



395 John Ireland Blvd  
St. Paul, Minnesota 55155

May 3, 2021

Senators Newman, Jasinski, Howe, Osmek, and Bigham, and  
Representatives Hornstein, Koegel, Frederick, Elkins, and Petersburg:

On behalf of the Minnesota Department of Transportation (MnDOT), I want to thank you for the opportunity to provide some context and perspective on the respective transportation bills. We understand this session has presented several challenges and appreciate the effort it is has taken to assemble the transportation omnibus bills.

### Senate Bill

**We appreciate the Senate's bill inclusion of some items from the Governor's policy and budget proposals, including those related to drones, animal-drawn vehicles, condemnation commissioners, and two other land management provisions.**

**However, the approach the Senate takes in this bill diverts general fund resources from other priorities identified in the Governor's budget proposal.** In addition to **enacting a 3% cut to agency services and buildings**, the bill largely replaces trunk highway funds with general funds, with some notable issues or exceptions, including the elimination of passenger rail and the apparent elimination of the Offices of Environmental Stewardship and Equity and Diversity.

**Prohibiting the expenditure of highway funds for department activities would have a significant impact on our operations.** While general fund resources are provided for backfilling some of these restrictions, other areas would see cuts, including agency services and buildings. Precedence and court rulings have affirmed it is appropriate to use trunk highway funds for these purposes.

**The Office of Environmental Stewardship provides support to meet state and federal environmental laws on road construction projects. These activities would cease if funds are not available for the office, as proposed under this bill.** This would essentially halt work on many highway projects or at the very least, cause project delays, result in damage claims from contractors as a result of those delays, lead to corrective actions, and result in regulatory penalties. Examples of issues that can arise during construction include discovery of contamination, hazardous or abandoned waste, permit violations, noise issues, identification of endangered and invasive species, etc. If the bill goes into effect, there would be no way to pay for these activities, which would in essence halt trunk highway construction in Minnesota due to failure to meet federal and state environmental protection laws. Failure to meet federal legal requirements could put all federal highway funding at risk. Projects currently undergoing environmental review, or soon to be scheduled, include:

- Rethinking I-94 in **Minneapolis/St. Paul**;
- Trunk Highway 252/I-94 in **Brooklyn Center**;
- Trunk Highway 14 between **New Ulm and North Mankato**;
- Blatnik Bridge in **Duluth**;
- Osceola Bridge near **Scandia**;
- I-494 in **Bloomington**;
- Trunk Highway 13 between **Savage and Burnsville**;
- I-35W Gateway between **Minneapolis and Roseville**; and
- Moorhead Downtown Improvement Project in **Moorhead**.

**Likewise, the Office of Equity and Diversity ensures compliance and accountability with state and federal employment laws.** Failure to comply with these laws would create significant legal exposure. The office ensures compliance in these areas by conducting discrimination investigations, providing expert legal counsel to supervisors and managers, representing the agency in administrative charges of discrimination, providing language services for employees and the public, implementing affirmative action, and overseeing disability programs.

The bill **cuts funding for passenger rail and shuts down the NorthStar commuter rail line**, which would negatively impact numerous communities. These actions could also jeopardize existing and future federal funds coming to Minnesota. Additionally, the **shutdown of NorthStar would mean the bond funded project assets would be subject to all the requirements in 16A.695 related to disposition of bond financed property. That would require the easements to be sold for fair market value. Given this, 16A.695 should be cited in the bill language for proper notice of the applicable requirements.**

**There are several provisions in the bill that prohibit the use of trunk highway funds for bicycle facilities.** This would create an unnecessary obstacle to MnDOT's mission of operating a safe, accessible and reliable multimodal transportation system for all Minnesotans. As we've seen during the pandemic, Minnesotans are choosing to use bicycles more often. Providing safe, well-designed facilities for them to use where vehicle traffic exists is better for everyone. Separating bicycle facility construction items from roadway construction items would be time-intensive and in the end, cost more than it would save. Bicycle facility and roadway construction share several items: subgrade, pavement, structures, mobilization, traffic control, turf restoration, storm sewer, storm water control, and construction personnel.

**In addition, trunk highway earmarks divert resources from projects that have been identified through an objective planning process.** Legislative earmarking can negatively impact fairness in project selection and funding. Many of the projects earmarked in this bill are under-funded, some in the range of \$50-70 million, which could result in appropriated funds sitting in an account until the project is ready for the funds to be expended. If the account in which the funds reside earn less than the rate of inflation, the gap will widen between project costs and the appropriated funds, and the Legislature will need to appropriate additional funds simply to keep pace with inflation. Not only is this poor fiscal management on the part of the Legislature, it eschews the objective planning process used by MnDOT and could delay projects that are "shovel-ready." **The attached letter from 2016, which includes bi-partisan representation of, at the time, current and past chairs of the House and Senate Transportation Committees, provides additional detail regarding concerns with earmarking.**

**The significant increase in electric vehicle fees (from \$75 to \$229) might discourage people from purchasing electric vehicles when we should be doing everything we can to encourage people to adopt this technology.** This legislation does not provide the resources needed to expand the state's electric vehicle charging network.

