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# Wisconsin Briefs

*from the Legislative Reference Bureau*

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## PROHIBITION ON RESIDENCY QUALIFICATIONS FOR MUNICIPAL EMPLOYMENT

The biennial state budget act, 2013 Wisconsin Act 20, passed by the legislature and signed by Governor Scott Walker on June 30, 2013, changed the law on local residency qualifications for municipal employees. Generally, it now prohibits local governments from requiring that employees live within a particular jurisdiction as a condition of employment and declares any local residency requirements in effect at the time of enactment of the prohibition to be unenforceable. The law includes partial exceptions for police, fire, and emergency personnel and for certain other residency requirements.

The law does not affect state statutes requiring local residency in certain instances, and also does not affect state statutes or local ordinances that require an employee or official to live in the state of Wisconsin.

### BACKGROUND

Historically, residency requirements for local government employment in the United States were associated with late-19th and early-20th century party politics and patronage, and such laws faced opposition from progressive reformers by the 1920s. Over the next four decades, residency requirements in many cities were either repealed or not widely enforced. By the late 1960s, Milwaukee was one of a small number of large U.S. cities, along with Buffalo, Philadelphia, and a few other large cities, to have retained the residency requirement for municipal employment.

By the 1970s and 1980s, there was a resurgence of residency qualifications for economic reasons as many large cities were experiencing fiscal distress accompanying out-migration to

growing suburbs. According to one study, a 1979-80 survey of nearly all U.S. cities over 250,000 in population found that slightly over half of them had residency requirements that applied to all city employees, and more than half of those had been enacted in the 1970s. Several other cities, most notably Chicago, had ordered renewed enforcement of existing ordinances that had not been enforced in many years. The reasoning was twofold. First, that residency qualifications benefit the local economy by providing stable middle-class employment to taxpaying city residents. Second, that the money paid in salaries to city employees would be recirculated within the local economy and promote growth in private business and employment in the city rather than being exported to the suburbs. Proponents contend residency qualifications provide some protection against a downward spiral of out-migration, downward pressure on housing prices, reduced tax base, and negative impacts on local city and school district budgets and services.

Additional justifications for municipal residency qualifications include the idea that employees who are paid their salaries by the taxpayers of the city shouldn't be paying taxes from that income to a different city, and that employees who live in the city and are engaged in local community activities have a greater stake in the well-being of the city and are better able to identify with the needs of the residents they serve. Living within the city also improves the ability of police, fire, and emergency personnel and other key employees to be able to respond quickly when on call because of the shorter distance. A

shorter distance to work also reduces energy consumption in commuting, an argument that was sometimes cited during the energy crisis of the early 1970s, and which may again be a timely consideration with respect to environmental and other concerns. Proponents of residency qualifications also frame the issue as one of local control and home rule.

Opponents of residency qualifications for municipal employment, including public employee unions, argue that employees and their families should have the freedom to live where they wish, making their residence decisions based on differences in housing affordability or other housing characteristics between city and suburb. Others may be concerned about the perceived quality of central city schools compared to surrounding school districts, perceptions of crime and safety, and other "quality of life" issues.

Opponents also note the possibility that residency requirements might exclude qualified applicants who live outside the city, or that a city may lose its investment in training an employee if he or she later decides to move outside the city later in his or her career and have to leave city employment because of the move.

The Wisconsin Legislative Fiscal Bureau cited a National Conference of State Legislatures survey that found that at least 14 states have some form of prohibition on local government residency qualifications for public employment, including relatively recent enactments by Michigan, Minnesota, Missouri, and Ohio. As a result, the number of U.S. cities with residency qualifications has fallen (including Cleveland, Detroit, Minneapolis, and St. Paul, among others), but some major cities, such as Boston, Chicago, and Philadelphia, maintain residency requirements for their employees.

In Wisconsin, prior to 2013 Wisconsin Act 20, bills proposing to prohibit or restrict local government or school district employee residency requirements had been introduced and

failed to pass in nearly every legislative session for at least the past two decades.

