



## 1997 ASSEMBLY BILL 681

December 23, 1997 - Introduced by Representatives BALDWIN, WOOD, LINTON, RYBA, PLOUFF, J. LEHMAN, BOYLE, RILEY, BOCK, HANSON, R. YOUNG, BLACK and REYNOLDS, cosponsored by Senators SHIBILSKI, WINEKE, BURKE, GEORGE, BRESKE, RISSER and CLAUSING. Referred to Committee on Ways and Means.

1     **AN ACT to repeal** 111.70 (1) (dm), 111.70 (1) (nc), 111.70 (4) (cm) 5s., 111.70 (4)  
2           (cm) 7., 111.70 (4) (cm) 7g., 111.70 (4) (cm) 8m. b., 111.70 (4) (cm) 8p. and 111.70  
3           (4) (cn); **to renumber and amend** 111.70 (4) (cm) 7r.; **to consolidate,**  
4           **renumber and amend** 111.70 (4) (cm) 8m. a. and c.; and **to amend** 111.70 (1)  
5           (b), 111.70 (4) (cm) 5., 111.70 (4) (cm) 6. a., 111.70 (4) (cm) 6. am., 111.70 (4) (cm)  
6           8s. and 111.70 (4) (d) 2. a. of the statutes; **relating to:** dispute settlement  
7           procedures in local government employment other than law enforcement and  
8           fire fighting employment.

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

This bill does all of the following:

1. Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin employment relations commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final and binding arbitration with respect to any dispute relating to wages, hours and conditions of employment. If WERC determines, after investigation, that an impasse exists and that arbitration is required, WERC must

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submit to the parties a list of 7 arbitrators, from which the parties alternately strike names until one arbitrator is left. As an alternative to a single arbitrator, WERC may provide for an arbitration panel that consists of one person selected by each party and one person selected by WERC. As a further alternative, WERC may also provide a process that allows for a random selection of a single arbitrator from a list of 7 names submitted by WERC. Under current law, an arbitrator or arbitration panel must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

Under current law, however, this process does not apply to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer. Under current law, a qualified economic offer consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to generally provide, with certain exceptions, for an annual average salary increase having a cost to the employer at least equal to 2.1% of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit.

This bill eliminates the qualified economic offer exception from the compulsory, final and binding arbitration process.

2. Current law provides that in reaching a decision, the arbitrator or arbitration panel must give weight to many factors, including the lawful authority of the municipal employer, the stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed agreement, comparison of wages, hours and conditions of employment with those of other public and private sector employees, the cost of living, the overall compensation and benefits that the employees currently receive and other similar factors. But, under current law, the arbitrator is required to give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer.

This bill eliminates the authorization for the arbitrator or arbitration panel to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

3. Under current law, every collective bargaining agreement covering school district professional employees must expire on June 30 of the odd-numbered years. For all other local government employees, the term of a collective bargaining agreement must be 2 years, except for an initial agreement and except as the parties otherwise agree, and in no case may exceed 3 years. This bill treats the terms of collective bargaining agreements for school district professional employees the same as those of other local government employees.

4. Finally, under current law, school district professional employees are required to be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

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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.** 111.70 (1) (b) of the statutes is amended to read:

2           111.70 (1) (b) “Collective bargaining unit” means a unit ~~consisting of municipal~~  
3 ~~employees who are school district professional employees or of municipal employees who~~  
4 ~~are not school district professional employees~~ that is determined by the commission  
5 to be appropriate for the purpose of collective bargaining.

6           **SECTION 2.** 111.70 (1) (dm) of the statutes is repealed.

7           **SECTION 3.** 111.70 (1) (nc) of the statutes is repealed.

8           **SECTION 4.** 111.70 (4) (cm) 5. of the statutes is amended to read:

9           111.70 (4) (cm) 5. ‘Voluntary impasse resolution procedures.’ In addition to the  
10 other impasse resolution procedures provided in this paragraph, a municipal  
11 employer and labor organization may at any time, as a permissive subject of  
12 bargaining, agree in writing to a dispute settlement procedure, including  
13 authorization for a strike by municipal employees or binding interest arbitration,  
14 which is acceptable to the parties for resolving an impasse over terms of any  
15 collective bargaining agreement under this subchapter. A copy of such agreement  
16 shall be filed by the parties with the commission. If the parties agree to any form of  
17 binding interest arbitration, the arbitrator shall give weight to the factors  
18 enumerated under ~~subds. subd. 7., 7g. and 7r.~~

19           **SECTION 5.** 111.70 (4) (cm) 5s. of the statutes is repealed.

