A06-840

# State of Minnesota
# In Court of Appeals

State of Minnesota ex rel. Speaker of House of Representatives
Hon. Steve Sviggum, et al.,

Appellants,

vs.

Peggy Ingison, in her official capacity as Commissioner of Finance,
or her successor, and the State of Minnesota,

Respondents.

## Brief of Amicus Curiae
## Eighty-fourth Minnesota Senate
## in Support of Appellants


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## Interest of Amicus Curiae

The Minnesota Senate is one of the two houses of the Legislature created by article IV, § 1, of the Minnesota Constitution, to which article XI, § 1, gives the power to control the payment of money out of the state treasury. Fifteen members of the Eighty-fourth Minnesota Senate are individual plaintiffs in this action.[1] By Senate Resolution 167,[2] the Senate voted to support this appeal on behalf of itself and all future Legislatures and directed the Office of Senate Counsel, Research, and Fiscal Analysis to submit a brief in support of appellants.[3]

## Argument

### I. The Power of the Purse is Reserved for the Legislature

#### A. The Common Law Gave the Power of the Purse to the Legislature

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[1] State Senators Ellen Anderson, Michele Bachmann, Leo Foley, David Hann, John Hottinger, Cal Larson, Warren Limmer, Sharon Marko, Tom Neuville, Sean Nienow, Jane Ranum, Mady Reiter, Ann Rest, David Senjem, and Charles Wiger.

[2] *Journal of the Senate* 6047 (May 20, 2006). Text also available at: <http://www.senate.leg.state.mn.us/resolutions/ls84/0/SR0167.htm>.

[3] The following disclosure is made to comply with Rule 129.03 of the Minnesota Rules of Civil Appellate Procedure: This brief was not authored by counsel for any party in whole or in part, though counsel for appellants was given an opportunity to review and comment on it. No one other than the Minnesota Senate made a monetary contribution to the preparation or submission of the brief.

Modeled on the U.S. Constitution, article I, § 9, cl. 7,[4] the Minnesota Constitution, article XI, § 1, provides: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."[5] Both provisions codify the common law maxim that the legislature holds the power of the purse. Every other state, except Mississippi, Rhode Island, and Utah, has a similar provision.[6] The supreme courts of Mississippi and Rhode Island have found it implied in their constitutions as a gift of the English common law:

> Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature . . . . This supreme prerogative of the Legislature, called in question by Charles I, was the

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[4] "No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time."

[5] Before the Constitution was restructured in 1974, article IV, § 12, included a sentence that said, "No money shall be appropriated except by bill." The ballot question presented this deletion to the people as having no legal consequence. *See* Act of Apr. 10, 1974, ch. 409, § 3, 1974 Minn. Laws 787, 819. It is clear that "an appropriation by law" means a law enacted by the Legislature passing a bill.

[6] Ala. Const. 1901, art. IV, § 72; Alaska Const. art. IX, § 13; Ariz. Const. art 9, § 5; Ark. Const. 1874, art. 5, § 29; Cal. Const. art. XVI, § 7; Colo. Const. art. V, § 33; Conn. Const. art. IV, § 22; Del. Const. art. VIII, § 6(a); Fla. Const. art. VII, § 1(c); Ga. Const. art. III, § IX(I); Haw. Const. art. VII, § 5; Idaho Const. art. VII, § 13; Ind. Const. art. X, § 3; Ia. Const. art. III, § 24; Kan. Const. art II, § 24; Ky. Const. § 230; La. Const. art. III, § 16(A); Me. Const. art. V, pt. third, § 4; Md. Const. art. III, § 32; Mich. Const. 1963, art. IX, § 17; Mo. Const. art. IV, § 28; Mont. Const. art. VIII, § 14; N.C. Const. art. V, § 7(1); N.D. Const. art. X, §12; Neb. Const. art. III, § 25; Nev. Const. art. 4, § 19; N.J. Const. art. VIII, § II (2); N.M Const. art. IV, § 30; N.Y. Const. art. VII, § 7; Ohio Const. art. 2, § 22; Okla. Const. art. V, § 55; Ore. Const. art. IX, § 4; Pa. Const. art. 3, § 24; S.C. Const. art. X, § 8; S.D. Const. art. XII, § 1; Tenn. Const. art. II, § 24; Tex. Const. art. 8, § 6; Vt. Const. ch. II, § 27; Va. Const. art. X, § 7; Wash. Const. art. VIII, § 4; Wis. Const. art. VIII, § 2; W. Va. Const. art. X, § 3; Wyo. Const. art. 3, § 35. *Compare* Ill. Const. art. VIII, § 2(b); Mass. Const. pt. 2, ch. II, § I, art. XI; N.H. Const. art. 56.

> issue upon which Parliament went to war with the King, with the result that ultimately the absolute control of Parliament over the public treasure was forever vindicated as a fundamental principle of the British Constitution. The American commonwealths have fallen heirs to this great principle, and the prerogative in question passes to their Legislatures without restriction or diminution, except as provided by their Constitutions, by the simple grant of the legislative power.

*Colbert v. State*, 39 So. 65, 66 (Miss. 1905). *See also In re Incurring of State Debts*, 37 A. 14 (R.I. 1896).

One of the first statements of the maxim can be found in clauses 12[7] and 14[8] of the *Magna Carta* that the barons forced King John to sign in 1215. Those clauses required the king to convene a representative assembly of nobles and clergy and obtain their consent before levying certain taxes.

After four more centuries of struggle with the Crown, Parliament invited William and Mary to the throne after the Glorious Revolution of 1688. As part of the invitation, to which the new monarchs assented, Parliament included the clause: "That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal." *The English Bill of Rights*, Feb. 13, 1689 (visited July 5, 2006) <http://www.yale.edu/lawweb/avalon/england.htm>.

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[7] "No [taxes] may be levied in our kingdom without its general consent . . . ." *Magna Carta*, as numbered and translated from the Latin by the British Library (visited July 4, 2006) <http://www.fordham.edu/halsall/source/magnacarta.html>.

[8] "To obtain the general consent of the realm for the assessment of [a tax] . . . we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day . . . and at a fixed place. In all letters of summons, the cause of the summons will be stated. . . ." *Id.*

The Supreme Court of Nebraska has explained the conflict that gave rise to the clause:

> Legislative appropriations are the outgrowth of the long struggle in England against royal prerogative. By degrees, the power of the crown to levy taxes was restrained and abolished, but it was found that so long as the crown might, at its own discretion, disburse the revenue, the reservation to the people, through parliament, of the power to raise revenues, was not a complete safeguard. Efforts to control the crown in disbursement, as well as in the collection, of revenues, culminated with the revolution in 1688; and since then the crown may only disburse moneys in pursuance of appropriations made by act of parliament. Three evils were at that time felt: In the first place, the use of the realm's revenue for purposes unlawful or distasteful to the people; secondly, the inability to control the crown in the amounts expended for particular objects; and, thirdly, the disposition of the crown to avoid encroachments upon its self-asserted prerogatives, by dispensing for long periods with sessions of parliament. By requiring appropriations for limited periods, it was sought to remedy all three evils,– the first two by making appropriations specific in amount and object, and the third by making them for limited periods, so that frequent parliamentary sessions should be absolutely necessary.

