



**Minneapolis**  
City of Lakes

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FROM: Susan L. Segal  
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DATE: May 21, 2012

RE: Vikings Stadium Legislation and  
City Charter Chapter 15, Section 13,  
Financing Professional Sports Facilities

## MEMORANDUM

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### Question Presented

A law was recently enacted providing for the construction and operation of a new professional football stadium on the site of the Hubert H. Humphrey Metrodome in downtown Minneapolis (the “stadium legislation”). Laws 2012, Chapter 299. This opinion addresses the question of whether the financing plan for the Vikings stadium contained in the legislation triggers (violates) Section 13 of Chapter 15 of the City of Minneapolis Charter, which provides that no city resources over \$10 million may be expended for the financing of a professional sports facility without a referendum. While the stadium legislation contains provisions that allow implementation of the law “without regard to charter limitations,” this opinion has been written as if these provisions were not in the legislation.<sup>1</sup>

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<sup>1</sup> The stadium legislation, in Article 3, Section 4 and Article 5, Section 6 allow certain actions “without regard to charter limitations.” This opinion ignores these sections and has been written to address the question of whether a referendum would have been triggered by the legislation for the financing of the Vikings stadium if these sections were not included in the law.



## Summary Response

Under the stadium legislation, the State will appropriate the funds needed for the public share of stadium construction and operating costs. Revenue to fund the state appropriations will come from two primary sources: lawful charitable gambling revenues (electronic pulltabs and bingo) and a portion of the local sales, liquor, lodging and restaurant taxes generated from sales in Minneapolis pursuant to Laws 1986, Chapter 396, as amended (the “local taxes”).<sup>2</sup> The legislation directs the Commissioner of Revenue to retain and deposit in the state general fund that portion of the local taxes specified in the legislation for stadium funding purposes. Only the local taxes collected that are in excess of those amounts retained by the Revenue Commissioner for the stadium funding will be disbursed to the City.

The Minnesota Constitution vests the state legislature with the sole authority to create, organize and administer local government units, such as the City, and to determine the scope and extent of their powers. The state constitution further vests all taxing authority with the legislature and provides that the legislature may pass special laws relating to local government units, subject only to a right of local approval as provided by a state general law. Under this constitutional framework, the state legislature has clear authority to amend the 1986 local taxes law to direct the Commissioner of Revenue to retain a portion of these taxes and to deposit them in the state general fund for the purpose of constructing and operating a public stadium, subject to local approval. It is equally clear that the City lacks the power to direct that these taxes be used for some other purpose.

Under the stadium legislation, the State and the Vikings will provide the financing for the stadium. The City will not issue any bonds or make any appropriations for stadium funding. The local taxes that will be used to reimburse the State for a portion of the construction and operating costs for the stadium will never be within City hands and the City will have no power or authority to direct the manner in which they will be spent. Because the funds will never enter the City treasury and will never be subject to City control, they are not a “city resource” being used by the City to “finance” a professional sports facility. Consequently, Section 13 of Chapter 15 of the Charter, the referendum section, is not triggered or violated by the funding mechanism for the Vikings stadium contained in the legislation.

### **I. OVERVIEW OF STADIUM LEGISLATION**

The stadium legislation provides for the construction and operation of a professional football stadium located in the City at the site of the existing Hubert H. Humphrey Metrodome. The relevant portions of the legislation for the purposes of this opinion are as follows:

#### **A. Construction, Operating and Capital Reserve Contributions.**

The stadium will be funded through a combination of private contributions from the Vikings and a public share. The private contributions include a minimum cash contribution of \$477 million from the Vikings for construction costs and an annual operating and capital reserve contribution of \$10 million, with a

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<sup>2</sup> The local sales tax and lodging is imposed citywide, while the liquor and restaurant tax is imposed only in a defined downtown taxing area. (Laws 1986, Chapter 396, Secs. 4 and 5).

