

June 2004

**2004 Legislation Relating
to Local and Metropolitan
Government**

This report describes legislation enacted in the 2004 regular session relating to local and metropolitan government. It also briefly describes vetoed legislation. This report does *not* cover all legislation that affects local governments. With a few exceptions, it does not cover civil or criminal law, employment or pensions, health and human services, transportation, economic development, or environmental issues.

This report was prepared by **Deborah Dyson, Jeanne LeFevre,** and **Patricia Dalton**, legislative analysts in the House Research Department.

Questions may be addressed to **Deb** at 651-296-8291, **Jeanne** at 651-296-5043, or **Pat** at 651-296-7434.

Jessica Boylan provided secretarial support.

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Introduction

All the citations in this report are to Laws 2004, unless otherwise indicated. For information on laws enacted in 2004 that may affect local government and are not covered in this report, see the acts or act summaries for:

Agriculture Policy	Chapter 254
Data Practices	Chapter 290
Elections	Chapter 277, 293
Environment and Natural Resources	Chapter 255
Health and Human Services.....	Chapter 288
Public Pensions	Chapter 223, 267
Transportation Policy.....	Chapter 295

Acts are available on the revisor's web site (www.revisor.leg.state.mn.us/slaws/2004). Act summaries are available on the House Research web site (ww3.house.leg.state.mn.us/hrd/actsum.asp).

Local Government Generally

Land Use, Planning, Zoning

Interim Ordinance Moratoriums

An interim ordinance establishing a moratorium on development to protect the planning process is now limited to one year, with a few limited exceptions. Under prior law, an interim ordinance could last up to two and one-half years. An interim ordinance does not extend the time for agency action under [Minnesota Statutes, section 15.99](#), with respect to an application filed before the effective date of the ordinance.

Exceptions: An interim ordinance applicable to an area affected by a city's master plan for a municipal airport may be extended for up to 18 additional months.

In other cases, after a public hearing and written findings, an interim ordinance may be extended for up to 120 days after receipt of a required approval or review, or 120 days after completion of any other process required by law or court order, or up to one year if the municipality has not adopted a comprehensive plan at the time the interim ordinance is adopted.

Ch. 258, § 1, amending Minn. Stat. § 462.355, subd. 4, effective August 1, 2004.

Nonconforming Uses

A nonconforming use may be continued, but not expanded, through replacement, restoration, or improvement, as well as through repair and maintenance. In addition, the repair or replacement may be made even if the nonconforming use (typically a structure) is destroyed by more than 50 percent (measured by market value) as long as a building permit is applied for within 180 days of the damage. A municipality may impose reasonable conditions on the building permit to mitigate newly created impacts on adjacent property. Under prior law, a nonconforming use could only be repaired and maintained, and had to be replaced with a conforming use if not in use for more than one year or if the destruction reduces the market value by more than 50 percent.

A municipality may by ordinance permit expansion of a nonconforming use.

Ch. 258, § 2, amending Minn. Stat. § 462.357, subd. 1e, effective August 1, 2004.

Development Fees and Dedications

Fees. Under the Municipal Planning Act, a municipality now must have a "nexus," or connection, between the amount it charges and its costs in reviewing, investigating, and administering an application for an amendment to an official control or a permit or other approval required

by an official control. The nexus requirement is in addition to the requirement added in 2001 that the fees be fair, reasonable, and proportionate to costs.

A municipality must explain the basis of its fees when asked. January 1 is now the standard effective date for changes to fee ordinances, but a municipality may set a different effective date as long as the new fee ordinance does not apply to a project for which application for final approval was submitted before the ordinance was adopted.

A person may appeal a fee within 60 days after approval of an application and deposit of the disputed fee in escrow. A municipality cannot condition approval of a proposed development on an agreement to waive the right to challenge the validity of a fee. However, a municipality may still condition approval of any proposed subdivision or development on a waiver agreement regarding costs associated with municipally installed improvements.

Dedication (subdivision regulations). Fees paid in lieu of dedication of land must not be used for ongoing operations or maintenance. The basis for calculating the amount to be dedicated or preserved must be established by ordinance or the procedures for adopting a fee schedule under [section 462.353](#), subdivision 4a.

There must be an essential nexus between fees or dedication and the municipal purpose to be achieved by the fee or dedication. Fees or dedication must have a rough proportionality to the need created by the proposed subdivision or development.

A municipality must not condition approval of a project on the applicant waiving the right to challenge the fee in lieu of dedication or dedication if the municipality has written notice of a dispute before it makes its final decision.

An application may proceed as if the fee was paid pending a decision on the appeal of the fee dispute if the city has written notice of the dispute, the fee is put in escrow, and the appeal is made within 60 days of approval of the application.

