



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
DIFFERENCES IN LAWS  
APPLICABLE TO CITIES AND  
VILLAGES  
[ASSEMBLY BILL 213]

April 27, 2009

RL 2009-02



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# Special Committee on Differences in Laws Applicable to Cities and Villages

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April 27, 2009

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# PART I

## KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Joint Legislative Council recommends the following for introduction in the 2009-10 Session of the Legislature.

**2009 Assembly Bill 213, Relating to Establishing and Changing Compensation for City and Village Elective Offices; Signing Village Contracts; Bidding Procedure for Village Public Construction Contracts; Officer-of-the-Peace Status of Village Officers; Publication by the City Clerk of Fund Receipts and Disbursements; Village and 4th Class City Regulation of Political Signs; Liability of Counties and Cities for Mob Damage; Means of Providing Police and Fire Protection by Cities and Villages; Holdover Status of Appointed City and Village Officers; Use of the s. 32.05 Procedure in Villages for Certain Housing and Urban Renewal Condemnation; and Application of Public Contract Bidder Prequalification to 1st Class Cities**

2009 Assembly Bill 213 does the following:

- 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 bill 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 bill removes the requirement that the salary of a village president and village board member be an "annual" salary.
- Makes the bidding procedure for village public construction contracts consistent with the bidding procedure that applies to city public construction contracts. Currently, villages have the option to use the city procedure.
- Provides that persons serving in city appointive offices serve until their respective successors are appointed and qualify, for consistency with current village law. For both cities and villages, the bill 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 first, second, and third class cities to regulate political signs larger than 11 square feet in area to include fourth 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 protection with a village, town, another city, or a county and authorizes cities to contract for fire protection with a village, town, or another city.

- Clarifies that the condemnation procedure under s. 32.05, Stats., may be used for certain housing and urban renewal condemnation in villages, as well as in cities.

- Authorizes a first class city, consistent with the authority of other classes of cities and of villages, to use the bidder prequalification procedure for public contracts.

## PART II

### COMMITTEE ACTIVITY

#### Assignment

The Joint Legislative Council established the Special Committee on Differences in Laws applicable to Cities and Villages and appointed the chairperson by an April 9, 2008 mail ballot. The committee was directed 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.

Membership of the Special Committee, appointed by June 9 and August 29, 2008 mail ballots, consisted of one Senator, 3 Representatives, and six public members. A list of committee members is included as *Appendix 3* to this report.

#### Summary of Meetings

The Special Committee held three meetings in Madison on the following dates:

August 5, 2008  
September 11, 2008  
October 6, 2008

At the August 5, 2008 meeting, the Special Committee reviewed a number of issues for possible committee consideration identified by several sources. In considering Memo No. 1, the committee reviewed issues relating to: salary changes for certain elected and appointed city officers; peace officer status of village president and trustees; publication of receipts and disbursements by city clerks; regulation of political signs; liability of cities for mob damage; election of village trustees by district; and trains blocking highways in cities. The committee agreed to give further consideration to all of the issues with the exception of trains blocking highways.

In considering Memo No. 2, the committee reviewed the current scheme of statutory regulation of police and fire protection for cities and villages and generally agreed to authorize cities the same flexibility that villages enjoy relating to the provision of police and fire protection.

In considering Memo No. 3, the committee reviewed the current scheme of statutory regulation of the letting of contracts for works of public construction by cities and villages. There was consensus to make uniform the procedure for public works contracts by cities and villages.

The statutory regulation of claims procedures for cities and villages was reviewed in Memo No. 4. There was consensus not to address the issue further.

Finally, the committee reviewed two drafts, one relating to salaries paid to village presidents and board members, the other relating to terms of office for appointive city officers. There was consensus in support of the first draft and agreement to hold the second draft for future consideration.

At the September 11, 2008 meeting, the Special Committee reviewed nine bill drafts reflecting the committee's review and discussion of issues at the August 5 meeting. The committee gave preliminary approval to the drafts, including some recommended changes.

