



State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY BILL 213

April 14, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Urban and Local Affairs.

1 **AN ACT to repeal** 61.31 (1), 61.55 and 61.56, 62.09 (6) (b), 62.09 (11) (g) and
2 893.81; **to renumber** 61.31 (2) and 62.13 (8); **to amend** 12.04 (4) (b), 32.05
3 (intro.), 61.23 (1), 61.31 (title), 61.32, 61.50 (1), 61.57, 61.65 (1) (a) 2., 62.09 (1)
4 (a), 62.09 (6) (a), 62.13 (1), 66.0133 (3), 66.0505 (3) (a) 1., 66.0507, 66.0901 (2),
5 66.1103 (11) (a) and 86.25 (4); **to repeal and recreate** 61.54 and 62.15 (5); and
6 **to create** 61.193, 62.09 (5) (e), 62.09 (6) (am), 62.13 (2g) and 62.13 (8) (b) of the
7 statutes; **relating to:** establishing and changing compensation for city and
8 village elective offices; signing village contracts; bidding procedure for village
9 public construction contracts; officer-of-the-peace status of village officers;
10 publication by the city clerk of fund receipts and disbursements; village and 4th
11 class city regulation of political signs; liability of counties and cities for mob
12 damage; means of providing police and fire protection by cities and villages;
13 holdover status of appointed city and village officers; use of the s. 32.05

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- 1 procedure in villages for certain housing and urban renewal condemnation; and
2 application of public contract bidder prequalification to 1st class cities.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was developed by the Joint Legislative Council's Special Committee on Differences in Laws Applicable to Cities and Villages. The committee was directed by the Joint Legislative Council to review laws relating to cities and villages, other than those laws that relate to the fundamental organizational structure that distinguishes cities and villages, to determine discrepancies and inconsistencies in the application of those laws to each type of municipality and recommend, when appropriate and advantageous, rectifying those discrepancies and inconsistencies that exist for no apparent policy rationale.

Based on its review of discrepancies and inconsistencies in laws that apply to cities and villages that were brought to the committee's attention by interested parties, the committee recommends further harmonizing the laws that apply to cities and villages as provided in this bill.

In general terms, this bill:

- Requires compensation for city and village elective offices to be established before the earliest time for filing nomination papers for the office or, if nomination papers are not used for an elective village office, before the caucus date for that office. In so providing, the bill repeals current language regarding the establishment of salaries for elective city offices and appointive city offices with definite terms. Also, for consistency with law that applies to cities, the bill removes the requirement that the salary of a village president and village board member be an "annual" salary.
- Makes the bidding procedure for village public construction contracts consistent with the bidding procedure that applies to city public construction contracts. Currently, villages have the option to use the city procedure.
- Provides that persons serving in city appointive offices serve until their respective successors are appointed and qualify, for consistency with current village law. For both cities and villages, the bill allows an ordinance to provide otherwise.
- Authorizes, consistent with law that applies to city public construction contracts, a village by resolution or ordinance to alter the statutory requirement that the village president and clerk execute all contracts, conveyances, commissions, licenses, or other written instruments.
- Repeals officer-of-the-peace status of village board members for consistency with the former repeal of police powers for city council members.
- Repeals the current directive that applies to city clerks, but not village clerks, to annually publish as a class 1 notice a statement showing the receipts and disbursements as to each fund during the preceding fiscal year.

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- Extends the current authority of 1st, 2nd, and 3rd class cities to regulate political signs larger than 11 square feet in area to include 4th class cities and villages.

- Repeals the statute providing that counties and cities are strictly liable, subject to contributory negligence principles, for injuries to persons or property caused by a mob or riot within their respective jurisdictions.

- Consistent with law that applies to villages, expressly authorizes cities to contract for police protection with a village, a town, another city, or a county and authorizes cities to contract for fire protection with a village, a town, or another city.

- Clarifies that the condemnation procedure under s. 32.05, stats., may be used for certain housing and urban renewal condemnation in villages, as well as in cities.

- Authorizes a 1st class city, consistent with the authority of other classes of cities and of villages, to use the bidder prequalification procedure for public contracts.

Additional information is contained in the Notes to individual SECTIONS of the bill.

1 **SECTION 1.** 12.04 (4) (b) of the statutes is amended to read:

2 12.04 (4) (b) In addition to regulation under par. (a), a ~~1st, 2nd or 3rd class city,~~
3 ~~or a town,~~ municipality may regulate the size, shape or placement of a sign exceeding
4 11 square feet in area. This paragraph does not apply to a sign which is affixed to
5 a permanent structure and does not extend beyond the perimeter of the structure,
6 if the sign does not obstruct a window, door, fire escape, ventilation shaft or other area
7 which is required by an applicable building code to remain unobstructed.

NOTE: Section 12.04 (2), stats., generally permits an individual to place a sign containing a political message on residential property owned or occupied by that individual during an election campaign period. However, under sub. (4) (a) of the statute, counties and municipalities may regulate the size, shape, or placement of any political sign that has an electrical, mechanical, or audio apparatus and may regulate any political sign in an order to ensure traffic or pedestrian safety. Subsection (4) (b) of s. 12.04 further authorizes the regulation of the size, shape, or placement of any political sign that is more than 11 square feet in area, but extends that regulatory authority only to 1st, 2nd, and 3rd class cities and towns. Thus, 4th class cities and villages do not enjoy the latter authority.