*State ex rel. Norfolk Beet-Sugar Co. v. Moore*, 69 N.W. 373, 375 (Neb. 1896). *See also, Edwards v. Childers*, 229 P. 472, 474, 1924 OK 652, ¶¶ 10-11; *State ex rel. Birdzell v. Jorgenson*, 142 N.W. 450, 457 (N.D. 1913); *Humbert v. Dunn*, 24 P. 111 (Cal. 1890); *Journal Pub. Co. v. Kenney*, 24 P.96, 97 (Mont. 1890).

At the Federal Convention of 1787, the maxim that the legislature held the power of the purse was discussed on June 13 in connection with a proposal by Elbridge Gerry of Massachusetts that "money bills" must originate in the house. *Journal of the Federal Convention* (Boston, 1819) 121; 1 *Records of the Federal Convention of 1787*, 233 (M. Farrand ed. 1911) <http://memory.loc.gov/ammem/amlaw/lwfr.html>. As James Madison recorded him saying, "it was a maxim that the people ought to hold the purse strings" and the house was closer to the people. 1 *Farrand Records* 233.

As Justice Story said in his 1833 *Commentaries on the Constitution*:

> [I]t is highly proper, that congress should possess the power to decide, how and when any money should be applied for [government] purposes. If it were otherwise, the executive would possess an unbounded power over the public purse of the nation; and might apply all its monied resources to his pleasure. . . . It is wise to interpose, in a republic, every restraint, by which the public treasure, the common fund of all, should be applied, with unshrinking honesty to such objects, as legitimately belong to the common defence, and the general welfare. Congress is made the guardian of this treasure . . . .

III J. Story, *Commentaries on the Constitution of the United States*, § 1342 (1833 ed., *reprinted in* Const. Soc. online ed. 1997) <http://www.constitution.org/js/js_332.htm>.

For 600 years after the *Magna Carta*, the legislative branch had fought to wrest control of the public purse from the executive. With enactment of the English Bill of Rights and ratification of the U.S. Constitution, it seemed that the public purse strings were securely in the hands of the legislature on both sides of the Atlantic. As the U.S. Supreme Court said:

> No officer, however high, not even the President, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. . . . It is a well-known constitutional provision, that no money can be taken or drawn from the Treasury except under an appropriation by Congress. See Constitution, art. 1, 9 (1 Stat. at Large, 15).
>
> However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion.

*Reeside v. Walker*, 52 U.S. 272, 291 (1850). *Accord, Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427-28 (1990); *Cincinnati Soap Co. v. United States*, 301 U.S. 308 (1937).

When federal agencies shut down during a budget impasse, the Attorney General looks to the law as enacted by Congress to determine what functions to continue. 43 U.S.

Op. Atty. Gen. 293, 5 U.S. Op. Off. Legal Counsel 1 (1981). No money is paid out of the treasury of the United States without an appropriation by law.

### B. The Legislative Power of the Purse is Preserved in the Minnesota Constitution

The legislative power of the purse was preserved in the Minnesota Constitution of 1857 as article IX, § 9, (renumbered as article XI, § 1, in the restructured Constitution of 1974).

Seven hundred years after the *Magna Carta*, the Minnesota Supreme Court had no doubt that the legislative branch controlled the public purse: "The purpose of the Constitution in prohibiting the payment of money from the state treasury, except upon an appropriation made by law, was intended to prevent the expenditure of the people's money without their consent first had and given." *State ex rel. Nelson v. Iverson*, 125 Minn. 67, 71, 145 N.W. 607, 608 (1914).

### C. A State Obligation May Not Be Liquidated Without an Appropriation

In the years when the taxes at issue in *Nelson v. Iverson* were distributed, the State of Minnesota maintained many departments using open and standing appropriations of department fees and receipts. *See State ex rel. Bradley v. Iverson*, 126 Minn. 110, 147 N.W. 946 (1914). As part of a progressive reform of state government budgeting practices, Laws 1913, chapter 140, abolished all open and standing appropriations, with certain exceptions, and began the biennial budget system used today.

The budgetary reform of 1913 caused the Minnesota Supreme Court to look more closely at the distinction between the legal obligation to pay money and the authority to liquidate the obligation by making the payment. In 1920, the Court held that a statute directing the State Auditor to reimburse counties for one-third the amount paid to dependent mothers under the law, did not authorize the State Auditor to issue warrants when the Legislature had not appropriated money for that purpose. As the Court said:

> The mere creation of the liability on the part of the state, or promise of the state to pay, if the statute may thus be construed, is of no force in the absence of an appropriation of funds from which the liability may be discharged.

*State ex rel. Chase v. Preus*, 147 Minn. 125, 127; 179 N.W. 725, 726 (1920). *Accord, Beltrami County v. Marshall*, 271 Minn. 115, 135 N.W.2d 749 (1965); *State ex rel. Spannaus v. Schneider*, 297 Minn. 520, 211 N.W.2d 516 (1973); *Morris v. Perpich*, 421 N.W.2d 333, 339-40 (Minn. App. 1988).

The Court in *Preus* noted that Minnesota's system of biennial budgeting, in which direct appropriations are made by the Legislature every two years in specific amounts and for limited times, was different from the budgetary system of open and standing appropriations that had been in effect before 1913. Statutory language that imposed an obligation would no longer be considered an implied appropriation to carry it out. "Decisions of other states operating under different and perhaps more liberal systems are not helpful and cannot be followed." 147 Minn. at 127, 179 N.W. 725 at 726. As the Court said more recently in summarizing the meaning of those earlier decisions, "A statute creating a liability on the part of the state is not an 'appropriation by law' within the meaning of this

constitutional provision." *Butler v. Hatfield*, 277 Minn. 314, 323, 152 N.W.2d 484, 493 (1967).

The rule summarized in *Butler v. Hatfield* has been followed by the Minnesota appellate courts in subsequent cases. When the Minnesota Zoological Board constructed its monorail "Zoo Ride" in 1977, pursuant to statutory language that made Zoo Board operations subject to biennial appropriations, the Legislature limited its appropriations for the Zoo Ride to the receipts generated by the ride. When those receipts were insufficient to make debt service payments as they came due, the Minnesota Supreme Court held that "the state cannot be required to pay money from the general fund for the Zoo Ride unless and until the legislature appropriates funds for that purpose." *U.S. Fire Ins. Co. v. Zoological Board*, 307 N.W.2d 490, 496 (Minn. 1981).

