## 96TH GENERAL ASSEMBLY

## State of Illinois

## 2009 and 2010

#### SB1446

Introduced 2/18/2009, by Sen. Mike Jacobs

### SYNOPSIS AS INTRODUCED:

New Act	
20 ILCS 2610/8	from Ch. 121, par. 307.8
55 ILCS 5/3-7009	from Ch. 34, par. 3-7009
55 ILCS 5/3-8011	from Ch. 34, par. 3-8011
65 ILCS 5/10-2.1-29	from Ch. 24, par. 10-2.1-29

Creates the Police Department Promotion Act. Sets forth requirements for a promotion process to be administered by the proper appointing authorities for certain positions within State and local police departments. Provides that the Act does not apply to a police department operated by a municipality with a population of more than 1,000,000 or to a combined department that provides both police and firefighting services. Excludes certain positions, including positions that are covered by a collective bargaining agreement in effect on the effective date of the Act. Sets forth procedures for preparing preliminary, adjusted, and final promotion lists. Provides for monitoring of the promotion process. Contains other provisions. Preempts the concurrent exercise of home rule powers. Amends the State Police Act, the Illinois Municipal Code, and the Counties Code to make corresponding changes. Effective immediately.

LRB096 10714 RLJ 20894 b

FISCAL NOTE ACT MAY APPLY HOME RULE NOTE ACT MAY APPLY SB1446

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AN ACT concerning government.

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

Section 1. Short title. This Act may be cited as the Police
Department Promotion Act.

6 Section 5. Definitions. In this Act:

7 "Affected department" or "department" means a full-time municipal police department that is subject to a collective 8 9 bargaining agreement or a police department operated by the 10 State or any unit of local government. The terms do not include police departments that are operated by a municipality with a 11 population over 1,000,000. The terms also do not include a 12 combined department that provides both police and firefighting 13 14 services.

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

19 "Promotion" means any appointment or advancement to a rank 20 within the affected department (1) for which an examination was 21 required before the effective date of this Act; (2) that is 22 included within a bargaining unit; or (3) that is the next rank 23 immediately above the highest rank included within a bargaining

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

"Preliminary promotion list" means the rank order of eligible candidates established in accordance with subsection (b) of Section 20 prior to applicable veteran's preference points. A person on the preliminary promotion list who is eligible for veteran's preference under the laws and agreements

applicable to the appointing authority may file a written 1 2 application for that preference within 10 days after the 3 initial posting of the preliminary promotion list. The preference shall be calculated in accordance with Section 55 4 5 and applied as an addition to the person's total point score on 6 appointing the examination. The authority shall make adjustments to the preliminary promotion list based on any 7 8 veteran's preference claimed and the final adjusted promotion 9 list shall then be posted by the appointing authority.

10 "Rank" means any position within the chain of command of a 11 police department to which employees are regularly assigned to 12 perform duties related to law enforcement or emergency 13 services.

"Final adjusted promotion list" means the promotion list 14 15 for the position that is in effect on the date the position is created or the vacancy occurs. If there is no final adjusted 16 17 promotion list in effect for that position on that date, or if all persons on the current final adjusted promotion list for 18 19 that position refuse the promotion, the affected department 20 shall not make a permanent promotion until a new final adjusted promotion list has been prepared in accordance with this Act, 21 22 but may make a temporary appointment to fill the vacancy. 23 Temporary appointments shall not exceed 180 days.

Each component of the promotional test shall be scored on a scale of 100 points. The component scores shall then be reduced by the weighting factor assigned to the component on the test

- and the scores of all components shall be added to produce a
   total score based on a scale of 100 points.
- 3 Section 10. Applicability.

4 (a) This Act shall apply to all positions in an affected 5 department, except those specifically excluded in items (i), 6 (ii), (iii), (iv), and (v) of the definition of "promotion" in 7 Section 5 unless such positions are covered by a collective 8 bargaining agreement in force on the effective date of this 9 Act. Existing promotion lists shall continue to be valid until 10 their expiration dates, or up to a maximum of 3 years after the 11 effective date of this Act.

12 (b) Notwithstanding any statute, ordinance, rule, or other 13 laws to the contrary, all promotions in an affected department 14 to which this Act applies shall be administered in the manner 15 provided for in this Act. Provisions of the Illinois Municipal 16 Code, the Counties Code, municipal or county ordinances, or rules adopted pursuant to such authority and other laws 17 18 relating to promotions in affected departments shall continue 19 to apply to the extent they are compatible with this Act, but 20 in the event of conflict between this Act and any other law, 21 this Act shall control.

