



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3736

Introduced 2/24/2005, by Rep. Larry McKeon

SYNOPSIS AS INTRODUCED:

50 ILCS 725/2	from Ch. 85, par. 2552
65 ILCS 5/10-2.1-17	from Ch. 24, par. 10-2.1-17
55 ILCS 5/3-8014	from Ch. 34, par. 3-8014

Amends the Uniform Peace Officers' Disciplinary Act. Changes the definition of "interrogation" to include the questioning of an officer during an informal inquiry. Amends the Board of Fire and Police Commissioners Act and the Sheriff's Merit Commission Act. Provides that certain Sections of those Acts shall not be construed to limit or prohibit any municipality, subject to the Illinois Public Labor Relations Act, from bargaining collectively over discipline and discharge procedures that are not consistent with other provisions of those Act, including arbitration procedures for the appeal of decisions of the Board of Fire and Police Commissioners and the Sheriff's Merit Commission. Effective immediately.

LRB094 10503 EFG 40774 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Uniform Peace Officers' Disciplinary Act is
5 amended by changing Section 2 as follows:

6 (50 ILCS 725/2) (from Ch. 85, par. 2552)

7 Sec. 2. For the purposes of this Act, unless clearly
8 required otherwise, the terms defined in this Section have the
9 meaning ascribed herein:

10 (a) "Officer" means any peace officer, as defined by
11 Section 2-13 of the Criminal Code of 1961, as now or hereafter
12 amended, who is employed by any unit of local government or a
13 State college or university, including supervisory and command
14 personnel, and any pay-grade investigator for the Secretary of
15 State as defined in Section 14-110 of the Illinois Pension
16 Code, not including Secretary of State sergeants, lieutenants,
17 commanders or investigator trainees. The term does not include
18 crossing guards, parking enforcement personnel, traffic
19 wardens or employees of any State's Attorney's office.

20 (b) "Informal inquiry" means a meeting by supervisory or
21 command personnel with an officer upon whom an allegation of
22 misconduct has come to the attention of such supervisory or
23 command personnel, the purpose of which meeting is to mediate a
24 citizen complaint or discuss the facts to determine whether a
25 formal investigation should be commenced.

26 (c) "Formal investigation" means the process of
27 investigation ordered by a commanding officer during which the
28 questioning of an officer is intended to gather evidence of
29 misconduct which may be the basis for filing charges seeking
30 his or her removal, discharge or suspension in excess of 3
31 days.

32 (d) "Interrogation" means the questioning of an officer

1 during an informal inquiry or pursuant to the formal
2 investigation procedures of the respective State agency or
3 local governmental unit in connection with an alleged violation
4 of such agency's or unit's rules which may be the basis for
5 filing charges seeking his or her suspension, removal, or
6 discharge. The term does not include questioning ~~(1) as part of~~
7 ~~an informal inquiry or (2)~~ relating to minor infractions of
8 agency rules which may be noted on the officer's record but
9 which may not in themselves result in removal, discharge or
10 suspension ~~in excess of 3 days.~~

11 (e) "Administrative proceeding" means any non-judicial
12 hearing which is authorized to recommend, approve or order the
13 suspension, removal, or discharge of an officer.

14 (Source: P.A. 90-577, eff. 1-1-99.)

15 Section 10. The Illinois Municipal Code is amended by
16 changing Section 10-2.1-17 as follows:

17 (65 ILCS 5/10-2.1-17) (from Ch. 24, par. 10-2.1-17)

18 Sec. 10-2.1-17. Removal or discharge; investigation of
19 charges; retirement. Except as hereinafter provided, no
20 officer or member of the fire or police department of any
21 municipality subject to this Division 2.1 shall be removed or
22 discharged except for cause, upon written charges, and after an
23 opportunity to be heard in his own defense. The hearing shall
24 be as hereinafter provided, unless the employer and the labor
25 organization representing the person have negotiated an
26 alternative or supplemental form of due process based upon
27 impartial arbitration as a term of a collective bargaining
28 agreement. In non-home rule units of government, such
29 bargaining shall be permissive rather than mandatory unless
30 such contract term was negotiated by the employer and the labor
31 organization prior to or at the time of the effective date of
32 this amendatory Act, in which case such bargaining shall be
33 considered mandatory.

34 If the chief of the fire department or the chief of the

1 police department or both of them are appointed in the manner
2 provided by ordinance, they may be removed or discharged by the
3 appointing authority. In such case the appointing authority
4 shall file with the corporate authorities the reasons for such
5 removal or discharge, which removal or discharge shall not
6 become effective unless confirmed by a majority vote of the
7 corporate authorities. The board of fire and police
8 commissioners shall conduct a fair and impartial hearing of the
9 charges, to be commenced within 30 days of the filing thereof,
10 which hearing may be continued from time to time. In case an
11 officer or member is found guilty, the board may discharge him,
12 or may suspend him not exceeding 30 days without pay. The board
13 may suspend any officer or member pending the hearing with or
14 without pay, but not to exceed 30 days. If the Board of Fire
15 and Police Commissioners determines that the charges are not
16 sustained, the officer or member shall be reimbursed for all
17 wages withheld, if any. In the conduct of this hearing, each
18 member of the board shall have power to administer oaths and
19 affirmations, and the board shall have power to secure by its
20 subpoena both the attendance and testimony of witnesses and the
21 production of books and papers relevant to the hearing.

