CITIZENS LEAGUE REPORT

No. 179

Local Consent Requirements to State Law

April 1965

Citizens League
545 Mobil Oil Building
Minneapolis 2, Minnesota

179

TO: Board of Directors

FROM: Local Consent Committee, Wallace Neal, Jr., Chairman

SUBJECT: Local Consent to Special Laws Passed by the Legislature

CONCLUSIONS AND RECOMMENDATIONS

I - On "Local Consent"

1. Responsibility for establishing a governmental framework within which metropolitan area problems can be solved ought to be clearly vested in the Legislature. It is the only elected decision-making body in a position to judge the needs of the area as a whole, to assess the interrelation between different aspects of the metropolitan problem, to mediate between competing local or special interests, and to decide the policy questions which have to be made.

The Legislature must ultimately determine such basic questions as:

a) What necessary governmental functions should be performed at what level--local, county, metropolitan, state.

b) Establishment, change or expansion of multi or single purpose commissions, districts, or authorities to deal with such problems as urban planning, sewer and water, open space, transit or to provide other area-wide facilities or services.

If the Legislature is stymied by local actions reflecting purely local or special interests, it cannot carry out its responsibilities. The problems with which the Legislature is dealing are area-wide in scope, transcending city, suburban or county boundaries. The legislative solutions to these problems must likewise be broad in scope.

We recommend the abolition of the "Local Consent" requirement for special laws affecting two or more local units of government. Only in this manner we believe can responsibility and decision making be focused where it belongs. If local consent in these broad area situations is not removed, we do not feel it will be possible to achieve the types of solutions we believe are imperative to the broad problems of the growing metropolitan area.

Some special laws affecting a small number of local government units are not concerned with "metropolitan problems", but rather deal with smaller area issues on which local units of government may differ. We know of no place where these issues can be resolved more effectively than at the Legislature.

Beyond these considerations, we believe that such a tangle of legal and procedural problems has arisen with the local consent requirement when it applies to two or more units of government that we question whether it ever could be made workable.

2. Special laws affecting only one unit of government may have impact on just as many people and over just as wide an area as laws affecting several units,

for an act may apply to a large county or to the operations of a single purpose commission which functions in one or many counties. An act applying to Hennepin County government may vitally affect nearly a million people.

Rapid change is occuring in the growing urban areas of our State. Changing needs require changing laws and sometimes revamping of the structures of local government so that necessary services may be provided more efficiently and effectively. The Legislature must be able to enact new laws affecting county governments and the special units of government which have been or may be established to provide services and facilities in such areas as sewer, transit, planning, area park reserves and recreation, pest control, and airports. In short, we believe that the same considerations apply to many "one unit" situations as we have noted in connection with special legislation applying to "multi unit" situations.

We recommend the abolition of the "Local Consent" requirement for special laws affecting one unit of government when the one unit is a county, or a multi or single purpose district, commission or authority providing special services or facilities for a broad area.

Abolition of the consent requirement as recommended would, for example, prevent the following types of situations from arising:

a) A single purpose district, for example, the Metropolitan Mosquito Control District, refuses to be merged into a newly established multi purpose district created to provide several governmental services to the metropolitan area.

b) A county vetoes legislative reform or updating of its personnel or purchasing functions.

c) A county refuses to abolish its special county gravel pit tax which conflicts with state and federal regulations for allocation of highway construction funds.

d) A sewer district is reluctant to agree to the expansion of its service area.

e) A county refuses to yield a governmental function or facility to an area-wide authority which the Legislature decides can better perform the function or operate the facility.

f) A special district does not want its budget reviewed by a higher level of government.

g) Legal uncertainties arise as to what and how many government units should consent to a law providing for municipalities to submit certain types of plans to an area planning commission.

3. Special laws affecting only one city, village, township or school district seldom have an impact outside of that municipality. The great majority of these special acts concern such matters as compensation of the mayor and councilmen, employee retirement plans, bond issues, raising special tax limitations, and municipal government powers and services. These are truly "local matters". Some of these laws effect change which could be accomplished locally through municipal charter amendment, but the special law route has been taken because it is easier or quicker than holding a charter referendum.

We believe that a local unit of government with discretionary powers over local matters in its own area ought to have the right to affirm or reject local laws applying only to that one local unit and area. Retaining the local consent requirement in these instances affords a measure of protection to local government against possible arbitrary or ill-considered special local legislation. We recommend therefore that local consent be retained to special laws affecting only one city, village, township or school district.

If the procedures by which local charter amendments can be accomplished are made easier and more workable, a significant number of local municipal matters which now find their way to the Legislature will be handled locally. Pending such developments, we believe local consent in these situations should be retained.

II - On Related Matters - Legislative Responsibility and Reducing the Volume of Special Legislation

4. It would be unfortunate, should the local consent requirement be modified in the manner we have recommended, if the Legislature were to continue to exercise its discretion to require local consent on special laws affecting broad public interests except in extraordinary situations. A by-product of abolishing the consent requirement where areawide problems are concerned ought to be a focusing of responsibility in the Legislature, and legislative understanding that, with the clear power to make decisions, goes a duty not to avoid facing up to the problems.

