

**2007 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB176)**

Received: 12/10/2007

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Glenn Grothman (608) 266-7513

By/Representing: Sen. Grothman

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Local Gov't - 1st class cities

Extra Copies:

Submit via email: YES

Requester's email: Sen.Grothman@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Payment of a police officer's salary after suspension, termination

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**Instructions:**

See Attached. Based on s0193/2, but makes changes recommended by Scott Herrick in bill section 3,

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**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 12/10/2007	wjackson 12/10/2007		_____			S&L
/1			pgreensl 12/11/2007	_____	cduerst 12/11/2007	cduerst 12/11/2007	

FE Sent For:

<END>

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1/1 MES 12/10/07

FE Sent For:

*[Handwritten initials]*  
P8

*[Handwritten initials]*  
<END>

## Shovers, Marc

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**From:** Scott Herrick [SNH@herricklaw.net]  
**Sent:** Monday, December 10, 2007 8:52 AM  
**To:** Shovers, Marc  
**Cc:** Sen. Grothman  
**Subject:** Re: Copy of Sen. Grothman's substitute amendment to SB 176

Marc - Thanks for the opportunity to review and comment on this draft. I think you have neatly captured the intent regarding pay pending criminal charges, as I understand it from Sen. Grothman's comments and questions to me.

Because of variations in local practice and complaint drafting styles, you might consider for 62.13(5)(b) something like this: IF A POLICE CHIEF SEEKS REMOVAL OF AN OFFICER UNDER THIS SUBSECTION FOR CAUSE...  
The problem is that sometimes we see a demand rather than a recommendation, just as a matter of form.

Also, while I would defer to your experience as a drafter, I think that I would simply end that sentence like this: ...PENDING DISPOSITION OF THE CHARGES BY THE BOARD. Not to quibble, but I don't think the phrase "officer waits for the board" is quite appropriate; the whole world is waiting, not merely the officer, while the process goes on, until the Board acts.

I have almost no actual experience with the Milwaukee system and statute, but your draft seems fine to me.

With respect to both the Milwaukee and non-Milwaukee texts, I note that you refer only to police officers. I know that the police situation is the most obvious and acute practical problem, but I suggest caution in establishing a different procedure or standard for police and fire officers. In a nutshell, I'm not sure that the public would feel more inclined to pay fire felons than police felons. More broadly speaking, I can point out that there is currently no part of the system, at least the non-Milwaukee system, that makes any formal, procedural distinction between the two services. Of course both the policy and the politics of this are outside my scope, and I raise the question only to be sure it is not inadvertently overlooked.

Finally, from informal conversation with the senator I formed the impression that he seeks in some way to address the impact of the budget bill on 62.13(5) - - impact which is both disturbing and still somewhat mysterious. I do not see anything here along those lines. Perhaps I misunderstood his intent, or perhaps you envision that subject as fitting in a separate item. The problem is that this language about pay for criminally charged officers may be moot, or may be subject to being made moot (outside Milwaukee that is), as a result of the collective bargaining of disciplinary procedures that is newly authorized by the budget.

Thanks again for the chance to dip my oar. Feel free to call on me again if convenient..  
-sh

Atty. Scott Herrick  
Herrick & Kasdorf LLP  
16 N. Carroll #500, Madison WI 53703  
608/257-1369, fax 608/250-4370

>>> "Shovers, Marc" <Marc.Shovers@legis.wisconsin.gov> 12/07/07 04:00PM

>>>

Hi Scott:

Here's a copy of the substitute amendment that I drafted for Sen. Grothman. My understanding is that he'd like you to review it and make comments, and to suggest any changes that you believe are necessary to achieve his intent. If you have time, perhaps you could call me on Monday once you've had a chance to review the draft. Thanks for your help.

Marc

Marc E. Shovers

Senior Legislative Attorney

Legislative Reference Bureau

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Fax: (608) 264-6948

e-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

WANTED  
Tues. 8:30 a.m.

2007 - 2008 LEGISLATURE

50199/1  
LRBs0193/2  
MES&CMH:wlj:pg  
stays  
R mdr

SENATE SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 176

D-NOTE

December 10, 2007 - Offered by Senator GROTHMAN.

