

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1520 Session of
2009INTRODUCED BY GINGRICH, FREEMAN, KESSLER, GRUCELA, ROSS AND
CALTAGIRONE, MAY 26, 2009SENATOR EICHELBERGER, LOCAL GOVERNMENT, IN SENATE, AS AMENDED,
FEBRUARY 2, 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

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 shall:

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

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

14 (3) if made a conditional offer of employment, be given a
15 physical and psychological medical examination as provided in
16 section 1189 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 borough, at
21 least two weeks prior to each examination, and a copy of the
22 notice shall be prominently posted in the office of the
23 commission or other public place.

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

1 additional credits and preference in appointment and promotion
2 provided for by law.]

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 illegally using a controlled substance, as defined in section
13 102 of the Controlled Substances Act (Public Law 91-513, 21
14 U.S.C. § 802), or who has been guilty of any crime involving
15 moral turpitude, or of infamous or notoriously disgraceful
16 conduct, or who has been dismissed from public service for
17 delinquency or misconduct of office, or who is affiliated with
18 any group whose policies or activities are subversive to the
19 form of government set forth in the constitutions and laws of
20 the United States and Pennsylvania.

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

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

1 Section 1184. Eligibility List and Manner of Filling

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

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

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

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

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

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

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

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

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

functions of the position. Physical medical examinations shall
be under the direction of a physician or other qualified medical
professional. Psychological medical examinations shall be under
the direction of a psychiatrist or psychologist.

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

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

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

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

(f) As used in this section, the ~~term medical examiner~~
FOLLOWING DEFINITIONS SHALL APPLY:

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

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

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

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

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

19 Section 5. Nothing contained in this act shall affect the
20 validity of any civil service appointment made prior to the
21 effective date of this section.

22 Section 6. This act shall take effect immediately.