

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**

Association for Government Accountability,

Petitioner,

Case Type: Civil

v.

Court File No. \_\_\_\_\_

Myron Frans in his Official Capacity as  
Commissioner of Management and Budget  
as a agency of the Executive Branch of the  
State of Minnesota;  
Minnesota House of Representatives Budget  
and Accounting Office, and Minnesota Senate  
Fiscal Services Department,

Respondents.

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**PETITION FOR WRIT OF MANDAMUS**

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**INTRODUCTION**

The Petitioner Association for Government Accountability, a government watch-dog association, seeks an order from this Court to direct the Commissioner of Management and Budget to pay the Minnesota state legislators their respective salaries of \$45,000 as prescribed by the Legislative Salary Council, mandated by the Minnesota Constitution. The Minnesota House of Representatives Budget and Accounting Office, and Minnesota Senate Fiscal Services Department are interested parties since the moneys for salaries are paid through these legislative departments.

During last year's election, a state constitutional amendment was enacted that created a Legislative Salary Council which established the base salary of state legislators at \$45,000, effective on July 1, 2017. Under Minnesota law, the State's Constitution mandates the funding of constitutional prerogatives of elected officials. Here, the prerogative arises from a constitutional amendment about legislator salaries. Governor Dayton, with his recent line-item veto of funding for the legislative branch of government, brings the issue of funding prerogatives to the forefront and to the brink of a state constitutional crisis.

Because their recent special session has ended, the state legislators have no way to override the veto. With that act, the legislative branch has ground to a halt. Any work between now and the next session is directly impeded and the people are effectively without local representation.

## **PARTIES**

1. The Association of Government Accountability ("AGA") is a state-wide association of citizens and taxpayers concerned about government accountability to the U.S. Constitution, federal statutes and regulation, the Minnesota Constitution, Minnesota statutes and regulations and all other existing codified and common law. The AGA does whatever it can to promote the rule of law.

2. As such, among other things, the AGA commences and participates in lawsuits involving the government where the government has strayed from the rule of law. For example, the AGA sponsored litigation resulting in a court injunction enjoining Wabasha County's legally unauthorized safe driving classes. *See Association for Government*

*Accountability, et al. v. Wabasha County, et al.*, Wabasha County District Court File No. 79-CV-13-751. Exhibit A.

3. Myron Frans is Minnesota's Commissioner of Management and Budget. The office of Management and Budget is an agency of the Minnesota Executive branch of government. Under Minnesota Statutes § 15.06, the governor appoints the Commissioner of Management and Budget with the consent of the Senate. The Commissioner acts as head of the Office of Management and Budget, which provides a number of financial services to the state including payroll for state employees and notably here, the funding to Minnesota House of Representatives Budgeting and Accounting Office and the Minnesota Senate Fiscal Services Department. *See* Exhibit I.

4. The Minnesota House of Representatives and Senate are the legislative branch of the Minnesota government. The State House through its financial department called the House Budgeting and Accounting Office compensates and reimburses its members. The State Senate through its financial department, Senate Fiscal Services Department, compensates and reimburses expenses for its members. The House Budgeting and Accounting Office and Senate Fiscal Services Department are necessary parties to the instant Petition. Payment of state legislator salaries is made through the respective departments within the legislative branch.

5. References to "Government" below are to the Commissioner, State Senate and State House, collectively, unless otherwise specifically stated, because Petitioner alleges that they have a collective constitutional and statutory duty that state legislators' salaries are timely paid.

## JURISDICTION

**The AGA has standing to bring the petition as having beneficiary interests regarding the funding of salaries for state legislators.**

6. The Court has jurisdiction over this petition for writ of mandamus seeking prospective injunctive relief pursuant to Minnesota Statute § 586.01, et seq. and Rule 65.01 of Minnesota Rules Civil Procedure.

7. The AGA has standing to bring this petition for mandamus as “beneficially interested” under Minnesota Statute § 586.02. AGA’s taxpayers and voters are beneficially interested in their legislative representatives being paid their salaries so they are available to them and to enact legislation and conduct oversight on the executive and judicial branches and local government. However, absent their respective salary, members of the state legislature be unable to effectively represent their constituents or will be less available or unavailable to meet with constituents, conduct limited hearings, respond to constituent inquires or complaints about their interaction with other governmental agencies, research issues, or draft legislation in anticipation of the next session.

8. For example, in the 2017 legislative session, members of the AGA successfully lobbied for legislation regarding the prevention of local government’s creation of safe driving classes as a revenue source that is not allowed by state law. The act arose from an earlier AGA district court victory that found Wabasha County’s safe driving class unauthorized by law and permanently enjoined the County from any further use of the program as a revenue source. *See* Exhibit B (House File No. 1, 2017 1<sup>st</sup> Special Session, Line 152.21 – 153.20 enacted 2017). The AGA expects to continue to lobby to strengthen the law

in the 2017 and in the 2018 legislative session, but it requires interaction with legislators between sessions including possible limited hearings on the issue.

### PETITION

**A writ of mandamus is necessary because the prescribed salaries arise from a constitutional amendment of which any funding to support is a constitution prerogative of the legislature that cannot be vacated by the executive branch even absent a legislative appropriation.**

9. Under Article III of the Minnesota Constitution, “[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” Minn. Const., art. III, § 1.

10. The Association of Government Accountability petitions the Court for a writ of mandamus pursuant to Minnesota Statute § 586.01, et seq., requiring the Government commencing on July 1, 2017 to pay Minnesota state legislators the \$45,000 annual salaries “prescribed” by the Legislative Salary Council (“Legislative Council”).

11. The petition is necessary because the state legislative session for 2017 has ended without the Governor signing an appropriation bill funding the Council’s prescribed salaries for state legislators effective July 1, 2017. Governor Dayton specifically used his line-item veto authority to bring the state legislators salaries to zero as a possible retaliatory measure to punish legislators because appropriation bills passed and enacted into law by the Governor, were not what the Governor wanted.

12. The Governor’s office is part of the state executive branch of government.

13. The Minnesota Supreme Court has held that the Constitution mandates the funding of constitutional prerogatives of elected officials. *See State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986) (requiring funding of State Treasurer’s constitutional prerogatives). Exhibit H.

14. Amended at the 2016 general election, Minnesota Constitution, Article IV, section 9, requires the Legislative Salary Council (Council) to “prescribe” the salaries of Minnesota state legislators by March 31st of each odd-numbered year:

Sec. 9. Compensation.

The salary of senators and representatives shall be prescribed by a council consisting of the following members: one person who is not a judge from each congressional district appointed by the chief justice of the Supreme Court, and one member from each congressional district appointed by the governor. If Minnesota has an odd number of congressional districts, the governor and the chief justice must each appoint an at-large member in addition to a member from each congressional district. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the most members in the legislature. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the second-most members in the legislature. None of the members of the council may be current or former legislators, or the spouse of a current legislator. None of the members of the council may be current or former lobbyists registered under Minnesota law. None of the members of the council may be a current employee of the legislature. None of the members of the council may be a current or former judge. None of the members of the council may be a current or former governor, lieutenant governor, attorney general, secretary of state, or state auditor. None of the members of the council may be a current employee of an entity in the executive or judicial branch. Membership terms, removal, and compensation of members shall be as provided by law. The council must prescribe salaries by March 31 of each odd-numbered year, taking into account any other legislative compensation provided to legislators by the state of Minnesota, with any changes in salary to take effect on July 1 of that

year. Any salary increase for legislators authorized in law by the legislature after January 5, 2015, is repealed.

The constitutional text also provides that “[a]ny salary increase for legislators authorized in law by the legislature after January 5, 2015, is repealed.”

15. Consistently, Minnesota Statute § 15A.0825, subdivision 7, provides that the council, among its duties, prescribe and set the salaries for the legislators:

By March 31 of each odd-numbered year, the council must prescribe salaries for legislators to take effect July 1 of that year. In setting salaries, the council must take into account any other legislative compensation provided to the legislators by the state and the most recent budget forecast. The council must submit a report by March 31 of each odd-numbered year with the prescribed salaries to the governor, the majority and minority leaders of the senate and the house of representatives, the chairs of the committees in the senate and the house of representatives with jurisdiction over the legislature's budget, and the chairs of the committees in the senate and house of representatives with jurisdiction over finance. The report must describe the council's rationale for selecting the prescribed salaries.

16. Accordingly, once the Council prescribes the legislator salaries, the Constitution requires that the Council-prescribed legislator salaries be paid by the Government.

17. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

18. Once the Council prescribes the legislator salaries, the Government is constitutionally and statutorily required to pay the prescribed salaries even in the absence of the Governor signing an appropriation act funding the Council's prescribed salaries.

19. In January, February and March of 2017, the Council held about six meetings to prescribe legislator salaries. The Council considered other legislative compensation, the budget forecast, and an extensive amount of other data and analysis.

20. On March 21, 2017, the Council prescribed \$45,000 as the legislator salary effective July 1, 2017:

Based on our consideration of these materials and our extended discussion, the Legislative Salary Council prescribes that salaries of Minnesota senators and representatives be set at \$45,000, effective July 1, 2017.

Attached hereto as Exhibit C is a true and correct copy of the Council's report dated March 21, 2017. In its report, the Council noted that salaries of Minnesota's legislators have been fixed at \$31,140 since 1999. *Id.*

21. Once the Council prescribes the legislative salaries under the Minnesota Constitution, Article IV, Section 9 and Minnesota Statute § 15A.0825, subdivision 7, the Government is obligated to pay the constitutionally-prescribed salaries irregardless of the existence of a state appropriation act funding the same.

22. After the Council's report was issued on March 21, 2017, the Speaker of the House Kurt Daudt wrote a letter instructing the House Budget and Accounting Office not to follow the Council's \$45,000 prescribed salary on July 1, 2017, but stick with the prior salary level of \$31,140, because he argued, erroneously, the state legislature is not required to

fund a Council-prescribed legislative salary increase. *See* Exhibit D (Kurt Daudt’s letter dated March 16, 2017 to Jim Reinholdz, Controller for the House of Representatives.)

23. At the time, in response, Senate Majority Leader Paul Gazelka told WCCO differently about the Council’s prescribed salaries of \$45,000, “That’s what the Constitution directs... I don’t know how you can possibly get around that.” *See* Exhibit E.

24. In May of 2017, the state legislature passed an appropriation bill including funding for state legislator salaries which the vetoed by Governor’s line-item veto authority by the Governor. The Governor wrote in his May 30, 2017 veto letter to President of the Senate Michelle Fischbach:

Dear Madam President:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State, Chapter 4, Senate File 1, with the exception of the line-item vetoes below:

- Page 2, Line 24: “Subd. 2 Senate 32,299,000 32,105,000”
- Page 2, Line 25: “Subd. 3 House 32,383,000 32,383,000”

*See* Exhibit F (Governor’s May 30, 2017 veto letter to President Fischbach).

25. In additional letter dated May 30, 2017, the Governor wrote to Speaker Daudt and Senate Majority Leader Gazelka:

Thus, I am line-item vetoing the appropriations for the House and Senate in FY 18/19 and FY 20/21. Your job has not been satisfactorily completed...

*See* Exhibit G (Governor’s May 30, 2017 veto letter to Speaker Daudt and Senate Majority Leader Gazelka).

26. There was no opportunity for a legislative override of the Governor's veto because the state legislative session and special session in 2017 ended.

27. No other special legislative session has been called by the Governor.

28. Under these circumstances, absent the legally required appropriation, the Government is constitutionally and statutorily obligated commencing on July 1, 2017, to pay the legislator salaries of \$45,000 per annum.

29. Similarly, the Constitution establishes legislator pay as a constitutional prerogative of state legislators.

30. Accordingly, if there is no legislative appropriation, the Court must order that the legislative salaries be paid anyway. For instance, during recent government shut-downs because of the government impasse to pass necessary appropriations for core functions of the government, the Ramsey County District Court issued orders requiring that specific agencies and programs be funded by the state. Such appropriations of moneys were made through the executive office of Management and Budget. *See e.g., In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203 (2011).

31. Here, with the unfunding of legislator salaries has effectively brought the legislative branch of government to a halt. State legislators are unable to fulfill their legislative functions as expected, including but not limited to research issues, draft legislation, meet and confer with constituents, or conduct limited hearings.

32. The Association for Governmental Accountability seeks a writ of mandamus prior or on July 1, 2017 to ensure that the Government commencing on July 1, 2017 fulfills its constitutional and statutory obligation to pay the legislator salaries of \$45,000 per annum.

