

1999 DRAFTING REQUEST

Bill

Received: **11/13/98**

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing: **Michael Bruhn**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Munis - miscellaneous
Counties
Education - miscellaneous**

Extra Copies:

Topic:

Residency requirements, local government employees

Instructions:

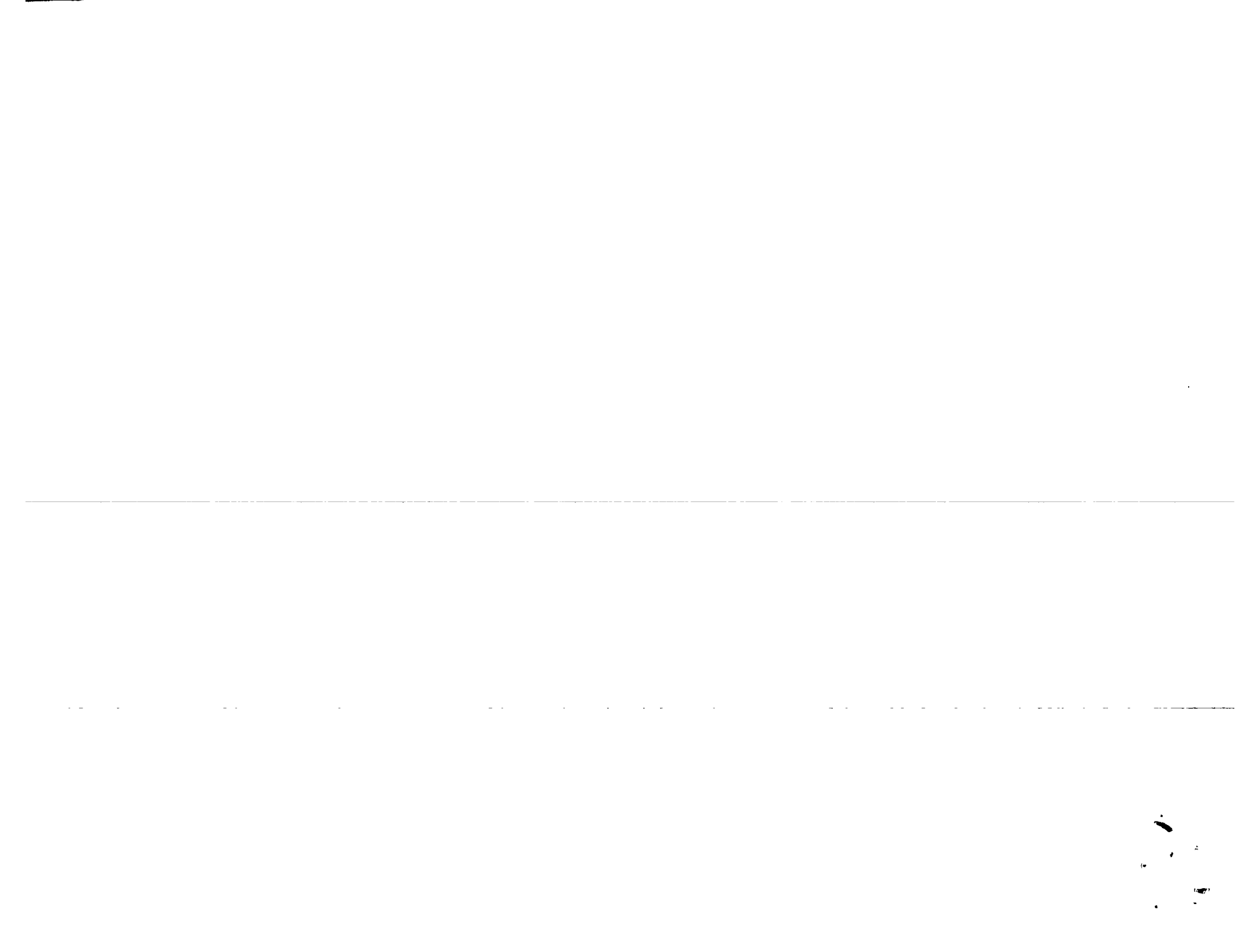
See Attached. Redraft 1997 AB 75 (-1009/1), but all local units of gov't to require police and fire fighters to live w/in 15 mile response zone from limits of employing LUG. Also, grandfather in EEs who are covered by res. req'ts of an LGU if the LGU enacts a more restrictive ordinance.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	shoveme 11/18/98	gilfokm 11/19/98		_____			S&L
/1			hhagen 11/20/98	_____	lrb_docadmin 11/20/98	lrb_docadmin 12/8/98	