Case law background. Although “essential nexus” is not defined in statute, this is the term of art used by the United States Supreme Court in cases challenging local exaction/impact fee/dedication regulations as unconstitutional takings. *E.g.*, [Dolan v. Tigard](#), 114 S. Ct. 2309, 2317, 512 U.S. 374, 386 (1994) (there must be an essential nexus between a legitimate governmental interest and a city dedication of land requirement, and whether there is an “essential nexus” is a case-by-case,

fact-specific analysis); *see also Kottschade v. City of Rochester*, 537 N.W.2d 301, 307 (Minn. App. 1995), *review denied* (Nov 15, 1995) (city has burden of proof to show an “essential nexus” exists between the “legitimate state interest” and the condition exacted by the city, and if it exists, the court must then decide whether the city has demonstrated a “rough proportionality” between the planned development and the municipality’s requirement for a dedication of land).

Ch. 178, amending Minn. Stat. §§ 462.353, subd. 4; 462.358, subds. 2b and adding 2c; effective August 1, 2004, and applies to ordinances relating to fees, fee schedules, and dedications adopted or amended on or after August 1, 2004.

**Agricultural
Nuisance Law Does
Not Limit Zoning
Enforcement**

Among the clarifications made to the law protecting agricultural operations from nuisance claims is the provision specifying that the law does not apply to any enforcement action brought by a local unit of government related to zoning under [Minnesota Statutes, chapter 394](#) or [462](#).

Ch. 254, §§ 43 and 44, amending Minn. Stat. § 561.19, subds. 1 and 2, effective for actions commenced on or after August 1, 2004.

**Section Markers,
Plat Approval**

Section markers. Section and quarter-section corner markers must be placed in such a way that they will not be disturbed by routine maintenance. A supplemental marker must be placed over the durable monument, visible from the surface and set to be protected from routine snowplowing. A durable metal marker may be set as a permanent witness monument on the section or quarter-section line when a corner marker in a highway surface is not practical or safe. Certificates of markers and monuments may be filed in the office of the county surveyor in counties that have a surveyor, rather than in the office of the county recorder.

Plat approval. A county that requires plats to be approved by the county surveyor no longer has to have a full-time surveyor’s office in the county. Plat approvals may be made by another licensed land surveyor hired by the county.

Ch. 154, amending Minn. Stat. §§ 160.15 and 389.09, effective August 1, 2004.

**County Fair
Buildings**

County fair buildings are exempt from zoning, building, and other ordinances of the city or town in which they are located, whether they are owned by the county, as under prior law, or a county agricultural society.

Ch. 254, § 12, amending Minn. Stat. § 38.16, effective August 1, 2004.

Government Powers and Duties

Open Meeting Law *Property sales or purchases.* A public body may close a meeting to address certain matters related to the sale or purchase of property. In particular, the meeting may be closed to (1) set the asking price for real or personal property to be sold, (2) review appraisal data that is confidential or nonpublic under Minnesota Statutes, section 13.44, subdivision 3, and (3) develop or consider offers and counteroffers for the purchase or sale of real or personal property.

In order to close a meeting, the public body must identify on the record the particular property that is the subject of the closed meeting. The closed meeting must be tape-recorded and the recording must be preserved for eight years. The recording must be public after the purchase or sale is completed or abandoned.

If a violation is alleged, the procedures that apply to alleged violations of the laws governing closing meetings for labor negotiations apply to this new provision. The court must review the recording of the meeting *in camera*. If the court finds no violation, the action shall be dismissed and the recording shall be sealed and preserved in the records of the court until otherwise made available to the public pursuant to this section. If the court finds a violation, the recording may be introduced at trial in its entirety subject to any protective orders as requested by either party and deemed appropriate by the court.

The actual purchase or sale must be decided in an open meeting.

Ch. 276, amending Minn. Stat. § 13D.05, subd. 3, effective May 29, 2004 (Minn. Stat. § 13.44, subd. 3, provides: “Estimated or appraised values of individual parcels of real property which are made by personnel of the state, its agencies and departments, or a political subdivision or by independent appraisers acting for the state, its agencies and departments, or a political subdivision for the purpose of selling or acquiring land through purchase or condemnation are classified as confidential data on individuals or protected nonpublic data.”)

Security briefings. Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities. The meeting may be closed only if disclosure of the information would pose a danger to public safety or compromise security. All financial issues must be discussed in an open meeting. The public body must describe the subject of the closed meeting before closing it and must tape-record the closed meeting. The tape recording must be preserved for at least four years.

Ch. 290, § 18, amending Minn. Stat. § 13D.05, subd. 3, effective May 30, 2004.