### PRAYER FOR RELIEF

The Petitioners pray for the following relief:

1. For an order to show cause on a hearing scheduled before or on July 1, 2017 for the Government to show why they would refuse to pay the \$45,000 salaries to the state legislators commencing on July 1, 2017;
2. For a writ of mandamus requiring the Government to pay the \$45,000 salaries to the state legislators commencing on July 1, 2017;
3. Award attorney's fees, costs, disbursements and expenses to Petitioner available under the Minnesota Equal Access to Justice Act, Minnesota Statute § 15.472, and other applicable law; and
4. Award other relief that the Court may deem just.

Dated: June 5, 2017.

/s/Erick G. Kaardal  
Erick G. Kaardal, 229647  
Mohrman, Kaardal & Erickson, P.A.  
150 South Fifth Street, Suite 3100  
Minneapolis, Minnesota 55402  
Telephone: 612-341-1074  
Facsimile: 612-341-1076  
Email: kaardal@mklaw.com  
*Attorney for Petitioners*

### ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, subd. 3, to the party against whom the allegations in this pleading are asserted.

Dated: June 5, 2017

/s/Erick G. Kaardal  
Erick G. Kaardal

STATE OF MINNESOTA  
COUNTY OF WABASHA

DISTRICT COURT  
THIRD JUDICIAL DISTRICT

Association for Government  
Accountability, Debra Roschen, David  
Harms, Merl Norman and Lynn Cliff,

File No. 79-CV-13-751

Plaintiffs,

vs.

Wabasha County, Wabasha County Sheriff  
Department, Wabasha County Sheriff  
Rodney Bartsh in his official capacity,  
Wabasha County Office of Auditor-  
Treasurer, Wabasha County Auditor-  
Treasurer Denise M. Anderson in her  
official capacity, the State of Minnesota,  
the Minnesota Office of Attorney General,  
Minnesota Attorney General Lori Swanson  
in her official capacity, the Minnesota  
Office of the State Auditor, and Minnesota  
State Auditor Rebecca Otto in her official  
capacity,

Defendants.

79 - CV - 13 - 751  
ORJGJTJGMT  
Order for Judgment and Judgment  
1123517



**PARTIAL SUMMARY  
JUDGMENT ORDER**

**FILED** *JMS*  
JAN 06 2014  
DISTRICT COURT  
WABASHA COUNTY, MN

The above-entitled matter came before the undersigned District Court Judge for hearing on October 15, 2013, to consider the parties' Summary Judgment Motions.

At the hearing, Plaintiffs were represented by Attorney Erick Kaardal. The State Defendants were represented by Attorney Nathan Hartshorn. The County Defendants were represented by Attorney Jason Kuboushek. Furthermore, prior to the hearing the parties submitted memorandums and supporting documents in support of their respective motions.



5. The attached memorandum included herein constitutes part of this Order.

There being no just reason for further delay,

**LET PARTIAL JUDGMENT BE ENTERED ACCORDINGLY.**

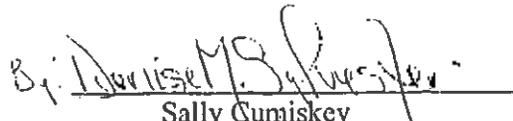
Dated: January 6, 2014



James A. Fabian  
Judge of District Court

I hereby certify that the above Partial Summary Judgment Order constitutes the Judgment in this matter.

Dated: January 6, 2014



Sally Cumiskey  
Court Administrator

from the Program are deposited into a County account and used for training and equipment for the Sheriff's Department<sup>1</sup>.

Beginning in 2004, the Minnesota State Auditor issued an opinion stating that the Program is unauthorized and in violation of Minn. Stat. §169.022. This opinion was reiterated in 2009, 2010, 2011, and 2012. The Minnesota State Auditor recommended that the Program be stopped.

Plaintiff Debra Roschen is a current member of the Wabasha County Board of Commissioners, is the Chair of the Association for Government Accountability, and is a resident of Wabasha County. Plaintiff Merl Norman is a past member of the Wabasha County Board of Commissioners, having lost his seat in 2012. Plaintiff David Harms is a current member of the Wabasha County Board of Commissioners and a resident of Wabasha County.

Plaintiff Lynn Cliff was a participant in the Program and is a resident of Goodhue County. While driving in Wabasha County on March 16, 2008, Plaintiff Cliff was stopped by law enforcement for speeding. Plaintiff Cliff received a speeding ticket and was offered a choice on how the ticket would be processed. Plaintiff Cliff was informed that the ticket could be processed through the court or she could attend the Program. If Plaintiff Cliff chose to participate in the Program, she would have to pay a non-refundable fee and the speeding ticket would not go on her driver's record.

Plaintiffs brought this action seeking declaratory relief, injunctive relief, and mandamus relief.

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<sup>1</sup> The Program costs \$125. Currently \$20 is allocated to the Wabasha County Substance Abuse Court, \$5 is disbursed to the County Law Library and the remaining \$100 is used by the Sheriff's Department.

Plaintiffs' lawsuit seeks relief from what they allege is an illegal diversion program. Plaintiffs' lawsuit seeks declaratory and injunctive relief. The State Defendants allege that the Complaint alleges no actual wrongdoing on the part of any State Defendant nor does it ask for relief that has any connection to a State Defendant. The Court finds that Plaintiffs have failed to state a claim against the State Defendants.

The State Defendants are correct in their assessment of the Complaint. Plaintiffs seek to end a diversion program that they say violates the law. In no way were the State Defendants involved in the creation or operation of the Program. Plaintiffs have failed to present any authority that obligates the State Defendants to take action to dissolve the Program. It has been shown that the State Auditor agrees that the Program is illegal and should be discontinued. But nowhere has it been alleged that the State Auditor has a duty to or the authority to see to it that all illegal programs are dissolved.

Additionally, the relief sought in the Complaint pertains only to the County Defendants. The Complaint seeks: (1) declaration that the Program is not legally authorized under Minnesota law; (2) declaration that the Wabasha County Sheriff's Department has unlawfully disbursed or misappropriated funds collected from Program participants; (3) declaration that Wabasha County unlawfully disbursed and misappropriated funds collected from Program participants; (4) a permanent injunction against conducting the Program; and (5) a writ of mandamus to compel the Wabasha County Sheriff's Department to cease all activities related to the Program. The Court may order all of the relief sought by Plaintiffs without any reference to the State Defendants.

"The [Uniform Declaratory Judgment Act] does not, by itself, confer jurisdiction on a court over the action." Hoelt v. Hennepin County, 754 N.W.2d 717, 722 (Minn. Ct. App. 2008). A justiciable controversy exists if a genuine conflict exists between parties with adverse

of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied. 261 N.W.2d 566, 571 (Minn. 1977).

The holding in McKee has been limited to apply when funding is derived directly from taxes. See Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P., 603 N.W.2d 143, 147 (Minn. Ct. App. 1999); Rukavina v. Pawlenty, 684 N.W.2d 525, 531 (Minn. App. 2004). The funds unlawfully disbursed derive from the Program and were not derived directly from taxes. For this reason, the Court finds that Plaintiffs' lack standing to challenge the unlawful disbursements of public money.

Plaintiffs claim standing due to the alleged illegal actions of the County officials in the creation of an unlawful diversion program. As stated above, taxpayers have standing to challenge illegal actions on the part of public officials. Plaintiffs challenge that Wabasha County, through the Wabasha County Sheriff's Department, is operating an illegal diversion program. The Plaintiffs, as taxpayers, have standing to challenge the allegedly illegal diversion program.

The County Defendants argue that Plaintiff Association for Government Accountability must be dismissed because there is no proof that it pays taxes. The evidence before the Court is that the Association for Government Accountability is made up of citizen taxpayers, including Plaintiff Roschen, Plaintiff Harms, Plaintiff Norman, and Plaintiff Cliff. As such, the Court finds that it is unnecessary for the Association for Government Accountability to itself pay taxes.

In addition to stating they have standing due to the allegedly illegal diversion program, Plaintiffs Roschen and Harms allege they have legislative standing. "For legislators to have standing, they must show that their claimed injury is "personal, particularized, concrete, and otherwise judicially cognizable." Rukavina v. Pawlenty, 684 N.W.2d 525, 532 (Minn. Ct. App. 2004). Courts have found that vote nullification has been sufficient to confer standing to a

from judicial involvement<sup>2</sup>. The Court feels it is important to note that in the matter at hand it is not the prosecutor that is determining participants for the Program but law enforcement. Based on the Court's decision that the creation of a diversion program is not protected under prosecutorial discretion, the Court will not address whether the delegation of a prosecutor's charging function to law enforcement was a valid delegation or a violation of the separation of powers.

Issue 4: Whether the Program is a legal pretrial diversion program under Minn. Stat. §401.065?

The County Defendants allege that the Program is a pretrial diversion program established pursuant to the authority of the County Attorney's exercise of prosecutorial discretion. In the alternative, the County Defendants claim that Minn. Stat. §401.065 authorize the establishment of pretrial diversion programs.

Minn. Stat. §401.065 allows for the creation of a pretrial diversion program by a county attorney for felony, gross misdemeanor, or misdemeanor crimes. Minn. Stat. §401.065, subd. 2 states that the diversion program must further the following goals:

- (1) to provide eligible offenders with an alternative to confinement and a criminal conviction;
- (2) to reduce the costs and caseload burdens on district courts and the criminal justice system;
- (3) to minimize recidivism among diverted offenders;
- (4) to promote the collection of restitution to the victim of the offender's crime; and
- (5) to develop responsible alternatives to the criminal justice system for eligible offenders.

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<sup>2</sup> The County Defendants argue that the diversion program is lawfully created under Minn. Stat. §401.065 or in the alternative Minn. R. Crim. P. 27. The Court finds that Minn. R. Crim. P. 27 is not applicable. Regardless of the fact that court approval is not necessary, there has been no mention that the diversion program has in any way complied with the other aspects of Rule 27.

The County Defendants argue that the Program's purpose is directly in line with the intent of Minn. Stat. §401.065. The Court disagrees. Not only is the statute unambiguous, but the statute is designed to not only reduce the costs and caseload burdens on district courts, but to provide an alternative to confinement and promote the collection of restitution. The Court finds that the court system is not overburdened by lengthy traffic cases. The Court finds that Minn. Stat. §401.065 does not allow for the creation of a pretrial diversion program applicable to petty misdemeanor traffic offenses.

Issue 5: Whether a permanent injunction is allowed under the law?

Plaintiffs' action seeks a declaration under Minn. Stat. §555.01 that the Program is not authorized under the law. Additionally, Plaintiffs seek a permanent injunction from conducting all activities related to the Program. The County Defendants claim that Plaintiffs are not entitled to a permanent injunction due to a lack of an underlying cause of action, a lack of an irreparable injury, and dissolving the Program would burden the County and work a disservice on the public. The Court finds that Plaintiffs have an underlying cause of action under Minn. Stat. §555.01. The Court finds that Plaintiffs' relief under the law is inadequate and a permanent injunction is allowed under the law.

The granting of an injunction rests with the discretion of the trial court. Cherne Indus., Inc. v. Grounds & Associates, Inc., 278 N.w.2d 81, 91 (Minn. 1979). In order for an injunction to be issued a party must show that his legal remedy under the law is not adequate and that the injunction is necessary to prevent great and irreparable injury. Id., at 91-92. "[W]here a trial court has determined that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief." Id., at 92. "A permanent injunction is the 'proper remedy to restrain a continuous and repeatedly threatened trespass.'"

continuation of the Program without express authorization by the Statutes of Minnesota is a continued and repeated trespass on the laws of the State of Minnesota. To continue to allow such a program to operate would most assuredly cause great and irreparable injury to individual tax paying citizens. It is not the duty of the Court to address alleged safe driving practices and read into statutes rights to operate safe driving programs when the legislature has not sought to include them. The Court finds that an injunction would not inundate the court system with new traffic violations to prosecute. Minn. Stat. 169 describes the process for issuance of a traffic ticket and the Court notes that the court system is able to effectively deal with all traffic tickets issued under this statute.

The Court finds that if Plaintiffs are successful in their claim for declaratory judgment, a permanent injunction is the only remedy at law that would prevent the operation of an illegal diversion program.

Issue 6: Whether Minn. Stat. §169.022 preempted the field of enforcement?

Plaintiffs claim that Minn. Stat. §169 governs the way in which all traffic offenses are to be handled. Minn. Stat. §169.022 states that:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

Minn. Stat. §169.99 states that a uniform traffic ticket shall be issued throughout the state and said uniform ticket shall have the effect of a summons and complaint. Accordingly, a political subdivision is precluded from creating their own enforcement scheme inconsistent with those

Issue 7: Whether Plaintiffs are entitled to declaratory judgment and a permanent injunction?

