Minnesota House of Representatives

State Office Building
100 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155

Minnesota Senate

Minnesota Senate Building
95 University Avenue West
Saint Paul, Minnesota 55155

March 3, 2022

Representative Frank Hornstein
Chair, House Transportation Finance and Policy Committee

Senator Scott Newman
Chair, Senate Transportation Finance and Policy Committee

Acting Commissioner Nancy Daubenberger
Minnesota Department of Transportation

Commissioner John Harrington
Minnesota Department of Public Safety

Commissioner Jim Schowalter
Minnesota Department of Management and Budget

Representative John Petersburg
Ranking Minority Member, House Transportation Finance and Policy Committee

Senator Scott Dibble
Ranking Minority Member, Senate Transportation Finance and Policy Committee

We are pleased to transmit to you the report of the Dedicated Funds Expenditures Task Force. Our task force was charged with examining state agency spending from the Highway User Tax Distribution (HUTD) Fund and the Trunk Highway (TH) Fund, known as "dedicated funds" because of their unique status in our state's constitution as being restricted for only highway purposes. The legislature was interested in engaging in an inquiry and discussion about what constitutes a highway purpose and whether the agencies making use of these funds would benefit from refinements in statutory guidance, policy, and procedures to ensure the dictates of the constitution are followed.

We met regularly between August of 2021 and March of 2022. The task force received a wealth of information, historical perspective and context, and legal and constitutional analysis. Members engaged in thoughtful, thought provoking and spirited discussion. Much of what was discussed resulted in mutual understanding

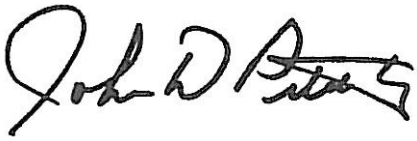
and agreement. A few key areas of policy diverged and failed to reach consensus. As a result, this report contains no unified findings or recommendations.

Our aspiration for this report is that it serve as a central resource, a repository of information and policy options for a question that the legislature, the executive branch, the courts and stakeholders have been grappling with for many years.

Readers will find a very thorough appendix that memorializes our discussion and debates. In addition, they will find all of the materials and presentations that were made, including a trove of historical information. Finally, it reflects the ideas, values and perspectives of the members in their own words.

We conclude this transmittal letter by thanking everyone who gave so much of their time, energy, knowledge and wisdom. Their efforts will continue to be of great service to the people of the state of Minnesota.

Very truly yours,



John Petersburg, Co-Chair
Representative, District 24A

D. Scott Dibble
Senator, District 61

Dedicated Funds Expenditures Task Force Report

March 1, 2022

Prepared by the Dedicated Funds Task Force, with assistance from the Minnesota Department of Transportation (Matt Shands, Jen Parshley, Craig Gustafson, Jim Cownie, and Kyle Fisher) and legislative staff of the 2022 Legislature (Matt Burress, Brenda van Dyck, and Alexis Stangl).

Report Contents

Legislative Report

The 2021 Legislature established a Dedicated Funds Expenditures Task Force and charged it with examining state agency spending from the Highway User Tax Distribution (HUTD) Fund and the Trunk Highway (TH) Fund, collectively referred to as “dedicated funds.” This report outlines the activity of the Task Force and its development complies with the reporting requirement in the enabling legislation. Laws 2021, 1st Spec. Sess., ch. 5, art. 4, sec. 146.

Membership

The following individuals served on the Task Force:

- Representative John Petersburg, Co-Chair
- Senator Scott Dibble, Co-Chair
- Senator Scott Newman
- Representative Frank Hornstein
- Senator Julia Coleman
- Representative Steve Elkins
- Senator Ann Johnson Stewart
- Representative Marion O'Neill
- Margaret Anderson Kelliher, Minnesota Department of Transportation Commissioner
- Liz Connor, Minnesota Management and Budget
- Shawn Kremer, Minnesota Department of Public Safety
- Angelica Klebsch, Office of Attorney General

Task Force Activity

The enabling legislation identified a number of duties and specific topics for the Task Force to review. The Task Force met over a period from August 2021, to March 2022. Among its activities over the course of the meetings, the Task Force:

- heard presentations on existing legislative reporting requirements related to dedicated funds, which were provided by executive branch staff at the Minnesota Department of Transportation (MnDOT), the Minnesota Department of Public Safety (DPS), Minnesota Management and Budget (MMB), and the Office of the Attorney General (OAG);
- received information on revenue and spending trends related to the HUTD Fund and the TH Fund, including overviews revenue and expenditure trends in their respective agencies provided by MnDOT and DPS budget staff;
- received copies of legislative reports, including (1) the April 2021 Report Concerning Certain Expenditures from the Trunk Highway Fund in the FY2022-2023 Biennial

Budget by MMB and the OAG; and (2) the January 15, 2021, Dedicated Fund Expenditures Report by MnDOT and DPS;

- received information from legislative staff on constitutional history and legislative activity;
- heard presentations on the Minnesota Constitution from two constitutional law scholars;
- obtained information on policies on dedicated funding in other states;
- received information from MnDOT staff on MnDOT's internal legal guidance for permissible uses of trunk highway funds;
- discussed transfers to various Department of Natural Resources accounts that are designed to reflect motor fuels tax revenue attributable to non-highway purposes;
- established a subcommittee that discussed potential statutory changes to clarify constitutional terms, particularly to provide definitions and direction on what constitutes "highway purposes" for constitutionally valid expenditure of dedicated funds; and
- deliberated potential legislative process changes to increase legislative review and oversight related to dedicated funds and appropriations.

Findings and Recommendations

Among the many issues before the task force, a key question that informed much of the discussion was: what is the core understanding of "highway purposes" in determining constitutionally valid expenditures of funds from the Trunk Highway Fund and the Highway User Tax Distribution Fund?

While the task force found both points of consensus and disagreement in addressing the question, it did not formally adopt any specific findings or recommendations.

Supplemental Materials Overview

The remainder of the report is divided into several appendices, which contain meeting minutes, reproduce various presentations to the Task Force, replicate a proposed report draft that was not adopted by the Task Force, present independent comments from several Task Force members as well as state agencies, provide a second draft report submitted by some of the Task Force members, and provide other supplemental information made available to the Task Force. An outline is below.

Report Appendices

Appendix	Summary
A	Enabling legislation for the Task Force
B	Task Force meeting minutes

Appendix	Summary
C	Task Force Subcommittee meeting minutes
D	MnDOT & DPS Funding Overview presentation
E	Attorney General's Role in Trunk Highway Expenditures presentation
F	MMB & Attorney General Report on Expenditures from the Trunk Highway Fund in the FY 2022-2023 Biennial Budget
G	Memo on Use of Trunk Highway Funds
H	Interpreting State Constitutional Clauses presentation
I	Internal Improvements in the Minnesota Constitution presentation
J	Memo on Dedicated Highway Funding & BCA Lab
K	Highway Funds Legislative Activity presentation
L	Dedicated Funds Direct Appropriations document
M	Dedicated State Transportation Revenues presentation
N	Mentimeter Exercise
O	Highway Purpose Bill Draft Comparison document
P	Other Reference Materials
Q	Draft Proposed Task Force Report
R	Letter and Draft Report Submitted By Sen. Newman, Rep. Petersburg, Sen. Coleman, and Rep. O'Neill
S	Letter Submitted by Rep. Hornstein, Sen. Johnson Stewart, Rep. Elkins, and Sen. Dibble
T	Letter submitted by MnDOT and DPS

Appendix A: Enabling Legislation

Sec. 146. DEDICATED FUNDS EXPENDITURES TASK FORCE.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given.

(b) "Commissioner" means the commissioner of transportation.

(c) "Each department" means every department that spends highway user tax distribution or trunk highway funds.

(d) "Task force" means the dedicated funds expenditures task force established in this section.

Subd. 2. Task force established. A dedicated funds expenditures task force is established to review and make recommendations regarding the permissible uses of expenditures from the trunk highway fund and the highway user tax distribution fund.

Subd. 3. Membership. (a) The task force consists of the following members:

(1) four senators, with two appointed by the senate majority leader and two appointed by the senate minority leader;

(2) four members of the house of representatives, with two appointed by the speaker of the house and two appointed by the house minority leader;

(3) the commissioner of transportation or a designee who is an employee in the Department of Transportation;

(4) the commissioner of public safety or a designee who is an employee in the Department of Public Safety;

(5) the commissioner of management and budget or a designee who is an employee in the Department of Management and Budget; and

(6) the attorney general or a designee.

(b) The appointing authorities under paragraph (a) must make the appointments by July 31, 2021.

(c) At its first meeting, the task force must elect a chair or co-chairs by a majority vote of those members present.

Subd. 4. Duties. At a minimum, the task force must:

(1) examine each department's practices in managing and tracking trunk highway fund and highway user tax distribution fund expenditures;

(2) develop findings regarding the permissibility of trunk highway fund and highway user tax distribution fund expenditures, which must include specific review of each of the following uses or activities:

(i) the creation, construction, expansion, or maintenance of bikeways;

(ii) expenditures for cybersecurity;

(iii) use of trunk highway funds by the Department of Transportation for: administrative costs of the targeted group business program; making grants to metropolitan planning organizations outside of the metropolitan area; and making grants to regional development commissions, joint powers boards, or to department district offices to identify critical concerns, problems, and issues;

(iv) administration and related services for the Department of Public Safety, the commissioner's office, fiscal services, human resources, communications, and technology services; and

(v) the following entities within the Department of Transportation: site development unit; labor compliance efforts in the Office of Construction and Innovative Contracting; Modal Planning and Program Management Division; Statewide Radio Communications within the department's State Aid Division; Workforce and Agency Services Division; Office of Financial Management; human resources; commissioner's staff offices; Office of Audit; Office of Chief Counsel; Office of Civil Rights; communications and public engagement; Office of Equity and Diversity; Government Affairs Office; and Office of Freight and Commercial Vehicle Operations;

(3) evaluate trunk highway fund and highway user tax distribution fund spending in each department to determine whether the spending is a highway purpose and identify whether each specific use is a permissible or impermissible use of the funds;

(4) evaluate and make recommendations on how the commissioner of management and budget should conduct a detailed review of the use of trunk highway funds or highway user tax distribution funds prior to disbursing the funds to the agency to ensure the use complies with statutory and budget requirements; and

(5) make recommendations for changes in trunk highway and highway user tax distribution fund expenditures, including to policies, procedures, and appropriations.

Subd. 5. Meetings. (a) By September 1, 2021, the commissioner must convene the first meeting of the task force.

(b) The task force is subject to the Minnesota Open Meeting Law under Minnesota Statutes, chapter 13D.

Subd. 6. Administration. Upon request of the task force, the commissioner must provide administrative services, technical support, and information for the task force.

Subd. 7. Legislative report. By February 15, 2022, the task force must submit a report to the chairs and ranking minority members of the house of representatives Ways and Means Committee, the senate Finance Committee, and each legislative committee with jurisdiction over any use of trunk highway funds or highway user tax distribution funds. At a minimum, the report must:

(1) summarize the activities of the task force;

(2) identify any analysis and findings;

(3) provide recommendations adopted by the task force; and

(4) include any draft legislation amending Minnesota Statutes, sections 161.20, subdivision 3, and 161.045, and chapter 16A; or any other statutes that is necessary to implement the recommendations.

Subd. 8. Expiration. The task force expires the day following submission of the report under subdivision 7.

Laws 2021, 1st Spec. Sess., ch. 5, art. 4, sec. 146.

Appendix B: Dedicated Funds Expenditures Task Force Meeting Minutes

Task Force Meeting Dates

- August 20, 2021, 8:30 AM to 10:30 AM
- September 14, 2021, 3:00 PM to 4:30 PM
- September 28, 2021, 3:00 PM to 4:30 PM
- October 12, 2021, 3:00 PM to 4:30 PM
- October 26, 2021, 3:00 PM to 4:30 PM
- November 23, 2021, 3:00 PM to 4:30 PM
- December 7, 2021, 3:00 PM to 4:30 PM
- December 21, 2021, 3:00 PM to 4:30 PM
- January 4, 2021, 3:00 PM to 4:30 PM
- January 18, 2022, 3:00 PM to 4:00 PM
- January 25, 2022, 3:00 PM to 4:30 PM
- February 1, 2022, 1:30 PM to 3:00 PM
- February 7, 2022, 1:00 PM to 2:30 PM
- February 14, 2022, 1:00 PM to 2:30 PM
- February 23, 2022, 1:00 PM to 3:00 PM

August 20, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Executive Budget Coordinator Liz Connor, MMB; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Carly Melin, Office of Attorney General; Sen. Scott Neman, Sen. Julia Coleman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Rep. Marion O'Neill, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins

Others in Attendance

Lexi Stangl, Senate Counsel; Josh Knatterud-Hubinger, MnDOT Budget Director; Erik Rudeen, Jen Parshley and Jennifer Witt, MnDOT Government Affairs; Brian Gage, MnDOT Transportation System Management; Jennifer Nelson, House DFL Research; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jim Cownie, Laura Roads and Craig Gustafson, MnDOT Chief Counsel; Andy Lee, House Fiscal Analyst; Kristi Schroedl, Robin Sylvester, Sam Brown and Brent Pearson, MnDOT Finance; Kim Collins, MnDOT Deputy Commissioner; Jordan Haltaufderheid, DPS; David Fraser, Senate GOP Research; Pat Kaluza, Senate Transportation Committee Administrator; Matt Wooldridge, Senate Legislative Assistant; Joe Marble, House GOP Research; Krista Boyd, Senate Fiscal Analyst.

Call to Order

MnDOT Commissioner Margaret Anderson Kelliher called the meeting to order.

Overview of Law

Lexi Stangl, Senate Counsel, provided an overview of Laws 2021, 1st Special Session, Chapter 5, Article 4, Section 146 that establishes the task force.

Introductions and Co-Chair Assignments

Task force members introduced themselves and described their goals for the task force.

Rep. Hornstein moved that Rep. Petersburg and Sen. Dibble serve as co-chairs of the task force. Sen. Newman supported the motion. The motion prevailed on a unanimous voice vote. Co-Chairs will rotate leading the meeting. For this meeting, Co-Chairs agreed Commissioner Anderson Kelliher will lead.

Co-chair Petersburg moved that MnDOT provide staff support to the task force. The motion prevailed. Sen. Newman suggested they have a secretary appointed. Commissioner Anderson Kelliher suggested Erik Rudeen and Jen Parshley manage the meeting minutes. Sen. Newman supported the recommendation.

MMB/AG Report

Liz Connor, MMB Executive Budget Coordinator, provided a brief walk-through of the MMB/AG Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget.

Commissioner Anderson Kelliher suggested reviewing the court cases in the report to understand why they still apply today or how they would change. Carly Melin agreed to provide an overview of the case law at the next meeting.

Overview of Highway Funds

Josh Knatterud-Hubinger, MnDOT Budget Director, and Shawn Kremer, DPS Chief Financial Officer, gave a presentation on highway funds. The following reports were mentioned:

- Major Highway Projects Report
- Report on Dedicated Fund Expenditures
- U of M Transportation Policy and Economic Competitiveness

Future Meeting Topics

The committee discussed possible future meeting topics and meeting schedules. The co-chairs will work with MnDOT staff on these issues. Sen. Newman recommended that the MnDOT offices mentioned in the law present on their programs and services to the committee. Rep. Hornstein would like fact sheets on how various offices and activities are funded. Rep. Hornstein recommended the committee have one more contextual meeting.

Sen. Dibble requested that members read meeting materials before the meeting. Jen Parshley will post meeting materials and meeting minutes on the Task Force website. Jen Parshley will create a survey to assess what topics the Task Force want for future meetings.

Closing

Commissioner Anderson Kelliher adjourned the meeting.

September 14, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Executive Budget Coordinator Liz Connor, MMB; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Carly Melin, Office of Attorney General; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins

Task Force Members Absent

Sen. Julia Coleman, Rep. Marion O'Neill

Others in Attendance

Kristi Schroedl, Commissioner's Office, Josh Knatterud-Hubinger, Sam Brown, MnDOT Financial Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Craig Gustafson, Kyle Fisher, Sam Juneau, MnDOT Office of Chief Counsel; Brian Gage, MnDOT Transportation System Management; Kim Collins, MnDOT Deputy Commissioner; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Cassandra O'Hern, Jordan Haltaufderheid, DPS; Lexi Stangl, Senate Counsel; Jennifer Nelson, House DFL Research; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Andy Lee, House Fiscal Analyst; David Fraser, Senate GOP Research; Pat Kaluza, Senate Transportation Committee Administrator; Matt Wooldridge, Senate Legislative Assistant; Joe Marble, House GOP Research; Krista Boyd, Senate Fiscal Analyst.

Call to Order

Co-Chair Rep. Petersburg called the meeting to order.

Approval of Minutes

MnDOT Commissioner Anderson Kelliher moved approval of the 8.20.21 meeting minutes. Rep. Elkins seconded. The motion carried.

Housekeeping

The Task Force will meet every other Tuesday 3:00 PM to 4:30 PM.

Rep. Petersburg requested Jen Parshley, MnDOT, share the agenda, meeting materials, and previous minutes in an email before each meeting.

Rep. Petersburg requested a contact list of Task Force member's email addresses be created. Ms. Parshley will coordinate with member's legislative assistants to get information.

Rep. Petersburg reviewed the duties of the Task Force as identified in legislation and requested that members read meeting materials before each meeting and be prepared to ask questions.

If Task Force members have questions, ideas, or concerns, they can send them to the Co-Chairs or to Ms. Parshley and Mr. Rudeen. They will get added to the agenda.

Sen. Dibble reminded Task Force members they can fill out the topics survey to give input. Mx. Parshley will resend the survey.

MMB/AG Report Presentation and Case Law History

Carly Melin, Office of Attorney General, presented on the attorney general's role in reporting on trunk highway fund expenditures. Ms. Melin clarified the office does not review HUTD expenditures. Change items are only included in the report if the office believes the items could be prohibited spending. Ms. Melin clarified they do not highlight items from the previous biennium.

Past OAG reports on dedicated funds are available on the Legislative Reference Library website.

Highway Funds Legal Guidance

Craig Gustafson, MnDOT Chief Counsel, explained the OAG is MnDOT's outside legal counsel on constitutional provisions and state law provisions.

Kyle Fisher, MnDOT Chief Counsel, presented the MnDOT Memo RE: What Can Trunk Highway Funds Be Used For.

Examine Existing Highway Fund Reporting Requirements

Kristi Schroedl, MnDOT CFO, presented MnDOT FY22-23 Governor's Recommendation Biennial Budget document. Schroedl highlighted the following areas within the document that reflect the majority of trunk highway fund spending and connecting it back to specific areas addressed in the dedicated task force statute:

- Expenditure Overview by Fund and Financing by Fund
- State Road Program Budget Activities:
    - Program Planning & Delivery
    - State Road Construction (SRC)
    - Debt Service
    - Ops and Maintenance
    - Statewide Radio
- Agency Management Program
    - Agency Services
    - Building Services (in response as a follow up question)
- Multimodal Program
    - Transit and Active Transportation (trunk highway funds replaced by general funds starting in FY '22)
    - Freight & Rail Safety (OFCVO)
- District Overview Pages – Appendix

Schroedl presented an infographic of the dollar breakdown of trunk highway total percent spending by that major areas outlined above for the state fiscal year 2020.

MnDOT Commissioner Anderson Kelliher reminded the Task Force that the budget is dependent on the legislature approving the expenditures.

Shawn Kremer, CFO Department of Public Safety, referred the Task Force back to his 8.20.21 presentation on DPS Funding Overview for the breakdown of DPS dollars.

Kremer presented DPS FY2022-23 Governor's Rec Biennial Budget Document – Transportation Portion. He highlighted the trunk highway expenditures in the following programs:

- Technology and Support Services
- State Patrol
- Office of Traffic Safety

Kremer presented DPS FY2022-23 Governor's Rec Biennial Budget Document – Public Safety Portion. He highlighted the trunk highway expenditures to support the cost of Bureau of Criminal Apprehension labs.

The Dedicated Funds Expenditure Report, which include all expenditures in the trunk highway fund and highway user tax distribution fund for all agencies was scheduled to be discussed but we ran out of time, so could add it to the agenda for the next meeting.

Closing

The next meeting will focus on laws and statues related to dedicated fund expenditures.

Gustafson is meeting with David Shultz from Hamline University to discuss a possible presentation on constitutional law.

Co-Chair Sen. Dibble will chair the next meeting.

Co-Chair Rep. Petersburg adjourned the meeting.

September 28, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Executive Budget Coordinator Liz Connor, MMB; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Carly Melin, Office of Attorney General; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Rep. Marion O'Neill

Others in Attendance

Kristi Schroedl, Josh Knatterud-Hubinger, MnDOT Financial Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Craig Gustafson, Kyle Fisher, Jim Cownie, MnDOT Office of Chief Counsel; Brian Gage, MnDOT Transportation System Management; Kim Collins, MnDOT Deputy Commissioner; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Cassandra O'Hern, DPS; Jennifer Nelson, House DFL Research; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Andy Lee, House Fiscal Analyst; Matt Wooldridge, Senate Legislative Assistant; Joe Marble, House GOP Research; Krista Boyd, Senate Fiscal Analyst; David Shultz, Hamline University; Margaret Donahoe, Minnesota Transportation Alliance

Call to Order

Co-Chair Dibble called meeting to order.

Approval of Minutes

Co-Chair Petersburg moved the approval of 9.14.21 minutes. Rep. Elkins seconded. The motion carried.

Overview of Constitutional Law and Trunk Highway Spending

Professor David Schultz of Hamline University provided an overview of how the Minnesota Supreme Court and other courts interpret the state constitution. Professor Schultz provided a detailed outline of his presentation and fielded several questions from the task force. He also provided his contact information to the task force as a reference for any future questions that may arise relating to his presentation.

If courts cannot figure out what a statute means, they often defer to the administrative agency for their expertise on what the statute means.

If courts are trying to ascertain legislative intent, they will look at different sources such as debates on the floor and plain language.

It may be helpful to look at the original ballot question to understand the legislative intent at that time around defining a trunk highway purpose.

The legislature has broad authority to clarify definitions. This deference was given by the courts. The legislature cannot bind future legislatures on statutory matters.

Examine Existing Highway Fund Reporting Requirements

Josh Knatterud-Hubinger, MnDOT Office of Finance, presented on the Dedicated Fund Expenditures Report which lists detailed expenditures and transfers from the trunk highway fund and highway user tax distribution fund for the previous two fiscal years and includes information on the purpose of each expenditure. Mr. Knatterud-Hubinger highlighted the following report areas to show how funds are broken down:

- MnDOT Bridge Office
- MnDOT Office of Aeronautics. Note: activities are no longer funded through the trunk highway but are now through the general fund.
- MnDOT Office of Transit and Active Transpiration. Note: activities are no longer funded through the trunk highway but are now through the general fund.
- MnDOT Technology Investment Management
- Transfers Out of the HUTD Fund
- Other HUTD Fund Expenditures

The Department of Revenue publishes a separate report that breaks down the various components of the highway user tax distribution fund revenues, including some activity that does not flow through the state accounting system or show up in the budgetary fund statements.

About 20% of MnDOT spending overall comes through specific statues, while 80% of funding is directly appropriated by the legislature. Larger areas like agency services or operations receive a large dollar amount without much direction in bill language.

Round Table Discussion on Future Meeting Topics & Concerns

Co-Chair Dibble proposed looking at the history of public works, infrastructure, and finance in the early days of the state constitution. How was transportation infrastructure considered a fundamental governmental purpose? Co-Chair Petersburg proposed looking at how we define trunk highway purpose. What is considered transportation? How do we continue to appropriate dollars if we determine an expenditure is not funding roads and bridges?

Sen. Newman proposed that the Senate Counsel present on the appropriations we make to MnDOT and DPS and on how state agencies determine what spending is appropriate for a highway purpose. Lexi Stangl, Senate Counsel, and Matt Burress, House Research, will present the memo they wrote on constitutionality of using dedicated funds at the Oct. 12th meeting.

Rep. Hornstein proposed looking at what other state DOTs are doing for trunk highway spending. Council of State Governments, NCSL, and AASHTO were suggested as potential resources. MnDOT Commissioner Anderson Kelliher has a contact at AASHTO that is policy expert who we could reach out to for a presentation.

Closing

Co-Chair Dibble adjourned meeting.

October 12, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Executive Budget Coordinator Liz Connor, MMB; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Carly Melin, Office of Attorney General; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Rep. Marion O'Neill

Others in Attendance

Kristi Schroedl, Josh Knatterud-Hubinger, MnDOT Financial Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Craig Gustafson, Kyle Fisher, Jim Cownie, Laura Roads, MnDOT Office of Chief Counsel; Brian Gage, MnDOT Transportation System Management; Kim Collins, MnDOT Deputy Commissioner; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Cassandra O'Hern, DPS; Jennifer Nelson, House DFL Research; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Andy Lee, House Fiscal Analyst; Lexi Stangl, Senate Counsel; Krista Boyd, Senate Fiscal Analyst; Nick Lardinois, MMB; Margaret Donahoe, Minnesota Transportation Alliance; Fred Morrison, University of Minnesota Law School; Joung Lee, AASHTO

Call to Order

Co-Chair Petersburg called meeting to order.

Approval of Minutes

Co-Chair Dibble moved the approval of 9.28.21 minutes. Rep. Elkins seconded. Motion carried.

Overview of Other State DOT Highway Spending

Joung Lee, Director of Policy and Government Relations for American Association of State Highway and Transportation Officials (AASHTO), presented an overview of state revenue resources and restrictions on revenue for transportation funding.

Rule of thumb is most gasoline fuel taxes go to transportation purposes, most likely for highway uses. Every state has a different setup.

The federal aid highway program limits funding to capital purposes only. Twenty-seven states restrict spending to highways only. Commissioner Margaret Anderson Kelliher requested that Mr. Lee provide a breakdown of how those other states define "highway purposes." Sen. Newman asked that Mr. Lee also provide examples from the twenty-one states who dedicate revenue to transportation broadly. How are they defining transportation? What are they doing with their funding? Sen. Newman wants to compare the restrictive states with the broadly interpreted states.

Sen. Newman brought up the issue of toll roads in Minnesota and suggested the Task Force examine the issue of toll roads.

Rep. Elkins addressed the appropriateness of using state funds for bike/ped facilities that are part of a highway project. He cited a court case with Illinois DOT over a bridge with no bike facilities. A cyclist tried getting across the bridge and was struck and killed by a car. The family sued the DOT and won. Mr. Lee explained that at the federal level there continues to be a dedicated pot for transportation alternative programs and active transportation/bike/ped modes.

Rep. Petersburg commented that in the 1950's and 1960's there was a growing use of gas. For a long time, gas tax was a growing revenue source. Now we are in period where the consumption of gas is plateauing, and people are keeping vehicles longer. Revenue is dropping.

Sen. Dibble recommended for reading "Transportation Trust Funds and Lockbox Protections" from the Council of State Governments. The article addresses constitutional protections for state transportation trust funds.

Constitutional History

Professor Fred Morrison, University of Minnesota Law School, presented an overview of the Minnesota constitution and how it originally prohibited internal improvements.

The rule prohibiting internal improvements ran into three major challenges in the first part of the 20th Century with the advent of the automobile, the Hinkley fire, and the beginnings of commercial air traffic. With the advent of the automobile, state officials wanted to create a state trunk highway system. A constitutional amendment was proposed that identified 70 "Trunk Highways" by giving starting and ending points and routes for each of the numbered highways.

In 1971, the Legislature created a study commission to review the constitution and to recommend any necessary changes. An amendment passed that permitted internal improvements to be carried on in any of ten purposes, now spelled out in Art. XI, Sec. 5, subsections (a) through (j). One of those purposes was to establish and maintain highways.

Commissioner Anderson Kelliher commented that direct improvements of a road or building a road are obvious highway purposes. But what about paying for snow plow drivers, or HR staff responsible for hiring engineers, or Civil Rights overseeing construction contacts. Commissioner Anderson Kelliher asked if there's latitude in this constitutional language. Professor Morrison explained they are permitted in a limited way.

Rep. Elkins asked why after the 1973 study commission report on the constitution the legislature didn't eliminate the internal improvements cause. Professor Morrison explained that the committee thought it was too big a decision and that there were other bigger issues to resolve.

Closing

The next meeting House and Senate staff will present background information on dedicated funds. Then the Task Force will look at how are states are defining highway purposes. Towards the middle of November, the Task Force will start working on the report that is due in February.

Co-Chair Petersburg stressed that the Task Force read the additional information that Mr. Lee has agreed to provide and to be ready to discuss it.

Co-Chair Dibble recommended reading the report Federal Aid to Roads and Highways Since the18th Century: A Legislative History from the Congressional Research Service. The report comprises a brief history of such aid, detailing some precedent setters and more recent funding through the Highway Trust Fund, which was created in 1956.

Rep. Elkins recommended reading about the Babcock Amendment of 1920 which defines highway routes 1 to 70 as constitutional routes.

Co-Chair Petersburg adjourned the meeting.

October 26, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Executive Budget Coordinator Liz Connor, MMB; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Carly Melin, Office of Attorney General; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Rep. Marion O'Neill

Others in Attendance

Andy Lee, House Fiscal Analyst; Jennifer Nelson, House DFL Research; Matt Burress, House Research; Lexi Stangl, Senate Counsel; Krista Boyd, Senate Fiscal Analyst; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Josh Knatterud-Hubinger, Sam Brown, MnDOT Financial Management; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Jim Cownie, Kyle Fisher, Craig Gustafson, MnDOT Office of Chief Counsel; Nick Lardinois, MMB; Ryan Majerus, Senate Researcher; John Howe, House Transportation Committee Administrator; Cassandra O'Hern, Jordan Haltaufderheid, DPS; Margaret Donahoe, Minnesota Transportation Alliance

Call to Order

Co-Chair Dibble called meeting to order.

Approval of Minutes

Co-Chair Petersburg moved approval of minutes. All approved.

Background Information of Dedicated Funds

Lexi Stangl, Senate Counsel, Matt Burress, House Legislative Assistant, and Andy Lee, Fiscal Analyst, presented on highway funds legislative activity. They reviewed:

- General Finance Overview
- Constitutional History
- Select Legislative Topics
- Constitutional Interpretation
- Contradictory Provisions

To date, staff research has not found in-depth legislative guidance on what constitutes a highway purpose or trunk highway purpose. Some legislative activity points to case-by-case responses to specific uses of dedicated funds.

Agencies and departments have broad authority within their own departments how to spend. Co-Chair Petersburg wanted to know if the legislature could make it more specific of what is and is not highway spending. Lexi Stangl commented that yes, the legislature could give more comprehensive guidance. Matt Burress noted the approach has been best when it has been

case by case specific areas. The level of specificity of the budget is reflective of the level of the prior budget.

Andy Lee pointed out that the current appropriation structure doesn't necessarily setup categories around MnSHIP or districts for example. MnDOT has the broad authority to be the decision maker on investment categories and district needs.

Matt Burress stated that a greater degree of specificity through the budget might not enable the legislature to address concerns around appropriate use of dedicated funds. Furthering division an appropriation into smaller chunks could still leave an appropriation without further guidance of what's acceptable use of those funds.

Lexi Stangl pointed out that MnDOT does not get a lot of general fund money. It's mainly trunk highway and HUTDF. If we don't want MnDOT to use those sources of funding, then we need to look at where else MnDOT would get their funding.

Closing

Co-Chair Petersburg, who took over for Co-Chair Dibble who needed to leave early, shared the next meeting will be a round table discussion to talk about what we have heard so far.

Co-Chair Petersburg adjourned the meeting.

November 23, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Government Affairs Director Angelica Klebsch, Office of Attorney General; MMB Executive Budget Coordinator Casey Mock; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Rep. Marion O'Neill

Notes: Angelica Klebsch replaces Carly Melin for Office of Attorney General. Casey Mock replaces Liz Connor for MMB.

Others in Attendance

Andy Lee, House Fiscal Analyst; Jennifer Nelson, House DFL Research; Matt Burress, House Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Kristi Schroedl, MnDOT CFO; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Jim Cownie, Kyle Fisher, Craig Gustafson, MnDOT Office of Chief Counsel; Kim Collins, MnDOT Deputy Commissioner and Chief Administrative Officer, Nick Lardinois, MMB; John Howe, House Transportation Committee Administrator; Jordan Haltaufderheid, DPS; Margaret Donahoe, Minnesota Transportation Alliance

Called Meeting to Order

Co-chair Petersburg called the meeting to order.

Approval of Minutes

Co-Chair Dibble moved to approve minutes. All approved.

Roundtable Discussion

Co-Chair Petersburg proposed the following questions to the Task Force:

1) Are there any other information or reports needed before we begin debating the task force report?
2) What are the areas/issues that we feel are a concern in expenditures out of the dedicated funds?
3) What expectations/solutions do you have to address your concerns?

Commissioner Margaret Anderson Kelliher shared we have reviewed a lot of reports. It may be helpful to look at analogous situations that are already addressed in statute for additional clarity and understanding. For example, MnDOT is asked why we can do something on the trunk highway system for walking in one area but cannot do it somewhere else. Clarification on those issues is important.

MnDOT staff are providing administrative support to the Task Force for drafting the final report. Matt Shands is leading that effort. Task Force members will need to provide the recommendations for the report.

Shawn Kremer advised that we want to make sure we think about funding for the future as this would be the appropriate place to have those conversations about tweaking funding. We can bring in experts for those conversations.

Co-Chair Petersburg commented that the Legislature in the past has been fairly broad in appropriation of trunk highway funding and in latitude to MnDOT. If the Task Force wants to be less broad, then we need to provide legislation that is more specific on how those funds get distributed and if MnDOT needs to get funding from somewhere else.

Co-Chair Dibble is interested in learning more about how the gas tax is paid and then reimbursed to various users who do not use gasoline for the roadway. For reference see 2021 statue 296A.18 apportionment of tax.

Rep. Hornstein does not feel we need additional information at this point and that we should include information from previous presentations in the report.

Sen. Newman would like to examine in more detail what other states are doing. He commented that the Task Force needs to decide if the statutory definition of highway purpose needs to be expanded or tightened. Without an appropriate definition of highway purpose, there is a great deal of latitude for MnDOT to decide what is and what is not a trunk highway purpose. Sen. Newman's expectations for the final report is that it is collaborative and unanimous in adoption, followed by legislation they could propose and enact next session. Rep. Hornstein shared in those expectations.

Sen. Johnston Stewart would like clarification on the how the percentage of gas tax to snowmobiles, ATVS, and other off-road vehicles is calculated. Co-Chair Petersburg asked Andy Lee and Matt Burress to submit a report on the question.

Rep. Elkins commented that if the Task Force does conclude some expenditures are not highway purpose, this would be a good year to address that. They will have to work with the Public Safety Committee about where those expenditures would get picked up in general fund allocations.

Closing

Co-Chair Petersburg asked the Task Force to review the report on MnDOT expenditures before the next meeting. The Co-Chairs will meet with MnDOT staff to discuss the outline of the final report and will bring the outline to the next meeting.

Co-Chair Petersburg adjourned the meeting.

December 7, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; MMB Executive Budget Coordinator Casey Mock; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Rep. Marion O'Neill; Laura Taken-Holtze, Legislative Director, Office of Attorney General

Note: Laura Taken-Holtze was proxy for Angelia Klebsch.

Others in Attendance

Andy Lee, House Fiscal Analyst; Jennifer Nelson, House DFL Research; Matt Burress, House Research; Joe Marble, House GOP Research; Dave Fraser, Senate GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, MnDOT Government Affairs; Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Jim Cownie, Craig Gustafson, MnDOT Office of Chief Counsel; Nick Lardinois, MMB; John Howe, House Transportation Committee Administrator; Cassandra O'Hern, Jordan Haltaufderheid, DPS; Margaret Donahoe, Minnesota Transportation Alliance

Call Meeting to Order

Co-Chair Dibble called meeting to order.

Approval of Minutes

Rep. Elkins moved approval of the minutes. All approved.

Discussion of Report Outline

Matt Shands presented a draft report outline. Report is divided into three sections: Task Force Information/Background Materials, Trunk Highway Spending Areas of Interest, and Task Force Recommendations. Report will have an executive summary and appendixes of reference material.

Sen. Newman recommended that under Areas of Interest, the report address the transfer of highway funds from MMB, Dept. of Revenue, and DNR. Mr. Shands confirmed that information would be included alongside the information on MnDOT and DPS activities.

Mr. Shands proposed two different ways the section on recommendations could be organized:

1) We talk about a specific finding then, offer a recommendation
2) We list all the findings, then all the recommendations

The Task Force liked the idea of listing a specific finding, then offering a recommendation.

Mr. Shands is writing the subsection Legal Precedent under section Task Force Information/Background Information with the help of the MnDOT Office of Chief Counsel. Together they will draft a summary of what issues around trunk highway spending have been considered in court and what determinations have been made.

Co-Chair Dibble commented that the courts in large measure deferred to the guidance and intent of the legislature of how they construed the constitutionality of a trunk highway purpose. The purpose of the report is working in conjunction with the executive branch about what is appropriate use in light of constitutional limitations.

Sen. Newman agreed that courts are going to defer to the legislature within certain parameters. They look at issues on a case-by-case basis. It's difficult for courts to give a hard definition of a trunk highway purpose.

Discussion of Narratives

To help us come to a consensus about what a trunk highway purpose is, Co-Chair Dibble posed two different ways we could ask the question.

1) Should the test of a highway purpose be a "but/for" question, i.e., "But for [activity X], roads and highways could not be [built / repaired / operated]."
2) Should the test be more expansive…also based on a "but/for" test, but asking instead, "But for [an activity X], roads and highway could not [be delivered efficiently / be as safe as possible / operate optimally / protect the environment / benefit those who need access and mobility]."

Co-Chair Dibble commented that we need to brainstorm on what are the larger values we want our transportation system to uphold, what we want from our transportation system, and how we want our transportation system to operate.

Co-Chair Dibble argued that we want work to be done as efficiently as possible in the least of amount time and in the least amount of expense. Sen. Johnson-Stewart responded that it's important to remember that the cheapest solution is not always the best product with the best value and life cycle costs. Co-Chair Dibble clarified we do not want to imply that the cheapest solution is always the best value.

The Co-Chairs proposed we first start looking at direct purposes for trunk highway spending, such as road use or construction, then look at more specific examples. What is a degree removed from direct roadway work? Co-Chair Dibble gave examples of acquiring land for right of way, removing obstacles from crashes on roads and bridges, law enforcement and administrative overhead.

Sen. Newman liked the idea of first looking at costs most closely associated with building a highway or bridge, then taking a larger look at indirect costs.

Sen. Newman suggested that as an approach to move forward we start with the question of what the statutory definition of a trunk highway purpose is and put it in statue. The way statue 161.045 reads now is a list of what is not a trunk highway purpose. Instead of prohibitions, we

could define trunk highway purpose to give agencies guidance as to how trunk highway funds can be spent.

Rep. Elkins commented that a portion of trunk highway funds are allocated to counties and cities where a road or street may have more uses than a trunk highway. Our definition of trunk highway purpose needs to accommodate all users of highway, not just motorists.

Closing

Co-Chair Petersburg requested that Mr. Shands present the narrative for Task Force Information/Background Materials at the next Task Force meeting on Dec. 21.

Co-Chair Dibble adjourned the meeting.

December 21, 2021, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Sen. Scott Neman, Sen. Scott Dibble, Sen. Ann Johnson Stewart, Sen. Julia Coleman, Rep. John Petersburg, Rep. Frank Hornstein, Rep. Steve Elkins, Laura Taken-Holtze, Legislative Director, Office of Attorney General, Nick Lardinois, Executive Budget Officer, DPS.

Absent: Rep. Marion O'Neill

Note: Laura Taken-Hotlze was proxy for Angelia Klebsch, Government Affairs Director, Office of Attorney General. Nick Lardinois was proxy for Casey Mock, Executive Budget Coordinator, DPS.

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Ryan Majerus, Senate DFL Research Consultant; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, MnDOT Government Affairs; Josh Knatterud-Hubinger, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Jim Cownie, Craig Gustafson, Kyle Fisher, MnDOT Office of Chief Counsel; Cassandra O'Hern, Jordan Haltaufderheid, DPS

Call to Order

Rep. Petersburg called the meeting to order.

Approval of Minutes

Rep. Elkins moved approval of the minutes. All approved.

Review of Draft of Section 1 of Report

Matt Shands, MnDOT Commissioner's Office, Kyle Fisher, and Jim Cownie, MnDOT Office of Chief Counsel, presented on the first draft of section 1 of the Task Force report. The section provides a summary of fiscal and budget considerations and legal considerations. They are still developing items that will go in the appendix.

MnDOT Commissioner Margaret Anderson suggested there are two levels of editing the report. Level one is grammar and clerical edits which are easy to accept. Level two are suggested edits that could take us in a different direction or understanding. Co-Chairs will decide the editing process of how to submit edits and how edits will be approved.

Mentimeter Exercise

For question one, "should the definition of highway purpose be detailed and specific," six Task Force members said yes and five said no. Rep. Elkins commented that a specific definition doesn't mean it needs to be a limited definition.

For question two, “when a future program/project/expenditure doesn’t appear to meet the exact current definition for highway purpose, but under certain circumstances it could, should the legislature have a proactive role in making the final determination,” seven Task Force members said yes and four said no. Rep. Hornstein commented that this issue doesn’t begin and end with what the definition is of a highway purpose. The legislature plays an ongoing role.

For question three, Task Force members were asked to rank what the legislature’s involvement in determining a questionable highway should be. The results were:

- 1st: During the budget proposal introduction to the transportation finance committee
- 2nd: Only during the debate and passage of the transportation omnibus bill
- 3rd: In consultation with a balanced bi-partisan committee created for this purpose
- 4th: Prior to the agency finalizing their budget
- 5th: Other

Commissioner Anderson Kelliher commented that she was glad “prior to the agency finalizing their budget” was ranked fourth. Logistically and historically it’s difficult to look at the budget this way with how budget submissions go. The process happens ahead of the Governor’s recommendation.

For question three, “should the definition include specific items that would be for a highway purpose and specific items that would not be for a highway purpose,” five Task Force members said yes, and six said no.

Review of Draft Definition of a Highway Purpose

Task Force members reviewed a draft definition of a highway purpose written by Co-Chair Dibble.

Highway purposes shall be construed to mean the following:

- *Fulfilling the purposes of the departments of transportation and public safety in Minnesota law (especially chapters 174 (DOT) and 299D (State Patrol)), as pertains to:*
- *The research, planning, design, engineering, construction, reconstruction, improvement, operation, maintenance, repair, and betterment of public highways, roads, bridges and streets of the state and its political subdivisions, including the cost and expense of acquisition of rights-of-way, policing and enforcement, the mitigation of environmental effects, their related fixed facilities in the immediate right of way, including related public facilities for nonmotorized traffic;*
- *Administrative and legal costs necessarily incurred in the foregoing purposes*
- *The payment or refunding of any obligation of the State of Minnesota;*
- *Refunds authorized by law for taxes paid on motor vehicle fuels for those vehicles that are not operated on public streets;*
- *The cost of collection of any revenues.*

The first bullet point is not meant to be comprehensive. It’s designed to be a general catch all statement. Co-Chair Petersburg asked Co-Chair Dibble to clarify “mitigation of environmental

effects" from the second bullet point. Co-Chair Dibble explained it has to deal with going through a wetland or when dealing with an environmental effect on a roadway. He gave the example of a highway going through a trout stream. A special culvert is constructed so the stream can be continuous, and the necessary temperature of water is maintained. Would we consider this a highway purpose, or would it come out of our environmental conservation fund?

Sen. Johnson-Stewart recommended we add the word "permitting" for environmental. She asked how specific we want to get. There is nothing about signage, erosion, or permitting. A road cannot be built unless certain things are included. Money is tied to federal funds that have requirements for road construction. Do we want the second bullet point to list all the elements required to acquire land, design, and construct a roadway from start to finish?

Sen. Newman commented that no matter how much we put into the specifics, we are never going to get it all because times and needs change. Sen. Newman had proposals for how the definition could be written. He will submit those to the Co-Chairs for review to share with the group. Co-Chair Dibble agreed with Sen. Newman that we will never have a definitive list for the definition.