Data Practices

Pleadings that are served on or by a government entity are public data to the same extent as data filed with the court.

Ch. 290, § 1, amending Minn. Stat. § 13.03, adding subd. 12, effective August 1, 2004.

A public employee's city and county of residence is now private data.

Ch. 290, § 4, amending Minn. Stat. § 13.43, subd. 2, effective August 1, 2004.

Reports of a county agricultural society are now expressly public data available for inspection by any person.

Ch. 290, § 19, amending Minn. Stat. § 38.04, effective August 1, 2004.

Local Government Purchasing and Contracting, Uniform Municipal Contracting Law

Reverse auction, electronic sale of surplus, and electronic bidding. Municipalities may purchase materials, supplies, and equipment using an electronic purchasing process. This authority is substantially the same as that granted to state agencies in [Minnesota Statutes, section 16C.10](#), subdivision 7.

Municipalities may use electronic bidding to sell surplus supplies, materials, and equipment.

Vendors may submit bids, quotes, and proposals electronically. Municipalities may allow bid, performance, or payment bonds to be furnished electronically. This is substantially the same authority granted the Department of Transportation in 2001. *See* [Minn. Stat. § 161.32](#).

Ch. 278, §§ 12 to 14, amending Minn. Stat. § 471.345, adding subds. 16 to 18, effective May 30, 2004.

Smaller municipalities threshold increased. Municipalities with populations of less than 2,500 now have the same project or contract amount thresholds as larger municipalities for procedures required under statutes governing purchasing and contracting. Since 2000, municipalities of 2,500 population or more have had higher thresholds. For example, sealed bids are required for contracts of \$50,000 or more for all municipalities instead of for contracts over \$35,000 for municipalities under 2,500 in population. "Municipality" includes all political subdivisions.

Ch. 278, §§ 6 to 11, amending Minn. Stat. §§ 429.041, subds. 1 and 2; 469.015, subds. 1 and 3; 471.345, subds. 3 and 4, effective May 30, 2004.

**Appropriations to
County
Agricultural
Societies**

The caps on the amounts a city, county, or township can contribute to an agricultural society for holding a fair are eliminated.

Ch. 254, §§ 9 to 11, amending Minn. Stat. §§ 38.12; 38.14; 38.15, effective August 1, 2004.

**Storm Water
Utilities**

Sanitary sewer charges are separated from storm sewer charges in the provision authorizing sewer charges. Sanitary sewer charges may still be based on water use, but storm sewer charges may be based on area of the property, adjusted for a reasonable calculation of the storm water runoff and other factors related to storm water.

A municipality may include the costs of obtaining and complying with permits required by law (the NPDES—National Pollution Discharge Elimination System permit) in the costs paid for with debt.

A number of definitions made in the substantive provisions of the law are moved to the definition section.

Minneapolis, St. Paul, and Duluth are now included in the statute authorizing cities and towns to build waterworks and sewer systems. (This primarily affects Minneapolis and St. Paul. Duluth is authorized to use the statute by special legislation, Laws 1995, chapter 90. St. Paul was authorized to use this statute under Laws 1985, First Special Session, chapter 14, article 19, section 7, coded in Minnesota Statutes, section 116.19, but that statute was repealed in 2002.)

Ch. 141, amending Minn. Stat. § 444.075, subs. 1, 1a, 2, 3, effective January 1, 2006, except that the inclusion of cities of the first class in the definition of municipality is effective August 1, 2004.

Special Charges

Under [Minnesota Statutes, section 429.101](#), a municipality (defined as a city or urban town) may collect unpaid special charges for specified services as special assessments against the property benefited if the municipality adopts an ordinance to do so.

This law adds two services to the list of special charges that may be collected this way. First, it adds the recovery of disbursements made to remedy a residential rental housing violation under the tenant remedies act, including utility payments.

Second, it adds painting the exterior of a structure to remedy a municipal code violation. This provision is repealed effective July 1, 2006.

Ch. 275, §§ 2 and 3, amending Minn. Stat. §§ 429.101, subd. 1, and 504B.445, subd. 4, effective the day after the latter of the town of White and the city of Hoyt Lakes have

completed local approval.

Direct Deposit of Employee Pay

A municipality may require direct deposit of pay for all employees. “Municipality” means a home rule charter or statutory city, town, county, school district, political subdivision, or agency of local government.

A municipality may do so notwithstanding the statute that defines “wage” to mean compensation in cash, check, or direct deposit, for the purposes of the Minnesota Fair Labor Standards Act ([Minn. Stat. § 177.23](#), subd.4) and [Minnesota Statutes, section 181.02](#) (“[i]t is unlawful for an employer, other than a public service corporation, to issue to any employee in lieu of or in payment of any salary or wages earned by the employee a nonnegotiable time check or order.”).

