

**SENATE SUBSTITUTE AMENDMENT 2,
TO 2007 SENATE BILL 176**

December 11, 2007 – Offered by Senator GROTHMAN.

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) (be) and 62.13 (5)
4 (bm) of the statutes; **relating to:** payment of a police officer’s salary after being
5 charged with a misdemeanor or felony, or after discharge, and the adjournment
6 of a trial or investigation relating to charges brought against a 1st class city
7 police officer.

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 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 substitute amendment, if a police officer of any class of city is charged with a misdemeanor or felony, the police chief must suspend the officer and the officer is deprived of compensation pending the disposition of the misdemeanor or felony charges. In first class cities, the police chief may also discharge an officer who is so charged. In second, third, and fourth class cities, a police chief may also seek the removal of an officer, by the board of police and fire commissioners (board), who is charged with a misdemeanor or felony. The substitute amendment also changes current law such that a 1st class city police chief 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.

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

In all cases under the substitute amendment, if the charges filed against a suspended officer are dismissed, or if the officer is found not guilty of the charges, the officer is reinstated and is 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 substitute amendment 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 substitute amendment, the board may grant an adjournment, for cause, to either party.

This substitute amendment also repeals a provision that was enacted as part of the state budget, Wisconsin Act 20, that relates to dispute resolution procedures in a collective bargaining agreement between a municipal employer and certain municipal employees.

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 police chief seeks removal of an officer under this subsection for cause, as a result of
7 the officer being charged with a misdemeanor or felony, the officer may not receive
8 any compensation following the chief's action, pending disposition of the charges by
9 the board.

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

11 62.13 (5) (be) If a police officer is charged with a misdemeanor or felony, he or
12 she shall be suspended by the chief of police and deprived of compensation pending
13 the disposition of the misdemeanor or felony. If the charges are dismissed or the
14 officer is found not guilty of the charges, the officer shall be reinstated and entitled
15 to compensation as though in continuous service.

16 **SECTION 3.** 62.13 (5) (bm) of the statutes is created to read:

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

1 officer shall be deprived of compensation at the time of his or her suspension, pending
2 the disposition of the charges.

3 **SECTION 4.** 62.13 (5) (h) of the statutes is repealed.

4 **SECTION 5.** 62.50 (11) of the statutes is amended to read:

5 **62.50 (11) DISCHARGE OR SUSPENSION.** No member of the police force or fire
6 department may be discharged or suspended for a term exceeding 30 days by the
7 chief of either of the departments except for cause and after trial under this section.
8 A member of the police force who is charged with a misdemeanor or felony shall be
9 suspended by the chief, and may be discharged by the chief, under this subsection.
10 A police officer who is awaiting trial under this section, with regard to the officer's
11 suspension or discharge, may not receive any pay or benefits after his or her
12 suspension or discharge, while he or she is awaiting trial under this section, subject
13 to the disposition of the charges. If the charges described in this subsection or in sub.
14 (13) are dismissed, or if the officer is found not guilty of the charges, the officer shall
15 be reinstated and entitled to pay as described in sub. (22).

16 **SECTION 6.** 62.50 (13) of the statutes is amended to read:

17 **62.50 (13) DISCHARGE OR SUSPENSION; APPEAL.** The chief discharging or
18 suspending for a period exceeding 5 days any member of the force shall give written
19 notice of the discharge or suspension to the member and immediately report the
20 same to the secretary of the board of fire and police commissioners together with a
21 complaint setting forth the reasons for the discharge or suspension and the name of
22 the complainant if other than the chief. A member of the police force who is
23 suspended or discharged by the chief under this subsection as a result of being
24 charged with a misdemeanor or felony, who is awaiting trial under this section with
25 regard to his or her suspension or discharge, may not receive any pay or benefits after

1 his or her suspension or discharge while he or she is awaiting trial under this section,
2 subject to the disposition of the charges that led to the officer's discharge. Within 10
3 days after the date of service of the notice of a discharge or suspension order the
4 members so discharged or suspended may appeal from the order of discharge or
5 suspension or discipline to the board of fire and police commissioners, by filing with
6 the board a notice of appeal in the following or similar form:

7 To the honorable board of fire and police commissioners:

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

11 **SECTION 7.** 62.50 (14) of the statutes is amended to read:

12 **62.50 (14) COMPLAINT.** The board, after receiving the notice of appeal shall,
13 within 5 days, serve the appellant with a copy of the complaint and a notice fixing
14 the time and place of trial, which time of trial may not be less than 5 90 days nor more
15 than 15 120 days after service of the notice and a copy of the complaint.

16 **SECTION 8.** 62.50 (16) of the statutes is amended to read:

17 **62.50 (16) TRIAL; ADJOURNMENT.** The board may grant the accused and or the
18 chief shall have the right to an adjournment of the trial or investigation of the
19 charges, for cause, not to exceed 15 days. In the course of any trial or investigation
20 under this section each member of the fire and police commission may administer
21 oaths, secure by its subpoenas both the attendance of witnesses and the production
22 of records relevant to the trial and investigation, and compel witnesses to answer and
23 may punish for contempt in the same manner provided by law in trials before
24 municipal judges for failure to answer or to produce records necessary for the trial.
25 The trial shall be public and all witnesses shall be under oath. The accused shall

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

8 **SECTION 9.** 62.50 (18) of the statutes is amended to read:

9 **62.50 (18) SALARY DURING SUSPENSION.** No chief officer of either department or
10 member of the fire department may be deprived of any salary or wages for the period
11 of time suspended preceding an investigation or trial, unless the charge is sustained.
12 No member of the police force may be suspended ~~or discharged~~ under sub. (11) or (13)
13 without pay or benefits, unless the reason for the suspension is that the officer has
14 been charged with a misdemeanor or felony, until the matter that is the subject of the
15 suspension ~~or discharge~~ is disposed of by the board or the time for appeal under sub.
16 (13) passes without an appeal being made.

17 **SECTION 10.** 111.70 (4) (c) 2. a. of the statutes, as affected by 2007 Wisconsin
18 Act 20, is renumbered 111.70 (4) (c) 2.

19 **SECTION 11.** 111.70 (4) (c) 2. b. of the statutes, as created by 2007 Wisconsin Act
20 20, is repealed.

21 **SECTION 12.** 111.70 (4) (mc) of the statutes, as created by 2007 Wisconsin Act
22 20, is repealed.

23 **SECTION 13. Initial applicability.**

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

