



State of Wisconsin  
2007 - 2008 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 2007 SENATE BILL 176**

February 29, 2008 – Offered by Representative TOLES.

1     **AN ACT** *to renumber and amend* 62.50 (1) and 62.50 (18); *to amend* 62.50 (13),  
2           62.50 (14), 62.50 (16), 62.50 (17) (a) and 62.50 (19); and *to create* 62.50 (1e) and  
3           62.50 (18) (b) of the statutes; **relating to:** payment of a 1st class city police  
4           officer's salary after discharge or suspension, the adjournment of a trial or  
5           investigation relating to charges brought against such an officer, disciplinary  
6           procedures for a 1st class city police officer, increasing the size of the city of  
7           Milwaukee Board of Fire and Police Commissioners, and authorizing a panel  
8           of the board to handle certain cases.

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***Analysis by the Legislative Reference Bureau***

Under current law, no member of the police force of a first class city (presently only Milwaukee) may be discharged or suspended without pay or benefits until the matter that is the subject of the discharge or suspension is disposed of by the Board of Fire and Police Commissioners (board) or the time for an appeal passes without an appeal being made. Currently, no member of a police force of a second, third, or fourth class city may be deprived of compensation while suspended, pending disposition of the charges.

Also under current law, if the board's decision upholding the discharge or suspension is reversed, the member must be reinstated to his or her former position in the department and is entitled to pay as if he or she was not discharged or suspended. Similar provisions apply to a second, third, or fourth class city police officer whose suspension or removal is reversed.

Under this substitute amendment, no member of a first class city police force is entitled to any salary or wages from the department pending an appeal to the board of the officer's discharge or suspension if felony criminal, or Class A or B misdemeanor, charges are also pending against the officer and if the charges arose out of the same conduct or incident that serves as the basis for the discharge or suspension.

Under current law, if a member of the police force or fire department is discharged or suspended by the chief for more than five days, the chief must give the member written notice, and must also notify the board. Within ten days of receiving a notice of his or her discharge or suspension, the member may appeal the chief's action to the board. This substitute amendment requires the chief to give the member, at the same time the member is given written notice of the disciplinary action, any exculpatory evidence in the chief's possession that relates to the discharge or suspension.

Currently, if the board receives a notice of appeal, it must schedule a trial within 5 and 15 days after service of the notice and copy of the complaint. This substitute amendment changes the time frame for scheduling a trial to between 60 and 120 days.

Currently, both the accused and the chief of a department have the right to request up to a 15-day adjournment of the trial or investigation of the charges. Once such a request is made, it is granted automatically. Under the substitute amendment, the board may grant an adjournment, for cause, to either party.

Under current law the board consists of five members. Each member is appointed to a staggered five-year term by the mayor of Milwaukee, subject to confirmation by the Milwaukee Common Council. Three members of the board constitute a quorum and no more than two members may belong to the same political party.

This substitute amendment increases the number of members on the board to seven or nine, and authorizes the mayor of Milwaukee to appoint two or four additional members of the board upon the substitute amendment's effective date. Generally, the substitute amendment increases the quorum requirement to four or five members, depending on the size of the board, but the substitute amendment also authorizes a three-member panel of the board to conduct and decide by majority vote disciplinary trials and to hear and decide by majority vote complaints filed by an aggrieved person. Currently, a quorum of the board may conduct such a trial or may hear and rule on such a complaint. The substitute amendment also authorizes the mayor to reduce the size of the board from nine to seven members.

Members of the board who are appointed on or after the effective date of the substitute amendment are still subject to confirmation by the Milwaukee Common Council and are appointed to five-year terms. The substitute amendment also

requires new members of the board to complete a training class that is related to the mission of the board.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 62.50 (1) of the statutes is renumbered 62.50 (1h) and amended to  
2 read:

3           **62.50 (1h) ORGANIZATION.** In all 1st class cities, however incorporated, there  
4 shall be a board of fire and police commissioners, consisting of 5 either 7 or 9 citizens,  
5 not more than 2-3, if the board has 7 members, or 4, if the board has 9 members,  
6 whom shall at any time belong to the same political party. The staff and members  
7 of the board shall receive the salary or other compensation for their services fixed by  
8 the common council. The salary shall be fixed at the same time and in the same  
9 manner as the salary of other city officials and employees. Three members Except  
10 as otherwise provided in this subsection, a majority of the members-elect, as that  
11 term is used in s. 59.001 (2m), of the board shall constitute a quorum necessary for  
12 the transaction of business. A 3-member panel of the board may conduct, and decide  
13 by majority vote, a trial described under sub. (12) or may hear and decide, by majority  
14 vote, charges filed by an aggrieved person under sub. (19). It shall be the duty of the  
15 mayor of the city, on or before the 2nd Monday in July, to appoint 5 7, or 9, members  
16 of the board, designating the term of office of each, one to hold one year, ~~one 2~~ to hold  
17 2 years, one 2 to hold 3 years, one to hold 4 years if the board has 7 members, and  
18 2 to hold 4 years if the board has 9 members, and one to hold 5 years if the board has  
19 7 members, and 2 to hold 5 years if the board has 9 members, and until their  
20 respective successors shall be appointed and qualified. Thereafter the terms of office  
21 shall be 5 years from the 2nd Monday in July, and until a successor is appointed and

1 qualified. The mayor may reduce the size of the board from 9 to 7 members by failing  
2 to appoint 2 successors for individuals whose terms expire at the same time. Every  
3 person appointed a member of the board shall be subject to confirmation by the  
4 common council and every appointed member shall, before entering upon the duties  
5 of the office take and subscribe the oath of office prescribed by article IV, section 28,  
6 of the constitution, and file the same duly certified by the officer administering it,  
7 with the clerk of the city. Not later than the first day of the 7th month beginning after  
8 a member appointed by the mayor is confirmed by the common council, the member  
9 shall enroll in a training class that is related to the mission of the board and, not later  
10 than the first day of the 13th month beginning after a member appointed by the  
11 mayor is confirmed by the common council, the member shall complete the class. The  
12 training class shall be conducted by the city. Appointments made prior to the time  
13 this subchapter first applies to a 1st class city shall not be subject to confirmation by  
14 the common council.

15 **SECTION 2.** 62.50 (1e) of the statutes is created to read:

16 62.50 (1e) DEFINITION. In this section, “offense” means any felony or Class A  
17 or Class B misdemeanor violation of any of the following:

- 18 (a) Chapters 940 and 941.  
19 (b) Section 942.08.  
20 (c) Section 942.09.  
21 (d) Chapters 943 to 948.

22 **SECTION 3.** 62.50 (13) of the statutes is amended to read:

23 62.50 (13) The chief discharging or suspending for a period exceeding 5 days  
24 any member of the force shall give written notice of the discharge or suspension to  
25 the member and, at the same time that the notice is given, and shall also give the

1 member any exculpatory evidence in the chief's possession related to the discharge  
2 or suspension. The chief shall also immediately report the same notice of the  
3 discharge or suspension to the secretary of the board of fire and police commissioners  
4 together with a complaint setting forth the reasons for the discharge or suspension  
5 and the name of the complainant if other than the chief. Within 10 days after the date  
6 of service of the notice of a discharge or suspension order the members so discharged  
7 or suspended may appeal from the order of discharge or suspension or discipline to  
8 the board of fire and police commissioners, by filing with the board a notice of appeal  
9 in the following or similar form:

10 To the honorable board of fire and police commissioners:

11 Please take notice that I appeal from the order or decision of the chief of the ....  
12 department, discharging (or suspending) me from service, which order of discharge  
13 (or suspension) was made on the .... day of ....., .... (year).

14 **SECTION 4.** 62.50 (14) of the statutes is amended to read:

15 62.50 (14) COMPLAINT. The board, after receiving the notice of appeal shall,  
16 within 5 days, serve the appellant with a copy of the complaint and a notice fixing  
17 the time and place of trial, which time of trial may not be less than 5 60 days nor more  
18 than 15 120 days after service of the notice and a copy of the complaint.

19 **SECTION 5.** 62.50 (16) of the statutes is amended to read:

20 62.50 (16) TRIAL; ADJOURNMENT. The board may grant the accused and or the  
21 chief shall have the right to an adjournment of the trial or investigation of the  
22 charges, for cause, not to exceed 15 days. In the course of any trial or investigation  
23 under this section each member of the fire and police commission may administer  
24 oaths, secure by its subpoenas both the attendance of witnesses and the production  
25 of records relevant to the trial and investigation, and compel witnesses to answer and

1 may punish for contempt in the same manner provided by law in trials before  
2 municipal judges for failure to answer or to produce records necessary for the trial.  
3 The trial shall be public and all witnesses shall be under oath. The accused shall  
4 have full opportunity to be heard in defense and shall be entitled to secure the  
5 attendance of all witnesses necessary for the defense at the expense of the city. The  
6 accused may appear in person and by attorney. The city in which the department is  
7 located may be represented by the city attorney. All evidence shall be taken by a  
8 stenographic reporter who first shall be sworn to perform the duties of a stenographic  
9 reporter in taking evidence in the matter fully and fairly to the best of his or her  
10 ability.