The 2003 Legislature authorized the commissioner of finance to require direct deposit of paychecks for all state employees. *See* Minn. Stat. 2003 Supp. § 16A.17, subd. 10.

Ch. 292, adding Minn. Stat. § 471.426, effective August 1, 2004.

Newspaper Publication Requirements

The 2004 Legislature updated and revised the laws governing publication of political subdivisions’ public notices. This is the result of work done by local governments and the newspapers after the 2003 session in which local governments sought general authority to meet legal publication requirements by publishing notices on local government web sites in order to reduce costs. Newspapers objected to the 2003 proposal and the legislature directed the parties to return in 2004 with an agreement.

Newspaper web publication. A qualified newspaper that maintains a web site must post official notices on its web site at no additional cost, as a condition of being the designated newspaper. The web postings must be maintained on the site for the notice’s full publication period. Failure to post on the newspaper’s web site does not affect the validity of the public notice.

Alternative dissemination of bids and requests by political subdivisions.

A political subdivision may disseminate solicitations for bids, requests for information, and requests for proposals by posting on the political subdivision’s web site or in a recognized industry trade journal as long as the posting is in substantially the same format and for the same period of time as a publication in a qualified newspaper, if the political subdivision publishes in its qualified newspaper a notice describing all solicitations and requests disseminated by the alternative means. The political subdivision must simultaneously publish in its official

newspaper and by alternative publication for the first six months after designating an alternative.

Report. The Revisor of Statutes must compile a list of all statutes requiring publication of public notices for the chairs of the House and Senate government operations committees by January 1, 2006.

Other provisions. A political subdivision that publishes a summary of proceedings or its financial statement, must include a notice that a full version is available without cost at the political subdivision's offices or by standard or electronic mail.

A political subdivision may enter into a multiyear contract with a qualified newspaper. The contract may be for up to three years.

A political subdivision's meeting minutes may be published up to ten days after the minutes are approved when meetings are not more than once every 30 days.

The threshold amount for individually listing a claim in the published notice of small claims against the county is increased from \$100 to \$300.

A small city may publish a summary of the financial statement without limitation. Small cities are those with populations under 2,500. Under prior law, the financial statement could be published in summary form only if the city council proceedings were published monthly or quarterly, showing to whom and for what purposes orders are drawn. The threshold amount of individual disbursements made that must be published is increased from \$100 to \$300.

Ch. 182, amending Minn. Stat. §§ 279.09; 279.092; 375.12, subd. 2; 375.17, subd. 1; 412.191, subd. 3; 471.698, subd. 1; various provisions in Minn. Stat. ch. 331A; repealing Minn. Stat. §§ 331A.01, subd. 5; 331A.02, subd. 2, effective August 1, 2004.

**Local Regulation of
LRT Horns,
Whistles**

A statutory or home rule charter city or town may by ordinance regulate within its jurisdiction the sounding of audible warnings by light rail transit vehicles, subject to federal law. This applies as a practical matter at this time to Minneapolis and Bloomington.

Ch. 245, § 2, adding Minn. Stat. § 473.4055, effective May 27, 2004.

**Peace Officers Legal
Fees Paid**

A local government (city, town, or county) must pay the legal fees that a peace officer incurs in defending a complaint brought before a civilian review authority if the civilian review authority sustains the complaint but the complaint is later not upheld.

Ch. 200, amending Minn. Stat. § 471.44, subd. 2, effective August 1, 2004.

**Damages for
Graffiti**

Public (and private) property owners may sue to recover damages of three times the cost of restoring property damaged by graffiti. The court may order the defendant to restore the property as an alternative to paying damages. Damages may be recovered from the defendant or from the parent or guardian if the defendant is a minor. The court may also award attorney fees and costs to a prevailing plaintiff.

Ch. 149, adding Minn. Stat. § 617.90, effective August 1, 2004, and applying to causes of action arising on or after that date.

**Alternative
Wastewater
Treatment Systems**

The Pollution Control Agency, with advice from the Department of Health, is in charge of a pilot program to create a certification program for new wastewater treatment technology. Under the pilot program, permitting of biodigester and water reclamation systems are subject to any local government requirements for installation and use, subject to the commissioner's approval, but are exempt from all state and local requirements pertaining to rules governing plumbing.

Ch. 248, § 3, adding Minn. Stat. § 115.60, effective May 29, 2004, and expires May 1, 2014.

**Water Level
Controls for Public
Waters with an
Outlet**

A county, municipality, watershed district, watershed management organization, or lake improvement district has 30 days after it is served a copy of an application, in which it may file with the Commissioner of Natural Resources a written recommendation on or an objection to issuance of a permit to control elevation for a public water.