(c) A home rule municipality may not administer its police department promotion process in a manner that is inconsistent with this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on

- the concurrent exercise by home rule units of the powers and 1 2 functions exercised by the State.
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(d) This Act is intended to serve as a minimum standard and shall be construed to authorize and not to limit: 4

appointing authority from 5 (1)An establishing different 6 or supplemental promotional criteria or 7 components, provided that the criteria are job-related and 8 applied uniformly.

9 (2) The right of exclusive an bargaining 10 representative to require an employer to negotiate clauses 11 within a collective bargaining agreement relating to 12 conditions, criteria, or procedures for the promotion of employees to ranks, as defined in Section 5, covered by 13 14 this Act.

15 (3) The negotiation by an employer and an exclusive 16 bargaining representative of provisions within а 17 collective bargaining agreement to achieve affirmative action objectives, provided that such clauses 18 are 19 consistent with applicable law.

20 (e) Local authorities and exclusive bargaining agents affected by this Act may agree to waive one or more of its 21 22 provisions and bargain on the contents of those provisions.

23 Section 15. Promotion process.

24 (a) For the purpose of granting promotion to any rank to 25 which this Act applies, the appointing authority shall from

1 time to time, as necessary, administer a promotion process in 2 accordance with this Act.

3 Eligibility requirements to participate in the (b) promotional process may include a minimum requirement as to the 4 5 length of employment, education, training, and certification 6 in subjects and skills related to law enforcement. After the 7 effective date of this Act, any such eligibility requirements 8 shall be published at least one year prior to the date of the 9 beginning of the promotional process and all members of the 10 affected department shall be given an equal opportunity to meet 11 those eligibility requirements.

12 (c) All aspects of the promotion process shall be equally 13 accessible to all eligible employees of the department. Every component of the testing and evaluation procedures shall be 14 15 published to all eligible candidates when the announcement of 16 promotional testing is made. The scores for each component of 17 the testing and evaluation procedures shall be disclosed to each candidate as soon as practicable after the component is 18 19 completed.

(d) The appointing authority shall provide a separate promotional examination for each rank that is filled by promotion. All examinations for promotion shall be competitive among the members of the next lower rank who meet the established eligibility requirements and desire to submit themselves to examination. The appointing authority may employ consultants to design and administer promotion examinations or

1 may adopt any job-related examinations or study materials that 2 may become available, so long as they comply with the 3 requirements of this Act.

4 Section 20. Promotion lists.

5 (a) For the purpose of granting a promotion to any rank to 6 which this Act applies, the appointing authority shall from time to time, as necessary, prepare a preliminary promotion 7 8 list in accordance with this Act. The preliminary promotion 9 list shall be distributed, posted, or otherwise made 10 conveniently available by the appointing authority to all 11 members of the department.

12 (b) A person's position on the preliminary promotion list shall be determined by a combination of factors which may 13 14 include any of the following: (i) the person's score on the 15 written examination for that rank, determined in accordance 16 with Section 35; (ii) the person's seniority within the department, determined in accordance with Section 40; (iii) the 17 18 person's ascertained merit, determined in accordance with Section 45; and (iv) the person's score on the subjective 19 determined in accordance with 20 evaluation, Section 50. 21 Candidates shall be ranked on the list in rank order based on 22 the highest to the lowest total points scored on all of the 23 components of the test. Promotional components, as defined 24 herein, shall be determined and administered in accordance with 25 the referenced Section, unless otherwise modified or agreed to 1 as provided by paragraph (1) or (2) of subsection (e) of 2 Section 10. The use of physical criteria, including but not 3 limited to fitness testing, agility testing, and medical 4 evaluations, is specifically barred from the promotion 5 process.

6 (c) A person on the preliminary promotion list who is 7 eligible for a veteran's preference under the laws and 8 agreements applicable to the department may file a written 9 application for that preference within 10 days after the 10 initial posting of the preliminary promotion list. The 11 preference shall be calculated as provided under Section 55 and 12 added to the total score achieved by the candidate on the test. 13 The appointing authority shall then make adjustments to the rank order of the preliminary promotion list based on any 14 veteran's preferences awarded. The final adjusted promotion 15 16 list shall then be distributed, posted, or otherwise made 17 conveniently available by the appointing authority to all members of the department. 18

