



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 606**

**Assembly Amendment 1 and  
Assembly Amendment 1 to  
Assembly Amendment 1**

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### CURRENT LAW

Subject to certain exceptions, current law requires each city with a population of 4,000 or more to create a board of fire and police commissioners (FPC), consisting of five citizen members. [s. 62.13 (1) and (2), Stats.] Members of the FPC are appointed by the mayor and no more than three of the members may belong to the same political party. Very generally, the FPC is responsible for appointing and suspending or removing the chiefs of the fire and police departments, has jurisdiction over the hiring and firing of subordinate police officers and firefighters, and reviews the police and fire chiefs' disciplinary discharge and promotional actions.

Separate statutory requirements apply to an FPC in a first class city. Currently, Milwaukee is the only first class city in the state. Section 62.50, Stats., requires that in a first class city, there be an FPC with a board of either seven or nine citizens. Members are appointed by the mayor and confirmed by the common council. On a seven-member board, no more than three members may belong to the same political party. On a nine-member board, no more than four members may belong to the same political party. As with the FPCs described above, an FPC in a first class city is responsible for appointing and suspending or removing the chiefs of the fire and police department, and has jurisdiction over certain disciplinary matters. An FPC in a first class city also has certain additional duties; among other responsibilities, an FPC in a first class city exercises oversight over the operations of the police and fire departments of the city.

### 2017 ASSEMBLY BILL 606

2017 Assembly Bill 606 makes certain changes that apply to FPCs in second, third, and fourth class cities, and a variety of changes that apply to an FPC in a first class city.

### **Provisions That Apply to an FPC in a Second, Third, or Fourth Class City**

The bill makes the following changes to the requirements that apply to an FPC in a second, third, or fourth class city. First, the bill requires each FPC to have at least one member who has either professional law enforcement or professional firefighting experience. In addition, the bill provides that an FPC's finding that there is just cause to sustain charges against a subordinate must be supported by a "preponderance of the evidence."

The bill also provides that, among other factors required under current law, when determining whether there is just cause to sustain charges against a subordinate, an FPC must consider whether the subordinate could reasonably be expected to have knowledge of the extent of possible disciplinary action. The bill also requires the FPC to consider whether the chief discovered clear and convincing evidence the subordinate violated the rule or order described in the charges filed. Under current law, the FPC must consider whether the chief discovered substantial evidence the subordinate violated the rule or order.

### **Provisions That Apply to an FPC in a First Class City**

The bill makes a number of changes to an FPC in a first class city. As relevant to Assembly Amendment 1, these changes include the following

#### **Membership and Appointment to the Police and Fire Commission of a First Class City**

Among other provisions, the bill requires that an FPC in a first class city have at least one member who has professional law enforcement experience and at least one member who has professional firefighting experience. These members must be selected from a list of three names by the employee supervisory association that represents nonsupervisory law enforcement officers, in the case of the member with law enforcement experience, and the employee association that represents nonsupervisory firefighters, in the case of the member with firefighting experience.

#### **Hearing Examiner**

The bill authorizes an FPC in a first class city to adopt rules to allow the use of a hearing examiner to assist the FPC with disciplinary hearings and appeals. The bill also provides that the FPC and the individual being disciplined must agree on the hearing examiner. If the parties cannot agree, the parties must follow a procedure created by the bill for choosing a hearing examiner.

#### **Independent Monitor**

The bill creates the position of "independent monitor." Under the bill, the mayor is required to appoint an independent monitor from a list of three qualified candidates provided by the FPC. The individual appointed is subject to confirmation by the common council. The independent monitor is authorized and directed to do all of the following:

- Act as the principal staff of the board.
- Review situations or investigations when an individual is dissatisfied with the outcome of an investigation or situation involving the police or fire department.

- Evaluate police and fire department policies, practices, and patterns, including staff deployments, crime and fire prevention training, use of force, search, seizure, citizen interaction, and communication.
- Issue periodic reports to the public, relating to the status and outcome of complaints that have been filed, the timeliness of compliant resolution, trends and patterns of concern pertaining to complaint investigations, the nature and frequency of complaints, and other performance indicators.

### **Discipline and Appeals**

The bill makes a variety of changes to the process of investigating and substantiating complaints against police officers and firefighters. Among other changes and as relevant to Assembly Amendment 1, the bill modifies the process for a disciplined police officer or member of the fire department to appeal a decision of the FPC. Under current law, the officer or member may bring an action in the circuit court of the county in which the city is located to review an order of the FPC. Under the bill, an officer or member may appeal a decision of the FPC either to the circuit court or to an arbitrator who shall be selected jointly by the parties to review the order. Under the bill, the arbitrator's decision may be appealed to the circuit court. The bill specifies the scope of the circuit court's or arbitrator's review.

