JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Testimony for Assembly Bill 606

Thank you Chairman Brooks and the Assembly Committee on Local Government for holding this hearing today.

It is no secret that crime in inner cities across America has been a source of frustration for all concerned citizens. The socioeconomic make-up of America's cities plays a central role in explaining why these trends exist. Police officers in rural towns and small cities often face dangerous situations, but being a police officer in a large city is a particularly dangerous job, and Milwaukee is no different. A positive relationship between law enforcement and the community at large is an extremely important aspect of effective policing and is essential for promoting a higher quality of life for both police officers and the community at large.

The vehicle that balances the Milwaukee police and firefighters with the community at large is the Milwaukee Fire and Police Commission. Currently the seven member board performs several functions including the selection of the police and fire chiefs, promoting officers, reviewing police policy, managing citizen complaints and conducting discipline hearings for police officers and fire fighters.

AB 606 makes several changes to the board and the make-up of the board. First, the bill would require the board to consist of at least one person with law enforcement experience and one person with firefighting experience. In the past few decades, we as a society have become particularly aware of the necessity of diversity. Diversity allows members to hear view points from people who have had access to many different life experiences. What could possibly be more relevant to a police and fire commission than having the opinion and insights of someone who has performed those jobs?

The bill creates an independent monitor that would be appointed by the mayor and serve at the pleasure of the board.

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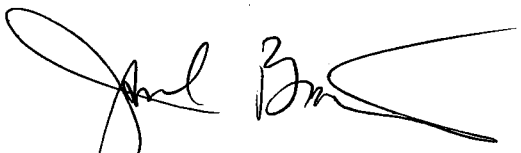
The bill also allows an officer or firefighter to choose arbitration rather than the using the court system for disciplinary disputes, saving both time and money while still having an independent review.

The final point I'd like to speak to is the bill restores the ten merit points veterans received before the commission reduced those points to three merit points last year. As it stands, someone living in Milwaukee gets five merit points but those who served their country only get three. Veterans have been and continue to be a very good source for recruiting police officers. Milwaukee will need to attract the finest individuals available. The quality of the police force is in direct correlation with the quality of officers we draw.

In closing, I would like to point out that I have been very vocal about public safety in Milwaukee and I remain dedicated to assist Milwaukee in regaining its place as Wisconsin's premier city. A lack of safety, real or imagined, is a hindrance to economic growth and therefore job creation. It is absolutely required that Milwaukee attract the finest law enforcement candidates and that we begin the process of providing a safe environment for all citizens including tourists, investors, and of course employees.

Thank you,



Representative Brandtjen

Van H. Wanggaard

Wisconsin State Senator

Testimony on Assembly Bill 606

Mr. Chairman and members of the committee, thank you for hearing this bill today. The bill before you is the product of over a year and a half of work that actually began more than a decade ago.

When my career as a law enforcement officer and traffic investigator was ended prematurely, I was fortunate to be appointed to serve on the Racine Police and Fire Commission, or PFC. Like this bill, my appointment was met with a great deal of opposition from other commissioners serving on the commission at that time. The PFC members even held numerous meetings in violation of open meeting laws to discuss and plan against my appointment and ultimately City Council confirmation not once, but twice. They believed, falsely, that I would merely support the position of the police union for all considerations before the commission. Prior to my appointment, the Racine PFC had routinely followed the administrations recommendations and questions were rarely, if ever asked. The perspective of an officer who had served as a street officer was non-existent. The idea of checking to see if the elements of a violation had been met or even occurred was an afterthought.

At my first hearing, that began to change. I asked questions to clarify the evidence being presented to ensure, during deliberations, an informed decision could be drawn from what was being presented in witness testimony and the interpretation of physical evidence. I worked to make sure the process was followed. In closed session, I was able to provide perspective to members. The eyes of the other PFC members were opened. They had seldomly delved into the thought process or the real-world implications of their decisions. In fact, one commissioner remarked directly to me during our first disciplinary hearing, that for the first time as a commissioner she had decided to ask questions, too.

I also surprised the other members by not defending the officers at every occasion. This was counter to their expectations and what they had been led to believe. To me, and to just about every officer on the street, justice is about following the process. Follow the process and see where the evidence leads. Whether it is in an arrest, in court, or before a police and fire commission, a good process is more likely to lead to good results.

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My two separate five (5) year terms on the commission, appointed by two different Mayors, which ended just a couple of years ago, brought positive change to the PFC and Racine. The public and those the PFC is charged with overseeing have greater confidence they will be addressed fairly before the commission.