11 **SECTION 6.** 62.50 (17) (a) of the statutes is amended to read:

12 62.50 (17) (a) Within 3 days after hearing the matter the board, or a 3-member  
13 panel of the board, shall, by a majority vote of its members and subject to par. (b),  
14 determine whether by a preponderance of the evidence the charges are sustained.  
15 If the board or panel determines that the charges are sustained, the board shall at  
16 once determine whether the good of the service requires that the accused be  
17 permanently discharged or be suspended without pay for a period not exceeding 60  
18 days or reduced in rank. If the charges are not sustained the accused shall be  
19 immediately reinstated in his or her former position, without prejudice. The decision  
20 and findings of the board, or panel, shall be in writing and shall be filed, together with  
21 a transcript of the evidence, with the secretary of the board.

22 **SECTION 7.** 62.50 (18) of the statutes is renumbered 62.50 (18) (a) and amended  
23 to read:

24 62.50 (18) (a) No chief officer of either department or member of the fire  
25 department may be deprived of any salary or wages for the period of time suspended

1 preceding an investigation or trial, unless the charge is sustained. ~~No Except as~~  
2 ~~provided in par. (b), no~~ member of the police force may be ~~suspended or discharged~~  
3 ~~or suspended~~ under sub. (11) or (13) without pay or benefits until the matter that is  
4 the subject of the ~~suspension or discharge~~ or suspension is disposed of by the board  
5 or the time for appeal under sub. (13) passes without an appeal being made.

6 **SECTION 8.** 62.50 (18) (b) of the statutes is created to read:

7 62.50 (18) (b) Following a discharge or suspension under sub. (11) or (13), no  
8 member of the police force is entitled to any salary or wages from the department  
9 pending an appeal of the discharge or suspension to the board of fire and police  
10 commissioners if charges relating to an offense are also pending against the member  
11 and such charges arose out of the same conduct or incident that serves as the basis  
12 for the discharge or suspension. If the charges against the officer are dismissed, or  
13 if the officer is found not guilty of the charges, the officer shall be reinstated and  
14 entitled to pay as described in sub. (22).

15 **SECTION 9.** 62.50 (19) of the statutes is amended to read:

16 62.50 (19) CHARGES BY AGGRIEVED PERSON. In cases where duly verified charges  
17 are filed by any aggrieved person with the board of fire and police commissioners,  
18 setting forth sufficient cause for the removal of any member of either of the  
19 departments, including the chiefs or their assistants, the board or chief may suspend  
20 such member or officer pending disposition of such charges. The board shall cause  
21 notice of the filing of the charges with a copy to be served upon the accused and shall  
22 set a date for the trial and investigation of the charges, following the procedure under  
23 this section. The board, or a 3-member panel of the board, shall decide by a majority  
24 vote and subject to the just cause standard described in sub. (17) (b) whether the  
25 charges are sustained. If sustained, the board shall immediately determine whether

1 the good of the service requires that the accused be removed, suspended from office  
2 without pay for a period not exceeding 60 days or reduced in rank. If the charges are  
3 not sustained, the accused shall be immediately reinstated without prejudice. The  
4 secretary of the board shall make the decision public.

5 **SECTION 10. Nonstatutory provisions.**

6 (1) On the effective date of this subsection the mayor of a 1st class city shall  
7 make 2, or 4, additional appointments to the board of fire and police commissioners  
8 under section 62.50 (1h) of the statutes, as affected by this act, such that the  
9 additional appointments are for terms that are consistent with the requirements,  
10 and with the terms of the existing commissioners, that are specified under section  
11 62.50 (1h) of the statutes, as affected by this act.

12 **SECTION 11. Initial applicability.**

13 (1) This act first applies to any member of the police force or fire department  
14 who is covered by a collective bargaining agreement that contains provisions  
15 inconsistent with this act on the day on which the collective bargaining agreement  
16 expires or is extended, modified, or renewed, whichever occurs first.

17 (2) The treatment of section 62.50 (1h) of the statutes, with regard to the  
18 training class required of members appointed to the board, first applies to a member  
19 who is appointed on the effective date of this subsection.

20 (END)