



Legislation Text

File #: 130382, Version: 1

130382
SUBSTITUTE 1
101310
THE CHAIR

Substitute resolution directing the City Attorney to bring a lawsuit challenging the constitutionality and enforceability of 2013 Wisconsin Act 20, s. 1270, relating to residency.

This resolution directs the City Attorney to bring a lawsuit challenging the constitutionality and enforceability of 2013 Wisconsin Act 20, s. 1270, relating to residency.

Whereas, The State of Wisconsin, by its legislature, may not enact laws contrary to the Wisconsin State Constitution; and

Whereas, Article XI, Section 3(1), of the Wisconsin State Constitution provides: “(1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.”

; and

Whereas, 2013 Wisconsin Act 20 was enacted by the State Legislature, and signed by Governor Scott Walker on June 30, 2013; and

Whereas, Section 1270 of 2013 Wisconsin Act 20 purports to end the City of Milwaukee's long-standing residency requirement found in s. 5-02 of the Milwaukee City Charter; and

Whereas, The issue of local residency is not a matter of state-wide concern but is instead clearly a matter of “local affairs and government” to be determined by local governments that are directly accountable to local voters; and

Whereas, In 1938, as an exercise of its Constitutional Home Rule authority, the City of Milwaukee enacted a charter ordinance, now City Charter s. 5-02, requiring that all employees reside within the boundaries of the City; and

Whereas, Since 1938, the City has maintained, enforced, and amended its charter ordinance residency requirements to address several local concerns directly impacting the City and its residents; and

Whereas, Since the City's adoption of a City Charter residency requirement 75 years ago, the State has never enacted legislation to disturb the City's residency requirement implicitly recognizing that municipal employee residency requirements are a matter in which local interests are superior to those of the State as a whole; and

Whereas, Factors unique to the City, including both population and geography, contribute to the need to ensure that sufficient staff are able to respond in a timely manner to weather and other emergency conditions,

homeland security events, and other events requiring prompt service from road and maintenance crews, police and fire personnel; and

Whereas, Minimizing the City's response time is critical to reducing personal injury, property damage and adverse economic and financial impact and is necessary to protecting the health, welfare and safety of the public; and

Whereas, It currently takes 2.5 to 3 hours for all 90 of the City's first responder salt truck drivers to report, load and be dispatched to their routes; and

Whereas, The Blizzard of 2011 on February 2, 2011, produced 20 inches of snow and 44 mph winds and required Department of Public Works plow drivers to take their trucks home in order to safely get back onto the streets during the storm; and

Whereas, Having police, fire department, health, neighborhood services and City development personnel, among other employees, live in the City provides them with better knowledge of the challenges facing the City, increased understanding of neighborhoods and enhanced relationships with residents; and

Whereas, Residency requirements encourage City employees to provide better results for residents since City employees are interested in the success of City services; and

Whereas, Employees who live within City boundaries make innumerable contributions to the City's economy, culture and community contributions that would vanish if the employees lived elsewhere; and

Whereas, The financial impacts of the out-migration of public employees on the City of Milwaukee would include depressed residential and commercial property values which would in turn erode the years of investment that City residents have made in their homes and businesses; and

Whereas, Over time the reduction in property values would likely decrease Milwaukee property tax receipts, diminishing the ability of the City to provide services and continue to pay family-supporting wages to the very City employees whose residency requirements are affected; and

Whereas, The mere recitation by the State Legislature in s. 1270 that "public employee residency requirements are a matter of statewide concern" is not sufficient to meet the requirements for abridging Home Rule and the specific provisions of s. 1270, including locally-determined adoption of 15-mile limitations for some employees and locally-determined definitions of "emergency personnel," are inconsistent with the Constitutional requirements of statewide application and uniformity; and

Whereas, The United States Supreme Court has long held that reasonable residency requirements such as those in s. 5-02 of the City Charter are constitutional under the United States Constitution; and

Whereas, The City's residency requirement has not impeded the City's efforts to attract thousands of highly qualified applicants for City employment annually; and

Whereas, The City has used its constitutional Home Rule authority to amend s. 5-02 of the City Charter to include measures for granting temporary residence waivers for hardship by the City Service Commission and the Fire and Police Commission, and to provide exceptions for employees whose spouses are subject to residency requirements in other jurisdictions; and

Whereas, For these and other reasons articulated in Common Council Resolution File 101310, adopted unanimously by the Common Council on March 23, 2011, and supporting the exercise of residency requirements under the Wisconsin State Constitution's Home Rule provisions, the Common Council determines that the City shall not acquiesce in the unconstitutional exercise of legislative authority reflected in the passage of 2013 Wisconsin Act 20, s. 1270; and

Whereas, The Wisconsin State Legislature's enactment of 2013 Wisconsin Act 20, s. 1270, has resulted in unnecessary and harmful confusion and uncertainty about the constitutional authority of cities and villages to exercise autonomy to act in a manner to accommodate the particular local needs of residents; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney is directed to bring a lawsuit challenging the constitutionality and enforceability of 2013 Wisconsin Act 20, s. 1270, relating to residency.

Richard L. Withers
LRB147703-1.1
July 2, 2013