Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," as to civil service for police and firemen, further providing for general provisions relating to examinations, for rejection of applicant and hearing, for manner of filling appointments, for probationary period, for physical examination and for promotions.

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

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

Section 1181. General Provisions Relating to Examinations.--

(a) The commission shall make rules and regulations, to be approved as provided in section 1176 hereof, providing for the examination of applicants for positions in the police force and as paid operators of fire apparatus and for promotions, which rules and regulations shall prescribe the minimum qualifications of all applicants to be examined and the passing grades. All examinations for positions or promotions shall be practical in character and shall relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have the minimum qualifications required by the rules and regulations. Each applicant shall:

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

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

(3) if made a conditional offer of employment, be given a physical and psychological medical examination as provided in section 1189 of this act.

(b) Public notice of the time and place of every examination, together with the information as to the kind of position or place to be filled, shall be given by publication once in a newspaper of general circulation in the borough, at
least two weeks prior to each examination, and a copy of the notice shall be prominently posted in the office of the commission or other public place.

(c) The commission shall post in its office the eligible list, containing the names and grades of those who have passed the examination. [Persons, male or female, who served in the military or naval service of the United States during any war in which the United States has been, is now, or shall hereafter be, engaged and who have honorable discharges from such service, who have successfully passed the examination, shall be given the additional credits and preference in appointment and promotion provided for by law.]

Section 1183. Rejection of Applicant; Hearing.-- (a) The commission may refuse to examine, or, if examined, may refuse to certify after examination as eligible, any applicant who is found to lack any of the minimum qualifications for examination prescribed in the rules and regulations adopted for the position or employment for which he has applied, or who is physically [disabled and] unfit for the performance of the duties of the position to which he seeks employment, or [who is addicted to the habitual use of intoxicating liquors or narcotic drugs,] who is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802), or who has been guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office, or who is affiliated with any group whose policies or activities are subversive to the form of government set forth in the constitutions and laws of the United States and Pennsylvania.

(b) If any applicant or [other person feels himself] person is aggrieved by [the action] refusal of the commission[, in refusing] to examine [him or to certify him] or certify the applicant as eligible after examination, the commission shall, at the request of [such person] the applicant, within ten days, appoint a time and place [where he may appear personally and by counsel. Whereupon] for a public hearing, with or without counsel, at which time the commission shall [then] take testimony and review its refusal to [make such] provide examination or certification [and take such testimony as may be offered]. The decision of the commission shall be final.

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

Section 1184. Eligibility List and Manner of Filling Appointments.--(a) At the completion of the testing process, including any background, physical agility or other examination, with the exception of any physical and psychological medical examination pursuant to section 1189 of this act, the commission shall rank the candidates who have satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names of individuals eligible for appointment listed from highest to lowest based on their scores on the examinations administered by the commission and any points for which the applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans' preference). The
eligibility list will be valid for one year from the date the
commission formally adopts the eligibility list. Prior to
expiration of the one-year period, the commission may extend the
validity of the eligibility list for up to an additional twelve
months by a majority vote of the commission at a duly authorized
commission meeting. In the absence of a lawful extension by the
commission, the list shall expire.

(b) Except as provided in subsection [(b)] [(c)], every
original position or employment in the police force or as paid
operators of fire apparatus, except that of chief of police or
chief of the fire department, or equivalent, shall be filled
only in the following manner: the council shall notify the
commission of any vacancy which is to be filled and shall
request the certification of a list of eligibles an eligibility list . The commission shall certify for each existing
vacancy from the eligible eligibility list, the names of the
three persons thereon, or a lesser number where three are not
available, who have received the highest average. The council
shall [thereupon, with sole reference to the merits and fitness
of the candidates,] make an a conditional appointment from the
three names certified, [unless they make] based solely on the
merits and fitness of the candidates, unless borough council
makes objections to the commission [as to] regarding one or more
of the persons so certified persons for any of the reasons
stated in section 1183 of this act. Should such objections be
sustained by the commission, as provided in [said section,]
section 1183 of this act, or if the conditional appointee is
determined to be unqualified in accordance with the procedures
set forth in section 1189 of this act, the commission shall
[thereupon] strike the name of [such] the person from the
[eligible] eligibility list and certify the next highest name
for each name stricken off from the eligibility list . As each
subsequent vacancy occurs in the same or another position
precisely the same procedure shall be followed.

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

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

Section 3. Sections 1186 and 1188 of the act are amended to
read:

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

Section 1188. Promotions.--Promotions shall be based on merit to be ascertained by examinations to be prescribed by the commission. All questions relative to promotions shall be practical in character and such as will fairly test the merit and fitness of persons seeking promotion. Borough council shall notify the commission of a vacancy in the police force or as a paid operator of fire apparatus in the borough which is to be filled by promotion and shall request the certification of an eligibility list. The commission shall certify for each vacancy the names of three persons on the eligibility list who have received the highest average in the last preceding promotional examination held within a period of two years preceding the date of the request for the eligibility list. If three names are not available, the commission shall certify the names remaining on the eligibility list. The borough council shall make an appointment from the names certified, based solely on the merits and fitness of the candidate, unless council makes objections to the commission regarding one or more of the persons so certified for any reason provided under section 1183 of this act.

The council shall have power to determine in each instance whether an increase in salary shall constitute a promotion.

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

Section 1189. Physical and Psychological Medical Examination.--[All applicants for examination shall undergo a physical examination, either before or after the written examination, which shall be conducted under the supervision of a physician appointed by the commission. No person shall be eligible for appointment until such physician certifies that the applicant is free from any bodily or mental defect, deformity or disease that might incapacitate him for the discharge of the duties of the position desired.] (a) An applicant selected from the eligibility list shall receive a conditional offer of employment. The offer of employment shall be conditioned upon the conditional appointee undergoing a physical and psychological medical examination and a determination that the 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 the person's ability to perform all of the
essential functions of the position for which the person was
conditionally appointed.

(c) If the opinion rendered by the 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
designated by council shall meet with the conditional appointee
for the purpose of having one or more interactive discussions on
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
under subsection (c), 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 to authorize
physical or psychological medical examinations prior to
conditional appointment.

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

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

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

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

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

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

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

Section 6. This act shall take effect immediately.

APPROVED--The 27th day of October, A. D. 2010.

EDWARD G. RENDELL