Sen. Johnson-Stewart asked for clarification on the phrase "including related public facilities for nonmotorized traffic" in the second bullet point. Co-Chair Dibble explained it's for sidewalks, adjacent bike paths, and whatever is part of the corridor that moves people.

Co-Chair Petersburg asked if the constitution and requirements for a highway purpose translates to counties, cities, and townships. They are getting funds from HUTD. Do they have more latitude on spending those dollars since they are not trunk highway funds?

Co-Chair Dibble explained he believes counties have some language around highway purpose. Both county state highway funds and municipal state aid funds can pay for roadway improvements for any road in geographic bounds of that jurisdiction. Lexi Stangl referred Task Members to Article 14 in the State Constitution which defines county state-aid highway fund and municipal state-aid street fund. Rep Elkins commented that many municipalities spend most of their municipal state-aid funds on county matches for state highways.

For next steps with the definition, Commissioner Anderson Kelliher commented that's important to take the definition through legal review to get their perspectives. We need time for it to go through MnDOT legal review and through Attorney General legal review. Co-Chair Petersburg agreed. Sen. Newman commented he intends to vet the definition though senate counsel at the appropriate time. He agreed MnDOT, OAG, and DPS legal counsel should weigh in.

Shawn Kremer, DPS, shared he has done a bit of cursory review but needs to do a deep dive to see if there any conflicts with any statutes and responsibilities.

Co-Chair Petersburg commented that if an activity is not a trunk highway fund or HUTD, it just means you have to use another source of funding. It does not mean you cannot do that activity.

Closing

Rep. Petersburg asked that anyone with suggestions or ideas on the definition should them to the Co-Chairs before the next meeting. The goal is to have a working definition a highway purpose by end of the next meeting.

Rep. Petersburg adjourned the meeting.

January 4, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Sen. Scott Neman; Sen. Ann Johnson Stewart; Sen. Julia Coleman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Angelia Klebsch, Government Affairs Director, Office of Attorney General; Casey Mock, Executive Budget Coordinator, MMB

Absent: Co-Chair Sen. Scott Dibble

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, John Dukich, Jennifer Witt, MnDOT Government Affairs; Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Kristi Schroedl, MnDOT CFO, Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Jim Cownie, Craig Gustafson, Kyle Fisher, MnDOT Office of Chief Counsel; Jordan Haltaufderheid, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Beth Ethier, Senate Legislative Assistant; Krista Boyd, Senate Fiscal Analyst; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research.

Call to Order

Rep. Petersburg called the meeting to order.

Approval of Minutes

Rep. Elkins moved approval of the minutes. All approved.

Discussion of Proposals for Definition of Highway Purpose

Senator Newman proposed five possible approaches for defining highway purpose. He tried to combine Supreme Court cases that give us guidance with the definition. The *Carter v Northwestern Telephone Exchange Company* case cautioned against a bright-line rule and recommended decisions be made on a case-by-case basis. The first approach used language that gave specifics about what is a highway, but this approach is problematic as it's not possible to include all current and future activities. The second approach defined what is not a highway purpose, but it doesn't tell what a highway purpose is. The legislature would be reacting to spending MnDOT has already taken and is not a proactive approach. The third approach combines the first and second approaches. The fourth approach would apply a test for what is a highway purpose. The fifth approach is a direct purpose definition, but it doesn't draw a bright line. Senator Newman was most comfortable with approach five.

Co-Chair Petersburg suggested we define highway purposes, construction purposes, improvement of public highways, and maintenance of public highways. The definitions provided were high-level and were not in conflict with the state constitution. Co-Chair Petersburg agreed

with Sen. Newman that we should not get too specific in our definition, and he liked the idea of a test as part of the definition.

Sen. Johnson Stewart commented that the maintenance and construction of a road can include hundreds of activities. Cities and counties defer to MnDOT's bidding methodology. If we get too specific and stop funding certain activities out of highway funds, we will have to try to figure how to fund those different items. We might spend a lot of money in administrative costs.

Johnson Stewart wanted to know the history of why the trunk highway fund covers the State Patrol but not local police. Co-Chair Petersburg explained that the fund pays for highway patrol enforcement of the trunk highway. State Patrol on capitol grounds is an activity that is paid by a different fund. Municipalities and county state aids have their own funding. Sen. Newman added that patrol of the trunk highway is determined to be directly related to highway purpose. When State Patrol is involved in other activities, they are not paid out of the trunk highway fund.

Sen. Johnson Stewart recommended providing sidewalks and trails as examples for public facilities of nonmotorized traffic. Rep. Hornstein liked that broader purpose. Rep. Elkins recommended we may need to have a definition of a highway that includes facilities for other uses of the highway.

Jim Cownie, MnDOT Chief Counsel, provided an overview of MnDOT and MMB's recommendation. Subdivision 1 lays out the policy. Subdivision 2 lists itemized generic MnDOT activities that are a trunk highway purpose. Subdivision 3 lists what the legislature has already declared is not a highway purpose. This would replace the current subdivision 3.

Commissioner Margaret Anderson Kelliher commented that the purpose of this exercise is to bring clarity and guidance at a high-level. We need to find a balance between historic case law and the ability of people to read statute and understand the guidance being given.

Rep. O'Neill wanted guidance on what is not included in the MnDOT budget. Anderson Kelliher gave the example of the technology expenditures that are not directly related to highway purpose. Mr. Cownie added that federal regulations require us to operate certain civil rights programs for highway funds. Programs like passenger rail and aero are not included here. Jen Parshley, MnDOT Commissioner's Office, referred the Task Force to MnDOT's Dedicated Fund Expenditures Report, which details expenditures and transfers from the trunk highway fund and highway user tax distribution fund for the previous two fiscal years

Sen. Newman asked if the MnDOT proposal would keep or repeal the limitations that take effect in 2025. Commissioner Anderson Kelliher said the limitations would be kept.

Sen. Newman expressed concern that the list MnDOT proposed raises questions of what kind of authority the department would be given with broad language. He preferred going with the direct purpose approach and using the four definitions that Co-Chair Petersburg provided. It could also include a "but for" test.

Commissioner Anderson Kelliher expressed that a direct link could be challenging. Listing what we already exclude and what listing what we do pay for would give the department the most guidance.

Rep. O'Neill commented that it would seem easier to administrate listing what's not allowed, than listing what is allowed.

Co-Chair Petersburg explained when activities are listed as 'not allowed' it's usually because they were paid for in the previous biennium and now, we are saying they are not covered. We need to decide if we want to be reactive to MnDOT spending of trunk highway funds or proactive. Rep. Elkins commented that if we rely on a list that is exclusions we will always be adding retrospectively.

Shawn Kremer, Department of Public Safety, asked Co-Chair Petersburg how he was thinking about safety in his definition of highway purpose. Co-Chair Petersburg explained he thought of it as the expectation of those traveling on the roadway of their own safety.

Mr. Kremer explained that for DPS's comments on the definition of highway purpose they took an inclusive approach of what State Patrol is responsible for now. They are primarily tasked with the safety of the trunk highway system. Mr. Kremer referenced Minn. Stat. chapter 299D which cites their responsibilities. The State Patrol does assist local jurisdictions off of the trunk highway. There are tasks the State Patrol is responsible for, like capitol security, that are not on the trunk highway. DPS agrees that BCA labs should not funded by the trunk highway, and they are looking for another funding source.

Sen. Newman asked Mr. Kremer to have DPS further define what is a trunk highway purpose. Sen. Newman would like more time to review MnDOT's proposal.

Rep. Hornstein proposed that the Task Force form a small working group to come up with one draft document for the definition of highway purpose. The working group would include Co-Chair Petersburg, Co-Chair Dibble, Rep. Hornstein, Sen. Newman, MnDOT Commissioner Anderson Kelliher, and Mr. Kremer of DPS. Co-Chair Petersburg asked that Lexi Stangl and Matt Burress be part of the group. The working group will meet Jan 11th at 3:00 PM.

Closing

Co-Chair Petersburg asked the Task Force to be prepared to answer questions five-ten in the questions document emailed by Parshley. This will be discussed at the next meeting.

January 18, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Sen. Scott Dibble; Sen. Scott Neman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Rep. Marion O'Neill; Angelica Klebsch, Government Affairs Director, Office of Attorney General; Casey Mock, Executive Budget Coordinator, MMB

Absent: Sen. Ann Johnson Stewart; Sen. Julia Coleman

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, MnDOT Government Affairs; Sam Brown, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Jim Cownie, Craig Gustafson, Kyle Fisher, MnDOT Office of Chief Counsel; Cassandra O'Hern, Jordan Haltaufderheid, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Beth Ethier, Senate Legislative Assistant; Krista Boyd, Senate Fiscal Analyst; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research; Dave Fraser, Senate GOP Research

Call to Order

Co-Chair Rep. Petersburg called the meeting to order.

Approval of Minutes

Rep. Elkins moved the approval of minutes. All in favor.

Schedule

The Task Force agreed to meet next Tuesday January 25 3:00 PM to 4:00 PM for additional time to discuss the definition of a highway purpose for the report.

Rep. Hornstein would like to present the report in a hearing and to prepare any needed bills. Sen. Newman agreed with Rep. Hornstein.

MnDOT Commissioner Anderson Kelliher recommended that we have Feb 1st as a goal for a final draft of the report to review. Petersburg supported this recommendation.

Discussion of Task Force Questions 5-10

Question 5: Can clarity of purpose be specified during budgeting process?

- Members supported using the budget presentations by the agencies to provide specific information about budget proposals.

Question 6: Have we examined each department's practices in managing and tracking distribution satisfactorily?

- Sen. Newman argued that we did not satisfactory accomplished this task because we do not know the specifics of how funding was spent. Sen. Newman suggested a next step might be a legislative audit. Co-Chair Rep. Petersburg responded that an audit is out of the scope of this task force, but we can recommend one in our required report.
- Co-Chair Sen. Dibble felt the reports from the agencies were informative and that we did satisfactory accomplish this task.
- Rep. Elkins agreed with Co-Chair Sen. Dibble and was not in favor of the line-by-line-item dissection of the agency budget that Sen. Newman proposed.
- MnDOT Commissioner Anderson Kelliher suggested an informational hearing on these items to talk about appropriate spending. Sen. Newman supported the Commissioner's suggestion. Prior to the hearing, they could send questions to the agencies to prepare.
- Rep. O'Neill asked for clarification if we are talking about ROI of spending or if we are talking about spending on things, we already deemed inappropriate. Sen Newman argued it's not a question of if concrete or asphalt is better surface to use on a road. It's about asking if money was appropriately spent on the construction, maintenance, or improvement of a highway.
- Co-Chair Rep. Petersburg argued that this task force does not have the time to do this deep review and supported the idea of informational hearings to review spending further. Sen. Newman and Rep. Hornstein also supported the idea of a hearing.
- Rep. O'Neill asked MnDOT Commissioner Anderson Kelliher to explain MnDOT's process when they categorize something as an appropriate trunk highway expenditure. MnDOT Commissioner Anderson Kelliher explained that most things are fairly well laid out in terms of use. She gave the example of last year when the legislature passed a report on future of transit. MnDOT was asked to do the report with the University of Minnesota. MnDOT took the request through an internal process to ask if this was an appropriate use of trunk highway funds. They determined that it wasn't and have since held up the report. They will look for clarification in the upcoming session on the source of funding. MnDOT provided a memo from Office of Chief Counsel at the start of these meetings that shows the decision-making process.
- MnDOT Commissioner Anderson Kelliher gave another example of capital allocations for truck stations. Is furnishing a truck station with lifts and large-scale equipment appropriate? At the time, it was determined that it was an appropriate trunk highway expenditure.

Question 7: Permissible uses?

- Are walking and bike trails permissible?
- Is cybersecurity permissible?

- Is MnDOT administration costs permissible? And if so, to what level?
- Same for DPS administration?
- Are there specific offices/entities within MnDOT that are permissible? If so, which ones?
- The Task Force will revisit this question after the definition is drafted.

Question 8: Have we sufficiently evaluated current MnDOT and DPS spending to determine permissibility?

- Sen. Newman argued this question is very similar to question six and that we have not satisfactory achieved this yet. He recommended that we put in the report we need more information before we can answer questions six and eight. Co-Chair Rep. Petersburg said that was an acceptable position to take.

Question 9: Does MMB have sufficient direction in determining permissibility of fund transfers? What changes?

- Co-Chair Rep. Petersburg commented this will depend on the definition we come up with for highway purpose.

Question 10: Other?

- Sen. Newman argued we should address the degree to which the legislature should have proactive input on spending of trunk highway funds. He believes this is a legislative function and not an agency function. Co-Chair Sen. Dibble asked Sen. Newman to explain what he means by proactive. Sen. Newman clarified he meant being the opposite of reactive. In the past the legislature has put in statutes after they have disagreed with MnDOT or DPS spending of trunk highway funds on a particular expenditure. He recommended that it may be a matter of holding hearings on budget proposals and asking specific questions.

Closing

Co-Chair Rep. Petersburg adjourned the meeting.

January 25, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Sen. Scott Dibble; Sen. Scott Neman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Angelica Klebsch, Government Affairs Director, Office of Attorney General; Casey Mock, Executive Budget Coordinator, MMB; Sen. Ann Johnson Stewart

Absent: Sen. Julia Coleman, Rep. Marion O'Neill

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Kristi Schroedl, MnDOT CFO; Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Craig Gustafson, Kyle Fisher, MnDOT Office of Chief Counsel;, Jordan Haltaufderheid, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Beth Ethier, Senate Legislative Assistant; Krista Boyd, Senate Fiscal Analyst; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research

Call to Order

Co-Chair Rep. Petersburg called the meeting to order.

Approval of Minutes

Rep. Elkins moved the approval of minutes. Trunk corrected to truck on second page. All approved.

Side-By-Side of Proposed Definitions of a Highway Purpose

Lexi Stangl presented on the side-by-side comparison of the definitions of a highway purpose from Rep. Elkins, Sen. Newman, and the agencies.

Co-Chair Rep. Petersburg recommended that legislative committees should focus on specific state agency programs and activities during the budget presentations.

I. Continued Discussion of Task Force Questions

The Task Force returned to question seven which focuses on the permissible issues the Task Force is required to review by statue.

i. the creation, construction, expansion, or maintenance of bikeways

Rep. Elkins asked how we separate bike/ped facilities from the roadway. There are great many contacts for a bikeway that are an integral part of the public way. Rep. Elkins cited research

from the 90s and 2000s that showed there were less accidents when a four-lane road was converted to a three-lane road. The Minnesota Local Road Research Board showed in a study about fifteen years ago on the conversion of four-lanes to three-lanes that accidents go down by about half.

Co-Chair Sen. Dibble agreed with Rep Elkins. Whether pedestrian accommodation, bikeways, or crosswalk, it's important for individuals to be able to do what they need to do.

Sen. Newman asked the Task Force to think in terms of other modes of transportation in the context of what we are talking about now, such as electric scooters and hover boards. He argued that crosswalks and overpasses for pedestrians are needed to provide safe access for them. Bikes already have the right to use vehicle lanes, but they do not have the exclusive right to use it. Sen. Newman argued that he is not suggesting barring bikes from the roads but is objecting to turning a vehicle lane into a bike lane for exclusive use of bicyclists who are not contributing to the cost of that lane. He recommends that bicyclists contribute to the cost of those lanes.

Rep. Elkins responded that the vast majority of funding for bike lanes on city and city county roads is from property taxes, not the gas tax.

Sen. Newman suggested that we put in our recommendation that bikes and pedestrians in the right of way are a highway purpose and that the legislature consider other modes of transportation that are not yet popular or invented.

Rep. Elkins commented that he did not have a problem with a sales tax on bikes for the dedicated fund. Co-Chair Sen. Dibble agreed.

Suggested final recommendation: Bikeways, along with other potential non-motorized modes, are permissible. We further recommend that the committees explore potential funding mechanisms.

ii. Expenditures for Cyber security permissible

Sen. Newman asked for a definition of cybersecurity that shows a direct relation to highway purpose. MnDOT Commissioner Anderson Kelliher explained that cybersecurity is related to both project delivery and operations. MnDOT has more connected devices on our roadways than other agencies.

Rep. Elkins, who serves on the LCC Cybersecurity Committee and on the Task Force for Data Connectivity on Connected and Automated Vehicles, commented that cybersecurity is infused with everything MnDOT is doing operationally such as maintaining security of GPS in plows and in traffic cams. There are some specific things you could tie to highway operations but for the most part this is an overhead expense like payroll expenses.

Co-Chair Dibble suggested it may need to be divided up on what's focused on the trunk highway.

Sen. Newman agreed that Rep. Elkins examples are examples of a highway purpose, but if we are talking about over all administration that is a different matter if not directly related to a highway purpose.

Co-Chair Rep. Petersburg suggested that it's permissible within the bounds of what is directly related to a trunk highway system and highway purpose. MnDOT Commissioner Anderson Kelliher expressed concern that recommendation is too narrow.

Sen. Newman, citing the *Cory v. King* case, suggested the cost is no more than necessary to carry out constitutional provisions in Article 14.

Suggested final recommendation: It is permissible within the bounds of what is directly related to programs and delivery of the trunk highway system.

iii. use of trunk highway funds by the Department of Transportation for: administrative costs of the targeted group business program; making grants to metropolitan planning organizations outside of the metropolitan area; and making grants to regional development commissions, joint powers boards, or to department district offices to identify critical concerns, problems, and issues

Co-Chair Sen. Dibble argued that within these categories, it's critical to question if it is possible without these activities to plan and do the necessary administrative work around planning and designing a highway system. The answer is no. We have state and federal statues we need to fulfill.

MnDOT Commissioner Anderson Kelliher asked if category iii is actually about the taking out of the trunk highway fund. So, for example MnDOT and the legislature should not take dedicated funds for other uses not related to transportation and highways.

Sen. Newman responded that it is about the prohibition of taking money out of HUTD for things that don't fulfill a highway purpose and gives direction to what that amount can be to fulfill a highway purpose.

MnDOT Commissioner Anderson Kelliher explained that the funds to MPOs are for highway planning purposes. Planning is also federal dollars, and we have an obligation to fund.

Rep. Elkins added that funds for MnDOT, cities, and counties that is spent on roadways is frequently comingled with federal and local sources. Rep. Elkins asked how much effort we want to take in teasing that out. Co-Chair Rep. Petersburg agreed that it is a struggle to decide with how much minute detail we want to go.

Suggested final recommendation: They are permissible, but only to the level of the necessary expenditures to defray the costs attributable to the construction, maintenance, and repair of the trunk highway system.

iv. administration and related services for the Department of Public Safety, the commissioner's office, fiscal services, human resources, communications, and technology services; and

Sen. Newman explained that in the case of DPS and the state highway patrol they do breakdown the allocations of money between the general fund and trunk highway fund to reflect the difference between what State Patrol is doing on the highway and other duties.

Co-Chair Dibble said that some of the cost is for overhead support for the State Patrol and whatever they need to do. The percentage or proportion of costs for activities on the highway can be ascertained.

DPS Chief Financial Officer Shawn Kremer explained there isn't any trunk highway funding for overhead that is spent on a DPS division that is not the State Patrol. DPS's direction for appropriations for operating overhead costs come directly from the legislature. Mr. Kremer argued it's appropriate for DPS to have some direct appropriations from trunk highway funds to support these costs.

Sen. Newman commented that the Supreme Court ruled the State Patrol is appropriate to pay out of the highway fund. He asked Lexi Stangl and Matt Burress to provide the exact language from that case to add to this particular category.

Suggested final recommendation: DPS agency expenditures are permissible, but only to the level of the necessary expenditures to defray the costs attributable to patrolling state highways by the State Patrol.

v. the following entities within the Department of Transportation: site development unit; labor compliance efforts in the Office of Construction and Innovative Contracting; Modal Planning and Program Management Division; Statewide Radio Communications within the department's State Aid Division; Workforce and Agency Services Division; Office of Financial Management; human resources; commissioner's staff offices; Office of Audit; Office of Chief Counsel; Office of Civil Rights; communications and public engagement; Office of Equity and Diversity; Government Affairs Office; and Office of Freight and Commercial Vehicle Operations;

Co-Chair Dibble argued that it's evident the Commissioner, Chief of Staff, and Civil Rights provide the kinds of administrative support and management activities that are crucial to the effective delivery of construction, improvement, and maintenance of trunk highways. He needs more time to think about the other areas and the work that they do. MnDOT Commissioner Anderson Kelliher explained that Innovative Contracting is directly related to construction delivery.

Sen. Newman commented that the specific office or entity is not nearly as important as what the money is being spent on and if it's a for a trunk highway purpose.

Suggested final recommendation: Recommend that these entities be determined in a case-by-case basis. That they are permissible to the extent it is attributable to highway purpose.

Closing

Sen. Newman requested that we discuss the topic of proactive legislation at the next meeting.

Co-Chair Rep. Petersburg adjourned the meeting.

February 1, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Sen. Scott Dibble; Sen. Scott Neman; Sen. Julia Coleman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Angelia Klebsch, Government Affairs Director, Office of Attorney General; Casey Mock, Executive Budget Coordinator, MMB

Absent: Rep. Marion O'Neill

Others in Attendance

Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, MnDOT Government Affairs; Josh Knatterud-Hubinger, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Jim Cownie, Craig Gustafson, Kyle Fisher, MnDOT Office of Chief Counsel; Matt Wooldridge, Senate Legislative Assistant; Matt Burress, House Research; John Howe, House Transportation Committee Administrator

Call to Order

Co-Chair Dibble called the meeting to order.

Approval of Minutes

Co-Chair Petersburg moved the approval of minutes. All in favor.

Discussion of Co-Chair Petersburg's Notes

Sen. Newman made clear that he believes Task Force consensus on the issue of bikeways has been achieved: that bikeways and bike facilities in the highway right-of-way are permissible.

MnDOT Commissioner Anderson-Kelliher proposed that Co-Chairs Rep. Petersburg and Sen. Dibble compose a letter to accompany the delivery of the final report.

Sen. Newman corrected the record from a previous meeting saying that the State Patrol's funding comes from legislative action as opposed to any previous Supreme Court ruling. Sen. Newman asserted that this means that the Legislature does have authority to act on budget decisions regarding the State Patrol and other functions.

Discussion of Proactive Legislative Oversight

The Task Force next took up the question of 'legislative oversight'.

Co-Chair Sen. Dibble kicked off the topic remarking that under the existing system of governance, 'the executive branch proposes and the legislature disposes', and adding that the legislature has the power of the purse. In that capacity, the legislature conducts stakeholder consultations, public budget hearings, and various other 'debates' on spending proposals. He

concluded by stating that the legislature does not get involved in agency budget development and requests.

Rep. Elkins followed up by suggesting that one approach would be to identify 'new' spending (later expanded by Sen. Newman, without dissent to include 'gray area' spending) and then to call out those gray area requests more rigorously through committee hearings.

Co-Chair Rep. Petersburg made clear that 'proactive' involvement by the legislature means after agency requests are submitted, but before the committee hearing to review the request. The idea is that those hearings could be designed more specifically to address those gray area budget items.

Sen. Newman emphasized that the legislature should weigh in on its view of the request's compliance with the 'highway purpose' standard before, and not after, the money has been spent.

Co-Chair Sen. Dibble summarized two possible approaches: 1) The review takes place after session, but before the subsequent fiscal year when the money would be spent (a la the Legislative Advisory Commission model); and 2) The review takes place after the budget request is submitted, but before final adoption.

Sen. Newman discussed the idea of focusing on the conditional term 'necessary' as in 'indirect, but necessary' to serve a highway purpose. These costs would be those that could be the focus of hearings. Co-Chair Rep. Petersburg agreed.

Rep. Hornstein supported the idea of a committee hearing or other non-binding informational hearing to review those costs, as it supports openness and transparency in government.

Rep. Elkins said that the budget discussions/hearings should take place early in the legislative session before targets are set.

MnDOT Commissioner Anderson-Kelliher reminded everyone that the existing AG/MMB report on dedicated fund expenditures would be the 'tool in the toolbox' that could be used as the vehicle to identify spending to be considered in the legislative hearing. The Commissioner supports the idea of an 'in law review' process.

Co-Chair Sen. Dibble summarized the preceding discussion by indicating that there are three elements to a potential legislative oversight process. 1) Rep. Hornstein's (and others') suggestion on assembling some sort of bipartisan / bicameral committee hearing; 2) As MnDOT Commissioner Anderson Kelliher suggested, consider using the existing Attorney General / MMB report on dedicated fund expenditures as the evaluative tool; 3) Legislature passes law formalizing oversight process, as articulated by Sen. Newman and others.

The Task Force discussion turned to how to identify those offices and general costs that should be more closely evaluated. The idea that one might not want to get too 'granular' was discussed. Rep. Hornstein used the term 'guardrails', suggesting that the process would benefit from an examination of the most important considerations.

Casey Mock of MMB said that it might be useful for the Task Force to agree upon consensus for items it wants to achieve, but it should also agree on consequences it wishes to avoid.
Co-Chair Sen. Dibble asked Matt Shands of MnDOT to draft language around proactive legislative oversight for the report.

Closing

An additional Task Force meeting was added to the schedule on Feb. 7, 2022 1:00 PM to 2:30 PM.

Co-Chair Sen. Dibble adjourned the meeting.

February 7, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Sen. Scott Dibble; Sen. Scott Neman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Angelica Klebsch, Government Affairs Director, Office of Attorney General; Sen. Ann Johnson Stewart

Absent: Sen. Julia Coleman, Rep. O'Neill, Casey Mock, Executive Budget Coordinator, MMB

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Brian Gage, MnDOT Transportation System Management; Erik Rudeen, Jennifer Witt, MnDOT Government Affairs; Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Craig Gustafson, Jim Cownie, MnDOT Office of Chief Counsel; Cassandra O'Hern, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research, Beth Ethier, Senate Legislative Assistant, Ryan Majerus, Senate Researcher

Call to Order

Co- Chair Rep. Petersburg called the meeting to order.

Approval of Minutes

Rep. Elkins moved the approval of minutes. All in favor

Discussion of Draft Report

Co-Chair Rep. Petersburg requested that the Task Force extend the report deadline to March 1 to allow for more discussion and response time to the draft presented by Matt Shands.

MnDOT Commissioner Margaret Anderson Kelliher reminded the Task Force her last day is March 1. She would be able to participate in a meeting next week, but not a meeting after that. She is concerned that MnDOT would not have full involvement in the process if meetings are extended further.

Co-Chair Rep. Petersburg suggested we could do one more meeting next week and then turn in the report on March 1.

Sen. Newman supported the request for additional time to review the proposed draft to get it ready for a final version. He will provide his written comments to the Task Force. He will aim to send that in an email before the next meeting.

Co-Chair Dibble, Rep Hornstein, and Sen Newman agreed with the MnDOT Commissioner that it's important we get her feedback.

On the issue of what this report will be used for, Co-Chair Rep. Petersburg proposed that it is reference material for future legislators. How each chamber will deal with this report will be different.

Sen. Newman supported the idea of the report as a reference for future legislators to help them answer the question of what we can spend money out of HUTD and Trunk Highway fund on. Sen. Newman does not believe the Task Force will come to consensus on all of the recommendations. There is value in pointing out the differences between what the legislature looks at and what agencies look at for trunk highway funding and how it is spent.

Matt Shands, who drafted the report, agreed that report is a source for future legislators. On the subject of legislative oversight, Matt drafted a recommendation for the legislature having more rigorous committee budget hearings on trunk highways. Section seven of the report identifies areas where there is a lack of consensus.

Looking at page 11, Co-Chair Rep. Petersburg asked for clarification that MMB does not review past expenditures but reviews new changes in spending. MnDOT Commissioner Anderson Kelliher confirmed that is correct.

Sen. Newman pointed out that the list on page 11 of expenditures that are determined to not but be a trunk highway is missing the expenditures from last session that were determined to also not be a trunk highway purpose. That statute goes into effect in 2025. Newman proposed that you could break it down into two lists, what is already in statute and what will be in statute in 2025.

On page 15, Co-Chair Rep. Petersburg asked for clarification on a quote from Professor Schultz: a review of Court construction of the trunk highway has generally been broad deference, generally allowing for all purposes of public highways, including but not limited to facilitating travel and transportation, such as relocating utility lines, collecting gas taxes, training police." Co-Chair Petersburg thought "training police" was too broad and that we're actually talking about state police, not all law enforcement. Sen. Newman also flagged that quote for being too broad. Craig Gustafson, of MnDOT Chief Counsel, will reach out to Professor Schultz to clarify his quote.

Sen. Newman shared he found the report comprehensive and organized. He would like to go through the report with Senate Counsel to put forward legal considerations from the Senate Attorney.

On the subject of DPS Offices/Activities, page 31, Shawn Kremer, of DPS, recommend that we add that we discussed BCA and had consensus that it is not an appropriate trunk highway fund. We should also clarify that we talked about the Office of Traffic Safety.

On the subject of DNR distributions, page 31, Co-Chair Dibble commented that some of the analysis done on motorboats, snowmobiles, and ATVS is fairly outdated. He recommended that those studies be refreshed and renewed. They should be conducted by a third party with no interest in the outcome of the study. The Task Force agreed with Co-Chair Sen. Dibble.

Sen. Newman shared he needs to spend more time reviewing section 6. He questions whether or not the Task Force has agreed to some of the areas that are listed. For example, while the Task Force agreed bikes are permissible within the highway right of way, he is not sure the Task Force agreed if bike expenditures meet a trunk highway purpose.

Sen. Newman commented that it's not how expenditures are categorized for spending that is important to him, but it's what those actual expenditures are. What did you spend money on?

MnDOT Commissioner Anderson Kelliher shared a quote about the supreme court that trunk highway expenditures are what is necessary to build, maintain, and complete a trunk highway. Office of Chief Counsel, for example, is important to making sure we can deliver and successfully defend the department. Cybersecurity has connections directly related to the effective delivery of a trunk highway. If we go down the path of examining these things, it will take months. Co-Chair Rep. Petersburg agreed that someone in the future could look at these items.

Rep. Elkins commented that the value in the report is it has all of the pertinent things future legislators will need to consider when evaluating this discussion.

Sen. Newman responded that he is not in disagreement with what the Supreme Court said. He commented that a lot of the cases are decades old. You won't for example find anything about cybersecurity. The Supreme Court has given the legislature some general guidelines to follow. In the end, it's the legislature not the agencies that decides if an expenditure is permissible or not as a trunk highway purpose.

Sen. Newman gave the example of garages for trucks and snowplows. He agrees that that expenditure meets a trunk highway purpose. When talking about putting up a building so state agency can run a state agency, he questions if that is an expenditure directly related to a trunk highway purpose.

MnDOT Commissioner Anderson Kelliher responded that MnDOT's mission is to build, maintain, and upkeep a safe transportation system and trunk highway system. MnDOT is not providing human services, not providing education. MnDOT's lens of how they spend money is through the lens of being responsible for a safe transportation system and trunk highway system.

Co-Chair Dibble responded that there are overhead and non-direct expenditures that do have nexus with trunk highway purposes. He proposed that report reflect the Task Force did not come to a unified agreement about these expenditures.

Rep. Elkins commented that the percentage of MnDOT costs that are pure overhead is a small number. Sen. Newman responded when we're talking about a percentage of billions of dollars it's a lot of money.

Closing

Co-Chair Rep. Petersburg thanked everyone for their work. The Task Forced agreed to meet at the same time as today on Feb. 14.

Co-Chair Rep. Petersburg adjourned meeting.

February 14, 2022, Meeting Minutes

Task Force Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Rep. Steve Elkins; Angelica Klebsch, Government Affairs Director, Office of Attorney General; Rep. Marion O'Neill; Casey Mock, Executive Budget Coordinator, MMB

Absent: Sen. Julia Coleman; Sen. Ann Johnson Stewart; Sen. Scott Newman; Co-Chair Sen. Scott Dibble

Others in Attendance

Andy Lee, House Fiscal Analyst; Joe Marble, House GOP Research; Lexi Stangl, Senate Counsel; Erik Rudeen, Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Matt Shands, Jen Parshley, Kim Collins, MnDOT Commissioner's Office; Kyle Fisher, Craig Gustafson, Jim Cownie, MnDOT Office of Chief Counsel; Jordan Haltaufderheid, Cassandra O'Hern, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research; Beth Ethier, Senate Legislative Assistant; Krista Boyd, Senate Fiscal Analyst; Pat Kaluza, Senate Committee Administrator

Call to Order

Co-chair Rep. Petersburg called meeting to order.

Approval of Minutes

MnDOT Commissioner Anderson Kelliher moved the approval of minutes. All approved.

Discussion on Agency's Last Report Draft and Sen. Newman Report Draft

Matt Shands, MnDOT Commissioner's Office, presented on changes to the draft report he wrote. Mr. Shands reframed section six to better reflect that there are several uses and activities where the Task Force has not made any financial decisions.

Sen. Newman was on the Senate floor and unable to attend the meeting. There was no one available from Sen. Newman's staff who helped with the draft to provide comment. Co-Chair Petersburg provided a high-level overview of Sen. Newman's draft.

Angelica Klebsch, Office of Attorney General, would like Sen. Newman to clarify where he finds the Report on Certain Expenditures from the Trunk Highway Fund from the Office of Attorney General and MMB to be insufficient in meeting expectations.

On page 38 of Sen. Newsman's draft, he recommended that a permanent Task Force be established. This had been talked about in passing with the Task Force, but no final recommendation had been put forth.

MnDOT Commissioner Anderson Kelliher recommended that Sen. Newman submit a letter raising his perspectives that could be added to the appendix.

Co-Chair Petersburg disagreed with this recommendation. He did not feel we could conclude that the majority of the Task Force agrees with the draft report as written by Mr. Shands and that Sen. Newman's draft is the minority report. He recommended we find a way to put the two drafts into one report.

Rep. Hornstein commented that the report is a tool is for future deliberation on the issue and that we do not get too specific with final recommendations. Rep. Hornstein suggested that one solution is to put the recommendations in the appendix and leave them out of the core report.

MnDOT Commissioner Anderson Kelliher proposed we vote on the two drafts. She also proposed the alternative of not submitting a report if the Task Force cannot come to a consensus.

Rep. Elkins commented that the value of this report is gathering everything we have learned through our discussions into one document for future discussion so future legislators do not have to start from scratch.

MnDOT Commissioner Anderson Kelliher commented the agencies could also provide a letter for the appendix. Co-Chair Rep. Petersburg supported agencies including their own letters.

Closing

Co-Chair Rep. Petersburg asked Task Force members to use this week to thoroughly review Mr. Shands' latest draft report and Sen. Newman's draft report, both of which were sent out today. Co-Chair Petersburg will schedule a meeting for next week with the intent that is the last time this Task Force meets.

Co-Chair Rep. Petersburg adjourned the meeting.

February 23, 2022, Meeting Minutes

Task Force Members Present

Co-Chair Sen. Scott Dibble; Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Co-Chair Rep. John Petersburg; Sen. Scott Newman; Rep. Frank Hornstein; Rep. Steve Elkins; Angelica Klebsch, Government Affairs Director, Office of Attorney General; Rep. Marion O'Neill; Casey Mock, Executive Budget Coordinator, MMB; Sen. Ann Johnson Stewart, came after the early adjournment

Absent: Sen. Julia Coleman

Others in Attendance

Andy Lee, House Fiscal Analyst; Lexi Stangl, Senate Counsel; Erik Rudeen, Josh Knatterud-Hubinger, Sam Brown, MnDOT Office of Financial Management; Matt Shands, Kim Collins, MnDOT Commissioner's Office; Craig Gustafson, MnDOT Office of Chief Counsel; Jordan Haltaufderheid, Cassandra O'Hern, DPS; Nick Lardinois, Executive Budget Officer, MMB; Matt Wooldridge, Senate Legislative Assistant; Matt Burress, House Research; John Howe, House Transportation Committee Administrator; Jennifer Nelson, House DFL Research; Beth Ethier, Senate Legislative Assistant; Krista Boyd, Senate Fiscal Analyst; Brian Gage, Jennifer Witt MnDOT

Call to Order

Co-chair Sen. Dibble called meeting to order.

Approval of Minutes

Co-chair Rep. Petersburg moved the approval of minutes. All approved.

Discussion About Proceeding to Report Release

The purpose of this meeting was discussion on how to move the report forward to completion while ensuring that any bias, real or perceived was addressed to the satisfaction of the task force members.

Several task force members shared their ideas for how and what to include in the draft report:

- contents
- organization
- authors of the draft
- letters from members
- appendices
- deadlines

Most of the ideas were very similar, so the differing elements were vetted, and a comprehensive plan emerged. It was decided by the Task Force members that non-partisan

House Transportation Research staff, Matt Burress and Senate Transportation Counsel, Lexi Stangl would write the executive summary. Both Lexi Stangl and Matt Burress agreed to their role to complete the report.

Task Force members can write letters, due to for review by Task Force on Monday, Feb. 28th at 1:00 and then to be included as an appendix. The previous draft (also known as the "Shands" report), the various minutes from meetings, the presentations, and the legal analysis will be included as appendices to create a historical reference and document-of-record for future of the work that has been done.

Closing

In closing, the process the Task Force members agreed to was reviewed and the plan to complete the report was clarified. The deadlines were finalized and the meeting was adjourned until 12:00 on Wednesday, March 1st.

Appendix C: Task Force Subcommittee Meeting Minutes

Task Force Subcommittee Meeting Dates

- Tuesday January 18, 2022, 4:00 PM to 5:00 PM
- January 25, 2022, 1:00 PM to 3:30 PM

January 18, 2022, Subcommittee Meeting Minutes

Task Force Subcommittee Members Present

Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS; Sen. Scott Neman; Co-Chair Rep. John Petersburg; Rep. Frank Hornstein; Co-Chair Sen. Scott Dibble

Others in Attendance

Erik Rudeen, MnDOT Government Affairs; Craig Gustafson, Kyle Fisher, MnDOT Chief Counsel; Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Lexi Stangl, Senate Counsel; Matt Burress, House Research

Call to Order

Co-Chair Rep. Petersburg called meeting to order.

Subcommittee Discussion

Jim Cownie, MnDOT Chief Counsel, walked through MnDOT's proposed definition of a highway purpose. Subd. 1 recognizes that commissioners of other departments get some trunk highway funds. Subd. 2 is the overarching policy. Subd. 3-6 defined construction of public highways, improvement of public highways, maintenance of public highways, and safety and enforcement of public highways. Subd. 7 lists the expenditures that are already in statue as not meeting a trunk highway purpose.

Rep. Petersburg asked Cownie how we are distinguishing the difference between trunk highway and public highway. Cownie explained that the constitution created a network of trunk highways with starting points and ending points. They are a specific series of highways. Public highways are broader. They could incorporate county highways and city streets. Petersburg cautioned to be careful to not interchange terminology.

Sen. Newman wanted clarity on where the authority for safety and enforcement of a public highway comes from in the constitution. There is a Supreme Court case that ruled State Patrol can be paid out of the trunk highway fund.

Shawn Kremer, DPS, commented that when DPS reviewed the initial definition there was the argument to be made that the safety of passengers falls under improvement and maintenance of public highways. If we agree that safety is a component of the three definitions put into statue (construction, maintenance, and improvement of public highways), we may want to define safety in the context of this definition. This is why there is a subd. 6 in the MnDOT proposal.

Sen. Newman is not sure he agrees that providing law enforcement on a public highway fits with the definition of improvement. Subd. 6 may be too broad. He would like to run Subd. 3-6 past Senate Counsel. Rep. Petersburg pointed out that Sen. Newman's proposal includes State Patrol activities and talks about safety in line 2.21 and 2.25. Kremer said he will work on guardrails for subd. 6.

Rep. Hornstein commented that a side by side of the proposed definitions would be helpful. Currently the definitions are in different formats: bill form, PDF, and word document.

Rep. Petersburg commented that Rep. Elkins' proposed subd. 4 and Sen. Newman's subd. 3 are very similar. Petersburg motioned accepting Newman's subd 3 that maintains the eighteen exclusions that are already in existing law. Dibble seconded the motion.

Kremer commented that item 15 could have an impact on State Patrol who has utility costs in one of their offices. If the current law stands there will be a funding issue for lease cost.

Motion carried with one no vote from Kremer.

MnDOT Commissioner Anderson Kelliher commented that the meeting seems very formal and not a discussion of all proposed definitions. She wanted to know why MnDOT's proposal was being dismissed.

Newman commented that he agrees with Hornstein a side by side of the proposed definitions would be helpful. Senate Counsel could prepare that for the next subcommittee meeting. Petersburg agreed this was a good idea. Lexi Stangl, Senate Counsel, will work with Matt Burress, House Research, to put together a side by side and have it ready by Friday for review.

Closing

The subcommittee decided to meet Monday Jan. 24, 2022 afternoon for an additional meeting to review the side by side.

Co-Chair Rep. Petersburg adjourned the meeting.

January 24, 2022, Subcommittee Meeting Minutes

Task Force Subcommittee Members Present

Co-Chair Rep. Petersburg, Sen. Newman, Commissioner Margaret Anderson Kelliher, MnDOT; Chief Financial Officer Shawn Kremer, DPS

Absent

Co-Chair Sen. Dibble

Others in Attendance

Matt Shands, Jen Parshley, MnDOT Commissioner's Office; Cassandra O'Hern, Jordan Haltaufderheid, DPS; Kyle Fisher, Craig Gustafson, MnDOT Office of Chief Counsel; Erik Rudeen, MnDOT Government Affairs; Matt Wooldridge, Senate Legislative Assistant; Beth Ethier, Senate Legislative Assistant; Lexi Stangl, Senate Counsel; Matt Burress, House Research

Call to Order

Co-Chair Rep. Petersburg called the meeting to order.

Side-By-Side of Proposed Definitions of a Highway Purpose

Lexi Stangl presented on the side-by-side comparison of the definitions of a highway purpose from Rep. Elkins, Sen. Newman, and the agencies.

Co-Chair Rep. Petersburg offered the idea of having a non-motorized fund to pay for non-motorized transportation needs on the highway like a bike lane.

MnDOT Commissioner Anderson Kelliher commented that walking is the oldest form of transportation and was not sure how we'd tax for pedestrian facilities.

Co-Chair Rep. Petersburg responded that everyone shares a responsibility for walking. Could those needs be funded with the general fund for the general public?

Sen. Newman shared he did not support a tax on pedestrians. He is concerned about dedicated bike lanes being paid by people who drive motor vehicles. When he brought up licenses for bicyclists to DPS, they said the cost to administer licensing bikes outweighs the money it would raise. He believes bicyclists should share in the cost of dedicated bike lanes.

Rep. Hornstein commented that active transportation was part of the last transportation bill and that we put money into it for the first time.

In section four of the side-by-side, MnDOT Chief Counsel Craig Gustafson pointed out that MnDOT's proposal is different than Sen. Newman's. There are ancillary functions that support direct relationships. For example, providing a snow plow driver access to a computer so they can do required state training. MnDOT sees that time spent as essential to being a state employee. He believes the term 'necessary' is a good language edition.

Sen. Newman countered that he didn't know if the term 'necessary' added a whole lot as in the end it is the legislature that will decide if the training is directly related to the highway purpose of clearing snow. He does not believe that requiring a snow plow driver like any other employee to undergo training is directly related. He believes you have to take issues on case-by-case basis.

Mr. Gustafson responded that he agreed sexual harassment training, for example, is necessary to create a workplace free of sexual harassment in a truck station to maintain a trunk highway system. You wouldn't be able to retain women snow plow drivers if there was no training or awareness of what sexually harassment means. He is not tied to the word 'necessary' to cover things needed to run a modern trunk highway system but we need something else other than 'direct' relationship.

DPS Shawn Kremer commented that state troopers also go through that training. At what point do we parse out these particular activities? There is a limitation on participating in parades. State Patrol participates very often for recruiting, relationship building, and visibility purposes.

Mr. Gustafson said the same arguments apply to sections six and seven.

Mr. Gustafson suggested that the definition include MnDOT's provision on safety related to State Patrol in section nine.

Sen. Newman responded that he does not see public safety as being listing in the constitution under the subject article as part of a highway purpose for construction, improvement, and maintenance of a highway. We have heard about it because supreme court said State Patrol activities on a highway is a highway purpose. Sen. Newman is concerned that if we expand to include public safety, then we could be dealing with other law enforcement agencies who want to use that funding for patrolling those same highways.

