

1 AMENDMENT TO HOUSE BILL 1195

2 AMENDMENT NO. _____. Amend House Bill 1195 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 full-time
8 municipal fire department that is subject to a collective
9 bargaining agreement or the fire department operated by a
10 full-time fire protection district that is subject to a
11 collective bargaining agreement. The terms do not include
12 fire departments operated by the State, a university, or a
13 municipality with a population over 1,000,000 or any unit of
14 local government other than a municipality or fire protection
15 district. The terms also do not include a combined department
16 that was providing both police and firefighting services on
17 January 1, 2002.

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

1 affected department.

2 "Promotion" means any appointment or advancement to a
3 rank within the affected department (1) for which an
4 examination was required before January 1, 2001; (2) that is
5 included within a bargaining unit; or (3) that is the next
6 rank immediately above the highest rank included within a
7 bargaining unit, provided such rank is not the only rank
8 between the Fire Chief and the highest rank included within
9 the bargaining unit, or is a rank otherwise accepted under
10 item (i), (ii), (iii), (iv), or (v) of this definition
11 "Promotion" does not include appointments (i) that are for
12 fewer than 180 days; (ii) to the positions of Superintendent,
13 Chief, or other chief executive officer; (iii) to an
14 exclusively administrative or executive rank for which an
15 examination is not required; (iv) to a rank that was exempted
16 by a home rule municipality prior to January 1, 2001,
17 provided that after the effective date of this Act no home
18 rule municipality may exempt any future or existing ranks
19 from the provisions of this Act; or (v) to an administrative
20 rank immediately below the Superintendent, Chief, or other
21 chief executive officer of an affected department, provided
22 such rank shall not be held by more than 2 persons and there
23 is a promoted rank immediately below it. Notwithstanding the
24 exceptions to the definition of "promotion" set forth in
25 items (i), (ii), (iii), (iv), and (v) of this definition,
26 promotions shall include any appointments to ranks covered by
27 the terms of a collective bargaining agreement in effect on
28 the effective date of this Act.

29 "Preliminary promotion list" means the rank order of
30 eligible candidates established in accordance with subsection
31 (b) of Section 20 prior to applicable veteran's preference
32 points. A person on the preliminary promotion list who is
33 eligible for veteran's preference under the laws and
34 agreements applicable to the appointing authority may file a

1 written application for that preference within 10 days after
2 the initial posting of the preliminary promotion list. The
3 preference shall be calculated in accordance with Section 55
4 and applied as an addition to the person's total point score
5 on the examination. The appointing authority shall make
6 adjustments to the preliminary promotion list based on any
7 veteran's preference claimed and the final adjusted promotion
8 list shall then be posted by the appointing authority.

9 "Final adjusted promotion list" means the promotion list
10 for the position that is in effect on the date the position
11 is created or the vacancy occurs. If there is no final
12 adjusted promotion list in effect for that position on that
13 date, or if all persons on the current final adjusted
14 promotion list for that position refuse the promotion, the
15 affected department shall not make a permanent promotion
16 until a new final adjusted promotion list has been prepared
17 in accordance with this Act, but may make a temporary
18 appointment to fill the vacancy. Temporary appointments shall
19 not exceed 180 days.

20 Each component of the promotional test shall be scored on
21 a scale of 100 points. The component scores shall then be
22 reduced by the weighting factor assigned to the component on
23 the test and the scores of all components shall be added to
24 produce a total score based on a scale of 100 points.

25 Section 10. Applicability.

26 (a) This Act shall apply to all positions in an affected
27 department, except those specifically excluded in items (i),
28 (ii), (iii), (iv), and (v) of the definition of "promotion"
29 in Section 5 unless such positions are covered by a
30 collective bargaining agreement in force on the effective
31 date of this Act. Existing promotion lists shall continue to
32 be valid until their expiration dates, or up to a maximum of
33 3 years after the effective date of this Act.

