

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 910 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 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, FOR rejection of
6 applicant and hearing, FOR manner of filling appointments,
7 FOR probationary period and, FOR physical examination
8 PROMOTION AND FOR PROMOTIONS.



9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Sections 1181 and 1183 of the act of February 1,
12 1966 (1965 P.L.1656, No.581), known as The Borough Code, are
13 amended to read:

14 Section 1181. General Provisions Relating to Examinations.--

15 (a) The commission shall make rules and regulations, to be
16 approved as provided in section 1176 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
20 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~~ SECTIONS 1186 AND 1188 of the act is ←  
2 ARE 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 due to the use of alcohol or  
10 drugs. If at the close of a probationary period the conduct of  
11 fitness of the probationer has not been satisfactory to the  
12 council, the probationer shall be notified in writing that he  
13 will not receive a permanent appointment. Thereupon, his  
14 appointment shall cease; otherwise his retention shall be  
15 equivalent to a permanent appointment.

16 SECTION 1188. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON ←  
17 MERIT TO BE ASCERTAINED BY EXAMINATIONS TO BE PRESCRIBED BY THE  
18 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE  
19 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT  
20 AND FITNESS OF PERSONS SEEKING PROMOTION. BOROUGH COUNCIL SHALL  
21 NOTIFY THE COMMISSION OF ANY VACANCY IN THE POLICE FORCE OR AS A  
22 PAID OPERATOR OF FIRE APPARATUS IN THE BOROUGH WHICH IS TO BE  
23 FILLED BY PROMOTION AND SHALL REQUEST THE CERTIFICATION OF A  
24 LIST OF ELIGIBLES. THE COMMISSION SHALL CERTIFY FOR EACH  
25 EXISTING VACANCY, FROM THE ELIGIBLE LIST, THE NAMES OF THREE  
26 PERSONS ON THE LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE IN THE  
27 LAST PRECEDING PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD OF  
28 TWO YEARS NEXT PRECEDING THE DATE OF THE REQUEST FOR ELIGIBLES.  
29 IF THREE NAMES ARE NOT AVAILABLE, THE COMMISSION SHALL CERTIFY  
30 THE NAMES REMAINING ON THE LIST. THE BOROUGH COUNCIL SHALL THEN,

1 WITH SOLE REFERENCE TO THE MERITS AND FITNESS OF THE CANDIDATES,  
2 MAKE AN APPOINTMENT FROM THE NAMES CERTIFIED, UNLESS COUNCIL  
3 MAKES OBJECTIONS TO THE COMMISSION AS TO ONE OR MORE OF THE  
4 PERSONS SO CERTIFIED.

5 THE COUNCIL SHALL HAVE POWER TO DETERMINE IN EACH INSTANCE  
6 WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A PROMOTION.

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

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

27 (b) The physician or other qualified medical professional  
28 and the psychiatrist or psychologist shall be appointed by  
29 council and shall render an opinion as to whether the  
30 conditional appointee has a physical or mental condition which

1 calls into question his or her ability to perform all of the  
2 essential functions of the position for which he or she was  
3 conditionally appointed.

4 (c) If the opinion rendered by the physician, other  
5 qualified medical professional, psychiatrist or psychologist  
6 calls into question the conditional appointee's ability to  
7 perform all essential functions of a position, a person or  
8 persons designated by council shall meet with the conditional  
9 appointee for the purpose of having one or more interactive  
10 discussions focused on the issue of whether the conditional  
11 appointee can, with or without reasonable accommodation, perform  
12 all the essential functions of the position.

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

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

20 (f) As used in this section, the following definitions  
21 shall apply:

22 "Medical examination" shall mean any examination, procedure,  
23 inquiry or test designed to obtain information about medical  
24 history or a physical or mental condition which might disqualify  
25 an applicant if it would prevent the applicant from performing,  
26 with or without a reasonable accommodation, all of the essential  
27 functions of the position.

28 "Physician" shall have the meaning given to it in 1 Pa.C.S. §  
29 1991 (relating to definitions).

30 "Qualified medical professional" shall mean an individual, in



1 collaboration with or under the supervision or direction of a  
2 physician, as may be required by law, who is licensed:

3 (1) as a physician assistant pursuant to the act of December  
4 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act  
5 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),  
6 known as the "Osteopathic Medical Practice Act"; or

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

10 Section 5. Nothing contained in this act shall affect the  
11 validity of any civil service appointment OR PROMOTION made  
12 prior to the effective date of this section.



13 Section 6. This act shall take effect immediately.