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**League of Minnesota Cities**

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# TABLE OF CONTENTS

**LEAGUE OF MINNESOTA CITIES LEGISLATIVE STAFF .....vi**

**2016 POLICY COMMITTEE MEMBERS.....vii**

**Improving Service Delivery.....vii**

**Improving Local Economies.....vii**

**Improving Fiscal Futures ..... viii**

**Human Resources and Data Practices .....ix**

**LMC POLICY DEVELOPMENT PROCESS.....xi**

**PURPOSE, PROCESS AND PRINCIPLES OF CITY POLICIES.xii**

**IMPROVING SERVICE DELIVERY ..... 1**

SD- 1. Unfunded Mandates .....1

SD- 2. Local Control.....1

SD- 3. Local Approval of Special Laws .....1

SD- 4. Redesigning and Reinventing Government.....2

SD- 5. State Government Shutdowns .....2

SD- 6. City Costs for Enforcing State and Local Laws .....3

SD- 7. Duration of Conservation Easements .....4

SD- 8. Responsibility for Locating Private Underground Facilities.....4

SD- 9. Utility Relocation Under Design-Build Road Construction.....5

SD- 10. National Fire Protection Association (NFPA) Standards .....6

SD- 11. Fire Mutual Aid .....6

SD- 12. Clarification of Joint Powers Relationships with Federally Recognized Indian Tribes.7

SD- 13. Ambulance Service Costs and Liability .....7

SD- 14. Fees for Service .....8

SD- 15. Improving and Increasing Citizen Access to Information.....9

SD- 16. Administrative Fines for Code Violations.....10

SD- 17. Contracting and Purchasing.....10

SD- 18. Recreational Program Awards and Trophies.....11

SD- 19. City Enterprise Operations .....11

SD- 20. Constitutional Amendments .....11

SD- 21. Initiative and Referendum .....12

SD- 22. Civil Liability of Local Governments .....12

SD- 23. Private Property Rights and Takings.....13

SD- 24. Organized Solid Waste Collection .....14

SD- 25. Private Well Drilling .....15

SD- 26. Sustainable Development .....15

SD- 27. Construction Codes .....	17
SD- 28. Building Officials .....	18
SD- 29. Disability Access Requirements.....	18
SD- 30. Assaults on Code Enforcement Officials .....	19
SD- 31. Restrictions on Possession of Firearms .....	20
SD- 32. Public Safety Communications .....	20
SD- 33. CriMNet.....	21
SD- 34. Pawn Shop Regulation and Use of the Automated Property System (APS).....	22
SD- 35. Compensation and Reimbursement for Public Safety Services .....	23
SD- 36. Administrative Traffic Citations .....	24
SD- 37. Driver Diversion Programs .....	25
SD- 38. Distracted Driving .....	25
SD- 39. Juveniles in Municipal Jails .....	26
SD- 40. Justice System Funding.....	26
SD- 41. 21 <sup>st</sup> Century Policing.....	27
SD- 42. Homeland Security Costs and Liability.....	28
SD- 43. State Compliance with Federal REAL ID Act.....	28
SD- 44. Immigration Reform.....	29
SD- 45. Legalization of Fireworks .....	30
SD- 46. Traffic Enforcement Cameras .....	31
SD- 47. Operation of Motorized Foot Scooters.....	31
SD- 48. Electric Personal Assistive Mobility Devices and Electric Vehicles Operation While Impaired.....	32
SD- 49. Drug Courts .....	32
SD- 50. Methamphetamine.....	33
SD- 51. Drug Paraphernalia.....	33
SD- 52. Regulation of Massage Therapists .....	34
SD- 53. Lawful Gambling and Local Control .....	34
SD- 54. Liquor Liability Insurance Limits .....	35
SD- 55. On-Sale Liquor or Wine Licenses to Cultural Centers.....	35
SD- 56. Wine and Off-Sale Licenses.....	35
SD- 57. Youth Access to Alcohol and Tobacco .....	36
SD- 58. Smoking Ban Ordinances.....	36
SD- 59. Regulation of Mobile Businesses .....	37
SD- 60. Regulation of Party Buses and Boats-for-Hire.....	37
SD- 61. Environmental Protection.....	38
SD- 62. Municipal Public Water Supplies.....	40
SD- 63. Impaired Waters .....	41
SD- 64. Urban Forest Management Funding.....	43
SD- 65. Election Issues .....	43
SD- 66. Administering Absentee Balloting .....	44
SD- 67. Felon Voting Rights Restoration.....	45
SD- 68. Write-in Candidates in City Elections.....	45
SD- 69. Ranked Choice Voting .....	46
SD- 70. Posting Campaign Finance Reports Online.....	46
SD- 71. Electronic Rosters.....	46

SD- 72. Election Judge Recruitment and Retention .....	47
SD- 73. Mail Balloting.....	47
SD- 74. Changing the Year of a Municipal Election .....	48
SD- 75. Park and Library Land Tax Break.....	49
SD- 76. Charter Law Expense Limit Increase .....	49

**IMPROVING LOCAL ECONOMIES ..... 50**

LE- 1. Growth Management and Annexation.....	50
LE- 2. Wildlife Management Areas.....	51
LE- 3. Official State Mapping Responsibility .....	52
LE- 4. Electric Service Extension.....	52
LE- 5. Statutory Approval Timelines .....	52
LE- 6. Public Infrastructure Utilities .....	53
LE- 7. Maintenance of Retaining Walls Adjacent to Public Rights of Way .....	54
LE- 8. Development Disputes.....	55
LE- 9. Foreclosure and Neighborhood Stabilization .....	55
LE- 10. Resources for Affordable Housing.....	57
LE- 11. Energy Efficiency Improvement Requirements for Housing.....	58
LE- 12. In-Home Day Care Facilities.....	59
LE- 13. Residential Programs .....	59
LE- 14. Post-Incarceration Living Facilities.....	60
LE- 15. Inclusionary Housing.....	61
LE- 16. Community Land Trusts.....	61
LE- 17. Telecommunications and Information Technology.....	62
LE- 18. Broadband.....	62
LE- 19. Competitive Cable Franchising Authority.....	63
LE- 20. Right-of-Way Management.....	64
LE- 21. Wireless Tower and Antenna Siting.....	65
LE- 22. Economic Development Authorities .....	66
LE- 23. Local Appropriations to Economic Development Organizations.....	66
LE- 24. Workforce Readiness.....	66
LE- 25. Community Reinvestment Partnerships and Financing.....	67
LE- 26. Tax Increment Financing (TIF) .....	68
LE- 27. Development Along Transit Corridors .....	69
LE- 28. Business Development Programs .....	70
LE- 29. Land Recycling and Redevelopment.....	70
LE- 30. Property Tax Abatement Authority .....	71
LE- 31. Workforce Housing .....	72
LE- 32. Revisions to the OSA Audit Function .....	73
LE- 33. OSA Time Limitations .....	74
LE- 34. Adequate Funding for Transportation .....	74
LE- 35. Turnbacks of County and State Roads .....	75
LE- 36. MnDOT Rights-of-Way Maintenance.....	75
LE- 37. Funding for Non-Municipal State Aid City Streets.....	76
LE- 38. Complete Streets.....	77
LE- 39. Safe Routes to School Grants Management .....	77

LE- 40. Railroads .....	78
LE- 41. Airport Planning and Funding .....	79
LE- 42. Airport Safety Zones .....	79

**IMPROVING FISCAL FUTURES ..... 81**

FF- 1. State-Local Fiscal Relations.....	81
FF- 2. Economic Contributions by Cities .....	82
FF- 3. State Budget Stability.....	82
FF- 4. Funding Local Government Aid .....	83
FF- 5. State Charges for Administrative Services .....	83
FF- 6. Reporting Requirements .....	84
FF- 7. Direct Property Tax Relief Programs.....	85
FF- 8. Sales Tax on Local Government Purchases .....	85
FF- 9. Taxation of Electronic Commerce .....	86
FF- 10. Local Lodging Taxes .....	86
FF- 11. Taxation of Electric Generation Personal Property .....	87
FF- 12. Electric Generation Taxation Reform .....	87
FF- 13. Agricultural Containment Property Tax Exemption Repeal.....	88
FF- 14. Taxation of Municipal Bond Interest.....	89
FF- 15. Pollution Control Exemption .....	89
FF- 16. State Support for Municipal Energy Policy Goals.....	90
FF- 17. Local Elected Officials Authority to Establish Local Budgets .....	90
FF- 18. Tax Hearing and Notification Process .....	91
FF- 19. General Election Requirement for Ballot Questions.....	91
FF- 20. City Fund Balances .....	92
FF- 21. Local Option Sales Tax and City Revenue Diversification .....	92
FF- 22. Expanding City Investment Authority .....	93
FF- 23. City Franchise Authority.....	94
FF- 24. Utility Valuation Transition Aid.....	95
FF- 25. Transition for Property Acquired by Tax-Exempt Entities.....	95
FF- 26. Payments for Services to Tax-Exempt Property .....	96
FF- 27. Fire Service Taxing Districts .....	96
FF- 28. Housing Improvement Areas/Special Service Districts.....	96
FF- 29. Tax-Forfeited Properties and Local Special Assessments .....	97
FF- 30. Distribution of Proceeds from the Sale of Tax-Forfeit Property .....	98
FF- 31. State Hazard Mitigation and Response Support .....	99
FF- 32. Impact Fees .....	99
FF- 33. Library Funding .....	100
FF- 34. Increasing Safe School Levy Authority.....	101
FF- 35. Equitable Funding of Community Education Services.....	101
FF- 36. Street Reconstruction Bond Approval .....	102
FF- 37. Electronic Fund Declaration Exemption.....	102

**HUMAN RESOURCES & DATA PRACTICES..... 103**

HR- 1. Personnel Mandates and Limits on Local Control.....	103
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HR- 2. Earned Sick and Safe Time.....	103
HR- 3. Pay Equity Compliance.....	103
HR- 4. Public Employment Labor Relations Act (PELRA).....	104
HR- 5. Public Employment Relations Board.....	105
HR- 6. Payment of Arbitration Fees .....	105
HR- 7. Essential Employees .....	105
HR- 8. Re-employment Benefits .....	106
HR- 9. Public Employee Defined Benefit Pension Plans .....	106
HR- 10. Retirement Work Incentives .....	108
HR- 11. State Paid Police and Fire Medical Insurance.....	109
HR- 12. Health Care Insurance Programs .....	110
HR- 13. Workers’ Compensation .....	110
HR- 14. Drug and Alcohol Testing in the Workplace .....	111
HR- 15. Veterans Preference .....	112
HR- 16. Military Leave Reimbursement .....	113
HR- 17. Background Checks .....	113
HR- 18. Tele-health Exams .....	114
HR- 19. Critical Incident Stress Debriefing.....	114

**Data Practices ..... 115**

DP- 1. Data Practices and Record Retention Compliance Costs .....	115
DP- 2. Maintaining Government Data in Large Databases .....	116
DP- 3. Sharing of Student Data with Local Law Enforcement in Emergencies.....	117
DP- 4. Disclosure of Victim Data.....	117
DP- 5. Open Meeting Law .....	118
DP- 6. Exceptions to the Open Meeting Law .....	118
DP- 7. Challenges to the Accuracy of Data .....	120
DP- 8. Law Enforcement Technologies.....	120

**Federal Employment Law ..... 121**

FED- 1. Consolidated Omnibus Budget Reconciliation Act (COBRA).....	121
FED- 2. Flexible Spending Accounts .....	121
FED- 3. IRS Regulations on Death Benefits .....	121
FED- 4. Federal Public Safety Collective Bargaining Bill.....	122
FED- 5. Federal Health Care Reform .....	122

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## LMC POLICY DEVELOPMENT PROCESS

The *City Policies* document addresses more than 180 legislative issues that impact cities and serves as the foundation of the League of Minnesota Cities (LMC) advocacy efforts. City officials from across the state are recruited throughout the year to serve on one or more policy committees. In 2016, over 150 city officials participated in the policy committees. Policies are considered, discussed, and revised annually with considerable member input. Then, draft policies are published online for member comments before being considered for approval by the LMC Board of Directors. Guided by the *City Policies*, LMC member cities and staff actively advocate for city-friendly legislation. Below are some of the major events in the policy development process:

- January** The Minnesota Legislature begins the first session of each two-year biennium in January of odd-numbered years. The 2017 Legislative session begins on January 3, 2017.
- February** The Legislature typically begins the second session of each biennium in February or March of even-numbered years. The February forecast will likely be released at the end of February or early March.
- March/April** From March 11-16, the National League of Cities hosts the Congressional City Conference in Washington, D.C. The League's legislative conference will be held on Thursday, March 23, 2017 at the Best Western Plus Capitol Ridge Hotel.
- May** Under the Minnesota Constitution, the deadline to end any legislative session is the first Monday following the third Saturday in May (May 22, 2017). The governor may call special legislative sessions when necessary.
- June** At the LMC Annual Conference (Rochester, June 14-16), members provide comments on *City Policies* throughout the conference and during the Legislative Update.
- July** Policy committees hold their first of three meetings. The July meeting typically includes a review of the most recent legislative session, a preliminary discussion of emerging issues, and a review of member comments and board interim policies from the prior year.
- August** Policy committees hold their second of three meetings to hear from subject-matter experts on existing and potential new policy topics.
- September** Policy committees meet for a third time to finalize their work and make specific policy recommendations to the LMC Board of Directors.
- October** Draft policies, as approved by the policy committees, are shared with members online during the comment period. Member input is also sought from city officials attending LMC Regional Meetings around the state each fall.
- November** The LMC Board of Directors reviews member input, then considers and amends the policies for the following calendar year. The Board adopts policies on behalf of League members before the start of the next legislative session.

## **PURPOSE, PROCESS AND PRINCIPLES OF CITY POLICIES**

The League of Minnesota Cities is dedicated to promoting excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities. Each year, the League's member cities identify common needs and goals, and the Board of Directors adopts policies designed to help cities overcome obstacles and reach those goals. These policies serve as the foundation of the League's advocacy work on behalf of Minnesota cities.

There are 853 cities in Minnesota, and 832 cities are members of the League of Minnesota Cities. Eleven townships, one joint powers entity, and 60 special districts are also League members. The League's members include the smallest rural cities in Greater Minnesota and the largest cities in the urban core; they include suburban communities in the Metropolitan Area and regional centers in every corner of the state. Every member of the League has a voice in developing the following policies.

Two core principles guide the development of City Policies and the actions of the League:

1. Local units of government must have sufficient authority and flexibility to meet the challenges of governing and providing citizens with public services. The Legislature must avoid imposing unfunded and underfunded mandates that erode local control and create liability and financial risk for city taxpayers.
2. The increasingly complex and costly requirements necessary for cities to provide services to their citizens require a strong partnership between federal, state, and local governments. This partnership should be based upon a shared vision for Minnesota and should allow individual communities to tailor that vision to the unique needs of their citizens.

Because of the fluid nature of emerging issues, state and national politics, and current events, additional and alternative policies may be proposed after the policies are adopted by the Board of Directors. The League will make every effort to notify members of substantial changes or additions to policies after they are adopted by the Board of Directors

LEAGUE OF MINNESOTA CITIES

**2017**

**City Policies**

# IMPROVING SERVICE DELIVERY

## SD-1. Unfunded Mandates

*Issue:* Federal and state mandated programs substitute the judgment of Congress, the president, the Minnesota Legislature, and the governor for local budget priorities. These mandates force cities to reduce funding for other basic services or to increase taxes and service charges.

*Response:*

- a) Existing unfunded mandates should be reviewed and modified, or repealed where possible.
- b) No additional statewide mandates should be enacted unless full funding for the mandate is provided by the level of government imposing it or a permanent stable revenue source is established.
- c) Cities should not be forced to comply with unfunded mandates.
- d) Cities should be given the greatest flexibility possible in implementing mandates to ensure their cost is minimized.
- e) The legislative government redesign groups created in 2010 should consider the various unfunded mandates as they look at local government reform and redesign and make recommendations for the next session.

## SD-2. Local Control

*Issue:* Cities are often laboratories for determining public policy approaches to the challenges that face citizens and success is rooted in local control to determine how best to respond to the ever-changing needs of a citizenry. City government most directly impacts the lives of people and therefore, local units of government must have

sufficient authority and flexibility to meet the challenges of governing and providing citizens with public services.

*Response:* The increasingly complex and costly requirements necessary for cities to provide services to their citizens require a strong partnership between federal, state and local governments. This partnership should be based upon a shared vision for Minnesota and should allow individual communities to tailor that vision to the unique needs of their citizens. The state should not enact initiatives that erode the fundamental principle of local control in cities across Minnesota.

## SD-3. Local Approval of Special Laws

*Issue:* The Minnesota Constitution prohibits special legislation except for certain special laws relating to local government. It provides that a special law must name the affected local unit of government and is effective only after approval by the local government unit, unless general state law provides otherwise. Under state statute, a special law is not effective unless approved by the affected local unit of government, except under limited circumstances.

In recent years, the Legislature has occasionally enacted general laws that affect a single local unit of government. By enacting a general law with limited application, local approval is not required.

*Response:* The League of Minnesota Cities supports the constitutional requirement that a special law must be approved by the affected local unit of government before it can take effect. If a law is intended to affect or benefit a single local unit of government, the Legislature



**must follow the requirements for enacting a special law set forth in the Minnesota Constitution and in state statute. The League specifically opposes the Legislature's technique of bypassing the constitution by not naming the local government, but describing the local government in such narrow terms that it can only apply to one entity.**

#### **SD-4. Redesigning and Reinventing Government**

*Issue:* Every level of government is redesigning, reinventing, and reevaluating its organizational structure and programs in response to financial realities and citizens' needs and problems. Reforms, however, must be more than change for the sake of change to existing programs. It is imperative that government officials talk with citizens about how services are currently provided and how they can be best provided in the future.

To be meaningful, redesign of governmental entities and services should:

- a) save money where feasible;
- b) deliver improved services;
- c) serve essential needs; and
- d) be equitably structured.

Cities have and will continue to re-evaluate city programs and services, pursue the use of cooperative agreements, and consider organizational changes that provide greater government efficiency and result in better service to citizens. Citizen input and participation should be gathered and taken into account as decisions about service delivery are being made and implemented.

All levels of government are encouraged to:

- a) Ensure that in redesigning, reinventing or reassigning government services and

programs, the appropriate level of service to citizens is evaluated and citizen demands and expectations are adequately addressed.

- b) Engage as many citizens as possible, from diverse backgrounds and interests, to determine what services matter most to citizens and how the delivery of those services can be changed to increase efficiency and lower cost.
- c) Educate citizens about what services government delivers, how they are delivered, and how those services are funded.
- d) Engage in traditional and nontraditional partnerships to make service changes and do things in new ways.
- e) Identify and repeal programs or discontinue services that are no longer necessary, and evaluate which services can readily and fairly be provided by the private sector.

***Response:* Federal, state, and county governments should:**

- a) **Promote and support local redesign efforts through incentives rather than mandates.**
- b) **Communicate and establish a process of negotiation before shifting responsibility for delivering services from one level of government to another, or seeking to reduce service duplication.**
- c) **Utilize government entities with proven track records in redesign efforts.**

#### **SD-5. State Government Shutdowns**

*Issue:* Twice in less than one decade, the state Legislature and governor failed to reach a global agreement on the state budget by the end of the fiscal biennium (June 30 of odd-numbered years). As a result of these impasses, portions of state government were

shut down. The shutdowns, particularly the shutdown in 2011, created a range of challenges for cities, as well as for the state's courts, residents, businesses, licensed professionals, state employees and others.

For cities, the most pronounced challenges related to the shutdowns were as follows:

- a) Uncertainty about the timing and amount of aid and credit reimbursement payments and the distribution of local sales tax revenues.
- b) Inability of licensed city professionals such as peace officers and water treatment facility operators to renew licenses.
- c) Loss of access to critical information such as the Bureau of Criminal Apprehension database and state-mandated reports.
- d) The shutdown of transportation projects on the trunk highway and state aid system.
- e) Interruption of local economic development due to the state having sole authority to inspect, review and approve various plans and types of projects.

***Response:* The League of Minnesota Cities urges the Legislature and governor to establish a procedure in state law to continue certain state government operations into a new biennium in the event that the governor and legislators cannot reach a budget agreement. Specifically, the Legislature and governor should modify state law to assure that the staff necessary to distribute state funds that are already encumbered or statutorily appropriated to local governments are distributed as statutorily scheduled, or in the absence of a statutory payment schedule, are released in a predictable and timely manner in the event of future shutdowns.**

**The Legislature should also pass legislation that allows existing licenses of public employees to be continued during any future state government shutdown and should identify additional areas, such as electrical and plumbing inspection and plumbing plan review, where local governments could reasonably step in to handle the inspections, review, and approval necessary for local projects to move forward, and allows work on approved projects to continue in state rights-of-way.**

### **SD-6. City Costs for Enforcing State and Local Laws**

***Issue:*** Cities experience substantial costs enforcing state and local laws, particularly those related to traffic, controlled substances, and incarceration of prisoners. The current method in our criminal justice system of recovering costs for law enforcement and prosecution through fines is insufficient to meet the costs incurred by local governments. Further, when a violator requests relief from paying the full amount of the fine and surcharge, the courts have been more inclined to waive the fine than to reduce the surcharge. When this occurs, the local units of government recover no costs even though the city has incurred expenses.

***Response:* The Legislature should review this issue and adopt measures that provide for complete reimbursement of the costs incurred by local governments in enforcing state and local laws. Solutions that should be considered include:**

- a) Increasing fine amounts.
- b) Removing or modifying county and state surcharges that conflict with cost recovery principles.
- c) Requiring the courts to consider ordering restitution from the defendant to reimburse the costs of

**enforcement and prosecution as part of any sentence.**

- d) Requiring that if a court reduces the amount paid by a violator, any reduction should be made from the surcharge and not the fine.**

## **SD-7. Duration of Conservation Easements**

*Issue:* The Minnesota Marketable Title Act provides that any deed over 40 years old can be disregarded unless the holder of the interest re-records it. There is an exception for a person in possession of the property. A 2010 Minnesota Supreme Court decision said that the person in possession has to show that the possession has been visible enough to put a prudent person on notice of the interest, and that the possession has to be continuous. See, *Sampair v. Village of Birchwood*, 784 N.W. 2d 65 (Minn. 2010).

This creates issues for cities that have conservation easements. It is difficult, if not impossible, to show actual use of the easement because conservation easements are passive easements, not active ones. As a result, cities will have to re-record the easements every 40 years in order to maintain them. This will result in a significant administrative burden and increase costs for local units of government due to staff time, legal fees, and recording fees.

Additionally, Minn. Stat. § 500.20, entitled “Defeasible Estates,” provides in subd. 2a that private covenants, conditions, or restrictions that affect the title or use of real estate cease to be valid 30 years after the date of the instrument creating them and they may be disregarded. This provision was initially enacted in 1988.

Minn. Stat. ch. 84C regarding conservation easements was enacted in 1985, and Minn.

Stat. § 84.64 and § 84.65 regarding conservation restrictions were originally enacted in 1974. Because conservation easements and conservation restrictions are not listed among the restrictions that are not subject to Minn. Stat. § 500.20, subd. 2a, it is possible to conclude, by negative implication, that subd. 2a does apply to the conservation easements and conservation restrictions created by earlier enacted statutes. This conclusion is inconsistent with the language in Minn. Stat. § 84C.02(b) that “a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.”

***Response:* The League of Minnesota Cities supports legislation that exempts holders of conservation easements from re-recording the easements under the Minnesota Marketable Title Act and that clarifies that Minn. Stat. § 500.20, subd. 2a, does not apply to conservation easements and restrictions.**

## **SD-8. Responsibility for Locating Private Underground Facilities**

*Issue:* Cities are responsible for complying with state pipeline safety regulations that hold cities responsible for locating and marking private service laterals that connect in public rights-of-way to city sanitary and storm sewer, water, and district heating systems. The Minnesota Office of Pipeline Safety (MNOPS) is proposing amendments to state pipeline and safety rules related to the definition of excavation and changes to mandatory damage reporting.

Cities are concerned that damage to private service laterals within the public right-of-way continues due, in part, to construction methods during the replacement, repair and/or installation of underground utilities which cross city water and sewer services that are in the public rights-of-way.

Trenchless excavation could potentially cause damage to underground service laterals and negatively impact the quality of utility services.

***Response:*** The League supports the changes to the definition of excavation presented by MNOPS at the 2012 Review of ch. 216D. Cities support the elimination of windbreaks, shelterbelts, and tree plantations from the definition of excavation, unless any of these activities disturbs the soil to a depth of 18 inches or more.

The League supports exempting normal maintenance of roads and streets from the definition of excavation if the maintenance does not change the original grade and does not involve the road ditch by defining “original grade” as the grade at the date of issue of the first notice by the excavator.

The League supports increasing MNOPS fines for violators of state pipeline safety requirements, bringing state penalties in line with federal penalties.

The League opposes mandatory damage reporting and recommends a simple standardized form to encourage cities to voluntarily report damages. The League opposes requirements that would force cities to mark underground facilities of all sizes and materials.

The League recognizes that trenchless excavation presents concerns to cities. Private property owners in the excavation area must receive advance notice of any trenchless or other excavation activities that could affect the quality of utility services. Notice must include at least one phone number for assistance in case of any service problems.

**Contractors must comply with city permits requiring that the drill head be visible when crossing any paint marks and moving through the pothole at the depth that the city allows for the installation.**

**Cities must not be required to locate privately-owned water and sewer laterals and must not be held responsible for actions by excavators when the city determines not to locate such facilities. Excavators should be responsible for locating and protecting any private service lateral that is impacted by excavation activities conducted on private property beyond the public right-of-way.**

## **SD-9. Utility Relocation Under Design-Build Road Construction**

***Issue:*** The Minnesota Department of Transportation (MnDOT) has promoted legislation relating to the design-build construction process that would require private and public utilities to be responsible for utility relocation necessitated by road construction. The policy, if enacted, would create unanticipated costs for utilities owned and operated by cities. Municipally-owned utilities would be unreasonably held to the same standards as privately-owned utilities that exist in the public right-of-way.

***Response:*** The League of Minnesota Cities supports use of the design-build procedure, however, municipal utilities that exist in the public right-of-way should not be penalized under this process. Municipal utilities legitimately exist in the public right-of-way. When a MnDOT construction project requires the relocation of utilities, the cost of relocating municipal utilities should be shared equitably between MnDOT and affected municipal utilities.

## **SD-10. National Fire Protection Association (NFPA) Standards**

**Issue:** The National Fire Protection Association (NFPA) is an international association of individuals and trade and professional organizations that deals with fire and life safety. The NFPA has advocated legislation that would mandate two standards: NFPA 1710, Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments, and NFPA 1720, Organization and Deployment of Fire Suppression, Emergency Medical Operations, and Special Operations to the Public by Volunteer Fire Departments. NFPA standards 1710 and 1720 define minimum response times, minimum fire company staffing levels, initial full alarm response levels, and extra alarm response levels. Although NFPA codes and standards are voluntary, they are often adopted by local jurisdictions.

**Response:** Levels of service delivery for fire and emergency medical services (EMS) have always been determined by local jurisdictions. If mandated, the NFPA standards would force local governments to shift dollars from fire prevention programs to fire suppression activities, potentially increasing the risk of fire and the danger to local firefighters.

The League of Minnesota Cities opposes any attempt to mandate standards for minimum staffing levels of fire, specialized or EMS vehicles controlled by units of local government. The League also opposes any attempt to adopt a standard dictating or affecting the response time of any fire, specialized or EMS vehicle.

## **SD-11. Fire Mutual Aid**

**Issue:** City and township fire departments regularly assist each other with firefighting and other response activities. This mutual aid is mostly authorized by individual written contracts with each city or township, which results in a patchwork of different agreements with different provisions. Often, each city attorney recommends different provisions.

Following the Red River floods and the St. Peter tornados, emergency responders (including fire departments) met and helped pass a statute to govern mutual aid situations when there is an emergency declared by mayor or governor and no written agreements exist. The statute, Minn. Stat. § 12.331, provides a framework for how worker's compensation, liability, property claims, insurance, and charges between the departments will be handled in mutual aid situations.

The League of Minnesota Cities Insurance Trust (LMCIT) developed a model mutual aid agreement that contains the same basic structure for liability as the statute. Many cities have entered into area-wide mutual aid agreements that are similar to the LMCIT model agreement. To provide uniformity, there should be a statute that is similar to Minn. Stat. § 12.331, to govern daily fire mutual aid situations that do not rise to the level of emergencies.

**Response:** The Legislature should pass a statute to provide uniform provisions when fire departments assist each other. These provisions should include statutory definitions and clarifications for:

- a) Who is in command of the mutual aid scene.
- b) Who will cover the firefighters for worker's compensation.

- c) **How liability and property claims will be handled.**
- d) **Who will pay for expendable supplies such as foam.**
- e) **When fire departments will charge each other for these services.**
- f) **The ability for fire departments to opt out by having a separate written agreement.**

- a) **Be subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties arising out of the joint powers agreement to the same extent as a municipality under Minn. Stat. ch. 466; and**
- b) **Notwithstanding Minn. Stat. § 16C.05, subd. 7, waive its sovereign immunity with respect to claims arising from liability under the joint powers.**

### **SD-12. Clarification of Joint Powers Relationships with Federally Recognized Indian Tribes**

*Issue:* During the 2010 legislative session, Minn. Stat. § 471.59 was modified to allow federally recognized Indian tribes to participate in joint powers agreements with other governmental entities, including Minnesota cities. Indian tribes are extremely unique legal entities under federal law and international treaties. The new law was a broad brush authorization that did not address important issues that uniquely arise when dealing with Indian tribes related to sovereignty, insurance liability and liability limits (commonly called “tort caps”). Previous laws, such as Minn. Stat. § 626.93 (authorizing tribes to act as law enforcement entities) explicitly addressed these concerns. Since the new law passed, interest has been expressed by public safety groups and individual cities in entering into joint powers agreements with federally recognized Indian tribes. However, legislative guidance is needed to address concerns related to sovereignty, insurance and liability limits for these agreements.

***Response:* Include in Minn. Stat. § 471.59 (the joint powers statute) language substantially similar to Minn. Stat. § 626.93 that clarifies that Indian tribes entering into joint powers relationships agree to:**

### **SD-13. Ambulance Service Costs and Liability**

*Issue:* The cost of providing ambulance care has increased steadily over the last several years due in part to changes in Medicare reimbursement. The federal Balanced Budget Act (BBA) of 1997 made two significant changes to ambulance billing. First, the act mandated that all ambulance services accept Medicare assignments as payment in full; that is, ambulance services cannot bill the Medicare patient for any unpaid balance beyond the Medicare payment. Second, the act mandated a uniform fee schedule that was implemented in April 2002. The new fee schedule significantly reduced reimbursement levels for many ambulance services. The BBA mandates are impacting the ability of some Minnesota ambulance service providers to adequately fund their operations.

The loss of revenue due to Medicare reimbursement changes, coupled with higher insurance rates, is affecting the ability of many non-government-based ambulance service providers to deliver emergency care, particularly in rural Minnesota. All ambulance services and personnel are regulated by Minn. Stat. ch. 144E and must comply with the same licensing, training, and equipment-related requirements, regardless of ownership. However, non-government-based ambulance service

providers are treated differently from government-based service providers in terms of exposure to liability. While government-based ambulance service providers have specific statutory caps on damages that limit their liability, non-government-based ambulance service providers are not protected by such caps. Consequently, non-government-based ambulance service providers have experienced inordinate growth in their insurance rates.

Non-government-based ambulance service liability exposure is a concern for three reasons. First, municipalities that contract for ambulance service may be required to purchase excess liability coverage in order to protect non-government-based ambulance service providers against claims. Second, it may discourage mutual aid agreements between government- and non-government-based ambulance service providers. Finally, unlimited liability exposure threatens the existence of small, non-government-based rural ambulance providers, which could leave large geographic areas without any ambulance service and undermine emergency response to mass casualty incidents.

In addition, the liability exposure of medical directors associated with ambulance service is a concern. While medical directors of government-based ambulance services may arguably be covered by public official immunity, the law is unclear and should be clarified.

**Response: The League of Minnesota Cities supports federal legislation that would:**

- a) **Require Medicare to set ambulance payment rates at the “regional cost” of providing service;**
- b) **Require adequate reimbursement for ambulance providers;**

- c) **Establish a “prudent layperson” standard for the payment of emergency ambulance claims such that if a reasonable person believed an emergency medical problem existed when the ambulance was requested, Medicare would pay the claim;**
- d) **Make it easier for providers to file claims with Medicare by eliminating a processing system that often leads to the rejection of legitimate reimbursement claims.**

**The League also urges the Legislature to extend the protection of the state and municipal Tort Claims Act to, at a minimum, licensed third parties that contract with a municipality to provide ambulance services. The League also supports extending the applicability of public official immunity to medical directors in the course of ambulance service activities.**

## **SD-14. Fees for Service**

*Issue:* While general services—such as permitting, inspections or enforcement—are typically funded out of a city’s general fund, cities often impose fees to cover the cost of providing certain services, permits, and licenses.

The Legislature and interest groups often seek to mandate or preserve fee limitations for city services. Over the last several years, the Legislature has enacted a number of new laws designed to rigorously control local fee-setting authority. Examples of such mandates include placing limits on coin-operated amusement machine license fees, on-sale and off-sale liquor license fees, license fees for retailers selling fireworks, deputy registrar fees and planning and zoning fees. The state also requires cities that collect more than \$5,000 in development-related fees each year to

annually report all construction and development fees to the Department of Labor and Industry.

***Response:* While the state has a role in providing a general, statewide funding policy, the state should not interfere in the decision-making functions performed by cities when setting city budgets to provide city services. The League of Minnesota Cities seeks authority for cities to charge fees that are reasonably related to the cost of providing the service, permit or license. The League opposes legislation that would require specific methods to pay for city services or would place caps on city fees.**

## **SD-15. Improving and Increasing Citizen Access to Information**

***Issue:*** State law requires that cities publish certain types of information in a “qualified” newspaper designated by the city. While the requirements vary based on city population size, most cities must publish: ordinances before they can take effect; advertisements for bids; various financial reports; meeting and hearing notices; notices of elections; dates for filing affidavits of candidacy; and sample ballots. Collectively, these items are referred to as “official notices,” legal notices” and “public notices” in state statute.

There are several requirements in statute for a newspaper to be a “qualified” or “official” newspaper for the city. For instance, there can only be one newspaper chosen for the city; it must be printed in English in a newspaper format; if it is a daily newspaper, it must be distributed at least five days each week; if not a daily paper, it may be distributed twice a month with respect to the publishing of government public notices; it must be circulated in the city which it purports to serve, and either have at least 400 copies regularly delivered to paying

subscribers or have at least 400 copies distributed without charge to local residents.

As technology has evolved, citizens have become more accustomed to the instantaneous availability of online information. Because cities are committed to providing information to citizens and responding to this demand, they have invested heavily in their websites and in growing a robust online presence. They survey citizens about what method of communication is preferred and based on this, cities update, reform, evolve, and advance communication tools and often, they do so with limited means and resources to ensure citizens have access to information about their city.

Because of the publishing mandate outlined in state statute, cities continue to publish in newspapers with limited resources while simultaneously providing information to citizens in the format they actually demand: online. These requirements originated in 1949 and to ensure the original intent of the law – providing citizens access to their local government – it is time to eliminate these outdated requirements and make communicating with citizens more efficient.

***Response:* The Legislature should eliminate outdated and unnecessary publication requirements that are no longer relevant or representative of the technology we now have that has significantly increased access to government. Cities should have the authority to:**

- a) Determine whether web publication should replace or supplement newspaper publication based on the unique needs of each community.**
- b) Designate an appropriate publication that reaches the maximum number of citizens possible.**



- c) **Use alternative means of communication to fulfill statutory requirements such as city newsletters, cable television, video streaming, e-mail, blogs and city websites.**
- d) **Expand the use of summaries where information is technical or lengthy.**
- e) **Publish and provide public access to local codes of ordinances on a website accessible to the public and to post revisions and changes to city codes, resolutions, and rules on the city website, when feasible.**

## **SD-16. Administrative Fines for Code Violations**

*Issue:* Many statutory and home rule charter cities have implemented administrative enforcement programs for violations of local regulatory ordinances such as building codes, zoning codes, health codes, and public nuisance ordinances. This use of administrative proceedings has kept enforcement at the local level and reduced pressure on over-burdened district court systems. Cities using administrative enforcement processes experience a lower cost of enforcement and a quicker resolution to code violations.

Minnesota statutes expressly provide the authority for all cities to utilize administrative enforcement of local codes and enforcement of liquor license and tobacco license violations.

In 2009, the Legislature amended Minn. Stat. ch. 169, the chapter of law pertaining to state traffic regulations, to allow cities and counties to issue administrative citations for certain minor traffic offenses. Since the passage of the 2009 administrative traffic citations law, some people have questioned whether administrative citations for non-traffic, liquor, and tobacco license code violations can be legally issued by statutory

cities given that state law does not expressly provide authority on other code matters.

*Response:* **The League of Minnesota Cities continues to support the use of city administrative fines for local regulatory ordinances, such as building codes, zoning codes, health codes, public nuisance ordinances, and regulatory matters that are not duplicative of misdemeanor or higher-level state traffic and criminal offenses. The Legislature should clarify that both statutory and home rules charter cities have the authority to issue administrative citations for code violations. Further, state statute should allow statutory and home rule charter cities to adjudicate administrative citations and to assess a lien on properties for unpaid administrative fines.**

## **SD-17. Contracting and Purchasing**

*Issue:* Minnesota statutes stipulate contracting and purchasing requirements for Minnesota cities. The law prescribes the process political subdivisions must use to make purchases and award contracts, and requires a competitive sealed bid procedure for contracts or purchases over \$100,000. The intent of these statutory requirements is to provide taxpayers with the best value for their dollar and ensure integrity in the process. However, imposing these statutory requirements may, at times, result in political subdivisions paying more for goods and services than private entities under the same circumstances.

