WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Municipal Residency Requirements

The 2013-15 Biennial Budget, 2013 Wisconsin Act 20, includes a provision that prohibits a local governmental unit from requiring a current or prospective employee to reside within any jurisdictional limit, as a condition of employment. The provision allows some exceptions that generally relate to law enforcement, fire, or emergency personnel.

This Information Memorandum describes the provisions of the 2013-15 Biennial Budget that affect a local governmental unit's residency requirements. It also discusses the operation and effect of the law, including its applicability to volunteers, to jurisdictional limits, and to a collective bargaining agreement or individual contract, and briefly discusses the enforceability of the law under Wisconsin's constitutional home rule authority.

Briefly, under the Act, a local governmental unit may not impose a residency restriction on its employees, on any basis, except as explicitly allowed. However, it appears that a municipality may impose a residency requirement for appointed officers and board members, and may apply a 15-mile residency requirement for law enforcement, fire, and emergency personnel, including volunteers who are not otherwise employees of a local governmental unit.

Furthermore, it appears that a municipality may enter into an individual contract or collective bargaining agreement that includes an agreement to adhere to a residency restriction, and an individual contract or collective bargaining agreement containing a residency restriction that was in effect on July 2, 2013, may remain in effect until the contract or agreement is terminated, extended, modified, or renewed.

Ultimately, if challenged, any questions about the interpretation or effect of the Act's residency provisions would be decided by a court based on the particular facts and circumstances presented.

RESIDENCY REQUIREMENTS IN 2013 WISCONSIN ACT 20

GENERAL PROHIBITION

The Act provides that no local governmental unit may require a current or prospective employee to reside within any jurisdictional limit, as a condition of employment, except in certain circumstances. The Act specifies that any such residency requirement by a city, village,

town, county, or school district is inapplicable as of July 2, 2013, and cannot be enforced. [s. 66.0502, Stats.]

The Act declares that the Legislature finds that public employee residency requirements are a matter of statewide concern.

EXCEPTIONS

Law Enforcement, Fire, or Emergency Personnel

The Act specifies that a local governmental unit may impose a requirement on law enforcement, fire, or emergency personnel to reside within 15 miles of its jurisdictional boundaries. If the local governmental unit is a county, the 15-mile limit applies to the jurisdictional boundaries of the city, village, or town to which personnel are assigned.

However, a local governmental unit may not impose a 15-mile residency requirement on volunteer law enforcement, fire, or emergency personnel who are employees of a local governmental unit.

Elected Officials and State Residency

The Act specifies that if a state statute imposes a requirement to reside within the jurisdictional limits of a local governmental unit, that requirement is unaffected by the general prohibition against requiring residency within a jurisdictional limit. For example, state law requires local elected officials to be residents of the district, and requires school board members in a first class city to reside within the boundaries of the district. These laws remain in effect. [ss. 59.20 (1) (county), 60.30 (2) (a) (town), 61.19 (village), 62.09 (2) (a) (city), and 119.08 (1) (c) (first class city school board), Stats.]

Likewise, the Act specifies that if either a state statute or local ordinance requires residency within the State of Wisconsin, that requirement is unaffected by the general prohibition against requiring residency.

Thus, if a state statute requires residency within the jurisdictional limits of a local governmental unit, or a statute or ordinance requires residency within the state, that statute or ordinance prevails over the general prohibition of the Act.

REPEALED STATUTORY RESIDENCY REQUIREMENTS

The Act repeals a number of statutory provisions that had required residency within local jurisdictions for certain public employees. The repealed provisions include residency requirements for a deputy sheriff, mayoral appointments in a first class city, or town employees, and residency requirements for particular civil service examinations. Additionally, the Act specifies that if a person appointed to a local position moves outside the local jurisdiction, the move does not create a vacancy in the position. [ss. 59.26 (1) (c) and 62.53, 2011 Stats.; ss. 17.03 (4) (d), 60.37 (1), 62.13 (4) (d), 62.50 (5), 63.08 (1) (a), and 63.25 (1) (a), Stats.]

OPERATION AND EFFECT OF THE LAW

MUNICIPAL OFFICERS AND VOLUNTEER BOARD MEMBERS

Under the general prohibition of the Act, a municipality may not require an "employee" to reside with any jurisdictional limit. An "employee" is not defined for purposes of the general prohibition, although the term has specific, different meanings under various laws. This may raise questions as to whether the general prohibition on residency restrictions applies to unelected municipal officers and to volunteer members of a municipality's various boards.

According to the League of Wisconsin Municipalities, appointed officers, including members of boards and commissions, are generally not considered "employees" of a municipality. [*Handbook for Wisconsin Municipal Officials*, League of Wisconsin Municipalities, p. 79 (2012).] Consequently, it appears that appointed officers and board members may not be "employees" within the meaning of the Act, and a municipality generally may impose any residency requirement it deems appropriate for appointed officers and board members, subject to any specific statutory limitations.