FE Sent For:
(2/11/99)
11

<END>



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1?	shoveme	11-11-98 KMG	11/11/20	11/11/20			
/1 MES 11/18							

FE Sent For:

<END>



Scott Gunderson



Wisconsin State Legislature
83rd Assembly District Representative

October 23, 1998

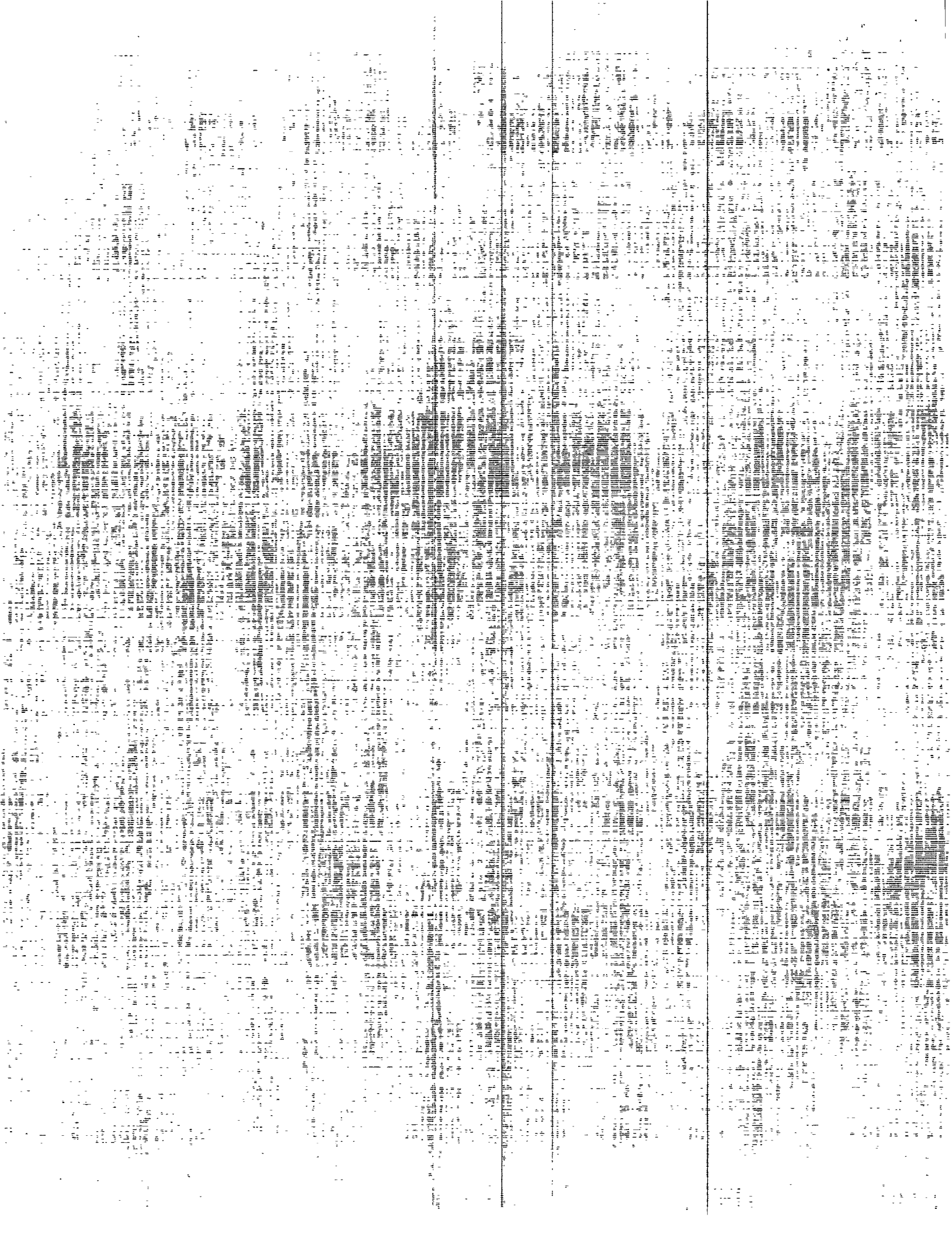
Mark,

I was informed that I should contact you regarding drafting a bill for the 1999-2000 session regarding residency requirements for municipal employees. We are interested in re-introducing a bill similar to Assembly Bill 75 from the 1997 session with a couple of differences.