### **Salary During Suspension**

The bill modifies provisions of current law that govern a police officer's or firefighter's pay during suspension. Under current law, a member of the fire department may not be deprived of any salary or wages for the period of time suspended preceding an investigation or trial, unless the charge is sustained. In addition, no member of the police force may be suspended without pay or benefits until the matter that is the subject of the suspension is disposed of by the board or the time for appeal passes without an appeal being made. The bill replaces references within these provisions to "suspension" to "discipline," which the bill defines as "suspension of five or more days; reduction in rank; demotion; or discharge."

### **Appointment of Chiefs**

The bill requires an FPC, before appointing a chief, to meet in closed session with representatives of the nonsupervisory employee association whose members will serve under the proposed chief. The board must also hold at least two public meetings before appointing the chief.

### **ASSEMBLY AMENDMENT 1**

The amendment modifies certain provisions of the bill that apply to an FPC in a second, third, or fourth class city. It also modifies a variety of provisions of the bill that apply to an FPC in a first class city.

### **Provisions That Apply to an FPC in a Second, Third, or Fourth Class City**

The amendment makes the following changes with to an FPC in a second, third, or fourth class city:

- Modifies the provision of the bill requiring an FPC to have at least one member that has professional law enforcement or firefighting experience. The amendment provides that this requirement does not apply if, after a reasonable search, no suitable candidates are available.
- Changes the “preponderance of the evidence” standard the bill applies to the just cause finding an FPC must make when determining whether charges can be sustained against a subordinate to a “clear and convincing evidence” standard.
- Eliminates a change the bill makes to one of the factors an FPC is required to consider when determining whether there is just cause to sustain the charges against a subordinate. Under the bill, an FPC must consider whether the chief discovered “clear and convincing” evidence the subordinate violated the rule. The amendment would retain current law referring to whether the chief discovered “substantial” evidence the subordinate violated the rule.

### **Provisions That Apply to an FPC in a First Class City**

The amendment also includes the following modifications that apply to an FPC in a first class city.

#### **Membership and Appointment to the Police and Fire Commission of a First Class City**

The amendment modifies the provision requiring the mayor to select a candidate with professional law enforcement experience and a candidate with professional firefighting experience from lists prepared by the professions’ respective employee associations to require that each list contain five, rather than three, names. The amendment also requires that the appointees who have professional law enforcement or firefighting experience be at least five years removed from service as a professional law enforcement officer or professional firefighter and comply with any residency requirements that apply to current members of the department with regard to which the appointee has experience.

#### **Selection of Hearing Examiner**

The amendment modifies the provision in the bill prescribing a process for selecting a hearing examiner. Under the amendment, the independent monitor shall select the examiner, randomly, from lists provided by the parties.

#### **Hearings and Appeals**

The amendment removes the requirement that an FPC consider, when determining whether there is just cause to sustain charges against a subordinate, whether the subordinate could reasonably be expected to have had knowledge of the extent of possible disciplinary conduct. The bill adds to the list of factors the FPC must consider when determining whether there is just cause to sustain charges against a subordinate, the obligation to ensure that the

proposed discipline is consistent with similar discipline for similar violations. The amendment also eliminates the authority to have an arbitrator's decision reviewed if the parties appeal the board's decision to an arbitrator.

### **Salary During Discipline**

The amendment specifies that a member of either the police or fire department is entitled to salary for the period of time disciplined preceding an investigation or trial, unless the charge is sustained or unless the accused asks for an extension of time for appeal.

### **Appointment of Chiefs**

The amendment modifies the requirement in the bill for an FPC, prior to appointing or reappointing a chief, to meet in closed session with representatives of the nonsupervisory employee association whose members will serve under the proposed chief. The amendment requires the FPC to make a good faith effort to meet in closed session with these representatives. The amendment also allows the FPC to accept applications for chief after the position closes and to reopen the application period if it does so.

### **Review of Chiefs**

The amendment provides that, if the common council adopts a resolution by a two-thirds vote to conduct a performance review of either chief, the FPC shall conduct the review and forward its written report with the common council. The amendment also requires each chief to meet with the members of the common council at least once a year at a regular meeting of the council.

## **ASSEMBLY AMENDMENT 1 TO ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 to Assembly Amendment 1 specifies that a chief officer of either the police or fire department and a member of the fire department may be deprived of any salary or wages to which the officer or member would otherwise be entitled if the individual is charged with a felony and bound over for trial.

## **BILL HISTORY**

Representative Brandtjen introduced Assembly Amendment 1 to 2017 Assembly Bill 606 on January 29, 2018. On February 14, 2018, the Assembly Committee on Local Government voted to recommend adoption of Assembly Amendment 1 and passage of Assembly Bill 606, as amended, both on votes of Ayes, 6; Noes, 3.

Representative Brandtjen offered Assembly Amendment 1 to Assembly Amendment 1 on February 20, 2018. That same day, the Assembly voted to adopt both Assembly Amendment 1 to Assembly Amendment 1 and Assembly Amendment 1. The Assembly then voted to pass Assembly Bill 606, as amended, on a vote of Ayes, 60; Noes, 34.

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