Plaintiffs filed a Motion for Summary Judgment seeking a permanent injunction enjoining the continued operation of the Program. The Court has found that Plaintiffs, as taxpayers, have standing to challenge the Program. The Court has found that the Program was not authorized by statute under Minn. Stat. §401.065 and not a legal exercise of prosecutorial discretion. The Court found that Minn. Stat. §169.022 requires all political subdivisions to enforce the provisions of Minn. Stat. §169 and all political subdivisions shall not enact any regulation that conflicts with the provisions of Minn. Stat. §169. The Court now finds that the Program operated by Wabasha County is in violation of Minn. Stat. §169.022. Minn. Stat. §169 does not authorize a pretrial diversion program as operated by Wabasha County. As such, the Court finds that Plaintiffs are entitled to a permanent injunction enjoining the County Defendants from operating the Program. In addition, the Court finds that absent a permanent injunction, Plaintiffs lack an adequate remedy at law. The State of Minnesota has chosen to allow the Program to continue despite their knowledge that Wabasha County was operating an illegal pretrial diversion program. Without the assistance of the State of Minnesota, the only available remedy is a permanent injunction.

Issue 8: Whether a writ of mandamus is an appropriate alternative remedy?

Plaintiffs seek a writ of mandamus to compel the Wabasha County Sheriff's Department to cease all activities related to the Program. The County Defendants state that a writ is not permitted for two reasons. First, the County Defendants argue that Plaintiffs have access to an adequate legal remedy, a declaratory judgment. Secondly, the County Defendants argue that the Sheriff's Department had no legal duty to act.

programs for misdemeanor, gross misdemeanor, and felony offenses. The Safe Driving Class is a diversion program applicable to petty misdemeanor traffic offense.

Minn. Stat. §169 governs the way in which all traffic offense are to be handled in Minnesota. Minn. Stat. §169.022 limits the authority of political subdivisions to regulate traffic offenses. As such, absent some other statutory authority, the Safe Driving Class is unauthorized. Wabasha County has enacted and operated a diversion program that infringes upon the power of the State to uniformly manage traffic offenses in the State of Minnesota. The Safe Driving Class is not legally authorized under Minnesota law.

The Court finds that a permanent injunction is the only available remedy under the law. The Wabasha County Sheriff's Department shall be enjoined from conducting all activities related to the Safe Driving Class.



J.A.F.

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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

SPECIAL SESSION

H. F. No. **1**

~~05/23/2017~~ Authored by Davids and Marquart  
The bill was read for the first time  
Rules suspended, urgency declared  
Read for the Second Time  
Read for the Third Time  
Bill was laid on the Table  
Bill was taken from the Table  
Passed by the House and transmitted to the Senate  
05/25/2017 Returned to the House as Amended by the Senate  
The House concurred in the Senate Amendments and ~~repassed the bill~~ as Amended by the Senate  
05/26/2017 Presented to Governor  
05/30/2017 Governor Approval

1.1 A bill for an act

1.2 relating to financing and operation of state and local government; making changes

1.3 to individual income, corporate franchise, estate, property, sales and use, excise,

1.4 mineral, tobacco, special, local, and other miscellaneous taxes and tax-related

1.5 provisions; providing for new income tax subtractions, additions, and credits;

1.6 providing for a Social Security subtraction; providing a student loan credit;

1.7 modifying the research and development credit; establishing a first-time home

1.8 buyer savings account program; modifying the child and dependent care credit;

1.9 modifying residency definitions; modifying estate tax exemption amount and rates;

1.10 establishing and modifying property tax exemptions and classifications; establishing

1.11 school building bond agricultural credit; modifying state general levy; modifying

1.12 certain local government aids; establishing riparian protection aid; providing

1.13 exemption from certain property taxes for a Major League Soccer stadium;

1.14 authorizing assessor accreditation waivers; modifying provisions related to

1.15 tax-forfeited land; modifying sales tax definitions and exemptions; providing sales

1.16 tax exemptions; clarifying the appropriation for certain sales tax refunds;

1.17 establishing sales tax collection duties for marketplace providers and certain

1.18 retailers; dedicating certain sales and use tax revenues from the sale of fireworks;

1.19 providing an exemption from sales and use taxes for a Major League Soccer

1.20 stadium; providing sales tax exemptions for certain construction projects; modifying

1.21 the exemption for Super Bowl admission, events, and parking; establishing 2018

1.22 Super Bowl extended alcohol service hours; providing exemptions for suite licenses

1.23 and stadium builder's licenses; authorizing certain tax increment financing authority;

1.24 authorizing and modifying certain local sales and use taxes; modifying provisions

1.25 related to taconite; modifying taxes on tobacco products and cigarettes; modifying

1.26 tax administration procedures; making minor policy, technical, and conforming

1.27 changes; requiring reports; appropriating money; amending Minnesota Statutes

1.28 2016, sections 13.51, subdivision 2; 16A.152, subdivision 2; 40A.18, subdivision

1.29 2; 69.021, subdivision 5; 84.82, subdivision 10; 84.922, subdivision 11; 86B.401,

1.30 subdivision 12; 116J.8738, subdivisions 3, 4; 128C.24; 270.071, subdivisions 2,

1.31 7, 8, by adding a subdivision; 270.072, subdivisions 2, 3, by adding a subdivision;

1.32 270.074, subdivision 1; 270.078, subdivision 1; 270.12, by adding a subdivision;

1.33 270.82, subdivision 1; 270A.03, subdivision 5; 270B.14, subdivision 1, by adding

1.34 subdivisions; 270C.171, subdivision 1; 270C.30; 270C.33, subdivisions 5, 8;

1.35 270C.34, subdivision 2; 270C.35, subdivision 3, by adding a subdivision; 270C.38,

1.36 subdivision 1; 270C.445, subdivisions 2, 3, 5a, 6, 6a, 6b, 6c, 7, 8, by adding a

1.37 subdivision; 270C.446, subdivisions 2, 3, 4, 5; 270C.447, subdivisions 1, 2, 3, by

1.38 adding a subdivision; 270C.72, subdivision 4; 270C.89, subdivision 1; 270C.9901;

1.39 271.06, subdivisions 2, 2a, 6, 7; 271.08, subdivision 1; 271.18; 272.02, subdivisions

EXHIBIT

B

11

tabbles

HF1 FIRST ENGROSSMENT

REVISOR

SGS

171-H0001-1

152 1 **EFFECTIVE DATE.** This section is effective for aids payable in calendar year 2018  
152 2 and thereafter.

152 3 Sec. 17. Minnesota Statutes 2016, section 477A.015, is amended to read:

152 4 **477A.015 PAYMENT DATES.**

152 5 (a) The commissioner of revenue shall make the payments of local government aid to  
152 6 affected taxing authorities in two installments on July 20 and December 26 annually.

152 7 (b) Notwithstanding paragraph (a), for aids payable in 2019 only, the commissioner of  
152 8 revenue shall make payments of the aid payable under section 477A.013, subdivision 9, in  
152 9 three installments as follows: (1) 14.6 percent of the aid shall be paid on June 15, 2019; (2)  
152 10 35.4 percent of the aid shall be paid on July 20, 2019; and (3) 50 percent of the aid shall be  
152 11 paid on December 26, 2019.

152 12 (c) When the commissioner of public safety determines that a local government has  
152 13 suffered financial hardship due to a natural disaster, the commissioner of public safety shall  
152 14 notify the commissioner of revenue, who shall make payments of aids under sections  
152 15 477A.011 to 477A.014, which are otherwise due on December 26, as soon as is practical  
152 16 after the determination is made but not before July 20.

152 17 (d) The commissioner may pay all or part of the payments of aids under sections  
152 18 477A.011 to 477A.014, which are due on December 26 at any time after August 15 if a  
152 19 local government requests such payment as being necessary for meeting its cash flow needs.

152 20 **EFFECTIVE DATE.** This section is effective beginning with aids payable in 2019.

152 21 Sec. 18. **477A.0175] AID REDUCTIONS FOR OPERATING AN UNAUTHORIZED**  
152 22 **DIVERSION PROGRAM.**

152 23 **Subdivision 1. Penalty for operating an unauthorized diversion program.**

152 24 Notwithstanding any other law to the contrary, a county or city that operated a pretrial  
152 25 diversion program that a court determines was not authorized under section 169.999 or  
152 26 another statute or law must have its aid under sections 477A.011 to 477A.03 reduced by  
152 27 the amount of fees paid by participants into the program for the years in which the program  
152 28 operated. A court shall report any order that enjoins a county or city from operating a pretrial  
152 29 diversion program to the state auditor as required under subdivision 2. The state auditor  
152 30 shall determine the amount of fees collected under the diversion program and notify the  
152 31 commissioner of the amount. The commissioner shall reduce the county program aid paid  
152 32 to a county or the local government aid paid to a city by this amount beginning with the

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153 1 first aid payment made after receiving notice of the reduction amount. No aid payment may  
153 2 be less than zero but the amount of the reduction that cannot be made out of that payment  
153 3 shall be applied to future payments until the total amount has been deducted.

153 4 Subd. 2. Court challenge to authority to operate a pretrial diversion program. Any  
153 5 taxpayer may challenge a city or county operation of a pretrial diversion program by filing  
153 6 a declaratory judgment action or seeking other appropriate relief in the district court for the  
153 7 county where the city is located or in any other court of competent jurisdiction. If the court  
153 8 finds that the county or city has exceeded its authority under law in operating the pretrial  
153 9 diversion program, the court must transmit a copy of the court order to the state auditor.

153 10 EFFECTIVE DATE. This section is effective the day following final enactment and  
153 11 applies beginning with aid payments under Minnesota Statutes, section 477A.015 in calendar  
153 12 year 2018.

153 13 Sec. 19. Minnesota Statutes 2016, section 477A.03, subdivision 2a, is amended to read:

153 14 Subd. 2a. ~~Cities. The total aid paid under section 477A.013, subdivision 9, is~~  
153 15 ~~\$516,898,012 for aids payable in 2015.~~ For aids payable in 2016 and thereafter 2017, the  
153 16 total aid paid under section 477A.013, subdivision 9, is \$519,398,012. For aids payable in  
153 17 2018 and thereafter, the total aid paid under section 477A.013, subdivision 9, is  
153 18 \$534,398,012.

153 19 EFFECTIVE DATE. This section is effective for aids payable in calendar year 2018  
153 20 and thereafter.

153 21 Sec. 20. Minnesota Statutes 2016, section 477A.03, subdivision 2b, is amended to read:

153 22 Subd. 2b. ~~Counties. (a) For aids payable in 2014 and thereafter~~ 2018 through 2024, the  
153 23 total aid payable under section 477A.0124, subdivision 3, is \$103,795,000, of which  
153 24 \$3,000,000 shall be allocated as required under Laws 2014, chapter 150, article 4, section  
153 25 6. For aids payable in 2025 and thereafter, the total aid payable under section 477A.0124,  
153 26 subdivision 3, is \$100,795,000. Each calendar year, \$500,000 of this appropriation shall be  
153 27 retained by the commissioner of revenue to make reimbursements to the commissioner of  
153 28 management and budget for payments made under section 611.27. The reimbursements  
153 29 shall be to defray the additional costs associated with court-ordered counsel under section  
153 30 611.27. Any retained amounts not used for reimbursement in a year shall be included in the  
153 31 next distribution of county need aid that is certified to the county auditors for the purpose  
153 32 of property tax reduction for the next taxes payable year.



## Legislative Salary Council

72 State Office Building St. Paul, MN 55155-1201 Phone: (651) 296-9002 Fax: (651) 297-3697 TDD: (651) 296-9896

March 21, 2017

Representative Kurt Daudt  
Speaker of the House

Senator Michelle Fischbach  
President of the Senate

Representative Joyce Peppin  
House Majority Leader

Senator Paul Gazelka  
Senate Majority Leader

Representative Melissa Hortman  
House Minority Leader

Senator Tom Bakk  
Senate Minority Leader

Representative Sarah Anderson  
Chair, State Government Finance Committee

Senator Mary Kiffmeyer  
Chair, State Government Finance and Policy  
and Elections Committee

Representative Jim Knoblach  
Chair, Ways and Means Committee

Senator Julie Rosen  
Chair, Finance Committee

Governor Mark Dayton

Chief Justice Lorie S. Gildea

Dear Governor Dayton, Chief Justice Gildea, Representatives and Senators,

### Prescribed salaries

I am writing to you on behalf of the Legislative Salary Council. The Minnesota Constitution, Article IV, section 9, and Minnesota Statutes 2016, section 15A.0825 establishes the Legislative Salary Council (Council) whose responsibility is to prescribe the salaries of Minnesota state legislators by March 31<sup>st</sup> of each odd-numbered year. The Council is required to take other legislative compensation into account, but its authority is limited to prescribing the salary component of legislative compensation. The Council has no authority over other forms of legislative compensation, which include: per diems, insurance, retirement, and expense reimbursement. The Council has held six meetings and considered other legislative compensation, the budget forecast, and an extensive amount of other data and analysis, as reflected in the attached report. Please consider this transmittal letter as part of our report.

