

March 13, 2014

To: Members of the Senate Committee on Judiciary and Labor
From: Senator Glenn Grothman
Re: Senate Bill 657

This issue was brought to my attention by multiple stories by the media detailing abuses of the duty disability system in Milwaukee and other communities. The *Milwaukee Journal Sentinel* took an in-depth look at police officers in Milwaukee applying for duty disability while in the process of being fired. This loophole hurts the entire duty disability system.

This legislation will clarify the duty disability system, while also allowing for information to be brought to the public in order to address other issues within the system. This bill contains the following provisions:

- 1) If the employer offers the employee another position, and the employee does not accept the position, they will not receive duty disability benefits.
- 2) If the employee does accept another position with the employer, the employee's duty disability benefits will be reduced by the amount of the wages.
- 3) Requires reexamination by a physician every five years, in order to continue to receive duty disability benefits.
- 4) Directs the Legislative Audit Bureau to audit local and state duty disability programs and make recommendations on design and implementation of the programs.
- 5) Prohibits collective bargaining with public safety employees over benefit features of, and eligibility conditions and methodology for obtaining and continuing to receive, any type of duty disability and survivor benefits.

Please join me in supporting this commonsense legislation that will shed light on abuses within the duty disability programs, at the same time it will reform the duty disability programs to rid the system of current abuses.



MICHAEL SCHRAA

STATE REPRESENTATIVE • 53RD ASSEMBLY DISTRICT

P.O. Box 8953
Madison, WI 53708

Office: (608) 267-7990
Toll-Free: (608) 534-0053
Rep.Schraa@legis.wi.gov

Testimony on Senate Bill 657 Senate Committee on Judiciary and Labor March 13th, 2014

Thank you committee members for listening to my testimony on SB 657 today. I appreciate the opportunity to offer my support for the bill.

Last fall, the *Milwaukee Journal Sentinel* outlined a disturbing loophole within the duty disability system that allowed a police officer to dupe the system and receive duty disability payments in the midst of being fired.¹ The newspaper wrote that he will likely receive these payments for the rest of his life tax-free. That particular officer wasn't alone. The investigation showed that since 2006, the city of Milwaukee paid almost \$1 million tax-free to five different officers using the same loophole.

Though some of the more egregious stories in the media were from Milwaukee, this is an issue statewide, and that's why Senator Grothman brought it to my attention and I agreed to take it on in the Assembly. As you may know, Milwaukee has its own retirement system run separately, but the state system is also open for abuse.

SB 657 represents a reasonable approach. Some of the provisions include:

- Closing the loophole with some common-sense reforms
- Auditing the program state-wide to look for abuses and recommend changes
- Continuing to protect those who suffer from legitimate duty-related disabilities

The last bullet point is one I want to expand on. In any industry, the bad actions of a few that get a lot of press coverage taint the image of the whole industry, most of whom are operating their businesses above board without issue. Take the egg recall in 2010 for example. A study from the University of California concluded that the recall of only 0.7 percent of the US egg production reduced consumer purchases of eggs overall – even eggs that are produced “free-range” or by other non-conventional ways.² There was up to a 10% reduction in purchases in certain egg types. This is seen again and again throughout other industries and recalls.

¹ Gina Barton and John Diedrich, “Loophole lets officers facing discipline get duty disability, records show,” *Milwaukee Journal Sentinel*, Nov. 9, 2013. Accessed March 12, 2014, <http://bit.ly/Onqv0F>.

² Chantal Toledo and Sofia Berto Villas-Boas, “Foodborne Disease Outbreaks and Consumer Purchases,” *Agricultural and Resource Economics* 17, no. 1 (Sep./Oct. 2013): 4, accessed March 12, 2014, <http://ucanr.edu/blogs/food/blogfiles/18897.pdf>.



MICHAEL SCHRAA

STATE REPRESENTATIVE • 53RD ASSEMBLY DISTRICT

P.O. Box 8953
Madison, WI 53708

Office: (608) 267-7990
Toll-Free: (608) 534-0053
Rep.Schraa@legis.wi.gov

My point is, the actions of a few “bad eggs” hurt the entire profession of police officers. The officers that legitimately do suffer from duty-related disabilities might suffer from the bad public perception that the few abusers bring on the system.

