

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 909** Session of
2009

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

SENATOR EICHELBERGER, LOCAL GOVERNMENT, AS AMENDED, JUNE 30,
2009

AN ACT

1 Amending the act of June 24, 1931 (P.L.1206, No.331), entitled
2 "An act concerning townships of the first class; amending,
3 revising, consolidating, and changing the law relating
4 thereto," further providing for general provisions relating
5 to examinations, for rejection of applicant and hearing, for
6 manner of filling appointments, for probation period and for
7 physical examinations.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 635 of the act of June 24, 1931
11 (P.L.1206, No.331), known as The First Class Township Code,
12 reenacted and amended May 27, 1949 (P.L.1955, No.569) and
13 amended December 4, 1980 (P.L.1101, No.188), is amended to read:

14 Section 635. General Provisions Relating to Examinations.--
15 (a) The commission shall make rules and regulations to be
16 approved as provided in section 630 hereof, providing for the
17 examination of applicants for positions in the police force and
18 as paid operators of fire apparatus and for promotions, which
19 rules and regulations shall prescribe the minimum qualifications
20 of all applicants to be examined and the passing grades. All

1 examinations for positions or promotions shall be practical in
2 character and shall relate to such matters and include such
3 inquiries as will fairly test the merit and fitness of the
4 persons examined to discharge the duties of the employment
5 sought by them. All examinations shall be open to all applicants
6 who have the minimum qualifications required by the rules and
7 regulations. Each applicant for examination shall:

8 (1) be subject to the regulations adopted by the commission
9 [and shall be required to submit to a physical examination];

10 (2) either before or after being admitted to the regular
11 examination held by the commission, be required to submit to a
12 physical fitness or agility examination that is job-related and
13 consistent with business necessity; and

14 (3) if made a conditional offer of employment, be given a
15 physical and psychological medical examination in accordance
16 with section 643 of this act.

17 (b) Public notice of the time and place of every
18 examination, together with the information as to the kind of
19 position or place to be filled, shall be given by publication
20 once in a newspaper of general circulation in the township or in
21 a newspaper circulating generally in the township at least two
22 weeks prior to each examination, and a copy of the notice shall
23 be prominently posted in the office of the commission or other
24 public place.

25 (c) The commission shall post in its office the eligible
26 list containing the names and grades of those who have passed
27 the examination. Persons male or female who served in the
28 military or naval service of the United States during any war in
29 which the United States has been, is now, or shall hereafter be
30 engaged and who have honorable discharges from such service, who

1 have successfully passed the examination, shall be given the
2 additional credits and preference in appointment and promotion
3 provided for by law.

4 Section 2. Section 637 of the act, added May 27, 1949
5 (P.L.1955, No.569), is amended to read:

6 Section 637. Rejection of Applicant; Hearing.--(a) The
7 commission may refuse to examine or, if examined, may refuse to
8 certify after examination as eligible, any applicant who is
9 found to lack any of the minimum qualifications for examination
10 prescribed in the rules and regulations adopted for the position
11 or employment for which he has applied, or who is physically
12 [disabled and] unfit for the performance of the duties of the
13 position to which he seeks employment, or who is [addicted to
14 the habitual use of intoxicating liquors or narcotic drugs]
15 illegally using a controlled substance, as defined in section
16 102 of the Controlled Substances Act (Public Law 91-513, 21
17 U.S.C. § 802), or who has been guilty of any crime involving
18 moral turpitude or of infamous or notoriously disgraceful
19 conduct, or who has been dismissed from public service for
20 delinquency or misconduct in office, or who is affiliated with
21 any group whose politics or activities are subversive to the
22 form of government set forth in the Constitution and laws of the
23 United States and Pennsylvania.

24 (b) If any applicant or person feels himself aggrieved by
25 the action of the commission in refusing to examine him or to
26 certify him as eligible after examination, the commission shall,
27 at the request of such person, within ten (10) days appoint a
28 time and place where he may appear personally and by counsel.
29 Whereupon, the commission shall then review its refusal to make
30 such examination or certification and take such testimony as may

1 be offered. The decision of the commission shall be final.

2 Section 3. Section 638 of the act, amended December 14, 1992
3 (P.L.864, No.136), is amended to read:

4 Section 638. Manner of Filling Appointments.--(a) At the
5 completion of the testing process, including any background,
6 physical agility or other examinations, with the exception of
7 physical and psychological medical examinations pursuant to
8 section 643 of this act, the commission shall rank the
9 candidates who have satisfied the minimum requirements for
10 appointment on an eligibility list. The eligibility list shall
11 contain the names of individuals eligible for appointment listed
12 from highest to lowest based on their scores on the examinations
13 administered by the commission and any points for which the
14 applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating
15 to veterans' preference). The eligibility list will be valid for
16 one year from the date the commission ranks all passing
17 applicants, assigns veterans' preference points and formally
18 adopts the eligibility list. The commission may, at its sole
19 discretion before the original expiration date, by a vote of the
20 majority of the commission at a duly authorized commission
21 meeting, extend the list for up to an additional twelve months.
22 In the absence of a lawful extension by the commission, the list
23 shall expire. The commission may, at its sole discretion, void ←
24 an eligibility list at any time for any reason so long as the
25 voiding of the list is not designed to circumvent this act.

