



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4367/1  
MES&MED:emw&amn

## 2017 BILL

1     **AN ACT** *to repeal* 62.50 (12) and 62.50 (26); *to renumber* 62.50 (1e) (a) to (d); *to*  
2         *renumber and amend* 62.50 (1h); *to amend* 62.13 (1), 62.13 (5) (em) (intro.),  
3         62.13 (5) (em) 1., 62.13 (5) (em) 5., 62.50 (1e) (intro.), 62.50 (6), 62.50 (7) (a),  
4         62.50 (11), 62.50 (13), 62.50 (17) (a), 62.50 (17) (b) (intro.), 62.50 (17) (b) 1., 62.50  
5         (17) (b) 5., 62.50 (18), 62.50 (19), 62.50 (20), 62.50 (21), 62.50 (22), 62.51 (1) (a)  
6         and 66.0502 (4) (b); and *to create* 62.50 (1e) (ae), 62.50 (1e) (bm) (intro.), 62.50  
7         (1h) (b), 62.50 (3) (d) and (e), 62.50 (5m), 62.50 (21m), 63.25 (1) (e) and 66.0502  
8         (4) (e) of the statutes; **relating to:** changes affecting a first class city board of  
9         fire and police commissioners, chiefs, officers, and fire fighters, police and fire  
10        departments and boards of police and fire commissioners in other cities,  
11        villages, and certain towns, veterans preference points awarded by first class  
12        cities, and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

This bill makes a number of changes that affect first class city (presently only Milwaukee) police and fire departments, and the board of fire and police

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commissioners. The bill makes some similar changes that affect other cities, villages, and towns, a change related to the standard of proof in disciplinary procedures that affects both a first class city and other cities, villages, and certain towns, and a change that applies to the makeup of boards of police and fire commissioners. Currently, not more than three members of a first class city seven-person board, or four members of a first class city nine-person board, may be members of the same political party. Under the bill, members who are affiliated with a political party must be selected by the mayor from lists submitted by the chief officer of each of the two major political parties. Under the bill, the board of a first class city must have at least one member with professional law enforcement experience and at least one member with professional fire fighting experience. With regard to other cities, villages, and certain towns, the bill requires their boards to have at least one member who has either professional law enforcement experience or professional fire fighting experience. The law enforcement and fire fighter members are selected by a first class city mayor from a list of names submitted by the respective associations of members of the police department and fire department. Political party affiliation requirements do not apply to the law enforcement and fire fighter members of the board, but such members are generally restricted from making financial contributions to political candidates within three years of their appointment.

The bill also specifies that when a three-member panel of a first class city board conducts a trial to evaluate a complaint filed against a member of either department, at least one member of the panel must have professional law enforcement experience if the accused is a police officer, and one such member must have professional fire fighting experience if the accused is a fire fighter.

The bill authorizes such a board to adopt rules to allow the use of a hearing examiner, who must be agreed to by the parties, to assist the board with disciplinary hearings and appeals. In addition, the bill removes the executive secretary of the board from the mayor's cabinet.

The bill creates the office of independent monitor. This person acts as the principal staff of a first class city board, reviews certain situations or investigations involving the police or fire department, evaluates police and fire department policies and practices, and issues periodic reports to the public relating to the status and outcome of complaints that have been filed. The independent monitor is appointed by the mayor and confirmed by the common council and serves a four-year term, although he or she serves at the pleasure of the board and may not be removed by the mayor or common council.

When a first class city board appoints a chief of either department, the bill requires the board to meet in closed session with representatives of the employee association whose members will serve under the proposed chief. Currently, if a first class city board discharges, suspends, or reduces in rank an officer or member of either department, the individual so disciplined may appeal that decision to a circuit court. Under the bill, an individual who is so disciplined may choose to appeal the board's decision either to a circuit court or to an arbitrator who is selected jointly by the parties. An individual who is disciplined and appeals to an arbitrator may appeal

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the arbitrator's decision to a circuit court. Currently, when the board issues a decision in a disciplinary hearing, it uses a just cause standard which consists of several elements. One of the elements requires the board to determine whether the chief of the police or fire department discovered substantial evidence that the subordinate violated the rule or order as described in the charges against the subordinate. The bill changes the standard from substantial evidence to clear and convincing evidence. This change, from substantial evidence to clear and convincing evidence, also applies to other cities, villages, and certain towns.

