



1997 SENATE BILL 405

January 15, 1998 - Introduced by COMMITTEE ON EDUCATION. Referred to
Committee on Education.

1 **AN ACT to repeal** 111.70 (1) (dm) and 111.70 (1) (nc); **to amend** 20.425 (1) (i),
2 111.70 (1) (a), 111.70 (3) (a) 7., 111.70 (3) (b) 6., 111.70 (4) (d) 2. a., 111.70 (4) (L),
3 111.70 (7m) (c) 3., 111.70 (7m) (e), 111.71 (2), 111.71 (4), 111.71 (5), 118.245 (3),
4 120.18 (1) (gm) and 904.085 (2) (a); **to repeal and recreate** 111.70 (4) (cm); and
5 **to create** 15.587, 20.923 (6) (bc), 111.70 (1) (cm), 111.70 (1) (hm), 111.71 (3),
6 111.71 (5m) and 111.71 (5r) of the statutes; **relating to:** dispute resolution
7 procedures under the municipal employment relations act, requiring the
8 exercise of rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

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 submit to the parties a list of 7 arbitrators, from which the parties alternately strike

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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 (QEO). Under current law, a QEO 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.

Current law also 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 creates a new dispute resolution process in local government employment other than law enforcement and fire fighting employment, as well as abolishes the QEO. Under the bill, the parties are required to meet for the purpose of submitting initial collective bargaining proposals. No later than 30 days after this meeting, the parties must jointly determine whether to use a method of dispute resolution called "consensus bargaining" to resolve their dispute. The bill defines "consensus bargaining" as a collaborative problem-solving system of collective bargaining that emphasizes the mutual interests of the parties involved in a labor dispute. If the parties are unable to agree to use consensus bargaining to resolve the dispute, they parties must continue to negotiate until such time that WERC determines that the parties have reached an impasse. No later than 30 days after such a determination, the parties must choose among the following procedures to resolve their dispute:

1. *Voluntary impasse resolution procedures.* Under this procedure, the parties may agree to any kind of dispute resolution procedure.

2. *Fact-finding.* Under this procedure, WERC appoints a fact finder or a fact-finding panel to make findings and recommendations to serve on the parties. In making findings and recommendations, the fact finder or fact-finding panel must take into consideration the principles vital to the public interest in efficient and

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economical governmental administration. Under this procedure, the parties have 30 days from receipt of the findings and recommendations to notify each other as to the party's acceptance or rejection of any of the recommendations. If the parties are unable to agree on the recommendations, the parties continue to negotiate.

3. *Strikes and lockouts.* Under this procedure, the parties may jointly agree to settle the dispute by engaging in strikes and lockouts. If the parties elect this procedure, the labor organization must give WERC and the employer 10 days' notice prior to engaging in a strike.

4. *Interest arbitration.* This procedure is essentially the same as in current law, except that WERC does not appoint an investigator to determine if the parties have reached a bargaining impasse. Instead, the parties submit their final offers, which must be generally limited to no more than 5 issues that are mandatory subjects of bargaining, and the arbitrator or arbitration panel adopts one of the party's final offers.

5. *Dispute resolution judicial process.* Under this procedure, the parties submit their final offers to the WERC. Through a selection process in which the parties have the authority to request a substitution, WERC appoints a dispute resolution judge to preside over a dispute resolution tripartite panel. The other members of the panel consist of an advocate appointed by one party and an advocate appointed by the other party. The tripartite panel initially acts as a fact-finding panel and is required, after hearings, to serve findings of fact and recommendations on the parties. In making findings and recommendations, the panel must take into consideration the principles vital to the public interest in efficient and economical governmental administration. If the parties have not resolved the dispute within 30 days after service of the panel's findings and recommendations, the dispute resolution judge reconvenes the panel and, by a majority vote of the panel, adopts the final offer of one of the parties.

Under the bill, if the parties cannot agree to a dispute resolution procedure, they are required to use the dispute resolution judicial process. As mentioned, this process is presided over by a dispute resolution judge. The dispute resolution judge is one of 12 dispute resolution judges that, under the bill, the governor is required to nominate, and with the advice and consent of the senate appoint, for 4-year terms. The dispute resolution judges are state officers, appointed in the unclassified service of the state and have their compensation established by WERC. The bill also creates a council on municipal collective bargaining which is charged with preparing a list of names from which the governor is to nominate dispute resolution judges. This council is also required to advise WERC on the operation of the municipal employment relations act and to continuously review the operation of the collective bargaining law as it affects municipal employment other than law enforcement and fire fighting employment. The chairperson of the WERC is to chair the council and is to appoint 5 representatives of municipal employers and 5 representatives of municipal employees bargaining under the municipal employment relations act. These members are to serve 6-year terms.

Finally, under the bill, new arbitration factors are created. An arbitrator, arbitration panel or dispute resolution tripartite panel must give weight to

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comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other municipal employes of the municipal employer and other employes in public and private employment who perform similar services in the same community and comparable communities; and such other factors that are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through collective bargaining in the public service or in private employment. However, an arbitrator, arbitration panel or dispute resolution tripartite panel must give greater weight to economic conditions in the jurisdiction of the municipal employer. Finally, an arbitrator, arbitration panel or dispute resolution tripartite panel must give greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

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

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

1 **SECTION 1.** 15.587 of the statutes is created to read:

2 **15.587 Same; councils. (1)** COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING.

3 There is created in the employment relations commission a council on municipal
4 collective bargaining. The council shall consist of the chairperson of the commission,
5 who shall serve as the nonvoting chairperson of the council, and 5 representatives
6 of municipal employers and 5 representatives of municipal employes bargaining
7 under subch. IV of ch. 111 appointed by the chairperson of the commission to serve
8 for 6-year terms. In making appointments to the council, the chairperson shall give
9 due consideration to the necessity of achieving balanced representation of municipal
10 employer interests, and to the diversity of municipal employe interests among
11 municipal employes who are included in collective bargaining units subject to the
12 procedures under s. 111.70 (4) (cm).