Mr. Kremer agrees we are not expanding to other law enforcement units. There is no change to the status quo for State Patrol activities.

Mr. Gustafson commented that the agency's section eleven is a public policy statement tied by back to the constitution while Sen. Newman's is strictly about highway purpose and does not use the same language from the constitution. Sen. Newman said he will revisit his section.

Mr. Kremer asked when does definition of a highway purpose start and stop? He doesn't want to parse out specific times of activities. State Patrol troopers' shifts start the minute they leave their driveway.

The subcommittee agreed with section three from Sen. Newman and the agencies.

There is no agreement over section four because of disagreement over the word necessary.

The subcommittee agreed with Sen. Newman's section five.

There is no agreement over section six because of disagreement over the word necessary.

There is no agreement over section seven.

The subcommittee agreed that section eight does not need to be included.

For section nine, Mr. Kremer pointed out that it would apply to Office of Traffic Safety at DPS and there are administration appropriations currently in law from the trunk highway fund. This is not present in section twelve from Sen. Newman. Sen. Newman was not in agreement over section nine as he felt it expands on the definition of what is safety and what is enforcement of the highway.

The subcommittee agreed on the one through eighteen limitations in section sixteen.

Co-Chair Petersburg recommended to Sen. Newman that his section twelve include a third item for requirement of federal or state law and is directly related to that activity. Sen. Newman will talk to Ms. Stangl.

Ms. Stangl will prepare a revised side-by-side for the Task Force committee.

Closing

Co-Chair Petersburg adjourned the meeting.

Appendix D: MnDOT & DPS Funding Overview

This appendix reproduces a presentation to the Task Force.[1] Note: slide page numbers include inaccuracies in this version.

[1] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=14296085.

Creation of MnDOT
M.S. Sect. 174.01-174.03

- Created by the Legislature in 1976
  - Combined former Departments of Aeronautics and Highways, State Planning Agency, and Department of Public Service
- Develop and implement policies, plans, and programs for highways, railroads, waterways, aeronautics, public transit, and motor carriers
- Provide safe, multimodal transportation
- Recognize economic importance of transportation
- Minimize impact on the environment

2/24/2022 3

MnDOT at a Glance
System Size

- **4th largest** public road system in the nation (22nd in population)
- Over **145,000 centerline miles** (including trunk highways and local roads)
- **4,901 bridges** greater than 10 feet in length on Trunk Highway routes

2/24/2022 5

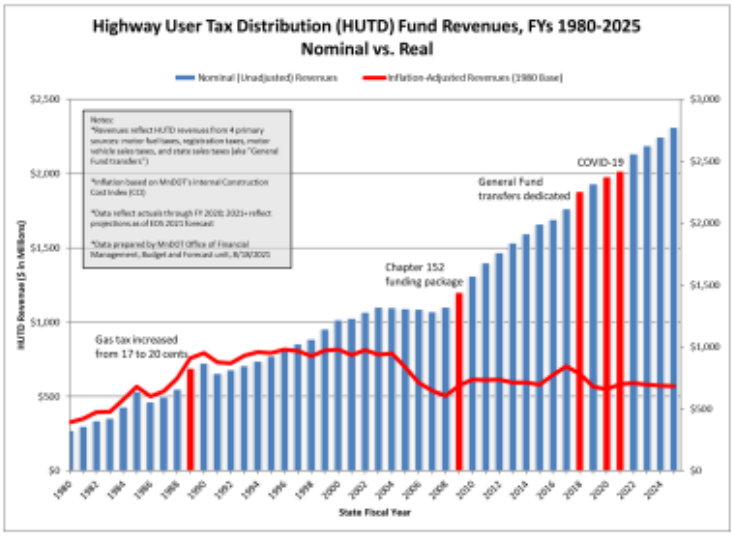
MnDOT at a Glance
Multimodal Agency

We work with our partners to support:

- 3 active Lake Superior and 4 Mississippi River system ports
- Transit services in all 80 greater Minnesota counties
- 133 publicly owned state-funded airports
- 4,420 track miles serving 21 railroad companies, Northstar commuter rail, and Amtrak passenger service

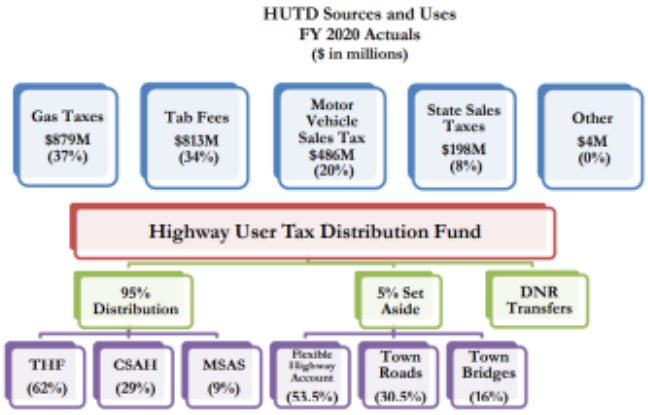
2/24/2022 7

Minnesota Highway User Tax Revenue
History of Annual Revenues



2/24/2022 9

Highway User Tax Distribution (HUTD) Fund Flow of Funds in FY 2020



-Article XIV of the Minnesota Constitution
-State Sales Taxes include: fixed portion of sales tax on auto parts, 11 percent of total Motor Vehicle Lease Sales Tax (MVLST) and rental sales taxes (both 6.5 percent & 9.2 percent)
-DNR transfers for unrefunded gas taxes per Minn. Stat. 296A.18 (totals about 2.5 percent of gas taxes)

Comparison of HUTD Revenues to System Size and Usage

	HUTD $	Centerline Miles	Lane Miles	Vehicle Miles Traveled (VMT)
Trunk Highway	58.90%	25.3%	29.1%	65.9%
County State Aid Highway	32.55%	66.5%	62.6%	25.4%
Municipal State Aid Street	8.55%	8.1%	8.3%	8.6%

Existing Reports that Detail Trunk Highway Spending

Report	Frequency	Statute	Description
Report Concerning Certain Expenditures from the Trunk Highway Fund in the Biennial Budget	Biennial, 1st in 2001	Laws of 2000, Chapter 479	Joint MMB/AG report analyzing "highway purpose" of agency budget requests
Major Highway Projects	Annual, 1st in 2009	MS 174.56	Details major projects, TH spending, product/service spending, productivity and efficiency measures
Dedicated Fund Expenditures	Biennial, 1st in 2016	MS 161.089	Detail HUTD and TH spending by office and purpose
Biennial Budget	Biennial	MS 16A.10	Details actual and estimated revenues and expenditures, performance data

Report Concerning Certain Expenditures from the Trunk Highway Fund in the Biennial Budget Background

- Required in Laws of 2000, Chapter 479:
  - "...Section 1. [PROHIBITION AGAINST APPROPRIATIONS FROM TRUNK HIGHWAY FUND.] To ensure compliance with the Minnesota Constitution, article XIV, sections 2, 5, and 6, the commissioner of finance, agency directors, and legislative commission personnel may not include in the biennial budget for fiscal years 2002 and 2003, or in any budget thereafter, expenditures from the trunk highway fund for a nonhighway purpose as jointly determined by the commissioner of finance and the attorney general...."
- Minnesota Management and Budget and the Attorney General have jointly authored reports every biennium since January 2001
- Most recent report published April 2021, reviewing FY 2022-23 biennial budget requests (link here)

Report Concerning Certain Expenditures from the Trunk Highway Fund in the Biennial Budget Specific Court Examples

- Report also details some findings from Minnesota Supreme Court about highway purpose and allowable uses (page 3):
  - "…The court has stated that the constitutional provisions at issue 'are of broad import and do not of themselves define the functional use of a public highway or what constitutes proper construction, reconstruction, improvements, and highway maintenance costs.' *Minneapolis Gas. Co. v. Zimmerman, 253 Minn. 164, 171, 91 N.W.2d 642, 648 (1958)*…."
  - "…More specifically, the court observed that: 'It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists.' *253 Minn. at 173, 91 N.W.2d at 649-50*…"

Major Highway Projects Report

- Required in Minnesota Statutes 174.56 (link here)
- Annual report due by December 15 (most recent report link here)
  - Major highway projects ($15M+ in Metro, $5M+ in greater Minnesota)
  - Trunk highway fund expenditures for: "…road construction; planning; design and engineering; labor; compliance with environmental regulations; administration; acquisition of right-of-way, including costs for attorney fees and other compensation for property owners; litigation costs, including payment of claims, settlements, and judgments; maintenance; and road operations…"
  - Annual budgets and spending by district/office and product/service
  - Productivity measures and efficiencies

Report on Dedicated Fund Expenditures Statute

- Required in Minnesota Statutes 161.089 (link here):
  - By January 15 of each odd-numbered year, the commissioners of transportation and public safety, in consultation with the commissioner of management and budget, must jointly submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation finance. The report must list detailed expenditures and transfers from the trunk highway fund and highway user tax distribution fund for the previous two fiscal years and must include information on the purpose of each expenditure. The report must include a separate section that lists detailed expenditures and transfers from the trunk highway fund and highway user tax distribution fund for cybersecurity.

Report on Dedicated Fund Expenditures Frequency

- Created in Laws of 2015, Chapter 75
- 1st report (link here) submitted by January 15, 2016, detailing expenditures for state fiscal years 2010-15
- 2nd report (link here) submitted by February 15, 2018, detailing expenditures for state fiscal years 2013-17
- 3rd report (link here) submitted by January 15, 2020, detailing expenditures for state fiscal years 2018-19
- 4th report (link here) submitted by January 15, 2021, detailing expenditures for state fiscal years 2019-20
- In the future, report required by January 15 of each odd-numbered year (next report January 15, 2023)

Biennial Budget

- Required in Minnesota Statutes 16A.10 (link here)
- Required of all state agencies
- Published in every even-numbered year by October 15th
- Includes actual and estimated revenues and expenditures and performance outcomes
- Most recent MnDOT biennial budget document for FY 2022-23 biennium available here

Cost Participation Policy

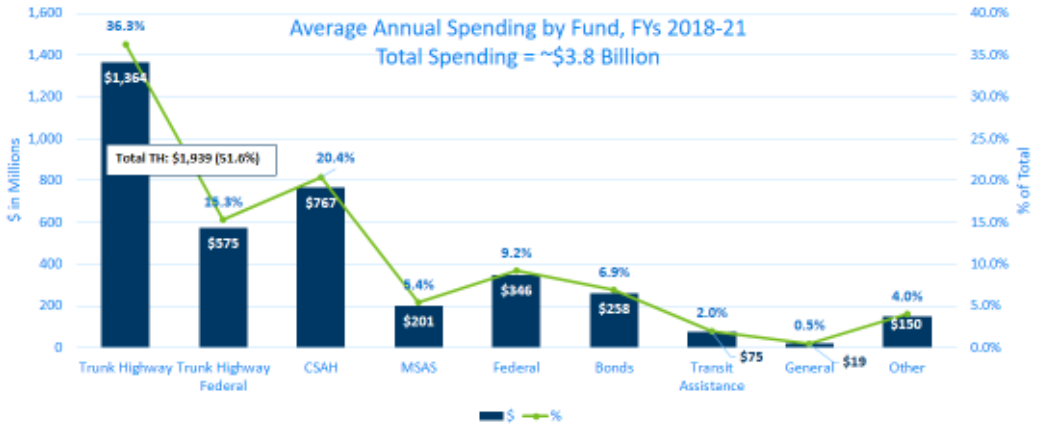
for Construction Projects and Maintenance Agreements between MnDOT and Local Governments

- MnDOT policy that "…provides a framework to determine the potential expenditure of trunk highway funds on elements of cooperative construction projects and maintenance…"
- Policy available on MnDOT website (link here)
- Policy last revised in February 2016
- Has existed in some form since August 1985

MnDOT Finances Overview

- Four programs, 13 budget activities
- 37 offices
- 25 products and services
- 5,210.7 full-time equivalent (FTE) employees in FY 2020
- Spending breakdown over past four years:
  - 21 different funds
  - 457 different appropriations
  - Average of ~$3.8 billion / year

MnDOT Finances Spending Detail by Fund

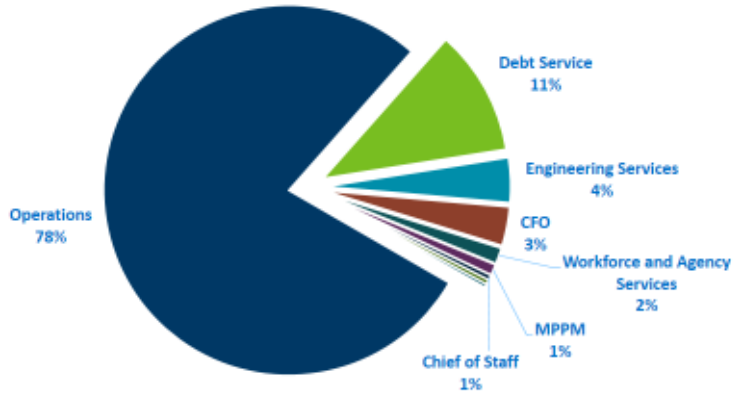


FY 2022 TH Budgets by Division
$ in millions

Division	Budget	% of Total
Operations (SRC including District C, Districts, Snow and Ice, etc.)	$1,684	78.2%
Debt Service	$236	11.0%
Engineering Services (Bridge, Materials, etc.)	$84	3.9%
Chief Financial Officer (Finance, IT, centralized costs like relo, severance, etc.)	$73	3.4%
Workforce and Agency Services (HR, Administration, etc.)	$30	1.4%
Multimodal Planning and Program Management (Research, Freight, etc.)	$20	0.9%
Chief of Staff (Civil Rights, Communications, etc.)	$9	0.4%
State Aid (Statewide Radio Communications)	$8	0.4%
Chief Counsel	$6	0.3%
Commissioner's Office (Commissioner's Staff, Government and Tribal Affairs, etc.)	$3	0.1%
Sustainability and Public Health	$0.7	0.03%
Grand Total	**$2,153**	**100.0%**

2/24/2022 mndot.gov 35

FY 2022 TH Budgets by Division



2/24/2022 mndot.gov 37

TH Offices/Activities Listed in Legislation for Review
FY 22 Budgets - $ in Millions

Office/Activity	Division	$ Amount	% of Total TH	Comments
Bikeways construction/maintenance	Operations	$6.7	0.3%	0.6% of total SRC based on MnSHIP
Centralized MN.IT @ MnDOT including cybersecurity	CFO	$32.2	1.5%	Entire centralized MN.IT office (does not include portions paid by individual offices)
Site development (Proj Mgmt office)	Engineering Services	$0.6	0.03%	Estimate from fiscal note
Labor compliance (Construction office)	Engineering Services	$0.5	0.02%	Estimate from fiscal note
Freight/Research/Transportation System Management	Multimodal Planning	$19.7	0.9%	Entire division (excludes OTSM District C SRC)
Statewide radio communications	State Aid	$7.5	0.4%	Includes $6.2M direct and $1.3M statutory tower leases
HR/Admin/Audit	Workforce and Agency Services	$30.1	1.4%	Entire division: Admin includes $5M CO rent, HR includes $3.9M grad engineers
Finance and central accounts	CFO	$19.2	0.9%	Includes $10.1M finance and $9.1M central accounts (relo, severance, worker's comp, unemployment, etc.)
Commissioner's Staff	Commissioner's Staff	$2.7	0.1%	Includes Government Affairs and Tribal Affairs
Chief of Staff	Chief of Staff	$9.5	0.4%	Entire division: Includes Civil Rights, E&D, Communications & Public Engagement, OPM
Chief Counsel	Chief Counsel	$6.1	0.3%	Includes $600k tort claims
Grand Total		**$134.9**	**6.3%**	

Non-TH Contributions to TH Activities

- Appropriations bill allows counties/cities to contribute to Trunk Highway projects
  - "…The commissioner may receive money covering other shares of the cost of partnership projects. These receipts are appropriated to the commissioner for these projects…."
  - Over past three years (FYs 2018-20), these averaged $28.8M/year
- General Funds now support $3.4M/year in various activities
  - $0.952M for bike/ped planning and design on trunk highways
  - $1.65M for aeronautics
  - $0.83M for various agency activities (parades, event sponsorships, tourist information centers, etc.)

DEPARTMENT OF TRANSPORTATION

Thank you again!

Josh Knatterud-Hubinger

Josh.knatterud-hubinger@state.mn.us

612-499-8115

DPS Funding Overview

Shawn Kremer| DPS Chief Financial Officer

August 20, 2021

DEPARTMENT OF TRANSPORTATION

DPS Budget Structure

Transportation Committee

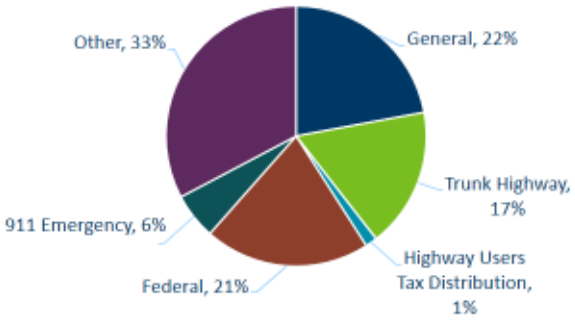
- Admin and Related Services
- Driver and Vehicle Services
- Minnesota State Patrol
- Office of Pipeline Safety
- Office of Traffic Safety

Public Safety Committee

- Alcohol and Gambling Enforcement
- Bureau of Criminal Apprehension
- Emergency Communication Networks
- Homeland Security and Emergency Management
- MN Firefighters Training and Education
- Office of Justice Programs
- State Fire Marshal

DPS Spending by Fund

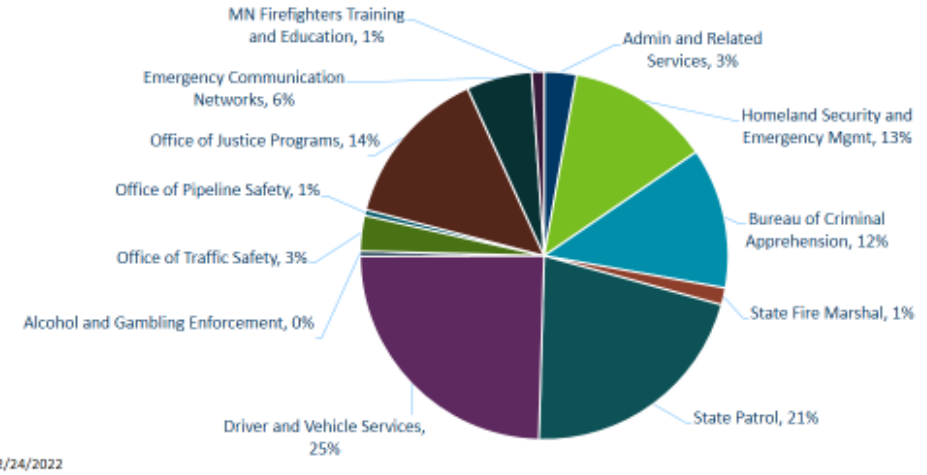
Average Annual Expenditures by Fund, FYs 2018-21



Trunk Highway Fund Appropriations
State Patrol: 90%
Admin & Related Services: 7%
BCA: 2%
Office of Traffic Safety: <1%

DPS Spending by Division

Average Annual Expenditures of $669 million, (FY 2018-21)



2/24/2022 49

DEPARTMENT OF TRANSPORTATION

Thank you again!

Shawn Kremer

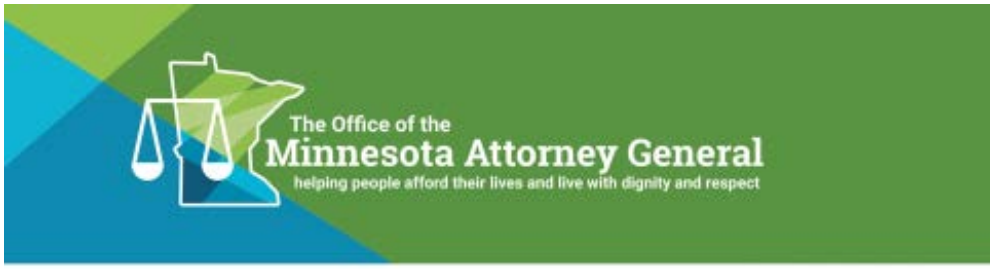
Shawn.Kremer@state.mn.us

651-201-7050

2/24/2022 mndot.gov 53

Appendix E: Attorney General's Role in Trunk Highway Expenditures

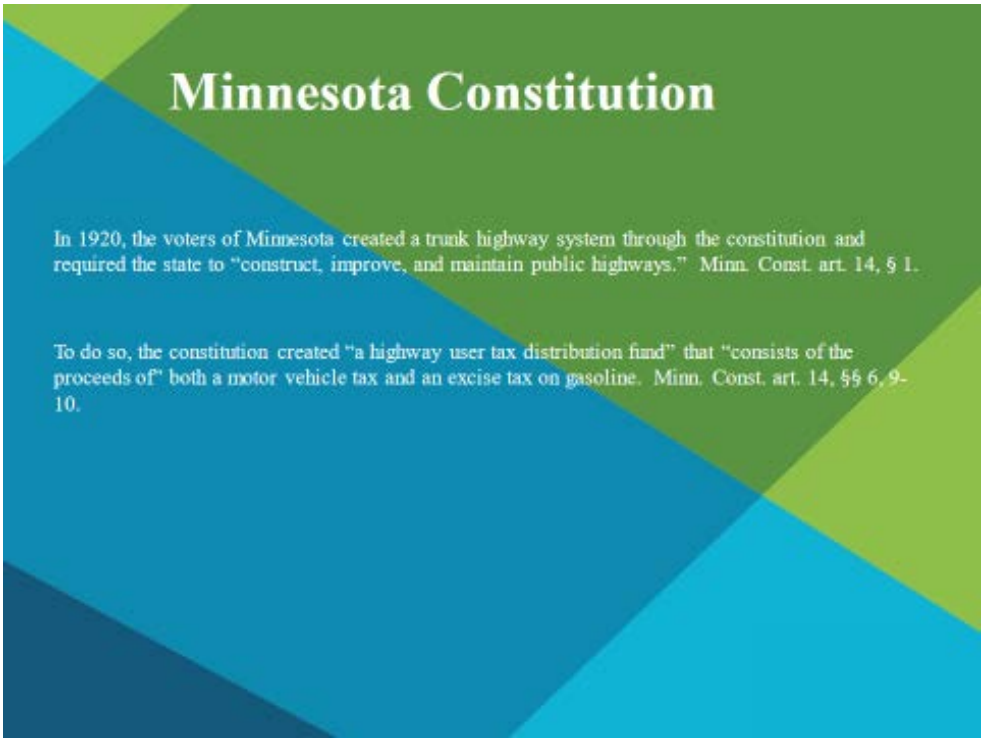
This appendix reproduces a presentation to the Task Force.[2]

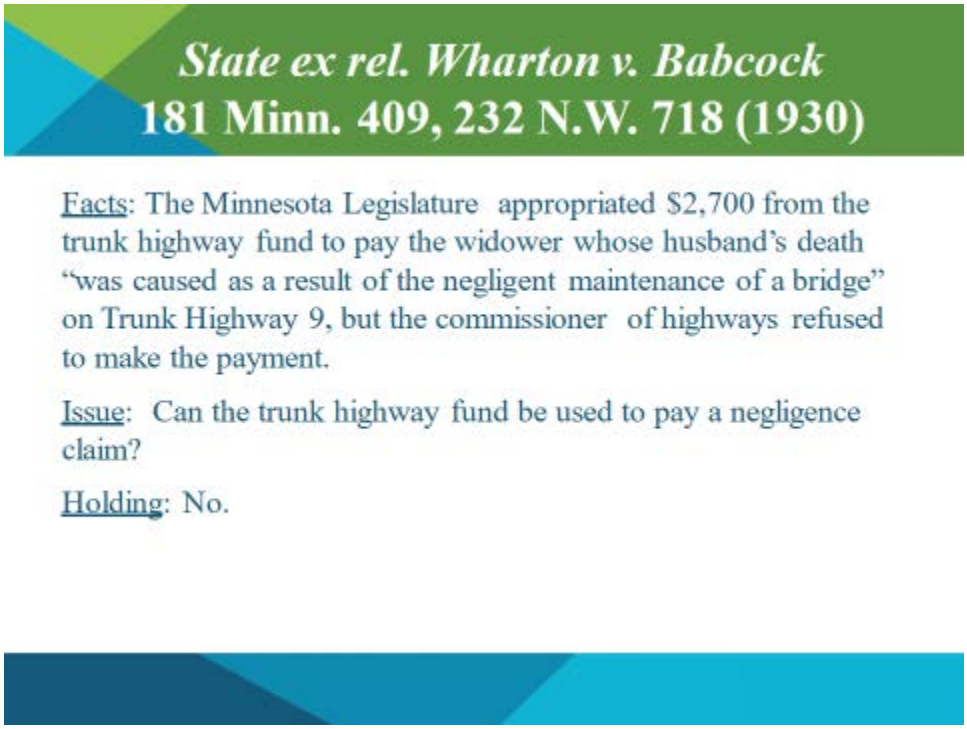


Attorney General's Role in Trunk Highway Fund Expenditures

Carly Melin, Director of Government Affairs

[2] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15126191.


Minnesota Constitution
In 1920, the voters of Minnesota created a trunk highway system through the constitution and required the state to "construct, improve, and maintain public highways." Minn. Const. art. 14, § 1.
To do so, the constitution created "a highway user tax distribution fund" that "consists of the proceeds of" both a motor vehicle tax and an excise tax on gasoline. Minn. Const. art. 14, §§ 6, 9-10.


State ex rel. Wharton v. Babcock
181 Minn. 409, 232 N.W. 718 (1930)
Facts: The Minnesota Legislature appropriated $2,700 from the trunk highway fund to pay the widower whose husband's death "was caused as a result of the negligent maintenance of a bridge" on Trunk Highway 9, but the commissioner of highways refused to make the payment.
Issue: Can the trunk highway fund be used to pay a negligence claim?
Holding: No.

State v. King
184 Minn. 250, 238 N.W. 334 (1931)

Facts: The legislature appropriated from the trunk highway fund $400,000 for 1932 and $420,000 for 1933 "to defray expenses for issuing licenses and collecting the monies therefor for the highway department by the secretary of state." The Secretary of State brought an alternative writ of mandamus against the State Auditor when the auditor refused to issue a pay warrant pursuant to the appropriation. The district court quashed the alternative writ.

Issue: Can the trunk highway fund be used to pay the secretary of state for costs incurred issuing motor vehicle licenses?

Holding: Yes.

State ex rel. Cnty. of Ramsey v. Babcock
186 Minn. 132, 242 N.W. 474 (1932)

Facts: Ramsey County incurred costs in obtaining right-of-way for two roads established and constructed by the county with the understanding that the roads would be designated by the commissioner of highways as trunk highways upon completion. The commissioner of highways agreed that Ramsey County should be compensated by the state but argued that the payment should not come from the trunk highway fund.

Issue: Can the trunk highway fund be used to pay a county to acquire new right of way for a future trunk highway?

Holding: No.

State v. Stanley
188 Minn. 390, 247 N.W. 509 (1933)

Facts: A landowner from whom property was being condemned for a trunk highway project brought a motion to have an additional 40 acres included in the acquisition.

Issue: Can trunk highway funds be used to pay a landowner whose property is being destroyed by a trunk highway project?

Holding: Yes.

Cory v. King
209 Minn. 431, 296 N.W. 506 (1941)

Facts: The Minnesota Legislature attempted to impose a five percent charge on all taxes and fees received by the trunk highway fund to maintain the offices of "the governor, the secretary of state, the state treasurer, the state auditor, the attorney general, the department of administration, the public examiner, the courts, and the legislature."

Issue: Can trunk highway funds be used to maintain the courts, the legislature, and several executive offices?

Holding: No.

Cory v. King, 214 Minn. 535, 8 N.W.2d 614 (1943)

Facts: The Minnesota Legislature appropriated trunk highway funds for "services performed by the auditor, the treasurer, the civil service commission, and the department of administration insofar as they pertain to highway matters and the handling of highway funds."

Issue: Can trunk highway funds be paid for services performed by agencies other than the highway department?

Holding: Yes.

Cory v. King, 227 Minn. 551, 35 N.W.2d 807 (1949)

Facts: Gasoline taxes were collected by the petroleum division of the state department of taxes, and the expenses of that department were appropriated from the general fund. The Minnesota Legislature transferred $214,330.46 to the general fund partially from the trunk highway fund to reimburse for the cost of collecting the tax on gasoline and gasoline substitutes during the 1945-47 biennium.

Issue: Can trunk highway funds be transferred to the general fund to reimburse for costs incurred to collect the gasoline tax that partially funds the trunk highway fund?

Holding: Yes.

Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 91 N.W.2d 642 (1958)

Facts: Minnesota began upgrading several highways as part of the Federal-Aid Highway Act, which created the interstate highway system. As part of the Federal-Aid Highway Act, "federal funds may be used" whenever a state "shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System." The Minnesota Legislature accordingly passed an act that provided that whenever relocation of a utility facility was necessary, "the owner or operator of such utility facility shall relocate" and "the cost thereof shall be ascertained and paid by the state out of trunk highway funds." The plaintiff relocated its facilities at the commissioner's request to allow for construction of Interstate 35W, and it sued to recover its relocation costs. The district court granted summary judgment to plaintiff as to its entitlement to payment from the trunk highway fund.

Issue: Can a landowner receive compensation from the trunk highway fund when it is forced to relocate because of a highway project?

Holding: Yes.

Hoene v. Jamieson, 289 Minn. 1, 182 N.W.2d 834 (1970)

Facts: The Minnesota Legislature passed a law imposing a 3-percent sales tax and explicitly noted that the tax did not exempt the "sales of road building materials intended for use in state trunk highway or interstate highway construction, whether purchased by the state or its contractors." Both a contractor and taxpayer sued arguing that the statute unconstitutionally required the expenditure of trunk highway funds on the sales tax.

Issues:

(1) Is a law imposing a sales tax on purchases by the state under the trunk highway fund unconstitutional?

(2) Is a law imposing a sales tax on purchases by a highway contractor unconstitutional if some of those costs may ultimately be passed onto the state's trunk highway fund?

Holdings: (1) Yes.
(2) No.

Minnesota Statute § 161.20

Pursuant to statute, the Commissioner of Transportation "may expend trunk highway funds only for trunk highway purposes." Minn. Stat. § 161.20, subd. 3.

The legislature has further clarified that payment expenses to the following do *not* further a highway purpose and do not aid in the construction, improvement, or maintenance of the highway system:

- Bureau of Criminal Apprehension laboratory,
- Explore Minnesota Tourism kiosks,
- Minnesota Safety Council,
- Driver education programs,
- Emergency Medical Services Board,
- Mississippi River Parkway Commission,
- Payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes; and,
- Personnel costs incurred on behalf of the Governor's Office.

Since 2000, the Minnesota Legislature has removed two types of expenses from and added one type of expense to its list of those which do not further a highway purpose. See Minn. Laws 2003, 1st Special Session, ch. 19, art. 2, sec. 9 (removing sales tax from the list); Minn. Laws 2013, ch. 117, art. 3, sec. 2 (removing tort claims and adding payment to MN.IT services in excess of actual costs incurred for trunk highway purposes to the list).

Minn. Laws 2000, ch. 479, art. 2, sec. 1

To ensure compliance with the Minnesota Constitution, article XIV, sections 2, 5, and 6, the commissioner of finance, agency directors, and legislative commission personnel may not include in the biennial budget for fiscal years 2002 and 2003, or in any budget thereafter, expenditures from the trunk highway fund for a nonhighway purpose as jointly determined by the commissioner of finance and the attorney general. For purposes of this section, an expenditure for a nonhighway purpose is any expenditure not for construction, improvement, or maintenance of highways, but does not include expenditures for payment of taxes imposed under Minnesota Statutes, chapter 297A. *At the time of submission of the biennial 2 budget proposal to the legislature, the commissioner of finance and the attorney general shall report to the senate and house of representatives transportation committees concerning any expenditure that is proposed to be appropriated from the trunk highway fund, if that expenditure is similar to those reduced or eliminated in sections 5 to 20.* The report must explain the highway purpose of, and recommend a fund to be charged for, the proposed expenditure…

FY2022-2023 Trunk Highway Fund Report

There were two categories of appropriations in the current biennial budget proposal that are similar to the eliminated expenditures from the THF enumerated in Minn. Stat. § 161.20, subd. 3:

- 1) BCA laboratory costs; and
- 2) MNIT Services costs in the MnDOT budget proposal.

The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity and respect

QUESTIONS?

Carly Melin, Director of Government Affairs,
Office of the Attorney General
Carly.melin@ag.state.mn.us

Appendix F: Report Concerning Certain Expenditures from the Trunk Highway Fund in the FY 2022-2023 Biennial Budget

This appendix reproduces a legislative report made available to the Task Force.[3] *(There are some stylistic differences.)*

REPORT CONCERNING CERTAIN EXPENDITURES FROM THE TRUNK HIGHWAY FUND IN THE FY2022-2023 BIENNIAL BUDGET

PREPARED BY MINNESOTA MANAGEMENT & BUDGET
(Formerly Minnesota Department of Finance) AND
OFFICE OF THE ATTORNEY GENERAL

April 2021

I. BACKGROUND.

The Minnesota Constitution provides that "[t]here is hereby created a trunk highway system which shall be constructed, improved and maintained as public highways by the state." *See* Minn. Const., art. 14, sec. 2. The constitution also states that "[t]here is hereby created a trunk highway fund which shall be used solely for the purposes specified in section 2 of this article and the payment of principal and interest of any bonds issued prior to July 1, 1957." See Minn. Const., art. 10, sec. 6. Prior to 2000, Minn. Stat. § 161.20, subd. 3, stated that "[t]he commissioner may expend trunk highway funds only for trunk highway purposes." Minn. Stat. § 161.20, subd. 3 (1998).

In 2000, however, the Minnesota Legislature amended section 161.20, subd. 3, adding that "[p]ayment of expenses related to *sales tax, bureau of criminal apprehension laboratory, office of tourism kiosks, Minnesota safety council, tort claims, driver education programs, emergency medical services board, and Mississippi River parkway commission* do not further a highway purpose and do not aid in the construction, improvement, or maintenance of the highway system." Minn. Laws 2000, ch. 479, art. 2, sec. 4. (Emphasis added.) For these eight areas of

[3] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=14295122.

expenditure, the Minnesota Legislature converted the source of appropriation for each from the Trunk Highway Fund ("THF") to the General Fund.

Minn. Laws 2000, ch. 479, art. 2, sec. 1, also directed preparation of a report as follows for subsequent biennial budget proposals:

> Section 1. [PROHIBITION AGAINST APPROPRIATIONS FROM TRUNK HIGHWAY FUND.] To ensure compliance with the Minnesota Constitution, article XIV, sections 2, 5, and 6, the commissioner of finance, agency directors, and legislative commission personnel may not include in the biennial budget for *fiscal years 2002 and 2003, or in any budget thereafter*, expenditures from the trunk highway fund for *a nonhighway purpose as jointly determined by the commissioner of finance and the attorney general. For purposes of this section, an expenditure for a nonhighway purpose is any expenditure not for construction, improvement, or maintenance of highways*, but does not include expenditures for payment of taxes imposed under Minnesota Statutes, chapter 297A. At the time of submission of the biennial budget proposal to the legislature, *the commissioner of finance and the attorney general* shall report to the senate and house of representatives transportation committees concerning any expenditure that is proposed to be appropriated from the trunk highway fund, *if that expenditure is similar to those reduced or eliminated in sections 5 to 20. The report must explain the highway purpose of, and recommend a fund to be charged for, the proposed expenditure*, [EFFECTIVE DATE.] This section is effective the day following final enactment.

(Emphasis added.) The original eight expenditure areas in 2000 in section 161.20, subd. 3 (sales tax, bureau of criminal apprehension ("BCA") laboratory, office of tourism kiosks, Minnesota safety council, tort claims, driver education programs, emergency medical services board, and Mississippi River parkway commission) are the appropriations referenced above that were "reduced or eliminated in sections 5 to 20" of Minn. Laws 2000, ch. 479, art. 2, sec. 1.

Since 2000, the Minnesota Legislature has changed the original eight expenditure areas that were reduced or eliminated for reimbursement by the THF as follows: sales tax was deleted from the list (Minn. Laws 2003, 1st Special Session, ch. 19, art. 2, sec. 9); personnel costs incurred on behalf of the Governor's Office was added to the list (Minn. Laws 2009, ch. 36, art. 3, sec. 3); tort claims was deleted from the list, and payment to MN.IT Services in excess of actual costs incurred for trunk highway purposes was added to the list (Minn. Laws 2013, ch. 117, art. 3, sec. 2).

Currently, the Legislature directs that payment of expenses related to the following eight areas "do not further a highway purpose and do not aid in the construction, improvement, or maintenance of the highway system" for reimbursement by the THF:

1) Bureau of Criminal Apprehension laboratory;
2) Explore Minnesota Tourism kiosks;
3) Minnesota Safety Council;
4) driver education programs;
5) Emergency Medical Services Board;
6) Mississippi River Parkway Commission;

7) payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes; and
8) personnel costs on behalf of the Governor's Office.

Pursuant to the legislative mandate, if an expenditure in the biennial budget proposal for FY2022-2023 is similar to the eight areas identified above, this report "must explain the highway purpose of" the proposed expenditure.

II. CASE LAW REGARDING APPROPRIATIONS FROM THE THF.

The Minnesota Supreme Court has reviewed several challenges to appropriations made from the THF. *See, e.g., Cory v. King*, 209 Minn. 431, 296 N.W. 506 (1941) (holding that the THF may not be used to defray the general costs of government); *State ex rel. Holm v. King*, 184 Minn. 250, 238 N.W. 334 (1931) (holding that appropriation from the THF to cover the costs of the secretary of state in issuing motor vehicle license and collecting the license tax is constitutional); *Cory v. King*, 214 Minn. 535, 8 N.W.2d 614 (1943) (holding that appropriating money from the THF to the offices of the auditor, treasurer, department of civil service, and commissioner of administration to defray their expenses reasonably attributable to highway matters does not violate the constitution); *Cory v. King*, 227 Minn. 551, 35 N.W.2d 807 (1949) (holding that the THF may be charged for services provided by the state tax department to collect the gasoline tax provided the amount charged accurately reflects expenses incurred for such service).

The court has also set forth certain general principles that govern determination of whether an expenditure is for "highway purposes." The court has stated that the constitutional provisions at issue "are of broad import and do not of themselves define the functional use of a public highway or what constitutes proper construction, reconstruction, improvements, and highway maintenance costs." *Minneapolis Gas. Co. v. Zimmerman*, 253 Minn. 164, 171, 91 N.W.2d 642, 648 (1958). More specifically, the court observed that: "It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists." 253 Minn. at 173, 91 N.W.2d at 649-50.

III. SUBSEQUENT BIENNIAL BUDGET PROPOSALS.

Since 2001, numerous biennial budget proposals have included recommendations that THF monies be appropriated for expenditures in at least two of the eight categories previously reduced or eliminated by the Minnesota Legislature – tort claims and the BCA laboratory. In 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, and 2019 the Minnesota Legislature appropriated monies from the THF for highway-related tort claims and BCA expenses, notwithstanding the legislation enacted in 2000 restricting the payment of such costs from the THF. But in 2013, the Minnesota Legislature amended the 2000 legislation to delete tort claims from the list of restricted THF expenditures, but did not make a similar change as to BCA laboratory costs. The Minnesota Legislature apparently allowed the payment of tort claims and BCA laboratory costs based on an analysis of case law interpreting the state constitutional provision. In 2015, 2017, and 2019, however, the Minnesota Legislature again appropriated

monies from the THF for BCA expenses, notwithstanding the legislation enacted in 2000 restricting the payment of such costs from the THF.

IV. THE 2021 BUDGET REQUEST FOR FY2022-2023: THE DEPARTMENT OF TRANSPORTATION (MNDOT) AND THE DEPARTMENT OF PUBLIC SAFETY (DPS).

There are two categories of appropriations in the current biennial budget proposal that are similar to the eliminated expenditures from the THF enumerated in Minn. Stat. § 161.20, subd. 3: 1) BCA laboratory costs; and 2) MNIT Services costs in the MnDOT budget proposal. A third category is not similar to eliminated expenditures, but is a divided-cost appropriation (part from the general fund and part from the THF) in two DPS Change Items, *State Trooper 8.4% Salary Increase* and *State Patrol Body Worn Cameras*, which under current case law should be analyzed to determine if the portion of the cost requested from the THF is for a trunk highway purpose.

A. BCA Laboratory Costs.

The biennial budget for FY2022 and FY2023 provides, in part, for payment from the THF for a portion of BCA laboratory costs. BCA laboratory costs are still a restricted category of THF expense. *Id.* Although case law can be interpreted to allow payment of a proportionate share of BCA laboratory costs from the THF, it is unclear that a court would agree with that interpretation. Moreover, existing legislation still provides that such costs are not reimbursable from the THF. Minn. Stat. § 161.20, subd. 3. If the Minnesota Legislature decides again to fund such costs from the THF, it should amend the 2000 legislation to delete BCA laboratory costs from the list of restricted THF expenditures, as it did for tort claims in 2013.

B. MN.IT Services Costs in MnDOT Change Item.

The current MnDOT budget proposal includes requested appropriations in FY2022 and FY2023 from the THF for MN.IT services. One MnDOT Change Item, *Cyber Security, Risk Management, And Agency Priority Initiatives*, includes a $9.8 million annual increase to the THF appropriation beginning in FY2022 through FY2025. The Change Item states that: “In partnership, MnDOT and MN.IT at DOT have developed a framework for programming strategic technology investments. This request will support needed modernization efforts designed to update MnDOT’s systems, applications, and platforms. Project resource capacity is needed to support these investment initiatives, which will include a combination of MNIT, MnDOT, and consultant resources.” MMB reports that: “This proposal provides an ongoing appropriation increase from the Trunk Highway Fund starting in FY22 for data modernization, cyber security, risk management, and other technology initiatives to help plan, build, operate, and maintain the state’s transportation system. This includes securing, managing and operating IT systems used for most of the agency business functions.” MMB also reports that the IT tools are used to determine the amount of salt to disperse, to calculate funds distributed to local government, to analyze crash and safety statistics, to replace a system used for processing applications and issue operating credentials to commercial motor carriers of property and passengers using the trunk highway system. MMB adds that other initiatives involve securing a permitting and routing software used to analyze and approve oversized and overweight loads on Minnesota state highways, and engineering and construction specific technical software used for design state highways and bridges.

A second MnDOT Change Item, *Operating Adjustment*, includes "a base increase in the Trunk Highway Fund appropriations of $9.36 million in FY 2021 and $9.56 million in FY 2023 and each year thereafter, largely to cover estimated compensation cost increases including eligible contract steps and insurance." In addition, the Change Item notes that: "Other operating costs, like rent and lease, fuel and utilities, IT and legal services also grow. This cost growth puts pressure on agency operating budgets that remain flat from year to year without enacted increases." MMB reports that MnDOT's operating budget is primarily supported by the THF, and that the requested increase from the THF to IT reflects an increase in IT funding that has previously been attributed to trunk highway purposes.

C. DPS State Patrol Change Items.

The DPS biennial budget proposal in FY2022 and FY2023 provides, in part, for payment from the THF for a portion of State Trooper salary costs and State Patrol body worn cameras. The DPS Change Item, *State Trooper 8.4% Salary Increase*, provides "for the ongoing salary costs of the 8.4% salary increase for State Troopers . . . included in chapter 3 of the 2020 fifth special session." The Change Item recommends "$5.937 million annually starting in FY 2022 from the general, trunk highway, and highway user tax distribution (HUTD) funds for the ongoing salary costs" to continue through FY 2025. Specifically, the Change Item lists $5.591 million as the expenditure total from the THF; $277,000 from the general fund; and $69,000 in HUTD funds. The Change Item states that "[t]he funds will be used to continue the current level of service the State Patrol provided to the public and allied agencies as it relates to traffic safety, public safety, and Capitol security missions." MMB reports that funding for Capitol security comes from the General Fund, and that the portion of funds to be appropriated from the THF reflects the costs attributable to those State Troopers who are currently compensated from the THF.