The bill also creates a scope of review under which a court or arbitrator is to review an appeal of a first class city board's discipline of an officer or member of either department. Under the bill, a court or arbitrator must review the evidence independently and without deference to the board's findings; must reverse the board's decision if it finds that fairness or correctness of the action has been impaired by material or procedural errors; and must set aside or modify the board's decision if it finds that the board erroneously interpreted a provision of law, or may remand the case to the board for further action that is consistent with current law.

The bill also requires the court or arbitrator to reverse the board's decision if it finds that the board's exercise of discretion is outside of its delegated powers; is inconsistent with a board rule, policy, or practice, unless the board's deviation is adequately explained; or violates the constitution or the statutes. The bill also authorizes a court or arbitrator to take additional testimony, depositions, and interrogatories, and to grant requests for additional discovery.

The bill also requires that a first class city's city service commission, and a first class city fire and police commission, have a rule that requires the city to give the same number of veterans preference points, with regard to competitive examinations, to applicants who apply for a job, as they gave before March 1, 2017. A first class city fire and police commission is also required to adopt a similar rule.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 62.13 (1) of the statutes is amended to read:
- 2           62.13 (1) COMMISSIONERS. Except as provided in subs. (2g), (2m), (2s), and (8)
- 3           (b) each city shall have a board of police and fire commissioners consisting of 5
- 4           citizens, 3 of whom shall constitute a quorum. At least one member of the board shall
- 5           have either professional law enforcement experience or professional fire fighting
- 6           experience. The mayor shall annually, between the last Monday of April and the first

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Monday of May, appoint in writing to be filed with the secretary of the board, one member for a term of 5 years. No appointment shall be made which will result in more than 3 members of the board belonging to the same political party. The board shall keep a record of its proceedings.

**SECTION 2.** 62.13 (5) (em) (intro.) of the statutes is amended to read:

62.13 **(5)** (em) (intro.) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether by a preponderance of the evidence there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

**SECTION 3.** 62.13 (5) (em) 1. of the statutes is amended to read:

62.13 **(5)** (em) 1. 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.

**SECTION 4.** 62.13 (5) (em) 5. of the statutes is amended to read:

62.13 **(5)** (em) 5. Whether the chief discovered substantial clear and convincing evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

**SECTION 5.** 62.50 (1e) (intro.) of the statutes is amended to read:

62.50 **(1e)** ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “offense” means any ~~felony or Class A or Class B misdemeanor violation of any of the following:~~

**SECTION 6.** 62.50 (1e) (a) to (d) of the statutes are renumbered 62.50 (1e) (bm)

1. to 4.

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**SECTION 7.** 62.50 (1e) (ae) of the statutes is created to read:

62.50 (1e) (ae) “Discipline” means any of the following disciplinary actions that may affect a member of the police force or fire department:

1. Suspension of 5 or more days.

2. Reduction in rank.

3. Demotion.

4. Discharge.

**SECTION 8.** 62.50 (1e) (bm) (intro.) of the statutes is created to read:

62.50 (1e) (bm) (intro.) “Offense” means any felony or Class A or Class B misdemeanor violation of any of the following:

**SECTION 9.** 62.50 (1h) of the statutes is renumbered 62.50 (1h) (a) and amended to read:

62.50 (1h) (a) In all 1st class cities, however incorporated, there shall be a board of fire and police commissioners, consisting of either 7 or 9 citizens, not more than 3, if the board has 7 members, or 4, if the board has 9 members, of whom shall at any time belong to the same political party. In selecting members of the board who are affiliated with a political party, the mayor shall select candidates from lists of eligible individuals that are prepared by the chief officer of each of the 2 major political parties that received the largest number of votes for president in the most recently held presidential election. Each list must contain at least 5 names, but may not contain more than 20 names. Each chief officer shall update his or her list every 6 months. Political party affiliation requirements do not apply to members who have professional law enforcement or fire fighting experience, but such members may not have made a financial contribution to any candidate for local political office, any

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1 partisan candidate for state political office, or any candidate for federal political  
2 office, within 3 years of his or her appointment.

3 (c) The staff and members of the board shall receive the salary or other  
4 compensation for their services fixed by the common council. The salary shall be  
5 fixed at the same time and in the same manner as the salary of other city officials  
6 and employees.