13 **SECTION 2.** 20.425 (1) (i) of the statutes is amended to read:

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1 20.425 (1) (i) *Fees*. The amounts in the schedule for the performance of impasse
2 determination, fact-finding, mediation and, arbitration and dispute resolution
3 judicial functions and for the provision of copies of transcripts. All moneys received
4 under ss. 111.09 (1) and (2), 111.71 (1) and (2) and 111.94 (1) and (2), except as
5 otherwise provided in those sections, shall be credited to this appropriation account.

6 **SECTION 3.** 20.923 (6) (bc) of the statutes is created to read:

7 20.923 (6) (bc) Employment relations commission: dispute resolution judges.

8 **SECTION 4.** 111.70 (1) (a) of the statutes, as affected by 1997 Wisconsin Act 27,
9 is amended to read:

10 111.70 (1) (a) "Collective bargaining" means the performance of the mutual
11 obligation of a municipal employer, through its officers and agents, and the
12 representative of its municipal employes in a collective bargaining unit, to meet and
13 confer at reasonable times, in good faith, with the intention of reaching an
14 agreement, or to resolve questions arising under such an agreement, with respect to
15 wages, hours and conditions of employment, and with respect to a requirement of the
16 municipal employer for a municipal employe to perform law enforcement and fire
17 fighting services under s. 61.66, except as provided in sub. (4) (m) and s. 40.81 (3) and
18 except that a municipal employer shall not meet and confer with respect to any
19 proposal to diminish or abridge the rights guaranteed to municipal employes under
20 ch. 164. The duty to bargain, however, does not compel either party to agree to a
21 proposal or require the making of a concession. Collective bargaining includes the
22 reduction of any agreement reached to a written and signed document. The
23 municipal employer shall not be required to bargain on subjects reserved to
24 management and direction of the governmental unit except insofar as the manner
25 of exercise of such functions affects the wages, hours and conditions of employment

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1 of the municipal employes in a collective bargaining unit, but the municipal
2 employer shall be required to discuss any proposal primarily related to the operating
3 efficiency and effectiveness of the governmental unit. Any such proposal that the
4 municipal employer is required to discuss shall not be considered a mandatory
5 subject of collective bargaining for the purposes of sub. (4) (cm), unless the proposal
6 affects the wages, hours and conditions of employment of the municipal employes in
7 a collective bargaining unit. In creating this subchapter the legislature recognizes
8 that the municipal employer must exercise its powers and responsibilities to act for
9 the government and good order of the jurisdiction which it serves, its commercial
10 benefit and the health, safety and welfare of the public to assure orderly operations
11 and functions within its jurisdiction, subject to those rights secured to municipal
12 employes by the constitutions of this state and of the United States and by this
13 subchapter.

14 **SECTION 5.** 111.70 (1) (cm) of the statutes is created to read:

15 111.70 (1) (cm) "Consensus bargaining" means a collaborative problem-solving
16 system of collective bargaining that emphasizes the mutual interests of the parties
17 involved in a labor dispute.

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

19 **SECTION 7.** 111.70 (1) (hm) of the statutes is created to read:

20 111.70 (1) (hm) "Lockout" means the barring of any employe from his or her
21 employment by a municipal employer as a part of a labor dispute, which is not
22 directly subsequent to a strike or other job action of a labor organization or group of
23 employes of the municipal employer, or which continues or occurs after the
24 termination of a strike or other job action of a labor organization or group of employes
25 of the municipal employer.

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1 **SECTION 8.** 111.70 (1) (nc) of the statutes is repealed.

2 **SECTION 9.** 111.70 (3) (a) 7. of the statutes is amended to read:

3 111.70 (3) (a) 7. To refuse or otherwise fail to implement an arbitration decision
4 or dispute resolution judicial decision lawfully made under sub. (4) (cm).

5 **SECTION 10.** 111.70 (3) (b) 6. of the statutes is amended to read:

6 111.70 (3) (b) 6. To refuse or otherwise fail to implement an arbitration decision
7 or dispute resolution judicial decision lawfully made under sub. (4) (cm).

8 **SECTION 11.** 111.70 (4) (cm) of the statutes is repealed and recreated to read:

9 111.70 (4) (cm) *Methods for peaceful settlement of disputes; other personnel.* 1.
10 'Notice of commencement of contract negotiations.' For the purpose of advising the
11 commission of the commencement of contract negotiations, whenever either party
12 requests the other to reopen negotiations under a binding collective bargaining
13 agreement, or the parties otherwise commence negotiations if no such agreement
14 exists, the party requesting negotiations shall immediately notify the commission in
15 writing. Upon failure of the requesting party to provide such notice, the other party
16 may so notify the commission. The notice shall specify the expiration date of the
17 existing collective bargaining agreement, if any, and shall set forth any additional
18 information the commission may require on a form provided by the commission.

19 2. 'Presentation of initial proposals; open meetings.' The parties shall meet for
20 the purpose of submitting initial collective bargaining proposals. The meetings
21 between parties to a collective bargaining agreement or proposed collective
22 bargaining agreement under this subchapter which are held for the purpose of
23 presenting initial collective bargaining proposals, along with supporting rationale,
24 shall be open to the public. Each party shall submit its initial collective bargaining
25 proposals to the other party in writing.

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1 3. ‘Grievance arbitration.’ Parties to a dispute pertaining to the meaning or
2 application of the terms of a written collective bargaining agreement may agree in
3 writing to have the commission or any other appropriate agency serve as arbitrator
4 or may designate any other competent, impartial and disinterested person to so
5 serve.

6 4. ‘Mediation.’ The commission or its designee shall function as mediator in
7 labor disputes involving municipal employees upon request of one or both of the
8 parties, or upon initiation of the commission. The function of the mediator shall be
9 to encourage voluntary settlement by the parties. No mediator has the power of
10 compulsion.