LAW ENFORCEMENT, FIRE, OR EMERGENCY PERSONNEL

Under the Act, a municipality may require law enforcement, fire, or emergency personnel, including volunteers who are not employees of a local governmental unit, to reside within 15 radial miles of its jurisdictional limits. The Act's authorization to apply a 15-mile residency requirement applies to law enforcement, fire, and emergency "personnel," which is broader than "employees," and appears to include volunteers. The Act prohibits a local governmental unit from imposing a 15-mile residency requirement on a volunteer law enforcement, fire, or emergency responder only when the person is an employee of a local governmental unit.

The exception for volunteer emergency personnel may raise a question as to the law's application if a volunteer emergency responder is an employee of a different governmental unit than the one for which the person volunteers. The law applies to a volunteer who is an employee of "a" local governmental unit. This implies that if a volunteer separately works for any municipality, even if the volunteering is not for "the" local governmental unit where the person is employed, the volunteer would be exempt from a municipality's requirement for law enforcement, fire, or emergency personnel to reside within 15 miles of its jurisdictional boundaries. A volunteer emergency responder who is otherwise employed in the private sector would be subject to a municipality's 15-mile residency requirement.

Lastly, the Act does not define "emergency" personnel, though that may commonly be understood to include an emergency medical technician, paramedic, or other first responder. [s. 256.01 (5) to (9), Stats.] It may also include other members of an emergency medical services team, such as an ambulance driver. [ss. 256.15 (4) and 941.37 (1) (c), Stats.]

JURISDICTIONAL LIMIT

For purposes of the general prohibition, the Act does not define what a "jurisdictional limit" means. The Act states specifically that a local governmental unit may only impose a residency restriction that is within 15 miles of its jurisdictional boundaries, for law enforcement, fire, or

emergency personnel. However, it may be less clear whether the Act's general prohibition for other employees applies to any residency-based criteria within a jurisdictional limit, or whether a municipality could require employees to reside in a location that is within a particular amount of time distance from a job location.

Under the broad language of the Act, it appears that a municipal requirement for residency on a different basis than geographic location, such as time distance from the job location, conflicts with the Act's general prohibition against requiring residency within "any" jurisdictional limit.

Furthermore, for the allowed residency restriction, it appears that the limitation to "within 15 miles" applies only to that exact radial distance from the jurisdictional boundaries. The distance is not restricted by any actual travel route miles. It also appears under this language that a greater or lesser distance may not be imposed by a residency requirement for law enforcement, fire, or emergency personnel.

COLLECTIVE BARGAINING AGREEMENTS AND INDIVIDUAL CONTRACTS

The language of the Act prohibits a local governmental unit from "requiring" residency within its jurisdictional limits. It appears that this language does not prohibit a local governmental unit from bargaining with an individual or a union to voluntarily limit employees' residency to within its jurisdictional limits.

The Wisconsin Supreme Court has recognized the authority of a municipality to bargain on the issue of residency requirements. In particular, the Court has held that if a provision of a collective bargaining agreement conflicts with an ordinance requiring residency for municipal employees, then the contract provision prevails. [*City of Madison v. Madison Professional Police Officers Ass'n*, 144 Wis. 2d 576 (1988).]

This holding raises two implications under the Act's residency provisions. First, it appears that if a collective bargaining agreement or individual contract is in effect on July 2, 2013, and the provisions of the agreement or contract restrict residency for an employee, those restrictions may remain in effect, under the Contracts Clause of the Wisconsin Constitution, until the agreement or contract is terminated, extended, modified, or renewed. [Art. I, s. 12, Wis. Const.]

On the other hand, the Act specifies that a local residency requirement does not apply and may not be enforced on or after July 2, 2013. It could be argued that this provision prohibits any residency requirement, whether the residency restriction was imposed by ordinance or agreed to in a contract or collective bargaining agreement. However, if enforcement of a contract or agreement's residency provision is challenged, the challenger must show that the law does not unconstitutionally impair the contract.

Second, it appears that a municipality may continue to bargain on the issue of residency restrictions, by offering incentives to live within a defined area. It seems under the specific language of the Act that an agreement to adhere to a residency restriction is not a prohibited imposition of a residency "requirement."

However, it could be argued that if the Act's language is unclear, under the general intent of the law a municipality is prohibited from bargaining on the issue of residency restrictions. Under this argument, even if voluntarily agreed upon, any residency restriction operates as an impermissible requirement for a condition of employment, making the contract provision illegal in its performance. In general, a contract provision is illegal if adhering to the contract would violate a statute. It could be considered that although a municipality may choose to ignore its own residency ordinance in entering into a contract or collective bargaining agreement, a municipality may not ignore state law that generally prohibits residency restrictions as a condition of employment.