The committee also reviewed Memo No. 5, relating to the application of the s. 32.05 condemnation procedure to villages for certain housing and urban renewal condemnations. The committee directed staff to prepare a bill draft providing that the same authority to use that procedure be made available in villages as well as cities. Finally, the committee tabled the issue of extending to villages express statutory authority to elect village trustees by district, reflecting: (1) that in the opinion of many, villages may already do so under their home rule authority; and (2) the complexity of the drafting to expressly provide that authority in the statutes.

At the October 6, 2008 meeting, the Special Committee reviewed a compiled draft consisting of drafts and issues previously considered. The committee reviewed new provisions and changes to previously considered provisions of the draft. The committee considered a second draft relating to the application of public contract bidder prequalification requirements to first class cities. The committee agreed to extend the option of using the prequalification procedure to the City of Milwaukee.

The committee agreed to combine both drafts considered at the meeting into one draft and directed staff to make any necessary changes in the combined draft that resulted from the meeting. The committee then voted to recommend the committee's draft legislation to the Joint Legislative Council for introduction in the 2009-10 Legislature.



# PART III

## RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Differences in Laws Applicable to Cities and Villages and introduced by the Joint Legislative Council.

The Special Committee on Differences in Laws Applicable to Cities and Villages was directed 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 exists for no apparent policy rationale. At the outset, Chairperson Gottlieb indicated that he was looking for a consensus approach on the part of the committee that would include the following two principles: (1) err on the side of giving more autonomy and flexibility to cities and villages; and (2) if there is no valid policy reason to treat cities and villages differently, the difference should be reconciled.

With the above directive and approach in mind, the committee sought identification from interested parties of differences in laws that apply to cities and villages that were arguably in need of reconciliation. Based on its review of discrepancies and inconsistencies that were brought to the committee's attention by interested parties, the committee recommended further harmonizing the laws that apply to cities and villages as described below.

### Establishing and Changing Salaries for Elective Offices

#### Background

Section 62.09 (6) (b), Stats., provides that salaries for city elective offices and appointive offices with definite terms are to be established or changed no later than the first regular meeting of the city council in February for any office to be elected or appointed during the ensuing year. There is no corresponding provision that applies to village elective or appointive offices.

As it relates to changes for nongoverning body city officers (governing body members are prohibited under s. 66.0505, Stats., from receiving salary during their term in excess of the salary provided at the time of taking office), the provision has been characterized as confusing by the League of Wisconsin Municipalities and has resulted in a number of questions regarding its interpretation.

Regarding salaries for village presidents and trustees, s. 61.32, Stats., provides in part that a village board may, by a 3/4ths vote of all of the board members, determine that an "annual" salary be paid the village president and trustees. There is no corresponding requirement that salaries of mayors and city council members be "annual" salaries.

The Special Committee determined that the establishment and changing of salaries for city and village elected officials should be clarified and made uniform and that there is no need to address these issues for appointive offices with fixed terms.

#### The Bill

The bill repeals s. 62.09 (6) (b), Stats., and deletes the provision of s. 61.32, Stats., that describes the salaries of a village president and village board members as "annual" salaries.

The bill creates new provisions that apply to establishing compensation for both city and village elective offices. “Compensation” is defined as “a salary, a per diem compensation for each day or part of a day necessarily devoted to the service of the [city or village] and the discharge of duties, or a combination of salary and per diem compensation.”

Under the bill, the compensation for an elective city or village office must be established before the earliest time for filing nomination papers for the office (in the case of village offices where candidates are chosen by the caucus method, the compensation must be established before the caucus date). After the latest time for establishing compensation, no change may be made in the compensation for the office that applies to the term of office for which the deadline applies. The compensation established for an elective office remains in effect for ensuing terms unless changed. In a newly incorporated city or village, the compensation for an elective office may be established during the first term of office (for cities, this provision is a carryover from current law; for villages, it is a new provision).

Linking the time for established compensation for an office to the earliest time for filing nomination papers for the office 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.

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 for city council or village board members).

## **Bidding Procedure for City and Village Public Construction Contracts**

### **Background**

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; and (3) exceptions to the preceding requirements apply when certain emergencies occur, material or labor is 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 2/3rds 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 five 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.