26 (b) Every position or employment in the police force or as
27 paid operators of fire apparatus except that of chief of police
28 or chief of the fire department or equivalent shall be filled
29 only in the following manner: the township commissioners shall
30 notify the commission of any vacancy which is to be filled and

1 shall request the certification of a list of eligibles. The
2 commission shall certify for each existing vacancy from the
3 eligible list the names of three persons thereon who have
4 received the highest average. The township commissioners shall,
5 thereupon, with sole reference to the merits and fitness of the
6 candidates, make [an] a conditional appointment from the three
7 names certified unless they make objections to the commission as
8 to one or more of the persons so certified for any of the
9 reasons stated in section 637 of this subdivision. Should such
10 objections be sustained by the commission, as provided in said
11 section, or if the conditional appointee is determined to be
12 unqualified in accordance with the procedures set forth in
13 section 643 of this act, the commission shall thereupon strike
14 the name of such person from the eligible list and certify the
15 next highest name for each name stricken off. As each subsequent
16 vacancy occurs in the same or another position, precisely the
17 same procedure shall be followed.

18 (c) A vacancy in an existing position in the police force or
19 as a paid operator of fire apparatus which occurs as a result of
20 retirement, resignation, disability or death may be filled by
21 the township commissioners by the reappointment or reinstatement
22 of a former employe of the police force or fire department who
23 had previously complied with the provisions of this section. No
24 examination, other than a physical examination as directed by
25 the Civil Service Commission, shall be required in a case of
26 reappointment or reinstatement to the force or department with
27 which the employe previously served, except at the discretion of
28 the township commissioners or as otherwise required by law.

29 (d) In the case of a vacancy in the office of chief of
30 police or chief of the fire department or equivalent official,

1 the township commissioners may nominate a person to the
2 commission. It shall thereupon become the duty of the commission
3 to subject such person to a non-competitive examination and if
4 such person shall be certified by the commission as qualified he
5 may then be appointed to such position and thereafter shall be
6 subject to all the provisions of this subdivision.

7 Section 4. Section 640 of the act, amended May 17, 1972
8 (P.L.293, No.72), is amended to read:

9 Section 640. Probation Period.--All original appointments to
10 any position in the police force or as paid operators of fire
11 apparatus shall be for a probationary period of not less than
12 six months and not more than one year, but during the
13 probationary period an appointee may be dismissed only for a
14 cause specified in [subdivision 637 of this subsection.] section
15 637 of this act or because of incapacity for duty due to the use
16 of alcohol or drugs. If at the close of a probationary period
17 the conduct or fitness of the probationer has not been
18 satisfactory to the township commissioners, the probationer
19 shall be notified in writing that he will not receive a
20 permanent appointment. Thereupon, his appointment shall cease;
21 otherwise, his retention shall be equivalent to a permanent
22 appointment.

23 Section 5. Section 643 of the act, amended December 4, 1980
24 (P.L.1101, No.188), is amended to read:

25 Section 643. Physical and Psychological Medical
26 Examinations.--[All applicants for examination shall undergo a
27 physical examination as provided in section 635 which shall be
28 conducted under the supervision of a doctor of medicine
29 appointed by the commission. No person shall be eligible for
30 appointment until said doctor certifies that the applicant is

1 free from any bodily or mental defects, deformity or disease
2 that might incapacitate him from the discharge of the duties of
3 the position desired.] (a) An applicant selected from the
4 eligibility list shall receive a conditional offer of
5 employment. The offer of employment shall be conditioned upon
6 the conditional employee undergoing a physical and psychological
7 medical examination and a determination that the conditional
8 employee is capable of performing all the essential functions of
9 the position. Physical medical examinations shall be under the
10 direction of a physician or other qualified medical
11 professional. Psychological medical examinations shall be under
12 the direction of a psychiatrist or psychologist.

13 (b) The physician or other qualified medical professional
14 and the psychiatrist or psychologist shall be appointed by the
15 township commissioners and shall render an opinion as to whether
16 the conditional appointee has a physical or mental condition
17 which calls into question his or her ability to perform all of
18 the essential functions of the position for which he or she was
19 conditionally appointed.

20 (c) If the opinion rendered by the medical examiner calls
21 into question the conditional appointee's ability to perform all
22 essential functions of a position, a person or persons
23 designated by the township commissioners shall meet with the
24 conditional appointee for the purpose of having one or more
25 interactive discussions focused on the issue of whether the
26 conditional appointee can, with or without reasonable
27 accommodation, perform all the essential functions of the
28 position.

29 (d) If, at the conclusion of the interactive discussion
30 process, the township commissioners determine that the

1 conditional appointee is not qualified, the township
2 commissioners shall give written notice to the conditional
3 appointee and the Civil Service Commission.

4 (e) Nothing in this act shall be construed as authorizing
5 physical or psychological medical examinations prior to
6 conditional appointment.

7 (f) As used in this section, the term "medical examination"
8 shall mean any examination, procedure, inquiry or test designed
9 to obtain information about medical history or a physical or
10 mental condition which might disqualify an applicant if it would
11 prevent the applicant from performing, with or without a
12 reasonable accommodation, all of the essential functions of the
13 position.

14 Section 6. Nothing contained in the amendment of sections
15 635, 637, 638, 640 and 643 of the act shall affect the validity
16 of any civil service appointments made prior to the effective
17 date of this section.

18 Section 7. This act shall take effect immediately.