

- (1) 100 percent for the first year of combination;
- (2) 75 percent for the second year of combination;
- (3) 50 percent for the third year of combination; and
- (4) 25 percent for the fourth year of combination.

(b) The additional aid provided in Minnesota Statutes, section 124.2725, subdivision 6, must be provided in the first two years of combination.

(c) The permanent revenue provided in Minnesota Statutes, section 124.2725, subdivision 8, is available after the fourth year of combination.

#### Sec. 4. EFFECTIVE DATE.

Sections 1 and 2 are effective the day following the final enactment.

Presented to the governor May 2, 1991

Signed by the governor May 6, 1991, 2:30 p.m.

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### CHAPTER 58—H.F.No. 739

*An act relating to corporations; deleting consideration of the effect of insurance company takeovers on shareholders and creditors; limiting application of fair price provisions to domestic corporations; deleting nexus requirements for application of control share acquisition and business combination statutes; exempting employee stock ownership plans from takeover statutes; exempting certain transactions from the control share acquisition statute; modifying limitations on corporate share purchases above market value; amending Minnesota Statutes 1990, sections 60D.02, subdivisions 1, 2, and 4; 60D.06; 60D.08, subdivisions 1 and 2; 60D.11; 60D.12, subdivision 2; 302A.011, subdivisions 38, 39, 49, and by adding subdivisions; and 302A.553, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 302A; repealing Minnesota Statutes 1990, sections 60D.02, subdivision 5; and 80B.06, subdivision 7.*

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

Section 1. Minnesota Statutes 1990, section 60D.02, subdivision 1, is amended to read:

Subdivision 1. **PREREQUISITES TO ACQUISITION OF CONTROL.** No person shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or otherwise seek to acquire, or acquire, any voting security issued by a domestic insurer or by a person which (1) is in control of a domestic insurer, and (2) is engaged primarily either directly or indirectly through its subsidiaries in the business of insurance,

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if such acquisition would result in a change in the direct or indirect control of the domestic insurer, unless prior thereto:

(1) The person proposing to make the acquisition shall have filed with the commissioner a statement containing the information required by this section and shall have furnished a copy of the statement to the domestic insurer ~~for mailing to its shareholders pursuant to subdivision 5; and~~

(2) The proposed acquisition has been approved by the commissioner in the manner hereinafter prescribed.

Sec. 2. Minnesota Statutes 1990, section 60D.02, subdivision 2, is amended to read:

Subd. 2. **CONTENT OF STATEMENT.** The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain:

(1) The name and address of each person by whom or on whose behalf the acquisition of control is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, that person's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (1) (i).

(2) The source, nature and amount of the consideration used or to be used in effecting the acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party and, if requested by the commissioner, its affiliates, for the preceding five fiscal years, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to

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make any other material change in the business or corporate structure or management.

(5) The number of shares of any security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition; ~~and a statement as to the method by which the fairness of the proposal was arrived at.~~

(6) The amount of each class of any security referred to in subdivision 1 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subdivision 1 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subdivision 1 during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subdivision 1 made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders or exchange offers for, and agreements to acquire or exchange any securities referred to in subdivision 1, and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subdivision 1 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders ~~and security-holders~~ of the insurer or in the public interest. If the person required to file the statement referred to in subdivision 1 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for in this subdivision shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate group, and each person who controls such partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subdivi-

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vision 1 is a corporation, the commissioner may require that the information called for in this subdivision shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the person learns of the change. ~~The insurer shall send the amendment to its shareholders.~~

Sec. 3. Minnesota Statutes 1990, section 60D.02, subdivision 4, is amended to read:

Subd. 4. **APPROVAL BY COMMISSIONER; HEARINGS.** (1) Pursuant to the powers granted under section 60A.03, subdivision 2, the commissioner shall approve any acquisition of control unless, after a public hearing, the commissioner finds that the acquiring party has failed to sustain the burden of showing that none of the following conditions exist:

(i) after the change of control the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of the acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly;

(iii) the financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders ~~or the interests of any securityholders who are unaffiliated with the acquiring party;~~

(iv) ~~the terms of the offer, request, invitation, agreement or acquisition are unfair and unreasonable to the securityholders of the insurer;~~

(~~v~~) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(~~vi~~) (v) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the acquisition of control.

(2) The hearing shall be held within 60 days after the statement is filed, and at least 20 days' notice shall be given by the commissioner to the person filing the statement. Not less than seven days' notice shall be given by the person filing the statement to the insurer and to any other persons as may be designated

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by the commissioner. ~~The insurer shall give notice of the hearing to its security-holders.~~ The commissioner shall make a determination within 30 days after conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected, has the right to present evidence, examine and cross-examine witnesses, offer oral and written arguments according to the procedure for contested cases under chapter 14. The persons participating may conduct discovery proceedings in the same manner as prescribed for the district courts of this state. All discovery proceedings shall be concluded not later than five days prior to the commencement of the public hearing.