It is not apparent from the legislative history or from a policy standpoint why the regulatory authority extended by s. 12.04 (4) (b), stats., does not also apply to 4th class cities and villages. Therefore, the bill extends the authority to all municipalities, which will include 4th class cities and villages in addition to other classes of cities and to towns. See s. 5.02 (11).

It is recognized that the implementation of the authority granted under s. 12.04 can raise first amendment issues relating to content-based regulation of speech. However, notwithstanding that issue, it was determined that the regulatory authority should be extended to all municipalities, consistent with the special committee's directive.

8 **SECTION 2.** 32.05 (intro.) of the statutes is amended to read:

ASSEMBLY BILL 213**SECTION 2****32.05 Condemnation for sewers and transportation facilities.** (intro.)

1
2 In this section, “mass transit facility” includes, without limitation because of
3 enumeration, exclusive or preferential bus lanes if those lanes are limited to
4 abandoned railroad rights-of-way or existing expressways constructed before
5 May 17, 1978, highway control devices, bus passenger loading areas and terminal
6 facilities, including shelters, and fringe and corridor parking facilities to serve bus
7 and other public mass transportation passengers, together with the acquisition,
8 construction, reconstruction and maintenance of lands and facilities for the
9 development, improvement and use of public mass transportation systems for the
10 transportation of passengers. This section does not apply to proceedings in 1st class
11 cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to
12 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under
13 subch. V of ch. 229, may proceed under this section or under s. 32.06 at the option
14 of the condemning authority. In any village, condemnation for housing under ss.
15 66.1201 to 66.1211 or for urban renewal under s. 66.1333 may proceed under this
16 section or under s. 32.06 at the option of the condemning authority. Condemnation
17 by a local exposition district under subch. II of ch. 229 for any exposition center or
18 exposition center facility may proceed under this section or under s. 32.06 at the
19 option of the local exposition district. All other condemnation of property for public
20 alleys, streets, highways, airports, spaceports, mass transit facilities, or other
21 transportation facilities, gas or leachate extraction systems to remedy
22 environmental pollution from a solid waste disposal facility, storm sewers and
23 sanitary sewers, watercourses or water transmission and distribution facilities shall
24 proceed as follows:

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NOTE: Clarifies that the condemnation procedure under s. 32.05, stats., may be used in villages for condemnation for housing under ss. 66.1201 to 66.1211, stats., and for urban renewal under s. 66.1333, stats.

There are 2 general condemnation procedures under state statute. One procedure is found in s. 32.05, stats., the other in s. 32.06, stats. Procedural and timeliness considerations may make the s. 32.05 procedure more advantageous to a condemnor than the s. 32.06 procedure. (Under the s. 32.05 procedure, if the condemnor and property owner are unable to agree on the purchase price, the condemnor sets the purchase price and, upon payment of that price to the property owner, title to the property passes to the condemnor. The property owner then has the burden of contesting the compensation, if the property owner so chooses, before the county condemnation commission or circuit court. In contrast, under the s. 32.06 procedure, if the condemnor and property owner are unable to agree on the purchase price, the purchase price is determined by the county condemnation commission before the condemnor acquires title. The condemnor has the burden of bringing the compensation issue before the condemnation commissioners. The condemnor is required to pay the price determined by the commission and title to the property passes upon payment.)

Cities have housing authority under ss. 66.1201 to 66.1211, stats., and urban renewal authority under s. 66.1333, stats. Under s. 66.1339, stats., villages have all of the powers of cities under ss. 66.1201 to 66.1329 and ss. 66.1331 to 66.1337, stats.

Cities have express authority under s. 32.05 (intro.) to use the condemnation procedure under that section for the housing and urban renewal authority cited above. (Alternatively, the s. 32.06 procedure may be used.) There is no express authority for villages to use the condemnation procedure under s. 32.05 for these purposes. The failure to expressly include housing and urban renewal condemnations in villages under the 32.05 procedure raises doubt about whether that authority exists in villages by implication.

Because there is no apparent policy rationale for not extending the authority to use the s. 32.05 procedure for condemnations in villages for these purposes, the section is amended to expressly include that authority.

1 **SECTION 3.** 61.193 of the statutes is created to read:

2 **61.193 Establishing and changing compensation for elective offices.**

3 **(1)** In this section, "compensation" means a salary, a per diem compensation for each
4 day or part of a day necessarily devoted to the service of the village and the discharge
5 of duties, or a combination of salary and per diem compensation.

6 **(2)** Except as provided in sub. (3), and subject to s. 61.32, the compensation for
7 an elective village office shall be established before the earliest time for filing
8 nomination papers for the office or, if nomination papers are not used, before the
9 caucus date determined under s. 8.05 (1) (a). After that time or date, no change may
10 be made in the compensation for the office that applies to the term of office for which

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1 the deadline or date applies. The compensation established for an elective office
2 remains in effect for ensuing terms unless changed.

3 **(3)** In a newly incorporated village, the compensation for an elective office may
4 be established during the first term of office.

