

1 AN ACT in relation to fire protection.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Fire Department Fair Testing Act.

6 Section 5. Other Acts; minimum standard. This Act is to  
7 be applied in conjunction with the Illinois Municipal Code,  
8 the Fire Protection District Act, and the Illinois Public  
9 Labor Relations Act and is to be considered a minimum  
10 standard for fire department promotions.

11 Section 10. Definitions. In this Act:

12 "Affected department" or "department" means a municipal  
13 fire department or the fire department operated by a fire  
14 protection district. "Affected department" does not include  
15 fire departments operated by the State, a university, a  
16 county, a municipality with a population or over 1,000,000,  
17 or any unit of local government other than a municipality or  
18 Fire Protection District.

19 "Appointing authority" means a Board of Fire and Police  
20 Commissioners, a Board of Fire Commissioners, Civil Service  
21 Commissioners, a Superintendent or Department Head, a Fire  
22 Protection District Board of Trustees, or any other entity  
23 having the authority to administer and grant promotions in an  
24 affected department.

25 "Promotion" means any permanent advancement in rank  
26 within the affected department for which an examination is  
27 ordinarily required. "Promotion" does not include: (i) a  
28 temporary appointment of less than 180 days to an  
29 administrative or executive position for which an examination  
30 is not ordinarily required; (ii) any appointment to a

1 position held at the pleasure of the appointing authority  
2 that has previously been exempted by a home rule  
3 municipality; except that after the effective date of this  
4 Act no home rule municipality may exempt any future or  
5 existing ranks from the provisions of this Act except for  
6 those provided in item (iii) of this paragraph; or (iii)  
7 appointment as the Superintendent, Chief, or other chief  
8 executive officer and all persons in the rank immediately  
9 below the Superintendent, Chief, or other chief executive  
10 officer of an affected department.

11 "Preliminary promotion list" means the rank order of  
12 eligible candidates established in accordance with subsection  
13 (b) of Section 25 before the application of veteran's  
14 preference points. A person on the preliminary promotion  
15 list who is eligible for a veteran's preference under the  
16 laws and agreements applicable to the appointing authority  
17 may file a written application for that preference within 10  
18 days after the initial posting of the preliminary promotion  
19 list. The preference must be calculated in accordance with  
20 Section 60 and applied as an addition to the person's total  
21 point score on the examination. The appointing authority  
22 must make adjustments to the preliminary promotion list based  
23 on any veteran's preference claimed, and the final adjusted  
24 promotional list shall then be posted by the appointing  
25 authority.

26 "Final adjusted promotion list" means the promotion list  
27 for the position that is in effect on the date the position  
28 is created or the vacancy occurs. If there is no final  
29 adjusted promotion list in effect for that position on that  
30 date, or if all persons on the current final adjusted  
31 promotion list for that position refuse the promotion, the  
32 affected department may not make a permanent promotion until  
33 a new final adjusted promotion list has been prepared in  
34 accordance with this Act, but may make a temporary

1 appointment to fill the vacancy. Temporary appointments may  
2 not exceed 180 days.

3 Each component of the promotional test must be scored on  
4 a scale of 100 points. The component scores must then be  
5 reduced by the weighting factor assigned to the component on  
6 the test, and the scores of all components must be added to  
7 produce a total score based on a scale of 100 points.

8 Section 15. Application of the Act.

9 (a) This Act applies to all positions in an affected  
10 department, except those specifically excluded in the  
11 definition of "promotion" in Section 5 of this Act that are  
12 not subject to a clause in a collective bargaining agreement  
13 in effect on the effective date of this Act. This Act  
14 applies to all promotions for all positions, for which  
15 promotions are subject to a collective agreement on the  
16 effective date of this Act, and to all promotions made after  
17 the expiration or renewal of a collective bargaining  
18 agreement, unless otherwise agreed as provided by paragraph  
19 (2) of subsection (e) of this Section. Existing promotional  
20 lists shall continue to be valid until after their expiration  
21 dates or up to a maximum of 3 years after the effective date  
22 of this Act.

23 (b) Notwithstanding any statute, ordinance, rule, or  
24 other law to the contrary, all promotions in an affected  
25 department to which this Act applies must be administered in  
26 the manner provided for in this Act. Provisions of the  
27 Illinois Municipal Code, the Fire Protection District Act,  
28 ordinances and or rules adopted pursuant to that Code or Act,  
29 and other laws relating to promotions in affected departments  
30 shall continue to apply to the extent that they are  
31 compatible with this Act, but in the event of conflict  
32 between this Act and any other law, this Act shall control.