In the 1980s, the State University Board constructed wood-fired boiler heating plants at its Bemidji and St. Cloud campuses under a statutory authorization to pay for them with the energy savings they generated. When there were no savings, and the Legislature first limited and then eliminated appropriations to pay for the boilers, the Court of Appeals ruled that "the state's obligation [to pay for the boilers] ended when the appropriation was not made." *First Trust Co. v. State*, 449 N.W.2d 491, 496 (Minn. App. 1990).

Without an appropriation by the Legislature of money to liquidate an obligation, the obligation must remain outstanding until the Legislature sees fit, by making an appropriation, to liquidate it.[9]

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[9] Amicus does not concede that the constitutional language cited by Appellants' Brief at 24-25, 34, other than that relating to debt service on state bonds, authorizes

### D. Minnesota Statutes Impose Additional Restrictions on Expenditures from the State Treasury

Eliminating most open and standing appropriations to run state departments was not the only way the Minnesota Legislature in the Twentieth Century sought to plug holes in the public purse. It enacted several other laws restricting the payment of money out of the state treasury without or in excess of an appropriation.

Laws 1907, ch. 272, § 2 (codified as amended at Minn. Stat. § 16A.138 (2004)), makes it a misdemeanor and cause for removal from office for a state official to incur indebtedness on behalf of the state without an appropriation by the Legislature to pay it. Laws 1937, ch. 457, § 36 (codified as amended at Minn. Stat. § 16A.139 (2004)) makes it illegal and cause for removal from office for a state official or employee to spend money for any purpose other than the purpose for which the money was appropriated.

Governor Harold Stassen's reform act of 1939 (Laws 1939, ch. 431) imposed a number of new restrictions designed to ensure that state money was spent only as directed by the Legislature. Article 3, § 3 (codified as amended at Minn. Stat. § 16A.57 (2004)) prohibits a state official from spending state money without an appropriation. Article 2, § 16(c) (codified as amended at Minn. Stat. § 16A.14, subd. 3 (2004)) prohibits a state agency from spending an appropriation until a spending plan for that appropriation has been approved by the Commissioner of Finance. Article 2, § 16(d) (codified as amended at Minn. Stat. § 16A.14, subd. 4 (2004)) requires an agency's spending plan to be within the amount

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payment without a legislative appropriation. Debt service on state bonds is also covered by statutory appropriations. *E.g.*, Minn. Stat. § 16A.641, subd. 10 (2004) (general obligation bonds); § 167.50, subd. 1 (2004) (trunk highway bonds).

and purpose of the appropriation on which it is based. Article 2, § 16(h), (codified as amended at Minn. Stat. § 16A.15, subd. 3(a) (2004)) makes a state employee who pays money out of the state treasury without or in excess of an appropriation subject to removal from office and personally liable for the amount paid out.

The law in Minnesota requiring an appropriation before money is paid out of the state treasury is clear.

## II. The Judicial Branch is not Authorized to Exercise this Legislative Power

In addition to reserving the power of the purse for the Legislature, the Minnesota Constitution prohibits the other branches from exercising legislative powers "except in the instances expressly provided in this constitution." Minn. Const. 1974, art. III.

The Governor is expressly given a role in the appropriation process: the Governor may sign or veto a bill containing an appropriation, or sign the bill and veto an item of appropriation. Minn. Const. 1974, art. IV, § 23. But to rule that the Governor may veto the transportation appropriations bill and then spend the money covered by those appropriations brings a result that is absurd. *See* Minn. Stat. § 645.17(1) (2004).

Nowhere in the Constitution is it "expressly provided" that the judicial branch may authorize the executive branch to pay money out of the treasury when the Legislature has not appropriated it.

The judicial branch must not assume a power the Framers gave expressly to the Legislature, not to the courts. As George Washington warned in his Farewell Address:

> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an

> amendment in the way which the constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

September 17, 1796, as published in *The Independent Chronicle*, September 26, 1796 <http://www.earlyamerica.com/earlyamerica/milestones/farewell/text.html>.

## III. The Authorities Relied On by the Trial Court Do Not Support its Ruling

The trial court cited three Minnesota Supreme Court cases and one case from Kentucky in support of its order that money be paid out of the state treasury without an appropriation by law.[10] None of those cases support its ruling.

### A. Constitutional Mandates Were Not Being Ignored

The trial court cited *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986), for the proposition that "the legislature could not 'gut' a constitutional executive office by removing 'core functions' of that office and necessary funding."[11] *State ex rel. Sviggum v. Ingison*, slip op. at 7, Appellants' App. 317.

The 2005 Legislature had not "gutted" any constitutional office. No constitutional mandates were being ignored. The "legislative department" described in article IV was

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[10] *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986); *Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 308 Minn. 172, 241 N.W.2d 781 (1976); *Sharood v. Hatfield*, 296 Minn. 416, 210 N.W.2d 275 (1973); *Fletcher v. Commonwealth*, No. 2005-SC-000046-TG, 163 S.W.3d 852 (Ky. 2005).

[11] This case was about responsibilities, not appropriations. The Court ordered that funding transferred to the Commissioner of Finance be returned to the Treasurer. 391 N.W.2d at 783. It did not order that the 7.5 positions abolished by the Legislature, 391 N.W.2d at 779 n.3, be reinstated or that any money be spent that had not been appropriated by the Legislature.

funded.[12] All the constitutional officers named in article V were funded.[13] The judiciary described in article VI was funded.[14] General education aid for a uniform system of public schools[15] and support for the University of Minnesota[16] under article XIII were funded.

It is true that the bill passed by the Legislature to fund the public highway system described in article XIV had been vetoed by the Governor. If any action defied a constitutional mandate to fund certain "core functions," it was that veto. Article XIV, § 2, mandates that the state construct, improve, and maintain the trunk highway system, § 3, the county state-aid highway system, and § 4 the municipal state-aid street system.

So, why did the Ramsey County District Court not rule the Governor's veto invalid? Because the veto was a political act. In the political duel between the executive and legislative branches, when the Legislature thrust with a bill that raised new revenue from a gasoline tax, the Governor parried with a veto. The two branches were still dueling when the court issued its order of June 23 continuing highway funding notwithstanding the veto of the bill that would have provided new revenue. The Constitution does not require, or even permit, a single judge of the district court to step between the duelists and declare one of them the political winner.

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[12] Act of June 3, 2005, ch. 156, art. 1, § 2, 2005 Laws 1628, 1630.

