

SENATOR JOE GIMSE
Transportation Policy & Finance Chair
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Senate

State of Minnesota

July 6, 2011

The Honorable Kathleen Blatz
Special Master
State of Minnesota
St. Paul, MN 55155

Dear Justice Blatz --

We write to you not in our capacity as the Chairs of the Minnesota Senate and House of Representatives Transportation Committees, but as concerned citizens. Yet, as the Transportation Committee Chairs, we possess an intimate knowledge of transportation -- that includes funding, safety priorities and the critical need to preserve our state's transportation infrastructure. We respectfully request that you deem the ongoing highway construction projects funded from the constitutionally dedicated Highway User Tax Distribution Fund (HUTDF) a core function of government. Listed below is the rationale for our request:

D) Constitutionality

The Minnesota Constitution requires the state to construct, improve and maintain public highways. Therefore, this should be deemed a core function of government. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, Court File No. 62-CV-11-5203 (Ramsey Co. D. Ct., filed June 29, 2011).

Article XIV of the Minnesota State Constitution is entitled *Public Highway System* and creates the HUTDF, as well as the trunk highway system, the county-state aid system and the municipal street aid system and their corresponding funding formulas. (See Exhibit A.) Money in the HUTDF may be used only for highway purposes and consists of revenue derived from the following sources:

- Gas Tax -- 100 percent of this tax is fully dedicated to the HUTDF
- License Tab Fees -- 100 percent of these fees are fully dedicated to the HUTDF
- Motor Vehicle Sales Tax -- 60 percent of these taxes are fully dedicated to the HUTDF



The June 29th Order issued by Chief Judge Kathleen Gearin, declares the following to be Core Functions of Government because they are mandated by the State Constitution:

- Responsibilities of the five constitutional officers (Governor, Lieutenant Governor, Attorney General, Secretary of State and State Auditor), and
- Education Funding for Public School Systems.

In Conclusion of Law, #3, Judge Gearin goes on to say, “Failure to fund these independent core functions, even temporarily...contravenes the Minnesota Constitution.”

2) Public Safety

In Conclusion of Law, #4, Judge Gearin stated, “Core functions include matters relating to the life, health and safety of Minnesota citizens.” Road construction projects are critical to maintain the life and safety of all users of Minnesota roads.

The Minnesota Department of Transportation’s (Mn/DOT) Statewide Transportation Policy Plan (STPP) identifies traveler safety as Policy 1. As a result, Mn/DOT developed a strategic plan to update public safety innovations for all highway construction projects. Road projects are selected in part based on performance measures that include injuries and fatalities. Safety enhancements such as cable median barriers, intersection improvements and roundabouts are incorporated into all applicable projects.

Some construction projects that are now sidelined were selected to receive funding from the Federal Highway Safety Improvement Program. These projects include safety features such as guardrails, shoulder improvements, turn-lane construction, lighting improvements, signage, vertical and horizontal curvature correction, roundabouts, median treatments, enhanced edge lines, rumble strips and cable median barriers.

Shuttering road construction projects has compromised the safety of the traveling public. Based upon Judge Gearin’s Conclusion of Law, #4, these projects should be deemed core functions of government.

3) Preservation of Public Property

In Conclusion of Law, #4, Judge Gearin stated, “Core functions include matters relating to...the maintenance and preservation of public property.” The Minnesota Department of Transportation’s Statewide Transportation Policy Plan (STPP) identifies Infrastructure Preservation as Policy 2. Minnesota’s transportation system includes approximately 132,000 miles of roadways with more than 19,000 bridges and 50 full-service safety rest areas. This infrastructure has a replacement value in the billions of dollars. To limit planned state road construction would jeopardize Mn/DOT’s ability to maintain and preserve this critical state asset which could also lower the state’s bond rating due to continued depreciation in value.

According to Mn/DOT, contractors on highway construction projects will be entitled to a contract price increase to cover the extra work and delays caused by the government shutdown. These claims must be paid by state funds that are otherwise dedicated to maintaining and preserving public property.

4) **Precedent**

In his 2005 ruling, Ramsey County District Court Judge Gregg Johnson ordered the funding of over 200 state highway construction projects during the partial state government shutdown as the projects were deemed to further the core functions of state government. Based on the court order, the Department of Finance appropriated over \$31 million from the Trunk Highway Fund during the 2005 shutdown. (See Exhibit B, Transportation Department Appropriations, Pages 3 and 4)

5) **Relief Requested**

In conclusion, we respectfully request that the Special Master deem the ongoing highway construction projects funded from the constitutionally dedicated Highway User Tax Distribution Fund (HUTDF) a core function of government and authorize expenditure of state funds to continue active construction projects, including staff and operating costs necessary to support these operations.