11 5. ‘Determination of dispute resolution procedures.’ a. No later than 30 days
12 after the initial meeting conducted under subd. 2., the parties shall jointly determine
13 whether to use consensus bargaining under subd. 6. to settle any dispute over wages,
14 hours and conditions of employment that are to be included in a new collective
15 bargaining agreement. If the parties are unable to agree to use consensus bargaining
16 under subd. 6. to settle the dispute, the parties shall continue to negotiate until such
17 time that the commission determines that an impasse exists between the parties.
18 The commission may only determine that an impasse exists upon the written request
19 of one or both of the parties. No later than 30 days after the commission determines
20 that an impasse exists, the parties shall jointly decide which dispute resolution
21 procedure to use to settle the dispute. The parties may select only from the voluntary
22 impasse resolution procedures under subd. 7., fact-finding under subd. 8., strikes
23 and lockouts under subd. 9., interest arbitration under subd. 10. and the dispute
24 resolution judicial process under subd. 11.

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1 b. After selecting a dispute resolution procedure under subd. 5. a., the parties
2 shall jointly notify the commission in writing of the procedure they have selected.
3 If the parties are unable to agree on which procedure to use to settle the dispute
4 before the 30th day after the commission has determined that an impasse exists, the
5 parties shall use the dispute resolution judicial process under subd. 11.

6 6. 'Consensus bargaining.' a. If the parties select consensus bargaining as the
7 dispute resolution procedure to settle a dispute over wages, hours and conditions of
8 employment that are to be included in a new collective bargaining agreement, the
9 commission shall offer to provide training in consensus bargaining methods. If after
10 a reasonable period of time the parties are unable to reach agreement regarding the
11 dispute using consensus bargaining, either party, or the parties jointly, may petition
12 the commission in writing to determine whether an impasse exists. If the
13 commission determines that an impasse exists, the parties shall jointly select a
14 different dispute resolution procedure specified in subd. 5. a. no later than 30 days
15 after the commission has determined that an impasse exists. If the parties are
16 unable to to reach agreement as to which dispute resolution procedure they shall use
17 to settle the dispute, the parties shall use the dispute resolution judicial process
18 under subd. 11.

19 b. If the parties, using consensus bargaining, settle their dispute over wages,
20 hours and conditions of employment that are to be included in a new collective
21 bargaining agreement, the commission shall reimburse the parties, from the
22 appropriation account under s. 20.425 (1) (i), for the cost of all training fees and
23 expenses incurred by the parties in using consensus bargaining.

24 7. 'Voluntary impasse resolution procedures.' In addition to the other dispute
25 resolution procedures provided in this paragraph, the parties may, as a permissive

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1 subject of bargaining, agree in writing to a different dispute resolution procedure for
2 resolving an impasse over terms of any collective bargaining agreement under this
3 subchapter. The parties shall file a copy of any such agreement with the commission.
4 If the parties agree to any form of binding interest arbitration, the arbitrator shall
5 give weight to the factors enumerated under subsds. 12., 12g. and 12r.

6 8. 'Fact-finding.' a. If the parties select fact-finding as the dispute resolution
7 procedure to settle a dispute over wages, hours and conditions of employment that
8 are to be included in a new collective bargaining agreement, the parties shall jointly
9 petition the commission in writing to initiate fact-finding and to make
10 recommendations to resolve the dispute.

11 b. Upon receipt of a petition to initiate fact-finding, the commission shall
12 appoint a qualified, disinterested person or 3-member panel, when jointly requested
13 by the parties, to function as a fact finder.

14 c. The fact finder may establish dates and place of hearings and shall conduct
15 the hearings under rules established by the commission, except that all hearings
16 shall be held no later than 60 days after the fact finder's appointment. Upon request,
17 the commission shall issue subpoenas for hearings conducted by the fact finder. The
18 fact finder may administer oaths. Upon completion of the hearings, but not later
19 than 40 days after completion of the hearings, the fact finder shall make written
20 findings of fact and recommendations for solution of the dispute and shall serve the
21 findings and recommendations on the parties and the commission. In making
22 findings and recommendations, the fact finder shall take into consideration among
23 other pertinent factors the principles vital to the public interest in efficient and
24 economical governmental administration.

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1 d. For any hearing conducted under this subdivision, the parties shall
2 exchange all exhibits, if any, at least 20 days before the scheduled date of the hearing.
3 Any party that objects to an exhibit offered by the other party shall file a written
4 objection with the fact finder at least 5 days before the scheduled date of the hearing.
5 For any hearing conducted under this subdivision, the parties shall exchange
6 hearing briefs and shall file 3 copies of the hearing briefs with the fact finder at least
7 5 days before the scheduled date of the hearing. The fact finder may not consider any
8 briefs that are not filed in accordance with this subd. 8. d.

9 e. Nothing herein shall be construed as prohibiting any fact finder from
10 endeavoring to mediate the dispute at any time prior to the issuance of the fact
11 finder's recommendations.

12 f. Within 30 days of the receipt of the fact finder's recommendations or within
13 a time period mutually agreed upon by the parties, each party shall notify the other
14 in writing as to the party's acceptance or rejection, in whole or in part, of the fact
15 finder's recommendations and, at the same time, send a copy of the notification to
16 the commission.

17 g. Cost of fact-finding proceedings shall be divided equally between the parties.
18 At the time the fact finder submits a statement of his or her costs to the parties, the
19 fact finder shall submit a copy of the statement to the commission.

20 9. 'Strikes and lockouts.' If the parties elect to engage in strikes and lockouts
21 as the dispute resolution procedure to settle a dispute over wages, hours and
22 conditions of employment that are to be included in a new collective bargaining
23 agreement, the labor organization, after giving 10 days' written advance notice to the
24 municipal employer and the commission, may strike.

