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Office Memorandum

Date: July 9, 2013

To: Rep. Frank Hornstein, Chairman
Transportation Finance and Policy Division

Sen. Scott Dibble, Chairman
Transportation Budget and Policy
Division

From: Keith Bogut
Executive Budget Officer

Phone: (651) 201-8034

Subject: Trunk Highway Report

The Laws of 2000, Chapter 479, Article 2, Section 1, stipulates that:

To ensure compliance with the Minnesota Constitution, article XIV, sections 2, 5, and 6, the commissioner of finance, directors, and legislative commission personnel may not include in the biennial budget for fiscal years 2002 and 2003, in any budget thereafter, expenditures from the trunk highway fund for a non-highway purpose as jointly determined by the commissioner of finance and the attorney general. For purposes of this section, an expenditure for a non-highway purpose is any expenditure not for construction, improvement, or maintenance of highways. 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 the proposed expenditure.

This report should have been sent in March of 2013 when the Governor released his budget for the FY 14-15 biennium. Please accept my apology.

Sincerely,

A handwritten signature in cursive script that reads "Keith Bogut".

Executive Budget Officer

**REPORT CONCERNING
CERTAIN EXPENDITURES
FROM THE
TRUNK HIGHWAY FUND
IN THE FY2014-2015
BIENNIAL BUDGET**

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

July 2013

INTRODUCTION

This document reports certain expenditures from the Trunk Highway fund that are included in the biennial budget for FY2014-2015 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.

FINDINGS

The biennial budget for FY2014 and FY2015 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, Forensic Lab Equipment and Staffing: The Governor proposed an appropriation of \$250,000 each year from the Trunk Highway Fund to replace BCA lab equipment due to age and obsolescence, and \$400,000 each year from the Trunk Highway Fund to add forensic lab staffing to expedite test results. The language of the proposed budget did not specifically limit the appropriations for equipment or staff to processing only DWI-related testing. 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 FY 2014-2015 recommend that the BCA's forensic laboratory equipment and staffing costs be supported by Trunk Highway funds but did not specifically limit spending to DWI enforcement or contain any information as to the proportion of the expenditures that are attributable to DWI arrests. 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, and focusing on whether the charge upon the Trunk Highway Fund accurately reflected highway expenses rather than identifying exactly how each dollar of each particular item would be spent. 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.

Because highway safety is served by enforcement of DWI and implied consent laws, to the extent that the proposed funding for BCA equipment and staffing supports DWI-related enforcement, it is reasonable to conclude that these expenditures serve a legitimate highway purpose for purposes of the Trunk Highway Fund. Although BCA was requested to provide the necessary information to determine the extent to which the proposed funding for BCA equipment and staffing benefits DWI-related highway enforcement, it did not do so until the end of May 2013. Accordingly, we were not in a position to determine whether that portion of the proposed funding would serve a legitimate highway purpose for Trunk Highway Fund expenditures. At the end of May

¹ The highway purposes of the proposed expenditures for FY2014 and FY2015 are as described in the 2001 report to the Legislature and the rationales are described in that document.

2013, the BCA laboratory director stated the \$250,000 lab equipment will be used for the processing of DWI cases in the toxicology section and the \$400,000 increase in lab staffing will fund the additional scientists for the toxicology section to conduct alcohol and drug testing for DWI cases and to assist in reducing the backlog of DWI cases. Accordingly, we are now in a position to reasonably conclude these expenditures serve a legitimate highway purpose for purposes of the Trunk Highway Fund.

- Minnesota State Patrol, Soft Body Armor: \$200,000 to buy bullet-proof vests for troopers. Because state troopers have the statutory duty as peace officers to enforce the provisions of the law relating to the protection of and use of trunk highways, it is reasonable to conclude that this appropriation serves a legitimate highway purpose for purposes of Trunk Highway Fund expenditures.

PREVIOUS FINDINGS

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 also 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).

