

April 6, 2017

Senator Scott Newman, Chair
Senate Transportation Finance and Policy Committee
3105 Senate Office Building
St. Paul, MN 55155

RE: SF 1060 (Omnibus Transportation Bill)

Dear Chair Newman:

I have had an opportunity to review Senate File 1060, and appreciate the effort the committee invested in crafting this piece of legislation. This letter contains my reactions to the provisions in the bill and I hope you will consider them as the legislation moves forward.

Thank you for your proposal to increase funding for roads and bridges. It suggests that we agree that increased funding is needed to adequately preserve and improve highways and roads in all jurisdictions across the state. In addition, I appreciate your having included several of the policy provisions that the Governor recommended on behalf of the department. When they are approved these changes will help the department better serve the people of Minnesota.

Unfortunately, in our view, the additional funding that would be provided if this bill were enacted is insufficient to adequately address the needs of the state and local systems. In addition, the exclusive reliance on funding from sources that history has proven to be unreliable makes it questionable whether the funding amounts will be available in future years.

Below I have listed specific concerns with SF 1060.

SF 1060 Provides Insufficient Funds to Preserve, Modernize and Strategically Expand the System

The \$383 million for the biennium of new funding dedicated to the Highway User Tax Distribution Fund provides only \$226 million to the Trunk Highway Fund. This is nowhere close to meeting the \$600 million annual funding needed to preserve and improve the trunk highway system. At this funding level the department will be unable to adequately invest in preserving the system and will be unable to strategically expand the system along key regional corridors, and address bottlenecks. These are the types of investments Minnesota needs to remain economically competitive.

SF 1060 Lacks Sustainable and Dedicated Funding Sources for Transportation

The funding plan reflected in this legislation completely lacks a long-term dedicated funding source for roads and bridges. A dependable funding stream is critically important for the efficient management and improvement of our transportation system, and the lack of predictability is a significant concern. Funding fluctuations during the long lead times required to develop projects to maintain and improve the system create inefficiencies that have financial impacts on MnDOT, contractors and project partners. The need for reliable funding streams is the primary reason why ninety-six percent of transportation funds across the country come from non-general fund sources.

Although some people believe that reducing the gas tax rate can occur as readily as a decrease in a general fund appropriation, historical experience suggests otherwise. The gas tax in Minnesota has never been reduced in Minnesota since it was first enacted 1925. On the other hand, there are recent examples of general funds and MVST dollars that had been designated for transportation during one biennium, and were appropriated for other purposes in the next biennium. History has shown that constitutionally dedicated funds are more stable, predictable, and reliable than funds from other sources.

SF 1060 Eliminates Flexible Fund for Turnbacks

MnDOT turns back highway segments to local jurisdictions when they start to perform a function more similar to a local road than a regional connector. Turning the road back usually benefits both the state and the local road authority. However, the road must be in a reasonable condition before it can be turned back and the flexible fund is the source of funding for this purpose. Sometimes it makes sense for the jurisdictional transfer and the road improvement to occur at different times. Putting these funds in the trunk highway fund will make it much more difficult to finance efficient jurisdictional transfers.

SF 1060 Earmarks

Three projects are earmarked for trunk highway bond funding in the bill. Funding projects with earmarks bypasses the planning and programming processes at MnDOT, causing delays to projects already programmed. Since the projects are only partially funded, it also creates pressure to divert additional funds from other projects to complete the earmarked projects. This is the definition of projects being selected without application of criteria and a lack of transparency. In addition, all of the earmarked projects require right of way acquisition which cannot be funded with trunk highway bonds due to federal arbitrage rules, and some require local road construction, which cannot be financed with trunk highway funds.

While some prefer the term “constituent request” to earmark, MnDOT receives thousands of constituent requests throughout the state on an annual basis. We work with local jurisdictions to thoughtfully and fairly plan, scope and build projects worth hundreds of millions of dollars that take years to efficiently stage and execute. In fact, the legislative auditor praised the consistency and success of our standard project selection process. Earmarking is the process politicians use to leapfrog certain projects over others that is neither fair nor based on objective criteria. Earmarking is inherently unfair and disruptive to the efficient management of the entire transportation system.

SF 1060 Eliminates Funding for the MnDOT Passenger Rail Office

The complete lack of funding for passenger rail operations is a concern. Considerable work has been done on passenger rail over the last several years. The state investment has attracted considerable federal funds and prepared the state to implement additional passenger rail service to Chicago in the relatively near future. This effort has been supported by a partnership with Wisconsin and all of the information available indicates a relatively high demand for this service.