[13] Act of June 3, 2005, ch. 156, art. 1, §§ 3-6, 2005 Laws 1628, 1632-33.

[14] Act of June 2, 2005, ch. 136, art. 1, §§ 1-5, 2005 Laws 901, 903-04.

[15] Minn. Stat. § 126C.20 (2004).

[16] Act of May 26, 2005, ch. 107, art. 1, § 4, 2005 Laws 619, 627.

### B. The Budget Duel Did Not Threaten Judicial Authority

The trial court cited *Sharood v. Hatfield*, 296 Minn. 416, 210 N.W.2d 275 (1973), and *Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 308 Minn. 172, 241 N.W.2d 781 (1976), for "the proposition that the court has the inherent judicial authority to preserve the court's power." *State ex rel. Sviggum v. Ingison*, slip op. at 7, Appellants' App. 317.

But there was no threat to the court's power posed by the political battle over the budget in 2005. The courts had been fully funded during the regular session.

When the political branches are as closely divided as they have been in this state in recent decades, the judicial power of the court is not threatened by staying out of political duels. On the contrary, their involvement in the budget battle of 2005 makes it more likely the courts will be drawn into the political fray in 2007, 2009, and beyond.

Were the judiciary intending to participate in the budget battle again in 2007, it would be appropriate for candidates for district judge in Ramsey County, judge of the Court of Appeals, and justice of the Supreme Court all to be queried on their position on the gas tax, so that the voters might be better informed about the officials who will be making that political decision. That is a scenario neither the judiciary nor anyone else wants.

### C. The State Was Not about to Commit "Suicide"

The final justification the trial court gave for its decision was that "the constitution is not a suicide pact." *State ex rel. Sviggum v. Ingison*, slip op. at 7-8, Appellants' App. 317-

18 (Johnson, C.J.) (quoting *Fletcher v. Commonwealth*, No. 2005-SC-000046-TG, slip op. at 11, 163 S.W.3d 852, 877 (Ky. 2005) (Lambert, C.J., dissenting)).

In July 2005, Minnesota state government was not about to commit suicide. Four of the seven omnibus appropriation bills had already been enacted. Appropriations to fund the constitutional officers, the courts, administrative state departments, public safety, corrections, natural resources, higher education, and many other departments and agencies were in effect. The largest single appropriation in the budget, $10 billion for general education aid to school districts, was covered by a statutory appropriation, Minn. Stat. § 126C.20 (2004),[17] as were other significant expenses for which previous legislatures had found open and standing appropriations to be advisable. *E.g.*, Minn. Stat. § 16A.641, subd. 10 (2004) (debt service on general obligation bonds); § 167.50, subd. 1 (2004) (debt service on trunk highway bonds); § 273.1384, subd. 5 (2005) (market value homestead credit); and § 477A.03, subd. 2 (2005) (local government aid). Only six major agencies were not fully funded by July 1: Education, Health, Human Services, Transportation, Metropolitan Council transit operations, and the trunk highway portion of Public Safety.

The health and human services appropriations had not yet been enacted, and the Governor had vetoed the transportation appropriations bill. But, while continuing their negotiations toward a final budget agreement, the Legislature was considering alternatives for funding state government temporarily.

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[17] As for other education appropriations, not even George Wallace could fund education by executive order when the Alabama Legislature adjourned its regular session without enacting appropriations for education. *Wallace v. Baker*, 336 So.2d 156 (Ala. 1976).

On June 30, 2005, the Senate passed S.F. No. 65, *Journal of the Senate* 521-22, which would have funded education, health and human services, and transportation for the biennium at reduced base levels. On July 2, 2005, the Senate passed S.F. No. 88, *Journal of the Senate* 586-87, which funded education, health and human services, and transportation until July 11, 2005, at the base levels appropriated in 2003. Once a budget agreement was reached on July 8, the House passed the same language as in S.F. No. 88, with the date changed to July 14, in the form of H.F. No. 111, *Journal of the House* 129 (July 8, 2005).

In July 2005, almost 800 years after the *Magna Carta*, the State of Minnesota was not about to grind to a halt. Had the court refused to order that "core functions" be continued without appropriations, the political process was poised to enact them. There was no need for judicial intervention to "preserve the state."

### D. Federal Law Does Not Require a State Legislature to Surrender the Power of the Purse

The trial court made no mention of federal law in its order of March 3, 2006. But in his order of June 23, 2005, ¶ 8, slip op. at 10, Appellants' App. 163, Chief Judge Johnson adopted the Memorandum of Law submitted by the Attorney General arguing that federal law required the State to continue to make payments under various human service programs notwithstanding the absence of appropriations for them. *See* Petitioner's Memorandum in Support of Motion for Relief, 7-9, Appellants' App. 50-52, *In re Temporary Funding of Core Functions* (June 15, 2005). The Memorandum cited four cases[18] to that effect. Each of those

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[18] *Pratt v. Wilson*, 770 F. Supp. 539, 543-44 (E.D. Cal 1991); *Coalition for Basic Human Needs v. King*, 654 F.2d 838, 841 (1st Cir. 1981); *Knoll v. White*, 595 A.2d 665 (Pa. Cmwlth. Ct. 1991); *Coalition for Economic Survival v. Deukmejian*, 171 Cal. App.3d

courts examined the federal laws requiring prompt payment to recipients of Aid to Families with Dependent Children ("AFDC") and concluded that the Supremacy Clause of the U.S. Constitution, article VI, cl. 2, mandated that state constitutional requirements yield to the federal aid program.

None of those courts considered whether that was what Congress intended. When the issue is not a denial of eligibility or a refusal to pay, but rather only a temporary delay in payments occasioned by a political duel between the chief executive and the Legislature over the biennial budget, it is unlikely that Congress, itself a guardian of the public purse having some experience with government shutdowns, would side with the chief executive. *See Tenney v. Brandhove*, 341 U.S. 367, 376 (1951) ("We cannot believe that Congress – itself a staunch advocate of legislative freedom – would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language before us." (Frankfurter, J.) (regarding whether Congress had intended to abolish legislative immunity for state legislators when it enacted the Civil Rights Act of 1871)). Each of the AFDC cases was litigated in haste, and was over in a matter of days or weeks, so there was never time to reflect on what Congress may have intended. Now, away from the heat of the moment, it is possible to see that those cases were wrongly decided.

Where the Ninth Circuit did a more careful review of federal law governing a program other than AFDC, it found that medical assistance need not be paid during a budget stalemate

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954, 957 (Cal. App. 2 Dist. 1985).

that lasted less than a month: "Delayed payment is an inherent feature of the Medicaid statutory and regulatory framework." *Dowling v. Davis*, 19 F.3d 445, 447 (9th Cir. 1994).