ENFORCEABILITY OF THE LAW

At least one municipality in Wisconsin, the City of Milwaukee, is continuing to enforce its own local residency requirements, on the basis of its constitutional home rule authority.

HOME RULE AUTHORITY

The Wisconsin Constitution provides that cities and villages "may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or village." [Art. XI, s. 3, cl. (1), Wis. Const.]

Correspondingly, "administrative" home rule authority is granted under the statutes to every county, and is limited in the same manner as the constitutional home rule authority, if a legislative enactment of statewide concern affects all counties. Similarly, if a town has adopted village powers, an ordinance that conflicts with a state statute is reviewed by a court in the same manner as the constitutional home rule authority for a village.

Under the home rule powers, if a policy is entirely a matter of a municipality's local affairs and government, a municipality is authorized to regulate that matter, and the Legislature is prohibited from enacting a law that would preempt the local regulation of the matter. However, if a matter is exclusively of statewide concern, or a legislative enactment applies uniformly to every local governmental unit of the same type, the Legislature may prohibit a municipality from enacting an ordinance on the matter and may regulate the matter through state laws.

HOME RULE ANALYSIS

If a court were to find that an issue is solely a matter of local concern, the court's inquiry could end there, because an ordinance on the matter would be within the municipality's home rule authority. However, the Wisconsin Supreme Court has noted that if a state law deals with local affairs and government of a municipality, an ordinance may still be subordinate if the statute affects every municipality with uniformity. [*Van Gilder v. Madison*, 222 Wis. 58, 84 (1936).]

If a statute states that the subject is a matter of statewide concern, a court is likely to give great weight to this statement of the Legislature's opinion. [*Id.*, at 73-74.] A court could nevertheless determine that the matter is not exclusively of statewide concern, if the matter affects local concerns that have traditionally been regulated at the local level. Consequently,

even if a matter is paramountly of statewide concern, local regulations could be allowed to remain in place, if, under a detailed analysis, the state legislation does not expressly or implicitly forbid local regulation. [*Local Union No. 487, IAFF-CIO v. Eau Claire*, 147 Wis. 2d 519, 524-525 (1988).]

When a topic has mixed statewide and local character, a court must make a case-by-case evaluation of whether the statute involved is primarily or paramountly a matter of local affairs and government or of statewide concern. Whichever is paramount will prevail. [*State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526-527 (1977); *Gloudeman v. City of St. Francis*, 143 Wis. 2d 780, 789 (Ct. App. 1988); *Anchor Sav. & Loan Ass'n v. Equal Opportunities Comm'n*, 120 Wis. 2d 391, 397 (1984).]

Wisconsin courts have not addressed the question of whether residency requirements are primarily a matter of local affairs or statewide concern, and will first look to the Act's declaration that the matter is of statewide concern. A court could also turn to other jurisdictions for comparisons. Decisions from other courts are varied, based on their particular laws and the facts presented. For example, state laws affecting local residency requirements were upheld in Missouri and Ohio, based on specific limitations on those states' constitutional home rule authority. On the other hand, the Supreme Court of Colorado determined that residency of employees was of local concern, and held that a state statute could not limit the municipalities' authority to require residency within corporate limits as a condition of continuing employment. [*City of St. Louis v. State*, 382 S.W.3d 905 (Mo. 2012); *City of Lima v. State*, 122 Ohio St. 3d 155 (2009); *Denver v. State*, 788 P. 2d (Colo. 1990).]

SUMMARY

The 2013-15 Biennial Budget prohibits a local governmental unit from requiring a current or prospective employee to reside within any jurisdictional limit, as a condition of employment. However, a local governmental unit may generally require law enforcement, fire, or emergency personnel to reside within 15 miles of its jurisdictional boundaries.

Under the Act, a local governmental unit may not impose a residency restriction on its employees, on any basis, except as explicitly allowed. However, it appears that a municipality may impose a residency requirement for appointed officers and board members, and may apply a 15-mile residency requirement for law enforcement, fire, and emergency personnel, including volunteers who are not otherwise employees of a local governmental unit.

Furthermore, it appears that a municipality may enter into an individual contract or collective bargaining agreement that includes an agreement to adhere to a residency restriction, and an individual contract or collective bargaining agreement containing a residency restriction that was in effect on July 2, 2013, may remain in effect until the contract or agreement is terminated, extended, modified, or renewed.

Ultimately, if challenged, any questions about the interpretation or effect of the Act's residency provisions would be decided by a court based on the particular facts and circumstances presented.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Margit Kelley, Staff Attorney, on August 23, 2013.

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WISCONSIN LEGISLATIVE COUNCIL
One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
Telephone: (608) 266-1304 • Fax: (608) 266-3830
Email: leg.council@legis.wisconsin.gov
http://www.legis.wisconisn.gov/lc