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1 10. 'Interest arbitration.' a. If the parties select interest arbitration as the
2 dispute resolution procedure to settle a dispute over wages, hours and conditions of
3 employment that are to be included in a new collective bargaining agreement, each
4 party shall submit in writing to the commission its single final offer containing its
5 final proposals on all issues in dispute that are subject to interest arbitration under
6 this subdivision. Such final offers shall be limited to no more than 5 issues, unless
7 the parties are endeavoring to obtain an initial collective bargaining agreement, in
8 which case the final offers may include any number of issues. The final offers may
9 include only mandatory subjects of bargaining, except that a permissive subject of
10 bargaining may be included by a party if the other party does not object and shall
11 then be treated as a mandatory subject of bargaining. No later than such time, the
12 parties shall also submit to the commission a written stipulation with respect to all
13 matters which are agreed upon for inclusion in the new or amended collective
14 bargaining agreement. The commission shall submit to the parties a list of 7
15 arbitrators. Upon receipt of the list, the parties shall alternately strike names until
16 a single name is left, who shall be appointed as arbitrator. The petitioning party shall
17 notify the commission in writing of the identity of the arbitrator selected. Upon
18 receipt of the notice, the commission shall formally appoint the arbitrator and submit
19 to him or her the final offers of the parties. The final offers shall be considered public
20 documents and shall be available from the commission. In lieu of a single arbitrator
21 and upon request of both parties, the commission shall appoint a tripartite
22 arbitration panel consisting of one member selected by each of the parties and a
23 neutral person designated by the commission who shall serve as a chairperson. An
24 arbitration panel has the same powers and duties as provided in this section for any
25 other appointed arbitrator, and all arbitration decisions by such panel shall be

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

11 b. The arbitrator shall, within 10 days of his or her appointment, establish a
12 date and place for the conduct of the arbitration hearing. The arbitration hearing
13 shall be held within 60 days of the arbitrator's appointment. Upon petition of at least
14 5 citizens of the jurisdiction served by the municipal employer, filed within 10 days
15 after the date on which the arbitrator is appointed, the arbitrator shall hold a public
16 hearing in the jurisdiction for the purpose of providing the opportunity to both
17 parties to explain or present supporting arguments for their positions and to
18 members of the public to offer their comments and suggestions. The final offers of
19 the parties, as transmitted by the commission to the arbitrator, shall serve as the
20 basis for continued negotiations, if any, between the parties with respect to the issues
21 in dispute. At any time prior to the arbitration hearing, either party, with the consent
22 of the other party, may modify its final offer in writing.

23 c. Prior to the arbitration hearing, either party may, within a time limit
24 established by the arbitrator, withdraw its final offer and mutually agreed upon
25 modifications thereof, if any, and shall immediately provide written notice of such

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1 withdrawal to the other party, the arbitrator and the commission. If both parties
2 withdraw their final offers and mutually agreed upon modifications, the labor
3 organization, after giving 10 days' written advance notice to the municipal employer
4 and the commission, may strike. Unless both parties withdraw their final offers and
5 mutually agreed upon modifications, the final offer of neither party shall be deemed
6 withdrawn and the arbitrator shall proceed to resolve the dispute by final and
7 binding arbitration as provided in this paragraph.

8 d. Before issuing his or her arbitration decision, the arbitrator shall, on his or
9 her own motion or at the request of either party, conduct a meeting open to the public
10 for the purpose of providing the opportunity to both parties to explain or present
11 supporting arguments for their complete offer on all matters to be covered by the
12 proposed agreement. No later than 40 days after the arbitration hearing that is
13 conducted under subd. 10. b., the arbitrator shall adopt without further modification
14 the final offer of one of the parties on all disputed issues submitted under subd. 10.
15 a., except those items that the commission determines not to be mandatory subjects
16 of bargaining and those items which have not been treated as mandatory subjects
17 of collective bargaining by the parties, and including any prior modifications of such
18 offer mutually agreed upon by the parties under subd. 10. b., which decision shall be
19 final and binding on both parties and shall be incorporated into a written collective
20 bargaining agreement. The arbitrator shall serve a copy of his or her decision on both
21 parties and the commission.

22 e. For any hearing conducted under this subdivision, the parties shall exchange
23 all exhibits, if any, at least 20 days before the scheduled date of the hearing. Any
24 party that objects to an exhibit offered by the other party shall file an objection with
25 the arbitrator or arbitration panel at least 5 days before the scheduled date of the

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1 hearing. For any hearing conducted under this subdivision, the parties shall
2 exchange hearing briefs and shall either file a copy of the hearing brief with the
3 arbitrator or file 3 copies of the hearing briefs with the arbitration panel, whichever
4 is appropriate, at least 5 days before the scheduled date of the hearing. The
5 arbitrator or arbitration panel may not consider any briefs that are not filed in
6 accordance with this subd. 10. e.

7 f. Arbitration proceedings may not be interrupted or terminated by reason of
8 any prohibited practice complaint filed by either party at any time.

9 g. If a question arises as to whether any proposal made in negotiations by either
10 party is a mandatory, permissive or prohibited subject of bargaining, the commission
11 shall determine the issue pursuant to par. (b). If either party to the dispute petitions
12 the commission for a declaratory ruling under par. (b), the proceedings under subd.
13 10. c. and d. shall be delayed until the commission renders a decision in the matter,
14 but not during any appeal of the commission order. The arbitrator's award shall be
15 made in accordance with the commission's ruling, subject to automatic amendment
16 by any subsequent court reversal thereof.

17 h. The costs of arbitration shall be divided equally between the parties. The
18 arbitrator shall submit a statement of his or her costs to both parties and to the
19 commission.