The DPS Change Item, State Patrol Body Worn Cameras, provides for $4.018 million as the expenditure total from the THF in FY 2022 and $3.182 million in FY 2023 through FY 2025; $449,000 from the general fund in FY 2022 and $395,000 in FY 2023 through FY 2025; and $22,000 in HUTD funds in FY 2022 and $18,000 in FY 2023 through FY 2025. The Change Item states that "[t]his funding will allow State Patrol to purchase, deploy, and manage body-worn cameras (BWCs) for State Troopers, Capitol Security Officers, and Commercial Vehicle Inspectors. The State Patrol is one of the largest law enforcement agencies in the state and the last major law enforcement agency in Minnesota without BWCs." MMB reports that the portion of funds for equipment costs to be appropriated from the THF reflects the costs attributable to those State Troopers who are currently compensated from the THF.

V. HIGHWAY PURPOSES.

Funding for certain state agency activities from the THF has been previously acknowledged by the Minnesota Supreme Court to be appropriate. In *Cory v. King*, the court said: "[c]ertain executive agencies such as the state highway patrol are properly incorporated with the highway department and the expense of their maintenance properly charged to the highway fund." 209 Minn. at 434, 296 N.W. at 508.

In a later decision, the court addressed the question of whether state departments rendering divided services (services related to highway matters as well as non-highway related services)

may be proportionately reimbursed from the THF for expenditures reasonably attributable to highway matters. *Cory v. King*, 214 Minn. at 543, 8 N.W.2 at 618. The court reasoned that "[t]he true test is whether the charge upon the highway fund accurately reflects highway expenses." *Id*. The court concluded that "[i]t is essential to validity of an appropriation from the highway fund that no more money be taken than is necessary to defray the expenses properly attributable to highway matters." *Id*.

As indicated above, expenses "attributable to highway matters" can be reimbursed from the THF. *See id*. However, it is "essential" that "no more money be taken than is necessary to defray the expense properly attributable to highway matters." *Id*. The Minnesota Legislature must have a reasonable basis for allocating the cost of expenses to be paid for from the THF. *See, e.g., id*. (concluding that "the legislature had before it necessary data to inform itself of the amount of expenditures reasonably attributable to highway matters."). The Legislature therefore can only use THF monies to pay for part of the DPS funding requests (for State Patrol salary costs and BWCs) if it decides that DPS has provided the necessary information to reasonably determine the percentage of those costs that are "properly attributable to highway matters." *Id*.

Beyond examining the accuracy of the divided services apportionment for specific Change Items, the Legislature will need to determine what, if any, MN.IT services costs "further a highway purpose." Minn. Stat. § 161.20, subd. 3. In regard to the MN.IT products and services encompassed by the above-referenced Change Items, MMB indicates that payments to MN.IT for these budget proposals is not in excess of actual costs incurred for trunk highway fund purposes because MN.IT either bills agencies by passing through the costs of the product or service directly, or charges the agency a break-even rate. Given that Minn. Stat. § 161.20, subd. 3, identifies "payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes" as an expenditure area that is reduced or eliminated for reimbursement from the THF, the Legislature can only use THF monies to pay for MN.IT Services if it has a reasonable basis to conclude that the amounts will be actually "incurred for trunk highway purposes." *Id*.

Appendix G: Memo on Use of Trunk Highway Funds

This appendix reproduces materials presented to the Task Force.[4] (There are some stylistic differences.)

To: Craig Gustafson, Chief Counsel, Office of Chief Counsel

From: Kyle Fisher, Associate Legal Counsel, Office of Chief Counsel[5]

Cc: Jim Cownie, Deputy Chief Counsel, Office of Chief Counsel Samantha Juneau, Deputy Chief Counsel, Office of Chief Counsel

Date: August 18, 2021

RE: What can trunk highway funds be used for?

The trunk highway fund is an important source of revenue that MnDOT can use to pay for its work. However, not everything that MnDOT needs to spend money on can be paid for with trunk highway funds. This is because the Minnesota Constitution places limits on what the trunk highway fund can be used for. This memo describes some of the things trunk highway funds can and cannot be spent on. It also addresses what to do if you have questions. This memo only addresses the unique restrictions placed on the trunk highway fund. It does not discuss other requirements related to how MnDOT spends money.

Trunk highway funds can only be used for the construction, improvement, and maintenance of the trunk highway system.

The Minnesota Constitution states that the trunk highway fund can only be used for the construction, improvement, and maintenance of the trunk highway system and payment of principal and interest on trunk highway bonds (Article 14 §§ 2, 6). It is important to understand this limitation, because MnDOT must comply with the Minnesota Constitution. Intentionally using money for anything other than what the money is appropriated for is a gross misdemeanor and cause for removal of an individual from a position held within the government (Minn. Stat. § 16A.139).

What is included in the construction, improvement, and maintenance of the trunk highway system?

The limitation on the use of trunk highway funds for the construction, improvement, and maintenance of the trunk highway system seems straightforward. However, there has been

[4] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15100210.

[5] This memo is based largely on an earlier iteration prepared by then-Associate Legal Counsel Lindsey Hanson in 2017.

much debate over what construction, improvement, and maintenance of the trunk highway system includes. The legislature[6] and the courts provide some guidance about what construction, improvement, and maintenance of the trunk highway system does – and does not – include. This section summarizes the guidance that is available on this topic to date.

The legislature and courts have said, or suggested, that trunk highway funds can be used for these things:[7]

Construction, Repairs, and Maintenance

- Paying contractors and others for construction, maintenance, or repairs of trunk highways. *Regan v. Babcock*, 264 N.W. 803 (Minn. 1936).
- For trunk highway purposes: road construction; planning; design and engineering; labor; compliance with environmental regulations; administration; acquisition of right-of-way, including costs for attorney fees or other compensation for property owners; litigation costs, including payment of claims, settlements, and judgments; maintenance; and road operations. Minn. Stat. § 174.56, Subd. 2a.
- The cost of making grade changes and payment for any damages from the grade change when the construction or reconstruction of a trunk highway results in a change of grade which makes a change in grade necessary for intersecting or connecting highways or streets (including city streets). Minn. Stat.§ 161.24, Subd. 1.
- The cost of changing the location of any highway or street (including a city street) – and any damages arising from the change of location – when the change in location is required in the interest of safety or convenient public travel due to the establishment, construction, or reconstruction of a trunk highway. Minn. Stat. § 161.24, Subd. 2.
- When requested by a local road authority, the cost of utilizing the most practical detour during construction, reconstruction, or maintenance of a trunk highway (and any temporary traffic-control devices on such detours), when it is necessary to provide a detour outside the limits of the trunk highway for traffic using local highways or streets due to the fact that it is impractical to provide crossovers within the trunk highway limits for local highways or city streets carrying traffic of five tons or more per axle. Minn. Stat. § 161.24, Subd. 3.
- Reimbursing a utility company under Minnesota Statute § 161.46 for the nonbetterment (the cost of relocation minus any increase in value from the new facility and minus any salvage value from the old facility) cost of relocating a utility that has to be moved due to construction, maintenance, or improvement of the

[6] Sometimes a court decides that a law passed by the legislature is unconstitutional. This means that it's possible a court could decide that the legislature is wrong about what can be paid for using trunk highway funds. However, the court starts with the presumption that a statute is constitutional and strikes down a statute as unconstitutional only if absolutely necessary.

[7] The headings in bold in this section are for convenience. They are not broader categories that the legislature has said MnDOT can use trunk highway funds for.

trunk highway system. *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642 (Minn. 1958).

- To construct and maintain a state trunk highway in an adjoining state if it is advisable to construct across the adjoining state to properly connect the designated objectives, but the adjoining state must pass legislation giving MnDOT jurisdiction over the highway first. Minn. Stat. § 161.26.
- The cost of construction or improvement of a segment of a Minnesota trunk highway to connect (or improve the connection of) the Minnesota trunk highway with the highway system of an adjoining state at the common boundary when the construction or improvement is carried out by an adjoining state in conjunction with a construction project in that adjoining state. The construction and improvement costs that can be paid from the trunk highway fund include planning, design, equitable engineering costs, and expenses attributable to the Minnesota trunk highway. Minn. Stat. § 161.261, Subd. 2.

Property

- To pay for land, property, real estate, or an interest in land – including easements – necessary to construct, improve, and maintain the trunk highway system. This includes recreational vehicle lanes. Minn. Stats. § 161.20, Subd. 2; § 161.23, Subd. 4; § 161.43; § 161.431; § 161.441; § 161.442; and § 167.50.
- Unpaid taxes and special assessments (and future installments), when MnDOT acquires a fee interest in property before forfeiture. Minn. Stat. § 117.135.
- Land for gravel or borrow pits needed to acquire materials for trunk highway purposes. Minn. Stat. § 161.44.
- The costs of acquiring property rights necessary to regulate outdoor advertising, erect directional or other official signs and notices, public utility signs, service club and religious notices, historical markers, municipal identification entrance signs, and recycling center signs. Minn. Stats. § 173.05 and § 173.17.
- To acquire land (or interest in land) necessary to relocate railroad tracks when the construction, reconstruction, or improvement of a trunk highway requires the state to acquire land (or an interest in land) owned by a railroad company resulting in the railroad company having to relocate its tracks to provide right-of-way for the trunk highway. Minn. Stat. § 161.241.

Buildings, Equipment, and Materials

- To purchase road material, machinery, tools, and supplies necessary to construct, maintain, and improve the trunk highway system. Minn. Stat. § 161.20, Subd. 2.
- For trunk highway purposes, purchasing, constructing, or renting buildings to store material, machinery, tools, and supplies, or for office space for employees, as well as maintaining, repairing, or remodeling these buildings as necessary. Minn. Stat. § 161.20.

- When accepting excess materials suitable for road construction and maintenance purposes from the federal government, the costs of receiving, placing in use, delivering, or purchasing spare parts for the excess materials can be paid from the trunk highway fund. But note that any of these expenses incurred on behalf of a county must be paid for by the county. Minn. Stat. § 161.37.

Centrally Managed Programs

- Costs of a centrally managed highway sign program (including equipment acquisition and rental, labor, materials, and other costs). However, note that highway operations units and local road authorities are billed for the costs of the program; the payments are then credited to the trunk highway fund and used to pay for the program. Minn. Stat. § 160.298.
- Costs of a centrally managed pavement marking program (including equipment acquisition and rental, labor, materials, and other costs). However, note that local road authorities are billed for these services and the money is credited to a special account within the trunk highway fund and used to pay for the work. Minn. Stat. § 161.391.
- Costs of centrally managed products or services that benefit multiple operation units of MnDOT and are billed to the operations unit (including equipment acquisition and rental, labor, materials, and other costs determined by the commissioner). Minn. Stat. § 174.02, Subd. 10.

Program Administration

- Administration of the permit program for oversize/overweight vehicles and snowplows. Minn. Stat. § 169.86.
- Administration of the permit program for special tire-hauling and special two and three-unit vehicles. Minn. Stat. § 169.864.
- Administration of the permit program for special canola-hauling vehicles. Minn. Stat. § 169.866.
- Costs of administering the special transportation service program. Minn. Stat. § 174.30, Subd. 4(e).
- Costs of administering the program to regulate motor carriers as described in Minnesota Chapter 221. Minn. Stat. § 221.83.

Personnel and Insurance Costs

- Salaries and expenses of MnDOT relating to trunk highway purposes. Minn. Stat. § 174.03, Subd. 8; *State ex. rel. Wharton v. Babcock*, 232 N.W. 718 (Minn. 1930); Regan v. Babcock, 264 N.W. 803 (Minn. 1936).
- Workers' Compensation Act payments to MnDOT employees. *State ex. rel. Wharton v. Babcock*, 232 N.W. 718 (Minn. 1930).

- Premiums for insurance that covers payment of Workers' Compensation to MnDOT employees engaged in non-trunk highway work pursuant to agreements between MnDOT and any political subdivision or state agency. However, the political subdivision or state agency must pay to the trunk highway fund the portion of the premium that is directly attributable to the work performed for it. Minn. Stat. § 161.11.

Legal Matters

- Attorneys' fees and costs of the opposing party when the lawsuit resulted in recovery of funds for the trunk highway fund. Regan v. Babcock, 264 N.W. 803 (Minn. 1936).
- Paying expert witnesses who appear for MnDOT in court cases arising out of the construction, improvement, and maintenance of the trunk highway system. Regan v. Babcock, 264 N.W. 803 (Minn. 1936).
- Damages the attorney general agrees can be paid to a county when – within one year of getting the road from MnDOT – the county vacates a highway or street that was a trunk highway. Minn. Stat. § 161.16, Subd. 5.
- Legal fees for copies of proceedings, documents, and plats relating to the establishment of any road or the procuring of right-of-way of any road which has been – or may be – taken over by the State of Minnesota as a trunk highway, when these documents are requested by the commissioner in writing. Minn. Stat. § 161.19.
- For trunk highway purposes: costs for attorneys' fees or other compensation for property owners and litigation costs, including payment of claims, settlements, and judgments. Minn. Stat. § 174.56, Subd. 2a.

Requests from other entities

- MnDOT may use trunk highway funds for any of the following work if the entity requesting the work pays for the services MnDOT performs and the payment is credited to the trunk highway fund. Minn. Stat. § 161.39.
    - Any of the following types of work requested by the county board for a county state-aid highway or county highway, the town board for a town road, or the governing body of a city for a city street: technical and engineering advice, assistance and supervision; surveys; plans for location, construction, and reconstruction of highways, streets, roads, or bridges; maintenance of highways, streets, roads or bridges; examination of part or all of a highway or street system to recommend changes, alterations, or additions in the public interest and in the interest of safety and convenient public travel (along with the surveys, studies, investigations, and work and services necessary to do this).
    - Engineering or survey services requested by the governor's office for any state department or agency.

- Pavement marking of highways and streets off the trunk highway system (and the equipment and operators necessary for this) at the request of a country board, town board, governing body of a city, state department, or state agency with jurisdiction over the road.
- Services performed for the Public Utilities Commission.

- When requested by a local road authority, the cost of utilizing the most practical detour during construction, reconstruction, or maintenance of a trunk highway (and any temporary traffic-control devices on such detours), when it is necessary to provide a detour outside the limits of the trunk highway for traffic using local highways or streets due to the fact that it is impractical to provide crossovers within the trunk highway limits for local highways or city streets carrying traffic of five tons or more per axle. Minn. Stat. § 161.24, Subd. 3.

Miscellaneous

- "Aesthetic purposes" within trunk highway rights-of-way. Minn. Stat. § 161.434.
- Safety rest areas within trunk highway rights-of-way. Minn. Stat. § 160.2745.
- Construction, operation, and maintenance of a combination safety rest area and tourist information center in South Dakota within one mile of Minnesota-South Dakota state line along Eastbound I-90. Minn. Stat. § 160.281.
- Expenses incidental to the sale, printing, execution, and delivery of state trunk highway bonds (including actual and necessary travel and subsistence expenses of state officers and employees). Minn. Stat. § 167.50.
- To cover the expenses of collecting taxes that benefit the trunk highway fund. State ex. rel. Holm v. King, 238 N.W. 334 (1931); Cory v. King, 35 N.W.2d 807 (Minn. 1949).
- To reimburse other government agencies for costs reasonably attributable to trunk highway matters. Each dollar reimbursed does not have to be earmarked for a specific trunk highway purpose, but the amount reimbursed has to accurately reflect trunk highway expenses. Cory v. King, 8 N.W.2d 614 (1943); Cory v. King, 35 N.W.2d 807 (Minn. 1949).
- Development of software products or services for trunk highway purposes. Minn. Stat. § 16E.15, Subd. 2(c).
- Drainage project costs assessed against the State when the drainage project benefits a trunk highway. Minn. Stat. § 103E.615, Subd. 3.
- The reasonable expenses of appeal board members reviewing decisions about the final layout for projects that alter, access, increase, or reduce highway traffic capacity or require acquisition of permanent right-of-way involving trunk highway systems within a municipality. Minn. Stat. § 161.167.
- Payment of ordinary expenses incurred by a municipal or volunteer fire department in extinguishing a grass fire on the right-of-way on a trunk highway or in extinguishing a fire outside the right-of-way of a trunk highway if the fire started on the right-of-way. Minn. Stat. § 161.465.

- The cost of purchasing, constructing, reconstructing, maintaining, improving, and operating (including interest and principal payments on any bond obligations) a toll bridge owned by a municipality of Minnesota when the bridge leads to a trunk highway over boundary waters between Minnesota and an adjoining nation or province. Minn. Stat. § 165.08.
- Inspecting and posting bridges on trunk highways. Minn. Stat. § 169.86.
- Costs of developing and maintaining the public safety radio communications that serve state agencies. Minn. Stat. § 174.70.
- The public's share of costs to remedy a railroad crossing on a trunk highway that the commissioner has determined is hazardous following a complaint. Minn. Stat. § 219.40.
- To carry out a directive in a legislative rider to use construction project funds specifically appropriated for transit to pay for transit to mitigate adverse social, environmental, and economic effects of traffic congestion due to construction. Minn. Stat. § 174.03, Subd. 6; Use of funds in this manner is limited to the duration of construction. Minn. Stat. § 174.03, Subd. 6; See Minnesota Session Laws for specific legislative rider language authorizing this type of use.[8]

The legislature and courts say that trunk highway funds cannot be used for these things:

- The cost of operation and maintenance of MnDOT's central office building that is properly attributable to MnDOT. Minn. Stat. § 167.45.9
- All expenses for the below entities or programs including, but not limited to, payroll, purchased services, supplies, repairs, and equipment. This prohibition on spending applies to any successor entities or programs that are substantially similar to the entity or program named. Minn. Stat. § 161.045, Subd. 3.[10]
    - Bureau of Criminal Apprehension laboratory;
    - Explore Minnesota Tourism kiosks;
    - Minnesota Safety Council;
    - Driver education programs;
    - Emergency Medical Services Regulatory Board;

[8] Whether trunk highway funds may be used to pay for transit to mitigate congestion during highway construction when there is not a legislative rider must be addressed on a case-by-case basis in consultation with the Office of Chief Counsel and the Commissioner.

[9] This section is not effective until July 1, 2025.

[10] This section is not effective until July 1, 2025. Until that time Minn. Stat. Sec. 161.20, subd. 3, provides several similar prohibitions, which will also be repealed on July 1, 2025. In addition, 2021 Session Laws, Chapter 5, Art. I, sec. 2, subd. 1, contained the following rider for state fiscal years 2022 and 2023: "The commissioner must not spend appropriations from the trunk highway fund in this section for transit and active transportation; aeronautics; passenger rail; tourist information centers; parades, events, or sponsorship of events; or public electric vehicle infrastructure." This rider essentially mimics the permanent statutory language that will take effect in 2025, so those listed activities are already effectively prohibited.

- Mississippi River Parkway Commission;
- Payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes;
- Personnel costs incurred on behalf of the governor's office;
- The Office of Aeronautics within the Department of Transportation;
- The Office of Transit and Active Transportation within the Department of Transportation;
- The Office of Passenger Rail;
- Purchase and maintenance of soft body armor under section 299A.38;
- Tourist information centers;
- Parades, events, or sponsorships of events;
- Rent and utility expenses for the department's central office building;
- The installation, construction, expansion, or maintenance of public electric vehicle infrastructure;
- The statewide notification center for excavation services pursuant to chapter 216D; and
- Manufacturing license plates.

- To pay for the costs of government generally without regard to what portion of the government expenses are for trunk highway purposes. *Cory v. King*, 296 N.W. 506 (1941).
- Purchasing property before – or without – designating it as a trunk highway or appurtenance to a trunk highway. *State by Peterson v. Werder*, 273 N.W. 714 (Minn. 1937).
- Parks or other "beautification" or "artistic development" independent of a trunk highway. *State by Peterson v. Werder*, 273 N.W. 714 (Minn. 1937).

What if I have questions?

Having reviewed this memo, you may still find it difficult to determine whether trunk highway funds can be spent on a particular item, project, or activity due to the lack of specific guidance from the legislature and courts. If you have questions about whether trunk highway funds should be used for to pay for something, please contact Kyle Fisher, Associate Legal Counsel in MnDOT's Office of Chief Counsel, at (651) 366-4837, or kyle.c.fisher@state.mn.us.

Appendix H: Interpreting State Constitutional Clauses

This appendix reproduces a presentation to the Task Force.[11]

Interpreting State Constitutional Clauses
September 28, 2021

David Schultz, Professor
Hamline University
St Paul, MN USA
dschultz@hamline.edu
1.651.523.2858 (office)

I. Introduction/My background
- A. Teach at Hamline,
- B. UMN/St. Thomas Law Schools
- C. Taught State Constitutional Law for nearly 30 years
- D. Mary Jane Morrison's *The Minnesota State Constitution*

II. Two Classic Problems
- A. No "vehicles" in the Park
- B. Benzine case and whether 6 PPB is potable
- C. How to determine what is clean water or what is a vehicle
  - 1. The difficulty of determining what words mean

III. Preliminary: How to Interpret a State Constitutional Text
- B. Different from US Constitution
  - 1. Power limiting versus power conferring
    - a. Broader presumption of constitutionality of legislative acts than even for Congress and US Constitution
    - b. Broad deference to State legislative construction
    - c. The state's police power to legislate for the health, safety, welfare, and morals give the legislature board authority to act and give meaning to constitutional clauses
    - d. Burden is on showing unconstitutionality

[11] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15372820.

C. Similar techniques employed to interpretation of statutes
    1. Framers' intent
    2. Plain meaning

IV. How to Apply

A. Of course judiciary will try to use framer's intent or plain meaning.
    1. If either are clear then the Court will simply apply the words or intent and we are done with it.
    2. Seldom are either clear.
B. Courts will refer to reasonable legislative construction of the statute
C. In some cases, if what the legislature is unclear in its construction, courts have crafted additional interpretive tools.
    1. Defer to reasonable agency construction of a statute
        a. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808 (Minn. 1977) Administrative decisions "enjoy a presumption of correctness." deference may be appropriate in light of an agency's technical expertise.
        b. *St. Otto's Home v. Minnesota Department of Human Services*, 437 N.W.2d 35 (Minn. 1989) "Considerable deference" to a state agency's interpretation of ambiguities in its own state regulations**.**
        c. *In the Matter of the Excess Surplus Status of Blue Cross and Blue Shield of Minnesota* and *Zachman, et al.,* 624 N.W.2d 264 (Minn.,2001). "The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision- maker in the interpretation of statutes *that the agency is charged with administering and enforcing.* (Italics in the original)
D. Courts thus defer to state legislative interpretations of the constitution in most cases and in many cases defer to agency construction because of expertise

V. Application to Trunk Highway amendments

A. Current Constitution language is an update of the original 1920 Public Highway Amendment which gave the state authority to raise and spend money for a trunk highway system. Amendment in part necessary to address constitutional clauses and concerns regarding state authority to expend funds for internal improvements.
B. A review of Court construction of the trunk highway has generally been broad deference, generally allowing for all purposes of public highways, including but not limited to facilitating travel and transportation, such as relocating utility lines, collecting gas taxes, training police.
C. So long as legislature is reasonable in explaining how legislation or expenditure

is related to highways and transportation, Court will likely allow it.

Appendix I: Internal Improvements in the Minnesota Constitution

This appendix reproduces a presentation to the Task Force.[12]

[12] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15422918.

The original Minnesota Constitution prohibited "internal improvements."

- But it was not carefully drafted
  - It applied only to action by the State, and not to local government units
    - A similar, but less stringent, rule was applied by the courts to local borrowing

This was a fundamental issue that separated early Republicans and early Democrats

- A fundamental philosophical and political dichotomy
  - Republicans thought that government should not meddle in economic affairs
  - Democrats wanted government to use its authority to improve the national economy
- This issue is what led to the Hamilton-Burr duel, which led to Hamilton's death in 1804.
- It was still a live issue when Minnesota began to seek admission to the Union as a State.

A digression: Constitutional History

- Original Minnesota Constitution had an unusual history
- In 1857, Congress invited Minnesota to draft a Constitution and seek admission to the Union
- Many seats in the Convention that drafted the Constitution were contested
  - The two parties met separately, debated separately, and voted separately, without recognizing the legitimacy of the "other" convention, but reached a nearly common text.
  - The Secretary of the Territory, a federal official, ran the election on adopting the constitution. The ballot question asked if the voter approved the "Constitution proposed at St. Paul," without specifying which one! It was/They were adopted. Minnesota had two nearly identical authentic constitutions for over a century.

Problems arising

- The rule prohibiting internal improvements ran into three major challenges in the first part of the 20th Century
  - The advent of the automobile
  - The Hinkley fire
  - The beginnings of commercial air traffic

State Trunk Highway system

- By the early 1920's cars and trucks were moving increasing numbers of people and goods. To give responsibility to individual cities and counties was impractical. State officials wanted to create a state trunk highway system.
  - The solution to this problem was simple. A constitutional amendment was proposed that identified 70 "Trunk Highways" by giving starting and ending points and routes for each of the numbered highways.
  - This added several pages of text to the state constitution

Fire Breaks and Reforestion

- After the Hinkley Fire, the Legislature sought to protect citizens from forest fires by cutting and clearing "fire breaks," but wouldn't this be an "internal improvement"?
  - The voters resolved this problem by adopting a constitutional amendment expressly permitting the state to build fire breaks.

Airports

The oversight and support of airports raised questions. An amendment was adopted permitting such support.

Effects of change

These decisions permitted state to resolve these issues, but could a more general solution be found?

1973 Study Commission Report

- After noting that constitutional amendments had permitted the State to spend on highways, etc.
- It noted that the Minnesota Supreme Court had been "increasingly lenient in permitting projects that 'served a public purpose.'"
- It concluded that "Judicial interpretation has been increasingly lenient in ascribing a governmental purpose to legislative projects. .. . "

Structure and Form; Study Commission Report

- In 1971, the Legislature created a Constitutional Study Commission to review the State's basic document and to recommend any necessary changes. The Commission was headed by former Governor Elmer L. Anderson.
  - That amendment permitted "internal improvements" to be carried on in any of 10 purposes now spelled out in Art. XI, Sec. 5, subsections (a) through (j)
    - Some of them require a 3/5 majority of both houses to exempt the proposal from the limitation.
    - Others simply require legislative enactment of the statute by the ordinary process

Current law. Internal improvements OK:

- To acquire or improve public grounds or facilities (3/5 vote required)
- To repel invasions or suppress insurrections
- Certain temporary borrowing
- To refund outstanding bonds
- To establish and maintain highways
- To prevent and control forest fires
- To support airports and air navigation
- To lend credit based on real estate security
- Improve and rehabilitat railroad rights-of-way

Alternative: Requirement of a "public purpose"

- Courts also have imposed a requirement of a "public purpose that outweighs any resulting private use or benefit" in cases involving local borrowing
- Such a requirement would provide a more flexible way to examine these issues.
- See *Visina v. Freeman, 87 N.W.2d 635 (1958).*

Conclusion

- The constitutional rule prohibiting “internal improvements” has limited effectiveness today.

Appendix J: Memo on Dedicated Highway Funding & BCA Lab

This appendix reproduces a memorandum provided to the Task Force.[13] *(There are some stylistic differences.)*

To: Senator Scott Dibble
Representative John Petersburg

CC: Craig Gustafson, Chief Counsel, MnDOT
Erik Rudeen, State Legislative Liaison, MnDOT

From: Alexis Stangl, Counsel, Senate Counsel, Research, and Fiscal Analysis
Matt Burress, Legislative Analyst, House Research Department

Date: September 13, 2021

Subject: Use Dedicated Highway Funds; Funding BCA Lab

At the Dedicated Funds Expenditures Task Force meeting on August 20, a question was raised about using the Highway User Tax Distribution Fund (HUTDF) or Trunk Highway Fund to fund activities that are not considered to be constitutionally permitted. More specifically, a question was asked about the ability to use dedicated funds for the BCA lab. This memo provides a brief introductory discussion of constitutional issues relating to highway purposes.

General Determination of Constitutionality

When discussing the constitutionality of an issue, there are a few basic points to keep in mind. An enacted law is presumed to be constitutional. It can only be declared unconstitutional by a court of competent jurisdiction. A court will only declare a law to be unconstitutional if it is clearly invalid or it is shown beyond a reasonable doubt that the law violates the constitution.

As implied by the comments above, legal determination of whether a law is indeed unconstitutional requires a court case and a finding by the court. Absent these steps in the judicial process, an enacted law will stand regardless of the extent to which its constitutionality might be questioned.

Constitutional Purposes

Constitution. The constitution establishes the HUTDF and the trunk highway fund in article 14. Article 14, section 5 says that money in the HUTDF is "to be used solely for highway purposes as specified in this article." Section 6 says that money in the trunk highway fund is to "be used

[13] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15403211.

solely for the purposes specified in section 2 of this article and the payment of principal and interest of any bonds issued under the authority of section 11 of this article and any bonds issued for trunk highway purposes prior to July 1, 1957." For reference, section 2 establishes the trunk highway system. However, that section does not provide much detail on what constitutes a trunk highway purpose, stating in part, "There is hereby created a trunk highway system which shall be constructed, improved and maintained as public highways by the state." Section 11 authorizes the legislature to sell bonds to carry out the provisions of section 2.

The constitution does not provide definitions or any additional substantive guidance on what constitutes a "highway purpose" or a "trunk highway purpose."

State law. Our view is that state law similarly does not provide comprehensive guidance on what constitutes a highway purpose, nor does it provide guidance on how to determine if something is a highway purpose. A state statute does provide a list of expenditures that are not allowed to be made from the Trunk Highway Fund and are not considered to be highway purposes. It currently states:

> Subd. 3. Trunk highway fund appropriations. The commissioner may expend trunk highway funds only for trunk highway purposes. Payment of expenses related to Bureau of Criminal Apprehension laboratory, Explore Minnesota Tourism kiosks, Minnesota Safety Council, driver education programs, Emergency Medical Services Board, Mississippi River Parkway Commission, payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes, and personnel costs incurred on behalf of the Governor's Office do not further a highway purpose and do not aid in the construction, improvement, or maintenance of the highway system. Minn. Stat. § 161.20, subd. 3.

During the first 2021 special legislative session, this subdivision was repealed with a delayed effective date. The same law change includes a new section intended to replace the repealed section. The new section will include a longer list of prohibited uses and expansion of the limitations. The effective date for these changes is July 1, 2025. See Laws 2021, 1st spec. sess., ch. 5, art. 4, §§ 11, 151 (f).

Case law. Another key source on constitutional questions is case law, as questions about valid uses of constitutionally dedicated highway funds have reached the Supreme Court on a few occasions. There is some guidance from the courts on constitutionally permissible uses of the trunk highway fund, but we are not aware of comprehensive guidance that governs all uses.

Instead, the courts have given some general guidance that can be used by the legislature when considering whether something is an appropriate use. While a full legal analysis is beyond the scope of this memo, a couple of opinions and statements from the courts are noteworthy.

The courts have upheld a number of uses of highway fund moneys for expenditures other than those relating directly to highway construction and maintenance, and have also struck down a couple of uses. Most of the permitted uses involved expenditures for agency administrative costs (such as for collecting motor fuel and vehicle registration taxes, for issuing license plates, and reimbursing other agencies).

In one case, the Minnesota Supreme Court considered using trunk highway funds for various activities of executive departments. In that case, the court wrote that the true test of whether something is an appropriate use of trunk highway funds is whether the use of the funds accurately reflects highway expenses. *Cory v. King*, 214 Minn. 535, 543, 8 N.W.2d 614, 618 (Minn. 1943).

The most recent court case considering the use of trunk highway funds was in 1958. In that case, the Minnesota Supreme Court wrote:

> Significantly, art. 16, ss 2 and 6, [the equivalent of the current article 14, sections 2 and 5] are of broad import and do not of themselves define the functional use of a public highway or what constitutes proper construction, reconstruction, improvement, and highway maintenance costs. In the absence of qualifying or restrictive language, these constitutional provisions are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today. The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface. *Minneapolis Gas Co. v. Zimmerman*, 253 Minn. 164, 171, 91 N.W.2d 642, 648 (1958).

Further, the court wrote, "It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists." *Id.* 173, 649–50.

In addition to the court opinions, the attorney general has also issued several opinions on uses of the trunk highway funds. Additional research on both the court opinions and attorney general opinions is forthcoming.

Contradictory Provisions

Conflicts in law. The legislature cannot contradict the constitution, but it can contradict state law. This is often done by "notwithstanding" the provision that would arise in conflict. In other words, a "notwithstanding" establishes that regardless of what the conflicting law says, this law prevails. Statutes also provide a method of determining which provision prevails when the provisions are otherwise irreconcilable. Minn. Stat. § 645.26 provides the following guidance:

- If a general provision in a law conflicts with a special provision in law, the two must be construed to give effect to both, if possible. If the two are irreconcilable, the special provision prevails and is construed as an exception to the general provision unless the general provision is enacted after the special and it is the "manifest intention" of the legislature that the general provision will prevail.
- If clauses in the same law are irreconcilable, the clause that was most recently enacted will prevail.
- When provisions of two or more laws passed during the same session are irreconcilable, the last to be finally enacted prevails.

- When provisions of two or more laws passed at different sessions are irreconcilable, the law with the most recent enactment date prevails.

BCA lab. At the last meeting of the task force, a specific question was raised about using trunk highway funds for the Bureau of Criminal Apprehension (BCA) lab. The constitution does not directly address this issue, but state law does. As quoted above, Minn. Stat. § 161.20, subd. 3, states that "expenses related to Bureau of Criminal Apprehension laboratory… do not further a highway purpose and do not aid in the construction, improvement, or maintenance of the highway system." Therefore, the use of trunk highway funds for the BCA lab is prohibited by this law.

However, the Judiciary and Public Safety biennial budget routinely appropriates money out of the Trunk Highway Fund for the BCA lab. See e.g., Laws 2021, 1st special session, chapter 11, article 1, section 14, subdivision 3, paragraph (a). The 2021 budget bill specifically "notwithstands" the prohibition on using trunk highway funds for the BCA lab found in Minn. Stat. § 161.20. The application of Minn. Stat. § 645.26 also indicates that the appropriation would prevail because the two provisions conflict and the budget bill was enacted more recently.

There is no case law on use of trunk highway funds for the BCA lab, so there is no judicial determination on whether this use is constitutional or not. In the *Report Concerning Certain Expenditures from the Trunk Highway Fund in the FY 2022-2023 Biennial Budget*[14], the attorney general and commissioner of management and budget consider this issue, writing on page 5 of the report:

> The biennial budget for FY2022 and FY2023 provides, in part, for payment from the THF for a portion of BCA laboratory costs. BCA laboratory costs are still a restricted category of THF expense. Id. Although case law can be interpreted to allow payment of a proportionate share of BCA laboratory costs from the THF, it is unclear that a court would agree with that interpretation. Moreover, existing legislation still provides that such costs are not reimbursable from the THF. Minn. Stat. § 161.20, subd. 3. If the Minnesota Legislature decides again to fund such costs from the THF, it should amend the 2000 legislation to delete BCA laboratory costs from the list of restricted THF expenditures, as it did for tort claims in 2013.

[14] Available at: https://www.lrl.mn.gov/docs/2021/mandated/210578.pdf.

Appendix K: Highway Funds Legislative Activity

This appendix reproduces a presentation to the Task Force.[15] *(Note: slide page numbers include inaccuracies in this version.)*

[15] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15494367.

Introduction

Contents

- General Finance Overview
- Constitutional History
- Select Legislative Topics
- Constitutional Interpretation
- Contradictory Provisions
- Concluding Comments

Introduction

Presentation caveats

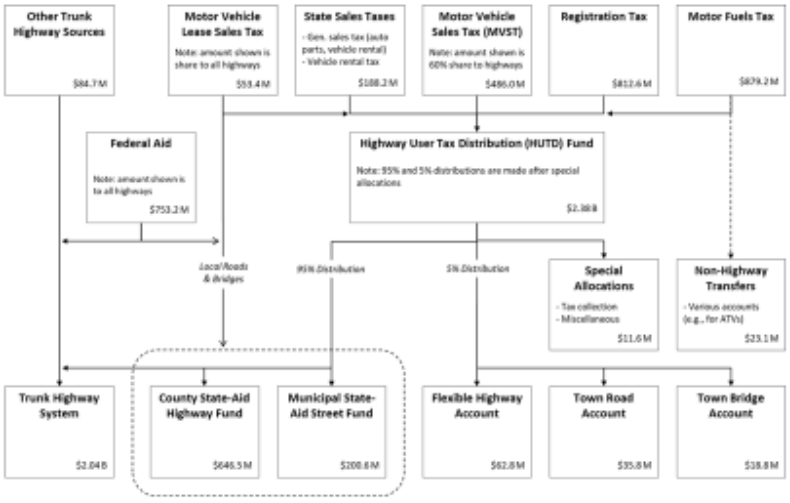
- It highlights some areas of legislative history and activity
- It is not comprehensive of provisions that involve questions of highway/non-highway purpose
- A full review and analysis of various historical circumstances is beyond of the scope of the presentation, given the time available
- Not a comprehensive analysis of the courts and case law

General Finance Overview

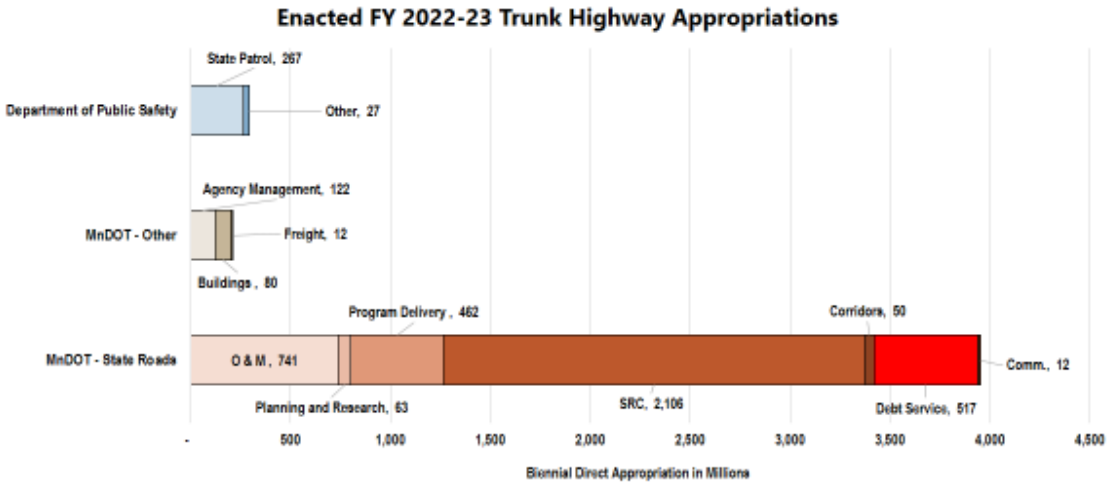
Highway finance characteristics

- Finance structure is both constitutional and statutory
- Core state revenue comes from three sources that are related to highway activities
  - MVST
  - Motor fuels tax
  - Registration tax
- Formula-based distribution of funds
  - Flow is into three highway funds: for the state, counties, and larger cities
  - Multiple formulas in state statute to distribute aid to counties and cities

General Finance Overview | Funding Flow, FY 2020



General Finance Overview

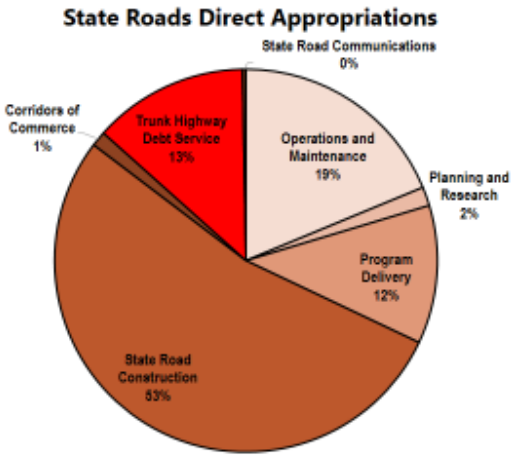


General Finance Overview

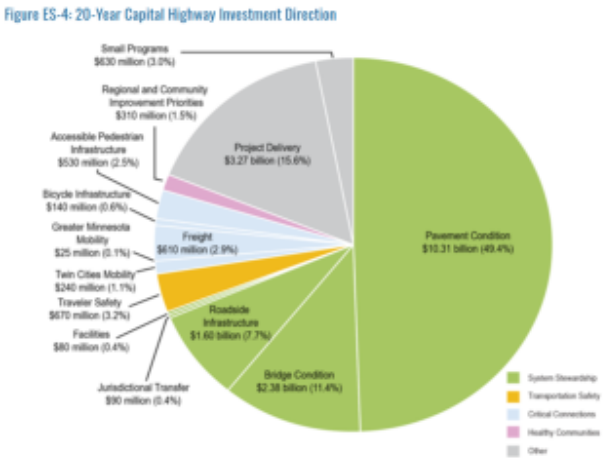
State roads layer cake

- Direct appropriations – legislative choices
  - Broad categories, not specific to district, project type or office
- State Highway Investment Plan (MnSHIP) / CHIP – MnDOT directed
  - Highway system objectives, maintenance vs. expansion, etc.
- District and central office functions – MnDOT directed

General Finance Overview

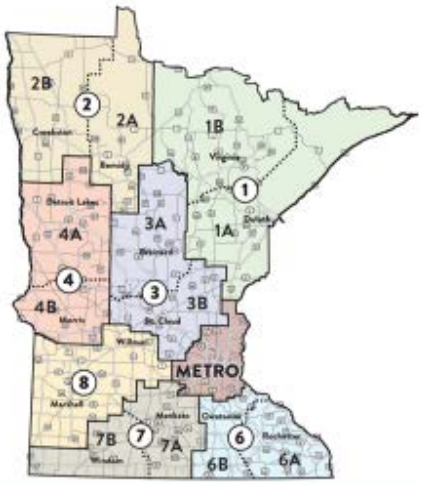


FY 2022-23



2017 MnSHIP

General Finance Overview



General Finance Overview

Past Direct Appropriations – 1971

Ch. 965 LAWS 1971 — REGULAR SESSION 2123

	APPROPRIATIONS Available for the Year Ending June 30, 1971	1972	1973
	$	$	$
Sec. 3. ADMINISTRATIVE OPERATIONS			
Subdivision 1. Salaries		2,200,000	2,329,000
Approved Complement—222			
Subd. 2. Supplies and Expense		1,015,000	1,050,000
Sec. 4. MAINTENANCE, SALARIES, SUPPLIES AND EXPENSE		41,234,000	43,725,000
Sec. 5. CONSTRUCTION OPERATIONS, SALARIES, SUPPLIES AND EXPENSE			
(a) Construction Design		4,955,000	5,251,000
(b) Right of Way Operations		3,047,800	3,224,000
(c) Central Office		4,055,600	4,485,400
(d) District Offices		19,936,700	21,086,100

General Finance Overview

Past Direct Appropriations – 1971 (cont.)

	APPROPRIATIONS Available for the Year Ending June 30, 1971	1972	1973
	$	$	$
Sec. 6. RESEARCH AND STANDARDS, SALARIES, SUPPLIES AND EXPENSE		753,300	790,100
Sec. 7. STATE AID ADMINISTRATION, SALARIES, SUPPLIES AND EXPENSE		220,300	233,300
Sec. 8. PLANNING AND PROGRAMMING, SALARIES, SUPPLIES AND EXPENSE		2,458,000	2,582,000
Sec. 9. EQUIPMENT		3,250,000	3,205,000
Sec. 10. BUILDINGS AND IMPROVEMENTS		2,375,250	

	1971	1972
	$	$
Sec. 11. INTERSTATE SAFETY REST AREA FACILITIES		1,170,550
Includes safety rest area facilities and tourist information centers as enumerated on page 123 of the report of the legislative building commission to the 1971 legislature. In addition, rest areas at the following locations are authorized: Interstate 90 near Jackson, Eastbound and Westbound; and one additional area at a site to be determined; and contingencies for these three items.		
Sec. 12. TRUNK HIGHWAY REST AREA FACILITIES		500,000
Improvement of existing and development of new safety rest areas provided that federal funds are available for that purpose. Not more than 30 percent of the cost of these facilities shall be from trunk highway funds.		