The services the Ramsey County District Court ordered to continue during the shutdown went far beyond Temporary Assistance to Needy Families (the successor to AFDC), and far beyond what Congress intended to continue during a state shutdown.

## IV. The Spending Questions Addressed by the Court are Nonjusticiable Political Questions

Even if the common law, the Minnesota Constitution, Minnesota Statutes, and the decisions of the Minnesota appellate courts did not prohibit the payment of money out of the state treasury without an appropriation, the spending questions addressed by the trial court would be outside its jurisdiction because they are nonjusticiable political questions. "What constitutes an essential service [or "core function"] depends largely on political, social and economic considerations, not legal ones." *Fletcher v. Commonwealth*, No. 2005-SC-000046-TG, slip op. at 11, 163 S.W.3d 852, 860 (Ky. 2005).

Among the factors that make a question nonjusticiable is "a lack of judicially discoverable and manageable standards for resolving it." *Baker v. Carr*, 369 U.S. 186, 217 (1962). A few examples of the "core functions" identified by the Ramsey County District Court illustrate its "lack of judicially discoverable and manageable standards" for identifying them and why identifying "core functions" is not a function for the judiciary.

On June 23, 2005, with a week to go before the start of the new biennium, while the political branches were locked in another end-of-the-biennium partisan deadlock, the Ramsey

County District Court ruled that "Metro Transit services (one month only),"[19] MinnesotaCare,[20] the Marriage and Family Therapy Board,[21] and the Board of Podiatric Medicine,[22] were "core functions" that would continue even without appropriations.

### A. Metro Transit Services

When did running a metropolitan transit system become a "core function" of state government mandated by the Constitution? Publicly owned metropolitan transit systems did not even exist in this state in 1857. Running the metropolitan transit system was a function of private enterprise until the 1960s, when Twin City Rapid Transit Company collapsed and its functions were taken over by the Twin Cities Area Metropolitan Transit Commission.[23] When Metro Transit employees go on strike and Metro Transit services shut down, are they violating the Constitution?

Even if it were a constitutional mandate, what "judicially discoverable and manageable standards" limit the funding for this "core function" to "one month only?" The amount and duration of funding for public transit assistance is a political question, not one to be answered by a single judge of the district court.

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[19] *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, No. C9-05-5928 (2nd Dist. Ramsey Cty. June 23, 2005) (Johnson, C.J.), Ex. B at 9.

[20] *Id.*

[21] Ex. B at 8.

[22] Ex. B at 11.

[23] *See* Act of May 25, 1967, ch. 892, 1967 Minn. Laws 1891.

### B. MinnesotaCare

MinnesotaCare has many advocates, as well as critics trying to shut it down. It has suffered significant budget cuts in recent years. It did not exist before 1992.[24] When did continuation of MinnesotaCare become a constitutional mandate? If its critics succeed at getting it repealed, will this Court hold the repealer unconstitutional?

### C. Marriage and Family Therapy and Podiatric Medicine

The Marriage and Family Therapy Board and Board of Podiatric Medicine are doubtless useful agencies, but are they really a "core function" of state government? How many Minnesota marriages would have collapsed because family therapists could not renew their licenses for a few days while the budget was being negotiated? The wisdom of continuing these agencies during the negotiations was clearly a political question.

### D. Ombudspersons

The court did rule that the Ombudsperson for Families was not a "core function" and must be closed.[25] But it continued the Ombudsman for Older Minnesotans,[26] and the Ombudsman for Mental Health-Mental Retardation.[27] Why the difference? Did the court conclude that, as long as family therapists could renew their licenses, families could scrape

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[24] *See* Act of Apr. 23, 1992, ch. 549, 1992 Minn. Laws 1487.

[25] Ex. B at 10.

[26] Ex. B at 9.

[27] Ex. B at 10.

by without their ombudsperson? The court articulated no reason for this disparate treatment. The decision was a political one.

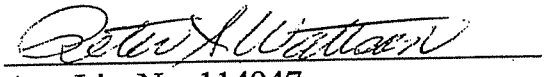
## V. Conclusion

The Ramsey County District Court's order of June 23, 2005, and its supplemental orders thereafter, ignored 800 years of history, the plain language of the Minnesota Constitution, and numerous Minnesota Statutes. They were unsupported by any prior decisions of this Court or the Minnesota Supreme Court.

For the foregoing reasons, the March 3, 2006, judgment of the Ramsey County District Court should be reversed and the case remanded to the district court with an instruction to issue the writ. In the alternative, this Court should issue a declaratory judgment that a district court may not authorize the payment of money out of the state treasury in the absence of an appropriation by law.

Respectfully submitted,

**Peter S. Wattson**
**Senate Counsel**



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August 1, 2006

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**Eighty-Fourth Minnesota Senate**

# Appendix

*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, No. C9-05-5928 (2nd Dist. Ramsey Cty. June 23, 2005) (Johnson, C.J.), Exhibit B