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

The Special Committee determined that village and city contracting procedures should be made uniform and that the current city procedure should apply to both entities.

#### **The Bill**

The bill amends the statutes to provide that a village letting a contract for public construction must comply with the procedures applicable to a city in s. 62.15, Stats.

## **Terms of Persons Serving in City Appointive Offices**

### **Background**

Section 61.23 (1), Stats., provides that persons serving in appointive village offices will serve until their respective successors are appointed and qualified. There is no similar statutory provision for appointive city officers.

The Special Committee determined that the law regarding city officers should be made comparable to village law and that both entities should be given additional flexibility in determining when a term of office ends.

#### **The Bill**

The bill creates s. 62.09 (5) (e), Stats., to provide that any appointive city officers will serve in their offices until their respective successors are appointed and qualify. Also, the bill provides that both villages and cities may by ordinance provide a different method of determining when a term of office ends.

## **Execution of Village Contracts**

#### **Background**

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. 62.15 (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.

The Special Committee determined that additional flexibility be provided to a village regarding the requirement that the village president and clerk sign specified documents.

#### **The Bill**

The bill amends s. 61.50 (1), Stats., 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.

## **Officer-of-the-Peace Status of Certain Village Officers**

#### **Background**

Current s. 61.31 (1), Stats., applicable to villages, provides: “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.

#### **The Bill**

Because it appears the provision is little used and little known, and because of concerns with possible liability, the bill repeals s. 61.31 (1), relating to officer-of-the-peace status for village presidents and trustees.

## **Annual Publication by City Clerk of Receipts and Disbursements**

### **Background**

Current s. 62.09 (1) (g), Stats., contains the following directive to the city clerk: “By March 15 the clerk shall publish as a class 1 notice, under ch. 985, a statement showing the receipts and disbursements as to each fund during the preceding fiscal year. This shall not apply to cities operating under s. 64.34.” There is no corresponding requirement imposed on village clerks. (The provision can be traced to 1889: see SEC. 41, Ch. 236, Laws of 1889; s. 925h, sub. 41, 1889, Stats.)

In addition to the above requirement imposed on city clerks, both cities and villages must annually publish a budget summary which, among other things, must include for both the current budget and the proposed budget “revenue and expenditure totals, by fund, for each governmental fund, and for each proprietary fund and the revenue and expenditure totals for all funds combined.” Section 65.90 (3) (b) 6., Stats. Thus, the directive in s. 62.09 (1) (g) overlaps the requirements of s. 65.90, with the exception of the timing of the publication.

Based on a sampling of cities, it appears that the publication requirement of s. 62.09 (1) (g) may typically be met by publication of the budget summary information under s. 65.90 (3) (b). This may reflect not only the redundancy of two publications but also the difficulty of obtaining audited expenditures for the prior year in time to meet the March 15 publication deadline under s. 62.09 (1) (g).

### **The Bill**

Because s. 62.09 (1) (g), Stats., overlaps other requirements and because there is no policy rationale for it to apply to cities and not villages, the bill repeals s. 62.09 (1) (g).

## **Village and Fourth Class City Regulation of Political Signs**

### **Background**

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 statutes, 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 first, second, and third class cities and towns. Thus, fourth class cities and villages do not enjoy the latter authority.

### **The Bill**

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 fourth class cities and villages. 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. The bill extends the regulatory authority under s. 12.04 (4) (b), Stats., to all municipalities, which will include 4th class cities and villages in addition to other classes of cities and to towns. (See the definition of “municipality” in s. 5.02 (11), Stats.)

## Liability of Cities and Counties for Mob or Riot Damage

### Background

Current s. 893.81, Stats., provides that counties and cities are strictly liable for injury to person or property caused by a mob or riot within their respective jurisdictions, subject to contributory negligence principles. An insurer who pays for riot or mob damage has no subrogation claim under this section against a county or city. See, generally, *Interstate Fire and Casualty Company v. Milwaukee*, 45 Wis. 2d 331, 173 N.W. 2d 187 (1970); and *American Insurance Company v. Milwaukee*, 51 Wis. 2d 346, 187 N.W. 2d 142 (1971). There is no corresponding liability on the part of villages for mob or riot damage. (However, under the liability and immunity principles under s. 893.80, Stats., the village would be liable for a negligent ministerial act on its part in connection with a mob or riot.)

