

# State of Wisconsin



2009 Assembly Bill 213

Date of enactment: **March 15, 2010**

Date of publication\*: **March 29, 2010**

## 2009 WISCONSIN ACT 173

AN ACT *to repeal* 61.31 (1), 61.55 and 61.56, 62.09 (6) (b), 62.09 (11) (g) and 893.81; *to renumber* 61.31 (2) and 62.13 (8); *to amend* 12.04 (4) (b), 32.05 (intro.), 61.23 (1), 61.31 (title), 61.32, 61.50 (1), 61.57, 61.65 (1) (a) 2., 62.09 (1) (a), 62.09 (6) (a), 62.13 (1), 66.0133 (3), 66.0505 (3) (a) 1., 66.0507, 66.0901 (2), 66.1103 (11) (a) and 86.25 (4); *to repeal and recreate* 61.54 and 62.15 (5); and *to create* 61.193, 62.09 (5) (e), 62.09 (6) (am), 62.13 (2g) and 62.13 (8) (b) of the statutes; **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.

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

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

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

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

**32.05 Condemnation for sewers and transportation facilities.** (intro.) In this section, "mass transit facility" includes, without limitation because of enumeration,

exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or existing expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under subch. V of ch. 229, may proceed under this section or under s. 32.06 at the option of the condemning authority. In any village, condemnation for housing under ss. 66.1201 to 66.1211 or for urban renewal under s. 66.1333 may proceed under this section

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or under s. 32.06 at the option of the condemning authority. Condemnation by a local exposition district under subch. II of ch. 229 for any exposition center or exposition center facility may proceed under this section or under s. 32.06 at the option of the local exposition district. All other condemnation of property for public alleys, streets, highways, airports, spaceports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:

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

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

(2) Except as provided in sub. (3), and subject to s. 61.32, the compensation for an elective village office shall be established before the earliest time for filing nomination papers for the office or, if nomination papers are not used, before the caucus date determined under s. 8.05 (1) (a). After that time or date, no change may be made in the compensation for the office that applies to the term of office for which the deadline or date applies. The compensation established for an elective office remains in effect for ensuing terms unless changed.

(3) In a newly incorporated village, the compensation for an elective office may be established during the first term of office.

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

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

**SECTION 5.** 61.31 (title) of the statutes is amended to read:

**61.31 (title) Peace officers, who are powers.**

**SECTION 6.** 61.31 (1) of the statutes is repealed.

**SECTION 7.** 61.31 (2) of the statutes is renumbered 61.31.

**SECTION 8.** 61.32 of the statutes is amended to read:

**61.32 Village board; meeting; salaries.** The trustees of each village shall constitute a board designated the "Village Board of" (name of village) in which shall be

vested all the powers of the village not specifically given some other officer. A majority of the members—elect shall constitute a quorum, but a less number may adjourn from time to time. The president shall preside at all meetings when present. In the president's absence the board may select another trustee to preside. Regular meetings shall be held at such time as may be prescribed by their bylaws. Special meetings may be called by any 2 trustees in writing, filed with the clerk, who shall thereupon seasonably notify all the trustees of the time and place thereof in the manner directed by the bylaws. All meetings shall be open to the public. The board shall keep a record of all its proceedings, and if there is a newspaper published in any village, the board shall cause the proceedings to be published therein as a class 1 notice, under ch. 985. The proceedings for the purpose of publication shall include the substance of every official action taken by the governing body. If there is no newspaper published in the village, the board may cause the proceedings to be published in a newspaper having general circulation in the village, posted in several public places or publicized in some other fashion, in such manner as the board directs. Nothing herein shall be construed as requiring the republication of any proceeding, ordinance or other matter or thing which has already been published according to law, nor shall anything herein be construed to relieve any village from publishing any proceeding, ordinance or other matter or thing required by law to be published. Notwithstanding the provisions of s. 985.08 (4), the fee for any such publication shall not exceed the rates specified in s. 985.08 (1). The board has power to preserve order at its meetings, compel attendance of trustees and punish nonattendance and it shall be judge of the election and qualification of its members. The president and board of trustees of any village, whether operating under general or special law, may by a three-fourths vote of all the members of the village board determine that ~~an annual a salary be paid the president and trustees. Salaries heretofore established shall so remain until changed by ordinance and shall not be increased or diminished during their terms of office.~~

