

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., 62.13 (1), 62.13 (8), 62.15 (5), 66.0133 (3), 66.0505 (3) (a) 1., 66.0507,
4 66.1103 (11) (a) and 86.25 (4); *to repeal and recreate* 61.54; and *to create* 61.193,
5 62.09 (6) (am), 62.13 (2g), 62.13 (8) (b), 62.15 (5) (b) and (c) and 62.23 (5) (a) of
6 the statutes; **relating to:** establishing and changing compensation for city and village
7 elective offices; signing village contracts; bidding procedure for village public
8 construction contracts; officer-of-the-peace status of village officers; publication by
9 the city clerk of fund receipts and disbursements; village and 4th class city regulation
10 of political signs; liability of counties and cities for mob damage; means of providing
11 police and fire protection by cities; holdover status of appointed city and village
12 officers; and use of the s. 32.05 procedure in villages for certain housing and urban
13 renewal condemnation.

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.
- Provides that persons serving in city appointive offices serve until the 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 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.

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,
19 streets, highways, airports, spaceports, mass transit facilities, or other transportation facilities,
20 gas or leachate extraction systems to remedy environmental pollution from a solid waste
21 disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and
22 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 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 salaries for elective offices. (1)** (a) In this section,
3 “compensation” means a salary, a per diem compensation for each day or part of a day

1 necessarily devoted to the service of the village and the discharge of duties, or a combination
2 of salary and per diem compensation.

3 (b) The compensation for an elective village office shall be established before the
4 earliest time for filing nomination papers for the office or, if nomination papers are not used,
5 before the caucus date determined under s. 8.05 (1) (a). After that time or date, no change may
6 be made in the compensation for the office that applies to the term of office for which the
7 deadline or date applies. The compensation established for an elective office remains in effect
8 for ensuing terms unless changed. In a newly incorporated village, the compensation for an
9 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 12 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 the provision restate language deleted from current s. 61.32, stats., by SECTION 2 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 24 of this draft.

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

11 61.23 (1) Except as otherwise provided by law, the term of office of all village officers
12 is 2 years. Persons serving in appointive offices shall serve until their respective successors
13 are appointed and qualify, unless otherwise provided by ordinance. If any officer other than

1 a trustee is absent or temporarily incapacitated from any cause the board may appoint some
2 person to discharge the officer's duties until the officer returns or until such disability is
3 removed. If a trustee is temporarily incapacitated because of physical or mental disability, the
4 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 21 of this draft.

5 **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.

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

7 **61.32 Village board; meeting; salaries.** The trustees of each village shall constitute
8 a board designated the "Village Board of" (name of village) in which shall be vested all the
9 powers of the village not specifically given some other officer. A majority of the
10 members-elect shall constitute a quorum, but a less number may adjourn from time to time.
11 The president shall preside at all meetings when present. In the president's absence the board
12 may select another trustee to preside. Regular meetings shall be held at such time as may be

1 prescribed by their bylaws. Special meetings may be called by any 2 trustees in writing, filed
2 with the clerk, who shall thereupon seasonably notify all the trustees of the time and place
3 thereof in the manner directed by the bylaws. All meetings shall be open to the public. The
4 board shall keep a record of all its proceedings, and if there is a newspaper published in any
5 village, the board shall cause the proceedings to be published therein as a class 1 notice, under
6 ch. 985. The proceedings for the purpose of publication shall include the substance of every
7 official action taken by the governing body. If there is no newspaper published in the village,
8 the board may cause the proceedings to be published in a newspaper having general circulation
9 in the village, posted in several public places or publicized in some other fashion, in such
10 manner as the board directs. Nothing herein shall be construed as requiring the republication
11 of any proceeding, ordinance or other matter or thing which has already been published
12 according to law, nor shall anything herein be construed to relieve any village from publishing
13 any proceeding, ordinance or other matter or thing required by law to be published.
14 Notwithstanding the provisions of s. 985.08 (4), the fee for any such publication shall not
15 exceed the rates specified in s. 985.08 (1). The board has power to preserve order at its
16 meetings, compel attendance of trustees and punish nonattendance and it shall be judge of the
17 election and qualification of its members. The president and board of trustees of any village,
18 whether operating under general or special law, may by a three-fourths vote of all the members
19 of the village board determine that ~~an annual~~ a salary be paid the president and trustees.
20 ~~Salaries heretofore established shall so remain until changed by ordinance and shall not be~~
21 ~~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, s. 30.]

