



Pamela Goshay

*Final Analysis*  
Legislative Service Commission

## **Sub. S.B. 82**

126th General Assembly  
(As Passed by the General Assembly)

**Sens. Grendell, Jacobson, Brady, Mumper**

**Reps. Wolpert, Bulp, Brinkman, Yuko, Fende, Domenick, Uecker, Walcher, Collier, Blessing, Cassell, Chandler, Evans, D., Flowers, Hagan, Hartnett, Hughes, Kilbane, Law, Oelslager, Patton, T., Perry, Peterson, Redfern, Reidelbach, Sayre, Schneider, Seitz, Stewart, D., Taylor, Woodard**

**Effective date: May 1, 2006**

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### **ACT SUMMARY**

- Generally prohibits political subdivisions from requiring their permanent full-time employees to reside in any specific area of the state.
- Permits citizens of a political subdivision, by initiative, or the legislative authority of a political subdivision, by ordinance or resolution, to require the political subdivision's employees, as a condition of employment, to reside either in the county where the political subdivision is located or in an adjacent county.

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### **CONTENT AND OPERATION**

#### **Prohibition, right, and exceptions**

The act generally prohibits any political subdivision from requiring its employees, as a condition of employment, to reside in any specific area of the state (R.C. 9.481(B)(1)). It relatedly states that political subdivision employees generally have the right to reside any place they desire (R.C. 9.481(C)). (See COMMENT 1.)

The act, however, creates three exceptions to the prohibition and the right. A political subdivision may have residency requirements for volunteers (R.C. 9.481(B)(2)(a)); "volunteer" is defined as a person who is not paid for service or is employed on less than a permanent full-time basis (R.C. 9.481(A)(2)). The act

also authorizes citizens of any political subdivision to propose a local law by initiative, or the legislative authority of any political subdivision to adopt an ordinance or resolution, to require any employee of the political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in the state.<sup>1</sup> The act states that the exceptions (other than the "volunteer" exception) result from the state's interest in ensuring adequate response times by certain employees of political subdivisions to emergencies or disasters and, at the same time, the state's interest in ensuring that those employees generally are free to reside throughout the state. (R.C. 9.481(B)(2)(b).)

### **General Assembly intent statement and finding**

The act states in uncodified law (Section 2) that the General Assembly, in enacting R.C. 9.481, declares its intent to recognize (a) the inalienable and fundamental right of an individual to choose where to live under Section 1 of Article I of the Ohio Constitution (see **COMMENT 2** below) and (b) that Section 34 of Article II of the Ohio Constitution specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees and that no other provision of the Ohio Constitution, including its home rule provisions, impairs or limits this power (see **COMMENT 3** below). The act also states that the General Assembly finds, in enacting R.C. 9.481, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those employees (Section 3).

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## **COMMENT**

1. The prohibition contained in the act, insofar as it relates to municipal corporations, may violate the "home rule" provisions of the Ohio Constitution. The power of local self-government is granted to municipal corporations in Section 3 of Article XVIII. Residency requirements for municipal employees most likely are a matter of local self-government, which can be overcome only when there is a state law expressing a matter of statewide concern. Case law has shown Ohio courts recognize the local nature of employment matters involving residency issues. While there may be some extraterritorial impact from municipal

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<sup>1</sup> *The act directs, in R.C. 9.481(B)(2)(b), citizens and their political subdivisions to use the initiative petition procedures in the Municipal Law, with substitution of political subdivision fiscal officers for municipal officials when necessary (R.C. 731.28 and 731.31--not in the act).*

ordinances creating residency requirements, courts may find the issue to be predominantly one of local concern, and, therefore, such a municipal ordinance would be upheld.

2. The United States Supreme Court and the Ohio Supreme Court have held that there is *no* constitutional right to be employed by a municipality while residing elsewhere. *McCarthy v. Philadelphia Civil Service Comm'n.* (1976), 424 U.S. 645; *Buckley v. Cincinnati* (1980), 63 Ohio St.2d 42.

3. Section 34 of Article II of the Ohio Constitution authorizes the passage of laws dealing with wages and hours of employment and laws providing for the comfort, health, safety, and general welfare of all employees. This section was originally enacted to ensure that laws regarding minimum wages and the like would not unconstitutionally impair contracts; no consideration was given to its effect on the Ohio Constitution's home rule provisions. Without a court interpretation, it is difficult to say whether this section would apply to the act's prohibition, despite the General Assembly's recognition of it, where the subject of the state law is not *all* employees, but instead only *certain government* employees.

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## HISTORY

ACTION	DATE
Introduced	03-01-05
Reported, S. State & Local Gov't & Veterans Affairs	06-15-05
Passed Senate (19-13)	06-21-05
Reported, H. Local & Municipal Gov't & Urban Revitalization	01-17-06
Passed House (68-28)	01-18-06

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