**SECTION 9.** 61.50 (1) of the statutes is amended to read:

61.50 (1) PUBLICATION OF NOTICE OF ORDINANCES. Every contract, conveyance, commission, license or other written instrument shall be executed on the part of the village by the president and clerk, unless otherwise provided by resolution or ordinance, sealed with corporate seal, and in pursuance only of authority therefor from the village board. All ordinances and bylaws shall be signed by the president and countersigned by the clerk; and, if any penalty or forfeiture is thereby imposed, the ordinance or bylaw shall be published either in its entirety, as a class 1 notice, under ch. 985, or as a notice, as described under sub. (3) (b), and shall take effect on the day after the publication or a later date if expressly pre-

scribed. If there is no newspaper published in the village, the village board may in lieu of newspaper publication have copies of the ordinances and bylaws posted in at least 3 public places in said village, and proof thereof filed and recorded by the village clerk, and the same shall take effect the day after the proof of posting has been filed and recorded, or at a later date if expressly provided in the ordinance or bylaw.

**SECTION 10.** 61.54 of the statutes is repealed and recreated to read:

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

**SECTION 11.** 61.55 and 61.56 of the statutes are repealed.

**SECTION 12.** 61.57 of the statutes is amended to read:

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

**SECTION 13.** 61.65 (1) (a) 2. of the statutes is amended to read:

61.65 (1) (a) 2. Contracting for police protective services with a city or town, with another village, or with ~~the a county in which the village is located.~~ A village that contracts for police protective services shall pay the full cost of services provided. A village may not contract with a county to provide all of the village's police protective services under this subdivision.

**SECTION 14.** 62.09 (1) (a) of the statutes is amended to read:

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

vote of all its members and approved by the electors at a general or special election, provide that there shall be 2 alderpersons from each aldermanic district.

**SECTION 15.** 62.09 (5) (e) of the statutes is created to read:

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

**SECTION 16.** 62.09 (6) (a) of the statutes is amended to read:

62.09 (6) (a) Salaries shall be paid the mayor or alderpersons only when ordered by a vote of three-fourths of all the members of the council. ~~Salaries heretofore established shall so remain until changed by ordinance.~~

**SECTION 17.** 62.09 (6) (am) of the statutes is created to read:

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

2. Except as provided in subd. 3., and subject to par. (a), the compensation for an elective city office shall be established before the earliest time for filing nomination papers for the office. After that time, 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.

3. In a newly incorporated city, the compensation for an elective office may be established during the first term of office.

**SECTION 18.** 62.09 (6) (b) of the statutes is repealed.

**SECTION 19.** 62.09 (11) (g) of the statutes is repealed.

**SECTION 20.** 62.13 (1) of the statutes is amended to read:

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

**SECTION 21.** 62.13 (2g) of the statutes is created to read:

62.13 (2g) CONTRACTING FOR POLICE PROTECTIVE SERVICES. A city may enter into a contract for police protective services with a village, a town, another city, or a county. A city that contracts for police protective services shall pay the full cost of services provided. A city that contracts for all of its police protective services under this subsection and for all of its fire protective ser-

vices under sub. (8) (b) is not required to have a board of police and fire commissioners. A city that contracts for all of its police protective services under this subsection, but not for all of its fire protective services under sub. (8) (b), shall have a board of police and fire commissioners under this section, but the board may only address issues related to the fire department. A city may not contract with a county to provide all of the city's police protective services under this subsection.