NOTE: Creates a provision for establishing and changing compensation for village
elective offices that corresponds to the provision applicable to city elective offices, created
by SECTION 17 of this bill.

The requirement that the compensation, as defined, for an elective village office be
established before the earliest time for filing nomination papers for the office or before
the caucus date is new. It reflects the principle that compensation for an elective office
is for the office, not for a particular individual holding the office. The definition of
“compensation” is based on s. 60.32 (2), stats., applicable to town elective offices.

The 2nd and 3rd sentences of par. (b) restate language deleted from current s.
61.32, stats., by SECTION 8 of this bill, although the current law provision applies only to
the village president and trustees and the new language applies more broadly, to all
elective officers. Paragraph (c) is new and corresponds with a provision that currently
applies to newly incorporated cities. See SECTIONS 17 and 18 of this bill.

Note that periodic increases in compensation for an elective office may be provided,
as long as any increase is determined by the stated deadline. In addition, under s.
66.0507, stats., salary may include an automatic adjustment for changes in cost of living
(except village board members). See SECTION 27 of this bill.

5 **SECTION 4.** 61.23 (1) of the statutes is amended to read:

6 61.23 (1) Except as otherwise provided by law, the term of office of all village
7 officers is 2 years. Persons serving in appointive offices shall serve until their
8 respective successors are appointed and qualify, unless otherwise provided by
9 ordinance. If any officer other than a trustee is absent or temporarily incapacitated
10 from any cause the board may appoint some person to discharge the officer’s duties
11 until the officer returns or until such disability is removed. If a trustee is temporarily
12 incapacitated because of physical or mental disability, the board may appoint a
13 person to discharge the trustee’s duties until the disability is removed.

NOTE: Persons serving in appointive offices in a village serve until their respective
successors are appointed and qualify. This SECTION amends current law to provide that
a village, by the adoption of an ordinance, may create a different method of determining
when the term of an appointed officer ends. See also SECTION 15 of this bill.

14 **SECTION 5.** 61.31 (title) of the statutes is amended to read:

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1 **61.31 (title) Peace officers, who are powers.**

2 **SECTION 6.** 61.31 (1) of the statutes is repealed.

NOTE: Repeals the following language: “The president and each trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the village, and may command assistance of all persons under the same penalty for disobedience provided in s. 61.28 [\$10 forfeiture].”.

There is no corresponding provision that applies to members of the city council. At one time, city council members had the “powers of a city policeman”. Section 62.09 (14), 1981-82 stats. That provision was repealed by 1983 Wisconsin Act 210.

There is no apparent policy rationale for extending peace officer status to village presidents and trustees and not extending the same powers to common council members, particularly in light of the former repeal of the latter.

Because it appears the provision is little used and little known, and because of concerns with possible liability, the provision is repealed.

3 **SECTION 7.** 61.31 (2) of the statutes is renumbered 61.31.

4 **SECTION 8.** 61.32 of the statutes is amended to read:

5 **61.32 Village board; meeting; salaries.** The trustees of each village shall
6 constitute a board designated the “Village Board of” (name of village) in which shall
7 be vested all the powers of the village not specifically given some other officer. A
8 majority of the members-elect shall constitute a quorum, but a less number may
9 adjourn from time to time. The president shall preside at all meetings when present.
10 In the president’s absence the board may select another trustee to preside. Regular
11 meetings shall be held at such time as may be prescribed by their bylaws. Special
12 meetings may be called by any 2 trustees in writing, filed with the clerk, who shall
13 thereupon seasonably notify all the trustees of the time and place thereof in the
14 manner directed by the bylaws. All meetings shall be open to the public. The board
15 shall keep a record of all its proceedings, and if there is a newspaper published in any
16 village, the board shall cause the proceedings to be published therein as a class 1
17 notice, under ch. 985. The proceedings for the purpose of publication shall include
18 the substance of every official action taken by the governing body. If there is no

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1 newspaper published in the village, the board may cause the proceedings to be
2 published in a newspaper having general circulation in the village, posted in several
3 public places or publicized in some other fashion, in such manner as the board
4 directs. Nothing herein shall be construed as requiring the republication of any
5 proceeding, ordinance or other matter or thing which has already been published
6 according to law, nor shall anything herein be construed to relieve any village from
7 publishing any proceeding, ordinance or other matter or thing required by law to be
8 published. Notwithstanding the provisions of s. 985.08 (4), the fee for any such
9 publication shall not exceed the rates specified in s. 985.08 (1). The board has power
10 to preserve order at its meetings, compel attendance of trustees and punish
11 nonattendance and it shall be judge of the election and qualification of its members.
12 The president and board of trustees of any village, whether operating under general
13 or special law, may by a three-fourths vote of all the members of the village board
14 determine that ~~an annual~~ a salary be paid the president and trustees. Salaries
15 ~~heretofore established shall so remain until changed by ordinance and shall not be~~
16 ~~increased or diminished during their terms of office.~~

NOTE: Section 61.32, stats., provides in part that a village board may, by a three-fourths vote of all the board members, determine that an annual salary be paid the village president and trustees. Section 62.09 (6) (a), stats., provides that salaries, with no reference to whether they are paid annually or on some other basis, shall be paid the mayor or alderpersons of a city only when ordered by a vote of three-fourths of all the members of the common council. This SECTION amends s. 61.32 to comport with the language of s. 62.09 (6) (a) by removing the requirement that the salaries of a village president and village board members be described as annual salaries. [The village language first appeared in ch. 44, laws of 1905, and the city language first appeared in ch. 326, laws of 1889, SEC. 30.]

