

1999 DRAFTING REQUEST

Bill

Received: **03/17/1999**

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Kelly**

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

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Munis - miscellaneous
Counties**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Municipal residency requirements, spousal hardship exception

Instructions:

See Attached. Limit muni res. requirements. Redraft 1997 AB 462, LRB -3245/1

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 03/18/1999	ygeller 03/22/1999		_____			S&L
/1			jfrantze 03/24/1999	_____	lrb_docadmin 03/24/1999	lrb_docadmin 08/26/1999	

FE Sent For:

<END>

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1/?	shoveme	1 3/2 JG	8/23	8/23			
11 MES 3/18/99							

FE Sent For:

<END>

-2521/1

JL (circled) RMNR

1999 ~~1997~~ ASSEMBLY BILL ~~462~~

P-note (circled) with arrow pointing to the date text below

July 31, 1997 - Introduced by Representatives KREUSER, PLOUFFE, J. LEHMAN, LINTON, WALKER, NASS, MUSSER, DOBYNS, OLSEN, LORGE, DUFF, JENSEN and URBAN, cosponsored by Senators FARROW and ROSENZWEIG. Referred to Committee on Urban and Local Affairs.

regen (circled)

1 AN ACT to amend 17.03 (4) (d), 59.26 (1) (intro.), 59.26 (1) (c), 59.35 (1), 60.23 (9),
2 60.37 (1), 62.13 (4) (d), 62.50 (5), 63.25 (1) (a) and 66.144; and to create 66.188
3 of the statutes; relating to: limiting certain local residency requirements.

Analysis by the Legislative Reference Bureau

Under current law a city, village, town, county or school board (local governmental unit) may be required by statute, or may have the local option, to impose residency requirements on its employees or on persons who would like to take a civil service test to determine fitness for employment. This bill creates an exception to certain local residency requirements that may currently be required by statute or may be imposed by local action.

Under this bill, if both spouses of a married couple work for different local governmental units that have local residency requirements, the married couple may reside within the jurisdictional limits of one of the local governmental units that has a residency requirement and that employs one of the spouses and the other spouse may not be subject to the residency requirement of the local governmental unit for which he or she works. Also under the bill, if one of the spouses of a married couple works for a local governmental unit that has a residency requirement, the other spouse may not be prohibited from applying for a job or taking a test to determine fitness for employment in another local governmental unit that has a residency requirement.

The bill does not apply to any state statute that requires local residency if the statute relates to a requirement that local elected officials reside in the jurisdiction

ASSEMBLY BILL 462

from which they were elected, nor does the bill apply to any state or local requirement for state residency. The bill also does not apply to certain school district officers, to employes of persons who receive public works contracts from certain local units of government or to individuals who may be appointed to a county or town board of adjustment or a town sanitary district commission.

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.** 17.03 (4) (d) of the statutes is amended to read:

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

5 **SECTION 2.** 59.26 (1) (intro.) of the statutes is amended to read:

6 59.26 (1) (intro.) Within 10 days after entering upon the duties of the office of
7 sheriff, the sheriff shall appoint some proper person, who is a resident of the county,
8 subject to s. 66.188,[✓] undersheriff. However, in counties with a population of 500,000
9 or more the appointment of an undersheriff is optional. In counties where the
10 sheriff's department is under civil service, the sheriff, in conformity with county
11 ordinance, may, at the request of the affected deputy, grant a leave of absence to a
12 deputy sheriff who the sheriff has appointed undersheriff, or to any other position
13 in the sheriff's department, upon the deputy's acceptance of the appointment. Any
14 deputy in a county under civil service granted leave of absence under this subsection
15 upon completion of the appointive position shall immediately be returned to the
16 position of deputy sheriff and shall continue therein without loss of any rights under
17 the civil service law. The sheriff, however, may not grant such leave of absence to a
18 deputy sheriff until the sheriff first secures the consent of the board by resolution

PROOF w/STATS.

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PROOF W/STATS.

1 duly adopted by the board. Within 10 days after entering upon the duties of the office
2 of sheriff, the sheriff shall also appoint deputy sheriffs for the county as follows:

3 **SECTION 3.** 59.26 (1) (c) of the statutes is amended to read:

4 59.26 (1) (c) ~~Each~~ Subject to s. 66.188,[✓] each deputy shall reside in the city or
5 village for which the deputy is appointed, or, if appointed for an assembly district,
6 shall reside in the village in such district.

7 **SECTION 4.** 59.35 (1) of the statutes is amended to read:

8 59.35 (1) Within 10 days after entering upon the duties of the office, the coroner
9 may appoint up to 6 proper persons, residents of the county, deputy coroner. The
10 deputies shall reside in the county for which they are appointed, subject to s. 66.188.[✓]
11 The coroner may fill vacancies in the office of any such appointees, and may appoint
12 a person to take the place of any deputy who becomes incapable of executing the
13 duties of the office. A person appointed deputy coroner for a regular term or to fill
14 a vacancy or otherwise shall hold office during the pleasure of the coroner. Every
15 appointment of a deputy coroner and every revocation of an appointment shall be in
16 writing and filed and recorded in the office of the clerk of the circuit court. In case
17 of a vacancy in the office of coroner, the chief deputy coroner shall in all things and
18 with like liabilities and penalties execute the duties of the office until the vacancy
19 is filled as provided by law.