Scott would like the new bill to state that a municipality may require emergency police and fire personnel to live within a zone of response being no less than fifteen miles from the city limits of the employing municipality. Also, if a municipality currently has less restrictive residency requirements for police and fire employees and adopts more restrictive requirements, current employees would be grandfathered in.

Thank you for your assistance. Should you have any questions feel free to call me at 266-3363.

Michael Bruhn
Legislative Assistant to Rep. Gunderson



1997 - 1998 LEGISLATURE

1997 ASSEMBLY BILL 75

February 12, 1997 - Introduced by Representatives Dobyms, Jensen, Huebsch, Lazich, Freese, Ladwig, Handrick, Johnsrud, Urban, Musser, Gunderson, Kreibich, Nass and Schafer, cosponsored by Senators Fitzgerald, Welch and Huelsman. Referred to Committee on Urban and Local Affairs.

Pg1Ln1 **An Act** to repeal 59.26 (1) (c); to amend 60.37 (1), 62.13 (4) (d), 63.08 (1) (a) and
Pg1Ln2 63.25 (1) (a); and to create 66.188 of the statutes; relating to: prohibiting
Pg1Ln3 cities, villages, towns, counties and school districts from imposing residency
Pg1Ln4 requirements on certain employees.

Analysis by the Legislative Reference Bureau

AB75

With some exceptions, this bill prohibits cities, villages, towns, counties and school districts from requiring, as a condition of employment, that any nonelective employe or prospective employe reside within any jurisdictional limits. Exceptions to the general prohibition include certain public officials appointed by the mayor of a 1st class city (presently only Milwaukee), town sanitary district commissioners and certain school board officials. In addition, the prohibition does not apply to any other state law requiring residency for a municipal position or to any state or municipal requirement for state residency.

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:

AB75, s. 1

Pg1Ln5 **Section 1.** 59.26 (1) (c) of the statutes is repealed.

AB75, s. 2

Pg2Ln1 **Section 2.** 60.37 (1) of the statutes is amended to read:

AB75, s. 2 - continued

Pg2Ln2 60.37 (1) **General.** The town board may employ on a temporary or permanent
Pg2Ln3 basis persons necessary to carry out the functions of town government. The board
Pg2Ln4 may establish the qualifications and terms of employment, which may not include
Pg2Ln5 the residency of the employe. The board may delegate the authority to hire town
Pg2Ln6 employes to any town official or employe.

AB75, s. 3

Pg2Ln7 **Section 3.** 62.13 (4) (d) of the statutes is amended to read:

AB75, s. 3 - continued

Pg2Ln8 62.13 (4) (d) The examination shall be free for all U.S. citizens over 18 and
Pg2Ln9 under 55 years of age, with proper limitations as to ~~residence~~, health and, subject to
Pg2Ln10 ss. 111.321, 111.322 and 111.335, arrest and conviction record. The examination,
Pg2Ln11 including minimum training and experience requirements, shall be job-related in
Pg2Ln12 compliance with appropriate validation standards and shall be subject to the
Pg2Ln13 approval of the board and may include tests of manual skill and physical strength.
Pg2Ln14 All relevant experience, whether paid or unpaid, shall satisfy experience
Pg2Ln15 requirements. The board shall control examinations and may designate and change
Pg2Ln16 examiners, who may or may not be otherwise in the official service of the city, and
Pg2Ln17 whose compensation shall be fixed by the board and paid by the city. Veterans and
Pg2Ln18 their spouses shall be given preference points in accordance with s. 230.16 (7).

AB75, s. 4

Pg2Ln19 **Section 4.** 63.08 (1) (a) of the statutes is amended to read:

AB75, s. 4 - continued

Pg2Ln20 63.08 (1) (a) Any applicant for an examination under s. 63.05 shall be a resident
Pg2Ln21 of this state before applying for an examination, but the commission may not require
Pg2Ln22 any period of residency in the county for entrance to an examination or employment
Pg2Ln23 in the county. The commission may require an applicant to file a written application
Pg2Ln24 form which bears upon the applicant's fitness for a vacant position and which the
Pg2Ln25 commission deems necessary. For a position offering a skilled, technical or
Pg3Ln1 professional service, upon a finding that a suitable number of qualified applicants
Pg3Ln2 cannot be obtained from within the state, the commission may open the examination
Pg3Ln3 to residents of other states. Residency in this state may be waived for an applicant
Pg3Ln4 for an examination for a position which requires a license in a health care field. No
Pg3Ln5 question pertaining to political affiliation or religious faith may be asked of any
Pg3Ln6 applicant for an examination.

