



2003 ASSEMBLY BILL 751

January 14, 2004 - Introduced by Representatives BIES, ALBERS, BALOW, BERCEAU, BLACK, COLON, HEBL, KREUSER, J. LEHMAN, MILLER, MOLEPSKE, MUSSER, OWENS, PETROWSKI, PLOUFF, POCAN, POPE-ROBERTS, RICHARDS, SCHOOFF, SHERMAN, SHILLING, SINICKI, STASKUNAS, STEINBRINK, TAYLOR, TURNER, VAN AKKEREN, VRUWINK and ZEPNICK, cosponsored by Senators HANSEN, BRESKE, ERPENBACH, RISSER and WIRCH. Referred to Committee on Labor.

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) 7., 111.70 (4) (cm) 7g., 111.70 (4) (cm) 8m. b., 111.70 (4) (cm)
3 8p., 111.70 (4) (cm) 8s. and 118.245; **to consolidate, renumber and amend**
4 111.70 (4) (cm) 8m. a. and c.; **to amend** 111.70 (4) (cm) 5., 111.70 (4) (cm) 6. a.,
5 111.70 (4) (cm) 6. am., 111.70 (4) (cm) 6. b., 111.70 (4) (cm) 6. c., 111.70 (4) (cm)
6 6. d., 111.70 (4) (cm) 6. g., 111.70 (4) (cm) 7r. (intro.), 111.70 (4) (d) 2. a., 111.70
7 (4) (L), 111.71 (5) and 119.04 (1); and **to create** 111.70 (4) (cm) 6. ar., 111.70 (4)
8 (cm) 6. bm., 111.70 (4) (cm) 6. cm., 111.70 (4) (cm) 7r. ie., 111.70 (4) (cm) 7r. ir.
9 and 111.71 (5m) of the statutes; **relating to:** the collective bargaining process
10 affecting school district professional employees under the Municipal
11 Employment Relations Act.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable

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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% 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% 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 bill eliminates the QEO exception from the arbitration process and, instead, provides that if a dispute involves a collective bargaining unit consisting of school district professional employees, the arbitrator may determine individually all issues in dispute involving mandatory subjects of bargaining that were included in the parties' initial bargaining offers. In this regard, the arbitrator is not limited to choosing the final offer of one party over the other party. In addition, the bill provides that WERC must randomly choose an arbitrator to resolve disputes involving collective bargaining units consisting of school district professional employees. Finally, the bill requires that, if at all possible, the WERC must appoint a permanent or temporary reserve judge as the arbitrator to resolve such disputes.

2. Current law provides that in reaching a decision, the arbitrator or arbitration panel must give weight to many factors, including the lawful authority of the municipal employer, the stipulations of the parties, the interest and welfare of the public, and the financial ability of the unit of government to meet the costs of the proposed agreement, comparison of wages, hours, and conditions of employment with those of other public and private sector employees, the cost of living, the overall compensation and benefits that the employees currently receive, and other similar

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factors. But, under current law, the arbitrator is required to give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer.

This bill eliminates the authorization for the arbitrator or arbitration panel to give any additional weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer and, instead, requires that the arbitrator or arbitration panel simply considers these as factors.

3. Finally, the bill eliminates a 3.8% cap imposed on salary fringe benefit annual increases for all nonrepresented professional school district employees.

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

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

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

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

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

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

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

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

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

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

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

19 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration involving
20 a collective bargaining unit consisting of municipal employees other than school
21 district professional employees, the commission shall make an investigation, with or
22 without a formal hearing, to determine whether arbitration should be commenced.
23 If in determining whether an impasse exists the commission finds that the
24 procedures set forth in this paragraph have not been complied with and such
25 compliance would tend to result in a settlement, it may order such compliance before

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

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

14 **SECTION 8.** 111.70 (4) (cm) 6. ar. of the statutes is created to read:

15 111.70 (4) (cm) 6. ar. Upon receipt of a petition to initiate arbitration involving
16 a collective bargaining unit consisting of school district employees, the commission
17 shall make an investigation, with or without a formal hearing, to determine whether
18 arbitration should be commenced. If in determining whether an impasse exists the
19 commission finds that the procedures set forth in this paragraph have not been
20 complied with and such compliance would tend to result in a settlement, it may order
21 such compliance before ordering arbitration. The validity of any arbitration award
22 or collective bargaining agreement shall not be affected by failure to comply with
23 such procedures. Prior to the close of the investigation, each party shall submit to
24 the commission a stipulation, in writing, with respect to all matters which are agreed
25 upon for inclusion in the new or amended collective bargaining agreement. The

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1 commission, after receiving a report from its investigator and determining that
2 arbitration should be commenced, shall issue an order requiring arbitration and
3 shall randomly appoint an arbitrator. The commission shall first seek to appoint a
4 permanent or temporary reserve judge, appointed under s. 753.075 (2), to serve as
5 an arbitrator under this subd. 6. ar. If a permanent or temporary reserve judge is
6 not available for appointment as an arbitrator, the commission may then appoint any
7 individual eligible to serve as an arbitrator under subd. 6. am. Unless both parties
8 to an arbitration proceeding otherwise agree in writing, every individual who is
9 appointed as an arbitrator shall be a resident of this state.