1 (b) Notwithstanding any statute, ordinance, rule, or
2 other laws to the contrary, all promotions in an affected
3 department to which this Act applies shall be administered in
4 the manner provided for in this Act. Provisions of the
5 Illinois Municipal Code, the Fire Protection District Act,
6 municipal ordinances, or rules adopted pursuant to such
7 authority and other laws relating to promotions in affected
8 departments shall continue to apply to the extent they are
9 compatible with this Act, but in the event of conflict
10 between this Act and any other law, this Act shall control.

11 (c) A home rule or non-home rule municipality may not
12 administer its fire department promotion process in a manner
13 that is inconsistent with this Act. This Section is a
14 limitation under subsection (i) of Section 6 of Article VII
15 of the Illinois Constitution on the concurrent exercise by
16 home rule units of the powers and functions exercised by the
17 State.

18 (d) This Act is intended to serve as a minimum standard
19 and shall be construed to authorize and not to limit:

20 (1) An appointing authority from establishing
21 different or supplemental promotional criteria or
22 components, provided that the criteria are job-related
23 and applied uniformly to identify merit factors for the
24 promotion of the candidate of the highest rank.

25 (2) The negotiation by an employer and an exclusive
26 bargaining representative of clauses within a collective
27 bargaining agreement relating to conditions of procedures
28 for the promotion of employees who are members of
29 bargaining units who are not specifically excluded under
30 the definition of "promotion" in Section 10 of this Act.

31 (3) The negotiation by an employer and an exclusive
32 bargaining representative of provisions within a
33 collective bargaining agreement to achieve affirmative
34 action objectives, provided that such clauses are

1 consistent with applicable law.

2 Section 15. Promotion process.

3 (a) For the purpose of granting promotion to any rank to
4 which this Act applies, the appointing authority shall from
5 time to time, as necessary, administer a promotion process in
6 accordance with this Act.

7 (b) Eligibility requirements to participate in the
8 promotional process may include a minimum requirement as to
9 the length of employment, education, training, and
10 certification in subjects and skills related to fire
11 fighting. After the effective date of this Act, any such
12 eligibility requirements shall be published at least one year
13 prior to the date of the beginning of the promotional process
14 and all members of the affected department shall be given an
15 equal opportunity to meet those eligibility requirements.

16 (c) All aspects of the promotion process shall be
17 equally accessible to all eligible employees of the
18 department. Every component of the testing and evaluation
19 procedures shall be published to all eligible candidates when
20 the announcement of promotional testing is made. The scores
21 for each component of the testing and evaluation procedures
22 shall be disclosed to each candidate as soon as practicable
23 after the component is completed.

24 (d) The appointing authority shall provide a separate
25 promotional examination for each rank that is filled by
26 promotion. All examinations for promotion shall be
27 competitive among the members of the next lower rank who meet
28 the established eligibility requirements and desire to submit
29 themselves to examination. The appointing authority may
30 employ consultants to design and administer promotion
31 examinations or may adopt any job-related examinations or
32 study materials that may become available, so long as they
33 comply with the requirements of this Act.

1 Section 20. Promotion lists.

2 (a) For the purpose of granting a promotion to any rank
3 to which this Act applies, the appointing authority shall
4 from time to time, as necessary, prepare a preliminary
5 promotion list in accordance with this Act. The preliminary
6 promotion list shall be distributed, posted, or otherwise
7 made conveniently available by the appointing authority to
8 all members of the department.

9 (b) A person's position on the preliminary promotion
10 list shall be determined by a combination of factors which
11 may include any of the following: (i) the person's score on
12 the written examination for that rank, determined in
13 accordance with Section 35; (ii) the person's seniority
14 within the department, determined in accordance with Section
15 40; (iii) the person's ascertained merit, determined in
16 accordance with Section 45; and (iv) the person's score on
17 the subjective evaluation, determined in accordance with
18 Section 50. Candidates shall be ranked on the list in rank
19 order based on the highest to the lowest total points scored
20 on all of the components of the test. Promotional components,
21 as defined herein, shall be determined and administered in
22 accordance with the referenced Section, unless otherwise
23 modified or agreed to as provided by paragraph (1) or (2) of
24 subsection (e) of Section 10. The use of physical criteria,
25 including but not limited to fitness testing, agility
26 testing, and medical evaluations, is specifically barred from
27 the promotion process.