20           **SECTION 6.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

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1           111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute ~~relating to one~~  
2 ~~or more issues, qualifying for interest arbitration under subd. 5s. in a collective~~  
3 ~~bargaining unit to which subd. 5s. applies~~, has not been settled after a reasonable  
4 period of negotiation and after mediation by the commission under subd. 3. and other  
5 settlement procedures, if any, established by the parties have been exhausted, and  
6 the parties are deadlocked with respect to any dispute between them over wages,  
7 hours and conditions of employment to be included in a new collective bargaining  
8 agreement, either party, or the parties jointly, may petition the commission, in  
9 writing, to initiate compulsory, final and binding arbitration, as provided in this  
10 paragraph. At the time the petition is filed, the petitioning party shall submit in  
11 writing to the other party and the commission its preliminary final offer containing  
12 its latest proposals on all issues in dispute. Within 14 calendar days after the date  
13 of that submission, the other party shall submit in writing its preliminary final offer  
14 on all disputed issues to the petitioning party and the commission. If a petition is  
15 filed jointly, both parties shall exchange their preliminary final offers in writing and  
16 submit copies to the commission at the time the petition is filed.

17           **SECTION 7.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

18           111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the  
19 commission shall make an investigation, with or without a formal hearing, to  
20 determine whether arbitration should be commenced. If in determining whether an  
21 impasse exists the commission finds that the procedures set forth in this paragraph  
22 have not been complied with and such compliance would tend to result in a  
23 settlement, it may order such compliance before ordering arbitration. The validity  
24 of any arbitration award or collective bargaining agreement shall not be affected by  
25 failure to comply with such procedures. Prior to the close of the investigation each

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1 party shall submit in writing to the commission its single final offer containing its  
2 final proposals on all issues in dispute that are subject to interest arbitration under  
3 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~  
4 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall  
5 close the investigation based on the last written position of the party. ~~The municipal~~  
6 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~  
7 ~~of the investigation.~~ Such final offers may include only mandatory subjects of  
8 bargaining, except that a permissive subject of bargaining may be included by a  
9 party if the other party does not object and shall then be treated as a mandatory  
10 subject. No later than such time, the parties shall also submit to the commission a  
11 stipulation, in writing, with respect to all matters which are agreed upon for  
12 inclusion in the new or amended collective bargaining agreement. The commission,  
13 after receiving a report from its investigator and determining that arbitration should  
14 be commenced, shall issue an order requiring arbitration and immediately submit  
15 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall  
16 alternately strike names until a single name is left, who shall be appointed as  
17 arbitrator. The petitioning party shall notify the commission in writing of the  
18 identity of the arbitrator selected. Upon receipt of such notice, the commission shall  
19 formally appoint the arbitrator and submit to him or her the final offers of the  
20 parties. The final offers shall be considered public documents and shall be available  
21 from the commission. In lieu of a single arbitrator and upon request of both parties,  
22 the commission shall appoint a tripartite arbitration panel consisting of one member  
23 selected by each of the parties and a neutral person designated by the commission  
24 who shall serve as a chairperson. An arbitration panel has the same powers and  
25 duties as provided in this section for any other appointed arbitrator, and all

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1 arbitration decisions by such panel shall be determined by majority vote. In lieu of  
2 selection of the arbitrator by the parties and upon request of both parties, the  
3 commission shall establish a procedure for randomly selecting names of arbitrators.  
4 Under the procedure, the commission shall submit a list of 7 arbitrators to the  
5 parties. Each party shall strike one name from the list. From the remaining 5  
6 names, the commission shall randomly appoint an arbitrator. Unless both parties  
7 to an arbitration proceeding otherwise agree in writing, every individual whose  
8 name is submitted by the commission for appointment as an arbitrator shall be a  
9 resident of this state at the time of submission and every individual who is  
10 designated as an arbitration panel chairperson shall be a resident of this state at the  
11 time of designation.

12 **SECTION 8.** 111.70 (4) (cm) 7. of the statutes is repealed.

13 **SECTION 9.** 111.70 (4) (cm) 7g. of the statutes is repealed.

14 **SECTION 10.** 111.70 (4) (cm) 7r. of the statutes is renumbered 111.70 (4) (cm) 7.,  
15 and 111.70 (4) (cm) 7. (intro.), as renumbered, is amended to read:

16 111.70 (4) (cm) 7. (title) ~~‘Other factors~~ Factors considered.’ (intro.) In making  
17 any decision under the arbitration procedures authorized by this paragraph, the  
18 arbitrator or arbitration panel shall also give weight to the following factors:

19 **SECTION 11.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,  
20 renumbered 111.70 (4) (cm) 8m. and amended to read:

21 111.70 (4) (cm) 8m. ‘Term of agreement; reopening of negotiations.’ Except for  
22 the initial collective bargaining agreement between the parties and except as the  
23 parties otherwise agree, every collective bargaining agreement covering municipal  
24 employes subject to this paragraph ~~other than school district professional employes~~  
25 shall be for a term of 2 years.—No, but in no case may a collective bargaining

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1 agreement for any collective bargaining unit consisting of municipal employees  
2 ~~subject to this paragraph other than school district professional employees shall be~~  
3 for a term exceeding 3 years. e. No arbitration award may contain a provision for  
4 reopening of negotiations during the term of a collective bargaining agreement,  
5 unless both parties agree to such a provision. The requirement for agreement by both  
6 parties does not apply to a provision for reopening of negotiations with respect to any  
7 portion of an agreement that is declared invalid by a court or administrative agency  
8 or rendered invalid by the enactment of a law or promulgation of a federal regulation.

