
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 910 Session of
2009

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
SEPTEMBER 29, 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] PERSON ←
22 IS aggrieved by [the action] REFUSAL of the commission[, in ←
23 refusing] to examine [him or to certify him] OR CERTIFY THE ←
24 APPLICANT as eligible after examination, the commission shall,
25 at the request of [such person] THE APPLICANT, within ten days, ←
26 appoint a time and place [where he may appear personally and by ←
27 counsel. Whereupon] FOR A PUBLIC HEARING, WITH OR WITHOUT ←
28 COUNSEL, AT WHICH TIME the commission shall [then] TAKE ←
29 TESTIMONY AND review its refusal to [make such] PROVIDE ←
30 examination or certification [and take such testimony as may be ←

1 offered]. The decision of the commission shall be final. ←

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

4 Section 1184. Eligibility List and Manner of Filling

5 Appointments.--(a) At the completion of the testing process,

6 including any background, physical agility or other examination,

7 with the exception of any physical and psychological medical

8 examination pursuant to section 1189 of this act, the commission

9 shall rank the candidates who have satisfied the minimum

10 requirements for appointment on an eligibility list. The

11 eligibility list shall contain the names of individuals eligible

12 for appointment listed from highest to lowest based on their

13 scores on the examinations administered by the commission and

14 any points for which the applicant was entitled by virtue of 51

15 Pa.C.S. Ch. 71 (relating to veterans' preference). The

16 eligibility list will be valid for one year from the date the

17 commission ranks all passing applicants, assigns veterans' ←

18 preference points and formally adopts the eligibility list. The ←

19 commission may, at its sole discretion before the original

20 expiration date, by a vote of the majority of the commission at

21 a duly authorized commission meeting, extend the PRIOR TO ←

22 EXPIRATION OF THE ONE-YEAR PERIOD, THE COMMISSION MAY EXTEND THE

23 VALIDITY OF THE ELIGIBILITY list for up to an additional twelve

24 months BY A MAJORITY VOTE OF THE COMMISSION AT A DULY AUTHORIZED ←

25 COMMISSION MEETING. In the absence of a lawful extension by the

26 commission, the list shall expire.

27 (b) Except as provided in subsection [(b)] (c), every

28 original position or employment in the police force or as paid

29 operators of fire apparatus, except that of chief of police or

30 chief of the fire department, or equivalent, shall be filled

1 only in the following manner: the council shall notify the
2 commission of any vacancy which is to be filled and shall
3 request the certification of [a list of eligibles] AN ←
4 ELIGIBILITY LIST. The commission shall certify for each existing
5 vacancy from the [eligible] ELIGIBILITY list, the names of THE ←
6 three persons [thereon], or a lesser number where three are not ←
7 available, who have received the highest average. The council
8 shall [thereupon, with sole reference to the merits and fitness ←
9 of the candidates,] make [an] a conditional appointment from the ←
10 three names certified, [unless they make] BASED SOLELY ON THE ←
11 MERITS AND FITNESS OF THE CANDIDATES, UNLESS BOROUGH COUNCIL
12 MAKES objections to the commission [as to] REGARDING one or more ←
13 of the [persons so] certified PERSONS for any of the reasons ←
14 stated in section 1183 of this act. Should such objections be
15 sustained by the commission, as provided in [said section,] ←
16 SECTION 1183 OF THIS ACT, or if the conditional appointee is
17 determined to be unqualified in accordance with the procedures
18 set forth in section 1189 of this act, the commission shall
19 [thereupon] strike the name of [such] THE person from the ←
20 [eligible] ELIGIBILITY list and certify the next highest name ←
21 for each name stricken [off] FROM THE ELIGIBILITY LIST. As each ←
22 subsequent vacancy occurs in the same or another position
23 precisely the same procedure shall be followed.

24 [(b)] (c) Any vacancy in an existing position in the police
25 force or as a paid operator of fire apparatus which occurs as a
26 result of retirement, resignation, disability or death may be
27 filled by council by the reappointment or reinstatement of a
28 former employe of the police force or fire department who had
29 previously complied with the provisions of this section. No
30 examination, other than a physical examination as directed by

1 the civil service commission, shall be required in any case of
2 reappointment or reinstatement.

3 [(c)] (d) In the case of a vacancy in the office of chief of
4 police or chief of the fire department, or equivalent official,
5 the appointive power may nominate a person to the commission. It
6 shall thereupon become the duty of the commission to subject
7 [such] THE person to a non-competitive examination, and if ←
8 [such] THE person shall be certified by the commission as ←
9 qualified, he may then be appointed to [such] THE position, and ←
10 thereafter shall be subject to all the provisions of this
11 subdivision.

12 Section 3. ~~Section 1186~~ SECTIONS 1186 AND 1188 of the act is ←
13 ARE amended to read: ←

14 Section 1186. Probationary Period.--All original
15 appointments to any position in the police force or as paid
16 operators of fire apparatus shall be for a probationary period
17 of not less than six months, and not more than one year, but
18 during the probationary period an appointee may be dismissed
19 only for a cause specified in section 1183 of this act or
20 because of incapacity for duty due to the use of alcohol or
21 drugs. If at the close of a probationary period the conduct [of] ←
22 OR fitness of the probationer has not been satisfactory to the ←
23 council, the probationer shall be notified in writing that he
24 will not receive a permanent appointment[. Thereupon, his], AND ←
25 THE appointment shall cease[; otherwise]. IF THE PROBATIONER IS ←
26 NOT NOTIFIED OR DISMISSED IN ACCORDANCE WITH THIS SECTION, his
27 retention shall be equivalent to a permanent appointment.

