

2007 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB308)

Received: 11/27/2007

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Garey Bies (608) 266-5350**

By/Representing: **Andrew**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact: **MPA: Bill Ward (414) 581-2081 or John Balcerzak (414) 530-3747**

Addl. Drafters:

Subject: **Local Gov't - 1st class cities**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Bies@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disciplinary procedures for certain law enforcement officers

Instructions:

See Attached. Based on LRB -2035/P1, w/ changes: all discipline involving a felony charge go to Fire and Police Commission and all discipline not involving a felony go to an arbitrator (no choice for officer). No appeal of arb. ruling to cir. court. Chief must hand over exculpatory evid. at time notice is given.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 11/27/2007	kfollett 11/27/2007		_____			
/1			rschluet 11/27/2007	_____	lparisi 11/27/2007	lparisi 11/27/2007	

FE Sent For:

<END>

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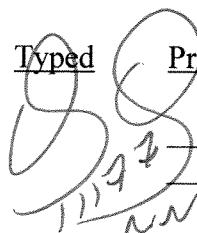
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1/1	mshovers	11/27/07					

FE Sent For:

<END>

§ 9, p. 5

do this as a sub to AB 308

make a clean fork -

if felony, keep current law

if no felony, → arbitrator -
no choice for officer

all felonies → FPC

all non-felonies → arbitrator

§ 3, p. 4: - ensure that chief must hand ~~over~~ exculpatory evi dat

same time notice of dish or susp. is given to officer

SA Bill can a 62.50(18)(b) first apply

John's Bill to someone susp, red, discharged, etc on eff date of subsection -

Say not do this. Instead of waiting until new coll. barg agreement - -

CM He Millice just signed new CBA
said would threaten
violating and
with the law suit.
lead to a 2009

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: MES) (Date: 11, 27, 07)



Please transfer the drafting file for

2005 LRB to the drafting file

for 2007 LRB

The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--- OR ---

Please copy the drafting file for

2007 LRB -2035 / P1 (include the version) and place it in the

drafting file for 2007 LRB 50181

For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

RMNA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASA _____
to
AB 308

SOON

reyn

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), 62.50 (16) and 62.50 (20); and *to create* 62.50 (13) (b) 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, and increasing the size of the city
7 of Milwaukee 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.

substitute amendment

, at the same time the member is given written notice of the disciplinary action,

Under this ~~bill~~, 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 ~~bill~~ requires the chief to give the member any exculpatory evidence in the chief's possession that relates to the discharge or suspension.

The ~~bill~~ 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. ~~unless the officer chooses to appeal the chief's decision to the board.~~ If the alternative to the appeals process includes a hearing, the hearing must be open to the public. ~~A discharged or suspended officer who chooses to appeal the chief's decision through a collectively bargained alternative to the current law appeal process may appeal the board's decision to the circuit court.~~

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 ~~bill~~ 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 ~~bill~~, 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 ~~bill~~ 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 bill's effective date. The ~~bill~~ 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 ~~bill~~ are still subject to confirmation by the Milwaukee Common Council and are appointed to five-year terms.

substitute amendment

For further information see the *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.** 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
20 clerk of the city. Appointments made prior to the time this subchapter first applies
21 to a 1st class city shall not be subject to confirmation by the common council.

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

2 62.50 (11) DISCHARGE OR SUSPENSION. No member of the police force or fire
3 department may be discharged or suspended for a term exceeding 30 days by the
4 chief of either of the departments except for cause and after trial under this section
5 or, in the case of a member of the police force, except as a result of an alternative
6 appeals process under a collective bargaining agreement, as described in sub. (13)
7 (b).

8 SECTION 3. 62.50 (13) of the statutes is renumbered 62.50 (13) (a) and amended
9 to read:

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

22 To the honorable board of fire and police commissioners:

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

plain

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

2 62.50 (13) (b) Except for a discharge or suspension with regard to which felony
3 criminal charges are also pending against the member of the police force and such
4 charges arose out of the same conduct or incident that serves as the basis for the
5 discharge or suspension, the appeal process under par. (a) does not apply to any
6 member of the police force who is suspended, reduced, suspended and reduced, or
7 removed by the chief and who is subject to the terms of a collective bargaining
8 agreement entered into under subch. IV of ch. 111 that provides an alternative to the
9 appeals procedure specified in par. (a) ~~unless the person chooses to appeal the order~~
10 ~~to the board.~~ If the alternative to the appeals procedure includes a hearing, the
11 hearing shall be open to the public with reasonable advance notice given by the
12 employer.

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

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

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

19 62.50 (16) TRIAL; ADJOURNMENT. The board may grant the accused and or the
20 ~~chief shall have the right to~~ an adjournment of the trial or investigation of the
21 charges, for cause, not to exceed 15 days. In the course of any trial or investigation
22 under this section each member of the fire and police commission may administer
23 oaths, secure by its subpoenas both the attendance of witnesses and the production
24 of records relevant to the trial and investigation, and compel witnesses to answer and
25 may punish for contempt in the same manner provided by law in trials before

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

10 **SECTION 7.** 62.50 (18) of the statutes is [✓]renumbered 62.50 (18) (a) and amended
11 to read:

12 62.50 (18) (a) No chief officer of either department or member of the fire
13 department may be deprived of any salary or wages for the period of time suspended
14 preceding an investigation or trial, unless the charge is sustained. ~~No~~ Except as
15 provided in par. (b), no member of the police force may be ~~suspended or discharged~~
16 or suspended under sub. (11) or (13) without pay or benefits until the matter that is
17 the subject of the ~~suspension or discharge~~ or suspension is disposed of by the board
18 or the time for appeal under sub. (13) passes without an appeal being made.

19 **SECTION 8.** 62.50 (18) (b) of the statutes is [✓]created to read:

20 62.50 (18) (b) Following a discharge or suspension under sub. (11) or (13), no
21 member of the police force is entitled to any salary or wages from the department
22 pending an appeal of the discharge or suspension to the board of fire and police
23 commissioners if felony criminal charges are also pending against the member and
24 such charges arose out of the same conduct or incident that serves as the basis for
25 the discharge or suspension.

1 **SECTION 9.** 62.50 (20) of the statutes is amended to read:

2 62.50 (20) CIRCUIT COURT REVIEW; NOTICE. Any officer or member of either
3 department discharged, suspended or reduced, may, within 10 days after the
4 decision and findings under this section, or under an alternative appeals process
5 under a collective bargaining agreement, as described in sub. (13) (b), are filed with
6 the secretary of the board, bring an action in the circuit court of the county in which
7 the city is located to review the order. Such action shall begin by the serving of a
8 notice on the secretary of the board making such order and on the city attorney of
9 such city, which notice may be in the following or similar form:

10 In Circuit Court, County.

11 To Board of Fire and Police Commissioners.

12 To City Attorney:

13 Please take notice that I hereby demand that the circuit court of County
14 review the order made by the Board of Fire and Police Commissioners on the ... day
15 of ... A.D. discharging, (or suspending) from the department.

16 (Signed)

17 **SECTION 10. Nonstatutory provisions.**

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

23 **SECTION 11. Initial applicability.**

24 (1) This act first applies to any member of the police force or fire department
25 who is covered by a collective bargaining agreement that contains provisions

1 inconsistent with this act on the day on which the collective bargaining agreement
2 expires or is extended, modified, or renewed, whichever occurs first, except that the
3 treatment of section 62.50 (13) (b) of the statutes first applies to a person who is
4 suspended, reduced, suspended and reduced, or removed on the effective date of this
5 subsection.

6 (END)