MANAGEMENT AND BUDGET

May 2, 2018

Representative Jim Knoblach, Chair
Ways and Means Committee
453 State Office Building
Saint Paul, MN 55155

RE: House Omnibus Bill, HF 4099

Dear Chair Knoblach:

I am writing with my concerns for the House Omnibus Bill, HF 4099. I want to start by conveying Governor Dayton's objections to the lack of fiscal responsibility for the House position overall, which includes the House budget proposal, House tax bill, House proposal for constitutional dedication of sales taxes, 2017 tax bill with costs exploding into the future, the House failure to extend the health care provider tax, and the House failure to pass the Pension Reform Bill. I want to also convey the Governor's objections to the state government finance portion of the omnibus bill.

Fiscally Irresponsible

As the State of Minnesota's Chief Financial Officer, I want to stress several overarching and significant concerns the Governor and I share with all the House budget proposals—when taken together, they undermine our current budget stability, which Governor Dayton has fought for over seven years to secure.

In 2017, the Legislature and the Governor agreed on a biennial budget that maintained fiscal balance for this biennium and the next. Based on the February Forecast, we have a projected $329 million budget surplus for the 2018/2019 biennium and a $251 million balance for 2020/2021.

The House budget bills and tax bill collectively spend more than the $329 million budget surplus for 2018/2019. The House proposals spend an additional $30 million by cutting agency budgets; and an additional $61 million by taking money from other funds. The House raids five different funds, including $30.8 million from the stadium reserve fund this year alone. The Governor has repeatedly voiced his objections to cutting agencies and to raiding other funds to support programs passed this year. He has made clear that he will veto any bill which cuts previously established state agency budgets.

The House position currently is unsustainable. It uses one time resources and **creates a budget deficit in the next biennium**. Deficit financing is simply not an acceptable fiscal solution, especially

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considering our revenue growth rate declined in the most recent forecast. This is neither a fiscally conservative, or fiscally responsible approach to state budgeting.

What is even more troubling, however, is that the House proposals create additional long-term fiscal instability because of the size of the revenue cuts and spending increases in the future, outside of our budget horizon ending in Fiscal Year 2021. Below is a snapshot of the global budget problems created by the House:

- **House Budget Proposal**: There are several provisions in the House omnibus budget proposal that, together, contain almost $300 million of "hidden" costs. The full impact of these costs occur after Fiscal Year 2021, when they are not currently tracked. In other words, the costs occur outside of our budget horizon. In addition to the tax bill and constitutional amendment noted below, the Disability Waiver rate modifications and Child Care Assistance Program rate increase in the Health and Human Services bill, Special Education Equity Aid in the Education bill, and the new Veterans Homes in the State Government bill will, in total, **add over $300 million of costs in the 2022/2023 biennium**.

- **House Tax Bill**: The proposed tax bill will create a hole in the budget in the future. Because the tax rate reductions are unaffordable now, the House bill phases them in over several years. They will not be fully phased in until FY 2021, the last year of our budget horizon. The cost of the tax rate cuts will grow from $130 million in the current biennium to **over $570 million in the 2022/2023 biennium**. The tax rate cuts will not be any more affordable then. We do not know if our budget can sustain this level of a tax rate reduction. The House tax bill relies on one-time funding from deemed repatriation in the federal tax bill to fund the tax rate cuts. Use of one-time funding for permanent tax rate cuts further risks the state's financial stability.

- **Dedication of Sales Tax to Transportation**: The constitutional amendment being considered this session will have long-term consequences for our budget. The impact in our current budget horizon is $167 million. The cost to the general fund of the amendment is **$438 million in the 2022/2023 biennium** and over $650 million in the 2026/2027 biennium when it is fully implemented.

- **2017 Tax Bill Tails**: Last session's tax bill eliminated the inflation factor on the statewide property tax. This tax cut was a $10 million revenue loss at the time of passage, but the full effect will grow to **$188 million in the 2022/2023 biennium**, and the full cost will be over $1 billion in lost revenue over ten years.

- **Expiration of Health Care Provider Tax**: In 2011, the Legislature required that the provider tax expire on December 31, 2019. Failure by this Legislature to eliminate the sunset will deplete the existing health care access fund balance in Fiscal Year 2021, leaving a structural deficit of $526 million in the health care access fund, and putting at risk the health care that hundreds of thousands of Minnesotans depend upon When we forecast the 2022/2023 biennium for the first time this coming November, we will reflect the full budgetary impact of the decision to sunset the tax – we will show a health care access fund deficit of **over $1 billion in the 2022/2023 biennium**. By allowing the provider tax to sunset, these expenses will fall to the general fund. The Governor has proposed the continuation of Health Care Access Fund revenues in a bill traveling separately from his tax bill proposal; we urge you to pass it this session, or risk significant structural deficits and the loss of essential health insurance for many hard-working Minnesotans.

