



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 462**

August 24, 2005 – Offered by Representative ZIEGELBAUER.

1 **AN ACT** *to repeal* 111.70 (1) (dm), 111.70 (1) (fm), 111.70 (1) (nc), 111.70 (4) (cm)
2 5s., 111.70 (4) (cm) 8m. b., 111.70 (4) (cm) 8p., 111.70 (4) (cm) 8s. and 118.245;
3 **to consolidate, renumber and amend** 111.70 (4) (cm) 8m. a. and c.; **to amend**
4 111.70 (1) (b), 111.70 (4) (cm) 6. a., 111.70 (4) (cm) 6. am., 111.70 (4) (cm) 7r. d.,
5 111.70 (4) (cm) 7r. e., 111.70 (4) (cm) 7r. f., 111.70 (4) (cm) 7r. h., 111.70 (4) (d)
6 2. a., 119.04 (1) and 121.91 (2m) (e) 2.; and **to create** 65.95, 111.70 (4) (c) 2m.,
7 111.70 (4) (jm) 4m. and 111.77 (6) (dm) of the statutes; **relating to:** spending
8 limits for cities, villages, towns, counties, school districts, and technical college
9 districts; school district revenue limits; and qualified economic offers under the
10 Municipal Employment Relations Act.

Analysis by the Legislative Reference Bureau

This substitute amendment establishes spending limits for cities, villages, towns, counties, and technical college districts beginning in 2006. The limit is the amount spent in the previous fiscal year plus the average percentage increase in the

consumer price index (CPI) over the three previous fiscal years plus 1 percent. The limit for a city, village, town, or county is also increased by the percentage increase over the previous fiscal year in its population; the limit for a technical college district is also increased by the percentage increase over the previous fiscal year in its enrollment.

An entity may exceed its spending limit in any fiscal year if a referendum approves the amount of the proposed excess.

Current law generally limits the increase in the total amount that a school district may receive from general school aids and property taxes in a school year to the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the CPI. Beginning with the revenue limit calculated for the 2006-07 school year, this substitute amendment indexes the per pupil increase allowed to the percentage increase in the CPI plus 1 percent.

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 seven arbitrators, from which the parties alternately strike names until one arbitrator is left. As an alternative to a single arbitrator, WERC may provide for an arbitration panel that consists of one person selected by each party and one person selected by WERC. As a further alternative, WERC may also provide a process that allows for a random selection of a single arbitrator from a list of seven 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 provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This substitute amendment eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under the Municipal Employment Relations Act, for labor disputes that go to arbitration, the arbitrator or arbitration panel must consider a variety of factors, some of which are given “greatest weight”; some of which are given “greater weight”; and some of which must simply be considered. Among the factors that must simply be considered are the wages, hours, and conditions of employment of employees providing similar services and of employees in public and in private employment in the same and comparable communities. This substitute amendment provides that the arbitrator or arbitration panel must consider the wages, hours, and conditions of employment of the employees as a whole and not in isolation.

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

Finally, the substitute amendment eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

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

1 **SECTION 1.** 65.95 of the statutes is created to read:

2 **65.95 Spending and levy limits. (1)** In this section:

3 (a) “Excess levy” means the amount by which a local governmental unit’s levy
4 exceeds its previous levy without approval at a referendum under sub. (5).

5 (b) “Excess spending” means the amount by which a local governmental unit’s
6 spending exceeds its spending limit under this section.

7 (c) “Local governmental unit” means any city, village, town, county, or technical
8 college district.

9 **(2)** Except as provided in sub. (3) and subject to sub. (4), a local governmental
10 unit may not spend in any fiscal year more than the amount it spent the previous
11 fiscal year increased by all of the following:

12 (a) The average percentage increase in the consumer price index for
13 Milwaukee–Racine or its successor for the 3 previous fiscal years, plus 1 percent.

1 (b) For cities, villages, towns, and counties, the percentage increase over the
2 previous fiscal year in the population of the city, village, town, or county, as estimated
3 by the department of administration under s. 16.96.

4 (c) For technical college districts, the percentage increase over the previous
5 fiscal year in the enrollment of the district.

6 **(3)** (a) If a local governmental unit wishes to exceed the limit otherwise
7 applicable to the local governmental unit under sub. (2) in any fiscal year, it shall
8 promptly adopt a resolution supporting inclusion in its final budget of an amount
9 equal to the proposed excess spending. The resolution shall be filed as provided in
10 s. 8.37. The local governmental unit shall call a special referendum for the purpose
11 of submitting the resolution to the electors for approval or rejection. In lieu of a
12 special referendum, the local governmental unit may specify that the referendum be
13 held at the next succeeding spring primary or election or September primary or
14 general election, if such election is to be held not sooner than 42 days after the filing
15 of the resolution.

16 (b) The local governmental unit shall publish type A, B, C, D, and E notices of
17 the referendum under s. 10.01 (2). Notwithstanding s. 10.01 (2) (a), the type A notice
18 shall include a statement of the amount of the excess spending specified in par. (a)
19 and a copy of the resolution under par. (a). Section 5.01 (1) applies in the event of
20 failure to comply with the notice requirements of this paragraph.