3% inflation factor, for a period of thirty years.<sup>3</sup> (Art. 1, Sec. 15, §473J.11, subd. 4(b); Art. 1, Sec. 18, §473J.13, subds. 2(a) and 4(b)). The public share includes a maximum cash contribution for construction costs of \$498 million (net of costs of bond issuance) and an annual contribution for operating and capital reserves of \$7.5 million per year, with an annual adjustment factor, for thirty years. (Art. 1, Sec. 18, §473J.13, subds. 2(b) and 4(c); Art. 1, Sec. 19, §473J.15, subd. 2(a)).

#### **B. Revenue Sources for State Appropriations.**

The legislation provides that the State will appropriate the public share of the construction and operating costs. (Art. 1, Sec. 18; Art. 2, Sec. 1). The legislation provides two primary sources of revenue for the public share of the construction, operating and capital reserve contributions: lawful charitable gambling (electronic pulltabs and bingo) and a portion of the local sales, liquor, lodging and restaurant taxes generated in Minneapolis pursuant to the 1986 local taxes law.<sup>4</sup> The legislation provides that the State will issue appropriation bonds in amounts necessary to provide construction funds not to exceed \$498 million (net of costs of issuance), with \$348 million of the total to be funded by charitable gambling revenues and the remaining \$150 million to be funded by the 1986 local taxes. (Art. 2, Sec. 1, §16A.965, subd. 2(b)).

The legislation further provides that “the state shall pay the [stadium] authority operating expenses, \$6,000,000 each year, adjusted by an annual adjustment factor” for a period of thirty years beginning the first year of operation of the new stadium. (Art. 1, Sec. 18, §473J.13, subd. 2(b)). For a capital reserve contribution, “the state shall contribute \$1,500,000 each year” for the

term of the thirty year lease. (*Id.* at subd. 4(c)). The legislation provides that the contributions for operating and capital reserve for the stadium shall be “repaid to the state using funds in accordance with section 297A.994, subdivision 4, clause (4),” through revenues from a portion of the local taxes. (*Id.* at subd. 2(b) and 4(c)). The funds referenced in the new section 297A.944 are derived from the local taxes in the 1986 local taxes law, as amended.

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<sup>3</sup> The Vikings will also be responsible for all game day expenses, estimated at a value of \$3 million per year. (Art. 1, Sec. 18, §473J.13, subd. 5).

<sup>4</sup> The stadium legislation also contains back-up revenue sources if the charitable gambling revenues do not reach the needed targets. These include a sports-themed lottery game and a tax on stadium suites. (Art. 6, Sec. 1, §16A.1524(a)).

**C. 1986 Local Taxes Law and Section 297A.994.**

The stadium legislation makes several significant amendments to the 1986 local taxes law. The law was originally enacted as a special law allowing the City to impose up to a half percent local sales tax and up to a three percent tax on liquor, lodging and restaurants to raise revenue for the sole purpose of constructing, operating and marketing the Minneapolis Convention Center and related facilities.<sup>5</sup> The stadium legislation grants the City greater control over the use of revenue from these taxes – it allows any of the four tax sources (sales, liquor, lodging and restaurant) to be used for any capital projects or economic development purposes. (Art. 3, Secs. 4 and 5). It also provides, however, that a portion of the revenues from these taxes will be used to reimburse the state general fund for \$150 million to be paid by the State for stadium construction costs and for the annual operating and capital reserve payments of \$7.5 million per year for thirty years. (*Id.*)

Specifically, the stadium legislation adds a new section (§297A.994) to Chapter 297A of the Minnesota statutes as follows:

**[297A.994] CITY OF MINNEAPOLIS SALES TAX; ALLOCATION OF REVENUES.** **Subdivision 1. Scope.** Notwithstanding the provisions of section 297A.99, subdivision 11, the provisions of this section govern the remittance of the proceeds of taxes imposed by the city of Minneapolis under the special law.

**Subd. 2. Definitions.** (a) For purposes of this section, the following definitions apply. (b) "City" means the city of Minneapolis. (c) "Special law" means Laws 1986, chapter 396, sections 4 and 5, as amended. (d) "Tax" means the sales taxes imposed by the city under the special law. (e) The terms defined under section 473J.03 apply for purposes of this section.