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

11 111.70 (4) (cm) 6. b. The arbitrator appointed under subd. 6. am. shall, within
12 10 days of his or her appointment, establish a date and place for the conduct of the
13 arbitration hearing. Upon petition of at least 5 citizens of the jurisdiction served by
14 the municipal employer, filed within 10 days after the date on which the arbitrator
15 is appointed, the arbitrator shall hold a public hearing in the jurisdiction for the
16 purpose of providing the opportunity to both parties to explain or present supporting
17 arguments for their positions and to members of the public to offer their comments
18 and suggestions. The final offers of the parties, as transmitted by the commission
19 to the arbitrator, shall serve as the basis for continued negotiations, if any, between
20 the parties with respect to the issues in dispute. At any time prior to the arbitration
21 hearing, either party, with the consent of the other party, may modify its final offer
22 in writing.

23 **SECTION 10.** 111.70 (4) (cm) 6. bm. of the statutes is created to read:

24 111.70 (4) (cm) 6. bm. The arbitrator appointed under subd. 6. ar. shall, within
25 10 days of his or her appointment, establish a date and place for the conduct of the

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1 arbitration hearing. Upon petition of at least 5 citizens of the jurisdiction served by
2 the municipal employer, filed within 10 days after the date on which the arbitrator
3 is appointed, the arbitrator shall hold a public hearing in the jurisdiction for the
4 purpose of providing the opportunity to both parties to explain or present supporting
5 arguments for their positions and to members of the public to offer their comments
6 and suggestions. The initial bargaining offers of the parties submitted under subd.
7 2., as transmitted by the commission to the arbitrator, shall serve as the basis for
8 continued negotiations, if any, between the parties with respect to the issues in
9 dispute. At any time prior to the arbitration hearing, either party, with the consent
10 of the other party, may modify its initial bargaining offer in writing.

11 **SECTION 11.** 111.70 (4) (cm) 6. c. of the statutes is amended to read:

12 111.70 (4) (cm) 6. c. Prior to the arbitration hearing under subd. 6. b., either
13 party may, within a time limit established by the arbitrator, withdraw its final offer
14 and mutually agreed upon modifications thereof, if any, and shall immediately
15 provide written notice of such withdrawal to the other party, the arbitrator and the
16 commission. If both parties withdraw their final offers and mutually agreed upon
17 modifications, the labor organization, after giving 10 days' written advance notice to
18 the municipal employer and the commission, may strike. Unless both parties
19 withdraw their final offers and mutually agreed upon modifications, the final offer
20 of neither party shall be deemed withdrawn and the arbitrator shall proceed to
21 resolve the dispute by final and binding arbitration as provided in this paragraph.

22 **SECTION 12.** 111.70 (4) (cm) 6. cm. of the statutes is created to read:

23 111.70 (4) (cm) 6. cm. Prior to the arbitration hearing under subd. 6. bm., either
24 party may, within a time limit established by the arbitrator, withdraw its initial
25 bargaining offer and mutually agreed upon modifications thereof, if any, and shall

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

9 **SECTION 13.** 111.70 (4) (cm) 6. d. of the statutes is amended to read:

10 111.70 (4) (cm) 6. d. Before issuing his or her arbitration decision, the arbitrator
11 shall, on his or her own motion or at the request of either party, conduct a meeting
12 open to the public for the purpose of providing the opportunity to both parties to
13 explain or present supporting arguments for their complete offer on all matters to
14 be covered by the proposed agreement. ~~The~~ If the dispute does not involve a collective
15 bargaining unit consisting of school district professional employees, the arbitrator
16 shall adopt without further modification the final offer of one of the parties on all
17 disputed issues submitted under subd. 6. am., except those items that the
18 commission determines not to be mandatory subjects of bargaining and those items
19 which have not been treated as mandatory subjects by the parties, and including any
20 prior modifications of such offer mutually agreed upon by the parties under subd. 6.
21 b., which decision shall be final and binding on both parties and shall be incorporated
22 into a written collective bargaining agreement. ~~If the dispute involves a collective~~
23 bargaining unit consisting of school district professional employees, the arbitrator
24 may determine individually all issues in dispute involving mandatory subjects of
25 bargaining that are included in the parties' initial bargaining proposals submitted

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1 under subd. 2., and the arbitrator's decision shall be final and binding and shall be
2 incorporated into a written collective bargaining agreement. The arbitrator shall
3 serve a copy of his or her decision on both parties and the commission.