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

### The Bill

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

It is recognized that the repeal of the provision affects not only the liability of cities but the liability of counties as well. As such, the recommendation to repeal might be questioned as exceeding the Special Committee's charge. However, the reasons outlined above also support the repeal of the provision as it applies to counties (and, addressing only the liability of cities under the provision would expand the liability of counties). More generally, there is no overriding policy reason to treat county and municipal liability under state law for mob damage differently than the general treatment of county and municipal liability under s. 893.80, Stats. (which will apply to liability for mob damage if s. 893.81 is repealed).

## Means of Providing Police and Fire Protection

### Background

Section 61.65 (1) (a), Stats., provides that a village with a population of 5,000 or more must, and a village with a population of under 5,000 may, provide police protection services by a number of methods including contracting for police protective services with a city, town, another village, or the county in which the village is located. Similarly, s. 61.65 (2) (a), Stats., provides that a village with a population of 5,500 or more must provide fire protection services by a number of methods including contracting for fire protection services with a city, town, or another village. The statutes regarding the provision of police and fire protection in cities do not specifically authorize a city to contract generally for the provision of these services with other local units of government, although s. 62.13 (2s) (a), Stats., provides that a city may abolish its police department if it enters into a contract with a county for the county sheriff to provide law enforcement services in all parts of the city.

The Special Committee determined that cities should have the same flexibility that villages have regarding the provision of police and fire protection services through contracts with other local units of government.

### The Bill

The bill creates s. 62.13 (2g) and (8) (b) of the statutes to provide that a city may enter into a contract for police and fire protective services with a village, a town, or another city. Section 62.13 (2g) also provides that a city may enter a contract for police protective services with a county. In addition, s. 61.65 (1) (a) 2., Stats., is amended to provide that a village may contract for police protective services

with a county rather than a county in which the village is located. The Special Committee concluded that in certain cases involving the distance of a particular city or village from the central location of the local sheriff, it may be advantageous to the city or village to contract for the provision of police protective services with a neighboring county. Note that the authority of a city or village to contract with a county for all of its protective services continues to be controlled by ss. 62.13 (2s) and 61.65 (1) (a) 4., Stats.

## **Application of s. 32.05 Procedure to Certain Condemnations for Housing and Urban Renewal in Villages**

### **Background**

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

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

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

Villages were granted the authority to exercise city housing and urban renewal authority under ss. 66.1201 to 66.1329 and ss. 66.1331 to 66.1337 by SEC. 9, Ch. 565, Laws of 1959. At the time of enactment of ch. 565, cities did not have authority to use the s. 32.05 condemnation procedure for these purposes. (In fact, the distinct procedures in ss. 32.05 and 32.06 were established later that session by Chs. 639 and 640, Laws of 1959.) Subsequently, first class cities were given the authority to use the s. 32.05 procedure for housing and urban renewal condemnations (Ch. 596, Laws of 1965). About 25 years later, the option to use s. 32.05 for these purposes was extended to all cities. 1989 Wisconsin Act 89, SEC. 1. There is no documentation in the legislative history\* of Act 89 of intent to include villages, or any awareness that it might be argued that villages would be included, in the expanded authority to use the s. 32.05 procedure.

### **The Bill**

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 bill clarifies that the condemnation

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\* The Legislative Reference Bureau (LRB) drafting file; the LRB analysis of the legislation that became Act 89; and the fiscal estimates for the latter legislation.

procedure under s. 32.05, Stats., may be used in villages, as well as in cities, for condemnation for housing under ss. 66.1201 to 66.1211, Stats., and for urban renewal under s. 66.1333, Stats.

## **Application of Public Contract Bidder Prequalification to First Class Cities**

### **Background**

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

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

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

### **The Bill**

The bill repeals the first class city exemption under s. 66.090 (2), Stats., giving first class cities the option of using the bidder prequalification procedure for public contracts.



