVICE OF THE UNITED STATES DURING ANY MILITARY ENGAGEMENT IN WHICH THE UNITED STATES PARTICIPATED, AND HAS AN HONORABLE DISCHARGE THEREFROM, SHALL TAKE ANY EXAMINATION FOR APPOINTMENT [OR PROMOTION], HIS EXAMINATION SHALL BE MARKED OR GRADED IN THE SAME MANNER AS PROVIDED FOR ALL OTHER EXAMINATIONS. WHEN THE EXAMINATION OF ANY SUCH PERSON IS COMPLETED AND GRADED, IF THE GRADE IS PASSING, THEN SUCH GRADING OR PERCENTAGE AS THE EXAMINATION MERITS SHALL BE INCREASED BY FIFTEEN PER CENTUM, AND SUCH TOTAL MARK OR GRADE SHALL REPRESENT THE FINAL GRADE OR CLASSIFICATION OF SUCH PERSON 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.

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SECTION 4. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

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

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

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



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

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



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