Based on our consideration of these materials and our extended discussion, the Legislative Salary Council prescribes that salaries of Minnesota senators and representatives be set at \$45,000, effective July 1, 2017.



**Rationale**

Salaries of Minnesota's legislators have been fixed at \$31,140 since 1999. During those 18 years, the cost of living, as measured by the CPI-U, has increased by more than 44%. Had salaries of legislators kept up with inflation, they would be \$44,860.

Minnesota's median household income has increased from \$47,035 in 1999 to \$68,730 in 2015, a change of 46.1%. If we believe that legislators' salaries should be adjusted to reflect the changes in the income of average Minnesotans, their pay would be \$45,503.

We considered other salary data points: For example, the average salary of county commissioners in the metro area (excluding Hennepin and Ramsey counties) was \$62,741. County commissioners in five non-metro regional centers were paid an average of \$40,972. If legislators were paid the average of these two groups, their salaries would be \$51,857. Other compensation comparisons are included in our report.

Ultimately, it is our judgement that a salary of \$45,000 is a fair and equitable salary to reflect the value provided to the State of Minnesota by legislators. In light of the 18 years since the last increase and our review of the data, we concluded that this increase was more than justified. Indeed several prior advisory compensation councils had recommended increases.

In our discussions, Council members agreed that it was in the state's best interest to provide fair and equitable compensation to legislators to reflect the value of their work for the state. The Council believes it is important to preserve the Minnesota Legislature as a citizens' legislature, a part-time legislature where any Minnesotan could consider serving, and where a broad and diverse mix of backgrounds and life experiences are represented among the members. The Council understands that we are setting the salary not just for those presently serving in the Legislature, but also for those who may desire to serve in the future. Unless Minnesota's Legislature has a competitive salary level, we will not be able to attract and retain legislators with the best skills and experience to represent us.

Council members also agreed that transparency in all aspects of compensation is essential to maintaining the public's confidence in the legislature. Transparency means that the value of all benefits including per diem, health care, and retirement are clearly stated and comprehensively reported.

In deciding to increase the salary of legislators, the Council considered a comprehensive set of data as outlined in our report, testimony from former legislators, and the analysis of experts. Among the highlights are the following:

- Former legislators, in testimony before the Council, indicated that while compensation is not generally an issue when citizens initially decide to run for public office, salaries often become an issue for members in deciding whether to continue serving in elective office.
- Data was presented indicating that the demographic makeup of the legislature has changed in recent years with fewer young and middle-aged members serving.

**Budget Forecast**

As required by statute, the Council considered Minnesota's financial status in making our decision. The February 2017 forecast prepared by Minnesota Management and Budget reports a projected

surplus of \$1.65 billion for the FY 18-19 biennium. Planning estimates for the 2020-21 biennium show projected revenues exceeding current law expenditures by \$2.124 billion.

#### **Other legislative compensation**

The Council considered other forms of legislative compensation in determining the level of salary to prescribe for legislators. By law, legislators can participate in the insurance programs provided to all state employees. Those programs include health, dental, and life insurance. As with other state employees, premiums vary depending on whether the legislator elects single or family coverage and the tier of services the member selects. Minnesota statutes also require legislators participate in a state retirement program. For legislators elected after 1997 this is a defined contribution program in which the state contributes 6 percent of salary and per diem and the legislator contributes 5.5 percent.

#### **Expense reimbursement**

Members of the legislature also receive payments for certain expenses incurred as they carry out the duties of their office. The Council does not consider the reimbursement for reasonable and legitimate expenses in performing legislative duties to be personal compensation to the legislators. We include them to demonstrate that the Council was aware of these expense reimbursements and so that the public can also know of these reimbursement provisions in the law.

Members are reimbursed for official travel. While the rules for mileage reimbursement differ slightly between the House and the Senate, reimbursement based on the federal mileage rate is allowed for official travel. Members may also receive reimbursement, up to \$200 per month for Senators and up to \$125 for Representatives, for communication expenses such as cellphone, telephone and internet services.

Representatives who live more than 50 miles from the Capitol may be reimbursed for up to \$1,800 per month in lodging expenses. All lodging reimbursements must be documented by receipts or lease agreements.

#### **Per diem**

The Council devoted considerable time to discussing legislative per diem. "Per diem" means daily payment and generally is understood to refer to payments to compensate recipients for daily living expenses such as meals and travel costs. Per diem payments for Minnesota legislators are currently \$86 in the Senate and \$66 in the House of Representatives. Council members viewed per diem payments primarily as non-transparent supplemental income to the salary received by Minnesota legislators.

Data from the House of Representatives and the Minnesota Senate indicate that average per diem payments for regular sessions were:

	2015	2016
House of Representatives	\$7,297	\$4,524
Senate	\$10,965	\$6,361

Average per diems vary greatly by year: legislative sessions are longer in odd-numbered years when the biennial state budget is adopted, so more per diem is paid. We have more related data in our report.

It should be noted that Minnesota is not alone in the use of per diem to supplement legislative salaries. A National Conference of State Legislatures Survey shows per diem is part of the legislative compensation package in 42 states. Daily per diem rates are \$140 or more in 24 states.

The Council learned that per diem payments are taxed as income. However, under the Internal Revenue Service code, members who live more than 50 miles from the Capitol may, within federal limits, deduct their per diem payments from their income. In addition, the calculation of retirement contributions include regular and special session per diem payments.

When comparing Minnesota salaries with those offered in other comparable public sector positions and when making comparisons with legislative salaries in other states, the Council took Minnesota's legislative per diem into consideration.

Concerns over the transparency of the current legislative compensation package led the Council to recommend on a 12-1 vote, with three members absent, that the Senate and House consider eliminating per diem payments and reimburse members only for actual living expenses. While the Council's salary determination is based on current per diem levels, Council members noted that if per diems were not part of legislator compensation, they would have prescribed higher salaries.

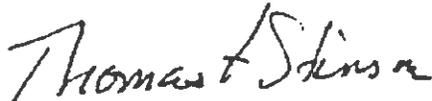
Council members considered a number of alternative methods of determining an appropriate legislative salary level to be effective July 1, 2017 and members reached their decisions based on their own analysis. However, the range in the salary level deemed appropriate for Minnesota legislators by Council members was relatively narrow.

Our report provides more detail regarding our process, the data and reports that we considered, and the testimony that we received in the course of our work.

I am pleased to report that the prescription of legislators' salaries was adopted by the Council on a 13-1 vote, with two members absent. The transmittal letter and report were adopted on a 15-0 vote, with one member absent.

I have included a list of the members of the Council. Each of the members worked diligently and thoughtfully as we executed our responsibility to prescribe legislative salaries. We are honored to have been the first Council to carry out this new duty adopted by Minnesota's citizens through the Constitutional amendment.

Respectfully submitted,



Thomas Stinson  
Chair

**Members of the Legislative Salary Council  
2017**

**Appointed by Governor Dayton**

Joseph Boyle	Eighth District
Patrice Hannan	Fifth District
Dr. David Metzen	Second District
Sherrie Pugh	Third District
Dr. Thomas Stinson	Fourth District
Randy Twistol	Seventh District
Marsha VanDenburgh	Sixth District
Laura Witty	First District

**Appointed by Chief Justice Gildea,  
Minnesota Supreme Court**

Diana Burlison	Sixth District
William P. Donohue	Fourth District
Gregory R. Fox	Eighth District
James Joy	Seventh District
Charles J. McElroy	Fifth District
Gloria S. Myre	Second District
Deborah Olson	Third District
Kenneth Wilmes	First District



# Report of the Legislative Salary Council

March 17, 2017

This report is submitted by the Legislative Salary Council, established under the Minnesota Constitution, Article IV, section 9, and Minnesota Statutes 2016, section 15A.0825,

#### **Prescribed salaries**

As provided in the Minnesota Constitution, Article IV, section 9, and Minnesota Statutes 2016, section 15A.0825, the Legislative Salary Council prescribes the salaries of legislators at \$45,000, effective July 1, 2017.

#### **Background**

The citizens of Minnesota voted on November 8, 2016 to amend their Constitution by establishing a Legislative Salary Council to prescribe salaries of Minnesota's legislators. The duties and other terms are specified in State Statute, section 15A.0825.

The Chief Justice of the Supreme Court and the Governor appointed their respective members on December 23, 2016. Governor Dayton, as provided in the Statute, appointed Dr. Thomas Stinson to convene and serve as chair of the first meeting. A list of the members is included in the Appendix.

The Council met six times between January 15 and March 31, 2017, the deadline for the Council to submit its determination. The Council reached agreement on its prescribed salary for Minnesota's 67 senators and 134 representatives at its meeting on March 10<sup>th</sup>, and completed its work at its meeting on March 17<sup>th</sup>, when it voted to adopt the letter of transmittal and this report.

#### **Process**

The Council devoted its first three meetings to getting organized and gathering information and becoming informed about legislator compensation. The Council elected Dr. Stinson to serve as chair, and elected Patrice Hannan as Vice-Chair. It heard a presentation by the Information Policy Analysis Division of the Department of Administration on the State's Open Meeting Law and Data Practice's Act, and adopted data practices policies recommended by the Department.

The Council requested and received substantial data regarding compensation of legislators. The Council received background on compensation policies for members, and data reflecting rates, costs, payments and expenditures of the various components of legislative compensation.

The statute establishing the Council proscribes members of the legislature from communicating with Council members. To improve Council members' understanding of compensation issues, several former legislators were invited to speak to the Council. Their presentations were very informative and instructive. A complete list of those former members is included in the Appendix.

As required by statute, the Council considered the financial status of the State, as indicated in the State's budget forecast. The State Budget Director provided an in-depth explanation of the budget based on the November 2016 forecast. Dr. Stinson, as the former state economist, updated the Council after the February 2017 forecast was issued.

The Council heard presentations on compensation from other parties:

- The Minnesota Council for Fiscal Excellence
- The former Manager of State Employee Compensation, Minnesota Management and Budget
- The League of Women Voters

The Council considered other data: National Conference of State Legislatures' data on salary and compensation for legislatures in other states, salaries of county board members, and salaries of higher compensated administrators and policy makers in the Executive Branch.

The Council considered per diem payments primarily as a form of salary, and in evaluating salary of other legislatures, included both elements in its considerations. The issue of per diem is discussed separately in this report.

At its meeting on March 3<sup>rd</sup>, the Council narrowed the range of salaries it was considering, taking into account per diem payments to Minnesota legislators, and those for other institutions with which it was making comparison.

At its March 10<sup>th</sup> meeting, the Council reached agreement on its prescribed salary, and adopted a draft of its transmittal letter. It completed its work at its meeting on March 17<sup>th</sup>, when it voted to adopt the letter of transmittal and this report.

### **Principles**

The Council devoted some amount of time discussing principles that should be considered in establishing compensation. Those principles included:

- Providing fair and equitable compensation to legislators that reflects the value of their work to the State of Minnesota.
- Preserving the Legislature as a citizen Legislature, an institution where any citizen could consider serving. Where the salary and related compensation would be set fairly so that a citizen could serve while being able to meet family obligations. Where the salaries are not set so high that individuals would seek to be elected solely for the remuneration that was available.
- Recognizing the Legislature is a part-time institution, one where citizens serve for a period in their career and then return to private life. Where legislators work full time for four or five months a year, and then generally return home with more limited service during the interim.
- Recognizing that as the state's public representatives, transparency in compensation is critical, so that the public can understand the manner in which legislators are

compensated, and the amounts of that compensation.

The Council's statutory responsibility is to prescribe legislators' salaries. The focus of its deliberations was on this component of legislative compensation. The following describes other salaries the Council examined, and the rationale for determining the prescribed salary.

#### **Comparable salaries**

The Council devoted considerable time to reviewing other comparable positions and salaries. The jobs of legislators are unique, especially in their time demands. The Council clearly heard that legislators work more than full time when they are in regular session, with committee hearings being held from early morning until well into the evening. Although committee hearings are not generally scheduled on Fridays, other meetings are conducted. Members attend meetings in their districts, and engage with constituents on weekends as well.

**Regular session varies:** In odd-numbers years, session begins on the first Monday after the first Tuesday in January, and adjourns the third week of May. This longer session is when the legislature enacts the biennial budget, funding state government for two years.

In even-numbered years, the Legislature typically convenes (based on agreement between legislative leaders) the end of January or early February, and then adjourns the third week of May.

