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## Special Legislation

The Minnesota Constitution prohibits special legislation with the exception of certain special legislation relating to local governments. This information brief explains what special legislation is and what the limitations and exceptions are for special legislation, including when local approval of legislation affecting a unit of local government is required.

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## How Special Legislation Is Defined

Special legislation is legislation that applies to part of a class—a particular person, thing, or locale within a given class—and, in general, is prohibited under the state constitution. Under [Article XII](#) of the Minnesota Constitution:

- ▶ If a general law can be enacted, the legislature may not enact a special law, except a local law; and
- ▶ There are certain subjects on which the legislature cannot enact even local law.

### Determined by the Court

Whether a law is “special” is determined by the courts. “Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject.”<sup>1</sup> The court will decide each challenge on a case-by-case basis, applying general principles. As stated by one court in deciding whether a law was prohibited special legislation, “[i]t is fruitless to try to harmonize or reconcile the numerous decisions involving the application of this question to varying factual situations. . . . The best that can be done is to ascertain if the facts in the case before us come within the general requirements of the provision of our constitution as construed by our decisions.”<sup>2</sup>

### Judicial Standards for Review

Since the first special legislation case in 1893,<sup>3</sup> the court has applied the following standards in analyzing if a law violates the constitutional prohibition against special legislation:

- “(1) A law is general when it is uniform in its operation even though it divides the subjects of its operation into classes and applies different rules to different classes. It need not operate alike upon all the inhabitants of the state, or all the cities, or all the villages in the state.
- (2) A law is general in the constitutional sense which applies to and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to itself in matters covered by the law.
- (3) A special law is one which relates and applies to particular members of a class, either particularized by the express terms of the act or separated by any method of

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<sup>1</sup> [Minn. Const. art. XII, § 1.](#)

<sup>2</sup> *Visina v. Freeman*, 252 Minn. 177, 196, 89 N.W.2d 635, 650 (1958).

<sup>3</sup> *State ex rel. Board v. Cooley*, 56 Minn. 540, 58 N.W. 150 (1893).

selection from the whole class to which the law might, but for such limitation, be applicable.

- (4) The classification must be based upon ‘substantial distinctions’—those which make one class really different from another. The distinction must be based ‘upon some natural reason,—some reason suggested by necessity, by some difference in the situation and circumstances of the subjects placed in the different classes, suggesting the necessity of different legislation with respect to them.’
- (5) The classification must be germane to the purpose of the law; that is, there must be an evident connection between the distinctive features to be regulated and the regulations adopted.
- (6) To whatever class the law applies, it must apply to every member of that class; that is to say, it must treat all alike who are similarly situated; ‘all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions.’
- (7) One alone may constitute a class as well as many, but the fewer there are in a class the more closely will courts scrutinize an act to see if its classification constitutes an evasion of the constitution.”<sup>4</sup>

## Classification

As the standards discussed above indicate, how the law identifies a class can be key to avoiding unconstitutional special legislation. In order to determine if a classification is justified and constitutional, the court has applied a three-part rational-basis test. A classification is proper if:

- ▶ the classification applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation;
- ▶ the distinctions are not manifestly arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and
- ▶ there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefore which the law purports to provide.<sup>5</sup>

A classification is more likely to be upheld if it is open. That is, if its application admits the possibility of applying to others as they meet the criteria of the application, it is likely a permissible classification.

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<sup>4</sup> *Visina*, 252 Minn. at 196-197, 89 N.W.2d at 651 (citing *Hamlin v. Ladd*, 217 Minn. 249, 252, 253, 14 N.W.2d 396, 399 (1944); *State ex rel. Board v. Cooley*, 56 Minn. 540, 58 N.W. 150 (1893)).

<sup>5</sup> *In re Tveten*, 402 N.W.2d 551, 558-559 (Minn. 1987) (citations omitted).

A classification that is essentially a closed group, is more likely to be held invalid. “A classification cannot be based on existing conditions thereby excluding those who may thereafter be in the same situation, nor on conditions which would exclude others on grounds having no reasonable relation to the subject-matter of the act.” *In re Humphrey*, 227 N.W. 179, 178 Minn. 331 (1929) (challenging [Laws 1929, chapter 424](#); law violated several constitutional provisions).

