

2007 SENATE BILL 489

February 15, 2008 – Introduced by Senators GROTHMAN, ROESSLER and CARPENTER, cosponsored by Representatives GOTTLIEB, NASS, KERKMAN, HAHN, VOS, KLEEFISCH and LEMAHIEU. Referred to Committee on Judiciary, Corrections, and Housing.

1 **AN ACT to repeal** 62.13 (5) (h), 111.70 (4) (c) 2. b. and 111.70 (4) (mc); **to**
2 **renumber** 111.70 (4) (c) 2. a.; **to amend** 62.13 (5) (b), 62.50 (11), 62.50 (13),
3 62.50 (14), 62.50 (16) and 62.50 (18); and **to create** 62.13 (5) (bm) of the statutes;
4 **relating to:** payment of a police officer's or fire fighter's salary after being
5 charged with a misdemeanor or felony and discharged, and the adjournment
6 of a trial or investigation relating to charges brought against a first class city
7 police officer or fire fighter.

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 suspended or discharged without pay or benefits until the matter that is the subject of the suspension or discharge is disposed of by the Board of Fire and Police Commissioners (first class city board) or the time for an appeal passes without an appeal being made. Also under current law, no first class city police chief or fire chief, or fire fighter, may be deprived of compensation during the time he or she is suspended preceding an investigation or trial, unless the charges are sustained. Currently, no member of a police force or fire department 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 first class city board's decision upholding the discharge or suspension is reversed, the member must be reinstated to his or her

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former position in the department and is entitled to pay as if he or she was not suspended or discharged. Similar provisions apply to a second, third, or fourth class city police officer or fire fighter whose suspension or removal is reversed.

Under this bill, if a police officer or fire fighter (subordinate) of any class of city is charged with a misdemeanor or felony, the chief must suspend the subordinate if the chief also discharges or seeks to discharge the subordinate, and the subordinate is deprived of compensation pending the disposition of the charges. In second, third, and fourth class cities, a chief may seek the removal of a subordinate, by the board of police and fire commissioners (board), who is charged with a misdemeanor or felony. The bill also changes current law such that a first class city police or fire chief, as well as a fire fighter, who is charged with a misdemeanor or felony may be deprived of compensation during the period after he or she is charged preceding an investigation or trial if the individual is also discharged.

The bill provides that if the chief of a second, third, or fourth class city police or fire department communicates in writing to the board that a subordinate be suspended or removed and if the board takes no action on the communication, the chief's written communication is considered to be charges filed against the subordinate, and a suspension without pay, on the 181st day following the board's receipt of the written communication.

The bill also specifies that, with regard to a first class city, a member of either force who is charged with a misdemeanor or felony and discharged may not receive any compensation following the discharge, and a member of either force who is discharged for any other reason may not receive any compensation after the discharge is upheld by the board or the time for an appeal passes without an appeal being made.

In all cases under the bill, if the charges filed against a suspended subordinate are dismissed, or if the subordinate is found not guilty of the charges, the subordinate is reinstated and entitled to back pay.

Currently, if a first class city 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 within 90 and 120 days.

Currently, both the accused and the chief of a first class city 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.

This bill also repeals a provision that was enacted as part of the state budget, Wisconsin Act 20, that permits a collective bargaining agreement to contain dispute resolution procedures that address suspension, reduction in rank, suspension and reduction in rank, or removal of municipal employees who engage in law enforcement or fire fighting functions.

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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.** 62.13 (5) (b) of the statutes is amended to read:

2 62.13 (5) (b) Charges may be filed against a subordinate by the chief, by a
3 member of the board, by the board as a body, or by any aggrieved person. Such
4 charges shall be in writing and shall be filed with the president of the board. Pending
5 disposition of such charges, the board or chief may suspend such subordinate. If a
6 chief seeks removal of a subordinate under this subsection for cause, as a result of
7 the subordinate being charged with a misdemeanor or felony, the chief shall suspend
8 the subordinate and the subordinate may not receive any compensation following the
9 chief's action, pending disposition of the charges by the board. If the charges are
10 dismissed or the subordinate is found not guilty of the charges, the subordinate shall
11 be reinstated and entitled to compensation as though in continuous service.

