



## 2005 ASSEMBLY BILL 268

March 28, 2005 – Introduced by Representatives GOTTLIEB, NASS, HUNDERTMARK, ALBERS, BALLWEG, BIES, GARD, GIELOW, HAHN, HONADEL, JENSEN, JESKEWITZ, KERKMAN, LEMAHIEU, LOTHIAN, MEYER, MURSAU, MUSSER, NISCHKE, OTT, OWENS, PRIDEMORE, STRACHOTA, STONE, TOWNS, VAN ROY, VOS, VRAKAS, WIECKERT, WOOD and AINSWORTH, cosponsored by Senators BROWN, DARLING, KANAVAS and LAZICH. Referred to Committee on Labor.

1     **AN ACT to amend** 111.70 (1) (a), 111.70 (1) (dm) and 111.70 (4) (cm) 5s.; and **to**  
2     **create** 111.70 (4) (p) of the statutes; **relating to:** mandatory and permissive  
3     subjects of collective bargaining under the Municipal Employment Relations  
4     Act.

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### *Analysis by the Legislative Reference Bureau*

Currently, a municipal employer's decision to contract out for services that are performed by its employees is a mandatory subject of collective bargaining under the Municipal Employment Relations Act (MERA). This bill establishes a process under which a municipal employer's decision to contract out for such services can become a permissive subject of collective bargaining under MERA.

The bill provides that a municipal employer may solicit bids to perform services that are currently performed by its employees if the municipal employer notifies the labor organization that represents the employees that it intends to solicit the bids and conducts an internal cost study to determine the total costs incurred by the municipal employer in having its employees perform the services. The costs determined by this study are called the "current internal cost." The study must also determine the percentage of the current internal cost that is attributable to wages and benefits paid to the employees who perform the services and who are represented by a labor organization. This percentage is called the "labor cost ratio."

After conducting this study, the municipal employer may then solicit and receive bids to perform any services that are currently performed by its employees. These bids are called the "preliminary external bids." No later than 30 days after

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receiving the final bid, the municipal employer must select the preliminary external bid that it considers most advantageous. The sum of the cost of this bid and the municipal employer's cost in administering any contract resulting from the bid are called the "selected external cost."

After determining the selected external cost, the municipal employer must then perform a calculus in which it subtracts the selected external cost from an amount equal to 90 percent of the current internal cost and must then multiply the result by the labor cost ratio. The product is called the "required labor savings." The municipal employer must then notify the labor organization that represents the employees of the required labor savings. If the required labor savings is an amount less than or equal to zero, the municipal employer is required to bargain collectively any decision to enter into contracts for the performance of services. If the required labor savings is an amount greater than zero, the municipal employer is not required to bargain collectively any decision to contract for the performance of services, unless the labor organization notifies the municipal employer that the employees agree to participate in a nonbinding arbitration process.

Under the nonbinding arbitration process, each party must submit to an arbitrator a proposal to reduce the current internal cost by an amount at least equal to the required labor savings. The reductions specified in the proposals must come entirely from changes to the wages, hours, or conditions of employment of the employees who are represented by the labor organization. The arbitrator may select any item from either proposal to reduce the current internal cost by an amount at least equal to the required labor savings. If the labor organization rejects the arbitrator's proposal, the municipal employer is not required to bargain collectively the decision to contract for the performance of the services. If the municipal employer rejects the arbitrator's proposal, the municipal employer is required to bargain collectively the decision to contract for the performance of the services.

However, under the bill, if neither party rejects the arbitrator's proposal, the proposal is final and binding on both parties and must then be incorporated into a collective bargaining agreement. If the proposal is not rejected and is incorporated into a collective bargaining agreement, the municipal employer may not solicit and receive bids to perform the service covered by the arbitrator's proposal for a period of 3 years from the date that the arbitrator submits his or her proposal to the parties.