33 (c) In accordance with subsection (i) of Section 6 of

1 Article VII of the Illinois Constitution, this Act is a  
2 limitation on the concurrent exercise by home rule units of  
3 powers and functions exercised by the public bodies of the  
4 State. A home rule unit or a non-home rule unit may not  
5 administer promotions in its fire department in a manner  
6 inconsistent with this Act.

7 (d) This Act does not apply to any municipality with a  
8 population over 1,000,000.

9 (e) This Act is intended to serve as a minimum standard  
10 and shall be construed to authorize and not to limit:

11 (1) An appointing authority from establishing  
12 different or supplemental promotional criteria are  
13 components, provided that the criteria are job-related  
14 and applied uniformly to identify merit factors for the  
15 promotion of a candidate to a higher rank.

16 (2) The negotiation by an employer and an exclusive  
17 representative of clauses within a collective bargaining  
18 agreement relating to conditions or procedures for the  
19 promotion of employees who are members of bargaining  
20 units who are not specifically excluded under the  
21 definition of "promotion" in Section 10 of this Act.

22 Section 20. Promotion process.

23 (a) For the purpose of granting promotions to any rank  
24 or position to which this Act applies, the appointing  
25 authority must from time to time, as necessary, administer a  
26 promotion process in accordance with this Act.

27 (b) Eligibility requirements to participate in the  
28 promotion process may include a minimum requirement as to  
29 length of employment, education, training, and certification  
30 in subjects and skills related to fire fighting. After the  
31 effective date of this Act, any eligibility requirements must  
32 be published at least one year before the date of the  
33 beginning of the promotion process. All members of the

1 affected department must be given an equal opportunity to  
2 meet those eligibility requirements.

3 (c) All aspects of the promotion process must be equally  
4 accessible to all eligible employees of the department. The  
5 results of every component of the testing and evaluation  
6 procedures must be disclosed to each candidate as soon as  
7 possible after the component is completed.

8 (d) The appointing authority must provide a separate  
9 promotional examination for each rank or position that is  
10 filled by promotion. The appointing authority may employ  
11 consultants to design and administer promotional examinations  
12 or may adopt any nationally recognized examinations or study  
13 materials that may become available, so long as they comply  
14 with the requirements of this Act.

15 Section 25. Promotion lists.

16 (a) For the purpose of granting a promotion to any rank  
17 or position to which this Act applies, the appointing  
18 authority must from time to time, as necessary, prepare a  
19 preliminary promotion list in accordance with this Act. The  
20 preliminary promotion list must be distributed, posted, or  
21 otherwise made conveniently available by the appointing  
22 authority to all members of the department.

23 (b) A person's position on the preliminary promotion  
24 list must be determined by a combination of factors that  
25 include: (i) the person's score on the written examination  
26 for that rank or position, determined in accordance with  
27 Section 40; (ii) the person's seniority with the department,  
28 determined in accordance with Section 45; (iii) the person's  
29 ascertained merit, determined in accordance with Section 50;  
30 and (iv) the person's score on the subjective evaluation,  
31 determined in accordance with Section 55. Candidates shall  
32 be ranked on the list in an order based on the highest to the  
33 lowest total points scored on all of the components of the

1 test. Promotional components must be determined and  
2 administered in accordance with Section 35, unless otherwise  
3 modified or agreed to as provided by paragraphs (1) and (2)  
4 of subsection (e) of Section 15. The use of physical  
5 criteria, including, but not limited to, fitness testing,  
6 agility testing, or medical evaluations are specifically  
7 barred from being used in the promotional process.

8 (c) A person on the preliminary promotion list who is  
9 eligible for a veteran's preference under the laws and  
10 agreements applicable to the department may file a written  
11 application for that preference within 10 days after the  
12 initial posting of the preliminary promotion list. The  
13 preference must be calculated as provided under Section 60  
14 and added to the total score achieved by the candidate on the  
15 test. The appointing authority must then make adjustments to  
16 the rank order of the preliminary promotion list based on any  
17 veteran's preferences awarded. The final adjusted promotion  
18 list shall then be distributed, posted, or otherwise made  
19 conveniently available by the appointing authority to all  
20 members of the department.