4 **SECTION 14.** 111.70 (4) (cm) 6. g. of the statutes is amended to read:

5 111.70 (4) (cm) 6. g. If a question arises as to whether any proposal made in
6 negotiations by either party is a mandatory, permissive or prohibited subject of
7 bargaining, the commission shall determine the issue pursuant to par. (b). If either
8 party to the dispute petitions the commission for a declaratory ruling under par. (b),
9 the proceedings under subd. 6. c. or cm., whichever is applicable, and d. shall be
10 delayed until the commission renders a decision in the matter, but not during any
11 appeal of the commission order. The arbitrator's award shall be made in accordance
12 with the commission's ruling, subject to automatic amendment by any subsequent
13 court reversal thereof.

14 **SECTION 15.** 111.70 (4) (cm) 7. of the statutes is repealed.

15 **SECTION 16.** 111.70 (4) (cm) 7g. of the statutes is repealed.

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

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

20 **SECTION 18.** 111.70 (4) (cm) 7r. ie. of the statutes is created to read:

21 111.70 (4) (cm) 7r. ie. Any state law or directive lawfully issued by a state
22 legislative or administrative officer, body, or agency which places limitations on
23 expenditures that may be made or revenues that may be collected by a municipal
24 employer.

25 **SECTION 19.** 111.70 (4) (cm) 7r. ir. of the statutes is created to read:

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1 111.70 (4) (cm) 7r. ir. Economic conditions in the jurisdiction of the municipal
2 employer.

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

5 111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for
6 the initial collective bargaining agreement between the parties and except as the
7 parties otherwise agree, every collective bargaining agreement covering municipal
8 employees subject to this paragraph ~~other than school district professional~~
9 ~~employees~~ shall be for a term of 2 years. No, but in no case may a collective
10 bargaining agreement for any collective bargaining unit consisting of municipal
11 employees ~~subject to this paragraph other than school district professional~~
12 ~~employees~~ shall be for a term exceeding 3 years. e. No arbitration award may
13 contain a provision for reopening of negotiations during the term of a collective
14 bargaining agreement, unless both parties agree to such a provision. The
15 requirement for agreement by both parties does not apply to a provision for
16 reopening of negotiations with respect to any portion of an agreement that is
17 declared invalid by a court or administrative agency or rendered invalid by the
18 enactment of a law or promulgation of a federal regulation.

19 **SECTION 21.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

20 **SECTION 22.** 111.70 (4) (cm) 8p. of the statutes is repealed.

21 **SECTION 23.** 111.70 (4) (cm) 8s. of the statutes is repealed.

22 **SECTION 24.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

23 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
24 bargaining unit for the purpose of collective bargaining and shall whenever possible,
25 unless otherwise required under this subchapter, avoid fragmentation by

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

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1 collective bargaining unit. Any vote taken under this subsection shall be by secret
2 ballot.

3 **SECTION 25.** 111.70 (4) (L) of the statutes is amended to read:

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

9 **SECTION 26.** 111.71 (5) of the statutes is amended to read:

10 111.71 (5) The commission shall, on a regular basis, provide training programs
11 to prepare individuals for service as arbitrators or arbitration panel members
12 appointed under s. 111.70 (4) (cm) 6. am. The commission shall engage in
13 appropriate promotional and recruitment efforts to encourage participation in the
14 training programs by individuals throughout the state, including at least 10
15 residents of each congressional district. The commission may also provide training
16 programs to individuals and organizations on other aspects of collective bargaining,
17 including on areas of management and labor cooperation directly or indirectly
18 affecting collective bargaining. The commission may charge a reasonable fee for
19 participation in the programs.

20 **SECTION 27.** 111.71 (5m) of the statutes is created to read:

21 111.71 (5m) The commission shall engage in appropriate promotional and
22 recruitment efforts to encourage permanent and temporary reserve judges,
23 appointed under s. 753.075 (2), to serve as arbitrators for the purpose of appointment
24 under s. 111.70 (4) (cm) 6. ar. The commission shall also provide training programs
25 to prepare the permanent and temporary reserve judges for such appointment.