And that's the point of this bill. Ensuring that everyone gets a fair shot before a citizen-led, not a politician-led, board.

The first step in that process is requiring that every community in the state have a former police officer or fire fighter serve on the commission. Given the size of Milwaukee's commission, and the size of its departments, Milwaukee would have both a fire fighter and police officer on their commission. Given the opposition to my appointment to the PFC initially, I am not surprised there is opposition to this provision. However, my experience and the experience of the Racine PFC shows that this is a complete misconception.

The bill draft also makes changes to make the application of discipline of officers fairer. Rather than have a police officer be publicly shamed and punished or have their livelihood taken away using a more-likely-than not standard for police and fire discipline, the bill changes the law to a clear & convincing standard. This is a middle standard of guilt, requiring more proof than preponderance of the evidence and short of the beyond-a-reasonable-doubt standard.

There is a lot in this bill that is tied to the city of Milwaukee. There is a simple reason for this. The Milwaukee Fire and Police Commission is the creation of state law. There are a number of changes that are made that strengthen the commission's autonomy and separate the political influence of the Office of Mayor from the duties that are solely that of the commissioners. This was the intended purpose of creation of the Police and Fire commissions in 1885 to minimize and eliminate undue political influence on the service.

There has been a lot of controversy surrounding policing in Milwaukee and its effects on the community at large. Some of it is well-earned and some of it is not. Many of the positive changes included in the bill are supported in a report that the city of Milwaukee commissioned (The PARC report) and paid for in order to provide greater transparency and accountability for the management of police and fire departments in Milwaukee. With Milwaukee's search for its next police chief, it is more critical than ever that we review the Milwaukee PFC law to ensure that the next chief is selected in an open, transparent process with public input.

This bill reinforces the idea that PFCs are to be citizen-led boards, not politician-led boards. This was one of the primary reasons for the creation of police and fire commissions. Police and fire departments should not be political footballs. This bill will increases transparency and accountability of PFC's across the state. For these reasons, and more, I urge your support.

MILWAUKEE DEMOCRATIC LEGISLATIVE CAUCUS

Members of the Wisconsin State Assembly and the Wisconsin State Senate

TO: Chairman Brooks and the Members of the Assembly Committee on Local Government

FROM: Undersigned Members of the MKE Democratic Legislative Caucus

DATE: January 17, 2018

RE: Written testimony in opposition to Assembly Bill 606.

Good morning, Chairman Brooks and committee members. The Milwaukee Delegation appreciates the opportunity to submit written testimony regarding Assembly Bill 606, relating to changes affecting a first class city's Fire and Police Commission.

Assembly Bill 606 significantly harms the independence of the Fire and Police Commission at a time when more transparency and community engagement is needed. Under the bill, the board of police and fire commissioners must appoint at least one individual with professional police experience and one individual with professional firefighting experience. While this is not troubling in of its self, the bill mandates that for first class cities – the members be pre-selected by the associations of the police and fire departments, then given to the Mayor. This move lacks transparency, ignores the independence of the Board, and reflects the same attitude of neglect and disregard for community input.

Even more troubling is the Office of the Independent Monitor. According to the bill, the independent monitor acts as "the principal staff" of the board, and would review investigations, policies, and practices of the fire and police departments. This is an important role with real responsibilities, broad discretion, and far reaching impacts for an entire city. Given these broad responsibilities, you would think that there would be oversight or accountability. Wrong. The independent monitor cannot be fired by the mayor, nor the Common Council. The monitor can only be removed by the Board – the same Board whose membership is comprised of hand-picked candidates pushed by the police and fire associations.

Also considerable is the cost of enhanced protections given to police and fire members accused of crimes, misconduct, and other professional failures. According to the City of Milwaukee, which opposes this targeted legislation, the city estimates taxpayers would be responsible for an additional $1 million per year in salary and benefit payments while police officers are under disciplinary review under this proposal. The irony is not lost when you have a political party that seeks to strip workers from employment protections under the guise of "right to work" that then turns around to increase the already high evidentiary standard for disciplinary action from "substantial evidence" to "clear and convincing evidence."

MILWAUKEE DEMOCRATIC LEGISLATIVE CAUCUS

Members of the Wisconsin State Assembly and the Wisconsin State Senate

Lastly, the process by which this bill was drafted and pushed through is extremely inappropriate. The bill is being heard in a committee without any representation from Milwaukee – Wisconsin's only first-class city. The bill is opposed by the city that the bill would be most impacted by it. The bill as it stands today does not include any input from Milwaukee's elected officials. Chairman Brooks and committee members, I urge you to oppose Assembly Bill 606. Thank you.