7 (d) Except as otherwise provided in this subsection, a majority of the  
8 members-elect, as that term is used in s. 59.001 (2m), of the board shall constitute  
9 a quorum necessary for the transaction of business. A 3-member panel of the board  
10 may conduct, and decide by majority vote, a trial described under sub. (12) or may  
11 hear and decide, by majority vote, charges filed by an aggrieved person under sub.  
12 (19). For a trial of a member of the police force, at least one member of the panel shall  
13 have professional law enforcement experience, and for a trial of a member of the fire  
14 department, at least one member of the panel shall have professional fire fighting  
15 experience.

16 (e) It shall be the duty of the mayor of the city, on or before the 2nd Monday in  
17 July, to appoint 7, or 9, members of the board, designating the term of office of each,  
18 one to hold one year, 2 to hold 2 years, 2 to hold 3 years, one to hold 4 years if the board  
19 has 7 members, and 2 to hold 4 years if the board has 9 members, and one to hold 5  
20 years if the board has 7 members, and 2 to hold 5 years if the board has 9 members,  
21 and until their respective successors shall be appointed and qualified. Thereafter  
22 the terms of office shall be 5 years from the 2nd Monday in July, and until a successor  
23 is appointed and qualified. The mayor may reduce the size of the board from 9 to 7  
24 members by failing to appoint 2 successors for individuals whose terms expire at the  
25 same time. Every person appointed a member of the board shall be subject to

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1 confirmation by the common council and every appointed member shall, before  
2 entering upon the duties of the office take and subscribe the oath of office prescribed  
3 by article IV, section 28, of the constitution, and file the same duly certified by the  
4 officer administering it, with the clerk of the city.

5 (f) Not later than the first day of the 7th month beginning after a member  
6 appointed by the mayor is confirmed by the common council, the member shall enroll  
7 in a training class that is related to the mission of the board and, not later than the  
8 first day of the 13th month beginning after a member appointed by the mayor is  
9 confirmed by the common council, the member shall complete the class. The training  
10 class shall be conducted by the city. ~~Appointments made prior to the time this~~  
11 ~~subchapter first applies to a 1st class city shall not be subject to confirmation by the~~  
12 ~~common council. No member may participate in a disciplinary appeal or trial until~~  
13 ~~he or she completes the training class and any other training required by the city,~~  
14 ~~except that a law enforcement officer or fire fighter who serves on the board is not~~  
15 ~~subject to these training requirements if the individual is current on his or her law~~  
16 ~~enforcement standards board training.~~

17 **SECTION 10.** 62.50 (1h) (b) of the statutes is created to read:

18 62.50 (1h) (b) At least one member of the board shall have professional law  
19 enforcement experience and at least one member of the board shall have professional  
20 fire fighting experience. With regard to the board members who must have  
21 professional law enforcement and professional firefighting experience, the mayor  
22 shall appoint those members from a list of 3 names submitted by the employee  
23 association that represents nonsupervisory law enforcement officers in the case of  
24 the law enforcement appointee, and the employee association that represents fire  
25 fighters in the case of the fire fighter appointee. The initial term of the professional

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1 law enforcement appointee shall be 2 years and the initial term of the professional  
2 fire fighter appointee shall be 5 years, notwithstanding the other requirements  
3 regarding length of terms in this subsection. All employees of the board shall be  
4 nonpartisan.

5 **SECTION 11.** 62.50 (3) (d) and (e) of the statutes are created to read:

6 62.50 **(3)** (d) 1. The board may adopt rules to allow the use of a hearing  
7 examiner to assist the board with disciplinary hearings and appeals. At least 30 days  
8 before a proceeding for which the board would like to use a hearing examiner, the  
9 board and the individual being disciplined must agree on the hearing examiner.

10 2. If the parties are unable to agree on a hearing examiner, the parties shall  
11 select a hearing examiner from the list of reserve judges maintained by the director  
12 of state courts. If the parties are unable to agree on reserve judge, the parties shall  
13 alternate striking names from the list until either the parties agree on a reserve  
14 judge who remains on the list or only one reserve judge remains on the list, except  
15 that a hearing examiner chosen under this method may not serve if he or she served  
16 in an appointed position for the city or county in which the city is predominantly  
17 located within 10 years from the date of the proceeding over which the reserve judge  
18 is being selected to preside.

