



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 280

**Senate Substitute
Amendment 1**

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Current law does not expressly authorize a local elective officer to refuse to accept his or her salary. In addition to the absence of authority, concerns about the application of the common law rule against bartering or trading for public office, about local liability to ultimately pay the salary even when refused, and about possible tax liability even when the salary is refused have resulted in many local jurisdictions requiring receipt of salary by local elective officers who would otherwise choose not to accept it (but allowing the officer to then donate the salary to the local government).

Senate Substitute Amendment 1 authorizes a member or member-elect of the governing body of a city*, village, town, or county to refuse to accept the salary he or she would otherwise receive for holding that position. In order to refuse to accept his or her salary, the governing body member must send a refusal notice to the local clerk and treasurer: (1) not less than 30 days after the officer's election is certified; or (2) at least 30 days before the start of the governing body member's next taxable year. If the former notice is given, the refusal is effective during the taxable year in which the election is certified unless the taxable year ends within three months of certification, in which case the refusal is effective until the end of the next taxable year. If a refusal notification is given at least 30 days before the start of the next taxable year, the refusal is effective until the end of that taxable year. A refusal notice may not be rescinded but may be renewed.

Under the original bill, a refusal notice could be given before any pay period and rescinded at any time. Concern that such control over the receipt or refusal of income would result in a tax interpretation that income was "constructively" received, even when a refusal was in effect, resulted in the limitations in the substitute amendment on when a refusal notice may be made and the limitations on rescinding a refusal notice.

* Note that by statute a mayor is a member of the common council, s. 62.11 (1), Stats.

Legislative History

On December 19, 2007, the Senate Committee on Ethics Reform and Government Operations introduced and adopted Senate Substitute Amendment 1 and recommended Senate Bill 280, for passage, as amended, all on votes of Ayes, 5; Noes, 0.

DD:RS:jb:wu:ty