

## 2009 DRAFTING REQUEST

### Bill

Received: 10/17/2008

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Legislative Council - JLC 6-0292

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters: emueller

Subject: Local Gov't - munis generally

Extra Copies:

Submit via email: YES

Requester's email: don.dyke@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Legislative Council Special committee on differences between city and village laws

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### Instructions:

See attached. Prepare WLC 0046/2 as an introducible LRB draft. Based on Leg. Council Special Committee on the differences in laws applicable to cities and villages.

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P2	mshovers 12/11/2008	csicilia 01/13/2009	rschluet 01/13/2009	_____	mbarman 01/13/2009		
/1	mshovers 01/29/2009	csicilia 02/03/2009	rschluet 02/03/2009	_____	sbasford 02/03/2009		
/2	mshovers 02/05/2009	csicilia 02/06/2009	rschluet 02/06/2009	_____	mbarman 02/06/2009		

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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lparisi  
02/16/2009

cduerst  
03/26/2009

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*None*

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**<END>**



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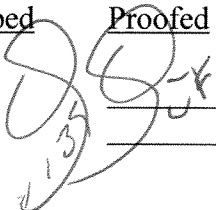
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1       **AN ACT** *to repeal* 61.31 (1), 61.55 and 61.56, 62.09 (6) (b), 62.09 (11) (g) and 893.81;  
2       *to amend* 12.04 (4) (b), 32.05 (intro.), 61.23 (1), 61.32, 61.50 (1), 61.57, 61.65 (1)  
3       (a) 2., 62.09 (1) (a), 62.13 (1), 62.13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

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was developed by the joint legislative council's special committee on differences in laws applicable to cities and villages. The committee was directed by the joint legislative council to review laws relating to cities and villages, other than those laws that relate to the fundamental organizational structure that distinguishes cities and villages, to determine discrepancies and inconsistencies in the application of those laws to each type of municipality and recommend, when appropriate and advantageous, rectifying those discrepancies and inconsistencies that exist for no apparent policy rationale.

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

In general terms, this draft:

- Requires compensation for city and village elective offices to be established before the earliest time for filing nomination papers for the office (or, if nomination papers are not used for an elective village office, before the caucus date for that office). In so providing, the draft repeals current language regarding the establishment of salaries for elective city offices and appointive city offices with definite terms. Also, for consistency with law that applies to cities, the draft removes the requirement that the salary of a village president and village board member be an "annual" salary.
- Makes the bidding procedure for village public construction contracts consistent with the bidding procedure that applies to city public construction contracts. Currently, villages have the option to use the city procedure.
- Provides that persons serving in city appointive offices serve until their respective successors are appointed and qualify, for consistency with current village law. For both cities and villages, the draft allows an ordinance to provide otherwise.
- Authorizes, consistent with law that applies to city public construction contracts, a village by resolution or ordinance to alter the statutory requirement that the village president and clerk execute all contracts, conveyances, commissions, licenses, or other written instruments.
- Repeals officer-of-the-peace status of village board members for consistency with the former repeal of police powers for city council members.
- Repeals the current directive that applies to city clerks, but not village clerks, to annually publish as a class 1 notice a statement showing the receipts and disbursements as to each fund during the preceding fiscal year.
- Extends the current authority of 1st, 2nd, and 3rd class cities to regulate political signs larger than 11 square feet in area to include 4th class cities and villages.
- Repeals the statute providing that counties and cities are strictly liable, subject to contributory negligence principles, for injuries to persons or property caused by a mob or riot within their respective jurisdictions.

- Consistent with law that applies to villages, expressly authorizes cities to contract for police and fire protection with a village, a town, another city, or a county.
- Clarifies that the condemnation procedure under s. 32.05, stats., may be used for certain housing and urban renewal condemnation in villages, as well as in cities.
- Authorizes a 1st class city, consistent with the authority of other classes of cities and of villages, to use the bidder prequalification procedure for public contracts.

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

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

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

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

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

("Municipality" is defined in s. 990.01 (22), stats., to include cities and villages; "it may be construed to include towns". In the context of s. 12.04 (4) (b), it is intended to include towns. Cf. the use of "municipality" in s. 12.04 (4) (a), stats.)

