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, <u>by a preponderance of the evidence</u>, there is just cause to sustain the charges; while the bill requires that the police or fire chief must show <u>by clear and convincing evidence</u> 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.