Presentations by former legislators indicated consistent themes on the demands on legislators' time:

- Legislators work long hours during session. As sessions progress, evenings and weekends are also consumed.
- There is much variation in time demands during the interims between sessions. Many members continue to have demands from constituents, including individuals and business in their districts. Some members report that this is limited, while others reported that they easily spending 15-20 hours per week engaged in legislative business during the legislative interims.
- There was surprising consensus among the former legislators who testified that, overall, a legislator can expect that this "job" represents about 70% of a full-time job.

#### **County commissioners**

The Council examined the salaries of county commissioners, who hold elective office, and serve in parallel functions, but at the county level. As with legislators, there is also a variation in the time demands for county commissioners. Some counties consider their commissioners to be full-time, while others clearly serve in more time-limited capacity.

A sampling of commissioner salaries shows:

Sampling of county commissioner salaries			
County	Annual salary	County	Annual salary
Hennepin	\$108,000	Olmsted	\$35,901
Ramsey	\$90,000	St. Louis	\$59,422
Anoka	\$64,000	Stearns	\$35,565
Dakota	\$75,000	Scott	\$59,930
Carver	\$62,064	Washington	\$52,713

### Other State Legislatures

The National Conference of State Legislatures publishes survey data on compensation paid to legislators across the country. A report for 2016 is included in the Appendix. A review of that data indicates a wide variance in salary, per diem rates, and the number of days legislatures are in session.

Dr. Stinson conducted some analysis to standardize the data and enable rough comparisons to be made. For example, for Minnesota, Dr. Stinson assumed the annual salary of \$31,140, the House average amount paid in per diem of \$7,686, for a total of \$38,827.

This permits comparisons with similar assumptions with other states:

Comparison of salary plus per diem with other Legislatures	
Minnesota	\$38,876
Iowa	\$29,914
Wisconsin	\$54,910
Washington	\$56,739

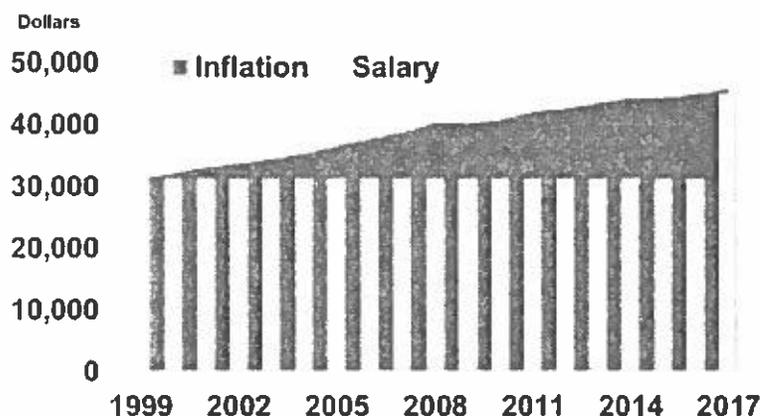
### Household median income

One comparison point has been that if Minnesota is to have a legislature that is broadly representative of the population, then the salaries of legislators should reflect that of a typical household. In Minnesota, according to the Census Bureau, the median household income in 1999 was \$47,035, and in 2015 was \$68,730, a change of 46.1%. If we believe that legislators' salaries should be adjusted to reflect the changes in the income of average Minnesotan's, their pay, would be \$45,503. If both salary and per diem had grown at the rate of median family income, with income held at its current level, salaries would be \$47,344.

### Adjust salary for inflation

One approach is to keep legislator pay current by adjusting salaries by inflation. If legislators had received increases equal to inflation (Consumer Price Index) since their salaries were last increased in 1999, their pay today would be \$44,860. Had their per diem also been adjusted for inflation, the salary would have been \$46,570

## Legislative Salaries Have Not Changed Since 1999



### Salary as percentage of the Governor

The State Compensation Council is established in state law (section 15A.082) to recommend salaries for Constitutional Officers and Judges. Until the Constitutional amendment was adopted in 2016, the Compensation Council also recommended salaries for legislators. Several previous Councils (2013, 2009, 2007 and 2005) recommended that legislators' salaries be set at 33% of the salary of the Governor. In current terms, legislators would be paid \$42,118 under this approach. However, the Legislative Salary Council was not able to determine the precise basis by which the Compensation Council elected to use 33%.

### Congressional salaries

Many legislators have remarked that in conversations with their constituents, that the public believes their salaries are comparable to those of members of Congress. Current Congressional salaries are \$174,000. While no one is contending that legislator salaries should be the same, if legislative salaries had kept pace with the *increases* in Congressional salaries, Minnesota legislative salaries would be \$40,252. (Congressional salaries increased from \$136,700 in 1999 to \$174,000 today, an increase of 27.3%).

<b>Summary of salary comparisons</b>				
	Description	MN Legislator salary + per diem (\$31,140 + 7,686)	Resulting Salaries only	% change from current
Increase by inflation		\$54,257	\$46,570	49.5%
Increase equal to Median Household Income	1999: \$47,035 2015: \$68,730 Change: 46.1%	\$55,030	\$47,344	52.0%
Maintain same % increase as Congressional salaries	1999: \$136,700 2016: \$174,000 change: 27.29%	\$47,938	\$40,252	29.3%
Salary at 33% of Governor's salary		\$42,543	\$34,857	11.9%
5 Metro counties (no Hennepin or Ramsey)	\$62,741	\$62,471	\$55,095	76.9%
5 Regional Center counties average	\$40,972	\$40,972	\$33,286	6.9%
5 Metro counties + 5 Regional Center counties average	\$51,856	\$51,856	\$44,170	41.8%
Iowa legislators	Salary: \$25,000 Per diem: \$12,600	\$37,600	\$29,914	-3.9%
Wisconsin legislators	Salary: \$50,950 Per diem Senate: \$3,960	\$54,910	\$47,224	51.6%
Washington legislators	Salary: \$46,839 Per diem: \$9,900	\$57,160	\$49,474	58.9%

#### **Rationale**

In reaching its determination, the Council considered what it had heard and the materials it had reviewed since its first meeting in January. This information included:

- Presentations and comments by former legislators.
- National survey data published by the National Conference of State Legislatures.
- All of the elements of legislators' compensation, with a particular focus on those components that are treated as income.
- The budget forecast issued by Minnesota Management and Budget.
- Salaries of county commissioners and other government employees.

The Council considered data indicating that the demographic makeup of the legislature includes fewer young and middle-aged members. The Council believes that Minnesota is best served if the Legislature is diverse. The Council heard consistent themes in discussions with former legislators, that while salary and compensation is not generally an issue when citizens initially decide to run for public office, salaries become an issue in deciding whether to continue serving in elective office.

The Council understands that we are setting the salary not just for those presently serving in the Legislature, but also for those who may desire to serve in the future. Unless Minnesota's Legislature has a reasonable salary level, we will not be able to attract and retain legislators with the best skills and experience to represent us.

As required in the Council's statute, Minnesota Management and Budget, the state agency tasked with preparing the state budget forecast, reported that the agency anticipates a surplus of \$1.65 billion for the FY 18-19 biennium, and a surplus of \$2.124 billion for the FY 20-21 biennium. The Council's salary determination is estimated as having a cost of \$3.2 million, approximately 5% of the \$64 million FY 18 base budget of the House of Representatives and the Senate.

The Council found that many of the data points in the summary of salary comparisons fit within a relatively narrow range of \$40,000 to \$47,000. Through extended discussion and informal polling at its March 10th meeting, members reached consensus that \$45,000 was the appropriate salary to prescribe for Minnesota's legislators to be paid effective July 1, 2017. A roll call vote with 13 ayes, 1 nay and two excused absences formalized the Council's position.

#### **Per diem**

Per diem payments are a not-well understood component of legislators' compensation. Per diem means "daily payment," and is generally understood to mean a payment to compensate a person for their daily expenses, such as meals and travel costs.

Minnesota Statutes 3.099 provides: "Each member shall also receive per diem living expenses during a regular or special session of the legislature in the amounts and for the purposes as determined by the senate for senate members and by the house of representatives for house members."

Per diem amounts and the rules under which those payments are made are determined by the respective Rules Committees of the House and the Senate. Individual members decide how much to accept.

In both the House and the Senate, members are eligible to receive payments seven days a week for the periods when the legislature is in session (generally the beginning of January through the third week in May in odd-numbered years, when the biennial budget is adopted.) In even-

numbered years, the Legislature will typically begin its session several weeks later, and conclude by the third week in May.

Members may also be paid per diem during the periods when the Legislature is not in session (“interims”), to attend committee hearings, or attend other meetings related to Legislative business. Eligibility for those per diem payments is determined by the respective Rules Committees.

The House and Senate currently have different per diem rates. Other than anecdotal statements, the Council did not hear any testimony that clearly explained why these rates are different. A complete history of these rates, collected by the Minnesota Legislative Reference Library, is included in the Appendix.

The per diem amounts paid vary widely: Data from the last four years show:

Per diem payments				
Minnesota House	Per diem rate	Average per diem paid for regular session	Average per diem paid for interim	Total dollar amount of per diem paid to all members
2013	\$66	\$7,325	\$490	\$1,103,255
2014	\$66	\$4,768	\$644	\$725,280
2015	\$66	\$7,297	\$503	\$1,142,567
2016	\$66	\$4,524	\$571	\$682,820

Minnesota Senate	Per diem rate	Average per diem paid for regular session	Average per diem paid for interim	Total dollar amount of per diem paid to all members
2013	\$86	\$10,976	\$868	\$798,142
2014	\$86	\$6,670	\$1,234	\$529,562
2015	\$86	\$10,965	\$1,034	\$810,340
2016	\$86	\$6,361	\$1,318	\$514,505

Regular session per diem payments are higher in odd-numbered years when the Legislature is in session from early January until the third week of May, in part because of its duty to adopt a biennial budget.

Under current law, per diem payments are treated as income when calculating legislators’ retirement contributions. Almost all legislators participate in a defined contribution retirement plan. Legislative retirement plans are discussed later in this report.

The issue of per diem payments is made more complex due to their treatment by the federal tax code. Under section (162 h) of the Internal Revenue Code, legislators who live more than 50 miles from the Capitol may have these payments excluded from the calculation of income. This exclusion is limited by federal per diem rates.

Council members expressed concern about numerous aspects of per diem payments:

- Per diem payments are substantial. Although per diem payments vary by the length of the session, legislators on average realize a 30% increase from their current published salary of \$31,140 so that their actual average salary is closer to \$38,800 (based on the lower House rate, and average number of days over the last several years.)
- It is unclear why per diem payments are different in the House and Senate, especially since legislators are separately reimbursed for mileage, communication expenses and, if eligible, for lodging expenses.
- Per diem payments average \$5,100 to \$7,900 in the House and \$7,600 to \$12,100 in the Senate. However maximum payments are considerably higher. In 2015, the maximum per diem payment in the House was \$13,398, and in the Senate \$16,426.
- The Council notes the disparate impact of the income tax treatment of per diem payments paid to members who live more than 50 miles from the Capitol compared to those who live within that range, when considering the provision of lodging and mileage reimbursements.

In keeping with the Council's interest in Legislator's salaries being transparent to Minnesota's citizens, the Council recommends that the Legislature consider eliminating per diem payments for their work during regular or special sessions. Instead, members should be reimbursed for their reasonable business expenses, as other organizations routinely do for their employees. Members of the Council indicated they would have set salaries at a higher level to make up for this diminishment if per diems were not provided. Upon advice of counsel from the Attorney General's Office, the Council understands it is within its legal authority to make this recommendation. One member filed a minority report, which is included in the Appendix.

#### **Other benefits**

**Insurance.** By law, Minnesota Statutes 43A.24, subd 2, legislators participate in the health insurance program provided to all state employees. The insurance program includes health, dental, and life insurance.

Premiums vary based on whether the legislator elects single or family coverage. Other costs, such as co-pays, co-insurance and deductibles depend on which tier of services the member elects. Members participate in the same manner as state employees.

Annual premiums for 2017 are:

Annual insurance premiums			
		Legislator contribution	State contribution
Health	Single coverage	\$367	\$6,992
	Family coverage	\$2,510	\$19,132
Dental	Single coverage	\$60	\$344
	Family coverage	\$456	\$740
Life insurance			\$60

Council members note:

- The State health and dental insurance plan represents a significant benefit paid to legislators.
- Given that legislators typically work full time for the Legislature four or five months a year, but substantially less the remaining part of the year, it would be difficult to obtain other insurance while they serve. Some Council members noted that part-time employment is a challenge for many Minnesotans, who are not offered the opportunity to participate in this comprehensive insurance program.