19 (e) The board shall adopt a rule that gives the same number of veterans  
20 preference points, with regard to examinations described in sub. (5), to applicants  
21 who apply for a position with the city on and after the first day of the 2nd month  
22 beginning after the effective date of this paragraph .... [LRB inserts date], as they  
23 gave before March 1, 2017.

24 **SECTION 12.** 62.50 (5m) of the statutes is created to read:



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1           62.50 (5m) INDEPENDENT MONITOR. (a) Before the 2nd Monday in July, the  
2       mayor shall appoint an independent monitor from a list of 3 qualified candidates  
3       provided by the board of fire and police commissioners. The board shall forward the  
4       list to the mayor no later than the 2nd Monday in June. The individual appointed  
5       is subject to confirmation by the common council. The independent monitor shall  
6       receive the salary or other compensation for his or her services fixed by the common  
7       council. The term of office shall be 4 years from the 2nd Monday in July, and until  
8       a successor is appointed and qualified, although during his or her term, the  
9       independent monitor serves at the pleasure of the board and may not be removed by  
10      the mayor or common council. If the independent monitor is an attorney, no  
11      attorney-client privilege exists between the independent monitor and the mayor or  
12      common council.

13           (b) The independent monitor has the authority, and it shall be his or her duty,  
14      to do all of the following:

15           1. Act as the principal staff of the board in exercising the board's functions and  
16      powers under this section.

17           2. Review situations or investigations when an individual is dissatisfied with  
18      the outcome of an investigation or situation involving the police or fire department.

19           3. Evaluate police and fire department policies, practices, and patterns,  
20      including staff deployments, crime and fire prevention training, use of force, search,  
21      seizure, citizen interaction, and communication.

22           4. Issue periodic reports to the public, relating to the status and outcome of  
23      complaints that have been filed, the timeliness of complaint resolution, trends and  
24      patterns of concern pertaining to complaint investigations, the nature and frequency  
25      of complaints, and other performance indicators.

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

62.50 (6) APPOINTMENT OF CHIEFS. If a vacancy exists in the office of chief of police or in the office of chief engineer of the fire department, the board by a majority vote shall appoint proper persons to fill such offices respectively. When filling a vacancy in the office of chief of police or in the office of chief engineer of the fire department occurring after June 15, 1977, the board shall appoint the person to a term of office the number of years and commencement date of which shall be set by the city of the 1st class by ordinance and which may not exceed 10 years, or for the remainder of an unexpired term. Before appointing or reappointing a chief of police or chief engineer of the fire department under this subsection, the board shall meet in closed session under s. 19.85 (1) (c) with representatives of the nonsupervisory employee association whose members will serve under the proposed chief. The board shall also hold at least 2 public meetings before appointing a proposed chief to hear comments from residents of the city and other interested persons.

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

62.50 (7) (a) If a vacancy exists in the office of assistant chief, the chief of police shall nominate and, with the approval of the board, shall appoint a person to a term of office coinciding with the term of the chief making the appointment, subject thereafter to reinstatement to a previously held position on the force in accordance with rules prescribed by the board. ~~Removal~~ Discipline of the assistant chief shall be pursuant to s. 17.12 (1) (c). ~~The chief may summarily suspend the assistant chief whose removal is sought by the chief.~~

**SECTION 15.** 62.50 (11) of the statutes is amended to read:

62.50 (11) ~~DISCHARGE OR SUSPENSION.~~ No DISCIPLINE. The chief of either department may recommend to the board of fire and police commissioners that a

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1 member of the chief's department be disciplined, but no member of the police force  
2 or fire department may be discharged or suspended for a term exceeding 30 days  
3 disciplined by the chief of either of the departments except for cause and after trial  
4 under this section. If no appeal of the chief's discipline recommendation is made to  
5 the board under sub. (13), within 10 days after the date of service of the notice of  
6 discipline, the recommended discipline becomes final and takes effect without a trial  
7 before the board or the chief being required to demonstrate cause.

8 **SECTION 16.** 62.50 (12) of the statutes is repealed.