In the event of a protracted government shutdown, we respectfully reserve the right to submit additional petitions to the Special Master or Court regarding other transportation related activities including contracting for future projects.

We appreciate your consideration of this request. If we can be of any assistance, please do not hesitate to contact us.

Sincerely,



Senator Joe Gimse
Chairman, Senate Transportation Committee



Representative Mike Beard
Chairman, House Transportation Committee

cc: Governor Mark Dayton
Attorney General Lori Swanson

EXHIBIT A

Minnesota Transportation Finance

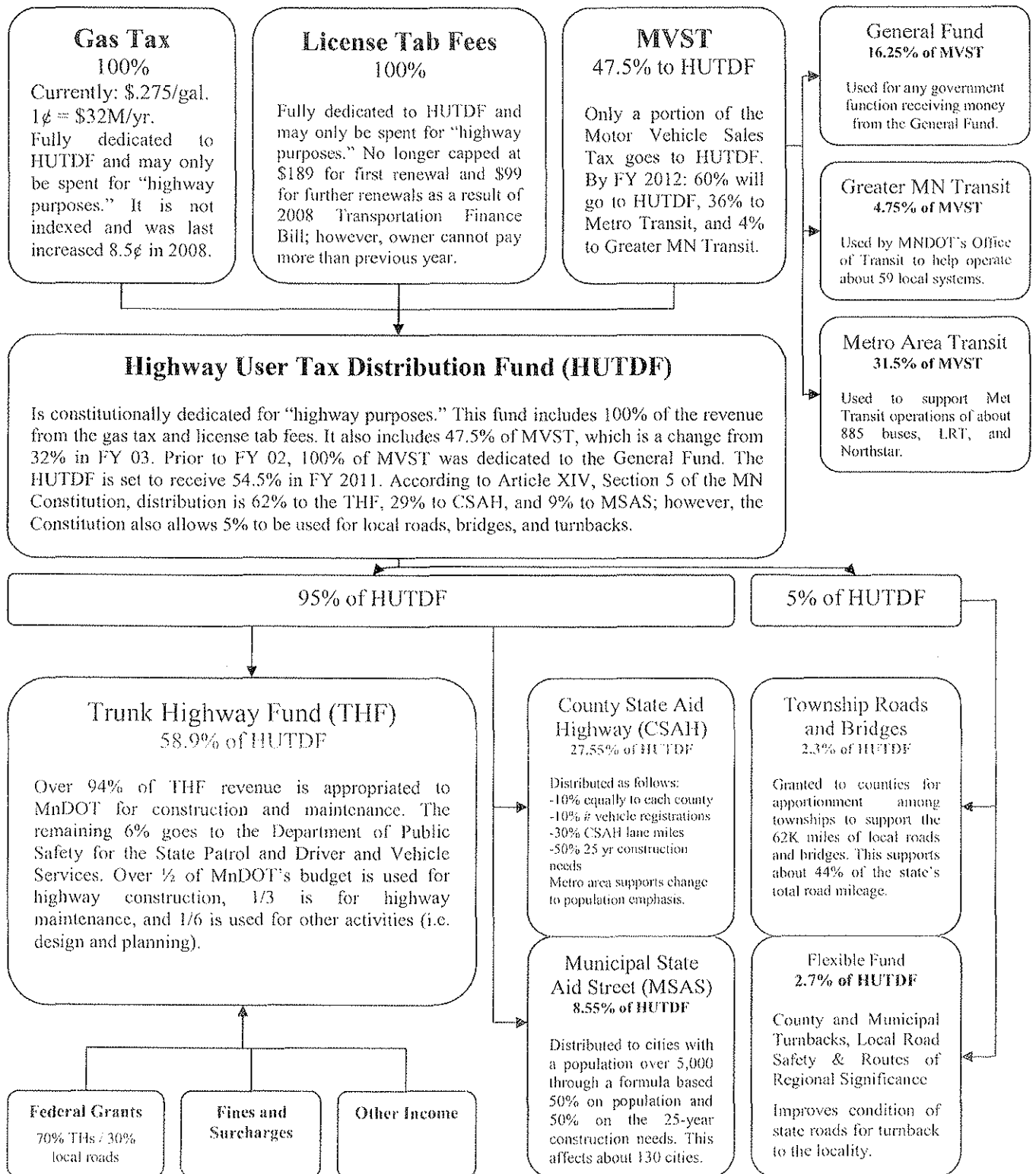


EXHIBIT B

Part One - Appropriations

**MN Department of Finance
 FY 2006 Court Ordered Operations
 Appropriation Amounts Established Under the Court-Ordered Legal Authority**

