

1 AMENDMENT TO HOUSE BILL 1689

2 AMENDMENT NO. _____. Amend House Bill 1689 by replacing
3 everything after the enacting clause with the following:

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

6 Section 5. Definitions. In this Act:

7 "Affected department" or "department" means a municipal
8 fire department or the fire department operated by a fire
9 protection district. The terms do not include fire
10 departments operated by the State, a university, or a
11 municipality with a population over 1,000,000 or any unit of
12 local government other than a municipality or fire protection
13 district.

14 "Appointing authority" means the Board of Fire and Police
15 Commissioners, Board of Fire Commissioners, Civil Service
16 Commissioners, Superintendent or Department Head, Fire
17 Protection District Board of Trustees, or other entity having
18 the authority to administer and grant promotions in an
19 affected department.

20 "Promotion" means any appointment or advancement to a
21 rank within the affected department for which an examination
22 was required before the effective date of this Act.

1 "Promotion" does not include appointments (i) that are for
2 less than 180 days; (ii) to the positions of Superintendent,
3 Chief, or other chief executive officer; (iii) to an
4 exclusively administrative or executive rank for which an
5 examination is not required; (iv) to a rank that has
6 previously been exempted by a home rule municipality,
7 provided that after the effective date of this Act no home
8 rule municipality may exempt any future or existing ranks
9 from the provisions of this Act; or (v) to an administrative
10 rank immediately below the Superintendent, Chief, or other
11 chief executive officer of an affected department, provided
12 such rank shall not exceed 2 persons and there is a promoted
13 rank immediately below it. Notwithstanding the exceptions to
14 the definition of "promotion" set forth in items (i), (ii),
15 (iii), (iv), and (v) of this paragraph, promotions shall
16 include any appointments to ranks covered by the terms of a
17 collective bargaining agreement in effect on the effective
18 date of this Act.

19 "Preliminary promotion list" means the rank order of
20 eligible candidates established in accordance with subsection
21 (b) of Section 20 prior to applicable veteran's preference
22 points. A person on the preliminary promotion list who is
23 eligible for veteran's preference under the laws and
24 agreements applicable to the appointing authority may file a
25 written application for that preference within 10 days after
26 the initial posting of the preliminary promotion list. The
27 preference shall be calculated in accordance with Section 55
28 and applied as an addition to the person's total point score
29 on the examination. The appointing authority shall make
30 adjustments to the preliminary promotion list based on any
31 veteran's preference claimed and the final adjusted promotion
32 list shall then be posted by the appointing authority.

33 "Final adjusted promotion list" means the promotion list
34 for the position that is in effect on the date the position

1 is created or the vacancy occurs. If there is no final
2 adjusted promotion list in effect for that position on that
3 date, or if all persons on the current final adjusted
4 promotion list for that position refuse the promotion, the
5 affected department shall not make a permanent promotion
6 until a new final adjusted promotion list has been prepared
7 in accordance with this Act, but may make a temporary
8 appointment to fill the vacancy. Temporary appointments shall
9 not exceed 180 days.

10 Each component of the promotional test shall be scored on
11 a scale of 100 points. The component scores shall then be
12 reduced by the weighting factor assigned to the component on
13 the test and the scores of all components shall be added to
14 produce a total score based on a scale of 100 points.

15 Section 10. Applicability.

16 (a) This Act shall apply to all positions in an affected
17 department, except those specifically excluded in items (i),
18 (ii), (iii), (iv), and (v) of the definition of "promotion"
19 in Section 5 unless such positions are covered by a
20 collective bargaining agreement in force on the effective
21 date of this Act. Existing promotion lists shall continue to
22 be valid until after their expiration dates, or up to a
23 maximum of 3 years after the effective date of this Act.

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

1 (c) A home rule or non-home rule municipality may not
2 administer its fire department promotion process in a manner
3 that is inconsistent with this Act. This Section is a
4 limitation under subsection (i) of Section 6 of Article VII
5 of the Illinois Constitution on the concurrent exercise by
6 home rule units of the powers and functions exercised by the
7 State.

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

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

12 (1) An appointing authority from establishing
13 different or supplemental promotional criteria
14 components, provided that each criteria is job related
15 and applied uniformly to all candidates.

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 not specifically excluded
20 under items (i), (ii), (iii), (iv), and (v) of the
21 definition of "promotion" in Section 5.