Ch. 262, art. 2, § 6, adding Minn. Stat. § 103G.407, effective August 1, 2004.

State Funding and Regulation

Dangerous Animals

A new law establishes state regulation over the purchase, possession, breeding, and sale of large nondomestic cats, bears, and nonhuman primates. Generally, by March 2, 2005, a person who possesses a regulated animal must be licensed by the United States Department of Agriculture (USDA) or register with the local animal control authority. The person also must bring the facilities and conditions under which the animal is kept into compliance with standards specified in USDA regulations for facilities and operations, animal health and husbandry, and veterinary care.

Local animal control authority includes a state agency, county, municipality, or other governmental subdivision that is responsible for

animal control operations in its jurisdiction.

The local animal control authority may charge an initial site inspection fee of \$50 plus \$25 per animal (to a maximum of \$250 per person) for the annual registration. If the person acquires a different type of regulated animal, the local animal control authority may charge an additional \$50 site inspection fee. The law implies that a local animal control authority is authorized but not required to conduct inspections.

A local animal control authority may require the owner of a regulated animal to notify the authority if the animal is moved.

The local animal control authority can seize a regulated animal possessed in violation of these regulations. The authority may grant a 30-day grace period for the owner to come into compliance with requirements. If an animal is seized, the owner must be notified and given the opportunity to post a security deposit and ask for a court hearing to recover the animal. The owner must pay all costs for the care, keeping, and possible disposal of the animal.

Each July 1, local animal control authorities must report to the Board of Animal Health on regulated animals registered with them and any enforcement actions taken.

Ch. 264, adding Minn. Stat. § 346.155, effective January 1, 2005.

**Banking,
Collateralization of
Local Government
Funds on Deposit**

Under current law, a governmental entity must designate a financial institution to be the depository of its public funds. It must also require security for public funds deposited that are in excess of the amount insured by federal deposit insurance.

This law clarifies *when* the amount of public funds on deposit is determined so that if the amount exceeds what federal deposit insurance will cover, the minimum amount of security or collateral is available. Under prior law, it is either not stated when the amount on deposit is determined or it is at the end of the “business” day, without saying whether it is the governmental entity’s business day or the financial institution’s business day. This law provides that it is determined at the close of the banking day and ties the definition of “banking day” to the definition in the Federal Reserve’s regulations. Prior to this change, the state auditor determined the collateral needed based on the largest amount on deposit at any point in the day, resulting in more audit exceptions.

The depository law applies to a “government entity,” which means a county, city, town, school district, hospital district, public authority,

public corporation, public commission, special district, any other political subdivision, except an entity whose investment authority is specified under [Minnesota Statutes, chapter 11A](#) or [356A](#). For the purposes of [Minnesota Statutes, sections 118A.02](#) and [118A.03](#) only, the term includes an American Indian tribal government entity located within a federally recognized American Indian reservation.

“Financial institution” means a savings association, commercial bank, trust company, credit union, or industrial loan and thrift company.

Ch. 151, amending Minn. Stat. § 118A.03, subs. 1 and 3, effective retroactively from the beginning of a government entity’s fiscal year 2003 and applies to each fiscal year thereafter.

Credit Unions as Depositories

A technical change was made to the depository law related to credit unions. Because credit unions may be depositories for public funds but they are not insured by the Federal Deposit Insurance Corporation (FDIC), the law governing allowable forms of collateral for public funds on deposit with the institution was amended to cover time deposits insured by any federal agency instead of those insured only by the FDIC. Credit unions are insured by the National Credit Union Administration (NCUA), which is a federal agency equivalent to the FDIC.

Ch. 174, § 2, amending Minn. Stat. § 118A.03, subd 2, effective August 1, 2004.

Local Match for Federal Airport Funding

The minimum contribution that local sources must make to the cost of airport construction, improvement, maintenance, or operation when a combination of state, federal, and local funds are used, is now 5 percent, reduced from 10 percent, of total project cost.

Ch. 136, amending Minn. Stat. § 360.305, subd. 4, effective March 11, 2004.

Annual Audit Requirement for Standard Plan and Plan A Statutory Cities and Towns

Towns, plan A statutory cities, and standard plan statutory cities that have combined the offices of clerk and treasurer must have a financial audit if their annual revenue is at least \$150,000 in 2004. This was increased from an annual threshold level of \$100,000. After 2004, the level is adjusted for inflation yearly.

The original laws setting the threshold amounts were enacted in 1994 and 1995.

Ch. 281, amending Minn. Stat. §§ 367.36, subd. 1; 412.02, subd. 3; and 412.591, subd. 2, effective August 1, 2004.