SF 1060 No Funds for State Plane Purchases

The two MnDOT passenger airplanes are reaching the end of their useful service lives and need to be replaced. The airplanes are used by state agencies to perform their duties effectively and efficiently and are often used to transport elected officials. The pilots use these planes to perform necessary inspections of airports and helipads across the state. The current aircraft face increasing maintenance costs and down time.

SF 1060 Lack of a General Fund Increase for Freight

There is no general fund base appropriation for rail freight programs to manage the increasing number and complexity of freight rail traffic in Minnesota. Stable funding is needed for project development, planning, and grant administration to address safety issues in addition to responding to concerns from constituents as well as elected officials. This funding would help address issues with the overall state rail safety, rail service and rail impacts on communities.

SF 1060 No Funding for the Working Capital Loan Fund

The Working Capital Loan Fund Program supports the goal of equity and reducing disparities in contracting by providing loans to small businesses that provide necessary operating capital to participate in MnDOT projects. The omnibus bill does not provide any funding for this important program. The Governor's recommendation of a onetime infusion of \$1.5M for this program is a minimal amount of funding for a program with so many positive outcomes.

SF 1060 Local Assistance Not Included

The Governor's recommendation to provide \$2.5M for tribal roads, \$19M for aid to larger cities and \$4M for Americans with Disabilities Act projects on local roads allows communities and Minnesotans an opportunity to address local infrastructure needs.

SF 1060 Workforce Optimization Not Included

A base increase to hire approximately 260 operations maintenance staff would provide a full complement of snow plow truck operators to cover two shifts per day and staff critical spring and summer maintenance work. It would also relieve the current practice of hiring for cross-over positions in program planning and delivery for snow plowing. Enacting this provision would make project development and snow and ice removal more efficient.

SF 1060 Highway 55/County Road 19 Railroad Crossing

This legislation is an earmark and the language includes an overly aggressive timeline. MnDOT is working already with local stakeholders to find a solution to the safety concerns on Highway 55 and County Road 19. The traffic problems can only be solved by working with the railroad to eliminate the issues with parked trains on a new rail siding. The requirements in the bill are not realistic and if constructed would not address the traffic problem. It is highly unlikely that a consensus solution can be reached by the date identified in the bill.

SF 1060 Project Selection Requirements

The bill contains numerous provisions related to the MnDOT project selection process for both Corridors of Commerce and the regular highway construction program. Although some of these changes reflect the department intention to implement recommendations of the recent legislative audit, the bill goes further and could result in unintended consequences. The bill includes a provision prohibiting project readiness from being a major factor in determining which projects to construct. This factor is critical to maximizing the expenditure of state and federal funds in a timely manner. The language also requires projects to be constructed in priority order. It is an unrealistic and impractical mandate to expect that hundreds of projects around the state can be scheduled in such an inflexible manner.

SF 1060 Tribal Training Appropriation Not Included

This funding would provide training to state agency employees to improve their effectiveness working with the eleven Minnesota Indian tribes. This training has increased the efficiency of MnDOT and other state agency employees by providing training on how to more appropriately interact, communicate and collaborate with tribes and tribal governments. A General Fund appropriation is needed to extend this training to other agencies and is included in the House Omnibus Transportation bill.

SF 1060 Inadequately Funding Building Services

The omission of the Governor's recommendation to increase funding for Building Services significantly restricts the ability to maintain, renovate and replace MnDOT facilities. Keeping facilities functioning well and in a state of good repair is critical to efficient operations and provide clean functional services to the traveling public. Funding for these activities has not kept pace with identified needs.

SF 1060 Highway Sponsorship Program Not Included

This proposal would provide MnDOT the authority to enter into agreements with businesses, civic groups or individuals for the maintenance and improvement of Trunk Highway property. Examples include sponsoring plantings to enhance pollinator habitat, the Adopt-A-Highway program, and highway beautification projects. The legislation also gives MnDOT authority to give recognition (such as signage) to program participants. This helps create effective partnerships between the state and business or other organizations to help MnDOT improve roadsides at minimal cost.

SF 1060 Utility Relocation on the Interstates Not Included

This proposal would require utilities installed along interstate highways in the future to relocate at company expense. Currently utilities installed along interstates are relocated at MnDOT expense when required to accommodate construction projects. Relocation costs of utilities along all other trunk highways is paid for by utilities. The current policy may have made sense as the interstate system was developed, but the system is now well established and utilities are well aware of the risk of relocation. This would only apply to utilities placed after passage of this change, grandfathering in all existing utilities.

