

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0871/1dn
MES:kmg:hmh

Friday, November 20, 1998

This bill is, basically, a redraft of 1997 AB-75 and contains the modifications that you requested. You should know, however, that there is a possibility that created s. 66.188 could be challenged as a violation of a city's or village's constitutional and statutory grants of home rule power. See article XI, section 3, of the Wisconsin Constitution and ss. 61.34 (1) and 62.11 (5), stats. This constitutional provision authorizes cities and villages to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern.

The provision also stands for the proposition that the state cannot prohibit a city or village from regulating an activity that solely involves local affairs and that is not a matter of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 and 529 (1977). It could be argued that municipal residency requirements involve solely local affairs and are not matters of statewide concern. Consequently, under *Michalek*, a court could hold that a statute that limits a city's or village's authority to enact residency requirements violates article XI, section 3, of the Wisconsin Constitution and ss. 61.34 (1) and 62.11 (5), stats.

In addition, in some cases, if a state law intrudes on an area of local concern, a city may elect not to be governed by the law. See *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633 (1926). To be sustained, proposed s. 66.188 must be viewed as treating a subject that is paramountly of statewide concern.

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266-0129