

**HF2014 - 0 - "Appeal Process;Driveway Permit Denial"**

Chief Author: **John Petersburg**  
 Committee: **Transportation Policy and Finance**  
 Date Completed: **03/22/2016**  
 Agency: **Transportation Dept**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              | X   |    |
| Fee/Departmental Earnings |     | X  |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

| State Cost (Savings)  | Biennium             |        |            | Biennium   |            |            |
|-----------------------|----------------------|--------|------------|------------|------------|------------|
|                       | Dollars in Thousands | FY2015 | FY2016     | FY2017     | FY2018     | FY2019     |
| Trunk Highway         | -                    | -      | 163        | 163        | 163        | 163        |
| <b>Total</b>          | -                    | -      | <b>163</b> | <b>163</b> | <b>163</b> | <b>163</b> |
| <b>Biennial Total</b> |                      |        | <b>163</b> |            |            | <b>326</b> |

| Full Time Equivalent Positions (FTE) | Biennium |        |        | Biennium |        |
|--------------------------------------|----------|--------|--------|----------|--------|
|                                      | FY2015   | FY2016 | FY2017 | FY2018   | FY2019 |
| Trunk Highway                        | -        | -      | -      | -        | -      |
| <b>Total</b>                         | -        | -      | -      | -        | -      |

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

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### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |  | Biennium |        |            | Biennium   |            |
|--|--|----------|--------|------------|------------|------------|
| Dollars in Thousands                                     |  | FY2015   | FY2016 | FY2017     | FY2018     | FY2019     |
| Trunk Highway  |  | -        | -      | 163        | 163        | 163        |
| <b>Total</b>   |  | -        | -      | <b>163</b> | <b>163</b> | <b>163</b> |
| <b>Biennial Total</b>                                    |  |          |        | <b>163</b> |            | <b>326</b> |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |  |          |        |            |            |            |
| Trunk Highway  |  | -        | -      | 163        | 163        | 163        |
| <b>Total</b>   |  | -        | -      | <b>163</b> | <b>163</b> | <b>163</b> |
| <b>Biennial Total</b>                                    |  |          |        | <b>163</b> |            | <b>326</b> |
| <b>2 - Revenues, Transfers In*</b>                       |  |          |        |            |            |            |
| Trunk Highway  |  | -        | -      | -          | -          | -          |
| <b>Total</b>   |  | -        | -      | -          | -          | -          |
| <b>Biennial Total</b>                                    |  |          |        | -          |            | -          |

### Bill Description

This bill would establish a process for owners who have a driveway access permit denied or revoked, under Minnesota Statute (M.S.) 160.18 subd. 3, to appeal the decision through the Administrative Procedures Act. If the appeal cannot be resolved through conference, conciliation, or mediation, then the appeal would receive a contested case hearing. The commissioner of transportation would have the burden of proof to show, by clear and convincing evidence, that denying the access permit was required to prevent interference with the construction, maintenance, and safe use of the highway.

### Assumptions

Since 2013 there have been 979 access permits approved, while 20 applications were denied the permit.

Based on this history, it is assumed that an average of 5 access permits is denied each year, and will go through the contested case hearing process specified in this bill.

For each appeal, to comply with the burden of proof requirement, MnDOT assumes it would need to perform an Intersection Control Evaluation (ICE). This ICE would be performed by a consultant at an estimated cost of \$20,000 each. This estimate is based on 3 recent ICE performed by consultants in a specific district that cost an average of about \$22,000 each.

In addition, each contested case hearing would require staff time from MnDOT's Office of Chief Counsel and the State Attorney General office, as well as costs charged by an Administrative Law Judge. The amount of effort for a contested case hearing, and the corresponding costs, varies significantly on an individual basis. However, based on recent examples it is assumed each hearing would require an average of 15 hours of staff time from MnDOT's Office of Chief Counsel. The blended average hourly wage rate for involved staff would be \$44/hour, plus an additional 50% added for overhead costs including fringe benefits. Based on actual billings for recent hearings, State Attorney General staff time would average 20 hours at \$129/hour, and Administrative Law Judge work would average 20 hours at \$165/hour.

It is assumed that one of the contested case hearings results would be appealed to the Minnesota Court of Appeals. The work required for the appeals process would be similar to the contested case hearing costs estimated in the paragraph above for MnDOT, but would require significant additional staff time for the State Attorney General office to write the brief, respond to motions, and prepare for oral arguments. We assume this would increase the hours from 20 to 80, at the same \$129/hour.

There would also be staff time required from subject matter experts related to both helping to prepare and review the ICE, as well as preparing for and attending the hearings. These staff would mostly be located in the specific district where the permit is located as well as the Office of Traffic, Safety, and Technology. Again, these costs would vary based on the specific circumstances and location, but on average would require 50 hours at an average hourly wage rate of \$35, plus an additional 50% added for overhead costs including fringe benefits, for each permit denial.

### Expenditure and/or Revenue Formula

ICE = \$20,000

Subject matter expert staff time = \$35/hour + 50% overhead x 50 hours = \$2,625 **rounded to \$2,600**

MnDOT legal staff time = \$44/hour + 50% overhead x 15 hours = \$990

Attorney General office = \$129/hour x 20 hours = \$2,580

Administrative law judge = \$165/hour x 20 hours = \$3,300

Legal costs per permit denial = \$990 + \$2,580 + \$3,300 = \$6,870 **rounded to \$7,000**

Costs per permit denial = \$20,000 ICE + \$2,600 staff time + \$7,000 legal costs = \$29,600

Costs per appeal = \$990 (MnDOT legal staff) + \$3,300 (administrative law judge) + \$10,320 (AG staff @ 80 hours x \$129/hour) = \$14,610 rounded to \$14,600

**\$29,600 x 5 permits/year = \$148,000 per year + 1 appeal at additional \$14,600 = \$162,600**

These expenditures would occur annually in the Trunk Highway Fund beginning in fiscal year 2017

### Long-Term Fiscal Considerations

These costs would continue in future years

### Local Fiscal Impact

None

### References/Sources

MnDOT Office of Transportation System Management (OTSM)

MnDOT Office of Traffic, Safety, and Technology (OTST)

MnDOT Office of Land Management

MnDOT Office of Chief Counsel

### **Agency Contact:**

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