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

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

2 61.50 (1) PUBLICATION OF NOTICE OF ORDINANCES. Every contract, conveyance,
3 commission, license or other written instrument shall be executed on the part of the village
4 by the president and clerk, unless otherwise provided by resolution or ordinance, sealed with
5 corporate seal, and in pursuance only of authority therefor from the village board. All
6 ordinances and bylaws shall be signed by the president and countersigned by the clerk; and,
7 if any penalty or forfeiture is thereby imposed, the ordinance or bylaw shall be published either
8 in its entirety, as a class 1 notice, under ch. 985, or as a notice, as described under sub. (3) (b),
9 and shall take effect on the day after the publication or a later date if expressly prescribed. If
10 there is no newspaper published in the village, the village board may in lieu of newspaper
11 publication have copies of the ordinances and bylaws posted in at least 3 public places in said
12 village, and proof thereof filed and recorded by the village clerk, and the same shall take effect
13 the day after the proof of posting has been filed and recorded, or at a later date if expressly
14 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.

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

2 **61.54 Public works.** All contracts for public construction shall be let by a village board
3 in accordance with s. 62.15. The village board, or a person or body designated by the village
4 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:

1 **61.57 Acquisition of recycling or resource recovery facilities without bids.** A
2 village may contract for the acquisition of any element of a recycling or resource recovery
3 facility without submitting the contract for bids as required under ~~ss. 61.54 to 61.56~~ s. 61.54
4 if the village invites developers to submit proposals to provide a completed project and
5 evaluates proposals according to site, cost, design and the developers' experience in other
6 similar projects.

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

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

8 61.65 (1) (a) 2. Contracting for police protective services with a city or town, with
9 another village or with ~~the a county in which the village is located.~~ A village that contracts
10 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
16 of this draft.

11 **SECTION 12.** 62.09 (6) (am) of the statutes is created to read:

12 62.09 (6) (am) 1. In this paragraph, "compensation" means a salary, a per diem
13 compensation for each day or part of a day necessarily devoted to the service of the city and
14 the discharge of duties, or a combination of salary and per diem compensation.

15 2. The compensation for an elective city office shall be established before the earliest
16 time for filing nomination papers for the office. After that time, no change may be made in
17 the compensation for the office that applies to the term of office for which the deadline applies.
18 The compensation established for an elective office remains in effect for ensuing terms unless

1 changed. In a newly incorporated city, the compensation for an elective office may be
2 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 4 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 the provision restate language deleted from current s. 61.32, stats., applicable to village elective offices, by SECTION 2 of this draft.

The last sentence of the provision 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 24 of this draft.

3 **SECTION 13.** 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 12 of this draft. The repealed language has been characterized as confusing and there is no counterpart or corresponding provision that applies to villages.

1 **SECTION 14.** 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.

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.

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.

2 **SECTION 15.** 62.13 (1) of the statutes is amended to read:

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

NOTE: This SECTION creates an additional exception to the general requirement that a city operate with a board of police and fire commissioners. SECTIONS 16 and 18 of this bill draft allow a city, like a village, to enter into a contract for the provision of police protective services with a village, a town, another city, or with a county and to enter into a contract for the provision of fire protective services with a village, a town, or another city. If a city takes such an action with respect to the

provision of police protective services, the SECTION provides that the city is not required to have a board of police and fire commissioners.

1 **SECTION 16.** 62.13 (2g) of the statutes is created to read:

2 62.13 (2g) CONTRACTING FOR POLICE PROTECTIVE SERVICES. A city may enter into a
3 contract for police protective services with a village, a town, another city, or a county. A city
4 that contracts for police protective services shall pay the full cost of services provided.

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.

5 **SECTION 17.** 62.13 (8) of the statutes is amended to read:

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

NOTE: See SECTION 18 and the Note thereto.

19 **SECTION 18.** 62.13 (8) (b) of the statutes is created to read:

1 62.13 (8) (b) A city may enter into a contract for fire protective services with a village,
2 a town, or another city. A city that contracts for fire protective services shall pay the full cost
3 of services provided.

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. Section 66.0301 (2), stats., also allows a municipality to contract with another municipality for services; this authority is to be liberally construed.