We owe it not only to the taxpayers who support these pension systems but also to the officers who really do need the program to make sure that this abuse is ended.

Again, thank you very much for holding this hearing today, and I’d be happy to take any questions you may have.



OFFICE OF THE COUNTY EXECUTIVE

Milwaukee County

CHRIS ABELE • COUNTY EXECUTIVE

Testimony of Eric Peterson, on behalf of County Executive Chris Abele
In Support of SB 657 – Disability Benefits in the Milwaukee Pension System
Senate Committee on Judiciary and Labor
Thursday, March 13, 2014

Honorable Chairman Grothman and members –

Thank you for the opportunity to testify today on Senate Bill 657. Milwaukee County Executive Chris Abele supports this proposal as it provides relevant information on the disability program of the Milwaukee County Pension system and provides us the local ability to manage that system.

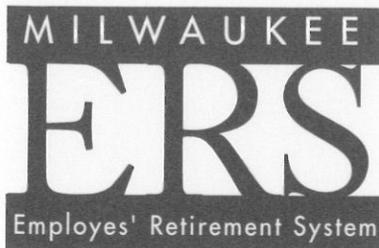
First, you should all be aware that nothing in this bill compels a change for Milwaukee County. This bill cannot be construed as a local control issue or an infringement on local decision making in its impact on Milwaukee County. Should this bill be enacted as drafted, Milwaukee County would still need to pass ordinance revisions through the County Board and the County Executive to change the operations of the system. As a point of reference, you can find all the relevant ordinances that govern the pension system in Milwaukee County online at: <http://library.municode.com/index.aspx?clientId=12598>. Please see chapter 201 of the ordinances and APPENDIX B for the Pension System Rules of the Board.

Our administration is keenly aware of the abuse that has happened in the disability program in Milwaukee County. We are currently investigating multiple cases of former employees now on disability status that are allegedly capable of work in some manner. I cannot divulge further information about these investigations so as not to compromise the county's position in disposing of these matters, but the scope is broad and cases far more numerous than common sense suggests. In addition, such cases are not without great cost to the pension system. Ch. 201.5.3 outlines the benefit payment for these cases. *"A member who meets the requirements for an accidental disability pension shall receive an amount computed in the same manner as a normal pension considering his earnable compensation and service prior to retirement, but no less than seventy-five (75) percent of his final average salary."*

This bill provides information for Milwaukee County. It will provide a complete audit of the program and provide the decision makers of Milwaukee County with the accurate information so that we may make the best decisions. No abuse of the accidental disability pension system should be tolerated and those that are deserving of a disability benefit should not be grouped with those who commit fraud against the pension fund.

On behalf of County Executive Abele, I encourage your support of this legislation.

Thank you.



City of Milwaukee
Employees' Retirement System

Bernard J. Allen
Executive Director

David M. Silber, CFA, CAIA
Chief Investment Officer

Beth Conradson Cleary
Deputy Director

Testimony of Bernard Allen, Executive Director of the City of Milwaukee Employees' Retirement System, on SB-657 to Senate Committee on Judiciary and Labor – March 13, 2014

Good morning Mr. Chairman and Committee Members,

Thank you for this opportunity to comment on SB-657. I'm Bernard Allen, Executive Director of the City of Milwaukee Employees' Retirement System (CMERS), established in 1937 and operated pursuant to Chapter 36 of the Milwaukee City Charter (MCC Chap. 36). CMERS is one of three public pension systems in Wisconsin, the others being The Wisconsin Retirement System (WRS) and the Milwaukee County Employees' Retirement System (MC-ERS).

Unlike the WRS, the benefit provisions of MCC Chap. 36 are the mandatory subject of collective bargaining under State collective bargaining statutes, including the provisions for duty disability. The purpose of duty disability benefits is to provide financial support for employees injured in the performance of their duty. Preservation of duty disability benefits is of critical importance to hard working City employees who are exposed daily to occupational hazards, none more so than professional fire fighters and police officers who are engaged in saving lives and protecting property every day on the streets of Milwaukee.