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<sup>5</sup> The 1986 local taxes law specifically authorized the City and the City's Board of Estimate and Taxation to impose the tax and issue bonds for the Convention Center, "[n]otwithstanding Minnesota Statutes, section 477A.016 [prohibition on local government ability to impose a new tax on sales or income], or any other contrary provision of law, ordinance, or city charter...." This provision allowed the City to override Chapter 15, Section 9 of the City Charter that requires a referendum for any bond issue in excess of \$15 million. (Laws 1986, Chapter 395, Sec. 4, subd.

Special laws subject to local approval that have overridden charter provisions have been passed and approved many times over the years. A few examples, in addition to the Convention Center special law, include: (1) the creation of the Minneapolis Community Development Agency in 1980, (Laws 1980, Ch. 595, Sec. 2) and the transfer of duties from the Minneapolis Community Development Agency to a newly created Community Planning and Economic Development Department in 2003 (Laws 2003, Ch. 127, Art. 12, Sec. 31); (2) the merger of the Minneapolis Library Board into the Hennepin County Library system (Laws 2007, Ch. 121); and (3) a change in classified service hiring and promotion requirements from a "Rule of 1" contained in the Charter to a "Rule of 3" (Laws 1978, Ch. 511). Special laws have overridden the City Charter over twenty times in the last twenty years.

Subd. 3. **General allocation of revenues.** The commissioner shall remit the revenues from the taxes, less the deductions listed in this subdivision, to the city at least quarterly. The commissioner shall make the following deductions in the order listed before distribution to the city:

- (1) refunds of any of these taxes due to taxpayers, if any;
- (2) the direct and indirect costs of the department to administer, audit, and collect the tax, according to the applicable law and agreements between the commissioner and the city. For revenues from the general local sales and use tax, the commissioner must deduct a proportionate share of costs described in section 297A.99, subdivision 11; and
- (3) notwithstanding the provisions of any agreement between the commissioner and the city providing for collection and remittance of these taxes, the commissioner must deposit to the general fund the amounts specified in subdivision 4.

Subd. 4. **General fund allocations.** The commissioner must retain and deposit to the general fund the following amounts, as required by subdivision 3, clause (3):

- (1) for state bond debt service support beginning in calendar year 2021, and for each calendar year thereafter through calendar year 2046, periodic amounts so that not later than December 31, 2046, an aggregate amount equal to a present value of \$150,000,000 has been deposited in the general fund. To determine aggregate present value, the commissioner must consult with the commissioner of management and budget regarding the present value dates, discount rate or rates, and schedules of annual amounts. The present value date or dates must be based on the date or dates bonds are sold under section 16A.965, or the date or dates other state funds, if any, are deposited into the construction fund. The discount rate or rates must be based on the true interest cost of the bonds issued under section 16A.965, or an equivalent 30-year bond index, as determined by the commissioner of management and budget. The schedule of annual amounts must be certified to the commissioner by the commissioner of management and budget and the finance officer of the city;
- (2) for the capital improvement reserve appropriation to the sports facilities authority beginning in calendar year 2021, and for each

calendar year thereafter through calendar year 2046, an aggregate annual amount equal to the amount paid by the state for this purpose in that calendar year under section 473J.13, subdivision 4;

(3) for the operating expense appropriation to sports facilities authority beginning in calendar year 2021, and for each calendar year thereafter through calendar year 2046, an aggregate annual amount equal to the amount paid by the state for this purpose in that calendar year under section 473J.13, subdivision 2;

(4) for recapture of state advances for capital improvements and operating expenses for calendar years 2016 through 2020 beginning in calendar year 2021, and for each calendar year thereafter until all amounts under this clause have been paid, proportionate amounts periodically until an aggregate amount equal to the present value of all amounts paid by the state have been deposited in the general fund.

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#### Article 3, Section 1.

