

LEGISLATIVE PRIORITIES
AND
RECOMMENDATIONS FOR REFORM

SUBMITTED BY SELECTED INTEREST GROUPS TO
THE LEGISLATIVE PROPERTY TAX STUDY
COMMITTEE

JANUARY 2009

TELECOMMUNICATIONS INDUSTRY TAXPAYERS

(submitted by Iowa Telecommunications Association, Rural Iowa Independent Telephone Association, Qwest, and Iowa Telecom)

1. Assessments should be on land and buildings only. The current telecommunications property taxation methodology was developed at a time where there was no competition and the industry was a monopoly. This is not the case today and it is time for property taxation to catch up with the real world.
2. As pointed out in the presentation to the Property Tax Study Committee, the telecommunications world is converging and the lines are no longer black and white. Telephone companies now compete with Cable TV and Wireless, with each entity providing voice, data and video services. There are multiple providers of telecommunication services so there should be some type of equity between the providers.
3. The state should consider applying a property tax to DirecTV or DISH satellites. They currently do not pay a property tax but are in direct competition with Iowa's telecommunications companies.
4. Broadband deployment is the future of telecommunications. In order to deliver a multitude of services to customers, the state should take a bold step forward by giving preferential treatment to fiber optic network development. This step would entice development so all of Iowa will have access to advanced broadband services in the future.

It is an opportune time for the State of Iowa to take a forward look at how to readdress communication property taxes in order to move the state to advance telecommunication services of the future.

AGRICULTURAL TAXPAYERS
(submitted by Iowa Farm Bureau Federation)

The assessment of agricultural land and buildings should continue on a productivity basis. The past six years have shown that the formula does react to changes in the farm economy. In 2003, production and prices were decreasing and the productivity values followed. In 2009, the estimates show that with periods of \$4 corn and \$10 beans, the productivity value will set an all time high, exceeding the previous statewide record of \$805 per acre.

Projections from the Legislative Service Agency show property taxes will increase approximately \$140 million a year over the next six years for homeowners and farmers, or \$840 million during that six year period. Decision-makers need to focus on reducing the burden for taxpayers.

Reform of the tax system must reduce the reliance on property taxes for non-property related services. Goals of the reform should include simplification, reducing administrative costs, and establishing limits for state and local spending authority. Government must find ways to control spending.

The primary objective of property tax reform should be to reduce property taxes. This can be accomplished by shifting to other funding sources, limiting future growth and limiting the services for which property taxes pay. Shifting to other funding source is only an option if dollar-for-dollar property tax relief is realized by taxpayers.

BUSINESS AND INDUSTRY TAXPAYERS
(submitted by the Association of Business and Industry)

- 1) Stop the shifting tax burden between the classes of property.** Because of the residential rollback and agriculture productivity formula limiting those property valuation increases, more and more burden falls on commercial and industrial currently taxed at 99% of valuation. Assessments are inconsistent and do not reflect true market value.
- 2) Fund property related services first.** Property tax reform will be successful, only when it is established as to what property taxes should fund. Most taxpayers generally believe that property taxes should pay for services directly related to their property such as fire protection, public safety and road maintenance to name a few. In reality, property taxes fund many other programs and projects beyond property related services.
- 3) Hold city councils and county board of supervisors accountable for increased tax burdens by requiring a vote of the councils or board of supervisors to occur on increases in property tax revenues.** Citizens often hear from their elected officials that they “did not raise taxes” or “increase the property tax rates.” However, citizens see their property tax bills rising. The valuations on their homes and businesses have increased because of its market value; thus property taxes go up because the elected officials spend the increased revenues and fail to lower the property tax rates. Regardless if property tax revenues increase due to a rate increase or a property valuation increase, our elected officials should be held publicly accountable for the increase in citizens’ property tax bills.
- 4) Provide transparency in the system by abolishing the county compensation board and requiring the county supervisors to set annual salaries.** Currently the county compensation board, appointed by the elected officials in the county, set the salaries for the elected officials. The supervisors are only allowed to reduce each increase by the same percentage. They are not allowed to adjust salaries in any other way. Currently, supervisors have complete control of the final outcome of the budget process, except for the salaries of the elected officials. If the compensation board is eliminated, the supervisors will have the ability to set all of the elected officials’ salaries. Removal of this sometimes misunderstood process will allow more transparency in the setting of elected officials’ salaries at the county level.
- 5) Enact a spending limitation for government subdivisions at all levels.** In 1997, \$2.39 billion was collected in property taxes. By 2007, that figure grew to \$4.03 billion. The growth in property tax assessments – an increase of more than \$1.5 billion in the past 10 years - along with continued burden shifting on commercial and industrial taxpayers directly corresponds to the increases in government budgets. It is expected that the price of goods and services to go up so municipal budgets logically must increase as well. The dramatically rapid growth, above the consumer price index and other inflationary measurements, however, simply cannot continue.