AB75, s. 5

Pg3Ln7 **Section 5.** 63.25 (1) (a) of the statutes is amended to read:

AB75, s. 5 - continued

Pg3Ln8 63.25 (1) (a) For open, competitive examinations and for other examinations
Pg3Ln9 by which to test applicants for office or for employment as to their practical fitness

Pg3Ln10 to discharge the duties of the positions which they desire to fill, which examinations
Pg3Ln11 shall be public and free to all persons with proper limitations as to ~~residence~~, age,
Pg3Ln12 health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record.

AB75, s. 6

Pg3Ln13 **Section 6.** 66.188 of the statutes is created to read:

AB75, s. 6 - continued

Pg3Ln14 66.188 Employe residency requirements prohibited. (1) The legislature
Pg3Ln15 finds that public employe residency requirements are a matter of statewide concern.

AB75, s. 6 - continued

Pg3Ln16 (2) In this section, "local governmental unit" means any city, village, town,
Pg3Ln17 county or school district.

AB75, s. 6 - continued

Pg3Ln18 (3) Except as provided in sub. (4), no local governmental unit may require, as
Pg3Ln19 a condition of employment, that any employe or prospective employe reside within
Pg3Ln20 any jurisdictional limit.

AB75, s. 6 - continued

Pg3Ln21 (4) This section does not affect any statute that requires residency within the
Pg3Ln22 jurisdictional limits of any local governmental unit or town sanitary district, or any
Pg3Ln23 provision of law that requires residency in this state.

AB75, s. 7

Pg3Ln24 **Section 7.** Initial applicability.

AB75, s. 7 - continued

Pg4Ln1 (1) This act first applies to any city, village, town, county or school district
Pg4Ln2 whose employes are covered by a collective bargaining agreement that is in effect on
Pg4Ln3 the effective date of this subsection upon the expiration, extension, renewal or
Pg4Ln4 modification of the agreement.

Pg4Ln5

(End)



P/NOTE

R/MNR

1999 BILL

The bill also allows a local governmental unit to impose a residency requirement on police officers or fire fighters that requires such personnel to live at least 15 miles from the boundary of the local governmental unit. If, however, a local governmental unit has in effect a less restrictive residency requirement on the effective date of the bill that applies to police officers or fire fighters, such personnel would not be subject to a residency requirement that requires other police officers and fire fighters to live at least 15 miles from the boundary of the local governmental unit.

who are employed by the local governmental unit on the effective date of the bill

1 AN ACT to repeal 59.26 (1) (c); to amend 17.03 (4) (d), 60.37 (1), 62.13 (4) (d),
2 63.08 (1) (a) and 63.25 (1) (a); and to create 66.188 of the statutes; relating to:
3 prohibiting cities, villages, towns, counties and school districts from imposing
4 residency requirements on certain employes.

repeal

Analysis by the Legislative Reference Bureau local governmental units

With some exceptions, this bill prohibits cities, villages, towns, counties and school districts from requiring, as a condition of employment, that any nonelective employe or prospective employe reside within any jurisdictional limits. Exceptions to the general prohibition include certain public officials appointed by the mayor of a 1st class city (presently only Milwaukee), town sanitary district commissioners and certain school board officials. In addition, the prohibition does not apply to any other state law requiring residency for a municipal position or to any state or municipal requirement for state residency.

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:

5 SECTION 1. 17.03 (4) (d) of the statutes is amended to read:

BILL

1 17.03 (4) (d) If the office is local and appointive, and residency, subject to s.
2 66.188, is a local requirement, the county, city, village, town, district or area within
3 which the duties of the office are required to be discharged.

4 **SECTION 2.** 59.26 (1) (c) of the statutes is repealed.

5 **SECTION 3.** 60.37 (1) of the statutes is amended to read:

6 **60.37 (1) GENERAL.** The town board may employ on a temporary or permanent
7 basis persons necessary to carry out the functions of town government. The board
8 may establish the qualifications and terms of employment, which may not include
9 the residency of the employe. The board may delegate the authority to hire town
10 employes to any town official or employe.

11 **SECTION 4.** 62.13 (4) (d) of the statutes is amended to read:

12 **62.13 (4) (d)** The examination shall be free for all U.S. citizens over 18 and
13 under 55 years of age, with proper limitations as to residence, health and, subject to
14 ss. 111.321, 111.322 and 111.335, arrest and conviction record. The examination,
15 including minimum training and experience requirements, shall be job-related in
16 compliance with appropriate validation standards and shall be subject to the
17 approval of the board and may include tests of manual skill and physical strength.
18 All relevant experience, whether paid or unpaid, shall satisfy experience
19 requirements. The board shall control examinations and may designate and change
20 examiners, who may or may not be otherwise in the official service of the city, and
21 whose compensation shall be fixed by the board and paid by the city. Veterans and
22 their spouses shall be given preference points in accordance with s. 230.16 (7).