The stricken last sentence is restated in s. 61.193, stats., created by SECTION 3 of this bill.

SECTION 9. 61.50 (1) of the statutes is amended to read:

61.50 (1) PUBLICATION OF NOTICE OF ORDINANCES. Every contract, conveyance, commission, license or other written instrument shall be executed on the part of the

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1 village by the president and clerk, unless otherwise provided by resolution or
2 ordinance, sealed with corporate seal, and in pursuance only of authority therefor
3 from the village board. All ordinances and bylaws shall be signed by the president
4 and countersigned by the clerk; and, if any penalty or forfeiture is thereby imposed,
5 the ordinance or bylaw shall be published either in its entirety, as a class 1 notice,
6 under ch. 985, or as a notice, as described under sub. (3) (b), and shall take effect on
7 the day after the publication or a later date if expressly prescribed. If there is no
8 newspaper published in the village, the village board may in lieu of newspaper
9 publication have copies of the ordinances and bylaws posted in at least 3 public places
10 in said village, and proof thereof filed and recorded by the village clerk, and the same
11 shall take effect the day after the proof of posting has been filed and recorded, or at
12 a later date if expressly provided in the ordinance or bylaw.

NOTE: Section 61.50 (1), stats., in part provides that the village president and clerk must sign every village contract, conveyance, commission license, or other written instrument. In contrast, s. 62.15 (12), stats., specifically provides that a city public works contract must be signed by the mayor and clerk, unless otherwise provided by a city resolution or ordinance. This SECTION amends current law to provide that the village president and clerk must sign every village contract, conveyance, commission license, or other written instrument, unless otherwise provided by a village resolution or ordinance.

13 **SECTION 10.** 61.54 of the statutes is repealed and recreated to read:

14 **61.54 Public works.** All contracts for public construction shall be let by a
15 village board in accordance with s. 62.15. The village board, or a person or body
16 designated by the village board, shall exercise the powers and duties of the board of
17 public works under s. 62.15.

NOTE: Sections 61.54, 61.55, and 62.15, stats., regulate the manner in which villages and cities contract for public works projects. The basic format is similar for both municipalities: (1) contracts exceeding \$25,000 must be let to the lowest responsible bidder; (2) contracts exceeding \$5,000 but not greater than \$25,000 must be preceded by notice to the public of proposed construction before contract execution; and (3) exceptions to the preceding requirements apply when certain emergencies occur, material or labor is donated, it is determined that bids are fraudulent, collusive, or excessive, or, in the case of city, the work is done directly by the city.

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However, s. 62.15, stats., specifically applies the following regulations to the public works contracting process engaged in by a city:

1. A contract may include an escalator clause for additional charges for labor and materials as a result of general inflation. Such a clause may not exceed 15% of the amount bid nor the amount of the increase paid by the contractor. A similar clause may be included for increasing the quantity of construction required in the original contract by an amount not to exceed 15% of the original contract price.

2. When work is let to the lowest responsible bidder, the board of public works must prepare plans, specifications, and a form contract for inspection by potential bidders.

3. A bidder must submit specified financial security as a guarantee that if the bid is accepted, the bidder will execute and file the proper contract and bond.

4. A bidder must provide sufficient sureties or provide financial security during the performance of the contract.

5. The board of public works may reject any bid if, in the board's opinion, any combination has been entered into to prevent free competition. Also, the city's common council may, if in its opinion any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, by resolution adopted by two-thirds of its members, reject any and all bids and direct the work to be done by the city directly under the supervision of the board of public works.

6. If the board of public works determines that a bidder is incompetent to perform the work, the board must report to the council a schedule of all of the bids for the work, together with a recommendation to accept the bid of the lowest responsible bidder. The common council may let the work to that bidder or re-advertise the contract.

7. A public work may be undertaken by the use of patented articles, materials, or processes if the owner of the patent permits the use of the patent or sells it.

8. Different plans and specifications for a public work may be prepared requiring the use of different kinds of materials.

9. A contract may include a provision requiring the contractor to keep the work done under the contract in good order or repair for a period not to exceed 5 years.

10. A specified amount of the contract payment may be retained by the city to ensure adequate performance of the contract.

11. A contractor must maintain barriers and lights to prevent accidents on streets or sidewalks. A contractor also will be liable for all damages caused by the negligent digging up of streets, alleys, or public grounds, or that result from the contractor's carelessness.

12. If an ordinance authorizes any work to be done directly by the city without submitting a proposal for bids, the board of public works must keep an accurate account of the cost of the public work, including necessary overhead expenses. The board must make a complete report of the work to the common council.

Finally, s. 61.56, stats., provides that a village board may elect to comply with the statutory contracting provisions applicable to cities, as described above, in lieu of the more minimal provisions of ss. 61.54 and 61.55, stats.

This SECTION provides that a village that lets a contract for public construction must comply with the procedures applicable to a city in s. 62.15, stats.

Additional public construction procedures in s. 66.0901, stats., apply to a number of municipal entities, including cities and villages.