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

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

2           **32.05 Condemnation for sewers and transportation facilities.** (intro.) In this  
3 section, "mass transit facility" includes, without limitation because of enumeration, exclusive  
4 or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or  
5 existing expressways constructed before May 17, 1978, highway control devices, bus  
6 passenger loading areas and terminal facilities, including shelters, and fringe and corridor  
7 parking facilities to serve bus and other public mass transportation passengers, together with  
8 the acquisition, construction, reconstruction and maintenance of lands and facilities for the  
9 development, improvement and use of public mass transportation systems for the  
10 transportation of passengers. This section does not apply to proceedings in 1st class cities  
11 under subch. II. In any city, condemnation for housing under ss. 66.1201 to 66.1211, for urban  
12 renewal under s. 66.1333, or for cultural arts facilities under subch. V of ch. 229, may proceed  
13 under this section or under s. 32.06 at the option of the condemning authority. In any village,  
14 condemnation for housing under ss. 66.1201 to 66.1211 or for urban renewal under s. 66.1333  
15 may proceed under this section or under s. 32.06 at the option of the condemning authority.  
16 Condemnation by a local exposition district under subch. II of ch. 229 for any exposition  
17 center or exposition center facility may proceed under this section or under s. 32.06 at the  
18 option of the local exposition district. All other condemnation of property for public alleys,

1 streets, highways, airports, spaceports, mass transit facilities, or other transportation facilities,  
2 gas or leachate extraction systems to remedy environmental pollution from a solid waste  
3 disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and  
4 distribution facilities shall proceed as follows:

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

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

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

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

Because there is no apparent policy rationale for not extending the authority to use the s. 32.05 procedure for condemnations in villages for

these purposes, the section is amended to expressly include that authority.

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

2           **61.193 Establishing and changing compensation for elective offices.** (1) (a) In this  
3 section, "compensation" means a salary, a per diem compensation for each day or part of a day  
4 necessarily devoted to the service of the village and the discharge of duties, or a combination  
5 of salary and per diem compensation.

6           (b) The compensation for an elective village office shall be established before the  
7 earliest time for filing nomination papers for the office or, if nomination papers are not used,  
8 before the caucus date determined under s. 8.05 (1) (a). After that time or date, no change may  
9 be made in the compensation for the office that applies to the term of office for which the  
10 deadline or date applies. The compensation established for an elective office remains in effect  
11 for ensuing terms unless changed. In a newly incorporated village, the compensation for an  
12 elective office may be established during the first term of office.

**NOTE:** Creates a provision for establishing and changing compensation for village elective offices that corresponds to the provision applicable to city elective offices, created by SECTION 14 of this draft.

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

The 2nd and 3rd sentences of par. (b) restate language deleted from current s. 61.32, stats., by SECTION 6 of this draft. The last sentence of par. (b) is new and corresponds with a provision that currently applies to newly incorporated cities. See SECTIONS 14 and 15 of this draft.

Note that periodic increases in compensation for an elective office may be provided, as long as any increase is determined by the stated deadline. In addition, under s. 66.0507, stats., salary may include an automatic

adjustment for changes in cost of living (except village board members).  
See SECTION 25 of this draft.

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

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

**NOTE:** Persons serving in appointive offices in a village serve until their  
respective successors are appointed and qualify. This SECTION amends  
current law to provide that a village, by the adoption of an ordinance,  
may create a different method of determining when the term of an  
appointed officer ends. See also SECTION 13 of this draft.

9           **SECTION 5.** 61.31 (1) of the statutes is repealed.

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

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

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

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

10           **SECTION 6.** 61.32 of the statutes is amended to read:



1           **61.32 Village board; meeting; salaries.** The trustees of each village shall constitute  
2 a board designated the "Village Board of" (name of village) in which shall be vested all the  
3 powers of the village not specifically given some other officer. A majority of the  
4 members—elect shall constitute a quorum, but a less number may adjourn from time to time.  
5 The president shall preside at all meetings when present. In the president's absence the board  
6 may select another trustee to preside. Regular meetings shall be held at such time as may be  
7 prescribed by their bylaws. Special meetings may be called by any 2 trustees in writing, filed  
8 with the clerk, who shall thereupon seasonably notify all the trustees of the time and place  
9 thereof in the manner directed by the bylaws. All meetings shall be open to the public. The  
10 board shall keep a record of all its proceedings, and if there is a newspaper published in any  
11 village, the board shall cause the proceedings to be published therein as a class 1 notice, under  
12 ch. 985. The proceedings for the purpose of publication shall include the substance of every  
13 official action taken by the governing body. If there is no newspaper published in the village,  
14 the board may cause the proceedings to be published in a newspaper having general circulation  
15 in the village, posted in several public places or publicized in some other fashion, in such  
16 manner as the board directs. Nothing herein shall be construed as requiring the republication  
17 of any proceeding, ordinance or other matter or thing which has already been published  
18 according to law, nor shall anything herein be construed to relieve any village from publishing  
19 any proceeding, ordinance or other matter or thing required by law to be published.  
20 Notwithstanding the provisions of s. 985.08 (4), the fee for any such publication shall not  
21 exceed the rates specified in s. 985.08 (1). The board has power to preserve order at its  
22 meetings, compel attendance of trustees and punish nonattendance and it shall be judge of the  
23 election and qualification of its members. The president and board of trustees of any village,  
24 whether operating under general or special law, may by a three—fourths vote of all the members