Respectfully,

Representative David Crowley
Chair of the Milwaukee Delegation

Senator Lena Taylor
Senate District 4

Representative Evan Goyke
Assembly District 18

Senator LaTonya Johnson
Senate District 6

Representative Leon Young
Assembly District 16

City of Milwaukee

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

La Keisha W. Butler
Director of Intergovernmental Relations

City of Milwaukee Testimony on Assembly Bill 606
Assembly Committee on Local Government
January 17, 2018

Thank you Chairman Brooks and committee members for taking the time to hear testimony regarding Assembly Bill 606. I am MaryNell Regan, Executive Director of the City of Milwaukee's Fire and Police Commission ("the Commission"). I have served as Executive Director since September 2015. Prior to that, I served as an Assistant City Attorney for the City of Milwaukee and worked closely with the Commission and the fire and police departments on personnel and employment issues. The City has some significant concerns with AB 606 and asks that you do not advance this legislation past today's public hearing.

We have numerous concerns with this bill and believe it is not only unnecessary, but threatens to seriously undermine the framework that guides the work of our rank and file law enforcement members, who each day dedicate their lives to enhancing public safety in Wisconsin's largest city, and who deserve our full support. To help inform your consideration of this bill, I will focus on the issues mentioned in the cosponsorship memorandum that was circulated. The cosponsorship memorandum lists several changes the bill intends to make including: 1) reversing the Milwaukee Fire and Police Commission's decision to alter the number of preference points given to veterans; 2) requiring fire and police commissions in cities of the 1st class to have at least one member with police experience and one with firefighting experience; 3) altering the independence of the Milwaukee Fire and Police Commission and its investigations; and 4) change related to the disciplinary review process for police and firefighters statewide.

First, I want to address the Commission's decision to alter the number of preference points given to veterans as I know supporting our veterans is a top priority for committee members. The City of Milwaukee appreciates and honors those who serve in our nation's armed forces. We appreciate their sacrifice and want to recognize their efforts when they strive to enter the civilian workforce. As a result, the City determined it was appropriate to award preference points for service in the military as well as other categories. It is important to note, that no state law currently requires the awarding of veterans' preference points to candidates seeking admission to our law enforcement membership. The City of Milwaukee proactively chose to award these points to acknowledge the service of our veterans, and recognize the transferability of their skillsets into law enforcement roles. In early 2017, the Commission decided to review the level of preference points given to veterans to determine whether the amount of points granted was balanced with the other considerations we must take into account. Prior to the change in April 2017, the amount of points awarded to veterans was well above that granted to other preference point categories. After taking several months to research and evaluate the issue, the Commission decided to reduce the amount of preference points given to veterans to be more in line with the amount given for other preference point categories. I should note that since the change, we have had several rounds of recruitment for the police and fire departments and there has not been a

For more information contact Danielle Decker: 414-286-5589; ddecke@milwaukee.gov and La Keisha Butler; 414-286-5513; labutl@milwaukee.gov

significant negative impact on the number of veterans who apply or on the number of veterans who succeed in being determined eligible. The Fire and Police Commission's application process for the police and fire departments is rigorous and we want to ensure that the skill set a veteran has from his or her service in the military is successfully transferred to non-military employment.

AB 606 would also require cities of the 1st class to appoint at least one commissioner with law enforcement experience and one with firefighting experience with those members being chosen from a list of names provided by the respective unions. I am happy to tell you that we will have two vacancies to fill on the Commission this spring and the nominees presented to the City's Common Council will be individuals with law enforcement and firefighting experience. The City is taking this initiative voluntarily and enthusiastically, and without being confined to a list provided by the police and fire unions. We feel that such a mandate is unnecessary and would be counterproductive to the work the commission is doing to better community/police relations. Specifically, being restricted to persons named by the unions raises concerns of bias and conflicts of interest since the bill would also require those individuals to sit on the panel for disciplinary hearings.