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1 **SECTION 11.** 61.55 and 61.56 of the statutes are repealed.

NOTE: See the Note to SECTION 10 of this bill.

2 **SECTION 12.** 61.57 of the statutes is amended to read:

3 **61.57 Acquisition of recycling or resource recovery facilities without**
4 **bids.** A village may contract for the acquisition of any element of a recycling or
5 resource recovery facility without submitting the contract for bids as required under
6 ~~ss. 61.54 to 61.56~~ s. 61.54 if the village invites developers to submit proposals to
7 provide a completed project and evaluates proposals according to site, cost, design
8 and the developers' experience in other similar projects.

NOTE: Revises a cross-reference to reflect the treatment of ss. 61.54 to 61.56, stats.,
by this bill.

9 **SECTION 13.** 61.65 (1) (a) 2. of the statutes is amended to read:

10 61.65 (1) (a) 2. Contracting for police protective services with a city or town,
11 with another village, or with the a county in which the village is located. A village
12 that contracts for police protective services shall pay the full cost of services provided.
13 A village may not contract with a county to provide all of the village's police protective
14 services under this subdivision.

NOTE: Current law provides that a village may contract for police protective services with, among other entities, a county in which the village is located. This SECTION amends the law to provide that a village may contract with any county for this purpose. (Note that the authority of a village to contract with a county for all of its police protective services is controlled by s. 61.65 (1) (a) 4., stats.) Section 66.0301 (2), stats., also allows a municipality to contract with another municipality for services; this authority is to be liberally construed. See also SECTION 21 of this bill.

15 **SECTION 14.** 62.09 (1) (a) of the statutes is amended to read:

16 62.09 (1) (a) The officers shall be a mayor, treasurer, clerk, comptroller,
17 attorney, engineer, one or more assessors unless the city is assessed by a county
18 assessor under s. 70.99, one or more constables as determined by the common
19 council, a local health officer, as defined in s. 250.01 (5), or local board of health, as

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1 defined in s. 250.01 (3), street commissioner, board of police and fire commissioners
2 except in cities where not applicable, chief of police except in a city that has
3 contracted for all of its police protective services under s. 62.13 (2g) or has abolished
4 its police department under s. 62.13 (2s), chief of the fire department except in a city
5 that contracted for all of its fire protective services under s. 62.13 (8) (b), board of
6 public works, 2 alderpersons from each aldermanic district, and such other officers
7 or boards as are created by law or by the council. If one alderperson from each
8 aldermanic district is provided under s. 66.0211 (1), the council may, by ordinance
9 adopted by a two-thirds vote of all its members and approved by the electors at a
10 general or special election, provide that there shall be 2 alderpersons from each
11 aldermanic district.

NOTE: Revises cross-references to reflect the treatment of s. 62.13 (2g) and (8) (b), stats., by this bill. If a city contracts for all of its police or fire protective services under these statutory provisions, the officers of the city will not include a chief of police or a chief of the fire department, respectively.

12 **SECTION 15.** 62.09 (5) (e) of the statutes is created to read:

13 62.09 (5) (e) Persons serving in appointive offices shall serve until their
14 respective successors are appointed and qualify, unless otherwise provided by
15 ordinance.

NOTE: Section 61.23 (1), stats., provides that persons serving in appointive village offices will serve until their respective successors are appointed and qualify. There is no similar statutory provision for appointive city officers. This SECTION creates s. 62.09 (5) (e) as a parallel to the law applicable in villages by requiring that appointive city officers serve in their offices until their respective successors are appointed and qualify. Consistent with the amendment of s. 61.23 (1) by SECTION 4 of this bill, a city by ordinance may provide a different method of determining when the term of an appointed officer ends.

16 **SECTION 16.** 62.09 (6) (a) of the statutes is amended to read:

17 62.09 (6) (a) Salaries shall be paid the mayor or alderpersons only when
18 ordered by a vote of three-fourths of all the members of the council. Salaries
19 ~~heretofore established shall so remain until changed by ordinance.~~

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NOTE: This change is similar to the change made in s. 61.32 in SECTION 8 of this bill. The deleted language is restated in s. 62.09 (6) (am) 2., although the current law provision applies only to a mayor and alderpersons and the language in s. 62.09 (6) (am) 2. applies, more broadly, to all elective officers.

1 **SECTION 17.** 62.09 (6) (am) of the statutes is created to read:

2 62.09 (6) (am) 1. In this paragraph, “compensation” means a salary, a per diem
3 compensation for each day or part of a day necessarily devoted to the service of the
4 city and the discharge of duties, or a combination of salary and per diem
5 compensation.

6 2. Except as provided in subd. 3., and subject to par. (a), the compensation for
7 an elective city office shall be established before the earliest time for filing
8 nomination papers for the office. After that time, no change may be made in the
9 compensation for the office that applies to the term of office for which the deadline
10 applies. The compensation established for an elective office remains in effect for
11 ensuing terms unless changed.

12 3. In a newly incorporated city, the compensation for an elective office may be
13 established during the first term of office.

NOTE: Creates a provision for establishing and changing compensation for city elective offices that corresponds to the provision applicable to village elective offices, created by SECTION 3 of this bill. The provision replaces current s. 62.09 (6) (b), stats., repealed by SECTION 18 of this bill.