22 Section 15. Promotion process.

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

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

1 and all members of the affected department shall be given an
2 equal opportunity to meet those eligibility requirements.

3 (c) All aspects of the promotion process shall be
4 equally accessible to all eligible employees of the
5 department. Every component of the testing and evaluation
6 procedures shall be published to all eligible candidates when
7 the announcement of promotional testing is made. The scores
8 for each component of the testing and evaluation procedures
9 shall be disclosed to each candidate as soon as practicable
10 after the component is completed.

11 (d) The appointing authority shall provide a separate
12 promotional examination for each rank that is filled by
13 promotion. All examinations for promotion shall be
14 competitive among such members of the next lower rank that
15 meet the established eligibility requirements who desire to
16 submit themselves to examination. The appointing authority
17 may employ consultants to design and administer promotion
18 examinations or may adopt any job related examinations or
19 study materials that may become available, so long as they
20 comply with the requirements of this Act.

21 Section 20. Promotion lists.

22 (a) For the purpose of granting a promotion to any rank
23 to which this Act applies, the appointing authority shall
24 from time to time, as necessary, prepare a preliminary
25 promotion list in accordance with this Act. The preliminary
26 promotion list shall be distributed, posted, or otherwise
27 made conveniently available by the appointing authority to
28 all members of the department.

29 (b) A person's position on the preliminary promotion
30 list shall be determined by a combination of factors which
31 may include any of the following: (i) the person's score on
32 the written examination for that rank, determined in
33 accordance with Section 35; (ii) the person's seniority

1 within the department, determined in accordance with Section
2 40; (iii) the person's ascertained merit, determined in
3 accordance with Section 45; and (iv) the person's score on
4 the subjective evaluation, determined in accordance with
5 Section 50. Candidates shall be ranked on the list in rank
6 order based on the highest to the lowest total points scored
7 on all of the components of the test. Promotional components,
8 as defined herein, shall be determined and administered in
9 accordance with the referenced Section, unless otherwise
10 modified or agreed to as provided by paragraph (1) or (2) of
11 subsection (e) of Section 10. The use of physical criteria,
12 including but not limited to, fitness testing, agility
13 testing, or medical evaluations is specifically barred from
14 being used in the promotion process.

15 (c) A person on the preliminary promotion list who is
16 eligible for a veteran's preference under the laws and
17 agreements applicable to the department may file a written
18 application for that preference within 10 days after the
19 initial posting of the preliminary promotion list. The
20 preference shall be calculated as provided under Section 55
21 and added to the total score achieved by the candidate on the
22 test. The appointing authority shall then make adjustments to
23 the rank order of the preliminary promotion list based on any
24 such veteran's preferences awarded. The final adjusted
25 promotion list shall then be distributed, posted, or
26 otherwise made conveniently available by the appointing
27 authority to all members of the department.

28 (d) Whenever a promotional rank is created or becomes
29 vacant due to resignation, discharge, promotion, death, or
30 the granting of a disability or retirement pension, or any
31 other cause, the department shall appoint to that position
32 the person with the highest ranking on the final promotion
33 list for that rank, except that the appointing authority may
34 pass over the person with the highest ranking if it has an

1 objectively demonstrable basis for determining that the
2 person is unable to perform the duties of the position. Any
3 disputes as to the existence of such basis shall be subject
4 to resolution in accordance with any grievance procedure in
5 effect covering the employee.

6 A vacancy shall be deemed to occur in a position on the
7 date upon which the position is vacated, and on that same
8 date, a vacancy shall occur in all ranks inferior to that
9 rank, provided that the position or positions continue to be
10 funded and authorized by the corporate authorities. If a
11 vacated position is not filled due to a lack of funding or
12 authorization and is subsequently reinstated, the final
13 promotion list shall be continued in effect until all
14 positions vacated have been filled or for a period up to 5
15 years beginning from the date on which the position was
16 vacated. In such event, the candidate or candidates who
17 would have otherwise been promoted when the vacancy
18 originally occurred shall be promoted.

19 Any candidate may refuse a promotion once without losing
20 his or her position on the final adjusted promotion list.
21 Any candidate who refuses promotion a second time shall be
22 removed from the final adjusted promotion list, provided that
23 such action shall not prejudice a person's opportunities to
24 participate in future promotion examinations.