This new section to Chapter 297A of the Minnesota Statutes provides that the Commissioner of Revenue “must retain and deposit to the [state] general fund” that portion of the 1986 local taxes that represents repayment for \$150 million in stadium construction costs and the \$7.5 million annual operating and capital reserve payments. (*Id.*, §297A.994, subd. 4). The Commissioner of Revenue will remit to the City only those local tax revenues that are in excess of the amounts required for stadium funding purposes. (*Id.*, §297A.994, subd. 3). Consequently, none of the public share of the stadium funding will enter City coffers or be under City control. The Commissioner of Revenue will collect the local taxes directly from the retailers, restaurants and hotels (as is provided for the collection of all sales and use taxes throughout the state) and will remit to the City only non-stadium related funds.<sup>6</sup>

The stadium legislation further requires, through an amendment to the 1986 local taxes law, that the local sales, liquor, lodging and restaurant taxes be imposed at least at a rate sufficient to fund the reimbursement to the state general fund of \$150 million in construction costs and \$7.5 million per year for operating and capital reserves. The City has no discretion on whether to impose the tax. The stadium legislation provides that the taxes “must” be imposed and at a rate that is at least sufficient to

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<sup>6</sup> Minnesota Statutes §297A.77, subdivision 3, and §297A.99, subdivision 9, require remittance of sales and use taxes to the Commissioner of Revenue. The Commissioner of Revenue is obligated to collect the taxes and, after paying any refunds due to taxpayers and deducting the state’s costs to collect, audit and administer the tax, to remit the amount owed to the local governmental unit. (Minn. Stat. §297A.99, subd. 9).

finance the purposes described, which includes the Convention Center, any other City capitol and economic development projects and the stadium funding. (Art. 3, Sec. 2, subd. 1 and Sec. 5).

The applicable sections of both the sales and use tax section of the 1986 local taxes law and the liquor, lodging and restaurant tax section of the law are amended as follows:

**Sec. 4. SALES AND USE TAX. Subdivision 1. Imposition.**

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The tax authorized by this section shall be imposed, must not be terminated before January 1, 2047. The tax must be imposed and may be adjusted periodically by the city council in conformity with Minnesota Statutes, section 297A.99, subdivision 12, such that the rate imposed, rounded to the next highest one-tenth of one percent, does not exceed the rate estimated to be required to produce revenue sufficient to finance the costs purposes described in subdivision subdivisions 3 and 4, and in Minnesota Statutes, section 297A.994, but in no case may the rate exceed one-half of one percent.

**Sec. 5. LIQUOR, LODGING, AND RESTAURANT TAXES.**

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The taxes authorized by this section must not be terminated before January 1, 2047. The taxes shall be imposed and may be adjusted periodically by the city council such that the rates imposed produce revenue sufficient, together with the tax imposed under section 4, to finance the purposes described in Minnesota Statutes, section 297A.994, and section 4, subdivisions 3 and 4. These taxes shall be applied, first, as provided in Minnesota Statutes, section 297A.994, subdivision 3, clauses (1) to (3), and then, solely to pay costs of collection and to pay or, secure, maintain, and fund the payment of any principal of, premium on, and interest on any bonds or any costs referred to other purposes in section 4, subdivision 3 or 4. The commissioner of revenue may enter into appropriate agreements with the city to provide for the collection of these taxes by the state on behalf of the city. The commissioner may charge the city a reasonable fee for its

~~collection from the proceeds of any taxes.~~ These taxes shall be subject to the same interest, penalties, and enforcement provisions as the taxes imposed under ~~section 473.592~~ Minnesota Statutes, chapter 297A.

Art. 3, Secs. 2 and 3, amending Laws 1986, Ch. 396, Secs. 4 and 5, as amended by Laws 1987, Ch. 55, Secs. 5 and 6, Laws 2001, 1<sup>st</sup> Spec. Session, Ch. 5, Art. 12, Sec. 87 and Laws 2009, Ch. 88, Art. 4, Secs. 11 and 12.

## II. MINNESOTA CONSTITUTIONAL FRAMEWORK

Under the framework of the Minnesota Constitution, local government units, including municipalities, “possess no inherent powers and are purely creatures of the legislature.” *Breza v. City of Minnetrista*, 725 N.W. 2d 106, 110 (Minn. 2006) (citing Minn. Const. Article XII, Section 3). The state legislature has sole authority to create and organize local governmental units and to determine the scope and extent of their powers. *Kronschnabel v. City of St. Paul*, 272 Minn. 256, 137 N.W.2d 200, 202 (1965) (Municipalities possess only such powers as are expressly enumerated by statute, or are implied as necessary in aid of those powers expressly granted, and those essential to the declared objects and purposes of the city).

