

April 10, 2017

The Honorable Pat Garofalo  
485 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, MN 55155

Dear Representative Garofalo,

I write to express the Commerce Department's thoughts and strong opposition to the items outlined below in your Job Growth and Energy Affordability Omnibus Budget Bill, as it was amended and heads to conference committee. I continue to hope to work with you to address these serious issues moving forward.

Your bill does not contain several critical proposals included in the Governor's Budget recommendations:

- Minnesotans expect safe and sound financial institutions and the Governor's proposal to modernize the funding is critical to ensure the continuation of efficient, low-cost Minnesota-based examinations of banks, credit unions and non-depository institutions across the State. This proposal has broad industry support including, the Independent Community Bankers of Minnesota and the Minnesota Credit Union Network.
- Minnesotans across the state rely on Weights & Measures every day to ensure accuracy and fair measurements in commercial transactions from gas pumps and fuel to grocery stores. Your bill does not include the Governor's proposal to fully fund this request so that we can replace antiquated lab equipment and infrastructure.
- Minnesota investors expect that their retirement funds and investments are handled by reputable companies that protect their money. The Governor's budget proposal would enable the Securities Section to meet its statutory examination responsibilities, deliver investor protection and industry outreach services and timely service to securities professionals that rely on Minnesota-based filings and examinations.
- Minnesotans expect great customer service and data security at government agencies. Your bill does not include the Governor's recommendation to address high-priority needs such as information technology modernization to strengthen data security, upgrade aging systems and deliver more timely, efficient customer services through investment in the Department's central services budget. Without this change item, essential day-to-day functions in the Department will be severely compromised because of inflationary cost pressures.

- Your bill does not achieve better building efficiency in Minnesota buildings that would come from the Guaranteed Energy Savings Program (GESp), nor would it save homeowners, businesses and ratepayers millions of dollars over time while creating, on average, over 1,500 jobs annually through an increase in the state's Energy Efficiency Resource Standard (EERS).
- Minnesota consumers trapped in a cycle of debt with high-cost payday loans need the protections proposed in the Governor's Budget to break free from the cycle of debt. Your bill does not close the loophole for Industrial Loan and Thrift companies nor limit borrowers to no more than four payday loans in a 12-month period.

Commerce also has very serious concerns with your bill's proposed funding reductions for the Department and policy provisions that jeopardize Minnesota's leadership and progress on consumer protection, renewable energy development and energy conservation.

### **Article 1 Section 7: Appropriations**

The Commerce Department opposes your bill's proposed budget cuts to the agency:

- Your bill includes a \$283,000 per fiscal year cut to the Administrative Services Division. This cut would eliminate key functions and system improvements that would leave Commerce more vulnerable to cyber-attacks and prevent the department from providing timely and effective consumer service to Minnesotans.
- Your bill includes a \$678,000 per fiscal year cut to the Energy Division. This cut guts critical State Energy Office functions, preventing Minnesotans from having unbiased information about their energy choices in energy efficiency and renewable energy resources, and when coupled with the President's proposed budget cuts destroys an office that advocated at the PUC for over \$900 million in ratepayer savings last year.
- Your bill includes a \$67,000 cut in FY19 to the Telecommunications Division while adding rider amounts. This effectively doubles cuts to this Division, amplifying the harm to Minnesota consumers as a result of the Voice over Internet Protocol (VoIP) policy provision. The Department expects the VoIP provision to cost \$220,000 per year over the biennium on its own. This will eliminate consumer protections that have existed for over 100 years and hits rural and vulnerable Minnesotans the hardest.
- Your bill includes a \$101,000 per fiscal year cut to the Insurance Division at a time when our actuaries, analysts and policy staff are working closely with the legislature, insurers and other stakeholders to ensure a stable health insurance market for 2018 and update our regulatory oversight of property and casualty and life insurers. These cuts will also have a negative impact on the day-to-day filing approvals and solvency examination functions of the Insurance Division.
- Commerce strongly opposes the provisions in Section 7, subdivision 1, paragraphs (b) and (c) removing the Department's budget flexibility that has allowed

quick, effective responses to statewide disasters and to resolve consumer complaints by allocating necessary resources where they are most critically needed. It eliminates the agency's ability to cross-train staff and provide centralized services in support of the entire agency's work for Minnesotans through the Department's Consumer Services Center. This prohibition destroys the original purpose of merging the agencies that now comprise the Commerce Department. When the reorganization occurred, your predecessors in the legislature understood the complexities of the various divisions when they created a strong and unified department under a single commissioner. Commerce protects Minnesotans on issues that cross divisions. The restrictions proposed in this bill would destroy the very efficiencies and cost savings intended for core functions

- The Commerce Department also opposes the provisions in paragraph (d) which prevent interagency agreements. We fail to understand your objective, as the restrictions included in the bill will make state government slower, less responsive and more expensive. Prohibiting billing or transfers between agencies would eliminate important government efficiencies that currently reduce costs to taxpayers.