- **Pension Reform**: Another significant omission thus far is passage by the House of the pension reform bill that was passed unanimously by the Senate on March 26, 2018. The pension reform bill is a crucial component of sound fiscal management. Failure to take action this legislative session will have significant budget impacts in the future. The Governor has previously stated his willingness to sign a stand-alone bill as passed by the Senate.

By the end of fiscal year 2023, when the spending and revenue changes identified here are added together, the House position **produces a $2.5 billion gap in our budget**. We should all agree that any action taken during this legislative session must be fully funded in our current budget horizon and must not be delayed to some future date to disguise the real budgetary impact.

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Article 13 (House File 4016, Anderson, S) House Omnibus State Government Bill

The following are MMB's concerns with the House Omnibus State Government bill.

Governor Dayton has been clear that he will not entertain cuts to the operating budgets of agencies, boards and commissions. In fact, the Governor has said that he will veto any bill which cuts previously established state agency budgets. This is not a biennial budget year and the Governor does not see the need to revisit agency budgets. As you know, it is these agencies, boards, and commissions that are required to deliver the services you have mandated in state statutes. Below is a summary of the concerns MMB has with the bill.

- **The bill reduces agency operating budgets by $18.3 million, and further requires agencies to prioritize reductions to central administrative costs as opposed to those affecting the public.** As someone who has run a private business, I know that administration costs are directly connected to the products and services delivered. Since any reduction to agencies administrative costs will have direct impacts on services delivered, this provision is irresponsible and will not produce more effective government services.

- **The agency budgets that are cut by the bill include the Department of Administration, Minnesota Management and Budget, the Department of Revenue, and the Department of Human Rights. These agency cuts are simply nonsensical.** They run contrary to the public's expectation that when the legislature passes new laws and tasks our agencies with work to implement them, we will have the necessary resources to do so effectively. Of particular offense is the adversarial nature of the attack on the budget of the Department of Human Rights. In a separate bill, HF 4459, the House proposes statutory changes that will greatly expand the workload of the department's sexual harassment investigations **– yet this bill cuts its budget by over 30%**. The Department has noted that these cuts would force the layoffs of 18 staff members – fully 40 percent of this small agency's entire workforce. Previous testimony in committee has reflected these cuts are motivated by score settling and not supported by policy concerns. The Governor is opposed to these arbitrary, unnecessary budget cuts, and in particular considers the cuts to the Department of Human Rights to be an attack on the rights of all Minnesotans.

- **The bill requires MMB to reduce agency budgets to fund an appropriation for MNLARS.** The Governor signed the MNLARS funding bill into law with the expectation that driver and vehicle services accounts reserves would be used, and agency budgets would not be cut. This provision is contrary to that agreement.

- **Legislative Budget Office concerns:** This bill makes several changes to the statutory authority for the Legislative Budget Office (LBO) that contradict the agreement with the Governor when this office was established last session**.**

  Contrary to the agreement reached last session, this bill cuts MMB's budget to finance the new LBO. The LBO cannot be funded at the expense of the MMB's Budget Office. MMB's broad statutory responsibilities remain and any cuts threaten MMB's ability to deliver on these duties.

  MMB opposes the transfer of the Results First program to the new office. Minnesota's Results First is one of the leading programs in the country for developing data-based policy decision-making... The Results First initiative requires dedicated staff year round, and is not "extra work" to be performed in the summer in order to keep fiscal staff in the LBO busy. The LBO must be established on its own and support the work of the Legislature.

  The bill directs MMB to turn over operational control of the fiscal note system to the LBO. To be clear, MMB is working on a plan to accomplish that transfer. MMB defines operational control as hosting and maintaining the systems as a whole, which includes system access and security; system tables update prior to the start of the legislative session for legislative members, fiscal analysts, budget officers, and agency fiscal note coordinators; creation and maintenance of manuals; user training; agency assistance; system fixes and enhancements; and all costs associated with maintaining the system. It will take MMB approximately 6 months to transfer operational control to the LBO.