5. In assuming full responsibility for a wide range of metropolitan problems, the Legislature should consider very carefully whether it is adequately structured and staffed to properly handle its increasing duties in these areas. While this question is beyond the scope of our committee's assignment it is closely related to local consent and was a cause of concern in our deliberations. We believe that the urban problems with which the Legislature is being forced to concern itself require a significantly greater amount of legislative study than is now being devoted to them, particularly between legislative sessions. With such study the Legislature would be better informed, further along it its thinking when the 120-day sessions commence every two years, and better able to legislate in these areas. We believe that establishment of a more permanent legislative structure for continuing study of these matters, perhaps a well-staffed permanent legislative interim commission or council on metropolitan area problems, ought to be seriously considered this session.

6. We generally favor the idea of legislation stating that it is the policy of the State of Minnesota that no special law affecting local government units will be enacted where a general law can be made applicable. However, we believe that much more is needed to achieve a desirable lessening in the volume of special legislation. In this connection we recommend intensive legislative study in the areas of implementing county administrative home rule, updating the laws governing municipal home rule, and easing restrictions to amendment of municipal home rule charters.

BACKGROUND AND SCOPE OF REPORT

The so-called "Home Rule Amendment" to the State Constitution adopted by the voters in November, 1958, permits the State Legislature to "enact special laws relating to local government units" but provides that "a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit, expressed through the voters or the governing body and by such majority as the Legislature may direct." The amendment defines "special law" as "every

law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties."

The local consent provision of the amendment has increasingly created roadblocks for the Legislature particularly as it has attempted to develop a governmental framework within which metropolitan area problems such as sewage disposal might be handled.

The most important difficulty with the local consent provision involves the question of how to enact special legislation pertaining to a number of government units without permitting any one of the affected units to veto an act which will benefit all or most of them. Closely related is the question of local consent as an impediment to effecting remedial legislation and changes in the structure of government, even when just one unit of government might be affected.

Some of the complex questions which have arisen on local consent are:

1. How can the Legislature determine which local units of government are "affected" by a particular special bill and therefore must consent to the bill?

2. What is the governing body of a local unit of government? For example, would a bill increasing the permissable tax levy for Minneapolis libraries require consent of the Minneapolis Library Board only, or of the Library Board, the Minneapolis City Council and perhaps the Board of Estimate and Taxation?

3. What sort of local consent is required for the approval of special legislation amending previously passed special legislation. For example, what consents would be required for a bill amending the Twin Cities Metropolitan Planning Commission law?

4. Is local consent required for enabling legislation?

5. Can any kind of special bill extend the normal period within which a local unit of government can consent to a special bill?

On the overriding question of area-wide bills affecting many governmental units through creation of a new or expanded authority, the Citizens League in March, 1961, supported the "general principle that such special acts--affecting two or more local units, should not require approval of all of the local government units affected". In the report, the League stated that, in such instances, "the requirement of unanimous approval gives an absolute veto to each local unit affected, no matter how small the effect may be, and that, such a check is not consistent with the need for adopting local governmental structures to handle the increasing number of problems that are taking on area-wide characteristics."

In 1963 the Citizens League reiterated its support, in a May 1961 report, of legislation to provide that special legislation affecting nine or more units of local government should require the approval of the governing bodies of only a majority of the units affected, and that such approving majority should contain at least a majority of the population of all the units affected. However, the League opposed as "too drastic" a bill sponsored by State Senator Gordon Rosenmeier which would have eliminated all local consent to special laws except such consent which the Legislature might require for a particular special law.

The Rosenmeier bill is again before the Legislature this session. It in effect utilizes the "unless" clause in the 1958 amendment by providing by general law that the local consent requirement shall be abolished except as the Legislature might choose to require local consent on a particular special bill.

This committee's assignment as outlined by the Citizens League Board of Directors was as follows: "Review the local consent requirement under which special laws must be approved by the governing body and/or the voters of the affected local government units. In the absence of a general law so providing, the consent of a local governing body or its voters must be obtained before a special law can become effective. At each of the past three sessions of the State Legislature efforts have been made to modify this requirement, without success. The issue is certain to be considered at the 1965 session. The committee should review the present consent requirements, determine what, if any modifications are desirable, and report the committee's findings and recommendations in time to be presented to the 1965 session of the Legislature."

The committee has included:

Wallace Neal, Jr., Chairman
Mrs. W. E. Balcom
Glenn Birkeland
Reynold Boezi
Mrs. Walter Carpenter
Richard Federman
Fred Goff
Roger Heegaard
William V. Lahr
Edward Lamphere
James B. Lund
Charles Mungesser
Stanley K. Platt
Royce Sanner
Paul Wilson

We held our first meeting December 17, 1964, and have held eight full committee meetings and two subcommittee meetings. Persons who have appeared before the committee have included, in the order they appeared, Orville Peterson, Executive Secretary of the League of Minnesota Municipalities; former Representative Douglas Head; Senator Richard Parish; Mayor Kenneth Wolfe of St. Louis Park; Representative Robert Latz; Hennepin County Commissioner Richard Hanson; Minneapolis Alderman Robert MacGregor; Senator Gordon Rosenmeier; Representative John Yngve; Senator Harmon Ogdahl; and David Kennedy, attorney for the League of Minnesota Municipalities.

