

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.

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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 subs. 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, subs. 1 and 2; 469.015, subs. 1 and 3; 471.345, subs. 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

fiscal impact of a proposed rule on local governments.

Ch. 274, § 1, amending Minn. Stat. §14.131, effective August 1, 2004.

**State Bond-
Financed Property,
Allocation of
Proceeds on Sale**

If state bond-financed property is no longer usable or needed for the purpose for which it was acquired or bettered, the property may be sold for fair market value. If the property was acquired or bettered partly with state bond funds and partly with other money, after all debts, state and other, are repaid, the remainder is divided proportionately among those who contributed to the acquisition or betterment.

Under the change made this year, in calculating the share contributed by each entity, the amount to be attributed to the owner of the property must be the fair market value of property that was bettered by state bond proceeds at the time the betterment began. This change was sought by Richfield because the Minnesota Historical Society awarded in fiscal year 2004 \$12,100 in state bond-financed capital funding for restoration of the property known as the Bartholomew House. The Richfield school district acquired the property in 1965 for about \$8,300. If the property was later sold, the state and the school district would divide the proceeds according to their respective shares contributed. The value of the property in 2004 is much greater than what it was in 1965. The school district wanted to have its contribution valued at its fair market value in 2004, when it will be improved, rather than its cost in 1965 when it was purchased.

Ch. 278, § 1, amending Minn. Stat. § 16A.695, subd. 3, effective May 30, 2004.

**Phosphorous Lawn
Fertilizer Use
Restrictions and
Local Ordinance
Preemption Made
Statewide**

The 2002 Legislature restricted the use of phosphorus fertilizers on lawns by prohibiting their use after January 1, 2004, in the metropolitan area and permitting local governments outside the metropolitan area to similarly restrict or prohibit their use. The 2002 law prohibits any local regulation of phosphorus fertilizer for agricultural use and preempted local ordinances governing phosphorus fertilizers.

The 2004 Legislature expanded the prohibition statewide, similarly preempting local ordinances. As before, the phosphorus fertilizer may be used if a soil test indicates it is needed, the fertilizer is being applied to establish new turf, or it is applied on a golf course under the supervision of a trained person. Local units of government are responsible for enforcement of the law, using their existing authority.

“Local unit of government” means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, another special purpose district, and local or regional board.

Ch. 179, amending Minn. Stat. § 18C.60, subd. 2, effective January 1, 2005, and applies to fertilizer to be used for turf purchased at retail after August 1, 2004.

**Closure of a
Municipal Airport,
Notice and Public
Hearing**

To avoid a sudden municipal airport closing, as was apparently experienced in Illinois, the owner of a municipal airport must notify the Commissioner of Transportation of the owner's intent to close the airport, before or at the time operations cease at the airport. A municipality cannot abandon, significantly alter, demolish, or convey airport property for 180 days after the commissioner is notified and the commissioner must impose a civil penalty of \$1,000 per day on a municipality violating this prohibition, depositing the penalty amount in the state airports fund. The municipal airport owner must schedule a public hearing within 90 days of giving notice to the commissioner, giving at least 30-day public notice before the hearing. The airport owner must present information on the closing at the hearing. The commissioner must prepare before the hearing a written evaluation of the impact of the closing on the airport system. The commissioner must make the evaluation available to the airport owner and the public before the hearing.

A municipal airport is one owned by a city, county, town, or joint powers board, but does not include airports operated by the Metropolitan Airports Commission.

Ch. 250, adding Minn. Stat. § 360.046, effective August 1, 2004.

**Enhanced 911
Service and
Multiline Telephone
Systems**

Operators of multiline telephone systems serving institutions such as offices, universities, and hotels must provide enhanced 911 service or its equivalent to their customers. Most traditional "landline" telephones have this enhanced capability, which automatically transmits the caller's location to the emergency personnel answering the call. This feature allows emergency responders to quickly reach callers unable to speak or who do not know their location. However, it has been estimated that as few as 20 percent of large institutions with multiline telephone systems can provide responders with the caller's specific location (e.g., 8th floor, southwest corner).

The legislature appropriated \$3,475,000 from the special revenue fund to the Commissioner of Public Safety for public safety answering points that have implemented enhanced 911 service or whose governmental agency has made a binding commitment to the Commissioner of Public Safety to implement enhanced 911 service by January 1, 2008.