9 **SECTION 12.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

10 **SECTION 13.** 111.70 (4) (cm) 8p. of the statutes is repealed.

11 **SECTION 14.** 111.70 (4) (cm) 8s. of the statutes is amended to read:

12 111.70 (4) (cm) 8s. 'Forms for determining costs.' The commission shall  
13 prescribe forms for calculating the total increased cost to the municipal employer of  
14 compensation and fringe benefits provided to school district professional employees.  
15 The cost shall be determined based upon the total cost of compensation and fringe  
16 benefits provided to school district professional employees who are represented by a  
17 labor organization on the 90th day before expiration of any previous collective  
18 bargaining agreement between the parties, or who were so represented if the  
19 effective date is retroactive, or the 90th day prior to commencement of negotiations  
20 if there is no previous collective bargaining agreement between the parties, without  
21 regard to any change in the number, rank or qualifications of the school district  
22 professional employees. For purposes of such determinations, any cost increase that  
23 is incurred on any day other than the beginning of the 12-month period commencing  
24 with the effective date of the agreement or any succeeding 12-month period  
25 commencing on the anniversary of that effective date shall be calculated as if the cost

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1 increase were incurred as of the beginning of the 12-month period beginning on the  
2 effective date or anniversary of the effective date in which the cost increase is  
3 incurred. ~~In each collective bargaining unit to which subd. 5s. applies, the municipal~~  
4 ~~employer shall transmit to the commission and the labor organization a completed~~  
5 ~~form for calculating the total increased cost to the municipal employer of~~  
6 ~~compensation and fringe benefits provided to the school district professional~~  
7 ~~employees covered by the agreement as soon as possible after the effective date of the~~  
8 ~~agreement.~~

9 **SECTION 15.** 111.70 (4) (cn) of the statutes is repealed.

10 **SECTION 16.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

11 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective  
12 bargaining unit for the purpose of collective bargaining and shall whenever possible,  
13 unless otherwise required under this subchapter, avoid fragmentation by  
14 maintaining as few collective bargaining units as practicable in keeping with the size  
15 of the total municipal work force. In making such a determination, the commission  
16 may decide whether, in a particular case, the municipal employees in the same or  
17 several departments, divisions, institutions, crafts, professions or other  
18 occupational groupings constitute a collective bargaining unit. Before making its  
19 determination, the commission may provide an opportunity for the municipal  
20 employees concerned to determine, by secret ballot, whether or not they desire to be  
21 established as a separate collective bargaining unit. ~~The commission shall not~~  
22 ~~decide, however, that any group of municipal employees constitutes an appropriate~~  
23 ~~collective bargaining unit if the group includes both municipal employees who are~~  
24 ~~school district professional employees and municipal employees who are not school~~  
25 ~~district professional employees. The commission shall not decide, however, that any~~



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1 other group of municipal employes constitutes an appropriate collective bargaining  
2 unit if the group includes both professional employes and nonprofessional employes,  
3 unless a majority of the professional employes vote for inclusion in the unit. The  
4 commission shall not decide that any group of municipal employes constitutes an  
5 appropriate collective bargaining unit if the group includes both craft employes and  
6 noncraft employes unless a majority of the craft employes vote for inclusion in the  
7 unit. The commission shall place the professional employes who are assigned to  
8 perform any services at a charter school, as defined in s. 115.001 (1), in a separate  
9 collective bargaining unit from a unit that includes any other professional employes  
10 whenever at least 30% of those professional employes request an election to be held  
11 to determine that issue and a majority of the professional employes at the charter  
12 school who cast votes in the election decide to be represented in a separate collective  
13 bargaining unit. Any vote taken under this subsection shall be by secret ballot.

**SECTION 17. Nonstatutory provisions.**

14  
15 (1) The employment relations commission may not accept any petition for  
16 arbitration filed under section 111.70 (4) (cm) 6. of the statutes, in any collective  
17 bargaining unit concerning a labor dispute about which the commission has, prior  
18 to the effective date of this subsection, already accepted a petition for arbitration  
19 filed under section 111.70 (4) (cm) 6. of the statutes.

**SECTION 18. Initial applicability.**

20  
21 (1) This act first applies to petitions for arbitration filed under section 111.70  
22 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this  
23 subsection.

24 (END)