**Retirement.** Under state law, members participate in a state retirement program, Minnesota Statutes 2016, section 352D. This is a defined contribution program where the State contributes 6%, while the legislator contributes 5.5%. Participation is mandatory. The member's salary and per diem payments for regular and special sessions are included when calculating the contributions. The legislator, like other state employees who participate in the State's defined contribution programs, can direct the investment in a variety of investment funds selected by the State Board of Investment.

At any time after employment ends, the legislator may withdraw the value of his or her account, including both employee and employer contributions, in a lump sum, which may be rolled, to continue the tax deferral, into an individual retirement account ("IRA"). A withdrawal forfeits the right to elect a retirement annuity at age 55.

At age 55 or later, provided legislative service has ended, the legislator may elect a distribution in the form of a lump sum or an annuity. The annuity, which is a monthly benefit paid for the life of the legislator, is calculated based on the account balance and the age of the legislator at the annuity starting date. In exchange for a lower monthly amount, the legislator may elect a joint and survivor annuity that pays a survivor benefit to a beneficiary after the death of the legislator. These options are also available if a legislator becomes totally and permanently disabled. Annuities are eligible for post-retirement adjustments (sometimes called "COLAs").

Retirement contributions based on average per diem payments paid in 2016 are:

<b>State retirement contribution (6%)</b>		
	House	Senate
Salary: \$31,140	\$1,868	\$1,868
Average per diem		
House: \$5,096	\$271	
Senate: \$7,679		\$382

#### **Expense reimbursements and allowances**

Members of the legislature receive other payments for certain expenses they incur to carry-out the duties of their office. They are also reimbursed for expenses they incur for attending approved conferences or trips.

**Mileage.** Representatives who live more than 50 miles from the Capitol are reimbursed for their mileage from their homes to the Capitol. Representatives are also reimbursed for mileage for travel in their legislative districts, with a maximum of \$850 per month. (There are exceptions for districts with greater than 1,000 square miles)

During session, senators are reimbursed for their mileage to and from the Capitol no matter how far they live from the Capitol. Senators are also reimbursed for their mileage for constituent and district meetings. Senators must present documentation to receive the constituent and district mileage.

All mileage reimbursement is based on the federal mileage rate.

**Lodging.** Members who live more than 50 miles from the Capitol may be reimbursed for lodging expenses. All reimbursements must be documented by receipts or lease agreements.

Representatives may be reimbursed for rent, and related lodging expenses such as furniture rental, local telephone, internet access service, basic media service, utilities, renter's insurance, non-refundable fees, and parking. The maximum amount is \$1,800 per month. The House of Representatives limits the total of these reimbursements to a maximum of \$32,400 over the two year length of their terms.

Senators may be reimbursed for rent, utilities, and furniture rental. The maximum reimbursement is \$1,800 per month.

**Communications.** Members may receive reimbursement for communications expenses.

Representatives may request a communications expense allowance of up to \$125 per month for internet service, an additional phone line, optional telephone services, wireless services, or other communication services needed to maintain frequent and reliable communication with constituents, house staff, and other government officials.

Senators may receive reimbursement for communications expenses up to \$200 per month for such items as telephone, fax, cell phone pager, and Internet services.

For both senators and representatives, if receipts are provided, these will be treated as an expense. If there is no receipt, it will be treated as income and taxed.

**Leadership pay.** Under Minnesota Statutes section 3.099, Subdivision 3, the Senate and the House Rules Committees may designate additional pay of up to 140% for leadership positions in each body.

Subd. 3. **Leaders.** The senate Committee on Rules and Administration for the senate and the house of representatives Committee on Rules and Legislative Administration for the house of representatives may each designate for their respective body up to three leadership positions to receive up to 140 percent of the compensation of other members.

#### **Budget forecast**

The Council's statute, section 15A.0825, Subdivision 7, requires it to take into account the most recent budget forecast. At its January 27<sup>th</sup> meeting, the Council heard a presentation on the state budget from Margaret Kelly, the State Budget Director.

Director Kelly indicated that, based on the November 2016 forecast, the state was estimating a surplus of \$736 million at the end of the current 2016-17 biennium, and a \$1.4 billion surplus at the conclusion of the 2018-2019 biennial budget period. She reported that the budget was structurally balanced, with reserves to help manage through an economic downturn. She indicated there is risk inherent in the forecast, given that 30 months remain until the end of the 18-19 biennium.

Minnesota Management and Budget issued an updated forecast on February 28<sup>th</sup>, which becomes the most current forecast for the Council to consider. Dr. Stinson, as the former state economist, summarized the Department's forecast for the Council at its meeting on March 3<sup>rd</sup>. That forecast projects a surplus of \$1.65 billion for the FY 18-19 biennium. Planning estimates for the 2020-21 biennium show projected revenues exceeding current law expenditures by \$2.124 billion.

**Conclusion**

The Council formally adopted its letter of transmittal and report at its final meeting on March 17, 2017. The letter was adopted on a 15-0 vote, with one member absent. This report was adopted at the same meeting on a 15-0 vote, with one member absent.

An appendix of key documents is attached.

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# **Appendix A**

## **Constitutional Amendment**

## CONSTITUTION OF THE STATE OF MINNESOTA

Adopted October 13, 1857

Generally Revised November 5, 1974

Article 1. Bill of rights.	Article 8. Impeachment and removal from office.
Article 2. Name and boundaries.	Article 9. Amendments to the constitution.
Article 3. Distribution of the powers of government.	Article 10. Taxation.
Article 4. Legislative department.	Article 11. Appropriations and finances.
Article 5. Executive department.	Article 12. Special legislation; local government.
Article 6. Judiciary.	Article 13. Miscellaneous subjects.
Article 7. Elective franchise.	Article 14. Public highway system.

### ARTICLE IV LEGISLATIVE DEPARTMENT

**Sec. 9. Compensation.** The salary of senators and representatives shall be prescribed by a council consisting of the following members: one person who is not a judge from each congressional district appointed by the chief justice of the Supreme Court, and one member from each congressional district appointed by the governor. If Minnesota has an odd number of congressional districts, the governor and the chief justice must each appoint an at-large member in addition to a member from each congressional district. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the most members in the legislature. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the second-most members in the legislature. None of the members of the council may be current or former legislators, or the spouse of a current legislator. None of the members of the council may be current or former lobbyists registered under Minnesota law. None of the members of the council may be a current employee of the legislature. None of the members of the council may be a current or former judge. None of the members of the council may be a current or former governor, lieutenant governor, attorney general, secretary of state, or state auditor. None of the members of the council may be a current employee of an entity in the executive or judicial branch. Membership terms, removal, and compensation of members shall be as provided by law. The council must prescribe salaries by March 31 of each odd-numbered year, taking into account any other legislative compensation provided to legislators by the state of Minnesota, with any changes in salary to take effect on July 1 of that year. Any salary increase for legislators authorized in law by the legislature after January 5, 2015, is repealed.

[Amended, November 8, 2016]

# **Appendix B**

## **Statute**

1

MINNESOTA STATUTES 2016

15A.0825

**15A.0825 LEGISLATIVE SALARY COUNCIL.**

Subdivision 1. **Membership.** (a) The Legislative Salary Council consists of the following members:

(1) one person, who is not a judge, from each congressional district, appointed by the chief justice of the Supreme Court; and

(2) one person from each congressional district, appointed by the governor.

(b) If Minnesota has an odd number of congressional districts, the governor and the chief justice must each appoint an at-large member, in addition to a member from each congressional district.

(c) One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the most members in the legislature. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the second most members in the legislature.

(d) None of the members of the council may be:

(1) a current or former legislator, or the spouse of a current legislator;

(2) a current or former lobbyist registered under Minnesota law;

(3) a current employee of the legislature;

(4) a current or former judge; or

(5) a current or former governor, lieutenant governor, attorney general, secretary of state, or state auditor.

Subd. 2. **Initial appointment; convening authority; first meeting.** Appointing authorities must make their initial appointments by January 2, 2017. The governor shall designate one member to convene and chair the first meeting of the council. The first meeting must be before January 15, 2017. At its first meeting, the council must elect a chair from among its members. Members that reside in an even-numbered congressional district serve a first term ending January 15, 2019. Members residing in an odd-numbered congressional district serve a first term ending January 15, 2021.

Subd. 3. **Terms.** (a) Except for initial terms and for the first term following redistricting, a term is four years or until new appointments are made after congressional redistricting as provided in subdivision 4. Members may serve no more than two full terms or portions of two consecutive terms.

(b) If a member ceases to reside in the congressional district that the member resided in at the time of appointment as a result of moving or redistricting, the appointing authority who appointed the member must appoint a replacement who resides in the congressional district to serve the unexpired term.

Subd. 4. **Appointments following redistricting.** Appointing authorities shall make appointments within three months after a congressional redistricting plan is adopted. Members that reside in an even-numbered district shall be appointed to a term of two years following redistricting. Members that reside in an odd-numbered district shall be appointed to a term of four years following redistricting.

Subd. 5. **Removal; vacancies.** Members may be removed only for cause, after notice and a hearing, for missing three consecutive meetings, or as a result of redistricting. The chair of the council or a designee shall inform the appointing authority of a member missing three consecutive meetings. After the second consecutively missed meeting and before the next meeting, the chair or a designee shall notify the member in writing that the member may be removed for missing the next meeting. In the case of a vacancy on the

15A.0825

## MINNESOTA STATUTES 2016

2

council, the appointing authority shall appoint a person to fill the vacancy for the remainder of the unexpired term.

**Subd. 6. Compensation.** Members shall be compensated under section 15.059, subdivision 3.

**Subd. 7. Duties.** By March 31 of each odd-numbered year, the council must prescribe salaries for legislators to take effect July 1 of that year. In setting salaries, the council must take into account any other legislative compensation provided to the legislators by the state and the most recent budget forecast. The council must submit a report by March 31 of each odd-numbered year with the prescribed salaries to the governor, the majority and minority leaders of the senate and the house of representatives, the chairs of the committees in the senate and the house of representatives with jurisdiction over the legislature's budget, and the chairs of the committees in the senate and house of representatives with jurisdiction over finance. The report must describe the council's rationale for selecting the prescribed salaries.

**Subd. 8. Chair.** The commission shall elect a chair from among its members.

**Subd. 9. Staffing.** The Legislative Coordinating Commission shall provide administrative and support services for the council.

**Subd. 10. No ex parte communications.** Members may not have any communication with a member of the legislature during the period after the first meeting is convened under subdivision 2 and the date the legislator salaries are submitted under subdivision 7.

**History:** 2014 c 282 s 1

**NOTE:** This section, as added by Laws 2014, chapter 282, section 1, is effective upon adoption of the constitutional amendment proposed under Laws 2013, chapter 124, as amended by Laws 2014, chapter 282, sections 2 and 3. Laws 2014, chapter 282, section 1, the effective date.

# **Appendix C**

## **Council Member Roster**

## Members of the 2017 Legislative Salary Council

The Legislative Salary Council consists of 16 members appointed as follows: one person, who is not a judge, from each congressional district, appointed by the chief justice of the Supreme Court; and one person from each congressional district, appointed by the governor. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the most members in the legislature. The remaining half must belong to a political party that has the second most members in the legislature.

### Appointed by Governor Dayton

Joseph Boyle	Eighth District
Patrice Hannan	Fifth District
Dr. David Metzen	Second District
Sherrie Pugh	Third District
Dr. Thomas Stinson	Fourth District
Randy Twistol	Seventh District
Marsha VanDenburgh	Sixth District
Laura Witty	First District

### Appointed by Chief Justice Gildea

Diana Burlison	Sixth District
William P. Donohue	Fourth District
Gregory R. Fox	Eighth District
James Joy	Seventh District
Charles J. McElroy	Fifth District
Gloria S. Myre	Second District
Deborah Olson	Third District
Kenneth Wilmes	First District

## **Appendix D**

### **Former Members Testifying**

Former members of the Minnesota Legislature that provided testimony:

- David Hann, former Minority Leader of the Minnesota Senate
- Mary Liz Holberg, former member of the Minnesota House of Representatives
- Margaret Anderson-Kelliher, former Speaker of the Minnesota House of Representatives
- Kate Knuth, former member of the Minnesota House of Representatives
- Gene Merriam, former member of the Minnesota Senate
- Roger Moe, former Majority Leader of the Minnesota Senate
- Steve Sviggum, former Speaker of the Minnesota House of Representatives

**Appendix E**  
**Minority Report**

## Minority Report

I, Joseph Boyle, believe the recommendation to the legislature to eliminate per diem is beyond the authority of the Legislative Salary Council.

The Authority of the Legislative Salary Council is as follows:

### AUTHORITY

Article IV of the Minnesota Constitution, LEGISLATIVE DEPARTMENT, Sec. 9.  
Compensation declares:

The salary of senators and representatives shall be prescribed by a council....The council must prescribe salaries by March 31 of each odd-numbered year taking into account any other legislative compensation provided to legislators by the state of Minnesota....