21 (c) The referendum shall be held in accordance with chs. 5 to 12. The local
22 governmental unit shall provide the election officials with all necessary election
23 supplies. The form of the ballot shall correspond substantially with the standard
24 form for referendum ballots prescribed by the elections board under ss. 5.64 (2) and
25 7.08 (1) (a). The question submitted shall be whether the limit under sub. (2) may

1 be exceeded by a specified amount. The limit otherwise applicable to the local
2 governmental unit under sub. (2) is increased by the amount approved by a majority
3 of those voting on the question.

4 (4) In the case of a city, village, town, or county, the spending limit under sub.
5 (2) does not apply to any of the following amounts:

6 (a) Any amount contributed to a proprietary fund under s. 65.90 (3) (b) 5. that
7 is not property tax revenues.

8 (b) Any amount spent as a matching contribution that is related to a federal
9 grant that is received by the city, village, town, or county that is not property tax
10 revenues.

11 (c) Any amount of spending that derived from a federal grant.

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

13 111.70 (1) (b) "Collective bargaining unit" means ~~a- the unit consisting of~~
14 ~~municipal employees who are school district professional employees or of municipal~~
15 ~~employees who are not school district professional employees~~ that is determined by
16 the commission to be appropriate for the purpose of collective bargaining.

17 **SECTION 3.** 111.70 (1) (dm) of the statutes is repealed.

18 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

19 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

20 **SECTION 6.** 111.70 (4) (c) 2m. of the statutes is created to read:

21 111.70 (4) (c) 2m. 'Factors used in arbitration to settle disputes.' If the parties
22 to a dispute agree to have the commission or any other appropriate agency serve as
23 arbitrator to resolve the dispute and if the commission or any other appropriate
24 agency compares the wages, hours, and conditions of employment of the municipal
25 employees involved in the arbitration proceedings with the wages, hours, and

1 conditions of employment of any other employees, the commission or other
2 appropriate agency shall compare the wages, hours, and conditions of employment
3 as a whole, rather than as individual elements.

4 **SECTION 7.** 111.70 (4) (cm) 5s. of the statutes is repealed.

5 **SECTION 8.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

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

22 **SECTION 9.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

23 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
24 commission shall make an investigation, with or without a formal hearing, to
25 determine whether arbitration should be commenced. If in determining whether an

1 impasse exists the commission finds that the procedures set forth in this paragraph
2 have not been complied with and such compliance would tend to result in a
3 settlement, it may order such compliance before ordering arbitration. The validity
4 of any arbitration award or collective bargaining agreement shall not be affected by
5 failure to comply with such procedures. Prior to the close of the investigation each
6 party shall submit in writing to the commission its single final offer containing its
7 final proposals on all issues in dispute that are subject to interest arbitration under
8 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~
9 applies. If a party fails to submit a single, ultimate final offer, the commission shall
10 close the investigation based on the last written position of the party. ~~The municipal~~
11 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~
12 ~~of the investigation.~~ Such final offers may include only mandatory subjects of
13 bargaining, except that a permissive subject of bargaining may be included by a
14 party if the other party does not object and shall then be treated as a mandatory
15 subject. No later than such time, the parties shall also submit to the commission a
16 stipulation, in writing, with respect to all matters which are agreed upon for
17 inclusion in the new or amended collective bargaining agreement. The commission,
18 after receiving a report from its investigator and determining that arbitration should
19 be commenced, shall issue an order requiring arbitration and immediately submit
20 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
21 alternately strike names until a single name is left, who shall be appointed as
22 arbitrator. The petitioning party shall notify the commission in writing of the
23 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
24 formally appoint the arbitrator and submit to him or her the final offers of the
25 parties. The final offers shall be considered public documents and shall be available

1 from the commission. In lieu of a single arbitrator and upon request of both parties,
2 the commission shall appoint a tripartite arbitration panel consisting of one member
3 selected by each of the parties and a neutral person designated by the commission
4 who shall serve as a chairperson. An arbitration panel has the same powers and
5 duties as provided in this section for any other appointed arbitrator, and all
6 arbitration decisions by such panel shall be determined by majority vote. In lieu of
7 selection of the arbitrator by the parties and upon request of both parties, the
8 commission shall establish a procedure for randomly selecting names of arbitrators.
9 Under the procedure, the commission shall submit a list of 7 arbitrators to the
10 parties. Each party shall strike one name from the list. From the remaining 5
11 names, the commission shall randomly appoint an arbitrator. Unless both parties
12 to an arbitration proceeding otherwise agree in writing, every individual whose
13 name is submitted by the commission for appointment as an arbitrator shall be a
14 resident of this state at the time of submission and every individual who is
15 designated as an arbitration panel chairperson shall be a resident of this state at the
16 time of designation.