Ch. 282, §§ 2-11, amending Minn. Stat. §§ 403.01, subd. 6; 403.02, by adding subs. 22 to 26; 403.07, subd. 5; and adding § 403.15, effective May 30, 2004.

Final Payment for Road Work

Under prior law, final payment for any road work could not be made until the person in charge of the project certified to the county or town board that the work was done according to the contract. Now, certification of performance is required only for road construction or improvement contract for which a sealed bid is required (i.e., over \$50,000). In addition, a county auditor or town clerk will no longer be guilty of a misdemeanor for making final payment before the certification is filed.

Ch. 209, amending Minn. Stat. § 160.17, subd. 3, repealing Minn. Stat. § 160.17, subd. 4, effective August 1, 2004.

Temporary Seasonal Weight Restrictions for Recycling and Garbage Trucks

Until July 1, 2005, the seasonal weight limit for garbage and recycling trucks is 7 tons per axle. After July 1, 2005, the spring weight limit for garbage trucks returns to the spring load limit, 5 tons per axle, and for recycling trucks to 10 tons per axle. Violations of spring weight restrictions by recycling or garbage trucks are not subject to criminal penalties, but only civil fines.

Ch. 205, amending Minn. Stat. § 169.87, subd. 6, effective May 19, 2004.

Local Road Authority May Set Weight Limits

A local road authority, without MnDOT approval, may designate highways and streets under its jurisdiction on which vehicles of up to 10 tons per axle may travel. Under present law, such designations are done by MnDOT with local approval.

Ch. 295, art. 1, § 11, amending Minn. Stat. § 169.832, adding subd. 11a, effective August 1, 2004.

Regional Review of Local Bridge Projects No Longer Required

Bridge replacement and repair projects funded with grants from the state transportation fund no longer need to be reviewed by Regional Development Commissions or the Metropolitan Council before the grant is made.

Ch. 180, repealing Minn. Stat. § 174.50, subd. 4, effective August 1, 2004.

MnDOT Local Advisory Committees Reinstated

Five advisory committees made up of local government representatives are reinstated. They are the advisory committee for county state-aid highway rules, the advisory committee for municipal state-aid rules, the county state-aid screening board, the municipal state-aid screening board, and the advisory committee for expenditures from the trunk highway corridor projects account in the local road improvement program. These all expired June 30, 2003, under Minnesota Statutes, section 15.059, subdivision 5.

Ch. 295, art. 1, §§ 3, 5, 6, 7, 15, amending Minn. Stat. §§ 162.02, subd. 2, 162.07, subd. 5; 162.09, subd. 2; 162.13, subd. 3; 174.52, subd. 3, effective retroactively from

July 1, 2003.

**Salary Cap Study by
the Legislative
Coordinating
Commission (LCC)**

The LCC, in consultation with the Commissioner of Employee Relations and local government associations, must study and report to the House and Senate committees with oversight of governmental operations and local government by January 15, 2005, on the impacts of the political subdivision compensation limit on local units of government. The study must:

- (1) examine local government compensation limits and comparative salary data in other states;
- (2) assess the impacts of the local government compensation limit on salary structures, recruitment, and retention; and
- (3) evaluate alternatives to the compensation limit, including elimination of the limit.

Ch. 207, § 30, effective August 1, 2004.

**Minnesota Museum
Property Act**

This law regulates loans of and abandoned, personal property left with public and private nonprofit museums.

Ch. 213, adding Minn. Stat. §§ 345.70 to 345.74, effective August 1, 2004.

Liability

**Liability Protection
for giving Job
References**

An employee or former employee cannot maintain a cause of action against a public employer for disclosure of information listed below unless the employee or former employee shows by clear and convincing evidence that the information is false and defamatory, the employer knew or should have known so, and the employer acted maliciously to injure the person.

The following information may be disclosed: (1) dates of employment, (2) compensation and wage history, (3) job description and duties, (4) training and education provided by the employer, and (5) acts of violence, theft, harassment, or illegal conduct that is documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response. The employee or former employee must be notified in writing of disclosure of information under (5).

Additional information listed (such as evaluations or reasons for separation) may be disclosed with permission of the employee or former employee. The prospective employer or employment agency cannot

disclose the information without permission of the employee or former employee.

The new law also provides protections for private employers.

Ch. 137, § 3, adding Minn. Stat. § 181.967, effective August 1, 2004, and applies to disclosures made on or after August 1, 2004.