20 11. 'Dispute resolution judicial process.' a. If the parties select the dispute
21 resolution judicial process as the dispute resolution procedure to settle a dispute over
22 wages, hours and conditions of employment that are to be included in a new collective
23 bargaining agreement, each party shall submit in writing to the commission its
24 single final offer containing its final proposals on all issues in dispute. The final
25 offers may include only mandatory subjects of bargaining, except that a permissive

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1 subject of bargaining may be included by a party if the other party does not object
2 and shall then be treated as a mandatory subject of bargaining. The final offers shall
3 be considered public documents and shall be available from the commission. No later
4 than such time, the parties shall also submit to the commission a written stipulation
5 with respect to all matters which are agreed upon for inclusion in the new or
6 amended collective bargaining agreement.

7 b. Unless otherwise provided in subd. 11. c., the commission shall randomly
8 select a dispute resolution judge to conduct the dispute resolution judicial process
9 under this subdivision. If no party objects to the dispute resolution judge who is
10 selected by the commission within 5 days after his or her selection, the commission
11 shall appoint the dispute resolution judge to conduct the dispute resolution
12 proceedings. If one party objects to the dispute resolution judge who is selected by
13 the commission, the party shall file a written objection with the commission no later
14 than 5 days after his or her selection. Upon receipt of the objection, the commission
15 shall randomly select another dispute resolution judge. If the other party does not
16 object to the selection of this dispute resolution judge within 5 days after his or her
17 selection, the commission shall appoint this dispute resolution judge to conduct the
18 dispute resolution proceedings. If the other party objects to the selection of this
19 dispute resolution judge, the party shall file a written objection with the commission
20 no later than 5 days after his or her selection. Upon receipt of the objection, the
21 commission shall randomly select yet another dispute resolution judge to conduct the
22 dispute resolution proceedings. The commission shall then appoint this dispute
23 resolution judge to conduct the dispute resolution proceedings and shall submit to
24 him or her the final offers of the parties.

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1 c. The parties may mutually agree to a dispute resolution judge selection
2 process that is different from the process specified in subd. 11. b. Any such
3 agreement shall be filed in writing with the commission.

4 d. After the commission has appointed a dispute resolution judge, each party
5 shall designate a person to serve as advocate no later than 3 days after the
6 appointment of the dispute resolution judge. At the time each party designates its
7 advocate, the party shall notify, in writing, the other party, the dispute resolution
8 judge and the commission. The dispute resolution judge and the 2 advocates shall
9 constitute the dispute resolution tripartite panel.

10 e. The dispute resolution judge may establish dates and place of hearings and
11 shall conduct the hearings under rules established by the commission, except that
12 all hearings shall be held no later than 60 days after the dispute resolution judge's
13 appointment under subd. 11. b. or c. Upon request, the commission shall issue
14 subpoenas for hearings conducted by the dispute resolution judge. The dispute
15 resolution judge may administer oaths. Upon completion of the hearings, but not
16 later than 40 days after completion of the hearings, the dispute resolution tripartite
17 panel, by majority vote, shall make written findings of fact and recommendations for
18 solution of the dispute and shall serve the findings and recommendations on the
19 parties and the commission. In making findings and recommendations, the dispute
20 resolution tripartite panel shall take into consideration among other pertinent
21 factors the principles vital to the public interest in efficient and economical
22 governmental administration.

23 f. Subject to subd. 11. g., if the parties have not resolved the dispute within 30
24 days after service of the dispute resolution tripartite panel's written findings of fact
25 and recommendations for resolving the dispute, the dispute resolution judge, within

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1 10 days, shall reconvene the dispute resolution tripartite panel. The dispute
2 resolution tripartite panel, by majority vote, shall adopt without further
3 modification the final offer of one of the parties on all disputed issues submitted
4 under subd. 11. a., except those items that the commission determines not to be
5 mandatory subjects of bargaining and those items which have not been treated as
6 mandatory subjects of collective bargaining by the parties, which decision shall be
7 final and binding on both parties and shall be incorporated into a written collective
8 bargaining agreement. The dispute resolution judge shall serve a copy of the
9 decision on both parties and the commission.

10 g. The dispute resolution tripartite panel, by a unanimous vote, may extend
11 any time limit specified in subd. 11. f. only upon a showing by one or both of the
12 parties of exceptional need. A stipulation by the parties to agree to extend any time
13 limit specified in subd. 11. f. does not, in itself, constitute exceptional need.

14 h. For any hearing conducted under this subdivision, the parties shall
15 exchange all exhibits, if any, at least 20 days before the scheduled date of the hearing.
16 Any party that objects to an exhibit offered by the other party shall file a written
17 objection with the dispute resolution judge at least 5 days before the scheduled date
18 of the hearing. For any hearing conducted under this subdivision, the parties shall
19 exchange hearing briefs and shall file 3 copies of the hearing briefs with the dispute
20 resolution tripartite panel at least 5 days before the scheduled date of the hearing.
21 The dispute resolution tripartite panel may not consider any briefs that are not filed
22 in accordance with this subd. 11. h.

23 i. Dispute resolution tripartite proceedings may not be interrupted or
24 terminated by reason of any prohibited practice complaint filed by either party at any
25 time.

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1 j. If a question arises as to whether any proposal made in negotiations by either
2 party is a mandatory, permissive or prohibited subject of bargaining, the commission
3 shall determine the issue pursuant to par. (b). If either party to the dispute petitions
4 the commission for a declaratory ruling under par. (b), the proceedings under subd.
5 11. e. and f. shall be delayed until the commission renders a decision in the matter,
6 but not during any appeal of the commission order. The dispute resolution tripartite
7 panel's award shall be made in accordance with the commission's ruling, subject to
8 automatic amendment by any subsequent court reversal thereof.

9 k. The costs of the dispute resolution tripartite process shall be divided equally
10 between the parties.