**SECTION 22.** 62.13 (8) of the statutes is renumbered 62.13 (8) (a).

**SECTION 23.** 62.13 (8) (b) of the statutes is created to read:

62.13 (8) (b) A city may enter into a contract for fire protective services with a village, a town, or another city. A city that contracts for fire protective services shall pay the full cost of services provided. A city that contracts for all of its fire protective services under this paragraph and for all of its police protective services under sub. (2g) is not required to have a board of police and fire commissioners. A city that contracts for all of its fire protective services under this paragraph, but not for all of its police protective services under sub. (2g), shall have a board of police and fire commissioners under this section, but the board may address only issues related to the police department.

**SECTION 24.** 62.15 (5) of the statutes is repealed and recreated to read:

62.15 (5) REJECTION OF BIDS; PERFORMANCE OF WORK BY CITY. (a) Unless the power has been expressly waived, the city may reject any bid. The board of public works may reject any bid, if, in its opinion, any combination has been entered into to prevent free competition.

(b) If the council finds that any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, it may, by resolution adopted by two-thirds of its members, reject any bids received and order the work done directly by the city under the supervision of the board of public works.

(c) If a city performs any work under par. (b), it may secure all necessary materials to perform the work.

(d) The city shall collect the cost of all work performed under par. (b) in the same manner as if done by any other person under contract with the city and may, subject to par. (e), defray such costs by special assessment.

(e) If the city imposes a special assessment under par. (d), it may not assess against any property an amount that is greater than would have been assessed against the property had the lowest bid received under this section been accepted. The city shall bear any costs in excess of that bid.

**SECTION 25.** 66.0133 (3) of the statutes is amended to read:

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

**SECTION 26.** 66.0505 (3) (a) 1. of the statutes is amended to read:

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

**SECTION 27.** 66.0507 of the statutes is amended to read:

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

**SECTION 28.** 66.0901 (2) of the statutes is amended to read:

66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter into a public contract may, before delivering any form for bid proposals, plans, and specifications to any person, except suppliers, and others not intending to submit a direct bid, require the person to submit a full and complete statement sworn to before an officer authorized by law to administer oaths. The statement shall consist of information relating to financial ability, equipment, experience in the work prescribed in the public contract, and other matters that the municipality requires for the protection and welfare of

the public in the performance of a public contract. The statement shall be in writing on a standard form of a questionnaire that is adopted and furnished by the municipality. The statement shall be filed in the manner and place designated by the municipality. The statement shall not be received less than 5 days prior to the time set for the opening of bids. The contents of the statement shall be confidential and may not be disclosed except upon the written order of the person furnishing the statement, for necessary use by the public body in qualifying the person, or in cases of actions against, or by, the person or municipality. The governing body of the municipality or the committee, board, or employee charged with, or delegated by the governing body with, the duty of receiving bids and awarding contracts shall properly evaluate the statement and shall find the maker of the statement either qualified or unqualified. ~~This subsection does not apply to a 1st-class city.~~

**SECTION 29.** 66.1103 (11) (a) of the statutes is amended to read:

66.1103 (11) (a) With respect to the enforcement of any construction lien or other lien under ch. 779 arising out of the construction of projects financed under this section, no deficiency judgment or judgment for costs may be entered against the municipality. Projects financed under this section are not public works, public improvements or public construction within the meaning

of ss. 59.52 (29), 60.47, ~~61.55~~ 61.54, 62.15, 779.14, 779.15 and 779.155 and contracts for the construction of the projects are not public contracts within the meaning of ss. 59.52 (29) and 66.0901 unless factors including municipal control over the costs, construction and operation of the project and the beneficial ownership of the project warrant the conclusion that they are public contracts.

**SECTION 30.** 86.25 (4) of the statutes is amended to read:

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

**SECTION 31.** 893.81 of the statutes is repealed.

**SECTION 32. Initial applicability.**

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

(2) The treatment of sections 61.54, 61.55, 61.56, 61.57, 62.15 (5), 66.0133 (3), 66.1103 (11) (a), and 86.25 (4) of the statutes first applies to the solicitation of bids for public works made on January 1, 2010.

(3) The treatment of section 893.81 of the statutes first applies to injuries to persons or property occurring on the effective date of this subsection.