
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Assembly Bill 114

**Assembly Substitute
Amendment 1**

CURRENT LAW

Subject to certain exceptions, current law requires each city with a population of 4,000 or more to create a board of fire and police commissioners (PFC). In a city other than a first class city, the PFC must consist of five citizen members. [s. 62.13 (1) and (2), Stats.] Members of the PFC are appointed by the mayor and no more than three of the members may belong to the same political party. Very generally, the PFC is responsible for appointing and suspending or removing the chiefs of the fire and police departments, has jurisdiction over the hiring and firing of subordinate police officers and firefighters, and reviews the police and fire chiefs' disciplinary, discharge, and promotional actions.

Separate statutory requirements apply to a PFC in a first class city. Currently, Milwaukee is the only first class city in the state. Section 62.50, Stats., requires that, in a first class city, there be a PFC with a board of either seven or nine citizens, who are appointed by the mayor and confirmed by the common council. On a seven-member board, no more than three members may belong to the same political party. On a nine-member board, no more than four members may belong to the same political party. A PFC in a first class city also has certain duties, in addition to the duties described above for non-first class cities. For example, among other responsibilities, a PFC in a first class city exercises oversight over the operations of the city's police and fire departments.

2021 ASSEMBLY BILL 114

2021 Assembly Bill 114 changes to statutory provisions governing a PFC in a first class city and creates new statutory provisions that apply to a second class city with a population of 200,000 or more. Milwaukee is currently the only first class city in the state. Though 15 second class cities currently exist in the state,¹ Madison is the only second class city with a population of 200,000 or more.

Size of PFC Membership

As noted above, under **current law**, a PFC in a first class city must have seven or nine members, while a PFC for a city other than a first class city must have five members. The **bill** eliminates the option to have a seven-member PFC in a first class city and instead requires that a PFC in a first class city have nine members, no more than four of whom may belong to the same political party. In addition, the bill requires a PFC for a second class city with a population of 200,000 or more to have seven members, but retains the requirement that no more than three members may belong to the same political party.

¹ The cities that are currently second class cities are: Appleton, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Oshkosh, Racine, Sheboygan, Waukesha, Wausau, Wauwatosa, and West Allis. Madison is the most populous of these cities, with a 2018 population estimate of 252,546. The next most populous is Green Bay, with a 2018 population estimate of 105,477. [2019-20 Blue Book, page 545.]

Members With Law Enforcement and Professional Firefighting Experience Required

The **bill** requires that a PFC for a first class city and a PFC for a second class city with a population of 200,000 or more each have at least one member who has professional law enforcement experience and at least one member who has professional firefighting experience, but who is at least five years removed from service as a professional law enforcement officer or firefighter. These members must be selected from a list of five names by the employee supervisory association that represents nonsupervisory law enforcement officers, in the case of the member with law enforcement experience, and the employee association that represents nonsupervisory firefighters, in the case of the member with firefighting experience. A member selected from one of these lists must comply with any residency requirements that apply to current members of the department with regard to which the appointee has experience.

Appointment to a PFC

Under **current law**, each member of a PFC is appointed by the mayor. In a first class city, these appointments are subject to confirmation by the common council. The **bill** requires the common council of a first class city and the common council of a second class city with a population of 200,000 or more to hold two public hearings that include public comment periods on each appointment to the PFC. If the mayor fails to make an appointment within 120 days of a vacancy occurring, the common council may make the appointment. Similarly, if, within 120 days of a vacancy occurring, the mayor fails to appoint a member from a list submitted by the employee supervisory association that represents nonsupervisory law enforcement officers or nonsupervisory firefighters under the requirements discussed above, the association that provided the list may make the appointment. In a first class city, the association's appointment is subject to confirmation by the common council. Under the bill, no member of a PFC for a first class city or a second class city with a population of 200,000 or more may continue after the expiration of the member's term unless he or she is reappointed to the board and confirmed by the common council.

PFC Member Training

Under **current law**, a member of a PFC for a first class city must enroll in a training class that is related to the mission of the board not later than the first day of the seventh month beginning after the common council confirms the member's appointment. The member must complete the class not later than the first day of the 13th month beginning after the common council confirmed the member's appointment. Current law specifies that the training class must be conducted by the city.

The **bill** modifies the training requirement for a member of a PFC of a first class city and also applies this requirement to a member of a PFC for a second class city with a population of 200,000 or more. The bill requires a PFC in these cities to make available a training class for members of the board, which may be provided directly by the city or in another manner, including by contracting with another person, and must cover all of the following:

- The mission and role of the board.
- The procedures that apply to disciplinary hearings, including applicable rules of evidence and applicable provisions of any contract between the city and employee associations that represent nonsupervisory law enforcement officers or firefighters.
- The conduct policies of the police and fire departments.
- Use of force guidelines of the police department.

A PFC member must enroll in and complete the training class within the same timeframes as specified under current law. Under the bill, no member may participate in a disciplinary appeal or trial until completing this training and any other training required by the city.

Ethics Code

The **bill** clarifies that membership on a PFC is a “local public office” for the purposes of the state code of ethics for public officials and employees.

Executive Director and Independent Monitor

Under **current law**, a PFC for a first class city has an executive director, who is appointed by the mayor, subject to confirmation by the common council.