9 **SECTION 17.** 62.50 (13) of the statutes is amended to read:

10 62.50 (13) NOTICE OF DISCHARGE OR SUSPENSION DISCIPLINE; APPEALS. The Before  
11 the chief discharging or suspending for a period exceeding 5 days may discipline any  
12 member of the force, the chief shall give written notice of the discharge or suspension  
13 discipline to the member and, at the same time that the notice is given, shall also give  
14 the member any exculpatory all evidence in the chief's department's possession  
15 related to the discharge or suspension discipline. The chief shall also immediately  
16 report the notice of the discharge or suspension discipline to the secretary of the  
17 board of fire and police commissioners together with a complaint setting forth the  
18 reasons for the discharge or suspension discipline and the name of the complainant  
19 if other than the chief. Within 10 days after the date of service of the notice of a  
20 discharge or suspension order discipline, the members member so discharged or  
21 suspended disciplined may appeal from the order of discharge or suspension or  
22 discipline to the board of fire and police commissioners, by filing with the board a  
23 notice of appeal in the following or similar form:

24 To the honorable board of fire and police commissioners:

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1 Please take notice that I appeal from the ~~order or~~ decision of the chief of the ...  
2 department, ~~discharging (or suspending)~~ disciplining me from service, which order  
3 of discharge ~~(or suspension)~~ was made on the .... day of ..., ... (year).

4 **SECTION 18.** 62.50 (17) (a) of the statutes is amended to read:

5 62.50 (17) (a) Within 3 days after hearing the matter the board, or a 3-member  
6 panel of the board, shall, by a majority vote of its members and subject to par. (b),  
7 determine whether by a preponderance of the evidence the charges are sustained.  
8 If the board or panel determines that the charges are sustained, the board ~~shall at~~  
9 ~~once determine whether the good of the service requires that the accused be~~  
10 ~~permanently discharged or be suspended~~ may demote, reduce in rank, suspend  
11 without pay for a period not exceeding 60 days or reduced in rank, or permanently  
12 discharge the accused. If the charges are not sustained the accused shall be  
13 immediately reinstated in his or her former position, without prejudice. The decision  
14 and findings of the board, or panel, shall be in writing and shall be filed, within 10  
15 days of the vote, together with a transcript of the evidence, with the secretary of the  
16 board.

17 **SECTION 19.** 62.50 (17) (b) (intro.) of the statutes is amended to read:

18 62.50 (17) (b) (intro.) No police officer or fire fighter may be suspended, reduced  
19 ~~in rank, suspended and reduced in rank, or discharged~~ disciplined by the board  
20 under sub. (11), (13) or (19), or under par. (a), based on charges filed by the board,  
21 members of the board, an aggrieved person or the chief under sub. (11), (13) or (19),  
22 or under par. (a), unless the board determines whether by a preponderance of the  
23 evidence there is just cause, as described in this paragraph, to sustain the charges.  
24 In making its determination, the board shall apply the following standards, ~~to the~~  
25 ~~extent applicable:~~

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**SECTION 20.** 62.50 (17) (b) 1. of the statutes is amended to read:

62.50 (17) (b) 1. 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.

**SECTION 21.** 62.50 (17) (b) 5. of the statutes is amended to read:

62.50 (17) (b) 5. Whether the chief discovered ~~substantial~~ clear and convincing evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

**SECTION 22.** 62.50 (18) of the statutes is amended to read:

62.50 (18) ~~SALARY DURING SUSPENSION~~ DISCIPLINE. 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~~ disciplined preceding an investigation or trial, unless the charge is sustained. No member of the police force may be ~~suspended~~ disciplined under sub. (11) or (13) without pay or benefits until the matter that is the subject of the ~~suspension~~ discipline is disposed of by the board or the time for appeal under sub. (13) passes without an appeal being made.

**SECTION 23.** 62.50 (19) of the statutes is amended to read:

62.50 (19) ~~CHARGES BY AGGRIEVED PERSON~~. In cases where duly verified charges are filed by any aggrieved person with the board of fire and police commissioners, setting forth sufficient cause for the ~~removal~~ discipline of any member of either of the departments, including the chiefs or their assistants, the board or chief may ~~suspend~~ discipline such member or officer pending disposition of such charges. The board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section. The board, or a 3-member panel of the board, shall

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1 decide by a majority vote and subject to the just cause standard described in sub. (17)  
2 (b) whether the charges are sustained. If sustained, the board shall immediately  
3 ~~determine whether the good of the service requires that the accused be removed,~~  
4 ~~suspended from office without pay for a period not exceeding~~ may institute  
5 discipline, not to exceed 60 days or reduced in rank without pay, demotion, reduction  
6 in rank, or discharge. If the charges are reduced, changed, or not sustained, the  
7 accused shall be immediately reinstated in his or her former position without  
8 prejudice and shall be entitled to any pay and benefits lost or forfeited due to the  
9 original charges. The secretary of the board shall make the decision public.