We are disappointed that this bill does not address the loss of transparency as fiscal notes move from one branch of government to the other. In addition, there are not adequate data protections. The LBO should be subject to the Minnesota Data Practices Act, similar to the Office of the Legislative Auditor. Basic open government principles and requirements should not be compromised simply because the work is done in the legislative branch. Fiscal notes and the information used to create them should be public information unless protected by law.

Finally, MMB believes that we must abide by the agreement reached last session for the timely implementation of the LBO.

- **Sexual Harassment Prevention proposal concerns**: Governor Dayton included a request in his supplemental budget to improve our ability to prevent and address sexual harassment in our state's workforce. He requested funds to support an office to investigate harassment complaints and to provide additional resources to our state employees. However, instead of promoting the goals of harassment prevention, the bill language would be a significant detriment to our efforts by cutting agency human resource and affirmative action offices and denying critical support services to our state workforce. This is done by the bill in two ways:

    - **First**, the bill expands the duties of the office by requiring it to handle all complaints of *misconduct* – in addition to harassment. Under this language, the office would provide intake and investigation of nearly all forms of employee conduct that can result in discipline. With this additional language, the office is not sufficiently funded to perform the expanded scope of work.

    - **Second**, the bill requires any duplicative or conflicting work done within agencies to be transferred to the new office. In effect, the language would gut agency human resource offices and affirmative action officer resources, having the opposite effect of our goal of preventing harassment by reducing the services we provide our employees.

  The core purpose of the Governor's request to create a new, independent office was to provide our employees with an additional option to report harassment and to ensure highly skilled and independent staff are available to investigate complaints. Pursuant to the statutory duties of MMB under 43A, we already have the statutory authority to develop the office. We simply need the funding. We will carefully monitor the implementation of the office and, where appropriate, we will report cost savings and eliminate services within agencies if they become unnecessary.

  MMB was not consulted in the drafting of the language and, as it is currently written, MMB opposes it. While we would gladly welcome additional, urgently-needed resources to support our efforts to prevent harassment in the workplace, the proposal offered by the House would create even greater barriers.

- **Transfer of stadium reserve funds concerns:** The House bill takes $30.8 million from the stadium reserve fund in this biennium to offset additional spending in the House omnibus bill; and takes an additional $62.5 million in the next biennium to partially offset the tax cuts in that biennium . Reducing the reserve at this time is not responsible financial management and the Governor objects to any reduction in the fund this session.

  To understand why raiding this fund is not fiscally responsible, it is important to understand the numbers. We currently have $27 million in the stadium reserve fund and estimate that annual costs for the stadium are $42 million. We recommend retaining no less than one year of annual costs. The forecasts show the reserve growing over the next three years, but that is all *forecasted growth*. We do not recommend reducing current nor future reserve balances in advance of actually receiving those revenues. Similar to the budget reserve, these funds are intended to buffer the general fund against an economic downturn or other unforeseen events. With a $329 million surplus, raiding the stadium reserve based on projected increases is not fiscally prudent.

  The fiscal tracking for this bill misrepresents the full cost of the stadium reserve changes. In addition to the transfer of $30.8 million describe above, another $62.5 million of general fund revenue (from capping the reserve at $26.8 million) should be reflected in tracking for this bill and not the tax bill. Tracking these resources in the tax bill is misleading, and makes the tails in the tax bill appear smaller than they really are.

  Also, the House bill proposes to use the stadium reserve fund as a down payment on three new veterans' homes. The Governor first of all wants to ensure that any proposal for new veterans' homes accounts for all the anticipated costs, which the House bill does not provide. Second, the Governor supports using the state's bonding capacity to fully-fund new veterans' homes. Typically capital projects are funded with state general obligation bonds that allow the state to leverage its revenue for low interest bonds rather than using general fund cash.

- **Election and campaign finance law changes**. The Governor has stated repeatedly that any changes to these areas of statute must have bi-partisan support for his signature and should travel separately instead of being buried in an enormous omnibus bill, rife with controversial provisions on a myriad of unrelated topics.

- **MN Sports Facilities Authority governance changes**. During the last year, the US Bank Stadium Authority has made a number of changes to enhance transparency such as publically posting its annual budget and financial reports, meeting minutes, use agreements, bylaws, and the newly updated suite-use policy on its website. It also already reports to the Legislature and has expanded the committees who receive copies of that report. None of the stakeholders participated in the drafting of changes to the

Minnesota Sports Facility Authority governance and the Governor does not support the language.