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| ACCOUNTANCY BOARD<br><br>Total Employees: 5 | # of employees = 1<br>$1,160 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Renewal of licenses<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 4 |
| AGRICULTURE DEPT<br><br>Total Employees: ~~500~~503<br><br>• Shared Services reduces critical/core employees by 10 | # of employees = ~~97~~103 + 40 temporary<br>$~~113,000~~166,700 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Commercial Feed Regulation<br>• Agricultural Chemical Emergency Response<br>• Food Inspection<br>• Dairy Inspection<br>• Food Safety Emergency & Food Re-inspection<br>• State Meat Inspection<br>• Laboratory Services<br>  • Agronomy Analysis/Ag Chemical Emergency Response<br>  • Food Safety Emergencies/Dairy and Food Inspection Services<br>  • Monitoring and Regulatory Analysis to State Meat Inspection Program<br>  • Regulatory Analysis for Commercial Feed<br>• Nuclear Response<br>• Biological Control Program<br>• Monitor and control invasive species of exotic plant diseases and pests<br>• Soybean Rust<br>• MDA Lab & Bldg. Construction<br>• Core administrative support, including payroll processing<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down.<br><br>Portions or all of this agency use non-appropriated funds as revenue source:<br><br># of employees = 42<br><br>• Farmers Market Nutrition Program<br>• Grain Inspection<br>• Seed Potato Inspection<br>• Grain Licensing and Auditing Program<br>• Livestock Weighing<br>• Fruit and Vegetable Inspection | ~~361~~318 |
| ANIMAL HEALTH BOARD<br><br>Total Employees: ~~36~~37 | # of employees = 4<br>$6,983 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Investigate suspect rabies cases; and,<br>• Investigate suspect foreign animal disease cases.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~32~~33 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| ARCHITECTURE, ENGINEERING BD<br>Total Employees: ~~9~~25 | # of employees = 1<br>$1,160 / week personnel costs<br>The following portions of your critical operations plan have been **approved**:<br>• Renewal of licenses<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~8~~24 |
| ARTS BOARD<br>Total Employees: 13 | Closed | 13 |
| BARBER AND COSMETOLOGY EXAMINERS BOARD<br>Total Employees: 6 | Closed | 6 |
| BEHAVIORAL HEALTH & THERAPY BOARD<br>Total employees: ~~5~~3 | # of employees = 2<br>$2,320 / week personnel costs<br>The following portions of your critical operations plan have been **approved**:<br>• Renewal of licenses<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~3~~1 |
| CENTER FOR ARTS EDUCATION<br>Total Employees: ~~93~~95 | # of employees = 2<br>$2,320 / week personnel costs<br>The following portions of your critical operations plan have been **approved**:<br>• Property Security<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~91~~93 |
| CHIROPRACTIC EXAMINERS BOARD<br>Total Employees: 5 | # of employees = 1<br>$1,160 / week personnel costs<br>The following portions of your critical operations plan have been **approved**:<br>• Renewal of licenses<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 4 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| COMMERCE DEPT<br><br>Total Employees: ~~328~~313 | # of employees = 5<br>$7,610 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Pre-payment for the Minnesota Message Relay Service<br>• Preserve state's interest in pending litigation and on-going regulatory investigations<br>• On-call payroll processing and IT system support<br><br>Current licenses remain in effect if renewal applications are submitted to the Department of Commerce by 6/30/05 or the appropriate renewal deadline.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~323~~308 |
| DENTISTRY BOARD<br><br>Total Employees: 11 | # of employees = 4<br>$4,640 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Respond to complaints about dental professionals<br>• Issue disciplinary actions<br>• Renewal and issuance of licenses<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 7 |
| DIETETICS & NUTRITION PRACTICE<br><br>Total Employees: 2 | Closed | 2 |
| DISABILITY COUNCIL<br><br>Total Employees: ~~6~~7 | Closed | ~~6~~7 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| EDUCATION<br><br>Total Employees: ~~422~~431 | # of employees = ~~28.5~~29.5<br>$~~33,230~~34,395 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Maltreatment of Minors Program<br>• Support operations to critical functions, including on-call payroll processing<br>• Administrative Management and Communications<br>• Protection of state buildings and other property owned by the government<br>• Critical Sate Categorical and Formula Aids<br>✓ General Education aid, including all linkages to the formula (compensatory, limited English proficiency, extended sparsity, operating capital, training and experience, equity, transition and referendum aid)<br>✓ Special education-regular and excess<br>✓ Head Start funding consistent with CAP critical services programs at the Department of Human Services<br>✓ Cost aid transition for disabled students aid; aid for children with disabilities<br>✓ Tribal contract aid<br>✓ Migrant Head Start Program<br>✓ Alternative teacher compensation aid<br>✓ Charter school building lease aid<br>✓ School lunch aid; school breakfast aid<br>✓ Adults with disabilities aid<br>• Critical Federal Formula Aids<br>✓ Special Education Formula Aid; Special Education Pre-school Formula Aid<br>✓ Special Education Grants for Infants and Families with Disability<br>✓ Title I Formula Aid<br>✓ Title I Program for Neglected and Delinquent<br>✓ Title II – Part A Improving Teacher Quality and Teacher Quality Enhancement<br>✓ Title II – Education Technology Grants Formula Grants<br>✓ Title V Formula Aid<br>✓ Federal Food Program Breakfast; Federal Food Program Lunch; Federal Food Program Special Milk<br>✓ CACFP Food Service; CACFP Commodities<br>✓ Summer Food Program for Children<br>✓ Migrant Educational Grants<br>• No Child Left Behind (NCLB)<br>• Teacher and Administrator Licensing<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support this operation is authorized in the event of a government shut down. | ~~393.5~~401.5 |
| EMERGENCY MEDICAL SERVICES BD<br><br>Total Employees: ~~23~~22 | # of employees = 7<br>$8,120 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Ensuring ambulance coverage in the area of disaster declared by Governor's emergency management response team (On-call only)<br>• Toxicology line<br>• Receive, investigate, and resolve complaints from public<br>• Monitor health professionals in HPSP program<br>• Renewal of licenses<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~16~~15 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| EMPLOYMENT & ECONOMIC DEVELOPMENT (DEED)<br><br>Total Employees: ~~16931~~1665 | # of employees = ~~64~~211<br>~~$98,840~~329,160 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• Unemployment Insurance Benefit Payments and Initial Claims<br>• Process claims for social security disability payments<br>• Public Facilities Authority bond obligation on-call services<br>• Business and Community Development Projects (on-call technical assistance)<br>• On-call payroll processing<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~1629~~1454 |
| ENVIRONMENTAL ASSISTANCE<br><br>Total Employees: ~~63~~61 | Closed | ~~63~~61 |
| EXPLORE MINNESOTA TOURISM<br><br>Total Employees: ~~59~~60 | Closed | ~~59~~60 |
| FARIBAULT ACADEMIES<br><br>Total Employees: 267 | # of employees = ~~56~~100<br>~~$60,000~~107,100 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• Security personnel necessary to provide 24/7 coverage of two sites (16 state buildings) and 60+ acres of government land at an estimated value of $80-$100 million.<br>• Continuation of July 5-22, 2005 Preparatory Assistance Summer School (PASS) at both the Academy for the Deaf and the Academy for the Blind required under Federal Law 94-142 and Minnesota Statute 125A, Individual Disability Education Act (IDEA).<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~211~~167 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| HEALTH DEPT<br>Total Employees: ~~13921~~1387 | # of employees = 209<br>$ 342,750 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• Investigate and respond to Disease Outbreaks<br>• Core Public Health Laboratory Capacity<br>• Health Facilities Complaint Investigation<br>• Safeguard Public Health Data<br>• Emergency Response to biological / chemical / radiological / nuclear and other public health emergencies<br>• Public Health Management & Communications<br>• Facility Security<br>• Health and safety inspections of nursing homes, hospitals, and home health care facilities<br>• Food inspection and food safety or security<br>• Inspections of municipal water supply systems, swimming pools, water well drillers<br>• Routine and non-emergency disease outbreak and intervention activities<br>• All health occupations licensing and inspection activities<br>• Issuance of birth and death certificates<br>• WIC (Women, Infants and Children) Program<br>• MDH building construction - project management<br>• Administrative support, including payroll processing<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~11831~~1178 |
| HOUSING FINANCE AGENCY<br>Total Employees: ~~185~~186 | # of employees = ~~185~~186<br><br>Portions or all of this agency use statutorily appropriated funds as revenue source:<br>• All Functions | 0 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS<br>That May Remain Open<br>All Others Closed | # OF NON-CRITICAL/ NON-CORE EMPLOYEES |
|---|---|---|