Unlike repealed s. 62.09 (6) (b), this provision does not include compensation for appointive city officers with definite terms. It was concluded there is no policy reason for including appointive offices in the provision.

The requirement that the compensation, as defined, for an elective city office be established before the earliest time for filing nomination papers for the office is new. It reflects the principle that compensation for an elective office is for the office, not for a particular individual holding the office. The definition of “compensation” is based on s. 60.32 (2), stats., applicable to town elective offices.

The 2nd and 3rd sentences of subd. 2. restate language deleted from current s. 61.32, stats., by SECTION 8 of this bill, although the current law provision applies only to a village president and trustees and the new language applies more broadly, to all elective officers.

Subdivision 3. restates the last sentence of repealed s. 62.09 (6) (b).

Note that periodic increases in compensation for an elective office may be provided, as long as any increase is determined by the stated deadline. In addition, under s.

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66.0507, stats., salary may include an automatic adjustment for changes in cost of living (except city council members). See SECTION 27 of this bill.

1 **SECTION 18.** 62.09 (6) (b) of the statutes is repealed.

NOTE: Repeals the following statutory language: “Whenever such salaries are to be changed or established the council shall, not later than the first regular meeting in February, fix the amount of salary of each officer entitled to a salary who may be elected or appointed for a definite term during the ensuing year. In cities newly incorporated, the compensation of the first officers may be fixed during their terms.”.

The last sentence of this repealed provision is replaced by a similar provision, s. 62.09 (6) (am) 3., stats., created by SECTION 17 of this bill. The repealed language has been characterized as confusing and there is no counterpart or corresponding provision that applies to villages.

2 **SECTION 19.** 62.09 (11) (g) of the statutes is repealed.

NOTE: Repeals the following directive to the city clerk: “By March 15 the clerk shall publish as a class 1 notice, under ch. 985, a statement showing the receipts and disbursements as to each fund during the preceding fiscal year. This shall not apply to cities operating under s. 64.34.”. There is no corresponding requirement imposed on village clerks. (The provision can be traced to 1889: see SEC. 41, ch. 236, laws of 1889; s. 925h, sub. 41, 1889, stats.)

In addition to the above requirement imposed on city clerks, both cities and villages must annually publish a budget summary which, among other things, must include for both the current budget and the proposed budget “revenue and expenditure totals, by fund, for each governmental fund, and for each proprietary fund and the revenue and expenditure totals for all funds combined”. Section 65.90 (3) (b) 6., stats. Thus, the repealed provision overlaps the requirements of s. 65.90, with the exception of the timing of the publication.

Based on a sampling of cities, it appears that the publication requirement of s. 62.09 (11) (g) may typically be met by publication of the budget summary information under s. 65.90 (3) (b). This may reflect not only the redundancy of 2 publications but also the difficulty of obtaining audited expenditures for the prior year in time to meet the March 15 publication deadline under s. 62.09 (11) (g).

Because s. 62.09 (11) (g) overlaps other requirements and because there is no policy rationale for it to apply to cities and not villages, the provision is repealed.

3 **SECTION 20.** 62.13 (1) of the statutes is amended to read:

4 62.13 (1) COMMISSIONERS. Except as provided in subs. (2g), (2m) and, (2s), and
5 (8) (b) each city shall have a board of police and fire commissioners consisting of 5
6 citizens, 3 of whom shall constitute a quorum. The mayor shall annually, between
7 the last Monday of April and the first Monday of May, appoint in writing to be filed
8 with the secretary of the board, one member for a term of 5 years. No appointment

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1 shall be made which will result in more than 3 members of the board belonging to
2 the same political party. The board shall keep a record of its proceedings.

NOTE: See SECTIONS 14, 21, and 23 and the NOTES thereto.

3 **SECTION 21.** 62.13 (2g) of the statutes is created to read:

4 **62.13 (2g) CONTRACTING FOR POLICE PROTECTIVE SERVICES.** A city may enter into
5 a contract for police protective services with a village, a town, another city, or a
6 county. A city that contracts for police protective services shall pay the full cost of
7 services provided. A city that contracts for all of its police protective services under
8 this subsection and for all of its fire protective services under sub. (8) (b) is not
9 required to have a board of police and fire commissioners. A city that contracts for
10 all of its police protective services under this subsection, but not for all of its fire
11 protective services under sub. (8) (b), shall have a board of police and fire
12 commissioners under this section, but the board may only address issues related to
13 the fire department. A city may not contract with a county to provide all of the city's
14 police protective services under this subsection.

NOTE: This SECTION allows a city, like a village, to contract for police protective services with a village, a town, another city, or a county. The city must pay the full cost of services provided. If a city contracts under this provision with another city, village, or town for all of its police protective services, the city is not required to have a board of police and fire commissioners, but it must retain such a board if it continues to provide fire protective services. (Note that the authority of a city to contract with a county for all of its police protective services is controlled by current s. 62.13 (2s), stats.) Section 66.0301 (2), stats., also allows a municipality to contract with another municipality for services; this authority is to be liberally construed.

15 **SECTION 22.** 62.13 (8) of the statutes is renumbered 62.13 (8) (a).