19 (d) Whenever a promotional rank is created or becomes vacant due to resignation, discharge, promotion, death, or the 20 granting of a disability or retirement pension, or any other 21 22 cause, the appointing authority shall appoint to that position 23 the person with the highest ranking on the final promotion list for that rank, except that the appointing authority shall have 24 25 the right to pass over that person and appoint the next highest ranked person on the list if the appointing authority has 26

reason to conclude that the highest ranking person has 1 2 demonstrated substantial shortcomings in work performance or has engaged in misconduct affecting the person's ability to 3 perform the duties of the promoted rank since the posting of 4 5 the promotion list. If the highest ranking person is passed over, the appointing authority shall document its reasons for 6 its decision to select the next highest ranking person on the 7 8 list. Unless the reasons for passing over the highest ranking 9 person are not remedial, no person who is the highest ranking 10 person on the list at the time of the vacancy shall be passed 11 over more than once. Any dispute as to the selection of the 12 first or second highest-ranking person shall be subject to 13 resolution in accordance with any grievance procedure in effect 14 covering the employee.

15 A vacancy shall be deemed to occur in a position on the 16 date upon which the position is vacated, and on that same date, 17 a vacancy shall occur in all ranks inferior to that rank, provided that the position or positions continue to be funded 18 and authorized by the corporate authorities. If a vacated 19 20 position is not filled due to a lack of funding or is 21 authorization and subsequently reinstated, the final 22 promotion list shall be continued in effect until all positions 23 vacated have been filled or for a period up to 5 years 24 beginning from the date on which the position was vacated. In such event, the candidate or candidates who would have 25 26 otherwise been promoted when the vacancy originally occurred

1 shall be promoted.

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

8 (e) A final adjusted promotion list shall remain valid and 9 unaltered for a period of not less than 2 nor more than 3 years 10 after the date of the initial posting. Integrated lists are 11 prohibited and when a list expires it shall be void, except as 12 provided in subsection (d) of this Section. If a promotion list 13 is not in effect, a successor list shall be prepared and distributed within 180 days after a vacancy, as defined in 14 15 subsection (d) of this Section.

16 (f) This Section 20 does not apply to the initial hiring 17 list.

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Section 25. Monitoring.

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

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(b) Two impartial persons who are not members of the

1 affected department shall be selected to act as observers by 2 the exclusive bargaining agent. The appointing authorities may 3 also select 2 additional impartial observers.

(c) The observers monitoring the promotion process are 4 5 authorized to be present and observe when any component of the test is administered or scored. Except as otherwise agreed to 6 in a collective bargaining agreement, observers may not 7 8 interfere with the promotion process, but shall promptly report 9 any observed or suspected violation of the requirements of this 10 Act or an applicable collective bargaining agreement to the 11 appointing authority and all other affected parties.

12 (d) The provisions of this Section do not apply to the 13 extent that they are inconsistent with provisions otherwise 14 agreed to in a collective bargaining agreement.

15 Section 30. Promotion examination components. Promotion 16 examinations that include components consisting of written examinations, seniority points, ascertained merit, 17 or subjective evaluations shall be administered as provided in 18 Sections 35, 40, 45 and 50. The weight, if any, that is given 19 20 to any component included in a test may be set at the 21 discretion of the appointing authority provided that such 22 weight shall be subject to modification by the terms of any collective bargaining agreement in effect on the effective date 23 of this Act or thereafter by negotiations between the employer 24 25 and an exclusive bargaining representative. If the appointing

authority establishes a minimum passing score, such score shall 1 2 be announced prior to the date of the promotion process and it 3 must be an aggregate of all components of the testing process. All candidates shall be allowed to participate in all 4 5 components of the testing process irrespective of their score on any one component. The provisions of this Section do not 6 7 apply to the extent that they are inconsistent with provisions 8 otherwise agreed to in a collective bargaining agreement.

9 Section 35. Written examinations.

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

SB1446

(b) Written examinations shall be graded at the examination 1 2 site on the day of the examination immediately upon completion of the test in front of the observers if such observers are 3 appointed under Section 25, or if the tests are graded offsite 4 5 by a bona fide testing agency, the observers shall witness the 6 sealing and the shipping of the tests for grading and the 7 subsequent opening of the scores upon the return from the 8 testing agency. Every examinee shall have the right (i) to 9 obtain his or her score on the examination on the day of the 10 examination or upon the day of its return from the testing 11 agency (or the appointing authority shall require the testing 12 agency to mail the individual scores to any address submitted 13 by the candidates on the day of the examination); and (ii) to 14 review the answers to the examination that the examiners 15 consider correct. The appointing authority may hold a review 16 session after the examination for the purpose of gathering 17 feedback on the examination from the candidates.