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

5 62.15 (5) REJECTION OF BIDS. (a) The power to reject any and all bids shall exist unless
6 expressly waived. The board of public works may reject any and all bids, if, in their opinion,
7 any combination has been entered into to prevent free competition. The council may, if it be
8 of the opinion that any of the bids are fraudulent, collusive, excessive or against the best
9 interests of the city, by resolution adopted by two-thirds of its members, reject any or all of
10 the bids received and order the work done by the city directly under the supervision of the
11 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 20.

12 **SECTION 20.** 62.15 (5) (b) and (c) of the statutes are created to read:

13 62.15 (5) (b) If a city performs the work directly under par. (a), it may purchase and
14 secure all necessary and proper tools to perform the work.

15 (c) The cost and expense of all work done and all materials furnished by a city under this
16 subsection shall be collected in the same manner as if done and furnished by any other person
17 under contract with the city and the city may levy special assessments for the work. The
18 amounts assessed against any lands or interests specially benefited or otherwise liable under
19 a special assessment may not exceed the amounts that would have been assessed against the

1 land or interests had the lowest bid received under par. (a) been accepted and costs and
2 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 in part repeals s. 61.54, this SECTION incorporates the substance of s. 61.54 (2) and (3) in s. 62.15 (5).

3 **SECTION 21.** 62.23 (5) (a) of the statutes is created to read:

4 62.23 (5) (a) Persons serving in appointive offices shall serve until their respective
5 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. 62.23 (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.

6 **SECTION 22.** 66.0133 (3) of the statutes is amended to read:

7 66.0133 (3) NOTICE. Notwithstanding ss. 27.065 (5) (a), 30.32, 38.18, 43.17 (9) (a),
8 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),
9 62.155, 66.0131 (2), 66.0923 (10), 66.0925 (10), 66.0927 (11), 66.1333 (5) (a) 2., 200.11 (5)
10 (d) and 200.47 (2), before entering into a performance contract under this section, a local
11 governmental unit shall solicit bids or competitive sealed proposals from qualified providers.
12 A local governmental unit may only enter into a performance contract if the contract is
13 awarded by the governing body of the local governmental unit. The governing body shall give

1 at least 10 days' notice of the meeting at which the body intends to award a performance
2 contract. The notice shall include a statement of the intent of the governing body to award the
3 performance contract, the names of all potential parties to the proposed performance contract,
4 and a description of the energy conservation and facility improvement measures included in
5 the performance contract. At the meeting, the governing body shall review and evaluate the
6 bids or proposals submitted by all qualified providers and may award the performance
7 contract to the qualified provider that best meets the needs of the local governmental unit,
8 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.

9 **SECTION 23.** 66.0505 (3) (a) 1. of the statutes is amended to read:

10 66.0505 (3) (a) 1. Notwithstanding the provisions of s. 59.10 (1) (c), (2) (c), (3) (f) to
11 (j), 60.32, ~~61.32~~ 61.193, or 62.09 (6), an elective officer may send written notification to the
12 clerk and treasurer of the political subdivision on whose governing body he or she serves that
13 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.

14 **SECTION 24.** 66.0507 of the statutes is amended to read:

15 **66.0507 Automatic salary schedules.** Whenever the governing body of any city,
16 village or town by ordinance adopts a salary schedule for some or all employees and officers
17 of the city, village or town, other than members of the city council or village or town board,
18 the salary schedule may include an automatic adjustment for some or all of the personnel in
19 conformity with fluctuations upwards and downwards in the cost of living, notwithstanding
20 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.

1 **SECTION 25.** 66.1103 (11) (a) of the statutes is amended to read:

2 66.1103 **(11)** (a) With respect to the enforcement of any construction lien or other lien
3 under ch. 779 arising out of the construction of projects financed under this section, no
4 deficiency judgment or judgment for costs may be entered against the municipality. Projects
5 financed under this section are not public works, public improvements or public construction
6 within the meaning of ss. 59.52 (29), 60.47, ~~61.55~~ 61.54, 62.15, 779.14, 779.15 and 779.155
7 and contracts for the construction of the projects are not public contracts within the meaning
8 of ss. 59.52 (29) and 66.0901 unless factors including municipal control over the costs,
9 construction and operation of the project and the beneficial ownership of the project warrant
10 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.

11 **SECTION 26.** 86.25 (4) of the statutes is amended to read:

12 86.25 **(4)** Sections ~~61.55~~ 61.54, 62.15 and 66.0901 shall not apply to funds provided
13 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.

14 **SECTION 27.** 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,