25 (e) A final adjusted promotion list shall remain valid
26 for a period of 3 years after the date of the initial
27 posting. Integrated lists are prohibited and when a list
28 expires it shall be void, except as provided in subsection
29 (d) of this Section. If a promotion list is not in effect,
30 a successor list shall be prepared and distributed within 180
31 days after a vacancy, as defined in subsection (d) of this
32 Section.

33 Section 25. Monitoring.

1 (a) All aspects of the promotion process, including
2 without limitation the administration, scoring, and posting
3 of scores for the written examination and subjective
4 evaluation and the determination and posting of seniority and
5 ascertained merit scores, shall be subject to monitoring and
6 review in accordance with this Section and Sections 30 and
7 50.

8 (b) Two impartial persons who are not members of the
9 affected department shall be selected to act as observers as
10 follows: by the exclusive bargaining agent or if there is no
11 exclusive bargaining agent, then by a majority of the
12 candidates participating in the promotion process. The
13 corporate authorities may also select 2 additional impartial
14 observers.

15 (c) The observers monitoring the promotion process are
16 authorized to be present and observe when any component of
17 the test is administered or scored. Observers may not
18 interfere with the promotion process, but shall promptly
19 report any observed or suspected violation of the
20 requirements of this Act or an applicable collective
21 bargaining agreement to the appointing authority and all
22 other affected parties.

23 Section 30. Promotion examination components. Promotion
24 examinations that include components consisting of written
25 examinations, seniority points, ascertained merit, or
26 subjective evaluations shall be administered as provided in
27 Sections 35, 40, 45 and 50. The weight, if any, that is
28 given to any such component included in a test may be set at
29 the discretion of the appointing authority provided that such
30 weight shall be subject to modification by the terms of any
31 collective bargaining agreement in effect on the effective
32 date of this Act or thereafter by negotiations between the
33 employer and an exclusive bargaining representative. If the

1 appointing authority establishes a minimum passing score,
2 such score shall be announced prior to the date of the
3 promotion process and it must be an aggregate of all
4 components of the testing process. All candidates shall be
5 allowed to participate in all components of the testing
6 process irrespective of their score on any one component.

7 Section 35. Written examinations.

8 (a) The appointing authority may not condition
9 eligibility to take the written examination on the
10 candidate's score on any of the previous components of the
11 examination. The written examination for a particular rank
12 shall consist of matters relating to the duties regularly
13 performed by persons holding that rank within the department.
14 The examination shall be based only on the contents of
15 written materials that the appointing authority has
16 identified and made readily available to potential examinees
17 at least 90 days before the examination is administered. The
18 test questions and material must be pertinent to the
19 particular rank for which the examination is being given. The
20 written examination shall be administered after the
21 determination and posting of the seniority list, ascertained
22 merit points, and subjective evaluation scores. The written
23 examination shall be administered, the test materials opened,
24 and the results scored and tabulated only in the presence of
25 the observers appointed under Section 25 and only in
26 accordance with subsection (b) of this Section.

27 (b) Written examinations shall be graded at the
28 examination site on the day of the examination immediately
29 upon completion of the test in front of the observers if such
30 observers are appointed under Section 25, or if the tests
31 are graded offsite by a bona fide testing agency, the
32 observers shall witness the sealing and the shipping of the
33 tests for grading and the subsequent opening of the scores

1 upon the return from the testing agency. Every examinee shall
2 have the right (i) to obtain his or her score on the
3 examination on the day of the examination or upon the day of
4 its return from the testing agency (or the appointing
5 authority shall require the testing agency to mail the
6 individual scores to any address submitted by the candidates
7 on the day of the examination); and (ii) to review the
8 answers to the examination that the examiners consider
9 correct. The appointing authority may hold a review session
10 after the examination for the purpose of gathering feedback
11 on the examination from the candidates.

12 (c) Sample written examinations may be examined by the
13 appointing authority and members of the department, but no
14 person in the department or the appointing authority
15 (including the Chief, Civil Service Commissioners, Board of
16 Fire and Police Commissioners, Board of Fire Commissioners,
17 or Fire Protection District Board of Trustees and other
18 appointed or elected officials) may see or examine the
19 specific questions on the actual written examination before
20 the examination is administered. If a sample examination is
21 used, actual test questions shall not be included. It is a
22 violation of this Act for any member of the department or the
23 appointing authority to obtain or divulge foreknowledge of
24 the contents of the written examination before it is
25 administered.