Local Fiscal Impacts of State Rules

An agency proposing rules must prepare a statement of need and reasonableness that includes information on who bears the costs and who benefits. This law adds the requirement that the agency proposing the rule consult with the Commissioner of Finance to help evaluate the

on land utilization project (LUP) lands. Currently, LUP lands are classified as commissioner-administered “other natural resources land” and receive in-lieu payments of 37.5 cents, adjusted for inflation. Both the House and Senate tax bills would have established a separate PILT category for LUP lands, with the House providing for a payment of 75 cents per acre, adjusted for inflation, and the Senate providing for a payment of \$3 per acre, adjusted for inflation. The inflation-adjusted amounts for aids payable in calendar year 2005 would have been 98.2 cents and \$3.92 per acre respectively.

H.F. 2540, 3rd engrossment, art. 3, §§ 32-35

H.F. 2540, Senate unofficial engrossment, art. 4, §§ 7-10.

Public Safety Radio Systems

Both the Senate and House proposed increasing the areas eligible for the sales tax exemption on equipment purchases for public safety radio systems. The Senate would have extended it to the entire state, and the House would have added the counties of Chisago, Isanti, Benton, Sherburne, Stearns, and Wright and the area included in the southeast state patrol district.

H.F. 2540, 3rd engrossment, art. 4, § 10.

H.F. 2540, Senate unofficial engrossment, art. 2, § 8.

Both the Senate and House also proposed expanding the definition of “public safety radio subsystems” to include all subsystems that are part of the statewide plan; they also proposed increasing the bonding authority of the Metropolitan Council to raise money to help pay for the subsystems in the southeast and the central state patrol districts. The House would have limited the expenditures in the central state patrol district to subsystems in Benton, Sherburne, Stearns, and Wright counties. The Senate proposed to authorize a backup levy for local governments involved in phases three to six of the public safety emergency radio system if necessary to pay for the development of the system.

H.F. 3081, 2nd engrossment, §§ 5-7.

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 3-6.

Cities

City Local Government Aid (LGA)

The 2003 Legislature restructured the city LGA program. One of the key elements of the restructuring was the elimination of most of the city aid base (“grandfathered aid”). The law struck two provisions related to this elimination, but a third provision that needed to be stricken was overlooked. When the error was discovered, the chair of the House tax committee wrote a letter to the Commissioner of Revenue asking for the law to be administered based on “legislative intent,” with the understanding that a technical correction would be passed retroactively in 2004. The chair of the Senate tax committee wrote a separate letter agreeing with the House tax chair’s request. Because the 2004 omnibus tax bill, which contained the technical correction, did not pass during the regular session, the correction was not enacted. As of June 2004, the governor and the Department of Revenue were considering how to administer the law absent the correction.

The language that was inadvertently retained is ambiguous and open for interpretation. One possible interpretation is to reinstate every city’s 2003 city aid base plus increase it by each city’s 2003 existing low-income housing aid. The second possible interpretation is to not only reinstate every city’s 2003 city aid base and existing low-income housing aid, but to add \$26 million of city aid base that remained in 2004 to the 2003 city aid base amounts, for a total grandfathered aid amount of \$388 million. This second interpretation is the basis for the numbers reported in the press in early June 2004.

H.F. 2540, 3rd engrossment, art. 10, § 24.

H.F. 2540, 2nd unofficial engrossment, art. 4, § 2.

(striking Minn. Stat. § 477A.011, subd. 36, paragraph (f)).

Local Sales Taxes

The 2003 Legislature required the Department of Revenue to prepare a written report on local sales taxes. *Laws 2003, 1st spec. sess., ch. 21, art. 9, § 19.* The report included the current uses of local sales taxes and recommendations on evaluating and authorizing local sales taxes in the future. The report recommended only minimal changes to current practices.

The House tax bill contained only one local sales tax provision, which would have slightly expanded the use of Rochester’s existing tax but not the duration of the tax.

H. F. 2540, 3rd engrossment, art. 4, § 15.

The Senate bill included provisions to grant statutory authority to cities of the first class to impose a local sales tax by ordinance, for any purpose, without a special law. Cities of the second and third class would have been allowed to impose a local sales tax to fund a capital project in one of eight categories, without a special law if approved at a local referendum.