**The proposed changes to the MnPASS statutes mean that no revenue would be available for transit service in the MnPASS corridors.** Enhancing transit service is one of the primary goals of the MnPASS system. The bill also includes other provisions that would make it more challenging to effectively manage the MnPASS system.

**This bill codifies in statute and places legislators on an internal MnDOT committee, known as the Transportation Programming and Investment Committee (TPIC).** In most cases, TPIC does not select projects, but sets high-level investment direction and provides programming guidance to districts. Most project selection occurs at the district level through the Area Transportation Partnerships. Inserting legislators into an executive branch function is not an appropriate way to provide legislative input, **and may, in fact, violate Article III, section 1 of the Minnesota Constitution, which provides for a distinct separation between the three branches of government.** Additionally, the requirement for legislators to be present will make it challenging for the committee to conduct business since legislators have so many demands on their time.

Article 2, Sec. 66 of the Senate bill includes a requirement that MnDOT submit a **report detailing the revenue and expenditures related to transportation activities**. Ensuring an accurate and timely completion of the report would require **adjusting the due date from January 1, 2022 to January 1, 2023**, along with **clarifying various elements to be included in the report**.

During the Senate floor debate, an amendment was adopted which would require an increase in the speed limit on Interstate 35E between West 7th Street and I-94 in St. Paul. This issue has arisen in legislative debates before. I would like to take this opportunity to provide a reminder that a **1984 court decision stipulates that the speed limit on this portion of I-35E must be set at 45 mph**.

The Senate bill includes **\$156.6M and \$177.5M in funding in fiscal years 2022 and 2023, respectively, for the Corridors of Commerce program**. If the program receives funding, there are several changes we would like to see to ensure the program works most effectively. **These changes include clarifying geographic balance and the project scoring and selection process, among others**.

**Finally, the Senate's bill does not include several department initiatives that would enhance our transportation system, including:**

- Small contracts to advance equity;
- Salt reduction, sustainability and public health;
- \$10M in funding for the Twin Cities-Milwaukee-Chicago second daily train;
- General fund appropriation for tribal training;
- Cyber security and risk management;
- Rail safety and development;
- The full department request for increased state road construction;
- Budget adjustments for operating pressures;
- Adjusting the administrative cap for transit assistance;
- Removing the cap on the number of construction manager/general contractor projects; and
  - Implementing an employment preference for projects on or near Indian reservations (MnDOT is willing to include a 60-mile limitation on this provision.)

We urge consideration of these important missing elements.

### **House Bill**

**We appreciate the House bill's inclusion of all the Governor's policy proposals, including those related to condemnation commissioners, land management, over-dimensional loads, and turn backs as well as funding to help the agency fulfill the following items from the Governor's budget request:**

- Small contracts to advance equity;
- Salt reduction, sustainability and public health;
- Cyber security and risk management;
- Rail safety and development;
- Increased funding for state road construction;
- Budget adjustments for operating pressures;
- Adjusting the administrative cap for transit assistance;
- Drones;
- Animal-drawn vehicles; and
- Tribal training.

We welcome the provisions related to **extending the cap on the number of construction manager/general contractor projects and implementing an employment preference for projects** on or near Indian reservations.

We appreciate the **inclusion of funding for passenger rail**, which can boost local economies and help connect Minnesotans to recreation and other opportunities across the state and beyond. **The \$10M included in the Governor's budget** will help the state provide the necessary matching funds to ensure the Twin Cities-Milwaukee-Chicago project stays on track.

The House bill includes **\$175M in in trunk highway bonds for the Corridors of Commerce program**. If the program receives funding, there are several changes we would like to see to ensure the program works most effectively. As mentioned above, **these changes include clarifying geographic balance and the project scoring and selection process, and other modifications**.

Finally, we are **pleased to see sustainability initiatives in the bill, including a goal for a 20% reduction in vehicle miles traveled by 2050**, which aligns a recommendation from the Sustainable Transportation Advisory Council, and funding for electric vehicle infrastructure.

Thank you for your consideration. I look forward to working with you over the next few weeks on these important issues.

Sincerely,

A handwritten signature in blue ink that reads "Margaret Anderson Kelliher". The signature is written in a cursive style and is contained within a light blue rectangular box.

Margaret Anderson Kelliher  
Commissioner  
Minnesota Department of Transportation