The Legislature recognized the benefits associated with alternative purchasing methods when it amended municipal contracting law in 2004 to authorize the use of reverse auctions to purchase supplies, materials, and equipment. Similarly, other contracting procedures, including “design-build” and direct negotiation are proven

alternatives to the formal bidding process. Authorizing broader use of these types of alternatives as the Legislature did in 2009 by authorizing a design-build pilot program, would enhance the ability of cities to make appropriate and fiscally responsible purchasing decisions.

***Response:* The League of Minnesota Cities supports broader use of alternative contracting and purchasing methods that streamline the process and reduce local purchasing costs. Specifically, the League supports authorizing cities to use the design-build procedure and providing municipalities with broader authority, similar to that of private businesses, to directly negotiate contracts. The Legislature should establish a task force to review municipal contracting laws, and consider contracting and purchasing reforms that give cities the flexibility to provide quality goods and services at the lowest cost to taxpayers.**

### **SD-18. Recreational Program Awards and Trophies**

***Issue:*** Cities and towns are allowed to expend up to \$800 per year for awards and trophies for recreation programs. The \$800 cap was enacted in 1957 and places an unnecessary limit on local governments to support recreation programs. Recreational programs supported by the city provide opportunities for all residents and reflect the interests of the community.

***Response:* The Legislature should amend Minn. Stat. § 471.15 to eliminate the cap on purchases for awards and trophies for recreation programs.**

### **SD-19. City Enterprise Operations**

***Issue:*** Historically, city enterprise operations have been created in response to

community needs, lack of a private market, financial reporting requirements, state and federal mandates, to enforce state and local law, and to ensure a quality of life for the residents of a community. Establishing an enterprise operation allows a city to provide a desired service while maintaining financial control over service levels, costs, and public inputs.

In some cases, enterprise operations produce general public benefits and may require public support to ensure a desired level of service at a reasonable cost. The benefits of an enterprise operation, therefore, should be evaluated not solely in terms of profitability but also on the service benefits to citizens of the community.

***Response:* The League of Minnesota Cities supports the local decisions made by cities to deliver services by establishing a city enterprise operation. The state should refrain from infringing on the ability of a city to provide services for its community.**

### **SD-20. Constitutional Amendments**

***Issue:*** The Minnesota Constitution requires that a constitutional amendment be approved by a simple majority of both chambers of the Legislature at one session, and must then be ratified by a majority of all the voters voting at the election. Minnesota is one of 18 states that require a simple majority vote by legislators while 26 states require a higher threshold (17 states require a two-thirds majority and nine require a three-fifths majority). Since statehood, 215 proposed constitutional amendments have been voted on by the electorate; 120 of them have been approved (56%) and 95 rejected (44%).

Cities provide a variety of critical and essential services to residents of Minnesota. Many public policy decisions at the state

level impact cities and therefore, city officials depend on their state legislators to represent city interests at the Legislature.

Additionally, unlike a statutory change, a constitutional amendment is difficult to modify or repeal once enacted.

***Response:*** The League of Minnesota Cities strongly supports our representational system of government and opposes laws and amendments that restrict local government. The Legislature is the appropriate governing body to consider and enact laws that reflect statewide interests. Utilizing constitutional amendments to change public policy circumvents this process.

Therefore, the League supports requiring a supermajority vote (two-thirds in support) by the Legislature to put an amendment on the ballot.

### **SD-21. Initiative and Referendum**

***Issue:*** The Legislature has frequently considered legislation to establish initiative and referendum by proposing to place a question for voter approval on the state general election ballot to amend the state constitution to allow voters to initiate or repeal state laws by submitting a petition which would cause such questions to be placed on the state general election ballot.

***Response:*** Cities strongly support our representational system of governance and, therefore, oppose amending the state constitution to provide for initiative and referendum. The Legislature is the appropriate governing body to consider and enact public policy that reflects statewide interests.

The process of adopting state law based on good public policy is best upheld and

supported by increasing the accountability and responsiveness of the legislative process, not by circumventing it. Presenting complex issues to voters in the guise of direct democracy further weakens representative government.

A state constitutional amendment to provide for initiative and referendum subjects cities and their residents and taxpayers to the unintended outcomes of sometimes unwise attempts to place significant public policy decisions into the hands of special interests that can raise unlimited funds for the purpose of promoting their more narrow interests.

### **SD-22. Civil Liability of Local Governments**

***Issue:*** One of the barriers to the delivery of governmental services and programs is the exposure of local governments and their officials to civil damage claims. The state has acted to protect itself and its local governments by enacting exceptions and limitations to liability suits, and authorizing self-insurance and other mechanisms to deal with claims allowed by law.

***Response:*** The League of Minnesota Cities supports:

- a) **Creating an exception to municipal tort indemnification law, Minn. Stat. § 466.07, where an employee is defended and indemnified for claims under a contract of insurance carried by the employee.**
- b) **Extending the protection of the state and municipal Tort Claims Act to quasi-governmental entities when performing public services such as firefighting or licensed third-party ambulance providers that contract with a municipality to provide ambulance services.**

- c) **Existing constitutional safeguards for protecting public and private property interests without any statutory expansion of property rights.**
- d) **Clarifying and maintaining the applicability of municipal immunity in various areas, including, but not limited to, vicarious official immunity and park and recreational immunity, including the extension to entities providing a public service that have not traditionally been included within the immunity (e.g., state trails over municipal utility easements).**
- e) **Preserving changes to Minnesota’s joint and several liability laws that require a municipality to be at least 50 percent at fault to be held responsible for 100 percent of a damage award.**
- f) **Reasonable limits on the amount and circumstances in which statutory attorney fees may be awarded in order to encourage settlement by all parties and decrease the likelihood of litigation.**
- g) **Preserving the essential structure of the local government tort liability caps in Minn. Stat. § 466.04.**

### **SD-23. Private Property Rights and Takings**

*Issue:* In the wake of the U.S. Supreme Court’s 2005 decision, *Kelo v. City of New London*, which upheld the ability of local governments to use eminent domain for economic development purposes, the Legislature enacted significant restrictions on cities’ use of eminent domain for economic development and redevelopment, and imposed new compensation and procedural requirements that apply to all condemnation actions, including those for traditional public uses such as roads, parks, and schools. Legislation to control cities’ abilities to perform regulatory acts—such as

road rights-of-way condemnation, shooting range zoning, and amortization—has also received strong support from legislators. In addition, some legislators would like to authorize businesses to seek inverse condemnation when a governmental entity enters the business market and provides competing goods or services or limits the number of businesses that can operate privately or receive public contracts.

Such legislative initiatives threaten a wide array of planning, environmental, historic preservation, and land conservation measures and undermine the fundamental responsibility of cities to protect the public health, safety, and welfare of its citizens.

In 2006, the Legislature enacted Minn. Stat. § 117.031, a statute related to attorney fees in the eminent domain process. The structure of the statute has resulted in attorney fee awards in eminent domain actions that have no relationship to the outcome of the case, serve only to encourage litigation, and shift limited public funding away from infrastructure projects.

***Response:* State law must continue to provide cities with the tools needed to balance the rights of private property owners with the interests of the public. The League of Minnesota Cities opposes legislation that diminishes the ability of cities to act in the best interest of the health, safety, and welfare of its citizens; that increases the cost of doing business for the public good; or that creates the possibility of additional lawsuits against cities.**

**Specifically, the League opposes legislation that:**

- a) **Allows businesses to seek inverse condemnation when a city provides**

- competing goods or services, or limits the number of private operators.**
- b) Creates an automatic cause of action for damages any time a local regulatory action impacts the use or reduces the value of private property.**

**The League supports legislation that:**

- a) Authorizes cities to use eminent domain for economic development and redevelopment projects that advance a greater public good that benefits the community.**
- b) Empowers local elected officials to determine whether a particular taking of property serves a public purpose.**
- c) Creates incentives to encourage landowners to voluntarily sell their property to the public for development or redevelopment.**
- d) More appropriately balances awards of attorney fees and costs of litigation with the outcome of the eminent domain proceeding.**

**SD-24. Organized Solid Waste Collection**

*Issue:* “Organized collection” refers to a situation where a local unit of government, for any of a variety of reasons, decides that there is a public interest served by limiting the number of solid waste and recycling collection services available in the area. The reasons for implementing organized collection can vary, but include:

- a) Public safety concerns caused by the number and frequency of large trucks moving quickly through residential neighborhoods;
- b) Reducing wear on public infrastructure from heavy truck traffic;
- c) Improving the efficiency, cost and quality of garbage and recycling service provided to local residents;

- d) Cooperating with other local governments to best meet solid waste management and recycling objectives;
- e) Taking local steps to reduce energy impacts of public services; and
- f) Meeting the requirements of county ordinances and solid waste management plans as required under Minn. Stat. § 115.94.

Organized collection is also encouraged in state solid waste policies as a means of improving the efficiency and coordination of solid waste management between local units of government. There are very specific and burdensome public procedures laid out in statute defining how such a decision must be publicly vetted and approved and over what time period that can occur.

Despite all of these important and valid reasons for using organized collection, legislation has been discussed in several recent sessions that would allow special takings claims or contractual damages to be claimed by the solid waste industry if local governments make decisions that limit the number of companies that can collect garbage in a community in a manner that prevents a company currently operating in the community from continuing to do so through the implementation of organized collection. The unspecified and ongoing liability this change would create would have the effect of eliminating organized collection as a waste management option. This change would also create a virtual monopoly situation for any company awarded a solid waste contract under organized collection. The local unit of government would have to “buy out” a contractor in the future to change providers, even if their services were no longer the lowest bid. It also creates an incentive for bidders under organized collection to submit high bids, as they would be eligible for damages if they fail to win without having to

provide service. Furthermore, this is a precedent that, if applied to other government purchasing and service contracting decisions, would clearly run counter to the public purpose of government providing services at the lowest feasible cost to taxpayers.

***Response: The League of Minnesota Cities opposes efforts to apply inverse condemnation claims to city solid waste contracting decisions or to allow automatic contractual damage claims for solid waste haulers that lose competitive bids in organized collection communities.***

Further, the League supports the current state policy that organized collection is a valuable tool as part of a comprehensive solid waste and recycling management program and recognizes the need to protect and preserve the authority of cities to adopt solid waste service contracts that protect public safety, the environment and public infrastructure.

## **SD-25. Private Well Drilling**

***Issue:*** The state has continued to place requirements on public water supply providers to add drinking water treatment and testing, to restrict the volume of water used, and to increase the cost of water use through fees and requirements on utility rate structures. As a result, many water users are choosing to obtain all or portions of their water from wells they place on their own property. This creates risks to public health and safety, can affect the surrounding environment, can affect city water supplies, and can leave city water utilities with massive losses of customer load and rate revenue.

Providing clean, safe, cost-efficient drinking water to citizens is an essential service provided by 726 active municipal water

systems. The Minnesota Department of Health (MDH) agrees that cities have the statutory authority to determine whether private wells are an appropriate use within their boundaries and that cities must protect the public water supplies from numerous private wells in city boundaries. Private wells in a city increase the risk of contaminating public water supplies and encourage over use of water. Cities have the authority to regulate and even prohibit private wells by local ordinance.

***Response: The League of Minnesota Cities supports current law that authorizes cities to protect public health and safety through local controls regulating or prohibiting private wells being placed within municipal water utility service boundaries and would oppose any changes to law to remove that authority.***

## **SD-26. Sustainable Development**

***Issue:*** Minnesota cities spend significant time and resources planning for growth, development, and redevelopment that will best serve the future needs of their residents. Numerous factors are considered as part of that process, but an area of increasing interest involves concepts often categorized as “sustainable development.” Minn. Stat. § 4A.07, subd.1(b) defines this term, as it pertains to local government, to mean “development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Cities play a key role in fostering sustainable development and other conservation practices due to their role in

land use planning and zoning, stormwater and wastewater management, and local economic development. Local governments can take a lead on these issues by choosing to incorporate aspects of sustainable development into their local operations and facilities. They can also develop local policies and regulations that support and guide individual and private sustainability efforts. The ability of a city to affect these changes can, however, be restricted by policies and requirements imposed by other levels of government.

Sustainable development initiatives can cover a wide range of issues, but share the benefit of lessening the future environmental impacts of communities on the land, air, and water in their area. Lakes, streams, rivers, wetlands, wildlife habitat, shoreland areas, and other natural resources can be protected and enhanced in quality through local efforts. Energy efficiency and renewable energy production reduce the energy demands of a community and the environmental impacts of energy production. By more efficiently using public infrastructure and minimizing resource consumption, the costs to individuals, business, and government can be reduced. New and expanded business and job opportunities are also generated by the “green” products and services needed to implement sustainable development initiatives. The ideal result of well-planned sustainability, natural resources management, and conservation efforts is a city that is more efficient in the use of its resources and infrastructure, creates fewer environmental problems for future generations to address, and is a more desirable home for residents and businesses.

***Response:* The League of Minnesota Cities supports federal, state, and regional efforts to promote sustainable development where the effectiveness of**

**the proposed practice is supported by sound science, and as long as those efforts do not supersede the authority of local governments to determine their own policies regarding land use and related issues.**

**Providing technical assistance and financial incentives, and streamlining regulations to encourage local governments and private property owners to engage in sustainable development practices, as well as assisting in education and information efforts for the building industry and the public, are the best means to generate successful results. These programs should focus on outcomes, allowing flexibility in how to best meet those outcomes in different locations and situations. The League opposes mandates that limit the authority of cities to determine what practices will best meet the needs of their communities.**

**The League supports sustainable development efforts that meet the above criteria, including programs proposed in the following areas:**

- a) Shifting public resources, services, investments, purchasing power, and procurement toward more economically and environmentally sustainable outcomes where those solutions are cost effective and appropriate.**
- b) Using local land-use planning and zoning to protect and enhance limited natural resources, and reduce the impacts of growth and development on local infrastructure.**
- c) Promoting efficient and renewable energy sources.**
- d) Encouraging sustainable building design, construction, and operation strategies focused on integrated design, energy efficiency, water**

**conservation, stormwater management, waste reduction, pollution prevention, indoor environmental quality, and the use of low-impact building materials and products.**

- e) **Supporting sustainable economic development, such as brownfield clean-up, on-site stormwater management, and sustainable business practices and technologies.**
- f) **Assisting and recognizing local governments that take actions to reduce greenhouse gas emissions and increase energy efficiency by providing and identifying technical assistance, financial assistance, and best practices.**

## **SD-27. Construction Codes**

*Issue:* The State Building Code (SBC) is the statewide standard for the construction, reconstruction, alteration, and repair of the buildings and other structures of the type governed by the code. A building code provides many benefits, including uniformity of construction standards in the building industry, consistency in code interpretation and enforcement, and life-safety guidance. Beginning in 2018, the state will adopt a new version of the SBC every six years after a rulemaking process that allows for significant public input. The League supports adopting and amending the SBC through the rulemaking process, and opposes legislative changes to the building codes absent unusual or extraordinary circumstances.

While all cities must enforce certain codes—such as the accessibility code and the bleacher safety code—enforcement of the SBC remains a local option for cities outside of the seven-county metropolitan area with fewer than 2,500 people that did not adopt the code before Jan. 1, 2008. Requiring

enforcement of the SBC by smaller cities in Greater Minnesota is cost-prohibitive for many cities, and would result in an unfunded mandated.

While a single set of coordinated codes helps provide consistency in code administration and enforcement, implementation of sustainable building design, construction, and operation does not readily integrate with the existing state building and energy code system. As a result, many cities are interested in adopting more aggressive local standards for sustainable development and conservation.

*Response:* **A statewide-enforced building code may have benefits, but requiring it would result in an unfunded mandate.**

**Enforcing the State Building Code should remain a local option for the municipalities that have not already adopted the Code, unless the state fully funds the costs of enforcement and inspection services necessary to enforce a statewide building code. If the Legislature requires all cities to enforce the State Building Code, local governments must have the option to hire or select a building official of their choice and set the appropriate level of service—even if the state fully funds code enforcement activities.**

**The state should collaborate with local governments, construction industry representatives, and other stakeholders to review the building and energy codes and consider modifications to encourage sustainable building design, construction, and operation.**

**Specifically:**

- a) **For purposes of federal conformity, the state should adopt the**



**International Energy Conservation Code as part of the State Building Code.**

- b) The state should include the International Green Construction Code as an optional appendix to the State Building Code to allow cities to utilize appropriate parts of those guidelines in their communities.**
- c) The Legislature should authorize cities to experiment with more aggressive local standards for sustainable development and conservation that will help inform the state code development process.**

### **SD-28. Building Officials**

*Issue:* There is a shortage of certified building officials in Minnesota. This shortage is particularly acute in Greater Minnesota where some cities have trouble finding certified building officials to perform inspections required by state law. Minnesota needs to hire a new generation of certified building officials, and must ensure that current officials have adequate training and opportunity to inspect a wide range of projects.

The Department of Labor and Industry (DLI) has authority over state-licensed facilities and public buildings. Pursuant to Minn. Stat. § 326B.106, subd. 2, it must delegate authority to inspect projects on these buildings to a municipality if DLI determines that the municipality has adequate qualified local building officials to perform plan review or inspection of the projects. In 2014 the Legislature passed legislation requested by the League of Minnesota Cities and agreed to by DLI to provide more transparency and clarity to the delegation process. DLI, after consulting local governments and the League, implemented a new delegation procedure as required by statute. Although the new

delegation process is a significant improvement, it can still be difficult for local building officials to achieve the experience necessary to be delegated full inspection authority.

*Response:* Minnesota’s housing and construction industries depend on the work of local building officials, and cities that enforce the State Building Code endeavor to provide quality code administration and enforcement. The State must increase its efforts to train new building officials, and must provide sufficient education to help local officials efficiently administer and enforce construction regulations to protect the health and safety of citizens. These education efforts should include training to assist local building officials gain the requisite experience to qualify for delegation of state-licensed facilities and public buildings.

**The League urges the state to make surplus revenue from the building permit surcharge available to local governments to help defray the cost of complying with code official training and education requirements.**

### **SD-29. Disability Access Requirements**

*Issue:* Title II of the Americans with Disabilities Act (ADA) of 1990 requires that state and local governments provide people with disabilities equal opportunity to benefit from all of their programs, services, and activities. Public entities are not required to take actions that would result in significant financial and administrative burdens, but they must modify policies, practices, and procedures to avoid discrimination unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

State and local governments are also required to follow specific standards when constructing new facilities and altering existing public buildings, and they must relocate programs or otherwise provide access in inaccessible older buildings. Under the ADA, public entities are not necessarily required to make each existing facility accessible. However, their programs—when viewed in their entirety—must be readily accessible to people with disabilities. A public entity may achieve program accessibility through various methods. For example, a city may alter existing facilities, acquire or construct new facilities, relocate a service or program to an accessible facility, or provide services at other accessible sites.

One district court judge has taken an expansive view of disability access requirements for public recreation facilities. The case involved a parent who sued a city due to difficulty viewing soccer and baseball games on certain city fields. The court, in interpreting the Minnesota Human Rights Act (MHRA), held that any public facility is a public service. Since the MHRA requires that every public service be accessible to disabled persons, the court concluded that each and every playing field and other public facility must be fully accessible. The court rejected the ADA's limitations on modifications for physical access to older facilities, as well as the ADA's "when viewed in its entirety" language for program access. The result is a more restrictive state standard for physical access to public facilities than required by the ADA and the State Building Code.

***Response:* The League of Minnesota Cities supports changes to the MHRA that will make state accessibility standards compatible with the federal ADA for public services and facilities. The Legislature should clarify that a facility that is in compliance with**

**handicap access provisions of the State Building Code meets the physical access requirements of the MHRA. State law should also specify that access requirements apply to public programs and services as a whole, rather than to each individual aspect of a public program or service.**

### **SD-30. Assaults on Code Enforcement Officials**

*Issue:* Many city employees and contractors are required to enforce city codes and ordinances and state statutes and rules as part of their job duties. Code enforcement can involve denying a building permit, ordering a landlord to make repairs to rental properties, or fining property owners for failing to abate a nuisance. Because of the nature of their job, code enforcement officials can be subjected to verbal assaults, threats, and physical violence.

Minnesota law recognizes the need to protect certain employees whose jobs make it more likely that they will be the target of assaults by escalating assault charges from fifth to fourth degree for the assaults of peace officers, firefighters, school officials, and "public employees with mandated duties". Minn. Stat. § 609.2231, subd. 6 specifically defines "public employees with mandated duties" as agricultural inspectors, occupational safety and health inspectors, child protection workers, public health nurses, animal control officers, and probation or parole officers. An assault on one of these employees who is engaged in the performance of a duty mandated by law, court order, or ordinance, is a gross misdemeanor if the person knows the employee is engaged in the performance of official duties and inflicts demonstrable bodily harm.

Under current law, an assault on a code enforcement official not enumerated in Minn. Stat. § 609.2231, subd. 6 while performing official business can only be charged as fifth degree assault, a misdemeanor, unless it results in substantial bodily harm. All code enforcement officials should be afforded the same protections under Minnesota Statutes, and the legislature should amend the statute to expand the employees covered by the statute.

***Response:* The legislature should expand Minn. Stat. § 609.2231, subd. 6 to include code enforcement officials. The term code enforcement official should be defined broadly to include public employees and contractors whose jobs require them to enforce all administrative codes, rules, ordinances, and state laws.**

### **SD-31. Restrictions on Possession of Firearms**

***Issue:*** The Minnesota Citizens Personal Protection Act, also known as “conceal-and-carry,” prohibits guns on most school properties but forbids other local units of government from prohibiting loaded firearms on their properties. The inconsistencies in the law’s treatment of different kinds of properties have caused confusion about how the law applies to multi-use facilities, such as municipal ice arenas used for school-sponsored programs.

Further, the law gives private property owners the right to prohibit guns in their establishments, but prohibits landowners from restricting firearm possession by tenants and their guests without distinguishing between residential and commercial properties. This creates confusion for shopping malls and other retail properties with large common areas that are not occupied by the tenants but which the

tenants and their customers must cross to access the tenant’s space.

Finally, the Citizens Personal Protection Act does not explicitly state the type of firearm a permit holder may carry, and this has led to ambiguity regarding whether the law is limited to the right to carry a pistol-length firearm in public or if it allows for any firearm, including a military-style assault rifle.

***Response:* The League of Minnesota Cities requests an amendment to the Citizens Personal Protection Act that would allow cities to prohibit firearms in city-owned buildings, facilities, and parks. The League supports clarifying the Act to state that a permit holder, under the terms of a permit, is allowed to carry a pistol-length firearm, but not a semiautomatic military-style assault weapon. The League is not seeking a repeal of the Citizens Personal Protection Act, nor authority to prohibit legal weapons in parking lots or on city streets and sidewalks. The League also supports efforts by commercial property owners to clarify that the prohibition on restricting possession by tenants and their guests applies only to residential rental property.**

### **SD-32. Public Safety Communications**

***Issue:*** The state role in financing public safety communications has important cost implications for cities. The state needs to accept financial responsibility for use by cities of the state public safety radio communications backbone. Cities have struggled to pay high expenses to participate in the 800 MHz statewide public safety system.

In previous state budgets, the Legislature turned to revenue sources upon which cities

depend to cover costs to purchase and operate new communications technology and hardware for computer-aided dispatch, 911 public safety answering points (PSAPs), and interoperable radio communications equipment and subsystems in order to finance the build-out of the state backbone for the new system. As a result, fees were directed to fund revenue bond debt service used to complete the statewide build-out of the Allied Radio Matrix for Emergency Response (ARMER) and the cost of operations of the state public safety radio communications backbone.

At the federal level, the Federal Communications Commission (FCC) has ordered reservation of 700 MHz wireless spectrum for a national interoperable broadband network to meet public safety communications needs. FirstNet was established in 2012 as an independent authority within the National Telecommunications and Information Administration (NTIA) and is responsible for constructing a nationwide high-speed public safety wireless broadband network.

***Response:* The League of Minnesota Cities supports continued and increased state financing of substantial local costs to participate in ARMER, including the acquisition and modernization of subscriber equipment, such as portable and mobile radios required for ARMER users. The League also opposes efforts to divert dedicated ARMER funds to the state's general fund. The Legislature should fund regional cooperation and partnerships for effective delivery of 911 service, training and use of ARMER.**

**The League also urges the FCC to continue to support availability of wireless spectrum necessary to expand channel capacity that allows local public**

**safety agencies to meet future needs of cities and other local units of government.**

### **SD-33. CriMNet**

***Issue:*** Public safety is compromised by the lack of centralized, complete, and accurate criminal history data about individuals, incidents, and cases. Without an integrated criminal justice information system, Minnesota cannot always hold serious criminals accountable for their crimes. CriMNet, Minnesota's effort to integrate the 1,100 criminal justice information systems operated by agencies at all levels, will improve access to relevant criminal history data for public safety and criminal justice authorities.

City officials are well aware of the complex issues raised by the utilization of electronic record keeping, data sharing, and access to records that identify data subjects. The League of Minnesota Cities recognizes that one of the challenges in making CriMNet operational is meeting the requirements of the Minnesota Government Data Practices Act (MGDPA).

More than 500 cities operate police departments. These departments vary dramatically in fiscal capacity, staffing resources, and technical expertise. Further, each municipal law enforcement agency has unique operating procedures, strengths, and needs based on the community it serves. The League knows CriMNet will have a significant impact on municipal police business practices, and could mean increased staffing needs, training, and equipment purchases. The League also recognizes that every agency must participate fully in CriMNet to make the system effective.

***Response:* The League of Minnesota Cities supports efforts by the state to**

**integrate criminal justice information systems. The League also supports cooperation between legislators, law enforcement and corrections agents, court officials, prosecutors, community groups, and businesses that build public support for CriMNet.**

**If CriMNet is to be implemented statewide, the Legislature must consider the different capacities of municipalities to participate. The League requests that the Legislature fund CriMNet planning and implementation at the local level.**

**To ensure compliance with the MGDPA, comprehensive guidelines and operational practices should be implemented to safeguard access to and use of CriMNet data. However, data practices policies should not create new, unfunded mandates for local units of government or compromise CriMNet’s usefulness to the criminal justice system by creating unnecessary barriers. CriMNet stakeholders and participating users at the local level should be involved in crafting any legislation that would govern data practices requirements for CriMNet.**

### **SD-34. Pawn Shop Regulation and Use of the Automated Property System (APS)**

*Issue:* Minn. Stat. ch. 325J enables licensure for pawnbrokers and provides statewide minimum regulations for the pawn industry.

Specifically, the law:

- a) Requires pawnbrokers to record all transactions, including details of the item pawned or sold, information about the customer and the cost of the transaction.
- b) Requires pawnbrokers to maintain records of all transactions for three years, and to make records available

upon request to law enforcement agencies.

- c) Allows pawnbrokers to charge a maximum monthly interest rate of 3 percent of the principal amount loaned in a transaction, plus a reasonable fee for storage and services.

The Automated Property System (APS) is a computerized system for tracking and monitoring pawn transactions. The purpose of the APS is to provide a tool to verify compliance with Minn. Stat. ch. 325J, to help identify and minimize illegal activity, to recover stolen property, and to provide a legitimate environment for consumers. Currently, almost 260 law enforcement agencies and over 190 stores in Minnesota and Wisconsin participate in the APS system as either a “query only” or “contributing” member.

All access to and use of information in the APS system is governed by the Minnesota Data Practices Act. Only authorized users have access to the data. There is no public access to the data. Further, data that would reveal the identity of persons who are customers of a licensed pawnbroker or secondhand goods dealer are private data on individuals and only used for law enforcement purposes. Data describing the property in a regulated transaction with a licensed pawnbroker or secondhand goods dealer is public.

Original pawn and secondhand transactions reported to the APS carry a \$1 fee, regardless of the number of items involved. All subsequent updates or corrections to transactions are processed without charge. Contributing jurisdictions may also add regulatory costs to the transaction fee. The total transaction fee is then typically assessed by the dealer to the customer.

A bill that would weaken Minn. Stat. ch. 325J and restrict the use of the APS has been introduced in the Minnesota Legislature. Specifically, the legislation would forbid law enforcement agents from acquiring customer information from pawn and secondhand shops until they have probable cause to do so, and would eliminate the authority of local units of government to more strictly regulate pawn and secondhand dealers.

***Response:* The League of Minnesota Cities supports the authority of cities to regulate and license pawnbrokers, and opposes any legislation that would remove the authority of local governments to enact more restrictive regulations than currently exist in Minn. Stat. ch. 325J.**

**The League supports the authority of cities to set licensing and transaction fees that enable them to recover their full regulatory and enforcement expenses.**

**The League supports cooperation between law enforcement agencies and the pawn industry that enhances the ability to identify illegal activity and recover stolen property. Access to transaction information by law enforcement agencies is vital to accomplishing this goal. Further, the sharing of information through the use of the APS is a proactive way to prevent property and other crimes.**

### **SD-35. Compensation and Reimbursement for Public Safety Services**

***Issue:*** Municipal public safety personnel often respond to emergencies involving non-residents. For example, municipal fire, police, and/or ambulance services may be dispatched to the scene of a traffic accident on an interstate highway involving victims

from other cities or states. Although cities can bill for some public safety services they provide to non-residents, they have limited authority to collect on unpaid bills.

Cities have also found that auto insurance policies vary when it comes to coverage for emergency responses. Insurance companies of those responsible for accidents sometimes deny payment for fire and ambulance service.

Additionally, municipal public safety personnel commonly respond to emergencies that require the provision of medical services. The medical services provided by the city-employed first responders are part of a continuum of health care that is covered by insurance companies when provided by paramedics and other medical care providers; however, insurance policies vary when it comes to coverage for municipally provided medical services. Insurance companies of those treated by municipal public safety personnel frequently deny payment for emergency medical services when they are billed by a municipality.

Thus, when a municipal public safety agency provides first response medical assistance, they commonly do so at the expense of local property taxpayers. While emergency responses are legitimate functions of municipal public safety departments, the costs of providing services to non-residents should not be borne by the community's taxpayers.

***Response:* Cities should be compensated for emergency responses they provide to non-residents. They should have the authority to bill for the full cost of fire and ambulance services they provide, and to collect on unpaid bills.**

**Further, while emergency medical responses are legitimate functions of municipal public safety departments, the costs of providing emergency medical care to individuals should be covered by insurance and not be borne exclusively by the community's taxpayers. Cities should have the authority to bill for the full cost of first responder medical services they provide and to collect on unpaid bills. Insurance companies should be required to reimburse local governments for the full cost of providing these emergency medical services. Finally, auto and homeowners insurance policies should be required to insure for the cost of emergency responses.**

### **SD-36. Administrative Traffic Citations**

*Issue:* Cities have implemented administrative enforcement programs for violations of local regulatory ordinances, such as building codes, zoning codes, health codes, and public nuisance ordinances. This use of administrative proceedings has kept enforcement at the local level and reduced pressure on over-burdened district court systems.

The Legislature has repeatedly increased the fine surcharge on district court cases to generate revenues for the state's general fund. The surcharge—the amount paid over and above the fine—is now \$75 per citation. The growth in the surcharge has dramatically increased the cost of citations and has caused some to question whether the total of the fine and surcharge is disproportionate for minor matters. To lower the amount imposed on their residents, a number of cities have expanded their administrative programs to include some offenses traditionally heard in district court, such as minor traffic offenses.

The increased state surcharges have not been used to assist local units of government with the growing costs of enforcement and prosecution. No matter which entity—city, county or state—issues a statutory citation, the violator pays between \$115 and \$127 for a minor speeding violation. Of this amount, the city receives between \$13 and \$20, and the county receives just slightly more.

Further, when a violator requests relief from paying the full amount of the fine and surcharge, the courts have been more inclined to waive the fine than to reduce the surcharge. When this occurs, the local units of government recover no costs even though the city has incurred expenses.

In 2009, the Legislature amended the statutes to allow administrative fines to be issued for certain minor traffic offenses. Cities report that the short list of offenses noted in that law change does not adequately address the needs of local law enforcement. Additional authority is necessary to allow law enforcement officers to implement an effective program to reduce violations.

***Response:* The League of Minnesota Cities continues to support the use of city administrative fines for local regulatory ordinances, such as building codes, zoning codes, health codes, public nuisance ordinances and regulatory matters that are not duplicative of misdemeanor or higher level state traffic and criminal offenses. Cities should have the authority to issue administrative citations for low-level moving and equipment violations that: 1) would otherwise result in warnings, and 2) occur on roadways where the speed limit is 45 miles per hour or less. Further, the League endorses the concept that, if the recipient of an administrative penalty wishes to appeal the issuance of an administrative fine for a violation before a disinterested third**

**party, the party may opt to be issued a standard traffic citation and appeal its issuance before the district court.**

**If state leaders choose not to expand the list of administrative traffic offenses, they should then change the distribution of statutory violation fine revenues so that cities are adequately compensated for enforcement and prosecution costs.**

### **SD-37. Driver Diversion Programs**

*Issue:* Cities across Minnesota have implemented traffic offense educational diversion programs. These programs provide an alternative to first-time petty misdemeanor traffic citations. The programs require an accused violator to enroll in an educational class and successfully complete the class. The courses focus on safe driving and have been shown to change behavior and reduce recidivism, particularly among young drivers.

In 2014, a judge in Wabasha County ruled that local units of government do not have the authority to implement minor traffic offense education diversion programs. Given this ruling, many longstanding, successful diversion programs for first-time offenders were suspended.

In 2008, the legislature approved a pilot diversion program to allow individuals with suspended or revoked licenses (who met the Driver and Vehicle Services' eligibility criteria) to obtain immediate reinstatement of their driver's licenses, while paying off all of the fines, fees, etc., they owe through a payment plan. The pilot program is scheduled to expire in June, 2017. The session law governing the pilot requires that all sums owed must be paid within 18 months. Most people entering the DDP have outstanding fines and fees in the amount of between \$1,000 and \$4,000.

There are some individuals, however, who owe as much as \$8,000 to \$10,000 in fines and fees. The short timeline for making all payments causes a number of otherwise cooperative participants to drop out of the program.

***Response:* The League of Minnesota Cities supports clarifying Minnesota Statutes to allow local units of government to establish diversion programs for holders of class D drivers' licenses who commit one petty misdemeanor driving offense involving no aggravating factors.**

**The League of Minnesota Cities also supports making the DDP pilot program for individuals with suspended or revoked licenses permanent and available to all jurisdictions, and a broadening of the eligibility criteria for participation in the program so it is available to more people. Lastly, the legislature should allow jurisdictions to consider the financial circumstances of individuals and grant authority to extend the timeline for collecting outstanding fines and fees beyond the current 18 months.**

### **SD-38. Distracted Driving**

*Issue:* Distracted driving is when a driver engages in any activity that might take attention away from the primary task of driving. According to the Minnesota Department of Public Safety, one in four motor vehicle crashes is related to distracted driving. Distracted driving was a contributing factor in 175 fatal crashes from 2011 to 2013 in Minnesota and resulted in 191 deaths. More than half of those crashes occurred in rural areas. Those fatalities cost the state more than \$269 million. A University of Utah study finds that the relative risk of being in a traffic accident while using a cell phone is similar to the



hazard associated with driving with a blood alcohol level at the legal limit.

Under existing law, it is illegal for a driver to read, compose, or send text messages and emails, or access the Internet using a wireless device, while the vehicle is in motion or a part of traffic (including while stopped in traffic or at a semaphore). Cell phone use is totally banned for school bus drivers. Cell phone use is also totally banned for teen drivers during their permit and provisional license stages.

***Response:* The League of Minnesota Cities opposes any changes to Minnesota Statutes that would weaken distracted driving laws.**

**The League supports:**

- a) **State funding for distracted driving enforcement and education;**
- b) **Changes to state statute making it illegal to drive while using a cell phone, unless the device is “hands-free;” and**
- c) **Strengthening distracted driving laws as they pertain to roadway construction work zones.**

### **SD-39. Juveniles in Municipal Jails**

***Issue:*** Municipal jails have long served as holding facilities for suspects who are being questioned and/or booked, and for those awaiting transfer to a county jail or juvenile detention facility. In 2012, the Minnesota Department of Corrections (DOC) issued a reinterpretation of an existing law to say that, “[W]here counties have secure juvenile correctional facilities...juveniles are not allowed to be held in jail and/or municipal lock-ups for any length of time.”

This interpretation is in conflict with a provision in Minn. Stat. § 260B.181, subd.

4, which provides that juveniles can be held in a licensed juvenile facility for up to six hours. Many municipal jails, including those in counties where juvenile detention facilities exist, have been operating under the six-hour holding law.

Managers of municipal jails indicate the reinterpretation of the law is contrary to common practice and presents significant challenges for municipal law enforcement personnel.

***Response:* The League of Minnesota Cities supports a statutory clarification that would allow juveniles to be held for questioning and booking in licensed jail facilities for up to six hours, regardless of whether the county has a juvenile detention facility.**

### **SD-40. Justice System Funding**

***Issue:*** Over the past several years, Minnesota’s justice system has operated under consecutive budget shortfalls. Public service windows are closed part of each week in many courthouses. Delays in case filings, hearings and dispositions are building throughout the state as staff and judges struggle to keep up with caseloads. The budget shortfalls limit the ability of the courts to process cases pertaining to shoplifting, trespassing, worthless checks, traffic and ordinance violations, juvenile truancy, runaways and underage drinking, consumer credit disputes, property-related and small civil claims, and many other cases. Timely processing of these cases is critical to keeping communities safe and to preserving the quality of life residents expect.