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) (a) of the statutes is amended to read:
- 2           111.70 (1) (a) "Collective bargaining" means the performance of the mutual
- 3           obligation of a municipal employer, through its officers and agents, and the

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1 representative of its municipal employees in a collective bargaining unit, to meet and  
2 confer at reasonable times, in good faith, with the intention of reaching an  
3 agreement, or to resolve questions arising under such an agreement, with respect to  
4 wages, hours and conditions of employment, and with respect to a requirement of the  
5 municipal employer for a municipal employee to perform law enforcement and fire  
6 fighting services under s. 61.66, except as provided in sub. (4) (m) and (p) and s. 40.81  
7 (3) and except that a municipal employer shall not meet and confer with respect to  
8 any proposal to diminish or abridge the rights guaranteed to municipal employees  
9 under ch. 164. The duty to bargain, however, does not compel either party to agree  
10 to a proposal or require the making of a concession. Collective bargaining includes  
11 the reduction of any agreement reached to a written and signed document. The  
12 municipal employer shall not be required to bargain on subjects reserved to  
13 management and direction of the governmental unit except insofar as the manner  
14 of exercise of such functions affects the wages, hours and conditions of employment  
15 of the municipal employees in a collective bargaining unit. In creating this  
16 subchapter the legislature recognizes that the municipal employer must exercise its  
17 powers and responsibilities to act for the government and good order of the  
18 jurisdiction which it serves, its commercial benefit and the health, safety and welfare  
19 of the public to assure orderly operations and functions within its jurisdiction,  
20 subject to those rights secured to municipal employees by the constitutions of this  
21 state and of the United States and by this subchapter.

22 **SECTION 2.** 111.70 (1) (dm) of the statutes is amended to read:

23 111.70 (1) (dm) "Economic issue" means salaries, overtime pay, sick leave,  
24 payments in lieu of sick leave usage, vacations, clothing allowances in excess of the  
25 actual cost of clothing, length-of-service credit, continuing education credit, shift

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1 premium pay, longevity pay, extra duty pay, performance bonuses, health insurance,  
2 life insurance, dental insurance, disability insurance, vision insurance, long-term  
3 care insurance, worker's compensation and unemployment insurance, social  
4 security benefits, vacation pay, holiday pay, lead worker pay, temporary assignment  
5 pay, retirement contributions, supplemental retirement benefits, severance or other  
6 separation pay, hazardous duty pay, certification or license payment, and limitations  
7 on layoffs that create a new or increased financial liability on the employer and  
8 ~~contracting or subcontracting of work that would otherwise be performed by~~  
9 ~~municipal employees in the collective bargaining unit with which there is a labor~~  
10 ~~dispute.~~

11 **SECTION 3.** 111.70 (4) (cm) 5s. of the statutes is amended to read:

12 111.70 (4) (cm) 5s. 'Issues subject to arbitration.' In a collective bargaining unit  
13 consisting of school district professional employees, the municipal employer or the  
14 labor organization may petition the commission to determine whether the municipal  
15 employer has submitted a qualified economic offer. The commission shall appoint an  
16 investigator for that purpose. If the investigator finds that the municipal employer  
17 has submitted a qualified economic offer, the investigator shall determine whether  
18 a deadlock exists between the parties with respect to all economic issues. If the  
19 municipal employer submits a qualified economic offer applicable to any period  
20 beginning on or after July 1, 1993, no economic issues are subject to interest  
21 arbitration under subd. 6. for that period, ~~except that only the impact of contracting~~  
22 ~~out or subcontracting work that would otherwise be performed by municipal~~  
23 ~~employees in the collective bargaining unit is subject to interest arbitration under~~  
24 ~~subd. 6.~~ In such a collective bargaining unit, economic issues concerning the wages,  
25 hours or conditions of employment of the school district professional employees in the

