



2009 ASSEMBLY BILL 919

April 2, 2010 - Introduced by Representatives DAVIS, STRACHOTA, BROOKS, HONADEL, KESTELL, KLEEFISCH, KNODL, LEMAHIEU, LOTHIAN, TOWNSEND and VOS. Referred to Committee on Education.

1 **AN ACT** *to renumber* 120.12 (24); *to renumber and amend* 111.70 (4) (cm) 8m.;
2 *to amend* 20.255 (2) (ac), 111.70 (1) (b), 111.70 (4) (cm) 6. a., 111.70 (4) (cm) 6.
3 am., 111.70 (4) (d) 2. a. and 111.70 (4) (m) 6.; and *to create* 111.70 (1) (dm),
4 111.70 (1) (mc), 111.70 (1) (ng), 111.70 (4) (cm) 5s., 111.70 (4) (cm) 8m. b.,
5 118.245, 120.12 (24) (b) and 121.15 (3m) of the statutes; **relating to:** creating
6 a qualified economic offer for school district professional employees in the
7 arbitration process and school board selection of the group health benefits
8 provider for school district employees.

Analysis by the Legislative Reference Bureau

Current law limits the increase in the total amount of revenue per pupil that a school district may receive from general school aids and property taxes in any school year (statewide per pupil revenue limit adjustment). For the 2009-10 and 2010-11 school years, no school district may increase its revenues per pupil to an amount that exceeds the sum of \$200 and the revenue increase allowed per pupil in the previous school year. For the 2011-12 school year, no school district may increase its revenues per pupil to an amount that exceeds the sum of \$275 and the revenue increase allowed per pupil in the previous school year. For the 2012-13 school year and any school year thereafter, no school district may increase its revenues by an

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amount that exceeds the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the consumer price index.

Under the Municipal Employment Relations Act (MERA), in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties, which is then incorporated into the collective bargaining agreement.

Under this bill, this process does not apply to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines that the school district has submitted a qualified economic offer (QEO). A QEO consists of a proposal by a school district to its represented employees to increase the average salary and fringe benefits by a certain amount. The amount is the product that results from multiplying the average amount the school district spends on salary and fringe benefits in the current school year by the statewide per pupil revenue limit adjustment divided by the statewide average base revenue per pupil, as calculated by the Department of Public Instruction (DPI). To determine the statewide average base revenue per pupil, DPI must first determine the base revenue per pupil for each school district by dividing the sum of general school aids and property taxes received by the district by the district's enrollment. DPI must certify the amount calculated as required in the bill to WERC by January 1, 2011, and biennially thereafter. For the certification due to WERC by January 1, 2011, the department must use \$275 for the per pupil revenue limit adjustment. This bill requires school district professional employees to be placed in a collective bargaining unit that is separate from the units of other school district employees and requires collective bargaining agreements covering school district professional employees to be for a term of two years. The bill also creates a cap on salary and fringe benefit annual increases for all nonrepresented school district professional employees that results in the increases being identical to represented school district professional employees.

Beginning in May 2011, and annually thereafter, this bill directs DPI, the Department of Administration, and the Legislative Fiscal Bureau jointly to determine the amount necessary to appropriate as general school aids in the following fiscal year to pay for the following portion of public school costs:

1. For the 2011–12 school year, 65.28 percent.
2. For the 2012–13 school year, 65.56 percent.
3. For the 2013–14 school year, 65.84 percent.
4. For the 2014–15 school year, 66.12 percent.
5. For the 2015–16 school year, 66.40 percent.
6. For the 2016–17 school year, two-thirds.

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The bill directs the Joint Committee on Finance to determine the amount appropriated as general school aids for the 2012-13 fiscal year and biennially thereafter.

Current law requires each school board, prior to the selection of any group health care benefits provider for school district employees, to solicit sealed bids for the provision of the benefits. Current law also authorizes a school board to offer its employees a health care coverage plan through a program offered by the Group Insurance Board (GIB).

This bill directs the school board to select the group health care benefits provider that is the lowest qualified responsible bidder unless the school board offers its employees a health care coverage plan through a program offered by the GIB.

The bill provides that the selection of the provider and the impact of that selection on the wages, hours, or conditions of employment are prohibited subjects of collective bargaining.

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

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

1 **SECTION 1.** 20.255 (2) (ac) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 20.255 (2) (ac) *General equalization aids.* ~~The amounts in the schedule A sum~~
4 sufficient for the payment of educational aids under ss. 121.08, 121.09, 121.095,
5 121.105, 121.137 and subch. VI of ch. 121 equal to \$4,652,500,000 in the 2010-11
6 fiscal year, equal to the amount determined by law in the 2011-12 fiscal year and
7 biennially thereafter, and equal to the amount determined by the joint committee on
8 finance under s. 121.15 (3m) (c) in the 2012-13 fiscal year and biennially thereafter.