| AGENCY / FUND | APPROPRIATION NAME | AMOUNT |
|--------------------------------------|--------------------------------|--------------------|
| Center for Arts Education GENERAL | PCAE GENERAL FUND | 11,564 |
| Dept of Education | | |
| GENERAL | EDUCATION AGCY OPERATIONS | 100,000 |
| GENERAL | HEAD START | 2,000,000 |
| GENERAL | EDUCATION | 300,000,000 |
| GENERAL | EDUC AID | 50,000 |
| GENERAL | RESIDENTIAL MARKET VALUE | 10,000 |
| GENERAL | ARGICULTURE MARKET VALUE | 5,000 |
| Total Dept of Education | | 302,165,000 |
| Minnesota State Academies GENERAL | MINNESOTA STATE ACADEMIES | 101,278 |
| Health Dept | | |
| GENERAL | COMMUNITY & FAMILY HLTH PROMO | 145,000 |
| GENERAL | HEALTH PROTECTION | 479,100 |
| GENERAL | ADMINISTRATIVE SUPPORT SVCS | 111,000 |
| Total GENERAL | | 735,100 |
| | STATE GOVT SPECIAL REV | 162,000 |
| | STATE GOVT SPECIAL REV | 199,700 |
| Total STATE GOVT SPECIAL REV | | 361,700 |
| Total Health Dept | | 1,096,800 |
| Human Services Dept | | |
| GENERAL | FINANCIAL OPERATIONS | 583,938 |
| GENERAL | FINANCIAL OPERATIONS | 583,938 |
| GENERAL | FINANCIAL OPERATIONS | 593,000 |
| GENERAL | MA BASIC HC GR-FAM & CHILD | 119,500,000 |
| GENERAL | AGING & ADULT SERVICES GR | 1,044,000 |
| GENERAL | DEAF AND HARD OF HEARING GR | 8,000 |
| GENERAL | DEAF AND HARD OF HEARING GR | 40,000 |
| GENERAL | OTHER CHILD & ECON ASSIST | 638,000 |
| GENERAL | MN FOOD ASSISTANCE PROG GRANTS | 25,000 |
| GENERAL | MINN SUPPLE ASSIST GR | 2,500,000 |
| GENERAL | GROUP RESID HOUSING GRANTS | 5,700,000 |
| GENERAL | MINN FAMILY INVEST PR | 10,500,000 |
| GENERAL | GENERAL ASSISTANCE GR | 2,600,000 |
| GENERAL | ALTERNATIVE CARE GRANTS | 2,000,000 |
| GENERAL | GAMC GRANTS | 400,000 |
| GENERAL | GAMC GRANTS | 40,000,000 |
| GENERAL | PRESCRIPTION DRUG - PROG | 750,000 |
| GENERAL | MFIP CHILD CARE ASSIST GRANTS | 600,000 |