H. F. 2540, Senate unofficial engrossment, art. 2, §§ 18-22 and 24.

In addition, the Senate tax bill included provisions allowing or amending existing local sales taxes for the following cities:

- ▶ St. Cloud (expanded use of revenues from food, liquor, and lodging tax uses)
- ▶ Mankato (delayed expiration date)
- ▶ Hermantown (authorized an increased rate for additional uses)
- ▶ Rochester (expanded use of revenues and delayed expiration date)
- ▶ Proctor (new general tax)
- ▶ Albert Lea (new general tax)
- ▶ Beaver Bay (new general tax)
- ▶ Bemidji (new general tax)
- ▶ Cloquet (new general tax)
- ▶ Clearwater (new general tax)
- ▶ Medford (new general tax)
- ▶ Park Rapids (new general tax)
- ▶ Proctor (expanded use of revenues from the existing lodging tax)
- ▶ St. Cloud area cities (expanded use of revenues and delayed expiration date)
- ▶ Waite Park (inclusion in the St. Cloud area tax)
- ▶ Waseca (new general tax)
- ▶ Winona (new general tax)

H. F. 2540, Senate unofficial engrossment, art. 2, §§ 25-34, 37-46, 48-50.

**City Special Service
Districts and
Housing
Improvement
Districts**

Under current law, cities' authority to establish by ordinance new special service districts and housing improvement districts sunsets June 30, 2005. The House proposed delaying the sunset to June 30, 2007, while the Senate proposed delaying the sunset until June 30, 2009.

H.F. 3081, 2nd engrossment, §§ 12 and 14.

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 9 and 10.

The House also would have required that cities provide the State Auditor with copies of ordinances for all existing special service districts and housing improvement districts by December 31, 2004, and for all new districts by the end of the calendar year in which they are adopted. The Senate did not have similar provisions.

H.F. 3081, 2nd engrossment, §§ 13 and 15.

Finally, the House would have authorized cities outside of the metropolitan area to contract with a nonprofit corporation to provide or manage services for a special service district. The Senate would have given this authority only to the city of Minneapolis and only if there were no city employee who could provide the service.

H.F. 3081, 2nd engrossment, §§ 10-11.

H.F. 2540, Senate unofficial engrossment, art. 5, § 29.

City Capital Improvement Program (CIP) Bonds

The 2003 Legislature authorized a city CIP bond program but a drafting error tied a city's debt limit to 0.05367 of the *county's* taxable market value. The House proposed changing the limit to 0.1 percent of the *city's* taxable market value, while the Senate proposed changing the limit to 0.16 percent of taxable market value in a city with a population less than 2,500 and 0.05367 of taxable market value in a city with a population of 2,500 or more.

H.F. 3081, 2nd engrossment, § 25.

H.F. 2540, Senate unofficial engrossment, art. 6, § 21.

Both bodies also proposed expanding the allowed uses of the bond proceeds for road improvements. The House proposed adding construction of turn lanes, realignments, and improvements having a substantial public safety function. The Senate bill included the House expansions and also proposed to allow use of bond proceeds to pay the local share of state and county road projects.

H.F. 3081, 2nd engrossment, § 26.

H.F. 2540, Senate unofficial engrossment, art. 6, § 22.

Tax Increment Financing (TIF)

Both the House and the Senate bills contained the same or similar provisions that modified district requirements or extended compliance or termination dates for specific districts in the following cities:

- ▶ New Brighton
- ▶ Brooklyn Center
- ▶ Robbinsdale
- ▶ Wabasha.

H.F. 2540, 3rd engrossment, art. 6, §§ 12-15.

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 9, 22, 26 and 31.

The House also proposed modifying:

- ▶ the size of commercial developments that can be assisted with housing district increments;
- ▶ the definition of “increment”; and
- ▶ the income limits and tests for housing districts and qualifying rental properties.

In addition, it proposed repealing special duration provisions for districts getting state cleanup grants, the three-year rule, and restrictions on developer payments.

H.F. 2540, 3rd engrossment, art. 6, §§ 1-7, and 16.

The Senate proposed the following changes to TIF law:

- ▶ authorizing creation of housing districts containing both owner-occupied and rental units
- ▶ modifying some restrictions on TIF districts in “urban renewal areas” within a city
- ▶ allowing increments to be used to pay for job training under certain conditions
- ▶ allowing existing districts to modify their plans to dedicate up to 10 percent of the increment to affordable housing or pollution and contaminant abatement activities

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 10-16, and 18.

The Senate bill also contained additional TIF provisions for specific districts in the following cities:

- ▶ Minneapolis (Lake St.)
- ▶ Detroit Lakes
- ▶ Elgin, Eyota, Byron, and Oronoco
- ▶ Fairmont
- ▶ Fergus Falls
- ▶ St. Michael

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 20, 24, 25, 27, 28, and 30.

Counties

County Capital Improvement Program (CIP) Bonds

Both the House and Senate proposed clarifications to allow county CIP bonds to be used to acquire, but not better, conservation easements. Current law is slightly ambiguous on this point.

H.F. 3081, 2nd engrossment, § 4.