20 **SECTION 5.** 60.23 (9) of the statutes is amended to read:

21 60.23 (9) RESIDENT PHYSICIANS, PHYSICIAN ASSISTANTS AND NURSES IN CERTAIN
22 TOWNS. In a town comprised entirely of one or more islands, annually appropriate
23 money to retain a physician or, if no physician is available, a physician assistant or
24 nurse practitioner, as a resident within the town, subject to s. 66.188.[✓]

25 **SECTION 6.** 60.37 (1) of the statutes is amended to read:

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SECTION 6

1 60.37 (1) GENERAL. The town board may employ on a temporary or permanent
2 basis persons necessary to carry out the functions of town government. The board
3 may establish the qualifications and terms of employment, ~~which that~~ [✓] may, subject
4 to s. 66.188, include the residency of the employe. The board may delegate the
5 authority to hire town employes to any town official or employe.

6 **SECTION 7.** 62.13 (4) (d) of the statutes is amended to read:

7 62.13 (4) (d) The examination shall be free for all U.S. citizens over 18 and
8 under 55 years of age, with proper limitations as to residence, subject to s. 66.188,
9 health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record.
10 The examination, including minimum training and experience requirements, shall
11 be job-related in compliance with appropriate validation standards and shall be
12 subject to the approval of the board and may include tests of manual skill and
13 physical strength. All relevant experience, whether paid or unpaid, shall satisfy
14 experience requirements. The board shall control examinations and may designate
15 and change examiners, who may or may not be otherwise in the official service of the
16 city, and whose compensation shall be fixed by the board and paid by the city.
17 Veterans and their spouses shall be given preference points in accordance with s.
18 230.16 (7).

19 **SECTION 8.** 62.50 (5) of the statutes is amended to read:

20 62.50 (5) EXAMINATIONS. The examinations which the rules and regulations
21 provide for shall be public and free to all U.S. citizens with proper limitations as to
22 residence, subject to s. 66.188, [✓] age, health and, subject to ss. 111.321, 111.322 and
23 111.335, arrest and conviction record. The examinations shall be practical in their
24 character and shall relate to those matters which fairly test the relative capacity of
25 the candidates to discharge the duties of the positions in which they seek

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1 employment or to which they seek to be appointed and may include tests of manual
2 skill and physical strength. The board shall control all examinations and may
3 designate suitable persons, either in the official service of the city or not, to conduct
4 such examinations and may change such examiners at any time, as seems best.

5 **SECTION 9.** 63.25 (1) (a) of the statutes is amended to read:

6 63.25 (1) (a) For open, competitive examinations and for other examinations
7 by which to test applicants for office or for employment as to their practical fitness
8 to discharge the duties of the positions which they desire to fill, which examinations
9 shall be public and free to all persons with proper limitations as to residence, subject
10 to s. 66.188,[✓] age, health and, subject to ss. 111.321, 111.322 and 111.335, arrest and
11 conviction record.

12 **SECTION 10.** 66.144 of the statutes is amended to read:

13 **66.144 Residency required for public officials in 1st class cities.** Any
14 public official, as defined in s. 66.146 (1) (b), may not serve more than 180 days after
15 his or her confirmation unless he or she resides within the boundaries of the 1st class
16 city by which he or she is employed, subject to s. 66.188.[✓]

17 **SECTION 11.** 66.188 of the statutes is created to read:

18 **66.188 Limits on employe residency requirements.** (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) (a) Except as provided in sub. (4),[✓] if both spouses of a married couple work
23 for different local governmental units that have local residency requirements, the
24 married couple may reside within the jurisdictional limits of one of the local
25 governmental units that has a residency requirement and that employs one of the

PROOF W/STATS.

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1 spouses and the other spouse may not be subject to the residency requirement of the
2 local governmental unit for which he or she works •

3 (b) Except as provided in sub. (4), if one of the spouses of a married couple works
4 for a local governmental unit that has a residency requirement and the other spouse
5 would like to apply for a job with a different local governmental unit that has a
6 residency requirement or is otherwise eligible to take a test that is described under
7 ss. 62.13 (4) (d), 62.50 (5) and 63.25 (1) (a) but for a residency requirement, the other
8 spouse may not be subject to the residency requirement of the local governmental
9 unit with which he or she would like to apply for a job or for which he or she would
10 like to take a test that is described under ss. 62.13 (4) (d), 62.50 (5) and 63.25 (1) (a).

11 (4) This section does not affect:

12 (a) Any statute that requires residency within the jurisdictional limits of any
13 local governmental unit if the requirement applies to an employe who holds elective
14 office.

15 (b) Any provision of law that requires residency in this state.

16 (c) Any individual who may be appointed to a position under ss. 59.694 (2) (c),
17 60.65 (2), 60.72 (8) (a), 60.75 (3), 66.29 (6) and 120.05 (1) (d).

18 SECTION 12. Initial applicability.

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

23 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3245/1dn

MES:pfd:arn

new
date } Monday, May 5, 1997

~~Please review this draft carefully to ensure that it is consistent with your instructions.~~
This drafter's note is meant to alert you 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 exceptions to 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 the applicability of a city's or village's 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 Staff Counsel
266-0129

Senior Leg. Atty

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

LRB-2521/1dn
MES:jlj:jf

March 23, 1999

This drafter's note is meant to alert you 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
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

**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: 3/24/99

To: Representative Gunderson

Relating to LRB drafting number: LRB-2521

Topic

Municipal residency requirements, spousal hardship exception

Subject(s)

Munis - miscellaneous, Counties

1. **JACKET** the draft for introduction Scott L 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