28 SECTION 1188. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON ←
29 MERIT TO BE ASCERTAINED BY EXAMINATIONS TO BE PRESCRIBED BY THE
30 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE

1 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT
2 AND FITNESS OF PERSONS SEEKING PROMOTION. ~~BOROUGH COUNCIL SHALL~~ ←
3 ~~NOTIFY THE COMMISSION OF ANY VACANCY IN THE POLICE FORCE OR AS A~~
4 ~~PAID OPERATOR OF FIRE APPARATUS IN THE BOROUGH WHICH IS TO BE~~
5 ~~FILLED BY PROMOTION AND SHALL REQUEST THE CERTIFICATION OF A~~
6 ~~LIST OF ELIGIBLES. THE COMMISSION SHALL CERTIFY FOR EACH~~
7 ~~EXISTING VACANCY, FROM THE ELIGIBLE LIST, THE NAMES OF THREE~~
8 ~~PERSONS ON THE LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE IN THE~~
9 ~~LAST PRECEDING PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD OF~~
10 ~~TWO YEARS NEXT PRECEDING THE DATE OF THE REQUEST FOR ELIGIBLES.~~
11 ~~IF THREE NAMES ARE NOT AVAILABLE, THE COMMISSION SHALL CERTIFY~~
12 ~~THE NAMES REMAINING ON THE LIST. THE BOROUGH COUNCIL SHALL THEN,~~
13 ~~WITH SOLE REFERENCE TO THE MERITS AND FITNESS OF THE CANDIDATES,~~
14 ~~MAKE AN APPOINTMENT FROM THE NAMES CERTIFIED, UNLESS COUNCIL~~
15 ~~MAKES OBJECTIONS TO THE COMMISSION AS TO ONE OR MORE OF THE~~
16 ~~PERSONS SO CERTIFIED. BOROUGH COUNCIL SHALL NOTIFY THE~~ ←
17 ~~COMMISSION OF A VACANCY IN THE POLICE FORCE OR AS A PAID~~
18 ~~OPERATOR OF FIRE APPARATUS IN THE BOROUGH WHICH IS TO BE FILLED~~
19 ~~BY PROMOTION AND SHALL REQUEST THE CERTIFICATION OF AN~~
20 ~~ELIGIBILITY LIST. THE COMMISSION SHALL CERTIFY FOR EACH VACANCY~~
21 ~~THE NAMES OF THREE PERSONS ON THE ELIGIBILITY LIST WHO HAVE~~
22 ~~RECEIVED THE HIGHEST AVERAGE IN THE LAST PRECEDING PROMOTIONAL~~
23 ~~EXAMINATION HELD WITHIN A PERIOD OF TWO YEARS PRECEDING THE DATE~~
24 ~~OF THE REQUEST FOR THE ELIGIBILITY LIST. IF THREE NAMES ARE NOT~~
25 ~~AVAILABLE, THE COMMISSION SHALL CERTIFY THE NAMES REMAINING ON~~
26 ~~THE ELIGIBILITY LIST. THE BOROUGH COUNCIL SHALL MAKE AN~~
27 ~~APPOINTMENT FROM THE NAMES CERTIFIED, BASED SOLELY ON THE MERITS~~
28 ~~AND FITNESS OF THE CANDIDATE, UNLESS COUNCIL MAKES OBJECTIONS TO~~
29 ~~THE COMMISSION REGARDING ONE OR MORE OF THE PERSONS SO CERTIFIED~~
30 ~~FOR ANY REASON PROVIDED UNDER SECTION 1183 OF THIS ACT.~~

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

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

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

23 (b) The physician or other qualified medical professional
24 and the psychiatrist or psychologist shall be appointed by
25 council and shall render an opinion as to whether the
26 conditional appointee has a physical or mental condition which
27 calls into question ~~his or her~~ THE PERSON'S ability to perform ←
28 all of the essential functions of the position for which ~~he or~~ ←
29 ~~she~~ THE PERSON was conditionally appointed. ←

30 (c) If the opinion rendered by the physician, other

1 qualified medical professional, psychiatrist or psychologist
2 calls into question the conditional appointee's ability to
3 perform all essential functions of a position, a person or ←
4 persons designated by council shall meet with the conditional
5 appointee for the purpose of having one or more interactive
6 discussions focused on the issue of ON whether the conditional ←
7 appointee can, with or without reasonable accommodation, perform
8 all the essential functions of the position.

9 (d) If, at the conclusion of the interactive discussion
10 process UNDER SUBSECTION (C), council determines that the ←
11 conditional appointee is not qualified, council shall give
12 written notice to the conditional appointee and the commission.

13 (e) Nothing in this act shall be construed as authorizing TO ←
14 AUTHORIZE physical or psychological medical examinations prior
15 to conditional appointment.

16 (f) As used in this section, the following definitions shall
17 apply:

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

24 "Physician" shall have the meaning given to it in 1 Pa.C.S. §
25 1991 (relating to definitions).

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

29 (1) as a physician assistant pursuant to the act of December
30 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act

1 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),
2 known as the "Osteopathic Medical Practice Act"; or
3 (2) as a certified registered nurse practitioner pursuant to
4 the act of May 22, 1951 (P.L.317, No.69), known as "The
5 Professional Nursing Law."

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

9 Section 6. This act shall take effect immediately.