26 (d) Each department shall maintain reading and study
27 materials for its current written examination and the reading
28 list for the last 2 written examinations for each rank and
29 shall make these materials available and accessible at each
30 duty station.

31 Section 40. Seniority points.

32 (a) Seniority points shall be based only upon service
33 with the affected department and shall be calculated as of

1 the date of the written examination. The weight of this
2 component and its computation shall be determined by the
3 appointing authority or through a collective bargaining
4 agreement.

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

10 Section 45. Ascertained merit.

11 (a) The promotion test may include points for
12 ascertained merit. Ascertained merit points may be awarded
13 for education, training, and certification in subjects and
14 skills related to the fire service. The basis for granting
15 ascertained merit points, after the effective date of this
16 Act, shall be published at least one year prior to the date
17 ascertained merits points are awarded and all persons
18 eligible to compete for promotion shall be given an equal
19 opportunity to obtain ascertained merit points unless
20 otherwise agreed to in a collective bargaining agreement.

21 (b) Total points awarded for ascertained merit shall be
22 posted before the written examination is administered and
23 before the promotion list is compiled.

24 Section 50. Subjective evaluation.

25 (a) A promotion test may include a subjective evaluation
26 component. Subjective evaluations may include an oral
27 interview, tactical evaluation, performance evaluation, or
28 other component based on subjective evaluation of the
29 examinee. The methods used for subjective evaluations may
30 include using any employee assessment centers, evaluation
31 systems, chief's points, or other methods.

32 (b) Any subjective component shall be identified to all

1 candidates prior to its application, be job related, and be
2 applied uniformly to all candidates. Every examinee shall
3 have the right to documentation of (i) his or her score on
4 the subjective component upon the completion of the
5 subjective examination component or its application and (ii)
6 an explanation of the basis or reasons for the score awarded.
7 Where chief's points or other subjective methods are employed
8 that are not amenable to monitoring, monitors shall not be
9 required, but any disputes as to the results of such methods
10 shall be subject to resolution in accordance with any
11 collectively bargained grievance procedure in effect at the
12 time of the test.

13 (c) Where performance evaluations are used as a basis
14 for promotions, they shall be given annually and made readily
15 available to each candidate for review and they shall include
16 any disagreement or documentation the employee provides to
17 refute or contest the evaluation.

18 (d) Total points awarded for subjective components shall
19 be posted before the written examination is administered and
20 before the promotion list is compiled.

21 Section 55. Veterans' preference. A person on a
22 preliminary promotion list who is eligible for veteran's
23 preference under any law or agreement applicable to an
24 affected department may file a written application for that
25 preference within 10 days after the initial posting of the
26 preliminary promotion list. The veteran's preference shall
27 be calculated as provided in the applicable law and added to
28 the applicant's total score on the preliminary promotion
29 list. Any person who has received a promotion from a
30 promotion list on which his or her position was adjusted for
31 veteran's preference, under this Act or any other law, shall
32 not be eligible for any subsequent veteran's preference under
33 this Act.

1 Section 60. Right to review. Any affected person or party
2 who believes that an error has been made with respect to
3 eligibility to take an examination, examination result,
4 placement or position on a promotion list, or veteran's
5 preference shall be entitled to a review of the matter by the
6 appointing authority or as otherwise provided by law in this
7 Act. This Section is not exclusive and does not limit any
8 right to seek review or redress under any other law or
9 agreement.

10 Section 65. Violations.

11 (a) A person who knowingly divulges or receives test
12 questions or answers before a written examination, or
13 otherwise knowingly violates or subverts any requirement of
14 this Act commits a violation of this Act and may be subject
15 to charges for official misconduct.

16 (b) A person who is the knowing recipient of test
17 information in advance of the examination shall be
18 disqualified from the promotion examination or demoted from
19 the rank to which he was promoted, as applicable and
20 otherwise subjected to disciplinary actions.

21 Section 900. The State Mandates Act is amended by adding
22 Section 8.25 as follows:

23 (30 ILCS 805/8.25 new)

24 Sec. 8.25. Exempt mandate. Notwithstanding Sections 6
25 and 8 of this Act, no reimbursement by the State is required
26 for the implementation of any mandate created by this
27 amendatory Act of the 92nd General Assembly.

28 Section 999. Effective date. This Act takes effect upon
29 becoming law."