

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1365** Session of  
2008

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INTRODUCED BY ROBBINS, ERICKSON, REGOLA, STOUT AND WOZNIAK,  
APRIL 11, 2008

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AS AMENDED ON THIRD CONSIDERATION, JUNE 16, 2008

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## 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 in the manner specified in section 1184 of  
2 this act.

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

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

30 Section 2. Section 1184 of the act, amended May 2, 1986

1 (P.L.148, No.46), is amended to read:

2 Section 1184. Manner of Filling Appointments.--(a) At the  
3 completion of the testing process, including any background,  
4 physical agility or other examination, with the exception of any  
5 physical and psychological medical examination pursuant to  
6 section 1189 of this act, the commission shall rank the  
7 candidates who have satisfied the minimum requirements for  
8 appointment on an eligibility list. The eligibility list shall  
9 contain the names of individuals eligible for appointment listed  
10 from highest to lowest based on their scores on the examinations  
11 administered by the commission and any points for which the  
12 applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating  
13 to veterans' preference). The eligibility list will be valid for  
14 one year from the date the commission ranks all passing  
15 applicants, assigns veterans' preference points and formally  
16 adopts the eligibility list. The commission may, at its sole  
17 discretion before the original expiration date, by a vote of the  
18 majority of the commission at a duly authorized commission  
19 meeting, extend the list for up to an additional twelve months.  
20 In the absence of a lawful extension by the commission, the list  
21 shall expire. The commission may, at its sole discretion, void  
22 an eligibility list at any time for any reason so long as the  
23 voiding of the list is not designed to circumvent this act.

24 (b) Except as provided in subsection [(b)] (c), every  
25 original position or employment in the police force or as paid  
26 operators of fire apparatus, except that of chief of police or  
27 chief of the fire department, or equivalent, shall be filled  
28 only in the following manner: the council shall notify the  
29 commission of any vacancy which is to be filled and shall  
30 request the certification of a list of eligibles. The commission

1 shall certify for each existing vacancy from the eligible list,  
2 the names of three persons thereon, or a lesser number where  
3 three are not available, who have received the highest average.  
4 The council shall thereupon, with sole reference to the merits  
5 and fitness of the candidates, make an appointment from the  
6 three names certified, unless they make objections to the  
7 commission as to one or more of the persons so certified for any  
8 of the reasons stated in section 1183 of this act. Should such  
9 objections be sustained by the commission, as provided in said  
10 section, the commission shall thereupon strike the name of such  
11 person from the eligible list and certify the next highest name  
12 for each name stricken off. As each subsequent vacancy occurs in  
13 the same or another position precisely the same procedure shall  
14 be followed.

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

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

1 to all the provisions of this subdivision.

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

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

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

19 Section 1189. Physical and Psychological Medical  
20 Examination.--[All applicants for examination shall undergo a  
21 physical examination, either before or after the written  
22 examination, which] After an applicant has been selected from  
23 the eligibility list, the applicant shall receive a conditional  
24 offer of employment. The offer of employment shall be  
25 conditioned upon the applicant's successfully completing a  
26 physical and a psychological medical examination, which  
27 examinations shall be conducted under the supervision of a  
28 physician and a psychiatrist or psychologist appointed by the  
29 commission. No person shall be eligible for appointment until  
30 [such physician certifies] both the physician and the

1 psychiatrist or psychologist certify that the applicant is free  
2 from any bodily or mental defect, deformity or disease that  
3 might incapacitate him for the discharge of the duties of the  
4 position desired. For purposes of this section, the term  
5 "medical examination" shall mean any examination, procedure,  
6 inquiry or test designed to obtain information about medical  
7 history or a physical or mental defect or impairment. Nothing in  
8 this section shall preclude rules and regulations requiring  
9 physical fitness or agility examinations of applicants that are  
10 job related and consistent with business necessity, either  
11 before or after being admitted to the written examination held  
12 by the commission.

13 Section 5. Nothing contained in this act shall affect the  
14 validity of any civil service appointment made prior to the  
15 effective date of this section.

16 Section 6. This act shall take effect immediately.