10 **SECTION 24.** 62.50 (20) of the statutes is amended to read:

11 62.50 (20) ~~CIRCUIT COURT REVIEW~~ APPEAL OF BOARD DECISION; NOTICE. Any officer  
12 or member of either department ~~discharged, suspended or reduced~~ who is  
13 disciplined, may, within 10 days after the decision and findings under this section are  
14 ~~filed with~~ delivered to the secretary of the board, ~~bring an action~~ appeal that decision  
15 either to the circuit court of the county in which the city is located or to an arbitrator  
16 who shall be selected jointly by the parties to review the order. Following the  
17 arbitrator issuing a decision, an officer or member of either department may appeal  
18 that decision in the circuit court of the county in which the city is located to review  
19 the order. Such ~~Sueh~~ An action shall begin by the serving of a notice on the secretary of  
20 the board making such order and on the city attorney of such city, which notice may  
21 be in one of the following or similar ~~form~~ forms:

22 In Circuit Court, .... County.

23 To .... Board of Fire and Police Commissioners.

24 To .... City Attorney:

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1 Please take notice that I hereby demand that the circuit court of .... County  
2 review the order made by the Board of Fire and Police Commissioners on the ... day  
3 of ... A.D. .... ~~discharging, (or suspending) .... from the .... department [(if applicable)~~  
4 and affirmed by an arbitrator on the ... day of ... AD ...] to discipline me.

5 (Signed) ....

6 In Circuit Court, .... County.

7 To .... Board of Fire and Police Commissioners.

8 To .... City Attorney:

9 Please take notice that I would like to appeal, through arbitration, the order  
10 made by the Board of Fire and Police Commissioners on the ... day of ... AD ... to  
11 discipline me.

12 (Signed) ....

13 **SECTION 25.** 62.50 (21) of the statutes is amended to read:

14 62.50 (21) CERTIFICATION AND RETURN OF RECORD; HEARING. Upon the service of  
15 the demand under sub. (20), the board upon which the service is made shall within  
16 5 days thereafter certify to the clerk of the circuit court of the county or the selected  
17 arbitrator all charges, testimony, and everything relative to the trial and ~~discharge,~~  
18 ~~suspension or reduction in rank~~ discipline of the member. Upon the filing of the  
19 return with the clerk of court or the selected arbitrator, actions for review shall be  
20 given preference. Upon application of the ~~discharged~~ disciplined member ~~or the~~  
21 ~~board,~~ the court or arbitrator shall fix a date for the trial which shall be no later than  
22 ~~15 days after the date of the application except upon agreement between the board~~  
23 ~~and the discharged or suspended member. The action shall be tried by the court~~  
24 ~~without a jury and shall be tried upon the return made by the board. In determining~~  
25 ~~the question of fact presented, the court shall be limited in the review thereof to the~~

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1 question: “~~Under the evidence is there just cause, as described in sub. (17) (b), to~~  
2 ~~sustain the charges against the accused?”~~ The court may require additional return  
3 ~~to be made by the board, and may also require the board to take additional testimony~~  
4 ~~and make return thereof~~ schedule the matter as soon as practical.

5 **SECTION 26.** 62.50 (21m) of the statutes is created to read:

6 **62.50 (21m) SCOPE OF REVIEW.** (a) The court or arbitrator shall conduct its  
7 review without regard to any action taken or decision made by the board and shall  
8 determine whether there is just cause, as described in sub. (17) (b). In making that  
9 determination, the court or arbitrator shall review the evidence independently and  
10 without deference to the board’s findings of fact and conclusions of law. The court or  
11 arbitrator may take into account the credibility determinations of the board, but  
12 neither are bound by those determinations.

13 (b) The court or arbitrator shall remand the board’s decision if it finds that  
14 either the fairness of the proceedings or the correctness of the action has been  
15 impaired by a material error in procedure or a failure to follow prescribed procedure.

