March 29, 2011

Representative Hintz:

This version of the bill is drafted according to your instructions in that it creates ss. 61.34 (3e) and 62.11 (6), which specifically authorize villages and cities to accept donations, gifts, or grants for any public purpose and to transfer any such donation, gift, or grant to a charitable organization. These sections are based on ss. 59.52 (19) and 60.23 (34), as amended or created in the bill.

As I stated in the analysis, however, cities and villages may already do this under their home rule authority, so the creation of ss. 61.34 (3e) and 62.11 (6) is not only unnecessary, but may serve to undermine the authority of cities and villages to exercise their home rule authority in the future. This is because if statutes are created to specifically authorize cities and villages to do things that they may currently do under their home rule authority, and thus don't need specific authorization, a city or village that attempts to act under its home rule authority on another matter in the future may be challenged as acting outside of its authority.

A person could argue that since there is no specific statutory authorization for a city or village to do a certain thing, the city or village couldn't act in that area, even if it seems like the city or village has home rule authority to act in the area. The person could point to ss. 61.34 (3e) and 62.11 (6) for the proposition that cities and villages really need specific authorization to act, even if acting within the scope of their home rule authority, or the legislature would not have found the need to enact ss. 61.34 (3e) and 62.11 (6). Therefore, it's possible that the creation of ss. 61.34 (3e) and 62.11 (6) could undermine city and village home rule authority in the future.

Please let me know if you'd like any changes made to this draft.

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