23 **SECTION 5.** 63.08 (1) (a) of the statutes is amended to read:

24 **63.08 (1) (a)** Any applicant for an examination under s. 63.05 shall be a resident
25 of this state before applying for an examination, but the commission may not require

BILL

1 any period of residency in the county for entrance to an examination or employment
 2 in the county. The commission may require an applicant to file a written application
 3 form which bears upon the applicant's fitness for a vacant position and which the
 4 commission deems necessary. For a position offering a skilled, technical or
 5 professional service, upon a finding that a suitable number of qualified applicants
 6 cannot be obtained from within the state, the commission may open the examination
 7 to residents of other states. Residency in this state may be waived for an applicant
 8 for an examination for a position which requires a license in a health care field. No
 9 question pertaining to political affiliation or religious faith may be asked of any
 10 applicant for an examination.

11 **SECTION 6.** 63.25 (1) (a) of the statutes is amended to read:

12 63.25 (1) (a) For open, competitive examinations and for other examinations
 13 by which to test applicants for office or for employment as to their practical fitness
 14 to discharge the duties of the positions which they desire to fill, which examinations
 15 shall be public and free to all persons with proper limitations as to residence, age,
 16 health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record.

17 **SECTION 7.** 66.188 of the statutes is created to read:

18 **66.188 Employe residency requirements prohibited.** (1) The legislature
 19 finds that public employe residency requirements are a matter of statewide concern.

20 (2) In this section, "local governmental unit" means any city, village, town,
 21 county or school district.

22 (3) Except as provided in sub. (4), no local governmental unit may require, as
 23 a condition of employment, that any employe or prospective employe reside within
 24 any jurisdictional limit.

INS
3-20

BILL

1 (a)
 2 (4) This section does not affect any statute that requires residency within the
 3 jurisdictional limits of any local governmental unit or town sanitary district, or any
 4 provision of law that requires residency in this state.

SECTION 8. Initial applicability.

5 (1) This act first applies to any city, village, town, county or school district
 6 whose employes are covered by a collective bargaining agreement that is in effect on
 7 the effective date of this subsection upon the expiration, extension, renewal or
 8 modification of the agreement.

(END)

9
 → § (b) Subject to par. (c), a
 local governmental unit may impose a residency
 requirement on emergency personnel that
 requires the emergency
 personnel to live at least 15 miles from
 the boundary of the local governmental
 unit.

¶ (c) If a local governmental unit has a residency
 requirement that is in effect on the effective date of
 this paragraph.... [revisor inserts date], that applies
 to emergency personnel and that requirement
 is less stringent than a residency requirement described under
 par. (b), a residency requirement that is enacted or
 adapted under par. (b) may not be applied to
 any emergency personnel who are employed by
 that local governmental unit on the effective date
 of this paragraph.... [revisor inserts date].

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

0971/1dw
LRB-06794dn
MES:kmg:jf
TMAA

November 3, 1998

and contains the modifications
that you requested.

This bill is, basically, a redraft of 1997 AB-75. 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.

Marc E. Shovers
Senior Legislative Attorney
266-0129

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**ASSEMBLY AMENDMENT,
TO 1997 ASSEMBLY BILL 75**

INS. 3-20 ✓

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 16: delete lines 16 and 17 and substitute:

3 **(2)** In this section:

4 (a) "Emergency personnel" means a law enforcement officer, ^{or} a firefighter ~~and~~
5 ~~emergency medical technician.~~ ←

6 (b) "Local governmental unit" means any city, village, town, county or school
7 district."

8 **2.** Page 3, line 21: after "(4)" insert "(a)".

9 **3.** Page 3, line 23: after that line insert:

10 "(b) Nothing in this section prohibits a local governmental unit from imposing
11 a reasonable emergency response time requirement on emergency personnel."

12 (END)

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.

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Marc E. Shovers
Senior Legislative Attorney
266-0129

**§ SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 11/20/98

To: Representative Gunderson

Relating to LRB drafting number: LRB-0871

Topic

Residency requirements, local government employees

Subject(s)

Munis - miscellaneous, Counties, Education - miscellaneous

1. **JACKET** the draft for introduction _____

Scott Z Gunderson

in the **Senate** _____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Marc E. Shovers, Senior Legislative Attorney
Telephone: (608) 266-0129