Governments, like in the private sector, must meet their obligations to their employees for wages and benefits. In the private sector, those items reflect the marketplace. Legacy costs like health insurance and pensions that have bankrupted several US companies have changed the way companies negotiate and structure benefits. Governments, in many cases, have not changed or responded to the market. It would be a great assistance to our local municipalities to control their costs by eliminating state mandated pension contribution rates. Additionally, cities could be assisted if binding arbitration were eliminated in salary negotiations.

BUSINESS TAXPAYERS

(submitted by Mr. Tom Zucker, Committee member representing commercial business taxpayers)

Concerning your request for a prioritized list of suggestions for improvement in the property tax system I come away somewhat frustrated. I went into this committee with perhaps the misconception that there was going to be an honest attempt made to reduce the tax burden on commercial property owners. I was mistaken.

In rereading the presentations I saw many discussions on the perception of how things are. I did not however see many suggestions offered, with the exception of an industry specific (Telecom) one, of ways to lower the tax burden of property tax payers in general and for owners of commercial property specifically. The majority of what I heard was requests from tax users to not lower their funding because they couldn't possibly do with less and in reality needed more. Cities talked of using franchise fees to pad their larder but since that issue is tied up in court with threats of possible repayment, I don't think that looks like a good path to follow at least temporarily. We spent a lot of time talking of the pros and cons of Tax Increment Financing with no conclusion. Other cities have come to say woe is me, times are tough. We spent over one hundred thousand dollars of Iowan's money on a study to tell us how the rest of the country is dealing with taxes which doesn't necessarily mean much to the way we can do things since everyone lives under different circumstances. At the end of the day we will have done what the Governor promised. We looked at the property tax situation and spent a good bit of the money he allowed.

No matter what this committee comes up with, for the past 72 years the cry has been that property taxes have been too high and for 72 years the legislature has not had the will to do anything about it. Having given up the hours I have as a non-voting member of this committee it appears to me that it too is going to kick the can down the road just as all the other committees have and we can add a few more years to the complaints about property taxes being too high with nothing being done about it but give it lip service. I know, the final report is not in yet and I hope that I am pleasantly surprised by it but with one meeting to go I'm not smelling anything that would indicate Santa is making a special trip.

