



2009 ASSEMBLY BILL 312

June 9, 2009 – Introduced by Representatives ZIEGELBAUER, HINTZ, KESSLER, ROYS, A. WILLIAMS, BALLWEG, BIES, GOTTLIEB, MASON, GUNDERSON, GUNDRUM, KAUFERT, KNODL, LEMAHIEU, LOTHIAN, MONTGOMERY, NASS, RIPP, SPANBAUER, TOWNSEND, VAN ROY, VOS and WOOD, cosponsored by Senators COWLES, DARLING, KAPANKE, A. LASEE, LAZICH and SCHULTZ. Referred to Committee on Urban and Local Affairs.

1 **AN ACT to amend** 40.02 (48) (am) 22., 40.02 (48) (c), 60.57 (1) (c), 61.66 (1) (a) and
2 (b) and (2), 62.09 (1) (a), 62.09 (13) (a), 62.09 (13) (b), 62.13 (2s) (a), 62.13 (3),
3 62.13 (6) (a) 1., 62.13 (6) (a) 2., 62.13 (6) (a) 3., 62.13 (6m) (intro.), 62.13 (7m),
4 62.13 (7n), 62.13 (10m), 62.13 (11), 62.13 (12), 66.0925 (14), 111.70 (1) (a),
5 425.2065 (1), 891.45 (1) (b), 891.455 (1), 951.01 (3f), 990.01 (7g), 990.01 (7m),
6 990.01 (7r), 990.01 (28g), 990.01 (28m) and 990.01 (28r); and **to create** 60.55
7 (1) (a) 5., 60.553, 60.56 (1) (a) 4. and 62.13 (2e) of the statutes; **relating to:**
8 authorizing cities and towns, and expanding the authority of villages, to create
9 combined protective services departments.

Analysis by the Legislative Reference Bureau

Generally under current law a village with a population of at least 5,000 is required to provide police protection services by creating its own police department, by contracting for police protection services with a city, village, town, or county or by creating a joint police department with another city, village, or town. Also under current law, in general, a village with a population of at least 5,500 is required to provide fire protection services by creating its own fire department, by contracting for fire protection services with a city, village, or town, or by creating a joint fire department with another city, village, or town.

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Current law also authorizes any village to provide police and fire protection services in one of two additional ways. The first way is by using a combined protective services department, which is neither a police department nor a fire department, which was created before January 1, 1987, and in which the same person may be required to perform police protection and fire protection duties, subject to some limitations on consecutive hours that may be worked in police protection. The second way is by requiring persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties, subject to some limitations on consecutive hours that may be worked in police protection and subject to the limitation that those persons were required to perform those duties before January 1, 1987. In either case, the village may designate any person required to perform police protection and fire protection duties as primarily a police officer or fire fighter for purposes related to presumptions related to certain employment-related diseases.

Generally under current law, 2nd, 3rd, and 4th class cities (presently all cities other than Milwaukee) with populations of at least 4,000 must have police departments and fire departments, and may have joint departments with other cities, villages, or towns. Such cities are generally required to have a board of police and fire commissioners, which appoint the police and fire chiefs who, in turn, appoint subordinates subject to approval by the board. Current law also authorizes a city to abolish its police department if it enters into a contract with a county under which the sheriff provides law enforcement services to the city.

Under a decision of the Wisconsin Supreme Court, *Local Union No. 487, IAFF-CIO, v. City of Eau Claire*, 147 Wis. 2d 519 (1989), cities may not create combined protective services departments or require persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties.

This bill authorizes 2nd, 3rd, and 4th class cities, and towns, to provide police and fire protection services in the same two additional ways that villages may do so, either by creating a combined protective services department which is neither a police department nor a fire department and in which the same person may be required to perform police protection and fire protection duties, or by requiring persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties. The bill also removes the limitations on villages relating to the creation of a department, and the requirement relating to the performance of duties, before January 1, 1987.