The State Court Administrator has advocated for statutory changes that have resulted in efficiencies and cost savings while preserving core services. These

changes involve consolidating services where practicable and using technology to reduce costs. They include centralized payable processing, use of e-citations and restructuring of state mandated programs.

***Response: The League of Minnesota Cities supports a statement by former Chief Justice Eric J. Magnuson that calls for “an adequately funded, functioning justice system that resolves disputes promptly in order to ensure the rule of law, protect public safety and individual rights and promote a civil society.” The League supports the use of technology to reduce costs and preserve services. The League opposes any changes that would decriminalize local ordinances, petty misdemeanors or misdemeanor offenses, or that would make prosecution of these crimes more difficult.***

## **SD-41. 21<sup>st</sup> Century Policing**

***Issue:*** Published in May 2015, the *President's Task Force on 21st Century Policing Report* makes multiple recommendations aimed at helping law enforcement agencies and communities strengthen trust and collaboration, while reducing crime by implementing the next phase of community-focused policing. The report contains recommendations related to six key areas of law enforcement:

1. Building Trust and Legitimacy;
2. Policy and Oversight;
3. Technology and Social Media;
4. Community Policing and Crime Reduction;
5. Training and Education; and
6. Officer Safety and Wellness.

Many Minnesota communities have embraced 21<sup>st</sup> Century Policing concepts, and municipal police departments throughout the state have adopted policies

that align with 21<sup>st</sup> Century Policing principles.

In Minnesota, police chiefs have indicated strong interest in securing additional training in 21<sup>st</sup> Century Policing practices for officers. Although demand for training has increased in recent years, the training reimbursement provided by the Peace Officer Standards and Training (POST) Board has declined. The POST Board is funded through a special revenue account from a surcharge on certain criminal and traffic convictions; however, a significant amount of the special revenues collected are diverted to the state's general fund and are not made available for training reimbursement. In addition, the amount of the surcharge paid to the state has been declining and concern has been raised about the impact of the surcharge on residents, particularly low income and persons of color.

***Response: The League of Minnesota Cities recognizes the need for communities and law enforcement agencies to strengthen trust and collaboration, while continuing to reduce crime. The League supports the recommendations of the President's Task Force on 21<sup>st</sup> Century Policing Report. To that end, the League supports:***

- a) **POST Board model policies that align with the recommendations of the *President's Task Force on 21<sup>st</sup> Century Policing Report*;**
- b) **POST Board approved training opportunities for new recruits and in-service peace officers that include but are not limited to procedural justice, bias/implicit bias and cultural awareness, de-escalation, and crisis intervention training;**
- c) **Increased state and federal funding for peace officer training that includes**

- reimbursement for tuition, travel, time and backfilling the shifts of officers who are out for training;
- d) State and federal funding for peace officer safety and wellness initiatives; and
- e) Authority and grants for municipal police departments to deploy technologies such as dash cameras and police body worn cameras that enhance both criminal justice and officer accountability.

### **SD-42. Homeland Security Costs and Liability**

*Issue:* The federal government’s response to terrorism has resulted in new responsibilities for local governments in a number of areas. For example, shortly after the terrorist attacks on Sept. 11, 2001, the federal government tapped local law enforcement personnel to provide security and perform screening at our nation’s airports. These new responsibilities increase cities’ liability exposure and result in higher local costs for public safety services. In addition, local governments are expected to continue emergency planning and capacity building efforts, provide additional training and equipment for first responders, and improve emergency response coordination and communication.

As partners in protecting our country from terrorism, the federal government must: 1) provide greater direct financial support for our first responders; 2) maintain funding for general pre- and post-disaster emergency management programs; 3) ensure a coordinated and effective national emergency response system; and 4) address issues of cyber security that threaten public safety, services, and infrastructure.

***Response:* The League of Minnesota Cities recommends that when the federal**

**government requires or contracts for cities’ assistance in meeting federal homeland security responsibilities, the federal government should fully cover the costs, including the risk of liability arising from these activities.**

**The League supports greater federal funding to prepare, train, and equip our first responders. The League also supports changes in the federal funding process to ensure Department of Homeland Security funds move quickly to the local level. Furthermore, the League supports the allocation of state resources to provide training and technical assistance to local governments related to the prevention and control of cyber security risks to critical infrastructure.**

### **SD-43. State Compliance with Federal REAL ID Act**

*Issue:* The REAL ID Act, passed by Congress in 2005, enacted the 9/11 Commission’s recommendation that the federal government “set standards for the issuance of sources of identification, such as driver’s licenses.” The Act established minimum security standards for license issuance and production and prohibits federal agencies from accepting, for certain uses, driver’s licenses and identification cards from states not meeting the Act’s minimum standards. The restricted ID uses covered by the Act are: accessing federal facilities, entering nuclear power plants, and, no sooner than 2018, boarding federally regulated commercial aircraft.

In 2009, the Minnesota legislature enacted a law (2009 Session Law Chapter 92) prohibiting implementation of the federal REAL ID Act due to cost and privacy concerns. Despite the 2009 prohibition, the State of Minnesota offers Enhanced Driver’s License (EDL) and Enhanced Identification

Cards (EID). They are dual-purpose cards that meet the security requirements of the REAL ID Act. In addition to serving as a typical driver's license, the card allows a Minnesota resident to re-enter the U.S. at its land or seaports when returning from Canada, Mexico, Bermuda or the Caribbean. An EDL is also available to a driver who qualifies for a commercial driver license (CDL). When the REAL ID Act is fully implemented by the federal government, travelers will need a passport, Enhanced Driver's License, Enhanced ID card or other federally recognized documents to board aircraft. Unless Minnesota law is changed to allow the state to implement the Real ID Act, a regular Minnesota state driver's license will not meet the requirements of REAL ID and the U.S. Department of Homeland Security warned that travelers may not be allowed to board federally-regulated commercial aircraft using a driver's license or ID card beginning January 2018.

The cost of the EDLs and EIDs is \$15 more than the standard issued Minnesota driver's license and the cards are available only by request. Recent media reports suggest that citizen knowledge of the availability of EDLs and EIDs is limited due in part to the fact that renewals only occur every four years, and also because they are obtainable only in certain locations.

As of November 1, 2016, 24 states and territories have adopted the federal standards for tighter security features on state-issued ID cards and driver's licenses and 24 states and territories have received extensions. Minnesota is among the last remaining states that have not fully complied with the REAL ID Act.

In 2016, the Minnesota legislature passed a bill allowing state agencies to develop a plan for compliance with the REAL ID Act;

however, they were unable to pass a bill actually complying with the REAL ID Act.

***Response:* The Minnesota Legislature should repeal 2009 Session Law Chapter 92, the law prohibiting the Minnesota Department of Public Safety (DPS) from implementing the federal REAL ID Act. The Legislature should explicitly authorize the DPS to:**

- 1) comply with the federal REAL ID Act;**
- 2) make compliant driver's licenses available to Minnesota residents in convenient locations statewide; and**
- 3) if necessary, adjust the cost of a Minnesota driver's license to cover the cost of implementation.**

**The League of Minnesota Cities also supports changes to federal law to allow:**

- 1) a time extension for Minnesota compliance and**
- 2) a transition period that would allow existing driver's license holders to obtain a compliant license when they renew.**

## **SD-44. Immigration Reform**

***Issue:*** The United States and the State of Minnesota have long traditions of welcoming immigrants. Immigrants strengthen Minnesota by contributing to the state's economy, enhancing cultural resources, and participating in efforts to build strong communities.

According to the National League of Cities, roughly 35 percent of undocumented immigrants have lived in the United States for 10 years or more. Approximately 1.6 million undocumented immigrants are children, and another 3.1 million children in the United States have at least one

undocumented parent. These families are forced to live “underground” and are unable to get drivers’ licenses or car insurance in most states. In addition, they are unlikely to obtain health insurance and are afraid to report crimes to local law enforcement.

Since immigrants are barred from most federal public assistance, the burden of providing social services, education, and health care falls to state and local governments that are increasingly feeling the financial impact of both legal and illegal immigrants living in their communities.

***Response:* The League of Minnesota Cities, together with the National League of Cities, urges Congress to move quickly to enact and enforce effective immigration laws.**

**Federal and state governments must not transfer responsibility for enforcing U.S. immigration laws to local personnel, including police officers, firefighters, educators, health professionals, and social service employees. Finally, federal and state governments must not prohibit local units of government from implementing policies aimed at fostering positive relationships between local government officials, including law enforcement personnel, and immigrant communities.**

## **SD-45. Legalization of Fireworks**

***Issue:*** In 2002, the state enacted a law allowing the sale and use of non-aerial, non-explosive consumer fireworks, including sparklers, party poppers, snakes, and other novelty items—relaxing the ban on consumer fireworks in place in Minnesota since 1941. In 2008, the Legislature further relaxed the ban by increasing the amount of explosive material allowed in legal fireworks.

Local fire service professionals have reported that consumers and law enforcement personnel have had difficulty distinguishing between legal and illegal fireworks, and that the 2002 law resulted in greater use in Minnesota of illegal fireworks purchased in other states.

According to data provided by the Minnesota State Fire Marshal Division, injury trends and dollar losses related to fireworks incidents surged after the consumer fireworks ban was lifted. Hospital reports reveal that the annual number of injuries caused by fireworks rose dramatically in 2002 and remains elevated. Likewise, Minnesota Fire Incident Reporting System records show that the annual dollar loss resulting from fireworks incidents increased significantly in 2002 and has since grown.

In 2003, the state enacted a number of provisions limiting local authority pertaining to fireworks sales. The 2003 law caps the allowable municipal permit fee at \$100 per vendor selling fireworks with other products, and \$350 per vendor selling fireworks exclusively. The law restricts cities from requiring fireworks sellers to purchase additional liability insurance. Finally, the 2003 law states that cities cannot prohibit or restrict the display of consumer fireworks if the display and structure complies with National Fire Protection Association (NFPA) Standard 1124. The NFPA is a private international association of individuals and trade and professional organizations. (NFPA Standard 1124 is not a public document and is available only for a fee.)

Fireworks products can cause serious injuries and fire loss. The legal sale of consumer fireworks undermines fire prevention efforts. The sale and use of consumer fireworks increases local public

safety enforcement, emergency response, and fire-suppression costs.

***Response:* The League of Minnesota Cities opposes legislation that would further relax the ban on the sale and use of consumer fireworks. The League supports a repeal of the 2002 law that relaxes the ban on the sale and use of consumer fireworks.**

**Fees are needed to cover the costs associated with compliance checks, education, and inspections relating to the sale of a regulated product. The current fee caps do not allow cities to recover these costs. The League supports allowing cities to establish and impose reasonable fees on retailers that sell fireworks. The League opposes restrictions on requiring fireworks retailers to purchase additional liability insurance. Finally, the League seeks repeal of the NFPA reference.**

## **SD-46. Traffic Enforcement Cameras**

***Issue:* Drivers who disobey traffic laws can cause serious traffic accidents and contribute to gridlock. In spite of the severity of this problem, cities cannot always afford the levels of peace officer enforcement that residents demand. The technology exists to enforce traffic laws with photographic evidence. For example, there is less running of red lights when motions imaging recording systems (MIRS) are installed at traffic signals.**

***Response:* Local law enforcement agencies should have the express authority to use photo enforcement technology to enforce traffic laws. Local law enforcement officers should have the express authority to issue citations for traffic violations by mail where the violation is detected with photographic evidence.**

## **SD-47. Operation of Motorized Foot Scooters**

***Issue:* Current state statute pre-empts the authority of local units of government to regulate the operation of motorized foot scooters. The law provides that an operator must be 12 years of age or older. Although the law contains safety provisions, including a requirement that operators under the age of 18 must wear helmets, it does not require training or permits for operators of any age. Further, it does not explicitly restrict the operation of motorized foot scooters to low-volume and/or low-speed roadways.**

Use of motorized equipment on roadways is inherently more dangerous than the use of non-motorized bicycles and is comparable to the operation of motorized watercraft. While the law governing watercraft operation also requires an operator to be at least 12 years of age, Minn. Stat. § 86B.101 requires watercraft operators between the ages of 12 and 18 to successfully complete a youth watercraft safety program and to obtain a watercraft operator's permit. The youth watercraft safety program is administered by the state, and includes a personal watercraft educational course and a testing program that emphasizes safe and legal operation.

***Response:* State law should limit operation of motorized foot scooters to roadways with speed limits of 30 miles per hour or less. State law should require motorized foot scooter operators between the ages of 12 and 18 to obtain an operator's permit by successfully completing a state-administered motorized foot scooter safety program modeled after the watercraft safety program. In addition, state law should allow local units of government to be more restrictive in regulating the operation of motorized foot scooters, and**

**should provide explicit authority to regulate hours of use.**

## **SD-48. Electric Personal Assistive Mobility Devices and Electric Vehicles Operation While Impaired**

*Issue:* Electric personal assistive mobility devices (commonly referred to as Segways) and electric vehicles are becoming increasingly popular modes of transportation, particularly for local trips. The definitions of these types of vehicles are provided under Minn. Stat. § 169.011 as follows:

- "Electric personal assistive mobility device" means a self-balancing device with two nontandem wheels, designed to transport not more than one person, and operated by an electric propulsion system that limits the maximum speed of the device to 15 miles per hour.
- "Electric vehicle" means a motor vehicle that is able to be powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and meets or exceeds applicable regulations in Code of Federal Regulations, title 49, part 571, and successor requirements. Electric vehicles include neighborhood electric vehicles, medium-speed electric vehicles and plug-in hybrid electric vehicles.

Although the state driving while impaired (DWI) law (Minn. Stat. § 169A.20) prohibits a person with a blood alcohol level (BAC) above .08 from operating a motor vehicle, boat or off-road vehicle, the Minnesota Court of Appeals recently held that such devices are not motor vehicles for purposes of Minnesota's DWI laws (State v. Brown, 801 N.W. 2d 186 (Minn. Ct. App. 2011)). The court's decision makes it difficult for local officials to prosecute a

person who is threatening public safety by operating an electric personal assistive mobility device or an electric vehicle while impaired.

*Response:* **The League of Minnesota Cities supports an expansion of the current DWI law so that it applies to a person operating an electric personal assistive mobility device or an electric vehicle.**

## **SD-49. Drug Courts**

*Issue:* The League of Minnesota Cities recognizes the impact of substance abuse on individuals, communities and taxpayers. According to the National Council on Alcoholism and Drug Dependence, the relationship between alcohol and drugs and crimes--including domestic abuse and violence, underage drinking, robbery, assault and sexual assault--is clearly documented. The National Center on Addiction and Substance Abuse reports 65 percent of the nation's inmates meet certain medical criteria for substance abuse and addiction, but only 11 percent received treatment for their addictions.

Drug courts are an effective problem-solving approach for dealing with alcohol and other drug addicted offenders in the judicial system. Drug courts closely monitor the defendant's progress toward sobriety and recovery through ongoing treatment, frequent drug testing, regular mandatory check-in court appearances, and the use of a range of immediate sanctions and incentives to foster behavior change.

In drug court, judges collaborate with other traditional court participants (prosecutors, defense counsel, treatment providers, probation officers, law enforcement, educational and vocational experts, community leaders and others), whose roles

have been substantially modified, but not relinquished, in the interest of helping defendants deal with addiction.

***Response:* The League of Minnesota Cities supports the efforts of drug courts to address substance abuse and reduce crime. The League supports funding for additional drug courts.**

## **SD-50. Methamphetamine**

***Issue:*** The production and abuse of methamphetamine (meth) continues to be a problem for communities across Minnesota. Cities are facing serious issues pertaining to meth, including costly cleanup of drug labs, and the social problems and public safety issues resulting from meth abuse. To meet the challenges presented by the growing meth problem, cities are working with retailers to monitor the sale of precursor ingredients, and are coordinating with other units of government on the impact on communities.

***Response:* The Legislature and state agencies must:**

- a) Provide sufficient funding to assist local units of government with cleanup of drug labs.**
- b) Allow local governments to be more restrictive in the development of ordinances at the city and county level to appropriately address the needs of their communities.**
- c) Support public education on methamphetamine, including information to local government officials, retailers, schools, and health care providers.**
- d) Provide training, equipment, standards, and support sufficient to allow local law enforcement and other responders to safely perform their duties.**

## **SD-51. Drug Paraphernalia**

***Issue:*** Cities throughout the state struggle with local businesses selling items primarily designed to enable illegal drug use. Current state law only prohibits use, possession, delivery, and advertisements of drug paraphernalia. The law inadequately defines the term “drug paraphernalia,” and leaves cities to pass more effective ordinances “prohibiting or otherwise regulating the manufacture, delivery, possession, or advertisement of drug paraphernalia.”

Many cities have adopted their own ordinances to regulate drug paraphernalia, including specifically prohibiting sales. But for a variety of reasons, business owners routinely challenge these ordinances as unconstitutional and then successfully invoke virulent public outcry on that basis. This experience—along with costly court challenges—discourages other cities from taking similar steps to curb illegal drug activity, and leaves most cities only able to enforce an inadequate state law.

Most states immediately around Minnesota define “drug paraphernalia” in a detailed way based on a 1979 model federal law designed to avoid constitutional issues. Minnesota does not. Federal law and the law of half the states immediately around Minnesota explicitly ban sales of drug paraphernalia, but Minnesota does not. The current state of the law arguably makes drug paraphernalia easier to obtain in Minnesota than in the states immediately surrounding it.

***Response:* The League of Minnesota Cities supports strengthening the current statutory prohibition on drug paraphernalia, including improving the statutory definition of “drug paraphernalia” and explicitly prohibiting sales.**



## **SD-52. Regulation of Massage Therapists**

**Issue:** The state does not currently license nor register massage therapists. Minn. Stat. ch. 146A is the Complementary and Alternative Health Care Practices Act which identifies prohibited provider conduct and authorizes the Minnesota Department of Health to take disciplinary action against noncompliant providers who are not registered or licensed by a health-related licensing board. The office has authority to respond to allegations of prohibited behavior through an investigatory process but this function is triggered mainly by consumer complaints and there is no requirement that the office take any action. Additionally, resources for these purposes have been severely limited.

In absence of any required statewide standards or regulation, several cities have entered the traditional state domain of health-care licensure by enacting ordinances that require all massage therapists to obtain a local professional license and many cities have also required bricks and mortar establishments to obtain a business license. These ordinances help local law enforcement officers to differentiate between legitimate providers and businesses engaged in sex trafficking and prostitution as well as provide for health and sanitation standards.

City staff and law enforcement have spent much time and resources conducting criminal background checks; investigating massage therapist accreditation programs to determine legitimacy and credibility; and inspecting and monitoring establishments due to citizen complaints and concerns. This has resulted in different procedures, requirements and fee structures across the state. Additionally, despite the thorough work of city staff and law enforcement,

when an illegitimate business suspects investigation, it will often close down and re-open in a different city. Without any sort of statewide database of these businesses, one city's solution may become another city's problem.

**Response:** **The League of Minnesota Cities supports the statewide registration or licensure of massage therapists that would not pre-empt the ability of cities to regulate massage therapy establishments. The League also supports legislation pertaining to the practice of massage therapy that accomplishes the following:**

- a) **Helps cities establish legitimacy of providers and businesses applying for a local license to practice.**
- b) **Prevents individuals from conducting criminal activities such as prostitution and sex trafficking out of establishments operating as massage therapy facilities.**
- c) **Improves provider compliance with Minn. Stat. ch. 146A and requires the state to take action in response to noncompliance.**
- d) **Protects the public from injury and from other conditions that may result in harm.**

## **SD-53. Lawful Gambling and Local Control**

**Issue:** As part of the 2009 reforms to lawful gambling statutes, some local control was removed from the lawful gambling process. Previously, the lawful gambling licensee would have to obtain the city council's approval as part of its application to renew the organization's premises permit (some forms of lawful gambling require obtaining an organizational license and a premises permit(s) from the state). This step was removed when the state established a perpetual organizational license and

premises permitting system. Because these licenses and permits are issued by the state, under the current system a city's authority over these licensees is limited to: 1) approval of the initial premises permit; and 2) enforcement of the city's lawful gambling ordinance. Some city officials have concerns that gambling organizations will be more apt to ignore local regulations (such as spending the required percentage of lawful gambling expenditures in the city's trade area) if they don't need the city's approval for the renewal of their state-issued premises permits.

***Response:* The licensee should be required to obtain local approval on an annual basis, or at longer intervals as determined by the city, and file the resolution of local approval with the Gambling Control Board.**

### **SD-54. Liquor Liability Insurance Limits**

***Issue:*** Minn. Stat. § 340A.409 requires that “no retail license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability imposed by Minn. Stat. § 340A.801” relating to the sale of alcoholic beverages. The minimum limits of liability currently in statute require \$50,000 of coverage because of bodily injury to any one person in any one occurrence, \$100,000 because of bodily injury to two or more persons in any one occurrence, \$10,000 because of injury to or destruction of property of others in any one occurrence, \$50,000 for loss of means of support of any one person in any one occurrence, \$100,000 for loss of means of support of two or more persons in any one occurrence, \$50,000 for other pecuniary loss of any one person in any one occurrence, and \$100,000 for other pecuniary loss of two or more persons in any one occurrence.

These limits have not been updated since at least 1985 and would provide very little relief to persons impacted by an intoxicated person. While cities can choose to require higher limits of liability than required by statute, it may create competitive imbalance between communities if the limits are not consistent.

***Response:* The minimum limits in Minn. Stat. § 340A.409 should be increased to \$500,000 per occurrence with a \$500,000 annual aggregate.**

### **SD-55. On-Sale Liquor or Wine Licenses to Cultural Centers**

***Issue:*** Cultural centers are not one of the qualifying entities to which municipalities may issue on-sale liquor or wine licenses. Several cultural centers have received special legislation that allows their municipalities to issue on-sale liquor or wine licenses to them. This practice interferes with the ability of municipalities to control the placement and operating manner of these entities.

***Response:* The Legislature should authorize municipalities to issue on-sale liquor or wine licenses to cultural centers, subject to restrictions imposed by the municipality.**

### **SD-56. Wine and Off-Sale Licenses**

***Issue:*** Minn. Stat. ch. 340A authorizes cities to issue liquor licenses to various establishments within their jurisdictions, but in virtually all cases, the license issued by the city is not valid until the state approves it. This is true for such commonly issued licenses as wine, off-sale intoxicating liquor and temporary on-sale intoxicating liquor licenses. The result is extra time spent for city staff, as well as a time-based

commercial impact to the business pursuing the original license.

Additionally, if a business applies for an on-sale wine license, the state may choose to conduct an inspection of the business further delaying approval of the license and full operation of the establishment. This inspection is often in addition to a city certificate of occupancy inspection and a county health inspection.

***Response:*** The Legislature should remove the requirement of approval by the commissioner for city-issued liquor licenses and simply require cities to notify the state of newly issued and renewed licenses as is already the case for intoxicating on-sale liquor licenses and all 3.2-liquor licenses. If the state requires an inspection to certify an on-sale wine license, this should be delegated to either the city or county to be conducted at the same time as other inspections. This will expedite the process for both the state and the business.

## **SD-57. Youth Access to Alcohol and Tobacco**

***Issue:*** The minimum age to purchase alcohol in Minnesota is 21. The minimum age to purchase tobacco in Minnesota is 18. The minimum age to sell alcohol and tobacco products in Minnesota is 18. The penalty for a minor or underage person using false identification is 90 days in jail and/or up to \$1,000. Cities have an interest in preventing youth from obtaining these products. To this end, many cities operate compliance check programs in an effort to discern the current level of youth access and to reduce youth access. Statewide, a number of cities have created community partnerships with their court systems, local businesses, and school districts to quickly

address problems associated with youth access to alcohol and tobacco.

***Response:*** The League of Minnesota Cities opposes any proposal that could result in increased risks of youth access to alcohol and tobacco products and expanded off-sale venues for the sale of such products. The League supports the sale of alcohol and tobacco products only in controlled environments. The League supports statutory changes that assist in reducing youth access to alcohol and tobacco products, including increasing the penalties for youth who use false identification and adults who provide alcohol to minors. The League supports locally-determined alcohol compliance check programs, but any state mandate for alcohol compliance checks should come with state-supported funding initiatives to support these locally-determined compliance efforts. The Legislature should consider a grant program supporting locally-based community partnerships that can quickly and effectively respond to youth access problems.

## **SD-58. Smoking Ban Ordinances**

***Issue:*** In 2007, the Legislature extended the Minnesota Clean Indoor Air Act (MCIAA) to cover all workplaces, including restaurants and bars. The law sets a floor with minimum standards and allows local governments to implement more restrictive ordinances.

In recent years, the popularity and use of electronic cigarettes (e-cigarettes) has increased significantly. There is much that is unknown about the health impacts of e-cigarettes which has slowed government regulation of their sale and use. Because of concerns over potential health impacts and the lack of comprehensive state and federal

regulation, cities have passed ordinances on an individual basis restricting the sale of e-cigarettes to minors and prohibiting their use in public places.

In 2014, the Legislature passed regulations on the sale of e-cigarettes to mirror existing cigarette sale regulations including prohibiting sale to minors. It also passed a law prohibiting use in public buildings owned and operated by the State of Minnesota and all political subdivisions. The Legislature did not ban indoor use in all workplaces.

***Response:* Many cities have already passed ordinances banning the use of e-cigarettes in all public places. To ensure uniformity and consistency across the state, the Legislature should regulate e-cigarettes under the MCIAA while preserving the ability of local governments to enact more restrictive ordinances.**

## **SD-59. Regulation of Mobile Businesses**

***Issue:*** The transient nature of mobile businesses presents unique challenges to traditional city zoning and permitting and may create an unfair competitive advantage over traditional businesses that pay property taxes and generate income for a city. Cities also make significant investments in the development of retail districts and downtowns and have a strong interest in maintaining a level playing field for brick and mortar establishments.

Minnesota has seen a sharp increase in the number of food trucks (Mobile Food Units) operating throughout the state. Food trucks are licensed as food and beverage service establishments by the Minnesota Department of Health (MDH) or by local jurisdictions pursuant to an MDH delegation

agreement. Food trucks are prohibited from operating in the same location for more than 21 days without approval of the regulatory authority.

In 2015, the Legislature authorized the Board of Cosmetologist Examiners to adopt rules governing the licensure, operation and inspection of “Mobile Salons” which are operated in a mobile vehicle or mobile structure for exclusive use to offer personal services defined in Minn. Stat. § 155A.23, subd. 3. The rules must prohibit mobile salons from violating reasonable municipal restrictions on time and place of operation of a mobile salon within its jurisdiction, and shall establish penalties, up to and including revocation of a license, for repeated violations of municipal laws.

***Response:* It is appropriate for mobile businesses to be licensed by the state or its designees in the same manner as non-mobile business establishments. Such state regulation must not preempt the ability of local governments to enact reasonable time and place restrictions on the operation of mobile businesses within their jurisdictions.**

## **SD-60. Regulation of Party Buses and Boats-for-Hire**

***Issue:*** A party bus (also known as a party ride, limo bus, limousine bus, party van, or luxury bus) is a large motor vehicle usually derived from a conventional (school) bus or coach, but modified and designed to carry 8 or more people for recreational purposes. In Minnesota, these vehicles are regulated by default under Minn. Stat. ch. 221 (the chapter of law dealing with motor carriers) and registered by the Minnesota Dept. of Transportation’s (MnDOT’s) Office of Freight and Commercial Vehicle Operations. The regulations require operators to carry commercial insurance,

have an annual vehicle inspection and be registered with the state. Party bus drivers are required to hold a current commercial driver's license (CDL) issued through the Minnesota Dept. of Public Safety's Driver and Vehicle Services Division.

A boat-for-hire is a watercraft used by owners and operators to carry passengers for hire. Minn. Stat. § 326B.94 and Minnesota Rules 5225.6000 through 5225.7200 govern the requirements of boat owners and operators carrying passengers for hire on Minnesota's inland waters. These vessels must have a permit to carry passengers for hire. They must have an annual safety inspection and a dry-dock inspection performed by Minnesota Department of Labor and Industry boiler inspection personnel once every three years (or annually if the hull is made of wood). The vessels must also be operated by a licensed master and must follow all Minnesota Dept. of Natural Resources' boating and water recreation regulations.

Party buses and boats-for-hire are sometimes chartered for celebrations such as weddings, proms, bachelor and bachelorette parties, birthdays and tours. Party buses are also popular for round trips to casinos and sporting events, and personalized drop-offs and pick-ups at various bars and nightclubs. Additionally, both party buses and boats-for-hire have become popular settings for adult entertainment.

Cities have seen a sharp increase in the number of party buses and boats-for-hire being used as venues for illegal activities such as underage drinking, drug use and sex trafficking. The transient nature of party buses and boats-for-hire presents unique challenges to traditional city zoning, permitting and law enforcement. While state laws regulate requirements for the operation of party buses and boats-for-hire, the law is

silent on enforcement, penalties, inspection and liability related to illegal activities that occur in party buses and on boats-for-hire.

***Response:* The League of Minnesota Cities supports changes to state statutes that would help reduce criminal activities taking place on party buses and boats-for-hire. Specifically, the League supports:**

- a) **Creation of statutory definitions of "party bus" and "boat-for-hire" that contain permissible uses of the vehicles;**
- b) **Prohibition on offering or allowing "adult entertainment" as defined by Minn. Stat. § 617.242, "sexual conduct" as defined by Minn. Stat. § 617.241, or "nudity" as defined by Minn. Stat. § 617.292, subd. 3, on party buses and boats-for-hire;**
- c) **Explicit authority for peace officers to investigate suspicious activities on party buses and boats-for-hire and to cite individuals on board who are involved in illegal activities; and**
- d) **Requiring the appropriate authority to utilize existing authority to impose fines, or to deny, suspend, or revoke permits or registration certificates held by operators found to have adult entertainment, drug, or underage consumption violations.**

## **SD-61. Environmental Protection**

***Issue:*** Cities demonstrate strong stewardship for the protection and preservation of the environment. Minnesota municipalities have historically been the leading funding source for environmental protection and improvements. Municipal efforts include environmental protection through wastewater treatment, wetland restorations, stormwater treatment, public utility emission

reductions, brownfield cleanup, safe drinking water programs, as well as others.

At some point, however, the diminishing or nonexistent environmental benefit received from additional efforts is fiscally irresponsible. The programs are often improperly designed to meet their stated goals. Additionally, the absence of funding by the state and federal government has removed an essential restraining feature in program design and implementation. Agencies are less accountable to the governments that mandate environmental programs when they do not have to find the money to implement the programs.

Specific problems faced by cities include:

- a) New programs or standards are continually adopted without regard to the existence, attainability or cost of existing programs and standards.
- b) Regulatory bodies fail to consistently use the best science available and the most current and accurate data when establishing water quality standards.
- c) Regulatory bodies impose new permit requirements without going through rulemaking. Instead, the agencies rely on internal documents, program strategies, and “best professional judgment of staff” when setting permit criteria.
- d) Regulatory bodies approve permits and programs that compete with traditional municipal services and encourage urban sprawl. This behavior puts at risk the public investments and growth management efforts cities have made when planning for future development.
- e) Permit fees and other cost-transfer elements of federal and state programs do not provide an incentive for environmental agency efficiency, policy prioritization or risk assessment. Additionally, all residents of the state contribute to the need for wastewater,

drinking water, and stormwater treatment and benefit from the resulting improved water quality. These factors make the state general fund an appropriate source for significant portions of state water program funding.

- f) Third-party environmental advocacy groups create significant hardships on cities by threatening litigation even when the best science available may not support the groups’ positions.
- g) Cities are often required to pay the cost of removing problem materials from the waste stream, rather than preventing the problem at the consumer product or manufacturing level.

***Response: Alternative wastewater treatment and cooperative service systems should be prohibited from operating in areas that can reasonably and effectively be served by existing municipal systems, unless:***

- a) **The municipal system is proven to be substantially less cost-effective and substantially less beneficial to the environment; and**
- b) **The operation of these systems will not create a stranded public investment in the existing system.**

**Sufficient state and federal financial assistance should be provided to local governments when complying with state and federal infrastructure requirements, particularly with regard to wastewater, stormwater, and drinking water facilities.**

**The Minnesota Pollution Control Agency (MPCA) should streamline its permitting and re-issuing processes to allow for effluent standards and permit requirements to be known earlier, thereby giving communities more time to defend against contested case hearings.**

**The Legislature should require the MPCA to make its determination regarding permit-required submittals, permit modifications, and the reissuance of a permit within a reasonable set time period, and require the MPCA to make its determinations and reissue the permit within that reasonable set time frame.**

**The state should ensure townships are required to meet the same environmental protection and regulatory requirements as cities.**

**Legislation should be passed that requires state agencies to establish permit requirements only when the criteria they are using is developed through the rule-making process.**

**State agencies need to develop science-based standards and quantify new effluent standards, ensuring that they are scientifically and economically practicable. State and federal agencies should coordinate and integrate their monitoring data to assure that all pertinent data is available and utilized.**

**The state general fund is an appropriate source for state water program funding. Municipal water permit fees should only be increased if new revenue is needed because of increased costs of processing municipal water permits or if the funds would go for specific scientific research, technical and financial support for cities, or agency staffing needed by cities to address environmental and public health concerns, not as a means to generate new revenue to cover other budget shortfalls.**

**Additionally, the Legislature should create effective, producer-led reduction, reuse, and recycling programs to deal with a product's lifecycle impacts from design through end-of-life management**

**and should regulate products and compounds that damage water quality, sewer collection, stormwater or wastewater treatment systems at the consumer and manufacturing levels, not just at the treatment and infrastructure maintenance level.**

## **SD-62. Municipal Public Water Supplies**

*Issue:* Essential residential water supplies provided by public water supply systems are classified as the highest priority for the use of public water under Minn Stat §103G.261. Minnesota cities spend significant resources meeting their responsibility to providing safe, reliable, affordable water to their residents in a sustainable manner. That is an essential element in assuring a healthy and stable future for public health, the environment, and economic development. As a result, municipal water suppliers have collected some of the most current and accurate information available on local water conditions.

The state requires extensive planning and permitting processes for municipal water suppliers to document that their systems are drawing water at sustainable levels, that the water is safe for human consumption, that they have land use controls in place to protect public water supplies from contamination, that adequate plans exist for emergency and high demand situations, and that rate structures meet state statutory requirements. Those systems are constantly becoming more technologically, environmentally, and economically efficient. City water suppliers have invested many billions of dollars to develop their utility systems and infrastructure in a manner that meets those criteria.

Demand and supply sides of this issue are being addressed throughout the state. Cities

have established educational programs, incentives, and local water use restrictions to further improve water conservation efforts, while appliances and plumbing fixtures are becoming more efficient in their water use. Furthermore, stormwater is being infiltrated into the ground at unprecedented levels as part of municipal stormwater permit requirements and is being redirected for irrigation purposes in some cities.

Despite those efforts, there are places in the state where monitoring data indicates that water may be being used faster than the supply can sustain, particularly in the case of underground aquifers. These issues are very complex, however, and causes and effects are not always easily documented or understood. City water supplies are not the only users of that water, either. Industries, smaller private wells, agricultural operations, irrigation systems, and contamination containment and treatment can all be major drains on local water supplies.

Hard facts and sound science need to be used to determine the best courses of action to assure that safe, reliable, affordable water supplies are available to future Minnesotans. Those approaches will vary considerably depending on local water and soil conditions, the types and sizes of users, and the quantity and quality of available water. They also need to be coordinated between the many state entities that play a role in water management and regulations so that scarce local resources are not wasted and efforts are not counterproductive to other priority environmental and public health results.

***Response:* The state should lead the development of sound scientific information on water supply, aquifer recharge, and groundwater availability and quality, making good use of the**

**existing studies, data, and staff expertise of municipal water suppliers.**

**The state should also be working to remove barriers to water re-use, aquifer recharge, encouraging cultural changes in water use practices, applying technology for smart water use, exploring impacts and creative mitigation options at contaminated sites, on ways to incent and enable alternate uses of stormwater, and ways to make sure that all water users play a role in ensuring that water supplies are being managed in a manner that is sustainable for future residents. Those solutions need to keep in mind that essential residential water use is the highest preferred use of public water supplies.**

**Finally, in cases where sound management of water resources will require substantial modifications in public water systems that were previously determined to be adequate, the state needs to be a partner in developing cost-effective solutions and in providing the technical and financial resources to make those changes to prevent communities from being economically uncompetitive.**

## **SD-63. Impaired Waters**

***Issue:*** Despite the billions of dollars that Minnesota municipalities have invested and continue to invest in wastewater and stormwater management systems, and best management practices to protect, preserve, and restore the quality of Minnesota's surface waters, the quality of some of Minnesota's surface waters does not meet federal water quality requirements. The federal Clean Water Act requires that further efforts be made by the state to reduce human impacts on surface waters that are determined to be impaired due to high pollutant loads of nutrients, bacteria,



sediment, mercury, and other contaminants. Scientific studies of these waters must be conducted to determine how much pollution they can handle (Total Maximum Daily Loads, or TMDLs). The pollutant load reduction requirements will affect municipal, industrial, and agricultural practices and operations along any river, stream or lake determined to be impaired. While the sources of 86 percent of the pollutants affecting Minnesota waters are non-point sources, there will also be new costs and requirements for point-source dischargers, like municipal wastewater treatment facilities. Municipal stormwater systems will also face increased protective requirements and regulation as part of the state's impaired waters program.