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1 unit for any period prior to July 1, 1993, are subject to interest arbitration under  
2 subd. 6. for that period. In such a collective bargaining unit, noneconomic issues  
3 applicable to any period on or after July 1, 1993, are subject to interest arbitration  
4 after the parties have reached agreement and stipulate to agreement on all economic  
5 issues concerning the wages, hours or conditions of employment of the school district  
6 professional employees in the unit for that period. In such a collective bargaining  
7 unit, if the commission's investigator finds that the municipal employer has  
8 submitted a qualified economic offer and that a deadlock exists between the parties  
9 with respect to all economic issues, the municipal employer may implement the  
10 qualified economic offer. On the 90th day prior to expiration of the period included  
11 within the qualified economic offer, if no agreement exists on that day, the parties are  
12 deemed to have stipulated to the inclusion in a new or revised collective bargaining  
13 agreement of all provisions of any predecessor collective bargaining agreement  
14 concerning economic issues, or of all provisions of any existing collective bargaining  
15 agreement concerning economic issues if the parties have reopened negotiations  
16 under an existing agreement, as modified by the terms of the qualified economic offer  
17 and as otherwise modified by the parties. In such a collective bargaining unit, on and  
18 after that 90th day, a municipal employer that refuses to bargain collectively with  
19 respect to the terms of that stipulation, applicable to the 90-day period prior to  
20 expiration of the period included within the qualified economic offer, does not violate  
21 sub. (3) (a) 4. Any such unilateral implementation after August 11, 1993, during the  
22 90-day period prior to expiration of the period included within a qualified economic  
23 offer, operates as a full, final and complete settlement of all economic issues between  
24 the parties for the period included within the qualified economic offer. The failure  
25 of a labor organization to recognize the validity of such a lawful qualified economic

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1 offer does not affect the obligation of the municipal employer to submit economic  
2 issues to arbitration under subd. 6.

3 **SECTION 4.** 111.70 (4) (p) of the statutes is created to read:

4 111.70 (4) (p) *Competitive contracting; all municipal employers.* 1. A municipal  
5 employer's decision to enter into contracts with persons who are not employed by the  
6 municipal employer for the performance of services, as that decision relates to  
7 mandatory and permissive subjects of collective bargaining under this subchapter,  
8 is subject to this paragraph.

9 2. A municipal employer may solicit bids from persons who are not employed  
10 by the municipal employer to perform services that are currently being performed  
11 by its municipal employees only if the municipal employer does all of the following:

12 a. Notifies the labor organization that is recognized or certified to represent the  
13 municipal employees who are currently performing the services that the municipal  
14 employer intends to solicit the bids.

15 b. Conducts an internal cost study to determine the total costs incurred by the  
16 municipal employer in having its municipal employees perform the services. The  
17 costs determined by this study shall be denominated the "current internal cost." The  
18 study shall also determine the percentage of the current internal cost that is  
19 attributable to wages and benefits paid to the municipal employees who perform the  
20 services and who are represented by the labor organization. This percentage shall  
21 be denominated the "labor cost ratio" and shall be expressed as a decimal. The  
22 municipal employer shall keep the study confidential until after all bids solicited  
23 under subd. 3. have been received by the municipal employer.

24 3. After conducting the study under subd. 2. b., the municipal employer may  
25 solicit and receive bids from persons who are not employed by the municipal

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1 employer to perform any services that are currently being performed by its municipal  
2 employees. These bids shall be denominated the “preliminary external bids” and  
3 shall provide for services that are at least substantially similar to those currently  
4 being performed by the municipal employer’s employees.

5 4. No later than 30 days after receiving the final bid under subd. 3., the  
6 municipal employer shall select the preliminary external bid that the municipal  
7 employer considers the most advantageous to the municipal employer. The sum of  
8 the cost of this bid and the municipal employer’s cost in administering any contract  
9 entered into pursuant to the bid shall be denominated the “selected external cost.”