NOTE: See SECTIONS 14, 21, and 23 the NOTES thereto.

16 **SECTION 23.** 62.13 (8) (b) of the statutes is created to read:

17 **62.13 (8) (b)** A city may enter into a contract for fire protective services with
18 a village, a town, or another city. A city that contracts for fire protective services shall
19 pay the full cost of services provided. A city that contracts for all of its fire protective

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1 services under this paragraph and for all of its police protective services under sub.
2 (2g) is not required to have a board of police and fire commissioners. A city that
3 contracts for all of its fire protective services under this paragraph, but not for all of
4 its police protective services under sub. (2g), shall have a board of police and fire
5 commissioners under this section, but the board may address only issues related to
6 the police department.

NOTE: This SECTION allows a city, like a village, to contract for the provision of fire protective services with a village, a town, or another city. The city must pay the full cost of services provided. If a city contracts for all of its police and fire protective services, it is not required to have a board of police and fire commissioners, but it must retain such a board if it continues to provide police protective services. Section 66.0301 (2), stats., also allows a municipality to contract with another municipality for services; this authority is to be liberally construed.

7 **SECTION 24.** 62.15 (5) of the statutes is repealed and recreated to read:

8 **62.15 (5) REJECTION OF BIDS; PERFORMANCE OF WORK BY CITY.** (a) Unless the power
9 has been expressly waived, the city may reject any bid. The board of public works
10 may reject any bid, if, in its opinion, any combination has been entered into to
11 prevent free competition.

12 (b) If the council finds that any of the bids are fraudulent, collusive, excessive,
13 or against the best interests of the city, it may, by resolution adopted by two-thirds
14 of its members, reject any bids received and order the work done directly by the city
15 under the supervision of the board of public works.

16 (c) If a city performs any work under par. (b), it may secure all necessary
17 materials to perform the work.

18 (d) The city shall collect the cost of all work performed under par. (b) in the same
19 manner as if done by any other person under contract with the city and may, subject
20 to par. (e), defray such costs by special assessment.

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1 (e) If the city imposes a special assessment under par. (d), it may not assess
2 against any property an amount that is greater than would have been assessed
3 against the property had the lowest bid received under this section been accepted.
4 The city shall bear any costs in excess of that bid.

NOTE: Section 62.15 (5), stats., provides that when a city directly performs public construction because it has been determined that bids are fraudulent, collusive, excessive, or not in the best interests of the city, the provisions of s. 61.54 (2) and (3), stats., will apply. The latter statute provides that in a similar situation a village: (1) may purchase all necessary and proper tools and equipment; (2) may levy special assessments up to the amount of the lowest rejected bid; and (3) must bear any costs in excess of the lowest rejected bid. Because SECTION 10 of this bill in part repeals s. 61.54, this SECTION incorporates the substance of s. 61.54 (2) and (3) in s. 62.15 (5).

5 **SECTION 25.** 66.0133 (3) of the statutes is amended to read:

6 66.0133 (3) NOTICE. Notwithstanding ss. 27.065 (5) (a), 30.32, 38.18, 43.17 (9)
7 (a), 59.52 (29) (a), 59.70 (11), 60.47 (2) to (4), 60.77 (6) (a), ~~61.55, 61.56~~ 61.54, 61.57,
8 62.15 (1), 62.155, 66.0131 (2), 66.0923 (10), 66.0925 (10), 66.0927 (11), 66.1333 (5) (a)
9 2., 200.11 (5) (d) and 200.47 (2), before entering into a performance contract under
10 this section, a local governmental unit shall solicit bids or competitive sealed
11 proposals from qualified providers. A local governmental unit may only enter into
12 a performance contract if the contract is awarded by the governing body of the local
13 governmental unit. The governing body shall give at least 10 days' notice of the
14 meeting at which the body intends to award a performance contract. The notice shall
15 include a statement of the intent of the governing body to award the performance
16 contract, the names of all potential parties to the proposed performance contract, and
17 a description of the energy conservation and facility improvement measures
18 included in the performance contract. At the meeting, the governing body shall
19 review and evaluate the bids or proposals submitted by all qualified providers and
20 may award the performance contract to the qualified provider that best meets the
21 needs of the local governmental unit, which need not be the lowest cost provider.

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NOTE: Revises a cross-reference to reflect the treatment of ss. 61.54 to 61.56, stats., by this bill.

1 **SECTION 26.** 66.0505 (3) (a) 1. of the statutes is amended to read:

2 66.0505 (3) (a) 1. Notwithstanding the provisions of s. 59.10 (1) (c), (2) (c), (3)
3 (f) to (j), 60.32, 61.193, 61.32, or 62.09 (6), an elective officer may send written
4 notification to the clerk and treasurer of the political subdivision on whose governing
5 body he or she serves that he or she wishes to refuse to accept the salary that he or
6 she is otherwise entitled to receive.

NOTE: Revises a cross-reference to reflect the treatment of ss. 61.193 and 61.32, stats., by this bill.