22 The age for retirement of policemen or firemen in the
23 service of any municipality which adopts this Division 2.1 is
24 65 years, unless the Council or Board of Trustees shall by
25 ordinance provide for an earlier retirement age of not less
26 than 60 years.

27 The provisions of the Administrative Review Law, and all
28 amendments and modifications thereof, and the rules adopted
29 pursuant thereto, shall apply to and govern all proceedings for
30 the judicial review of final administrative decisions of the
31 board of fire and police commissioners hereunder. The term
32 "administrative decision" is defined as in Section 3-101 of the
33 Code of Civil Procedure.

34 Nothing in this Section shall be construed to limit or
35 prohibit any municipality, subject to the Illinois Public Labor
36 Relations Act, from bargaining collectively over discipline

1 and discharge procedures that are not consistent with this Act,
2 including arbitration procedures for the appeal of board
3 decisions.

4 Nothing in this Section shall be construed to prevent the
5 chief of the fire department or the chief of the police
6 department from suspending without pay a member of his
7 department for a period of not more than 5 calendar days, but
8 he shall notify the board in writing of such suspension. The
9 hearing shall be as hereinafter provided, unless the employer
10 and the labor organization representing the person have
11 negotiated an alternative or supplemental form of due process
12 based upon impartial arbitration as a term of a collective
13 bargaining agreement. In non-home rule units of government,
14 such bargaining shall be permissive rather than mandatory
15 unless such contract term was negotiated by the employer and
16 the labor organization prior to or at the time of the effective
17 date of this amendatory Act, in which case such bargaining
18 shall be considered mandatory.

19 Any policeman or fireman so suspended may appeal to the
20 board of fire and police commissioners for a review of the
21 suspension within 5 calendar days after such suspension, and
22 upon such appeal, the board may sustain the action of the chief
23 of the department, may reverse it with instructions that the
24 man receive his pay for the period involved, or may suspend the
25 officer for an additional period of not more than 30 days or
26 discharge him, depending upon the facts presented.

27 (Source: P.A. 91-650, eff. 11-30-99.)

28 Section 15. The Counties Code is amended by changing
29 Section 3-8014 as follows:

30 (55 ILCS 5/3-8014) (from Ch. 34, par. 3-8014)

31 Sec. 3-8014. Removal, demotion or suspension. Except as is
32 otherwise provided in this Division, no certified person shall
33 be removed, demoted or suspended except for cause, upon written
34 charges filed with the Merit Commission by the sheriff. Upon

1 the filing of such a petition, the sheriff may suspend the
2 certified person pending the decision of the Commission on the
3 charges. After the charges have been heard, the Commission may
4 direct that the person receive his pay for any part or all of
5 this suspension period, if any.

6 The charges shall be heard by the Commission upon not less
7 than 14 days' certified notice. At such hearing, the accused
8 certified person shall be afforded full opportunity to be
9 represented by counsel, to be heard in his own defense and to
10 produce proof in his defense. Both the Commission and the
11 sheriff may be represented by counsel. The State's Attorney of
12 the applicable county may advise either the Commission or the
13 sheriff. The other party may engage private counsel to advise
14 it.

15 The Commission shall have the power to secure by its
16 subpoena both the attendance and testimony of witnesses and the
17 production of books and papers in support of the charges and
18 for the defense. Each member of the Commission shall have the
19 power to administer oaths.

20 If the charges against an accused person are established by
21 the preponderance of evidence, the Commission shall make a
22 finding of guilty and order either removal, demotion, loss of
23 seniority, suspension for a period of not more than 180 days,
24 or such other disciplinary punishment as may be prescribed by
25 the rules and regulations of the Commission which, in the
26 opinion of the members thereof, the offense justifies. If the
27 charges against an accused person are not established by the
28 preponderance of evidence, the Commission shall make a finding
29 of not guilty and shall order that the person be reinstated and
30 be paid his compensation for the suspension period, if any,
31 while awaiting the hearing. The sheriff shall take such action
32 as may be ordered by the Commission.

33 The provisions of the Administrative Review Law, and all
34 amendments and modifications thereof, and the rules adopted
35 pursuant thereto, shall apply to and govern all proceedings for
36 the judicial review of any order of the Commission rendered

1 pursuant to this Section. The plaintiff shall pay the
2 reasonable cost of preparing and certifying the record for
3 judicial review. However, if the plaintiff prevails in the
4 judicial review proceeding, the court shall award to the
5 plaintiff a sum equal to the costs paid by the plaintiff to
6 have the record for judicial review prepared and certified.
7 Nothing in this Section shall be construed to limit or prohibit
8 any public employer, subject to the Illinois Public Labor
9 Relations Act, from bargaining collectively over discipline
10 and discharge procedures that are not consistent with this Act,
11 including arbitration procedures for the appeal of Commission
12 orders rendered pursuant to this Section.

13 (Source: P.A. 86-962.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.