Sec. 4. Minnesota Statutes 1990, section 60D.06, is amended to read:

**60D.06 CONFIDENTIAL TREATMENT.**

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 60D.05, and all information reported pursuant to section 60D.03, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders; ~~shareholders~~ or the public will be served by the publication, in which event the commissioner may publish all or any part in such manner as the commissioner may deem appropriate.

Sec. 5. Minnesota Statutes 1990, section 60D.08, subdivision 1, is amended to read:

Subdivision 1. **INJUNCTIONS.** Whenever it appears to the commissioner that an insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of sections 60D.01 to 60D.13 or of any rule or order issued by the commissioner, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Ramsey county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate sections 60D.01 to 60D.13 or any rule or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders; ~~creditors and shareholders~~ or the public may require.

Sec. 6. Minnesota Statutes 1990, section 60D.08, subdivision 2, is amended to read:

Subd. 2. **VOTING OF SECURITIES; WHEN PROHIBITED.** No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired in contravention of the provisions of sections 60D.01 to

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60D.13 or of any rule or order issued by the commissioner may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of sections 60D.01 to 60D.13 or of any rule or order issued by the commissioner, the insurer or the commissioner may apply to the appropriate court as designated in subdivision 1, to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 60D.02 or any rule or order issued by the commissioner, to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of the shareholders, and for other equitable relief as the nature of the case and the interests of the insurer's policyholders, ~~creditors and shareholders~~ or the public may require.

Sec. 7. Minnesota Statutes 1990, section 60D.11, is amended to read:

**60D.11 RECEIVERSHIP.**

Whenever it appears to the commissioner that any person has committed a violation of sections 60D.01 to 60D.13 which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, ~~creditors, shareholders~~ or the public, the commissioner may proceed as provided in chapter 60B, to take possession of the property of such domestic insurer and to conduct the business thereof.

Sec. 8. Minnesota Statutes 1990, section 60D.12, subdivision 2, is amended to read:

Subd. 2. **STAY OF ACTION.** The filing of an appeal pursuant to this section shall stay the application of any order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that a stay would be detrimental to the interests of policyholders, ~~shareholders, creditors~~ or the public.

Sec. 9. Minnesota Statutes 1990, section 302A.011, subdivision 38, is amended to read:

Subd. 38. **CONTROL SHARE ACQUISITION.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

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(a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;

(b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1-201, clause (10);

(c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;

(d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction;

(e) an acquisition from the issuing public corporation; or

(f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;

(g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or

(h) an acquisition subsequent to January 1, 1991, pursuant to an offer to purchase for cash all shares of the voting stock of the issuing public corporation:

(i) which has been approved by a majority vote of the members of a committee comprised of the disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d); and

(ii) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan. All shares the beneficial ownership of which is acquired within a 120-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition.

Sec. 10. Minnesota Statutes 1990, section 302A.011, subdivision 39, is amended to read:

Subd. 39. **ISSUING PUBLIC CORPORATION.** "Issuing public corporation" means a corporation ~~(a)~~ which has at least 50 shareholders; ~~(b) which (1)~~

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has its principal place of business or its principal executive office located in this state or (2) owns or controls assets located within this state that have a fair market value of at least \$1,000,000, and (e) which (1) has more than ten percent of its beneficial or record shareholders resident in this state, (2) has more than ten percent of its shares owned beneficially or of record by residents in this state, or (3) has more than 1,000 beneficial or record shareholders resident in this state.

Sec. 11. Minnesota Statutes 1990, section 302A.011, subdivision 49, is amended to read:

Subd. 49. **INTERESTED SHAREHOLDER.** (a) "Interested shareholder," when used in reference to any issuing public corporation, means any person ~~(other than the issuing public corporation or any subsidiary of the issuing public corporation)~~ that is (1) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation or (2) an affiliate or associate of the issuing public corporation and at any time within the four-year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares entitled to vote of the issuing public corporation. Notwithstanding anything stated in this subdivision, if a person who has not been a beneficial owner of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation immediately prior to a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action shall become a beneficial owner of ten percent or more of the voting power solely as a result of the share repurchase, recapitalization, or similar action, the person shall not be deemed to be the beneficial owner of ten percent or more of the voting power for purposes of clause (1) or (2) unless:

(i) the repurchase, recapitalization, conversion, or similar action was proposed by or on behalf of, or pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) with, the person or any affiliate or associate of the person; or

(ii) the person thereafter acquires beneficial ownership, directly or indirectly, of outstanding shares entitled to vote of the issuing public corporation and, immediately after the acquisition, is the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation.