Unfortunately, over time this purpose has been subverted by certain employees involved with the disciplinary process or under criminal investigation who are seeking a "safe haven" against loss of income in the event of termination of employment. Others in order to avoid "light duty" accommodation of their injuries (and thereby continue employment) have also sought refuge under CMERS duty disability provisions. This conduct not only jeopardizes the financial sustainability of duty disability benefits but also damages the public perception of public employee pension benefits generally.

There are powerful financial incentives for such behavior because duty disability benefits are substantial. A duty disability award usually provides 75% of salary tax free, continued benefit increases linked to pay increases for the employees' former position until conversion to normal retirement benefits, continued accrual of benefit service toward normal retirement benefits and continued access to health coverage on attractive terms. As a result there has developed a pattern of employees filing for duty disability for psychological stress related injuries often attributable to incidents occurring years past, which suddenly materialize when the individual becomes subject to the internal disciplinary process or criminal investigation.

CMERS has in recent years received approximately 20 applications from employees utilizing the same consultant, a retired detective and former union president convicted of a felony for forging a document in connection with a multi-million dollar CMERS related lawsuit. CMERS independent actuary valued the duty disability benefits awarded to these applicants at approximately \$10 million and new duty disability applications involving similar circumstance continue to be filed.

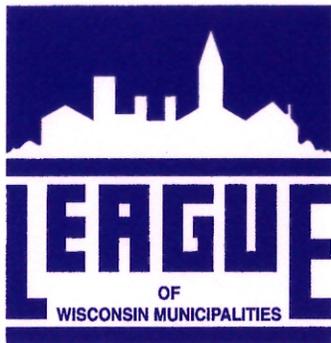
Further, these applications appear to be "ghost written" by this consultant based on reoccurring inaccurate statements of fact and other verbiage common to each. CMERS has responded to this challenge by asserting its authority to control certain administrative practices surrounding the application form and its completion but is greatly constrained in assuring the objective adjudication of duty disability applications because the process is largely the subject of mandatory collective bargaining under State law. Consequently, the City of Milwaukee as employer cannot unilaterally amend MCC Chap. 36 to reform adjudication of duty disability claims to make the process reliably objective.

The most glaring flaw in the current process is that public safety employees hired prior to 2006 filing duty disability applications for stress related injuries effectively control the selection of two of the three medical panel doctors who make the findings of fact regarding both 1) whether the applicant is totally and permanently incapacitated and 2) whether the incapacity is a result of an injury that occurred in the performance of the applicant's duty.

The union ostensibly selects one doctor (generally the employee's attending physician) and the City selects one as well. However, if there is an impasse as there usually is between the two doctors, then they must select a tie-breaker physician. In the event of disagreement on the choice of the third doctor, the union doctor is allowed to eject the City doctor from the panel and the process starts over. This has resulted in the union doctor and therefore, the applicant having effective control of selection of two of the three medical panel doctors. Also, there appears to be a pattern by many applicants of selecting physicians who are known to regularly provide certifications of total and permanent disability as result of duty related injuries.

The ERS contracts with three independent physicians who meet monthly and who are well versed in the legal standard under MCC Chap. 36 for finding total and permanent duty related disability and in the complex procedures needed to objectively determine whether an applicant is so disabled. However, this medical council is precluded by applicable union contracts from evaluating duty disability applications for public safety employees, except those for stress related injuries of applicants hired subsequent to 2005.

The provisions of SB 657 would, by placing the City of Milwaukee in parity with the other public employers in the State who participate in the WRS or Milwaukee County Retirement System and who are not required to collectively bargain duty disability benefits, permit the necessary reform of the duty disability claim adjudication process to prevent the waste, fraud and abuse of these benefits that is occurring today to the detriment of the members of CMERS and to the taxpayers of Milwaukee who financially guarantee the provision of these benefits. Thank you for your consideration.



122 W. Washington Avenue
Suite 300
Madison, Wisconsin 53703-2715

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

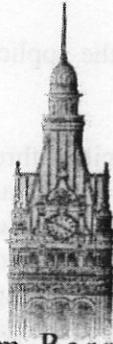
To: Senate Committee on Judiciary and Labor
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: March 13, 2014
Re: SB 657, Duty Disability Benefits for Public Safety Employees

The League of Wisconsin Municipalities supports SB 657, making several common sense modifications to this state's duty disability benefits program.