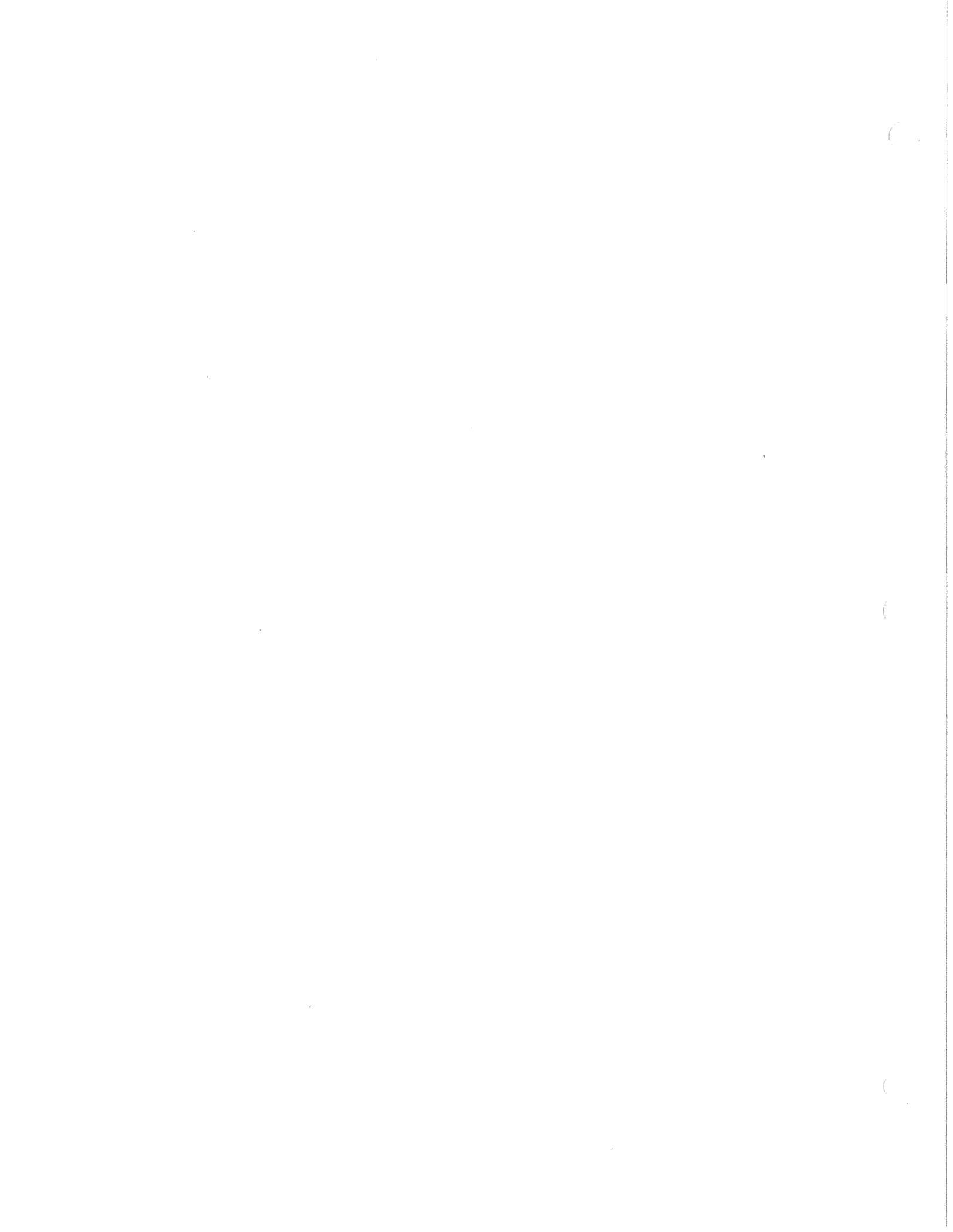
For the 2004-2005 biennium, the Legislature again appropriated funds for both purposes.

An appropriation of \$600,000 each year 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), and appropriations of \$361,000 for FY2004 and \$361,000 for FY2005 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).

For the 2006-2007 biennium, the Legislature appropriated the same level of funding for these two activities. Appropriations of \$600,000 each year were 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), and \$361,000 each year 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).

For the 2008-2009 biennium, the Legislature again appropriated funds for both purposes. An appropriation of \$600,000 each year from the Trunk Highway Fund to the Department of Finance for Tort Claims (Minnesota Laws 2007, Chapter 152, Article 2, Section 6), and appropriations of \$367,000 for FY2008 and \$373,000 for FY2009 for laboratory analysis related to driving while impaired cases (Minnesota Laws 2007, Chapter 054, Article 1, Section 10, Subdivision 3).

For the 2010-2011 biennium, the Legislature appropriated funds for both purposes. An appropriation of \$600,000 each year from the Trunk Highway Fund to Minnesota Management and Budget for Tort Claims (Minnesota Laws 2009, Chapter 36, Article 1, Section 7), and \$1,941,000 each year for laboratory analysis related to driving while impaired cases (Minnesota Laws 2009, Chapter 83, Article 1, Section 10, Subdivision 3).



For the 2011-2012 biennium, the legislature appropriated funds for both purposes. An appropriation of \$600,000 each year from the Trunk Highway Fund to Minnesota Management and Budget for Tort Claims (Minnesota Laws 2011, 1st Special Session, Chapter 3, Article 1, Section 6), and \$1,941,000 each year for laboratory analysis related to driving while impaired cases (Minnesota Laws 2011, 1st Special Session, Chapter 1, Article 1, Section 11, Subdivision 3).