Constitutional History (1849-1857)

Frontier and territorial years

- Trails, territory and military roads
- County responsibility

Constitutional History (1858-1898)

- Constitutional prohibition on state debt or works of internal improvement (e.g., roads)
- Shifting responsibility for roads in state statute
  - 1858-1860: Counties
  - 1860-1862: Towns
  - 1862: Counties (state roads) and Towns (all other roads)

Constitutional History (1898-1912)

- Beginning of state funding
- "Good roads" movement
- 1898 amendment adopted
  - State Road and Bridge Fund established and funded by property tax
  - Established State Highway Commission
  - Limitations on how and where funds could be spent
  - No specified question in legislation

Constitutional History (1898-1912)

- 1902 amendment rejected
  - Increased tax
  - Repealed commission
  - Repealed limits on distribution of funds
- 1906 amendment adopted
  - Increased tax
  - Repealed commission
  - Repealed restriction on how much could be spent on bridges
- 1908 amendment rejected
  - Allowed the state unlimited annual taxing authority
  - Eliminated all spending limitations
- 1910 amendment adopted
  - Increased proportion of a project that the state could pay for
- 1912 amendment adopted
  - Increased tax
  - Repealed limitation on spending for projects

Same question used all 5 years: "Amendment to section sixteen (16) of article nine (9) of the constitution, establishing the road and bridge fund, and 'authorizing the legislature to levy an annual tax for the purpose of constructing and improving roads and bridges within this state. Yes... No..."

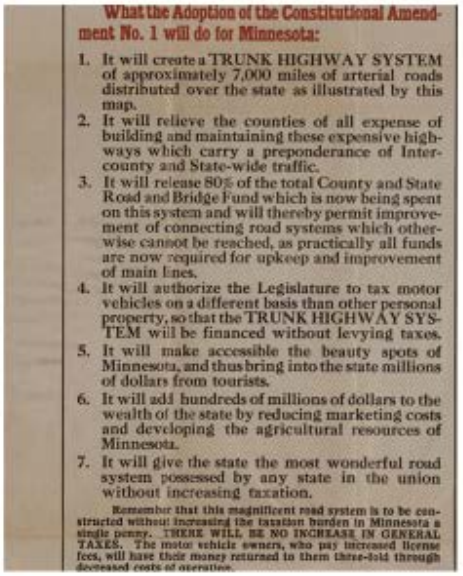
Constitutional History (1913-1952)

- Expanded state role
- Shifting responsibilities from counties and town to the state
- Continued push for improved roads
- Federal Aid Road Act of 1916

Constitutional History (1913-1952)

- 1920 amendment adopted
  - "Babcock plan"
  - Established trunk highway system
  - New funds
    - Trunk Highway Sinking Fund (payment of principal and interest on bonds)
    - Trunk Highway Fund (trunk highway purposes)
  - Authorized tax on motor vehicles
  - Authorized trunk highway bonds with limits

Question: "Amendment to constitution by adding thereto a new article, to be known as article 16, and creating a trunk highway system; authorizing the taxation of motor vehicles to create a fund for the construction and improvement of the same; authorizing the enactment of laws providing for the issuance of the bonds of the state, and the payment of the principal and interest of such bonds. Yes... No..."



What the Adoption of the Constitutional Amendment No. 1 will do for Minnesota:

1. It will create a TRUNK HIGHWAY SYSTEM of approximately 7,000 miles of arterial roads distributed over the state as illustrated by this map.
2. It will relieve the counties of all expense of building and maintaining these expensive highways which carry a preponderance of Inter-county and State-wide traffic.
3. It will release 80% of the total County and State Road and Bridge Fund which is now being spent on this system and will thereby permit improvement of connecting road systems which otherwise cannot be reached, as practically all funds are now required for upkeep and improvement of main lines.
4. It will authorize the Legislature to tax motor vehicles on a different basis than other personal property, so that the TRUNK HIGHWAY SYSTEM will be financed without levying taxes.
5. It will make accessible the beauty spots of Minnesota, and thus bring into the state millions of dollars from tourists.
6. It will add hundreds of millions of dollars to the wealth of the state by reducing marketing costs and developing the agricultural resources of Minnesota.
7. It will give the state the most wonderful road system possessed by any state in the union without increasing taxation.

Remember that this magnificent road system is to be constructed without increasing the taxation burden in Minnesota a single penny. THERE WILL BE NO INCREASE IN GENERAL TAXES. The motor vehicle owners, who pay increased license fees, will have their money returned to them three-fold through decreased costs of operation.

MN Highway Improvement Association Advertisement and Map Courtesy of the Legislative Reference Library

Constitutional History (1913-1952)

Intent of the 1920 amendment

- A constitutional amendment is an act of the people, not the legislature; look at intent of electors (not legislators)
- "The people of the state desired better highways. They created a fund for the purpose of locating, building, improving, and maintaining such highways. To protect and preserve that fund and make certain that it should be used only for the purposes stated, they placed in the article a specific limitation that the fund should be used solely for the purposes stated. The language used is clear and limits the power of the Legislature, as well as all other persons, in the use of the fund. It has always been the law here that the state is not legally liable for the negligence of any official or agent in the maintenance of highways. To hold that, in adopting article 16, the people intended that subsequent Legislatures might use the trunk highway fund to pay damages for injuries to persons and property upon such highways, where there was no legal liability, however laudable the purpose, would be going far afield."
  - State ex rel. Wharton v. Babcock, 181 Minn. 409, 232 N.W. 718 (Minn. 1930)

Constitutional History (1913-1952)

Intent (cont.)

- "Does article 16 intend that the great expense of imposing and enforcing this special tax is to be borne by the general taxes derived from other property? We think not. It is more reasonable to consider that when, by article 16, the people established this trunk highway system and authorized the taxation of motor vehicles on a more onerous basis than other property for the special use of the system, it was thought that the expense of imposing and collecting this tax which was to produce the necessary funds was an essential part of the enterprise to be paid out of such funds."
  - State ex rel. Holm v. King, 184 Minn. 250, 238 N.W. 334 (Minn. 1931)

Constitutional History (1913-1952)

- 1924 amendment adopted
  - Allowed state to contract debt for transportation
  - Imposed gas tax
    - Deposited in Trunk Highway Fund
- 1928 amendment adopted
  - Amended how gas tax was deposited
    - 2/3 going to the Trunk Highway Fund and 1/3 to the State Road and Bridge Fund

1924 Question: "Amendments to Section 5, of Article 9, of the Constitution, authorizing the state to place in the 'Trunk Highway Fund' any or all excise taxes levied and collected on the business of selling or dealing in fluids used, or which can be used for motor vehicle power purposes. Yes... No..."

1928 Question: "Amendments to Section 5, of Article 9, of the Constitution (as amended), authorizing the state to place in the trunk highway fund two-thirds and in the state road and bridge fund one-third of any and all excise taxes levied and collected on the business of selling or dealing in fluids used or which can he used for motor vehicle power purposes. Yes... No... "

Constitutional History (1913-1952)

- 1932 amendment adopted
  - Additional tax on certain vehicles
- 1934 amendment rejected
  - Recognized additional trunk highways
  - Eliminated requirement to have funding in place before adding new routes

1932 Question: "Amendment of Article 16, section 3 of the constitution, relating to the taxation of motor vehicles of companies paying taxes under the gross earnings system of taxation. Yes... No..."

1934 Question: "Amendment to Section 1, Article 16, of the Constitution of the State of Minnesota, authorizing the legislature to add new routes to the trunk highway system. Yes... No..."

Constitutional History (1913-1952)

- 1948 amendment rejected
  - Split gas tax 50% to Trunk Highway Fund and 50% to State Road and Bridge Fund
- 1950 amendment rejected
  - Split gas tax 50% to Trunk Highway Fund; 6% for cities over 100,000; 55% to State Road and Bridge Fund

1948 Question: "Shall the Constitution, Article IX, Section 5, be amended so as to provide that the proceeds of the excise tax on petroleum products be apportioned as follows: Of the proceeds of such tax, one-half thereof in Trunk Highway Fund and one-half thereof in State Road and Bridge Fund. Yes... No..."

1950 question: Shall the Constitution, Article IX, Sec 5, be amended so as to provide that the proceeds of the excise tax on petroleum products be apportioned as follows: Of the proceeds of such tax, one-half thereof in Trunk Highway Fund, 6% thereof for road and street - purposes on the basis of population among cities of over 100,000 population, and 44% thereof in the State Road and Bridge Fund. Yes... No..."

Constitutional History (1913-1952)

- 1952 amendment rejected
  - Split gas tax 65% to Trunk Highway Sinking Fund; 10% cities; 25% to counties

1952 question: "Shall the constitution, Article XVI, Section 3, be amended so as to provide for apportionment of the excise tax on motor vehicles so that 65 per cent be paid into the trunk highway sinking fund, ten per cent be apportioned to cities, villages, and boroughs in proportion to population, and 25 per cent be apportioned to counties according to the following computation: One-half in the ratio which the rural population of the county bears to the total rural population of the state. One-half in the ratio which the total mileage of county and township roads bears to the total mileage of all the county and township roads in the state. Yes… No…"

Constitutional History (1953-1979)

Highway finance restructuring

- 1953: Highway Study Commission (Laws 1953, Ch. 692)
  - Established to "make a comprehensive, detailed and complete investigation and study" of highway policy, adequacy, and finance
  - Large-scale analysis with consultants for needs and fiscal studies
  - Multiple constitutional amendment concepts
    - Various differences in distribution percentages & other details
    - Example: trunk highway funds "shall be used only for the support of the state trunk highway system, as may be provided by law"

Constitutional History (1953-1979)

Highway finance restructuring (cont.)

- Highway Study Commission (cont.)
  - Final recommendations included a proposed constitutional amendment
    - Language is similar to the final proposal ultimately submitted in 1956 (discussed later)
  - Proposal included creating the HUTDF
    - HUTDF proceeds are "used solely for the purposes enumerated in sections 2, 3, and 4 of this article"
      - Sections 2-4 regard the trunk highway system and the proposed county state-aid and municipal state-aid systems, respectively

Constitutional History (1953-1979)

Highway finance restructuring (cont.)

- 1955: constitutional amendment proposal enacted (Laws 1955, Ch. 882)
- 1955: Legislative Interim Commission on Highway Taxes Distribution (Laws 1955, Ch. 585)
  - Established to determine revenue distribution, assuming passage of the constitutional amendment
  - No indications found of "highway purpose" discussions

Constitutional History (1953-1979)

1956 constitutional amendment

- Consolidated transportation provisions
- Formed the core of the current constitutional finance structure
  - Eliminated and created accounting funds
    - HUTDF
    - County State-Aid Highway (CSAH) Fund
    - Municipal State-Aid Street (MSAS) Fund
  - Established state-aid systems
  - Set the 62%/29%/9% constitutional distribution formula
  - Established the 5% set-aside

Constitutional History (1953-1979)

1956 amendment (cont.)

- Amendment adopted:
  - 73.4% Yes votes – among all voting
  - 82.1% Yes votes – among those voting on the question

Question: "Shall the Constitution of the State of Minnesota be amended by including a consolidated article on public highways, establishing and continuing the trunk highway system which is to be constructed and maintained by the state, authorizing the issuance of bonds for trunk highway purposes; authorizing the state to aid in the construction and maintenance of other public highways; authorizing the taxation of motor vehicles and the levying of an excise tax on motor fuel to create a fund for highway purposes, and apportioning the moneys in said fund for highway purposes as follows: 62 percent to the trunk highway fund, 29 percent to the county state-aid highway fund, and nine percent to the municipal state-aid street fund? Yes... No..."

Constitutional History (1953-1979)

- 1974 amendment adopted
  - Reorganized and modernized entire constitution
  - Moved highways to Article XIV
  - Example in section 1: "The state may ~~establish, locate,~~ construct, ~~reconstruct,~~ improve and maintain public highways"
  - Supreme Court: modifications were "not intended to change the interpretation" of a section

Question: "Shall the Minnesota Constitution be amended in all its articles to improve its clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, but without making any consequential changes in its legal effect? Yes... No..."

Constitutional History (1980-2004)

Increased bonding capacity

- 1980 amendment rejected
  - Eliminate cap on bonds
- 1982 amendment adopted
  - Eliminate cap on bonds (same as 1982 amendment)

Question for both years: "Shall the Minnesota Constitution be amended to remove restrictions on the interest rate for and the amount of trunk highway bonds? Yes... No..."

Constitutional History (2005-Present)

- New revenue
- Transportation budget bill vetoed except constitutional amendment
- One amendment on the ballot; others considered but not enacted

Constitutional History (2005-Present)

- 2006 amendment adopted
  - Allows imposition of a dedicated tax on sales of new or used vehicle (motor vehicle sales tax, or MVST)
  - Funds "must be allocated for the following transportation purposes:"
    - Not more than 60% deposited into HUTDF
    - Not less than 40% deposited into fund for public transit assistance
  - 2007: Allocation formula specified in state statute (Minn. Stat. § 297B.09)
    - 60% to HUTDF; 36% to metropolitan area transit account; 4% to greater Minnesota transit account

Question: Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes? Yes… No…"

Select Legislative Topics

Statutory limits on Trunk Highway Fund spending

- 1959: general prohibition for Trunk Highway Fund (Laws 1959, Ch. 500)
  - Part of broader recodification
  - "The commissioner may expend trunk highway funds only for trunk highway purposes." (1961 Minn. Stat. § 161.20, subd. 3)
  - Various statutory references to "highway purposes" and "trunk highway purposes", but the meaning is not further delineated

Select Legislative Topics

Statutory limits (cont.)

- 2000: limitations and reporting requirements (Laws 2000, Ch. 479)
  - Added various specifics to the general prohibition
    - E.g., BCA laboratory; sales tax expenses; office of tourism kiosks
  - Limited executive branch budget proposals
    - In each biennial budget, MMB may *not* include any expenditure "…for a nonhighway purpose as jointly determined by the commissioner of [management and budget] and the attorney general. For purposes of this section, an expenditure for a nonhighway purpose is any expenditure not for construction, improvement, or maintenance of highways."
  - Directed Attorney General (AG)/MMB reports to the legislature
    - See prior presentation from the AG's Office for details

Select Legislative Topics

Statutory limits (cont.)

- 2003-13: some modifications made
  - Generally, legislative response to spending concerns
- 2021: expansion & recodification (Laws 2021, 1st spec. sess., Ch. 5)
  - Broadened to limitations to include HUTDF
  - Restricted various additional purposes and functions
  - Delayed effective dates (FY 2026)

Select Legislative Topics

Department of Natural Resources (DNR) transfers

- Motor fuels tax collection is at the wholesale level, prior to end use
- Some tax revenue is attributed to non-highway activity
  - E.g., use in motorboats, snowmobiles, and various off-road vehicles
- Attributed non-highway shares are transferred from the HUTD Fund into various accounts
  - State statute specifies revenue percentages (Minn. Stat. § 296A.18)
- FY 2020: $23.1 million in transfers
- Implied legislative intent: align revenue transfers with use

Select Legislative Topics

DNR transfers (cont.)

- Periodic legislation directing studies to estimate fuel consumption
  - 1994 off-highway motorcycle and off-road vehicle study
  - 2006 all-terrain vehicle (ATV) study
- Latest changes in percentages
  - 2001: snowmobile trails & enforcement account (Laws 2001, 1st spec. sess., Ch. 8)
  - 2008: all-terrain vehicle account (Laws 2008, Ch. 154)
    - DNR proposal to increase the percentage based on the 2006 ATV study
    - Legislative discussion of study methodology & accuracy of findings, as well as appropriateness of resulting spending

Select Legislative Topics

License plates

- Statutory funding for license plate costs (Minn. Stat. § 168.381)
  - 1965: statutory statement on intent of appropriations from HUTDF for plate manufacturing costs (Laws 1965, Ch. 158)
    - Arguably implies a use for subsequent unspecified HUTD direct appropriations
  - 2001: statutory appropriation from HUTDF created for plate & sticker costs (Laws 2001, 1st spec. sess., Ch. 8)
  - 2005: statutory appropriation source shifted from HUTDF to vehicle services operating account in the Special Revenue Fund (Laws 2005, 1st spec. sess., Ch. 6)

Select Legislative Topics

License plates (cont.)

- Direct appropriations (for DVS – vehicle services)
  - $8.2 million/yr. from HUTDF in recent biennial budgets
  - Purposes not specified in budget legislation
  - Appropriations eliminated for FY 2016-17, FY 2023+ (*see* Laws 2021, 1st spec. sess., Ch. 5)
- Legislative concerns regarding uses of funds

Select Legislative Topics

MnDOT central office building

- 1955: funding for new central office building (Laws 1955, Ch. 717)
  - Trunk Highway Fund uses authorized
    - Direct appropriation to construct and equip the building for Department of Highways (precursor to MnDOT)
    - Statutory appropriation for operations and maintenance costs
  - Limitations established:

    "The cost of operation and maintenance of the new central office building for the department of highways, *or so much thereof as is properly attributable to the department of highways*, shall be paid out of the trunk highway fund…" (1957 Minn. Stat. § 167.45; emphasis added)

Select Legislative Topics

MnDOT central office building (cont.)

- 1976: statutory appropriation from Trunk Highway Fund eliminated (Laws 1976, Ch. 163)
- 2021: funding change (Laws 2021, 1st spec. sess., Ch. 5)
  - Prohibited use of trunk highway funds for the building
  - Created statutory appropriation from GF
  - Delayed effective date (FY 2026)
  - Element in the broader legislative discussion of permissible uses of highway funds

Select Legislative Topics

Appropriations in made other budget areas

- Department of Revenue
  - $2.2 million/yr. from HUTDF in recent budgets (e.g., Laws 2021, 1st spec. sess., Ch. 12)
  - For tax collection costs
  - Implied rationale: for costs of administering highway user taxes
- Department of Public Safety – BCA laboratory
  - ~$2.4 million/yr. from Trunk Highway fund in recent budgets (e.g., Laws 2021 1st spec. sess., Ch. 11)
  - For laboratory analysis related to driving-while-impaired cases
  - See separate memo

Constitutional Interpretation

Determining constitutionality

- Enacted law is presumed to be constitutional
- Only courts can declare something unconstitutional
- Court will do so only if it is clearly invalid or it is shown beyond a reasonable doubt that the law violates the constitution
- Court involvement is in response to a legal action

Constitutional Interpretation

Constitutional language on purposes

- HUTDF is "to be used solely for highway purposes as specified in this article." (Minn. Const. art. XIV, § 5)
- Trunk highway fund is to "be used solely for the purposes specified in section 2 of this article and the payment of principal and interest of [trunk highway bonds]..." (Minn. Const. art. XIV, § 6)
  - Section 2 establishes the trunk highway system but does not provide much detail on trunk highway purposes, stating in part:

    "There is hereby created a trunk highway system which shall be constructed, improved and maintained as public highways by the state." (Minn. Const. art. XIV, § 2)

Constitutional Interpretation

Constitutional language (cont.)

- The constitution does not provide definitions or additional substantive guidance on what constitutes a "highway purpose" or a "trunk highway purpose"
- State law gives some guidance

Constitutional Interpretation

Case law

- Cases look at valid uses of dedicated funds in specific circumstances
- No comprehensive list or test, but some general guidance
- Courts have upheld some things and struck down others
- Context and details matter
- See prior presentation from the AG's Office for details

Constitutional Interpretation

Other sources

- Attorney General has authored multiple opinions on what constitutes a highway purpose
- Minnesota courts might look at executive branch policies and practices
- Minnesota courts might look at cases in other jurisdictions

Constitutional Interpretation

- Purpose of interpretation is to find and effectuate the intent of the legislature (and the people?)
- When possible, all provisions should be given effect
- When words are not ambiguous, letter of law "shall not be disregarded under the pretext of pursuing the spirit."
- If there is ambiguity, then look to intent and canons of construction
- Canons of Construction: case law and Minn. Stat. §§ 645.16 and 645.17

Contradictory Provisions

When provisions conflict with each other

- Cannot contradict the constitution; can conflict with other statutes
- Practice of "notwithstanding" the conflicting provision
- Statutes provide a method of determining which provision prevails when the provisions are otherwise irreconcilable

Contradictory Provisions

Minn. Stat. § 645.26 provides guidance

- If a general provision in a law conflicts with a special provision in law, the two must be construed to give effect to both, if possible. If the two are irreconcilable, the special provision prevails and is construed as an exception to the general provision unless the general provision is enacted after the special and it is the "manifest intention" of the legislature that the general provision will prevail.
- If clauses in the same law are irreconcilable, the clause that was most recently enacted will prevail

Contradictory Provisions

Minn. Stat. § 645.26 guidance (cont.)

- When provisions of two or more laws passed during the same session are irreconcilable, the last to be finally enacted prevails
- When provisions of two or more laws passed at different sessions are irreconcilable, the law with the most recent enactment date prevails

Concluding Comments

- Historical origins for the constitutional & statutory structure
  - "Highway user taxes" concept since inception of tax streams
  - Various state/local partnership and aid models
- To date, staff research has not found in-depth legislative guidance on what constitutes a highway purpose or trunk highway purpose
- Some legislative activity points to case-by-case responses to specific uses of dedicated funds

Questions?

Alexis Stangl
alexis.stangl@senate.mn

Krista Boyd
krista.boyd@senate.mn

Matt Burress
matt.burress@house.mn

Andy Lee
andrew.lee@house.mn

The Office of Minnesota Senate Counsel, Research, and Fiscal Analysis, Minnesota House Research Department, and Minnesota Fiscal Analysis Department are nonpartisan offices that provide legislative, legal, research, and fiscal analysis services to the Senate and House of Representatives.

Appendix L: Dedicated Funds Direct Appropriations

This appendix reproduces a document provided to the Task Force by Andy Lee, House Fiscal Analysis Department.[16]

Dedicated Funds Direct Appropriations

All dollar amounts in thousands 000's

Transportation Finance Committees

Minnesota Department of Transportation

Appropriation	Fund	FY 2022	FY 2023	FY 22-23	Fund Specific Rider Paragraphs	Amount named in riders 22-23
Multimodal - Fright	Trunk Highway	5,878	5,878	11,756	None	
State Roads - Operations and Maintenance	Trunk Highway	370,975	369,481	740,456	1, Liquid deicing	4,260
State Roads - Planning and Research	Trunk Highway	31,690	31,190	62,880	4, District 1, planning, targeted business	3,092
State Roads - Program Delivery	Trunk Highway	231,028	231,028	462,056	2, consultants, contamination	2,000
State Roads - State Road Construction	Trunk Highway	1,131,925	974,282	2,106,207	5, fed aid, contracts, job training, transfer	30,000
State Roads - Corridors of Commerce	Trunk Highway	25,000	25,000	50,000	1, reference, project development	17% of yeah year
State Roads - Debt Service	Trunk Highway	235,849	281,064	516,913	1, deficiency authorization	
State Roads - Communications	Trunk Highway	6,236	6,236	12,472	None	
Local Roads - County State Aid	CSAH	850,452	871,591	1,722,043	2, citation & additional spending authorization	
Local Roads - Municipal State Aid	MSAS	212,677	218,139	430,816	2, citation & additional spending authorization	
Agency Management - Agency Services	Trunk Highway	57,869	62,669	120,538	1, Information technology	14,800
Agency Management - Buildings	Trunk Highway	39,994	40,194	80,188	1, carryforward, either year use	
Agency Management - Tort Claims	Trunk Highway	600	600	1,200	1, either year use	

Department of Public Safety

Appropriation	Fund	FY 2022	FY 2023	FY 22-23	Fund Specific Rider Paragraphs	Amount named in riders 22-23
Admin - Public Safety Support	Trunk Highway	4,391	4,391	8,782	None	
Admin - Technology Support Services	Trunk Highway	4,911	4,911	9,822	None	
State Patrol - Patrolling Highways (1)	Trunk Highway	123,177	121,524	244,701	2, Body Cameras, additional troopers	20,831
State Patrol - Patrolling Highways	HUTD	92	92	184	None	
State Patrol - Commercial Vehicle (1)	Trunk Highway	11,060	10,926	21,986	1, Body Cameras	854
State Patrol - Vehicle Crimes (1)	HUTD	998	994	1,992	3, Body Cameras, tax and title investigation	40
Vehicle Services	HUTD	686		686	None	
Traffic Safety	Trunk Highway	494	494	988	None	

Public Safety Finance Committees

Department of Public Safety

Appropriation	Fund	FY 2022	FY 2023	FY 22-23	Fund Specific Riders
Bureau of Criminal Apprehension	Trunk Highway	3,981	3,262	7,243	1, DWI Lab & non-withstanding

State Government Finance Committees

Department of Revenue

Appropriation	Fund	FY 2022	FY 2023	FY 22-23	Fund Specific Riders
Operating Appropriation	HUTD	2,195	2,195	4,390	None

(1) Amount includes conditional appropriation level for salary

(2) does not include onetime appropriations without a base

[16] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15494368.

Appendix M: Dedicated State Transportation Revenues

This appendix reproduces a presentation to the Task Force.[17]

[17] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15422922.

STATE REVENUE SOURCES

- Fuel taxes (all states + DC and PR)
- Variable-rate gas tax (20 states)
- Vehicle registration, license, or title fees (48 states + PR)
- Vehicle or truck weight fees (37 states)
- Motor vehicle or rental car sales tax (29 states)
- Plug-in hybrid or hybrid electric fee (28 states)
- Tolls (24 states + PR, plus non-state toll entities)
- Sales tax on fuel, or other taxes on distributors or suppliers (15 states + PR)
- Transportation Network Company Fees (11 states)
- General funds (34 states + DC)
- Interest income (37 states + DC and PR)

STATE FUEL TAX STRUCTURE

- State taxes on motor fuels are the single largest source of state revenue for highways – representing more than 30 percent of revenues nationwide
- Motor fuel taxes also support other modes
- Traditional state fuel tax model: a static, fixed cents-per-gallon rate
- Given the declining purchasing power of a fixed-rate tax, many states have structured their taxes to change over time
- Variable-rate taxes are periodically adjusted based on:
  - Consumer or producer price index
  - Percentage of wholesale or retail fuel price

RESTRICTIONS ON REVENUE

- Alaska is the only state to *not* have statutory or constitutional restrictions on transportation revenue diversion
- Restrictions are in place for the use of funds and accounts into which revenues are deposited
- Used in about half the states to dedicate their fuel tax revenue to road and bridges only – either in constitution or statute
- Most of the remaining dedicate their fuel taxes to transportation purposes more broadly
- Exceptions are common

RESTRICTIONS ON REVENUE

- "Lockbox" measures to constitutionally protect transportation revenues from diversion to other areas of the budget in place in 31 states
- 20 states have a restrictions in statute
- Arkansas, Kansas, and Maryland have both a constitutional and statutory protection
- 21 states dedicate revenue to transportation broadly, while 27 restrict spending only to highways

RESTRICTIONS ON REVENUE

- States also place restrictions on non-fuel tax revenues so that must be re-invested in the same modes
  - Vehicle-related taxes and fees
  - Tolls
  - Rail, waterway, or aviation derived revenues
  - Airport-related revenues, including state taxes on aviation fees

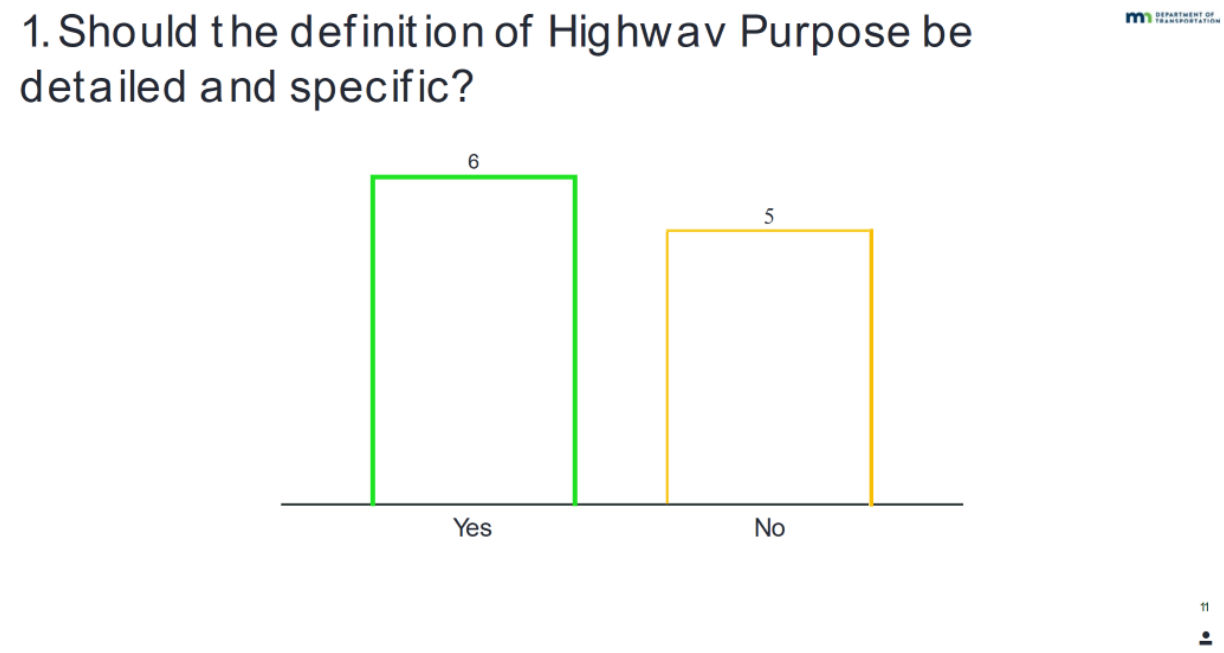
QUESTIONS?

Joung Lee
Director of Policy and Government Relations
AASHTO | American Association of State Highway and Transportation Officials
jlee@aashto.org
202-624-5818

13

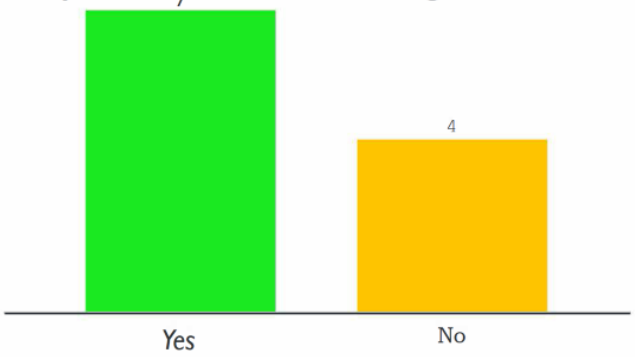
Appendix N: Mentimeter Exercise

This appendix reproduces a document developed by the Task Force Subcommittee.[18]

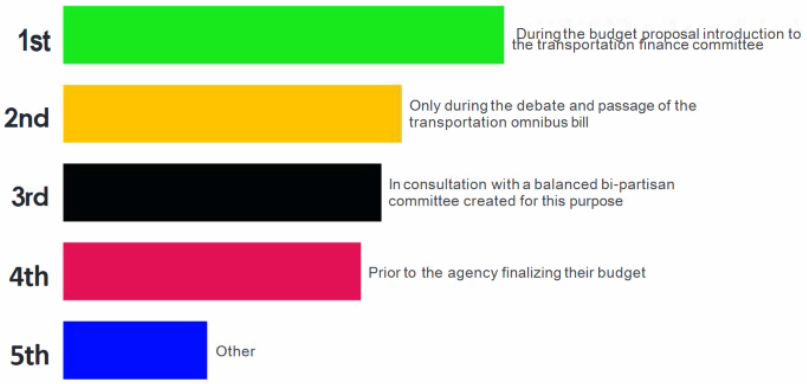


[18] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15848564.

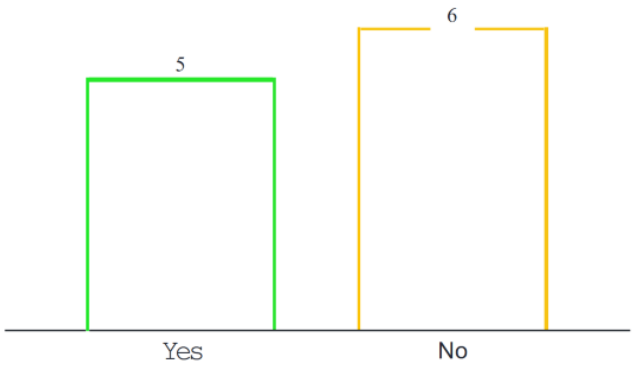
2. When a future program/project/expenditure doesn't appear to meet the exact current definition for highway purpose, but under certain circumstances it could, should the legislature have a proactive role in making the final determination?



If the answer is ves in 2, then the following should be asked) 2a. The legislature's involvement in determining a questionable highway purpose should be: (Please prioritize 1-5)



3. Should the definition include specific items that would be for a highway purpose and specific items that would not be for a Highway Purpose?



11

Appendix O: Highway Purpose Bill Draft Comparison

This appendix reproduces a document developed by the Task Force Subcommittee.[19]

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
1.	Amending Laws 2021, First Special Session chapter 5, article 4, section 11	Creating new section of law	Creating a new section of law	
2.	**Definitions**			
3.	Subd. 1. (b) "Commissioner" means any commissioner of a state agency that either proposes to spend or spends funds out of the highway user tax distribution fund or the trunk highway fund.	Subd. 1. "Commissioner" means any commissioner of a state agency that either proposes to spend or spends funds out of the highway user tax distribution fund or the trunk highway fund.	n/a	The definition is identical in SC8877-2 (Newman) and SC8937 (Agencies). Subcommittee agreed to this definition.
4.	Subd. 1. (c) "Construction" means an activity that is directly related to the building and construction of a public trunk highway. This includes, but is not limited to, land purchase, legal activity, engineering and planning, contracting for construction, inspections, signage, drainage, and payroll for individuals directly involved in the construction activities.	Subd. 3. Construction of public highways. Construction of public highways means any activity that is directly related to, or necessary for the administration and support of, the building and construction of the state trunk highway system. This includes, but is not limited to, the costs of acquiring property, public engagement, environmental work, legal services, engineering and planning, contracting for construction, inspections, and payroll for the construction activity.	Subd. 1. (b) "Construct" means, except as specifically provided by subdivisions 3 and 4, activities which are necessary to plan, design, and build public highways and includes analysis, engineering, construction, project management, public outreach, and securing project approvals as well as supporting administrative services needed to execute a highway construction project including financial, human resources, procurement, real estate, legal, and information technology services.	

[19] This is also available at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15847822.

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
5.	Subd. 1. (d) "Highway Purposes" mean the activities authorized by the Minnesota Constitution, article XIV, section 5, or the construction, improvement, and maintenance of trunk highways as authorized by the Minnesota Constitution, article XIV, sections 2 and 6.	n/a	Subd. 1. (c) "Highway purposes" means activities which are necessary to construct, improve, and maintain public highways, including all activities specifically included in subdivision 3 and excluding all activities specifically excluded in subdivision 4.	Subcommittee agreed to the definition in SC8877-2 (Newman).
6.	Subd. 1. (e) "Improvement" means an activity that is directly related to improving a trunk highway. This includes, but is not limited to, safety improvements, congestion reduction, expanded capacity, increased access to trunk highways, improvements to pavement surfaces beyond their original condition, and directly related research to support these activities.	Subd. 4. Improvement of public highways. Improvement of public highways means any activity that is directly related to, or necessary for the administration and support of, the improvement of the state trunk highway system. This includes, but is not limited to, activities that improve the safety of highway users; improve and reduce congestion; improve access and drive times between locations; and improve drivability of roadway, such as smoothness of surface, access ramps, number of lanes, etc.	Subd. 1. (d) "Improve" means, except as specifically provided by subdivisions 3 and 4, measures which enhance the safety of a public highway or improve its operational functionality by making travel destinations more accessible or by expediting mobility between destinations using contextually appropriate modes of travel.	
7.	Subd. 1. (f) "Maintenance" means an activity that is directly related to preserving the condition of the trunk highway in relation to its original condition. This includes, but is not limited to, snow and ice removal, repairs, and performing inspections.	Subd. 5. Maintenance of public highways. Maintenance of public highways means any activity that is directly related to, or necessary for the administration and support of, maintaining the state trunk highway system, which attempts to keep the roadway in original driving condition.	Subd. 1. (e) "Maintain" means, except as specifically provided by subdivisions 3 and 4, activities which ensure that a public highway can be used safely, conveniently, and economically by keeping it in a state of good repair, keeping it clear of snow and other obstructions,	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
		This includes, but is not limited to, snow and ice removal and repair of highway surfaces, potholes, and bridge repairs.	providing emergency assistance to travelers, and ensuring that travelers observe traffic safety laws by providing sufficient law enforcement.	
8.	n/a	n/a	Subd. 1. (f) "Public highway" means a significant state, county, or municipal public way which has been designated as a state trunk highway, county state-aid highway, or municipal state aid street pursuant to the Minnesota Constitution, article XIV, sections 2 to 4, and is therefore eligible for funding from the highway user tax distribution fund pursuant to the Minnesota Constitution, article XIV, sections 5 to 8. A public highway includes both the roadway and its appurtenant structures which serve the transportation and safety needs of all those who travel within the public way.	
9.	n/a	Subd. 6. Safety and enforcement of public highways. Safety and enforcement of public highways means any activity that is directly related to, or necessary for the administration and support of, activities of the State Patrol, excluding Capitol security and executive protection, and traffic safety on the state trunk highway system.	n/a	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
10.	**Expenditures**			
11.	Subd. 2. General expenditure requirements. (a) A commissioner must expend highway user tax distribution and trunk highway funds only for highway purposes and only in amounts that accurately reflect the highway purpose expenses.	Subd. 2. Policy. The legislature finds that the interests of the people of the state are served by ensuring that the fund created by the Minnesota Constitution, article XIV, section 6, is used only for the purposes set forth in the Minnesota Constitution, article XIV, section 2, to construct, improve, and maintain the trunk highway system. Expenditures made in furtherance of that section constitute a trunk highway purpose. The legislature also finds that when a law requires the commissioner of transportation to take an action with regard to the trunk highway system, that action can be paid with trunk highway funds unless the law specifies otherwise.	Subd. 2.Policy. The legislature finds that the interests of the people of the state are served by ensuring that the funds created by the Minnesota Constitution, article XIV, sections 5 to 8, are used only for the purposes set forth in the Minnesota Constitution, article XIV, sections 2 to 4, to construct, improve, and maintain the public highway system. Expenditures made in furtherance of those sections constitute public highway purposes. The legislature also finds that when a law requires the commissioner to take an action with regard to the public highway system, that action can be paid from the fund unless the law specifies otherwise.	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
12.	Subd. 2. (b) In determining whether an activity is a highway purpose, a commissioner must first determine if the activity is construction, improvement, or maintenance of a trunk highway. If so, the commissioner must then determine if that activity is directly related to that categorization. An activity is directly related to construction, improvement, or maintenance of a trunk highway if that activity is: (1) such a substantial part of completing the construction, improvement, or maintenance of a trunk highway that the project would fail without completion of the activity; and (2) is part of a continuous, unbroken sequence of events necessary to complete the construction, improvement, or maintenance of a trunk highway. (c) The following activities are deemed to be highway purposes and are not subject to paragraph (b): (1) collection of motor fuel taxes; and (2) the following state patrol activities: patrolling of trunk highways, the vehicle crimes task force, and the commercial vehicle enforcement unit.	n/a	n/a	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
13.	**Specified Authority for Expenditures**			
14.	n/a	n/a	Subd. 3. Public highway purposes. The legislature declares that the following expenditures support a public highway purpose: (1) costs of operating and maintaining the public highway system, including costs of buildings, personnel, equipment, supplies, technology, maintenance contracts, and management and supervision; (2) costs of planning the department's construction programs, including public engagement costs; (3) costs of planning for construction projects, including completing necessary environmental documents and conducting public engagement; (4) costs of preparing plans, specifications, and estimates for construction projects, including department staff, supervision and management, and contracts for professional and technical services; (5) costs of contracting for construction contracts, professional and technical services contracts, and other contracts as needed to construct, operate, and maintain the public highway system; (6) costs of contracts to construct, reconstruct, and improve the public highway system, including	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
			the costs of elements to facilitate the safe use of the system by pedestrians and nonmotorized vehicles as permitted by law; (7) costs of administering construction contracts, including engineering, inspection, environmental, and legal expenses; (8) costs of complying with federal laws and regulations as necessary to obtain federal funding for highway projects; (9) costs of acquiring property for highways, safety rest areas, and department buildings, including necessary personnel, supervision, management, and legal services; (10) costs of legal services supporting any trunk highway purpose; (11) costs of department leadership and management; (12) costs of administrative and support functions; (13) costs of operating civil rights and small business programs as required or permitted by federal or state law; (14) costs of centrally-provided administrative and support functions including workers compensation, unemployment insurance, severance, relocation, statewide indirect costs, and statewide system costs;	

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
			(15) costs of operating the statewide radio communications system, to the extent not reimbursed by user charges; (16) costs of technology to the extent attributable to a trunk highway purpose; (17) debt service costs; (18) tort claims costs; (19) costs of Department of Revenue attributable to collecting fuel and other transportation taxes; (20) [specified DPS costs]; (21) [specified DNR costs]; and (22) other costs not prohibited by subdivision 3 and which logically and directly relate to the construction, improvement, or maintenance of the trunk highway system.	
15.	**Specified Limitations on Expenditures**			
16.	Subd. 3. Limitations on spending. (a) A commissioner must not pay for any of the following with funds from the highway user tax distribution fund or the trunk highway fund: (1) Bureau of Criminal Apprehension laboratory; (2) Explore Minnesota Tourism kiosks; (3) Minnesota Safety Council; (4) driver education programs; (5) Emergency Medical Services Regulatory Board;	Subd. 7. Limitations on spending. (a) A commissioner must not pay for any of the following with funds from the highway user tax distribution fund or the trunk highway fund: (1) Bureau of Criminal Apprehension laboratory; (2) Explore Minnesota Tourism kiosks; (3) Minnesota Safety Council; (4) driver education programs; (5) Emergency Medical Services Regulatory Board;	Subd. 4. Other expenditures not serving a trunk highway purpose. The legislature declares that the following expenditures do not support a trunk highway purpose: (1) expenses of the Bureau of Criminal Apprehension laboratory; (2) expenses of Explore Minnesota Tourism kiosks; (3) expenses of the Minnesota Safety Council; (4) driver education programs;	Definitions in SC8877-2 (Newman) and SC8937 (Agencies) are identical with two exceptions: In clause (7), the Newman draft refers to "MN.IT Services" and the Agencies draft refers to "Office of MN.IT Services." This is a technical difference. The Newman draft includes clause 19, which is unique to this draft. The subcommittee agreed to paragraph (a) clauses 1-18 and paragraph (b). The subcommittee did not decide which reference to MN.IT was preferred. The language that has been

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
	(6) Mississippi River Parkway Commission; (7) payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes; (8) personnel costs incurred on behalf of the governor's office; (9) the Office of Aeronautics within the Department of Transportation; (10) the Office of Transit and Active Transportation within the Department of Transportation; (11) the Office of Passenger Rail; (12) purchase and maintenance of soft body armor under section 299A.38; (13) tourist information centers; (14) parades, events, or sponsorships of events; (15) rent and utility expenses for the department's central office building; (16) the installation, construction, expansion, or maintenance of public electric vehicle infrastructure; (17) the statewide notification center for excavation services pursuant to chapter 216D; (18) manufacturing license plates; and	(6) Mississippi River Parkway Commission; (7) payments to the Office of MN.IT Services in excess of actual costs incurred for trunk highway purposes; (8) personnel costs incurred on behalf of the governor's office; (9) the Office of Aeronautics within the Department of Transportation; (10) the Office of Transit and Active Transportation within the Department of Transportation; (11) the Office of Passenger Rail; (12) purchase and maintenance of soft body armor under section 299A.38; (13) tourist information centers; (14) parades, events, or sponsorships of events; (15) rent and utility expenses for the department's central office building; (16) the installation, construction, expansion, or maintenance of public electric vehicle infrastructure; (17) the statewide notification center for excavation services pursuant to chapter 216D; and (18) manufacturing license plates.	(5) expenses of the Emergency Medical Services Board; (6) expenses of the Mississippi River Parkway Commission; (7) payments to the Department of Information Technology Services in excess of actual costs incurred for trunk highway purposes; (8) personnel costs incurred on behalf of the Governor's Office; and	agreed to is the same as language that was enacted during the 2021 June special session.