21 (d) Whenever a promotional position is created or  
22 becomes vacant due to resignation, discharge, promotion,  
23 death, or the granting of a disability or retirement pension,  
24 the department must appoint to that position the person with  
25 the highest ranking on the final promotion list for that  
26 rank; except that the appointing authority may pass over the  
27 person with the highest ranking if it has an objectively  
28 demonstrable basis for determining that the person is  
29 unable to perform the duties of the position. Any disputes  
30 as to the existence of that reason shall be subject to  
31 resolution in accordance with any grievance procedure in  
32 effect covering the employee.

33 A vacancy occurs in a position on the date upon which the  
34 position is vacated and, on that same date, a vacancy occurs

1 in all ranks inferior to that rank; provided that the  
2 position or positions continue to be funded and authorized by  
3 the corporate authorities of the municipality or fire  
4 protection district. If a vacancy is not filled due to a  
5 lack of funding and is subsequently reinstated, the final  
6 promotion list continues in effect for a 5-year period  
7 beginning on the date the position is vacated.

8 (e) Any candidate may refuse a promotion once without  
9 losing his or her position on the final adjusted promotion  
10 list. Any candidate who refuses promotion a second time must  
11 be removed from the final adjusted promotion list, provided  
12 that the action may not prejudice a person's opportunities to  
13 participate in future promotional examinations.

14 (f) A final adjusted promotion list remains valid for a  
15 period of 3 years from the date of the initial posting.  
16 Integrated lists are prohibited. When a list expires it is  
17 void, except as provided in subsection (d) of this Section.  
18 If a promotion list is not in effect, a successor list must  
19 be prepared and distributed within 180 days after a vacancy,  
20 as defined in subsection (d), occurs.

21 Section 30. Monitoring.

22 (a) All aspects of the promotion process, including  
23 without limitation the administration, scoring, and posting  
24 of scores for the written examination and subjective  
25 evaluation and the determination and posting of seniority and  
26 ascertained merit scores, are subject to monitoring and  
27 review in accordance with this Section.

28 (b) Two impartial persons who are not candidates in the  
29 promotion process must be selected to act as observers by the  
30 exclusive bargaining agent or, if there is no exclusive  
31 bargaining agent, then by a majority of the candidates  
32 participating in the promotion process.

33 (c) The observers monitoring the promotion process must

1 be present at and observe when any component of the test is  
2 administered or scored. Observers may not interfere with the  
3 promotion process, but must promptly report any observed or  
4 suspected violation of the requirements of this Act or an  
5 applicable collective bargaining agreement to the appointing  
6 authority and all other affected parties.

7 Section 35. Promotional examination components.  
8 Promotion examinations that include components consisting of  
9 written examinations, seniority points, ascertained merit, or  
10 subjective evaluations must be administered as provided in  
11 Sections 40, 45, 50, and 55. The weight, if any, that is  
12 given to any component included in a test may be set at the  
13 discretion of the appointing authority; provided that the  
14 weight is subject to modification by the terms of any  
15 collective bargaining agreement in effect on the effective  
16 date of this Act or by negotiations between the employer and  
17 an exclusive bargaining representative.

18 Section 40. Written examinations.

19 (a) The appointing authority may not condition  
20 eligibility to take a written examination on the candidate's  
21 score on any of the previous components of the examination.  
22 The written examination for a particular rank must consist of  
23 matters relating to the duties regularly performed by persons  
24 holding that rank within the department. The examination  
25 must be based only on the contents of written materials that  
26 the appointing authority has identified and made readily  
27 available to potential examinees at least 90 days before the  
28 examination is administered. The test questions and  
29 materials must be pertinent to the particular rank for which  
30 the examination is being given. The written examination must  
31 be administered after the determination and posting of the  
32 seniority list, ascertained merit points, and subjective

1 evaluation scores. The written examination must be  
2 administered, the test materials opened, and the results  
3 scored and tabulated only in the presence of the observers  
4 appointed under Section 30.

5 (b) Written examinations must be graded at the  
6 examination site on the date of the examination and  
7 immediately upon completion of the test in front of the  
8 observers or, if the tests are graded off-site by a bona fide  
9 testing agency, the observers must witness the sealing and  
10 the shipping of the tests for grading and the subsequent  
11 opening of the scores upon the return from the testing  
12 agency. Every examinee has the right to (i) obtain his or  
13 her score on the examination on the date of the examination  
14 or upon the day of its return from the testing agency and  
15 (ii) review the answers to the examination that the examiners  
16 consider correct. The appointing authority may hold a review  
17 session after the examination for the purpose of gathering  
18 feedback on the examination from the candidates.