While the League unquestionably supports the availability of duty disability benefits for public safety employees injured while performing their duties, we also support taking steps to make sure the program is not abused. SB 657 does not eliminate or reduce the program. Rather, it requires the Legislative Audit Bureau to conduct a program evaluation audit of the duty disability benefits program under the WRS and comparable programs operated by the City of Milwaukee and Milwaukee County. In addition, it makes the following sensible changes to the state's duty disability program:

- Provides that if an employer offers an employee who qualifies for a duty disability benefit another position and the employee does not accept the offer, the employee may not receive a duty disability benefit. If an employee accepts such an offer of employment, the amount of the employee's monthly benefit is reduced by all earnings payable to the employee from the employer.
- Requires that an employee receiving a duty disability benefit must be re-examined by at least one physician designated or approved by the Wisconsin Retirement Board every five years to determine whether the employee's disability is likely to be permanent. The duty disability benefit is terminated if the employee refuses to undergo the examination or if the examination reveals that the disability is no longer permanent.
- Makes duty disability program benefit features, and eligibility conditions and methodology for obtaining and continuing to receive any type of duty disability a prohibited subject of collective bargaining for municipal and state employees who are police officers, fire fighters, or emergency service providers.

The League urges you to recommend passage of SB 657. Thanks for considering our comments.



Tom Barrett
Mayor, City of Milwaukee

March 12, 2014

Wisconsin State Senate
Members, Committee on Judiciary and Labor

Dear Committee Members:

Thank you for the opportunity to comment on SB 657. This bill addresses a major concern of the City of Milwaukee regarding the determination of eligibility for duty disability benefits under our home rule retirement system, the City of Milwaukee Employees' Retirement System (ERS).

First, we are not seeking to change benefits for current protective service employees. Those benefits are contractually guaranteed as part of our Charter, and changes to benefit structure and eligibility standards for future employees can be made.

Second, we do believe we must address the process, or as this bill refers to it, the "methodology" for determining benefit eligibility, for all City of Milwaukee public safety employees, regardless of when they were hired. Currently, the process that applies to duty disability eligibility determinations for our public safety employees, other than those hired after 2005 who claim to be incapacitated on the basis of a mental injury, is profoundly deficient. That process, which establishes a 3-doctor "medical panel" to rule on eligibility, lacks transparency, fails to provide for essential job-related input from the employing department, and fails to protect the financial integrity of the ERS. As a practical matter, the method for selecting the "third" doctor has failed to provide for impartiality or for consistency in the application of criteria to evaluate applications for this benefit. In addition, it has become increasingly difficult to operate the panel in manner that enables timely decisions. The result has been a process that prevents the Annuity & Pension Board to exercise responsible, fiduciary management of duty disability benefits.

We must add that the current process has another serious defect which affects the ability of the Milwaukee Police Department to ensure that its sworn police officers exercise their authority in a responsible manner. There have been numerous instances in which an officer who has been terminated for inappropriate behavior has been able to win an award of a duty disability allowance, generally using a "stress-related" claim. It is easy to see how this reality weakens the incentives for officers to avoid rogue behavior. In addition, there has been no opportunity for the

Police Department to comment on whether the applicant is in fact incapable of performing the duties of a police officer. This must change.

The ERS maintains a separate medical council of three physicians who meet monthly and who are well versed in the legal standard under our Charter for finding total and permanent duty related disability and in the complex procedures needed to objectively determine whether an applicant is so disabled. This council determines whether eligibility standards are met by general city employees, as well as for protective service employees hired after 2005 who claim to be incapacitated as a result of a mental injury. If this legislation becomes law, the City could return to this council for all duty disability applications. The medical council will protect our retirement system's financial soundness, as well as the public interest in preventing wrong doers from being placed on the duty disability roll.

In closing, we believe this bill will enable the City to operate without constraints that apply only to ourselves. We ask for your support.

Sincerely,



Tom Barrett
Mayor



Michael Murphy
Common Council President