## Prohibited Topics for Special Legislation

The Minnesota Constitution lists certain subjects that cannot be the subject of special legislation, whether they are local law or not:

- ▶ authorizing the laying out, opening, altering, vacating, or maintaining of roads, highways, streets, or alleys
- ▶ remitting fines, penalties, or forfeitures
- ▶ changing the names of persons, places, lakes, or rivers
- ▶ authorizing the adoption or legitimation of children
- ▶ changing the law of descent or succession
- ▶ conferring rights on minors
- ▶ declaring any named person of age
- ▶ giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability
- ▶ granting divorces
- ▶ exempting property from taxation or regulating the rate of interest on money
- ▶ creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever or authorizing public taxation for a private purpose<sup>6</sup>

## Other Constitutional Limitations

The constitution also prohibits special laws in the form of bills of attainder.<sup>7</sup> A bill of attainder is special legislation that inflicts punishment or a penalty upon an individual.

Finally, the constitution requires taxes to be uniform on the same class of objects.<sup>8</sup>

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<sup>6</sup> [Minn. Const. art. XII, §](#)

1. <sup>7</sup> [Minn. Cons. art. I, §](#)

11. <sup>8</sup> [Minn. Const. art. X, §](#)

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## Appropriations Are Not Special Legislation

Legislative appropriations are not special legislation. In 1943, a law appropriating money to individuals to pay claims against the state was challenged as unconstitutional special legislation. The court held it was not subject to the limitations of the constitutional prohibition against special legislation because that would mean that the legislature could never appropriate money to pay a particular claim without passing a general law providing for the payment of all other claims.<sup>9</sup>

## History of the Constitutional Restrictions on Special Legislation

The original 1857 state constitution did not prohibit special legislation, apart from prohibiting the legislature from granting divorces and creating corporations other than for municipal purposes. The volume of special legislation increased every session.

Biennially there had come forth from the presses of the public printers two volumes of laws, one containing acts called “general,” and the other and thicker volume a mass of enactments called “special laws.” In the latter volume every act began by naming the individuals, associations, corporations, or places to which it was intended to apply. In the main these acts dealt with the thousand and one special needs of particular units of local government, counties, cities, villages, towns, and school districts. Others of these acts changed the names of persons or places, or declared named persons of age, or made special rules for disposition of the estate of some minor, or enlarged the powers of some corporation, or extended its life, or conferred special privileges upon named persons or corporations.<sup>10</sup>

Until 1892, the sheer quantity of special legislation was impressive. In 1887, for example, there were 265 general laws but 399 special laws, many of which were local laws, but some were private laws, like [chapter 398](#) which changed the name of a church.

The first attempt to limit special legislation was in a constitutional amendment adopted in 1881. With the 1881 amendment, special laws on 11 topics were prohibited but the number of special laws enacted each year still exceeded the number of general laws.<sup>11</sup> The constitution was amended again in 1892 to expand the list of topics on which special legislation was prohibited

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<sup>9</sup> *Dennison v. State*, 215 Minn. 609, 614-615, 11 N.W.2d 151 (1943).

<sup>10</sup> William Anderson, *Special Legislation in Minnesota*, 7 Minn. L. Rev. 133, 138 (1923).

<sup>11</sup> The 1881 amendment prohibited special, primarily private, legislation: (1) For changing the name of a person or constituting one person the heir at law of another. (2) For laying out, opening, or altering highways. (3) For authorizing persons to keep ferries across streams wholly within this state. (4) For authorizing the sale or mortgage of real or personal property of minors or other persons under disability. (5) For changing any county seat. (6) For assessment or collection of taxes or for extending the time for the collection thereof. (7) For granting corporate powers or privileges, except to cities. (8) For authorizing the apportionment of any part of the school fund. (9) For incorporating any town or village. (10) For granting to any individual, association, or corporation, except municipal, any special or exclusive privilege, immunity, or franchise, whatever. (11) For vacating roads, town plats, streets, alleys, and public grounds.

and, more significantly, prohibit special legislation relating to local government.<sup>12</sup> The 1892 amendment dramatically curtailed special legislation, including local law.

The earliest cases involving a special legislation or local approval claim arose after the 1892 amendment to the state constitution. That amendment, while reducing much of special legislation, also led to a number of laws that were general on their face but by means of the general classification used, applied to only one or a few local governments. This resulted in a number of constitutional challenges to laws on the grounds that they were prohibited special legislation, and the cases discussing special legislation for the most part are cases discussing the appropriateness of the classification used.

In 1958, the Minnesota Constitution was amended to allow special legislation relating to local government.<sup>13</sup> Since then there have been relatively few challenges to laws on the grounds that they are prohibited special legislation.

In 1974, the constitution was restructured and the special legislation provisions were consolidated in [article XII](#), sections 1 and 2.