H.F. 2540, Senate unofficial engrossment, art. 6, § 2.

Towns

Town Spending and Tax Authority Clarification

Both the House and the Senate included a clarification of town spending and levying authority, as requested by townships and recommended by the state auditor. It would have tied spending authority to total revenue rather than only to the levy authorized. It also would have clarified that a town may levy as authorized by other law, in addition to the amount authorized by the electors.

H.F. 2540, 3rd engrossment, art. 3, §§ 29-30.

S.F. 2449.

Development Authorities and Special Districts

International Economic Development Zone, Twin Cities

Both the House and Senate tax bills provided for establishment of an international economic development zone within 60 miles of the Minneapolis-St. Paul International Airport and under the Greater Metropolitan Foreign Trade Zone Commission number 119, a joint powers authority created by Hennepin County, Minneapolis, Bloomington, and the Metropolitan Airports Commission. Both bills provided for sales tax exemptions and job credits for different time periods; the House bill also allowed a property tax exemption for certain improvements.

H.F. 2540, the 3rd engrossment, art. 7.

H.F. 2540, Senate unofficial engrossment, art. 7.

Housing and Redevelopment Authority (HRA) General Obligation Bond Projects

Both the House and the Senate proposed expanding the definition of “qualified housing development project” to include projects owned by a limited partnership or other entity if:

- ▶ the HRA or an entity controlled by the HRA is its sole general partner; and
- ▶ the project has or will receive an allocation of tax

exempt bonding and federal low-income housing tax credits.

Currently, the HRA must be the owner of the project for the term of the bonds.

H.F. 3081, 2nd engrossment, § 16.

H.F. 2540, Senate unofficial engrossment, art. 5, § 8; and art. 6, § 12.

Special Legislation

Lakes Area Economic Development Authority (EDA) Levy

Both the Senate and House proposed allowing the Lakes Area EDA (Alexandria) to levy as a special taxing district, rather than requesting its member governments to levy for the benefit of the authority.

H.F. 3081, 2nd engrossment, § 27.

H.F. 2540, Senate unofficial engrossment, art. 3, § 50.

Sauk River Watershed District Levy

Both the House and Senate proposed increasing the levy authority for this district—the House by an additional \$100,000 over current law, the Senate by changing the authorized amount to 0.01 percent of taxable market value.

H.F. 2540, 3rd engrossment, art. 3, § 39.

H.F. 2540, Senate unofficial engrossment, art. 3, § 56.

St. Louis County, Noncounty Nursing Homes

The Senate proposed extending the time to complete local approval of the 2003 special law for St. Louis County that authorized a special taxing district to fund the Chris Jenson nursing home. The House proposal was a general law that would have allowed St. Louis County to continue to levy for nursing homes not owned by the county but require the county to share the proceeds with all nursing homes in the county that are owned by governments other than the county.

H. F. 3081, 2nd engrossment, § 3.

H. F. 2540, Senate unofficial engrossment, art. 3, § 51.

St. Paul, RiverCentre Operation by a Nonprofit

Both the House and the Senate proposed authorizing the city of St. Paul to establish a nonprofit organization to manage and operate the RiverCentre complex. The provisions in both bodies where almost identical and provided for the establishment of a governing board, stated that the tax exemptions granted to the nonprofit in operating the complex are the same as the city has in operating it, required the nonprofit to comply with the open

meeting law and the government data practices act as the city does, and makes the nonprofit a “municipality” for purposes of the Municipal Tort Liability Act.

H.F. 3081, 2nd engrossment, §§ 29-32.

H.F. 2540, Senate unofficial engrossment, art. 6, § 24.

Metropolitan Government

Metropolitan Transit

Both the House and the Senate proposed authorizing the Metropolitan Council to issue \$32 million of debt to implement its regional transit master plan and transit capital improvement plan.

H.F. 3081, 2nd engrossment, § 19

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 16 and 26.

As part of the 2001 property tax reform, the state removed funding of metropolitan transit operations from the local property tax and replaced those funds with dedicated motor vehicle sales tax (MVST) revenues. It also provided that the Metropolitan Council could levy for any shortfall if the dedicated MVST revenues did not grow at least at the same rate as the consumer price index. As part of the 2004 budget-balancing proposal, the House proposed changing the MVST dedication from a percentage of revenues collected to a fixed dollar amount. In conjunction with the House omnibus transportation finance bill’s freeze in MVST funding, the House public finance bill would have precluded the possibility of the council making up for the freeze through a property tax levy by terminating the levy provision for fiscal year 2005 and thereafter.

H.F. 3081, 2nd engrossment, § 20; H.F. 3141, 2nd engrossment, art. 1, § 5.

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