

REPORT CONCERNING
CERTAIN EXPENDITURES
FROM THE
TRUNK HIGHWAY FUND
IN THE FY2012-2013
BIENNIAL BUDGET

PREPARED BY
MINNESOTA DEPARTMENT OF FINANCE
AND
OFFICE OF THE ATTORNEY GENERAL

December 2011

INTRODUCTION

This document reports certain expenditures from the Trunk Highway fund that are included in the biennial budget for FY2012-2013 submitted to the Minnesota Legislature by Governor Dayton. This report is required by Minnesota Laws 2000, Chapter 479, Article 2, Section 1 (as amended by Minnesota Laws 2000, Chapter 499, Section 41 and Minnesota Laws 2001, 1st Special Session, Chapter 5, Article 20, Section 20), which provides as follows:

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.

The expenditures reduced or eliminated in Sections 5 to 20 of Minnesota Laws 2000, Chapter 479, Article 2 relate to:

- Bureau of Criminal Apprehension Laboratory
- Office of Tourism Travel Information Centers (TICs)
- Minnesota Safety Council
- Tort claims
- CFL-Driver education programs [Note: CFL is now the Minnesota Department of Education].
- Emergency Medical Services Board, and
- The Mississippi River Parkway Commission.

BACKGROUND

The Department of Finance and Office of the Attorney General prepared a report on this topic which was presented to the Legislature on January 23, 2001. That report presented the rationale for Trunk Highway funding that was recommended in the Governor's budget for Tort Claims and for a portion of the BCA Laboratory costs. Since the State Patrol is responsible for 21% of DWI arrests, the 2001 report described the rationale that 21% of the DWI-related laboratory costs be funded from the Trunk Highway Fund.

For FY2002 and FY2003, the Legislature appropriated funds during the 2001 session for both purposes. An appropriation of \$600,000 each year was made from the Trunk Highway Fund to the Department of Finance for Tort Claims (Minnesota Laws 2001, 1st Special Session, Chapter 8, Article 1, Section 6). Appropriations of \$354,000 for FY2002 and \$361,000 for FY2003 were made from the Trunk Highway Fund to the Department of Public Safety for laboratory analysis related to driving while impaired cases (Minnesota Laws 2001, 1st Special Session, Chapter 8, Article 4, Section 10, Subdivision 3).

The Department of Finance and Office of the Attorney General prepared another report on this topic that was presented to the Legislature after the Governor's budget was released in 2003. For FY2004 and FY2005, the Legislature appropriated funds during the 2003 first special session for both purposes. An appropriation of \$600,000 each year was made from the Trunk Highway Fund to the Department of Finance for Tort Claims (Minnesota Laws 2003, 1st Special Session, Chapter 19, Article 1, Section 6). Appropriations of \$361,000 for FY2004 and \$361,000 for FY2005 were made from the Trunk Highway Fund to the Department of Public Safety for laboratory analysis related to driving while impaired cases (Minnesota Laws 2003, 1st Special Session, Chapter 2, Article 1, Section 9, Subdivision 3).

The Department of Finance and Office of the Attorney General prepared a similar report on this topic that was presented to the Legislature after the Governor's budget was released in 2005. For FY2006 and FY2007, the Legislature appropriated funds during the 2005 first special session for both purposes. An appropriation of \$600,000 each year was

made from the Trunk Highway Fund to the Department of Finance for Tort Claims (Minnesota Laws 2005, 1st Special Session, Chapter 6, Article 1, Section 6). Appropriations of \$361,000 for FY2006 and \$361,000 for FY2007 were made from the Trunk Highway Fund to the Department of Public Safety for laboratory analysis related to driving while impaired cases (Minnesota Laws 2005, Chapter 136, Article 1, Section 9, Subdivision 3).

The Department of Finance and Office of the Attorney General prepared a similar report on this topic that was presented to the Legislature after the Governor's budget was released in 2007. For FY2008 and FY2009, the Legislature appropriated funds during the 2007 session for both purposes. An appropriation of \$600,000 each year was made from the Trunk Highway Fund to the Department of Finance for Tort Claims (Minnesota Laws 2007, Chapter 152, Article 2, Section 6). Appropriations of \$367,000 for FY2008 and \$373,000 for FY2009 were made from the Trunk Highway Fund to the Department of Public Safety for laboratory analysis related to driving while impaired cases (Minnesota Laws 2007, Chapter 054, Article 1, Section 10, Subdivision 3).

The Department of Finance and Office of the Attorney General prepared a similar report on this topic that was presented to the Legislature after the Governor's budget was released in 2009. For FY2010 and FY2011, the Legislature appropriated funds during the 2009 session for both purposes. An appropriation of \$600,000 each year was made from the Trunk Highway Fund to Minnesota Management and Budget for Tort Claims (Minnesota Laws 2009, Chapter 36, Article 1, Section 7). Appropriations of \$1,941,000 for FY2010 and \$1,941,000 for FY2011 were made from the Trunk Highway Fund to the Department of Public Safety for laboratory analysis related to driving while impaired cases (Minnesota Laws 2009, Chapter 83, Article 1, Section 10, Subdivision 3).

FINDINGS

The biennial budget for FY2012 and FY2013 includes expenditures that are similar to those reduced or eliminated in sections 5 to 20 of Laws 2000, Chapter 479, Article 2, as follows:

- Department of Public Safety, Bureau of Criminal Apprehension, DWI Lab Analysis: The Governor proposed, and the legislature adopted an appropriation of \$1,941,000 each year from Trunk Highway fund. This amount represents one hundred percent of the Bureau's DWI-related laboratory expenses. The highway purpose of this funding is to improve the safety of state highways by supporting prosecution of violators of DWI laws. The governor's budget proposals for FY2012-2013 recommended that the BCA's DWI-related lab costs be supported by Trunk Highway funds in proportion to the number of DWI arrests attributable to the state patrol. That proportion had historically been approximately twenty-one percent. The 2001 Report to the Legislature, concluded that those proposed Trunk Highway fund expenditures served a legitimate trunk highway purpose.^[1] Legal authorities that supported that conclusion, however analyzed funding of highway safety measures generally, without regard to the identity of the particular agencies participating in the safety-related functions. For example Op. Atty. Gen. 229a, July 27, 1967 found a legitimate highway purpose was served by expenditures for training BCA agents who would, in turn, train and certify breathalyzer operators statewide. As recognized by that opinion, enforcement of DWI and implied consent laws serves important highway safety purposes regardless of the identity of the agencies involved in the process. Consequently, while the apportionment of the BCA's DWI-related laboratory costs between the General and Trunk Highway funds based upon state patrol arrest data as recommended in previous budgets was a reasonable approach, such an apportionment is not necessarily required by the Constitution. Since the highway safety purposes served by DWI and implied consent enforcement actions, including the laboratory analysis function, would not seem to be dependent upon the identity of the agencies employing the arresting officers, it is reasonable to conclude that all such activities serve a legitimate highway purpose for purposes of Trunk Highway Fund expenditures.
- Minnesota Management and Budget, Tort Claims: \$600,000 per year from Trunk Highway fund

¹ The highway purposes of the proposed expenditures for FY2012 and FY2013 are as described in the 2001 report to the Legislature and the rationales are described in that document.