7 **SECTION 27.** 66.0507 of the statutes is amended to read:

8 **66.0507 Automatic salary schedules.** Whenever the governing body of any
9 city, village, or town enacts by ordinance adopts a salary schedule for some or all
10 employees and officers of the city, village or town, other than members of the city
11 council or village or town board, the salary schedule may include an automatic
12 adjustment for some or all of the personnel in conformity with fluctuations upwards
13 and downwards in the cost of living, notwithstanding ss. 60.32, 61.193, 61.32, 62.09
14 (6) and 62.13 (7).

NOTE: Revises a cross-reference to reflect the treatment of ss. 61.193 and 61.32, stats., by this bill.

15 **SECTION 28.** 66.0901 (2) of the statutes is amended to read:

16 66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter
17 into a public contract may, before delivering any form for bid proposals, plans, and
18 specifications to any person, except suppliers, and others not intending to submit a
19 direct bid, require the person to submit a full and complete statement sworn to before
20 an officer authorized by law to administer oaths. The statement shall consist of
21 information relating to financial ability, equipment, experience in the work

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1 prescribed in the public contract, and other matters that the municipality requires
2 for the protection and welfare of the public in the performance of a public contract.
3 The statement shall be in writing on a standard form of a questionnaire that is
4 adopted and furnished by the municipality. The statement shall be filed in the
5 manner and place designated by the municipality. The statement shall not be
6 received less than 5 days prior to the time set for the opening of bids. The contents
7 of the statement shall be confidential and may not be disclosed except upon the
8 written order of the person furnishing the statement, for necessary use by the public
9 body in qualifying the person, or in cases of actions against, or by, the person or
10 municipality. The governing body of the municipality or the committee, board, or
11 employee charged with, or delegated by the governing body with, the duty of
12 receiving bids and awarding contracts shall properly evaluate the statement and
13 shall find the maker of the statement either qualified or unqualified. ~~This subsection~~
14 ~~does not apply to a 1st class city.~~

NOTE: Current s. 66.0901 (2), stats., authorizes a municipality intending to execute a public contract to require prospective bidders to provide information relating to financial ability, equipment, work experience, in any other matters required by the municipality for the protection of the public in the performance of the contract. Based on the information, the municipality determines whether the prospective bidder is qualified. If a municipality uses the prequalification procedure, s. 66.0901 (3), stats., prohibits a bid from being received from any person who has not provided the required information on qualifications.

The authority under s. 66.0901 (2) does not apply to a 1st class city (presently only the city of Milwaukee). The 1st class city exemption was added to s. 66.0901 (2) by ch. 474, laws of 1955. At that time, the bidder prequalification procedure was a requirement, not an option. The procedure was made optional by ch. 346, laws of 1957, but the 1st class city exemption was not removed.

Because the optional prequalification authority applies to all cities other than the city of Milwaukee and to all villages, there appears to be no reason to continue to deny the city of Milwaukee the option of using the procedure. The city of Milwaukee has indicated it desires the exemption to be removed.

15 **SECTION 29.** 66.1103 (11) (a) of the statutes is amended to read:

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1 66.1103 (11) (a) With respect to the enforcement of any construction lien or
2 other lien under ch. 779 arising out of the construction of projects financed under this
3 section, no deficiency judgment or judgment for costs may be entered against the
4 municipality. Projects financed under this section are not public works, public
5 improvements or public construction within the meaning of ss. 59.52 (29), 60.47,
6 ~~61.55~~ 61.54, 62.15, 779.14, 779.15 and 779.155 and contracts for the construction of
7 the projects are not public contracts within the meaning of ss. 59.52 (29) and 66.0901
8 unless factors including municipal control over the costs, construction and operation
9 of the project and the beneficial ownership of the project warrant the conclusion that
10 they are public contracts.

NOTE: Revises a cross-reference to reflect the treatment of ss. 61.54 to 61.56, stats.,
by this bill.

11 **SECTION 30.** 86.25 (4) of the statutes is amended to read:

12 86.25 (4) Sections ~~61.55~~ 61.54, 62.15 and 66.0901 shall not apply to funds
13 provided or agreements made pursuant to this section.

NOTE: Revises a cross-reference to reflect the treatment of ss. 61.54 and 61.55,
stats., by this bill.

14 **SECTION 31.** 893.81 of the statutes is repealed.

NOTE: Repeals a provision providing that counties and cities are strictly liable for injury to person or property caused by a mob or riot within their respective jurisdictions, subject to contributory negligence principles. An insurer who pays for riot or mob damage has no subrogation claim under this section against a county or city. See, generally, *Interstate Fire and Casualty Company v. Milwaukee*, 45 Wis. 2d 331, 173 N.W. 2d 187 (1970); and *American Insurance Company v. Milwaukee*, 51 Wis. 2d 346, 187 N.W. 2d 142 (1971). There is no corresponding liability on the part of villages for mob or riot damage. (However, under the liability and immunity principles under s. 893.80, stats., the village would be liable for a negligent ministerial act on its part in connection with a mob or riot.)

The origin of s. 893.81, stats., can be traced to ch. 21, laws of 1863. While the original law differed from the current statute in several respects, e.g., it only applied to property damage, not personal injury, from its inception it extended liability only to counties and cities. It does not appear that villages have ever been made liable under the provision.

Because there appears to be no current policy rationale for treating cities and villages differently under this statute and because common law municipal government immunity was abrogated by the supreme court in *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d. 618 (1962) and municipal liability was then comprehensively addressed