Under the bill, cities, villages, and towns may designate any person who is required to perform police protection and fire protection duties as primarily a police officer or fire fighter for purposes relating to rest days, consecutive hours worked, hours of labor, rules for leaving the city, and presumptions related to certain employment-related diseases. These requirements and limitations that apply to persons designated as primarily a police officer or fire fighter under the bill apply to police officers and fire fighters under current law. If a city creates a combined

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protective services department, the city must create a chief of the department and must abolish the offices of chief of police and fire chief. The chief of a combined protective services department has the same authority as the chief of police and fire chief had.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 40.02 (48) (am) 22. of the statutes is amended to read:
- 2 40.02 (48) (am) 22. A person employed under s. 60.553 (1), 61.66 (1), or 62.13
- 3 (2e) (a).
- 4 **SECTION 2.** 40.02 (48) (c) of the statutes is amended to read:
- 5 40.02 (48) (c) In s. 40.65, “protective occupation participant” means a
- 6 participating employee who is a police officer, fire fighter, an individual determined
- 7 by a participating employer under par. (a) or (bm) to be a protective occupation
- 8 participant, county undersheriff, deputy sheriff, state probation and parole officer,
- 9 county traffic police officer, conservation warden, state forest ranger, field
- 10 conservation employee of the department of natural resources who is subject to call
- 11 for forest fire control or warden duty, member of the state traffic patrol, state motor
- 12 vehicle inspector, University of Wisconsin System full-time police officer, guard or
- 13 any other employee whose principal duties are supervision and discipline of inmates
- 14 at a state penal institution, excise tax investigator employed by the department of
- 15 revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a), or special
- 16 criminal investigation agent employed by the department of justice.
- 17 **SECTION 3.** 60.55 (1) (a) 5. of the statutes is created to read:

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1 60.55 (1) (a) 5. Creating a combined protective services department under s.
2 60.553.

3 **SECTION 4.** 60.553 of the statutes is created to read:

4 **60.553 Combined protective services. (1)** Any town may provide police and
5 fire protection services by any of the following:

6 (a) A combined protective services department which is neither a police
7 department under s. 60.56 (1) (a) nor a fire department under s. 60.55 (1) (a), and in
8 which the same person may be required to perform police protection and fire
9 protection duties without being required to perform police protection duties for more
10 than 8 hours in each 24 hours except in emergency situations, as described under s.
11 62.13 (7n).

12 (b) Persons in a police department or fire department who, alone or in
13 combination with persons designated as police officers or fire fighters, may be
14 required to perform police protection and fire protection duties without being
15 required to perform police protection duties for more than 8 hours in each 24 hours
16 except in emergency situations, as described under s. 62.13 (7n).

17 **(2)** The governing body of a town acting under sub. (1) may designate any
18 person required to perform police protection and fire protection duties under sub. (1)
19 as primarily a police officer or fire fighter for purposes described in s. 62.13 (7m), (7n),
20 (10m), and (11) and s. 891.45 or 891.455.

21 **SECTION 5.** 60.56 (1) (a) 4. of the statutes is created to read:

22 60.56 (1) (a) 4. Creating a combined protective services department under s.
23 60.553.

24 **SECTION 6.** 60.57 (1) (c) of the statutes is amended to read:

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1 60.57 (1) (c) If the town has both a police and fire department, or a combined
2 protective services department, establish a board of police and fire commissioners.

3 **SECTION 7.** 61.66 (1) (a) and (b) and (2) of the statutes are amended to read:

4 61.66 (1) (a) A combined protective services department which is neither a
5 police department under s. 61.65 (1) (a) nor a fire department under s. 61.65 (2) (a),
6 ~~which was created prior to January 1, 1987~~, and in which the same person may be
7 required to perform police protection and fire protection duties without being
8 required to perform police protection duties for more than 8 hours in each 24 hours
9 except in emergency situations, as ~~specified~~ described under s. 62.13 (7n).

10 (b) Persons in a police department or fire department who, alone or in
11 combination with persons designated as police officers or fire fighters, may be
12 required to perform police protection and fire protection duties without being
13 required to perform police protection duties for more than 8 hours in each 24 hours
14 except in emergency situations, as ~~specified~~ described under s. 62.13 (7n), ~~if those~~
15 ~~persons were required to perform those duties prior to January 1, 1987.~~

16 **(2)** The governing body of a village acting under sub. (1) may designate any
17 person required to perform police protection and fire protection duties under sub. (1)
18 as primarily a police officer or fire fighter for purposes of described in s. 62.13 (7m),
19 (7n), (10m), and (11) and s. 891.45 or 891.455.