(c) Sample written examinations may be examined by the 18 19 appointing authority and members of the department, but no 20 person in the department or the appointing authority (including the Chief, Civil Service Commissioners, Board of Fire and 21 22 Police Commissioners, and other appointed elected or 23 officials) may see or examine the specific questions on the written before 24 actual examination the examination is 25 administered. If a sample examination is used, actual test 26 questions shall not be included. It is a violation of this Act

1 for any member of the department or the appointing authority to 2 obtain or divulge foreknowledge of the contents of the written 3 examination before it is administered.

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

9 (e) The provisions of this Section do not apply to the 10 extent that they are in conflict with provisions otherwise 11 agreed to in a collective bargaining agreement.

12 Section 40. Seniority points.

(a) Seniority points shall be based only upon service with the affected department and shall be calculated as of the date of the written examination. The weight of this component and its computation shall be determined by the appointing authority or through a collective bargaining agreement.

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

23 Section 45. Ascertained merit.

24 (a) The promotion test may include points for ascertained

merit. Ascertained merit points may be awarded for education, 1 2 training, and certification in subjects and skills related to 3 law enforcement. The basis for granting ascertained merit points, after the effective date of this Act, shall be 4 5 published at least one year prior to the date ascertained merit 6 points are awarded and all persons eligible to compete for 7 promotion shall be given an equal opportunity to obtain ascertained merit points unless otherwise agreed to in a 8 9 collective bargaining agreement.

10 (b) Total points awarded for ascertained merit shall be 11 posted before the written examination is administered and 12 before the promotion list is compiled.

13 Section 50. Subjective evaluation.

14 (a) A promotion test may include subjective evaluation 15 components. Subjective evaluations may include an oral 16 interview, tactical evaluation, performance evaluation, or other component based on subjective evaluation of the examinee. 17 The methods used for subjective evaluations may include using 18 19 any employee assessment centers, evaluation systems, chief's 20 points, or other methods.

(b) Any subjective component shall be identified to all candidates prior to its application, be job-related, and be applied uniformly to all candidates. Every examinee shall have the right to documentation of his or her score on the subjective component upon the completion of the subjective

- 16 - LRB096 10714 RLJ 20894 b

1 examination component or its application.

2 (c) Where chief's points or other subjective methods are 3 employed that are not amenable to monitoring, monitors shall 4 not be required, but any disputes as to the results of such 5 methods shall be subject to resolution in accordance with any 6 collectively bargained grievance procedure in effect at the 7 time of the test.

8 (d) Where 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 shall include 11 any disagreement or documentation the employee provides to 12 refute or contest the evaluation. These annual evaluations are 13 not subject to grievance procedures, unless used for points in 14 the promotion process.

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

18 Section 55. Veterans' preference. A person on a preliminary 19 promotion list who is eligible for veteran's preference under 20 any law or agreement applicable to an affected department may 21 file a written application for that preference within 10 days 22 after the initial posting of the preliminary promotion list. The veteran's preference shall be calculated as provided in the 23 24 applicable law and added to the applicant's total score on the preliminary promotion list. Any person who has received a 25

promotion from a promotion list on which his or her position was adjusted for veteran's preference, under this Act or any other law, shall not be eligible for any subsequent veteran's preference under this Act.

5 Section 60. Right to review. Any affected person or party 6 who believes that an error has been made with respect to 7 eligibility to take an examination, examination result, 8 placement or position on a promotion list, or veteran's 9 preference shall be entitled to a review of the matter by the 10 appointing authority or as otherwise provided by law.

11 Section 65. Violations.

12 (a) A person who knowingly divulges or receives test 13 questions or answers before a written examination, or otherwise 14 knowingly violates or subverts any requirement of this Act 15 commits a violation of this Act and may be subject to charges 16 for official misconduct.

17 (b) A person who is the knowing recipient of test 18 information in advance of the examination shall be disqualified 19 from the promotion examination or demoted from the rank to 20 which he was promoted, as applicable and otherwise subjected to 21 disciplinary actions.