## **Article 8: Commerce Policy**

### **Sections 1, 11: Deputy Commissioner Reduction**

Commerce opposes your bill's elimination of important Deputy Commissioner positions at the agency. Cutting these roles from the Department would be detrimental to all of the industries Commerce serves, as well as Minnesota consumers, without achieving any benefit whatsoever.

The Department's authority extends to over 109 different chapters of statute, more than 21 industries, and thus Commerce's Deputy Commissioners oversee work units that cover very complex, unique industries that help the economy and wellbeing of all Minnesotans.

### **Section 6: Pawn Transaction Period of Redemption Limitation**

Commerce opposes your bill's proposal to gut the vital consumer protection which allows a redemption period of 60 days for an individual to renew or extend their contract with a pawnbroker before losing their ability to regain ownership of their property. Your bill removes that opportunity for cash-strapped Minnesotans to reclaim their property.

## **Article 9: Telecommunications Policy**

### **Sections 1, 2, 3: Repeal of Telephone "VoIP" Protections**

Commerce strongly opposes your bill's far-reaching repeal of vital telephone consumer protections currently required under state regulation. If this provision passes, large companies win while Minnesotans, especially those in our state who rely on telephone VoIP

service, lose. They lose the right to appeal to a state regulator to seek assistance on complaints; they lose the right to remedies for inaccurate billing, service termination, failure to obtain service, timely restoration of service, fairness of rates, and “cramming” of unauthorized fees or third-party charges; and they lose on having the certainty of available 911 service when needed.

Specifically, companies providing Voice over Internet Protocol (VoIP) and Internet Protocol (IP) enabled services would be free to:

- Allow “cramming” of unauthorized fees or third-party charges on phone bills.
- Terminate service to customers without notice and without a process to ensure that customers are treated fairly.
- Raise rates without notice and lock customers into long-term contracts with high early termination fees.
- Deny service to customers in rural, tribal or high-cost areas.
- Ignore state efforts to address rural call completion problems.
- Fail to restore timely service in the event of a failure.
- Refuse to participate in Minnesota’s Telephone Assistance Program (TAP) that reduces monthly bills for low-income residential customers.
- Discriminate in favor of their own affiliated companies.

## **Article 10: Energy Policy**

### **Sections 2, 28, 41: Made-in-Minnesota Repeal**

Commerce opposes your bill’s repeal of the Made-in-Minnesota Rebate Program (MiM) and the transfer of unspent money to the Energy Fund, which will result in job losses across the state. The MiM program is a proven job creator and a key component in jump-starting the solar industry in Minnesota and transition to clean, affordable solar energy across the state. Furthermore, because payments may only be made for installations that first began generating electricity between January 1, 2014 and December 31, 2017, Minnesotans who were included in this year’s lottery approvals will be required to pay for the full cost of projects already started. Commerce also opposes the repeal of the MiM Solar Thermal Rebate.

### **Section 3: Clean Air Act Settlement Money Legislatively Taken**

Commerce opposes your bill’s proposal that puts funding into jeopardy by requiring money received due to settlements related to the Clean Air Act be specifically appropriated by law. As the Pollution Control Agency has testified, the settlement tightly specifies acceptable uses and so is not a source of funding for legislative priorities. The state plan is due during a time when the Legislature will not be in session, further complicating approval of an acceptable plan and the use of this money for projects that will benefit Minnesotans and our environment.

### **Sections 4-7, 26-27, 42: RDF Taken for New Energy Fund**

Commerce opposes your bill's attempt to create a slush fund for political pet projects by changing the Renewable Development Fund (RDF). For many years, the RDF has served as a fundamental resource to expand Minnesota's renewable energy market and support emerging energy technologies. At a time when Minnesota must continue moving forward on the renewable energy path, this proposal would derail important energy initiatives and our significant progress. The RDF's success to date has been the result of an impartial RFP process and review by a technical board, with expenditures approved by the PUC. Legislative appropriations over the years seem to have been politically motivated and often not consistent with the fund's mission to support critically needed research and development investments in renewable energy. For example, the legislature required the PUC to approve \$10 million in funding to a coal gasification project that never materialized.

This provision would also abrogate the agreement between the state and a sovereign nation, the Prairie Island Indian Community, over the storage of spent nuclear fuel immediately adjacent to their tribal lands.

### **Sections 8, 9: PUC Commissioners Legislatively Appointed**

Commerce opposes your bill's proposal to politicize the Public Utilities Commission. Making legislative appointments in the manner proposed would politicize a body that must act independently in quasi-judicial fashion to protect the public interest in the regulation of monopoly energy and telecommunications providers. The bill would also prematurely terminate current appointments that are required to be six-year terms under current law.

### **Section 14: State-Mandated Energy Purchases; Public Information**

Commerce opposes your bill's proposal that increases rates by requiring the wholesale cost and amount of energy purchased under certain contracts to be publicly disclosed. This would in turn tend to drive up the price utilities and their ratepayers would pay to acquire such resources.