20 **SECTION 8.** 62.09 (1) (a) of the statutes is amended to read:

21 62.09 (1) (a) The officers shall be a mayor, treasurer, clerk, comptroller,
22 attorney, engineer, one or more assessors unless the city is assessed by a county
23 assessor under s. 70.99, one or more constables as determined by the common
24 council, a local health officer, as defined in s. 250.01 (5), or local board of health, as
25 defined in s. 250.01 (3), street commissioner, board of police and fire commissioners

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1 except in cities where not applicable, chief of police except in a city that has abolished
2 its police department under s. 62.13 (2s) or except in cities where not otherwise
3 applicable, chief of the fire department except in cities where not applicable, chief of
4 combined protective services department except in cities where not applicable, board
5 of public works, 2 alderpersons from each aldermanic district, and such other officers
6 or boards as are created by law or by the council. If one alderperson from each
7 aldermanic district is provided under s. 66.0211 (1), the council may, by ordinance
8 adopted by a two-thirds vote of all its members and approved by the electors at a
9 general or special election, provide that there shall be 2 alderpersons from each
10 aldermanic district. If a city creates a combined protective services department
11 under s. 62.13 (2e) (a) 1., it shall create the office of chief of such a department and
12 shall abolish the offices of chief of police and chief of the fire department.

13 **SECTION 9.** 62.09 (13) (a) of the statutes is amended to read:

14 62.09 (13) (a) The chief of police shall have command of the police force of the
15 city, or the chief of a protective services department created under s. 62.13 (2e) (a)
16 1. shall have command of the combined protective services force, under the direction
17 of the mayor. The chief shall obey all lawful written orders of the mayor or common
18 council. The chief and each police officer or combined protective services officer shall
19 possess the powers, enjoy the privileges and be subject to the liabilities conferred and
20 imposed by law upon constables, and be taken as included in all writs and papers
21 addressed to constables; shall arrest with or without process and with reasonable
22 diligence take before the municipal judge or other proper court every person found
23 in the city engaged in any disturbance of the peace or violating any law of the state
24 or ordinance of the city and may command all persons present in that case to assist,
25 and if any person, being so commanded, refuses or neglects to render assistance the

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1 person shall forfeit not exceeding \$10. They shall collect the same fees prescribed
2 for sheriffs in s. 814.70 for similar services, unless a higher fee is applicable under
3 s. 814.705 (1) (b).

4 **SECTION 10.** 62.09 (13) (b) of the statutes is amended to read:

5 62.09 (13) (b) The chief of police, or the chief of a protective services department
6 created under s. 62.13 (2e) (a) 1., shall have charge of all city jails, including that
7 portion of any jail which is used by the city in a joint city-county building.

8 **SECTION 11.** 62.13 (2e) of the statutes is created to read:

9 62.13 (2e) COMBINED PROTECTIVE SERVICES. (a) A city may provide police and
10 fire protection services by any of the following:

11 1. A combined protective services department which is neither a police
12 department as otherwise constituted under this section nor a fire department as
13 otherwise constituted under this section, in which the same person may be required
14 to perform police protection and fire protection duties without being required to
15 perform police protection duties for more than 8 hours in each 24 hours except in
16 emergency situations, as described under s. 62.13 (7n).

17 2. Persons in a police department or fire department who, alone or in
18 combination with persons designated as police officers or fire fighters, may be
19 required to perform police protection and fire protection duties without being
20 required to perform police protection duties for more than 8 hours in each 24 hours
21 except in emergency situations, as described under s. 62.13 (7n).

22 (b) The governing body of a city acting under par. (a) may designate any person
23 required to perform police protection and fire protection duties under par. (a) as
24 primarily a police officer or fire fighter for purposes of subs. (7m), (7n), (10m), and
25 (11) and s. 891.45 or 891.455.

ASSEMBLY BILL 312**SECTION 12**

1 **SECTION 12.** 62.13 (2s) (a) of the statutes is amended to read:

2 62.13 **(2s)** (a) Subject to pars. (b) to (d), a city may abolish its police department
3 or combined protective services department if it enters into a contract with a county
4 under s. 59.03 (2) (e) for the county sheriff to provide law enforcement services in all
5 parts of the city. If the city is located in more than one county, it may not abolish its
6 police department or combined protective services department under this paragraph
7 unless the city enters into a contract under this paragraph with the county in which
8 the greatest amount of the city's equalized value, population or territory is located.
9 If a city that is located in more than one county enters into a contract with a county
10 under this paragraph, the jurisdiction of the contracting county's sheriff and
11 deputies includes the entire territory of the city.

12 **SECTION 13.** 62.13 (3) of the statutes is amended to read:

13 62.13 **(3)** CHIEFS. The board shall appoint the chief of police and the chief of the
14 fire department or, if applicable, the chief of a protective services department, who
15 shall hold their offices during good behavior, subject to suspension or removal by the
16 board for cause.

17 **SECTION 14.** 62.13 (6) (a) 1. of the statutes is amended to read:

18 62.13 **(6)** (a) 1. To organize and supervise the fire and police, or combined
19 protective services, departments and to prescribe rules and regulations for their
20 control and management.