**Minnesota Statute §15A.0825 LEGISLATIVE SALARY COUNCIL, states:**

**Duties:** By March 31 of each odd-numbered year, the council must prescribe salaries for legislators....In setting salaries, the council must take into account any other legislative compensation provided to the legislators by the state and the most recent budget forecast. The council must submit a report by March 31 of each odd-numbered year with the prescribed salaries....The report must describe the council's rationale for selecting the prescribed salaries.

Thus, the Constitutional Amendment states in part:

The salary of senators and representatives shall be prescribed by a council....taking into account any other legislative compensation provided to legislators by the State of Minnesota.

The enabling legislation states in part:

...the council must prescribe salaries for legislators....In setting salaries, the council must take into account any other legislative compensation....The report must describe the council's rationale for selecting the prescribed salaries.

It is clear the council does not have the authority to criticize the "...other legislative compensation", but to take into account "...other legislative compensation" when prescribing "...the council's rationale for prescribing the legislators salaries."

Further, substantively elimination of per diem will eliminate rural legislator's ability to take legal tax deductions, and be paid for incidental expenses incurred due to living and maintaining two residences.

Respectfully Submitted:

Joseph M. Boyle  
Council Member

**Appendix F**  
**MMB Budget Forecast**  
**(November and February)**

# BUDGET AND ECONOMIC FORECAST 28

November 2016

FOR IMMEDIATE RELEASE

## Minnesota's Budget Outlook Remains Stable

### \$1.4 Billion Available for Upcoming Budget

**Current Biennium Balance Increases.** \$334 million transferred to budget reserve, \$678 million balance remains. A favorable FY 2016 close, partially offset by a reduced forecast for FY 2017, leaves projected revenues \$41 million higher for the current biennium compared to end of session estimates. Spending in the current biennium is projected to be \$245 million lower than prior estimates. Current law allocates 33 percent, or \$334 million of the resulting balance to the budget reserve. FY 2016-17 is now projected to end with a \$678 million balance, \$51 million lower than previous estimates.

#### FY 2016-17 General Fund Forecast

(\$ in millions)	November	Change
<b>Beginning Balance</b>	<b>\$2,103</b>	<b>\$ -</b>
Revenues	42,382	41
Spending	41,502	(245)
Cash & Budget Reserves	1,947	-
Stadium Reserve	24	3
<b>Forecast Balance</b>	<b>\$1,012</b>	<b>\$283</b>
33% to Budget Reserve	334	334
<b>Budgetary Balance</b>	<b>\$678</b>	<b>\$(51)</b>

#### FY 2018-19 General Fund Forecast

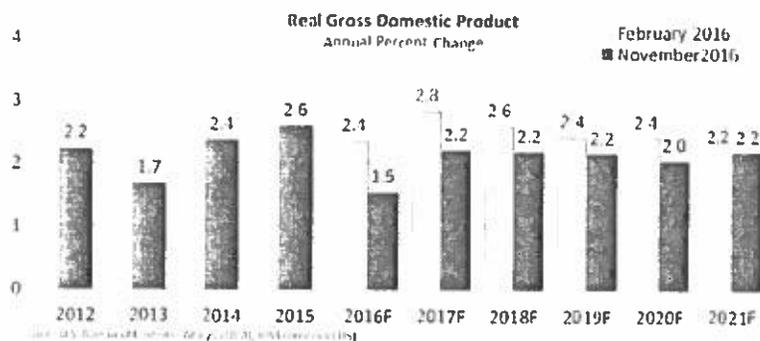
(\$ in millions)	November	Change
<b>Beginning Balance</b>	<b>2,982</b>	<b>\$286</b>
Revenues	45,321	(467)
Spending	44,585	(152)
Cash & Budget Reserves	2,280	334
Stadium Reserve	38	13
<b>Forecast Balance</b>	<b>\$1,400</b>	<b>\$(376)</b>

**Slower Revenue Growth reduces projected balance in FY 2018-19 to \$1.4 billion.** The balance between revenues and spending in the next biennium has been reduced compared to prior estimates. General fund revenues in FY 2018-19 are expected to grow to \$45.3 billion, while projected current law spending is estimated to be just under \$44.6 billion. The \$678 million ending balance forecast for the current biennium adds to resources available for the next biennium. As a result, a \$1.4 billion balance is projected to be available for the upcoming FY 2018-19 biennial budget.

**U.S. economic outlook weakens.** A reduction in business building and equipment purchases in the first half of this year slowed U.S. economic growth for 2016. Since February, Minnesota's macroeconomic consultant, IHS Markit, has decreased their forecast for real GDP growth in 2016. Lower forecasts for consumer spending and business capital purchases reduce the 2017 growth forecast. Consumer spending growth is expected to remain modest and helps lower the economic growth forecasts for 2018 and 2019.

**Slower economic growth lowers next biennium revenue forecast.** FY 2018-19 revenues are now forecast to be \$467 million (1.0 percent) less than the prior estimate. The sales tax shows the largest revenue forecast change for the next biennium, with lower expected taxable sales growth combining with higher projected refunds to reduce the general sales tax forecast by \$428 million.

**Structural Balance intact; revenue growth expected to outpace spending growth into FY 2020-21.** This forecast provides the first budget planning estimates for the FY 2020-21 biennium. The average annual growth rate for revenue, FY 2018 to FY 2021 is 3.7 percent compared to 2.5% for spending. However, these longer term projections have a higher degree of uncertainty and a significantly higher potential range of error. Revenue growth exceeds expenditure growth through the forecast horizon, indicating structural balance for FY 2020-21.



# BUDGET AND ECONOMIC FORECAST

February 2017

FOR IMMEDIATE RELEASE

## Minnesota's Budget Outlook Improves \$1.65 Billion Now Available for Upcoming FY 2018-19 Budget

**Increased Revenues Raise Expected FY 2018-19 Balance to \$1.65 Billion; significant risk continues.** FY 2018-19 revenues are now forecast to be \$45.663 billion, a \$321 million increase (0.7 percent) compared to November 2016 estimates adjusted for law changes. Current law spending is forecast to be \$44.741 billion, \$156 million (0.4 percent) higher than prior estimates. Stadium reserves increased by \$3 million. As a result, the projected budgetary balance in the next biennium is now \$1.650 billion, \$250 million higher than prior estimates. The positive budget outlook continues into the planning estimates for the 2020-21 biennium, however federal policy unknowns create significant risk for this forecast.

### FY 2018-19 General Fund Budget Forecast

(\$ in millions)	February	\$ Change
<b>Beginning Balance</b>	<b>\$2,721</b>	<b>\$88</b>
Revenues	45,663	321
Spending	44,741	156
Cash & Budget Reserve	1,953	0
Stadium Reserve	40	3
<b>Budgetary Balance</b>	<b>\$1,650</b>	<b>\$250</b>

**Stronger expected economic growth raises the tax revenue forecast.** FY 2018-19 tax revenues are now forecast to be \$321 million (0.7 percent) more than the prior estimate. Higher expected income growth raises forecast individual income tax revenue for the next biennium by \$274 million. Higher forecast taxable sales growth—driven in part by expected fiscal stimulus—offsets higher projected refunds to raise the general sales tax forecast by \$48 million. A stronger corporate profits forecast adds \$69 million to expected corporate tax revenue.

### FY 2018-19 General Fund Revenue Forecast

(\$ in millions)	February	\$ Change
Individual Income	\$24,401	\$274
General Sales	11,466	48
Corporate Franchise	2,623	69
Statewide Property	1,742	(2)
All Other Revenues	3,667	(50)
<b>Total Tax Revenues</b>	<b>\$43,899</b>	<b>\$339</b>
All Other Revenues, Transfers	1,764	(18)
<b>Total Revenues</b>	<b>\$45,663</b>	<b>\$321</b>

**U.S. economic outlook improves.** The last few months of economic data have been mostly positive, showing improvements in personal income, business spending on equipment and structures, employment, and consumer spending. In addition, IHS has incorporated into their baseline outlook federal fiscal stimulus—in the form of lower individual income and corporate tax rates and increased infrastructure spending—which are expected to boost economic growth starting in 2018. IHS has increased their forecast for real GDP growth in 2017 from 2.2 percent in November's outlook to 2.3 percent in February. Higher forecasts for real consumer spending and business capital purchases offset increased drag from net exports to raise the 2018 growth forecast from 2.2 percent in November to 2.8 percent February.



**Increased Education and Health Care Forecast Adds to Overall Spending.** Spending in FY 2018-19 is now forecast to be \$44.741 billion, \$156 million (0.4 percent) higher compared to prior estimates. Driving the change are higher projections in the education and health and human services budget areas. Higher student enrollment and health care cost estimates increase state obligations for spending.

**Long Term Budget Outlook Improves.** The fiscal policy-fueled growth that is forecast to begin in 2018 raises the long term economic outlook. Consequently, the increased revenue forecast continues into FY 2020-21. Projected revenues are now estimated to exceed current law spending by \$2.124 billion, which is more than the \$1.480 billion projected in November. Economic changes as well as the nature and timing of any budget changes may materially affect both revenue and expenditure projections for the next biennium.

**Appendix G**  
**Salary History: Stinson**

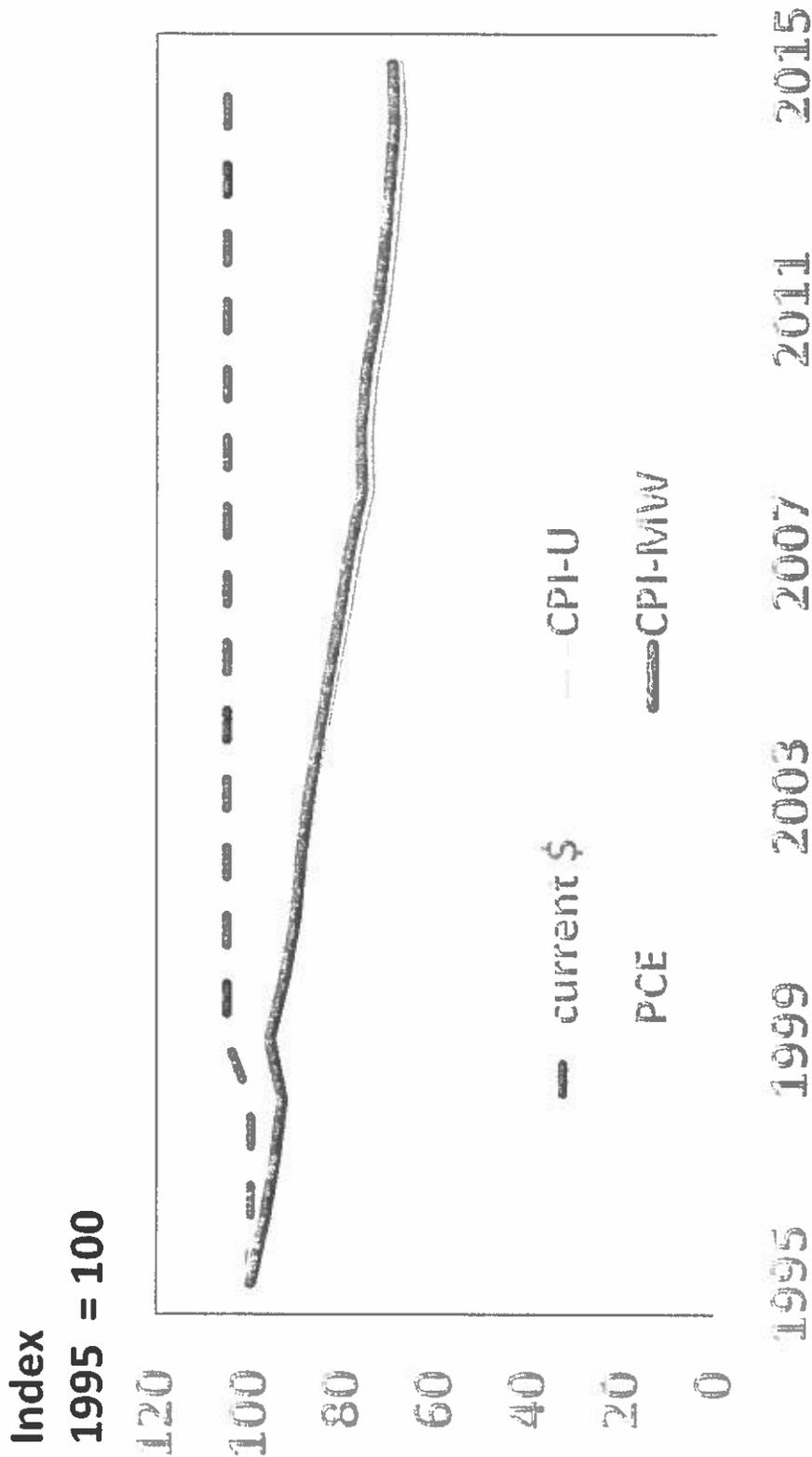
# **Minnesota Legislative Salaries: Background Data**