11 12. 'Factor given greatest weight.' In making any decision under the
12 arbitration procedures authorized by this paragraph, the arbitrator, arbitration
13 panel or dispute resolution tripartite panel shall consider and shall give the greatest
14 weight to any state law or directive lawfully issued by a state legislative or
15 administrative officer, body or agency which places limitations on expenditures that
16 may be made or revenues that may be collected by a municipal employer. The
17 arbitrator, arbitration panel or dispute resolution tripartite panel shall give an
18 accounting of the consideration of this factor in the decision.

19 12g. 'Factor given greater weight.' In making any decision under the
20 arbitration procedures authorized by this paragraph, the arbitrator, arbitration
21 panel or dispute resolution tripartite panel shall consider and shall give greater
22 weight to economic conditions in the jurisdiction of the municipal employer than to
23 any of the factors specified in subd. 12r.

SENATE BILL 405**SECTION 11**

1 12r. ‘Other factors considered.’ In making any decision under the arbitration
2 procedures authorized by this paragraph, the arbitrator, arbitration panel or dispute
3 resolution tripartite panel shall also give weight to the following factors:

4 a. Comparison of wages, hours and conditions of employment of the municipal
5 employes involved in the arbitration proceedings with the wages, hours and
6 conditions of employment of other municipal employes of the municipal employer
7 and other employes in public and private employment who perform similar services
8 in the same community and comparable communities.

9 b. In addition to the factors specified in subd. 12r. a., such other factors that are
10 normally or traditionally taken into consideration in the determination of wages,
11 hours and conditions of employment through collective bargaining in the public
12 service or in private employment.

13 13. ‘Rule making; interest arbitration.’ The commission shall adopt rules for
14 the conduct of all arbitration proceedings under subd. 10., including, but not limited
15 to, rules for:

16 a. The appointment of tripartite arbitration panels when requested by the
17 parties.

18 b. The expeditious rendering of arbitration decisions, such as waivers of briefs
19 and transcripts.

20 c. The removal of individuals who have repeatedly failed to issue timely
21 decisions from the commission’s list of qualified arbitrators.

22 d. Proceedings for the enforcement of arbitration decisions.

23 14. ‘Rule making; dispute resolution judicial process.’ The commission shall
24 adopt rules for the conduct of all dispute resolution judicial proceedings under subd.

25 11.

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1 15. ‘Term of agreement; reopening of negotiations.’ a. Except for the initial
2 collective bargaining agreement between the parties and except as the parties
3 otherwise agree, every collective bargaining agreement covering municipal
4 employes subject to this paragraph other than school district professional employes
5 shall be for a term of 2 years. No collective bargaining agreement for any collective
6 bargaining unit consisting of municipal employes subject to this paragraph other
7 than school district professional employes shall be for a term exceeding 3 years.

8 b. Except for the initial collective bargaining agreement between the parties,
9 every collective bargaining agreement covering municipal employes who are school
10 district professional employes shall be for a term of 2 years expiring on June 30 of
11 the odd-numbered year. An initial collective bargaining agreement between parties
12 covering municipal employes who are school district professional employes shall be
13 for a term ending on June 30 following the effective date of the agreement, if that date
14 is in an odd-numbered year, or otherwise on June 30 of the following year.

15 c. No arbitration award may contain a provision for reopening of negotiations
16 during the term of a collective bargaining agreement, unless both parties agree to
17 such a provision. The requirement for agreement by both parties does not apply to
18 a provision for reopening of negotiations with respect to any portion of an agreement
19 that is declared invalid by a court or administrative agency or rendered invalid by
20 the enactment of a law or promulgation of a federal regulation.

21 16. ‘Application.’ a. Chapter 788 does not apply to arbitration proceedings
22 under this paragraph.

23 b. This paragraph does not apply to labor disputes involving municipal
24 employes who are engaged in law enforcement or fire fighting functions.

25 **SECTION 12.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

SENATE BILL 405**SECTION 12**

1 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
2 bargaining unit for the purpose of collective bargaining and shall whenever possible,
3 unless otherwise required under this subchapter, avoid fragmentation by
4 maintaining as few collective bargaining units as practicable in keeping with the size
5 of the total municipal work force. In making such a determination, the commission
6 may decide whether, in a particular case, the municipal employees in the same or
7 several departments, divisions, institutions, crafts, professions or other
8 occupational groupings constitute a collective bargaining unit. Before making its
9 determination, the commission may provide an opportunity for the municipal
10 employees concerned to determine, by secret ballot, whether or not they desire to be
11 established as a separate collective bargaining unit. ~~The commission shall not~~
12 ~~decide, however, that any group of municipal employees constitutes an appropriate~~
13 ~~collective bargaining unit if the group includes both municipal employees who are~~
14 ~~school district professional employees and municipal employees who are not school~~
15 ~~district professional employees.~~ The commission shall not decide, however, that any
16 ~~other~~ group of municipal employees constitutes an appropriate collective bargaining
17 unit if the group includes both professional employees and nonprofessional employees,
18 unless a majority of the professional employees vote for inclusion in the unit. The
19 commission shall not decide that any group of municipal employees constitutes an
20 appropriate collective bargaining unit if the group includes both craft employees and
21 noncraft employees unless a majority of the craft employees vote for inclusion in the
22 unit. The commission shall place the professional employees who are assigned to
23 perform any services at a charter school, as defined in s. 115.001 (1), in a separate
24 collective bargaining unit from a unit that includes any other professional employees
25 whenever at least 30% of those professional employees request an election to be held

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1 to determine that issue and a majority of the professional employes at the charter
2 school who cast votes in the election decide to be represented in a separate collective
3 bargaining unit. Any vote taken under this subsection shall be by secret ballot.

4 **SECTION 13.** 111.70 (4) (L) of the statutes is amended to read:

5 111.70 (4) (L) *Strikes prohibited.* Except as authorized under par. (cm) ~~5. and~~
6 ~~6. e. 7., 9. and 10. c.,~~ nothing contained in this subchapter constitutes a grant of the
7 right to strike by any municipal employe or labor organization, and such strikes are
8 hereby expressly prohibited. Paragraph (cm) does not authorize any strike after an
9 injunction has been issued against such strike under sub. (7m).