1 of the village board determine that ~~an annual~~ a salary be paid the president and trustees.  
2 Salaries heretofore established shall ~~so remain until changed by ordinance and shall not be~~  
3 ~~increased or diminished during their terms of office.~~

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

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

4 **SECTION 7.** 61.50 (1) of the statutes is amended to read:

5 61.50 (1) PUBLICATION OF NOTICE OF ORDINANCES. Every contract, conveyance,  
6 commission, license or other written instrument shall be executed on the part of the village  
7 by the president and clerk, unless otherwise provided by resolution or ordinance, sealed with  
8 corporate seal, and in pursuance only of authority therefor from the village board. All  
9 ordinances and bylaws shall be signed by the president and countersigned by the clerk; and,  
10 if any penalty or forfeiture is thereby imposed, the ordinance or bylaw shall be published either  
11 in its entirety, as a class 1 notice, under ch. 985, or as a notice, as described under sub. (3) (b),  
12 and shall take effect on the day after the publication or a later date if expressly prescribed. If  
13 there is no newspaper published in the village, the village board may in lieu of newspaper  
14 publication have copies of the ordinances and bylaws posted in at least 3 public places in said  
15 village, and proof thereof filed and recorded by the village clerk, and the same shall take effect

1 the day after the proof of posting has been filed and recorded, or at a later date if expressly  
2 provided in the ordinance or bylaw.

**NOTE:** Section 61.50 (1), stats., in part provides that the village president and clerk must sign every village contract, conveyance, commission license, or other written instrument. In contrast, s. 62.13 (12), stats., specifically provides that a city public works contract must be signed by the mayor and clerk, unless otherwise provided by a city resolution or ordinance. This SECTION amends current law to provide that the village president and clerk must sign every village contract, conveyance, commission license, or other written instrument, unless otherwise provided by a village resolution or ordinance.

3 **SECTION 8.** 61.54 of the statutes is repealed and recreated to read:

4 **61.54 Public works.** All contracts for public construction shall be let by a village board  
5 in accordance with s. 62.15. The village board, or a person or body designated by the village  
6 board, shall exercise the powers and duties of the board of public works under s. 62.15.

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

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

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

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

3. A bidder must submit specified financial security as a guarantee that if the bid is accepted, the bidder will execute and file the proper contract and bond.
4. A bidder must provide sufficient sureties or provide financial security during the performance of the contract.
5. The board of public works may reject any bid if, in the board's opinion, any combination has been entered into to prevent free competition. Also, the city's common council may, if in its opinion any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, by resolution adopted by two-thirds of its members, reject any and all bids and direct the work to be done by the city directly under the supervision of the board of public works.
6. If the board of public works determines that a bidder is incompetent to perform the work, the board must report to the council a schedule of all of the bids for the work, together with a recommendation to accept the bid of the lowest responsible bidder. The common council may let the work to that bidder or re-advertise the contract.
7. A public work may be undertaken by the use of patented articles, materials, or processes if the owner of the patent permits the use of the patent or sells it.
8. Different plans and specifications for a public work may be prepared requiring the use of different kinds of materials.
9. A contract may include a provision requiring the contractor to keep the work done under the contract in good order or repair for a period not to exceed 5 years.
10. A specified amount of the contract payment may be retained by the city to ensure adequate performance of the contract.
11. A contractor must maintain barriers and lights to prevent accidents on streets or sidewalks. A contractor also will be liable for all damages caused by the negligent digging up of streets, alleys, or public grounds, or that result from the contractor's carelessness.
12. If an ordinance authorizes any work to be done directly by the city without submitting a proposal for bids, the board of public works must keep an accurate account of the cost of the public work, including necessary overhead expenses. The board must make a complete report of the work to the common council.