9 **SECTION 2.** 111.70 (1) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
10 is amended to read:

11 111.70 (1) (b) "Collective bargaining unit" means a unit consisting of municipal
12 employees who are school district professional employees or of municipal employees

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1 who are not school district professional employees that is determined by the
2 commission to be appropriate for the purpose of collective bargaining.

3 **SECTION 3.** 111.70 (1) (dm) of the statutes is created to read:

4 111.70 (1) (dm) "Economic issue" means salaries, overtime pay, sick leave,
5 payments in lieu of sick leave usage, vacations, clothing allowances in excess of the
6 actual cost of clothing, length-of-service credit, continuing education credit, shift
7 premium pay, longevity pay, extra duty pay, performance bonuses, health insurance,
8 life insurance, dental insurance, disability insurance, vision insurance, long-term
9 care insurance, worker's compensation and unemployment insurance, social
10 security benefits, vacation pay, holiday pay, lead worker pay, temporary assignment
11 pay, retirement contributions, supplemental retirement benefits, severance or other
12 separation pay, hazardous duty pay, certification or license payment, limitations on
13 layoffs that create a new or increased financial liability on the employer, and
14 contracting or subcontracting of work that would otherwise be performed by
15 municipal employees in the collective bargaining unit with which there is a labor
16 dispute.

17 **SECTION 4.** 111.70 (1) (mc) of the statutes is created to read:

18 111.70 (1) (mc) 1. "Qualified economic offer" means an offer made to a labor
19 organization by a municipal employer to increase in each year that is covered by the
20 collective bargaining agreement being negotiated the salary and fringe benefits of
21 the represented municipal employees in an amount that is at least equal to the
22 product of the percentage determined by the department of public instruction under
23 s. 118.245 (3) multiplied by the average amount spent by the school district on school
24 district professional employees' salary and fringe benefits in the existing school year.

25 **SECTION 5.** 111.70 (1) (ng) of the statutes is created to read:

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1 111.70 (1) (ng) “School district professional employee” means a school district
2 employee who is a professional employee.

3 **SECTION 6.** 111.70 (4) (cm) 5s. of the statutes is created to read:

4 111.70 (4) (cm) 5s. ‘Issues subject to arbitration.’ In a collective bargaining unit
5 consisting of school district professional employees, the municipal employer or the
6 labor organization may petition the commission to determine whether the municipal
7 employer has submitted a qualified economic offer. If the commission finds that the
8 municipal employer has submitted a qualified economic offer, it shall determine
9 whether a deadlock exists between the parties with respect to all economic issues.
10 If the municipal employer submits a qualified economic offer, no economic issues,
11 except the impact of contracting out or subcontracting work that would otherwise be
12 performed by municipal employees in the collective bargaining unit, is subject to
13 interest arbitration under subd. 6. for that period. In such a collective bargaining
14 unit, noneconomic issues are subject to interest arbitration after the parties have
15 reached agreement and stipulate to agreement on all economic issues concerning the
16 wages, hours, or conditions of employment of the school district professional
17 employees in the unit for that period. In such a collective bargaining unit, if the
18 commission finds that the municipal employer has submitted a qualified economic
19 offer and that a deadlock exists between the parties with respect to all economic
20 issues, the municipal employer may implement the qualified economic offer. On the
21 90th day prior to expiration of the period included within the qualified economic
22 offer, if no agreement exists on that day, the parties are considered to have stipulated
23 to include in a new or revised collective bargaining agreement all provisions of any
24 predecessor collective bargaining agreement concerning economic issues, or all
25 provisions of any existing collective bargaining agreement concerning economic

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1 issues if the parties have reopened negotiations under an existing agreement, as
2 modified by the terms of the qualified economic offer and as otherwise modified by
3 the parties. In such a collective bargaining unit, on and after that 90th day, a
4 municipal employer that refuses to bargain collectively with respect to the terms of
5 that stipulation, applicable to the 90-day period prior to expiration of the period
6 included within the qualified economic offer, does not violate sub. (3) (a) 4. Any such
7 unilateral implementation during the 90-day period prior to expiration of the period
8 included within a qualified economic offer operates as a full, final, and complete
9 settlement of all economic issues between the parties for the period included within
10 the qualified economic offer. The failure of a labor organization to recognize the
11 validity of a qualified economic offer does not affect the obligation of the municipal
12 employer to submit economic issues to arbitration under subd. 6.