### NEW LAW

The employee residency requirement provisions in 2013 Wisconsin Act 20 created a new Section 66.0502, Wisconsin Statutes, effective July 2, 2013. The new section:

1) Declares public employee residency requirements to be a matter of statewide concern.

2) Defines "local governmental unit" to mean any city, village, town, county, or school district.

3) Prohibits, with specified exceptions, local government units from requiring as a condition of employment that any employee or prospective employee reside within any jurisdictional limit, and prohibits enforcement of any local residency requirements in effect at the time of enactment of the act.

4) Provides exceptions for state statutes requiring residency within local jurisdictional limits (including residency of local elected officials within a particular district), state or local provisions requiring residency in Wisconsin; allows local units to require law enforcement, fire, or emergency personnel to reside within 15 miles of the boundaries of the local jurisdiction; and allows counties to require law enforcement, fire, or emergency personnel to reside within 15 miles of the boundaries of the city, village, or town to which the personnel are assigned. (These exceptions allowing for limited residency requirements, however, do not apply to volunteer law enforcement, fire, or emergency personnel who are local government employees.)

The act's provisions also repealed several previously existing requirements in state statutes relating to residency as it pertains to an applicant's eligibility to take county and city civil service examinations to qualify for employment, as well as for law enforcement and firefighters. It also repealed a requirement that public officials appointed by the mayor

in 1st class cities (i.e., Milwaukee) establish residence in the city within 180 days of confirmation, and allows a person appointed to a local position to move outside the city without having to vacate the position.

## HOME RULE; MILWAUKEE AND OTHER LOCAL GOVERNMENTS

Prior to Act 20, many local governments had some kind of residency restriction in effect for police, fire, public works, department heads, and other staff to reside within a certain distance of the employing jurisdiction or specific place of employment. Fewer local governments required all employees to live within the jurisdiction. Over the years, some Wisconsin municipalities had made their residency qualifications more lenient, either through local ordinance or the collective bargaining process. Nonetheless, several local governments opposed the legislation prohibiting municipal residency qualifications because it infringes on what they contend is a matter of local, not state, concern.

The most prominent example of a municipal residency requirement in Wisconsin has been the City of Milwaukee (and also Milwaukee Public Schools). The city adopted a residency requirement as a charter ordinance in 1938, and the city considers its ability to establish conditions of municipal employment to be a matter of local control. Article XI, Section 3 of the Wisconsin Constitution, which was amended in 1924 to establish municipal home rule, limits state legislative power over local affairs, except for matters deemed to be of "statewide concern" that uniformly affect every city and village. In practice, the constitutional provision has not been a significant constraint on legislative power, and the courts have given great weight to legislative declarations of "statewide concern," such as the one included as part of Act 20.

Although many local governments repealed or ceased enforcement of their residency requirements for employees following

the enactment of the new law, Milwaukee continued enforcement of its 75-year-old residency requirement, citing the home rule authority under the Wisconsin Constitution for cities and villages to handle its own affairs.

On the day the state law went into effect, the Milwaukee Common Council passed Resolution 130376 (July 2, 2013), directing city officials to continue enforcing Section 5-02 of the Milwaukee City Charter, based on a finding that the new law "violates the City's constitutional home rule authority... and that... [it] would significantly harm the interest of the City and its residents."

The police and fire unions, Milwaukee Police Association and Milwaukee Professional Fire Fighters Association Local 215, challenged the city's continued enforcement of city residency as a condition of employment. Citing the declaration of statewide concern, they argued that the city's ordinance is preempted by the new law, contending that the prohibition in 2013 Wisconsin Act 20 rendered void and unenforceable the city ordinance and the resolution reaffirming it, and that Milwaukee's ordinance impairs employees' liberty to be free from residency requirements.