Regan

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.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INS  
ANL

8 SECTION 1. 62.13 (5) (b) of the statutes is amended to read:  
9 62.13 (5) (b) Charges may be filed against a subordinate by the chief, by a  
10 member of the board, by the board as a body, or by any aggrieved person. Such  
11 charges shall be in writing and shall be filed with the president of the board. Pending  
12 disposition of such charges, the board or chief may suspend such subordinate. If a

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

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

6 62.13 (5) (be) If a police officer is charged with a misdemeanor or felony, he or  
7 she shall be suspended by the chief of police and deprived of compensation pending  
8 the disposition of the misdemeanor or felony. If the charges are dismissed or the  
9 officer is found not guilty of the charges, the officer shall be reinstated and entitled  
10 to pay in compensation as though in continuous service.

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

12 62.13 (5) (bm) If a police chief <sup>communicates</sup> ~~recommends~~ in writing to the board that an  
13 officer be suspended or removed under this subsection for cause, and if the board does  
14 not take any action on the <sup>communication</sup> ~~recommendation~~, on the 181st day following the board's  
15 receipt of the ~~recommendation~~, the chief's <sup>communication</sup> ~~recommendation~~ shall be considered  
16 charges filed against a subordinate under par. (b) and the chief shall suspend the  
17 officer. The officer shall be deprived of compensation at the time of his or her  
18 suspension, pending the disposition of the charges, while the officer waits for the  
19 board to determine, under par. (e), whether the charges are sustained.

20 **SECTION 4.** 62.13 (5) (h) of the statutes is repealed. (1)

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

22 62.50 (11) DISCHARGE OR SUSPENSION. No member of the police force or fire  
23 department may be discharged or suspended for a term exceeding 30 days by the  
24 chief of either of the departments except for cause and after trial under this section.  
25 A member of the police force who is charged with a misdemeanor or felony shall be

1 suspended by the chief, and may be discharged by the chief, under this subsection.  
2 A police officer who is awaiting trial under this section, with regard to the officer's  
3 suspension or discharge, may not receive any pay or benefits after his or her  
4 suspension or discharge, while he or she is awaiting trial under this section, subject  
5 to the disposition of the charges. If the charges described in this subsection or in sub.  
6 (13) are dismissed, or if the officer is found not guilty of the charges, the officer shall  
7 be reinstated and entitled to pay as described in sub. (22).

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

9 **62.50 (13) DISCHARGE OR SUSPENSION; APPEAL.** The chief discharging or  
10 suspending for a period exceeding 5 days any member of the force shall give written  
11 notice of the discharge or suspension to the member and immediately report the  
12 same to the secretary of the board of fire and police commissioners together with a  
13 complaint setting forth the reasons for the discharge or suspension and the name of  
14 the complainant if other than the chief. A member of the police force who is  
15 suspended or discharged by the chief under this subsection as a result of being  
16 charged with a misdemeanor or felony, who is awaiting trial under this section with  
17 regard to his or her suspension or discharge, may not receive any pay or benefits after  
18 his or her suspension or discharge while he or she is awaiting trial under this section,  
19 subject to the disposition of the charges that led to the officer's discharge. Within 10  
20 days after the date of service of the notice of a discharge or suspension order the  
21 members so discharged or suspended may appeal from the order of discharge or  
22 suspension or discipline to the board of fire and police commissioners, by filing with  
23 the board a notice of appeal in the following or similar form:

24 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 7.** 62.50 (14) of the statutes is amended to read:

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

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

10 **62.50 (16) TRIAL; ADJOURNMENT.** The board may grant the accused and or the  
11 chief shall have the right to an adjournment of the trial or investigation of the  
12 charges, for cause, not to exceed 15 days. In the course of any trial or investigation  
13 under this section each member of the fire and police commission may administer  
14 oaths, secure by its subpoenas both the attendance of witnesses and the production  
15 of records relevant to the trial and investigation, and compel witnesses to answer and  
16 may punish for contempt in the same manner provided by law in trials before  
17 municipal judges for failure to answer or to produce records necessary for the trial.  
18 The trial shall be public and all witnesses shall be under oath. The accused shall  
19 have full opportunity to be heard in defense and shall be entitled to secure the  
20 attendance of all witnesses necessary for the defense at the expense of the city. The  
21 accused may appear in person and by attorney. The city in which the department is  
22 located may be represented by the city attorney. All evidence shall be taken by a  
23 stenographic reporter who first shall be sworn to perform the duties of a stenographic  
24 reporter in taking evidence in the matter fully and fairly to the best of his or her  
25 ability.