13 **SECTION 7.** 111.70 (4) (cm) 6. a. of the statutes, as affected by 2009 Wisconsin
14 Act 28, is amended to read:

15 111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute relating to one
16 or more issues, qualifying for interest arbitration under subd. 5s. in a collective
17 bargaining unit to which subd. 5s. applies, has not been settled after a reasonable
18 period of negotiation and after mediation by the commission under subd. 3. and other
19 settlement procedures, if any, established by the parties have been exhausted, and
20 the parties are deadlocked with respect to any dispute between them over wages,
21 hours and conditions of employment to be included in a new collective bargaining
22 agreement, either party, or the parties jointly, may petition the commission, in
23 writing, to initiate compulsory, final and binding arbitration, as provided in this
24 paragraph. At the time the petition is filed, the petitioning party shall submit in
25 writing to the other party and the commission its preliminary final offer containing

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1 its latest proposals on all issues in dispute. Within 14 calendar days after the date
2 of that submission, the other party shall submit in writing its preliminary final offer
3 on all disputed issues to the petitioning party and the commission. If a petition is
4 filed jointly, both parties shall exchange their preliminary final offers in writing and
5 submit copies to the commission at the time the petition is filed.

6 **SECTION 8.** 111.70 (4) (cm) 6. am. of the statutes, as affected by 2009 Wisconsin
7 Act 28, is amended to read:

8 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
9 commission shall make an investigation, with or without a formal hearing, to
10 determine whether arbitration should be commenced. If in determining whether an
11 impasse exists the commission finds that the procedures set forth in this paragraph
12 have not been complied with and such compliance would tend to result in a
13 settlement, it may order such compliance before ordering arbitration. The validity
14 of any arbitration award or collective bargaining agreement shall not be affected by
15 failure to comply with such procedures. Prior to the close of the investigation each
16 party shall submit in writing to the commission its single final offer containing its
17 final proposals on all issues in dispute that are subject to interest arbitration under
18 this subdivision or under subd. 5s. in collective bargaining units to which subd. 5s.
19 applies. If a party fails to submit a single, ultimate final offer, the commission shall
20 close the investigation based on the last written position of the party. The municipal
21 employer may not submit a qualified economic offer under subd. 5s. after the close
22 of the investigation. Such final offers may include only mandatory subjects of
23 bargaining, except that a permissive subject of bargaining may be included by a
24 party if the other party does not object and shall then be treated as a mandatory
25 subject. No later than such time, the parties shall also submit to the commission a

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1 stipulation, in writing, with respect to all matters which are agreed upon for
2 inclusion in the new or amended collective bargaining agreement. The commission,
3 after receiving a report from its investigator and determining that arbitration should
4 be commenced, shall issue an order requiring arbitration and immediately submit
5 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
6 alternately strike names until a single name is left, who shall be appointed as
7 arbitrator. The petitioning party shall notify the commission in writing of the
8 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
9 formally appoint the arbitrator and submit to him or her the final offers of the
10 parties. The final offers shall be considered public documents and shall be available
11 from the commission. In lieu of a single arbitrator and upon request of both parties,
12 the commission shall appoint a tripartite arbitration panel consisting of one member
13 selected by each of the parties and a neutral person designated by the commission
14 who shall serve as a chairperson. An arbitration panel has the same powers and
15 duties as provided in this section for any other appointed arbitrator, and all
16 arbitration decisions by such panel shall be determined by majority vote. In lieu of
17 selection of the arbitrator by the parties and upon request of both parties, the
18 commission shall establish a procedure for randomly selecting names of arbitrators.
19 Under the procedure, the commission shall submit a list of 7 arbitrators to the
20 parties. Each party shall strike one name from the list. From the remaining 5
21 names, the commission shall randomly appoint an arbitrator. Unless both parties
22 to an arbitration proceeding otherwise agree in writing, every individual whose
23 name is submitted by the commission for appointment as an arbitrator shall be a
24 resident of this state at the time of submission and every individual who is

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1 designated as an arbitration panel chairperson shall be a resident of this state at the
2 time of designation.

3 **SECTION 9.** 111.70 (4) (cm) 8m. of the statutes is renumbered 111.70 (4) (cm) 8m.
4 a. and amended to read:

5 111.70 (4) (cm) 8m. a. Except as provided in subd. 8m. b., except for the initial
6 collective bargaining agreement between the parties, and except as the parties
7 otherwise agree, every collective bargaining agreement covering municipal
8 employees subject to this paragraph shall be for a term of 2 years, but in no case may
9 a collective bargaining agreement for any collective bargaining unit consisting of
10 municipal employees subject to this paragraph other than school district employees
11 be for a term exceeding 3 years nor may a collective bargaining agreement for any
12 collective bargaining unit consisting of school district employees subject to this
13 paragraph be for a term exceeding 4 years.

