

SENATOR JOE GIMSE  
Transportation Policy & Finance Chair  
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Senate

State of Minnesota

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) Constitutionality**

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



SENATOR JOE GIMSE  
Transportation Policy & Finance Chair

The June 29<sup>th</sup> 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

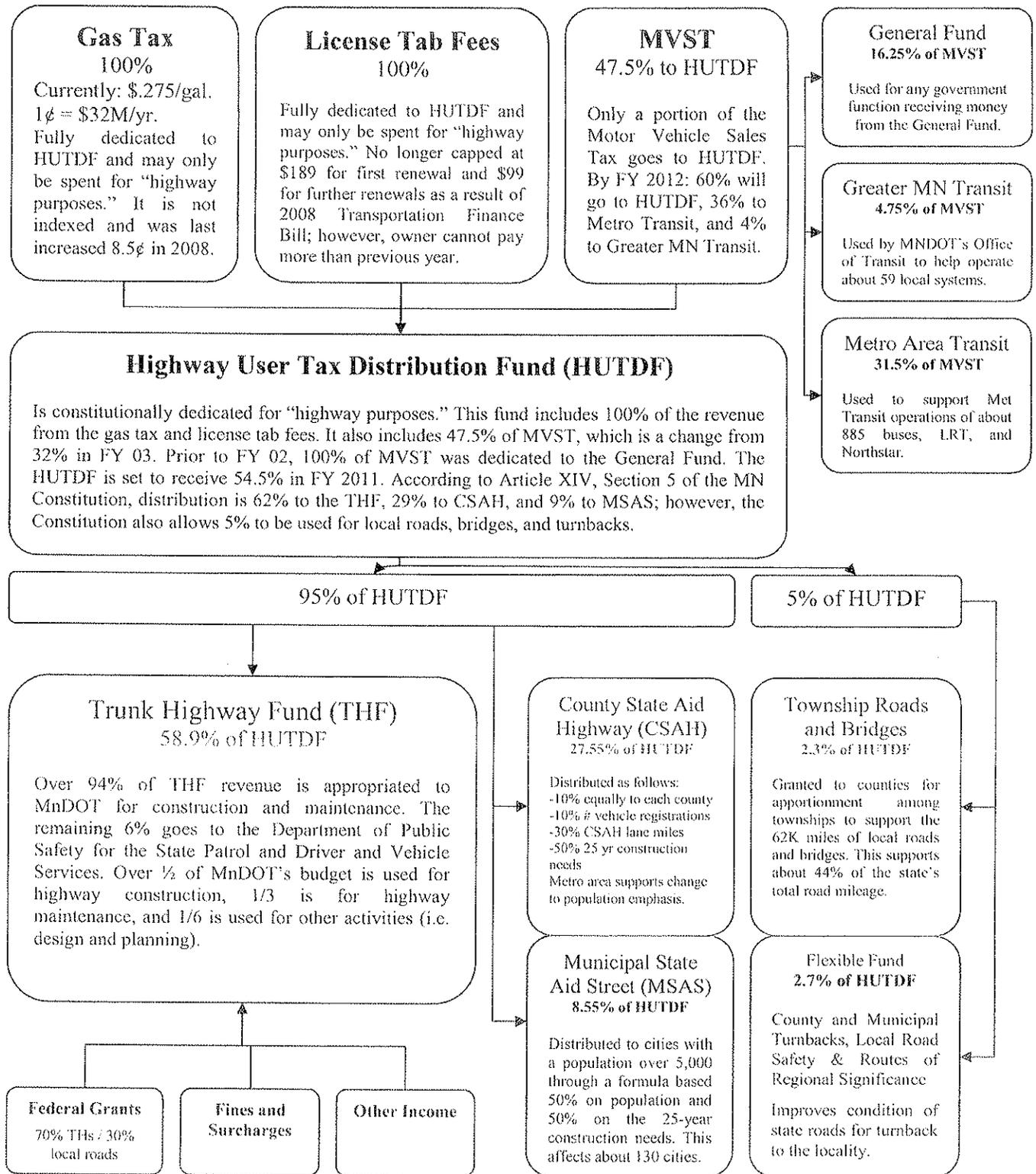


Representative Mike Beard  
Chairman, House Transportation Committee

cc: Governor Mark Dayton  
Attorney General Lori Swanson

# EXHIBIT A

# Minnesota Transportation Finance



# EXHIBIT B

# Part One - Appropriations

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

AGENCY / FUND	APPROPRIATION NAME	AMOUNT
Center for Arts Education GENERAL	PCAE GENERAL FUND	11,564
Dept of Education	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
<b>Total Dept of Education</b>		<b>302,165,000</b>
Minnesota State Academies GENERAL	MINNESOTA STATE ACADEMIES	101,278
Health Dept	COMMUNITY & FAMILY HLTH PROMO	145,000
GENERAL	HEALTH PROTECTION	479,100
GENERAL	ADMINISTRATIVE SUPPORT SVCS	111,000
<b>Total</b>		<b>735,100</b>
STATE GOVT SPECIAL REV	HEALTH PROTECTION	162,000
STATE GOVT SPECIAL REV	POLICY QUALITY & COMPLIANCE	199,700
<b>Total</b>		<b>361,700</b>
<b>Total Health Dept</b>		<b>1,096,800</b>
Human Services Dept	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