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| AGENCY / | FUND | APPROPRIATION NAME | AMOUNT |
|---------------------------------------|---------------------------|--------------------------------|--------------------|
| | GENERAL | EARLY CHILDHOOD ED GRANT | 100,000 |
| | GENERAL | BSF CHILD CARE ASST GRANTS | 600,000 |
| | GENERAL | HC GRANTS-OTHER ASSIST | 112,000 |
| | GENERAL | HC GRANTS-OTHER ASSIST | 204,000 |
| Total | GENERAL | | <u>189,081,875</u> |
| | HEALTH CARE ACCESS | MNCARE GR - HCAF | 150,000 |
| | HEALTH CARE ACCESS | MNCARE GR - HCAF | 39,500,000 |
| Total | HEALTH CARE ACCESS | | <u>39,650,000</u> |
| Total Human Services | | | <u>228,731,875</u> |
| Medical Practices Board | STATE GOVT SPECIAL REV | MEDICAL PRACTICE OPERATIONS | 56,000 |
| Nursing Board | STATE GOVT SPECIAL REV | NURSING OPERATIONS | 59,000 |
| Pharmacy Board | STATE GOVT SPECIAL REV | PHARMACY OPERATIONS | 59,000 |
| Dentistry Board | STATE GOVT SPECIAL REV | DENTISTRY OPERATIONS | 31,000 |
| Chiropractic Examiners Board | STATE GOVT SPECIAL REV | CHIROPRACTOR LICENSING | 10,000 |
| Optometry Board | STATE GOVT SPECIAL REV | OPTOMETRY LICENSING | 5,000 |
| Nursing Home Admin Board | STATE GOVT SPECIAL REV | NURSING HOME ADMINISTRATION | 10,000 |
| | STATE GOVT SPECIAL REV | NURSING HOME ADMINISTRATION | 14,000 |
| Total Nursing Home Admin Board | | | <u>24,000</u> |
| Social Work Board | STATE GOVT SPECIAL REV | SOCIAL WORK OPERATIONS | 12,000 |
| Marriage & Family Therapy Board | STATE GOVT SPECIAL REV | MARRIAGE & FAMILY THERAPY OPER | 6,000 |
| Podiatric Medicine Board | STATE GOVT SPECIAL REV | PODIATRY LICENSING | 4,000 |
| Veterinary Medicine Board | STATE GOVT SPECIAL REV | VETERINARY MEDICINE LICENSING | 14,000 |

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| AGENCY / FUND | APPROPRIATION NAME | AMOUNT |
|---|--------------------------------|------------------|
| Emergency Medical Services Bd | | |
| GENERAL | EMERGENCY MEDICAL SERVICES OPS | 19,000 |
| STATE GOVT SPECIAL REV | HEALTH PROFESSIONAL SERVICES | 26,000 |
| Total Emergency Medical Services Bd | | 45,000 |
| Psychology Board | | |
| STATE GOVT SPECIAL REV | PSYCHOLOGY LICENSING | 21,000 |
| Behavioral Health & Therapy Bd | | |
| STATE GOVT SPECIAL REV | BEHAVIORIAL HLT & THERAPY OPER | 11,000 |
| STATE GOVT SPECIAL REV | ALCOLOH & DRUG CONSELORS OPS | 6,000 |
| Total Behavioral Health & Therapy Bd | | 17,000 |
| Ombudsman MH/MR | | |
| GENERAL | OMBUDSMAN FOR MH & MR | 69,053 |
| Public Safety Dept | | |
| GENERAL | STATE PATROL- GENERAL FUND | 167,000 |
| GENERAL | SECURITY GOVERNOR'S RESIDENCE | 15,000 |
| Total GENERAL | | 182,000 |
| TRUNK HIGHWAY | DPS ADMINISTRATION-THF | 49,000 |
| TRUNK HIGHWAY | OFFICE OF COMMUNICATIONS | 8,000 |
| TRUNK HIGHWAY | TECHNICAL SUPPORT SERVICES | 23,000 |
| TRUNK HIGHWAY | STATE PATROL- TRUNK HIGHWAY | 3,790,000 |
| TRUNK HIGHWAY | TROOPER CANDIDATE SCHOOL | 27,000 |
| TRUNK HIGHWAY | COMMERICAL VEHICLE ENFORCEMENT | 488,000 |
| TRUNK HIGHWAY | DRIVER VEHICLE SERVICES-THF | 165,000 |
| Total TRUNK HIGHWAY | | 4,550,000 |
| HIGHWAY USERS TAX DISTRIBUTION DRIVER VEHICLE SERVICES-HUTD | | 41,000 |
| Total Public Safety Dept | | 4,773,000 |
| Transportation Dept | | |
| GENERAL | GREATER MINNESOTA TRANSIT ASST | 996,247 |
| STATE AIRPORTS | AERONAUTICS OPERATION | 49,865 |
| TRUNK HIGHWAY | HIGHWAY IMPROVEMENT | 28,012,536 |
| TRUNK HIGHWAY | HIGHWAY IMPROVEMENT | 35,000 |
| TRUNK HIGHWAY | HIGHWAY IMPROVEMENT | 214,457 |
| TRUNK HIGHWAY | HIGHWAY IMPROVEMENT | 83,000 |
| TRUNK HIGHWAY | RAIL SERVICE PLAN & P | 12,832 |
| TRUNK HIGHWAY | ELECTRONIC COMMUNICAT | 31,663 |
| TRUNK HIGHWAY | COMMON CARRIER RATE R | 29,663 |
| TRUNK HIGHWAY | MAINTENANCE OPERATION | 5,133 |