	SC8877-2 (Newman)	SC8937 (Agencies)	SC8944 (Elkins)	Subcommittee Notes
	(19) dedicated lanes for bicycles, as defined in 169.011, subd. 4, or motorized foot scooters, as defined in 169.011, subd. 46, unless bicycle and motorized foot scooter users are required by state law to contribute to the highway user tax distribution fund in order to pay for the costs of the dedicated lanes. (b) The prohibition in paragraph (a) includes all expenses for the named entity or program, including but not limited to payroll, purchased services, supplies, repairs, and equipment. This prohibition on spending applies to any successor entities or programs that are substantially similar to the entity or program named in this subdivision.	(b) The prohibition in paragraph (a) includes all expenses for the named entity or program, including but not limited to payroll, purchased services, supplies, repairs, and equipment. This prohibition on spending applies to any successor entities or programs that are substantially similar to the entity or program named in this subdivision.	(9) the manufacture or distribution of vehicle license plates.	
17.	**Repealers**			
18.	n/a	(a) Minnesota Statutes 2021 Supplement, section 161.20, subdivision 3, is repealed. (b) Laws 2021, First Special Session chapter 5, article 4, section 11, is repealed.	Minnesota Statutes 2021 Supplement, section 161.20, subdivision 3, is repealed.	
19.	**Effective Dates**			
20.	Effective August 1, 2022.	Sections are effective July 1, 2025.	None specified; default date is July 1, 2022.	

Appendix P: Other Reference Materials

In addition to materials reproduced in other appendices, the following was presented or made available to the Task Force.

1) Williamson, John. Congressional Research Office (January, 2012). *Federal Aids to Roads and Highways Since the 18th Century: A Legislative History.* <https://sgp.fas.org/crs/misc/R42140.pdf>

2) Council of State Governments (2017). Transportation Trust Funds and Lockbox Protections.

3) Minnesota Management and Budget and Office of the Attorney General (April, 2021). *Report Concerning Certain Expenditures from the Trunk Highway Fund*. <https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=641>

4) Minnesota Department of Transportation (December, 2020). *Major Highway Projects, Trunk Highway Fund Expenditures, and Efficiencies Report*. <https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=1804>

5) Minnesota Department of Transportation and the Minnesota Department of Public Safety (January, 2021). *Dedicated Fund Expenditures Report.* <https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=13857>

6) Minnesota Management and Budget. *Governor's Biennial Budget Recommendations – Department of Transportation* (March, 2021). <https://mn.gov/mmb-stat/documents/budget/2022-23-biennial-budget-books/governors-revised-march/transportation.pdf>

7) Minnesota Management and Budget. *Governor's Biennial Budget Recommendations – Department of Public Safety-Transportation* (March, 2021). <https://mn.gov/mmb-stat/documents/budget/2022-23-biennial-budget-books/governors-revised-march/public-safety-transportation.pdf>

8) Minnesota Management and Budget. *Governor's Biennial Budget Recommendations – Department of Public Safety-Transportation* (March, 2021). <https://mn.gov/mmb-stat/documents/budget/2022-23-biennial-budget-books/governors-revised-march/public-safety-public-safety.pdf>

9) University of Minnesota Transportation Policy and Economic Competitiveness. *Minnesota Transportation Finance Database*. <https://tpec.umn.edu/research/finance/MNTF/data/index.html>

10) American Association of State Highway and Transportation Officials (November 2016). *A 50-State Review of State Legislatures and Departments of Transportation.* <https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=15432122>

Appendix Q: Draft Proposed Task Force Report

This appendix reproduces a proposed draft report of the Dedicated Funds Task Force that was developed by MnDOT staff in consultation with Task Force members. It has been edited where considered necessary to eliminate redundancy, remove references to its appendices, and align with the rest of the final report. Please note: references in this appendix to "this report" or "the report" are only for the proposed draft reproduced within this appendix, and not for the final report of the Task Force. (There are some stylistic differences.)

Executive Summary

The 2021 legislature authorized creation of the Dedicated Funds Expenditures Task Force, charged with examining state agency – mostly MnDOT and DPS – spending from the dedicated HUTD fund, and more specifically, the state TH fund. At the heart of the Task Force's work was the following question: "Does all spending from the dedicated state trunk highway fund serve a "highway purpose", i.e. "construction, improvement, and maintenance" of the trunk highway system as required by Article 14 of the Minnesota Constitution. This report is an effort to assemble the key information all in one place, to build upon the existing body of knowledge on the subject, and to offer findings and recommendations that could provide guidance to the 2022 Legislature and future policy-makers in making budget decisions.

After 20 official Task Force meetings over six months, the committee did not reach unanimous consensus on each specific area of spending under consideration. Some spending areas were cut and dried, for example, DPS's State Patrol highway law enforcement costs, and MnDOT's Office of Traffic Safety. Beyond that, the Task Force was able to agree that a more rigorous 'legislative oversight' process – briefly described in Section 7 of this report – could be implemented that would focus on specific areas of spending and whether those are appropriately funded from constitutionally dedicated funds.

The report is divided into sections, as follows:

Section 1 introduces the 'user pays' principle as the underlying foundation for dedicating funds. It provides the overall context for the discussion on dedicated funding. This section also is an introduction to the Task Force's objective: to address the issue of what constitutes a 'highway purpose' in determining eligible costs.

Section 2 provides background and historical spending and revenue information of the Highway User Tax Distribution Fund and the state Trunk Highway Fund provided to the Task Force by department financial and budget staff and staff from the national association AASHTO. These presentations referenced other official documents and reports that also inform the discussion including state agency budget documents, House and Senate information briefs, and academic sources. These resources all listed in Appendix C.

Section 3 identifies existing financial reports that MnDOT, DPS, and other affected agencies are required to provide on a regular basis designed to shed light on the expenditure of dedicated

funds. Among the agreed-upon recommendations of the Task Force is the idea that more rigorous budget hearings should take place, devoted specifically for discussion on spending of dedicated funds. These reports could serve as the 'tool' by which the state agencies would report on their use of dedicated funds.

Section 4 addresses the legal framework regarding the definition of 'highway purpose' and the constitutional and case law history. This section goes into some detail on previous case law and precedent, since the legal considerations around the term 'highway purpose' lie at the heart of the issue. Presentations and supporting materials were provided by MnDOT's Office of the Chief Counsel, the State Attorney General's Office and the testimony of respected legal scholars.

Section 5 delves more deeply into the opinions of the Task Force members on the definition of 'highway purpose', first summarizing the results of an online 'Mentimeter' exercise. The results of the exercise provided a clue that achieving unanimous agreement on all matters relating to a highway purpose would be difficult. This section also includes some of the best work of the Task Force, a detailed side-by-side comparison of 3 'concepts' prepared by House and Senate Research staff on the basis of proposed definitions of 'highway purpose' submitted by Task Force members.

Section 6 was intended to be the section where possible agreement on the appropriate funding for specific offices and activities would be presented as a recommendation. This section does indicate those uses/activities that remain unresolved and may require additional attention in the future.

Section 7 describes the process that would emphasize greater legislative oversight, that all members of the Task Force supported. This section promotes the idea of scheduling legislative hearings on specific offices and activities identified that might be characterized as 'non-direct' by the legislature and where existing reports, such as the regular MMB/AG report and the MnDOT/DPS report would be the tools used as the basis for discussion.

Section 8 identifies the recommendations agreed upon by members of the task for legislative action moving forward.

Section 1: Introduction

The “user pays” principle of financing transportation infrastructure in Minnesota dates back to the pre-automobile era. In the 1880s, as bicycling was gaining popularity, an organized effort known as Minnesota Goodroads was established and went to work lobbying the government to improve and pave roadways suitable for the wider, air-filled bicycle tires. Reportedly, rural residents and farmers initially opposed calls for additional spending on roads, arguing that the system’s users – in this case, bicycle riders – should be obligated to pay for the improvements since they were the primary beneficiaries of paved roadways. (It wasn’t much longer before nearly everyone rallied around the ‘user pays’ idea.)

Today, the ‘user pays’ principle is a fundamental feature of Minnesota’s tax system to finance transportation infrastructure. State revenues generated from the motor fuel tax, the sales tax on motor vehicles, and the vehicle registration tax – along with a portion of revenues from sales tax on auto parts and vehicle rental taxes – are deposited into funds that are dedicated to a ‘highway purpose’, as provided in Article 14 of the State Constitution. These funds include the state’s Highway User Tax Distribution (HUTD) fund and its sub-funds, the state Trunk Highway (TH) fund, the County State Aid Highway (CSAH) fund, and the Municipal State Aid Streets (MSAS) fund.

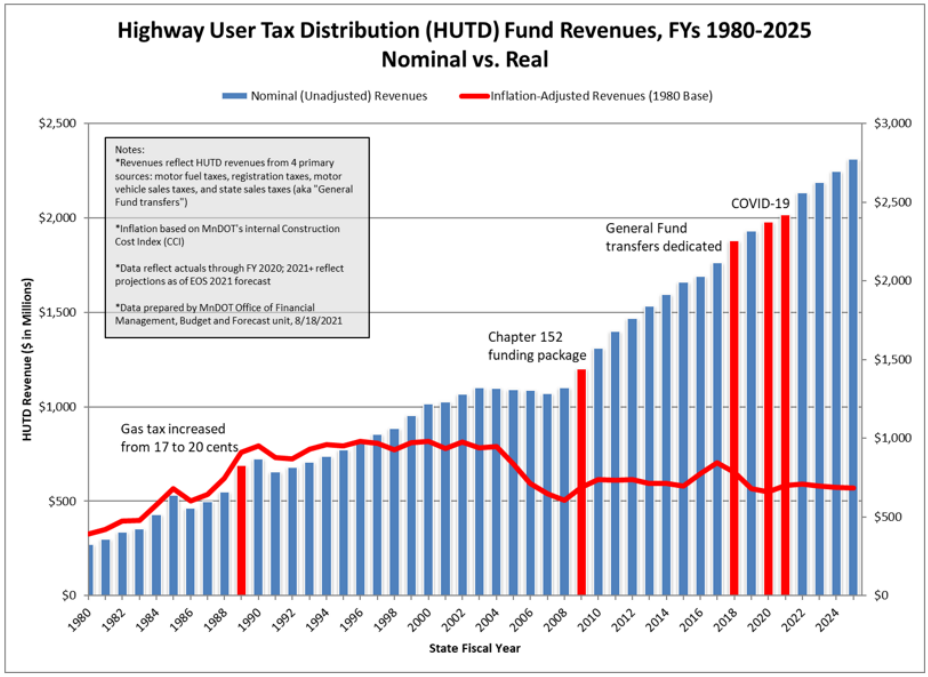
The 2021 legislature authorized creation of the Dedicated Funds Expenditures Task Force, charged with examining state agency – mostly MnDOT – spending from the dedicated HUTD fund, and more specifically, the state TH fund. The Task Force’s inaugural, virtual meeting took place on August 20, 2021. Throughout its deliberations, the Task Force heard testimony from numerous legislative analysts and legal scholars and collected a variety of information on state agency spending from these designated funds. The question at the heart of the Task Force’s work: Does all spending from the dedicated state trunk highway fund serve a “highway purpose”, for “construction, improvement, and maintenance” of the trunk highway system as required by Article 14 of the Minnesota Constitution?

Section 2: HUTD and TH Funding – An Overview

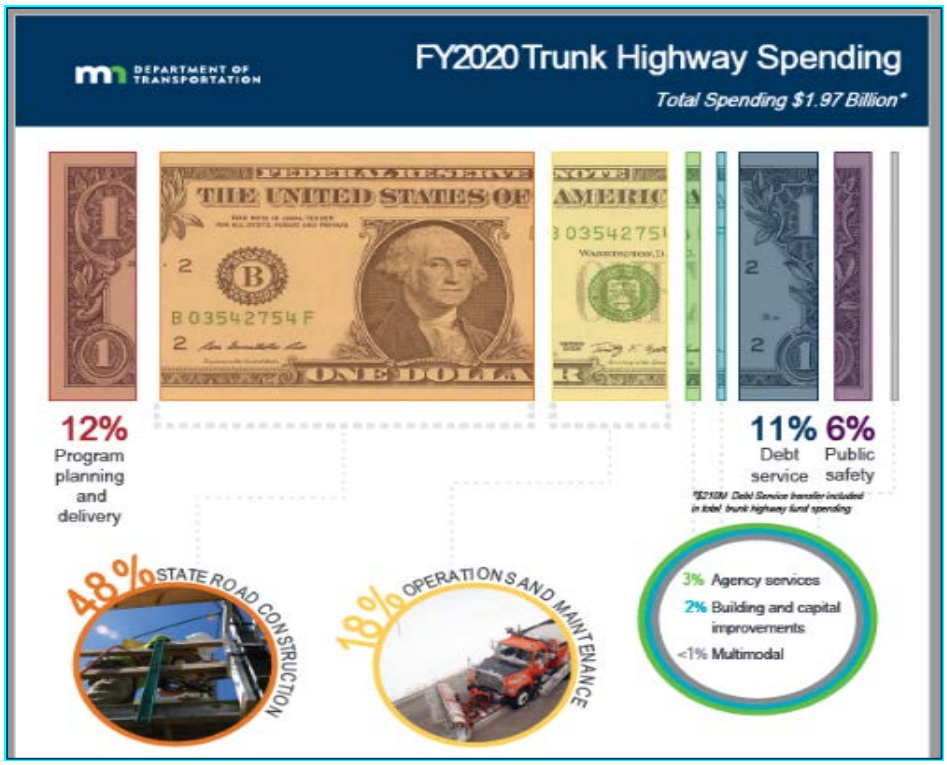
Early in its proceedings, the Task Force heard testimony and gathered information detailing revenue and spending trends related to HUTD fund and TH fund. Budget officials from MnDOT and DPS gave overviews of revenue and expenditure trends in their respective agencies. Highlights of those presentations are presented here.

MnDOT Trunk Highway Spending Trends

The Task Force heard testimony from MnDOT budget staff on the historical trend of overall HUTD Fund revenues and expenditures since 1980. The following chart was presented to convey the idea that in real terms, recent years' revenue to the HUTD Fund dipped slightly in 2018 and then has plateaued since. Since State Trunk Highway fund revenues are a function of total HUTD Fund revenues (along with County State Aid Highway and Municipal State Aid Streets), revenues to the TH fund in real terms have leveled off in recent years.



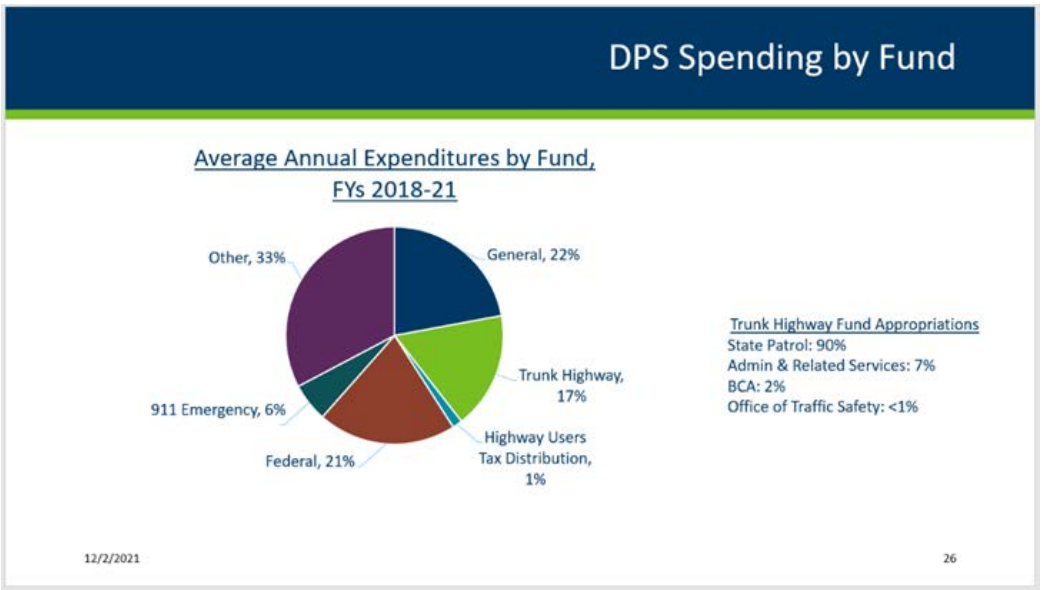
The figure below shows an infographic of the dollar breakdown of trunk highway spending by major areas for the state fiscal year 2020. The operations and maintenance and state road construction functions are most reliant on the TH fund. Twelve percent of TH spending is dedicated for program planning and delivery. Eleven percent of the debt service on bonds is supported by the TH fund, and then beyond that, other divisions and offices are supported by a small share of TH funding.



The Task Force was established to more closely examine specific uses and activities to assess their permissibility for TH funding.

DPS Trunk Highway Spending Trends

At the first Task Force meeting (August 20, 2021), Shawn Kremer, Task Force member and DPS Chief Financial Officer, made a presentation on the Public Safety portion of the FY 2022-23 Governor's biennial budget recommendation. He highlighted the trunk highway expenditures to support the cost of specific DPS offices and functions.



The Minnesota Department of Public Safety also relies on the Trunk Highway Fund for some functions that have been authorized by past legislation. As the above figure illustrates, about 18% of the department's revenue comes from dedicated funds (TH funding 17%; HUTD funding 1%) and of that amount, 90% is used to support the State Highway Patrol for its law enforcement activities on the state trunk highway system.

Experience in Other States

The Task Force also sought information on other state's policies on dedicated funding. Mr. Joung Lee, the associate director for finance and business development at the American Association of State Highway and Transportation Officials (AASHTO) referenced a 2016 AASHTO study called *A 50-State Review of State Legislatures and Departments of Transportation*.[20] Mr. Lee affirmed that virtually every state – with the exception of Alaska – imposes restrictions on state highway fund spending, either by the state constitution or through statute.

[20] Available at: http://www.financingtransportation.org/pdf/50_state_review_nov16.pdf.

Section 3: Existing Reporting on Trunk Highway Fund Spending

One of the themes that emerged during testimony from agency budget staff and legislative research staff was that there are some mechanisms already in place intended to provide the Legislature with information to oversee agency funding requests. Testimony from staff at MnDOT, DPS, MMB, the Legislature and the Office of the Attorney General identified the following reports and documents that focus on spending from the Trunk Highway fund.

MMB/AG: Report

Since 2001, Minnesota Management and Budget (MMB) and the Office of the Attorney General have been required to submit a report every other year to the legislature, addressing the identified purpose of any proposed new trunk highway funding. At the Task Force's inaugural meeting, the most recent edition of the report, dated April 2021 called *Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget* was discussed.

The report's principal function is to explain the highway purpose of any proposed spending initiative that is similar to those that have been legislatively determined not to 'further a highway purpose' or 'aid in the construction, improvement, or maintenance of the highway system'.[21] These include the following offices and activities, specifically identified in state law:

- Bureau of Criminal Apprehension laboratory
- Explore Minnesota Tourism kiosks
- Minnesota Safety Council
- Driver education programs
- Emergency Medical Services Board
- Mississippi River Parkway Commission
- Payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes
- Personnel costs on behalf of the Governor's Office

In addition to providing a detailed legal context, the MMB/AG report weighs in on the 'highway purpose' of newly proposed uses and activities to be paid for from TH funds. As an example, the most recent report (April 2021) provides a concise legal analysis covering the allowance or

[21] This report does not address the 10 additional items of impermissible spending as established by the 2021 Legislature. Those items are as follows:

- The Office of Aeronautics within the Department of Transportation;
- The Office of Transit and Active Transportation within the Department of Transportation;
- The Office of Passenger Rail;
- Purchase and maintenance of soft body armor under section 299A.38;
- Tourist information centers;
- Parades, events, or sponsorships of events;
- Rent and utility expenses for the department's central office building;
- The installation, construction, expansion, or maintenance of public electric vehicle infrastructure;
- The statewide notification center for excavation services pursuant to chapter 216D; and
- Manufacturing license plates.

prohibition of spending from the Trunk Highway fund for spending proposals in the following areas: the Bureau of Criminal Apprehension (BCA) laboratory costs; MN.IT services costs in MnDOT's biennial budget proposal; a state trooper salary increase; and state patrol body-worn cameras.

Dedicated Funds Expenditures Report

In 2015, the legislature required MnDOT and DPS to submit a report focusing on spending from the Highway User Tax Distribution Fund and the Trunk Highway Fund. Laws 2015, Ch. 75. Since then, four reports have been prepared, which include information on dedicated fund spending from 2010 through 2020, including program narratives, performance measures, and funding rationale. The most recent report was issued in January, 2021, and identified TH and HUTD funding for fiscal years 2018 and 2019. The report identifies accounts funded from the Trunk Highway Fund.

MnDOT's section of the report details seven accounts of HUTD fund and TH Fund expenditures for each office within MnDOT's divisions. These include Engineering Services, Operations, State Aid for Local Transportation, Modal Planning and Program Management, Sustainability, Workforce and Agency Services, and Commissioner's staff offices (e.g. Chief Counsel, Office of the CFO).

DPS's section of the report details six accounts of HUTD fund and TH fund expenditures to that department. These include Administration and Related Services, the Bureau of Criminal Apprehension, Driver and Vehicle Services, Office of Traffic Safety and the State Patrol.

Budget / Forecast Documents

The biennial budget, the state financial forecast, and other regularly published financial statements detail actual and estimated revenues, expenditures and performance data for the Highway User Tax Distribution Fund, and the Trunk Highway Fund. The legislative session provides for a budget adoption process including committee review of biennial (odd year) and supplemental (even year) budgets, review of the bi-annual revenue forecast, and final budget adoption. Legislative fiscal staff maintain current records of all direct appropriations out of the dedicated funds (HUTDF, TH, CSAH, and MSAS). This list would be a useful tool for any committee undertaking hearings on the issue. (See: House Fiscal Analyst Andy Lee's model spreadsheet: Dedicated Funds Direct Appropriations – FY 22-23.)

MnDOT's Major Highway Projects Report

Each December, MnDOT is required to submit a report detailing overall financing, Trunk Highway fund spending, product/service spending, and efficiency measures on all projects whose estimated costs exceed $15 million in the metropolitan district and $5 million in Greater Minnesota. The report was identified as among the "Existing Reports that Details Trunk Highway Spending" in a joint presentation to the Task Force by MnDOT and DPS. While the report's purpose is not to specifically address matters related to the 'highway purpose' permissibility of TH funded uses and activities, it does provide information on specific highway projects, including information on the total expenditures of each major project from the Trunk

Highway fund during the previous fiscal year for each of the following categories: road construction; planning; design and engineering; labor; compliance with environmental regulations; administration; acquisition of right-of-way, including costs for attorney fees and other compensation for property owners; litigation costs, including payment of claims, settlements, and judgments; maintenance; and road operations.

Section 4: Legal Considerations – 'Highway Purpose'

In addition to the budget and fiscal framework discussed above, the Task Force dedicated time to understanding the implications of case law precedent on 'what constitutes a highway purpose?'. Detailed presentations and supporting materials were provided by MnDOT's Office of the Chief Counsel, the State Attorney General's Office and the testimony of respected legal scholars. This material is included in this report in great detail since any future discussion of the definition of 'highway purpose' will require a review of the legal framework on the issue.

This following section was written by attorneys in the MnDOT's Chief Counsel's Office. It offers a comprehensive analysis of the legal precedent on what constitutes a 'highway purpose'.

Court Precedent

The Minnesota Supreme Court has occasionally been called on to rule on the validity of expenditures from the Trunk Highway Fund. It should be noted that this is not a frequently-litigated area, so Supreme Court and Court of Appeals cases are relatively rare. The Minnesota Supreme court does not issue "advisory" opinions - the court must have a justiciable "case or controversy" before it in order to issue a ruling and opinion.[22] The court generally treads lightly in constitutional cases. State statutes receive the benefit of a presumption of constitutionality, and the judicial power to declare a statute unconstitutional "should be exercised with extreme caution and only when absolutely necessary."[23]

The Minnesota Supreme Court has reviewed several challenges to expenditures made from the Trunk Highway Fund, including:

- *State ex. rel. Wharton v. Babcock*, 232 N.W. 718 (1930) which held that the Trunk Highway Fund may be used for salaries and expenses of MnDOT relating to trunk highway purposes, as well as Workers' Compensation Act payments to MnDOT employees;
- *State ex rel. Holm v. King*, 184 Minn. 250, 238 N.W. 334 (1931) which held that appropriation from the Trunk Highway Fund to cover the costs of the secretary of state to issue motor vehicle licenses and to collect the license tax is constitutional;
- *State v. Stanley*, 188 Minn. 390, 247 N.W. 509 (1933) which held that the Trunk Highway Fund may be used to pay a land owner whose property is being destroyed by a trunk highway project;
- *Regan v. Babcock*, 264 N.W. 803 (1936) which held that the Trunk Highway Fund may be used to pay for: (1) contractors and others for construction, maintenance, or repairs of trunk highways; (2) attorneys' fees and costs of the opposing party when the lawsuit resulted in recovery of funds for the trunk highway fund; and (3) expert witnesses who appear for MnDOT in court cases arising out of the construction, improvement, and maintenance of the trunk highway system;

[22] See, for example, *Schowalter v. State of Minnesota* 822 N.W. 2d 292 (Minn. Sup. Ct. 2012).

[23] See In Re Hagerty, 448 N.W. 2d 363 (Minn. Sup. Ct. 1989).

- *State by Peterson v. Werder*, 273 N.W. 714 (1937) which held that the Trunk Highway Fund may not be used to purchase property before – or without – designating it as a trunk highway or appurtenance to a trunk highway. Also holding that the Trunk Highway Fund may not be used for parks or other "beautification" or "artistic development" independent of a trunk highway;
- *Cory v. King*, 209 Minn. 431, 296 N.W. 506 (1941) which held that the Trunk Highway Fund may not be used to defray the general costs of government;
- *Cory v. King*, 214 Minn. 535, 8 N.W.2d 614 (1943) which held that appropriating money from the Trunk Highway Fund to the offices of the auditor, treasurer, department of civil service, and commissioner of administration to defray their expenses reasonably attributable to highway matters does not violate the constitution;
- *Cory v. King*, 227 Minn. 551, 35 N.W.2d 807 (1949) which held that the Trunk Highway Fund may be charged for services provided by the state tax department to collect the gasoline tax provided the amount charged accurately reflects expenses incurred for such service; and
- *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642 (1958) which held that using the Trunk Highway Fund to reimburse a utility company for the nonbetterment cost of relocating a utility that has to be moved due to construction, maintenance, or improvement of the trunk highway system is constitutional.

While all of these cases tend to have fairly limited holdings, in *Minneapolis Gas Co. v. Zimmerman*, the court set forth certain general principles that have governed the determination of whether or not an expenditure is for a "highway purpose." In that case, the court stated:

> "[the constitutional provisions at issue] are of broad import and do not of themselves define the functional use of a public highway or what constitutes proper construction, reconstruction, improvements, and highway maintenance costs. In the absence of qualifying or restrictive language, these constitutional provisions are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today. The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface."

Quoting *Cater v. Northwestern Tel. Exch. Co.*, 60 Minn. 539, 543, 63 N.W. 111, 112, the court continued:

> "Another proposition, which we believe to be sound, is that the public easement in a highway is not limited to travel or transportation of persons or property in movable vehicles. This is, doubtless, the principal and most necessary use of highways, and in a less advanced state of society was the only known use, as the etymology of the word 'way' indicates. …But it is now universally conceded that urban highways may be used

> for constructing sewers and laying pipes for the transmission of gas, water, and the like for public use.
>
> …The uses referred to of urban streets are not in aid of travel, but are themselves independent and primary uses, although all within the general purpose for which highways are designed. Neither can a distinction between urban and rural ways be sustained on the ground that such uses were contemplated when the public easement was acquired in the former but not when the easement was acquired in the latter …."
>
> '…In our judgment, public highways, whether urban or rural, are designed as avenues of communication; and, if the original conception of a highway was limited to travel and transportation of property in movable vehicles, it was because these were the only modes of communication then known; that as civilization advances, and new and improved methods of communication and transportation were developed, these are all in aid of and within the general purpose for which highways are designed."

Finally, the court concluded as follows:

> "The soundness of the view that the placing of utility facilities upon a right-of-way is one of the proper uses of a highway benefiting the public is emphasized by the fact that convenience and economy result therefrom to utility users, who are usually located near highways, and by the further fact that, it is in the interest of the public welfare—in the view of our ever-in-creasing population—to make full and efficient use of the land surface occupied by public roads.
>
> In view of the fact that the transmission of utility services is one of the general and primary purposes for which highways are designed, it would be unrealistic to construe the broad language of Minn. Const. art. 16, ss 2 and 6, so narrowly as to prohibit the legislature from authorizing the use of highway funds for the nonbetterment location of utility services as a proper cost of highway construction, reconstruction, improvement, and maintenance. It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists. If we were to conclude otherwise we would not only disregard the broad language of the constitution but also the principle that, since an act is presumed to be constitutional, it will no [*sic*] be declared unconstitutional unless its invalidity appears clearly or unless it is shown beyond a reasonable doubt that it violates some constitutional provision. The power of the court to declare a law unconstitutional is to be exercised only when absolutely necessary in the particular case and then with great caution."

Current MnDOT Office of the Chief Counsel Guidelines

As one would expect, MnDOT's Office of the Chief Counsel is regularly asked for its opinion on the interpretation of 'highway purpose' in the constitution. In response, the office has prepared as well-researched and comprehensive a summary as is possible given the ever-changing conditions and vagaries of the issue. In a presentation provided to the Task Force by MnDOT's Kyle Fisher in September, he reviewed his memo citing relevant case law and provides additional details involving what trunk highway funds can and cannot be spent on (Memo dated August 18, 2021).

Constitutional Scholars' Remarks

The Task Force requested presentations on the Minnesota Constitution from two prominent constitutional law scholars: Professor David Schultz (Hamline University) and Professor Emeritus Fred Morrison (University of Minnesota).

Professor Morrison discussed the contentious history of how the Minnesota Constitution was adopted. He also described the original ban on "internal improvements" and how the constitution was amended over time to authorize a wide variety of internal improvements.

Professor Schultz described how the Minnesota Supreme Court deals with constitutional challenges to legislative and executive branch actions. He pointed out that a primary purpose of the court in reviewing a statute is to determine the legislative intent, noting that when statements of legislative intent are present in the statutory language, that greatly assists the court in adjudicating cases. In addition to emphasizing the presumption of constitutionality that exists for trunk highway expenditures, Professor Schultz noted that the court extends significant deference to state agency decisions based on an agency's technical expertise[24], and the agency's interpretation of statutes that it is charged with enforcing.[25] Professor Schultz concluded, stating "a review of Court construction of the trunk highway has generally been broad deference, generally allowing for all purposes of public highways, including but not limited to facilitating travel and transportation, such as relocating utility lines, collecting gas taxes, training [state highway patrol] police."[26]

[24] See *Reserve Mining Co. v. Herbst*, 256 N.W. 2d 808 (Minn. Sup. Ct. 1977).

[25] See *In the Matter of the Excess Surplus Status of Blue Cross and Shield of Minnesota*, 624 N.W. 2d 264 (Minn. Sup. Ct. 2001).

[26] Prof. David Schultz document entitled "Interpreting State Constitutional Clauses" dated September 28, 2021.

Section 5: Core Question—The Definition of 'Highway Purpose'

At the heart of the challenge before the task force lay the following question: "What constitutes a 'highway purpose' as specified in the constitution?" And as a corollary, "If 'highway purpose' is defined in statute, how detailed must any legal definition be?" The Task Force dedicated much of its final three months of work wrestling with that question.

In its December 21, 2021, meeting, Task Force members participated in an informal online Mentimeter exercise intended to elicit their views on the fundamental issues, as expressed in the questions below. Eleven members who were present at the meeting participated in the exercise. These questions, and a summary of the task force responses (offered anonymously) are recorded below to convey the range of views held by Task Force members.

Question #1: Should a more specific, detailed definition of highway purpose be included in the statutory language? Yes 6; No 5

The vote was split on this fundamental question before the Task Force. In the discussion following the vote, some voiced caution at any attempt to identify a strict definition of a highway purpose because times change. Some supported the notion that to the extent possible, identifying activities that do not serve a highway purpose should continue to be included in statute.

Question #2: Should the legislature be more actively involved in the final determination of whether or not an activity or expense meets the definition of a highway purpose? Yes 7; No 4

Most of the members feel strongly that as the elected body, the legislature, and not the state agency, is rightfully empowered to make the determination as to whether an activity is a highway purpose or not. Some pointed to existing reports and legislative oversight as 'active involvement'.

Question #3: Rank in priority order, at what point in the process should the legislature get involved?

This is a follow up to the preceding question: On the subject of legislative oversight, members were asked to rank several options in order of preference. The responses indicated a preference for the option "during the agency's budget proposal to committee" as the clear top choice. The 2nd, 3rd, and 4th choices were close and more distantly ranked.

Results:

- 1st: during the agency's budget proposal to committee
- 2nd: only during the omnibus budget bill debate
- 3rd: during consultation with a bipartisan committee
- 4th: prior to the agency finalizing its budget

Question #4: Should any definition of a highway purpose specifically identify items that either are or are not classified as a highway purpose? Yes 5; No 6

This question addresses whether – and how – to classify specific additional 'grey area' activities in statute as either meeting a trunk highway purpose or not. In the discussion following the vote members identified a variety of 'grey area' activities, which could be the subject of future legislative oversight.

Side-by-Side: Proposed Concepts

Recognizing that a decision concerning the definition of 'highway purpose' was paramount to the Task Force's mission, Co-Chairs Rep. Petersburg and Sen. Dibble agreed that a subcommittee of Task Force members should be established specifically to set about determining whether a consensus could be reached on its definition. That subcommittee met three times, first on January 18, 2022. The following members served: the two Co-Chairs, Sen. Newman, Rep. Hornstein, Commissioner Anderson Kelliher and DPS representative Shawn Kremer.

The subcommittee was unable to agree upon any single definition of 'highway purpose', and instead, came back with a proposal for consideration by the full Task Force that included three 'concepts' / variations to the definition. It was agreed by the subcommittee members that since any statutory change would require legislative action, a recommendation of potential options for consideration by the 2022 Legislature could suffice.

House Research and Senate Counsel analysts Matt Burress and Alexis Stangl drafted the concepts into bill language and then created a side-by-side summary of the three concepts. While each was the product of input from multiple members, the three concepts are known as SC8877-2 (Newman); SC8937 (Agencies); and SC8944 (Elkins). These concepts can provide a baseline to advise future efforts to define the term in law.

***Note**: the side-by-side summary is available in Appendix O: Highway Purpose Bill Draft Comparison.*

Section 6: TH Spending 'Areas of Interest'

A requirement of this report is that it include a "specific review" regarding the permissibility of Trunk Highway fund expenditures for a multitude of MnDOT, DPS, and other state agency uses or activities. The list identified in the authorizing language of the Task Force is lengthy, and includes the following items:

- Creation, construction, expansion, or maintenance of bikeways
- Expenditures for cybersecurity
- MnDOT administrative costs of the targeted group business program
- MnDOT grants to metropolitan planning organizations outside of the metropolitan area
- MnDOT grants to regional development commissions, joint powers boards, or to department district offices to identify critical concerns, problems, and issues
- Other MnDOT entities:
    - Site development unit
    - labor compliance efforts in the Office of Construction and Innovative Contracting
    - Modal Planning and Program Management Division
    - Statewide Radio Communications within the department's State Aid Division
    - Workforce and Agency Services Division
    - Office of Financial Management
    - Human resources
    - Commissioner's staff offices
    - Office of Audit
    - Office of Chief Counsel
    - Office of Civil Rights
    - Communications and public engagement
    - Office of Equity and Diversity
    - Government Affairs Office
    - Office of Freight and Commercial Vehicle Operations;
- DPS administration and related services for the commissioner's office, fiscal services, human resources, communications, and technology services

The Task Force set out to "evaluate trunk highway fund and highway user tax distribution fund spending in each department to determine whether the spending is a highway purpose and identify whether each specific use is a permissible or impermissible use of the funds". Unfortunately the Task Force was unable to complete this task. As the Task Force ran out of time, discussion turned to consider these uses and activities further down the road, potentially applying the hearings process to further evaluate the highway purpose of those activities on a case-by-case basis.

Issues, by agency, that were discussed by the Task Force included the following.

MnDOT Offices/Activities

Bikeways

The Task Force generally supported the inclusion of bikeways located within the trunk highway right-of-way as a trunk highway purpose, but some members did express the view that the designation should not be granted carte blanche, and that further exploration of the 'highway purpose' of such facilities be considered along with alternative funding mechanisms.

Cybersecurity

MnDOT defines cybersecurity as the combination of people, policies, processes and technologies employed by an enterprise to safeguard the physical transportation network, protect its systems, networks and devices from unauthorized access or criminal use and to ensure the availability, integrity, authentication, confidentiality, and nonrepudiation of the enterprise's data and information. The Task Force discussed the topic, but did not reach any conclusion regarding its permissibility as serving a 'highway purpose'.

MnDOT Administrative Costs

Per the report's authorizing language, these costs include the targeted group business program, grants to metropolitan planning organizations outside of the metropolitan area; grants to regional development commissions, joint powers boards, department district offices, and other units enumerated above. The Task Force did not reach any conclusion on these uses and activities. The Task Force also suggested that MPOs outside the metro area, RDCs, Joint Powers Boards, and MnDOT district offices should be invited to provide their insights and identify any concerns or issues that they may have.

Other MnDOT Offices

The Task Force members all recognized the difficulty in rendering judgment on all affected uses and activities due to the ever-changing technology and related innovations. Members recognized that consideration of certain offices and functions would always need to be considered on a case-by-case basis. These include:

- Modal Planning & Program Management
- State Aid – Statewide Radio Communications
- Workforce and Agency Services Division
- Office of Financial Management
- Human Resources
- Commissioner's staff
- Office of Audit
- Office of Chief Counsel
- Office of Civil Rights

DPS Offices/Activities

The following DPS uses and activities were discussed by the Task Force.

Administration and related service costs

Per the report's authorizing language, these costs include the commissioner's office, fiscal services, human resources, communications, and technology services. The Task Force discussed these functions, but did not reach any conclusion regarding their permissibility as serving a 'highway purpose'.

Bureau of Criminal Apprehension labs

The Task Force agreed that the BCA should not be funded with dedicated TH funds.

Office of Traffic Safety

The Task Force took no formal position.

Department of Natural Resources

An issue discussed early in the deliberations of the Task Force (November 23, 2021) concerned spending from the Trunk Highway fund for reimbursements to the Minnesota Department of Natural Resources (DNR) to account for fuel tax revenues attributable to non-highway use purposes that are reimbursed to other funds.

State law (in Minnesota Statutes, section 296A.18) sets various percentages by which the TH fund must reimburse various non-transportation accounts (largely administered by the Department of Natural Resources) for fuel tax revenues generated from users of Minnesota's trails and waterways. The total annual transfers generally amount to roughly 2.5% of gas tax revenue, or about $23.1 million in fiscal year 2020. A detailed accounting of each revenue sources disposition is available in the highway funds distribution outlined in each of the MnDOT Commissioner's Orders.[27] The figures from 2018 and 2019 are shown in the following table.

[27] These are available at: https://www.dot.state.mn.us/safinance/apportionments.html.

Transfers OUT		
Distributions (Transfers Out)	**2018**	**2019**
Motorboats[14]	11,062	11,181
Snowmobile Trails and Enforcement[19]	7,375	7,454
All-Terrain Vehicles[19]	1,991	2,013
Forest Roads[19]	1,051	1,061
Off-Highway Motorcycles[19]	339	343
Off-Road Vehicles[19]	1,209	1,222
TOTAL DISTRIBUTIONS	**23,028**	**23,274**

***all amounts in thousands**

Over the years, the legislature has required various studies that are intended to estimate motor fuel use for non-highway purposes. These studies are not conducted with regularity, and in fact, even the most recent study of an 'off-highway vehicle' is an all-terrain vehicle study conducted in 2006. These studies appear to have been a factor in occasional legislative adjustments to the reimbursement percentages. The following list shows the year of the most recent study on record for the various off-highway vehicles:

- 1983 motorboat and snowmobile study
- 1994 motorcycle and off-road vehicle study
- 2002 forest roads review
- 2006 ATV study

No formal vote was taken, but the Task Force seemed to concur that these studies should be undertaken with greater frequency.

Minnesota Management and Budget

The Task Force was unable to get into specifics and thus comes to the conclusion on these activities.

Department of Revenue

The Task Force was unable to get into specifics and thus comes to the conclusion on these activities.

Section 7: Legislative Oversight

At one of the last meetings of the full Task Force (February 1, 2022), the discussion focused on ideas for a process that would provide greater 'legislative oversight' of TH funded offices or activities. Co-Chair Dibble set the stage remarking that under the existing system of governance, 'the executive branch proposes and the legislature disposes', adding that the legislature has the power of the purse. In that capacity, the legislature's role is to decide whether proposed spending is constitutionally permissible and if so, to appropriate the funds. The agency, and by extension, the executive branch, meanwhile, has full authority over development of its own budget request/submittal to the legislature.

In sum, the Task Force discussed and offered proposals for three elements of a more rigorous legislative oversight process:

1) Rep. Hornstein's and others' suggestion on conducting a bipartisan and/or bicameral committee hearing assembled specifically to review requested TH spending;
2) Commissioner Anderson Kelliher's suggestion that the existing Attorney General / MMB report called Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget (described in Section 3), be used as the primary evaluative tool; and
3) Sen. Newman and others' suggestion that the process promotes greater legislative oversight with a focus on information on specific areas of proposed spending, and that the legislative review takes place prior to the funding being authorized and codified in law.

This '3-element', more vigorous legislative oversight process is discussed briefly below to provide a record of the Task Force's intent.

1) TH Fund Spending 'Focused' Legislative Committee Hearings

Importantly, the Task Force members agreed that a better understanding of the 'highway purpose' behind any proposed spending plan is essential to evaluating the permissibility of any funding option. Currently, the legislature reviews agency budget requests in Committee, but there is no requirement for a review specifically addressing the highway purpose of TH funding proposals. Rep. Hornstein voiced support for the idea of a committee hearing or other non-binding informational hearing to review those costs, as it supports openness and transparency in government.

Beyond simply holding a hearing, the question of how to identify those offices and general costs that should be evaluated was raised by members of the Task Force. The Task Force members had varying views on the required level of 'granularity' in identifying costs that would be required to get the job done. Some suggested that the broad line items that are currently used in budgeting discussions are adequate and that larger issues would find its way to the committee's attention while the smaller issues might best continue to be decided by the agencies. Others suggested a deeper dive might sometimes be required, focusing on the qualifier 'directly' related to a highway purpose'. In the end, the decision on what offices or

activities to examine in the hearings will likely be the prerogative of the committees themselves.

2) 'Tools' to be Used

Commissioner Anderson Kelliher opined that the existing Attorney General/MMB report on dedicated fund expenditures published every other year, most recently: *Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget*[28] is already a regular report and a useful tool.

Section 3 of this report also identifies a number of other reports, including MnDOT's and DPS's *Dedicated Fund Expenditures Report*[29] that could provide additional information on certain Trunk Highway fund spending.

3) Process/Timing of the Hearing

Task Force members agreed that 'legislative oversight' must mean 'proactive' involvement by the legislature, that is, the legislature should weigh in on its view of the request's compliance with the 'highway purpose' standard before, and not after, the money has been spent. The idea is that those hearings could be designed more specifically to address those gray area budget items. Rep. Elkins reminded the group that the budget discussions/hearings should take place early enough in the legislative session prior to committee targets are set.

[28] Available at: https://www.lrl.mn.gov/edocs/edocs?oclcnumber=124039994.

[29] Available at: https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=13857.