## Committee and Joint Legislative Council Votes

LRB-0568/2 was recommended by the Special Committee on Differences in Laws Applicable to Cities and Villages to the Joint Legislative Council for introduction in the 2009-10 Session of the Legislature.

### Special Committee Vote

The Special Committee voted to recommend WLC: 0046/2 to the Joint Legislative Council for introduction in the 2009-10 Session of the Legislature. The vote on the draft was as follows:

- WLC: 0046/2, relating to establishing and changing compensation for city and village elective offices; signing village contracts; bidding procedure for village public construction contracts; officer-of-the-peace status of village officers; publication by the city clerk of fund receipts and disbursements; village and 4th class city regulation of political signs; liability of counties and cities for mob damage; means of providing police and fire protection by cities and villages; holdover status of appointed city and village officers; use of the s. 32.05 procedure in villages for certain housing and urban renewal condemnation; and application of public contract bidder prequalification to 1st class cities: Ayes, 10 (Reps. Gottlieb, Ballweg, and Jeskewitz; Sen. Plale; and Public Members Cannon, Mahoney, May, Menne, Morse, and Witynski); and Noes, 0.

### Joint Legislative Council Vote

At its March 26, 2009 meeting, the Joint Legislative Council voted to introduce 2009 Assembly Bill 213. The vote by the Joint Legislative Council was as follows:

Co-Chair Schneider moved, seconded by Sen. Decker, that LRB-0568/2\*, relating to establishing and changing compensation for city and village elective offices; signing village contracts; bidding procedure for village public construction contracts; officer-of-the-peace status of village officers; publication by the city clerk of fund receipts and disbursements; village and 4<sup>th</sup> class city regulation of political signs; liability of counties and cities for mob damage; means of providing police and fire protection by cities and villages; holdover status of appointed city and village officers; use of the s. 32.05 procedure in villages for certain housing and urban renewal condemnation; and application of public contract bidder prequalification to 1<sup>st</sup> class cities, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 22 (Sens. Risser, Coggs, Darling, Decker, Fitzgerald, Harsdorf, Kreitlow, Miller, Robson, Schultz, and Wirch; and Reps. Schneider, Ballweg, Black, Berceau, Fitzgerald, Kaufert, Nelson, Pocan, Sheridan, Staskunas, and Vos); Noes, 0; and Absent, 0.

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\* The version of the draft introduced as Assembly Bill 213 is LRB-0568/3. The introduced version includes correction by the Legislative Reference Bureau of two minor, mechanical errors in the notes to LRB-0568/2.



## Appendix 2

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

#### Co-Chair

#### **FRED RISSER**

*Senate President*  
5008 Risser Road  
Madison, WI 53705

#### Co-Chair

#### **STEVE WIECKERT**

*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

#### SENATORS

#### **ROGER BRESKE**

8800 Hwy. 29  
Eland, WI 54427

#### **RUSSELL DECKER**

*Majority Leader*  
6803 Lora Lee Lane  
Weston, WI 54476

#### **ALAN LASEE**

2259 Lasee Road  
De Pere, WI 54115

#### **TIM CARPENTER**

*President Pro Tempore*  
2957 South 38<sup>th</sup> Street  
Milwaukee, WI 53215

#### **SCOTT FITZGERALD**

*Minority Leader*  
N4692 Maple Road  
Juneau, WI 53039

#### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

#### **SPENCER COGGS**

3732 North 40<sup>th</sup> Street  
Milwaukee, WI 53216

#### **SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

#### **JUDY ROBSON**

2411 E. Ridge Road  
Beloit, WI 53511

#### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

#### REPRESENTATIVES

#### **JOAN BALLWEG**

170 W. Summit Street  
Markesan, WI 53946

#### **DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

#### **MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

#### **JEFF FITZGERALD**

*Majority Leader*  
910 Sunset  
Horicon, WI 53032

#### **JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

#### **KITTY RHOADES**

708 4th Street  
Hudson, WI 54016

#### **MARK GOTTLIEB**

*Speaker Pro Tempore*  
1205 Noridge Trail  
Port Washington, WI 53074

#### **THOMAS NELSON**

1510 Orchard Dr.  
Kaukauna, WI 54130

#### **MARLIN SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

#### **MICHAEL HUEBSCH**

*Speaker*  
419 West Franklin  
West Salem, WI 54669

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

# Joint Legislative Council

[Current Joint Legislative Council Members Who Received Committee Report]