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| AGENCY / | FUND | APPROPRIATION NAME | AMOUNT |
|----------------------------------|----------------------|--------------------------------|-----------------------|
| | TRUNK HIGHWAY | TRAFFIC ENGINEERING | 24,697 |
| | TRUNK HIGHWAY | 800 MHZ SYSTEM | 7,933 |
| | TRUNK HIGHWAY | METRO CONSTRUCTION | 663,572 |
| | TRUNK HIGHWAY | DULUTH CONSTRUCTION | 215,771 |
| | TRUNK HIGHWAY | BEMIDJI CONSTRUCTION | 80,456 |
| | TRUNK HIGHWAY | BRAINERD CONSTRUCTION | 226,569 |
| | TRUNK HIGHWAY | DETROIT LAKES CONSTRUCTION | 82,989 |
| | TRUNK HIGHWAY | ROCHESTER CONSTRUCTION | 153,445 |
| | TRUNK HIGHWAY | DISTRICT 7 CONSTRUCTION | 142,315 |
| | TRUNK HIGHWAY | WILLMAR CONSTRUCTION | 105,119 |
| | TRUNK HIGHWAY | METRO MAINTENANCE | 208,989 |
| | TRUNK HIGHWAY | DISTRICT 1 MAINTENANCE | 111,927 |
| | TRUNK HIGHWAY | BEMIDJI MAINTENANCE | 55,927 |
| | TRUNK HIGHWAY | BRAINERD MAINTENANCE | 34,730 |
| | TRUNK HIGHWAY | ST. CLOUD MAINTENANCE | 46,197 |
| | TRUNK HIGHWAY | DISTRICT 4 MAINTENANCE | 63,927 |
| | TRUNK HIGHWAY | ROCHESTER MAINTENANCE | 87,927 |
| | TRUNK HIGHWAY | DISTRICT 7 MAINTENANCE | 113,927 |
| | TRUNK HIGHWAY | WILLMAR MAINTENANCE | 54,927 |
| | TRUNK HIGHWAY | ADMINISTRATIVE SERVICES | 10,265 |
| | TRUNK HIGHWAY | HR AND WORKFORCE EQUITY | 23,097 |
| | TRUNK HIGHWAY | FINANCIAL MANAGEMENT | 12,832 |
| | TRUNK HIGHWAY | COMMISSIONERS OFFICE | 10,265 |
| | TRUNK HIGHWAY | COMMUNICATIONS OFFICE | 5,133 |
| | TRUNK HIGHWAY | PROGR MGMT DIV ADMIN | 2,566 |
| | TRUNK HIGHWAY | TECHNICAL SUPPORT | 23,097 |
| | TRUNK HIGHWAY | BRIDGES | 34,264 |
| | TRUNK HIGHWAY | LAND MANAGEMENT | 17,964 |
| | TRUNK HIGHWAY | MATERIALS ENGINEERING | 97,388 |
| | TRUNK HIGHWAY | CONSTRUCTION&INNOVATIVCONTRACT | 28,229 |
| | TRUNK HIGHWAY | ENVIRONMENTAL SERVICES | 20,530 |
| | TRUNK HIGHWAY | EEO CONTRACT MGMT | 7,699 |
| | TRUNK HIGHWAY | GOVERNMENT RELATIONS | 2,566 |
| | TRUNK HIGHWAY | F & A ADMINISTRATION | 2,566 |
| | TRUNK HIGHWAY | OPERATIONS SAFETY & TECHNOLOGY | 5,133 |
| | TRUNK HIGHWAY | BRIDGES & STRUC - MAINT | 18,264 |
| | TRUNK HIGHWAY | ENVIRONM SVCS-MAINT | 5,133 |
| | TRUNK HIGHWAY | TECH SUPPORT - MAINT | 2,566 |
| | TRUNK HIGHWAY | TRAFFIC ENGINEERING - MAINT | 10,565 |
| | TRUNK HIGHWAY | OSTD-MAINTENANCE | 20,530 |
| Total | TRUNK HIGHWAY | | 31,266,280 |
| Total Transportation Dept | | | 32,312,392 |
| | | Grand Total | \$ 569,623,962 |