Section 8: Task Force Recommendations

No specific recommendations have been formally adopted by the Task Force.

Appendix R: Letter and Draft Report Submitted By Sen. Newman, Rep. Petersburg, Sen. Coleman, and Rep. O'Neill

This appendix presents a letter and draft report jointly provided by Sen. Scott Newman, Rep. John Petersburg, Sen. Julia Coleman, and Rep. Marion O'Neill for inclusion in the Task Force report. (There are some stylistic differences.)

Dedicated Funds Expenditures Task Force

At the conclusion of this Task Force, it was agreed that nonpartisan legislative staff would prepare a concise report summarizing the meetings, discussions and documents reviewed by the Task Force without including any opinions, conclusions, or recommendations. It was further agreed upon that any member of the Task Force may attach to the appendix a letter and any documents they deem appropriate for consideration of the issues assigned to the Task Force. Accordingly, the undersigned legislators submit this letter and attachments to reflect their position on issues discussed by the Task Force.

Accompanying this letter is a report titled "Dedicated Funds Expenditures Task Force Report" authored by the undersigned. Appendix O includes a side-by-side comparison document prepared by House and Senate nonpartisan staff intended to illustrate three different approaches to resolving the issues assigned to the Task Force. By way of explanation, the far-left column is the version supported by the undersigned and commonly referred to in committee discussion as the "Newman" version. The second from the left reflects the version supported by the agencies, referred to in discussions as the "MnDOT" version. Third from the left is the version proposed by Task Force member Representative Elkins and in the far-right column is the one item that all Task Force members were able to agree to.

As succinctly put as possible, there are two questions the Task Force attempted to resolve:

1) What is the definition of a "highway purpose" that Article XIV of the Minnesota Constitution requires the HUTDF be spent on?
2) What entity, a state agency, or the legislature, should make the decision of what to spend the money on?

The task force, with good reason, was unable to reach an agreement on the definition of a highway purpose. First consider the constitutional language that requires the HUTDF to be "used solely for highway purposes" and to be used for the "construction, improvement and maintenance" of highways. The Supreme Court provides little guidance because no case has

ever come before the Court raising the broad constitutional question attempting to define a highway purpose and the Court does not give advisory opinions. Further, the topic is so vast that it would seem to be impossible to create a legal definition into which any proposed spending could be logically pigeonholed. The best that could be done would be to provide a definition of and to require all expenditures be "directly related" to the construction, improvement, and maintenance of a highway to comply with the Minnesota Constitution.

As difficult as the first question is, the second is simple. It is the legislature that is responsible for all appropriations and spending, and it is here that the legislature has failed in its constitutional responsibility of legislative oversight of agency spending. Historically, the legislature does not delve deeply enough into agency spending in order to determine the permissibility of proposed spending from HUTDF. The tools employed by the legislature currently are:

1) Report concerning certain expenditures from the Trunk Highway Fund, prepared by MMB and Office of the Attorney General. While this report is useful, it does not provide the legislature with a legal analysis of the majority of spending and does not adequately explain the highway purpose of proposed expenditures as required by Minnesota law (see the draft report in this appendix, page 187).

2) Dedicated Funds Expenditure Report prepared by MNDOT and DPS. Again, this is a helpful tool but is deficient in several ways. See page 186 of the draft report in this appendix for a detailed explanation of the deficiencies but to summarize: it doesn't include all agencies that spend HUTDF, it doesn't help the legislature with current proposed spending, rather it looks back at what the agency has spent, hence the many prohibitions found at MN Statutes 161.20 subd 3, and it reflects expenditures within certain "accounts" or categories. It does not provide information sufficient for the legislature to determine whether a particular expenditure is a permissible highway expenditure. See page 186 of the draft report in this appendix for an example that illustrates this specific deficiency, categorized as "Research & Innovation" while the actual expenditure is to "demonstrate how arts and culture approaches can better transportation outcomes and work to heal past wounds".

3) Budget/Forecast Documents. Again, these documents are helpful, but they do not provide the legislature with specific information of proposed spending sufficient to determine whether the spending is constitutionally permissible.

The answer to providing adequate legislative oversight and preventing the list of prohibited expenditures enacted at Minnesota Statutes § 161.20, subdivision 3, from increasing is for the legislature to hold robust legislative budget hearings focused on proposed spending. The legislative committees with jurisdiction should insist that the agencies provide the legislature with information on actual spending proposals rather than categorical spending lists. This is the legislature's responsibility, and it is not adequately providing legislative oversight necessary to prohibit impermissible spending of funds constitutionally dedicated to the construction, improvement, and maintenance of our highways.

While the Task Force has decided against making any recommendations, in Section 8 of the report attached to this letter, the undersigned legislators individually make recommendations in an effort to urge the legislature to proactively become more involved in its proper role of determining what is or is not a permissible expenditure for highway purposes.

Respectfully Submitted:

Senator Scott Newman, District 18
Chair, Senate Transportation Committee

Representative John Petersburg, District 24A
Minority Lead, House Transportation Committee

Senator Julia Coleman, District 47

Representative Marion O'Neill, District 29B

Dedicated Funds Expenditure Task Force Report

March 1, 2022

Prepared by:

Senator Scott Newman, Chair, Senate Transportation Finance and Policy Committee
Representative John Petersburg, Minority Lead, House Transportation Finance and Policy Committee
Senator Julia Coleman, Member, Senate Transportation Finance and Policy Committee
Representative Marion O'Neill, Member, House Transportation Finance and Policy Committee

Executive Summary

At the heart of the Task Force's work was the following question: What spending is permissible from the constitutionally dedicated highway fund for the construction, improvement, and maintenance of the trunk highway system as required by Article 14 of the Minnesota Constitution. This report is an effort to provide guidance to the 2022 Legislature and future policymakers in making budget decisions.

The report is divided into sections, as follows:

Section 1 is an introduction to the Task Force effort, its mission, and how it came to be.

Section 2 provides background and historical spending and revenue information of the Highway User Tax Distribution Fund and the state Trunk Highway Fund.

Section 3 focuses on a review of the current reporting mechanisms in place to shed light on the expenditure of dedicated funds.

Section 4 addresses the legal framework regarding the definition of 'highway purpose' and the constitutional and case law history.

Section 5 delves more deeply into the question of defining a 'highway purpose', first summarizing the results of an online 'Mentimeter' exercise undertaken to initially gauge the attitudes of Task Force members. This section includes a detailed side-by-side comparison of 3 concepts formulated by members of the Task Force as potential models for future legislation on the definition of 'highway purpose'.

Section 6 examines more closely some of the 'areas of interest' identified in the authorizing language establishing the Task Force, such as specific MnDOT, DPS, DNR and other state agency functions.

Section 7 reviews the Task Force discussion concerning strategies to provide for additional legislative oversight to state spending requests from the state Highway User Tax Distribution fund and the state Trunk Highway Fund.

Section 8 identifies the recommendations agreed upon by members of the task for legislative action moving forward.

An Appendix of sources and resources is also provided.

Section One: Introduction

The "user pays" principle of financing transportation infrastructure in Minnesota dates to the pre-automobile era. In the 1880s, as bicycling was gained popularity, an organized effort known as Minnesota Goodroads was established and went to work lobbying the government to improve and pave roadways suitable for the wider, air-filled bicycle tires. Reportedly, rural residents and farmers initially opposed calls for additional spending on roads, arguing that the system's users – in this case, bicycle riders – should be obligated to pay for the improvements

since they were the primary beneficiaries of paved roadways. (It wasn't much longer before nearly everyone rallied around the 'user pays' idea.)

Today, the 'user pays' principle is a fundamental feature of Minnesota's tax system to finance transportation infrastructure. State revenues generated from the motor fuel tax, the sales tax on motor vehicles, and the vehicle registration tax – along with a portion of revenues from sales tax on auto parts and vehicle rental taxes – are deposited into funds that are dedicated to a 'highway purpose", as provided in Article 14 of the State Constitution. These funds include the state's Highway User Tax Distribution (HUTD) fund and its sub-funds, the state Trunk Highway (TH) fund, the County State Aid Highway (CSAH) fund, and the Municipal State Aid Streets (MSAS) fund.

However, solely funding a transportation infrastructure system in the 21st century through "user fees" is not providing adequate funding. Under the concept of "everyone benefits from an adequate transportation system whether they drive a motor vehicle or not", this supports the idea that general fund dollars are necessary to construct, improve, and maintain Minnesota's road system.

Section Two: HUTD and TH Funding – An Overview

Early in its proceedings, the Task Force heard testimony and gathered information detailing revenue and spending trends related to HUTD fund and TH fund. Budget officials from MnDOT and DPS gave overviews of revenue and expenditure trends in their respective agencies. Highlights of those presentations are presented here.

MnDOT Trunk Highway Spending Trends

The task force heard testimony from MnDOT budget staff on the historical trend of overall HUTD fund revenues and expenditures since 1980. Figure 1 was presented to convey the idea that in real terms, recent years' revenue to the HUTD fund dipped slightly in 2018 and then has plateaued since. Since State Trunk Highway fund revenues are a function of total HUTD fund revenues (along with County State Aid Highway and Municipal State Aid Streets), revenues to the TH fund in real terms have leveled off in recent years lending credence to the position that funding for Minnesota's roads, irrespective of the source, is inadequate.

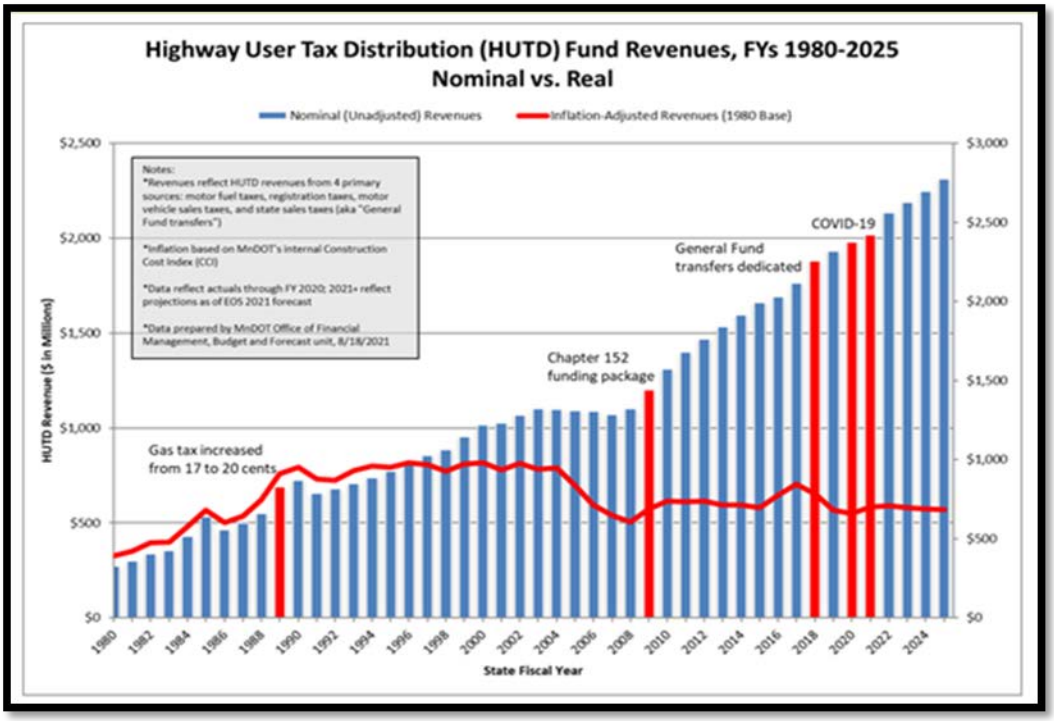


Figure 1

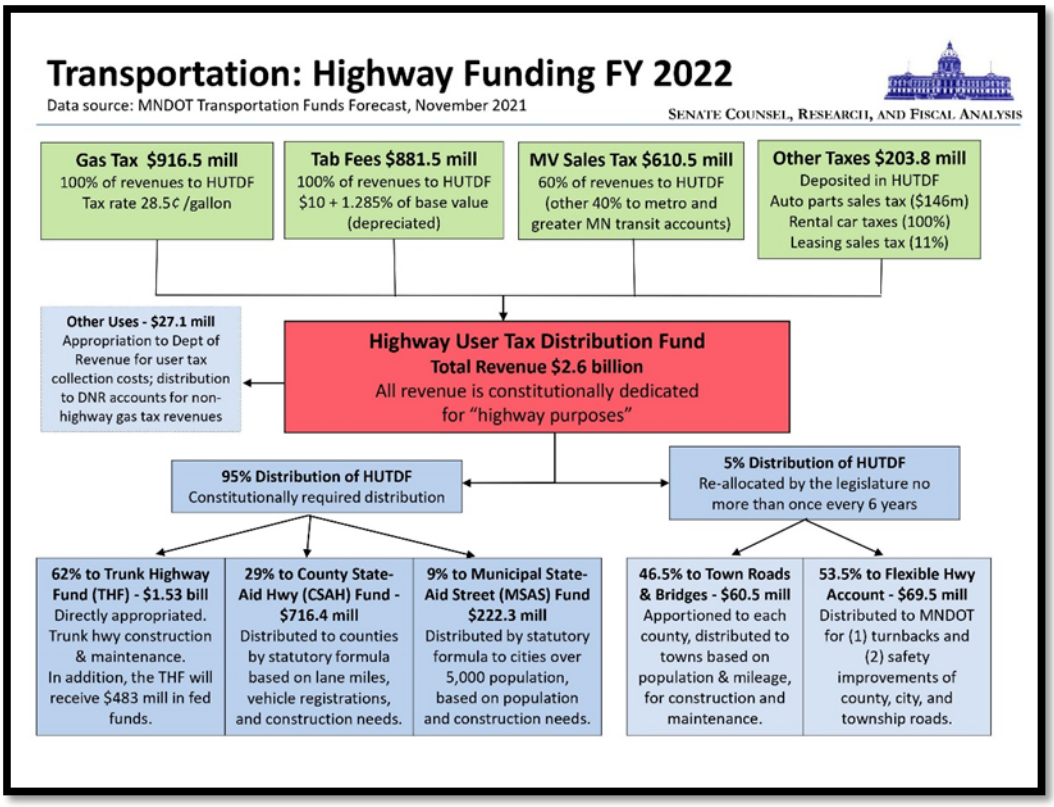


Figure 2

This chart illustrates the source of funds that are paid into the HUTDF and the statutory formula for the distribution of those funds.

Figure 3 shows an infographic of the dollar breakdown of trunk highway spending by major areas for the state fiscal year 2020. The operations and maintenance and state road construction functions are most reliant on the TH fund. Twelve percent of TH spending is dedicated for program planning and delivery. Eleven percent of the debt service on bonds is supported by the TH fund, and then beyond that, all divisions and offices are supported by a small share of TH funding. However, the potential impermissible spending, which was only partially discussed in this Task Force, is spread throughout much of these TH fund categories.

Figure 3

DPS Trunk Highway Spending Trends

At the first Task Force meeting (August 20, 2021) Shawn Kremer, Task Force member and DPS Chief Financial Officer, made a presentation on the Public Safety portion of the FY 2022-23 Governors biennial budget recommendation. He highlighted the trunk highway expenditures to support the cost of specific DPS offices and functions.

The Minnesota Department of Public Safety also relies on the Trunk Highway Fund for some functions that have been authorized by past legislation. As Figure 4 illustrates, about 18% of the department's revenue comes from dedicated funds (TH funding 17%; HUTD funding 1%) and of that amount, 90% is used to support the State Highway Patrol for its law enforcement activities on the state trunk highway system. It is in this 17% of DPS's funding, which comes from the THF, where potential ineligible expenditures exist.

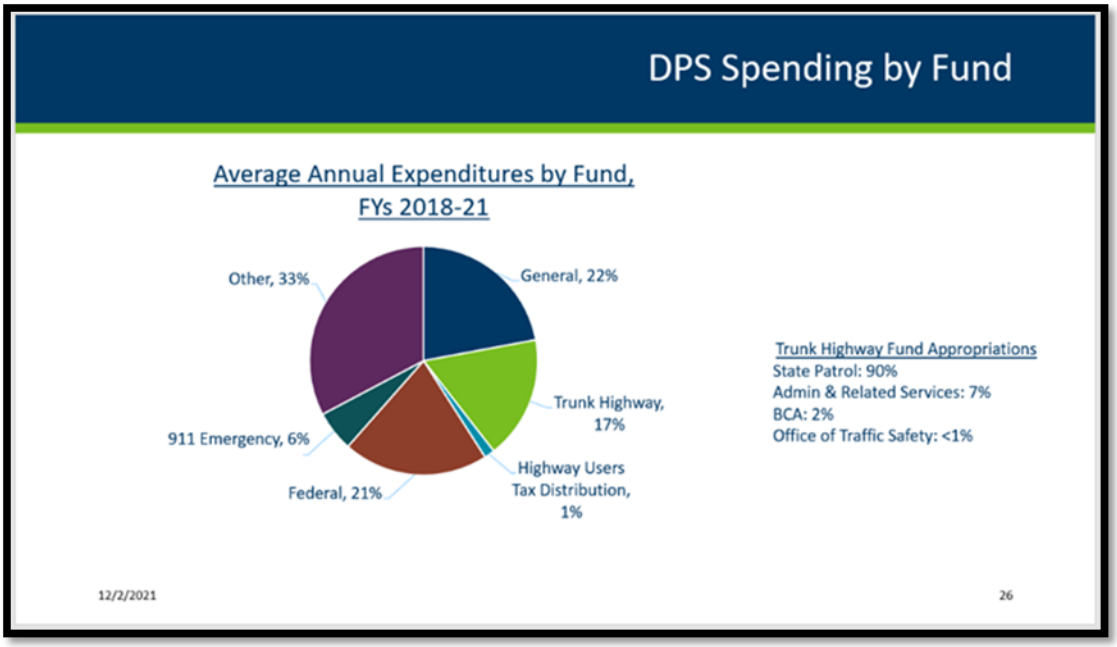


Figure 4

Experience in Other States

The task force also sought information on other state's policies on dedicated funding. Mr. Joung Lee, the associate director for finance and business development at the American Association of State Highway and Transportation Officials (AASHTO) reviewed referenced a 2016 AASHTO study called A 50-State Review of State Legislatures and Departments of Transportation. Mr. Lee affirmed that virtually every state – with the exception of Alaska – imposes restrictions on state highway fund spending, either by the state constitution or through statute.

Section Three: Existing Reporting on Trunk Highway Fund Spending

One of the themes that emerged during testimony from agency budget staff and legislative research staff was that there are some mechanisms already in place intended to provide the Legislature with information to oversee the agencies' broad funding requests. Testimony from staff at MnDOT, DPS, MMB, the Legislature and the Office of the Attorney General identified the following reports and documents that focus on spending from the Trunk Highway fund.

***Note**: links to reports are available in Appendix P: Other Reference Materials.*

MMB/AG, Report

Since 2001, Minnesota Management and Budget (MMB) and the Office of the Attorney General have been required to submit a report every other year to the legislature, addressing the identified purpose of trunk highway funding. At the Task Force's inaugural meeting, the most recent edition of the report dated April 2021, called Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget was discussed.

The report's principal function is to explain the highway purpose of any proposed spending initiative that is similar to those that have been legislatively determined not to 'further a highway purpose' or 'aid in the construction, improvement, or maintenance of the highway system'. These include the following offices and activities, specifically identified in state law:

- Bureau of Criminal Apprehension laboratory
- Explore Minnesota Tourism kiosks
- Minnesota Safety Council
- Driver education programs
- Emergency Medical Services Board
- Mississippi River Parkway Commission
- Payments to MN.IT Services in excess of actual costs incurred for trunk highway purposes
- Personnel costs on behalf of the Governor's Office

This report does not contain the 10 additional items of impermissible spending as determined by the 2021 Legislature. Those items are as followed:

- The Office of Aeronautics within the Department of Transportation;
- The Office of Transit and Active Transportation within the Department of Transportation;
- The Office of Passenger Rail;
- Purchase and maintenance of soft body armor under section 299A.38;
- Tourist information centers;
- Parades, events, or sponsorships of events;
- Rent and utility expenses for the department's central office building;
- The installation, construction, expansion, or maintenance of public electric vehicle infrastructure;
- The statewide notification center for excavation services pursuant to chapter 216D; and
- Manufacturing license plates.

In addition to providing a legal context, this report weighs in on the 'highway purpose' of large categories of newly proposed spending from the Trunk Highway fund that may warrant more careful examination.

While this report is an important tool to guide the Legislature in its budget negotiations, it fails to adequately explain the highway purpose of the proposed expenditures as required by Minnesota Laws 2000, Chapter 479, Art. 2, Sec. 1. Also, MMB only reviews questionable proposed spending during the first time it is proposed and doesn't review the spending after that. So, improper or impermissible spending could be built into future budgets, without that review and without question.

Dedicated Funds Expenditure Report

In 2015, (Laws of 2015, Chapter 75) the legislature required MnDOT and DPS to submit a report focusing on spending from the HUTDF and the Trunk Highway Fund. Since then, four reports have been prepared, which include information on broad categories of TH spending from 2010 through 2020. The most recent report was issued in January 2021 and identified TH and HUTD funding for fiscal years 2018 and 2019. The report identifies accounts funded from the Trunk Highway fund.

MnDOT's section of the report details seven "accounts" of HUTD fund and TH fund expenditures for each office within MnDOT's divisions. These include Engineering Services, Operations, State Aid for Local Transportation, Modal Planning and Program Management, Sustainability, Workforce and Agency Services, and Commissioner's staff offices (e.g., Chief Counsel, Office of the CFO).

DPS's section of the report details six "accounts" of HUTD fund and TH fund expenditures to that department. These include Administration and Related Services, the Bureau of Criminal Apprehension, Driver and Vehicle Services, Office of Traffic Safety, and the State Patrol.

The above "accounts" are in reality broad categories of expenditures and in reality, provide no information as to what the expenditure actually paid for. For illustrative purposes, consider the following: one of MNDOT's categories in this report is "Research and Innovation" which presumably could include projects that involve the construction maintenance and improvement of a Hwy. The report does not provide information for an actual expenditure under this category titled "Role of Arts, Culture and Placemaking in Transportation Projects". A summary of the proposed spending under this project indicates "This research project will go into depth on 15 case studies that demonstrate how arts and culture approaches can produce better transportation outcomes and work to heal past wounds". The point of this illustration is not to address whether the expenditure is a good, or constitutional use of taxpayer money. Rather, the point is that the report as written does not provide sufficient information that may trigger a legislative inquiry of whether the spending is a permissible highway expenditure.

Although the report is a valuable tool in providing the legislature with information on spending by DPS and MNDOT from various accounts, the Dedicated Funds Expenditure Report is deficient in the following ways:

1) All agencies that spend money out of the constitutionally dedicated fund are not required to be included in the report.
2) It does not provide the legislature with the information needed to inquire or determine the permissibility of agency spending from the THF or HUTDF.
3) Because the report looks back on what an agency has spent from the THF or HUTDF, it does not assist the legislature in addressing the question of legislative oversight prospectively.

Budget / Forecast Documents

The biennial budget, the state financial forecast, and other regularly published financial statements gives broad categories of actual and estimated revenues, expenditures and performance data for the Highway User Tax Distribution Fund, and the Trunk Highway Fund. The legislative process includes a budget adoption process of budgets with broad categories. The legislative process does not include a process to review the detailed spending items nor the constitutional eligibility of those items. Through the legislative process, the legislature votes on broad categories shown in line items but is unable to review and vote on the minutia which is needed to determine not only the constitutionality of the authorized spending but also the legitimacy of the spending items in general. Legislative fiscal staff maintain current records of broad categories of all direct appropriations out of the dedicated funds (HUTDF, TH, CSAH, and MSAS). While appreciated for a 10,000 ft. view of Transportation spending, this list does not have nearly enough of a breakdown and detail for any committee to determine the constitutionality and legitimacy of the spending. (See: House Fiscal Analyst Andrew Lee's model spreadsheet: Dedicated Funds Direct Appropriations – FY 22-23.)

These documents are very important in assisting the legislature in forming a budget and it is the legislature's responsibility to hold the necessary hearings to determine whether proposed spending by state agencies are "permissible". However, it would be helpful if the agency would point out spending proposals that are not directly related to the construction maintenance or improvement of a Hwy and provide specific details of such proposed spending. Doing so would provide the legislature with an opportunity to examine such proposals more rigorously without the need to make in depth rigorous inquiries into spending proposals that are obviously directly related a highway purpose.

MnDOT's Major Highway Projects Report

This report does not add to the core question because it does not identify specific spending that serves a highway purpose.

Section Four: Minnesota Supreme Court Cases Summary

The following is a detailed summary prepared by non-partisan Senate Counsel staff. These are relevant court cases on the issue of spending constitutionally dedicated funds.

Senate Counsel, Research, and Fiscal Analysis

Tom Bottem, Director

Minnesota Senate Building
95 University Ave. W. Suite 3300
ST. PAUL, MN 55155-1800
(651) 296-4791
www.senate.mn/scrfa

Senate

State of Minnesota

TO: Senator Scott J. Newman

FROM: Alexis C. Stangl, Senate Counsel (651/296-4397)

DATE: February 28, 2022

RE: Case Law Summary

In response to your request, this memo provides summaries of Minnesota court cases that discuss the use of trunk highway funds. You also asked for the summaries to include instances where the court considered legislative history or intent and I have included that information as well. Where a case touches on multiple issues, this memo only focuses on the discussion of issues related to using trunk highway funds. For each case, you will find the syllabus of the court copied and pasted followed by a summary that I have written.

As you are aware, the constitutional language for highway funding has changed over the years. The memo "A History of Transportation Amendments to the Minnesota Constitution" may be helpful if you want to track these changes along with the cases. You may access this memo here:

https://www.senate.mn/storage/scrfa/constitutional_road_funding.pdf.

Cater v. Nw. Tel. Exch. Co., 60 Minn. 539, 63 N.W. 111 (Minn. 1895)

Syllabus by the Court:

"The defendant, under legislative authority (Gen. St. 1894, § 2641), constructed along the side of a country highway (the fee of which was in plaintiff) a telephone line, consisting of poles planted in the ground upon which wires were strung. It did not interfere with the safety and convenience of ordinary travel, or unreasonably or materially impair plaintiff's special easements in the highway as owner of the abutting land. Held, that it did not impose an additional servitude upon the highway."

Summary:

This case does not discuss use of trunk highway funds, but rather looks at uses of highway easements. It is included here because later cases reference the discussion in this case about the use of rights-of-ways when talking about trunk highway funds.

Defendant is a company that erects and maintains phone lines. Defendant erected poles and lines in the existing public easement of a rural highway. The owner of the property challenged the erection of the poles and lines as a new and different use than what was allowed by the existing public easement. The court held that the poles and lines were consistent with existing public easement because the lines were for a public purpose and Defendant was not required to obtain a new easement for the use.

The court talked in detail about its reasoning for its holding. The court says that the use of roads and the corresponding right-of-way is not just for transportation of people and property, it is also for the transmission of information, such as that by phone lines. Further, the court noted that uses of a road and its right-of-way change over time and evolve to adopt to new technology and new uses. The court cautions that it is impracticable and dangerous to attempt to draw a bright line rule over what is a highway use and that decisions should be made on a case-by-case basis.

State ex rel. Wharton v. Babcock, 181 Minn. 409, 232 N.W. 718 (Minn. 1930)

Syllabus by the court:

By the limitation upon the use of the trunk highway fund contained in section 2, art. 16, of the state Constitution, the Legislature is prevented from appropriating money out of that fund to pay damages to persons injured or suffering property loss through the negligence of the highway department or its employees in the maintenance of trunk highways.

Summary:

The Minnesota Supreme Court considered the use of trunk highway funds to pay damages to a person injured through negligence of the highway department or its employees. Petitioner challenged a state law that directed the commissioner of highways to use trunk highway funds to pay damages for personal injuries and damages to property caused by negligence of Department of Highways or its employees. The question before the court was whether the constitutional provisions in the Constitution's article 16, section 2 (which established the trunk highway fund) prevented the Legislature from appropriating money out of the trunk highway fund to pay the damages at issue. The court held that the trunk highway funds could not be used to pay damages for injuries caused by the negligence of the highway department in maintaining trunk highways.

The court spends some time examining article 16 and the subsequently enacted legislation. The legislation established the state highway department and empowered the commissioner of highways to "to locate, construct, reconstruct, improve, and maintain the trunk highways specified in article 16" and to spend trunk highway funds to do so. *State ex rel. Wharton v. Babcock*, 181 Minn. 409, 412, 232 N.W. 718, 719.

The court then went on to talk about the constitutional amendment and intent, writing:

> Article 16 of the Constitution is not an act of the Legislature, but an act of the people or electors of the state. If the meaning of any word, sentence, or section thereof is in doubt, and search is to be made as to the intent of the lawmakers, we must go back to search for the intent of the electors of the state. A search of that kind may not be of great value. Neither do we hold that there is any serious doubt to be here resolved. But a brief consideration of the situation may not be out of place. The people of the state desired better highways. They created a fund for the purpose of locating, building, improving, and maintaining such highways. To protect and preserve that fund and make certain that it should be used only for the purposes stated, they placed in the article a specific limitation that the fund should be used solely for the purposes stated. The language used is clear and limits the power of the Legislature, as well as all other persons, in the use of the fund. It has always been the law here that the state is not legally liable for the negligence of any official or agent in the maintenance of highways. To hold that, in adopting article 16, the people intended that subsequent Legislatures might use the trunk highway fund to pay damages for injuries to persons and property upon such highways, where there was no legal liability, however laudable the purpose, would be going far afield.
>
> *Id*. at 412, 7119.

The court went on to express concerns about seriously depleting the fund if the compensation for damages were to be made from the fund. The court noted that the state has "ample other funds" which the Legislature could use to pay for damages. So, in this case, the Legislature could grant compensation for damages but could not do so out of a fund "clearly set aside by constitutional provision solely for other specified purposes." *Id*. at 412, 720.

The court rejects the argument that injuries cause by negligence of the highway department, or its employees, is so related to the construction and maintenance of the trunk highway system that it may be considered a proper purpose to be paid from the trunk highway fund. The court also rejects the argument that the Legislature has the discretion to determine what constitutes a legitimate expense paid from the trunk highway fund. The court says "Whatever discretion the Legislature has does not go to the extent of finding that something clearly not an expense of constructing and maintaining such highways in such an expense." *Id*. at 414, 720.

State ex rel. Holm v. King, 184 Minn. 250, 238 N.W. 334 (Minn. 1931)

Syllabus by the court:

Section 7, c. 306, Laws 1931, particularly item 4 thereof, appropriating moneys to defray the expenses for issuing motor vehicle licenses and collecting the moneys therefor from the moneys collected in the motor vehicle division by the secretary of state's office, does not contravene article 16 of the Constitution.

The purpose of that section is sufficiently indicated in the title of the chapter.

Summary:

In 1931, the Minnesota Supreme Court considered whether the use of trunk highway funds could be used to pay for the costs of collecting taxes on vehicles. The state auditor refused to allow the disbursal of funds for postage used in issuing motor vehicle licenses and collecting money. An action was brought to compel the auditor to allow the disbursal. The Legislature appropriated money from the proceeds of the motor vehicle taxes that were collected and deposited into the trunk highway fund. There were two challenges: 1) the constitution prohibited the appropriation of money from the trunk highway fund "for any other purpose than the construction and maintenance of trunk highways" and 2) that the bill title did not accurately reflect the appropriation. For purposes of this memo, only the first argument will be addressed. The Court held that the Legislature could appropriate trunk highway funds to pay for collection of taxes (instead of paying those costs out of the general fund).

The court noted that there is no specific prohibition in the constitutional language that would prohibit using trunk highway funds for the expense of imposing and enforcing the tax on vehicles; similarly, there is no constitutional requirement that these expenses be paid for out of the general fund. Therefore, the Legislature can decide where the funds come from.

The court focused on the intent of the people when enacting the amendment:

> The people, in establishing the sinking fund by section 2, art. 16, and devising its revenue or source of income, set apart from the taxable property of the state all motor vehicles (with minor exceptions) using the public highways for the purpose of taxing the same for the sole use of the highway system.
>
> *State ex rel. Holm v. King*, 184 Minn. 250, 254, 238 N.W. 334, 336 (Minn. 1931).

In discussing the establishment of vehicle taxes for dedicated purposes versus general taxes for general purposes, the court said this:

> But did the people so consider the money to be derived from the motor vehicle tax authorized by article 16? Here is a tax to be laid upon a certain class of property of immense value for the special benefit of such property or the owners thereof, no part of which tax may be used for the general expenses of government. Does article 16 [establishing the trunk highway system and providing funding for the system] intend that the great expense of imposing and enforcing this special tax is to be borne by the general taxes derived from other property? We think not. It is more reasonable to consider that when, by article 16, the people established this trunk highway system and authorized the taxation of motor vehicles on a more onerous basis than other property for the special use of the system, it was thought that the expense of imposing and collecting this tax which was to produce the necessary funds was an essential part of the enterprise to be paid out of such funds.
>
> *Id*. at 255, 336.

The trial court noted that licensing and registration served as a police regulation, with the implication that this meant it should not be paid for out of the trunk highway fund. The supreme court did not find this persuasive and said that a constitutional provision could

accomplish more than one purpose, but that other purposes should not "obscure its main purpose." In this case, the main purpose of the vehicle tax was to raise revenue to pay for the trunk highway system. Because this was the main purpose, it was not contrary to the constitutional provisions to use the trunk highway funds for this purpose.

The court also closely examined the interactions of several constitutional provisions relating to conducting and paying for public works, such as the trunk highway system. Again, the court looked at the intent of the people in passing the various constitutional amendments. The court concluded that the appropriation was not in contradiction to any constitutional provision.

State ex rel. County of Ramsey v. Babcock, 186 Minn. 132, 242 N.W. 474, (Minn. 1932)

Syllabus by the court:

1. Sections 1 and 2, article 16, of the state Constitution, establishing the trunk highway system, permits the state to reimburse counties out of the trunk highway fund only for 'permanently improving' roads.

2. The purchasing or acquiring of the right of way for a new road is not 'improving' or an improvement of a road within the meaning of these sections of article 16 of the Constitution.

3. The state is not required or permitted to reimburse a county out of the trunk highway fund for the amount expended for right-of-way for a new road built by the county and later designated and taken over by the state as a trunk highway.

Summary:

The Minnesota Supreme Court examined what the word "improve" means and whether trunk highway funds could be properly used to acquire property for rights-of-way. Ramsey County constructed two highways that were designated as trunk highways after they were completed. The county sought reimbursement of the costs for building the roads, including the cost to purchase property for the right-of-way. The commissioner of highways would then sell bonds to pay for the costs. The state did not contest the reimbursement for construction but did contest the reimbursement for the cost to acquire property for the right-of-way. The court held that trunk highway funds cannot be used for acquiring right-of-way for new trunk highways or to reimburse counties.

At the time, the state constitution established the trunk highway system. Specifically, article 16, section 1 said that trunk highways "shall be located, constructed, reconstructed, improved and forever maintained by the state of Minnesota." The constitution also said that trunk highway funds must be used only for the purposes specified in section 1 and, where authorized by the Legislature, to reimburse counties for money expended prior to Feb. 1, 1919, to permanently improve any road in accordance with plans approved by the commissioner.

The court looked to how the word “improve” was used in both sections. The court determined that “improved” in section 1 references a betterment of an established highway and not to acquire right-of-way for a highway. Section 2 refers to “permanently improving” which limits reimbursements only to permanent improvements and not things like ordinary repairs. The court concludes that “improve” in both sections means “a betterment of an existing highway” and does not include expenditures made for acquiring right-of-way. The court further discusses the word “improve” and notes that, in this case, there was no road when the right-of-way was acquired so the acquisition cannot be an improvement to the nonexistent road. The court holds that the cost of acquiring right-of-way cannot be made out of the trunk highway fund because of the limitation on reimbursements to counties. In the course of this discussion, the court does not look at legislative intent or the intent of the voters.

The court indicates there is a strong argument that because the road was constructed in accordance with plans approved by the highway department, the state should reimburse the county for all costs. However, the constitutional provision on reimbursement “is so limited that reimbursement for cost of right-of-way cannot be made out of the trunk highway fund.” *State ex rel. County of Ramsey v. Babcock*, 186 Minn. 132, 136, 242 N.W. 474, 476 (Minn. 1932). The court did not look at whether the highway department could use other road funds.

Regan v. Babcock, 196 Minn. 243, 264 N.W. 803 (Minn. 1936)

Syllabus by the court:

1. Where the state intervenes and joins the plaintiffs in suits in equity by taxpayers to cancel contracts for the paving of state trunk highways, entered into by the commissioner of highways, and for injunctions to restrain the contractors and commissioner from proceeding with the carrying out of such contracts, and for the purpose of recovering for the state moneys illegally paid out or to be paid out under such contracts, the state subjects itself to the jurisdiction of the court and may be required by the court to pay to the plaintiffs, the taxpayers, out of the funds recovered and saved to the state, the reasonable and necessary expenditures and attorneys' fees incurred by such plaintiffs in carrying on the litigation.

2. While moneys cannot be paid out of the state treasury ‘except in pursuance of an appropriation by law,’ we find in Mason's Minn. St. 1927, § 2554, such an appropriation, where, as here, the moneys recovered and saved go into and are a part of the trunk highway fund.

3. The attorneys' fees allowed are not shown to have been based on a contingency and are not excessive.

4. The fact that the court directed payment of the attorneys' fees to the plaintiffs' attorneys instead of to them for the plaintiffs was not error nor important.

5. Other errors claimed found not to present any reversible error.

Summary:

The Minnesota Supreme Court considered a variety of issues arising out of several contracts. The two issues discussed here are whether a specific appropriation was needed to spend trunk highway funds and whether trunk highway funds could be used to pay attorney fees. Six taxpayer suits were brought challenging six contracts entered into by the commissioner of highways with six different contractors for paving highways. Plaintiffs were asking to enjoin the state from making further payments and the contractors be enjoined from further performance of the contracts. The plaintiffs also asked for the state to recover money that was paid to the contractors. After the lawsuits were commenced, the attorney general, on behalf of the state and the contractors, entered into a stipulation that the work should proceed and that the state would pay 80% of the contract price and retain the balance until the trial. The plaintiffs were not consulted. The work proceeded. A trial was held, and contracts were determined to be void. The contractors were paid the reasonable value of work done. Some contractors repaid some of the funds already received and additional payments were made to some other contractors. There was a sizeable sum of money retained from the 20% of the contract.

Plaintiffs asked for reasonable expenses and attorney's fees to be paid from the 20% and the money received by the court for overpayments for several of the contracts. A jury trial determined the amount to be awarded to plaintiffs, which exceeded the overpayment amounts made to the court. The trial court ordered the expenses and fees to be paid from the overpayment amount and the remaining amount owed from the trunk highway fund. The court determined that it was appropriate for the plaintiffs to receive attorney fees and expenses in a case against the state paid out of the funds recovered in the suit. Further, the court determined the amount was not excessive. The court held that trunk highway funds could be used to pay attorney fees and a specific appropriation was not necessary.

The court wrote about the trunk highway funds. The trunk highway is, in one aspect, a trust fund. The money in the fund is for stated purposes only. Trunk highway funds are deposited first into the state treasury and then into the separate trunk highway fund. Because of this separation and stated purpose, the "Legislature cannot use or dispose of the moneys therein for any other than the purposes stated." *Regan v. Babcock*, 196 Minn. 243, 253, 264 N.W. 803, 808 (Minn. 1936).

The court considered whether an appropriation by the Legislature was necessary to use the funds to pay for expenses and attorneys' fees. The court noted that article 9, section 9, of the constitution prohibits money from being paid out of the state treasury except by appropriation. State law at the time made annual statutory appropriations from the trunk highway fund to the commissioner of highways for the stated purposes and an amount necessary to accomplish those purposes. The plaintiff's expenditures were "for recovery and preservation of a substantial part of the trunk highway fund." *Id*. As a result of the suit, money was recovered that could be used for trunk highway purposes. The court held "that plaintiffs' expenditures were necessary for the purpose of locating, constructing, and maintaining trunk highways, and payment for such expenditures is authorized and covered by the legislative appropriation pointed out. In addition to that, the result of plaintiffs' actions removed unauthorized restrictions on biddings for highway contracts in the future, which, under the circumstances

shown, should result in further savings to the trunk highway fund." *Id*. Therefore, there was no specific legislative appropriation needed for the money to be spent as ordered by the court.

State, by Peterson v. Werder, 200 Minn. 148, 273 N.W. 714 (Minn. 1937)

Syllabus by the court:

1. A highway condemnation proceeding is in rem. In consequence, no question of jurisdiction is presented if without formal intervention under the statute, interested taxpayers are permitted to appear and to apply for and procure injunctional relief appropriate to the proceeding.

2. The question being as to the payment out of the 'highway fund' for private property sought to be purchased by the highway commissioner near, but not part of, the right of way of a trunk highway, and the statute requiring that the limits of the right of way be fixed by formal written order of the highway commissioner, and there being no formal action by the commissioner indicating the purpose for which the property in question was to be acquired or used, held, that its attempted purchase was void and beyond the statutory power of the highway commissioner.

Summary:

This case was about acquiring property through condemnation for a trunk highway right-of-way. The statute for condemning property for a right-of-way required property to be formally designated. The commissioner purchased a property that was not designated as part of the right-of-way. The court invalidated the purchase and transfer of the property. Note that this case is less about what constitutes a "highway purpose" than whether the proper procedure to condemn the property was followed. The case is included in this memo because the court discusses highway purposes in dicta.

In dicta, the court discussed using trunk highway funds to acquire property for beautification, even though this question was not before the court. The court wrote:

> It must be remembered that as matter of constitutional law, under the so-called Babcock Amendment, Minn. Const. art. 16, § 1, the system to be established thereunder was to consist of highways and nothing else. Article 16, § 2, is at some pains to say that the trunk highway fund thereby contemplated shall be devoted solely to the highway purposes specified in section 1. Those objectives did not include any system of parks or beautification, independently of a highway, in either an urban or rural community.
>
> *State, by Peterson v. Werder*, 200 Minn. 148, 156, 273 N.W. 714, 718 (Minn. 1937).

They speculated that it would likely be a legitimate highway purpose to widen a right of way at a scenic point to allow tourists to stop in a safe manner. The court went on to say:

> On the other hand, there would be serious question, not merely of statutory, but also of constitutional, law if independently of a way of travel there was an attempt to spend from the highway fund for purposes of local 'artistic development,' such as the establishment and maintenance of a mere park.
>
> *Id*.

In a continued discussion in dicta, the court contemplated the powers of the commissioner to use trunk highway funds. The court wrote:

> No one denies that the Legislature may vest in, and has granted to, the commissioner of highways a vast power. When he acts within the limits and in the manner prescribed by law, no court may properly interfere. But not to be forgotten is the inescapable fact that article 16 of the State Constitution is a part of the law circumscribing both his powers and the execution thereof. Were we to hold that, out of the constitutional highway fund, wholly exacted from motorists, the commissioner may purchase land, anywhere and to any extent, for some purpose which officially and formally he does not disclose, and which is not otherwise shown to be for any highway use, we would be opening wide a conduit for an unconstitutional diversion of public moneys constitutionally dedicated to a special purpose. The point has been argued at the bar and much considered. But there has been presented no reason or authority with persuasiveness adequate to justify our embarkation on a course so fraught with danger to constitutional limitations.
>
> *Id*. at 156-57, 718-19.

Cory v. King, 209 Minn. 431, 296 N.W. 506 (Minn. 1941)

Syllabus by the court:

Minnesota Constitution, Art. 16, § 2, in establishing a 'highway fund', requires that it be used 'solely' for highway purposes. Hence, L.1939, c. 431, Art. 2, § 20, imposing upon that fund a charge to be used to defray the general costs of government, is by that much unconstitutional.

Summary:

The Minnesota Supreme Court considered a law that required using trunk highway funds to pay for general costs of government. A 1936 law required 5% of certain taxes and fees received by certain state departments be used to maintain the offices of governor, secretary of state, state treasurer, state auditor, attorney general, Department of Administration, public examiner, the courts, and the Legislature. The Legislature estimated that this charge pays for the reasonable cost and value of the services rendered to those agencies. This included 5% of the motor vehicle registration tax and gas taxes credited to the trunk highway fund. The court held the law unconstitutional as it is applied to motor vehicle taxes and the portion of the gas tax that is constitutionally dedicated to the trunk highway fund.