**Part One - Appropriations**

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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
<b>Total</b>		<b>189,081,875</b>
HEALTH CARE ACCESS	MNCARE GR - HCAF	150,000
HEALTH CARE ACCESS	MNCARE GR - HCAF	39,500,000
<b>Total</b>		<b>39,650,000</b>
<b>Total Human Services</b>		<b>228,731,875</b>
Medical Practices Board	MEDICAL PRACTICE OPERATIONS	56,000
STATE GOVT SPECIAL REV		
Nursing Board	NURSING OPERATIONS	59,000
STATE GOVT SPECIAL REV		
Pharmacy Board	PHARMACY OPERATIONS	59,000
STATE GOVT SPECIAL REV		
Dentistry Board	DENTISTRY OPERATIONS	31,000
STATE GOVT SPECIAL REV		
Chiropractic Examiners Board	CHIROPRACTOR LICENSING	10,000
STATE GOVT SPECIAL REV		
Optometry Board	OPTOMETRY LICENSING	5,000
STATE GOVT SPECIAL REV		
Nursing Home Admin Board	NURSING HOME ADMINISTRATION	10,000
STATE GOVT SPECIAL REV		
STATE GOVT SPECIAL REV	NURSING HOME ADMINISTRATION	14,000
<b>Total Nursing Home Admin Board</b>		<b>24,000</b>
Social Work Board	SOCIAL WORK OPERATIONS	12,000
STATE GOVT SPECIAL REV		
Marriage & Family Therapy Board	MARRIAGE & FAMILY THERAPY OPER	6,000
STATE GOVT SPECIAL REV		
Podiatric Medicine Board	PODIATRY LICENSING	4,000
STATE GOVT SPECIAL REV		
Veterinary Medicine Board	VETERINARY MEDICINE LICENSING	14,000
STATE GOVT SPECIAL REV		

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AGENCY / FUND	APPROPRIATION NAME	AMOUNT
Emergency Medical Services Bd		
GENERAL	EMERGENCY MEDICAL SERVICES OPS	19,000
STATE GOVT SPECIAL REV	HEALTH PROFESSIONAL SERVICES	26,000
<b>Total Emergency Medical Services Bd</b>		<b>45,000</b>
Psychology Board		
STATE GOVT SPECIAL REV	PSYCHOLOGY LICENSING	21,000
Behavioral Health & Therapy Bd		
STATE GOVT SPECIAL REV	BEHAVIORIAL HLT & THERAPY OPER	11,000
STATE GOVT SPECIAL REV	ALCOLOH & DRUG CONSELORS OPS	6,000
<b>Total Behavioral Health &amp; Therapy Bd</b>		<b>17,000</b>
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
<b>GENERAL</b>		<b>182,000</b>
TRUNK HIGHWAY	DPS ADMINISTRATION-THF	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	COMMERCIAL VEHICLE ENFORCEMENT	488,000
TRUNK HIGHWAY	DRIVER VEHICLE SERVICES-THF	165,000
<b>TRUNK HIGHWAY</b>		<b>4,550,000</b>
HIGHWAY USERS TAX DISTRIBUTION DRIVER VEHICLE SERVICES-HUTD		41,000
<b>Total Public Safety Dept</b>		<b>4,773,000</b>
Transportation 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	31,663
TRUNK HIGHWAY	COMMON CARRIER RATE R	29,663
TRUNK HIGHWAY	MAINTENANCE OPERATION	5,133

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AGENCY / 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	215,771
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	111,927
TRUNK HIGHWAY	BEMIDJI MAINTENANCE	55,927
TRUNK HIGHWAY	BRAINERD MAINTENANCE	34,730
TRUNK HIGHWAY	ST. CLOUD MAINTENANCE	46,197
TRUNK HIGHWAY	DISTRICT 4 MAINTENANCE	63,927
TRUNK HIGHWAY	ROCHESTER MAINTENANCE	87,927
TRUNK HIGHWAY	DISTRICT 7 MAINTENANCE	113,927
TRUNK HIGHWAY	WILLMAR MAINTENANCE	54,927
TRUNK HIGHWAY	ADMINISTRATIVE SERVICES	10,265
TRUNK HIGHWAY	HR AND WORKFORCE EQUITY	23,097
TRUNK HIGHWAY	FINANCIAL MANAGEMENT	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
TRUNK HIGHWAY	BRIDGES	34,264
TRUNK HIGHWAY	LAND MANAGEMENT	17,964
TRUNK HIGHWAY	MATERIALS ENGINEERING	97,388
TRUNK HIGHWAY	CONSTRUCTION&INNOVATVCONTRACT	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	10,565
TRUNK HIGHWAY	OSTD-MAINTENANCE	20,530
<b>Total</b>		<b>31,266,280</b>
<b>Total Transportation Dept</b>		<b>32,312,392</b>
<b>Grand Total</b>		<b>\$ 569,623,962</b>