21 **SECTION 15.** 62.13 (6) (a) 2. of the statutes is amended to read:

22 62.13 **(6)** (a) 2. To contract for and purchase all necessary apparatus and
23 supplies for the use of the departments under their supervision, exclusive of the
24 erection and control of the police and, fire station, and combined protective services
25 buildings.

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1 **SECTION 16.** 62.13 (6) (a) 3. of the statutes is amended to read:

2 62.13 **(6)** (a) 3. To audit all bills, claims and expenses of the fire and, police, and
3 combined protective services departments before the same are paid by the city
4 treasurer.

5 **SECTION 17.** 62.13 (6m) (intro.) of the statutes is amended to read:

6 62.13 **(6m)** (intro.) If a city of less than 4,000 population has not by ordinance
7 applied subs. (1) to (6) to the city, the city may not suspend, reduce, suspend and
8 reduce, or remove any police chief, protective services chief, or other law enforcement
9 officer who is not probationary, and for whom there is no valid and enforceable
10 contract of employment or collective bargaining agreement which provides for a fair
11 review prior to that suspension, reduction, suspension and reduction or removal,
12 unless the city does one of the following:

13 **SECTION 18.** 62.13 (7m) of the statutes is amended to read:

14 62.13 **(7m)** REST DAY. (a) The council of every city of the fourth class shall
15 provide for, and the chief of the police department, or the chief of the combined
16 protective services department, shall assign to, each police officer, or each
17 subordinate designated as primarily a police officer under sub. (2e) (b), in the service
18 of such city one full rest day of 24 consecutive hours during each 192 hours, except
19 in cases of positive necessity by some sudden and serious emergency, which, in the
20 judgment of the chief of police, or the chief of the combined protective services
21 department, demands that such day of rest not be given at such time. Arrangements
22 shall be made so that each full rest day may be had at such time or times as will not
23 impair the efficiency of the department.

24 (b) The council of every city of the second or third class shall provide for, and
25 the chief of the police department, or the chief of the combined protective services

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1 department, shall assign to, each police officer, or each subordinate designated as
2 primarily a police officer under sub. (2e) (b), in the service of such city 2 full rest days
3 of 24 consecutive hours each during each 192 hours, except in cases of positive
4 necessity by some sudden and serious emergency, which, in the judgment of the chief
5 of police, or the chief of the combined protective services department, demands that
6 any such day of rest not be given at such time. Arrangements shall be made so that
7 each full rest day may be had at such time or times as will not impair the efficiency
8 of the department. This section shall not apply to villages to which s. 61.65 is
9 applicable.

10 **SECTION 19.** 62.13 (7n) of the statutes is amended to read:

11 62.13 **(7n)** HOURS OF LABOR. Except when a labor agreement under subch. IV
12 of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd or
13 4th class city shall provide for a working day of not more than 8 hours in each 24
14 except in cases of positive necessity by some sudden and serious emergency, which,
15 in the judgment of the chief of police, or the chief of the combined protective services
16 department, demands that such workday shall be extended beyond the 8-hour
17 period at such time; and, when such emergency ceases to exist, all overtime given
18 during such emergency shall be placed to the credit of such police officer, or each
19 subordinate designated as primarily a police officer under sub. (2e) (b), and
20 compensatory time under s. 103.025 given therefor.

21 **SECTION 20.** 62.13 (10m) of the statutes is amended to read:

22 62.13 **(10m)** RULES GOVERNING LEAVING CITY. Subject to approval of the common
23 council the fire chief, or the chief of the combined protective services department,
24 may establish rules requiring fire fighters, or each subordinate designated as

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1 primarily a fire fighter under sub. (2e) (b), to obtain permission before leaving the
2 city.

3 **SECTION 21.** 62.13 (11) of the statutes is amended to read:

4 62.13 (11) FIRE FIGHTERS, REST DAY. The common council of every 4th class city,
5 having a population of 5,000 or more and a fire department, or a combined protective
6 services department, shall provide for, and the chief of the fire department or
7 combined protective services department shall assign to each full paid member
8 thereof of the fire department or subordinate designated as primarily a fire fighter
9 under sub. (2e) (b), a period of 24 consecutive hours off duty during each 72 hours,
10 except in cases of positive necessity by some sudden and serious fire, accident or
11 other peril, which, in the judgment of the chief engineer or other officer in charge
12 demands that the day of rest not be given at that time. The provisions of this section
13 shall not apply to cities having a 2-platoon or double shift system.