## Co-Chair

### **FRED A. RISSER**

*Senate President*

100 Wisconsin Avenue, Unit 501  
Madison, WI 53703

## Co-Chair

### **MARLIN D. SCHNEIDER**

*Representative*

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

## SENATORS

### **SPENCER COGGS**

7819 W. Potomac Avenue  
Milwaukee, WI 53222

### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

### **RUSSELL DECKER**

*Majority Leader*  
6803 Lora Lee Lane  
Schofield, WI 54476

### **SCOTT FITZGERALD**

*Minority Leader*  
N4692 Maple Road  
Juneau, WI 53039

### **SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

### **PAT KREITLOW**

*President Pro Tempore*  
15854 93<sup>rd</sup> Avenue  
Chippewa Falls, WI 54729

### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

### **JUDY ROBSON**

2411 E. Ridge Road  
Beloit, WI 53511

### **DALE SCHULTZ**

515 North Central Avenue  
Richland Center, WI 53581

### **ROBERT WIRCH**

3007 Springbrook Road  
Pleasant Prairie, WI 53158

## REPRESENTATIVES

### **JOAN BALLWEG**

170 W. Summit Street  
Markesan, WI 53946

### **TERESE BERCEAU**

4326 Somerset Lane  
Madison, WI 53711

### **SPENCER BLACK**

5742 Elder Place  
Madison, WI 53705

### **JEFF FITZGERALD**

*Minority Leader*  
910 Sunset  
Horicon, WI 53032

### **DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

### **THOMAS NELSON**

*Majority Leader*  
1510 Orchard Drive  
Kaukauna, WI 54130

### **MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

### **MICHAEL SHERIDAN**

*Speaker*  
1032 Nantucket Drive  
Janesville, WI 53546

### **TONY STASKUNAS**

*Speaker Pro Tempore*  
2010 South 103<sup>rd</sup> Court  
West Allis, WI 53227

### **ROBIN VOS**

4710 Eastwood Ridge  
Racine, WI 53406

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

## Appendix 3

### DIFFERENCES IN LAWS APPLICABLE TO CITIES AND VILLAGES

**Representative Mark Gottlieb, Chair**  
1205 Noridge Trail  
Port Washington, WI 53074

**Senator Jeff Plale, Vice Chair**  
1404 18th Avenue  
South Milwaukee, WI 53172

**Representative Joan Ballweg**  
170 West Summit Street  
Markesan, WI 53946

**Representative Suzanne Jeskewitz**  
N80 W15239 Hilltop Drive  
Menomonee Falls, WI 53051

**Patrick Cannon**  
City Administrator  
300 East Main Street  
Sun Prairie, WI 53590

**Mr. Dan Mahoney**  
Plover Village Administrator  
Plover Municipal Building  
P.O. Box 37  
2400 Post Road  
Plover, WI 54467

**Mike May**  
City Attorney  
210 Martin Luther King, Jr. Blvd., Rm. 401  
Madison, WI 53703

**Jerry Menne**  
Village President  
1099 Daisy Lane  
Ashwaubenon, WI 54304

**Mike Morse**  
Village Attorney  
W156 N8480 Pilgrim Road  
Menomonee Falls, WI 53051-3140

**Curt Witynski**  
Assistant Director  
League of Wisconsin Municipalities  
4318 Waite Circle  
Madison, WI 53711

**STUDY ASSIGNMENT:** The committee is directed 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.

**10 MEMBERS:** 1 Senator, 3 Representatives, and 6 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Don Dyke, Chief of Legal Services; Ronald Sklansky, Senior Staff Attorney; and Julie Learned, Support Staff.