10 **SECTION 14.** 111.70 (7m) (c) 3. of the statutes is amended to read:

11 111.70 (7m) (c) 3. 'Strike in violation of award.' Any person who authorizes or
12 otherwise participates in a strike after the issuance of any final and binding
13 arbitration award or decision or dispute resolution judicial decision under sub. (4)
14 (cm) and prior to the end of the term of the agreement which the award or decision
15 amends or creates shall forfeit not less than \$15. Each day of continued violation
16 constitutes a separate offense.

17 **SECTION 15.** 111.70 (7m) (e) of the statutes is amended to read:

18 111.70 (7m) (e) *Civil liability.* Any party refusing to include an arbitration
19 award or decision or dispute resolution judicial decision under sub. (4) (cm) in a
20 written collective bargaining agreement or failing to implement the award or
21 decision, unless good cause is shown, shall be liable for attorney fees, interest on
22 delayed monetary benefits, and other costs incurred in any action by the
23 nonoffending party to enforce the award or decision.

24 **SECTION 16.** 111.71 (2) of the statutes is amended to read:

SENATE BILL 405**SECTION 16**

1 111.71 (2) The commission shall assess and collect a filing fee for filing a
2 complaint alleging that a prohibited practice has been committed under s. 111.70 (3).
3 The commission shall assess and collect a filing fee for filing a request that the
4 commission determine whether a collective bargaining impasse exists under s.
5 111.70 (4) (cm) 5. The commission shall assess and collect a filing fee for filing a
6 request that the commission act as an arbitrator to resolve a dispute involving the
7 interpretation or application of a collective bargaining agreement under s. 111.70 (4)
8 (c) 2. or (cm) ~~4.~~ 3. The commission shall assess and collect a filing fee for filing a
9 request that the commission initiate consensus bargaining under s. 111.70 (4) (cm)
10 6. The commission shall assess and collect a filing fee for filing a request that the
11 commission initiate fact-finding under s. 111.70 (4) (c) 3. or (cm) 8. The commission
12 shall assess and collect a filing fee for filing a request that the commission act as a
13 mediator under s. 111.70 (4) (c) 1. or (cm) ~~3.~~ 4. The commission shall assess and collect
14 a filing fee for filing a request that the commission initiate compulsory, final and
15 binding arbitration under s. 111.70 (4) (cm) ~~6.~~ 10. or (jm) or 111.77 (3). The
16 commission shall assess and collect a fee for the commission's initiating dispute
17 resolution judicial proceedings under s. 111.70 (4) (cm) 11. For the performance of
18 commission actions under ss. 111.70 (4) (c) 1., 2. and 3., (cm) 3., 4., ~~5., 6., 8., 10.~~ and
19 ~~6.~~ 11. and (jm) and 111.77 (3), the commission shall require that the parties to the
20 dispute equally share in the payment of the fee and, for the performance of
21 commission actions involving a complaint alleging that a prohibited practice has
22 been committed under s. 111.70 (3), the commission shall require that the party filing
23 the complaint pay the entire fee. If any party has paid a filing fee requesting the
24 commission to act as a mediator for a labor dispute and the parties do not enter into
25 a voluntary settlement of the dispute, the commission may not subsequently assess

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1 or collect a filing fee to initiate fact-finding or arbitration to resolve the same labor
2 dispute. If any request for the performance of commission actions concerns issues
3 arising as a result of more than one unrelated event or occurrence, each such
4 separate event or occurrence shall be treated as a separate request. The commission
5 shall promulgate rules establishing a schedule of filing fees to be paid under this
6 subsection. Fees required to be paid under this subsection shall be paid at the time
7 of filing the complaint or the request for impasse determination, fact-finding,
8 mediation ~~or~~, arbitration or the dispute resolution judicial process. A complaint or
9 request for impasse determination, fact-finding, mediation ~~or~~, arbitration or the
10 dispute resolution judicial process is not filed until the date such fee or fees are paid,
11 except that the failure of the respondent party to pay the filing fee for having the
12 commission initiate compulsory, final and binding arbitration under s. 111.70 (4)
13 (cm) ~~6. 10.~~ or (jm) or 111.77 (3) or dispute resolution judicial proceedings under s.
14 111.70 (4) (cm) 11. shall not prohibit the commission from initiating such arbitration
15 or dispute resolution judicial proceedings. The commission may initiate collection
16 proceedings against the respondent party for the payment of the filing fee. Fees
17 collected under this subsection shall be credited to the appropriation account under
18 s. 20.425 (1) (i).

19 **SECTION 17.** 111.71 (3) of the statutes is created to read:

20 111.71 (3) (a) The council on municipal collective bargaining shall provide
21 advice to the commission on the operation of this subchapter and may make
22 recommendations relating to the law. The commission may refer to the council for
23 its study and advice any matter having to do with collective bargaining between
24 municipal employers and municipal employes under this subchapter.

SENATE BILL 405**SECTION 17**

1 (b) The vote of 7 of the voting members of the council on municipal collective
2 bargaining is required for the council to act on any matter before it.

3 (c) The council on municipal collective bargaining shall continuously review
4 the operation of the dispute settlement procedures under s. 111.70 (4) (cm) and (7m).
5 The council shall submit its recommendations with respect to any amendment to s.
6 111.70 (4) (cm) or (7m) to the chief clerk of each house of the legislature under s.
7 13.172 (2) at the commencement of each legislative session.

8 (d) The council on municipal collective bargaining shall review each pending
9 legislative proposal relating to the modification of the dispute settlement procedures
10 under s. 111.70 (4) (cm) and (7m) and shall report its findings and recommendations
11 relating to the proposal to the chief clerk of each house of the legislature for referral
12 to the appropriate standing committee under s. 13.172 (3).