19 (c) Sample written examinations may be examined by the  
20 appointing authority and members of the department, but no  
21 person in the department or the appointing authority  
22 (including the Chief, Civil Service Commissioners, Board of  
23 Fire and Police Commissioners, Board of Fire Commissioners,  
24 Fire Protection District Board of Trustees, or other  
25 appointed or elected officials) may see or examine the  
26 specific questions on the actual written examination before  
27 the examination is administered. It is a violation of this  
28 Act for any member of the department or for the appointing  
29 authority to obtain or divulge the contents of the written  
30 examination before it is administered.

31 (d) Each department must maintain reading and study  
32 materials for its current written examinations and the  
33 reading list for the last 2 written examinations for each  
34 rank and must make these materials available and accessible

1 at each duty station.

2 Section 45. Seniority points.

3 (a) Seniority points must be based only upon service  
4 with the affected department and must be calculated as of the  
5 date of the written examination. A candidate shall be  
6 entitled to 1/12th of one point for each completed month of  
7 service with the affected department.

8 (b) A seniority list must be posted before the written  
9 examination is given and before the preliminary promotion  
10 list is compiled. The seniority list must include the  
11 seniority date, any breaks in service, the total number of  
12 eligible years, and the number of seniority points.

13 Section 50. Ascertained merit. The promotional test may  
14 include points for ascertained merit. Ascertained merit  
15 points may be awarded for education, training, and  
16 certification in subjects and skills related to fire  
17 fighting. The basis for granting ascertained merit points,  
18 after the effective date of this Act, must be published at  
19 least 2 years before the date ascertained merits points are  
20 awarded. All persons eligible to compete for promotion must  
21 be given an equal opportunity to obtain ascertained merit  
22 points.

23 Section 55. Subjective evaluation.

24 (a) A promotional test may include a subjective  
25 evaluation component. Subjective evaluations may include an  
26 oral interview, tactical evaluation, character or performance  
27 evaluation, or other component based on the subjective  
28 evaluation of the examinee, and may employ assessment  
29 centers, evaluation systems, a force matrix process, chief's  
30 points, or other methods.

31 (b) Any subjective component must be identified to all

1 candidates before its application, be job-related, and be  
2 applied uniformly to all candidates. Every examinee has the  
3 right to documentation of (i) his or her score on the  
4 subjective component upon the completion of the subjective  
5 examination component or its application and (ii) an  
6 explanation of the basis or reasons for the differences in  
7 the scores awarded.

8 (c) When performance evaluations are used as a basis for  
9 promotions, they shall be given annually and made readily  
10 available to each candidate for review and they must include  
11 any disagreement or documentation the employee provides to  
12 refute or contest the evaluation.

13 Section 60. Veteran's preference. A person on a  
14 preliminary promotion list who is eligible for veteran's  
15 preference under Section 10-1-16 or 10-2.1-11 of the Illinois  
16 Municipal Code, Section 16.08a of the Fire Protection  
17 District Act, or any other law or agreement applicable to an  
18 affected department may file a written application for that  
19 preference within 10 days after the initial posting of the  
20 preliminary promotion list. The veteran's preference must be  
21 calculated as provided in the applicable law and added to the  
22 applicant's total score on the preliminary promotion list.  
23 Any person who has received a promotion from a promotion list  
24 on which his or her position was adjusted for veteran's  
25 preference, under this Act or any other law, is not eligible  
26 for any subsequent veteran's preference under this Act.

27 Section 65. Right to review. Any affected person who  
28 believes that an error has been made with respect to his or  
29 her eligibility to take an examination, examination result,  
30 placement or position on a promotion list, or veteran's  
31 preference is entitled to a review of the matter by the  
32 appointing authority or as otherwise provided by law. This

1 Section is not exclusive and does not limit any right to seek  
2 review or redress under any other law or agreement.

3 Section 70. Violations.

4 (a) A person who knowingly divulges or receives test  
5 questions or answers before a written examination, or  
6 otherwise knowingly violates or subverts any requirement of  
7 this Act, commits official misconduct and is subject to the  
8 penalties prescribed by Section 33-3 of the Criminal Code of  
9 1961.

10 (b) A person who knowingly receives test information in  
11 advance of the examination must be disqualified from the  
12 promotion examination or demoted from the rank to which he or  
13 she was promoted, as applicable, and otherwise subjected to  
14 disciplinary actions.

15 (c) A person convicted of an offense under subsection  
16 (a) of this Section is civilly liable to any person harmed by  
17 the actions constituting the offense for lost wages and any  
18 other appropriate damages, plus reasonable attorney fees and  
19 costs.

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.