Our commissioners take seriously the obligation to objectively hear and weigh the evidence and testimony presented to them in disciplinary appeal hearings. It is a serious responsibility expected by the members facing discipline and by the community we serve. This unwarranted addition of bias into the disciplinary appeal process only subjects the Commission to distrust by the community and allegations of violations of due process by members. The changes to the disciplinary appeals process proposed under AB 606 would yield severe, negative impacts for our rank and file law enforcement, the vast majority of whom uphold themselves to the strict ethical requirements of his and her positions. Currently, once the Commission renders a disciplinary decision, the affected member may appeal that decision to circuit court and ask the court to consider the decision under a certiorari review. The court would review the evidence and testimony presented to the Commission and ask whether the decision reached was reasonable. In addition to requiring the member with law enforcement or firefighting experience to sit on the hearing panel while a member from the corresponding union appeals the chief's recommended discipline, AB 606 allows a member facing discipline to choose to go to arbitration after the Commission issues its decision or after circuit court and changes the standard of review to de novo. De novo review will result in a "do over" of the entire disciplinary employment hearing including the possibility for new discovery and new testimony that was not presented to the Commission. Not only will this prove deeply inefficient, it will drain taxpayer dollars by unnecessarily extending the amount of time and resources dedicated to defending these cases. Moreover, if a member chooses arbitration, local taxpayers will foot the bill because the bill requires the City to pay for the *entire* arbitration process.

For more information contact Danielle Decker: 414-286-5589; ddecke@milwaukee.gov and La Keisha Butler; 414-286-5513; labutl@milwaukee.gov

City of Milwaukee

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

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Director of Intergovernmental Relations

For a member facing termination, the bill's proposal offers no incentive to conclude the employment discipline process because they will continue to be paid and receive benefits pending the final outcome of the hearing and because neither the member nor the member's union will be paying for any portion of the proceedings. The cost will be borne entirely by local taxpayers thereby turning a balanced employment proceeding into a pro-employee and anti-employer proceeding. And to add unfairness and inefficiency, if a member opts for arbitration, the member can still appeal that decision to circuit court if they are dissatisfied with the outcome and the standard of review would again be de novo. It is critical to note that if charges are cleared by a member who underwent disciplinary review, *the member is eligible to have all salary and benefits compensated retroactively.*

Finally, I would like to briefly address the changes to disciplinary standards that would impact fire and police commissions statewide. AB 606 proposes to alter what we call the "just cause standards" which could prove highly problematic not only for the City of Milwaukee, but for fire and police commissions across the state, large and small, cities including the City of Brookfield, the City of Green Bay, the City of Beloit, the Village of Menomonee Falls, and many more. First, the bill changes the first consideration to "whether the subordinate could reasonably be expected to have had knowledge of the probable consequences, including the extent of possible disciplinary action, of the alleged conduct." The addition of the phrase "including the extent of possible disciplinary action" will lead to a system where police chiefs will have to develop predetermined disciplinary outcomes for rule and policy violations absent consideration of the circumstances surrounding the violation. This provision could lead to abuse of the system where members consciously choose to violate rules knowing that they are willing to suffer the predetermined punishment. The system already has a check on the chief's power to mete out discipline, which is review by the Fire and Police Commission.

Second, the bill changes the fifth consideration to "whether the chief discovered clear and convincing evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate." Evidence is clear and convincing when it reasonably permits unbiased and impartial minds to come to but one conclusion. This heightened burden of proof will be difficult to meet in cases where evidence of the rule violation comes down to conflicting testimony and credibility determinations of witnesses. The Commission has designated counsel, separate from the Chiefs, as well as a Hearing Examiner, to assist with legal issues. Smaller communities with even more limited resources could be substantially burdened by this change.

Given the significant and far-reaching concerns I have described today, we respectfully ask you to take no further action on this bill. I would be pleased to answer any questions.

For more information contact Danielle Decker: 414-286-5589; ddecke@milwaukee.gov and La Keisha Butler; 414-286-5513; labutl@milwaukee.gov

2017 A.B. 606

In Favor of:

1) FPC members to be selected by the Mayor from a list submitted by the chief officer of each of the two major political parties.
   A. Must have at least one member with law enforcement experience and one with fire fighting experience. Mayor selects from lists submitted by the respective associations (bargaining units).

   (For MPD I think the list should include input from both the MPA and MPSO.)

   (Manney decision and policies of Ed Flynn are prime examples of why this is necessary. I sat through much of the Manney appeal hearing and heard two experts give excellent testimony as to why Manney should NOT have been terminated. Flynn's "approach policy" is an insane policy as it will lead to Officer's being hurt or killed.)

2) Trial panels must include either one member with law enforcement experience or fire fighting experience depending on which agency the appellant works for.

   (Ref: The Manney appeal. The two expert witnesses were completely ignored and, I believe, it was because of Mayoral and other political bias.)

3) The Hearing Examiner must be agreed to by the parties involved.

   (Manney appeal)

4) Remove the Executive Secretary (Director?) from the Mayor's cabinet.

   (The history of the FPC has been, and still is very much, political and very closely tied to the Mayor who makes the selections. It is, by ordinance I believe, supposed to be an independent body and has been publicly labeled as such many times.)

