

2007 Senate Bill 176

Date of enactment: **March 19, 2008**

Date of publication\*: **April 2, 2008**

## 2007 WISCONSIN ACT 114

AN ACT *to renumber and amend* 62.50 (1) and 62.50 (18); *to amend* 62.50 (13), 62.50 (14), 62.50 (16), 62.50 (17) (a) and 62.50 (19); and *to create* 62.50 (1e) and 62.50 (18) (b) of the statutes; **relating to:** payment of a 1st class city police officer's salary after discharge or suspension, the adjournment of a trial or investigation relating to charges brought against such an officer, disciplinary procedures for a 1st class city police officer, increasing the size of the city of Milwaukee Board of Fire and Police Commissioners, and authorizing a panel of the board to handle certain cases. The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 62.50 (1) of the statutes is renumbered 62.50 (1h) and amended to read:

62.50 (1h) ORGANIZATION. In all 1st class cities, however incorporated, there shall be a board of fire and police commissioners, consisting of ~~5~~ either 7 or 9 citizens, not more than ~~2~~ 3, if the board has 7 members, or 4, if the board has 9 members, of whom shall at any time belong to the same political party. The staff and members of the board shall receive the salary or other compensation for their services fixed by the common council. The salary shall be fixed at the same time and in the same manner as the salary of other city officials and employees. ~~Three members~~ Except as otherwise provided in this subsection, a majority of the members—elect, as that term is used in s. 59.001 (2m), of the board shall constitute a quorum necessary for the transaction of business. A 3—member panel of the board may conduct, and decide by majority vote, a trial described under sub. (12) or may hear and decide, by majority vote, charges filed by an aggrieved person under sub. (19). It shall be the duty of the mayor of the city, on or before the 2nd Monday in July, to appoint ~~5~~ 7, or 9, members of the board, designating the term of office of each, one to hold one year, ~~one~~ 2 to hold 2 years, ~~one~~ 2 to hold 3 years, one to hold 4 years if the

board has 7 members, and 2 to hold 4 years if the board has 9 members, and one to hold 5 years if the board has 7 members, and 2 to hold 5 years if the board has 9 members, and until their respective successors shall be appointed and qualified. Thereafter the terms of office shall be 5 years from the 2nd Monday in July, and until a successor is appointed and qualified. The mayor may reduce the size of the board from 9 to 7 members by failing to appoint 2 successors for individuals whose terms expire at the same time. Every person appointed a member of the board shall be subject to confirmation by the common council and every appointed member shall, before entering upon the duties of the office take and subscribe the oath of office prescribed by article IV, section 28, of the constitution, and file the same duly certified by the officer administering it, with the clerk of the city. Not later than the first day of the 7th month beginning after a member appointed by the mayor is confirmed by the common council, the member shall enroll in a training class that is related to the mission of the board and, not later than the first day of the 13th month beginning after a member appointed by the mayor is confirmed by the common council, the member shall complete the class. The training class shall be conducted by the city.

\* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

**SECTION 2.** 62.50 (1e) of the statutes is created to read:

62.50 (1e) DEFINITION. In this section, "offense" means any felony or Class A or Class B misdemeanor violation of any of the following:

- (a) Chapters 940 and 941.
- (b) Section 942.08.
- (c) Section 942.09.
- (d) Chapters 943 to 948.

**SECTION 3.** 62.50 (13) of the statutes is amended to read:

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

To the honorable board of fire and police commissioners:

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

**SECTION 4.** 62.50 (14) of the statutes is amended to read:

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

**SECTION 5.** 62.50 (16) of the statutes is amended to read:

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

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

**SECTION 6.** 62.50 (17) (a) of the statutes is amended to read:

62.50 (17) (a) Within 3 days after hearing the matter the board, or a 3-member panel of the board, shall, by a majority vote of its members and subject to par. (b), determine whether by a preponderance of the evidence the charges are sustained. If the board or panel determines that the charges are sustained, the board shall at once determine whether the good of the service requires that the accused be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained the accused shall be immediately reinstated in his or her former position, without prejudice. The decision and findings of the board, or panel, shall be in writing and shall be filed, together with a transcript of the evidence, with the secretary of the board.

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

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

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

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

is found not guilty of the charges, the officer shall be reinstated and entitled to pay as described in sub. (22).

**SECTION 9.** 62.50 (19) of the statutes is amended to read:

**62.50 (19) CHARGES BY AGGRIEVED PERSON.** In cases where duly verified charges are filed by any aggrieved person with the board of fire and police commissioners, setting forth sufficient cause for the removal of any member of either of the departments, including the chiefs or their assistants, the board or chief may suspend such member or officer pending disposition of such charges. The board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section. The board, or a 3-member panel of the board, shall decide by a majority vote and subject to the just cause standard described in sub. (17) (b) whether the charges are sustained. If sustained, the board shall immediately determine whether the good of the service requires that the accused be removed, suspended from office without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained, the accused shall be immediately rein-

stated without prejudice. The secretary of the board shall make the decision public.

**SECTION 10. Nonstatutory provisions.**

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

**SECTION 11. Initial applicability.**

(1) This act first applies to any member of the police force or fire department who is covered by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

(2) The treatment of section 62.50 (1h) of the statutes, with regard to the training class required of members appointed to the board, first applies to a member who is appointed on the effective date of this subsection.

---