***Response:* The League of Minnesota Cities will work actively with the administration, the Legislature, and other stakeholders in the design and implementation of Minnesota's impaired waters program to:**

- a) **Ensure equitable funding solutions are found, such as the state general fund or bonding, that broadly collect revenue to address this statewide problem;**
- b) **Support legislative appropriation of constitutionally dedicated clean water revenues that will supplement traditional sources of funding for these purposes, not be used to cover budget cuts, backfill past program reductions, or to otherwise supplant normal state spending on water programs;**
- c) **Direct the majority of funds collected by the state for impaired waters into programs that fund municipal wastewater and stormwater projects, and for state programs needed for municipal wastewater and stormwater permitting and technical support,**

**including the Clean Water Revolving Loan Fund, Wastewater Infrastructure Fund, TMDL Grants Program, Small Community Wastewater Treatment Grant and Loan Program, and other state programs that provide financial resources for city wastewater treatment facilities, septic tank replacement, stormwater management projects, and other city water quality improvement and protection projects;**

- d) **More adequately cover the current five-year wastewater infrastructure funding need projection of more than \$1.65 billion;**
- e) **Recognize and address the upcoming costs of stormwater management infrastructure and operation on municipalities from new regulatory mandates and load reduction requirements;**
- f) **Allow flexibility in achieving pollutant load reductions and limitations through offsets or trading of pollutant load reduction credits for both point and non-point load reduction requirements within watersheds;**
- g) **Recognize and credit the work underway and already completed by local units of government to limit point and non-point source water pollutant discharges;**
- h) **Recognize the diversity of efforts and needs that exists across the state;**
- i) **Ensure the best science available is used to accurately determine the sources of pollutant load in order to maximize positive environmental outcomes and minimize unnecessary regulatory and financial burdens for cities by correctly accounting for and addressing agricultural and other non-point pollutant sources;**
- j) **Ensure the state requires that the MPCA retain control of the TMDL**

**development process and that all scientific research related to TMDLs is conducted by the MPCA or qualified, objective parties pursuant to state contracting, procurement, and conflict of interest laws; and**

- k) Clarify state water quality mandates so cities know specifically what they are required to do and what methods of achieving those outcomes are acceptable to state and federal regulators.**

### **SD-64. Urban Forest Management Funding**

*Issue:* Urban forests are an essential part of city infrastructure. Dutch elm disease, oak wilt disease, drought, storms, and emerald ash borer threaten our investment in trees. The costs for control and removal can be catastrophic and put pressure on city budgets. The Minnesota Department of Natural Resources, through its Urban and Community Forestry program, and the Minnesota Department of Agriculture, through its Shade Tree and Invasive Species program, currently have regulatory authority to direct tree sanitation and control programs. Although these programs allow for addressing some tree disease, pest, and other problems, funding levels have been inadequate to meet the need of cities to build capacity for urban tree programs and respond to catastrophic problems. Cities share the goal of the state’s Releaf Program—promoting and funding the inventory, planning, planting, maintenance, and improvement of trees in cities throughout the state. In addition, economic gains for stormwater management, tourism, recreation, and other benefits must be protected from tree loss. A lack of timely investment in urban forests costs cities significantly more in the long run.

Further, more and more cities are facing immediate costs for the identification, removal, replacement, and treatment of emerald ash borer (EAB) as it spreads across the state. The state has no program to assist cities in covering those expenses.

*Response:* **The League of Minnesota Cities supports funding from the general fund or other appropriate state funds for a state matching grant program to assist cities with building capacity for urban forest management and meeting the costs of preparing for, and responding to, catastrophic urban forest problems.**

**Specifically, direct grants to cities are desperately needed for the identification, removal, replacement, and treatment of trees related to management of EAB. The state should establish an ongoing grant program with at least \$5 million per year that is usable for those activities.**

### **SD-65. Election Issues**

*Issue:* Cities play an important role in administering state and federal election law and conducting voting activities.

*Response:* **In order to strengthen the effectiveness of local election administration, the Legislature should:**

- a) Seek the input of cities, townships, counties, and school districts on proposed changes to voter registration and election law;**
- b) Expedite court action to resolve candidate eligibility related to residency in errors and omissions proceedings;**
- c) Eliminate redundant audio testing of AutoMARK voting equipment by election judges in precinct polling places on Election Day;**

- d) **Repeal requirements for precinct election judges to count blank ballots in each shrink-wrapped ballot package as they are opened in the polling place;**
- e) **Shorten the deadline for major political parties to provide lists of persons interested in serving as election judges to election officials to within one month (30 days) following precinct caucuses; and**
- f) **Allow cities the option of certifying primary elections results within three days of the election instead of waiting until the third day.**

## **SD-66. Administering Absentee Balloting**

*Issue:* Eligible voters in Minnesota may vote by absentee ballot prior to Election Day. Starting 46 days before the election, a voter can request an application for an absentee ballot and if approved, receive and cast an absentee ballot in one visit to their county or city election offices. Ballots can also be requested, applied for and received by mail and returned by the voter to the election office by 3:00 pm on Election Day or by 8:00 pm on Election Day if delivered by mail or package delivery. Absentee balloting results are not known until combined with polling place results when the polls close on Election Day.

For those voting absentee in-person, the absentee ballot application process is burdensome and confusing as voters expect the same process they encounter in their polling place on Election Day. The application process should be replaced by having the voter verify their identity on a paper or electronic roster. Currently electronic signatures are not allowed by state law; having the authority to use electronic signatures would make the process more efficient. Streamlining the voter check-in

procedures would increase efficiency and decrease the time voters spend in line waiting to cast their absentee ballot.

Seven days before Election Day, elections administrators can begin processing absentee ballots received by mail and in-person absentee voters can place their ballots directly into a tabulator. Currently, a voter can request to place their ballot in a series of envelopes similar to those returned by mail to be processed after they have left the building. Following legislative changes in 2016 allowing voters to place their ballot into a tabulator, few, if any, voters request to place their ballot into envelopes.

State law allows alternative sites for conducting absentee balloting but requires that these sites remain open for the full 46 days prior to Election Day. Because of the increase in voting before Election Day, cities should have the authority to conduct in-person absentee balloting in alternative sites for the time period during which voters are allowed to place their ballots directly into a tabulator. Additionally, to respond to the voter demand to vote early, this time period should be increased from seven to 14 days before Election Day.

Current law allows for in-person absentee voting until 5:00 p.m. on the day before Election Day. This does not leave adequate time for election officials to process absentee ballots, prepare supplemental lists indicating which voters have already cast absentee ballots and deliver the lists to precincts prior to opening of the polls on Election Day. The current absentee voting process further requires that additional supplemental lists of final absentee voters be delivered to the polls after the last mail delivery on Election Day and often leads to administrative challenges and increased potential for errors in the process.

As more and more voters choose to vote early with absentee balloting, improvements must be made to increase efficiency of administering absentee balloting before Election Day, reduce the potential for errors, and to improve voter experience.

***Response:* The League of Minnesota Cities supports:**

- a) **Replacing the in-person absentee ballot application process with paper or electronic rosters similarly to those used in polling places on Election Day and allow voters to use an electronic signature for electronic rosters;**
- b) **Eliminating the option to place an in-person absentee ballot in a series of envelopes instead of a tabulator;**
- c) **Increasing the time period that an in-person absentee voter can place their ballot directly into a tabulator from seven to 14 days;**
- d) **Allowing alternative in-person absentee voting sites to be established for 14 days prior to Election Day instead of the full 46 days currently required by state law;**
- e) **Establishing an earlier deadline for ending in-person absentee voting;**
- f) **Revising absentee ballot regulations to allow any person 18 and older to witness the absentee process and sign the envelope as a witness; and**
- g) **Authorizing cities with health care facilities to schedule election judges to conduct absentee voting at an earlier date in health care facilities.**

### **SD-67. Felon Voting Rights Restoration**

***Issue:*** There is confusion as to when felon voting rights are restored, and notification of restoration is inconsistent or nonexistent. While there were some changes made to data sharing requirements between the

Department of Corrections and the Office of the Secretary of State in the 2013 legislative session, the process of notifying felons of their eligibility to vote was not improved. This very often leads to challenges placed on Election Day rosters for felons who are not eligible to vote and election judges must then challenge the voter and spend time and resources determining a voter's eligibility.

***Response:* The League of Minnesota Cities supports the restoration of voting rights to felons once they have completed their term of incarceration. This will eliminate the administrative burden of challenging voters at the polls and determining eligibility from various jurisdictions. This will also eliminate the need for investigation by local law enforcement of those who have unknowingly registered to vote or voted before their rights were restored.**

### **SD-68. Write-in Candidates in City Elections**

***Issue:*** For federal, state and county offices, write-in candidates are totaled together as one number for write-in votes. If a candidate wants the write-in votes to be individually recorded, the candidate must file a written request with the Secretary of State no later than seven days before the general or special Election Day. This provides any declared write-in candidate the same provisions for tabulation as a candidate whose name is printed on the ballot. Because this requirement does not exist in city elections, city election officials are required to take considerable time and resources to count and individually record write-in votes cast, many of which are frivolous.

***Response:* The League of Minnesota Cities supports legislation to give cities the option to require that write-in candidates for local elective offices file a**

**formal request with the chief election official at least seven days before the city election if they wish to have their write-in votes individually recorded.**

## **SD-69. Ranked Choice Voting**

*Issue:* Current law allows charter cities to consider and adopt Ranked Choice Voting (RCV) as an alternative voting method in local elections. State statute does not extend this authority to statutory cities.

Additionally, there are no statewide standards for conducting RCV. The lack of consistent guidelines on how to effectively implement a RCV system imposes significant challenges for election administrators and voters.

***Response:* The League of Minnesota Cities supports legislation that would give statutory cities the same authority given to charter cities to consider and adopt RCV. The League of Minnesota Cities also supports statewide standards for those cities that choose to adopt RCV to ensure it is implemented consistently throughout the state to give voters confidence in the fairness of the alternative process of casting their ballots and in the outcome of such elections.**

## **SD-70. Posting Campaign Finance Reports Online**

*Issue:* The 2014 Legislature passed a law requiring the filing officer of a local government to post all campaign reports required to be filed with the local government online. The law does not change what reports must be filed and only requires the posting of reports online if a city has a website. The filing officer must post the reports on the city's website as soon as possible, but no later than 30 days after receipt of the report. The reports must be available on the city's website for four years

from the date the report was posted to the website.

While posting the reports online may be more convenient for citizens and city staff alike as it will replace the physical distribution of reports upon request, the time required to make the report available may be difficult for maintenance of city websites.

***Response:* While the League of Minnesota Cities supports increasing access to information through the use of city websites, the League also urges the Legislature to revisit the length of time required to keep reports online.**

## **SD-71. Electronic Rosters**

*Issue:* While electronic rosters (or “e-poll books”) may increase efficiency and decrease cost for some cities, this may not be true for all. As cities explore the use of electronic rosters, data collected from the Office of the Secretary of State and from jurisdictions that have used the technology, may be helpful in determining next steps and to improve the process. Currently when a voter verifies their identity at a polling place via an electronic roster, they sign a paper form. State law does not allow voters to sign the e-poll book.

***Response:* As the Legislature continues to examine the use of electronic rosters, cities should retain the option of utilizing this technology but should not be required to do so. If cities choose to use e-poll books, the use of electronic signatures should be allowed to increase efficiency. To ensure there is a paper copy of the signatures, the receipts printed by the electronic rosters should include a copy of the voter's signature.**

## **SD-72. Election Judge Recruitment and Retention**

**Issue:** In 2014, just over 28,600 Minnesotans served as election judges. The recruitment and retention of election judges is a significant and essential component of administering elections throughout the State of Minnesota.

State statute requires that precincts with more than 500 registered voters be assigned at least four election judges and those with fewer than 500 registered voters be assigned at least three election judges. Minn. Stat. § 204B.21 requires that at least two election judges in each precinct serve with a different major political party designation, except for student trainee election judges. The remaining election judges in a precinct can serve without an affiliation to a major political party and no more than half the judges in a precinct may belong to the same major political party. Increasingly, political party affiliation has proven to be unnecessary for appointed city clerk and hired city staff serving as election judges during the absentee balloting time period. Political party affiliation is also unnecessary in city special elections when offices on the ballot are nonpartisan.

Minn. Stat. § 204B.19 allows high school students to be excused from school to serve as a trainee election judge if the student submits a written request signed and approved by the student's parent or guardian to be absent from school and a certificate from the appointing authority stating the hours during which the student will serve as a trainee election judge to the principal of the school at least ten days prior to the election. This process is not currently extended to college students which has proven to be a barrier for recruiting college students to serve as election

judges. Additionally, teachers and college faculty are also allowed to take time off of work to serve as an election judge.

**Response:** To ensure state requirements are met and to expand the opportunity of serving as an election judge to others, the League of Minnesota Cities supports the following changes:

- a) **Eliminate the party balance requirement of appointed clerks and hired staff administering absentee balloting prior to Election Day and for city special elections;**
- b) **Eliminate the party balance requirement for elections where only nonpartisan offices and/or ballot questions are on the ballot; and**
- c) **Authorize college students to get time off from classes if they have been appointed to serve as an election judge.**

## **SD-73. Mail Balloting**

**Issue:** Minn. Stat. § 204B.45 authorizes all non-metropolitan townships and cities with less than 400 registered voters located outside of the Minneapolis/St. Paul seven-county metropolitan area to hold elections by mail. A city may conduct mail balloting for an individual precinct having fewer than 100 registered voters, subject to the approval of the county auditor.

Staffing and equipment needs can be very costly and mail balloting is an efficient way of conducting an election for cities that have lower numbers of registered voters regardless of location in or outside the metro area. It is not uncommon for the redistricting process to create very small precincts in the metro area that are more cost-effectively served by a mail balloting process. Additionally, for special elections that

historically have lower turnout, mail balloting could increase voter participation.

***Response:* The League of Minnesota Cities supports allowing cities inside or outside the metropolitan area to conduct mail balloting in precincts with less than 500 registered voters. Additionally, for special elections held on dates other than those of regularly scheduled elections, cities should have the option of using mail balloting regardless of number of registered voters or location.**

## **SD-74. Changing the Year of a Municipal Election**

***Issue:*** Many cities currently conducting odd-year municipal elections are considering changing to an even-year election cycle to increase voter turnout and participation. The process for doing so is outlined in Minn. Stat. § 205.07 which provides that a city may change its elections from one year to another by ordinance passed at a regular meeting held before June 1 of any year. This language has recently been interpreted in district court as meaning between January 1 and May 31 of any year but this specificity is not reflected in statute.

When a city council passes an ordinance changing the year of the municipal election, it is effective 240 days after passage. Within 180 days after passage, a petition requesting a referendum on the ordinance may be filed with the city clerk. The petition must be signed by eligible voters equal in number to ten percent of the total number of votes cast in the city at the last municipal general election. The clerk has 10 days to reject or approve the petition. If the petition is approved, the ordinance shall not become effective until voters approve it in a general or special election held at least 60 days after submission of the petition. Minn. Stat. § 204B.071 requires the Minnesota Secretary

of State to adopt rules governing the manner in which elections-related petitions are circulated, signed, filed and inspected. Minn. R. 8205.1010 sets forth the form of petitions and specifies additional requirements for filing election-related petitions but they are not referenced in Minn. Stat. § 205.07 creating confusion for both the petitioners and city staff as they review the petition.

If the city rejects the petition and the petitioners wish to file a lawsuit, there is no legal remedy set forth in Minn. Stat. § 205.07. Leaving an unlimited timeframe for individuals to object a City's decision regarding a petition or election-related ordinance is problematic as it may then conflict with additional election timeline and requirements, such as candidates filing for office.

***Response:* Clarification in state statute and in Minnesota Rules is needed to ensure that the process of changing the year in which a municipal election will take place is understood clearly by all those impacted by the change. This includes:**

- a) **Clarifying the timeframe in which a city must pass an ordinance changing the election. This should be connected to the election, not the calendar. The language should be amended to require that the ordinance be passed “no later than 26 weeks before the first day to file for city offices” to ensure that additional election timelines can be followed;**
- b) **Amending Minn. Stat. § 205.07 to specifically reference Minn. Stat. § 204B.071 and Minn. R. 8205.1010 to ensure that the requirements for the petition are understood by both the petitioners and those reviewing the petition; and**

**Clarifying the amount of time petitioners have to file a lawsuit and aligning it with changes made in item a) regarding the timeline for passing an ordinance so that it is connected to the election.**

### **SD-75. Park and Library Land Tax Break**

*Issue:* As the price for land increases, it is becoming more difficult for cities and other local units of government to compete with developers to save and secure land and easements that are deemed appropriate for park, library, trail, and green spaces.

*Response:* **The state should amend the tax laws to provide tax incentives for property owners who sell land and easements to local units of government when the land is to be used for park, library, trail or green space purposes.**

### **SD-76. Charter Law Expense Limit Increase**

*Issue:* Under current law (Minn. Stat. § 410.06), charter commission expenses that are paid by the city are limited to \$10,000 in a first class city and \$1,500 in all other cities. The first class city limit was increased in 1961 from \$1,500 to \$10,000 while the limits for all other charter cities have not been adjusted since 1947.

*Response:* **The League of Minnesota Cities supports increasing the allowable annual charter commission expense limit to \$5,000 for cities other than cities of the first class.**



## IMPROVING LOCAL ECONOMIES

### LE-1. Growth Management and Annexation

*Issue:* Unplanned and uncontrolled growth has a negative environmental, fiscal, and governmental impact on cities, counties, and the state because it increases the cost of providing government services and results in the loss of natural resource areas and prime agricultural land.

*Response:* The League of Minnesota Cities believes the existing framework for guiding growth and development primarily through local plans and controls adopted by local governments should form the basis of a statewide planning policy, and that the state should not adopt a mandatory comprehensive statewide planning process. Rather, the state should:

- a) Provide additional financial and technical assistance to local governments for cooperative planning and growth management issues, particularly where new comprehensive plans have been mandated by the Legislature;
- b) Keep comprehensive planning timelines on a ten-year cycle due to the financial and workload impacts these processes place on cities;
- c) Clearly establish the public purposes served by existing statewide controls, such as shore land zoning and wetlands conservation; clarify, simplify, and streamline these controls; eliminate duplication in their administration; and fully defend and hold harmless any local government sued for a “taking” as a result of executing state land-use policies;
- d) Give cities broader authority to extend their zoning, subdivision, and other land-use controls outside the city’s boundaries, regardless of the existence of county or township controls, to ensure conformance with city facilities and services;
- e) Clearly define and differentiate between urban and rural development and restrict urban growth without municipal services or annexation agreements outside city boundaries. This should contain a requirement that counties and joint power districts that provide sewer, water, and other services, which have been traditionally provided by cities, include as a condition of providing service the annexation of properties that are the recipients of such services in cases where annexation is requested by a city that could feasibly be providing those services;
- f) Facilitate the annexation of urban land to cities by amending state statutes that regulate annexation to make it easier for cities to annex developed or developing land within unincorporated areas;
- g) Oppose legislation that would reinstate the election requirement in contested annexations;
- h) Support legislation to prohibit detachment of parcels from cities unless approval of the detachment has been granted by both the affected city and township and the affected county has been notified prior to the city and township acting on the request;
- i) Oppose legislation that allows orderly annexation agreements to be adopted that prohibit annexation by other cities of property not being annexed under the agreement;

- j) **Encourage ideas consistent with the long-term goal of allowing urban development only in urban areas. Density incentives such as sprawl-reduction aid programs are more straightforward methods of rewarding and encouraging compact urban development than using local government aid (LGA) for another new purpose; and**
- k) **Establish stricter criteria on the amount cities can pay to townships as part of an orderly annexation agreement so that payments to townships are limited to reimbursement for lost property tax base for no more than a fixed number of years, documented stranded assessments, and other items for which there is a clear nexus.**

## **LE-2. Wildlife Management Areas**

*Issue:* The Department of Natural Resources has been pressing for legislative requirements creating development restrictions on property adjacent to land purchased by the state for hunting and other conservation purposes. This issue has been increasingly controversial as urban growth extends into areas previously considered rural and residential property owners are finding themselves adjacent to public hunting land. With large amounts of new revenue going into state land purchase for game and fish habitat and public access purposes because of the passage of the constitutional amendment, these problems could occur even more frequently.

The solution being proposed will put local governments in the position of enforcing state land use restrictions and would require extensive changes to local plans, controls and ordinances. It would also create large numbers of nonconformities on properties within city limits and would make state

wildlife management areas far less desirable due to impacts on future city development.

In rural areas, where this is less of a concern, counties and townships have the authority to object to the state purchasing land for the outdoor recreation system for these very reasons. Cities do not have that statutory right. Due to recent statutory changes (Minn. Stat. § 97A.137, subd. 4) removing city authority to adopt ordinances related to firearm discharge, hunting and trapping activity in wildlife management areas within their borders, these purchases should not occur without city consent and input.

***Response:* The League of Minnesota Cities opposes the state imposing retroactive development restrictions around existing wildlife management areas.**

**When purchasing state wildlife management areas and other conservation and outdoor recreation system land, the state should either purchase sufficient land to provide an internal buffer from surrounding development or purchase development rights to land adjacent to the property if such a buffer is deemed essential to preserving the intended uses for the property. This should be required for new land purchases and done where feasible for existing wildlife management areas.**

**Furthermore, Minn. Stat. § 84.944 and § 97A.145 should be amended to include cities in the local government notification and approval process the state must follow before purchasing public land.**

### **LE-3. Official State Mapping Responsibility**

**Issue:** For many years, the Minnesota Department of Transportation (MnDOT) has provided the mapping services to keep survey-level accuracy in place for the state's official maps and records. That information changes when roads are made or improved, and needs regular adjustment when municipal boundary adjustments are made. The information is then used at all levels of government to accurately determine property boundaries for transportation aid, utility service boundaries, state and local funding formulas, election issues, and a number of other uses.

No state agency, however, has ever been statutorily provided with mapping responsibility and MnDOT is not funded for providing that level of detail in its mapping. Because MnDOT, as an agency, requires less specificity in its maps, a change has slowly been integrated to mostly restrict MnDOT mapping to what changes occur in road ownership and responsibility, leaving many mapping needs unmet for other users of boundary data.

**Response:** **The League of Minnesota Cities supports legislation making a named state entity the official provider of survey-level mapping for the state, including maps for municipal boundary adjustments. The Legislature must provide the necessary appropriations to the entity for providing that service.**

### **LE-4. Electric Service Extension**

**Issue:** Minnesota law preserves the right of municipal electric utilities to grow with the cities they serve. Municipal electric utilities may grow either through application to the Minnesota Public Utilities Commission (MPUC) or through condemnation

proceedings. Eliminating authority of municipal electric utilities to extend services, or making extension of municipal electric service to annexed property unreasonably costly, would interfere with community development and make it unfeasible for municipal electric utilities to serve properties located within rural electric cooperative (REC) or other electric service provider service territory in annexed areas, even if the REC or other electric utility had not served them prior to annexation.

**Response:** **The League of Minnesota Cities opposes any attempt to remove or alter the eminent domain option available to municipal electric utilities in state law, or to make it financially unfeasible for municipal utilities to compensate rural electric cooperatives or other electric utilities for serving future customers who reside in annexed areas where that electric utility has not provided service.**

### **LE-5. Statutory Approval Timelines**

**Issue:** Cities since 1995 have been required to act on written requests relating to zoning, septic systems, the expansion of Metropolitan Urban Service Areas (MUSA), and other land-use applications in accordance with a statutory time period generally referred to as the 60-day rule. Pursuant to Minn. Stat. § 15.99, state and local government agencies must approve or deny a permit within a statutory timeframe. Failure by the agency to issue a specific denial of the application is deemed an approval.

Minn. Stat. § 15.99 does not directly address whether an appeal of a decision triggers an extension or is part of an original zoning request that must be handled within the 60- or 120-day time period. In a 2004 court of appeals decision, the court found that a

zoning application is not approved or denied for the purposes of Minn. Stat. § 15.99 until the city has resolved all appeals challenging the application. See, *Moreno v. City of Minneapolis*, 676 N.W. 2d 1 (Minn. Ct. App. 2004). According to the court, an appeal is not a request for a permit, license or other governmental approval; therefore, it does not trigger a new 60-day time period. Under this interpretation, a decision rendered by a zoning board or planning commission is not the final approval or denial of an application if the city allows an appeal to the city council.

This court decision is problematic for a couple of reasons. Forcing cities to further condense the process for considering planning and zoning applications will make it more difficult to gather public input and leave less time for thoughtful deliberation by zoning boards and planning commissions. It may also provide an incentive for cities to extend the original 60-day period in every instance in order to build-in adequate time to consider possible appeals.

The Minnesota Supreme Court recently issued another 60-day rule decision that held that an application to the Minneapolis Heritage Preservation Commission for a certificate of appropriateness was a “written request related to zoning,” and therefore was subject to the automatic approval provision of the 60-day rule. (See, *500, LLC v. City of Minneapolis*, 837 N.W. 2d 287 (Minn. 2013). This opinion creates ambiguity and uncertainty about what permit applications are subject to the law.

While the Legislature has clarified some aspects of this law, additional modifications are necessary to assist cities in providing accurate and timely responses to applicants and to allow adequate time for public input. Furthermore, as city staff and financial resources are increasingly limited, flexibility

in the length of approval timeline requirements may be needed at the local level.

***Response:* The Legislature should repeal or amend Minn. Stat. § 15.99. If repeal is unlikely, amendments should:**

- a) **Increase the initial time limit to 90 days or have the language in Minn. Stat. § 15.99 apply as the default requirement only in cases where permitting bodies have not established an independent approval timeline;**
- b) **Clarify that approval does not abrogate the need for approvals under other applicable federal, state or local requirements;**
- c) **Provide appeal rights to adjacent property owners;**
- d) **Clarify that, if requests are to be decided by a board, commission or other agent of a governmental agency, and the decision of the board, commission or other agent is adopted subject to appeal to the governing body of the agency, then the agency may extend the 60-day time limit to resolve the appeal; and**
- e) **More clearly define that the phrase “related to zoning” refers to a traditional land use decision such as rezoning, conditional use permits, and variances.**

## **LE-6. Public Infrastructure Utilities**

***Issue:*** Successful economic development efforts and community stability are dependent upon a city’s ability to make infrastructure investments. Current infrastructure funding options available to cities are inadequate and unsustainable. Funding pressures have been exacerbated by levy limits, unallotment and reductions in the local government aid and market value homestead credit programs. The existing

special assessment law, Minn. Stat. ch. 429, does not meet cities' financing needs because of the special benefit requirement. The law also requires a bond election unless a minimum of 20 percent of such a project can be specially assessed against affected properties due to the increase in fair market value or "benefit" from the project. In practice, however, proof of increased property value to this degree of benefit can rarely be proven from regular repair or replacement of existing infrastructure such as streets or sidewalks. Alternatives to the Minn. Stat. ch. 429 methods for financing infrastructure improvements are nearly nonexistent.

The Legislature has given cities the authority to operate utilities for waterworks, sanitary sewers, and storm sewers. The storm sewer authority, established in 1983, set the precedent for a workable process of charging a use fee on a utility bill for a city service infrastructure that is of value to everyone in a city. Similar to the storm sewer authority, a transportation or sidewalk utility would use technical, well-founded measurements and would equitably distribute the costs of local infrastructure services.

**Response: The Legislature should authorize cities to create, as a local option, additional utilities such as a transportation or sidewalk utility, that ensure funding for the maintenance of these public amenities. Additionally, whether established as a new chapter of law or added to the list of service charges in Minn. Stat. § 429.101, cities should be able to impose service charges against property to ensure the maintenance and safety of the right of way for all Minnesotans without having to prove an increase in fair market value or having to determine whether those contributing to the utility fund are taxable or tax-exempt.**

**Such authority would acknowledge the effects of repeated levy limits and the general funding shift from the state to local governments for building and maintaining necessary infrastructure; the benefits to all taxpayers of a properly maintained public infrastructure; and, the limitations of existing special assessment authority.**

### **LE-7. Maintenance of Retaining Walls Adjacent to Public Rights of Way**

*Issue:* The Minnesota Constitution grants cities the power to "levy and collect assessments for local improvements upon property benefited hereby." Retaining walls are one of the many improvements that a city is authorized to make on behalf of its citizens, and Minnesota's special assessment law, Minn. Stat. ch. 429, authorizes cities to charge special assessments on properties that are benefitted by an improvement.

The Minnesota Court of Appeals held that the city of Minneapolis had a nondelegable duty of lateral support to a property owner with a retaining wall abutting a city sidewalk. *Howell v. City of Minneapolis*, 2013 WL 1707759 (April 22, 2013). A subsequent jury found that the city created the need for lateral support when it built the street and sidewalk adjacent to the property, making the city responsible for the maintenance the retaining wall, despite the fact that the property is clearly benefitted by the retaining wall.

The special assessment statute anticipates the need for cities to create retaining walls when making public improvements, and this holding could create significant costs for cities forced to repair and maintain retaining walls that benefit a single property. A choice by a developer or previous property owner

to build a retaining wall to improve the value or usefulness of property may appear to be necessary today, but determining who first created the need for lateral support in the past can involve costly and time-consuming historical research that may not reveal a clear answer.

***Response:* The Legislature should amend the special assessment statute so that retaining walls needed to facilitate public improvements are treated the same as other local improvements. In cases where retaining walls located along public rights of way or within drainage and utility easements separate public improvements from adjacent properties, the Legislature should establish a rebuttable presumption that the need for lateral support was created by the property owner.**

## **LE-8. Development Disputes**

***Issue:*** State law is clear that fees collected under Minn. Stat. ch. 462 are eligible for judicial review in the event of dispute. The Legislature recently limited the timeframe during which an aggrieved party may challenge planning and zoning fees to 60 days after approval of an application. However, the law is not clear about what notice requirements to the municipality are necessary, relative to the timing for a person aggrieved by an ordinance or decision under the municipal planning act to seek review.

***Response:* The Legislature should amend Minn. Stat. § 462.361 to establish a 60-day time limitation in which an aggrieved person may bring an action against the municipality.**

## **LE-9. Foreclosure and Neighborhood Stabilization**

***Issue:*** Cities dedicate scarce resources to address public safety and maintenance

challenges associated with foreclosed, vacant, and under-maintained homes. Left unaddressed, these properties destabilize neighborhoods, depress neighborhood property values, and potentially increase the costs of municipal services. Cities' revenue also continues to decline due to delinquent utility payments and property tax payments, as well as added costs for nuisance abatements. Although the number of those mortgage foreclosures has stabilized somewhat since the peak of the recession in 2008, issues surrounding community recovery are still ongoing.

State and local governments can play an important role in spurring reinvestment in struggling neighborhoods, but without additional resources to address the variety and costly impacts of foreclosures and vacant properties, cities cannot maintain or increase those activities to meet local needs. The federal government has provided funds for neighborhood stabilization, but such funds are limited in eligible uses and scope, and they are only available to a limited number of cities.

Contracts for deed have been used to successfully buy and sell thousands of homes around Minnesota. However, some property owners use contracts for deed as an alternative to a traditional lease, even though the purchaser has no intention of buying the home. Some communities have encountered a situation where a property owner is buying many homes in a community, then selling them on contract for deed. This can allow a person to essentially act as a landlord while evading a city's rental inspection and rental licensing process, while the buyers lose the traditional legal rights and protections as tenants. Many view it as a way to rent the property and may not be aware of it being a contract for deed.

Numerous problems arise for cities and neighborhoods when property owners are acting essentially as renters. It is difficult to determine who is responsible for maintaining the property or for paying utility bills and property taxes, and cities may not be able to inspect substandard properties if they are not subject to a lease agreement. In some situations, property owners may wish to have a renter be the responsible party for utility bills and utilize contract for deed arrangements to have the person living on the property be the responsible party. The property may also not be recorded at the county for homesteading purposes if the buyer is not aware of the formal change in ownership that results from a contract for deed.

In recent years, private equity companies have begun purchasing large numbers of single-family homes to convert to residential rental uses. The impacts of large a number of acquisitions by private equity companies on cities, housing stock, and the rental and home ownership market are not yet fully understood by local, state, and federal units of government. Possible issues that may need further exploration include proposed disposition strategies for such a large number of properties and how that may affect the local housing market.

***Response:*** The Legislature should:

- a) **Secure increased state and federal resources and provide financing tools to help cover city costs associated with foreclosed and /or vacant properties, community revitalization strategies, and community investment, including revenue sources for programs that support foreclosure mitigation, homeownership counseling, and expanded homeownership opportunities and are sustainable.**
- b) **Allow cities to take actions necessary to protect foreclosed and/or vacant homes from damage and to help preserve property values in neighborhoods where concentrations of such conditions are present, including an expedited process to address nuisance properties.**
- c) **Reexamine the Contract for Deed statutes to determine whether additional protections are necessary to prevent property owners from evading responsibilities of a landlord, and provide local jurisdictions resources to allow for education of future buyers and sellers in contract for deed arrangements.**
- d) **Support local authority for cities to collect all delinquent taxes, utility bills, liens, and assessments on foreclosed, vacant, boarded and/or tax forfeited properties.**
- e) **Improve notification to cities, and consistency in the information available to cities, when a property is in the foreclosure process and vacated.**
- f) **Support coordinated responses to prevent foreclosures, activate and guide private investment and home purchases, and support distressed neighborhoods.**
- g) **Study and monitor the impacts on the housing market of single-family home acquisition by private equity companies.**
- h) **Re-enact a program similar to “This Old House” to allow owners of qualifying single-family homes or multi-unit rental properties to defer the increase in tax capacity from repairs or improvements to their homestead property as an incentive for cities to maintain housing stock, including, but not limited to re-occupying and homesteading foreclosed and vacant homes. In order**

**to provide potential opportunities in more communities, the program’s age limit qualifications for a homestead property should be updated to include properties that are at least 30 years old.**

- i) Support programs that provide resources to cities for rehabilitation or new construction of single-family homes, such as the Community Impact Fund and the Community Fix Up Program currently administered through MN Housing Finance Agency (MHFA).**

## **LE-10. Resources for Affordable Housing**

*Issue:* Cities, along with local housing officials, are concerned about the need for proactive commitment at the state level to aid cities to meet demand for affordable housing that is sensitive to local conditions, including meeting the needs of an aging population, particularly when elderly residents often must leave communities where they have owned their homes for many years. The League also recognizes that federal, state and local governments all have a role to play in meeting affordable housing needs, preventing, and recovering from, foreclosure, and responding to problems caused by vacant homes and the increase in rental properties that are the result of foreclosure.

On July 16, 2015, the U.S. Department of Housing and Urban Development (HUD) released a final rule on affirmatively furthering fair housing (AFFH) with an aim to provide communities that receive HUD funding with clear guidelines to meet their obligation under the Fair Housing Act of 1968 to promote and reduce barriers to fair housing and equal opportunity.

Households with Section 8 housing choice vouchers face many barriers to securing housing in the private rental market, especially when rental vacancy rates are low. Currently rental vacancy rates are at a historic low in much of the state. As a result, many families and individuals may be unable to use their Section 8 housing choice vouchers and thus unable to secure safe, decent and affordable housing.

*Response:* The Legislature should:

- a) Support the strategic priorities that Minnesota Housing has adopted, which include making resources and methods available to maintain and improve existing affordable homes, especially housing stock that is aging.**
- b) Provide stable and long term funding for Minnesota Housing and other affordable housing programs, including a state low-income housing tax credit to help rebuild the state’s partnership with local governments in the development of homeownership, multi-family rental assistance and housing renovation programs, and allow flexibility for cities to achieve partnerships and leverage resources with private and public entities.**
- c) Consider establishing a program to address immediate needs throughout the year to provide a match for new or existing city-supported affordable housing projects.**
- d) Substantially increase long-term funding for the Economic Development & Challenge Fund to leverage local private and public resources to develop workforce rental and single family homes.**
- e) Support legislation to provide sales, use, and transaction tax exemptions or reductions for development and production of affordable housing and use state bond proceeds for land**



**banking and trusts as well as rehabilitation and construction of affordable housing.**

- f) Provide funding and financing tools to cities to create affordable senior housing for our aging population.**
- g) Provide funding and financing tools to cities to create affordable housing and prevent foreclosure for veterans.**
- h) Support resources to assist communities to reduce barriers to and promote fair housing and equal opportunity.**
- i) Support additional funding for the Section 8 housing choice voucher program and financial, tax, and/or other incentives for rental property owners to participate in the program.**

## **LE-11. Energy Efficiency Improvement Requirements for Housing**

*Issue:* Rising energy costs have brought attention to the poor energy efficiency of many private residences and multi-family properties, especially in older housing stock. The affordability of housing could be severely impacted by continued increases in home energy costs. Improvements in the energy efficiency of housing would improve the affordability of local housing options and would help achieve state energy demand and greenhouse gas emission reduction goals. The challenge is how best to achieve that result.

Legislative discussions have suggested that minimum energy efficiency improvements could be added as point of sale requirements, including energy use disclosure and basic renovations such as improved attic insulation levels, window caulking and other air sealing, or improved light fixtures.

While the goals of such a program are laudable, there are a number of concerns for how this would actually be accomplished in individual cities. Most cities do not, for example, have point of sale inspections. There will also be cases where the building could be structurally unable to meet high attic insulation requirements, such as with manufactured housing or with older houses with very little attic space. There are also concerns that the cost of meeting these energy requirements could result in homeowners being reluctant to sell their houses because of the expense of the improvements that would be required to meet new standards or property owners passing on the cost of upgrades to tenants.

