

2007 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-SB176)

Received: 01/03/2008

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:

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 1st class city law enforcement officers

Instructions:

Draft SSA 3 to SB 176 (s0194/1) as a sub to SB 176

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 01/03/2008	kfollett 01/03/2008		_____			
/1			nmatzke 01/04/2008	_____	sbasford 01/04/2008	sbasford 01/04/2008	

FE Sent For:

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Assembly
SENATE SUBSTITUTE AMENDMENT 3,
TO 2007 SENATE BILL 176

WANTED
MON. a.m.

December 11, 2007 - Offered by Senator PLALE.

Legn

1 **AN ACT to renumber and amend 62.50 (18); to amend 62.50 (1), 62.50 (13),**
2 **62.50 (14) and 62.50 (16); and to create 62.50 (18) (b) of the statutes; relating**
3 **to:** payment of a 1st class city police officer's salary after discharge or
4 suspension, the adjournment of a trial or investigation relating to charges
5 brought against such an officer, disciplinary procedures for a 1st class city
6 police officer, and increasing the size of the city of Milwaukee Board of Fire and
7 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.

Under this substitute amendment, 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 substitute amendment requires the chief to give the member, at the same time the member is given written notice of the disciplinary action, any exculpatory evidence in the chief's possession that relates to the discharge or suspension.

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

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

1 2 3 of whom shall at any time belong to the same political party. The staff and
2 members of the board shall receive the salary or other compensation for their
3 services fixed by the common council. The salary shall be fixed at the same time and
4 in the same manner as the salary of other city officials and employees. ~~Three~~ Four
5 members of the board shall constitute a quorum necessary for the transaction of
6 business, except that 3 members of the board shall constitute a quorum necessary
7 for a trial under this section. It shall be the duty of the mayor of the city, on or before
8 the 2nd Monday in July, to appoint ~~5~~ 7 members of the board, designating the term
9 of office of each, one to hold one year, ~~one~~ 2 to hold 2 years, one to hold 3 years, ~~one~~
10 2 to hold 4 years and one to hold 5 years, and until their respective successors shall
11 be appointed and qualified. Thereafter the terms of office shall be 5 years from the
12 2nd Monday in July, and until a successor is appointed and qualified. Every person
13 appointed a member of the board shall be subject to confirmation by the common
14 council and every appointed member shall, before entering upon the duties of the
15 office take and subscribe the oath of office prescribed by article IV, section 28, of the
16 constitution, and file the same duly certified by the officer administering it, with the
17 clerk of the city. Appointments made prior to the time this subchapter first applies
18 to a 1st class city shall not be subject to confirmation by the common council.

19 **SECTION 2.** 62.50 (13) of the statutes is amended to read:

20 62.50 (13) The chief discharging or suspending for a period exceeding 5 days
21 any member of the force shall give written notice of the discharge or suspension to
22 the member and, at the same time that the notice is given, and shall also give the
23 member any exculpatory evidence in the chief's possession related to the discharge
24 or suspension. The chief shall also immediately report the same notice of the
25 discharge or suspension to the secretary of the board of fire and police commissioners

1 together with a complaint setting forth the reasons for the discharge or suspension
2 and the name of the complainant if other than the chief. Within 10 days after the date
3 of service of the notice of a discharge or suspension order the members so discharged
4 or suspended may appeal from the order of discharge or suspension or discipline to
5 the board of fire and police commissioners, by filing with the board a notice of appeal
6 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 3.** 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 60 days nor more
15 than ~~15~~ 120 days after service of the notice and a copy of the complaint.

16 **SECTION 4.** 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 5.** 62.50 (18) of the statutes is renumbered 62.50 (18) (a) and amended
9 to read:

10 62.50 (18) (a) No chief officer of either department or member of the fire
11 department may be deprived of any salary or wages for the period of time suspended
12 preceding an investigation or trial, unless the charge is sustained. ~~No~~ Except as
13 provided in par. (b), no member of the police force may be ~~suspended or discharged~~
14 or suspended under sub. (11) or (13) without pay or benefits until the matter that is
15 the subject of the ~~suspension or discharge~~ or suspension is disposed of by the board
16 or the time for appeal under sub. (13) passes without an appeal being made.

17 **SECTION 6.** 62.50 (18) (b) of the statutes is created to read:

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

24 **SECTION 7. Nonstatutory provisions.**

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

6 **SECTION 8. Initial applicability.**

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

11

(END)