(In 2007, after the application for Police Chief had officially closed, an exception was made to bring in Ed Flynn leading to one of the applicants, Louis Vega, to write the FPC and Alderman Bob Donovan and inform them that he was withdrawing his application due to the very obvious deviation and abuse of the process. Only someone who still believes in the Tooth Fairy would deny that the FPC Board was not directed by the Mayor to do so.)

5) This Bill creates an Independent Monitor appointed by the Mayor who will serve at the pleasure of the FPC Board and cannot be removed by the Mayor or Common Council to:
   A. Review situations and investigations
   B. Evaluate policies and practices
   C. Issue reports to the public regarding status and outcomes of complaints that have been filed.

(Flynn policies – "No Chase"; Approach to suspicious persons and others who may present a threat to an Officer as well as having the effect of contributing significantly to the increase in crime and whole neighborhoods being out of control – not to mention the bleeding of Milwaukee crime into the surrounding suburbs – and anyone who argues that "crime has been reduced by Ed Flynn's policies needs to explain why suburban Police Chiefs have found it necessary to establish a Suburban Police Task Force within the past 6-7 months to address violent crime being committed by Milwaukee thugs.)

(Greatly reduce the likelihood that such policies will erode morale and confidence in the Chief.)

6) Appointment of Chief – Closed session meeting with the FPC Board and Milwaukee Bargaining units (MPA and MPSO).

(This is a no brainer. Input is taken from many other groups, the ACLU and various other special interest groups, yet the MPA and MPSO are excluded.

Their input is just as important, if not more so, and should be sought out by the FPC Board members for consideration.)

7) Discipline – Appeal the Board's decision to Circuit Court or Arbitrator. If Arbitrator then can appeal to Circuit Court.

8) Regarding discipline/charges, violations of Rules and Regulations or Department Order, change from requiring "substantial evidence" to "clear and convincing evidence".

(A Chief who abuses his authority can easily fire a member who is then off the payroll unless successful in appeal, but while awaiting the appeal he is without means to support himself and family and may have to just quit to take another job. This is a very "convenient" way for a Chief to get rid of someone he doesn't care for and, because of the biased manner in which a past legislative body changed the laws that allowed an accused member to remain on the payroll pending appeal, currently a member is literally shoved off the plank.)

9) Review of appeal by the court or arbitrator must be independent from the FPC Board findings which, if found to be wrong, must be reversed, set aside, modified, or remanded back to the FPC for additional review and findings.

10) Disciplinary Dispositions: Court/Arbitrator must reverse FPC decision if discretion was abused in reaching the decision.

11) Court/Arbitrator may take additional testimony/evidence not brought forth in the FPC trial if it was discovered after the trial.

(Additional facts may come to light after the FPC trial and should be admitted in the interests of justice.)

12) Veterans Preference Points for competitive examinations to be restored, and the prior March 1, 2017 change reversed.

(Credit for military service using preference points is EARNED and should be THE ONLY preference points recognized. This latest change was the result of Mayor Tom Barrett and some local Milwaukee politicians who didn't like

the fact that the members of the Milwaukee Police Department no longer were required to live in the City of Milwaukee. The Mayor, and those others, wanted to do something to counter that ruling and came up with the idea of rewarding City of Milwaukee residents with their own "preference" in these exams. I would remind the legislature, and the Milwaukee politicians, that there was a time when one HAD TO BE A MILWAUKEE RESIDENT TO APPLY for a position with the Milwaukee Police Department. It would appear Mayor Barrett and others want to return to that requirement, and they should be prohibited from doing so. It way past time that merit be given preference in hiring and promotions, and merit includes service to one's country which no one of any good character is excluded from performing.

submitted 01-17-2018

Glenn D. Francour

September 23, 2007

David L. Heard, Executive Director
City of Milwaukee Fire and Police Commission
City Hall, Room 706
200 E. Wells Street
Milwaukee, WI 53202

Dear Mr. Heard and Commission Members,

I was recently notified via e-mail that you have decided to add another name to the list of candidates for the Police Chief position. In the e-mail, I was told that this action does not affect my candidacy. I ask you, how can it not affect the eight finalist candidacy, when you insert an unknown into a process that began in April? What is the message that you are sending?

Although, I am informed that this decision was based on the recommendation of Mr. Kelling and Mr. Wasserman after conducting interviews with the eight finalists, I find it somewhat irregular that you would take such action months after the closing of the application deadline. What is the reason this person did not apply for the position in the same timely manner as the rest of us, why the interest all of a sudden? If some other individuals expressed an interest, would you allow them to enter the process at this late stage?