10 5. After determining the selected external cost under subd. 4., the municipal  
11 employer shall subtract that number from an amount equal to 90 percent of the  
12 current internal cost determined under subd. 2. b. and shall then multiply the result  
13 by the labor cost ratio determined under subd. 2. b. The product shall be  
14 denominated the “required labor savings.” No later than 5 days after selecting the  
15 preliminary external bid under subd. 4., the municipal employer shall notify the  
16 labor organization that represents the municipal employees of the required labor  
17 savings and shall also provide to the labor organization a copy of the preliminary  
18 external bid selected under subd. 4.

19 6. a. If the required labor savings is an amount less than or equal to zero, the  
20 municipal employer is required to bargain collectively any decision to enter into  
21 contracts with persons who are not employed by the municipal employer for the  
22 performance of services for the municipal employer, and the impact of any such  
23 decision on the wages, hours, and conditions of employment of the municipal  
24 employees who would otherwise perform those services.

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1           b. If the required labor savings is an amount greater than zero, the municipal  
2 employer is not required to bargain collectively any decision to enter into contracts  
3 with persons who are not employed by the municipal employer for the performance  
4 of services for the municipal employer, or the impact of any such decision on the  
5 wages, hours, and conditions of employment of the municipal employees who would  
6 otherwise perform those services, unless the labor organization that represents the  
7 municipal employees notifies the municipal employer, in writing, that the municipal  
8 employees agree to be subject to the nonbinding arbitration mechanism under subd.  
9 7. The notification must be received by the municipal employer no later than 15 days  
10 after the municipal employer selects the preliminary external bid under subd. 4.

11           7. a. No later than 30 days after the municipal employer receives the  
12 notification under subd. 6. b., each party shall submit to an arbitrator a proposal to  
13 reduce the current internal cost determined under subd. 2. b. by an amount at least  
14 equal to the required labor savings determined under subd. 5. The reductions  
15 specified in the proposals shall come entirely from changes to the wages, hours, or  
16 conditions of employment of the municipal employees who are represented by the  
17 labor organization. The arbitrator shall be selected using the process under par. (cm)  
18 6. am. The arbitrator may select any item from each proposal to reduce the current  
19 internal cost determined under subd. 2. b. by an amount at least equal to the required  
20 labor savings determined under subd. 5. b.

21           b. If the labor organization rejects the arbitrator's proposal, the municipal  
22 employer is not required to bargain collectively the decision to contract with persons  
23 who are not employed by the municipal employer for the performance of the services  
24 for the municipal employer, or the impact of any such decision on the wages, hours,

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1 and conditions of employment of the municipal employees who would otherwise  
2 perform those services.

3 c. If the municipal employer rejects the arbitrator's proposal, the municipal  
4 employer is required to bargain collectively the decision to contract with persons who  
5 are not employed by the municipal employer for the performance of the services for  
6 the municipal employer, and the impact of any such decision on the wages, hours, and  
7 conditions of employment of the municipal employees who would otherwise perform  
8 those services.

9 d. If neither party rejects the arbitrator's proposal within 10 days after the  
10 arbitrator presents the proposal to the parties, the proposal shall be final and  
11 binding on both parties and shall be incorporated into a collective bargaining  
12 agreement.

13 e. Any rejection of an arbitrator's proposal under subd. 7. b. or c. shall be made  
14 no later than 10 days after the arbitrator presents the proposal to the parties.

15 8. If the arbitrator's proposal is not rejected by either party and is incorporated  
16 into a collective bargaining agreement, the municipal employer may not solicit and  
17 receive bids from persons who are not employed by the municipal employer to  
18 perform the service covered by the arbitrator's proposal for a period of 3 years from  
19 the date that the arbitrator submits his or her proposal to the parties.

20 **SECTION 5. Initial applicability.**

21 (1) This act first applies to collective bargaining agreements under subchapter  
22 IV of chapter 111 of the statutes for which a notice of commencement of contract  
23 negotiations has been filed by either party on the effective date of this subsection.

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(END)