SF 1060 Truck Permits Cleanup Language Not Included

This proposal repeals two sets of changes made to oversize/overweight permit statutes that are not being used. One relates to linking the expiration date of an oversize/overweight permit to a vehicle's registration, and the other cancels a \$30,000 appropriation made in 2012 to tie the MnDOT permit system to the DPS vehicle registration system. Both of these provisions would be costly and impracticable for MnDOT and DPS to implement, in major part due to the pace of Minnesota License and Registration System (MnLARS) development. This provision would only create more efficient delivery of services yet was left out of the bill.

SF 1060 Needed Rail Provisions Not Included

Rail Safety Inspectors

This provision included hiring up to five additional rail inspectors, plus a program manager. The State Rail Safety Inspection Program ensures compliance with federal and state safety regulations which will help reduce the number of rail accidents. Class I & II railroads would be assessed annually for the actual costs of the program. This important safety provision ensures that railroad tracks and equipment are operating safely within Minnesota.

Grade Crossing Safety Improvements

Rail Safety Account

Increasing funding estimated at about \$3.725M would allow for a significant increase in the number of small grade crossing safety projects that could be built on state and local roads.

Railroad Assessment for Safety Improvements on Priority Rail Corridors

The intent of this investment program is to improve grade crossings and reduce or eliminate grade crossing crashes, fatalities, injuries, and the release of hazardous materials. The Governor's recommendation was to fund this program from an annual assessment on Class I railroads.

SF 1060 Excessive Number of New Reports Mandated

Nine new reports, plans and studies mandated in this bill. MnDOT currently produces over 30 statutorily mandated reports on annual, biennial or four year cycles. Adding more reports and studies increases operating costs and decreases efficiency, which ultimately reduces benefits delivered to users of the system.

SF 1060 Speed Enforcement on I-35E

The state of Minnesota, the Federal Highway Administration, and MnDOT signed an agreement that was incorporated into a court order that allowed the construction of I-35E southwest of downtown St. Paul. Among other commitments these parties made to get authority to construct the freeway was limiting the speed limit on this four mile section to 45 miles per hour. This provision to restrict the recording of violations of this speed limit is a thinly veiled attempt to void the spirit and intent of the agreement. The state could face sanctions and lawsuits as a result of this abrogation of trust. The integrity of the state seems a high price to pay for less than a minute in travel time savings.

SF 1060 Clean Air Act Settlement Money

This provision pertains to an estimated \$47 million settlement from a federal suit against Volkswagen for their cheating. The language requires Legislative appropriation before Minnesota's share of these funds can be spent. The Minnesota Pollution Control Agency, as the fiscal agent for these funds, is concerned this language will, at best, delay Minnesota's funding or, at worst, make the state ineligible to receive funds.

SF 1060 Active Transportation Program

While the department supports the creations of an active transportation program, there are several issues that have to be resolved with the language currently in the bill.

- MnDOT cannot physically transfer National Highway Performance Program (NHPP) funds to a state account, because they are only available as reimbursements of project expenditures. Funds from this program can only be used for projects on the National Highway System (NHS). Diverting these funds from work on the NHS would reduce work to preserve pavement and bridges on the system.
- Non-profits would not be eligible recipients of federal funds so a government agency would have to administer the program.
- There are also constitutional restrictions about where state funds can be used which are not adequately addressed. GO bonds cannot be used on a trunk highway. MnDOT's Office of State Aid may have to administer those as we may not have an eligible funding source to staff a non-trunk-highway, non-federal-aid program.

- If this transfer were made it would directly reduce the money that is used for non-National Highway System projects, negatively impacting non-NHS pavement and bridge conditions.
- Grantees cannot have five years to execute their project. Federal funds only have a life of three years and GO bonds only have a life of four years.
- Federal obligation authority must be used every year. Past experience with local projects indicate there will be a high attrition and delay rate, meaning MnDOT will have to flex its program to cover for those delays. That creates another burden on our program to maintain flexibility and increases the risk that we will lose federal funds.
- Bonds cannot be used for maintenance or for non-infrastructure projects.

We do appreciate your work on this bill and your inclusion of many of the Governor's policy recommendations. Thank you for the opportunity to provide comments on SF 1060. We look forward to working with you in the coming weeks on these important issues.

Sincerely,



Charles A. Zelle
Commissioner