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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 910 Session of  
2009

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

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REFERRED TO LOCAL GOVERNMENT, JUNE 5, 2009

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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.]

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. The  
20 commission may, at its sole discretion, void an eligibility list  
21 at any time for any reason so long as the voiding of the list is  
22 not designed to circumvent this act.

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

1 the names of three persons thereon, or a lesser number where  
2 three are not available, who have received the highest average.  
3 The council shall thereupon, with sole reference to the merits  
4 and fitness of the candidates, make [an] a conditional  
5 appointment from the three names certified, unless they make  
6 objections to the commission as to one or more of the persons so  
7 certified for any of the reasons stated in section 1183 of this  
8 act. Should such objections be sustained by the commission, as  
9 provided in said section, or if the conditional appointee is  
10 determined to be unqualified in accordance with the procedures  
11 set forth in section 1189 of this act, the commission shall  
12 thereupon strike the name of such person from the eligible list  
13 and certify the next highest name for each name stricken off. As  
14 each subsequent vacancy occurs in the same or another position  
15 precisely the same procedure shall be followed.

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

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

1 be appointed to such position, and thereafter shall be subject  
2 to all the provisions of this subdivision.

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

4 Section 1186. Probationary Period.--All original  
5 appointments to any position in the police force or as paid  
6 operators of fire apparatus shall be for a probationary period  
7 of not less than six months, and not more than one year, but  
8 during the probationary period an appointee may be dismissed  
9 only for a cause specified in section 1183 of this act or  
10 because of incapacity for duty due to the use of alcohol or  
11 drugs. If at the close of a probationary period the conduct of  
12 fitness of the probationer has not been satisfactory to the  
13 council, the probationer shall be notified in writing that he  
14 will not receive a permanent appointment. Thereupon, his  
15 appointment shall cease; otherwise his retention shall be  
16 equivalent to a 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 shall be conducted under the supervision of a  
23 physician appointed by the commission. No person shall be  
24 eligible for appointment until such physician certifies that the  
25 applicant is free from any bodily or mental defect, deformity or  
26 disease that might incapacitate him for the discharge of the  
27 duties of the position desired.](a) An applicant selected from  
28 the eligibility list shall receive a conditional offer of  
29 employment. The offer of employment shall be conditioned upon  
30 the conditional appointee undergoing a physical and

1 psychological medical examination and a determination that the  
2 conditional appointee is capable of performing all the essential  
3 functions of the position. Physical medical examinations shall  
4 be under the direction of a physician or other qualified medical  
5 professional. Psychological medical examinations shall be under  
6 the direction of a psychiatrist or psychologist.

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

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

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

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

29 (f) As used in this section, the term "medical examination"  
30 shall mean any examination, procedure, inquiry or test designed

1 to obtain information about medical history or a physical or  
2 mental condition which might disqualify an applicant if it would  
3 prevent the applicant from performing, with or without a  
4 reasonable accommodation, all of the essential functions of the  
5 position.

6 Section 5. Nothing contained in this act shall affect the  
7 validity of any civil service appointment made prior to the  
8 effective date of this section.

9 Section 6. This act shall take effect immediately.