28 (c) A person on the preliminary promotion list who is
29 eligible for a veteran's preference under the laws and
30 agreements applicable to the department may file a written
31 application for that preference within 10 days after the
32 initial posting of the preliminary promotion list. The
33 preference shall be calculated as provided under Section 55
34 and added to the total score achieved by the candidate on the

1 test. The appointing authority shall then make adjustments
2 to the rank order of the preliminary promotion list based on
3 any veteran's preferences awarded. The final adjusted
4 promotion list shall then be distributed, posted, or
5 otherwise made conveniently available by the appointing
6 authority to all members of the department.

7 (d) Whenever a promotional rank is created or becomes
8 vacant due to resignation, discharge, promotion, death, or
9 the granting of a disability or retirement pension, or any
10 other cause, the appointing authority shall appoint to that
11 position the person with the highest ranking on the final
12 promotion list for that rank, except that the appointing
13 authority shall have the right to pass over that person and
14 appoint the next highest ranked person on the list if the
15 appointing authority has reason to conclude that the highest
16 ranking person has demonstrated substantial shortcomings in
17 work performance or has engaged in misconduct affecting the
18 person's ability to perform the duties of the promoted rank
19 since the posting of the promotion list. If the highest
20 ranking person is passed over, the appointing authority shall
21 document its reasons for its decision to select the next
22 highest ranking person on the list. Unless the reasons for
23 passing over the highest ranking person are not remedial, no
24 person who is the highest ranking person on the list at the
25 time of the vacancy shall be passed over more than once. Any
26 dispute as to the selection of the first or second
27 highest-ranking person shall be subject to resolution in
28 accordance with any grievance procedure in effect covering
29 the employee. Local authorities affected by this Section may
30 agree to waive this Section and bargain on its contents.

31 A vacancy shall be deemed to occur in a position on the
32 date upon which the position is vacated, and on that same
33 date, a vacancy shall occur in all ranks inferior to that
34 rank, provided that the position or positions continue to be

1 funded and authorized by the corporate authorities. If a
2 vacated position is not filled due to a lack of funding or
3 authorization and is subsequently reinstated, the final
4 promotion list shall be continued in effect until all
5 positions vacated have been filled or for a period up to 5
6 years beginning from the date on which the position was
7 vacated. In such event, the candidate or candidates who
8 would have otherwise been promoted when the vacancy
9 originally occurred shall be promoted.

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

16 (e) A final adjusted promotion list shall remain valid
17 and unaltered for a period of not less than 2 nor more than 3
18 years after the date of the initial posting. Integrated
19 lists are prohibited and when a list expires it shall be
20 void, except as provided in subsection (d) of this Section.
21 If a promotion list is not in effect, a successor list shall
22 be prepared and distributed within 180 days after a vacancy,
23 as defined in subsection (d) of this Section.

24 (f) This Section 20 does not apply to the initial hiring
25 list.

26 Section 25. Monitoring.

27 (a) All aspects of the promotion process, including
28 without limitation the administration, scoring, and posting
29 of scores for the written examination and subjective
30 evaluation and the determination and posting of seniority and
31 ascertained merit scores, shall be subject to monitoring and
32 review in accordance with this Section and Sections 30 and
33 50.

1 (b) Two impartial persons who are not members of the
2 affected department shall be selected to act as observers by
3 the exclusive bargaining agent. The appointing authorities
4 may also select 2 additional impartial observers.

5 (c) The observers monitoring the promotion process are
6 authorized to be present and observe when any component of
7 the test is administered or scored. Except as otherwise
8 agreed to in a collective bargaining agreement, observers may
9 not interfere with the promotion process, but shall promptly
10 report any observed or suspected violation of the
11 requirements of this Act or an applicable collective
12 bargaining agreement to the appointing authority and all
13 other affected parties.

14 (d) The provisions of this Section do not apply to the
15 extent that they are inconsistent with provisions otherwise
16 agreed to in a collective bargaining agreement.