22 Section 80. The State Police Act is amended by changing 23 Section 8 as follows:

SB1446

(20 ILCS 2610/8) (from Ch. 121, par. 307.8) 1 2 Sec. 8. Subject to the provisions of the Police Department 3 Promotion Act, the The Board shall exercise jurisdiction over 4 the certification for appointment and promotion, and over the 5 discipline, removal, demotion and suspension of Department of 6 State Police officers. Pursuant to recognized merit principles of public employment, the Board shall formulate, adopt, and put 7 8 into effect rules, regulations and procedures for its operation and the transaction of its business. The Board shall establish 9 10 classification of ranks of persons subject to its а 11 jurisdiction and shall set standards and qualifications for 12 each rank. Each Department of State Police officer appointed by the Director shall be classified as a State Police officer as 13 14 follows: trooper, sergeant, master sergeant, lieutenant, 15 captain, or major, or as a Special Agent, Special Agent 16 Sergeant, Special Agent Master Sergeant, Special Agent Lieutenant, Special Agent Captain or Special Agent Major. 17 (Source: P.A. 84-25.) 18

Section 85. The Counties Code is amended by changing Sections 3-7009 and 3-8011 as follows:

21 (55 ILCS 5/3-7009) (from Ch. 34, par. 3-7009)

22 Sec. 3-7009. Promotions. Promotion of deputy sheriffs in 23 the County Police Department, full-time deputy sheriffs not

employed as county police officers or county corrections 1 2 officers, and of employees in the County Department of Corrections shall be made by the sheriff from those candidates 3 who have been certified to him as being qualified for 4 5 promotion. Certification for promotion in one department shall certification 6 not. constitute for promotion in another 7 department. The Board shall make certifications for promotions 8 on the basis of ascertained merit, experience, and and 9 physical, mental and other tests and examinations. Those 10 promoted shall serve a probationary period of 12 months and 11 during that period may be reduced to their former rank at the 12 will of the Board. Employees of the house of correction whose names, at the time of the transfer of the house of correction 13 14 to the County Department of Corrections, appear on a civil 15 service promotional register, shall retain the same status 16 insofar as their eligibility to comparable positions in the 17 employ of the County Department of Corrections is concerned.

18This Section is subject to the provisions of the Police19Department Promotion Act. To the extent that any provision of20this Section conflicts with the Police Department Promotion21Act, the Police Department Promotion Act shall control.

22 (Source: P.A. 86-962.)

(55 ILCS 5/3-8011) (from Ch. 34, par. 3-8011)
 Sec. 3-8011. Certification for promotion. Whenever a
 position in a higher rank is to be filled, the Merit Commission

1 shall certify to the sheriff the names of eligible persons who 2 stand highest upon the promotional register for the rank to 3 which the position belongs. The Commission shall make 4 certifications for promotion on the basis of ascertained merit, 5 seniority of service, and physical and other qualifying 6 examinations.

7 The sheriff shall appoint from those whose names were 8 certified. If the sheriff rejects all persons so certified, he 9 shall state his reasons for such refusal in writing to the 10 Commission.

11 All vacancies in all ranks of deputy sheriff above the 12 lowest shall be filled by promotion, except that the Merit Commission may by regulation provide that a former sheriff may 13 14 be appointed by a successor sheriff of the same county to any 15 rank after he has been certified by the Commission or that 16 applicants who have served with another sheriff's office, a 17 police department, or any other law enforcement agency, may be given credit for time so served and may receive an initial 18 19 appointment to a rank above the lowest.

Persons appointed to a higher rank shall be on probation in such higher rank for a period of 12 months. Such appointees may be demoted by the sheriff to their former rank at any time during the period of probation, if, in the opinion of the sheriff, they have failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service.

26 <u>This Section is subject to the provisions of the Police</u>

SB1446 - 21 - LRB096 10714 RLJ 20894 b

Department Promotion Act. To the extent that any provision of 1 2 this Section conflicts with the Police Department Promotion 3 Act, the Police Department Promotion Act shall control. 4 (Source: P.A. 86-962.) 5 Section 90. The Illinois Municipal Code is amended by changing Section 10-2.1-29 as follows: 6 (65 ILCS 5/10-2.1-29) (from Ch. 24, par. 10-2.1-29) 7 8 Sec. 10-2.1-29. Governing provisions. 9 This division is subject to the provisions of the "Illinois 10 Police Training Act", approved August 18, 1965 and the 11 provisions of the "Illinois Fire Protection Training Act", certified November 9, 1971, and the Police Department Promotion 12 13 Act. 14 This amendatory Act of 1973 is not a limit on any 15 municipality which is a home rule unit. 16 (Source: P.A. 78-951.)

Section 999. Effective date. This Act takes effect uponbecoming law.