## Appendix 4

### Committee Materials List (Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

Recommendations to the Joint Legislative Council (March 26, 2009)				
<ul style="list-style-type: none"> <li>• <a href="#">Results</a> of the March 26, 2009 Meeting.</li> <li>• <a href="#">Proposed Report</a> to the Legislature 2009-02, <i>Special Committee on Differences Applicable to Cities and Villages</i> (February 4, 2009).</li> <li>• <a href="#">LRB-0568/2</a>, relating to establishing and changing compensation for city and village elective offices; signing village contracts; bidding procedure for village public construction contracts; officer-of-the-peace status of village officers; publication by the city clerk of fund receipts and disbursements; village and 4th class city regulation of political signs; liability of counties and cities for mob damage; means of providing police and fire protection by cities and villages; holdover status of appointed city and village officers; use of the s. 32.05 procedure in villages for certain housing and urban renewal condemnation; and application of public contract bidder prequalification to 1st class cities.</li> </ul>				
Completed Committee Work (Pending JLC Review)				
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0046/2</a>, relating to establishing and changing compensation for city and village elective offices; signing village contracts; bidding procedure for village public construction contracts; officer-of-the-peace status of village officers; publication by the city clerk of fund receipts and disbursements; village and 4th class city regulation of political signs; liability of counties and cities for mob damage; means of providing police and fire protection by cities and villages; holdover status of appointed city and village officers; use of the s. 32.05 procedure in villages for certain housing and urban renewal condemnation; and application of public contract bidder prequalification to 1st class cities.</li> </ul>				
October 6, 2008 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0046/1</a>, relating to establishing and changing compensation for city and village elective offices; signing village contracts; bidding procedure for village public construction contracts; officer-of-the-peace status of village officers; publication by the city clerk of fund receipts and disbursements; village and 4th class city regulation of political signs; liability of counties and cities for mob damage; means of providing police and fire protection by cities; holdover status of appointed city and village officers; and use of the s. 32.05 procedure in villages for certain housing and urban renewal condemnation.</li> <li>• <a href="#">WLC: 0103/1</a>, relating to the application of public contract bidder prequalification requirements to first class cities.</li> </ul>				
September 11, 2008 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 5</a>, <i>Application of Section 32.05 Condemnation Procedure to Villages for Certain Housing and Urban Renewal Condemnations</i> (September 2, 2008).</li> <li>• <a href="#">WLC: 0003/1</a>, relating to establishing and changing salaries for village and city elective offices.</li> <li>• <a href="#">WLC: 0004/1</a>, relating to publication by the city clerk of fund receipts and disbursements.</li> <li>• <a href="#">WLC: 0005/1</a>, relating to officer-of-the-peace status of village board members.</li> <li>• <a href="#">WLC: 0006/1</a>, relating to liability of counties and cities for mob damage.</li> <li>• <a href="#">WLC: 0007/1</a>, relating to municipal regulation of political signs.</li> <li>• <a href="#">WLC: 0023/1</a>, relating to the provisions of police and fire protective services in a city.</li> <li>• <a href="#">WLC: 0024/1</a>, relating to signing village contracts.</li> <li>• <a href="#">WLC: 0025/1</a>, relating to village contracts for public construction.</li> </ul>				
August 5, 2008 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 1</a>, <i>Selected Items for Special Committee Consideration</i> (July 24, 2008).</li> <li>• <a href="#">Memo No. 2</a>, <i>Police and Fire Protection</i> (July 24, 2008).</li> <li>• <a href="#">Memo No. 3</a>, <i>Letting of Contracts</i> (July 24, 2008).</li> <li>• <a href="#">Memo No. 4</a>, <i>Claims Procedures</i> (July 24, 2008).</li> <li>• <a href="#">WLC: 0001/1</a>, relating to salaries paid to village presidents and board members.</li> <li>• <a href="#">WLC: 0002/1</a>, relating to terms of office for appointive city officers.</li> <li>• <a href="#">List of Wisconsin Cities and Villages</a>, Wisconsin Blue Book 2007-2008.</li> </ul>				