Elections

Help America Vote Act (HAVA)

In 2002, Congress enacted the Help America Vote Act (HAVA), which provides federal funding to states for election purposes and requires states to implement some election administration law changes. Minnesota enacted a number of changes in 2003. The 2004 Legislature made additional changes to Minnesota's election administration to implement the federal law.

Ch. 293, art. 1, amending and adding to various provisions of Minnesota Election Law, in Minn. Stat. chs. 201 to 206, effective January 1, 2004.

Fair Campaign Practices

The 2004 Legislature created an administrative remedy for violations of fair campaign practices in state and local elections. This process must be followed before the alleged violation may be prosecuted by a county attorney.

Ch. 277, amending Minn. Stat. §§ 10A.31, subd. 4; 201.275; 211A.08, adding subd. 3; 211B.16, adding subd. 3; adding 211B.31 to 211B.36, effective July 1, 2004, and applies to violations committed on or after July 1, 2004.

Noncommercial Signs and Local Ordinances

State law preempts municipal ordinances on the size of signs during the state general election season. Now, the preemption applies to the number of signs as well as the size so that noncommercial signs of any size can be posted in any number from August 1 to ten days after the state general election.

Ch. 142, amending Minn. Stat. § 211B.045, effective August 1, 2004.

Miscellaneous

The political parties must notify the city clerk as well as the county auditor of the date, time, and places of precinct caucuses. The county auditor must make this information available on request at least ten days before the caucuses.

A municipal clerk's office that is administering absentee balloting must be open the same hours as the county auditor's office. The clerk's and

auditor's office must be open until 5:00 p.m. the day before a primary or election, unless that day is a Saturday or Sunday.

An individual may serve as an election judge if he or she is eligible to vote in this state. Prior law required election judges to live in the precinct where they serve; or if not enough judges are available, then in the municipality or school district; and if still not enough, then in the county.

A municipal or school clerk or county auditor may give news media written authorization to enter polling places for up to 15 minutes during voting hours to observe the process. Reporters cannot come within six feet of an election judge or voter, talk to or interview a voter in the polling place, or make a list of persons voting or not voting.

Ch. 293, art. 2, §§ 12, 13, 19, 24, amending Minn. Stat. §§ 202A.14, subd. 3; 203B.085; 204B.19, subd. 1; 204C.06, adding subd. 8, effective May 30, 2004.

Counties, Towns For election law changes specific to counties, see [page 20](#), and for towns, [page 21](#).

Property Taxes and Aids, Public Finance

Levy Limits Expired The general levy limits under [Minnesota Statutes, sections 275.70 to 275.74](#), that apply to counties and cities with a population of 2,500 or more are scheduled to expire beginning with levies payable in 2005. No bills were introduced in either the House or Senate during the 2004 legislative session to extend levy limits to future years.

For a brief list of proposals that both the House and Senate would have considered in conference in the 2004 session, see the Appendix, [page 28](#).

Cities

Electronic Payroll Processing

A city may use electronic time recording systems if the city council adopts policies to ensure accurate and reliable timekeeping and payroll methods are used.

Ch. 165, amending Minn. Stat. § 412.271, subd. 2, effective April 27, 2004.

Charter Commissions

A city charter may provide that members of the governing body of the city cannot serve on the charter commission. A person can now be appointed to serve more than two successive terms on a charter commission.

Ch. 197, amending Minn. Stat. § 410.05, subs. 1 and 2, effective August 1, 2004.

Plan B Statutory Cities, Manager's Authority for Purchasing

The maximum dollar amount for purchases and contracts that the city manager may make or let is now \$20,000, up from \$15,000. The city council may still set a lower limit. The limit was last increased (to \$15,000) in 1992.

Ch. 278, § 5, amending Minn. Stat. § 412.691, effective May 30, 2004.

Municipal Utility Reporting on Conservation Improvement Expenditures

A few more small municipal utilities will be able to certify that they are meeting conservation improvement expenditure requirements by filing a letter with the Department of Commerce, rather than filing the more extensive overview and evaluation required of large municipal utilities. Under prior law, eligibility to file a certification letter instead of the full evaluation was determined looking at annual sales in dollars; now eligibility is determined by looking at annual sales in kilowatt hours. This means that the focus is on the size of the utility and the energy produced rather than on cost, which has increased over time.

Ch. 216, § 3, amending Minn. Stat. § 216B.241, subd. 1b, effective August 1, 2004.

Counties

Hazardous Buildings, Removal

Counties were added to the statute that allows cities and towns to order an owner to repair or remove a hazardous building or property condition. It provides for a civil action in district court to enforce an order. If an owner does not comply with the court's judgment, the municipality may repair or remove the hazardous building or property condition and collect the cost of the work by assessment. It also allows

for use of eminent domain.

Ch. 147, amending Minn. Stat. §§ 463.15, adding subd. 3a; 463.151; 463.152, subd. 2; 463.16; 463.161; 463.25, effective April 3, 2004.

**Poll Hours for Vote
on Changing County
Seat**

The polls must be open four hours longer for voting on whether to change the county seat. Under prior law, the polls had to be open from 8 a.m. to 5 p.m. Now they must be open from 7 a.m. to 8 p.m., the same as for state general elections.

Ch. 158, amending Minn. Stat. § 372.07, effective April 15, 2004.

Security Deposits

County recorders will no longer have to, but may, accept security deposits to guarantee payment of charges. If a county recorder accepts security deposits, any form of security deposit must be accepted to allow alternative ways of paying (e.g., electronic transfers).

The law was originally enacted to require acceptance of security deposits to accommodate title and mortgage companies so that their couriers would not have to pay for each transaction with the county recorder. Instead a company could deposit money with the county recorder to guarantee payment of charges.

Ch. 274, § 2, amending Minn. Stat. § 386.78, effective August 1, 2004.

**Electronic Bidding
for Sale of Surplus
County Personal
Property**

As part of the new law authorizing local governments to use electronic bidding and on-line reverse auction for contracting and purchasing, counties are authorized to use these methods for sale of surplus county personal property with an estimated value of \$15,000 or more. See the description of the contracting and purchasing law changes on page 6.

Ch. 278, § 4, amending Minn. Stat. § 373.01, subd. 1, effective May 30, 2004.

**County Approval
for Designation of
SNA**

A scientific and natural area (SNA) cannot be designated by the Commissioner of Natural Resources unless the designation is approved by resolution of the county board of the county in which the land is located.

Ch. 262, art. 2, § 3, amending Minn. Stat. § 84.033, effective for designations made after July 1, 2004.

**County Auditors No
Longer Responsible
for DNR Licenses
and Permits**

The Commissioner of Natural Resources may appoint agents to issue and sell cross-country ski passes, and game and fish licenses. This is instead of requiring county auditors to be responsible for DNR licenses and permits.

Ch. 255, §§ 20 to 22, 32 to 37, amending Minn. Stat. §§ 85.41, subds. 2, 4, 5; 97A.485, subds. 3 to 7, 11, effective July 1, 2004.

**Association of
Minnesota Counties,
List Greater
Minnesota Regional
Parks**

The legislature gave the Association of Minnesota Counties \$6,000 to identify and list all regional parks in Greater Minnesota, with an inventory of park facilities. This begins implementation of the Legislative Commission on Minnesota Resources' 2004 report on regional parks.

Ch. 255, § 46, subd. 2, effective May 29, 2004.

Towns

**Payments by
Electronic or Wire
Transfer, Credit
Card, Etc.**

Towns may now make payments by electronic or wire funds transfer and accept payment by credit card, debit card, and other forms of electronic or wire funds transfer. Cities and counties were given this authority in 2001.

Ch. 152, amending Minn. Stat. § 471.381, effective April 7, 2004.

**Revenue Threshold
for Annual Audits
Increased**

The threshold revenue amount, above which a town with a population of 2,500 or more must have an annual financial audit, was increased from \$500,000 to \$670,500 in 2004, and then adjusted for inflation each year after 2004.

The threshold amount has been \$500,000 since towns were added to this law in 1992.

Ch. 161, amending Minn. Stat. § 471.697, subd. 1, effective August 1, 2004.

Elections

When more than one seat is being filled at an election for town supervisor, a candidate must designate which seat he or she seeks.

Ch. 293, art. 2, § 34, amending Minn. Stat. § 205.075, adding subd. 3., effective May 30, 2004.

Ballot questions may be considered at the annual town meeting.

Ch. 293, art. 2, § 45, amending Minn. Stat. § 365.51, subd. 3, effective May 30, 2004.

If a town clerk has not appointed a deputy, the town treasurer shall perform the duties of the clerk relating to receiving candidate filings when the clerk is absent.

Ch. 293, art. 2, § 46, amending Minn. Stat. § 367.12, effective May 30, 2004.

Cartways

A town must establish a cartway when petitioned by the owner of property with no access except over a navigable waterway.

In February 2003, the Minnesota Supreme Court held that access via a navigable waterway was sufficient access and a town was not required to establish a cartway. *In re Daniel*, 656 N.W.2d 543 (Minn. 2003). This new law overrides that court opinion.

Ch. 262, art. 2 § 7, amending Minn. Stat. § 164.08, subd. 2, effective July 1, 2004.

Development Authorities and Special Districts

Housing and Redevelopment Authorities (HRA)

A townhome or condominium association cannot bar or limit a local HRA that acquired a unit after January 1, 1999, from leasing the unit to eligible low- or moderate-income persons.

Ch. 263, § 21, amending Minn. Stat. § 469.018, adding subd. 3, effective July 1, 2004.

Watershed Districts, Soil and Water Conservation Districts

Watershed districts and soil and water conservation districts were added to the list of governmental units covered by the exceptions to the prohibition against conflicts of interests statute. The statute stating the prohibition applies generally to public officers. The statute that provides exceptions to the prohibition specifies which units of government are covered.

Ch. 139, amending Minn. Stat. § 471.88, subd. 1, effective March 20, 2004.

Iron Range Resources and Rehabilitation Board (IRRRB)

All revenues collected by the IRRRB in connection with the state-owned ski and golf facilities at Giants Ridge Recreation Area must be deposited into the IRRRB account created in the state enterprise fund. Money in the fund is appropriated to the IRRRB to be spent as approved by the majority of the IRRRB to pay for construction, equipping, operation, repair, or improvement of facilities at Giants Ridge, to pay bond costs and debt service, and to pay the costs of other projects authorized by the board.

Ch. 275, § 1, amending Minn. Stat. § 298.221, effective the day after the latter of the town of White and the city of Hoyt Lakes have completed local approval.

Special Legislation

Anoka County

Anoka County may establish a county personnel board of appeals that differs from the general law in [Minnesota Statutes, section 375.65 to 375.67](#), by: (1) limiting the scope of the board to disciplinary matters, (2) specifying who is a proper party to litigation (the county, not the personnel board of appeals), (3) removing the county board from review of personnel board of appeals decisions and providing that the decisions can be appealed directly to the court of appeals, and (4) making the personnel board of appeals decision effective upon service.

Several other counties have special legislation to tailor the procedures to their individual situations, including Dakota, St. Louis, Hennepin, and Ramsey counties.

Ch. 210, effective upon local approval.

Crystal, Golden Valley, and New Hope

The 2004 Legislature approved the consumptive use of groundwater under a permit of more than 2 million gallons per day average, by the Joint Water Commission, a joint powers board of the cities of Crystal, Golden Valley, and New Hope. The Commissioner of Natural Resources must determine that the water remaining in the basin of origin will be adequate to meet the basin's need for water and must approve the use. Legislative approval was sought as required under [Minnesota Statutes, section 103G.265](#), subdivision 3.

Ch. 230, effective May 20, 2004.

Hoyt Lakes, Town of White

The city of Hoyt Lakes may extend its zoning and subdivision regulations into a specified part of the town of White, if the town consents.

Ch. 275, §§ 4 and 5, effective the day after the latter of the town of White and the city of Hoyt Lakes have completed local approval.

Minneapolis

Columbia Parkway, Ridgeway Parkway, and Stinson Boulevard, all in Minneapolis, are to be considered included in the metropolitan regional recreation open space system. This means the Minneapolis Park Board may use regional funding it receives for operations and maintenance on these parkways.

Ch. 255, § 48, effective July 1, 2004, and expires August 1, 2007.

The Commissioner of Natural Resources may lease land on the upper bluff of Fort Snelling State Park for athletic fields and golf operations to the Minneapolis Park and Recreation Board. The Executive Council (composed of Minnesota's constitutional officers) does not have to

approve the lease or issuance of a liquor license by the Commissioner of Public Safety. The park and recreation board may charge tenants of Officer's Row and Area J up to \$450,000 for installation of a new water line.

Ch. 255, § 18, amending Minn. Stat. § 85.34, adding subds. 6, 7, effective July 1, 2004.

Ramsey County

If the county board authorizes it, the court must impose an additional \$1 surcharge on every person convicted of any felony, gross misdemeanor, or petty misdemeanor (other than a parking violation). The court administrator for the second judicial district must collect the surcharge. The money collected is to fund a petty misdemeanor diversion program administered by the Ramsey County Violations Bureau. (It is likely that additional legislation appropriating the money will be necessary to implement this law.)

Ch. 278, § 2, amending Minn. Stat. § 357.021, subds. 6 and 7, effective the day after the county authorizes imposition of the charge, or August 1, 2004, whichever is later, and applies to convictions on or after the effective date.

Miscellaneous Land Sales

A number of provisions for the transfer or sale of public lands may affect local governments, counties in particular. See [ch. 262](#), art. 3.

Metropolitan Government

Metropolitan Council

Disbursements by electronic funds transfer permitted. In addition to payments by check, the Metropolitan Council is now permitted to make disbursements by means of electronic funds transfer when authorized by the chair or vice-chair of the council and by the regional administrator or designee.

Ch. 140, amending Minn. Stat. § 473.13, subd. 4, effective March 20, 2004.

Investment of postretirement reserves. Notwithstanding chapter 118A (governing investment of local public funds), the State Board of Investment may invest Metropolitan Council postretirement reserve funds when requested by the council. Neither the reserve of the funds or their investment by the board constitutes an irrevocable dedication of the funds for the purpose of postretirement benefits.

Ch. 175, amending Minn. Stat. § 473.13, by adding subd. 5, effective May 11, 2004.

ALHOA formula modified. The formula for determining a municipality's affordable and life-cycle housing opportunities amount

(ALHOA) is modified for calendar years 2003 and thereafter. The new formula uses each municipality's proportionate share of levies for the local housing incentives account and the livable communities demonstration account to calculate the ALHOA. Previously, each municipality's amount was based on new residential market values. The ALHOA is what a municipality must spend on affordable and life-cycle housing in order to be eligible for funding under the Metropolitan Livable Communities Act.

The council sought the legislation because of rising housing costs, and the change is intended to slow the escalation of the amount a participating city must contribute toward their own affordable and life-cycle housing efforts.

Ch. 259, amending Minn. Stat. § 473.254, subs. 2, 3, 4, 6, 7, and 8, and adding subd. 3a, effective May 13, 2004.

Transit. LRT crossings. Vehicles required to stop at railroad crossings do not have to stop at an LRT crossing if the crossing is within an intersection of two or more streets controlled by a traffic signal, and signs are posted stating that stopping is not required. The owner or operator of the tracks may place the signs.

Ch. 245, § 1, amending Minn. Stat. § 169.28, subd. 1, effective May 27, 2004.

Local regulation of LRT horns and whistles. Minneapolis and Bloomington may regulate, subject to federal law, LRT use of audible warnings.

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

Fare violations. In addition to spelling out what "unlawfully obtaining service" from public transit means, it is now a misdemeanor to not show proof of fare paid on request of a transit representative where self-service, barrier-free fare collection is used. This allows for enforcement of the LRT fare system.

Ch. 245, §§ 3 and 4, amending Minn. Stat. § 609.855, subd. 1, and adding subd. 7, effective May 27, 2004.

Park and Open Space System. Columbia Parkway, Ridgeway Parkway, and Stinson Boulevard, all in Minneapolis, are to be included in the metropolitan regional recreation open space system. This means the Minneapolis Park Board may use regional funding that it receives for operations and maintenance on these parkways.

Ch. 255, § 48, effective July 1, 2004, and expires August 1, 2007.

The Legislative Commission on Minnesota Resources is directed to continue studying funding for operation and maintenance costs at regional parks in the metropolitan area and in greater Minnesota.

Ch. 255, § 46, subd. 1, effective May 29, 2004.

Metropolitan Radio Board

The board's membership is expanded from 17 to 21 members to permit the inclusion of county commissioners from Chisago and Isanti counties. In addition, the Commissioner of Public Safety, or the commissioner's designee, and the chair of the technical operations committee were added to the board.

The Metropolitan Radio Board is again the entity that may request that the Metropolitan Council issue revenue bonds for specified purposes, instead of the Public Radio Communication System Planning Committee. The planning committee was established in the Anti-Terrorism Act of 2002, and in the 2003 special session, was given the authority to request issuance of the revenue bonds. The planning committee is restructured as the Statewide Radio Board and is responsible for planning and implementing the statewide system, including the metropolitan area for the third phase of the public safety radio communications system. This includes the authority to request the Metropolitan Council to issue its revenue bonds for the third phase of the system.

The new law also provides for regional radio boards around the state. On July 1, 2006, the Metropolitan Radio Board's powers and duties not assumed by a regional radio board meeting the new law's requirements, will be taken over by the Statewide Radio Board.

Finally, the Metropolitan Radio Board must report by February 1, 2005, to the governor and the legislature on allocation of costs among state, regional, and local parts of the system, and how the board will deal with allocation of costs among existing and new users before July 1, 2006, when the board sunsets.

Ch. 201, amending Minn. Stat. §§ 403.21, subds. 1, 2, 3, 5, 8, 9, 10, and by adding various subdivisions; 403.22, subds. 1 and 2; 403.23, subd. 3; 403.27, subd. 1; 403.35; 403.36; adding §§ 403.20; 403.37; 403.38; 403.39; 403.40; repealing Laws 1995, ch. 195, art. 1, § 18, as amended, effective May 18, 2004.

Metropolitan Mosquito Control Commission

The required public meetings to notify citizens of an intent to do aerial spraying for mosquito control must be held within each city or town where the pesticide treatment is to be made, and the time and location of

the meetings must be convenient for residents. The 2003 Legislature required the public meetings to be held. (This law applies to all mosquito spraying in the state.)

Ch. 254, § 3, amending Minn. Stat. § 18B.07, subd. 2, effective August 1, 2004.

Vetoed Legislation

Federally Subsidized Transit Facilities, Bidding Exception

The governor vetoed legislation sought by Minneapolis that would have provided an exception to the requirement that a housing and redevelopment authority use an open and competitive bidding process for construction of a transit facility if at least 60 percent of the construction costs are federally financed and other conditions are met.

Ch. 265 (S.F. 2386)

Omnibus Liquor Act

The governor vetoed the omnibus liquor act, which included a number of provisions related to local government. It included a provision that would have allowed cities to grant temporary licenses to small brewers to sell their product at a social event in the city that is sponsored by the brewer. It also included several special laws for the Elko Speedway, the State Fair wine license transfer from St. Paul to Ramsey County, Duluth's Wade Stadium, Minneapolis for a restaurant, and St. Paul for state capitol centennial events.

Ch. 237 (S.F. 2696)

Appendix: Tax and Public Finance Proposals Not Enacted

No tax or public finance provisions affecting local governments were enacted into law during the 2004 regular session. Below is a list of the major tax and public finance provisions directly related to local or metropolitan government that were the same or similar in bills that passed either the House or the Senate. The provisions were included mainly in the following three bills:

- ▶ [H.F. 2540](#), the third engrossment—the House omnibus tax bill
- ▶ [H.F. 3081](#), the second engrossment—the House public finance bill
- ▶ [H.F. 2540](#), the Senate unofficial engrossment—the Senate omnibus tax bill, which included the Senate public finance provisions

General

Capital Notes For Computer Software

The 2003 Legislature authorized use of capital notes to pay for “original operating system software.” This year, the House proposed expanding this authority to include all types of software and application development costs. The Senate proposed expanding it to include all software, application development costs, software upgrades, and training related to the use of the computer and software. Both bodies’ proposed changes would have applied to capital notes issued by counties, and home-rule charter and statutory cities.

H.F. 3081, 2nd engrossment, §§ 2, 8, 9.

H.F. 2540, Senate unofficial engrossment, art. 6, §§ 1, 7, 8.

Payment In Lieu of Taxes (PILT)

The House and Senate tax bills and the Senate supplemental budget bill contained provisions to increase state PILT payments to local governments on certain tax-exempt lands.

Camp Ripley. Both bodies proposed an in-lieu payment on land that is both held by the state for military purposes and designated as a game refuge. The land in question is at Camp Ripley (Morrison County), where the game refuge portion is available for use by the general public for about one-half of each year. Currently, no payment is paid to local governments on this land. Both the House and Senate would have required annual state payments equal to 50 percent of the PILT rate paid on acquired natural resource property, beginning with aids paid in calendar year 2005. This would be a payment of \$1.96 per acre in the first year.

H.F. 2540, 3rd engrossment, art. 3, § 1.

H.F. 2028, Senate 2nd unofficial engrossment, art. 9, § 22.

LUP lands. Both the House and Senate proposed increased payments

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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