

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Senator Reynolds:

This version of the bill applies to local governmental units, including cities and villages. If this bill becomes law, it could be challenged by cities and villages as a violation of their constitutional and statutory home rule powers. Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (5) 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 this bill, to the extent that it prohibits cities and villages from spending their own funds to advocate for or against referenda which, in many cases, could involve only local issues, impacts only local affairs and not matters of statewide concern, thus violating Article XI, section 3, of the Wisconsin Constitution.

You should know that even if this amendment 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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