## Local Approval

Local approval of legislation relates to special legislation affecting only one or a few units of local government.

### Constitution

Under the state constitution, “[t]he 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.”<sup>14</sup>

### Statute

[Minnesota Statutes, section 645.021](#), implements the constitutional requirement that special legislation relating to local government be approved by the affected unit of government. It requires approval “by resolution adopted by a majority vote of all members of the governing

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<sup>12</sup> The 1892 amendment established essentially the same constitutional prohibitions we have today, except that special legislation for local governments was also prohibited.

<sup>13</sup> [Minnesota Constitution, article IV](#), section 33 (1857) was amended to cross-reference article XI, which was amended to allow local laws.

<sup>14</sup> [Minn. Const. art. XII](#), § 2.

body of the unit unless another method of approval is specified by the particular special law.”<sup>15</sup> “The chief clerical officer of a local government unit [then files] with the secretary of state a certificate stating the essential facts necessary to valid approval, including a copy of the resolution of approval or, if submitted to the voters, the number of votes cast for and against approval at the election. The form of the certificate [is] prescribed by the attorney general and copies [are provided] by the secretary of state.”<sup>16</sup> The secretary of state provides the form for a certificate of local approval and information on filing the form. It is available online at <https://officialdocuments.sos.state.mn.us/Home/Contact>.

Generally, the law is effective after the local government files the required certificate with the secretary of state.

## Time For Local Approval

If a local government unit fails to file a certificate of approval before the first day of the next regular session of the legislature (i.e., before the first Tuesday after the first Monday in January of odd-numbered years), the law is deemed to be disapproved by the local government unless otherwise provided in the special law. This has caught a few local governments, which have then had to return to the legislature for enactment of the same special legislation.

## Exceptions to the Local Approval Requirement

The constitution permits the legislature to provide by general law exception to the local approval requirement. Currently, under general law there are three instances in which local approval is not required:

- (1) The law enables one or more local government units to exercise authority not granted by general law. That is, the law is permissive, not mandatory.
- (2) The law brings a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.
- (3) The law applies to a single unit or a group of units with a population of more than one million people.<sup>17</sup>

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<sup>15</sup> [Minn. Stat. § 645.021](#), subd. 2. Because the governing body for a town can be the electors or the town board, it is a good drafting practice to indicate in the legislation which is required to complete local approval.

<sup>16</sup> [Minn. Stat. § 645.021](#), subd. 3.

<sup>17</sup> [Minn. Stat. § 645.023](#), subd. 1. *Blanch v. Suburban Henn. Reg. Park Dist.*, 449 N.W.2d 150, 154 (Minn. 1989) (holding that a law allowing the Metropolitan Council and the park district to acquire land and develop a regional park on Lake Minnetonka was special legislation but did not require local approval under [Minnesota Statutes, section 645.023](#), subdivision 1, paragraphs (a) and (c), which exempt from local approval a law that is permissive and one that applies to a unit of government with a population over one million); *J.L. Shiely Co. v.*

Under all other circumstances, local approval is required. This includes legislation for a local government that is coded in Minnesota Statutes. If a special law does not need local approval it is effective on August 1, following its final enactment, unless a different date is specified in the special law. Even if a law does not require local approval because it fits one of the exceptions above, if the specific legislation requires it, it is not effective until approved.<sup>18</sup> Finally, whether or not the legislation expressly requires local approval, if the legislation is local law and none of the general law exceptions apply, the constitution requires local approval before the law is effective.

## History of Statutory Requirements for Local Approval

The state constitution provides that “[t]he 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.” From 1958 to 1967, no general law addressed the issue and local approval was required for all special legislation relating to local government. In 1967, the legislature enacted [Minnesota Statutes, section 645.023](#), which stated at that time, “A special law enacted pursuant to the provisions of the Constitution . . . , shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties.”<sup>19</sup> From 1967 to 1979, when the scope of the section’s exceptions was limited to the three in law today, the general law was that local approval was not required.

## Researching Special Legislation

There are two basic sources for searching for uncoded special legislation: the tables provided at the end of the print copies of Minnesota Session Laws and Minnesota Statutes, and by various electronic searches.

The *print* copy of Minnesota Statutes, Table I, provides a cumulative list of special legislation relating to local governments or local courts from 1849 to the present.<sup>20</sup> It is organized

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*County of Stearns*, 395 N.W.2d 357, 361 (Minn. 1986) (population of 26 contiguous counties to which special law applied was in excess of one million so local approval was not required).

<sup>18</sup> [Minnesota Statutes, section 645.024](#) provides, “[Section 645.023](#) does not apply to a special law which by its own terms becomes effective upon the approval of one or more affected local government units, expressed through the voters or the governing body and by such majority as the special law may direct.”

<sup>19</sup> [Laws 1967, ch. 595](#), § 1, subd. 1, codified at [Minn. Stat. § 645.023](#), subd. 1 (1968); *Leroy v. Special Indep. School Dist. No. 1, Minneapolis*, 285 Minn. 236, 242-43, 172 N.W.2d 764, 769 (1969) (holding that a statute that allowed the board of estimate and taxation to reduce the mill-rate limitation for the Minneapolis school district did not require local approval because [Laws 1967, chapter 595](#), providing that special laws become effective without local approval, was effective before the statute at issue).

<sup>20</sup> Not to be confused with the online Table 1, which provides information on session laws amended or repealed, covering 1945 to the present.

alphabetically by jurisdiction name. One must be careful in using it, however, because it includes special laws that have been superseded by later special or general law, and local laws that never became effective.

To determine if a local law that required local approval ever became effective, one can look to tables in the session laws. The session laws published each year include two or three tables related to special legislation relating to local government. In odd-numbered years, the session laws include Tables 4, 5, and 6. Table 4 lists special laws enacted two years previously (e.g., Laws 2015, Table 4, lists 2013 special laws). Table 5 lists special laws enacted one year before, and Table 6 lists special laws enacted during that year. In even-numbered years, the session laws include two tables: Table 4, listing special laws enacted during the first year of the biennium, and Table 5, listing the laws enacted during the second year of the biennium.

The session law tables include only those local laws that expressly state that local approval is required, not required, or for which a local government has filed a certificate of local approval even if there was no express statement in the legislation. Each table indicates the local approval date and filing date. To determine if a law was ever approved using the tables, one should check the last time a law could be included in the tables. One can also search on the secretary of state's website or also go directly to the secretary of state's office to check the filings.<sup>21</sup>

The Revisor of Statutes website has all session laws online and allows for term searches of session laws back to 1849.<sup>22</sup> The commercial online legal research services, such as Lexis or Westlaw, also provide ways of searching session laws for special legislation.

With the citation for an uncoded special law enacted since 1945, one can determine if it has been amended, repealed, or been the subject of another action by looking it up in the table maintained by the Revisor of Statutes, *Minnesota Session Laws 1945 to ...., Amended, Repealed, or the Subject of Other Action*.<sup>23</sup>

Finally, there are many laws that apply to one or a few local governments but that do not name the jurisdictions because the application was devised by means of classification. Due to the prohibition against local law between 1892 and 1958, this was very common. Thus, finding such laws for any particular jurisdiction can be very challenging.

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<sup>21</sup> <https://officialdocuments.sos.state.mn.us/Document/DocumentSearch>

<sup>22</sup> <https://www.revisor.mn.gov/search/?search=all&stat=0&laws=1&rule=0&court=0>

<sup>23</sup> Available online at <https://www.revisor.mn.gov/laws/table1/>

## The “Application Clause”

The constitution also requires that special legislation for local government name what local government unit or what counties, if more than one unit, are affected, whether or not local approval is required. “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.”<sup>24</sup> The statute provides “a special law as defined in the [Minnesota Constitution, article XII](#), section 2, shall name the local government unit to which it applies. If a special law applies to a group of local government units in a single county or in a number of contiguous counties, it shall be sufficient if the law names the county or counties where the affected units are situated.”<sup>25</sup>

Often the affected unit of government is named as a substantive part of the law and the application is apparent. With regard to the Metropolitan Council and the metropolitan agencies, it is a little different. A number of years ago some drafters deemed it prudent to name the counties in which the council or agency has jurisdiction. In this instance however, the application provision is simply to identify the counties in which the unit of government is located. It is not a substantive part of the law. Although some drafters disagree with the need for the application provision for metropolitan government because it is a single unit of government and is already named in the substantive part of the legislation, without a court decision on this issue, drafters are generally unwilling to risk a challenge to a law simply for omitting it.

*For more information about local government and legislation, visit the local and metropolitan government area of our website, [www.house.mn/hrd/](http://www.house.mn/hrd/).*

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<sup>24</sup> [Minn. Const. art. XII](#), § 2. This language raises the question of whether one law or act can include provisions applying to individual local governments that are in noncontiguous counties.

<sup>25</sup> [Minn. Stat. § 645.021](#), subd. 1.