In addition, the committee has reviewed previous Citizens League reports on local consent, the recent Legislative Research Committee (LRC) Study on Local Laws (Publication No. 99, November, 1964), materials of the League of Minnesota Municipalities, the proposed 1963 legislation abolishing local consent which has been introduced in the 1965 session as S.F. No. 720 (H.F.807) by Senator Rosenmeier and others, and the League of Minnesota Municipalities bill, S.F. No. 1126, introduced by Senator Jerome Blatz and others.

HISTORY OF LOCAL CONSENT AND SPECIAL LEGISLATION

Prior to 1892, local government problems in Minnesota were solved almost exclusively by special legislation relating to one or, very occasionally, a handful of counties or municipalities. In those days the number of special laws often exceeded the number of general or statewide laws passed every time the Legislature met. But in 1892, a constitutional amendment was adopted prohibiting the Legislature from enacting special laws. Thus, the formulation of a different method for solving local government problems became essential. Section 36 of Article IV of the Constitution was ratified in 1896, authorizing municipalities to adopt home rule charters and to exercise powers under those charters that were formerly exercised by the Legislature by means of special laws. Decisions in connection with county government, however, including many administrative decisions, were left to the Legislature, where they still remain.

Special laws apply to problems of a particular municipality, county or group of municipalities or counties. The advantage of special legislation is that it fills a need for localized treatment of a legislative problem. Since local units of government differ in size, population and economic condition, their problems cannot always be solved by general laws. Sometimes a special law is needed for a city or village because the problem in question is beyond the power of solution through the home rule charter for the city or village in question. Since Minnesota counties have no home rule, they must regularly come to the Legislature for a whole range of special bills involving salaries of county officials and employees, personnel matters, taxes, issuing bonds and other matters. Other special laws are curative in nature, correcting irregularities or defects in prior laws or in actions of the governing body of a local unit.

A major disadvantage of special legislation is the tendency of the Legislature to enact many laws on the same subject but each one applicable to only one county or municipality, when one broad general law or enabling act might serve just as well and reduce the time the Legislature must repeatedly devote to the same problem. When one county or municipality has a special act passed, others will push for the same or better treatment when they run up against the problem which prompted the initial special act.

Because of the pressure for and volume of special legislation, there have historically been attempts made in the Legislature to reduce, restrict or even prohibit the use of special legislation. Despite these efforts, the volume of local laws had continued to increase. The 1892 amendment tried to prohibit all local laws and also stated "In all cases where a general law can be made applicable, no special shall be enacted." But, even this amendment failed for long to restrict the flow of special legislation. The practice swiftly grew up of passing laws general in form, but special in effect. These "general-special" laws classified local governmental units according to population, area, assessed valuation, or other criteria. But the classification was, in reality, designed to include only one or a small number of municipalities. For example, a law applying to "first class cities of over 450,000 population" could apply only to Minneapolis.

The Minnesota courts have generally upheld these laws, stating that classification should not be disturbed unless "clearly arbitrary and without reasonable basis". Williams v. Rolfe, 11 NW2d 671, 678 (Minnesota 1962)

"General-Special" Laws

These "general-special" laws, in addition to the normal disadvantages of special legislation, also created additional problems, for they did not name the municipalities or local governmental units to which they applied and it became increasingly difficult to determine the status of the law applicable to a particular local unit of government. Furthermore, a municipality might outgrow a particular classification, or a city might become so large in population that some other law which was never intended to apply to that particular city, but which was intended to apply originally to another city, might suddenly apply to the city which has increased its population.

As a result of these problems, a constitutional amendment was offered to the voters in 1958, and adopted in November of that year. The amendment was publicized as the "Home Rule Amendment" and it was largely on this basis that it obtained the backing of many organizations and the approval of the voters.

The amendment became Article XI of the Minnesota Constitution superseding Section 36 of Article IV, the 1896 amendment. It removed the restriction against the passage of special legislation by the Legislature, but it provided a new safeguard against the enactment of unwanted special legislation through the so-called "local consent provision" by which the voters or governing body of a local government unit affected by a special law were required to consent to the special law before it could go into effect.

Section 2 of Article XI, entitled "Special Laws", provides for the local consent, and reads as follows:

> "Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The Legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject." (Emphasis added)

PROBLEMS WITH LOCAL CONSENT

There is uncertainty, when a special law applies to more than one local unit, whether each local unit is an affected unit or whether the combination of local units is the affected unit. For example, a special law seeking to create or enlarge a special or multi purpose district for all cities, villages and townships in one or more counties has been construed as requiring the consent of each and every local governmental unit in the county or counties. One might argue that only approval by a majority of the combined units is required, thereby making the requirement of local consent easier to achieve. There have been no judicial decisions

on this question, but it has been assumed almost universally that the intent of Section 2 was that each and every local unit affected must individually approve such a special law.

Hence, it can readily be seen that any metropolitan area special legislation would require the separate consents of hundreds of separate local units of government in the seven-county metropolitan area, a number of consents which it would be futile to attempt to achieve. In this situation a handful of small units or even just one small village could thwart an attempt to enact a special law creating a metropolitan sanitary sewer district or enlarging the area of operation of the Minneapolis-St. Paul Sanitary District or the Metropolitan Airports Commission, or any other special district. Or, a special law creating a Metropolitan Zoo Commission or Metropolitan Sports Commission could be similarly vetoed through failure to achieve just one of many required local consents.

While it is true that the Legislature could require area-wide public referenda on these matters, such referenda are cumbersome and expensive. Legislators take the position that, when they have studied such complex matters as the need to require area-wide planning coordination and pass a bill, they should not in effect be forced into a position of requiring public votes. If this were in effect required for each special district act and for many county bills, the public would be trooping to the polls constantly to vote to approve or disapprove a host of special bills.

"Mandatory Referral" to MPC?

Another area of uncertainty has developed in connection with amending existing laws applying to special units of government such as the Metropolitan Planning Commission (MPC). It was established by the 1957 Legislature. A bill requiring MPC approval of municipal long range plans would clearly involve multiple consents. But what if a bill required merely submission of local plans to the Commission? Clearly the MPC itself would have to approve such a bill, but would the municipal units of government have to consent to such a bill too? Are they "affected" by such a bill? They would be required to take affirmative action in submitting their plans. To that extent they are affected. But if the MPC had no power over them beyond that of requiring their plans to be submitted, are they affected so that a court would say they had to consent to the legislation? If the bill said they had to submit their plans and then wait three or six months before they could begin to implement their local plan, then they probably would be affected. This is one of the kinds of problems involved in trying to determine the requirements of local consent.

Another problem has arisen in determining what the "affected" units are in connection with special legislation clearly applying to several units of government. The legislation under which Minneapolis became a part of the Hennepin County Park Reserve District is a case in point. Consents were required from the Reserve District Board, the County Board, the Minneapolis Council and the Minneapolis Board of Park Commissioners. In the case of Minneapolis there is confusion whether certain boards or commissions are "governing bodies" or not. In the parks bill, should consents of both the City Council and Minneapolis Park Board have been required? Should the Council approve a library tax levy increase or the Library Board, or both? This type of problem is apt to arise in connection with special laws providing for transfer of governmental functions or facilities between levels of government, laws providing for cooperation between governmental units, special tax levies, etc.

Still another problem is determination of what kinds of legislation "affect" a unit of government. This session the Hennepin County Park Reserve District wants legislation to obligate Minneapolis on certain bonds of the district issued before Minneapolis became a part of the District. Would the Minneapolis City Council and/or Park Board have to approve such legislation? Arguments can be made both ways on this question.

What if a Metropolitan Area Zoological Commission were established with a tax of .2 mills on the seven-county area. What consents would be required, if any? What if the bill said that St. Paul shall close its zoo and a new zoo shall be built in Fridley, to be paid for by zoo bonds the cost of which shall be spread on the seven counties? St. Paul would have to consent. Would Fridley? What units would consent to the bond issue assuming no referendum was required by the Legislature? The consent problem arises in any discussion of establishment of new units or rearrangement of the existing structure of government in the metropolitan area.

With these uncertainties, the tendency for the Revisor of Statutes understandably has been to take a most cautious position in determining what local consents shall be required on a bill, to the extent that many legislators indicated to us that many more consents have been "tacked on" to some bills than legislators thought necessary. In some fashion a given bill can be found to obliquely "affect" a lot of units of government. Many a bill has died in the Revisor's office when the would-be author has realized how many consents would be involved. Many other bills passed by the Legislature have died when local government units required to consent to the bill have failed to act before commencement of the next legislative session.

County Commissioner Richard Hanson reported to the committee a situation in the 1959 Legislative Session in which legislation was passed providing for the Hennepin County Welfare Department rather than the City Welfare Department to be the distributing agency for federal surplus commodities to relief families. But the bill was construed to require not just City Council and County Board consent, as the authors had intended, but consent of each and every city and village government in the county before it could take effect, and as a result it never went into effect. Innumerable problems in drafting special legislation have arisen as a result of the local consent requirement.

Enabling Legislation

An area of uncertainty exists with regard to "enabling legislation"--legislation which a local unit may utilize if it wishes or refrain from utilizing. It takes a positive vote of the governing body (or voters of a local unit) to implement the enabling act. Is consent required also? Such enabling acts may affect only one unit as in the case of a special law permitting or authorizing a village to change the salaries of its officers by ordinance or may affect many units as in the case of a special law authorizing municipalities in a county to set up a special purpose district or to authorize villages to contract for certain services to be provided by county government.

How Long To Consent?

What about special bills applying to named governmental units in a county and purporting to allow each unit to put into effect a change as specified in the law upon the consent of the unit alone? Several such bills in effect lumping

together what would otherwise be a series of bills each applying to just one unit are before this session of the Legislature. One of these bills delegates to the governing body of a local unit in effect what form the consent shall take--public referendum or vote of the governing body. At least one bill purports to extend indefinitely the period within which local units listed in the special act may consent. Currently Section 645.021, Subdivision 1 of the Statutes prescribes the cutoff date after which special acts shall become null and void if not consented to. This date is the convening of the next session of the Legislature after the session in which the special act is passed. The question is whether this date may be extended, and, if so, for all kinds of special bills or only certain kinds? If the date may be extended, for how long may it be extended?

The above brief discussion merely touches on some of the problems which have come up, many of which remain unsettled in connection with local consent.

VOLUME OF SPECIAL LEGISLATION

The volume of special legislation all currently requiring local consent is illustrated in part by the following figures. In the five legislative sessions between 1955 and 1963 the Legislature enacted 517 special bills for individual counties. Of this total, 38 were enacted for Hennepin County, 50 for Ramsey County, 61 for St. Louis County, and 368 for the other 84 counties. In the same five sessions 568 local bills were passed for cities and villages, 73 for Minneapolis, 67 for St. Paul, 27 for Duluth, and 401 for other municipalities. There were 92 special bills for school districts, 53 for special purpose districts, and 5 for townships. In the 1963 session only, of a total of 888 bills signed by the Governor, 305 or slightly over one-third were special or local laws. (LRC Publication 99, November 1964)

The LRC analysis of types of local laws is also significant. In 1963, of 119 special bills for counties, 53 concerned salaries, compensation and personnel matters, reflecting the total lack of county home rule in Minnesota. Seventeen involved taxation, and 28 the county district courts, mostly dealing with salaries and compensation. Of 114 bills for cities and villages, 34 dealt with local courts, 22 with relief and retirement, 15 with bond issues, 5 with taxation, 5 with personnel, 10 with compensation, and 53 with local powers and providing of public services.

A brief summary of a random sample of the 132 special acts pertaining to individual counties which were passed by the 1961 legislative session, and of some of the many legislative acts pertaining to all counties, illustrates the nature of special county legislation. Among the bills passed during the 1961 session were the following:

- An act permitting the Koochiching County Board of Commissioners to levy a tax of up to 3 mills for library purposes. (Laws of 1961, Chapter 37)

- An act permitting the Lincoln County Board of Commissioners to deposit the county's share of the proceeds from the sale of the County Tuberculosis Sanatorium in the County General Fund. (Chapter 125)

- An act permitting the Cottonwood County Board of Commissioners to levy a tax of up to 25 mills for the County Road and Bridge Fund. (Chapter 126)

- An act setting a salary of $4,200-$6,000 for the Register of Deeds of Cook County and providing that all fees collected by him shall be paid into the County Revenue Fund. (Chapter 141)

- An act permitting the Dodge County Board of Commissioners to issue bonds for the construction of a grandstand on the Dodge County Fairgrounds. (Chapter 168)

- An act permitting the Anoka County Board of Commissioners to establish parks or playgrounds within the county. (Chapter 209)

- An act permitting Freeborn County to require work relief as a condition of receiving relief or public assistance from the county. (Chapter 301)

- An act authorizing the Todd County Board of Commissioners to levy a tax of up to 4 mills for snow removal from town roads. (Chapter 307)

- An act permitting Aitkin County to acquire road equipment by means of rental purchase or conditional sales agreements. (Chapter 328)

- An act permitting Sibley County to spend money for the erection of a monument to the war veterans of Sibley County in Winthrop, Minnesota. (Chapter 355)

- An act permitting Traverse County to maintain or replace private bridges or culverts across county ditches. (Chapter 404)

- An act providing for the creation of a central mobile equipment division and the establishment of a mobile equipment revolving fund for Hennepin County. (Chapter 237)

LOCAL CONSENT LEGISLATION THIS SESSION

The two bills on local consent introduced thus far this session are: (1) The Rosenmeier Bill (S.F. 720, H.F. 806) identical to the bill which passed the Senate in 1963 but which failed to clear committee in the House; and (2) the LMM Bill (S.F. 1126).

The Rosenmeier Bill reads:

A BILL FOR AN ACT

RELATING TO SPECIAL ACTS ENACTED PURSUANT TO THE CONSTITUTION, ARTICLE XI, SECTION 2, PERMITTING THE ENACTMENT THEREOF WITHOUT LOCAL APPROVAL IN CERTAIN CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (645.023) Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, Article XI, Section 2, does not

require the approval of the affected local government unit, or groups of such units in a single county or a number of contiguous counties, unless such special law specifically so provides.

Subd. 2. A special law enacted without local approval as provided in subdivision 1 takes effect in the same manner as a general act and as so provided in Minnesota Statutes 1961, Section 645.02.

The LMM Bill reads:

A BILL FOR AN ACT

RELATING TO SPECIAL LAWS AFFECTING LOCAL GOVERNMENT UNITS.

BE IT ENACTED BY THE LEGISIATURE OF THE STATE OF MINNESOTA:

Section 1. Subdivision 1. Local approval of a special law as defined in the Minnesota Constitution, Article XI, Section 2, is not required of each affected local government unit in the case of any of the following cases of special laws unless the special law otherwise provides:

Subd. 2. Class 1: A special law or an amendment to such law which enables three or more local government units to exercise, whether alone or jointly with other units, authority granted by law, if each unit to which authority is granted by the law may refrain from exercising that authority.

Subd. 3. Class 2: A special law, other than a Class 1 law, affecting ten or more government units and requiring approval, by the governing body or the voters as the special law provides, of a 55% majority both in number and in aggregate population according to the last Federal decennial census of those affected local government units which approve or disapprove the law within six months after enactment of such special law. Those affected units which fail to act on the question of approval within such period shall not be counted for any purpose in determining the requisite majority. The law shall name the units affected and such enumeration shall be conclusive for purposes of compliance with this subdivision.

Section 2. It is the policy of the State of Minnesota that no special law affecting local government units will be enacted where a general law can be made applicable.

Section 3. This act applies to any special law enacted at any regular or special session of the legislature occurring after January 1, 1965.

DISCUSSION OF CONCLUSIONS AND RECOMMENDATIONS

Our total recommendations represent a significant departure from previous Citizens League positions. It is our observation reinforced by the views of almost every guest who appeared before our committee that local consent is unworkable in the "multi-unit" situation, in which a large number of local governments would be required to assent to a special act of the Legislature involving an area sewer, transit, planning, or other single-purpose unit of government. In addition, in reviewing the governmental structure in the metropolitan area, the creation of new special single-purpose districts, and the discussion of need for a possible multi-purpose area government to handle clearly metropolitan services, we are impressed with the need for flexibility and innovation in almost any type of approach to "metropolitan problems."

Our first recommendation is that local consent should no longer be required on bills affecting two or more units of government. Thus, we would leave to the Legislature complete responsibility and power to deal with issues involving cooperation or interrelationships between two or more units of government, whether they be counties, cities or villages, or special bodies, such as sewer or planning districts or other one-purpose authorities or commissions.

We have reassessed our 1963 position which favored the type of approach to the multi-unit local consent problem represented in Section 1, Subdivision 3, of the LMM Bill (SF 1126) set out elsewhere in this report. We believe that this proposal, while much preferable to the existing unworkable situation, would be insufficient to solve several of the most pressing metropolitan area problems, most notably that of devising a plan for sewage disposal for the metropolitan area.

The sewage controversy is essentially a core cities vs. suburbs issue. If a so-called "metropolitan" sewage disposal plan is passed by the Legislature which suburban and rural areas by and large didn't like, they could fail to consent to the law, and most likely the requirement in SF 1126 that 55% of the affected units of government have to consent to put the law into effect would not be met. Conversely, Minneapolis and St. Paul, representing more than half the population of a likely sewer district area, could stymie the bill through failure to deliver 55% consent measured in population.

There is currently no substantial agreement on the sewer question as between cities and suburban areas and no machinery through which a consensus could be achieved outside the Legislature. Individual legislators are elected to represent their districts, but also to consider together the interests of the state and metropolitan area and to fashion means by which complex and urgent problems may be dealt with. We elect our legislators to become experts and understand these problems, to weigh competing interests and to make decisions for us. They are responsible to the electorate for the decisions they make.

But, if they have the responsibility to decide, they must also have the power to implement their decisions. When circumstances change, they must have the power to change the laws and the structures of local government to reflect the changes. Otherwise, our growing and changing needs, to the extent they must be met by government action, will not be adequately handled by state and local government.

Some special laws affecting a small number of local government units are not concerned with "metropolitan problems," but rather deal with smaller area issues on which local units of government may differ. We know of no place where these

issues can be resolved more effectively than at the Legislature. There must be a referee.

Our second recommendation is that local consent should no longer be required when a county or metropolitan-wide issue is involved, even if only one governmental unit's consent to a special law might be needed. Some special laws affecting only one unit of government may have impact on just as many people and over just as wide an area as laws affecting several units, Just as the Legislature must have the freedom to innovate and to change the laws on the basis of experience in the multi-unit situations, it must have it in the one-unit situation, too, where vital broad interests are involved.

A special unit of government created by the Legislature should not be in a position to impede needed change or improvements in its law deemed necessary in the collective majority judgment of the legislators. Hennepin is currently represented by 39 legislators, 26 of whom are elected every two years, and the rest every four years. Generally speaking, we feel they are in a better position to assess the needs of the area and of the county than any other body. If they decide that a governmental function should be shifted, or that a special district should be abolished and its functions merged with those of another unit, we believe their decision must be final in the matter -- at least until the voters have spoken at the next legislative election.

We have set out in our second recommendation on Page 2 of this report examples of some of the types of situations which have arisen or might arise, in which one unit of government, through failing to consent to a bill legally "affecting" it alone, can stymie the Legislature and prevent needed reform or change. We believe that the law should not allow roadblocks in these and similar situations.

It might be argued that local consent through referenda is a way to get around an entrenched governmental body which refuses to consent to a beneficial law. We do not agree. We do not believe that a referendum as a form of consent should often be required, except (by majority vote) in connection with some bond issues or perhaps when very fundamental governmental structural changes are contemplated in an act. Many technical but important reform matters are the subject of special legislation following intensive legislative study. Such legislation, especially, should not be put to public vote.

An earlier section of this report sets out some of the problems and uncertainties which have arisen on local consent. They apply not only to the multi-unit consent situation, but also in many instances to situations in which it is uncertain whether only one or possibly more consents may be required. The difficult tangle of legal and procedural problems which have arisen with the local consent requirement lead us to the conclusion that local consent, except where clearly applicable to only one unit of government, is technically unworkable.

Our third recommendation is that local consent be retained only where clearly required of only one local unit, which is a village, city, township or single school district. In this category of special laws are the laws obviously "local" in their nature and in their restricted impact or effect. Many of these laws should not, we believe, be at the legislature at all and would not be if the desired result of the law could be more easily achieved through local action in the form of a charter amendment. But when these local matters are the subject of state law, we believe a measure of local protection from the Legislature should be afforded.

These local bills are processed through the Legislature with few legislators aware of their provisions. The legislator from the local area usually handles the bills and, since many are noncontroversial and most are insignificant compared to other legislative matters, few people have the time or inclination to pay attention. Hence, there is good reason for local review of such local laws.

Another aspect of this type of legislation is that some of it, expecially that affecting non-populous areas of the state, is often handled in effect by only one or two legislators in each chamber. There are thus the possibilities of the legislation being poorly drafted, incapable of accomplishing the desired effect, setting a poor precedent, catering to a special interest, being arbitrary or dictatorial or in other ways being faulty or undesirable.

One can argue that special legislation affecting a wider area or broader public interest is also subject to the above-listed dangers, regardless of how many units of government may or may not be affected. There is always this danger. It is countered, however, by the fact that the more "important" a bill is, the more scrutiny it generally has. When conflicting interests are involved, the issues will generally be brought to light. In making our recommendations we have said that the dangers of abolishing the consent requirement in the situations we have suggested are, we believe, outweighed by the necessity of allowing the Legislature to legislate when urgent, important and broad area problems must be faced, or when controversial issues must be resolved.

Consent When a County is the only Affected Unit of Government

The committee had difficulty in recommending that local consent no longer be required when one county is found to be the only unit of government affected by a special law. We have noted elsewhere that Minnesota counties, as contrasted with cities or villages, do not have "home rule" or legislative powers. County government historically has been considered an administrative arm of the State with the procedures of county officials, including the county boards, quite rigidly prescribed by State Law.

As a result, many special laws pertaining to a particular county concern operations of that county's government or specific authority given to the county government to perform a specific act or governmental function. The Legislature is the only body which may reassign responsibility or authority between county officials. In urban areas, however, where county government has taken on service functions historically provided by cities, such as operating large hospitals or library systems, an increasing amount of special county legislation is concerned with these services, allocation of costs for the services, etc.

The Citizens League is on record favoring "home rule" for Hennepin County under which the County Board of Commissioners could make many of the administrative, organizational and budgetary decisions now requiring special legislation. However, the League has said that decisions on the basic structure of county government, on the level at which given governmental functions should be provided--local, county, area or state--should be left to the Legislature.

County legislative delegations from urban counties are large and getting bigger. The Ramsey, St. Louis and Hennepin County delegations operate under "unit rules" whereby, unless a local bill has near unanimous local legislative support, it is not sponsored as a "delegation bill". As a result, there is protection against partisan, arbitrary or ill-considered county legislation. When near complete

agreement on legislation as is represented by a "delegation bill" is achieved, we do not believe that county government ought to be able to veto a bill by failing to give local consent. If the Legislature passes a bill to reform some aspect of county government or shift or abolish some function of county government, we believe the bill should take effect without local consent. Similarly, if the Legislature finds it to be in the best interest of the State for a county to abolish some special disruptive local county tax, then we feel that the Legislature ought to be able to pass a bill without being hamstrung by a county government.

Admittedly, there are good arguments to be made for retaining consent in connection with many laws affecting only one county. In a rural county there is not the protection of the "unit rule" to possible arbitrary legislation by a small number of legislators. On the other hand we have the impression that most rural legislators are quite close to their county boards and officials and will not often differ with these officials on local matters.

It is certainly true that a majority of special county legislation is still "local" in nature and more akin to local city or school legislation which we have said should be locally approved, than to the broad interest legislation in connection with which we have recommended abolition of the consent requirement. Nevertheless, on balance we feel that, with an increasing amount of county legislation related to changes in the structure and service functions of government and affecting large numbers of our citizens, the Legislature should have a free hand. On county bills of a "local" nature such as some of those used as examples on pages 10 and 11 of this report, we suspect that the Legislature will require local approval in any case, even if it no longer must provide for local consent.

Enabling Legislation

It is implicit in our major recommendation that we see no merit to requiring local consent in connection with enabling legislation which local governments must take positive actions to implement in any case and can refrain from utilizing if they wish. There has been doubt as to whether such special acts require local consent. To require it would be merely to require the same action in effect twice. If the Legislature wishes to provide for a particular type of approval on implementation of the act by a local unit, a referendum or a majority plus vote of the governing body, such provision may be prescribed in the act itself. However, one advantage of consent could be the preserving of the right of a local unit of government to implement an act beyond the time of expiration of the special act. This can be accomplished, we believe, just as well by providing in the act itself for a longer set period or an unlimited period in which local units can implement the enabling legislation.

One of the reasons we have recommended partial abolition of the local consent requirement is because of the technical, legal and procedural problems of many kinds which have come up or which have been raised in connection with almost any kind of special bill. Some of these problems have been cited above in this report. The instances in which legislation actually passed has run afoul of local consent are well known. Less known are the many instances in which possible legislative approaches to all kinds of issues and problems have been thwarted by uncertainties as to how many consents are or might be required to a proposed bill and by other legal or technical impediments posed by local consent.

Legislative Responsibility

One of the basic problems of local consent has been that of "buck passing." Legislators have felt that consent has represented a shared responsibility between the Legislature and local government. Thus, there has not always been the necessary feeling among all legislators that they are responsible for devising workable solutions to difficult metropolitan area problems. As a result, urgently needed legislation has often not been passed on the theory that "let's let these squabbling local units get together first." Or, legislation has been passed with the idea that "it may not be what we should do, but the local units have to consent, so we'll pass the buck to them."

One of the committee's primary concerns has been that, even if local consent is not required in certain situations as we have recommended, the Legislature, when faced with difficult problems, would tend to require some form of local consent anyway. The Legislature will always have the right to require local consent to a special law, unless the Constitution is again amended. We would hope that, if the Legislature is given complete responsibility and power to deal with the most difficult and broad reaching of our area and local problems, the Legislature would exercise its power to continue to require local consent most sparingly.

We think that the responsibility and power in these matters should be clearly in one place, so that we can hold the Legislature clearly accountable for its acts.

Another concern we have had is that the Legislature operate in a manner so that it can most satisfactorily handle the many new problems resulting from urban growth which are before it. We chose to call these problems "metropolitan area" or urban problems. This is largely a question of semantics, for issues involving the health, welfare and economic growth of the Twin Cities area in which such a large percentage of our state's population resides can truly be called "state problems."

Should there be a permanent interim commission or council of legislators permanently staffed and continually studying and reporting to the Legislature on metropolitan problems? Or, can the permanent legislative committees, better staffed and meeting more frequently in the interim between sessions, adequately exercise the legislative responsibilities in these areas? These questions are outside of the scope of our committee's charge, but they are intimately related to the problems of local consent and special laws, and to the closely tied in question of extension of "home rule." We hope that the Legislature will carefully study the question of how best it can carry out its added responsibilities, particularly in the 19 months between sessions, and we believe that study and suggestions to the Legislature from local government bodies and leagues and from civic organizations would be helpful in this regard so that more satisfactory interim procedures for legislative consideration of metropolitan problems may be established.

Volume of Special Bills

In principle, we favor a state policy favoring general laws over special laws wherever possible. However, we believe that, along with enacting such a policy other related reforms must be studied and implemented.

One of the problems is that the procedure for amending a municipal charter is still difficult and has resulted in municipalities continuing to operate under antiquated charters. For example, in Minneapolis even the smallest and relatively insignificant charter change requires a public vote and approval by a 55% majority to effect the change. One of the reasons why so many special laws have continued to come to the Legislature has been the fact that it has continued to be easier to make changes in local law through the enactment of special laws at the Legislature than to effect charter change locally.

In this connection we endorse in general principle the suggestion in LRC Publication 99, November, 1964, "A Study of Legislation for Local Units of Government," Page 3:

> "A possible solution to this difficulty would be to establish a device allowing the amendment of charters in a fairly simple fashion. This would allow the establishment of a much more rigid policy on special laws which have the effect of amending local charters. Changes in certain major areas of the charter (i.e., taxation) would still be subjected to a vote, but an alternate method could be used in specified areas of government. The alternate method would allow the charter commission to submit an amendment to the charter in the form of an ordinance to the particular city council. The latter body would then hold public hearings and adopt the proposal. There would be a period in which the ordinance would be suspended from operation during which a petition with a fairly low percentage could be presented asking for a vote. It would then be feasible to adopt a legislative policy prohibiting the consideration of special legislation in areas encompassed in this field."

We also generally approve another suggestion for reducing the flow of special legislation made in the LRC study, Page 2:

> "Several methods were suggested whereby the number of local bills could be reduced. A suggestion was made that the Legislature, possibly through a joint rule, could develop a policy of restriction allowing special laws only when there is no pertinent general law and where such problems could not be treated locally. Another potential aid to the situation would call for the creation of a subcommittee of an existing committee or a new committee in both the House and Senate to hold all local bills until it has been determined whether there is a trend which would warrant the passage of a statewide bill. If such a trend existed, the committee could write the bill to apply to the entire state or require the various authors to revamp their proposals."

Another means of reducing the flow of special laws would be to implement the 1958 Home Rule Amendment and allow counties to be more self-governing. The Citizens League in November 1964 recommended such enabling legislation, and suggested that Home Rule for Hennepin County should involve granting greater power to the County Board in administrative and personnel matters involving all aspects of county government, but should not involve questions of shifting governmental functions to or from the County, matters we said should be left with the Legislature. We urge legislative study of these matters and on related questions of establishing a metropolitan structure of government.