With all due respect, this decision appears to violate the sincerity and integrity of the whole search process. It may also be perceived as highly suspect and a total disregard for a fair and ethical process.

I realize that by informing you of my thoughts, I will undoubtedly be eliminated from continuing in the process. However, as I told you at the interview, I will always tell you the truth, no matter what the consequences to me.

Sincerely,

Louis Vega

October 11, 2007

David L. Heard, Executive Director
City of Milwaukee Fire and Police Commission
City Hall, Room 706
200 E. Wells Street
Milwaukee, WI 53202

Dear Mr. Heard and Commission Members,

The decision of the Fire and Police Commission to add an additional candidate to the Police Chief Search process is highly irregular and demonstrates a total disregard for the current finalist who complied with the rules of the search process and its closing date. Through your actions, you have brought into question the integrity of the search process and have created an ambiguous scenario for the community of Milwaukee to accept.

I have been honest and forthright with you during this process but I find that you have not reciprocated in kind. I therefore have decided to withdraw my name from any further consideration for the position of Chief of Police for the City of Milwaukee.

Thank you for your time and I wish you and the community of Milwaukee much success and prosperity.

Sincerely,

Louis Vega

To: Assembly Committee on Local Government
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities
Date: January 17, 2018
Re: AB 606, Making Changes to Membership and Procedures of Police and Fire Commissions

The League of Wisconsin Municipalities, the Wisconsin Chiefs of Police Association, and the Wisconsin State Fire Chiefs Association share the same concerns about AB 606 and join together in opposing the bill. While the bill makes numerous changes affecting Milwaukee's board of police and fire commissioners only, the first 4 sections of the bill make changes affecting all city and village police and fire commissions.

Cities over 4,000 in population and villages over 5,500 in population must establish a board of police and fire commissioners. Approximately 150 cities, villages and towns have commissions. Police and fire commissions (PFCs) date back to a time, a century ago, when the Legislature believed that by creating an independent body made up of citizens of the community, the selection and removal or other serious discipline of police officers and fire fighters would be insulated from the vagaries of partisan or local politics.

The League, the Fire Chiefs, and the Police Chiefs have the following specific concerns about AB 606:

Makeup of Boards of Police and Fire Commissioners. Section 1 of the bill requires that at least one member of the PFC have either professional law enforcement experience or professional fire fighting experience. While it is common for former police officers or fire fighters to be appointed to boards of police and fire commissioners around the state, those appointments are currently made at the discretion of the local mayor or village president. Mandating that one of the five members of a PFC be a former police officer or fire fighter undermines the ability of the mayor and village president to appoint to the board the most qualified individual who best reflects the cares, concerns, values, and makeup of the community. What problem is this change attempting to solve?

Standard of Evidence Necessary. Section 4 of the bill makes changes to one of the just cause evidence standards in police or fire fighter disciplinary cases. One of the elements of the just cause standard requires the PFC to determine whether the chief of the police or fire department discovered substantial evidence that the police officer or fire fighter being disciplined violated the rule or order as described in the charges against the officer or fire fighter. The bill changes the standard from substantial evidence to clear and convincing evidence. This applies to all communities with PFCs. Substantial evidence has been interpreted to mean more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to

support a conclusion. Clear and convincing, on the other hand, is usually considered a higher standard. It has been interpreted to require that the evidence be highly and substantially more probable to be true than not. We think this is too high a standard and is inconsistent with the preponderance of the evidence standard that applies to the PFC itself. Preponderance of the evidence is a less demanding standard than clear and convincing.

It doesn't make sense that the PFC, in reviewing charges brought by a chief against a subordinate, can uphold the charges and apply discipline as long as it concludes, by a preponderance of the evidence, there is just cause to sustain the charges; while the bill requires that the police or fire chief must show by clear and convincing evidence that the subordinate violated the rule or order.

The League, the Wisconsin Chiefs of Police Association, and the Wisconsin State Fire Chiefs Association urge you to retain current law on these matters. We urge you to vote against recommending passage of AB 606. Thanks for considering our comments.

2017 Assembly Bill 606

Statement of Scott Herrick
to the
Assembly Committee on Local Government
January 17, 2018

I am an attorney in Madison. My private practice includes the representation of Boards of Police and Fire Commissioners, commonly called "PFCs," locally and around the state, generally in disciplinary proceedings and occasionally in other matters. In 1998 I was a citizen-member of the Joint Legislative Council Special Committee on Disciplinary Procedures for Represented Police and Fire Personnel. For many years I have presented an annual orientation program sponsored by the League of Municipalities for local commissioners.