The challenge was to the 5% of the taxes on motor vehicle registration and gas. The constitution credited these taxes to the trunk highway fund. The trunk highway fund was constitutionally required to be used for "the establishment, construction, and maintenance 'forever' of 'a trunk highway system." The court said:

> We hold the challenge of the law well-founded. The constitutional demand that the highway fund be used 'solely' for highway purposes is explicit prohibition of their use for any other. The inhibition of their use to defray any of the general cost of government could not be more plain.
>
> Cory v. King, 209 Minn. 431, 433, 296 N.W. 506, 507 (Minn. 1941).

The court compares this to *State ex rel. Holm v. King*, 184 Minn. 250, 238 N.W. 334, (Minn. 1931). In that case, trunk highway funds were used to collect motor vehicle taxes and that was a permissible use. This court says, "Collection of the motor vehicle tax is functionally part of the maintenance of the highway system." *Cory*, at 433, 507. The court goes on to compare that case with the case before it saying that the departments that are benefitted by the 5% charge are "general government functions of those departments." *Id*. at 434, 507. The court says that at the time article 16 was adopted, "all concerned had in mind that other governmental departments would continue and necessarily render service to the highway department. Notwithstanding, the unequivocal dedication to highway purposes of highway funds was incorporated." *Id*.

In dicta, the court indicates that certain executive agencies, such as the state highway patrol, and expenses are properly paid for out of the trunk highway fund:

> Certain executive agencies such as the state highway patrol are properly incorporated with the highway department and the expense of their maintenance properly charged to the highway fund. It is equally plain, we assume, that the highway fund may, in a proper case, be required to reimburse other departments for special services to it. For example, when the public examiner makes an official audit of the highway department, we assume that there may be no legal objection to charging that department with the cost.
>
> Such services are administrative in nature and so might be performed by the department itself and paid for out of the highway fund. Performed by other departments (as audits should be), there is no constitutional prohibition of their being charged against the highway fund. That is because the expense is directly chargeable to maintenance of highways.
>
> But, as to the chief executive, Legislature, and courts, it is just impossible to say that any of their constitutional functions could properly be delegated to the highway department. So no part of the expense of their maintenance is chargeable to the highway fund as against the plain constitutional requirement that it be used for none other than highway purposes.
>
> *Id*. at 434, 508.

The court concludes with some thoughts on how trunk highway fund usage could become a slippery slope:

> We refuse to sanction disobedience of a statute, whether it be by way of direct attempt or evasion by erroneous construction. *Scott v. Prudential Ins. Co.*, 207 Minn. 131, 134, 290 N.W. 431. All the more imperative is our duty to preserve constitutional mandates against similar attrition, even though the error be that of the Legislature itself. One such

> abrasion might be harmless, or even beneficial in result, were it not for the baleful infection of its invitation to repetition, and thereby ultimate destruction of the whole fabric by the slow but effective process of erosion.
>
> *Id*.

Cory v. King, 214 Minn. 535, 8 N.W.2d 614 (Minn. 1943)

Syllabus by the court:

L.1941, c. 548, §§ 13, 14, 19, and 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, civil service commission (Department of Civil Service), and commissioner of administration respectively to defray expenses reasonably attributable to highway matters, held not violative of Minn. Const. art. 16. The test whether an appropriation is toward a highway purpose within the meaning of art. 16 is not whether each dollar appropriated is earmarked for each particular item of highway expense, but rather whether the charge upon the highway fund accurately reflects highway expenses, as borne by the four offices and departments, and does not exceed the amount of expense properly attributable to highway matters.

Summary:

The Minnesota Supreme Court again considered the use of trunk highway funds for governments services, but this time the services were specifically related to trunk highways. Plaintiff, a taxpayer, challenged a state law as unconstitutional because it appropriated money from the trunk highway fund to the state auditor, state treasurer, civil service commission, and the commissioner of administration. The law in question appropriated money for "the general expenses of state government." A specified portion of each appropriation was from the trunk highway fund for services performed by the auditor, the treasurer, the civil service commission, and the Department of Administration relating to trunk highways and the trunk highway fund. The appropriations were based on estimates of actual operations for specified services. The court held that the appropriations did not violate the constitutional provisions.

The Legislature enacted a vehicle registration tax and a gas tax as allowed by the constitution. The proceeds were deposited into the trunk highway sinking fund and the trunk highway fund. Money from either fund must be by warrants drawn by the state auditor on the treasurer. Handling these funds "entails a large amount of administrative work on the part of both the auditor and the treasurer" and the civil service commission and commissioner of administration "also render extensive service to the highway department." *Cory v. King*, 214 Minn. 535, 540, 8 N.W.2d 614, 616 (Minn. 1943).

The court reviewed prior cases on the issue and indicated that while none of these decisions answered the question before the court, they were instructive, particularly the discussions in dicta.

The court examined the constitutional language found in Article 16, writing:

> Article 16 contemplated an elaborate road program. The consummation of its purposes necessarily entails the expenditure of much time and money. In adopting the article, the people of the state must have known that it would not function automatically and that it would have to be administered by some state agency or agencies. The details of administration could have been provided by the article had it been deemed prudent to do so. It was, however, delegated to the Legislature to design such methods of administration as it deemed necessary to the accomplishment of its purposes. The Legislature in turn might have charged the highway department with the entire administration of the article and the acts passed pursuant thereto, or it might, as it did, place a part of the work and responsibility in other departments of the government.
>
> *Id*. at 542, 617.

Pointing to previous cases, the court reiterated that state agencies that perform administrative services for the highway department could be reimbursed properly for those services from the trunk highway fund. Before the court in this case is the question of whether departments rendering services to the highway department, as well as other departments, may be proportionately reimbursed with a general payment to that department (instead of a specific appropriation for a specific purpose). The court notes that it is not necessary to earmark each dollar to each expense item. Instead, "[t]he true test is whether the charge upon the highway fund accurately reflects highway expenses, as borne by the four offices and departments. It is essential to validity of an appropriation from the highway fund that no more money be taken than is necessary to defray the expenses properly attributable to highway matters" *Id*. at 543, 618. In this case, the Legislature had the necessary data to make an informed decision on the amount of expenses reasonably attributable to highway matters. The court concluded that the appropriations did not violate the constitutional provisions.

Cory v. King, 227 Minn. 551, 35 N.W.2d 807 (Minn. 1949)

Syllabus by the court:

1. In view of trial court's unchallenged finding that the sum of $214,330.46 transferred by virtue of L.1947, c. 634, s 58, subd. 1, to the general revenue fund from the trunk highway and road and bridge funds, to reimburse the general revenue fund for money expended by the Department of Taxation in collecting taxes on gasoline and gasoline substitutes, did not exceed actual expenditures for such purpose by such department, Held that L.1947, c. 634, s 58, subd. 1, did not violate Minn. Const. art. 16, ss 1 and 2, restricting use of funds derived from such taxes to the construction, maintenance, and improvement of the public highways of the state.

2. Legislature may provide for transfer of funds from the trunk highway or road and bridge fund to the general revenue fund to cover expenses incurred or special services rendered such highway funds by other state departments, provided the amount transferred accurately reflects expenditures by such department for such expenditures and services.

3. Services rendered by the gasoline tax division in the collection of taxes on gasoline and gasoline substitutes constitute special services rendered solely on behalf of constitutional highway funds.

Summary:

For a third time, the Minnesota Supreme Court considered the use of trunk highway funds for government expenses. This time, the challenge was about using trunk highway funds to pay the administrative costs of collecting the gas tax. A state statute was challenged under declaratory judgement act. The law transferred money from the trunk highway fund and the state road and bridge fund to the general fund to reimburse the general fund for the cost of collecting the gas tax. The court held that the law did not violate the constitution.

Plaintiff challenged the statute as violating the state constitution which created the trunk highway system, particularly the section that established the trunk highway sinking fund (which is made up of taxes on motor vehicles). The fund is to be used for paying principal and interest on bonds and the excess was to be transferred to the trunk highway fund. The trunk highway fund is to be used solely for the purposes in section 1 (which provides for the construction, improvement, and maintenance of public highways in the state).

Gas taxes were collected by the petroleum division of the state Department of Taxation. The money was collected and paid into the general fund. Until the law in question was passed, the expenses for the entire department were then appropriated from the general fund. The law in question transfers money from the trunk highway fund and the road and bridge fund to the general fund an amount sufficient to reimburse the general fund for the expenses incurred by the petroleum division in collecting gas taxes. Plaintiff argued that this is an unconstitutional use of trunk highway funds.

The court first finds that the statutorily required transfer from the trunk highway fund and the road and bridge funds to the general fund to reimburse the expense of tax collections did not exceed the amount actually expended. Therefore, the statute does not violate the constitutional provisions. Citing previous cases, the court stated again that "under proper conditions the Legislature may provide for a transfer of funds from the trunk highway or road and bridge fund to the general revenue fund for expenses incurred or for special services rendered such highway funds by other state departments, provided the charge therefor accurately reflects expenditures for such expenses and services." *Cory v. King*, 227 Minn. 551, 555, 35 N.W.2d 807, 809 (Minn. 1949). The court also reiterated the test established in the previous *Cory v. King* case that the "true test" for whether highway funds may be used to pay other departments rendering services related to the trunk highway fund "is whether the charge upon the highway fund accurately reflects highway expenses, as borne by the offices and departments." *Id*.

The court noted that the primary function of the gas tax division is to impose, collect, and enforce the gas tax laws. This is the same as the secretary of state collecting motor vehicle taxes that was found to be constitutional in *State ex rel. Holm v. King*, 184 Minn. 250, 238 N.W. 334 (Minn. 1931). Further, the services of the division are "special services rendered solely on behalf of the constitutional highway funds." *Cory* at 556, 810. Even though a portion of the amount transferred is to reimburse expenses of the division in making tax refunds on nontaxable gas, this doesn't change the fact that even these services are a necessary part of collecting gas taxes for highway purposes. Finally, the fact that the proceeds from the division

were sufficient to defray all expenses of the department does not change the analysis. The court held that the law did not violate the constitution.

Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 91 N.W.2d 642 (Minn. 1958)

Syllabus by the court:

1. In the absence of qualifying or restrictive language, the provisions of Minn. Const. art. 16, ss 2 and 6, are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today.

2. Since 1895 Minnesota has been definitely committed to the view that the use of rights-of-way by utilities for locating their facilities is one of the proper and primary purposes for which highways are designed even though their principal use is for travel and the transportation of persons and property.

3. In view of the fact that the transmission of utility services is one of the general and primary purposes for which highways are designed, it would be unrealistic to construe the broad language of Minn. Const. art. 16, ss 2 and 6, so narrowly as to prohibit the Legislature from authorizing the use for highway funds for the nonbetterment location of utility services as a proper cost of highway construction, reconstruction, improvement, and maintenance.

4. An act of the Legislature is presumed to be constitutional and it will not be declared unconstitutional unless its invalidity appears clearly or unless there is a showing that beyond a reasonable doubt it violates some constitutional provision.

5. What is a public purpose that will justify the expenditure of public money is not capable of a precise definition, but the courts generally construe it to mean such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.

6. The mere fact that some private interest may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public.

7. Where it becomes reasonably necessary to relocate utility facilities upon a highway in order to improve the highway for public travel (and especially so, as to a highway designed to facilitate interstate travel and commerce and to further the common defense) and expenditure of funds to effect such relocation is properly a governmental function exercised for a public purpose of primary benefit to the entire community.

8. Although gratuities and benevolences of public moneys in aid of private undertakings are prohibited, Minn. Const. art. 9, ss 1 and 10, does not prohibit the Legislature from, by prospective action (that is by an enactment prior to the ordering of a relocation of utility facilities or prior to the commencement of a great public work requiring such relocation), fixing the conditions of performance and making provisions for the future recognition of claims for

damages founded on equity and justice, although such claims would otherwise be damnum absque injuria and unenforceable against the state.

9. Minn. Const. art. 9, s 5, expressly excepts highway construction work under art. 16 from the provision prohibiting the state from contracting debts for, or engaging in, works of internal improvement.

10. The Reimbursement Act (Ex.Sess.L.1957, c. 4) is not special legislation in contravention of Minn. Const. art. 4, s 33.

Summary:

The Minnesota Supreme Court considered the use of trunk highway funds for utility relocation costs. Plaintiff petitions the court asking for a declaration that a state law (referred to as the Reimbursement Act) is constitutional and that the state use trunk highway funds to pay the costs of relocating plaintiff's utility facilities. The court considered five questions, of which the first two related to the use of the highway funds. This memo only addresses those two questions. The ultimate holding is that the Reimbursement Act does not violate the constitution and trunk highway funds may be used for this purpose. For these two questions, the court held that the use of the highway funds for the nonbetterment relocation costs is appropriate and that relocation costs are a valid expenditure for a public purpose.

The case arises out of the state's participation in the federal road building program authorized by the Federal-Aid Highway Act. The Federal-Aid Highway Act was enacted in Congress in 1956 and created the interstate system to be constructed by the states but paid for by federal funds at a minimum of 90% of the total construction cost. As part of the federal law, a utility which must relocate its facilities due to the road project must be paid for the nonbetterment costs of relocation out of federal funds. The state must make the initial payment to the utility and then is reimbursed by the federal government.

In 1957, Minnesota passed the Reimbursement Act that allowed it to qualify for federal reimbursement under the Federal-Aid Highway Act. The law allowed for the payments to utility companies to be made from the trunk highway fund. The amount to be paid must not exceed the amount on which the federal government bases its reimbursement. The Legislature also appropriated money from the trunk highway fund to pay for the provisions of the Act.

In 1957, the defendant (state commissioner of highways) notified plaintiff that a Federal-aid highway construction project would require relocation of Plaintiff's gas main on a trunk highway. Plaintiff and defendant entered into an agreement where the Plaintiff agreed to relocate its gas mains; the state agreed to determine the allowed nonbetterment cost and to reimburse plaintiff in that amount. The agreement was approved by the US Public Roads Administration with one condition: the state must certify that the payment does not violate state law or a legal contract with the Gas Company. Further, this determination must be supported by an AG opinion or court decision.

Plaintiff relocated its facilities and in early 1958 provided an itemized statement of nonbetterment costs for relocating its facilities. Plaintiff requested the defendant determine

the cost of relocation and provide reimbursement. The defendant refused. The district court granted summary judgment in the Plaintiff's favor and determined that the Reimbursement Act is constitutional.

The court first examined whether the reimbursement act violated article 16, sections 2 and 6, of the state constitution. Article 16, section 6, creates the trunk highway fund, which must be used solely for the purposes specified in section 2. Section 2 creates the trunk highway system. These two sections, taken together, "constitute the sole constitutional limitation on the use of trunk highway funds." *Minneapolis Gas Co. v. Zimmerman*, 253 Minn. 164, 171, 91 N.W.2d 642, 648 (Minn. 1958). The court goes on to say that the question is whether the nonbetterment costs of relocating the utilities is a highway purpose. The court notes that it is "immaterial" whether such a payment has been made before.

The court goes on to say that "highway purposes" is a broad concept:

> Significantly, art. 16, ss 2 and 6, are of broad import and do not of themselves define the functional use of a public highway or what constitutes proper construction, reconstruction, improvement, and highway maintenance costs. In the absence of qualifying or restrictive language, these constitutional provisions are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today. The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface.
>
> *Id*.

The court discusses *Cater v. Northwestern Tel. Exch. Co.*, 60 Minn. 539, 543, 63 N.W. 111, which dealt with expanding uses of highway rights-of-ways for telecom purposes, and more generally about expanding uses of highways. After extensively quoting from *Cater*, the court writes:

> Clearly since the Cater decision in 1895, Minnesota has been definitely committed to the view that the use of rights-of-way by utilities for locating their facilities is one of the proper and primary purposes for which highways are designed even though their principal use if for travel and the transportation of persons and property. Furthermore, the import of that decision is a clear recognition that the use of highway rights-of-way for the transmission of public intelligence and public utility services confers important and direct benefits upon the public and that such use is not solely for the benefit and convenience of the utilities. The soundness of the view that the placing of utility facilities upon a right-of-way is one of the proper uses of a highway benefiting the public is emphasized by the fact that convenience and economy result therefrom to utility users, who are usually located near highways, and by the further fact that, it is in the interest of the public welfare—in the view of our ever-in-creasing population—to make full and efficient use of the land surface occupied by public roads."
>
> *Minneapolis Gas Co.* at 172–73, 642.

The court then goes on to talk about utilities services as a highway purpose:

> In view of the fact that the transmission of utility services is one of the general and primary purposes for which highways are designed, it would be unrealistic to construe the broad language of Minn. Const. art. 16, ss 2 and 6, so narrowly as to prohibit the Legislature from authorizing the use of highway funds for the nonbetterment location of utility services as a proper cost of highway construction, reconstruction, improvement, and maintenance. It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists. If we were to conclude otherwise we would not only disregard the broad language of the constitution but also the principle that, since an act is presumed to be constitutional, it will no be declared unconstitutional unless its invalidity appears clearly or unless it is shown beyond a reasonable doubt that it violates some constitutional provision. The power of the court to declare a law unconstitutional is to be exercised only when absolutely necessary in the particular case and then with great caution.
>
> *Id*. at 173, 649–50.

The court notes that it is not a new concept to recognize that public service installations are integral to highways. On past occasions, the state has reimbursed municipalities from the highway fund for utility relocation costs. The state has used the highway fund to pay the cost of relocating railroad crossings when the relocation did not benefit the railroad. The court notes that these reimbursements do not mean they were valid uses under the constitution, but the court considered them persuasive on the argument "that nonbetterment relocation costs are a normal and necessary part of highway construction and reconstruction costs." *Id*. at 174, 650.

On this issue, the court concludes that article 16 must "be given a broad, and not a strict, construction which justifies the payment of such costs out of the highway fund is justified by a number of prior decisions in which we have approved the payment of expenses which were reasonably related to the construction and maintenance of highways." *Id*. The court cites several previous decisions to support this point. The court holds that the use of the highway funds for the nonbetterment relocation costs is appropriate.

The court then considers whether the relocation costs are a valid expenditure for a public purpose. The analysis starts with two different constitutional provisions. Article 9, sections 1 and 10, provide that public funds may be spent only for public purposes and the credit of the state must not be given to aid an individual, association, or corporation. There isn't a precise definition of what constitutes a "public purpose" but "the courts generally construe it to mean such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government. The mere fact that some private interest may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public." *Id*. at 176, 651 (internal quotes omitted).

With that in mind, the court turned to whether the authorized payment out of the trunk highway fund to reimburse a utility company for the nonbetterment costs of relocating its facilities on a federal highway constitutes a public purpose. As discussed in the first question, the court points out that right-of-way use by utilities is one of the primary purposes for which highways are designed. Therefore, when it is reasonably necessary to relocate utilities in order to improve highways, spending funds for the relocation is "properly a governmental function

exercised for a public purpose of primary benefit to the entire community." *Id*. at 177, 652. Further, the court stated that Minnesota residents would suffer economically if the state didn't take advantage of the Federal program. The court noted the importance that this was about nonbetterment costs so that the plaintiff would be in the same position – not payment for a gain in situation. The court holds that relocation costs are a valid expenditure for a public purpose.

Constitutional Law Professors' Remarks

The Task Force requested presentations on the Minnesota Constitution from two prominent constitutional law scholars: Professor David Schultz (Hamline University) and Professor Emeritus Fred Morrison (University of Minnesota).

Professor Morrison discussed the contentious history of how the Minnesota Constitution was adopted. He also described the original ban on "internal improvements" and how the constitution was amended over time to authorize a wide variety of internal improvements.

Professor Schultz described how the Minnesota Supreme Court deals with constitutional challenges to legislative and executive branch actions. He pointed out that a primary purpose of the court in reviewing a statute is to determine the legislative intent, noting that when statements of legislative intent are present in the statutory language, that greatly assists the court in adjudicating cases. While many other states such as Maryland, Washington and Wisconsin have chosen to allow the legislature to make decisions on the constitutionality and legitimacy of individual spending items, the Minnesota legislature has not, at least in recent years, until the 2021 session, given the court direction via statutory changes or through legislative intent.

Section Five: Core Question: Definition of 'Highway Purpose'

In its December 21, 2021, meeting, Task Force members participated in an informal online polling exercise intended to elicit their views on the following fundamental issues. Eleven members who were present at the meeting participated in the exercise. These questions, and a summary of the task force responses (offered anonymously) are recorded below to convey the range of views held by Task Force members.

Question #1: Should a more specific, detailed definition of highway purpose be included in the statutory language?

Yes 6; No 5

The vote was split on this fundamental question before the Task Force. In the discussion following the vote, some voiced caution at any attempt to identify a strict definition of a highway purpose because times change. Some supported the idea that to the extent possible, identifying activities that do or do not serve a highway purpose should continue to be included in statute.

Question #2: Should the legislature be more actively involved in the final determination of whether or not an activity or expense meets the definition of a highway purpose?

Yes 7; No 4

Most of the members strongly feel that as the elected body, the legislature, and not the state agency, is rightfully empowered to make the determination as to whether an activity is a highway purpose or not. Some pointed to existing reports and legislative oversight as 'active involvement'.

Question #3: Rank in priority order, at what point in the process should the legislature get involved?

This is a follow up to the preceding question: On the subject of legislative oversight, members were asked to rank several options in order of preference. The responses indicated a preference for the option "during the agency's budget proposal to committee' as the clear top choice. The 2nd, 3rd, and 4th choices were close and more distantly ranked.

Results:

- 1st: during the agency's budget proposal to committee
- 2nd: only during the omnibus budget bill debate
- 3rd: during consultation with a bipartisan committee
- 4th: prior to the agency finalizing its budget

Question #4: Should any definition of a highway purpose specifically identify items that either are or are not classified as a highway purpose?

Yes 5; No 6

This question addresses whether – and how – to classify specific additional 'grey area' activities in statute as either meeting a trunk highway purpose or not. In the discussion following the vote members identified a variety of 'grey area' activities, which should be resolved by legislative oversight.

Side-by-Side: Proposed Concepts

Recognizing that a decision concerning the definition of 'highway purpose' was paramount to the Task Force's mission, Co-Chairs Rep. Petersburg and Sen. Dibble agreed that a subcommittee of Task Force members should be established specifically to set about determining whether a consensus could be reached on its definition. That subcommittee met three times, first on January 18, 2022. The following members served: the two Co-Chairs, Sen. Newman, Rep. Hornstein, Commissioner Anderson Kelliher and DPS representative Shawn Kremer.

The subcommittee was unable to agree upon any single definition of 'highway purpose', and instead, came back with a proposal for consideration by the full Task Force that included three 'concepts' / variations to the definition. It was agreed by the subcommittee members that since

any statutory change would require legislative action, a recommendation of potential options for consideration by the 2022 Legislature could suffice.

House Research and Senate Counsel analysts Matt Burress and Alexis Stangl drafted the concepts into bill language and then created a side-by-side summary of the three concepts. While each was the product of input from multiple members, the three concepts are known as SC8877-2 (Newman); SC8937 (Agencies); and SC8944 (Elkins). These concepts can provide a baseline to advise future efforts to define the term in law.

***Note**: the side-by-side summary is available in Appendix O: Highway Purpose Bill Draft Comparison.*

Section Six: TH Spending: Areas of Interest

One of the main requirements of the Task Force was to develop findings regarding the permissibility of trunk highway fund and highway user tax distribution fund expenditures, which must include specific review of each of the following uses or activities:

(i) the creation, construction, expansion, or maintenance of bikeways;

(ii) expenditures for cybersecurity;

(iii) use of trunk highway funds by the Department of Transportation for: administrative costs of the targeted group business program; making grants to metropolitan planning organizations outside of the metropolitan area; and making grants to regional development commissions, joint powers boards, or to department district offices to identify critical concerns, problems, and issues;

(iv) administration and related services for the Department of Public Safety, the commissioner's office, fiscal services, human resources, communications, and technology services; and

(v) the following entities within the Department of Transportation: site development unit; labor compliance efforts in the Office of Construction and Innovative Contracting; Modal Planning and Program Management Division; Statewide Radio Communications within the department's State Aid Division; Workforce and Agency Services Division; Office of Financial Management; human resources; commissioner's staff offices; Office of Audit; Office of Chief Counsel; Office of Civil Rights; communications and public engagement; Office of Equity and Diversity; Government Affairs Office; and Office of Freight and Commercial Vehicle Operations

Unfortunately, the Task Force was unable to adequately complete this task due to the Task Force deadline stated in the enabling legislation.

MnDOT / DPS Offices & Activities

The original draft of the task force report regarding MNDOT and DPS Offices and Activities purports to state a Task Force agreement that certain entities and items of spending are permissible to the extent it is attributable to a highway purpose. The Task Force should be very

cautious in making such a blanket statement because of lack of details regarding such an agreement. For example, the Task Force did discuss whether bikes are permissible within a highway right of way. It is an entirely different issue as to whether creation of bike lanes exclusive to the use of bikes within that right of way should be paid for out of the THF. The same lack of details are evident in all of the other categories which would be necessary to support the idea an agreement has been reached.

Because the Task Force has been unable to reach an agreement on the definition of a highway purpose, all spending must be reviewed by the legislature on a case-by-case basis rather than stating the Task Force has agreed that certain departments, categories, or items are permissible. Further, if the Task Force were recommending the "directly related" test to determine permissibility of spending from HUTDF and the THF, the picture of permissible spending would be much clearer in following the dictates of the constitutional mandate of paying for the construction, maintenance, and improvement of Minnesota's highways. Agencies should be required to come to the legislature with convincing information that the proposed spending fulfills the Article 14 mandate. It doesn't matter if the proposal is for administrative costs, cybersecurity, personnel or from the office of Construction and Innovative Contracting, Human Resources, Project Management & Support, Civil Rights, or any other category. The question is whether the proposed spending serves to construct, maintain, or improve the public highways of this state.

Department of Natural Resources

An issue discussed early in the deliberations of the Task Force (November 23, 2021) concerned spending from the Trunk Highway fund for reimbursements to the Minnesota Department of Natural Resources (DNR) to account for fuel tax revenues attributable to non-highway use purposes.

State law (Minn. Stat. § 296A.18) sets various percentages by which the TH fund must reimburse various non-transportation accounts (largely administered by the Department of Natural Resources) for fuel tax revenues generated from users of Minnesota's trails and waterways. The total annual transfers generally amount to roughly 2.5% of gas tax revenue, or about $23.1 million in fiscal year 2020. A detailed accounting of each revenue sources disposition is available in the highway funds distribution outlined in each of the MnDOT Commissioner's Orders.

Transfers OUT

Distributions (Transfers Out)	2018	2019
Motorboats[14]	11,062	11,181
Snowmobile Trails and Enforcement[19]	7,375	7,454
All-Terrain Vehicles[19]	1,991	2,013
Forest Roads[19]	1,051	1,061
Off-Highway Motorcycles[19]	339	343
Off-Road Vehicles[19]	1,209	1,222
TOTAL DISTRIBUTIONS	**23,028**	**23,274**

*all amounts in thousands

Over the years, the legislature has required various studies that are intended to estimate motor fuel use for non-highway purposes. These studies are not conducted with regularity, and in fact, even the most recent study of an 'off-highway vehicle' is an all-terrain vehicle study conducted in 2006. These studies appear to have been a factor in occasional legislative adjustments to the reimbursement percentages. The following list shows the year of the most recent study on record for the various off-highway vehicles:

- 1983 motorboat and snowmobile study
- 1994 motorcycle and off-road vehicle study
- 2002 forest roads review
- 2006 ATV study

The above studies listed should be reviewed to ensure correct and current reimbursements.

Minnesota Management and Budget / Department of Revenue

The Task Force was unable to adequately examine these agencies due to the time constraints cited in the enabling legislation. Consequently, no information, conclusions or recommendations are contained in this report concerning MMB or Department of Revenue.

Section Seven: Legislative Oversight

At the February 2, 2022, meeting of the full Task Force the discussion focused on ideas for a process that would provide greater 'legislative oversight' of TH funded offices or activities. Co-Chair Dibble set the stage remarking that under the existing system of governance, 'the executive branch proposes and the legislature disposes', adding that the legislature has the power of the purse. In that capacity, the legislature's role is to decide whether proposed spending is constitutionally permissible and if so, appropriate the funds. The agency, and by extension, the executive branch, meanwhile, has full authority over the development of its own budget request/submittal to the Legislature.

In sum, the Task Force discussed and offered proposals for three elements of a more rigorous legislative oversight process:

1) Rep. Hornstein's and others' suggestion on conducting a bipartisan and/or bicameral committee hearing assembled specifically to review requested TH spending;
2) Commissioner Anderson Kelliher's suggestion that the existing Attorney General / MMB report called Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget (described in Section 3), be used as the primary evaluative tool; and
3) Sen. Newman and others' suggestion that the legislature be given more detailed information on the proposed spending rather than broad categories and that the legislative review takes place prior to the funding being authorized and codified in law.

A more vigorous legislative oversight process lies at the heart of the Task Force's purpose. The 3 proposals listed above were discussed in detail by the Task Force. The following paragraphs are included to provide a record of the Task Force's discussion.

1) TH Fund Spending 'Focused' Legislative Committee Hearings

Importantly, the Task Force members agreed that a better understanding of the 'highway purpose' behind any proposed spending plan is essential to evaluating funding options. Currently, the legislature reviews agency budget requests in Committee, but there is no requirement for a review specifically addressing the highway purpose of TH funding proposals. Rep. Hornstein supported the idea of a committee hearing or other non-binding informational hearing to review those costs, as it supports openness and transparency in government.

Beyond simply holding a hearing, the question of how to identify those offices and general costs that should be more closely evaluated came up. The Task Force members had varying views on the required level of 'granularity' in identifying costs that would be required to provide adequate legislative oversight. Some suggested that the broad line items that are currently used in budgeting discussions are used and the larger issues would find its way to the committee's attention while the smaller issues continue to be decided by the agencies. Others suggested that a deeper dive might sometimes be required, focusing on the term 'directly related to a highway purpose' as in costs 'indirect, but necessary' to serve a highway purpose. In the end, the decision on what offices or activities to examine in the hearings will likely be the prerogative of the committees themselves.

2) 'Tools' to be Used

Commissioner Anderson Kelliher opined that the existing Attorney General/MMB report on dedicated fund expenditures published every other year, most recently: Report on Certain Expenditures from the Trunk Highway Fund in the FY22-FY23 Biennial Budget is already a regular report and is a useful tool. To note this report does not cover a legal analysis of the majority of the spending items in the THF. In addition, while some items like the BCA lab are considered explicitly unconstitutional, the state continues spending THFs on that item. Note however, Senator Newman's list of deficiencies in these reports listed in Section 3 hereof.

While this report fails to give recommendations or make changes, it is the legislature that is designed to make the final decision on what funding items are considered a highway purpose.

Section 3 of this report also identifies a number of other reports and their deficiencies in providing proactive legislative oversight on proposed agency spending, including MnDOT's and DPS' Dedicated Fund Expenditures Report that could provide additional information on certain Trunk Highway fund spending.

3) Process/Timing of the Hearing

Task Force members agreed that 'legislative oversight' must mean 'proactive' involvement by the legislature, that is, the legislature should weigh in on its view of the request's compliance with the 'highway purpose' standard before, and not after, the money has been spent. The idea

is that those hearings could be designed more specifically to address those gray area budget items. Rep. Elkins reminded the group that the budget discussions/hearings should take place early enough in the legislative session prior to committee targets are set.

Section Eight: Task Force Recommendations

While many recommendations were conceived through the task force process there was no agreement on how to move forward with any one unified recommendation.

Recommendations:

1) The legislature should consider adding a "highway purpose" definition in statute.
2) The legislature should consider implementing some or all of the 'legislative oversight' process laid out in Section 7.
3) Revise the Dedicated Expenditure Report per deficiencies in prior section hereof.
4) Require the AG report to provide a better explanation of the purpose of the report per the deficiencies in prior section.
5) Use the "directly related" test to reduce the number of expenditures that need closer scrutiny by the legislature as discussed in section 7.
6) Provide a definition of "directly related" to aid in applying the test described at #5 hereof.
7) Given the difficulty and complexity of the issues facing this task force, a permanent task force be established with legislative members to provide guidance to future legislators.
8) Many of the items of disagreement that have been discussed could be addressed by MnDOT having an operating budget funded by the General Fund. The issue of whether an expenditure is worthy of being funded is not the crux of the issue at hand. As technology changes and new issues arise MnDOT is left with little choice but to use the HUTDF as a source of funds. This creates a problem because it may lead the agency to make tenuous connections to a highway purpose to justify future necessary expenditures. An ongoing General Fund appropriation would allow important items to continue to be funded while at the same time maximizing the amount of money in the HUTDF to meet the ever-increasing needs of our transportation infrastructure. We propose that the Minnesota Legislature strongly consider creating a base General Fund appropriation to support MnDOT agency operations.
9) In the event of a Supreme Court review, early legislative involvement in deciding what is a permissible spending item for 'highway purposes' will provide the Court with guidance on a case-by-case basis pertaining to the constitutional question of: what is permitted for the construction, maintenance, and improvement of public roads.

Appendix S: Letter Submitted by Rep. Hornstein, Sen. Johnson Stewart, Rep. Elkins, and Sen. Dibble

This appendix presents a letter jointly provided by Rep. Frank Hornstein, Sen. Ann Johnson Stewart, Rep. Steve Elkins, and Sen. D. Scott Dibble for inclusion in the Task Force report. (There are some stylistic differences.)

March 1, 2022

Members of the Minnesota Dedicated Funds Task Force
Minnesota State Capitol
St. Paul, MN 55155

Dear Member of the Task Force,

We are writing to provide our perspective on matters discussed by the Dedicated Funds Task Force.

We place a high premium on ensuring the integrity of Minnesota's constitutional requirements concerning the expenditure of funds dedicated to highway purposes. When assessing these requirements, it is vital that we respect the principles of the separation of powers and exercise the differentiated duties and responsibilities of each of the branches of government, as our democratic and representative system is designed.

For the purposes of this discussion and this document, to guide those tasked with making determinations about use of restricted funds, it is useful to indicate what a highway is and what highway purposes are.

A highway is publicly owned corridor, a road, used by people for mobility they need to access destinations. Put more simply, this is where most surface, land-based transportation occurs in the public realm.

The most direct example of a highway purpose is the building and maintaining of a roadway itself. Included are those activities that keep it in a state of functionality, such as snow plowing and traffic enforcement, and those things that allow the roadway to function optimally, such as signage and lighting. Also obvious are those support activities without which a road could not be built or operated, such as analysis, planning, design, legal work, contracting and providing administrative support for those functions. A but-for test is useful: “But for this activity or program, would roads and highways be able to be built and used optimally by members of the public in need of the transportation they facilitate?”

Other funds, such as the general fund, may be determined proper to be used for highway purposes by the legislature in its capacity to appropriate public resources and determine public policies and the law.

It is important to keep in mind that transportation technology and modes are evolving rapidly. The needs and expectation of the public is always changing. For example, what is thought of as a highway purpose needs to accommodate connected and automated vehicles, innovations in maintenance equipment and infrastructure, electric and alternative fuel vehicles and their infrastructure, active transportation such as biking and walking, and transit. There is no constitutional language that would suggest that highways are intended for one particular mode of travel. Likewise, there are no restrictions on who can use a highway or how anyone can use a highway based on the source of the revenue. The words from the courts in a case examining the question before this task force are valuable guidance (Minneapolis Gas Co. v. Zimmerman): "I*n the absence of qualifying or restrictive language, these constitutional provisions are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today. The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface*."

To the question of whether and how the legislature should ensure the state executive branch agencies are spending dedicated funds appropriately, in large part those measures are already in place. The agencies undergo a rigorous analysis conducted by Minnesota Management and Budget Agency with the Attorney General in the process of developing their budget proposal, the *Report on Certain Expenditures from the Trunk Highway Fund*, which is conveyed to the legislature.

After funds are expended, a report is prepared by the agencies showing how dedicated funds have been spent, the Dedicated Funds Expenditure Report, which is conveyed to the legislature. The budget submittal from the executive branch itself is very detailed. The process of considering and adopting an agency's budget can be as detailed and specific as the legislature would like. This is akin to how most other agencies account to the legislature for the taxes allocated and appropriated for their responsibilities and goes even farther than a number of agencies. Should the legislature have reason to believe that dedicated funds are being misused, it is able to call upon the Legislative Auditor for an examination.

Another suggestion for the legislature in fulling its duties to set policy, appropriate public resources and exercise oversight, would be to convene a bicameral committee with to review the Departments of Transportation and Public Safety's budgets and expenditures during the interim. The practical realities of time, capacity and resources in deliberating, deciding and delivering essential public goods and services needs to be kept in mind.

The legislature has identified a number of activities and programs that it and deemed do not fulfill a highway purpose and passed a law barring the Highway User Tax Distribution Fund and the Trunk Highway Fund from being used to pay for them. After months of effort to develop language that would be prescriptive as to what the definition of a highway purpose is, and

efforts to enumerate a number of activities that would be permitted, this proscriptive approach has emerged as the best way to create statutory guidance to the executive branch agencies.

Thank you for your time and consideration.

Very truly yours,

Representative Frank Hornstein
Senator Ann Johnson Stewart
Representative Steve Elkins
Senator D. Scott Dibble

Appendix T: Letter Submitted By MnDOT and DPS

This appendix presents a letter jointly provided by MnDOT and DPS for inclusion in the Task Force report. (There are some stylistic differences.)

February 28, 2022

The Honorable Scott Dibble
Co-Chair
Dedicated Funds Expenditures Task Force
2213 Minnesota Senate Building
Saint Paul, MN 55155

The Honorable John Petersburg
Co-Chair
Dedicated Funds Expenditures Task Force
217 State Office Building
Saint Paul, MN 55155

Dear Co-Chairs Petersburg and Dibble:

As part of its constitutional duty to faithfully execute the laws, the executive branch takes great care to ensure that it implements laws and spends appropriated funds in a manner that does not violate the state constitution. The Minnesota Department of Transportation (MnDOT) and Department of Public Safety (DPS) believe that their trunk highway fund expenditures are in accordance with the Minnesota Constitution, court cases interpreting the Constitution, and other duly enacted laws. Although the relevant trunk highway case law is relatively sparse, the general context is clear. Case law construes the constitution's "broad language" as providing considerable discretion when determining whether an expenditure can be made from the trunk highway fund. In *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642 (1958), the Minnesota Supreme Court provided that:

> *In the absence of qualifying or restrictive language, these constitutional provisions are not to be construed as expressing an intent to limit the expenditure of funds thereunder to only one, or less than all, of the purposes for which highways exist in our society of today. The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface. …The public easement in a highway is not limited to travel or transportation of persons or property in movable vehicles. …**It would be unreasonable to hold that the proceeds of the highway fund may not be expended for whatever is reasonably necessary to the complete accomplishment of all the basic purposes for which a highway exists.*** **[emphasis added]**

Much of the task force discussion centered on whether various uses of trunk highway funds are permissible or constitutional. The legislature may, of course, make policy decisions about how to fund certain expenditures, and it may pass laws stating that certain expenditures should not be funded with trunk highway proceeds. This is not, however, a legal determination that such spending is "unconstitutional," even though it may reflect the legislature's view on that topic. Ultimately, only a court may decide whether certain uses of the fund are unconstitutional.

MnDOT follows all current laws, which are presumed constitutional, and implement statutes which direct the commissioner to take certain actions under the presumption that those actions serve a trunk highway purpose, unless the agencies have reason to believe otherwise. MnDOT analyzes expenditures to determine whether they serve a trunk highway purpose.

Although trunk highway funds represent less than 20 percent of DPS' total budget, DPS follows all current laws, which are presumed to be constitutional. In addition, MnDOT and DPS follow all restrictions passed by the legislature on spending trunk highway funds, even though the restrictions may represent a constitutional use of trunk highway funds. The legislature may continue to pass additional laws on this subject, and the agencies will follow those as well.

The task force discussed at length, and in the end came to an impasse, on how to define what constitutes a "trunk highway purpose." MnDOT and DPS proposed that activities that are "directly related to, or necessary for the administration and support of" constructing, improving, or maintaining the trunk highway system constitute a trunk highway purpose. This proposal is based on current and past operating practice. However, there was disagreement over activities that are "necessary for the administration and support of" the trunk highway system and whether these activities are permissible uses of trunk highway funding. One of the significant concerns that MnDOT and DPS had during these discussions was the granularity of some of the discussions, like whether state-required training constitute a highway purpose for a state employee that is otherwise 100 percent dedicated to a highway purpose.

MnDOT and DPS believe that constructing, improving, and maintaining a transportation system for Minnesota citizens includes expenditures beyond simply laying pavement or building bridges. Our agencies must operate a cohesive and complete highway agency, which includes several other costs related to environmental reviews, contracting, human resources, payroll and accounting services, cyber security, legal services, and other administrative costs that ensure day-to-day agency operations are unimpeded and projects are delivered. We believe this is directly in line with Supreme Court precedent. In addition, MnDOT must perform a number of other functions, such as having a Civil Rights Program and complying with the Americans with Disabilities Act, so that Minnesota can receive federal funding for highway projects.

As part of the discussion to define highway purposes, the task force broadly agreed that public safety is an important part of improving highways. DPS supports this highway purpose through the Minnesota State Patrol and Office of Traffic Safety, but this work cannot be done without agency leadership or the necessary administrative and legal costs incurred for supporting these divisions.

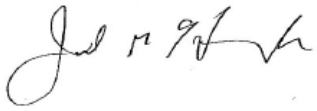
Finally, state agency budget uses are reviewed and approved by the legislature after significant review. There are numerous existing reports detailing Highway User Tax Distribution and Trunk Highway Fund spending. Actual spending (looking backwards) is detailed in the Dedicated Funds Expenditure Report (as required by Minn. Stat. § 161.089). This report includes spending by office and account category for both MnDOT and DPS, as well as explanations of the various activities and responsibilities of each office. The first report was submitted in 2016, and the most recent report was submitted in 2021.

Cumulatively, these reports have detailed spending for state fiscal years 2010-20 (11 years), and these reports are required going forward every other year. Proposed new spending (budget requests) in the Trunk Highway Fund is required to be reviewed for highway purpose jointly by Minnesota Management and Budget and the Attorney General's Office (see MN Laws of 2000, Chapter 479). A report has been prepared every biennium since 2001. As part of this review, this report has identified one expenditure item that may not be sufficiently for a highway purpose: Bureau of Criminal Apprehension (BCA) laboratory costs. This item has been flagged in most, if not all, of the joint reports, but DPS has continued to receive an appropriation from the legislature for the BCA that "notwithstands" the current statutory prohibition on using trunk highway funds for that purpose. DPS has agreed with the task force that this appropriation should be shifted to the general fund but this change requires legislative action. There is also a significant amount of detail on each proposed budget request included the Governor's budget recommendations published on Minnesota Management and Budget's website.

Because of the extensive nature of this review, as well as internal controls at our agencies, MnDOT can confidently state that its Trunk Highway Fund expenditures comply with applicable laws and the Minnesota Constitution. Similarly, DPS complies with all applicable laws, the Constitution, and legislative intent – its budget is primarily set by the legislature and there is not always the same degree of discretion as that of other agencies. If the legislature desires additional hearings or reports to learn more about certain expenditures and to confirm that they agree with the policy decision on funding source, we will participate and provide any required information.

With that being said, the task force has also discussed the level of review that is appropriate for individual expenditures. While MnDOT and DPS welcome legislative review, we believe that an on-going, granular review of individual expenditures would be detrimental to the nimble operations of two large agencies and would also create an inconsistency with how other state agency budgets are reviewed. Further, our view is that the legislature can pass a budget with any level of specificity desired, but once the funds are appropriated the agency has a level of discretion within that budget to implement the vision of the legislature. As stated above, the executive branch is charged with faithfully executing the laws, and MnDOT and DPS take that duty very seriously.

Sincerely,



Margaret Anderson Kelliher
Commissioner
Minnesota Department of Transportation

John Harrington
Commissioner
Minnesota Department of Public Safety