14 c. No arbitration award may contain a provision for reopening of negotiations
15 during the term of a collective bargaining agreement, unless both parties agree to
16 such a provision. The requirement for agreement by both parties does not apply to
17 a provision for reopening of negotiations with respect to any portion of an agreement
18 that is declared invalid by a court or administrative agency or rendered invalid by
19 the enactment of a law or promulgation of a federal regulation.

20 **SECTION 10.** 111.70 (4) (cm) 8m. b. of the statutes is created to read:

21 111.70 (4) (cm) 8m. b. Except for the initial collective bargaining agreement
22 between the parties, every collective bargaining agreement covering school district
23 professional employees shall be for a term of 2 years expiring on June 30 of the
24 odd-numbered year. An initial collective bargaining agreement covering school
25 district professional employees shall be for a term ending on June 30 of the first

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1 odd-numbered year following the effective date of the collective bargaining
2 agreement.

3 **SECTION 11.** 111.70 (4) (d) 2. a. of the statutes, as affected by 2009 Wisconsin
4 Act 28, is amended to read:

5 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
6 bargaining unit for the purpose of collective bargaining and shall whenever possible,
7 unless otherwise required under this subchapter, avoid fragmentation by
8 maintaining as few collective bargaining units as practicable in keeping with the size
9 of the total municipal workforce. In making such a determination, the commission
10 may decide whether, in a particular case, the municipal employees in the same or
11 several departments, divisions, institutions, crafts, professions, or other
12 occupational groupings constitute a collective bargaining unit. Before making its
13 determination, the commission may provide an opportunity for the municipal
14 employees concerned to determine, by secret ballot, whether they desire to be
15 established as a separate collective bargaining unit. The commission shall not
16 decide, however, that any group of municipal employees constitutes an appropriate
17 collective bargaining unit if the group includes both municipal employees who are
18 school district professional employees and municipal employees who are not school
19 district professional employees. The commission shall not decide, ~~however,~~ that any
20 other group of municipal employees constitutes an appropriate collective bargaining
21 unit if the group includes both professional employees and nonprofessional
22 employees, unless a majority of the professional employees vote for inclusion in the
23 unit. The commission shall not decide that any group of municipal employees
24 constitutes an appropriate collective bargaining unit if the group includes both craft
25 employees and noncraft employees unless a majority of the craft employees vote for

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1 inclusion in the unit. The commission shall place the professional employees who are
2 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in
3 a separate collective bargaining unit from a unit that includes any other professional
4 employees whenever at least ~~30%~~ 30 percent of those professional employees request
5 an election to be held to determine that issue and a majority of the professional
6 employees at the charter school who cast votes in the election decide to be
7 represented in a separate collective bargaining unit. Upon the expiration of any
8 collective bargaining agreement in force, the commission shall combine into a single
9 collective bargaining unit 2 or more collective bargaining units consisting of school
10 district employees if a majority of the employees voting in each collective bargaining
11 unit vote to combine. Any vote taken under this subsection shall be by secret ballot.

12 **SECTION 12.** 111.70 (4) (m) 6. of the statutes, as affected by 2009 Wisconsin Act
13 28, is amended to read:

14 111.70 (4) (m) 6. Solicitation of sealed bids for the provision of group health care
15 benefits for school district employees and selection of the group health care benefits
16 provider, as provided in s. 120.12 (24), and the impact of that selection on the wages,
17 hours, or conditions of employment of the school district employees.

18 **SECTION 13.** 118.245 of the statutes is created to read:

19 **118.245 Limitation on salary and fringe benefit costs for professional**
20 **employees. (1)** In this section:

21 (a) "Nonrepresented professional employee" means an employee who is a
22 professional employee as defined in s. 111.70 (1) (L), who is employed to perform
23 services for a school district, and whose position is not included in a collective
24 bargaining unit for which a representative is recognized or certified under subch. IV
25 of ch. 111.

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1 (b) “Represented professional employee” has the meaning given for “school
2 district professional employee” in s. 111.70 (1) (ng).

3 (2) No school district may increase in any year the average of salary and fringe
4 benefits of its nonrepresented professional employees in an amount that is more than
5 the product of the percentage determined by the department under sub. (3)
6 multiplied by the average amount spent by the school district on represented
7 professional employees’ salary and fringe benefits in the existing school year or by
8 more than the average amount that the school district increased the salary and
9 fringe benefits of its represented professional employees, whichever is greater.