I speak on my own behalf in opposition to components of this legislation which directly affect PFC's outside the City of Milwaukee. I raise two issues.

Issue One: Section 1 of the bill would impose an unwelcome universal requirement on all PFC's outside Milwaukee that at least one commissioner have either professional law enforcement experience or professional fire fighting experience. These qualifications are not further defined.

In my experience over many years and across much of the state, many PFCs already contain one or more commissioners with significant emergency service experience, and current law provide no barrier to such appointments. These individuals make a substantial positive contribution to their boards and communities through this service.

Keep in mind the underlying purpose, character and mission of Wisconsin PFCs: To provide local independent, unbiased, impartial, and civilian personnel authority over our local protective services, in hiring, promotions, and major disciplinary matters. Mandating the makeup of a PFC is a bit like mandating the makeup of a jury. We want both to be balanced, experienced, judicious, and to reflect their community. But we don't say that every jury must have, say, a minister, a homemaker, a school teacher, a janitor, and an insurance agent, even though a good jury may have exactly that makeup.

PFCs typically have five commissioners, with staggered 5-year terms. I believe that requiring the appointing authority (mayor or other executive, subject to council or other governing board approval) to assure that one of the commissions will always be qualified per Section 1 is both bad policy, and an awkward, even unworkable requirement.

Bad policy, because the appointment should reflect local circumstances and local decisions, and should reflect the deep goals of independence, impartiality, and civilian community control.

Awkward and unworkable, because:

1. Substantial differences exist between the professional experiences of fire fighters and police officers, and between line staff and management. A former police officer and a former police

chief bring very different personal histories, as to a former line fire fighter and a former fire chief or commander. There are really four backgrounds here, not one; which do you intend to mandate?

2. Because terms expire on an established rotation, Section 1 would mean in practice that after the first appointment made under the bill, that seat would become the permanent designated professional-veteran seat, which must be filled by an individual with that credential even if no well-qualified candidate were available.

3. The bill does not begin to address the differences among localities served by volunteer fire departments compared to full-time professional fire departments.

4. The bill does not begin to address the situation of commissions associated exclusively with police departments or fire departments, nor with joint departments, whose commissioners are appointed separately by the constituent units of government, nor the situation of localities in which the commission has authority only over police. What purpose of this bill would be served by the appointment of a former fire fighter to a commission with no authority over firefighters? If one village of a joint fire department appointed a former police chief to the Commission, would the statute, and statutory purpose, be satisfied?

And I must note that, while respecting fully the role of your hearing in gathering information and views, I attest that I have no direct personal knowledge of any actual problem or need posed around the state by the absence of the Section 1 mandate.

Issue Two: The tweaks to WS 62.13(5)(em) are generally ill-advised, with one exception.

I frame this second issue this way in order to stress that the "Seven Standards of Just Cause" are incorporated in the current statute in a comprehensive way that might perhaps be profitably reviewed overall but definitely should not be dealt with piece-meal. More specifically:

Section 2 introduces the simple phrase *by a preponderance of the evidence* into the basic instruction to the PFC. This phrase is not on its face objectionable; in fact, it is current law - - old law. This is the legal burden of proof long ago defined by the Wisconsin Supreme court and consistently followed for many years. One might think that adding it to the statute merely codifies the case law, and that would be the effect if that were all that the bill did. So Section 2 would be acceptable by itself, although redundant. But:

Section 4 of the bill then replaces *substantial* with *clear and convincing* as the standard of evidence which the PFC must apply to the investigation which the chief conducted prior to bringing the case to the PFC. The "clear and convincing" standard is a higher legal standard than "preponderance."

So, the bill directs a PFC to make its own decision on the basis of preponderance of the evidence, after first determining that the Chief had found culpability on the basis of clear and convincing evidence. This incongruity is baffling.

I believe I understand the underlying source of the problem. The "Seven Standards" were developed originally by Professor Dougherty as a description and guide to the decision-making of labor arbitrators, whose job is to review disciplinary decisions that have already been made. But our PFCs do not REVIEW decisions; they MAKE decisions. Our current statute has borrowed the arbitration-review standards to guide and govern the PFCs in the imposition of discipline. Ultimately, a PFC should make its substantive disciplinary decision on the basis of the evidence presented to it on the record of the PFC proceedings; the PFC must look to the investigatory and administrative practices of the chief for basic fairness and competence, but should ultimately make the disciplinary decision on its own - based on a preponderance of the evidence before it. The Section 4 tweak is confusing, inconsistent with the balance of the statute and the bill itself, and simply illogical.