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

62.50 (18) SALARY DURING SUSPENSION. 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 member of the police force may be suspended ~~or discharged~~ under sub. (11) or (13) without pay or benefits, unless the reason for the suspension is that the officer has been charged with a misdemeanor or felony, until the matter that is the subject of the suspension ~~or discharge~~ is disposed of by the board or the time for appeal under sub. (13) passes without an appeal being made.

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

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

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

**SECTION 13. Initial applicability.**

(1) This act first applies to any member of the police force 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.

(END)

0-NOTE

Senator Grothman  
This substitute amendment is based on s 0193/2, but it adds an analysis; deletes <sup>the words</sup> "pay in" from page 2, line 10; of s 0193/2, and makes changes in bill section 3, created 0062013 (5) (6m), consistent with the changes Scott Herrick recommended for 0062013 (5) (6), which s 0193/20 ↓ am & → appear in

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS ANL

1 ~~AN ACT ..., relating to: payment of a police officer's or fire fighter's salary after~~  
 2 ~~being charged with a misdemeanor or felony, or after discharge, and the~~  
 3 ~~adjournment of a trial or investigation relating to charges brought against a 1st~~  
 4 ~~class city police officer or fire fighter.~~

*SR* **Analysis by the Legislative Reference Bureau** *SP*

Under current law, no member of the police force of a 1st 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 (1st class city board) or the time for an appeal passes without an appeal being made. Also under current law, no 1st class city police 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 1st 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 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 and

*Substitute Amendment*

*police*

*officer*



the <sup>officer</sup> subordinate is deprived of compensation pending the disposition of the misdemeanor or felony charges. In <sup>an officer</sup> 1st class cities, the chief may also discharge a <sup>SP</sup> subordinate who is so charged. In <sup>SP</sup> 2nd, 3rd, and <sup>SI</sup> 4th class cities, a chief may also seek the removal of a subordinate by the board of police and fire commissioners (board), who is charged with a misdemeanor or felony. The <sup>bill</sup> also changes current law such that a <sup>SP</sup> 1st 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.

The <sup>bill</sup> also provides that if the chief of a 2nd, 3rd, or 4th class city police or fire department communicates in writing to the board that a subordinate 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 subordinate, and a suspension without pay, on the 181st day following the board's receipt of the written communication.

In all cases under the <sup>bill</sup>, 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 is entitled to back pay. <sup>SP</sup>

Currently, if a 1st 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 <sup>bill</sup> changes the time frame for scheduling a trial to <sup>between</sup> 90 and 120 days. <sup>within</sup> <sup>SP</sup>

Currently, both the accused and the chief of a 1st 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 <sup>bill</sup>, the board may grant an adjournment, for cause, to either party. <sup>Substitute Amendment</sup>

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

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:**

SECTION 1. 62.13 (5) (b) of the statutes is amended to read:

62.13 (5) (b) Charges may be filed against a subordinate by the chief, by a member of the board, by the board as a body, or by any aggrieved person. Such charges shall be in writing and shall be filed with the president of the board. Pending disposition of such charges, the board or chief may suspend such subordinate. If a chief seeks removal of a subordinate under this subsection for cause, as a result of the subordinate being charged with a misdemeanor or felony, the subordinate may

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0199/1dn  
MES:wlj:pg

December 11, 2007

Senator Grothman:

This substitute amendment is based on s0193/2, but it adds on analysis, deletes the word "pay in" from page 2, line 10, of s0193/2, and makes changes in bill section 3, created s. 62.13 (5) (bm), consistent with the changes Scott Herrick recommended for s. 62.13 (5) (b), which appear in s0193/2.

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