The **bill** modifies the appointment process for the executive director of a PFC for a first class city, enumerates the duties of the executive director, and creates a similar position, termed an “independent monitor,” for a second class city with a population of 200,000 or more. Under the bill, the mayor must appoint an executive director or independent monitor, as applicable, from a list of three qualified candidates provided by the PFC. The individual appointed is subject to confirmation by the common council. The executive director or independent monitor is authorized and directed to do all of the following:

- Act as the principal staff of the board in exercising the board’s functions and powers.
- Review situations or investigations when an individual is dissatisfied with the outcome of an investigation or situation involving the police or fire department.
- Evaluate police and fire department policies, practices, and patterns, including staff deployments, crime and fire prevention training, use of force, search, seizure, citizen interaction, and communication of the police and fire departments.
- Issue reports to the public at least annually, relating to the status and outcome of complaints that have been filed, the timeliness of complaint resolution, trends and patterns of concern pertaining to complaint investigations, the nature and frequency of complaints, and other performance indicators.

The bill requires that all employees of a PFC for a first class city and employees of a PFC for a second class city with a population of 200,000 or more be nonpartisan.

Appointment and Reappointment of Chiefs

The **bill** requires a PFC for a first class city and a PFC for a second class city with a population of 200,000 or more to meet in closed session with representatives of the nonsupervisory employee association whose members will serve under the proposed chief before appointing or reappointing a chief of police or chief engineer of the fire department. The board must also hold at least two public meetings before appointing either chief.

The **bill** also requires the PFC to reopen the application period for an additional seven days if the board accepts an additional application for chief of police after the application period for accepting these applications has closed. Under the bill, this additional seven-day period begins on the date the board accepted the late application.

Review of Chiefs

The **bill** provides a mechanism for the common council of a first class city or a second class city with a population of 200,000 or more to initiate a performance review of the chief of police or the chief engineer of the fire department. Under the bill, if the common council adopts a resolution by a two-thirds vote to conduct a performance review of either chief, the PFC must conduct the review and forward its written report to the common council. The bill also requires both chiefs to meet with the members of the common council at least once a year at a regular meeting of the council.

Disciplinary Hearings by a PFC

Under **current law**, a PFC in a first class city may conduct a disciplinary trial of a member of the police department or the fire department either as a full board or with a three-member panel of the board. The **bill** requires that, for a trial of a member of the police force of a first class city, at least one member of the panel have professional law enforcement experience and, for a trial of a member of the fire department of a first class city, at least one member of the panel have professional firefighting experience.

Judicial Review of Disciplinary Hearing by a PFC for a First Class City

Current law limits the scope of a court's review of a PFC's disciplinary hearing to consideration of whether, under the evidence, there was just cause to sustain the charges.

The **bill** generally expands the scope of a court's review of a PFC's disciplinary hearing with respect to a PFC in a first class city. Among other changes, the bill requires the court to determine whether there is just cause and to conduct its review without regard to any action or decision made by the board. The bill also specifies circumstances under which the court must remand the decision to the PFC, set aside or modify the PFC's decision, or reverse the PFC's decision. Under the bill, the court's decision must provide appropriate relief. The bill requires that the court's review be confined to the record, except that in cases of alleged irregularities in procedure before the board, the court may take additional testimony.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 generally makes all of the same changes to current law as Assembly Bill 114, except as follows. Under the substitute amendment, if the mayor of a first class city or a second class city with a population of more than 200,000 fails to appoint a member with professional law enforcement experience or professional firefighting experience from a list submitted by the relevant supervisory association, the common council may make the appointment by a majority vote of the members of the common council in open session. This appointment must be made within 60 days after the timeframe for the mayor to make the appointment has passed, and the obligation to hold at least two public hearings that include a public comment period applies to these appointments.

With respect to a PFC in a first class city, the substitute amendment provides that when a three-member panel of the board conducts a trial of a police officer, at least one member of the panel must have professional law enforcement experience, unless the board determines that all board members having professional law enforcement experience will be unavailable for the trial. Similarly, the substitute amendment provides that when a three-member panel of the board conducts a trial of a firefighter, at least one member of the board must have professional firefighting experience, unless the board determines that all board members having professional firefighting experience will be unavailable for the trial.

Also with respect to a PFC in a first class city, in place of the bill's provisions relating to judicial review of a disciplinary decision, the substitute amendment includes provisions that instead specify that a court's review of the disciplinary decision of a PFC in a first class city shall be limited to review of the following:

- Whether the board followed appropriate procedure.
- Whether the board considered all evidence received.
- Whether there is just cause to sustain the charges against the officer.

The substitute amendment provides that if the court finds that the board failed to consider all evidence received, the court shall review the decision of the board independently and without deference to the board's findings of fact and conclusions of law. If the court finds that the board followed appropriate procedure and considered all evidence received, however, the court shall adopt the board's findings of fact. The court's review must generally be confined to the record, but the court may, in its discretion, allow submission of additional evidence.

With respect to a PFC in a second class city with a population of 200,000 or more, the substitute amendment provides that the position that the bill termed "independent monitor" is called "executive director."

BILL HISTORY

Representative Brandtjen offered Assembly Substitute Amendment 1 on June 25, 2021. On October 5, 2021, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of Assembly Substitute Amendment 1 and passage of Assembly Bill 114, as amended, on votes of Ayes, 8; Noes, 3.

TK:jal