The city's response is that regulation of residency is a matter of local concern, and the residency requirement is "a means of managing its finances and sustaining the economic well-being of Milwaukee" by helping to maintain the city's tax base to pay resident employees' salaries and provide services to city residents. Employee departures from the city would cause the spending power of city-paid salaries also to leave, thereby diminishing property values, property tax revenues, and the city's ability to "provide services and pay its employees family-supporting wages... The direct connection between the tax base and the City's 'purse strings' establishes that the City's residency requirement is a matter of local concern."

Circuit Court Judge Paul Van Grunsven, in a January 27, 2014 ruling, acknowledged that the issue presents a combination of both statewide and local concerns, but ruled that it is primarily a statewide concern, and the law also satisfies the uniformity requirement of the constitutional provision. Van Grunsven also ruled that the new statute created a liberty interest for public employees to be free from residency conditions of employment. Milwaukee Mayor Tom Barrett has stated that the city will appeal the decision to the Court of Appeals.

While Milwaukee has indicated it would challenge the new law, at least one municipality has taken a different approach, as noted by the League of Wisconsin Municipalities. On the same day that it repealed its city employee residency ordinance, the Common Council of the City of Kaukauna also passed a resolution establishing a financial incentive program for employees who are city residents. The Residency Incentive Program provides qualified resident employees with a contribution to a supplemental retirement plan cumulatively amounting to 6% of retirement eligible wages through 2017 (3% for 2014 and 1% per year thereafter), with the program subject to review for extension or termination after 2017. It remains to be seen whether other local governments will also respond with initiatives to encourage or reward residency now that they no longer have the ability to require their employees to be residents.

## FOR MORE INFORMATION

### Legislation

View a copy of 2013 Wisconsin Act 20, pp. 357-365 at <http://docs.legis.wisconsin.gov/2013/related/acts/20.pdf>.

View a copy of Section 66.0502, Wisconsin Statutes, at <http://docs.legis.wisconsin.gov/statutes/statutes/66.pdf>.

## Wisconsin Legislature Publications

Wisconsin Legislative Fiscal Bureau. "Local Government Employee Residency Requirements." *Paper #554* (May 2013). <http://legis.wisconsin.gov/lfb/publications/budget/2013-15%20budget/documents/budget%20papers/554.pdf>.

Champagne, Rick. "Municipal Home Rule." *Constitutional Highlights IV*, no. 3 (July 2004). <http://legis.wisconsin.gov/lrb/pubs/consthi/04consthiIV3.htm>.

## Selected Articles and Documents on Municipal Residency Qualifications

City of Kaukauna. *Resolution 3848: Establishing Incentives for Employees of the City of Kaukauna Residing within the City of Kaukauna*. [http://www.lwm-info.org/vertical/sites/%7B92F7D640-E25A-4317-90AD-4976378A8F8D%7D/uploads/City\\_of\\_Kaukauna\\_Resolution\\_Nos-1\\_3848\\_3850\\_3851.pdf](http://www.lwm-info.org/vertical/sites/%7B92F7D640-E25A-4317-90AD-4976378A8F8D%7D/uploads/City_of_Kaukauna_Resolution_Nos-1_3848_3850_3851.pdf).

Eisinger, Peter K. *Municipal Residency Requirements and the Local Economy*. Madison, WI: University of Wisconsin Institute for Research on Poverty, 1980. <http://www.irp.wisc.edu/publications/dps/pdfs/dp63680.pdf>.

Kerrigan, Heather. "Wisconsin Reignites the Residency Debate." *Governing*. March 13, 2013. <http://www.governing.com/columns/col-wisconsin-reignites-residency-requirement-debate.html>.

Maynard, Melissa. "Should Public Workers Have to Live Where They Work?" *Stateline*. March 18, 2013. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/03/18/should-public-workers-have-to-live-where-they-work>.

*Milwaukee Police Association et al. v. City of Milwaukee*, Case No. 13-CV-5977, January 27, 2014. Document can be accessed at <http://media.jrn.com/documents/resideruling.pdf>.