(b) Interested shareholder does not include:

(1) the issuing public corporation or any of its subsidiaries; or

(2) a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or its subsidiary, or a fiduciary of the plan when acting in a fiduciary capacity pursuant to the plan.

For purposes of this subdivision, shares beneficially owned by a plan

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described in clause (2), or by a fiduciary of a plan described in clause (2) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

Sec. 12. Minnesota Statutes 1990, section 302A.011, is amended by adding a subdivision to read:

**Subd. 52. OFFEROR.** "Offeror" means a person who makes or in any way participates in making a takeover offer. Offeror does not include a bank or broker-dealer loaning funds to an offeror in the ordinary course of its business or a bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror and not otherwise participating in the takeover offer. When two or more persons act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise, whether or not in writing, for the purpose of acquiring, owning, or voting shares of a target company, all members of the partnership, syndicate, or other group constitute "a person."

Sec. 13. Minnesota Statutes 1990, section 302A.011, is amended by adding a subdivision to read:

**Subd. 53. TAKEOVER OFFER.** (a) "Takeover offer" means an offer to acquire shares of an issuing public corporation from a shareholder pursuant to a tender offer or request or invitation for tenders, if, after the acquisition of all shares acquired pursuant to the offer:

(1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding shares of the issuing public corporation and was directly or indirectly the beneficial owner of less than ten percent of any class of the outstanding shares of the issuing public corporation before commencement of the offer; or

(2) the beneficial ownership by the offeror of any class of the outstanding shares of the issuing public corporation would be increased by more than ten percent of that class and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class of the outstanding shares of the issuing public corporation before commencement of the offer.

(b) Takeover offer does not include:

(1) an offer in connection with the acquisition of a share which, together with all other acquisitions by the offeror of shares of the same class of shares of the issuer, would not result in the offeror having acquired more than two percent of this class during the preceding 12-month period;

(2) an offer by the issuer to acquire its own shares unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

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(3) an offer in which the issuing public corporation is an insurance company subject to regulation by the commissioner of commerce, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.

Sec. 14. Minnesota Statutes 1990, section 302A.553, subdivision 3, is amended to read:

Subd. 3. **LIMITATION ON SHARE PURCHASES.** Except for redemptions under section 302A.671, subdivision 6, a publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the market value thereof if the shares have been beneficially owned by the person ~~or persons~~ for less than ~~six months~~ two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

(1) shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

(2) shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and

(3) shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

Sec. 15. [302A.675] TAKEOVER OFFER; FAIR PRICE.

Subdivision 1. FAIR PRICE REQUIREMENT. An offeror may not acquire shares of a publicly held corporation within two years following the last purchase of shares pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapital-

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ization, reorganization, or any other similar transaction, unless the shareholder is afforded, at the time of the acquisition, a reasonable opportunity to dispose of the shares to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

Subd. 2. EXCEPTION. Subdivision 1 does not apply if the acquisition of shares is approved by a committee of the board's disinterested directors before the purchase of any shares by the offeror pursuant to a takeover offer. The provisions of section 302A.673, subdivision 1, paragraph (d), relating to a committee of disinterested directors, apply to this section.

Sec. 16. **REPEALER.**

Minnesota Statutes 1990, sections 60D.02, subdivision 5; and 80B.06, subdivision 7, are repealed.

Sec. 17. **EFFECTIVE DATE.**

Section 9, paragraph (h), is effective the day following final enactment.

Presented to the governor May 1, 1991

Signed by the governor May 2, 1991, 4:35 p.m.

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**CHAPTER 59—S.F.No. 286**

*An act relating to cities of the first class; providing for the organization and powers of neighborhood revitalization policy boards; amending Minnesota Statutes 1990, section 469.1831, subdivision 6.*

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

Section 1. Minnesota Statutes 1990, section 469.1831, subdivision 6, is amended to read:

Subd. 6. **CITIZEN PARTICIPATION REQUIRED.** (a) The neighborhood revitalization program must be developed with the process outlined in this subdivision.

(b) The development of the program must include the preparation of neighborhood action plans. The city must organize neighborhood planning workshops to prepare the neighborhood action plans. The neighborhood workshops must include the participation of, whenever possible, all populations and interests in each neighborhood including renters, homeowners, people of color, business owners, representatives of neighborhood institutions, youth, and the elderly. The neighborhood action plan must be submitted to the policy board established under paragraph (c). The city must provide available resources, information, and technical assistance to prepare the neighborhood action plans.

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