Tom Zucker

IOWA ASSOCIATION OF REALTORS®

1. Maintain the residential rollback. The rollback is serving its purpose by keeping residential property taxes in proportion and balance with the other classes. If the rollback is eliminated it will be a direct shift and significant property tax increase for all residential taxpayers.
2. Instead of growing local budgets and services, the State, County and Municipal governments should work together to merge services or share services in order to save the taxpayer cost. With 99 counties, 947 communities, and 364 school districts there is overlap and there are cost savings that can be implemented on behalf of the taxpayer.
3. Property taxes should fund real property related services. These are services that have a direct cost related to and impacting the real property itself and primarily include fire, police, water, sewer, sidewalks, streetlights, etc.
4. The budgets of local government should be capped to a certain percentage of growth or spending per year and details of the budget should be made more transparent to taxpayers.
5. If there are new taxes or fees allowed at the local level in order to reduce the reliance on property taxes it must be a dollar for dollar property tax relief proposal to relieve the burden on taxpayers. Any new taxation or fee implemented at the local level must also be approved by a vote of the citizens and the governments must specify how the taxes will be used. The REALTORS® oppose any proposal allowing a menu of new fees or taxes at the local level.
6. Home-based businesses continue to grow nationwide and it is possible to allow for a specific property tax classification for businesses receiving an income tax benefit for their home-based status. The revenue generated could be given as dollar for dollar property tax relief for other commercial businesses.
7. An emergency statewide sales tax could be implemented in times of a statewide natural disaster, such as the floods. This tax would only be allowed for a certain period of time, funds would go directly to disaster related areas, and would require a vote of the people if necessary to continue.
8. The State could fund mental health in order to allow local governments to give dollar for dollar property tax relief to taxpayers.

IOWA POLICY PROJECT

(submitted by Beth Pearson and Dr. Peter Fisher)

1. Authorize local income tax as an option for municipal revenue generation.
2. Repeal authorization of sales tax TIF districts.
3. Restrict use of tax increment financing so that it cannot be used for retail or residential development.
4. Place constraints on the size of tax increment financing areas so that they are limited to a certain percent of a city's land area or tax base.

IOWA STATE ASSOCIATION OF SCHOOL BOARDS

- 1) Keep state penny use strictly dedicated to school infrastructure and property tax relief.
- 2) Continue unfolding state commitment to the additional levy buy down.
- 3) Focus on taxpayer inequities that impact students - the Instructional Support Levy state match would be a good next place to go.
- 4) Avoid shifts in burden that make it harder for voters to approve discretionary levies.
- 5) Make sure there is sufficient and stable revenue source to pay for any changes that relieve a property tax burden.
- 6) Look at TIF reform (not elimination) but refine criteria, set sunset dates for pre-1993 TIFs, refocus on manufacturing, financial services, technology and alternative energy job creation priorities in new TIFs (not residential or retail unless there is a higher standard of urban blight definition that has been met).
- 7) Consider the impact of income tax surcharges in the bigger picture - the current limit of 20 percent combined income surtax from all taxing entities will need revision if this source is to significantly reduce the property tax burden.

IOWA STATE ASSOCIATION OF COUNTIES - PROPERTY TAX REFORM

1. Implement Alternative Revenue Sources

PROBLEM: Iowa's local governments are over-reliant on property taxes. Cities and counties can reduce their citizens' and businesses' property tax burden by diversifying their revenue bases.

SOLUTION: Allow cities and counties to implement alternative revenue sources, including a local option income tax, by a vote of the governing body, subject to a reverse referendum.

2. Uncouple Agricultural and Residential Valuation Growth

PROBLEM: Since the late 1970s, the increases in residential and agricultural property values have been tied together. As one class of property experienced low or no valuation growth, it restrained the valuation growth in the other class and shifted the property tax burden to commercial and industrial properties.

SOLUTION: Uncouple agricultural and residential valuation growth by amending Iowa Code § 441.21(4). The 2009 legislative session is an ideal time to uncouple. Because of substantial growth in the assessed value of agricultural property projected for 2009, uncoupling now will have zero impact on taxpayers for a number of years.

3. Separate the Assessment of Agricultural Buildings and Agricultural Land

PROBLEM: Iowa uses an outdated productivity formula that greatly undervalues agricultural property. The distortion is most obviously highlighted by this fact: The construction of a multi-million dollar agricultural building adds zero net value to the property tax base, even while counties incur significant infrastructure costs to service agricultural operations.

SOLUTION: Amend Iowa Code § 441.21(1)(e) to provide that the value generated by the productivity formula is the value of agricultural land only. Assessors would value agricultural buildings at their replacement cost new less depreciation, subject to the ag factor, and the value of the buildings so assessed would be in addition to the value of agricultural land generated by the productivity formula. This would add \$2.6 billion to Iowa's property tax base.

4. Tax Increment Finance (TIF) Reform

PROBLEM: In addition to numerous technical problems with the administration of TIF districts, there remains the simple fact that over 800 Iowa TIF districts can exist forever. All TIF districts created before 1995, and even TIF districts created today to remedy slum and blighted areas, are not limited to a 20-year duration. To compound the potential for TIF abuse, the legislature enacted a local option sales tax TIF (LOST-TIF) in 2008. The LOST-TIF allows cities to capture all the LOST revenue generated in a TIF district for up to 20 years, and it allows city councils to change the use of their LOST proceeds from what the citizens approved by voting to implement the LOST.

SOLUTION: Repeal the LOST-TIF, if necessary grandfathering in cities that have already acted quickly to implement it. Further, limit all TIF districts to a duration of 20 years or, for those that have already existed for 20 years, the term of the current bonded indebtedness. Cities would be free to recreate those TIF districts, but the base value would be adjusted to current levels.

LINN COUNTY

(submitted by Dawn Jindrich, Linn County Budget Director)

1. Need to be able to issue debt of more than \$1.2 million per project, per code section 331.441(5)(d) without a referendum to finance reconstruction of flood damaged buildings.
2. Local option sales tax could be used to retire debt, as an alternative to debt service levy on property taxes, by Board vote subject to reverse referendum.
3. Hotel/motel tax as an additional percentage to counties.

IOWA COUNTIES AFFECTED BY DISASTER
(submitted by Lu Barron, Linn County Supervisor)

Problem: Limited borrowing capacity

Federal assistance for damaged public buildings strongly favors repair to pre-disaster condition which may not be the best long-term solution for the community. Federal funds must be accessed within a relatively short time frame. These conditions remove alternatives from consideration, including inter-governmental collaborations that may be a better long term solution but would require the customary bond referendum process by one or more public bodies.

Solution: Allow issuance of debt above per project limits

Amend essential county purpose as currently provided in 331.441(5)(d) to allow issuance of debt above current per project limits in order to finance reconstruction/replacement of flood/disaster damaged buildings.

Proposed new language in bold underline:

331.441(5)(d) Public buildings, including the site or grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits. **No limits shall apply for those projects initiated as part of a county's recovery efforts following the county's inclusion in a presidential disaster declaration.**

Problem: Loss of property tax dollars

An area included in a presidential disaster declaration often experiences a decline in property values as a result of the disaster. This occurs at a time when the affected jurisdiction is faced with recovery efforts that place new demands on both services and infrastructure resulting in an additional burden on property taxes.

Solution: Local Option Sales Tax (LOST)

Allow countywide local option sales tax by vote of the Board of Supervisors, subject to reverse referendum by each local jurisdiction or the unincorporated area for that area. Local option sales tax revenues could be used to support recovery efforts and/or to retire debt, as an alternative to a debt service levy on property taxes. This would allow a quicker and more reliable source of funding for recovery needs of the community. Request is to allow this provision with a five (5) year sunset and limit to no more than an additional \$.01.

Problem: Cost to counties to house state agencies

Counties are required to provide workspace including storage of physical documents for certain state workers and functions. This results in expenditures for space, maintenance, utilities, etc. from the county's budget for service areas/employees over which there is no local control. This creates a burden on local revenues and does not encourage efficiencies across the state.

Solution: State to provide space for state agencies or compensate counties

Adopt legislation requiring the State of Iowa to provide space for state employees or compensation to counties, at fair market value, for workspace occupied by State employees. This places the responsibility for providing workspace on the actual employer. This could encourage inter-departmental and regional efficiencies for State customer service facilities thereby reducing costs for all. Electronic document storage initiatives by the State need to be accelerated as part of disaster recovery efforts and eliminating storage expenses.

Problem: No county funding for post-disaster crisis counseling / mental health needs

There will be increases in the mental health service needs of Iowans as a result of the natural disasters of 2008. According to a National Center for Posttraumatic Stress Disorder (PTSD) fact sheet, as many as one out of every three disaster survivors experiences some or all of the following severe stress symptoms, which may lead to lasting PTSD, anxiety disorders or depression:

- Dissociation (feeling completely unreal or outside yourself, like in a dream; having "blank" periods of time you cannot remember)
- Intrusive reexperiencing (terrifying memories, nightmares, or flashbacks)
- Extreme attempts to avoid disturbing memories (such as through substance use)
- Extreme emotional numbing (completely unable to feel emotion, as if empty)
- Hyper-arousal (panic attacks, rage, extreme irritability, intense agitation)
- Severe anxiety (paralyzing worry, extreme helplessness, compulsions or obsessions)
- Severe depression (complete loss of hope, self-worth, motivation, or purpose in life)

(Bruce H. Young, L.C.S.W., Julian D. Ford, Ph.D. and Patricia J. Watson, Ph.D.)

Counties have created an effective service delivery system for persons with mental health needs. County funds for MH/DD services are obligated and there is no county funding available to support the provision of services to the area's general population that needs post-disaster crisis counseling services, or the coordination, monitoring or training for programs to provide these disaster services. There must be additional resources allocated to counties to use to address the ongoing mental health needs of individuals whose homes and businesses have been lost.

Solution: Appropriate additional funds to counties to address ongoing mental health needs of Iowans

Iowa State Association of Counties (ISAC) supports additional state funding to meet post-disaster needs and opposes the diversion of state funding from existing programs or the creation of a parallel system of state-operated services to address the flood and weather-related recovery efforts. Assuming that the legislature will not allow counties to generate additional resources through property taxes, the legislature must appropriate additional funds to counties to address the ongoing mental health needs of Iowans impacted by the recent disasters.

IOWA STATE ASSOCIATION OF COUNTIES - DISASTER RECOVERY

1. Expanded Authority to Issue Noncurrent Debt

PROBLEM: Counties have substantial flexibility to incur current debt – debt that will be retired by the end of the fiscal year. However, counties may only issue noncurrent debt for specific purposes authorized by law. Iowa Code § 331.478 allows counties to issue noncurrent debt for “bridges or buildings destroyed by fire, flood, or other extraordinary casualty.”

SOLUTION: Expand Iowa Code § 331.478 to allow counties to issue noncurrent debt for all disaster cleanup, recovery and rebuilding purposes.

2. Speed the Rebuilding of Public Buildings, Roads and Bridges

PROBLEM: Hundreds of public buildings and a significant amount of transportation infrastructure were damaged or destroyed by natural disasters in 2008, and future disasters could have similar effects. Under current law, rebuilding these public assets will be slowed and possibly stalled indefinitely by the bond referendum process.

SOLUTION: Allow counties to issue bonds to rebuild public buildings, roads and bridges damaged or destroyed by a disaster without the delay, expense and uncertainty of a referendum. This could be accomplished by eliminating the “economic development” limitation on bridges and roads as an essential county purpose in Iowa Code § 331.441(2)(b)(16), and by eliminating the dollar limitations on the reconstruction of public buildings as an essential county purpose in Iowa Code § 331.441(2)(b)(5).

IOWA LEAGUE OF CITIES

City Disaster Response and Preparedness Proposal -- Alternative Revenues

1. Allow cities alternative revenue options – to be determined by each city council. Those options could include the following:

- Franchise fee – language to include legalizing provisions, up to 5%
- Locally imposed hotel/motel tax increase of up to 2% or a \$1.50 per room/per night fee
- Local sales tax, subject to reverse referendum
- Local Income surtax, subject to reverse referendum
- Entertainment tax

2. These alternative revenues could only be used for the following purposes:

- Public Safety
- Disaster Recovery and Prevention
- Infrastructure
- Property Tax Reduction
- Targeted jobs program

3. Prior to adoption of any revenue proposals, a city must prepare and publish a revenue purpose statement specifying the purpose or purposes for which the revenue collected from the increased revenue will be expended.

IOWA LEAGUE OF CITIES - DISASTER RELIEF RECOMMENDATIONS

Existing laws governing cities limit their ability to respond effectively to the storm and flood damage of 2008. In order to make the existing “tools” more useful for cities, without cost to the State of Iowa, the following legislative changes could be considered:

I. Add new “essential corporate purposes”

The current definition of an "essential corporate purpose" under Section 384.24 (allowing general obligation bonds to be issued following a public hearing) does not include many of the costs relating to the remediation or clean-up of storm or flood damaged areas. In addition, the repair and restoration of existing municipal buildings is considered a "general corporate purpose", ordinarily requiring a referendum before general obligation bonds can be issued for such purposes. Since a city's lowest-cost financing tool is the issuance of general obligation indebtedness, several new “essential corporate purposes” should be added to Section 384.24(3), such as the following:

- (v) *The remediation, clean-up, restoration and repair of storm and flood damaged properties.*
- (w) *The repair, clean-up, restoration and improvement of existing municipal buildings that have been damaged by storms or floods.*
- (x) *The replenishment of operating reserves drawn down for the purpose of paying storm or flood-related remediation and repair costs.*
- (y) *The funding of internal city costs or administrative expenses relating to the undertaking of an essential corporate purpose.*

II. Authorize “Midwestern Disaster Area Bonds”

The recently approved federal Economic Stabilization Act of 2008 (the “Act”) provides Iowa and other Midwestern states with the authority to issue a special class of tax-exempt “qualified private activity bonds”, called Midwestern disaster area bonds. These bonds present a unique opportunity for Iowa private business owners and corporations (as well as Iowa lending institutions) to borrow (and lend) capital at very favorable tax-exempt rates to acquire, construct or renovate certain flood and storm damaged property authorized by the Act.

The maximum aggregate bond authority with respect to any state cannot exceed \$1,000 times the portion of the state population which is located in a Midwestern disaster area. Midwestern disaster area bonds can be issued by cities and counties. The bond proceeds would then be loaned by the municipality to the private business user with repayment to be made solely by the private business user, with no liability on the part of the municipality for repayment. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Midwestern disaster area.

Under the Act, interest payments on the bonds are tax exempt on a federal basis, and not subject to the AMT. The authority to issue Midwestern disaster area bonds expires on December 31, 2012. In the case of a project involving a private business use,

either the person using the property must have incurred a loss in a trade or business attributable to severe storms, tornadoes or flooding, *or* must be a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by severe storms, tornadoes or flooding.

The Governor's Executive Order 9 (issued November 7, 2008) directs the Iowa Finance Authority to administer and track the allocation of the additional bonding authority provided in the Act. Chapter 419 of the Iowa Code authorizes cities to issue other types of "private activity bonds," but not to the full extent permitted under the new Act. Therefore, many disaster-related projects cannot be financed under current State law. To use the new federal authority, the term "project" under Section 419.1(12)(a) should be amended to include the following new subsection:

(17) the acquisition, construction, repair or renovation of nonresidential real property, public utility property and other property damaged by severe storms, tornadoes or flooding and which is eligible for financing with Midwestern disaster area bonds under the federal emergency economic stabilization act of 2008. Bonds may be issued for this purpose before January 1, 2013 [optional language that could be added: "and shall be exempt from state income taxation"].

III. Extensions of Bond Maturities

The current 20-year limitation on general obligation bond maturities could be extended for affected cities, so as to enable them to defer principal payments on general obligation bonds and to restructure the repayment of outstanding bonds based on current expectations and more flexible terms. This could be accomplished by amending Section 76.1 as follows:

Hereafter issues of bonds of every kind and character by counties, cities, and school corporations shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue; provided, however, that bonds issued under the provisions of [new essential corporate purpose provisions] may mature over a longer period, not to exceed thirty years. Each issue of bonds shall be scheduled to mature ~~serially~~ in the same order as numbered.

IV. Authorization of Emergency Repairs

The flooding and storms of 2008 revealed the need for more explicit and expansive provisions relating to the authority of cities to undertake emergency repairs. Specifically, two legislative amendments to the Code of Iowa are desirable:

1. Chapter 26 should be amended to include the following new section:
26.16 -- Emergency repairs.

When emergency repair of a public improvement, highway, bridge or culvert is necessary and the delay of advertising and a public letting might cause serious loss or injury to the governmental entity, the chief officer or official of the governmental entity shall make a finding of the necessity to institute emergency proceedings under this section and shall procure a certificate from a competent licensed professional engineer or registered architect certifying that emergency repairs are necessary. In that event the chief officer or chief official of a governmental entity may accept, enter into and make payment under a contract for emergency repairs without advertising for bids and holding a public hearing as required by chapter 26, and without obtaining a performance and payment bond as required by chapter 573. The contract and the nature of the emergency giving rise to the contract shall be reported to the governing body of the governmental entity at the next scheduled meeting of the governmental entity after execution of the contract.

2. In addition, if the foregoing change is enacted, Section 384.103 should be conformed to eliminate what would otherwise be a redundant provision, as follows:

384.103 – Bonds authorized — ~~Emergency repairs.~~

~~1.—A governing body may authorize, sell, issue, and deliver its bonds whether or not notice and hearing on the plans, specifications, form of contract, and estimated cost for the public improvement to be paid for in whole or in part from the proceeds of said bonds has been given, and whether or not a contract has been awarded for the construction of the improvement. This subsection does not apply to bonds which are payable solely from special assessment levies against benefited property.~~

~~2.—When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the governing body shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent licensed professional engineer or registered architect, not in the regular employ of the city, certifying that emergency repairs are necessary. In that event the governing body may contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of chapter 26 do not apply.~~

V. Approve a Legalizing Act

A legalizing act should be approved for the purpose of validating any non-compliance which may have occurred during the summer of 2008 in connection with the undertaking of emergency repairs and reconstruction of public improvements and any “over-expenditure” of city budgets that could not be amended within the time period

required under Chapter 384. Such a legalizing act generally should extend to and include the following:

All acts and proceedings of cities affected by the storm and flooding conditions between May 1, 2008 and August 31, 2008 in connection with the emergency repair or reconstruction by such a city of public improvements, including highways, streets, bridges and culverts, damaged by such storm or flooding conditions, and all storm or flood-related expenditures by such a city in excess of an original or previously amended city budget for the fiscal year ended June 30, 2008, are hereby legalized, validated and confirmed. This act is effective upon enactment and is retroactively applicable on and after May 1, 2008.

In addition, Section 721.2(1) (which makes it a criminal misdemeanor to expend funds in excess of a budget) should be repealed.

VI. Clarify Amount of General Fund Loans and Leases

A recent decision of the Iowa Supreme Court has drawn into question the manner in which the authorized amount of city (and county) general fund loans and leases should be calculated, thereby limiting the usefulness of those provisions in responding to disaster-related conditions. The necessary clarity can be provided as follows:

1. By amending Iowa Code Section 364.4(4)(e) (City general fund lease/lease-purchase) as follows:

The governing body may authorize a lease or lease-purchase contract which is payable from the general fund provided such ~~and which~~ would not cause the total of annual lease or lease-purchase payments ~~of the city~~ due from the general fund ~~of the city~~ in any single future fiscal year for all lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

2. By amending Iowa Code Section 384.24A(4) (City general fund loans) as follows:

The governing body may authorize a loan agreement which is payable from the general fund provided such ~~and which~~ would not cause the total of scheduled annual payments of principal or interest or both principal and interest ~~of the city~~ due from the general fund ~~of the city~~ in any single future fiscal year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

Similar changes also should be made to Sections 331.301(10)(e) (county lease/lease-purchase agreements) and Section 331.402(3)(d) (county general fund loans).