This would include, but not be limited to, contracts under the Renewable Energy Objective, the Wind Power Mandate and the Biomass Power Mandate. Price and contracted volume information is typically protected as proprietary data. Regulators commonly require utilities to secure such purchases through a competitive bidding process to assure that utility ratepayers are getting the best deal. Requiring bidders to disclose price and volume information would have a chilling effect on bidders' willingness to participate in competitive bidding solicitations.

### **Sections 15-20: Conservation Improvement Program by Cooperative Association or Municipality**

Commerce opposes your bill's proposal to exempt small electric cooperatives and municipal utilities from the Conservation Improvement Program. Minnesotans in 12 out of 44 electric cooperatives (some 40,000 customers) and 38 out of 125 municipal utilities (another 20,000 customers) would be deprived of energy conservation services that utility customers

around the state have come to rely on. These services include energy audits of customer homes and businesses, rebates and other financial incentives for energy efficient lighting and appliances, and building insulation services, among others.

## **Section 22: Economic Growth and Job Growth and Retention Required to be Considered During the Ratemaking Process**

While economic and job growth are important goals, Commerce opposes your bill's proposal to require a utility to calculate the impact of resource options considered in its integrated resource plan filed with the PUC on utility rates, but specifies that any doubt with respect to those options must be resolved to support the economy, job growth, and job retention. In this context, this provision would place a priority on job impact rather than the paramount energy resource objective of reliability of our energy grid, which is critical to our economy and state. The type of analysis required in this provision also would require providing additional staffing expertise resources to the department and the funds appropriated to Commerce to hire experts in the area of economic and job growth. This will have the effect of driving up the costs of such proceedings to the public and all parties in these proceedings without clear evidence that PUC decision-making would be meaningfully aided for the purpose of energy resource planning.

## **Section 24: Certificate of Need Exemptions**

Commerce opposes your bill's exemption for pipelines from the requirement to obtain a Certificate of Need from the PUC prior to construction. The Certificate of Need process assures that large energy facilities serving the state are needed and rationally planned to avoid unnecessary redundancy. Failure to conduct Certificate of Need investigations could lead to costly, duplicative facilities, putting Minnesota landowners, businesses and residents at higher risk. In this case, those risks include risks of accidental releases or explosions of toxic and combustible materials from pipeline failures or hostile actions.

## **Section 40: Pause on Residential PACE Task Force Funding**

While Commerce supports the policy in this paragraph to pause the residential Property Assessed Clean Energy Financing (PACE) program until important consumer protections are enacted, no funding was given to the Department to carry out the work required of organizing and staffing the task force. I urge you to include the funding request of \$83,000 highlighted in our fiscal note so that Commerce can facilitate the meetings and the Task Force can develop its report to the Legislature.

## **Section 43: Line 3 Preferred Route**

Commerce opposes your bill's provision allowing Enbridge, at its sole discretion, to construct the Line 3 pipeline on their preferred route. This provision would negate the PUC Certificate of Need and Routing review and allow a private company to acquire land through eminent domain for a private purpose, ignoring tribal treaty rights, the wishes of other private landowners, oil-spill clean-up assurances, and the impact the route would have on the surrounding environment. Minnesotans expect the review of an Environmental Impact

Statement that provides an independent, scientific analysis of the proposed project and project alternatives (alternative routes and modes of delivering crude oil to market) on a project that will have significant environmental and economic impacts to Minnesota, and that allows all stakeholders to have their voices heard.

#### **Section 44: Repealers**

Commerce opposes your bill's repeal of the agency's subpoena power for Energy Planning & Energy Conservation. This removes important information collection powers during energy related supply emergencies, determinations of the adequacy of electric transmission lines serving the state, and emergency energy assistance programs. While energy providers have typically provided such information voluntarily, eliminating this subpoena authority severely limits the state's ability to respond to events like the propane emergency the state experienced during the recent polar vortex winter.

#### **Article 11: "Miscellaneous"**

##### **Section 12: Agency Activity and Expenditure Reports**

Commerce opposes your bill's proposal requiring that the Commissioners of DEED, DLI, Commerce, and the PUC, submit a report to the chairs and ranking minority members of the House of Representatives and Senate committees and divisions with jurisdiction over their budget appropriations by October 15, 2018. While the agency has no objection to legislative reporting generally, much of the information contained in this report is duplicative or overly broad. This unfunded mandate will require an extraordinary amount of staff time on paperwork that would be much better spent helping Minnesota's consumers.

Thank you for the opportunity to present the Commerce Department's budget requests and comments on your Job Growth and Energy Affordability Omnibus Bill. I hope this information is helpful and you will take these serious considerations on unacceptable items into account to amend the bill as it moves forward.

Sincerely,

A handwritten signature in cursive script that reads "Mike Rothman".

Mike Rothman  
Commerce Commissioner