

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 308**

November 29, 2007 – Offered by Representative BIES.

1 **AN ACT** *to renumber and amend* 62.50 (13) and 62.50 (18); *to amend* 62.50 (1),
2 62.50 (11), 62.50 (14) and 62.50 (16); and *to create* 62.50 (13) (b) and 62.50 (18)
3 (b) of the statutes; **relating to:** payment of a 1st class city police officer's salary
4 after discharge or suspension, the adjournment of a trial or investigation
5 relating to charges brought against such an officer, disciplinary procedures for
6 a 1st class city police officer, and increasing the size of the city of Milwaukee
7 Board of Fire and Police Commissioners.

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 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.

The substitute amendment also states that, except for a discharge or suspension related to pending felony criminal charges against a member of the police force which served as the basis of the officer's discharge or suspension, if the discharged or suspended officer is subject to the terms of a collective bargaining agreement that provides an alternative to the appeal process to the board, the appeal process in the collective bargaining agreement applies to the accused officer and not the current law process that involves an appeal to the board. If the alternative to the appeals process includes a hearing, the hearing must be open to the public.

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.

This substitute amendment increases the number of members on the board to seven, and authorizes the mayor of Milwaukee to appoint two additional members of the board upon the substitute amendment's effective date. The substitute amendment changes the board's quorum requirement from three to four, except in the case of officers who are discharged or suspended, the quorum requirement for a trial of such officers is still three 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 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 amended to read:

2 **62.50 (1) ORGANIZATION.** In all 1st class cities, however incorporated, there shall
3 be a board of fire and police commissioners, consisting of ~~5~~ 7 citizens, not more than
4 ~~2~~ 3 of whom shall at any time belong to the same political party. The staff and
5 members of the board shall receive the salary or other compensation for their
6 services fixed by the common council. The salary shall be fixed at the same time and
7 in the same manner as the salary of other city officials and employees. ~~Three~~ Four
8 members of the board shall constitute a quorum necessary for the transaction of
9 business, except that 3 members of the board shall constitute a quorum necessary
10 for a trial under this section. It shall be the duty of the mayor of the city, on or before
11 the 2nd Monday in July, to appoint ~~5~~ 7 members of the board, designating the term
12 of office of each, one to hold one year, ~~one~~ 2 to hold 2 years, one to hold 3 years, ~~one~~
13 2 to hold 4 years and one to hold 5 years, and until their respective successors shall
14 be appointed and qualified. Thereafter the terms of office shall be 5 years from the
15 2nd Monday in July, and until a successor is appointed and qualified. Every person
16 appointed a member of the board shall be subject to confirmation by the common
17 council and every appointed member shall, before entering upon the duties of the
18 office take and subscribe the oath of office prescribed by article IV, section 28, of the
19 constitution, and file the same duly certified by the officer administering it, with the

1 clerk of the city. Appointments made prior to the time this subchapter first applies
2 to a 1st class city shall not be subject to confirmation by the common council.

3 **SECTION 2.** 62.50 (11) of the statutes is amended to read:

4 **62.50 (11) DISCHARGE OR SUSPENSION.** No member of the police force or fire
5 department may be discharged or suspended for a term exceeding 30 days by the
6 chief of either of the departments except for cause and after trial under this section
7 or, in the case of a member of the police force, except as a result of an alternative
8 appeals process under a collective bargaining agreement, as described in sub. (13)
9 (b).

10 **SECTION 3.** 62.50 (13) of the statutes is renumbered 62.50 (13) (a) and amended
11 to read:

12 **62.50 (13) (a)** The chief discharging or suspending for a period exceeding 5 days
13 any member of the force shall give written notice of the discharge or suspension to
14 the member and, at the same time that the notice is given, and shall also give the
15 member any exculpatory evidence in the chief's possession related to the discharge
16 or suspension. The chief shall also immediately report the same notice of the
17 discharge or suspension to the secretary of the board of fire and police commissioners
18 together with a complaint setting forth the reasons for the discharge or suspension
19 and the name of the complainant if other than the chief. ~~Within~~ Except as provided
20 in par. (b), within 10 days after the date of service of the notice of a discharge or
21 suspension order the members so discharged or suspended may appeal from the
22 order of discharge or suspension or discipline to the board of fire and police
23 commissioners, by filing with the board a notice of appeal in the following or similar
24 form:

25 To the honorable board of fire and police commissioners:

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

4 **SECTION 4.** 62.50 (13) (b) of the statutes is created to read:

5 62.50 (13) (b) Except for a discharge or suspension with regard to which felony
6 criminal charges are also pending against the member of the police force and such
7 charges arose out of the same conduct or incident that serves as the basis for the
8 discharge or suspension, the appeal process under par. (a) does not apply to any
9 member of the police force who is suspended, reduced, suspended and reduced, or
10 removed by the chief and who is subject to the terms of a collective bargaining
11 agreement entered into under subch. IV of ch. 111 that provides an alternative to the
12 appeals procedure specified in par. (a). If the alternative to the appeals procedure
13 includes a hearing, the hearing shall be open to the public with reasonable advance
14 notice given by the employer.

15 **SECTION 5.** 62.50 (14) of the statutes is amended to read:

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

20 **SECTION 6.** 62.50 (16) of the statutes is amended to read:

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

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

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

14 62.50 **(18)** (a) No chief officer of either department or member of the fire
15 department may be deprived of any salary or wages for the period of time suspended
16 preceding an investigation or trial, unless the charge is sustained. ~~No~~ Except as
17 provided in par. (b), no member of the police force may be ~~suspended or discharged~~
18 or suspended under sub. (11) or (13) without pay or benefits until the matter that is
19 the subject of the ~~suspension or discharge~~ or suspension is disposed of by the board
20 or the time for appeal under sub. (13) passes without an appeal being made.

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

22 62.50 **(18)** (b) Following a discharge or suspension under sub. (11) or (13), no
23 member of the police force is entitled to any salary or wages from the department
24 pending an appeal of the discharge or suspension to the board of fire and police
25 commissioners if felony criminal charges are also pending against the member and

1 such charges arose out of the same conduct or incident that serves as the basis for
2 the discharge or suspension.

3 **SECTION 9. Nonstatutory provisions.**

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

9 **SECTION 10. Initial applicability.**

10 (1) This act first applies to any member of the police force or fire department
11 who is covered by a collective bargaining agreement that contains provisions
12 inconsistent with this act on the day on which the collective bargaining agreement
13 expires or is extended, modified, or renewed, whichever occurs first, except that the
14 treatment of section 62.50 (13) (b) of the statutes first applies to a person who is
15 suspended, reduced, suspended and reduced, or removed on the effective date of this
16 subsection.

17 (END)