Increased exposure to educational information, such as increased access to energy audits and more familiarity with and access to programs that finance energy efficiency projects could increase adoption of energy efficiency improvements. Electric utilities provide successful, cost-effective energy efficiency programs, have a customer relationship with homeowners, a regulatory requirement to meet energy demand reduction goals through conservation spending, and access to technical expertise that can take into account variations in building age and construction. Cities could, however, play a strong role in increasing public exposure to approved educational materials and providing incentives through the use of other local financing support options for property owners, such as grants, loans, a Property Assessed Clean Energy (P.A.C.E.) program, and other financing tools.

***Response:* The League of Minnesota Cities agrees that there is a need to improve the energy efficiency of residential building stock to reduce energy consumption and improve the affordability and livability of housing.**

**The state should focus its efforts on improving educational programs and on improving the use of the existing statewide Conservation Improvement Program (CIP) and similar programs, and provide property owners with technical and financial support for weatherization and energy efficiency improvements. Further, the state should work to make residential Property Assessed Clean Energy (P.A.C.E.) programs viable for local governments.**

**Cities should use their communication tools, such as newsletters, web sites, and staff communications to promote these efforts and to help link property owners to educational materials and program resources. Additionally, cities could be incentivized to adopt strategies to disclose energy usage data for building owners to identify options for cost-efficient energy improvements.**

### **LE-12. In-Home Day Care Facilities**

*Issue:* There are restrictions on the ability of a city to regulate licensed day care facilities. Minn. Stat. § 462.357, subd. 7 states that certain licensed residential facilities and day care facilities must be considered a permitted single-family use for zoning purposes. The restriction is designed to protect “in-home” daycare facilities, but the law applies even if the facility is not the primary residence of the day care provider. This creates a loophole for providers to use a single-family home as a commercial daycare facility, which might not otherwise be allowable under a city zoning ordinance.

***Response:* The Legislature should amend Minn. Stat. § 462.357, subd. 7 to clarify that a licensed day care facility serving 12 or fewer persons is considered a permitted single-family use only if the**

**license holder owns or rents and resides in the home.**

### **LE-13. Residential Programs**

*Issue:* Minnesota’s deinstitutionalization policy seeks to ensure that all people can live in housing that maximizes community integration. Minnesota statute states that “persons with disabilities should not be excluded by municipal zoning ordinance or other land use regulations from the benefits of normal residential surroundings.” (Minn. Stat. § 462.357, subd. 6a.) Minnesota cities support inclusion of people with and without disabilities in their communities, but these policies are best implemented with minimal encroachments on municipal zoning authority and positive working relationships between cities, care providers, and the state.

On one hand, treating persons with disabilities differently generally raises questionable issues of disparate treatment with the Federal Fair Housing Act. On the other hand, without some regulation, cities are powerless to protect individuals with disabilities from a clustering of residential programs within one neighborhood. As the Department of Justice has stated, while density regulations are generally suspect, “if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community.” (*Joint Statement of the Department of Justice and the Department of Housing and Urban Development.*)

To this end, and in upholding a state and local dispersal requirement, the Eighth Circuit Court of Appeals stated that the requirement was designed to ensure that people with disabilities “needing residential treatment will not be forced into enclaves of treatment facilities that would replicate and

thus perpetuate the isolation resulting from institutionalization.” *Familystyle of St. Paul, Inc. v. St. Paul*, 923 F.2d 91, 95 (8th Cir. 1991).

City authority to regulate the locations of residential programs is limited by state statute and the federal Fair Housing Act (FHA), although Minn. Stat. § 245A.11, subd. 4 prohibits the Commissioner of Human Services from granting an initial license to a residential program of six or fewer people within 1,320 feet of an existing residential program in cities of the first class.

In 2015, Minn. Stat. § 245A.11, subd. 4 was amended to clarify that the Commissioner of Human Services is required to approve licenses for “community residential settings” within 1,320 feet of existing residential programs. A “community residential setting” is commonly known as adult foster care. While this was the original intent of the legislature, statutory terms changed over the years; this amendment was to make various statutory references consistent.

Sufficient funding and oversight is needed to ensure that residents living in residential programs have appropriate care and supervision, and that neighborhoods and residents of residential programs are not negatively impacted by high concentrations of these types of programs. As it stands now, there is nothing preventing clustering of residential programs in most cities in the state. Cities want to be part of the solution, and more than anything cities desire to be, and should be, partners in serving the policies of deinstitutionalization. Cities have an interest in, and are in the best position, to preserve a balance in residential neighborhoods between residential programs and all other uses. Because Minnesota cities are committed to inclusion of all individuals, it is in the best interest of the state, care

providers, and those individuals served, that all parties include cities as partners before opening a residential program to best plan for community integration.

***Response:* Cities should maintain the statutory authority to require agencies, as well as licensed and registered providers that operate residential programs, to notify the city before properties are operated. Cities should be provided with the necessary contact information after a residential program is licensed or registered. Providers applying to operate residential programs should be required to contact the city to be informed of applicable local regulations. Finally, licensing or registering authorities must be responsible for removing any residents incapable of living in such an environment, particularly if they become a danger to themselves or others.**

**The Legislature should amend Minn. Stat. 245A.11, subd. 4 to allow for appropriate non-concentration standards for all types of cities to prevent clustering.**

## **LE-14. Post-Incarceration Living Facilities**

***Issue:*** Sufficient funding and oversight is needed to ensure that residents living in post-incarceration living facilities have appropriate care and supervision, and that neighborhoods are not disproportionately impacted by high concentrations of these types of facilities. Under current law, operators of certain post-incarceration living facilities are not required to notify cities when they intend to purchase single family housing for these purposes. Cities do not have authority to regulate the locations of post-incarceration living facilities. Cities have reasonable concerns about the safety of facility residents and neighborhoods, particularly in cases of public safety. Cities

also have an interest in preserving a balance in residential neighborhoods between this type of facilities and other uses. It is in the best interest of providers to inform and work with cities before opening a facility in order to educate providers of community standards and expectations.

**Response:** Cities should have statutory authority to require agencies, as well as licensed and registered providers, that operate post-incarceration living facilities to notify the city before properties are operated. Cities should be provided with the necessary contact information once licensed or registered. Providers applying to operate post-incarceration living facilities should be required to contact the city to be informed of applicable local regulations. The Legislature should also require establishment of non-concentration standards for post-incarceration living facilities to prevent clustering. Finally, licensing or registering authorities must be responsible for removing any residents incapable of living in such an environment, particularly if they become a danger to themselves or others.

### **LE-15. Inclusionary Housing**

**Issue:** Provisions in current state statute (Minn. Stat. § 462.358, subd. 11) allowing cities to enter into development agreements for the inclusion of a portion of the units in the development to be affordable for low- or moderate-income families have been a source of conflict between cities and housing developers.

Cities are concerned builders that view this statute as a restriction on local authority to adopt policies that promote availability of housing affordable to those who are unable to purchase or rent housing at price points that the market alone provides.

**Response:** The Legislature should:

- a) **Strengthen and clarify cities' authority to carry out policies that offer developers a range of incentives in return for including a designated number of affordable units in their projects.**
- b) **Identify strategies to ensure long-term affordability of rental and owner-occupied housing produced as a result of such policies and practices.**
- c) **Focus state housing policy to support for local assessment of housing needs and direct additional state resources and the full exercise of local authority to increase development of affordable rental units and access to entry-level, owner-occupied housing.**
- d) **Support voluntary measures to encourage cities to adopt and carry out land-use plans, activities, and subdivision regulations aimed at providing for construction and marketing of housing where a portion of all new units are affordable to lower-income households.**

### **LE-16. Community Land Trusts**

**Issue:** The increasing price of land available for housing development, particularly for retaining affordability of housing for lower-income households, is a concern throughout the state. Creating more permanently affordable, owner-occupied housing depends heavily on maximizing the cost-effectiveness of taxpayer investments. The Legislature has previously appropriated funding and granted the Minnesota Housing Finance Agency authority to assist cities with funding community land trusts (CLTs) for affordable housing.

**Response:** The Legislature should support continuation of the land trust capacity-building program and provide capital

**start-up funds so community land trusts can continue to offer gap financing, interest rate write-downs, predevelopment financing, and financial underwriting. The Legislature should also support efforts by the Minnesota Community Land Trust Coalition to develop property tax valuation to lower property taxes for sales-price-restricted properties enrolled in CLT programs.**

### **LE-17. Telecommunications and Information Technology**

*Issue:* Telecommunications and information technology is essential public infrastructure for the efficient, equitable, and affordable delivery of local government services to residents and businesses.

Telecommunications includes voice, video, data, and services delivered over cable, telephone, fiber-optic, wireless, and all other platforms.

***Response:* The League of Minnesota Cities supports a balanced approach to telecommunications policy that allows new technologies to flourish while preserving local regulatory authority. Regulations and oversight of telecommunications services are important prerogatives for local government to advance community interests, including the provision of high quality basic services that meet local needs, spur economic development, and are available at affordable rates to all consumers. Policies should not diminish local authority to manage public rights-of-way, to zone, to collect compensation for the use of public assets, or to work cooperatively with the private sector. The League opposes the adoption of state and federal policies that restrict cities' ability to finance, construct, and operate telecommunications networks.**

### **LE-18. Broadband**

*Issue:* High-speed Internet is essential infrastructure needed by cities to compete in a global economy. Yet many communities do not have access to broadband at affordable prices. High fixed costs, low density, and short term return-on-investment thresholds for private sector providers contribute to the lack of broadband across the state. Investing in universal broadband access has substantial local and regional economic benefits for communities of all sizes. Cities and other local units of government are facilitating the deployment of broadband services to increase connectivity, reliability, availability, and affordability for residents and businesses through a variety of models, including municipal broadband and public-private partnerships. However, attempts have been made to restrict cities from providing telecommunications services, particularly in unserved or underserved areas. Recent court cases have overturned interpretation by the Federal Communications Commission (FCC) that states may not limit the extension of municipal broadband services from one city to another.

Due to the high costs of broadband infrastructure, the state has expanded its role to identify and formulate tools to expand broadband access. The Office of Broadband Development within the Department of Employment and Economic Development (DEED) created in 2013 formally established a partnership between the state and local communities to deploy high-speed Internet in unserved and underserved areas. The Office supports broadband expansion through broadband mapping and managing the state's broadband grant program. Additional state action occurred during the 2016 legislative session when the legislature reestablished state speed and adoption goals under Minn. Stat. § 237.012. In addition to

the state's focus on extending broadband to unserved areas, Minnesota must also be on the cutting edge for next-generation broadband investments.

**Response:** To promote economic development and achieve state broadband goals, the Legislature, Governor's office, and state agencies should:

- a) **Identify and implement actions for the state to reach and maintain a position in the top five states for broadband speed that is universally accessible to residents and businesses;**
- b) **Make significant investments to the Border-to-Border Broadband Grant Program and continue to encourage public/private sector collaboration;**
- c) **Support measures to authorize and encourage cities and other local units of government to play a direct role in providing broadband services;**
- d) **Remove barriers to the exercise of local authority to provide such services, including repeal of Minn. Stat. § 237.19, that requires a supermajority voter approval for the provision of local phone service by a local unit of government;**
- e) **Offer incentives to private sector service providers to respond to local or regional needs and to collaborate with cities and other public entities to deploy broadband infrastructure capable of delivering sufficient bandwidth and capacity to meet immediate and future local needs;**
- f) **Adopt policies which seek to position Minnesota as a state of choice for testing next-generation broadband;**
- g) **Affirm that cities have the authority to partner with private entities to finance broadband infrastructure using city bonding authority;**
- h) **Remove barriers and restrict anti-competitive practices that prevent or**

**impede cities, municipal utilities, schools, libraries, and other public sector entities from collaborating and deploying broadband infrastructure and services at the local and regional level;**

- i) **Continuously update and verify comprehensive statewide street-level mapping of broadband services to identify underserved areas and connectivity issues; and**
- j) **Recognize the crucial role of local government in the work of the Governor's Broadband Task Force and fund the Office of Broadband Development to help achieve significantly higher broadband speeds and to ensure that robust and affordable Internet connectivity is widely available.**

**On the federal level, the League urges Congress to adopt laws restoring the ability of municipalities to extend beyond their borders to serve unserved and underserved areas.**

### **LE-19. Competitive Cable Franchising Authority**

*Issue:* Studies and evidence to date do not support that state franchising is the solution for competition, lower consumer rates, and improved customer service. Unlike the exercise of local franchising authority, state franchising models frequently make no provision for staffing at the state level or for consumer complaints to be adjudicated at the local level.

The transmission of video signals, regardless of how they are transported, remains subject to local franchising authority. Maintaining local franchising most effectively creates and preserves agreements that guarantee broad access to services throughout the community, ensuring there is no digital

divide for access to available additional services such as access to IP voice and high-speed Internet via infrastructure that also delivers video programming services.

**Response:** State policy should maintain local cable franchise authority and oversight of the rights-of-way, as well as ensure franchise agreements reflect new technology, and are reasonably tailored to the technical and operational differences among providers and communities. Independent studies clearly demonstrate that statewide franchising does not increase direct competition to incumbent cable franchisees. In Minnesota, there are markets throughout the state with two franchised cable service providers, which is further proof that state cable franchising is neither necessary nor warranted in Minnesota.

The Legislature, Federal Communications Commission (FCC), and Congress should also continue to recognize, support and maintain the exercise of local franchising authority to encourage increased competition between incumbent cable system operators and new wireline competitive video service providers including:

- a) **Maintaining provisions in Minn. Stat. ch. 238 that establish and uphold local franchising authority, including the authority to receive a gross revenues based franchise fee;**
- b) **Refraining from adopting any FCC rule changes that would restrict existing local authority to charge for and control access to public rights-of-way by all video and cable service providers;**
- c) **Clarifying local authority to charge fees on providers to ensure the provision of public, educational, and governmental (PEG) programming,**

**to require the provision of video channels and video streaming for PEG programming with video and audio quality equivalent to that of the local broadcast stations, and ensuring programming is accessible and searchable by all residents of the local authority through detailed Electronic Programming Guide listings that are equivalent to that of local broadcast stations;**

- d) **Providing for continued local government access to capacity on institutional networks (I-Nets) provided by local cable system operators for public safety communications, libraries, schools, and other public institutions to use state-of-the-art network applications; and**
- e) **Strengthening local authority to enforce customer service standards.**

## **LE-20. Right-of-Way Management**

**Issue:** The Legislature and the Minnesota Public Utilities Commission (MPUC) recognize that cities have fundamental responsibility for managing the safe and convenient use of public rights-of-way (PROW). Cities hold local rights-of-way in trust for the public as an increasingly scarce and valuable asset. Municipalities enforce consensus standards negotiated with the private sector that are contained in Minn. Stat. ch. 237 for safe maintenance of the public rights-of-way.

Current PROW standards have served the state well. As demand increases for use of rights-of-way for underground wired and overhead wireless facilities and sites for wireless communications towers, cities must continue to have authority to allocate and coordinate the use of this resource among competing uses and to manage the use of PROWs for delivery of essential municipal

utility services. Local management responsibilities vary and are site specific, underscoring the necessity for maintaining local authority.

Cities have the authority to impose construction standards, requirements for moving such facilities, and timelines for the completion and inspection of private projects in the PROW.

**Response:** Minn. Stat. §§ 237.162-.163 has worked well for many years. Current state rules adopted by the Minnesota Public Utilities Commission regulate the manner in which cable companies and other right-of-way users install facilities in the PROW. State and federal policymakers and regulators must:

- a) Uphold existing local authority to manage and protect public rights-of-way, including reasonable zoning and subdivision regulation and the exercise of local police powers;
- b) Recognize that cities have a paramount role in developing, locating, siting, and enforcing utility construction and safety standards;
- c) Support local authority to require compensation from service providers for managing use of public rights-of-way;
- d) Maintain city authority to franchise gas, electric, cable, telecommunications and broadband services, open video systems and all other wireline programming platforms and services and to collect franchise fees and alternative revenue streams to support maintenance and management of the traveled portion of the PROW and other public services of importance to communities;
- e) Encourage a collaborative process with stakeholders, including cities, to

**determine any revised standards if needed;**

- f) **Recognize that as rights-of-way become more crowded, the costs of disrupting critical infrastructure become evident and the exercise of local authority to manage competing demands and ensure public safety in the PROWs becomes increasingly important;**
- g) **Maintain the courts as the primary forum for resolving disputes over the exercise of such authority; and**
- h) **Maintain existing local authority to review and approve or deny plans for installation or relocation of additional wires or cables on in-place utility poles. In the alternative, cities should have broader authority to require the underground placement of new and/or existing services at the cost of the utility or telecommunications provider.**

## **LE-21. Wireless Tower and Antenna Siting**

*Issue:* Demand for wireless communication service has increased requests by private and public sector providers to site additional towers, antennas, small cells and other facilities in cities. It is anticipated that applications to install small cell networks and distributed antenna systems (DAS) will grow. Local zoning authority and police power to manage and coordinate the siting of these facilities continue to be necessary and appropriate to the exercise of local land use management and police powers. Local management needs vary and are site specific, underscoring the necessity for the exercise of such local authority.

Subject to applicable state and federal laws and regulations, cities may exercise local authority over zoning and land-use decisions for wireless service facilities.



***Response:* Cities must continue to exercise full authority to consider public health, safety, and welfare concerns, including issues of aesthetic and property value in responding to siting and related requests to site, upgrade or alter such wireless facilities to the fullest extent allowed under federal law. The Legislature should maintain laws that recognize and uphold city authority to manage the siting of wireless facilities through local zoning and regulation and provider agreements, including compensation.**

## **LE-22. Economic Development Authorities**

***Issue:*** The 2005 Legislature authorized all counties outside the metropolitan area to establish county economic development authorities (EDAs). Minn. Stat. § 469.1082 provides specificity on certain process and limitations issues. County EDA activity in areas surrounding cities will directly impact the adjacent city in terms of service provision and taxes.

Under Minn. Stat. § 469.107 and § 469.033, EDA levies for economic development activities are capped. These limits can hinder the planning of future development.

***Response:* The Legislature should require city approval for proposed county EDA activities within two miles of a city. The Legislature should increase the levying authority for EDA, Housing and Redevelopment Authority (HRA), and port authority activities in Minn. Stat. ch. 469.**

## **LE-23. Local Appropriations to Economic Development Organizations**

***Issue:*** Cities and towns are allowed to appropriate up to \$50,000 per year from general fund revenue to an incorporated development society or organization for “promoting, advertising, improving, or developing the economic and agricultural resources” of the city or town. The \$50,000 cap has been in place since 1989 and places unnecessary restrictions on a city’s ability to work with non-profit development corporations. Local governments should have the flexibility to work with outside organizations if local leaders believe it is in the best interest of their communities to do so. Such appropriations are subject to the same budgetary oversight as other government expenditures, and local elected officials are ultimately responsible to the voters for how local tax dollars are spent.

***Response:* The Legislature should amend Minn. Stat. § 469.191 to eliminate or increase the cap on appropriations to incorporated development societies or organizations.**

## **LE-24. Workforce Readiness**

***Issue:*** It is critical for the future of our economy to prepare for new demographic trends. While population rates among communities of color are projected to increase, the unemployment rate for communities of color exceed the unemployment rate for white Minnesotans. For example, data from the Bureau of Labor Statistics (BLS) indicate that black unemployment rates are consistently two to three times higher than the unemployment rates of white Minnesotans. In addition, while early work experience is a leading predictor of future success in a workplace,

recent statistics from BLS show that the youth unemployment rate for 16-19 year olds is three times that of the unemployment rate for the state as a whole.

Incumbent worker training and education must be an important component of Minnesota's efforts to improve workforce readiness. By making firms and employees more competitive, incumbent worker training can increase wages, increase employment opportunities, fill skilled worker gaps, and keep jobs and employers in their communities. The Minnesota Job Skills Partnership is one proven tool that provides training to thousands of incumbent workers each year.

**Response: The Legislature should:**

- a) **Fully fund the Minnesota Job Skills Partnership and other workforce training programs administered by the Department of Employment and Economic Development, the Department of Human Services, and the various education agencies;**
- b) **Provide additional flexible funding to local workforce councils, including governments and educational facilities, for the purpose of upgrading the skills and productivity of the workforce, and pursue additional creative programming and funding to prepare and place underemployed and unemployed Minnesotans, as well as address the issue of those phasing out of the workplace and retiring;**
- c) **Provide additional funding for programs specifically designed to address youth employment and workforce readiness, and employment disparities; and**
- d) **Continue to support cities that provide workforce programs that are coordinated with and complement state and regional efforts by seeking**

**municipal approval before making any changes to those service areas.**

## **LE-25. Community Reinvestment Partnerships and Financing**

**Issue:** The 2001 property tax reform package has had a dramatic impact on how the state of Minnesota's community reinvestment needs is addressed. The impacts bring into question the future viability of tax increment financing (TIF) as the primary tool to fund community reinvestment efforts. Additionally, the impacts of the 2006 eminent domain reforms will dramatically limit a city's ability to assemble parcels of land needed to facilitate economic development and redevelopment projects. Activities cities have historically been able to undertake, but will likely be less able to achieve in the future given the likely diminished effectiveness of TIF and limited ability to assemble parcels of land, include long-term tax base stabilization and growth, job creation, development of low-to-moderate income and workforce housing, remediation of pollution, elimination of blight, recycling and redevelopment of infrastructure, and redevelopment of communities. Passage of the 2010 Jobs-State Stimulus bill and the 2011 one-year extension offered up flexibility in several tax increment and public finance provisions, but only with a short window for actually using the tools.

Research into another strategy of community reinvestment has focused on public and private investments in youth. This body of work suggests that this form of economic development pays off in areas such as improved high school graduation rates and homeownership rates. Helping youth develop the social and emotional skills necessary to be contributing members of the state economy meets the state's

interest in building quality communities that sustain into the future.

**Response:** To ensure Minnesota is able to continue to effectively compete with other states, the Legislature has a responsibility to partner with cities, state agencies, and other community reinvestment organizations to develop a statewide community reinvestment strategy, and to identify and implement additional tools to fund community reinvestment efforts. The state should partner with cities in community reinvestment activities. State acknowledgment of the need for community reinvestment and economic development is essential to the state's prosperity, and legislation is needed to generate resources sufficient to address these critical needs at the local level.

Given the big picture view of investing in people, the state should maintain a long-term vision for a healthy society and renew its commitment to early childhood family education and preschool programs that better equip individuals to contribute to the local and state economies and that ultimately make for quality communities.

## **LE-26. Tax Increment Financing (TIF)**

**Issue:** TIF is the most important tool available to fund community development and redevelopment efforts. Over time, the TIF law has become increasingly complex as the Legislature seeks to provide cities with the resources to grow the state's economy while maintaining limits on the use of property taxes. Cities need greater flexibility to use TIF for community and economic development that support a city's residents and businesses. Further restrictions of TIF would render the tool less effective and will hinder local efforts to

support job creation, housing, redevelopment and remediation.

**Response:** The Legislature should not enact future TIF law restrictions, rather the Legislature should:

- a) Expand the use of TIF to assist in the development of technological infrastructure and products, biotechnology, research, multi-modal transportation and transit-oriented development, restoration of designated historic structures, non-retail commercial projects, and non-wetland areas where unstable/non-buildable soils exist;
- b) Increase the ability of TIF to facilitate redevelopment and housing activities;
- c) Allow term extensions for redevelopment districts which are taking longer to develop;
- a) Amend Minn. Stat. § 469.1763, subd. 3 to eliminate the "Five-year Rule" for districts that are taking longer to develop;
- b) Modify the housing district income qualification level requirements to allow the levels to vary according to individual communities;
- c) Encourage compact development and consider reauthorization of compact development TIF districts with modifications to increase their effectiveness;
- d) Discourage any statutory mechanisms that directly or indirectly decrease the impact of city redevelopment and economic development projects;
- e) Amend Minn. Stat. § 469.174, subd. 25 to provide time limits on the "deemed increment" created by land sales, leases and loans, and allow authorities greater flexibility in the use of lease revenues to fund ongoing operations;

- f) **Simplify the substandard building test to resolve ambiguities and reduce the continued threats of litigation;**
- g) **Clarify that expenditures for the necessary maintenance of properties within TIF districts are an allowable use of tax increment under Minn. Stat. § 469.176, subd. 4; and**
- h) **Create an exception to the interfund loan resolution requirement in Minn. Stat. 469.178, subd. 7, allowing interfund loans without a prior resolution for “administrative expenses” as defined by the TIF Act.**
- i) **Amend Minn. Stat. § 469.1763, subd. 4 to clarify that tax increment pooling limitations are calculated on a cumulative basis.**
- j) **Amend the definition of redevelopment district under the TIF Act to include the obsolescence and incompatible land uses included in a renewal and renovation district, thereby providing cities with more flexible tools to address land recycling and redevelopment.**

## **LE-27. Development Along Transit Corridors**

*Issue:* While the establishment of transit lines and corridors provide the impetus for economic development, there are limits to existing development tools that hinder full development of transit corridors. For example, acquisition of land outside of the line but within the corridor can be difficult, and current tools are not well-suited for the creation of public spaces, enhancement of infrastructure, and investments such as parking ramps that are necessary components of a transit-oriented development plan.

In 2008 the Department of Employment and Economic Development (DEED) was authorized to establish Transit Improvement

Areas, which should complement long-term transportation planning initiatives such as MAP-21 and Minnesota GO. Transit Improvement Areas include parcels of land that are located in part within one-half mile of a transit station. A transit station is defined as a physical structure or designated area which supports the interconnection of various transportation modes, including light rail, commuter rail and bus rapid transit, and which promotes and achieves the loading, discharging and transporting of people. The commissioner of DEED may designate a Transit Improvement Area if it will increase the effectiveness of a mass transit project by incorporating one or more modes of public transportation with commercial and housing development, as well as providing a clean and pleasant place for pedestrian use. DEED has designated over 50 Transit Improvement Areas; all but two are located in the seven-county metropolitan area. Although the language passed and was signed into law by the governor (Minn. Stat. § 469.35), there was no funding put into place to implement the new program.

***Response:* The League of Minnesota Cities urges the Legislature to increase the ability of traditional economic development tools, including tax increment financing, tax abatement, and special service districts, to address the needs of transit-oriented development. The League encourages the Legislature to appropriate bonding and general fund dollars for revolving loan grants to fund the TIA program. Additionally, the Legislature should consider adding park and ride facilities to the list of qualifying transportation modes, as defined in Minn. Stat. § 469.351. Because the majority of the DEED-designated Transit Improvement Areas are currently located in the seven-county metropolitan area, increased funding for this program will not be balanced between greater**

**Minnesota and the metro area. Additional funding for this program should not change the overall balance of state funding between greater Minnesota and the seven-county metropolitan area.**

## **LE-28. Business Development Programs**

*Issue:* The 2013 Legislature made substantial investments in statewide economic development programs, reversing recent funding shortfalls. Proven programs such as the Minnesota Investment Fund (MIF), the Redevelopment Program, and contaminated site clean-up grants all received substantial funding increases. The 2013 Legislature also appropriated \$24 million for the biennium for the newly created Minnesota Job Creation Fund, which replaced the JOB-Z program as a way for local communities and businesses to access state development dollars.

Although the 2015 legislature set the funding for the Minnesota Investment Fund at \$15 million per year and the Job Creation Fund at \$12.5 million, the 2016 legislature retroactively reduced funding for the Minnesota Investment Fund for fiscal year 2017 by \$9 million to \$6 million while funding for the Job Creation fund was reduced by \$11.5 million to \$1 million. For the 2018-19 biennium, the base funding level for the Minnesota Investment Fund will be reduced to \$11 million while the Job Creation Fund will receive \$6.5 million per year.

***Response:* On a statewide level Minnesota has recovered from the Great Recession, but the Legislature must recognize that certain communities will need additional time and assistance to fully recover from the impacts of the economic downturn. The League of Minnesota Cities supports restoration of funding for the Minnesota**

**Investment Fund and the Job Creation Fund to assist local communities recover and thrive.**

**The League supports the continuation of the Minnesota Job Creation Fund and DEED should solicit input from cities about how best to implement the Fund, and make adjustments to the administration of the program as necessary. The League supports Department of Employment and Economic Development (DEED) studying and making recommendations on methods to improve the geographic balance of recipients, perhaps by altering the required number of jobs created or developing other programmatic changes that allow all regions of the state to better prosper.**

## **LE-29. Land Recycling and Redevelopment**

*Issue:* Communities across Minnesota are faced with expensive barriers to re-using property. These roadblocks include deteriorating, obsolete, and vacant structures, and contaminated land.

Larger scale redevelopment projects often require the purchase and assembly of multiple, smaller parcels of land that are not suitable for development on their own. Cities and development authorities may need to purchase land over a period of years and hold them for later development, reducing the effectiveness of traditional financing tools that require immediate development.

Such barriers pose significant problems for cities seeking to re-use existing infrastructure, maintain and improve property tax base, provide jobs and housing opportunities, and preserve historic structures. Land recycling activities are

particularly costly because significant remediation must occur before private-sector interest can be generated. Exacerbating this situation, the land recycling programs administered by the Department of Employment and Economic Development (DEED) and the Metropolitan Council programs continue to be underfunded.

***Response:* In recognition of the unique needs of land recycling projects statewide, the Legislature should increase funding for the statewide redevelopment account. The League of Minnesota Cities would also support the creation of a land assembly grant or loan program to assist cities and economic development authorities assemble small parcels for redevelopment. The League supports competitive programs administered by DEED with both bonding and general fund appropriations that distribute the funds equitably between greater Minnesota and the metro area.**

**The State should recognize that the rehabilitation of land due to obsolescence or incompatible land uses is a component of redevelopment. The Legislature should amend the definition of redevelopment district under the TIF Act to include the obsolescence and incompatible land uses included in a renewal and renovation district, thereby providing cities with more flexible tools to address land recycling and redevelopment.**

**The Legislature should also revive a program similar to “This Old Shop”, which would allow cities greater flexibility in targeting commercial development and redevelopment. The Legislature should consider enacting authority that would provide a tax deferral on improvements to commercial buildings, including those located in designated rehabilitation or historic**

**preservation districts. The program’s age limit qualifications should include properties that are at least 30 years old.**

**Finally, the Legislature should continue its support and increase funding levels for state and regional programs to assist in contamination cleanup and brownfields remediation efforts.**

### **LE-30. Property Tax Abatement Authority**

***Issue:*** In an effort to increase the number of development tools available, the 1997 Legislature authorized local units of government to grant property tax abatements. Although tax increment financing (TIF) continues to be the primary financing mechanism for local development projects, tax abatements provide cities with an important, additional economic development tool. Recognizing the need for municipal development tools, the 2008 Legislature expanded the abatement authority by converting the limit on abatements from ten percent of the current tax levy to ten percent of net tax capacity. In order to provide maximum benefits and recognize local decision-making, tax abatements should have less restrictive funding caps, financing terms, and authorized uses.

The tax abatement law requires that a political subdivision may only approve an abatement after holding a public meeting with a minimum of 10 days published public notice. When more than one political subdivision abates property taxes for a development project, there must be separate notices and hearings for each subdivision. This requirement can be particularly burdensome for programs designed to develop multiple properties over an extended period of time. If one political subdivision could be designated as the lead

entity for purposes of the notice and hearing requirements, such projects could be made more efficient without sacrificing public transparency.

Property tax abatements should not be considered a replacement for TIF.

**Response: In light of current economic conditions existing property tax abatement authority should be strengthened. The Legislature should:**

- a) **Expand the abatement authority to allow abatement revenues to be used for economic development activities such as workforce readiness and assistance programs, and technology infrastructure improvements;**
- b) **Develop a state fund to facilitate state participation in abatement projects;**
- c) **Increase funding caps and duration limits; and**
- d) **Amend Minn. Stat. § 469.1813, subd. 5 to create a streamlined notice and hearing requirement for multi-jurisdictional tax abatement projects.**

### **LE-31. Workforce Housing**

**Issue:** Job creation is one of the fundamental goals of economic development. When employers create new jobs through expansion or relocation there must be sufficient housing in the host community for the new workers and their families to live. In rural communities, a lack of housing stock for new workers can prevent a planned expansion or relocation, hampering job growth and economic development. The economics of building a housing development in greater Minnesota communities makes private development difficult, and workers with higher paying jobs do not qualify for traditional affordable housing. This housing gap can bring

development and job growth in a community to a halt.

In 2014, at the urging of cities through Minnesota, the Legislature created a workforce housing pilot program for three cities in Roseau and Pennington Counties. In 2015 the Legislature passed League-sponsored legislation that created the workforce housing development program (Minn. Stat. § 116J.549), and appropriated \$4 million to the Department of Employment and Economic Development (DEED) to administer the program. The House and Senate omnibus tax bills both contained a provision creating a workforce housing TIF district, and the Senate omnibus tax bill contained a workforce housing tax credit provision. Neither provision became law because the Legislature did not pass an omnibus tax bill.

**Response: The League of Minnesota Cities supports additional tools for local communities to develop workforce housing:**

- a) **The Legislature should create a Workforce Housing TIF District that is not constrained by traditional income limits to be used by cities that have low vacancy rates, anticipated or current job growth, recognizes insufficient private development, or a significant portion of area employees who are forced to commute a significant distance to work;**
- b) **DEED should solicit input from local communities to ensure that the goals of the Workforce Housing Grant program are met, and DEED should award funds to eligible projects as quickly and efficiently as possible;**
- c) **The Legislature should continue to fund the Housing and Job Growth Initiative to aid housing in support of job growth, and amend Minn. Stat. §**

- 462A.33 to eliminate or increase the maximum income levels for participation in the program; and**
- d) The Minnesota Housing Finance Agency should make administrative changes to the Housing Challenge Grant program to streamline the application process, reduce the per-unit cost of constructing affordable housing, and increase the construction of affordable rental units at 80% of median income and owner-occupied units at 115% of median income, as currently allowed by state and federal law; and**
  - e) The Legislature should pass legislation creating a workforce housing tax credit to spur development of workforce housing.**

## **LE-32. Revisions to the OSA Audit Function**

*Issue:* Pursuant to Minn. Stat. § 469.1771, the Office of the State Auditor (OSA) is responsible for tax increment financing (TIF) oversight. As part of its review of TIF districts, the OSA identifies alleged violations of the TIF laws and issues noncompliance notices to TIF authorities. In recent years, a number of cities have received letters of inquiry from the OSA that raise questions about practices long-accepted by the OSA or limit statutory definitions that have not been amended by the legislature for over a decade. The audit power in Minn. Stat. § 469.1771 is necessary to ensure that individual cities comply with the TIF statutes, but is not effective in clarifying the legislative intent of the TIF statutes.

In addition, the TIF statute requires that authorities respond to noncompliance notices within 60-days of receiving the notification. There is no deadline for the OSA to respond, and authorities often do not

receive timely responses on the matter from the OSA. Government agencies typically have response-time deadlines, and it is appropriate for the OSA to respond by a time certain to provide finality to the audit process. Any final disposition notice must be clear about the final disposition of the matter.

Finally, the statutory audit enforcement process does not create an environment where these policy questions can be fairly and sufficiently resolved. County attorneys lack the resources to prioritize TIF disputes and lack the subject matter expertise needed to analyze the merits of the OSA's audit findings. This results in excessive deference granted to the OSA's original audit findings. Faced with the potential loss of increment, payment of attorney fees, and small likelihood of success on the merits, cities often acquiesce to the OSA to save time and money.

*Response:* **The League of Minnesota Cities believes there should be a more defined process to establish rules or guidelines for TIF authorities with adequate input from local government officials and public finance professionals prior to their adoption.**

**In the event that the OSA determines to issue a final noncompliance notice to a TIF authority, the Legislature should require the OSA to issue the notice within 60 days of receiving the authority's response. Any final noncompliance notice should contain the OSA's final position on the matter, the date upon which it forwarded the matter to the county attorney, and the next steps that are required to be taken according to state law. Upon expiration of the 60-day period, the authority should be deemed to be in compliance with the TIF laws if no final noncompliance notice is received.**



**In order to ensure a fair process to resolve disputes over TIF findings of the OSA, the Legislature should consider whether the authority to resolve such disputes should be shifted from county attorneys to the Office of Administrative Hearings.**

### **LE-33. OSA Time Limitations**

*Issue:* The Office of the State Auditor (OSA) has the authority to issue noncompliance notices for every existing tax increment financing (TIF) district in the state for alleged violations of the TIF laws. This authority extends retroactively to the inception of the district. Accordingly, TIF authorities can receive noncompliance notices for alleged violations that occurred 20 or more years ago. Often, staff and record-keeping procedures have changed, and TIF authorities find it difficult to reconstruct the past in order to identify and remedy these situations. Similarly, the OSA claims the authority, based on the state's records retention schedule, to audit TIF districts for up to 10 years after decertification, which requires cities to expend staff resources to maintain files and a working knowledge of old districts for an unreasonable period of time.

*Response:* **A reasonable timeframe within which alleged violations are identified should be established. The Legislature should reasonably restrict the OSA's ability to issue noncompliance notices to the six-year period prior to the notice's issuance date. The Legislature should also require the OSA to conduct any audits on decertified districts within one year of decertification.**

### **LE-34. Adequate Funding for Transportation**

*Issue:* A well-coordinated state transportation policy utilizing all modes of transportation in moving passengers and freight will enhance the state economic development of new and expanding business as well as foster additional tourism opportunities.

*Response:* **More resources must be dedicated to all components of the state's transportation system, and local units of government must have access to resources and funding tools to meet growing needs. The League of Minnesota Cities supports:**

- a) **Development of a comprehensive state transportation policy which provides an environment where all modes of transportation (motor, rail, air, water and pipeline) complement each other in moving passengers and freight within the state.**
- b) **A dedicated and sustainable state revenue source for non-municipal state aid city streets.**
- c) **The Statewide Transportation Plan 2009-2028 developed by the Minnesota Department of Transportation (MnDOT).**
- d) **MVST distribution of 60 percent for roads and bridges and 40 percent for transit.**
- e) **A permanent increase in the gas tax.**
- f) **Indexing of the gas tax, provided there is a limit on how much the tax can be increased for inflation in a given amount of time.**
- g) **Increases in vehicle registration taxes (tab fees).**
- h) **Trunk highway bonding provided the Legislature implements reasonable restrictions on the amount of debt service the state will incur, and provided the Legislature appropriates**

**funding to assist with local costs related to projects funded with trunk highway bonds.**

- i) General obligation bonding for local roads and bridges, particularly for routes of regional significance.**
- j) A sales tax increase dedicated to transportation.**
- k) Funding to assist cities burdened by cost participation responsibilities imposed by improvement projects on the state's principal arterial system and on the county state aid highway (CSAH) system.**
- l) Funding for transportation components of economic development and redevelopment projects of regional significance.**
- m) Full funding for all components of state highway projects, including related stormwater management systems, through state sources.**
- n) Funding to build roads to standards that can accommodate the year-round transport of heavy loads.**
- o) A sales tax exemption for materials purchased for state and local road, bridge, sidewalk, trail and transit construction projects.**
- p) Authority for cities to impose development impact fees for transportation infrastructure.**
- q) Local funding options that would allow cities to raise revenues for roads, bridges, sidewalks, trails, and transit.**
- r) Expanded use of alternative revenue sources such as MnPASS and other tolling mechanisms for funding of maintenance and construction (where feasibility studies indicate the program is appropriate).**

## **LE-35. Turnbacks of County and State Roads**

*Issue:* As road funding becomes increasingly inadequate, more roads are being “turned back” to cities from counties and the state.

*Response:* Turnbacks should not occur without direct funding or transfer of a funding source. A process of negotiation and mediation should govern the timing, funding, and condition of turned-back roads. Agreements should be negotiated and finalized before work on a project requiring a turnback begins. City taxpayers should receive the same treatment as township taxpayers. The requirement for a public hearing, standards about the conditions of turnbacks, and temporary maintenance funding should also apply to county turnbacks to cities. At a minimum, roads that are proposed to be turned back to a city government should be brought up to the standards of the receiving government, or that city should be compensated with a direct payment. Direct funding should be provided for smaller cities that are not provided with turnback financing through the municipal state aid system.

## **LE-36. MnDOT Rights-of-Way Maintenance**

*Issue:* Maintenance of property, including government property and facilities, is important to public safety and to the image of Minnesota cities. Cities are acutely aware of the responsibility they have for enforcing property maintenance codes pertaining to grass mowing, noxious weed abatement, the placement of trash in yards and fence maintenance.

Minnesota has many miles of highways that run through cities. In recent years, the Minnesota Department of Transportation (MnDOT) has cut a substantial percentage of its rights-of-way management staff. The cuts have resulted in reduced maintenance along some corridors and on parcels acquired by MnDOT for transportation purposes. Specifically, MnDOT has reduced the frequency of mowing, litter collection, noxious weed abatement, graffiti abatement and repair of fences and guard rails. This maintenance reduction has created public safety concerns, undermined efforts to keep corridors attractive and presented challenges for communities working to promote economic development.

***Response: MnDOT must maintain state rights-of-way and parcels acquired by MnDOT for transportation purposes located within city limits in a manner consistent with local ordinances governing the upkeep of private property when requested by the city. Alternatively, MnDOT should reimburse Minnesota cities for the labor, supplies, and equipment necessary to maintain state rights-of-way to meet city standards and/or minimize public safety hazards. The Legislature must provide MnDOT with adequate funds to maintain state rights-of-way.***

### **LE-37. Funding for Non-Municipal State Aid City Streets**

**Issue:** Minnesota has over 141,000 miles of roadway, and more than 22,500 miles—or 16 percent—are owned and maintained by Minnesota’s 853 cities.

The Minnesota Constitution limits eligibility for dedicated Highway User Tax Distribution Fund dollars to up to twenty percent of streets in cities with populations over 5,000 (147 of 853 cities). This means

almost 85 percent of municipal streets are ineligible for municipal state aid (MSA) funds and must be paid for with property taxes and special assessments. Funding challenges are compounded by city cost participation requirements in state and county highway projects, which divert resources from city-owned streets.

Recognizing the unique street funding needs in cities under 5,000 population, the 2015 legislature created the Small Cities Assistance Account (Minn. Stat. § 162.145). Funds in the account are distributed through a formula to all cities under 5,000 population for street maintenance and reconstruction. Unfortunately, funding for the account was only provided for one year.

Maintenance costs increase as road systems age, and no city—large or small—is spending enough on roadway capital improvements to maintain a 50-year lifecycle. For every one dollar spent on maintenance, a road authority—and therefore taxpayers—save seven dollars in repairs. According to a report released in late 2012 by the governor’s Transportation Finance Advisory Committee, cities collectively need an additional \$400 million per year to bring city streets up to an economically competitive standard.

***Response: City streets are a separate but integral piece of the network of roads supporting movement of people and goods. Cities need greater resources and flexible policies in order to meet growing demands for street improvements and maintenance. The League of Minnesota Cities supports:***

- a) **A dedicated and sustainable state funding source for non-MSA city streets in large and small cities statewide;**

- b) **enabling legislation that would allow cities to create street improvement districts (similar to sidewalk improvement districts already allowed under Minn. Stat. § 435.44); and**
- c) **the creation of a new fund within the Local Road Improvement Program that would provide grants to cities burdened by cost participation requirements related to trunk highway and county state-aid projects.**

### **LE-38. Complete Streets**

*Issue:* There is increasing public support for the reform of local street design policies to make streets safer for pedestrians, cyclists and neighborhood residents.

*Response:* **The League of Minnesota Cities supports reforms in state design guidelines for local streets that would give cities greater flexibility to safely accommodate all modes of travel, including walking and biking. The state should also provide incentives such as grants to local units of government working to advance complete street projects. Crosswalks and Safe Routes to School projects should be eligible for incentives.**

**The League opposes state imposed unfunded mandates that would increase the costs of building streets in contexts where facilities for cyclists and pedestrians are unnecessary or inappropriate.**

### **LE-39. Safe Routes to School Grants Management**

*Issue:* The Safe Routes to School (SRTS) Program provides funding support for capital projects that promote and encourage more students to walk or bicycle to school

by making the school routes safer and more accessible.

The following are some types of SRTS infrastructure improvement grants that are provided by the state and offered through the Minnesota Dept. of Transportation (MnDOT):

- School site improvements: secure bicycle parking facilities, traffic diversion improvements, and Americans with Disabilities Act (ADA) improvements;
- Pedestrian facilities: new sidewalk, sidewalk gap closures, and related ADA improvements;
- Bicycle facilities: bicycle trails, separated multi-use or shared paths and related ADA improvements; and
- Traffic calming and crossing improvements: curb extensions, speed humps, median refuges, enhanced crosswalk markings, timed on/off beacons, vehicle feedback signs (dynamic speed signs), and other traffic control devices.

Cities that receive municipal state aid (MSA)--those with populations above 5,000--may apply for and administer their own SRTS grants. Non-MSA cities, even those with a city engineer on staff or contract, must rely on the county to manage any grant funds secured as well as to approve the project design. In some cities, this requirement has led to project delays and disputes with counties over project design and delivery.

*Response:* **The League of Minnesota Cities supports changes to MnDOT rules to allow small cities that have the capacity to manage SRTS grants and projects to do so without county approval.**

## LE-40. Railroads

**Issue:** Railroads impose far-reaching and long-term impacts on communities. The impact of railroads on communities has become more pronounced in Minnesota as the number and length of trains have increased due to frac sand and crude oil entering the state by rail to and from North Dakota. While railroads often support economic activity and can relieve pressure on roadway and bridge infrastructure, they also bring noise, environmental impacts and safety challenges. Below are some of the concerns cities have raised about railroads:

- a) Local public safety personnel are under-equipped to respond to a potential derailment of a train carrying hazardous materials such as crude oil or nuclear products.
- b) The cost-share ratio related to roadway crossing improvements is borne disproportionately by the public sector. Some estimates are 80 percent public to 20 percent private funding, regardless of the public entity's ability to pay or whether service is provided within the community. Funding has not kept pace with the growing need for grade separations.
- c) Legislation brought by the railroad industry that would exempt railroads from stormwater fees and assessments and shift the cost of complying with stormwater management to other property owners.
- d) The financial burden is faced by the public sector to deal with mitigation improvements, a cost that the Surface Transportation Board (STB) is not requiring the private sector to pay.
- e) At-grade crossings are blocked by both long moving trains and by trains that stop and remain stopped, sometimes for hours at a time. Blocked crossings delay

motorists and sometimes prevent passage of emergency vehicles.

- f) Difficulty and expense of imposing and enforcing whistleblowing ordinances.
- g) Unabated graffiti on railroad cars and structures.
- h) Pre-emption of local and state authority to regulate railroad activities.

**Response:** The League of Minnesota Cities opposes legislation and policies that disproportionately shift authority, costs and/or liability away from railroad companies and onto other entities. The railroad industry, along with state and federal government, must:

- a) Adequately mitigate the negative impacts of railroads on communities;
- b) Allow local governments to enforce the existing law regarding the maximum time a crossing may be blocked;
- c) Allow local governments to enforce whistle-free zones;
- d) Impose and implement safety standards that are in the best interest of the public, including requiring every train that is carrying freight to be operated with a crew of at least two crewmembers;
- e) Equip and train local public safety officials to respond to potential catastrophic rail incidents;
- f) Develop plans and identify funding sources for more grade separations between railways and roadways; and
- g) Require railroad companies to provide a direct emergency response telephone number for city first responders (police, fire & ambulance) to call when an at-grade crossing is blocked, and the emergency services need this crossing immediately unblocked to continue their response.

**The public sector should not incur the costs of improvements sought by the private sector, and cities should not be required to fund most of the cost of crossing repairs or improvements. The federal government must exercise greater oversight of the STB to ensure fair and equitable solutions are reached when dealing with cities in Minnesota. Finally, the Minnesota Department of Transportation's (MnDOT's) Office of Freight and Passenger Rail should advocate on behalf of local communities when conflicts between cities and railroad entities arise.**

#### **LE-41. Airport Planning and Funding**

*Issue:* Airports are an essential component of Minnesota's transportation infrastructure. The Minneapolis-St. Paul International Airport (MSP) serves as an important gateway to the region, the nation and global markets. It serves as a primary access point to our national airport system. This airport, even with all the planned improvements, will eventually reach its capacity. The state needs to implement a long term strategy to make better use of other airport facilities and existing resources, reduce environmental impacts, and achieve sound and sustainable economic growth throughout the state.

Aviation planning is a multi-layered effort with different levels of responsibilities. Currently, the State Airports System Plan is put together by MnDOT with individual pieces developed by the Federal Aviation Agency (FAA), Metropolitan Council (MC), and Metropolitan Airports Commission (MAC). Aviation planning could be improved by a more unified statewide effort and coordination of the various aviation strategies through creation of an oversight body.

Minn. Stat. § 360.017 establishes the State Airport Fund and authorizes the Minnesota Department of Transportation (MnDOT) Office of Aeronautics to support cities, counties and townships in the planning, development, maintenance and safe operation of public airports. In recent years, in order to help balance the state's budget, the Legislature transferred funds from the State Airport Fund to the General Fund. Although the borrowed funds were eventually repaid in full, efforts to preserve and improve the quality of airports throughout the state were hindered by the unavailability of these revenues.

*Response:* **The state needs a higher degree of integration of agencies (FAA, MnDOT, MC, and MAC) and communities related to aviation planning. The League of Minnesota Cities supports the development of a statewide airport advisory board, which could provide input, review and make recommendations to assist in development of a comprehensive statewide State Airports System Plan.**

**The state needs to make planning and investment decisions that will maximize the potential for airports to become economic development centers that provide access to domestic and global marketplaces. Investments in airports allow existing businesses to remain and grow, help attract new businesses, increase employment, and lower product and service costs for the benefit of the region. Finally, the Legislature should not authorize shifting of dedicated State Airports Fund dollars to resolve general fund deficits.**

#### **LE-42. Airport Safety Zones**

*Issue:* The field of aeronautics is regulated generally by Minn. Stat. ch. 360 and Chapter

8800 of the Minnesota Rules. Land use safety zones and other public airport zoning standards are established in Minnesota Rules Chapter 8800.2400, and are adopted by local airport zoning regulations that are submitted to the Minnesota Department of Transportation (MnDOT) commissioner for review and approval before adoption. Airport safety zones are intended to restrict land uses that may be hazardous to the operational safety of aircraft using the public airport, and to protect the safety and property of people on the ground in the area near the public airport.

While some of the provisions included in the Minnesota Rules are required by the Federal Aviation Administration (FAA), other provisions go well beyond the federal requirements. In some cases, the Minnesota Rules do not make sense for the community served by a public airport.

Finally, in some cases airports cross multiple municipal jurisdictions. Neither state law nor Minnesota Rules provide powers for joint airport zoning boards. These boards could be useful in resolving interjurisdictional issues involving airport planning, development, funding and zoning.

***Response:* The League of Minnesota Cities supports efforts to protect the safety and property of people living and working near public airports. The League also recognizes that the Minnesota Rules related to public airport zoning standards exceed the FAA's and other states' standards and, thus, needlessly infringe on local control. The League supports changes to Minnesota Rules pertaining to airport zoning standards that will more closely align Minnesota's Rules with those in other states, while at the same time retaining local authority to be more restrictive than the Minnesota Rules. The League also supports changes to**

**Minnesota Statutes and Minnesota Rules that would authorize powers for joint airport zoning boards so issues related to funding, staffing, and authority to enforce ordinances can be resolved at the local level.**

# IMPROVING FISCAL FUTURES

## FF-1. State-Local Fiscal Relations

**Issue:** Since the 1970s, services provided by Minnesota cities have been largely funded through a combination of property taxes, state aids, and state property tax relief programs. This system of municipal finance has evolved to ensure that municipal services can be funded without excessive local tax burdens.

Over the past decade, the state-local partnership has vacillated with the state budget, challenging the ability of city officials to plan for the future fiscal needs of their communities.

**Response:** The League of Minnesota Cities supports a strong state-local fiscal partnership. The state-local fiscal system, and any future modifications, should be consistent with the following principles:

**Accountability.** Cities believe a viable partnership with the state requires cities and the state to communicate effectively with each other and with the public about their roles and responsibilities. Cities and the state must also exercise sound financial stewardship, including maximizing efficiencies in service delivery and other means of cost containment whenever possible.

**Certainty.** Cities need to have more certainty and predictability in all of their available revenue sources, including the property tax and the amount of funding they receive from local government aid and similar programs. The current practice of almost annual adjustments to local government aid (LGA) and similar programs, recent unallotments of the appropriation and the imposition of levy

limits do not allow for prudent financial planning and decisions. In addition, the 2011 state government shutdown further decreased the certainty of the system when the Department of Revenue indicated that despite the standing LGA appropriation, the shutdown of many state government operations would prevent the distribution of the LGA.

**Adequacy.** The revenue sources available to cities and the state must raise adequate funds to meet city needs, to fund mandates, and to maintain Minnesota's long-term competitiveness.

**Flexibility.** As cities become increasingly diverse in their characteristics and as existing aid and credit programs have eroded, a "one-size-fits-all" system that limits all cities to the property tax as the major, non-state aid revenue source is increasingly unworkable. Some cities have sufficient property tax base to sustain an adequate service level, but many do not. Cities should have greater access to other tax and revenue sources than currently permitted.

**Equity.** All citizens should receive adequate levels of municipal services at relatively similar levels of taxation. This means that the state should provide financial assistance to cities that have high costs, including costs related to overburden created by non-resident users of city services, low fiscal capacity, or both. State financial assistance should also reduce tax burden disparities among communities and between cities and surrounding areas.



## **FF-2. Economic Contributions by Cities**

**Issue:** Cities provide and maintain the physical infrastructure as well as the social and economic infrastructure necessary to support a large share of the state's economic activity. In addition, cities play a major role in statewide economic development activities that assist businesses with expansion and job creation. The importance of cities to the overall vitality of the state's economy is frequently overlooked in state policy discussions.

**Response:** To provide lawmakers with information on the economic activity occurring within cities, the Department of Revenue should annually collect and compile information on major state tax collections within each city, in addition to county and regional reports.

## **FF-3. State Budget Stability**

**Issue:** In recent years, the Legislature has faced repeated budget deficits. Legislative actions to address these deficits have included changes in the state budget, including permanent reductions in funding to local units of government for programs such as local government aid as well as the full elimination of programs such as the market value homestead credit. However, the state has frequently relied on short-term solutions that have only shifted a large share of the deficit problem into the next biennium.

As required under state law, recent state budget surpluses have been dedicated to the repayment of many of these short-term budget shifts. In 2014, with these repayments completed, the legislature increased the state budget reserve by \$150 million and established a process to further

expand the state's budget reserves with a portion of future surpluses.

**Response:** To increase the stability of the state budget and avoid or reduce the impact of future state budget deficits, the Legislature:

- a) **Must consider all options, including revenue increases, with a particular focus on changes that increase state revenues and improve the stability of the state's revenue stream;**
- b) **Must not further reduce funding for property tax relief programs to cities;**
- c) **Must not accelerate the remittance of sales tax collections by retailers including municipal liquor operations, and should make steps to reverse past accelerations;**
- d) **Must consider the aggregate impact on Minnesota taxpayers of previous budget cuts and tax increases;**
- e) **Must reinstate estimates of inflationary increases to expenditure estimates;**
- f) **Should continue to build at a minimum, a five-percent budget reserve and should establish state budget stability as a state priority. This includes prioritizing stability ahead of sending back tax rebate checks as was done in 2000;**
- g) **Should modify the unallotment statute to place a reasonable statutory limit on the percentage and timing of the state's budget that can be unallotted during a biennium without legislative approval; and**
- h) **Must emphasize long-term budget solutions and budget stability and the continuation of both state and local government operations.**
- i) **The League of Minnesota Cities supports the principle of representative democracy and opposes limiting the Legislature's flexibility in**

**making financial decisions through new Constitutional amendments.**

#### **FF-4. Funding Local Government Aid**

*Issue:* Local government aid (LGA) is an important component in the state's property tax relief system, and a critical tool to help equalize tax base to ensure needs for public services can be met. To avoid undue pressure on the property tax, funding for LGA must keep pace with inflationary pressures. For the 2003 distribution, the legislature originally set the LGA appropriation at \$586.8 million. By 2011, the LGA appropriation had been reduced to \$425.3 million, a reduction of \$161 million from the original 2003 appropriation. Since 2013, the legislature has restored a total of \$92 million in funding for LGA and updated the formula to reflect recent fiscal and demographic data. For 2016 and beyond, the LGA appropriation is frozen at \$519.4 million.

During the 2015 legislative session, the House omnibus tax bill included an arbitrary limitation on the maximum per capita LGA distribution to cities of the first class that would have limited their LGA to 112.5 percent of the average per capita amount for all non-first class cities. This change would have been a significant deviation from the practice of using the formula to distribute LGA and could have jeopardized the long-term stability of the program.

Currently, LGA payments are made to cities on July 20 and December 26 each year. This distribution occurs late in the city fiscal year and can create short-term cash flow challenges for some cities. In 2015, the Senate proposed accelerating the annual LGA distribution by making payments to

cities on March 15, July 15, September 15, and November 15.

*Response:* In order to reduce pressure on the property tax, and to equalize property tax bases, the League of Minnesota Cities continues to support the existing LGA formula as the appropriate mechanism to distribute LGA resources and opposes artificial limits on any city or group of cities. In addition, the League supports an increase in the LGA appropriation to at least the level that would have been provided prior to the 2003 cuts, including the restoration of the annual inflation adjustment. The League also supports an acceleration of the annual LGA distribution to assist cities with cash flow needs. Increases to the LGA appropriation should be distributed based on the formula. The League opposes targeted reductions to specific cities.

**The legislature should avoid creating side-pots or special appropriations through the LGA (Minn. Stat. ch. 477A) program. If special circumstances such as a natural disaster warrant additional state assistance to specific cities, the criteria for the additional aid should be specifically enumerated and the appropriation should be separate and in addition to the appropriation through the general LGA formula.**

#### **FF-5. State Charges for Administrative Services**

*Issue:* Currently, some state agencies have wide discretion in setting the fees for special services they provide to local governments.

*Response:* State agencies should be required to justify their service fees or for increases in existing service fees and not

**charge more than what is fair, reasonable, and proportionate to the cost of service. Agencies should give adequate notice of increases to allow local governments to budget for the increases. State agencies should set administrative service fees as close as possible to the marginal cost of providing the service. Local government should be given the option to self-administer or contract with the private sector for the service if the state cannot provide the service at a reasonable cost.**

## **FF-6. Reporting Requirements**

*Issue:* Budget and financial reporting requirements imposed on cities by the state often result in duplication and additional costs. In addition to the state mandated annual audits under Minn. Stat. § 471.697-.698, cities are required to prepare and submit or publish numerous other budget and financial reports including but not limited to:

- a) Summary budget reports (Minn. Stat. § 6.745);
- b) Treasurers report to the city clerk (Minn. Stat. § 412.141);
- c) Statement of tax collections and other income by clerk to the city council (Minn. Stat. § 471.69);
- d) Report on outstanding obligations and the purpose for each issue filed with the county auditor (Minn. Stat. § 471.70);
- e) Publication of summary budget statement (Minn. Stat. § 471.6965);
- f) Publication of statement of liquor store operations (Minn. Stat. § 477A.017);
- g) Liquor store audited financial statements (Minn. Stat. § 471.6985);
- h) TIF district plan and amendments (Minn. Stat. § 469.175, subd. 4a);
- i) TIF district annual disclosure (Minn. Stat. § 469.175, subd. 5);

- j) TIF district annual financial report (Minn. Stat. § 469.175, subd. 6);
- k) Business subsidy reporting (Minn. Stat. § 116J.993 through 116J.995);
- l) State required financial activity reports (Minn. Stat. § 6.74);
- m) Local improvement requirements (Minn. Stat. § 429.031);
- n) Development and permit fees report (Minn. Stat. § 326B.145);
- o) Utility annual financial statements (Minn. Stat. § 412.381);
- p) Housing and redevelopment authority annual financial report (Minn. Stat. § 469.013); and
- q) Federal single audit or a program-specific audit (31 U.S.C.A. § 7502 (a)(1)).

Many cities have expanded the availability of information on their web sites in response to citizen requests and some cities have begun using new tools to assist citizens in understanding the city budget. Expanding state mandated financial reporting requirements could force cities to redirect scarce resources to the state mandate and stifle innovative ways to communicate with citizens.

***Response:* Requirements for reporting and advertising financial and budget information should be carefully weighed to balance the need for information with the administrative costs of compiling and submitting this information. In addition, the legislature should direct all state agencies to review existing local government reporting mandates and eliminate redundant or superfluous requirements. To this point, the legislature should consolidate municipal government financial reporting requirements in the Office of State Auditor, include an electronic submission alternative to any remaining paper filing**

requirements and authorize the use of web publication where newspaper publication is currently required. Finally, the legislature must not increase reporting burdens for local units of government. Any new reporting requirement should have a clearly defined statement of purpose and public need not currently met with existing reports, a sunset date to facilitate a future discussion of the usefulness of the requirement as well as full state funding for the costs associated with a new reporting mandate.

### **FF-7. Direct Property Tax Relief Programs**

*Issue:* In 2013, the legislature expanded the homeowner property tax refund (PTR) program and renamed it the Homestead Credit Refund program. As a direct taxpayer relief program, the Homestead Credit Refund avoids the problems with the former Market Value Homestead Credit system where the state provided a credit on the homeowner's property tax statement but did not always reimburse cities and counties for the amount of the credit.

*Response:* **The League of Minnesota Cities supports providing additional, direct property tax relief through an expansion of the Homestead Credit Refund program, the renters' refund program, the targeting program or other programs that provide property tax relief directly from the state to taxpayers. In addition, the League supports the 2013 legislation that requires the Department of Revenue to notify potentially eligible homeowners of the program and would also support legislative modifications to these programs to eliminate the taxpayer filing requirement thereby making the tax relief payments automatic.**

**The League opposes property tax credit programs that reimburse local units of government for reduced tax burden such as the former market value homestead credit system due to the fact that the reimbursements to local units of government can be cut while the credit to the taxpayer remains on the property tax statement. In addition, the League opposes reinstating Limited Market Value, a program that reduces the taxable value of individual properties based on assessor's valuation increase. Limited Market Value creates inequities between similar properties based solely on the valuation increase determined by the assessor.**

### **FF-8. Sales Tax on Local Government Purchases**

*Issue:* The local government sales tax exemption enacted in 2013 and expanded in 2014 does not apply to all city purchases. Some purchases for municipal enterprise operations, such as liquor stores and golf courses are excluded from the exemption. In addition, in order to receive the sales tax exemption on construction materials under current law, cities must bid labor and materials separately and also designate a contractor to be a purchasing agent on behalf of the city. The existing Department of Revenue rules (MN Rules 8130.1200, Subp. 3) are complex and the implementation can be so complicated that it can cost cities more money to implement than they will save on the tax exemption. Finally, although cities currently do not pay the motor vehicle sales tax on marked police vehicles or firefighting vehicles, other city vehicles are not exempt from the motor vehicle sales tax.

*Response:* **In order to ensure that taxpayers receive the full benefit of the local government sales tax exemption:**

- a) **The exemption should apply to all purchases made by local units of government;**
- b) **The process to receive the exemption for construction materials should be simplified or converted into a refund process; and**
- c) **The exemption should be extended to all local government purchases that would otherwise be subject to the motor vehicle sales tax in Minn. Stat. ch. 297B.**

### **FF-9. Taxation of Electronic Commerce**

*Issue:* Sales over the Internet and through other electronic means are projected to increase exponentially over the next several years. Electronic transactions pose significant tax-policy challenges because of the difficulty of assigning a location to electronic sales and because many Internet goods are not tangible property.

***Response:* Federal tax policy should not place main street businesses at a competitive disadvantage to electronic retailers, must not jeopardize repayment of bonds backed by state and local sales tax revenues, and should ensure stability in state and local revenues. To address the challenges created by the growth of electronic commerce, the League of Minnesota Cities supports the multi-state effort to develop a streamlined sales tax system.**

**The League also supports federal legislation, such as the Marketplace Fairness Act and the Remote Transactions Parity Act, which would provide congressional authority for states that comply with the Streamlined Sales and Use Tax Agreement to require remote retailers to collect and remit state sales taxes. If Congress is unable to enact**

**such legislation, the League supports the 2016 Minnesota legislative effort to broaden the definition of retailers, affiliates and related parties in order to expand sales tax collection responsibility.**

### **FF-10. Local Lodging Taxes**

*Issue:* In 2011, the legislature amended Minn. Stat. § 297A.61 to define accommodation intermediaries and clarified that their services are subject to the state sales tax as part of the tax imposed on lodging. Local lodging taxes collected by the state for local units of government under Minn. Stat. § 469.190, subd. 7 also clearly apply to services provided by these accommodation intermediaries since these taxes are required under Minn. Stat. § 270C.171 to use the definition for tax base contained in the general sales tax statute. Since 2011, some accommodation intermediaries have not been collecting and remitting locally-administered lodging taxes based on the full cost of the accommodation plus the accommodation intermediary services. There are currently 120 cities and towns that individually or jointly impose lodging taxes for tourism purposes under Minn. Stat. § 469.190. Another five cities impose a lodging tax that is administered locally under special law. Four local lodging taxes are currently administered by the state.

***Response:* The League of Minnesota Cities supports legislation that will clarify that all lodging taxes, whether administered by the state or administered locally, apply to the total charges to the customer, including charges for services provided by accommodation intermediaries.**

## **FF-11. Taxation of Electric Generation Personal Property**

*Issue:* Investor-owned utilities (IOUs) have a longstanding relationship with Minnesota cities. IOUs site baseload power plants in host communities, and in exchange pay personal property tax on attached generation machinery to the cities, counties and school districts hosting the plants. These plants bring jobs to our communities, but they also create nuisances such as air pollution, nuclear waste, noise, vibration, and coal train traffic. They also create security risks and take up land that could be used for other, less disruptive commercial and industrial development. Cities believe personal property taxes paid by IOUs are a fair compensation for the environmental and economic costs of hosting baseload power plants.

IOUs argue that personal property tax relief is important to pass along to their shareholders and ratepayers. However, only a few IOU shareholders and ratepayers actually live in the communities hosting baseload power plants. Further, almost all new power plants receive personal property tax exemptions from the Legislature, while host communities with existing, non-exempt baseload plants will continue to have them for decades to come.

Currently the taxation of electric generation personal property represents the best method for reimbursing host communities for the cost of hosting IOUs. However, a 2015 MN Department of Revenue study on electric generation taxation has generated proposals to change the state system of taxing electric generation which raise equal or greater revenues for host cities.

***Response: Personal property taxes on attached electric generation machinery***

**are a fair way to spread the environmental and economic costs of electric generation power plants among all IOU shareholders and ratepayers. The League of Minnesota Cities supports the continuation of personal property taxes paid by IOUs to host communities for existing and new facilities or a tax system which generates equal or greater revenue for host communities. As the Department of Revenue analyzes methods of utility taxation in its Study of Electric Energy Producing Systems (Session Law 2014, Chapter 308), the League supports the inclusion of these environmental and economic costs in assessing the appropriate property taxes paid to host cities by electric generation facilities.**

## **FF-12. Electric Generation Taxation Reform**

*Issue:* Currently, electric utilities are subject to a personal property tax on personal property which is part of an electric generating, transmission, or distribution system. This tax has a number of exemptions and exclusions which make a patchwork of taxation statewide. The Department of Revenue issued a report on February 15, 2015 which laid out the details of this tax system, stating, “The utility tax base comprised of these energy producing facilities is not predictable. The unpredictability is a result of law and rule changes that determine the amount of utility tax base available for host communities.”

Cities which host Investor Owned Utility base load power plants have faced unpredictability in tax base from both changes to state law regarding the personal property tax on electric generation equipment and from changes in valuation due to the upgrade/depreciation cycle of equipment.

The Minnesota Legislature has introduced a reform to the system of taxing electric generation. It repeals the personal property tax and all of its exclusions and exemptions, and replaces it with an “electric generation tax base” which is subject to local property taxes. This proposal also repeals the personal property tax on transmission and distribution and creates a “Valuation for Electric Transmission Line Tax Base,” a “Valuation for Electric Substation Tax Base” and an “Electric Distribution Line Tax Base.”

The proposal defines the tax base for electric generation in a new way for electric generation plants which use coal, oil, natural gas, nuclear fission, biomass and flowing water to generate electricity. Under the proposal, the Department of Revenue would annually assess the tax base of electric generation machinery under a set of statutory formulas. The new valuation which replaces the value of electric generating equipment is based on a combination of an individual facility’s nameplate capacity, average energy production and amount of nuclear waste storage.

The proposal also replaces the taxable value of electric transmission and distribution with statutory formulas. The Department of Revenue would assess the value of the “electric transmission line tax base” according to the number of miles of electric transmission within the taxing jurisdiction, the value of the “electric substation tax base” according to the sum of the capacity of a substation, and the value of the “electric distribution line tax base” according to the number of customers in the taxing jurisdiction that receives an electric distribution.

These new tax bases define the value for purposes of the ad valorem tax of hosting jurisdictions.

Factors such as inflation affect the expenses of host cities, so any proposal to change the system of taxing electric generation should account for changes in value over time, using an independently reported adjustment factor for changing values over time.

Statutory changes to the system of electric generation taxation should not adversely affect host city tax revenues. Any proposal to change the system must include some form of replacement aid which compensates cities for adverse effects due to changing state law on electric generation taxation.

***Response:* The personal property tax on electric generation equipment as well as the exemptions, exclusions and sliding scales to that tax represent a patchwork of taxation rules statewide. Changes to state law which replace the personal property tax on electric generation equipment with a tax base valuation based on electric generation capacity, production, nuclear storage, transmission, and distribution will benefit IOU host cities so long as the change comes with a factor to increase the tax base valuation over time and reimbursement to cities for revenues lost due to a change in state law.**

### **FF-13. Agricultural Containment Property Tax Exemption Repeal**

***Issue:*** A recent Department of Revenue survey of local government assessors indicated that a long-standing exemption for agricultural containment facilities under Minn. Stat. § 272.03 subd. 23, defined as containment tanks, cache basins, and that portion of the structure needed for the containment facility used to confine agricultural chemicals, has not been applied

uniformly across the state. Since the exemption was originally enacted in 1992, practices with respect to storage of chemicals used in farming have changed considerably as new, larger facilities have been constructed.

According to the Department of Revenue survey, the consistent administration of the exemption beginning on January 1, 2017, will result in a significant and immediate loss of tax base in many cities across the state. In some cases, the tax base loss in cities that host these facilities will exceed five percent, resulting in a large property tax shift to all other taxable properties within the city.

***Response:* The League of Minnesota Cities supports the repeal of the exemption for agricultural containment facilities under Minn. Stat. § 272.03, subd. 23.**

## **FF-14. Taxation of Municipal Bond Interest**

***Issue:*** The federal and state laws that grant a tax exemption to bondholders for municipal bond interest lowers borrowing costs for cities and reduces property tax levies. Recent proposed Internal Revenue Service rules would potentially restrict some local government entities such as housing and redevelopment authorities, economic development authorities and port authorities from issuing tax exempt bonds.

***Response:* Congress and the state should maintain the tax exemption for municipal bond interest income. Congress should also clarify the law to supersede proposed IRS rules and thereby continue to allow housing and redevelopment authorities, economic development authorities and port authorities to issue tax exempt debt.**

## **FF-15. Pollution Control Exemption**

***Issue:*** Minnesota grants electric utilities and several other industries a property tax exemption for personal and real property that is primarily used for pollution control. Minnesota adopted the property tax exemption that now extends to electrical generation systems, agricultural operations, and wastewater treatment facilities in 1967, before water and air pollution were heavily regulated by the Environmental Protection Agency and the Minnesota Pollution Control Agency. The language and the purpose of these statutes have evolved through the years. When states first began adopting these tax incentives in the 1960s, they hoped to encourage utilities, industrial plants, and others to install pollution control equipment. Gradually, as regulation increased, states adopted the exemptions to help companies offset the cost of the equipment.

This tax benefit erodes local tax bases. In 2013, more than \$1.8 billion of personal and real property for electrical generation was exempted from the market value of utilities. The incentive value of this benefit is low because utility companies are required to install the equipment anyway. In addition, these companies frequently recover the cost of the equipment through rate riders granted by the Public Utilities Commission. Allowing the pollution control equipment exemption places the cost of this equipment on the citizens of the host community, rather than the purchasers of electricity.

***Response:* The pollution control exemption places an undue burden on host communities without incentivizing the environmentally responsible behavior that it was originally created to encourage. The League of Minnesota Cities supports narrowing or eliminating**



**the pollution control equipment exemption for investor owned electric generation facilities. The League would also support allowing utilities to continue to recover their costs relating to the pollution control equipment by spreading those costs to electricity users.**

## **FF-16. State Support for Municipal Energy Policy Goals**

*Issue:* The State of Minnesota has adopted an energy policy focusing on the promotion of energy efficiency and the expansion of renewable energy with the goal of achieving a reduction in carbon generation through reduced use of fossil fuels. Minnesota cities share this goal, but already strained budgets and reserves at the state and local level have limited the ability of the state to assist local units of government in furthering specific projects that support the overall state goal. In addition, institutional knowledge and capacity of most cities limits their ability to explore energy efficiency or renewable energy projects, even projects whose energy “payback” could finance project capital costs.

***Response:* The League of Minnesota Cities calls on our legislators and state executive agencies charged with accomplishing the state’s energy policy goals to assist cities, townships and counties with tailored efforts to identify appropriate energy efficiency and renewable energy projects for undertaking at the local level. State law should allow and support utility grant and loan programs and Property Assessed Clean Energy Programs, both publically and privately funded.**

**The state should create a grant and loan program to offset start-up capital expenses for projects identified where the savings in energy costs can offset capital**

**project costs or where projects are needed to meet energy policy goals. The state should clarify that cities may use public utility franchise agreements to advance energy policy goals. Additionally, state efforts should recognize that state energy agency technical expertise should be made available to cities at no cost.**

## **FF-17. Local Elected Officials Authority to Establish Local Budgets**

*Issue:* In 2015, the House omnibus tax bill included a reverse referendum provision that would allow a small number of voters (ten percent of those voting in the last general election) to petition for a referendum on a general city property tax levy increase. The outcome of the election could reverse the decision of the local elected officials on the local budget and property tax levy after months of planning and public hearings.

As recently as the 2013 legislative session, the legislature imposed levy limits on cities over 2,500 population for one year. Levy limits replace local accountability with a state judgment about the appropriate level of local taxation and local services. Additionally, state restrictions on local budgets can have a negative effect on a city’s bond rating due to the restriction on revenue flexibility.

Levy limits also fail to account for the decertification of tax increment financing districts. Upon decertification, the property taxes that were formerly collected and used to support the public improvements in the TIF district can no longer be collected at the same rate and used to support ongoing general city operations.

***Response:* Local elected officials are elected to make decisions about local**

**budgets and meeting community needs. The League finds that it is inappropriate for the Legislature to undermine local elected officials decision-making and accountability through the continued imposition of levy limits or by enacting proposals such as a reverse referendum requirement or the “taxpayers’ bill of rights.” The League of Minnesota Cities supports the principle of representative democracy that allows local elected officials to formulate local budgets without state or other restrictions.**

## **FF-18. Tax Hearing and Notification Process**

*Issue:* Cities must set a preliminary levy by September 30, which is the levy used to compute the parcel-specific property tax notification forms. With only a few limited exemptions (e.g., voter-approved levies, levies for natural disasters and levies for certain tort judgments), this preliminary levy, by law, becomes the maximum that cities can levy the following year. As a result, cities may be unable to budget for unforeseen needs that arise after September 30.

The 2009 Legislature eliminated the separate tax hearing requirement and replaced it with a requirement that the public be allowed to speak at a regularly scheduled meeting on the budget and tax levy. These changes erroneously repealed an exception to the tax hearing and notification process for cities adopting their levies at or less than the current rate of inflation.

With the major property tax changes enacted by the Legislature in 2011, city officials have found it difficult to explain to local taxpayers not only the effects of their budget and levy decisions but also the separate effects of the actions of the state Legislature.

*Response:* Cities should have the authority to increase the final levy from the preliminary levy with the approval of the commissioner of the Department of Revenue, to meet additional, unforeseen and uncontrollable needs, including arbitrator awards resulting from labor negotiations, the impact of new and existing federal or state mandates including administrative rules, or other non-discretionary budget factors.

The tax hearing and notification law should be carefully reviewed to assure that the legislative intent is reflected in the statutes.

Specifically, the League of Minnesota Cities supports the following:

- a) **Modifying Minn. Stat. § 275.065 to clearly and fully exclude cities of population 500 and under from the budget and levy hearing requirements;**
- b) **Reinstating the exception to the tax hearing and notification requirements for cities with more than 500 residents with a proposed levy increase below the implicit price deflator (IPD); and**
- c) **Moving the proposed levy certification deadline for all instrumentalities of local government and special taxing authorities to September 30.**

**In order to assist local officials with the challenge of explaining legislative changes to the property tax system, legislators should attend and be encouraged to participate in local government budget hearings in their districts.**

## **FF-19. General Election Requirement for Ballot Questions**

*Issue:* Under current state law, when cities are required to seek voter approval on a

ballot question or where statutes allow voters to petition for an election on a council action (reverse referendum), these referenda can generally be held at a general or special election. This flexibility allows cities to respond to local circumstances in a timely manner.

During the 2015 legislative session, the House omnibus tax bill included language that would have required referenda on most ballot questions be restricted to the November general election. If enacted, this requirement could limit the ability of cities to respond to unanticipated events or to undertake projects in a timely and cost-efficient manner.

***Response:* Cities should be allowed to conduct elections on ballot questions at a date and time set by the city council and that complies with existing election notification statutes.**

## **FF-20. City Fund Balances**

***Issue:*** As a component of a prudent financial management plan, cities maintain a fund balance composed of cash flow funds, savings for projects, and rainy day reserves to maintain high level bond ratings and to minimize borrowing costs. Although the size of a city's fund balance should be determined through local financial needs and local preferences, some cities are being criticized for maintaining "excessive" reserves.

The Office of the State Auditor (OSA) report measures city fund balances on December 31, shortly after the city receives its largest sources of revenue from the property tax and state aid distributions. Measuring at this time, however, yields a picture of a high fund balance even though the city will spend down these funds to cash

flow the next five to six months of its operations.

***Response:* The state should respect local decisions on adequacy of local fund balances. The League of Minnesota Cities opposes any attempt to divert local reserves to benefit the state budget.**

## **FF-21. Local Option Sales Tax and City Revenue Diversification**

***Issue:*** Under current state law, the property tax is the only generally accessible form of local tax revenue for cities. Even with the restoration of \$80 million in LGA funding by the 2013 legislature, state aid funding remains below the 2002 funding level. Allowing cities to diversify their revenue stream would help prevent rapid additional future reliance on the property tax.

The basic public finance rationale for diversification of local tax systems is rooted in the fact that economists generally agree that there is no perfect tax. Each tax has unique strengths and weaknesses and the more intensively any single tax type is used, the more obvious its shortcomings become. For example, the property tax is generally regarded as being very stable throughout the economic cycle and it is considered to be a relatively easy tax to administer and enforce. However, when property tax burdens become too high, there may be negative consequences for other public policy objectives such as business development and home ownership.

In addition to avoiding the problems created by excessive reliance on any single tax, a balanced and diversified revenue system for Minnesota cities may create a more favorable business climate and provide for greater stability of revenues to the recipient

government unit throughout the course of the economic cycle.

Under Minn. Stat. § 297A.99, the Legislature has created a set of local sales tax rules and a defined process by which cities and other political subdivisions can impose a general local option sales tax. Although the statutory process requires the city council to adopt a resolution supporting the local sales tax and also requires the city to seek voter approval of the sales tax at a general election, the process continues to require the final authorization of the local sales tax by the Legislature through the passage of a special law. Since 2011, seven additional cities have successfully sought legislative authorization to impose new local sales taxes. As a result, there are now 31 cities that currently are authorized to impose a general local sales tax.

***Response:*** Cities should be able to diversify their sources of revenues. The League of Minnesota Cities continues to support a statutory change that will allow a city to enact a local sales tax for public improvements, including but not limited to those specified in the 2011 legislation:

- a) **Convention or civic centers;**
- b) **Public libraries;**
- c) **Parks, trails, and recreational facilities;**
- d) **Overpasses, arterial and collector roads, or bridges, on, adjacent to, or connecting to a Minnesota state highway;**
- e) **Railroad overpasses or crossing safety improvements;**
- f) **Transportation infrastructure improvements, including construction, repair of roadways, bridges and airports;**
- g) **Flood control and protection;**

- h) **Water quality projects to address groundwater and drinking water pollution problems;**
- i) **Court facilities;**
- j) **Fire, law enforcement, or public safety facilities; or**
- k) **Municipal buildings.**

**Local sales taxes would follow the process outlined in Minn. Stat. § 297A.99 but without the need for the approval by the Legislature and governor through the passage of special legislation. The League supports allowing the referendum to be conducted at either a general or a special election.**

**State law should also be modified to generally authorize any city to impose other types of taxes such as a local payroll tax or an entertainment tax with the adoption of a supporting resolution by the city council and after approval by the voters at a general or special election.**

**In addition, Minn. Stat. § 469.190 should be amended to allow cities to impose up to a five percent local lodging tax and to allow cities to modify the uses of their local lodging tax revenues to meet local needs. Cities should also have general authority to create utilities, similar to the storm sewer utility authority, in order to fund local services where benefit or usage of the service can be measured.**

## **FF-22. Expanding City Investment Authority**

***Issue:*** Maintaining the highest public trust in the investment of public funds, and safeguarding of investment assets, are critical financial roles and responsibilities of a local unit of government. Cities and other government entities are given some authority under Minnesota Statutes 118A.04 to invest funds that are not presently needed

or restricted for other purposes in investments such as in United States securities or state and local securities.

In recent years, there have been legislative proposals introduced to expand the investment authority of government entities, including cities. One recent proposal would have allowed counties or cities with a population greater than 100,000, or a county or a city with a credit rating in the highest category, to invest in index mutual funds based in the United States and indexed to Standard & Poor's 500 or Dow Jones United States Total Stock Market Index, or, with the Minnesota State Board of Investment. The Minnesota State Board of Investment invests state funds based on established policies related to investment objectives, risk tolerance, performance standards, and other criteria.

Increased authority for government entities to invest funds under such a proposal could allow for greater returns on investment to ensure the maximum level of fiscal prudence on behalf of the public and responsible preservation of public assets into the future.

***Response: The League of Minnesota Cities supports legislative changes to Minn. Stat. § 118A such as providing for additional investment authority for cities over 100,000 population, cities whose rating from national bond rating agencies are in the highest category, or other public entities which are financially capable of assuming greater investment risk. The broadened investment authority should permit the public entity to invest in index mutual funds based in the United States and indexed to Standard & Poor's 500 or Dow Jones United States Total Stock Market Index, or, with the Minnesota State Board of Investment***

## **FF-23. City Franchise Authority**

**Issue:** Under Minn. Stat. ch. 216B and Minn. Stat. § 301B.01, a city may require a public utility furnishing gas or electric utility services or occupying streets, highways or other public property within a municipality to obtain a franchise to operate within the community. In addition, cable system operators are required to obtain a franchise under Minn. Stat. ch. 238.

Under a franchise, the city may require the utility to pay a fee to the municipality to raise revenue or to defray increased municipal costs, such as maintenance and reconstruction costs, accruing as a result of utility operations, or both.

State law currently allows the franchise fee to be based upon gross operating revenues or gross earnings of the utility from its operations in the municipality. In this manner, all utility users within the municipality contribute to the public costs associated with the utility operation. In the absence of franchise fees, municipal costs resulting from utility operations are currently being funded by property tax payers.

Many cities also have policies related to utility company services and products that could be supported under conditions of a franchise agreement, such as local renewable energy and energy efficiency programs. Current statutes do not explicitly provide city authority to include those types of performance conditions in a franchise agreement.

Under current law, cities are permitted to engage citizens when discussing a new or renewed franchise fee arrangement in the manner that best fits the community. A recent legislative proposal would have

added a prescriptive notification and reverse referendum requirement to the process of imposing or renewing a franchise agreement with a gas or an electric utility.

***Response:* Municipal authority to collect franchise fee revenues from utilities is an important and equitable mechanism to offset the costs of maintaining public right-of-way and to generate a return on a publicly held asset. Municipal franchise authority must be preserved and should be expanded to allow city policy priorities to be addressed through conditions in franchise agreements that have the cost covered by local ratepayers, where appropriate, and can be accomplished within the local franchise boundaries. The League opposes adding a one-size-fits-all notification requirement and a reverse referendum procedure to the gas and electric franchise fee process. In addition, in situations where a local provider decides to sell their operations, the city must have the right of first refusal to purchase the assets of the utility.**

## **FF-24. Utility Valuation Transition Aid**

***Issue:*** In 2007 the Minnesota Department of Revenue revised its rules regarding the valuation of electric and natural gas utility property. This change in the rules resulted in valuation changes for utility property that dramatically reduced the amount of revenue that local governments will collect in property tax from these utilities.

Recognizing that the communities that host these utilities bear extraordinary burdens connected with stress on local infrastructure, public safety, and public nuisance due to the presence of these facilities in their communities, the Legislature created the Utility Valuation Transition Aid program.

This program compensates host communities that have lost more than 4 percent of their net tax capacity as a result of Department of Revenue's rule changes.

Currently the taxation of electric generation personal property represents the best method for reimbursing host communities for the cost of hosting IOUs. However, a 2015 MN Department of Revenue study on electric generation taxation has generated proposals to change the state system of taxing electric generation which raise equal or greater revenues for host cities.

***Response:* The League of Minnesota Cities supports the continuation of the Utility Valuation Transition Aid program and opposes any efforts to change statutory language or to divert promised funds away from host communities for any purpose unless statutory language replaces promised funds with equal or greater revenue to host communities. If the Legislature does determine that it is necessary to re-allocate the funds in the Utility Valuation Transition Aid program for another purpose, the League supports other legislative efforts that would compensate the host communities for the economic and environmental costs of hosting these facilities through reimbursement from the investor owned utilities. These other efforts could include, but are not limited to, increasing the class rate on utility property to the extent that it would offset the negative effects of the utility valuation rule change.**

## **FF-25. Transition for Property Acquired by Tax-Exempt Entities**

***Issue:*** When an existing taxable property is acquired by a tax exempt entity and removed from the tax base, the taxes formerly paid by the property owner are

shifted to other, remaining taxable properties within the jurisdiction. When the acquired property is a large percentage of the tax base of a city or other local unit of government, the shift in taxes can be substantial.

***Response:* To avoid immediate, large tax burden shifts when an existing taxable property is acquired by an entity qualifying for a Minnesota property tax exemption, state law should require the new owner to continue to pay the property taxes with a five-year phase-out of taxable value or the state legislature should create a program that provides a state-paid transition aid paid over a period of time to local units of government that experience tax exempt acquisitions, paid over a period of time.**

## **FF-26. Payments for Services to Tax-Exempt Property**

***Issue:*** Taxable property in many cities is being acquired by nonprofit and government entities. Converting the property to tax-exempt status can lead to serious tax base erosion without any corresponding reduction in the service needs created by the property.

In 2013, legislation was introduced that would have broadly exempted non-profit property from paying user fees or service charges for any service funded in part with property taxes over the previous five years. Under certain circumstances, this proposal could have potentially exempted non-profits from paying for even utility charges.

***Response:* Cities should have the authority to collect payments from statutorily-exempt property owners to cover costs of service similar to the authority provided under the special assessment law. The League of Minnesota Cities opposes legislation that would**

**exempt non-profits from paying for user fees and service charges that help fund services these organizations use.**

## **FF-27. Fire Service Taxing Districts**

***Issue:*** Fire service districts have the potential to reduce duplication of equipment purchases and services, and to improve uniformity of service delivery throughout a region. One obstacle to establishing fire service districts is the absence of statutory authority to establish fire taxing districts. The Legislature has granted authority for special taxing districts to provide services such as watershed management and emergency medical services. In spite of growing funding and staffing challenges, this authority does not currently exist for providing fire protection services.

***Response:* The League of Minnesota Cities recognizes that some regions of the state could sustain or improve fire protection services if fire taxing districts were authorized. The League supports authority for local units of government to establish fire service taxing districts provided that 1) participation in a district is a local decision, and 2) fire taxing districts must be governed by elected officials representing the participating entities.**

## **FF-28. Housing Improvement Areas/Special Service Districts**

***Issue:*** In 1996, cities were granted general authority under Minn. Stat. § 428A.11 to § 428A.21 to use Housing Improvement Areas (HIAs) in order to finance housing improvements for condominium and townhome complexes. Several cities around the state have used this tool, and found it to be a useful mechanism for maintaining older association homes.

The 2013 Legislature also granted HIA authority to a county Community Development Authority (CDA). As part of that authority, the CDA is required to gather local approval before creating an HIA.

In 1996, the Legislature also gave cities the general authority to create Special Service Districts (SSDs). Cities around the state have used this tool to provide an increased level of service to commercial or industrial areas, commonly in areas of retail concentration. The 2013 legislature extended the sunset for both tools for 15 years, making it now set to expire on June 30, 2028.

As cities work to develop and/or redevelop commercial, industrial, and residential areas, new ways of paying for and providing increased levels of service should be available to local entities. Use of Special Service Districts in mixed-use development is one tool that could be available for this purpose.

***Response:* The Legislature should give cities permanent authority to create HIAs and SSDs. The League of Minnesota Cities also supports the potential use of SSDs for mixed-use districts that include residential and commercial/industrial properties. The law should be reviewed to determine to what extent mixed-use properties can and should contribute to a Special Service District from which they will benefit. The League would support legislation that expands SSDs to include mixed use development to the extent it balances the benefits and obligations of residential properties within the district.**

**If the Legislature grants multi-jurisdictional entities the authority to create HIAs, creation of an HIA must require local approval.**

## **FF-29. Tax-Forfeited Properties and Local Special Assessments**

***Issue:*** Special assessments are a charge, authorized by the Legislature and state law, imposed on properties for a particular improvement that benefits those selected properties. Cities follow complex, time-consuming statutory special assessment procedures to specially assess the appropriate amount of the local infrastructure improvements to those properties.

If a property with validly attached special assessments goes into tax-forfeiture, the county auditor cancels all of the local special assessments due and remaining unpaid on each parcel, which is authorized in Minn. Stat. § 282.07. Therefore, the city loses the funds previously budgeted and planned for to pay for the local improvements. To underline this point, the funds have already been expended and if not collected, result in losses to the city. When tax-forfeited land returns to private ownership, and the parcel benefitted from an improvement for which the city canceled special assessments because of the forfeiture, the city may assess or reassess the parcel. But cities must go through the same cumbersome notice and hearing procedures in order to re-attach the assessments.

***Response:* The Legislature should remove cancellation of local special assessments from state law, allowing cities to receive the funding validly assessed and counted on to fund local infrastructure improvements.**



## **FF-30. Distribution of Proceeds from the Sale of Tax-Forfeit Property**

*Issue:* When properties go into tax forfeiture all levels of government lose tax revenue that would otherwise support the services they provide. It is always in the best interest of taxpayers to return these properties to the tax rolls as quickly as possible.

Although the tax forfeiture process is controlled by the county, and counties have a legitimate need to be reimbursed for reasonable administrative costs, the city often has more at stake financially in terms of costs fronted to facilitate development (e.g., assessments for public infrastructure and unpaid development or utility fees). While the tax forfeit procedure provides a process for the repayment of special assessments, it does not require the repayment of unpaid utility charges or unpaid building and development fees. Further, due to large assessments that some cities are left with, it may not be practical to sell a tax-forfeited property subject to a special assessment, and city taxpayers may be forced to absorb the sunk costs of a project in order to sell the property.

State statutes governing the apportionment of the proceeds from the sale of tax forfeit property allow counties to first recover administrative costs related to the tax forfeiture process before subsequent allocations are made for special assessments and hazardous waste cleanup associated with the property. State law is unclear whether the proceeds from a tax forfeiture transaction should be used to reimburse the county only for the expenses associated with the transacted parcel, or if the proceeds can be used to reimburse the county for administrative costs associated with other parcels that were not transacted. When the

latter allocation method is employed by a county, the transaction proceeds can be disproportionately applied to county administrative costs resulting in a lower allocation of remaining proceeds to cover existing special assessments, hazardous waste cleanup costs and ultimately the final allocation of residual tax forfeit sale proceeds to cities.

In addition, counties are allowed to use 30 percent of the amount remaining after the deduction for administrative expenses and the repayment of special assessments for forest development projects and then 20 percent of any remaining proceeds for county parks and recreation projects. The structure of the distribution of the proceeds frequently results in cities receiving a very small percentage of the initial forfeit sale proceeds. As a result, cities may not recoup even a portion of the unpaid taxes or special assessments owed on a property.

In most cases, cities and counties work collaboratively to ensure that properties are returned to the tax rolls quickly to benefit all taxpayers. However, when consensus is not reached, the tax forfeiture statutes place cities at a disadvantage and can disproportionately burden the taxpayers of the city in which the properties are located.

***Response:* The League of Minnesota Cities believes the tax forfeiture statutes should be reviewed and amended as necessary to ensure that the needs of city and county taxpayers are properly balanced. Specifically, the League supports changes in the distribution of the proceeds from the sale of tax forfeit property contained in Minn. Stat. § 282.08 to elevate the priority for repayment of unpaid charges for electricity, water and sewer charges certified pursuant to Minn. Stat. §**

**444.075 subd. 3(e), and any unpaid fees prescribed pursuant to Minn. Stat. § 462.353 subd. 4(a), to require those unpaid charges and fees to be repaid immediately after unpaid special assessments.**

**The proceeds from the sale of a tax forfeited parcel should be used to pay the assessments and administrative and development costs for the transacted parcel. Minn. Stat. § 282.09 should be amended to prevent the proceeds from the sales of a tax forfeited parcel to be used to pay excessive administrative costs or the costs for other parcels in the county until the city is fairly reimbursed for unpaid assessments and development costs of the transacted parcel.**

**Before the final distribution of any remaining proceeds from the sale of tax forfeited land are distributed to cities, counties, and school districts, Minn. Stat. § 282.08(4)(i) and (ii) give counties the right to take up to half of those proceeds for county forest development and county park and recreation areas. The League also supports the elimination of these separate statutory apportionments while allowing counties to use their designated 40 percent share of the remaining proceeds for these uses.**

### **FF-31. State Hazard Mitigation and Response Support**

*Issue:* Cities in Minnesota are exposed to extreme weather events such as winds, flooding, fires, and drought and are facing the severe financial consequences of the clean-up, repairs, and community social and economic recovery, even though damages may be deemed “not of such severity and magnitude” as to qualify for federal assistance.

*Response:* The League of Minnesota Cities calls on our legislators and state executive agencies charged with hazard mitigation planning to address not only a response to extreme weather events but to also put into place a proactive strategy to minimize or mitigate the financial consequences. At a minimum, this effort should offer a reasonable loan funding program that is easily accessible by cities, businesses and homeowners to financially recover and rebuild, with the ultimate goal of preserving jobs, industries, and communities.

The state response should allow for the use of new technology and best management practices for any reconstruction of infrastructure to lessen the impact of future disasters and to mitigate the effects of disasters resulting from future extreme weather events.

### **FF-32. Impact Fees**

*Issue:* New development and the resulting growth create an increased demand for public infrastructure and other public facilities. Severe constraints on local fiscal resources and dramatic forecasts for population growth have prompted cities to reconsider ways to pay for the inevitable costs associated with new development. Traditional financing methods tend to subsidize new development at the expense of the existing community, discourage sound land-use planning, place inefficient pressures on public facilities, and allow under-utilization of existing infrastructure. Consequently, local communities are exploring methods to ensure new development pays its fair share of the true costs of growth. Given the existing authorization to impose fees on new development for water, sanitary and storm sewer, and park purposes, it is reasonable to extend the concept to additional public

infrastructure and facilities improvement also necessitated by new development.

***Response:* The Legislature should authorize local units of government to impose impact fees so new development pays its fair share of the off-site, as well as the on-site, costs of public infrastructure and other public facilities needed to adequately serve new development.**

### **FF-33. Library Funding**

***Issue:*** State law requires that local governments maintain a minimum level of funding for public library services. This is collectively known as “state-certified levels of library support,” or more commonly known as, “maintenance of effort (MOE)” and is described in Minn. Stat. § 134.34.

A majority of public libraries in Minnesota belong a regional library system, which is the entity that receives library funding from the Minnesota Department of Education. Six of the 12 regional library systems are structured as a federated system where the individual libraries or library systems operate autonomously from the regional library system but they can utilize certain services such as inter-library loan distribution, digital card cataloging, which capitalize on economies of effort from partnering with the other libraries in the regional system. The MOE for cities in a federated library system is now set at 90% of the amount established in 2011 (see Minn. Stat. § 275.761). In 2011, it was calculated using a formula that included payments made in the form of the library employee salaries, payments toward operating the facility, purchasing materials from the library, and other operating costs, adjusted net tax capacity, and several other factors. The other half of the state’s public library systems are consolidated systems, where the regional library system runs the

libraries through a joint powers agreement with counties and participating cities. The regional library system has a board and hires the director. A city that participates in the regional system will have an MOE (calculated as described above). The city MOE may include dollars provided directly to the regional library system or operating dollars provided to support building costs (i.e. city-provided maintenance services).

In the metropolitan area, the seven county library systems and one city library system belong to the Metropolitan Library Services Agency (MELSA), the metro area regional library system. Most of the cities that operate libraries independently from their county library system belong to MELSA as affiliates of their county library system. The funding of libraries in MELSA may be from a county levy, a city levy, a city library fund from the general city levy or a combination.

Most libraries not only serve city residents, but also serve people that reside outside of city limits who, in some cases, are not fully contributing to the upkeep, maintenance or operations of the library through property tax levies. While counties do contribute to municipal libraries, this support falls well short of the per capita amounts contributed by city residents.

City officials support libraries and believe that a system of equitably funded libraries is needed. One approach that has been previously approved by the Legislature is providing for funding through regional tax levies designated as “library districts.” A district would have the authority to levy for public library services in lieu of their member cities and counties. Under Minn. Stat. § 134.201, the Great River Regional Library System and the East Central Regional Library System already have authority to create “library districts.”

Some cities also contribute a supplemental amount of funding separate from MOE requirements, usually to pay for building maintenance costs. When the state calculates the required MOE for each local unit of government, it does not take into account the money cities contribute to a library building in their community. The MOE requirement is a mandate on cities that does not allow for local decision making. However, it provides a stable source of funding to protect the investment in library resources and services around the state. There are some groups that are advocating for a restoration of the MOE to levels at least as high as the 2010 level.

***Response:* The League of Minnesota Cities supports equitable funding for local libraries to allow for local budget decision making. Changes to the maintenance of effort by the Legislature should be as follows:**

- a) **The required annual payment should reflect the amount the city itself pays toward maintenance, upkeep, and capital improvements to the library in that year.**
- b) **If the MOE reduction in Minn. Stat. § 275.761 is restored to a level at least as high as the 2010 level, it should be phased in over three years.**
- c) **Any relief provided to the county MOE requirement should not result in additional funding requirements to cities.**

**The authority for library systems to create library taxing districts should be expanded statewide.**

**The Legislature should allow municipal libraries the ability to charge non-residents for membership and/or other services without the loss of any State or Federal aids.**

## **FF-34. Increasing Safe School Levy Authority**

**Issue:** Strong partnerships between schools and local law enforcement are critical to school safety. Police School Resource Officers (SROs) are valued professionals in school communities and provide support, safety and security for students, staff and the public. Further, SROs can provide regular opportunities for informal, positive interactions between students and police personnel.

Under Minn. Stat. § 126C.44, the Safe Schools Levy allows school districts to levy for costs associated with student and staff safety based on student enrollment numbers. Some eligible expenses include police liaison services; drug abuse prevention programs; gang resistance education training; school security; crime prevention; and implementation of student and staff safety measures.

Using Safe Schools Levy authority, local school boards may raise additional resources for school safety and security. Almost every Minnesota school district currently levies the full amount of \$36 per pupil. This amount does not cover the full cost of providing this important service, and local law enforcement agencies are not being fully compensated for providing SROs.

**Response:** The League supports increasing the maximum Safe Schools Levy from \$36 per pupil up to \$60 per pupil to ensure schools and communities are able to continue providing safe schools programming

## **FF-35. Equitable Funding of Community Education Services**

**Issue:** Under Minn. Stat. § 124D.20, school districts are authorized to levy for

community education programs that can include youth recreational activities. However, state statute limits the total amount of revenue that can be raised by the school district to fund community education programs and this limit has not been sufficiently increased in recent years. In many instances, cities participate in the funding of these programs and with the statutory limit on the amount school districts can levy, the increased cost of these programs is increasingly falling on cities and their property taxpayers. In areas where the school district is significantly larger than the city, the burden of funding these programs is falling disproportionately on city taxpayers while the programs benefit the entire school district.

***Response:* The League of Minnesota Cities supports a statutory increase in the community education revenue authorization for school districts. Increasing the amount of the community service revenue available to school districts would provide a steady source of revenue, which would be assessed against all properties in the school district, not just against properties in the city.**

### **FF-36. Street Reconstruction Bond Approval**

***Issue:*** Under Minnesota law, financing the maintenance of streets can be a challenge for city councils. Minn. Stat. § 475.58 subd. 3b authorizes a city council, by unanimous vote, to approve the issuance of bonds to finance street reconstruction or bituminous overlays without voter approval. The unanimous council approval requirement is further subject to a reverse referendum process whereby a number equal to five percent of those voting in the last municipal general election can petition for a

referendum to approve the issuance of the bonds.

***Response:* Street maintenance is one of the essential functions of cities in Minnesota. The laws governing issuance of bonds to maintain streets should be amended to allow the approval of the bonds by a simple majority of the council. The existing reverse referendum process assures that taxpayers could trigger a referendum on the issuance of bonds if they can meet the five percent petition threshold.**

### **FF-37. Electronic Fund Declaration Exemption**

***Issue:*** In Minnesota, any city purchase, including those transactions made via electronic or wire funds transfer must be accompanied by a declaration certifying that the claim is just and correct and otherwise unpaid. Under Minn. Stat. § 471.38, each vendor must sign a declaration when a purchase is made by a city. The declaration requirement may have made sense at a time when most transactions were made by check but the procedure becomes cumbersome when dealing with credit card and other electronic transactions.

In 2000, Hennepin County secured an exemption from this regulation. Under Minn. Stat. § 383B.116, the declaration procedure does not apply to any claim for which payment is made by electronic or wire funds transfer.

***Response:* The League supports changes to Minn. Stat. § 471.38 that would exclude electronic transfers from the declaration procedure.**

# HUMAN RESOURCES & DATA PRACTICES

## HR-1. Personnel Mandates and Limits on Local Control

**Issue:** Many state laws increase the cost of providing city services to residents by requiring city governments to provide certain levels of compensation or benefits to public employees, by specifying certain working conditions, or by limiting city governments' ability to effectively manage their personnel resources. For instance, existing state laws limit governments' ability to effectively address incompetence or misconduct of city employees by specifying certain procedures or standards of conduct that cities must follow. Several laws are potentially contradictory and force local governments to choose which one to follow.

**Response:** Any new legislation and changes to existing legislation should meet the following goals:

- a) **Recognize the need for local decision-making authority by local elected officials with regard to the terms and conditions of employment for local government employees (e.g., allow local elected officials to determine employee compensation, employee recognition, and to make employee benefit decisions.**
- b) **Provide funding that pays the full costs of any mandated employment-related expenditures.**
- c) **Avoid and eliminate expensive and time-consuming duplicative legal protections and processes for public employees.**
- d) **Eliminate contradictory existing laws regarding public employment.**
- e) **Eliminate mandates for local government employers that are not**

**imposed upon the state as an employer.**

- f) **Use the collective bargaining process established by state law, rather than legal mandates, to determine benefits for employees covered by collective bargaining agreements.**

## HR-2. Earned Sick and Safe Time

**Issue:** In recent years, there have been legislative proposals to require employers to provide "earned sick and safe time" affording employees one hour of sick and safe time for every 30 hours worked. Cities recognize their employees for their dedication to public service and currently provide a wide variety of excellent benefits to their employees and prioritize the health and well-being of staff. Benefits include paid time off for most staff who are required to be enrolled in the Public Employee Retirement Association (PERA) (Minn. Stat. § 353.01, subd. 2a, 2b). In developing leave and benefit policies, cities must be mindful of the cost to citizens for programs, much of which are driven by staff compensation and benefits.

**Response:** To avoid significant cost increases and to provide clarity, the Legislature should use the same eligibility requirements for public employees outlined in state statute for PERA participation if a mandatory sick and safe time program is enacted by the Legislature.

## HR-3. Pay Equity Compliance

**Issue:** In 1984, the Legislature passed the Local Government Pay Equity Act to eliminate sex-based wage disparities in public employment. The Act requires each local government to submit reports of its pay

structure to the state's Pay Equity Compliance Coordinator within the Department of Management and Budget. The data is then subject to analysis to determine if there are inequities in the city's pay structure. Since its passage, the administrative rules implementing the Act have not substantively changed.

***Response: The League of Minnesota Cities supports the Local Government Pay Equity Act, and seeks to partner with the Legislature and the state's Pay Equity Compliance Coordinator to update and improve the current system so that cities can more efficiently and effectively fulfill the mandated reporting requirements. Local governments and the state should:***

- a) **Explore and document problems individual local governments are experiencing, and evaluate whether the problems are widespread and if they can be resolved administratively;**
- b) **Evaluate the reporting process, and make recommendations for improvement as needed;**
- c) **Review the methodology for analyzing pay equity data; and**
- d) **Evaluate the process by which cities receive notification of reporting requirements and compliance issues and make recommendations for improvement as needed.**

#### **HR-4. Public Employment Labor Relations Act (PELRA)**

***Issue:*** The League of Minnesota Cities supports the purpose of the Public Employment Labor Relations Act (PELRA) to balance the rights and interests of public employees, public employers, and the general public. However, certain changes are necessary to assist public employers in implementing this law. For example, current definitions of "public employee" are

confusing and difficult to manage. In addition, the arbitration process has produced decisions that are contrary to the interests of the public, and the legal standard for overturning arbitration decisions is very difficult to meet. Also, recent interpretations of Minn. Stat. § 179A.25 (independent review of non-union employee grievances) has created uncertainty and confusion in the longstanding judicial process used by courts to review city council administrative decisions, particularly employment termination decisions of non-union employees.

***Response: Minn. Stat. ch. 179A should be modified to:***

- a) **Change the definition of "public employee" under PELRA by removing the existing 14-hour/67-day requirement and replace it with a definition in which employees must work more than an annual average of 20 hours per week.**
- b) **Exclude temporary or seasonal employees, as well as unpaid volunteers, from the PELRA definition of public employee in Minn. Stat. ch. 179A.**
- c) **Provide different options for accessing arbitrators and utilizing the arbitration process in order to "address inequities" between union and management representatives.**
- d) **Allow public employers to bypass mandatory arbitration required under PELRA and directly access the district court system in situations where an employee is being terminated for gross misconduct (e.g., sexual harassment, sexual abuse, theft or a felony conviction) that is related to the employee's position with the public employer.**
- e) **Repeal Minn. Stat. § 179A.25 or, in lieu of repeal, exclude employment**

terminations from Minn. Stat. § 179A.25; require a 60-day timeframe for filing a petition for review of a grievance under Minn. Stat. § 179A.25; and clarify that decisions of Bureau of Mediation Services (BMS) under this section are non-binding and merely advisory.

## **HR-5. Public Employment Relations Board**

*Issue:* Dating back to the 1970's, Minnesota had a Public Employment Relations Board (PERB) in place, but over time, its responsibilities were changed and reassigned to another bureau. Until the reemergence of the PERB in 2014, unfair labor practices (ULPs) actions could be brought in Minnesota District Courts through injunctive relief. In 2014, the Legislature recreated PERB to hear ULPs filed by employees, employers and labor unions under the Public Employment Labor Relations Act (PELRA). The board was created in Minn. Stat. ch. 179A and after receiving initial funding, the board has yet to be fully funded or operational. Much of the current statutory language regarding implementation should be amended to ensure the PERB operates successfully and efficiently for both public employees and employers.

***Response:* The League of Minnesota Cities supports the structure and process to address ULPs that was utilized before the reestablishment of the PERB in 2014. If the PERB is implemented fully and funded sufficiently, the League of Minnesota Cities encourages the Legislature to make the following changes:**

- a) **Create statutory authority for the PERB to establish a fee-based structure for filing ULPs and to pay for hearing officers, with costs to be**

**shared by employers and authorized representatives;**

- b) **Allow the PERB to defer to the decisions made by an arbitrator to prevent duplicative litigation on the same issue; and**
- c) **Amend the Minnesota Government Data Practices Act and the Open Meeting Law to properly maintain the integrity of the hearing process.**

## **HR-6. Payment of Arbitration Fees**

*Issue:* Like other employers, cities must sometimes make difficult employment decisions and uphold certain principles in order to best serve the public. In a union environment, grievance arbitration is generally used as a “last-resort” remedy when a difficult employment decision must be made or to uphold an important principle. Legislation has been introduced in the past that would require a city or the union to pay arbitration fees if a reasonable settlement is offered and refused in a grievance situation, and the arbitrator ultimately decides on a less favorable remedy. The legislation would have the impact of discouraging cities from using the grievance arbitration process in a manner that best serves the public good.

***Response:* The League of Minnesota Cities opposes legislation that would undermine the grievance arbitration process and discourage cities from using the process in the manner intended. Specifically, the League opposes any legislation that proposes payment of grievance arbitration fees when a settlement is offered and declined.**

## **HR-7. Essential Employees**

*Issue:* Cities must balance the health, welfare, and safety of the public with the costs to taxpayers. Essential employee status



removes the right to strike, but gives the right to mandatory binding arbitration. This status can result in arbitration awards that exceed the city's budget or conflict with the city's compensation policy.

***Response:* The Legislature should carefully examine requests from interest groups seeking essential employee status under Minn. Stat. ch. 179A (PELRA). The League of Minnesota Cities opposes legislation that mandates arbitration that increases costs and removes local decision-making authority.**

**The League supports a mandate for Final Offer/Total Package arbitration for all essential groups on a trial basis. The League also supports a change in the PELRA law that would strengthen existing language (Minn. Stat. § 179A.16, subd. 7) requiring arbitrators to consider a public employer's obligation to efficiently manage their operations. Specifically, the statute should be amended to require arbitrators to take into consideration any wage adjustments already given to or negotiated with other groups – both union and non-union for the same employer in the same contract year.**

## **HR-8. Re-employment Benefits**

***Issue:*** Cities employ many workers in seasonal and temporary positions such as parks and recreation-related positions. In the past, such workers generally have not filed for unemployment benefits because there has not been an expectation of continued employment. In recent years, cities have experienced an increase in the number of such workers applying for unemployment benefits. This increases costs to cities and taxpayers in a way that may not have been originally intended.

In the 2012 legislative session, a new law was passed which prohibits employers from entering into agreements with employees not to contest or appeal payment of unemployment benefits as part of a settlement agreement at termination of employment. Because most cities are "reimbursement employers," the benefits paid to the employee are at the direct expense of the city.

***Response:* Public sector temporary or seasonal employees should not be eligible for re-employment benefits. In addition, cities (as reimbursement employers) should be allowed to enter into agreements with employees not to contest/appeal payment of unemployment benefits as part of a settlement agreement.**

## **HR-9. Public Employee Defined Benefit Pension Plans**

***Issue:*** Public pensions are an important employee benefit that can help cities attract and retain employees. However, unlike salary and other employee benefits that are established by each city, the pension contribution rates and benefit levels are set by the state legislature. Benefit levels and plan costs must be carefully balanced to assure long-term sustainability of the pension plans and affordability to employers and employees.

Recent adjustments to balance PERA plan costs have largely focused on contribution increases rather than benefit adjustments. On January 1, 2015, the employer and employee contribution rates for the PERA General Plan each increased by 0.25% of salary, resulting in the current employer rate of 7.5 percent of salary and an employee rate of 6.5 percent of salary. For PERA Police and Fire (P&F) employees, the employer contribution was increased to 16.2% and the

employee contribution was increased to 10.8% beginning January 1, 2015.

**For the PERA General Plan, an additional one percent employer contribution is required under Minn. Stat. § 353.27, subd. 3a, which will continue until the actuarial value of the plan assets equal or exceed the liabilities. Employees do not have a similar obligation to help the General Plan reach full funding. When the additional employer contribution was increased to 0.43 percent in 1997, the state instituted a PERA aid program for employers to partially offset the cost of increased employer contributions. However, the PERA aid payment rate is frozen at 1999 levels, while the additional employer contribution has since increased from .43% to 1.0%.**

***Response:* The League of Minnesota Cities opposes any benefit improvements for retirees or active employees until the financial health of the General Plan and the Police and Fire Plan is restored.**

**For the PERA General Plan, any further increases in employer contributions should only be considered by the Legislature after other measures have been considered, including:**

- a) An increase in employee contributions so that employees and employers truly bear the same responsibility to bring the pension plans to full funding; or**
- b) The removal of the cap on PERA Pension Aid payments so the state equalizes the contributions of employees and employers.**

**The League also supports:**

- a) Modifications to the PERA eligibility guidelines to take into account temporary, seasonal, unique part-time, and student employment situations in cities, particularly in recreational operations. These modifications should include the use of pro-rated service credit, which would make PERA consistent with the other major Minnesota pension plans.**
- b) A comprehensive review of exclusions from pension participation with the goal of simplifying current eligibility guidelines. Such a review should also include a possible revision of current penalties for employers that fail to report covered employees to ensure that these penalties are not overly harsh and punitive.**
- c) The transfer of all school district employees out of the PERA General Plan and into another fund that is more appropriate for school district employees as long as the change would not negatively impact the financial health of the pension funds nor result in employer contribution increases. The continued authority of cities to effectively use retirees in reemployment situations. The League supports policy changes which would include an increase in the earnings threshold for such retirees and supports keeping the required break in service at 30 days and opposes suspending payments to retirees.**

**For PERA Police and Fire, any further increases in employer contributions should only be considered by the Legislature after other measures have been considered, including:**

- a) An initial increase in the employee contribution of at least 1.0% of salary with subsequent increases split evenly between employee and employer so**

that the contribution ratio moves toward a more equitable split between employees and employers; or

- b) **An additional state general fund appropriation to fund the deficiency in police and fire pension aid payments so that the state equalizes the contributions of employers and employees.**

**The League also supports:**

- a) **Maintaining the statutory changes made to Minn. Stat. § 353.01 in 2007 that separate injuries resulting from “hazardous duties” from injuries resulting from “non-hazardous duties” for purposes of police and fire disability retirement benefits.**
- b) **A thorough study by PERA of the current effects of overtime accumulation and outside employment compensation on individual pension benefits and the overall funding of the plan. The study should also include recommendations on whether the overtime or outside employment should be factored into or excluded from high five average wage calculations.**

**For PERA Corrections Plan the League supports:**

- a) **Maintaining the current definition of covered employees for the PERA corrections plan, which does not include dispatchers due to the substantial differences between the dispatchers and the existing corrections positions covered by this plan.**

**For all PERA defined benefit plans the League supports:**

- b) **Adjustments to the benefits for active members and retirees to reduce the cost of the plans .**
- c) **Requiring special legislation for individual employee pension benefit increases be initiated or approved by the city council of the impacted city unless the cost of the benefit increase is fully covered by the individual or the legislation addresses a clerical or administrative error.**

## **HR-10. Retirement Work Incentives**

*Issue:* Demographic experts warn that as the baby boomers retire, employers will begin to experience a significant labor shortage and lose the substantial expertise and knowledge of a fully-trained workforce. One solution to the coming labor shortage is to provide some incentives for retirees to postpone full retirement with a “phased-in” approach that would allow “knowledge transfer” to take place between the retiree and less-experienced replacement staff.

The Phased Retirement Option (PRO) program was created by PERA for this purpose. The PRO program meets many of the goals of workforce planning. However, cities would benefit from broadening the criteria for participation; currently, only employees age 62 or older can participate. In addition, the program is scheduled to sunset in 2019. The program, as introduced, allows for five one-year renewals, which may be more than is needed to meet the intended purpose.

*Response:* **The League of Minnesota Cities supports changes to the PRO program (if actuarially neutral for PERA pension plans) that would:**

- a) **Broaden the criteria for participation to allow employees to participate at a**

**younger age if such a change can be made without damaging the tax-favored status of the plan.**

- b) Remove the sunset provision to allow the plan to continue past 2019.**
- c) Reduce the number of one-year renewals from five to three.**

## **HR-11. State Paid Police and Fire Medical Insurance**

**Issue:** Minn. Stat. § 299A.465 requires public employers to continue health insurance benefits for firefighters and peace officers injured in the line of duty. When the law was enacted in 1997, it contained a provision requiring the Department of Public Safety (DPS) to reimburse employers for the full amount of administering this benefit.

By 2002, the fund created to provide this benefit became deficient. Instead of increasing the fund, the 2003 Legislature amended the law to pro-rate reimbursements to cities based on the amount available and the number of eligible applicants. The 2003 law change triggered a significant and unanticipated cost to cities. The cost has increased every year for cities, and the funding for the account has never been increased. Even if the health insurance benefit was discontinued entirely, the costs for existing recipients will substantially increase well into the future due to the growing cost of health insurance.

In 2015, the Legislature expanded the health insurance benefit to include survivors of volunteer firefighters who die in the line of duty. This change increased the number of firefighters eligible for this benefit from 2,000 to 20,000—without increasing funding for the reimbursement account.

**Response:** The League of Minnesota Cities supports the following legislative

**actions to address the funding deficiency in this program:**

- a) The state must fully fund programs that pay for health insurance for police and fire employees injured in the line of duty and dependents of police and fire employees killed in the line of duty as originally required under Minn. Stat. § 299A.465.**
- b) The Legislature must avoid further expansion of eligibility for benefits under Minn. Stat. § 299A.465 unless 1) full funding for benefits is provided by the state; and 2) beneficiaries can be enrolled in a state health insurance plan such as the Public Employees Insurance Program (PEIP).**
- c) Cumulative injuries that occur over time in the job should not qualify a police officer or firefighter for benefits under Minn. Stat. § 299A.465 since these types of cumulative injuries are not unique to the dangers of police officer and firefighter duties.**
- d) The Legislature must clarify that the amount of an employer's contribution under Minn. Stat. § 299A.465 is no greater than that given to active employees in the same job class.**
- e) The Legislature must establish the minimum criteria used to determine ability to work, and set a percentage threshold of disability for eligibility into this program. At a minimum, the Legislature must identify that a workers' compensation determination as to whether the injury is work-related is necessary in order to receive the benefits under Minn. Stat. § 299A.465.**
- f) Employees who receive a police and fire disability retirement benefit and accept another job that offers them group health benefits should be required to pay for their group health benefits with the city should they**

decide to continue them. The Legislature must amend Minn. Stat. § 299A.465 to reflect that employees are required to inform the city when they become eligible for coverage under another group plan and that failure to do so is grounds for termination from the benefits granted under Minn. Stat. § 299A.465.

## **HR-12. Health Care Insurance Programs**

*Issue:* Cities, like other employers in the state, are struggling with the rising costs of health care insurance for their employees. In addition, cities must cope with unfunded mandates imposed on them by the Legislature such as the requirement to pool early retirees with active employees and the requirement to bargain over changes in the “aggregate value” of benefits, even when the city’s contribution has not changed.

*Response:* The League of Minnesota Cities supports legislative efforts to control health insurance costs while maintaining quality health care services. However, cities have differing local needs and circumstances and must retain the flexibility to provide unique and creative solutions to the rising costs of health care insurance for their employees. The League:

- a) Opposes legislative action that undermines local flexibility to manage rising health care costs.
- b) Encourages the Legislature to carefully examine the costs and administrative impacts of any new, mandated insurance-related benefit before imposing it upon city employers.
- c) Supports changes to Minn. Stat. § 471.6161, subd. 5, that would clarify the intent of the subdivision is to

address changes in cost vs. changes in value (e.g., changes in provider networks, changes in benefit levels required by an incumbent insurance carrier, changes required for compliance with state and federal laws, including those needed to avoid incurring the federal excise tax known as the “Cadillac Tax”).

- d) Supports changes to Minn. Stat. § 471.61 so that the requirement for cities to offer retiree coverage begins on the date the retiree and/or dependents become eligible for federal Medicare coverage.
- e) Supports a clarification to Minn. Stat. § 471.61 and to Minn. Stat. § 471.617 to explicitly alleviate a city’s responsibility to comply with group health benefits mandated by state law when the city’s employees are covered under a union plan authorized by federal statutes.
- f) Supports statutory authorization for cities to collect up to a two percent administrative fee from retirees receiving post-retirement health insurance benefits.
- g) Opposes any mandatory, centralized, statewide health insurance option for active or retired city employees.
- h) Supports changing Minn. Stat. § 62A.21 to place reasonable limits on health care continuation for former spouses, similar to the Federal COBRA law.

## **HR-13. Workers’ Compensation**

*Issue:* Rising medical costs are an increasingly serious problem for all employers and insurers, and now represent over half of all loss costs within the workers’ compensation system. Medical costs will be a major driver of future workers’ compensation premium increases. In addition, the 2013 legislature added post-

traumatic stress disorder (PTSD) as a compensable injury and in 2014, a Minnesota Supreme Court decision found that provisions in the Workers' Compensation statute which allow workers compensation benefits for permanent and total disabilities to be offset by disability benefits and pension benefits such as Social Security does not apply to retirement benefits of the Public Employees Retirement Association. The Minnesota Legislature has also regularly considered proposals to expand the heart, lung and infectious disease presumptions for public safety workers, or to make the presumptions more conclusive and difficult to rebut. These types of benefit expansions would further increase municipal workers' compensation costs.

***Response:* Legislative action is necessary to address increasing workers' compensation costs, particularly rising medical costs. The League of Minnesota Cities supports use of the Workers Compensation Advisory Council (WCAC) system to consider proposals for changes to the workers' compensation law, and urges the WCAC and the Legislature to approve medical cost containment reforms. The League also supports filling an existing WCAC employer vacancy with a public sector employer representative or adding a designated public sector employer representative to the WCAC.**

**The League opposes expansion of workers' compensation and related health insurance benefits because of the potential for dramatically increasing costs to cities. Specifically, the League opposes expansion of the heart, lung and infectious disease presumptions as well as any expansion of the law that would require payment of health insurance premiums or that would include mental**

**injuries that have no physical cause or manifestation.**

**The League also supports continuing the WCRA as the mandatory workers' compensation reinsurer for insurers and self-insurers in Minnesota and supports modifying state statutes to treat PTSD events involving several affected parties as one occurrence for retention purposes, thereby reducing the exposure of self-insured entities and the statewide insurance pools. Such a change would not have any effect on the benefit an individual employee would receive.**

**The League supports legislation that would disallow the "stacking" of PERA retirement benefits and Workers Compensation benefits due to the fact that some injured employees could receive total compensation from workers' compensation and PERA retirement benefits that would be well above the salary that they had been earning and the fact that the costs would ultimately be passed on to cities and their taxpayers.**

**The League also supports legislation to implement an agreed-on compromise solution to resolve the issues created by the 2014 Supreme Court decision regarding offset of PERA retirement benefits, which will avoid the necessity for expensive litigation and mitigate the burdensome cost to cities resulting from that decision.**

## **HR-14. Drug and Alcohol Testing in the Workplace**

***Issue:* Employer testing of job applicants is governed by Minn. Stat. § 181.950 – 181.957 and is known as the Drug and Alcohol Testing in the Workplace Act (DATWA). It applies to all employers with one or more employees, including cities.**

The DATWA has not been amended for many years to reflect various and significant changes in drug-testing technology nor policy changes at the federal level.

The DATWA prohibits an employer from terminating an employee for a positive controlled substance test without first providing the employee a chance for rehabilitation and treatment. This law applies to probationary employees as well as those who have completed probation.

Currently, breathalyzer use and saliva swabs are permitted for alcohol testing under federal commercial driver testing laws though Minnesota does not allow for the use of breathalyzers in testing. Use of breathalyzers for employee alcohol testing is a less invasive, less expensive method. In addition, federal commercial driver testing laws address a number of outcomes other than a positive test result, including but not limited to tampering with a sample, providing a substitute sample, providing a sample that is not human urine, providing a sample that is not capable of being tested, etc. State law is silent on these outcomes.

***Response: The League of Minnesota Cities supports the following changes to the DATWA:***

- a) Updates to reflect new issues, such as adding new definitions as needed to reflect current practices;**
- b) Clarification that a positive controlled substance test during probation does not require the employer to provide an employee who has not completed probation a chance for rehabilitation and treatment; and**
- c) Permitting the use of breathalyzers and saliva swabs as acceptable technology for determining alcohol use.**

## **HR-15. Veterans Preference**

**Issue:** Cities have a long history of recruiting and hiring veterans as they are a natural fit in city government. Across the state, cities are partners in working with and ensuring veterans have a variety of opportunities afforded to them given their sacrifice and service. The purpose of the Minnesota Veteran’s Preference Act (VPA) is to facilitate the transition of veterans from the military to civilian life and to help compensate veterans for their sacrifices of health and time to the community, state and nation. The VPA grants veterans limited preference over nonveterans in hiring and promotion for most state and local government employment to recognize the training and experience they received as a result of serving in the military. It also provides local government employees who are veterans some protection against unfair demotions and dismissals. These preferences and protections are commonly referred to as “veteran’s preference” and are codified in Minnesota Statutes sections 43A.11, 197.455, 197.46, 197.48, and 197.481.

Once a veteran has completed an initial probationary period upon hire, they cannot be removed from their position or employment, except for incompetency or misconduct shown after a properly noticed hearing. Currently, a veteran can only be placed on probation upon hire but not following a promotion. It is common practice to place employees on probation following employee promotion making this restriction inconsistent with current practice and procedure.

Termination hearings are held before the local civil service commission or before an arbitrator and Minn. Stat. § 197.46 allows a veteran to choose a hearing before the local civil service commission, or an arbitrator. Members of civil service commissions are

chosen for their expertise and experience with employment law. Hiring an arbitrator for a hearing instead of utilizing an established civil service commission is inefficient.

***Response:* The League of Minnesota Cities recognizes the important contributions veterans have made and supports giving veterans limited preference in employment. To strengthen and improve the VPA, the legislature should:**

- a) **Allow cities to place veterans on probationary periods upon promotion as they do with other employees; and**
- b) **Restore the language in Minn. Stat. § 197.46 requiring a hearing to be held before a local civil service commission where one exists.**

## **HR-16. Military Leave Reimbursement**

**Issue:** Minn. Stat. § 192.26 subd. 1 requires local units of government to provide 15 days of compensation per year to employees who are members of the military for military leave. State laws give preference to hiring veterans for public sector jobs, and, citizen soldiers are a natural fit to also serve as public safety personnel. As such, many public safety personnel are often also members of the military and are required to conduct training and military duties throughout the year.

In addition to providing compensation for mandatory military leave, cities must also ensure that these temporary vacancies are adequately filled by public safety personnel whose training and qualifications are unique to providing public safety. This can result in added overtime costs and may impact public safety service levels.

Government employers honor and recognize the importance of ensuring members of the military are able to fulfill their duties and participate in mandatory training, while also aiming to ensure that public safety service in their community is efficient, seamless, and cost-effective. In response to this issue, there have been recent legislative proposals to reimburse local units of government for military leave paid to public safety personnel.

***Response:* The League of Minnesota Cities supports state funding to ensure that local units of government can maintain quality and cost-effective public safety services in their communities and for their taxpayers while also offering full support for employees who are members of the military. Such state funding could include reimbursement of costs incurred to local units of government related to compensating personnel on military leave as well as reimbursement for costs related to ensuring these temporary vacancies are adequately filled.**

## **HR-17. Background Checks**

**Issue:** Current law allows criminal justice background checks on active employees (as opposed to applicants for employment) only when such employees are firefighters or work with children. The law governing criminal history background checks on police and other city employees does not specifically allow such checks on active employees. Cities need the ability to be able to conduct criminal history background checks on active employees as well as applicants for employment using the BCA or the BCA database access.

***Response:* Cities should be able to conduct, but not be required to conduct, criminal history background checks on active employees using the BCA database.**



**The laws governing background checks for all city employees should be amended to allow for this practice. For those cities that choose to use the BCA to run the criminal history employment background check for them, the fee should be the same as that charged to non-profit organizations.**

### **HR-18. Tele-health Exams**

*Issue:* Technology improvements are creating new ways to approach many city functions. Specifically, the increased acceptance of the use of tele-health (audio and video, web-based) exams creates an opportunity for cities to access and use psychologists with specific expertise in public safety as part of the hiring process for police officers. However, the Peace Officers Standards and Training (POST) Board has adopted a position prohibiting the use of tele-health exams for the required psychological oral interview/evaluation prior to hiring.

*Response:* **The League of Minnesota Cities supports the use of tele-health (audio and video, web-based) exams to meet the requirements of the POST Board for a psychological oral interview/evaluation prior to hiring a police officer candidate.**

### **HR-19. Critical Incident Stress Debriefing**

*Issue:* Critical Incident Stress Debriefing (CISD) is a process designed to assist first responders deal with the stress and potential mental health issues after experiencing a traumatic incident. CISD can be similar to traditional counseling between a counselor and a group of law enforcement officers, firefighters, or other first responders, or it can involve one-on-one peer counseling between non-licensed counselors, such as

first responders who have experienced similar incidents.

CISD data is classified as private under the Minnesota Government Data Practices Act (MGDPA), and Minn. Stat. § 181.973 prohibits a participant in CISD or other peer counseling from disclosing any information shared in counseling sessions without the permission of the subject. Neither of these protections, however, prohibit the discoverability or admissibility of CISD data in a lawsuit, and federal common law on evidentiary privilege applies to licensed psychotherapists and social workers only. *Jaffee v. Redmond*, 518 U.S. 1 (1996).

CISD is an important tool used to assist first responders, and those in need of CISD services should be allowed to participate in peer counseling without fear of having statements later used against them in court. This undermines the value of CISD and makes it less likely that first responders will seek help.

*Response:* **The Legislature should amend Minnesota law to exclude any statements or other information from employer-sponsored CISDs from being admissible in court, pursuant to the same guidelines as those established for registered nurses, psychologists, or licensed social workers under Minn. Stat. § 595.02, subd. 1(g).**

## Data Practices

### DP-1. Data Practices and Record Retention Compliance Costs

*Issue:* The purpose of the Minnesota Government Data Practices Act (MGDPA) is to protect personal information from indiscriminate disclosure while balancing the right of the public to know what the government is doing. The Act also attempts to balance these rights within a context of effective government operation. The League of Minnesota Cities supports the public policy behind the MGDPA while acknowledging that compliance with the law imposes costs on local taxpayers. Smaller cities struggle with limited staff and resources while larger cities struggle with larger complex databases. The MGDPA must balance the right of citizens to access public data with the cost to municipalities of complying with certain types of data requests.

In 2014, the Legislature imposed additional security requirements on political subdivisions in an attempt to prevent unauthorized individuals from accessing private data. Adequate security measures are important, but they make compliance with the MGDPA more difficult and costly. Although the Legislature has made compliance with the MGDPA a priority, funding for the Information and Policy Analysis Division of the Department of Administration (IPAD), the department charged with overseeing the MGDPA, does not reflect the increased need for local government assistance.

Cities continue to receive repetitive, overly broad and far-reaching data requests that require significant staff time to locate government records, redact private data or data unrelated to the request, and assemble

documents to be provided in order to comply with requirements to provide access to public government data. In some situations, as with overly broad data requests related to “applicant” lists, staff time and costs are significantly increased and not recoverable for very limited public benefit. The MGDPA also limits the ability of cities to be reimbursed for responding to requests.

For example, cities are limited to charging only 25-cents per page for copies of police motor vehicle incident reports, which does not cover the city cost for copying, while the Commissioner of Public Safety is exempt from this restriction—thereby permitting the Department of Public Safety to continue to charge \$5 for incident reports that cities are required to submit to the department.

Furthermore, the Official Records Act requires government entities to “make and preserve all records necessary to a full and accurate knowledge of their official activities.” In accordance, cities must establish a records retention schedule, and maintain and destroy official records according to this schedule. There are rigorous requirements for any changes to a city’s records retention schedule, including getting approval from the statutorily-created Records Disposition Panel, which strikes an appropriate balance between the government entity’s decision-making role in determining retention and disposition of official records with the public’s right to know the government entity’s official activities.

***Response:* As the cost of complying with the MGDPA increases, the League supports:**

- a) **Providing additional state funding to assist political subdivisions with meeting the increasing complexity of managing government data.**

- b) **Allowing political subdivisions to charge for the staff time that is required to comply with wide-ranging data requests regardless of whether copies of the data are requested.**
- c) **Providing a mechanism that would permit cities to challenge whether a data request is reasonable and made in good faith.**
- d) **Amending the MGDPA to limit what is considered public applicant data to better balance the value of public data with the cost related to data practices compliance.**
- e) **Allowing political subdivisions to charge the same amount for copies of motor vehicle incident reports issued by local police and fire departments as the commissioner of public safety.**

**The League of Minnesota Cities opposes:**

- a) **Further increasing the maximum exemplary damages that courts may impose against government entities, including cities, found to have violated the MGDPA; further increasing the maximum civil penalty that may be imposed when a court order is issued to compel a government entity to comply with MGDPA; or any statutory change that would make it a mandatory civil penalty to compel compliance under the MGDPA.**
- b) **Repealing of the administrative remedies provisions adopted by the 2010 Legislature to address disputes regarding MGDPA compliance issues.**
- c) **Changing the current record management requirements.**

## **DP-2. Maintaining Government Data in Large Databases**

*Issue:* The Minnesota Department of Administration Advisory Opinion 10-016 issued in June 2010 maintains that the

Minnesota Government Data Practices Act (MGDPA) requires cities to keep records containing public government data so that they can be easily accessible and convenient to use, regardless of how they are kept. Cities maintain that the application of this advisory opinion to large databases in which records are kept in an electronic format forces cities to risk the daily threat of allegations of noncompliance or leaves local government officials confused regarding how to apply the requirement for access to data in circumstances where information technology is utilized to facilitate the management and organization of records and information which often includes public, private, and nonpublic data within individual data sets.

*Response:* **Cities insist that it is not feasible to separate public from non-public data when the records in which that data is held are in electronic format and held in large databases that are intended to provide secure data storage and maintenance, but are not directly available in a form in which public and private data contained in those records can be separated. Requiring cities to design such databases to accommodate extensive data requests under MGDPA is both financially and technologically nearly impossible to achieve.**

**The Legislature should address the growing and costly impact on cities of providing access to specific public data housed in large electronic databases. Cities also require discretion in determining that the release of certain incident data could identify an individual whose identity must be protected.**

### **DP-3. Sharing of Student Data with Local Law Enforcement in Emergencies**

*Issue:* Minn. Stat. § 13.32, subd. 3(1) defines education data as private data that must not be disclosed except to the juvenile justice system in cases where information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals. In addition, the federal Family Education Rights & Privacy Act (FERPA) bars schools from disclosing information on student educational records that contains personally identifiable information without consent of a parent or eligible student, with only limited exceptions.

Minn. Stat. § 13.32 does not adequately define who is responsible for making the determination that an emergency or risk of harm exists. As a result, school district officials have interpreted the statute in conjunction with the restrictions in FERPA to require that the determination be made solely by school officials.

Local police officials are often frustrated in their efforts to investigate allegations of criminal or other illegal activity when school officials refuse, under Minn. Stat. § 13.32, subd. 3(1) and FERPA, to provide information to follow up such complaints or to assist local police in solving crimes that have already taken place.

School boards are responsible to have policies in place that require school officials to report a student who possesses an unlawful firearm to law enforcement or the juvenile justice system. But schools are not allowed to release the name of a student in dangerous weapon reports involving use or possession of such weapons that are made to the Minnesota Department of Education.

*Response:* Minn. Stat. § 13.32 should be clarified to allow local law enforcement agencies to work with school officials to jointly make the determination that an emergency or risk of harm exists in order to enable police enforcement actions to be taken in a timely manner.

### **DP-4. Disclosure of Victim Data**

*Issue:* Under the Minnesota Government Data Practices Act (MGDPA), the name and address of a victim or casualty of an accident or incident to which a law enforcement agency responds is public government data. In addition, the name and location of the health care facility to which victims or casualties are taken is public government data. The MGDPA allows for a crime victim to prevent the disclosure of public data, but no such provision exists for accident victims. Accident victims and their families can be traumatized by the events that caused their injuries. Publicly disclosing their identities and the location where they are receiving medical care places a burden on families and victims who may be questioned by reporters, solicited by lawyers, and contacted by other members of the community. While there are legitimate public policy reasons to make this information public, the MGDPA provides no discretion for city officials and law enforcement to temporarily withhold victim data when releasing it is not in the best interest of the victims. This not only makes the initial period of recovery more difficult for victims, but erodes the trust between victims and state and local government.

*Response:* The Legislature should amend Minn. Stat. § 13.82 to temporarily prohibit the disclosure of victim data if the victim or victim's family specifically requests not to be identified publicly, and the agency or local government reasonably determines that access to the

**data would cause emotional or physical harm to the individual or otherwise impede the individual's recovery.**

## **DP-5. Open Meeting Law**

*Issue:* The Open Meeting Laws allows certain meetings to be held using interactive television provided that: all members of the body can hear and see one another and all discussion and testimony; members of the public can see and hear all discussion, testimony, and votes; at least one member of the body is physically present at the regular meeting location; and each remote location is open and accessible to the public. The Information and Policy Analysis Division (IPAD) issued an advisory opinion (13-009) that allowed a city's use of Skype to conduct a remote meeting under Minn. Stat. § 13.02, subd. 1. IPAD applied a "common sense" approach to technology questions, which recognizes the difficulty cities must face when interpreting the Open Meeting Law in light of ever-changing technology.

The Open Meeting Law also allows certain state bodies to conduct meetings via telephone and other electronic means, pursuant to Minn. Stat. § 13D.015. This useful tool should be expanded to local government to assure that members can attend meetings remotely if attendance at the regular meeting site is not possible. In order to ensure maximum public access, the Legislature should require that such meetings be allowed only if a quorum of members of the body is present at the regular meeting location.

The use of Facebook, Twitter, and other social media creates opportunities for cities to reach more constituents and to share more information faster than ever before. Social media creates new opportunities for citizen participation, and citizens increasingly expect that their elected officials will

provide them with information via the internet and social media sites. This expectation is not always consistent with laws that require citizens to attend a meeting in order to participate in local government. The use of social media by elected officials raises issues of compliance with laws that were drafted before social media existed, and increases the likelihood of unintentional violations. In recognition of these issues, the 2014 Legislature created a social media exemption to the Open Meeting Law, Minn. Stat. § 13D.065, which states that the use of social media by members of a public body does not violate the law so long as the use is limited to exchanges with all members of the general public.

*Response:* **The League of Minnesota Cities supports IPAD's interpretation of the interactive television provision of the Open Meeting Law, and encourages the Legislature to authorize cities to conduct official meetings by telephone or other electronic means, as allowed by Minn. Stat. § 13D.015, provided that a quorum of members are present at the regular meeting site.**

**The League supports the 2014 change to the Open Meeting Law, which grants cities and elected officials reasonable flexibility to use social media to communicate with citizens while maintaining the protections of the Open Meeting Law.**

**The League opposes any change to the open meeting law that would expand the award of attorney's fees to unintentional violations.**

## **DP-6. Exceptions to the Open Meeting Law**

*Issue:* The purpose of the Open Meeting Law generally requires that all meetings of

public bodies must be open to the public. This presumption of openness serves three vital purposes: it prohibits actions from being taken at secret meetings, to assure the public's right to be fully informed, and to afford the public an opportunity to present views to the public body. The League of Minnesota Cities supports the Open Meeting Law, and recognizes the important role it plays in maintaining the public trust and the accountability of elected officials.

The Open Meeting Law must, however, balance the need for public information and the need to protect privacy rights and certain negotiation strategies to protect the use of public resources. Currently, there are seven exceptions to the open meeting laws that authorize the closure of meeting to the public. Under these exceptions, some meetings may be closed at the discretion of the governing body and some must be closed. Two challenges exist with current law.

The first concern is the hiring process for management level positions. While existing law allows a governing body to close a meeting to evaluate the performance of an individual subject to its authority, the statute doesn't grant the same level of privacy for the city council and prospective applicants. The statute should allow a governing body to close a meeting to interview applicants for employment if there is a quorum present; and, to allow a governing body to close a meeting to discuss the terms of an employment agreement to offer to a candidate to whom a job offer has been extended. This would be consistent with the existing authority for the governing body can to close a meeting to discuss labor negotiations strategy. Allowing a closed meeting so that a council can discuss the results of an interview process for a management-level position will allow council members to express opinions or ask

questions they may have concerns about discussing in a public meeting, and preserves the integrity of the interview process of subsequent candidates.

The second concern with existing law is the inability for public bodies to conduct strategic negotiations regarding public/private partnerships. Current law allows the public body to close a meeting to discuss the purchase or sale of property and labor negotiations but does not allow the public body to discuss terms and conditions of an agreement with private and/or non-profit organizations. The ability for public bodies to close meetings in these situations provides public bodies the opportunity to form strategies in the best financial interest of the community. Allowing public bodies to close meetings to discuss public/private partnerships would be consistent with the importance of negotiation regarding purchase or sale of property and labor contracts.

***Response: The Legislature should amend the Open Meeting Law:***

- a) **To allow a governing body or a committee created by a governing body to close a meeting to interview candidates for management-level positions such as city manager, administrator, superintendent, or department head, and to close a meeting to evaluate and discuss the candidates, and discuss salary and benefit negotiations.**
- b) **To allow a governing body to close a meeting to discuss negotiation strategies for proposed contracts and/or agreements with private and/or non-profit agencies.**

**Such closed meetings should follow the same or similar procedures for**

**conducting closed meetings currently required under the Open Meeting Law.**

## **DP-7. Challenges to the Accuracy of Data**

**Issue:** The Minnesota Government Data Practices Act (MGDPA) allows the subject of government data to challenge the accuracy or completeness of data maintained by the government entity. If the government entity denies the challenge, the Act allows the data subject to appeal that determination through a contested case proceeding under the Administrative Procedures Act (APA).

In the human resources context, a performance evaluation is a tool used to document and evaluate employee job performance. Performance evaluations are not discipline; however, some jurisdictions and some union contracts have appeal processes to challenge a performance evaluation. Performance evaluations are normally conducted once a year.

The Minnesota Supreme Court recently held that a public employee could use the MGDPA to challenge the accuracy of certain information contained in the employee's performance evaluation. *Schwanke v. Minn. Dept. of Admin.*, 851 N.W. 2d 591 (Minn. 2014). While the Court held that "dissatisfaction with a subjective judgment or opinion cannot support a challenge under the [MGDPA]," a data subject can still challenge data that supports the subjective judgment. There is currently no limitation on when a performance evaluation challenge may be brought. Often there is no retention period for the underlying data because it is rarely an official record. Furthermore, the more time that passes, the less likely those with the knowledge of a given performance evaluation may be still employed by the city. It is to everyone's benefit to have the

challenge to accuracy of data conducted as soon as possible.

Under *Schwanke*, an invalid challenge to a subjective opinion can no longer be dismissed by the Department of Administration; it can only be dismissed in a contested-case proceeding. In even a frivolous challenge the data subject will have the right to submit evidence and call witnesses at taxpayer expense.

This right of review is in addition to any union grievance process, and can be exercised by an employee before or after such a grievance is undertaken. This process can result in conflicting decisions and has the potential to create a heavy burden on all levels of government, and impose significant costs on taxpayers.

**Response: In light of the *Schwanke* decision, the Legislature should modify the data challenge provision of Minn. Stat. § 13.04, subd. 4 to balance the rights of data subjects to challenge the accuracy and completeness of data with the administrative and financial burdens on local governments and taxpayers.**

## **DP-8. Law Enforcement Technologies**

**Issue:** To aid law enforcement in work, law enforcement agencies need the flexibility to effectively use all available tools, including technology, in a manner that balances privacy interests of citizens, transparency of their work, and costs related to these technologies. The Legislature has balanced these concerns in the recent License Plate Readers law and the Police-Worn Body Camera law.

License Plate Readers (LPRs) are an important tool that assist law enforcement agencies in locating wanted individuals,

recover stolen vehicles, and many other types of investigations. Nevertheless, the use of this technology raises legitimate privacy concerns. In 2015, the Legislature passed compromise legislation regulating the use of LPRs, the classification of LPR data, and the retention period for LPR data that struck a fair balance between the need for robust law enforcement and individual privacy rights.

Police-worn body cameras (or portable recording systems) provide invaluable evidence when investigating crimes and prosecuting criminals, and strengthened trust of citizens in law enforcement by increasing the accountability between peace officers and the public. Different than other kinds of data, body camera data use involves the unique complexities of the sensitive nature in its use in private homes as well as the sheer volume of data in daily use. In 2016, the Legislature contemplated all of these issues and passed compromise legislation regulating use of body cameras, classification of body camera data, retention period for body camera data, release of body camera data, audit requirements, and written policy requirements.

***Response:* Law enforcement agencies should be allowed to decide whether to utilize technology and be given the flexibility to decide how they are used in the field. The League supports the continued use of License Plate Readers under the terms of the 2015 legislation, and opposes any further restrictions on their use or any reduction in the current 60-day retention period.**

**The League supports the continued use of Police-Worn Body Cameras under the terms of the 2016 legislation, and opposes any further restrictions on their use, data classification, retention period, or written policy requirements.**

## **Federal Employment Law**

### **FED-1. Consolidated Omnibus Budget Reconciliation Act (COBRA)**

***Issue:*** The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) law, which requires employers to offer continued health and dental insurance group benefits after an employee terminates, has been interpreted to apply to Employee Assistance Programs (EAPs), health funding mechanisms such as Health Reimbursement Arrangements (HRA)/Voluntary Employee Benefit Accounts (VEBAs), and flexible benefits. The application of COBRA benefits to these programs results in unlikely and impractical outcomes.

***Response:* Congress should clarify the intended benefits to which COBRA law should apply, excluding programs such as EAPs, HRA/VEBAs, and flexible benefits.**

### **FED-2. Flexible Spending Accounts**

***Issue:*** Health care costs are rising dramatically and employees need financial relief. Flexible spending accounts provide some relief, but the current “use it or lose it” provision for medical spending discourages employees from participating in this program.

***Response:* The League of Minnesota Cities supports legislation that would allow employees to roll unused funds over to the next plan year, or into a tax-qualified retirement plan, or a 457 plan.**

### **FED-3. IRS Regulations on Death Benefits**

***Issue:*** Current IRS regulations do not allow any type of death benefit to be included in a



post-employment health savings plan and other tax-free funding vehicles. If the employee who owns the savings plan account dies, he or she cannot leave the remaining funds to a designated beneficiary (unless the beneficiary is a spouse or dependent child). If the employee does not have a spouse or dependent child, the funds are typically redistributed among plan participants. A death benefit provision is an attractive feature for many employee groups.

***Response:* IRS regulations should be changed to allow post-employment health savings plans and other tax-free vehicles for both active employees and retirees to include a provision that allows the employee to designate beneficiaries in addition to spouses or children.**

#### **FED-4. Federal Public Safety Collective Bargaining Bill**

***Issue:*** Congress is considering a bill that would require all states to establish collective bargaining procedures for all public safety employees. The bill directs the Federal Labor Relations Authority (FLRA) to determine, state by state, whether it meets the bill's requirements with regard to collective bargaining rights for public safety employees. While it appears Minnesota is likely to pass the tests set out by the bill, federal public sector lobbyists have expressed serious concern that the bill is very much open to interpretation. In addition, the bill directs the FLRA to "consider and give weight, to the maximum extent practicable, to the opinion of affected employee organizations."

***Response:* The League of Minnesota Cities opposes the federal collective bargaining bill for public sector employees. Public sector collective bargaining should be left to the determination of each state.**

#### **FED-5. Federal Health Care Reform**

***Issue:*** Certain provisions of the Patient Protection and Affordable Care Act (commonly referred to as the federal health care reform law or Affordable Care Act (ACA)) are problematic for cities. These issues range from administratively difficult to very costly. Tracking employee hours, particularly hours of seasonal and temporary employees and council members, is burdensome and will require significant administrative time and effort. Because most of these employees will not qualify for coverage under the ACA, the effort does not result in a worthwhile outcome. There are also situations where employees who are currently working more than 30 hours per week in a city will now be eligible for health care coverage by that city, which will drive up city costs significantly, particularly for cities using the "duty crew" concept at fire stations to ensure adequate daytime response. Finally, there are provisions which require the city to offer coverage to full-time students who are already covered by their parents' insurance and do not need the coverage through the city, which results in wasted effort. Furthermore, cities that provide health insurance coverage to their employees should not be subject to the federal excise or so-called Cadillac Tax, which will result in substantial costs to Minnesota taxpayers.

***Response:* The League of Minnesota Cities supports the intent of the ACA to provide affordable health care coverage to all Minnesota residents. However, prior to implementation, Congress should:**

- a) **Exempt employees under age 26 who are covered by their parents' insurance;**

- b) Exempt (from coverage requirements) employees who work in recreational facilities and programs owned and operated by governmental entities;**
- c) Exempt elected officials from being counted as “employees” for the purposes of the ACA; and**
- d) Revise the provisions of the federal excise “Cadillac Tax” so that it does not penalize employers and instead provides incentives to strengthen wellness and disease prevention effort.**



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