HUMAN SERVICES DEPT

Total Employees: ~~68486~~942

# of employees = 4080
$5 million / week payroll
$117 million / week benefits

~~27682~~862

The following portions of your critical operations plan have been approved:

- State Operated Services inpatient and outpatient treatment for mentally ill (MI), chemically dependent (CD), psychopathic personalities (PP), Minnesota Extended Treatment Options (METO) & nursing home; residential services for persons with developmental disabilities (DD); day training and habilitation (DT&H) programs; mental health initiative (MHI); medication administration; MHI – crisis response teams; and DD Community Support Services (CSS); in home support staff; and DD CSS limited triage staff to respond to DD crisis.
- State operated services system-wide support and oversight for client treatment services.
- Cash, child care and food assistance to families & individuals. Monthly and daily issuance for cash & food.
- Child Support Payments: receipt and disbursement; PRISM maintenance and operation for county Child Support agencies.
- Adoption Assistance Payments/Relative Custody Assistance
- Health care - Medical Assistance, General Assistance Medical Care, & Minnesota Care
- Payments to the following MA providers: personal care attendants (PCAs), private duty nursing services; home health agencies; special transportation providers, pharmacy services; waiver services, including CAC, CADI, MR/RC, TBI, Elderly and Alternative Care; day training and habilitation (DT&H); nursing homes (SNF/ICF); volume purchasing for oxygen; children's therapeutic support services (CTSS); adult residential mental health services (ARMHS); mental health crisis services; intensive residential treatment services (IRTS); Rural Health clinics; Indian Health Services and tribal providers; and Federally Qualified Health Clinics.
- Processing premium payments for MinnesotaCare enrollees.
- HIV/AIDS program.
- Senior nutrition and home delivered meals.
- Ombudsman for Older MN.
- Guardianship Services.
- Maintain State-wide Social Service Information System Health Network support to county servers.
- Commodity Distribution via TEFAP (The Emergency Food Assistance Program and USDA).
- MA/EPD approval for late payments requests for good cause.
- Approval of Nursing Home Admissions for persons under 21.
- Approval of OBRA Level 1 and 2 Nursing Home Admission Screening Documents, Transitional Housing and Emergency Services Program -
- Community Action and Community Services Block Grants
- Deaf blind support services, intervenor and independent living services for adult deaf blind
- Residential and community mental health services for deaf, deaf blind, and hard of hearing
- Services for Deaf and Hard of Hearing
- Applicant background checks for persons working in programs licensed by DHS ~~and~~
- ~~MDH~~ DHS Building Construction-Project Management / Converged Network Development
- Findings issued in Special Review Board Hearings already held

Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

Portions or all of this agency use statutorily appropriated funds as revenue source:

- State Operated Services—Outside Laundry Contracts

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| IRON RANGE RESOURCES & REHAB<br>Total Employees: ~~13~~597 | # of employees = ~~13~~597<br>Portions or all of this agency use statutorily appropriated funds as revenue source:<br>• All Functions | 0 |
| LABOR AND INDUSTRY DEPT<br>Total Employees: ~~373~~449<br>• Shared services reduce critical/core employees by 5 | # of employees = ~~39~~57<br>$~~68,250~~99,750 / week personnel costs<br>The following portions of your critical operations plan have been **approved:**<br>• Limited Workplace Safety/Health Regulation-Response to fatalities, imminent danger and catastrophic workplace events.<br>• Boiler Vessel & High Pressure Piping - Routine inspections and inspections of system failures causing fatal or imminent danger and continued licensing of operators<br>• Child Labor Regulation<br>• Benefit Payments to Injured Workers<br>• Routine electrical inspections, carnival events, and license renewals for current electricians (Board of Electricity)<br>• Elevator Inspections on-call for accidents<br>• Plumbing inspections on new and remodeled construction projects<br>• Plumber license renewals<br>• DLI Central and Technology Services, including payroll processing<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down.<br>Portions or all of this agency use non-appropriated funds as revenue source:<br># of employees = ~~3~~13<br>• Building codes and standards inspections of elevators, manufactured homes, and building inspections on projects located throughout the state, as well as plan review. | ~~331~~379 |
| MARRIAGE & FAMILY THERAPY BD<br>Total Employees: 2 | # of employees = 1<br>$1,160 / week personnel costs<br>The following portions of your critical operations plan have been **approved:**<br>• Renewal of licenses<br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 1 |
| MEDIATION SERVICES DEPT<br>Total Employees: ~~16~~15 | Closed | ~~16~~15 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS<br>That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| MEDICAL PRACTICE BOARD<br>Total Employees: ~~23~~22 | # of employees = 7<br>$7,500 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved:**<br><br>• Processing and investigating complaints against physicians and other health care providers alleging unsafe or illegal health care practices.<br>• Issuing new licenses and permits to physicians and other regulated health care providers.<br>• Renewal of licenses and registrations to physicians and other health care providers in order that they may continue to practice medicine legally.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~46~~15 |
| METROPOLITAN COUNCIL TRANSIT | # of employees = 3,660<br><br>The following portions of your critical operations plan have been **approved:**<br><br>• Metro Mobility<br>• Metro Transit services (one month only)<br>• Contracted regular routes (one month only)<br><br>Portions or all of this agency use other funds as revenue source:<br><br>• ~~Metro Mobility~~<br>• ~~Metro Transit services (one month only)~~<br>• ~~Contracted regular routes (one month only)~~<br>• Community Programs<br>• Opt-Out Community Services | 0 |
| NATURAL RESOURCES DEPT<br>Total Employees: ~~24~~43021 | # of employees = 211<br>$245,000 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved:**<br><br>• Provide law enforcement, public safety, and safety training<br>  • Enforce hunting, Off-Highway (OHV) vehicle and watercraft laws<br>  • Wetlands law enforcement<br>  • Firearms and vehicle safety training<br>• Fire Suppression<br>• Flood and Dam Safety Response<br>• Hazmat Response<br>• Fish Hatchery-Custodial, to keep hatchery fish alive<br>• Tree Nursery-Custodial, to water nursery trees to keep them alive<br>• On-call payroll services<br><br>Note: Others (up to 75) may be added in event of emergencies such as fire, flood, tornado, etc.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~226~~32810 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| NURSING BOARD<br>Total Employees: ~~25~~27 | # of employees = 6<br>$4,800 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved**:<br>• Processing complaints alleging unsafe nursing practices.<br>• Issuing of licenses/temporary permits to practice nursing<br>• Renewal of licensure<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~19~~21 |
| NURSING HOME ADMIN BD<br>Total Employees: 2 | # of employees = 1 * = 2<br>$3,480 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved**:<br>• Investigate complaints<br>• Take disciplinary action<br>• Issue and renewal of licenses<br><br>* NHAB administers IT, HR, and payroll services for 15 health related boards.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 1 |
| OMBUDSMAN MH/MR<br>Total Employees: ~~18~~19 | # of employees = 4~~1~~6<br>$~~4,640~~18,320 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved**:<br>• Individual Client Services/Investigations or Reviews<br>• Death and Serious Injury Review<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~14~~3 |
| OMBUDSPERSON FOR FAMILIES<br>Total Employees: ~~3~~4 | Closed | ~~3~~4 |
| OPTOMETRY BOARD<br>Total Employees: 2 | # of employees = 1<br>$1,160 / week personnel costs<br><br>The following portions of your critical operations plan have been **approved**:<br>• Investigate complaints regarding optometrists<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 1 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| PHARMACY BOARD<br><br>Total Employees: 16 | # of employees = 6<br>$6,960 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Investigate complaints<br>• Renewal of licenses<br>• Inspect pharmacies, wholesalers, certain researchers<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 10 |
| PHYSICAL THERAPY BOARD<br><br>Total Employees: 2 | Closed | 2 |
| PODIATRIC MEDICINE BOARD<br><br>Total Employees: 1 | # of employees = .5<br>$580 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Renewal of licenses<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | .5 |
| POLLUTION CONTROL AGENCY<br><br>Total Employees: ~~774~~775 | # of employees = 26<br>$52,000 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Emergency Response Remediation<br>• Maintenance and monitoring of ongoing remedial systems at state owned closed landfills, LUST fund financed sites, and Superfund sites<br>• Air quality monitoring and air quality health alerts<br>• Training and licensing of environmental professionals<br>• On-call payroll services<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~748~~749 |
| PSYCHOLOGY BOARD<br><br>Total Employees: 9 | # of employees = ~~3~~4<br>$~~3,480~~4,640 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br><br>• Renewal of licenses<br>• Complaint investigations<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~6~~5 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| PUBLIC SAFETY DEPT<br>Total Employees: ~~1515~~1457 | # of employees = 712<br>$830,190 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• State Patrol<br>  • All road troopers and selected supervisors<br>  • All Radio Communications Officers and supervisors<br>  • Capitol Security<br>  • Investigate all highway crashes and fatalities<br>  • Enforcement of commercial vehicles<br>  • School bus safety equipment and driver inspections<br>  • Weigh scales will be open<br>  • Flight or air support provided to local police agencies<br>  • Special response team will support local police agencies<br>  • Motor vehicle crash reports remain available<br>• Pipeline Safety<br>  • Investigation and oversight of gas and hazardous liquids<br>  • Hazardous response<br>  • Federal inspection and infrastructure security<br>• Driver and Vehicle Services<br>  • Driver's license renewals and duplicates<br>  • Commercial driver renewals and HazMat endorsements<br>  • Perform status checks for extensions for temporary residents<br>  • Driver evaluation hearings to meet due process requirements<br>  • Inspection of licensed motor vehicle dealers<br>• Administrative support for IT, payroll processing and communications<br>• Commissioner/State Homeland Security Director<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~803~~745 |
| PUBLIC UTILITIES COMM<br>Total Employees: ~~44~~40 | Closed | ~~44~~40 |
| SOCIAL WORK BOARD<br>Total Employees: 10 | # of employees = 2<br>$2,320 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• Renewal of licenses<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | 8 |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| TRANSPORTATION DEPT<br>Total Employees: ~~4851~~4828 | # of employees: 864<br>$1.35 million / week personnel costs<br><br>The following portions of your critical operations plan have been **approved:**<br>• Provide highway operations and maintenance emergency services affecting the safety of the public:<br>  • Barricade replacement<br>  • Repair damaged guardrails or replace any removed construction site barriers<br>  • Repair hazardous conditions on roadways (pavement blow-ups, obstructions, wash-outs, etc.)<br>  • Traffic signal repair, stop and yield sign replacement<br>• Continuation of active (200) construction projects<br>• Hazardous Material Incident Response<br>• Stillwater Lift Bridge operation<br>• Continue ramp meters and MnPASS Hot Lane operations<br>• Assessment of traffic damage to bridges<br>• Maintain aeronautic navigation systems<br>• Maintain pilot weather information systems<br>• Provide computer and communications affecting the State Patrol in shared facilities<br>• Provide Gopher One responses<br>• Provide essential department leadership and management, communications, and support services<br>• Continue to process payment for active county/municipal state aid projects; critical project plan review<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~3987~~3964 |
| VETERANS HOME BOARD<br>Total Employees: ~~404~~91057 | # of employees = ~~87~~41057<br>$961,000 / week personnel costs (874 FTE)<br><br>The following portions of your critical operations plan have been **approved:**<br>• Direct Care and Supporting Operations<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~17~~50 |
| VETERINARY MEDICINE BD<br>Total Employees: 2 | ~~Closed~~<br># of employees = 2<br>$1,580 / week personnel costs<br><br>The following portions of your critical operations plan have been approved:<br>• Oversight of licensed veterinarians regarding compliance with state/federal laws regulating prescribing/dispensing of prescription drugs for use in food animals and the prescribing/dispensing of controlled substances to all animals.<br>• Responding to allegations of licensees practicing veterinary medicine while impaired.<br>• In the event of natural disaster, foreign animal disease outbreak (foot and mouth), bioterrorism event or zoonotic disease outbreak (Salmonella or Monkey Pox), veterinarian credentialing and licensing to practice veterinary medicine in Minnesota.<br><br>Only staff and operating expenses that are **minimally** necessary to continue, secure, or support these operations are authorized in the event of a government shut down. | ~~20~~ |

| AGENCY<br># of current employees | 2005 AGENCY SHUTDOWN DETERMINATIONS<br>CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS<br>That May Remain Open<br>All Others Closed | # OF NON-CRITICAL / NON-CORE EMPLOYEES |
|---|---|---|
| WATER & SOIL RESOURCES BOARD<br>Total Employees: ~~59~~57 | Closed | ~~59~~57 |
| WORKERS COMP COURT OF APPEALS<br>Total Employees: 15 | Closed | 15 |
| ZOOLOGICAL BOARD/Minnesota Zoo<br>Total Employees: ~~222~~271 | # of employees = ~~222~~271<br>Portions or all of this agency use other funds as revenue source:<br>• All Functions | 0 |