Section 3 in my judgement also is a misguided editorial adjustment to the statute, or more specifically to the Seven Standards. A Chief seeking serious discipline need not and should not be obliged to show that the accused knew specifically what discipline would be proposed, because that decision must properly be made carefully in the light of all circumstances including the officer's record and the good of the service. Surprise is not really a very good defense. Separate standards, at WS 62.13(5)(em)(4) and (6), require that the chief act fairly, objectively, and without discrimination; this is the rubric under which a the level of discipline should properly be challenged. The question for the PFC should not be, did the officer know specifically what was coming? but rather, was the chief unfair or biased in seeking these consequences in this instance?

A further problem in such tweaking of the standards which instruct a PFC is that the same standards are incorporated by reference [at WS 63.13(5)(j)] as instruction to the Circuit Court conducting a judicial appeal of the PFC decision. The inconsistencies and incongruities that would bedevil a PFC will thus be amplified on judicial review when the court attempts to conduct the two-tiered analysis.

In short, I strongly recommend against the bill's editorial assault on WS 62.13(5)(em).

But to clarify, I take no position on the portions of AB 606 pertaining to "cities of the first class," i.e. Milwaukee.

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COMMITTEE ASSIGNMENTS

CHAIR
- Public Safety and Health

MEMBER
- Public Works
- Steering and Rules
- Anti-Graffiti Policy

ROBERT G. DONOVAN
ALDERMAN, 8TH DISTRICT

January 17, 2018

Dear Chairman Brooks and the Assembly Committee on Local Government,

I am writing today in support of Assembly Bill 606. The changes proposed in this Bill are long overdue, especially the stipulation that the Commission must have at least one member with professional law enforcement experience and at least one member with professional firefighting experience.

Many of the additional changes proposed, I believe, will result in a Commission that is balanced, unbiased, and experienced in the issues they will be tasked with reviewing.

It is my sincere hope that this bill moves forward. In my opinion, it is in the best interest of the citizens of Milwaukee.

Cordially,

Robert G. Donovan

Robert G. Donovan

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MILWAUKEE

January 16, 2017

Wisconsin State Senate
2 E Main Street, State Capitol
Room 330 Southwest
Madison, WI 53707

STATEMENT OF PROTEST CONCERNING ASSEMBLY BILL 606

Dear Senator Leah Vukmir,

My name is Shauntay Nelson. I live at 9207 W. Adler Street, Milwaukee, WI 53214 and I am your constituent.

The current proposed amendments to AB606 is harmful to communities that are already stressed over operational practices concerning law enforcement and community relationships.

Section 62.13 (lines 4-6) states, "At least one member of the board shall have either professional law enforcement experience or professional fire-fighting experience."

> **My concern**: With the current conditions of community relations to law enforcement officers, this change creates an instant response of distrust amongst community members. It is imperative that we find ways to rebuild trust of those in positions of authority. Although it may seem logical to have those who have experience on the board, it is unrealistic to progress.
>
> A better option would be to have the person with the professional experience sit as an advisor to the board.

Section 62.13 (lines 10-11 and 18-19) re: "by a preponderance of evidence" and the change from "substantial" to "clear and convincing" alarms me.

> **My concern**: How will "clear and convincing" be determined with such an uncertain definition? Who would need to be convinced? I am not sure of the best option for this change; however, it is problematic in nature.

Section 62.50 (1h)(f)(lines 9-16) "The training class shall be conducted by the city..."

> **My concern**: What does the training consist of? Additional options could include a "citizen portion" of this training...where law enforcement officers are required to attend before being appointed, as well.

The above changes, although few, would considerably impact communities and have the capacity to increase the level of distrust that already exist between community members and law enforcement.

Personal Impact:
I am the mother of two black male youth within the City of Milwaukee. It is challenging to convey to them that they must respect those who are in authority; while wondering if they will be respected in the same manner, if encountered by law enforcement.

They question the intentions of law enforcement for many reasons; but this one is personal. Their cousin was pulled over by an officer within the "inner city" of Milwaukee and made to sit on the curb with his hands behind his back; while an officer searched the vehicle, and reviewed his driving record. Once the officer found no offense, their cousin was told by the officer to "get out of the neighborhood" because he didn't "belong there". The problem: he should be able to drive throughout the city without being pulled over on false pretense.

This story, being shared at a family gathering, has impacted my sons.

It is stories like these, both personal and those found via news media, that create concern when reading the amendments to AB 606.

Please consider this statement of testimony as you think about the implementation of Assembly Bill 606, as it is in its current written state?

Sincerely,

Shauntay Nelson

Shauntay Nelson
Constituent
African American Roundtable, Member