12 **SECTION 2.** 62.13 (5) (bm) of the statutes is created to read:

13 62.13 (5) (bm) If a chief communicates in writing to the board that a
14 subordinate be suspended or removed under this subsection for cause, and if the
15 board does not take any action on the communication, on the 181st day following the
16 board's receipt of the communication, the chief's communication shall be considered
17 charges filed against a subordinate under par. (b) and the chief shall suspend the
18 subordinate.

19 **SECTION 3.** 62.13 (5) (h) of the statutes is repealed.

20 **SECTION 4.** 62.50 (11) of the statutes is amended to read:

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1 62.50 (11) DISCHARGE OR SUSPENSION. No member of the police force or fire
2 department may be discharged or suspended for a term exceeding 30 days by the
3 chief of either of the departments except for cause and after trial under this section.
4 A member of either force who is charged with a misdemeanor or felony shall be
5 suspended by the chief if the chief discharges the subordinate under this subsection.
6 A member of either force who is awaiting trial under this section, with regard to the
7 member's suspension and discharge, which is related to being charged with a
8 misdemeanor or felony, may not receive any pay or benefits after his or her
9 suspension and discharge, while he or she is awaiting trial under this section, subject
10 to the disposition of the charges. A member of either force who is charged with a
11 misdemeanor or felony and discharged following a trial under this section may not
12 receive any pay or benefits following his or her discharge. A member of either force
13 who is discharged for any other reason under this section may not receive any pay
14 or benefits after the discharge is upheld by the board or the time for an appeal to the
15 board passes without an appeal being made. If the charges described in this
16 subsection or in sub. (13) are dismissed, or if the member is found not guilty of the
17 charges, the member shall be reinstated and entitled to pay as described in sub. (22).

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

19 62.50 (13) DISCHARGE OR SUSPENSION; APPEAL. The chief discharging or
20 suspending for a period exceeding 5 days any member of the force shall give written
21 notice of the discharge or suspension to the member and immediately report the
22 same to the secretary of the board of fire and police commissioners together with a
23 complaint setting forth the reasons for the discharge or suspension and the name of
24 the complainant if other than the chief. A member of either force who is suspended
25 and discharged by the chief under this subsection as a result of being charged with

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1 a misdemeanor or felony, who is awaiting trial under this section with regard to his
2 or her suspension and discharge, may not receive any pay or benefits after his or her
3 suspension and discharge while he or she is awaiting trial under this section, subject
4 to the disposition of the charges that led to the officer's discharge. Within 10 days
5 after the date of service of the notice of a discharge or suspension order the members
6 so discharged or suspended may appeal from the order of discharge or suspension or
7 discipline to the board of fire and police commissioners, by filing with the board a
8 notice of appeal in the following or similar form:

9 To the honorable board of fire and police commissioners:

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

13 **SECTION 6.** 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 90 days nor more
17 than 15 120 days after service of the notice and a copy of the complaint.

18 **SECTION 7.** 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

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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 8.** 62.50 (18) of the statutes is amended to read:

11 62.50 (18) SALARY DURING SUSPENSION. No chief officer of either department or
12 member of the fire department may be deprived of any salary or wages for the period
13 of time suspended preceding an investigation or trial, unless the reason for the
14 suspension is that the chief or member has been charged with a misdemeanor or
15 felony and the chief or fire fighter is discharged, or unless the charge is sustained.
16 No member of the police force may be suspended ~~or discharged~~ under sub. (11) or (13)
17 without pay or benefits, unless the reason for the suspension is that the officer has
18 been charged with a misdemeanor or felony, and the officer is discharged, until the
19 matter that is the subject of the suspension ~~or discharge~~ is disposed of by the board
20 or the time for appeal under sub. (13) passes without an appeal being made.

21 **SECTION 9.** 111.70 (4) (c) 2. a. of the statutes, as affected by 2007 Wisconsin Act
22 20, is renumbered 111.70 (4) (c) 2.

23 **SECTION 10.** 111.70 (4) (c) 2. b. of the statutes, as created by 2007 Wisconsin Act
24 20, is repealed.

