

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1517 Session of 2009

INTRODUCED BY FREEMAN, GRUCELA, ROSS, GINGRICH, KESSLER AND CALTAGIRONE, MAY 26, 2009

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, SEPTEMBER 21, 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.

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 THE INDIVIDUAL'S ability to perform all of the essential ←
9 functions of the position for which he or she THE INDIVIDUAL 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, the
15 director of the department within which the position is to be
16 filled shall meet with the conditional appointee for the purpose
17 of having one or more interactive discussions ~~focused on the~~ ←
18 ~~issue of~~ ON whether the conditional appointee can, with or ←
19 without reasonable accommodation, perform all the essential
20 functions of the position.

21 (d) If, at the conclusion of the interactive discussion
22 ~~process~~ UNDER SUBSECTION (C), the department director determines ←
23 that the conditional appointee is not qualified, the department
24 director shall give written notice to the conditional appointee
25 and the board.

26 (e) Nothing in this act shall be construed as ~~authorizing~~ TO ←
27 AUTHORIZE physical or psychological medical examinations prior
28 to conditional appointment in accordance with section 4406 of
29 this act.

30 (f) As used in this section, the term "~~medical~~ THE FOLLOWING ←

1 DEFINITIONS SHALL APPLY:

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

8 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
9 1991 (RELATING TO DEFINITIONS).

10 "QUALIFIED MEDICAL PROFESSIONAL" SHALL MEAN AN INDIVIDUAL, IN
11 COLLABORATION WITH OR UNDER THE SUPERVISION OR DIRECTION OF A
12 PHYSICIAN, AS MAY BE REQUIRED BY LAW, WHO IS LICENSED:

13 (1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER
14 20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT
15 OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
16 KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

17 (2) AS A CERTIFIED REGISTERED NURSE PRACTITIONER PURSUANT TO
18 THE ACT OF MAY 22, 1951 (P.L.317, NO.69), KNOWN AS "THE
19 PROFESSIONAL NURSING LAW."

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

21 SECTION 4405. GRADING FOR DISCHARGED SERVICEMEN.--WHEN ANY
22 PERSON WHO WAS ENGAGED IN THE MILITARY SERVICE OF THE UNITED
23 STATES DURING ANY MILITARY ENGAGEMENT IN WHICH THE UNITED STATES
24 PARTICIPATED, AND HAS AN HONORABLE DISCHARGE THEREFROM, SHALL
25 TAKE ANY EXAMINATION FOR APPOINTMENT [OR PROMOTION, HIS], THE
26 EXAMINATION SHALL BE MARKED OR GRADED IN THE SAME MANNER AS
27 PROVIDED FOR ALL OTHER EXAMINATIONS. WHEN THE EXAMINATION OF
28 [ANY SUCH PERSON] THE DISCHARGED INDIVIDUAL IS COMPLETED AND
29 GRADED, IF THE GRADE IS PASSING, [THEN SUCH] THE GRADING OR
30 PERCENTAGE AS THE EXAMINATION MERITS SHALL BE INCREASED BY

1 FIFTEEN PER CENTUM, AND [SUCH] THE TOTAL MARK OR GRADE SHALL
2 REPRESENT THE FINAL GRADE OR CLASSIFICATION OF [SUCH PERSON] THE
3 DISCHARGED INDIVIDUAL AND SHALL DETERMINE [HIS OR HER] THE
4 INDIVIDUAL'S ORDER OF STANDING ON THE [ELIGIBLE] ELIGIBILITY
5 LIST. FOR THE PURPOSE OF THIS ARTICLE[, THE MILITARY SERVICE]:

6 (1) "MILITARY SERVICE" MEANS THE ARMY, NAVY, MARINES, AIR
7 FORCE, COAST GUARD, AND ANY BRANCH OR UNIT THEREOF[; AND
8 SERVICEMEN].

9 (2) "SERVICEMEN" MEANS [THE MEMBERS THEREOF] MEMBERS OF THE
10 MILITARY SERVICE, INCLUDING WOMEN[; AND MILITARY ENGAGEMENT].

11 (3) "MILITARY ENGAGEMENT" INCLUDES LAND, NAVAL AND AIR
12 ENGAGEMENTS.

13 Section ~~2~~ 3. Section 4406 of the act, amended October 13, ←
14 1965 (P.L.579, No.300), is amended to read:

15 Section 4406. Selection of Appointee from Certified List of
16 Applicants.--[Said] THE boards shall make and keep, in numerical ←
17 order, a list containing the names of all applicants for civil
18 service positions in [said] THE city who may pass the required ←
19 [mental and physical examinations.] examinations, including any
20 required physical fitness or agility examinations that are job-
21 related and consistent with business necessity. Where more than
22 one person takes examinations for any [of said positions] ←
23 POSITION at the same time, the names of all those successfully
24 passing [such] THE examination shall be entered upon the ←
25 ELIGIBILITY list [of eligible names] in the order of their ←
26 respective percentages, the highest coming first. The board
27 shall furnish to council a certified copy of all lists so
28 prepared and kept. Wherever any vacancy shall occur in any civil
29 service position in [said] THE city, the city council shall make ←
30 written application to the president of the proper board, who