17 Section 30. Promotion examination components. Promotion
18 examinations that include components consisting of written
19 examinations, seniority points, ascertained merit, or
20 subjective evaluations shall be administered as provided in
21 Sections 35, 40, 45 and 50. The weight, if any, that is
22 given to any such component included in a test may be set at
23 the discretion of the appointing authority provided that such
24 weight shall be subject to modification by the terms of any
25 collective bargaining agreement in effect on the effective
26 date of this Act or thereafter by negotiations between the
27 employer and an exclusive bargaining representative. If the
28 appointing authority establishes a minimum passing score,
29 such score shall be announced prior to the date of the
30 promotion process and it must be an aggregate of all
31 components of the testing process. All candidates shall be
32 allowed to participate in all components of the testing
33 process irrespective of their score on any one component. The

1 provisions of this Section do not apply to the extent that
2 they are inconsistent with provisions otherwise agreed to in
3 a collective bargaining agreement.

4 Section 35. Written examinations.

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

22 (b) Written examinations shall be graded at the
23 examination site on the day of the examination immediately
24 upon completion of the test in front of the observers if such
25 observers are appointed under Section 25, or if the tests
26 are graded offsite by a bona fide testing agency, the
27 observers shall witness the sealing and the shipping of the
28 tests for grading and the subsequent opening of the scores
29 upon the return from the testing agency. Every examinee shall
30 have the right (i) to obtain his or her score on the
31 examination on the day of the examination or upon the day of
32 its return from the testing agency (or the appointing
33 authority shall require the testing agency to mail the

1 individual scores to any address submitted by the candidates
2 on the day of the examination); and (ii) to review the
3 answers to the examination that the examiners consider
4 correct. The appointing authority may hold a review session
5 after the examination for the purpose of gathering feedback
6 on the examination from the candidates.

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

21 (d) Each department shall maintain reading and study
22 materials for its current written examination and the reading
23 list for the last 2 written examinations or for a period of 5
24 years, whichever is less, for each rank and shall make these
25 materials available and accessible at each duty station.

26 (e) The provisions of this Section do not apply to the
27 extent that they are in conflict with provisions otherwise
28 agreed to in a collective bargaining agreement.

29 Section 40. Seniority points.

30 (a) Seniority points shall be based only upon service
31 with the affected department and shall be calculated as of
32 the date of the written examination. The weight of this
33 component and its computation shall be determined by the

1 appointing authority or through a collective bargaining
2 agreement.

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

8 Section 45. Ascertained merit.

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

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

22 Section 50. Subjective evaluation.

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

30 (b) Any subjective component shall be identified to all
31 candidates prior to its application, be job-related, and be
32 applied uniformly to all candidates. Every examinee shall

1 have the right to documentation of his or her score on the
2 subjective component upon the completion of the subjective
3 examination component or its application.

4 (c) Where chief's points or other subjective methods are
5 employed that are not amenable to monitoring, monitors shall
6 not be required, but any disputes as to the results of such
7 methods shall be subject to resolution in accordance with any
8 collectively bargained grievance procedure in effect at the
9 time of the test.

10 (d) Where performance evaluations are used as a basis
11 for promotions, they shall be given annually and made readily
12 available to each candidate for review and they shall include
13 any disagreement or documentation the employee provides to
14 refute or contest the evaluation. These annual evaluations
15 are not subject to grievance procedures.

16 (e) Total points awarded for subjective components shall
17 be posted before the written examination is administered and
18 before the promotion list is compiled.

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

32 Section 60. Right to review. Any affected person or party

1 who believes that an error has been made with respect to
2 eligibility to take an examination, examination result,
3 placement or position on a promotion list, or veteran's
4 preference shall be entitled to a review of the matter by the
5 appointing authority or as otherwise provided by law.

6 Section 65. Violations.

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

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

17 Section 900. The State Mandates Act is amended by adding
18 Section 8.27 as follows:

19 (30 ILCS 805/8.27 new)

20 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6
21 and 8 of this Act, no reimbursement by the State is required
22 for the implementation of any mandate created by this
23 amendatory Act of the 93rd General Assembly.

24 Section 999. Effective date. This Act takes effect upon
25 becoming law."