16 (c) The court or arbitrator shall set aside or modify the board’s decision if it finds  
17 that the board has erroneously interpreted a provision of law and a correct  
18 interpretation compels a particular result, or it shall remand the case to the board  
19 for further action that is consistent with current law.

20 (d) The court or arbitrator shall reverse the board’s decision if it finds that the  
21 board’s exercise of discretion is one of the following:

- 22 1. Outside the range of discretion delegated to the board by law.
- 23 2. Inconsistent with a board rule, a board policy, or a board practice, unless such  
24 deviation is satisfactorily explained by the board in its ruling.
- 25 3. In violation of a constitutional or statutory provision.



**BILL**

1 (e) The court's or arbitrator's decision shall provide appropriate relief  
2 irrespective of the original form of the petition. If the court or arbitrator sets aside  
3 the board's decision or remands the case to the board for further proceedings, it may  
4 make such interlocutory order as it finds appropriate to preserve the interests of any  
5 party.

6 (f) If conducted by a court, the review described in this subsection shall be  
7 conducted without a jury.

8 (g) A review under this subsection shall be confined to the record, except that  
9 in cases of alleged irregularities in procedure before the board, the court or arbitrator  
10 may take additional testimony. If leave is granted to take additional testimony,  
11 depositions and written interrogatories may be taken before the date set for hearing  
12 in the manner provided in ch. 804. The court or arbitrator may allow for discovery,  
13 or require additional return to be made by the board, and may also require the board  
14 to take additional testimony and make return thereof. The court or arbitrator shall  
15 grant requests for discovery if there is credible evidence that it is necessary to further  
16 the appeal and provide the accused with due process.

17 **SECTION 27.** 62.50 (22) of the statutes is amended to read:

18 62.50 (22) COSTS; REINSTATEMENT. No costs may be allowed in the action to either  
19 party and the clerks' or arbitrator's fees shall be paid by the city in which the  
20 department is located. If the decision of the board is reversed, the ~~discharged or~~  
21 ~~suspended~~ disciplined member shall forthwith immediately be reinstated in his or  
22 her former position in the department and shall be entitled to pay the same as if not  
23 ~~discharged or suspended.~~ If the decision of the board is sustained, the order of  
24 ~~discharge, suspension or reduction shall be final and conclusive in all cases~~  
25 disciplined.

**BILL**

**SECTION 28.** 62.50 (26) of the statutes is repealed.

**SECTION 29.** 62.51 (1) (a) of the statutes is amended to read:

62.51 (1) (a) "Public office" means the following positions or their equivalent: city engineer; city purchasing agent; commissioner of building inspection, of city development, of health or of public works; director of administration, of budget and management, of community development agency, of employee relations, of office of telecommunications, or of safety; emergency management coordinator; employee benefits administrator; executive director of the commission on community relations; municipal port director; commissioner of assessments; director of liaison; city personnel director; executive director of the retirement board; executive director of the city board of election commissioners; city librarian; city labor negotiator; executive secretary of the board of fire and police commissioners; and supervisor of the central electronics board.

**SECTION 30.** 63.25 (1) (e) of the statutes is created to read:

63.25 (1) (e) A requirement that 1st class cities shall give the same number of veterans preference points, with regard to competitive examinations, to applicants who apply for a position with the city on and after the first day of the 2nd month beginning after the effective date of this paragraph .... [LRB inserts date], as they gave before March 1, 2017.

**SECTION 31.** 66.0502 (4) (b) of the statutes is amended to read:

66.0502 (4) (b) Subject to ~~par.~~ pars. (c) and (e), a local governmental unit may impose a residency requirement on law enforcement, fire, or emergency personnel that requires such personnel to reside within 15 miles of the jurisdictional boundaries of the local governmental unit.

**SECTION 32.** 66.0502 (4) (e) of the statutes is created to read:

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66.0502 (4) (e) A requirement imposed by a 1st class city under par. (b) does not apply to any individual serving on a board of fire and police commissioners described under s. 62.50 (1h).

### SECTION 33. Initial applicability.

(1) This act first applies to a vacancy on the board of fire and police commissioners, a vacancy on a board of police and fire commissioners, a vacancy in the office of chief of either department, a vacancy in a public office, or an action by an officer or member of either department which gives rise to the need for a disciplinary proceeding that occurs on the effective date of this subsection.

**(END)**