

# Constitutional Highlights

*From the Legislative Reference Bureau*

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## Wisconsin Constitution Article IV, Section 18 TITLE OF PRIVATE BILLS

*No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.*

### History and purposes of this section

This section of the Wisconsin Constitution, which restricts the legislature's ability to pass laws that have limited application, was adopted as part of the original state constitution and has never been amended. Like many other provisions in our constitution, it is apparently derived from the New York Constitution, which includes identical language. The section is related to article IV, section 31, which prohibits special and private laws on specific subjects. The purposes of article IV, section 18, are to encourage the legislature to devote its time to matters that affect the entire state, to preclude favoritism and discrimination, and to alert the members of the legislature to the subject matter of the legislation that they consider. See *Milwaukee Brewers v. DHSS*, 130 Wis. 2d 79 (1986); *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 144 Wis. 2d 896 (1988); and *Davis v. Grover*, 166 Wis. 2d 501 (1992). Any law enacted in violation of this provision is unconstitutional.

In *Soo Line R.R. v. Department of Transportation*, 101 Wis. 2d 64, 71-72 (1981), Justice Abrahamson explained the origins and purposes of this section of the Wisconsin Constitution:

State constitutional provisions regulating private, local, and special legislation were adopted in response to the changing conditions in which 19th century state legislatures found themselves. State legislatures were under pressure from their constituents to act on a multitude of subjects. The volume of laws drastically increased, and private or local laws dramatically outnumbered the general laws.

The proliferation of laws of limited applicability created the specter of favoritism and discrimination and diverted the legislature's attention from matters of public, state-wide importance. The constitutional

proscriptions against special, private or local legislation were intended to prevent the granting of special privileges or the imposition of special disabilities and to encourage the legislature to devote its time to the interests of the state at large. Hurst, *The Growth of American Law: The Law Makers*, 30, 66, 79, 229, 233-34 (1950); 351, 355-358 (1936). The constitutional limitations seek to insure that the legislature and the people of the state are advised of the real nature and subject matter of the legislation being considered to avoid fraud or surprise.

Questions relating to this constitutional provision often arise during the consideration of the biennial budget bill and the budget adjustment bill. Those bills typically contain hundreds of pages of legislation and cover many subjects. In addition, the biennial budget bill has only a general title. Because this section of the Constitution prohibits private and local laws that embrace more than one subject, and requires that a bill's title express the subject of any private or local provision contained in the bill, the inclusion of a private or local provision in either of these bills raises a constitutional issue.

### How courts interpret the section

The most basic question that appears in court cases on this section of the constitution is whether a law is private or local. A private law applies only to a particular person or thing; a local law applies only to a particular place. The courts have used two methods to determine whether a law is private or local and therefore subject to this section or whether it is general and therefore not subject to this section. The nature of the law determines which method the court will use.

The court developed the first method of analysis in *Milwaukee Brewers*. The court held that if a law explicitly applies to a particular person, thing or place, the law is a private or local law for the purposes of this section unless the law "relates to a state responsibility of statewide dimension and its enactment will have a direct and immediate effect on a specific statewide concern or interest." *Milwaukee Brewers* at 115.

The court developed the second method of analysis in *Brookfield*. In that case, the court held that if a law is not explicitly private or local but is applicable only to a particular class (for example, first class cities), the law is a private or local law for the purposes of this section unless all of the following are true:

1. The classification is based on substantial distinctions that make each class really different from the others.
2. The classification is germane to the law's purpose.
3. The classification is open to additional members.
4. The law applies equally to all members of the class.
5. The characteristics of each class are so different from those of the other classes that substantially different treatment is justified.

Thus, any law that is explicitly private or local and that does not relate to a state responsibility of statewide dimension is in violation of this section of the constitution. Similarly, any law that is applicable only to a particular class and that does not meet the applicable criteria specified above is in violation of this section

of the constitution.

With regard to most of the constitutional provisions that form the grounds of challenges to legislation, courts presume that the statute is constitutional, so a challenger must overcome that presumption in order to prevail. In cases in which a law is challenged on the basis of this section of the constitution, however, because the challenger is alleging that the legislature has “violated a law of constitutional stature which mandates the form in which bills must pass,” courts do not automatically presume that the law is constitutional. *Brookfield* at 918-19 n.6. The courts will make that presumption only if they find evidence that the legislature adequately considered the issue in question. *Davis* at 523.

### Strategies for reconciling legislation with the section

Although this section of the constitution restricts the legislature’s ability to enact laws that have limited application, it does not make it impossible for the Legislature to do so. There are a number of strategies that a legislator may use if he or she wishes to pass a law that may be private or local in nature.

1. Unless the subject of the private or local law is specifically prohibited by Article IV, section 31 (which prohibits nine specific categories of private or special laws), of the Wisconsin Constitution, the law may always be constitutionally enacted as a separate bill.
2. If that is not feasible, and the legislator wishes to include the provision in a multi-subject bill like the biennial budget bill, efforts may be made to comply with the criteria outlined above. For example, if the provision in question is explicitly private or local, perhaps it can be modified so that it relates to a state responsibility of statewide dimension. If the law is applicable only to a particular class, perhaps it can be written so that it applies equally to all members of the class and so that the classification is open to additional members.
3. Finally, because laws challenged on the basis of this section of the constitution are not presumed to be constitutional unless the court finds evidence that the legislature adequately considered the issue in question, it may be wise to establish a record of such evidence. In the *Davis* case, the private or local law in question was the Milwaukee Parental Choice Program, which had been passed by the Assembly as a single subject bill before being incorporated in the budget adjustment bill. The court felt that the legislature had “intelligently participate[d] in considering” the program and therefore applied the presumption of constitutionality. *Davis* at 523, quoting *Brookfield* at 912 n.5.

In contrast, the court of appeals in *City of Oak Creek v. DNR*, 185 Wis. 2d 424 (Ct. App. 1994), did not afford the presumption of constitutionality to the process by which the legislature included permit exemptions for the City of Oak Creek in the 1991 budget bill. In that case, the Joint Committee on Finance introduced the proposal without the sponsorship of any individual legislators, the proposal had not been introduced previously, and there were no public hearings on the issue. The court concluded that the statute did not receive the required legislative consideration.

*The Legislative Reference Bureau attorneys would be happy to help you reconcile your proposal with article IV, section 18.*



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