13 **SECTION 18.** 111.71 (4) of the statutes is amended to read:

14 111.71 (4) The commission shall collect on a systematic basis information on
15 the operation of the arbitration law and the dispute resolution judicial process under
16 s. 111.70 (4) (cm). The commission shall report on the operation of the law to the
17 legislature on an annual basis. The report shall be submitted to the chief clerk of
18 each house of the legislature for distribution to the legislature under s. 13.172 (2).

19 **SECTION 19.** 111.71 (5) of the statutes is amended to read:

20 111.71 (5) The commission shall, on a regular basis, provide training programs
21 to prepare individuals for service as arbitrators ~~or~~, arbitration panel members or
22 dispute resolution judges under s. 111.70 (4) (cm). The commission shall engage in
23 appropriate promotional and recruitment efforts to encourage participation in the
24 training programs by individuals throughout the state, including at least 10
25 residents of each congressional district. The commission may also provide training

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1 programs to individuals and organizations on other aspects of collective bargaining,
2 including on areas of management and labor cooperation directly or indirectly
3 affecting collective bargaining. The commission may charge a reasonable fee for
4 participation in the programs.

5 **SECTION 20.** 111.71 (5m) of the statutes is created to read:

6 111.71 (5m) The commission shall prescribe a methodology for calculating the
7 total increased cost to the municipal employer of compensation and fringe benefits
8 provided to school district professional employes for each 12-month period ending
9 on June 30. The cost shall be determined based upon the total cost of compensation
10 and fringe benefits provided to school district professional employes who are
11 represented by a labor organization on the 90th day before expiration of any previous
12 collective bargaining agreement between the parties, or who were so represented if
13 the effective date is retroactive, or the 90th day prior to commencement of
14 negotiations if there is no previous collective bargaining agreement between the
15 parties, without regard to any change in the number, rank or qualifications of the
16 school district professional employes. For purposes of such determinations, any cost
17 increase that is incurred on any day other than the beginning of the 12-month period
18 commencing with the effective date of the agreement or any succeeding 12-month
19 period commencing on the anniversary of that effective date shall be calculated as
20 if the cost increase were incurred as of the beginning of the 12-month period
21 beginning on the effective date or anniversary of the effective date in which the cost
22 increase is incurred.

23 **SECTION 21.** 111.71 (5r) of the statutes is created to read:

24 111.71 (5r) (a) With the advice of the commission, the council on municipal
25 collective bargaining shall establish a list of persons qualified to serve as dispute

SENATE BILL 405**SECTION 21**

1 resolution judges under s. 111.70 (4) (cm) 11. Such a list shall only consist of persons
2 who are residents of this state.

3 (b) From the list of those persons established under par. (a), the governor shall
4 nominate, and with the advice and consent of the senate appoint, 12 persons to serve
5 as dispute resolution judges under s. 111.70 (4) (cm) 11.

6 (c) Dispute resolution judges shall serve 4-year terms that expire on May 1.

7 (d) No person may serve as a dispute resolution judge for more than 2
8 consecutive terms.

9 **SECTION 22.** 118.245 (3) of the statutes is amended to read:

10 118.245 (3) No school district may provide to its nonrepresented professional
11 employes for any 12-month period ending on June 30 an average increase for all such
12 employes in the total cost to the school district of compensation and fringe benefits
13 for such employes having an average cost per employe exceeding 3.8% of the average
14 total cost per employe of compensation and fringe benefits provided by the school
15 district to its nonrepresented professional employes for the preceding 12-month
16 period ending on June 30 or the average total percentage increased cost per employe
17 of compensation and fringe benefits provided to its represented professional
18 employes during the 12-month period ending on June 30 preceding the date that the
19 increase becomes effective, whichever is greater. In this subsection, the cost of
20 compensation includes the cost of any increase in compensation due to a promotion
21 or the attainment of increased professional qualifications. For purposes of this
22 subsection, the average total percentage increased cost per employe of the
23 compensation provided by a school district to its represented professional employes
24 shall be determined in accordance with the method methodology prescribed by the
25 employment relations commission under s. ~~111.70 (4) (cm) 8s~~ 111.71 (5m).

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1 **SECTION 23.** 120.18 (1) (gm) of the statutes is amended to read:

2 120.18 (1) (gm) Payroll and related benefit costs for all school district employes
3 in the previous school year. Costs for represented employes shall be based upon the
4 costs of any collective bargaining agreements covering such employes for the
5 previous school year. If, as of the time specified by the department for filing the
6 report, the school district has not entered into a collective bargaining agreement for
7 any portion of the previous school year with the recognized or certified
8 representative of any of its employes and the school district and the representative
9 have been required to submit final offers under s. 111.70 (4) (cm) ~~6.~~ 10. or 11.,
10 increased costs limited to the lower of the school district's offer or the representative's
11 offer shall be reflected in the report. The school district shall amend the annual
12 report to reflect any change in such costs as a result of any award or settlement under
13 s. 111.70 (4) (cm) ~~6.~~ 10. or 11. between the date of filing the report and October 1. Any
14 such amendment shall be concurred in by the licensed accountant certifying the
15 school district audit.

16 **SECTION 24.** 904.085 (2) (a) of the statutes, as affected by 1997 Wisconsin Act
17 (Senate Bill 272), is amended to read:

18 904.085 (2) (a) "Mediation" means mediation under s. 93.50 (3), conciliation
19 under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) ~~3.~~ 4. or 111.87, mediation
20 under s. 115.812, negotiation under s. 289.33 (9), mediation under ch. 655 or s.
21 767.11, or any similar statutory, contractual or court-referred process facilitating
22 the voluntary resolution of disputes. "Mediation" does not include binding
23 arbitration or appraisal.

24 **SECTION 25. Nonstatutory provisions.**

25 (1) LENGTH OF TERMS OF DISPUTE RESOLUTION JUDGES.

