

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 909 Session of 2009

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

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 10, 2010

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, FOR
7 PROMOTIONS and for 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

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

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

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

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

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

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

1 engaged and who have honorable discharges from such service, who
2 have successfully passed the examination, shall be given the
3 additional credits and preference in appointment [and promotion] ←
4 provided for by law.

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

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

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

1 such examination or certification and take such testimony as may
2 be offered. The decision of the commission shall be final.

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

5 Section 638. Manner of Filling Appointments.--(a) At the
6 completion of the testing process, including any background,
7 physical agility or other examinations, with the exception of
8 physical and psychological medical examinations pursuant to
9 section 643 of this act, the commission shall rank the
10 candidates who have satisfied the minimum requirements for
11 appointment on an eligibility list. The eligibility list shall
12 contain the names of individuals eligible for appointment listed
13 from highest to lowest based on their scores on the examinations
14 administered by the commission and any points for which the
15 applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating
16 to veterans' preference). The eligibility list will be valid for
17 one year from the date the commission ranks all passing
18 applicants, assigns veterans' preference points and formally
19 adopts the eligibility list. The commission may, at its sole
20 discretion before the original expiration date, by a vote of the
21 majority of the commission at a duly authorized commission
22 meeting, extend the list for up to an additional twelve months.
23 In the absence of a lawful extension by the commission, the list
24 shall expire.

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

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

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

28 (d) In the case of a vacancy in the office of chief of
29 police or chief of the fire department or equivalent official,
30 the township commissioners may nominate a person to the

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

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

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

22 SECTION 5. SECTION 642 OF THE ACT, ADDED MAY 27, 1949 ←
23 (P.L.1955, NO.569), IS AMENDED TO READ:

24 SECTION 642. PROMOTIONS.--PROMOTIONS IN THE POLICE FORCE OR
25 FIRE DEPARTMENT SHALL BE BASED ON MERITS TO BE ASCERTAINED BY
26 EXAMINATIONS TO BE PRESCRIBED BY THE COMMISSION. ALL QUESTIONS,
27 RELATIVE TO PROMOTIONS SHALL BE PRACTICAL IN CHARACTER AND SUCH
28 AS WILL FAIRLY TEST THE MERIT AND FITNESS OF PERSONS SEEKING
29 PROMOTION.

30 THE TOWNSHIP COMMISSIONERS SHALL NOTIFY THE COMMISSION OF ANY

1 VACANCY WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
2 CERTIFICATION OF A LIST OF ELIGIBLES. THE COMMISSION SHALL
3 CERTIFY FOR EACH EXISTING VACANCY FROM THE ELIGIBLE LIST THE
4 NAMES OF THREE PERSONS THEREON WHO HAVE RECEIVED THE HIGHEST
5 AVERAGE IN THE LAST PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD
6 OF TWO YEARS PRECEDING THE DATE OF THE REQUEST FOR THE
7 ELIGIBLES. IF THREE NAMES ARE NOT AVAILABLE, THEN THE COMMISSION
8 SHALL CERTIFY THE NAMES REMAINING ON THE LIST. THE TOWNSHIP
9 COMMISSIONERS SHALL, THEREUPON, WITH SOLE REFERENCE TO THE
10 MERITS AND FITNESS OF THE CANDIDATES, MAKE AN APPOINTMENT FROM
11 THE NAMES CERTIFIED UNLESS THEY MAKE OBJECTIONS TO THE
12 COMMISSION AS TO ONE OR MORE OF THE PERSONS SO CERTIFIED.

13 THE TOWNSHIP COMMISSIONERS SHALL HAVE POWER TO DETERMINE IN
14 EACH INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A
15 PROMOTION.

16 Section 5 6. Section 643 of the act, amended December 4,
17 1980 (P.L.1101, No.188), is amended to read:

18 Section 643. Physical and Psychological Medical
19 Examinations.--[All applicants for examination shall undergo a
20 physical examination as provided in section 635 which shall be
21 conducted under the supervision of a doctor of medicine
22 appointed by the commission. No person shall be eligible for
23 appointment until said doctor certifies that the applicant is
24 free from any bodily or mental defects, deformity or disease
25 that might incapacitate him from the discharge of the duties of
26 the position desired.] (a) An applicant selected from the
27 eligibility list shall receive a conditional offer of
28 employment. The offer of employment shall be conditioned upon
29 the conditional employee undergoing a physical and psychological
30 medical examination and a determination that the conditional

1 employee is capable of performing all the essential functions of
2 the position. Physical medical examinations shall be under the
3 direction of a physician or other qualified medical
4 professional. Psychological medical examinations shall be under
5 the direction of a psychiatrist or psychologist.

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

13 (c) If the opinion rendered by the physician, other
14 qualified medical professional, psychiatrist or psychologist
15 calls into question the conditional appointee's ability to
16 perform all essential functions of a position, a person or
17 persons designated by the township commissioners shall meet with
18 the conditional appointee for the purpose of having one or more
19 interactive discussions focused on the issue of whether the
20 conditional appointee can, with or without reasonable
21 accommodation, perform all the essential functions of the
22 position.

23 (d) If, at the conclusion of the interactive discussion
24 process, the township commissioners determine that the
25 conditional appointee is not qualified, the township
26 commissioners shall give written notice to the conditional
27 appointee and the Civil Service Commission.

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

1 (f) As used in this section, the following definitions shall
2 apply:

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

9 "Physician" shall have the meaning given to it in 1 Pa.C.S. §
10 1991 (relating to definitions).

11 "Qualified medical professional" shall mean an individual, in
12 collaboration with or under the supervision or direction of a
13 physician, as may be required by law, who is licensed:

14 (1) as a physician assistant pursuant to the act of December
15 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act
16 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),
17 known as the "Osteopathic Medical Practice Act"; or

18 (2) as a certified registered nurse practitioner pursuant to
19 the act of May 22, 1951 (P.L.317, No.69), known as "The
20 Professional Nursing Law."

21 Section 6 7. Nothing contained in the amendment of sections ←
22 635, 637, 638, 640 and 643 of the act shall affect the validity
23 of any civil service appointments made prior to the effective
24 date of this section.

25 SECTION 8. NOTHING CONTAINED IN THIS ACT SHALL AFFECT THE ←
26 VALIDITY OF ANY CIVIL SERVICE PROMOTIONS MADE PRIOR TO THE
27 EFFECTIVE DATE OF THIS SECTION.

28 Section 7 9. This act shall take effect immediately. ←