### A. The Constitution Governs the Organization and Administration of Local Governments.

The Minnesota Constitution vests the state legislature and the legislature alone with the authority to create, organize, administer, consolidate, divide, and dissolve local government units. Article XII, Section 3 of the Minnesota Constitution provides:

The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. \* \* \*

Even though the City is a home rule charter city, with broad governance authority, home rule powers are necessarily limited by and must be in harmony with the constitution and laws of the state. *See, e.g., State ex. rel Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958); *Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984); *City of Minneapolis Commission on Civil Rights v. University of Minnesota*, 356 N.W.2d 841, 843 (Minn. App. 1984); and *Lilly v. City of Minneapolis*, 527 N.W.2d 107, 111 (Minn. App. 1995). Home rule charter status “does not preclude the legislature from preempting charter authority on matters of state concern.” *Haumant v. Griffin*, 699 N.W.2d 774, 777 -778 (Minn. App. 2005) (*quoting Nordmarken v. City of Richfield*, 641 N.W.2d 343 at 348).

For example in *Monaghan v. Armatage*, 218 Minn. 108, 15 N.W.2d 241, 243 (1944), the Minnesota Supreme Court ruled that the State was within its powers when it passed legislation requiring the Minneapolis Park Board to transfer ownership of the municipal airport to the Metropolitan Airports

Commission without any compensation. In reaching its decision, the Court described the rights of a city compared to the powers of the state as follows:

A city holds its property ... subject to the paramount power of the legislature, whose creature it is. The answer to the question before us becomes simple in the light of a realization that the city is but a subdivision of the legislative branch of government and always subject to the paramount power of the legislature, its creator. The legal situation is no different from that where the state itself holds the property and subjects it to a different or greater use.

218 Minn. 108 at 113-14, 15 N.W.2d 241 at 244. (citing *State ex rel. School District v. County Board*, 126 Minn. 209, 212, 148 N.W. 53, 54)

The *Monaghan* court further stated:

The case is controlled by the further rule that the Legislature, having plenary control of the local municipality, of its creation and of all its affairs, has the right to authorize or direct the expenditure of money in its treasury, though raised for a particular purpose, for any legitimate municipal purpose, or to order and direct a distribution thereof upon a division of the territory into separate municipalities. \*\*\* The local municipality has no such vested right in or to its public funds, like that which the Constitution protects in the individual, as precludes legislative interference. *People v. Power*, 25 Ill. 187; *State Board [of Education] v. City*, 56 Miss. 518. As remarked by the supreme court of Maryland in *Mayor v. Sehner*, 37 Md. 180: 'It is of the essence of such a corporation, that the government has the sole right as trustee of the public interest, at its own good will and pleasure, to inspect, regulate, control, and direct the corporation, its funds, and franchises.'

(Emphasis added). See also, *Leighton v. Abell*, 31 N.W.2d 646, 652-53 (Minn. 1948).

As in the *Monaghan* case, which affirmed the rights of the State to transfer City property to a different governmental unit without compensation to the City, the State has the right to repurpose the 1986 local taxes and use them as a source for stadium funding.

#### **B. Taxing Authority is Vested in the State.**

Similarly, all taxing authority in the State of Minnesota is vested with the Minnesota Legislature. Minn. Const. Art. X, Section 1 ("The power of taxation shall never be surrendered, suspended or contracted away"). Without legislative authorization, cities may not levy any taxes under their own authority. The ability of local government units to impose local sales taxes flows from the legislature. See, Minn. Stat. §297A.99 titled "Local Sales Taxes"; Minn. Stat. § 477A.016. The legislature, in its discretion, may modify or terminate local ability to impose sales taxes.

**C. Minnesota Constitution Authorizes Special Laws.**

The Minnesota Constitution also provides for special laws affecting local governments. Minn. Const. Art. XII, Section 2. The state constitution expressly allows the legislature to enact special laws even when those laws supersede a contrary provision in a home rule charter. *Id.* The only requirement is a right of local approval as dictated by general law. *See*, Minn. Stat. §645.021; *Davies v. City of Minneapolis*, 316 N.W.2d 498, 500-501 (1982).

