

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 910** Session of
2009

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

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY
26, 2010

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),
2 entitled "An act concerning boroughs, and revising, amending
3 and consolidating the law relating to boroughs," as to civil
4 service for police and firemen, further providing for general
5 provisions relating to examinations, rejection of applicant
6 and hearing, manner of filling appointments, probationary
7 period and physical examination.

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

10 Section 1. Sections 1181 and 1183 of the act of February 1,
11 1966 (1965 P.L.1656, No.581), known as The Borough Code, are
12 amended to read:

13 Section 1181. General Provisions Relating to Examinations.--

14 (a) The commission shall make rules and regulations, to be
15 approved as provided in section 1176 hereof, providing for the
16 examination of applicants for positions in the police force and
17 as paid operators of fire apparatus and for promotions, which
18 rules and regulations shall prescribe the minimum qualifications
19 of all applicants to be examined and the passing grades. All
20 examinations for positions or promotions shall be practical in

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

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

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

13 (3) if made a conditional offer of employment, be given a
14 physical and psychological medical examination as provided in
15 section 1189 of this act.

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

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

1 provided for by law.]

2 Section 1183. Rejection of Applicant; Hearing.--(a) The
3 commission may refuse to examine, or, if examined, may refuse to
4 certify after examination as eligible, any applicant who is
5 found to lack any of the minimum qualifications for examination
6 prescribed in the rules and regulations adopted for the position
7 or employment for which he has applied, or who is physically
8 [disabled and] unfit for the performance of the duties of the
9 position to which he seeks employment, or [who is addicted to
10 the habitual use of intoxicating liquors or narcotic drugs,] who
11 is illegally using a controlled substance, as defined in section
12 102 of the Controlled Substances Act (Public Law 91-513, 21
13 U.S.C. § 802), or who has been guilty of any crime involving
14 moral turpitude, or of infamous or notoriously disgraceful
15 conduct, or who has been dismissed from public service for
16 delinquency or misconduct of office, or who is affiliated with
17 any group whose policies or activities are subversive to the
18 form of government set forth in the constitutions and laws of
19 the United States and Pennsylvania.

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

28 Section 2. Section 1184 of the act, amended May 2, 1986
29 (P.L.148, No.46), is amended to read:

30 Section 1184. Eligibility List and Manner of Filling

1 Appointments.--(a) At the completion of the testing process,
2 including any background, physical agility or other examination,
3 with the exception of any physical and psychological medical
4 examination pursuant to section 1189 of this act, the commission
5 shall rank the candidates who have satisfied the minimum
6 requirements for appointment on an eligibility list. The
7 eligibility list shall contain the names of individuals eligible
8 for appointment listed from highest to lowest based on their
9 scores on the examinations administered by the commission and
10 any points for which the applicant was entitled by virtue of 51
11 Pa.C.S. Ch. 71 (relating to veterans' preference). The
12 eligibility list will be valid for one year from the date the
13 commission ranks all passing applicants, assigns veterans'
14 preference points and formally adopts the eligibility list. The
15 commission may, at its sole discretion before the original
16 expiration date, by a vote of the majority of the commission at
17 a duly authorized commission meeting, extend the list for up to
18 an additional twelve months. In the absence of a lawful
19 extension by the commission, the list shall expire.

20 (b) Except as provided in subsection [(b)] (c), every
21 original position or employment in the police force or as paid
22 operators of fire apparatus, except that of chief of police or
23 chief of the fire department, or equivalent, shall be filled
24 only in the following manner: the council shall notify the
25 commission of any vacancy which is to be filled and shall
26 request the certification of a list of eligibles. The commission
27 shall certify for each existing vacancy from the eligible list,
28 the names of three persons thereon, or a lesser number where
29 three are not available, who have received the highest average.
30 The council shall thereupon, with sole reference to the merits

1 and fitness of the candidates, make [an] a conditional
2 appointment from the three names certified, unless they make
3 objections to the commission as to one or more of the persons so
4 certified for any of the reasons stated in section 1183 of this
5 act. Should such objections be sustained by the commission, as
6 provided in said section, or if the conditional appointee is
7 determined to be unqualified in accordance with the procedures
8 set forth in section 1189 of this act, the commission shall
9 thereupon strike the name of such person from the eligible list
10 and certify the next highest name for each name stricken off. As
11 each subsequent vacancy occurs in the same or another position
12 precisely the same procedure shall be followed.

13 [(b)] (c) Any vacancy in an existing position in the police
14 force or as a paid operator of fire apparatus which occurs as a
15 result of retirement, resignation, disability or death may be
16 filled by council by the reappointment or reinstatement of a
17 former employe of the police force or fire department who had
18 previously complied with the provisions of this section. No
19 examination, other than a physical examination as directed by
20 the civil service commission, shall be required in any case of
21 reappointment or reinstatement.

22 [(c)] (d) In the case of a vacancy in the office of chief of
23 police or chief of the fire department, or equivalent official,
24 the appointive power may nominate a person to the commission. It
25 shall thereupon become the duty of the commission to subject
26 such person to a non-competitive examination, and if such person
27 shall be certified by the commission as qualified, he may then
28 be appointed to such position, and thereafter shall be subject
29 to all the provisions of this subdivision.

30 Section 3. Section 1186 of the act is amended to read:

1 Section 1186. Probationary Period.--All original
2 appointments to any position in the police force or as paid
3 operators of fire apparatus shall be for a probationary period
4 of not less than six months, and not more than one year, but
5 during the probationary period an appointee may be dismissed
6 only for a cause specified in section 1183 of this act or
7 because of incapacity for duty due to the use of alcohol or
8 drugs. If at the close of a probationary period the conduct of
9 fitness of the probationer has not been satisfactory to the
10 council, the probationer shall be notified in writing that he
11 will not receive a permanent appointment. Thereupon, his
12 appointment shall cease; otherwise his retention shall be
13 equivalent to a permanent appointment.

14 Section 4. Section 1189 of the act, amended October 17, 1980
15 (P.L.1082, No.182), is amended to read:

16 Section 1189. Physical and Psychological Medical
17 Examination.--[All applicants for examination shall undergo a
18 physical examination, either before or after the written
19 examination, which shall be conducted under the supervision of a
20 physician appointed by the commission. No person shall be
21 eligible for appointment until such physician certifies that the
22 applicant is free from any bodily or mental defect, deformity or
23 disease that might incapacitate him for the discharge of the
24 duties of the position desired.] (a) An applicant selected from
25 the eligibility list shall receive a conditional offer of
26 employment. The offer of employment shall be conditioned upon
27 the conditional appointee undergoing a physical and
28 psychological medical examination and a determination that the
29 conditional appointee is capable of performing all the essential
30 functions of the position. Physical medical examinations shall

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

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

11 (c) If the opinion rendered by the ~~medical examiner~~ ←
12 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←
13 PSYCHOLOGIST calls into question the conditional appointee's
14 ability to perform all essential functions of a position, a
15 person or persons designated by council shall meet with the
16 conditional appointee for the purpose of having one or more
17 interactive discussions focused on the issue of whether the
18 conditional appointee can, with or without reasonable
19 accommodation, perform all the essential functions of the
20 position.

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

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

28 (f) As used in this section, ~~the term "medical~~ THE FOLLOWING ←
29 DEFINITIONS SHALL 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 a 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 5. Nothing contained in this act shall affect the
19 validity of any civil service appointment made prior to the
20 effective date of this section.

21 Section 6. This act shall take effect immediately.