14 **SECTION 22.** 62.13 (12) of the statutes is amended to read:

15 62.13 (12) LEGISLATIVE INTENT. Section 62.13 and chapter 589, laws of 1921,
16 chapter 423, laws of 1923, and chapter 586, laws of 1911, shall be construed as an
17 enactment of statewide concern for the purpose of providing a uniform regulation of
18 police and, fire, and combined protective services departments.

19 **SECTION 23.** 66.0925 (14) of the statutes is amended to read:

20 66.0925 (14) CONSTRUCTION. Nothing in this section shall be construed as
21 relieving, modifying or interfering with the responsibilities for operating jails which
22 are vested in sheriffs under s. 59.27 (1) and chiefs of police under s. 62.09 (13) (b) or
23 chiefs of protective services departments under s. 62.13 (2e) (a) 1.

24 **SECTION 24.** 111.70 (1) (a) of the statutes is amended to read:

ASSEMBLY BILL 312**SECTION 24**

1 111.70 (1) (a) “Collective bargaining” means the performance of the mutual
2 obligation of a municipal employer, through its officers and agents, and the
3 representative of its municipal employees in a collective bargaining unit, to meet and
4 confer at reasonable times, in good faith, with the intention of reaching an
5 agreement, or to resolve questions arising under such an agreement, with respect to
6 wages, hours and conditions of employment, and with respect to a requirement of the
7 municipal employer for a municipal employee to perform law enforcement and fire
8 fighting services under s. 60.553 (1), 61.66, or 62.13 (2e) (a), except as provided in sub.
9 (4) (m) and s. 40.81 (3) and except that a municipal employer shall not meet and
10 confer with respect to any proposal to diminish or abridge the rights guaranteed to
11 municipal employees under ch. 164. The duty to bargain, however, does not compel
12 either party to agree to a proposal or require the making of a concession. Collective
13 bargaining includes the reduction of any agreement reached to a written and signed
14 document. The municipal employer shall not be required to bargain on subjects
15 reserved to management and direction of the governmental unit except insofar as the
16 manner of exercise of such functions affects the wages, hours and conditions of
17 employment of the municipal employees in a collective bargaining unit. In creating
18 this subchapter the legislature recognizes that the municipal employer must
19 exercise its powers and responsibilities to act for the government and good order of
20 the jurisdiction which it serves, its commercial benefit and the health, safety and
21 welfare of the public to assure orderly operations and functions within its
22 jurisdiction, subject to those rights secured to municipal employees by the
23 constitutions of this state and of the United States and by this subchapter.

24 **SECTION 25.** 425.2065 (1) of the statutes is amended to read:

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1 425.2065 (1) In this section, “law enforcement agency” means the police
2 department, combined protective services department under s. 60.553, 61.66, or
3 62.13 (2e), or sheriff, that has primary responsibility for providing police protection
4 services in the city, village, or town in which a repossession is expected to occur.

5 **SECTION 26.** 891.45 (1) (b) of the statutes is amended to read:

6 891.45 (1) (b) “Municipal fire fighter” includes any person designated as
7 primarily a fire fighter under s. 60.553 (2), 61.66 (2), or 62.13 (2e) (b) and any person
8 under s. 60.553, 61.66, or 62.13 (2e) whose duties as a fire fighter during the 5-year
9 qualifying period took up at least two-thirds of his or her working hours.

10 **SECTION 27.** 891.455 (1) of the statutes is amended to read:

11 891.455 (1) In this section, “state, county, or municipal fire fighter” means a
12 fire fighter who is covered under s. 891.45 and any person under s. 60.553, 61.66, or
13 62.13 (2e) whose duties as a fire fighter during the 10-year qualifying period
14 specified in sub. (2) took up at least two-thirds of his or her working hours.

15 **SECTION 28.** 951.01 (3f) of the statutes is amended to read:

16 951.01 (3f) “Fire department” includes a volunteer fire department and a
17 department under s. 60.553 (1) (a), 61.66, or 62.13 (2e) (a) 1.

18 **SECTION 29.** 990.01 (7g) of the statutes is amended to read:

19 990.01 (7g) FIRE CHIEF. “Fire chief” or “chief of a fire department” includes the
20 chief of a department under s. 60.553 (1) (a), 61.66, or 62.13 (2e) (a) 1.

21 **SECTION 30.** 990.01 (7m) of the statutes is amended to read:

22 990.01 (7m) FIRE DEPARTMENT. “Fire department” includes a department under
23 s. 60.553 (1) (a), 61.66, or 62.13 (2e) (a) 1.

24 **SECTION 31.** 990.01 (7r) of the statutes is amended to read:

