



*Phil Mullin*

## ***Bill Analysis***

*Legislative Service Commission*

### **H.B. 84**

126th General Assembly  
(As Introduced)

**Reps. Flowers, Trakas, McGregor, Aslanides, Brinkman, Webster, Wolpert, Seitz, Gilb, D. Evans, Calvert, Hagan, Hood, Reidelbach, Oelslager**

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#### **BILL SUMMARY**

- Prohibits political subdivisions from requiring certain of their employees to reside in any specific area of the state.
- Permits citizens of a political subdivision, by initiative or legislative enactment, 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**

The bill generally prohibits any political subdivision from requiring its employees, as a condition of employment, to reside in any specific area of the state (sec. 9.481(B)(1)). (See **COMMENT.**) It, however, creates two exceptions to this prohibition. First, a political subdivision may have residency requirements for volunteers (sec. 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 (sec. 9.481(A)(2)). Second, the bill does not prevent citizens of any political subdivision, acting by either initiative or through their political subdivision's legislative body, from requiring 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. The bill states that this exception results from the state's overriding safety 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 are free to reside throughout the state. (Sec. 9.481(B)(2)(b).)

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## COMMENT

The prohibition contained in the bill, 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 ordinances creating residency requirements, it seems that the issue is predominantly one of local concern, and, therefore, such a municipal ordinance would be upheld. However, only a court can make a definitive interpretation.

Another constitutional provision could apply to the bill's prohibition. 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, and may override the "home rule" provisions in these circumstances. 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 bill's prohibition, where the subject of the state law is not all employees, but instead only certain government employees. The Ohio Supreme Court has held that the Public Employee Collective Bargaining Law was enacted pursuant to Section 34 of Article II and prevails over municipal home rule authority in the realm of labor relations. *Rocky River v. State Employment Relations Board* (1989), 43 Ohio St.3d 1 (Syllabus 2).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-05	p. 233

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