Finally, s. 61.56, stats., provides that a village board may elect to comply with the statutory contracting provisions applicable to cities, as described

above, in lieu of the more minimal provisions of ss. 61.54 and 61.55, stats.

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

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

1       **SECTION 9.** 61.55 and 61.56 of the statutes are repealed.

**NOTE:** See the Note to SECTION 8 of this draft.

2       **SECTION 10.** 61.57 of the statutes is amended to read:

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

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

9       **SECTION 11.** 61.65 (1) (a) 2. of the statutes is amended to read:

10       61.65 (1) (a) 2. Contracting for police protective services with a city or town, with  
11 another village or with ~~the a county in which the village is located~~. A village that contracts  
12 for police protective services shall pay the full cost of services provided.

**NOTE:** Current law provides that a village may contract for police protective services with, among other entities, a county in which the village is located. This SECTION amends the law to provide that a village may contract with any county for this purpose. Section 66.0301 (2), stats., also allows a municipality to contract with another municipality for services; this authority is to be liberally construed. See also SECTION 18 of this draft.

13       **SECTION 12.** 62.09 (1) (a) of the statutes is amended to read:

1           62.09 (1) (a) The officers shall be a mayor, treasurer, clerk, comptroller, attorney,  
2 engineer, one or more assessors unless the city is assessed by a county assessor under s. 70.99,  
3 one or more constables as determined by the common council, a local health officer, as defined  
4 in s. 250.01 (5), or local board of health, as defined in s. 250.01 (3), street commissioner, board  
5 of police and fire commissioners except in cities where not applicable, chief of police except  
6 in a city that has contracted for all of its police protective services under s. 62.13 (2g) or has  
7 abolished its police department under s. 62.13 (2s), chief of the fire department except in a city  
8 that contracted for all of its fire protective services under s. 62.13 (8) (b), board of public  
9 works, 2 alderpersons from each aldermanic district, and such other officers or boards as are  
10 created by law or by the council. If one alderperson from each aldermanic district is provided  
11 under s. 66.0211 (1), the council may, by ordinance adopted by a two-thirds vote of all its  
12 members and approved by the electors at a general or special election, provide that there shall  
13 be 2 alderpersons from each aldermanic district.

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

14           **SECTION 13.** 62.09 (5) (e) of the statutes is created to read:

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

**NOTE:** Section 61.23 (1), stats., provides that persons serving in appointive village offices will serve until their respective successors are appointed and qualify. There is no similar statutory provision for appointive city officers. This SECTION creates s. 62.09 (5) (e) as a parallel to the law applicable in villages by requiring that appointive city officers serve in their offices until their respective successors are appointed and qualify. Consistent with the amendment of s. 61.23 (1) by

SECTION 4 of this draft, a city by ordinance may provide a different method of determining when the term of an appointed officer ends.

1       **SECTION 14.** 62.09 (6) (am) of the statutes is created to read:

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

5       2. The compensation for an elective city office shall be established before the earliest  
6       time for filing nomination papers for the office. After that time, no change may be made in  
7       the compensation for the office that applies to the term of office for which the deadline applies.  
8       The compensation established for an elective office remains in effect for ensuing terms unless  
9       changed. In a newly incorporated city, the compensation for an elective office may be  
10      established during the first term of office.

**NOTE:** Creates a provision for establishing and changing compensation for city elective offices that corresponds to the provision applicable to village elective offices, created by SECTION 3 of this draft. The provision replaces current s. 62.09 (6) (b), stats., repealed by SECTION 15 of this draft.

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

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

The 2nd and 3rd sentences of subd. 2. restate language deleted from current s. 61.32, stats., applicable to village elective offices, by SECTION 6 of this draft.

The last sentence of subd. 2. restates the last sentence of repealed s. 62.09 (6) (b).

Note that periodic increases in compensation for an elective office may be provided, as long as any increase is determined by the stated deadline. In addition, under s. 66.0507, stats., salary may include an automatic adjustment for changes in cost of living (except city council members). See SECTION 25 of this draft.

1       **SECTION 15.** 62.09 (6) (b) of the statutes is repealed.

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

The repealed provision is replaced by s. 62.09 (6) (am), stats., created by SECTION 14 of this draft. The repealed language has been characterized as confusing and there is no counterpart or corresponding provision that applies to villages.

2       **SECTION 16.** 62.09 (11) (g) of the statutes is repealed.