- **The bill limits the Governor's authority to support the work of his or her office by capping transfers from agencies.** This is micro-managing the executive branch, limits flexibility and responsiveness, and is unnecessary.

- **The bill fails to fund enterprise cybersecurity needs. Instead, it requires agencies to dedicate 3.5% of their existing IT budgets for cybersecurity.** While some agencies may already be spending 3.5% on cybersecurity, others may not and it may not make sense for them to do so based on the scope of their work and their IT needs. To the extent that agencies are not currently budgeting at that level, this language would result in a cut to their budget. We all seem to agree on the need for investments in cybersecurity, as Minnesota's IT systems are subjected to 3 million attacks each and every day. The Governor believes we should make strategic and targeted investments rather than set an arbitrary threshold. The security of Minnesotans' personal data, and the effective operation of our state's IT systems, should be our shared priority; and we ought to be straightforward and decisive in our commitment to pay for it.

- **The bill requires agencies to report to the Legislature when submitting to Minnesota Management and Budget any uncollectable debt of over $10,000.** This public information is already available to the Legislature upon request making a new administrative report unnecessary. We encourage you not to create new, unnecessary layers of bureaucracy in state government.

- **The bill micro-manages the executive branch by prohibiting any salary savings from being spent on anything other than the vacant position.** This language limits a commissioner's ability to direct resources to emerging priorities, statutory obligations, or necessary improvements within an agency. In order to best serve the public, and deliver on legislatively mandated outcomes, it is critical agencies have flexibility to be innovative and efficient in fulfilling statutory obligations.

- **The bill requires that any enterprise software project be purchased or built through a vendor.** This blanket requirement assumes that the only solution exists outside of state government. Our recent experience with our budget systems has proven the contrary. Requiring agencies to seek a legislative exemption from statute will only slow projects down, and limit the flexibility of state government to provide the quality, efficient, and timely services that Minnesotans expect and deserve.

- **The bill cuts $500,000 from the sexual harassment prevention funding if MMB does not realize savings from a new gainsharing program.** This number has no factual basis, not to mention the language of the gainsharing statute that the House insists that MMB implement is unworkable. MMB has performed significant research into gainsharing programs in other states and found the assumption of half a million dollars in savings ridiculous. Even the state of California – with seven times the population of Minnesota – rarely experiences more than $70,000 of savings in one year, and often far less in an average year. California also employs two FTEs to administer the program. MMB is expected to administer it without any additional resources and an already over-extended staff from all other statutory obligations. The so-called "savings" from this program are simply another $500,000 cut to MMB.

- **The bill moves the Data Practices Office from the Department of Administration to the Office of Administrative Hearings (OAH) for no reason.** There are no service deficiencies that merit the transfer of these duties and would not result in any service improvements. Current law intentionally separates the Office from OAH to provide separate forums for Minnesotans who want data practices support and training, and those who need to pursue more advanced legal remedies. This transfer would likely result in additional costs and disrupt the work of the agencies. Both agencies oppose this language and there was no public support for this transfer – all testimony heard in committee was in opposition to this transfer.

This session, we have no statutory or constitutional obligation to pass any budget bills. Rather we are faced with an opportunity that many states do not share: we have resources available to solve problems. There are multiple issues where we agree we can and must agree on a solution. Governor Dayton has repeatedly asked that we work toward agreement now, and that we do so in separate, stand-alone bills.

We can work together on:

- the opioid crisis
- improving protections for our elderly and vulnerable adults
- safer schools for our youth
- emergency school aid for this year and early childhood learning for the future
- addressing sexual harassment in the workplace
- fixing the vehicle registration system
- passing a robust bonding bill to maintain our higher education buildings, our wonderful parks, our precious water, and affordable housing
- pension reform for over 511,000 workers and retirees
- a tax bill that responds to the federal law while giving tax cuts to individuals and families

If we agree to solve these problems, we can also agree that the solutions can be funded – in a fiscally responsible manner – by our modest surplus of $329 million.

Additionally, the Governor reiterated his request that budget bills focus on budget matters and treat policy decisions as separate issues. As we have seen in recent legislative sessions, it is not a productive nor transparent process to link unrelated provisions that can cause disagreement on important areas of critical state needs.

Please do not hesitate to let me know if I can provide additional information on the House budget proposals.

Sincerely,

Myron Frans
Commissioner

cc: Representative Lyndon Carlson
Representative Sarah Anderson
Senator Mary Kiffmeyer
Representative Leon Lillie
Senator Jim Carlson