17 **SECTION 10.** 111.70 (4) (cm) 7r. d. of the statutes is amended to read:

18 111.70 (4) (cm) 7r. d. Comparison of wages, hours and conditions of employment
19 of the municipal employees involved in the arbitration proceedings with the wages,
20 hours and conditions of employment of other employees performing similar services.
21 In making this comparison, the arbitrator or arbitration panel shall consider wages,
22 hours, and conditions of employment as a whole, rather than as individual elements.

23 **SECTION 11.** 111.70 (4) (cm) 7r. e. of the statutes is amended to read:

24 111.70 (4) (cm) 7r. e. Comparison of the wages, hours and conditions of
25 employment of the municipal employees involved in the arbitration proceedings with

1 the wages, hours and conditions of employment of other employees generally in
2 public employment in the same community and in comparable communities. In
3 making this comparison, the arbitrator or arbitration panel shall consider wages,
4 hours, and conditions of employment as a whole, rather than as individual elements.

5 **SECTION 12.** 111.70 (4) (cm) 7r. f. of the statutes is amended to read:

6 111.70 (4) (cm) 7r. f. Comparison of the wages, hours and conditions of
7 employment of the municipal employees involved in the arbitration proceedings with
8 the wages, hours and conditions of employment of other employees in private
9 employment in the same community and in comparable communities. In making
10 this comparison, the arbitrator or arbitration panel shall consider wages, hours, and
11 conditions of employment as a whole, rather than as individual elements.

12 **SECTION 13.** 111.70 (4) (cm) 7r. h. of the statutes is amended to read:

13 111.70 (4) (cm) 7r. h. The overall compensation presently received by the
14 municipal employees, including direct wage compensation, vacation, holidays and
15 excused time, insurance and pensions, medical and hospitalization benefits, the
16 continuity and stability of employment, and all other benefits received. In making
17 this comparison, the arbitrator or arbitration panel shall consider wages, hours, and
18 conditions of employment as a whole, rather than as individual elements.

19 **SECTION 14.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,
20 renumbered 111.70 (4) (cm) 8m. and amended to read:

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

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

10 **SECTION 15.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

11 **SECTION 16.** 111.70 (4) (cm) 8p. of the statutes is repealed.

12 **SECTION 17.** 111.70 (4) (cm) 8s. of the statutes is repealed.

13 **SECTION 18.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

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

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

18 **SECTION 19.** 111.70 (4) (jm) 4m. of the statutes is created to read:

19 111.70 (4) (jm) 4m. For the purpose of setting wages and determining hours and
20 conditions of employment under subd. 4., if the arbitrator compares the wages,
21 hours, and conditions of employment with the wages, hours, and conditions of
22 employment of other employees performing similar services or in the same
23 community or comparable communities, the arbitrator shall consider wages, hours,
24 and conditions of employment as a whole, rather than as individual elements.

25 **SECTION 20.** 111.77 (6) (dm) of the statutes is created to read:

1 111.77 (6) (dm) In making the comparison of wages, hours, and conditions of
2 employment under par (d), the arbitrator shall consider wages, hours, and conditions
3 of employment as a whole, rather than as individual elements.

4 **SECTION 21.** 118.245 of the statutes is repealed.

5 **SECTION 22.** 119.04 (1) of the statutes is amended to read:

6 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),
7 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38
8 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to
9 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18,
10 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), ~~118.245~~, 118.255, 118.258, 118.291,
11 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13
12 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) and (37), 120.14 and 120.25 are
13 applicable to a 1st class city school district and board.

14 **SECTION 23.** 121.91 (2m) (e) 2. of the statutes is amended to read:

15 121.91 (2m) (e) 2. Multiply the amount of the revenue increase per pupil
16 allowed under this subsection for the previous school year by the sum of ~~1.0~~ 1.01 plus
17 the allowable rate of increase under s. 73.0305 expressed as a decimal.

18 **SECTION 24. Nonstatutory provisions.**

19 (1) Notwithstanding section 65.95 (2) of the statutes, as created by this act, in
20 the first fiscal year in which the spending limit established under this act applies,
21 the base for determining the spending limit is the fiscal year that began in 2004, not
22 2005.

23 **SECTION 25. Initial applicability.**

24 (1) The treatment of section 65.95 of the statutes first applies to the fiscal year
25 of a local governmental unit that begins in 2006.

1 (2) The treatment of section 111.70 (1) (b), (dm), (fm), and (nc) and (4) (cm) 5s.
2 and 6. a., and am., 8m. a., b., and c., 8p., and 8s. and (d) 2. a. of the statutes first
3 applies to petitions for arbitration that relate to collective bargaining agreements
4 that cover periods beginning on or after July 1, 2005, and that are filed under section
5 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this
6 subsection.

7 (3) The treatment of sections 111.70 (4) (c) 2m., (cm) 7r. d., e., f., and h., and (jm)
8 4m. and 111.77 (6) (dm) of the statutes first applies to an arbitration decision that
9 results from a petition for arbitration submitted on the effective date of this
10 subsection.

11 (4) The treatment of section 121.91 (2m) (e) 2. of the statutes first applies to the
12 calculation of a school district's revenue limit for the 2006-07 school year.

13

(END)