

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3484/1dn
GMM:wlj:jf

October 14, 2003

Representative Grothman:

Section 104.001, as created by this draft, contains a statement of legislative intent, and prohibits local units of government from enacting local minimum wage ordinances, but you should know that there is still some possibility that a city or village could claim that those statutes, if enacted, violate the state constitutional home rule provision.

Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (1) and 62.11 (5) of the statutes, and numerous decisions of the Wisconsin Supreme Court give cities and villages extensive home rule authority. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that prohibiting cities and villages from enacting local minimum wage ordinances is state interference with an issue of local affairs which is not a matter of statewide concern, thus violating Article XI, section 3, of the constitution.

You should know that even if this bill becomes law, cities and villages may not be subject to its provisions. 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 *Ekern*, 642.

Although it is difficult to predict how a court would rule should this bill become law and should a legal challenge be filed, I thought you should at least be aware of these issues. Please let me know if you have any questions.

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