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SENATOR JOE GIMSE

Transportation Policy & Finance Chair Senate District 13 303 State Capitol Building 75 Rev. Dr. Martin Luther King, Jr. Blvd. St. Paul, MN 55155 (651) 296-3826 sen.joc.gimse@senate.mn



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:

I) <u>Constitutionality</u>

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

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Representative Mike Beard

Chairman, House Transportation Committee

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cc: Governor Mark Dayton

Attorney General Lori Swanson

EXHIBITA

Minnesota Transportation Finance

Gas Tax

100% Currently: \$.275/gal.

1¢ = \$32M/yr. Fully dedicated to HUTDF and may only be spent for "highway purposes." It is not indexed and was last

increased 8.5¢ in 2008,

License Tab Fees

Fully dedicated to HUTDF and may only be spent for "highway purposes." No longer capped at \$189 for first renewal and \$99 for further renewals as a result of 2008 Transportation Finance Bill; however, owner cannot pay more than previous year.

MVST

47.5% to HUTDF

Only a portion of the Motor Vehicle Sales Tax goes to HUTDF. By FY 2012: 60% will go to HUTDF, 36% to Metro Transit, and 4% to Greater MN Transit.

General Fund 16.25% of MVST

Used for any government function receiving money from the General Fund.

Greater MN Transit

Used by MNDOT's Office of Transit to help operate about 59 local systems.

Metro Area Transit

Used to support Met Transit operations of about 885 buses, LRT, and Northstar.

Highway User Tax Distribution Fund (HUTDF)

Is constitutionally dedicated for "highway purposes." This fund includes 100% of the revenue from the gas tax and license tab fees. It also includes 47.5% of MVST, which is a change from 32% in FY 03. Prior to FY 02, 100% of MVST was dedicated to the General Fund. The HUTDF is set to receive 54.5% in FY 2011. According to Article XIV, Section 5 of the MN Constitution, distribution is 62% to the THF, 29% to CSAH, and 9% to MSAS; however, the Constitution also allows 5% to be used for local roads, bridges, and turnbacks.

95% of HUTDF

5% of HUTDF

Trunk Highway Fund (THF) 58.9% of HUTDF

Over 94% of THF revenue is appropriated to MnDOT for construction and maintenance. The remaining 6% goes to the Department of Public Safety for the State Patrol and Driver and Vehicle Services. Over ½ of MnDOT's budget is used for highway construction, ¼3 is for highway maintenance, and 1/6 is used for other activities (i.e. design and planning).

Municipal State Aid Street (MSAS) 8.55% of HUTDF

County State Aid

Highway (CSAH)

27.55% of HUTDF Distributed as follows:

-10% equally to each county

-10% # vehicle registrations

Metro area supports change

-30% CSAH lane mites

-50% 25 yr construction

to population emphasis.

Distributed to cities with a population over 5,000 through a formula based 50% on population and 50% on the 25-year construction needs. This affects about 130 cities.

Township Roads and Bridges 2.3% of HUTDF

Granted to counties for apportionment among townships to support the 62K miles of local roads and bridges. This supports about 44% of the state's total road mileage.

Flexible Fund 2.7% of HUTDF

County and Municipal Turnbacks, Local Road Safety & Routes of Regional Significance

Improves condition of state roads for turnback to the locality.

Federal Grants 70% THs / 30% local roads

Fines and Surcharges

Other Income

EXHIBIT B

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

AGENCY /	FUND	APPROPRIATION NAME	AWOUNT
Center for Ar	ts Education		
S-11401 101 7 11	GENERAL	PCAE GENERAL FUND	11,564
Dept of Educ	ration		
Dept or Educ	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	ANGIOCETONE MARKET PALOL	302,165,000
Alimananta Ci	tato Apadamina		
Minnesota Si	tate Academies	MINNESOTA STATE ACADEMIES	404 070
	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	HEALTH PROTECTION	162,000
	STATE GOVT SPECIAL REV	POLICY QUALITY & COMPLIANCE	199,700
Tota!	STATE GOVT SPECIAL REV		361,700
Total	Health Dept		1,096,800
Human Serv	ices 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		189,081,875
	HEALTH CARE ACCESS	MNCARE GR - HCAF	150,000
	HEALTH CARE ACCESS	MNCARE GR - HCAF	39,500,000
Total	HEALTH CARE ACCESS		39,650,000
Total	Human Services		228,731,875
Medical Prac			
	STATE GOVT SPECIAL REV	MEDICAL PRACTICE OPERATIONS	56,000
Nursing Boa			
	STATE GOVT SPECIAL REV	NURSING OPERATIONS	59,000
Pharmacy Bi			
	STATE GOVT SPECIAL REV	PHARMACY OPERATIONS	59,000
Dentistry Bo	ard		
	STATE GOVT SPECIAL REV	DENTISTRY OPERATIONS	31,000
Chiropractic	Examiners Board		
	STATE GOVT SPECIAL REV	CHIROPRACTOR LICENSING	10,000
Optometry B	Board		
	STATE GOVT SPECIAL REV	OPTOMETRY LICENSING	5,000
Nursing Hon	ne 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		24,000
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 Me	edicine Board		
	STATE GOVT SPECIAL REV	PODIATRY LICENSING	4,000
Veterinary N	Medicine Board		
,	STATE GOVT SPECIAL REV	VETERINARY MEDICINE LICENSING	14,000

MN Department of Finance
FY 2006 Court Ordered Operations
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AGENCY /		APPROPRIATION NAME	AMOUNT
Emergency M	fedical 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 B	Board		
	STATE GOVT SPECIAL REV	PSYCHOLOGY LICENSING	21,000
Behavioral H	ealth & 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-THE	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	UNIVERVIEW NOCE OF WIGHT HIS	4,550,000
	HIGHWAY USERS TAX DISTRIBUTION DRIVER VEHICLE SERVICES-HUTD		41,000
Total Public Safety Dept			4,773,000
Transportatio	on 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	31,660
	TRUNK HIGHWAY	COMMON CARRIER RATE R	29,663
	TRUNK HIGHWAY	MAINTENANCE OPERATION	5,133
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MN Department of Finance
FY 2006 Court Ordered Operations
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ICY/	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	215,77
	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	
	TRUNK HIGHWAY	BEMIDJI MAINTENANCE	111,927
	TRUNK HIGHWAY	BRAINERD MAINTENANCE	55,927
	TRUNK HIGHWAY	ST. CLOUD MAINTENANCE	34,730
	TRUNK HIGHWAY	DISTRICT 4 MAINTENANCE	46,197
	TRUNK HIGHWAY	ROCHESTER MAINTENANCE	63,927
	TRUNK HIGHWAY	DISTRICT 7 MAINTENANCE	87,927
	TRUNK HIGHWAY	WILLMAR MAINTENANCE	113,927
	TRUNK HIGHWAY	ADMINISTRATIVE SERVICES	54,927
	TRUNK HIGHWAY	HR AND WORKFORCE EQUITY	10,265
	TRUNK HIGHWAY	FINANCIAL MANAGEMENT	23,097
	TRUNK HIGHWAY		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
		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	10,56
	TRUNK HIGHWAY	OSTD-MAINTENANCE	20,530
Totai	TRUNK HIGHWAY		31,266,280
Total Transportation Dept			32,312,392
		Grand Total	\$ 569,623,962