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

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

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



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

1           **SECTION 17.** 62.13 (1) of the statutes is amended to read:

2           62.13 **(1)** COMMISSIONERS. Except as provided in subs. (2) (g), (2m) and (2s), and (8)  
3           (b) each city shall have a board of police and fire commissioners consisting of 5 citizens, 3  
4           of whom shall constitute a quorum. The mayor shall annually, between the last Monday of  
5           April and the first Monday of May, appoint in writing to be filed with the secretary of the board,  
6           one member for a term of 5 years. No appointment shall be made which will result in more  
7           than 3 members of the board belonging to the same political party. The board shall keep a  
8           record of its proceedings.

**NOTE:** See SECTIONS 18 and 20 and the notes thereto.

9           **SECTION 18.** 62.13 (2g) of the statutes is created to read:

10          62.13 **(2g)** CONTRACTING FOR POLICE PROTECTIVE SERVICES. A city may enter into a  
11          contract for police protective services with a village, a town, another city, or a county. A city  
12          that contracts for police protective services shall pay the full cost of services provided. A city  
13          that contracts for all of its police protective services under this paragraph is not required to  
14          have a board of police commissioners.

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

15          **SECTION 19.** 62.13 (8) of the statutes is amended to read:

1           62.13 (8) FIRE DEPARTMENT. (a) The council may provide by ordinance for either a paid  
2 or a volunteer fire department and for the management and equipment of either insofar as not  
3 otherwise provided for by law. In the case where a combination of paid and volunteer fire  
4 department is provided for, such city shall be reimbursed by the department of transportation,  
5 not to exceed \$500 for any fire calls on a state trunk highway or on any highway that is a part  
6 of the national system of interstate highways and is maintained by the department of  
7 transportation if the city submits written proof that the city has made a reasonable effort to  
8 collect the cost from the insurer of the person to whom the fire call was provided or from the  
9 person to whom the fire call was provided, except that the city may attempt to collect the cost  
10 from the person only if the city is unsuccessful in its efforts to collect from the person's insurer  
11 or if the person has no insurer. If the city collects the cost from an insurer or such person after  
12 the department reimburses the city, the city shall return the amount collected to the  
13 department.

**NOTE:** See SECTION 20 and the Note thereto.

14           **SECTION 20.** 62.13 (8) (b) of the statutes is created to read:

15           62.13 (8) (b) A city may enter into a contract for fire protective services with a village,  
16 a town, or another city. A city that contracts for fire protective services shall pay the full cost  
17 of services provided. A city that contracts for all of its fire protective services under this  
18 paragraph is not required to have a board of fire commissioners.

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

19           **SECTION 21.** 62.15 (5) of the statutes is amended to read:

1           62.15 (5) REJECTION OF BIDS. (a) The power to reject any and all bids shall exist unless  
2 expressly waived. The board of public works may reject any and all bids, if, in their opinion,  
3 any combination has been entered into to prevent free competition. The council may, if it be  
4 of the opinion that any of the bids are fraudulent, collusive, excessive or against the best  
5 interests of the city, by resolution adopted by two-thirds of its members, reject any or all of  
6 the bids received and order the work done by the city directly under the supervision of the  
7 board of public works and s. 61.54 (2) and (3) shall apply to the performance of such work.

**NOTE:** See the Note to SECTION 22.

8           **SECTION 22.** 62.15 (5) (b) and (c) of the statutes are created to read:

9           62.15 (5) (b) If a city performs the work directly under par. (a), it may purchase and  
10 secure all necessary and proper tools to perform the work.

11           (c) The cost and expense of all work done and all materials furnished by a city under this  
12 subsection shall be collected in the same manner as if done and furnished by any other person  
13 under contract with the city and the city may levy special assessments for the work. The  
14 amounts assessed against any lands or interests specially benefited or otherwise liable under  
15 a special assessment may not exceed the amounts that would have been assessed against the  
16 land or interests had the lowest bid received under par. (a) been accepted and costs and  
17 expenses in excess of that bid shall be borne by the city.

**NOTE:** Section 62.15 (5), stats., provides that when a city directly performs public construction because it has been determined that bids are fraudulent, collusive, excessive, or not in the best interests of the city, the provisions of s. 61.54 (2) and (3), stats., will apply. The latter statute provides that in a similar situation a village: (1) may purchase all necessary and proper tools and equipment; (2) may levy special assessments up to the amount of the lowest rejected bid; and (3) must bear any costs in excess of the lowest rejected bid. Because SECTION 8 of this draft in part repeals s. 61.54, this SECTION incorporates the substance of s. 61.54 (2) and (3) in s. 62.15 (5).