1 shall forthwith certify to the city council, in writing, the
2 three names on the ELIGIBILITY list [of applicants for such] FOR ←
3 THE position having the highest percentage, but if there be less
4 than three eligible names on [such] THE list, the board shall ←
5 certify [such name or] THE names. [Thereupon the] THE director ←
6 of the department in which [such] THE appointment is to be made ←
7 shall nominate to the city council a person from the ELIGIBILITY ←
8 list submitted to fill [such] THE vacancy. If the city council ←
9 approves [such] THE nomination, the person nominated shall be ←
10 conditionally appointed by council to fill [such] THE vacancy, ←
11 and shall be assigned for service in the department[.], subject
12 to any physical or psychological medical examinations that may
13 be required by the appropriate examining board as a condition of
14 permanent appointment in accordance with section 4404.1 of this
15 act. If the council does not approve [such] THE nomination, or ←
16 if the appointee is determined by the medical examination
17 process to be unqualified, then the director of the department
18 in which [such] THE appointment is to be made shall submit ←
19 another nomination for [such] THE position from the remaining ←
20 names, if any, and if [such] THE nomination is not approved by ←
21 the council, [HE] or if the appointee is determined by the ←
22 medical examination process to be unqualified, ~~he~~ THE DIRECTOR ←
23 shall submit the third name, if any. The person whose nomination
24 by the director is approved by the city council shall be
25 appointed to fill [such a] THE position in the department or as ←
26 building inspector. [In all cases the boards may recommend those ←
27 in the employ of a department for promotion in case the person
28 recommended is competent for the higher position.] The name of ←
29 the person so appointed shall be immediately stricken from the
30 ELIGIBILITY list of [said] THE board, and the names of the ←

1 rejected persons shall immediately be restored to their proper
2 place [in said] ON THE ELIGIBILITY list: Provided, however, That ←
3 if the name of any applicant has been submitted to the [said] ←
4 council and been rejected three times or the appointee has been
5 determined by the medical examination process to be unqualified,
6 then [such] THE name shall be stricken from the [eligible] ←
7 ELIGIBILITY list. EXAMINATIONS FOR PROMOTIONS FOR CIVIL SERVICE ←
8 POSITIONS IN THE CITY SHALL BE PURSUANT TO SECTION 4406.1 OF
9 THIS ACT. As used in this section, the term "medical
10 examination" shall have the meaning given it in section 4404.1
11 of this act.

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

13 SECTION 4406.1. PROMOTIONS.--THE CIVIL SERVICE BOARDS MAY
14 RECOMMEND THOSE IN THE EMPLOY OF A DEPARTMENT FOR PROMOTION IF
15 THE PERSON RECOMMENDED IS COMPETENT FOR THE HIGHER POSITION. IF
16 AN EXAMINATION IS REQUIRED, THE CITY COUNCIL SHALL NOTIFY THE
17 APPLICABLE CIVIL SERVICE BOARD OF A CIVIL SERVICE VACANCY IN THE
18 CITY WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
19 CERTIFICATION OF AN ELIGIBILITY LIST AS PROVIDED IN THIS
20 ARTICLE. THE BOARD SHALL CERTIFY FOR EACH VACANCY THE NAMES OF
21 THREE PERSONS ON THE ELIGIBILITY LIST WHO HAVE RECEIVED THE
22 HIGHEST AVERAGE IN THE LAST PRECEDING PROMOTIONAL EXAMINATION
23 HELD WITHIN THE PERIOD OF TWO YEARS PRECEDING THE DATE OF THE
24 REQUEST FOR THE ELIGIBILITY LIST. IF THREE NAMES ARE NOT
25 AVAILABLE, THE BOARD SHALL CERTIFY THE NAMES REMAINING ON THE
26 LIST. THE CITY COUNCIL SHALL MAKE AN APPOINTMENT FROM THE NAMES
27 CERTIFIED, BASED SOLELY ON THE MERITS AND FITNESS OF THE
28 CANDIDATES, UNLESS THE CITY COUNCIL MAKES OBJECTIONS TO THE
29 BOARD REGARDING ONE OR MORE OF THE PERSONS ON THE ELIGIBILITY
30 LIST. THE CITY COUNCIL SHALL HAVE POWER TO DETERMINE IN EACH

1 INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A
2 PROMOTION.

3 Section ~~3~~ 5. Nothing contained in ~~the addition of section~~ ←
4 ~~4404.1 of the act or the amendment of section 4406 of the act~~
5 THIS ACT shall affect the validity of any civil ~~services~~ SERVICE ←
6 appointments OR PROMOTIONS made prior to the effective date of ←
7 this section.

8 Section ~~4~~ 6. This act shall take effect immediately. ←