**III. DISCUSSION**

In 1997, the City Charter was amended through a ballot amendment by adding the following provision:

**Section 13. Putting Professional Sports Facility Financing Before the Voters.**

The City of Minneapolis, Minneapolis Community Development Agency, or any city department, agency, commission, or board, shall use no city resources over \$10 million dollars for the financing of professional sports facilities without the approval of a simple majority of the votes cast on the question, in a ballot question put to the public at the next regularly scheduled election. City resources are defined for these purposes as: Tax increment financing, bonds, loans, land purchase or procurement, land or site preparation, including necessary infrastructure such as roads, parking development, sewer and water, or other infrastructure development, general fund expenditures, sales tax or other taxes, deferred payments, interest free or below market interest rate loans, the donation or below market value sale of any city resources or holdings or any other free or below cost city services. The ballot question shall not be put before the public in a special election, in order to prevent the costs associated with special elections.

Charter Chapter 15, Section 13.

By its terms, this section of the Charter prohibits the City from using “city resources” in excess of \$10 million “for the financing of professional sports facilities” unless the expenditure is approved in a voter referendum. This section of the Charter is only applicable if the City uses “city resources” to “finance” a professional sports facility. The term “city resource” presupposes that the City has authority or control over the revenues, in this case, that portion of the local taxes designated by the legislature for stadium funding. These funds, however, will never enter the City treasury nor can the City alter the use or purpose of these revenues other than as prescribed in the 1986 local taxes law, as amended. The State has exercised its constitutional power to designate the purpose of these revenues – to reimburse the state for a portion of the stadium funding and the City is without power to revise the stadium financing provisions.

A common definition of the word “resource” includes the requirement of “availability.” Merriam-Webster includes in its definitions that a resource means “available funds.” (Merriam-Webster Dictionary, Home and Office ed.). Black’s Law Dictionary includes “available means or capability” as a definition. (Black’s Law Dictionary, Abridged 6th ed.). Here, the portion of the local taxes being retained by the Commissioner of Revenue for stadium funding is not “available” to the City. The city has no power to redirect these revenues to a different purpose. The legislature has dictated that they shall be deposited by the Minnesota Revenue Department into the state general fund. They are not an available “city resource.”

As originally enacted, the 1986 local taxes law was an enabling statute, allowing the City to impose the sales, liquor, lodging and restaurant taxes, as a means to fund the convention center and related purposes. While the City did impose the taxes, the City was not required to do so. This fact, however, does not render the local tax revenues “city resources” at least as to the portion being retained by the State for stadium funding purposes. First, the stadium legislation amends the 1986 local taxes law by providing that the City “must” and “shall” impose the taxes in an amount sufficient to fund the needed purposes, including the stadium funding. (Art. 3, Secs. 4 and 5). This is mandatory language. Second, the stadium legislation takes this portion of the local tax revenues out of City hands and direction. Indeed, as described above, these revenues never enter the City treasury. After the legislation becomes effective, no City action can alter the fact that the taxes will be collected by the State and only those amounts in excess of the stadium funding portion will be disbursed to the City.

The stadium legislation also fails to trigger the referendum requirement under Chapter 15, Section 13 of the Charter because the City is not “financing” a professional sports facility. Under the stadium legislation, the State is financing the public share of the stadium. The State is using taxes raised from retail sales transactions in Minneapolis to fund and finance a portion of the public share of the stadium costs. The City government, however, is not involved in these transactions.

The only action being taken by the City with respect to the stadium legislation is that the City must act to approve Article 3 of the legislation. The legislation allows a period of thirty days from the date of enactment for local approval. This again, however, does not trigger the referendum requirement. Local approval is a legislative act involving an up or down vote. It does not alter the financing mechanism in the legislation.

For these reasons, we have concluded that the financing mechanism for the Vikings stadium contained in the legislation – even disregarding the sections of the stadium legislation that allow actions “without regard to charter limitations” – does not trigger or violate Section 13 of Chapter 15 of the Charter, the professional sports facility referendum provision.