1           **SECTION 23.** 66.0133 (3) of the statutes is amended to read:

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

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

17          **SECTION 24.** 66.0505 (3) (a) 1. of the statutes is amended to read:

18          66.0505 (3) (a) 1. Notwithstanding the provisions of s. 59.10 (1) (c), (2) (c), (3) (f) to  
19          (j), 60.32, ~~61.32~~ 61.193, or 62.09 (6), an elective officer may send written notification to the  
20          clerk and treasurer of the political subdivision on whose governing body he or she serves that  
21          he or she wishes to refuse to accept the salary that he or she is otherwise entitled to receive.

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

1           **SECTION 25.** 66.0507 of the statutes is amended to read:

2           **66.0507 Automatic salary schedules.** Whenever the governing body of any city,  
3 village or town by ordinance adopts a salary schedule for some or all employees and officers  
4 of the city, village or town, other than members of the city council or village or town board,  
5 the salary schedule may include an automatic adjustment for some or all of the personnel in  
6 conformity with fluctuations upwards and downwards in the cost of living, notwithstanding  
7 ss. 60.32, ~~61.32~~ 61.193, 62.09 (6) and 62.13 (7).

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

8           **SECTION 26.** 66.0901 (2) of the statutes is amended to read:

9           66.0901 (2) **BIDDER'S PROOF OF RESPONSIBILITY.** A municipality intending to enter into  
10 a public contract may, before delivering any form for bid proposals, plans, and specifications  
11 to any person, except suppliers, and others not intending to submit a direct bid, require the  
12 person to submit a full and complete statement sworn to before an officer authorized by law  
13 to administer oaths. The statement shall consist of information relating to financial ability,  
14 equipment, experience in the work prescribed in the public contract, and other matters that the  
15 municipality requires for the protection and welfare of the public in the performance of a  
16 public contract. The statement shall be in writing on a standard form of a questionnaire that  
17 is adopted and furnished by the municipality. The statement shall be filed in the manner and  
18 place designated by the municipality. The statement shall not be received less than 5 days prior  
19 to the time set for the opening of bids. The contents of the statement shall be confidential and  
20 may not be disclosed except upon the written order of the person furnishing the statement, for  
21 necessary use by the public body in qualifying the person, or in cases of actions against, or by,  
22 the person or municipality. The governing body of the municipality or the committee, board,

1 or employee charged with, or delegated by the governing body with, the duty of receiving bids  
2 and awarding contracts shall properly evaluate the statement and shall find the maker of the  
3 statement either qualified or unqualified. ~~This subsection does not apply to a 1st class city.~~

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

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

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

4 **SECTION 27.** 66.1103 (11) (a) of the statutes is amended to read:

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

1 construction and operation of the project and the beneficial ownership of the project warrant  
2 the conclusion that they are public contracts.

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

3 SECTION 28. 86.25 (4) of the statutes is amended to read:

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

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

6 SECTION 29. 893.81 of the statutes is repealed.

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

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

Because there appears to be no current policy rationale for treating cities and villages differently under this statute and because common law municipal government immunity was abrogated by the supreme court in 1962 and municipal liability was then comprehensively addressed by the legislature in 1963, making s. 893.81 arguably anachronistic, the provision is repealed.

It is recognized that the repeal of the provision affects not only the liability of cities but the liability of counties as well. As such, the recommendation to repeal might be questioned as exceeding the special

committee's charge. However, the reasons outlined above also support the repeal of the provision as it applies to counties (and, addressing only the liability of cities under the provision would expand the liability of counties). More generally, there is no overriding policy reason to treat county and municipal liability under state law for mob damage differently than the general treatment of county and municipal liability under s. 893.80, stats. (which will apply to liability for mob damage if s. 893.81 is repealed).

1           **SECTION 30. Initial applicability.**

2           (1) The treatment of sections 61.193, 61.32, 62.09 (6) (am), 62.09 (6) (b), and 66.0507  
3           of the statutes by this act first applies to village and city elective offices to be filled at the 2010  
4           spring election.

5           (2) The treatment of sections 61.54 to 61.57, 62.15, 66.0133 (3), 66.1101 (11) (a), and  
6           86.25 (4) of the statutes by this act first applies to the solicitation of bids for public works made  
7           on January 1, 2010.

8                                   **(END)**