10 (3) (a) By January 1, 2011, and biennially by January 1 thereafter, the
11 department shall perform the following calculations and certify the result, expressed
12 as a percentage, to the employment relations commission:

13 1. Except as provided in par. (b), determine the per pupil revenue limit
14 adjustment under s. 121.91 (2m) for the current school year.

15 2. Divide the amount under subd. 1. by the statewide average base revenue per
16 pupil, as calculated for the current school year under s. 121.905 (3).

17 (b) For the certification due by January 1, 2011, the department shall use \$275
18 under par. (a) 1.

19 **SECTION 14.** 120.12 (24) of the statutes, as affected by 2009 Wisconsin Act 28,
20 is renumbered 120.12 (24) (a).

21 **SECTION 15.** 120.12 (24) (b) of the statutes is created to read:

22 120.12 (24) (b) Select the group health care benefits provider for school district
23 employees, as defined in s. 111.70 (1) (ne), that is the lowest qualified responsible
24 bidder under par. (a). This paragraph does not apply if the school board offers all of

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1 its employees a health care coverage plan through a program offered by the group
2 insurance board under ch. 40.

3 **SECTION 16.** 121.15 (3m) of the statutes is created to read:

4 121.15 (3m) (a) In this subsection:

5 1. "Partial school revenues" means the sum of state school aids, other than the
6 amounts appropriated under s. 20.255 (2) (fv), property taxes levied for school
7 districts, and aid paid to school districts under s. 79.095 (4), less all of the following:

8 a. The amount of any revenue limit increase under s. 121.91 (4) (a) 2. due to a
9 school board's increasing the services that it provides by adding responsibility for
10 providing a service transferred to it from another school board.

11 b. The amount of any revenue limit increase under s. 121.91 (4) (a) 3.

12 c. The amount of any revenue limit increase under s. 121.91 (4) (h).

13 d. The amount of any property taxes levied for the purpose of s. 120.13 (19).

14 e. An amount equal to 38.4 percent of the amount estimated to be paid under
15 s. 119.23 (4) and (4m).

16 f. The amount by which the property tax levy for debt service on debt that has
17 been approved by a referendum exceeds \$490,000,000.

18 2. "State school aids" means those aids appropriated under s. 20.255 (1) (b) and
19 (2), other than s. 20.255 (2) (fm), (fu), (fv), (k), and (m), and under s. 20.285 (1) (r),
20 (rc), and (rm), and those aids appropriated under s. 20.505 (4) (es) and (s) that are
21 used to provide grants or educational telecommunications access to school districts
22 under s. 16.995 or 16.997 (7).

23 (b) By May 15, 2011, and annually by May 15 thereafter, the department, the
24 department of administration, and the legislative fiscal bureau shall jointly certify
25 to the joint committee on finance an estimate of the amount necessary to appropriate

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1 under s. 20.255 (2) (ac) in the following school year to ensure that the sum of state
2 school aids and the school levy tax credit under s. 79.10 (4) equals the following
3 portion of partial school revenues:

- 4 1. For the 2011–12 school year, 65.28 percent.
- 5 2. For the 2012–13 school year, 65.56 percent.
- 6 3. For the 2013–14 school year, 65.84 percent.
- 7 4. For the 2014–15 school year, 66.12 percent.
- 8 5. For the 2015–16 school year, 66.40 percent.
- 9 6. For the 2016–17 school year and each school year thereafter, two-thirds.

10 (c) By June 30, 2012, and biennially by June 30 thereafter, the joint committee
11 on finance shall determine the amount appropriated under s. 20.255 (2) (ac) in the
12 following school year.

SECTION 17. Initial applicability.

14 (1) The treatment of section 111.70 (1) (b), (dm), (mc), and (ng) and (4) (cm) 5s.
15 and 6. a. and am. and (d) 2. a. of the statutes, the renumbering and amendment of
16 section 111.70 (4) (cm) 8m. of the statutes, and the creation of section 111.70 (4) (cm)
17 8m. b. of the statutes first apply to a petition for arbitration that relates to a collective
18 bargaining agreement that is filed on the effective date of this subsection.

19 (2) The treatment of section 111.70 (4) (m) 6. of the statutes first applies to a
20 collective bargaining agreement entered into, extended, modified, or renewed on the
21 effective date of this subsection.

SECTION 18. Effective date.

23 (1) This act takes effect on July 1, 2010.

24 (END)