## **Minnesota Legislative Salary Council January 11, 2017**

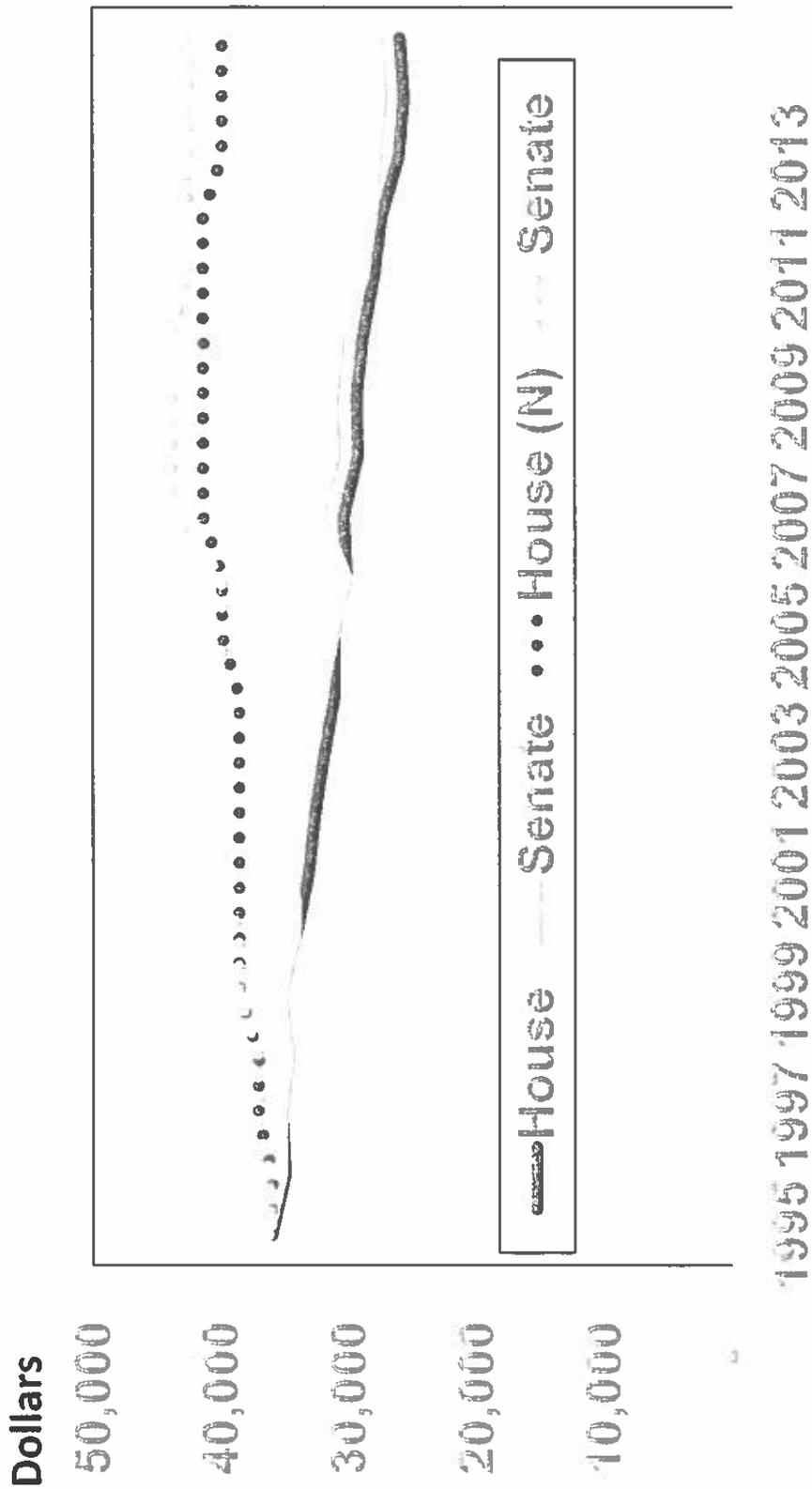
# Minnesota Legislative Compensation

	<u>HOUSE</u>	<u>SENATE</u>	
• Base Salary	\$31,141.00	\$31,141.00	
• Per Diem	8,778.00	11,438.00	
• Pension	2,395.14	2,554.74	
• Insurance (F)	16,922.00	16,922.00	
• Insurance (E)	6,430.00	6,430.00	
• Total:			
• Employee Only	\$48,217.45	\$51,563.74	
• Family	\$59,236.14	\$62,055.74	

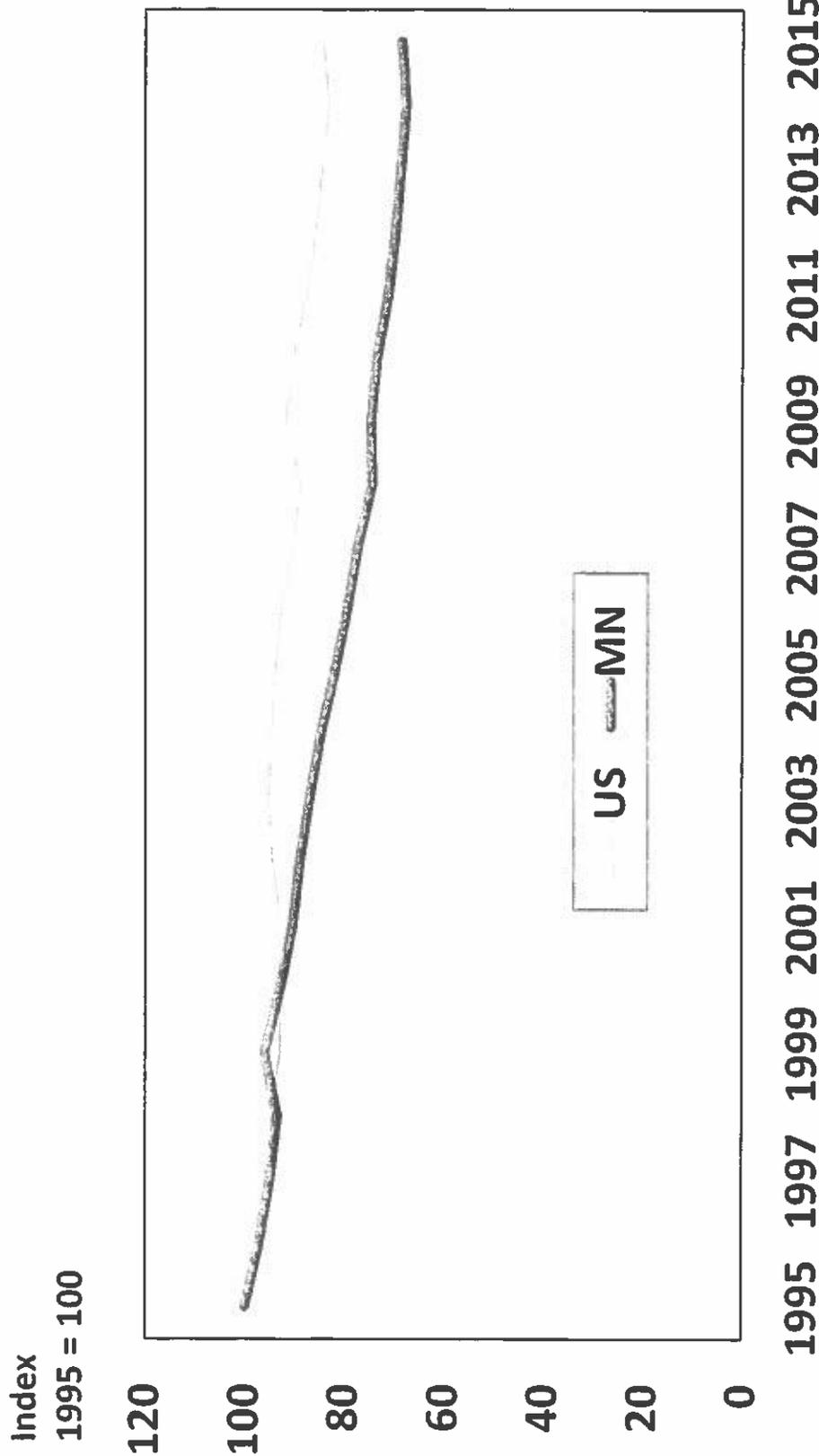
# Real Legislative Salaries in Minnesota Have Fallen by More than 25 Percent



# Minnesota House and Senate Salary History, Real And Nominal, 1995-2015

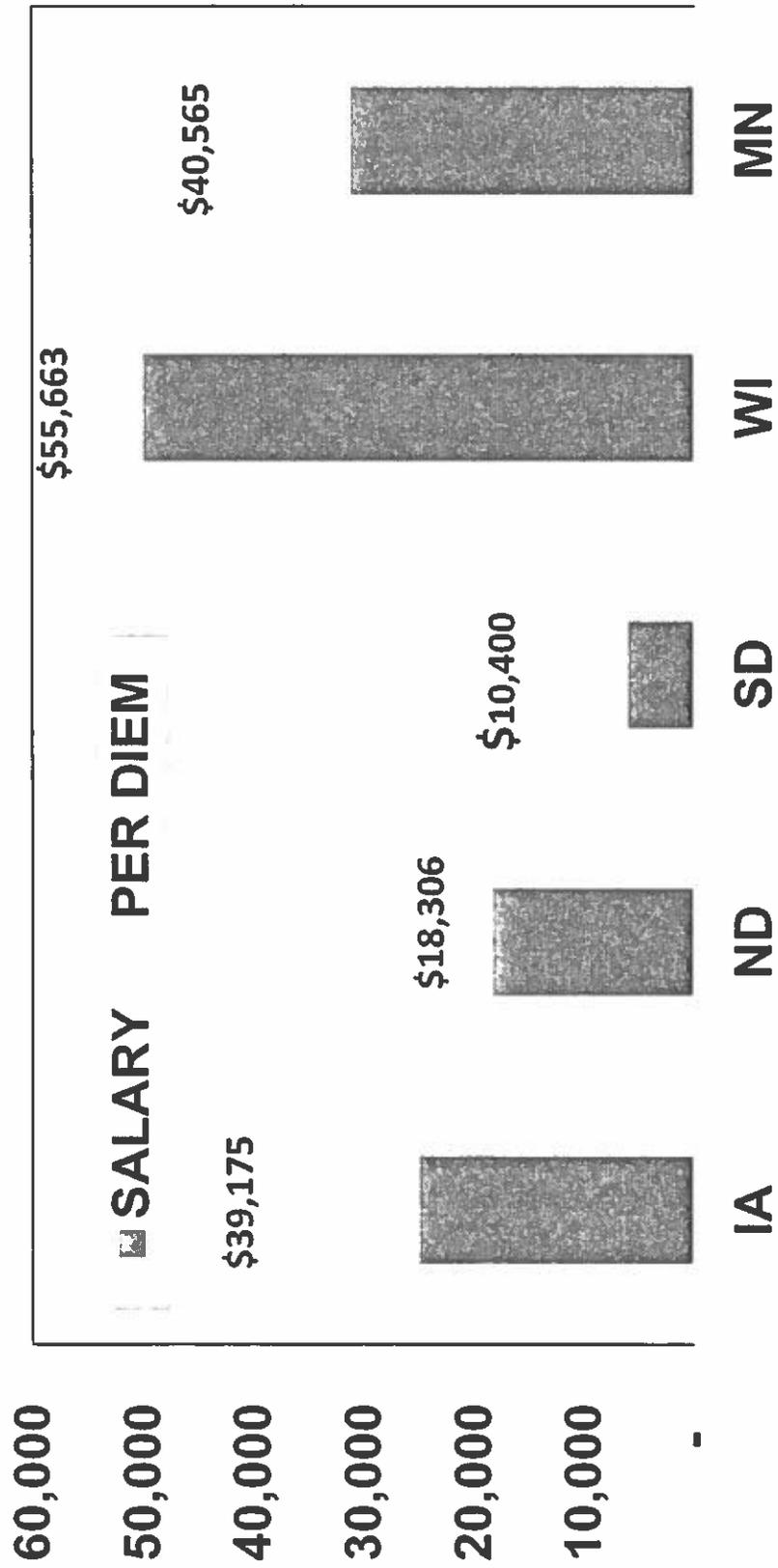


# Real Minnesota Legislative Salaries Have Fallen Faster than Congressional Salaries

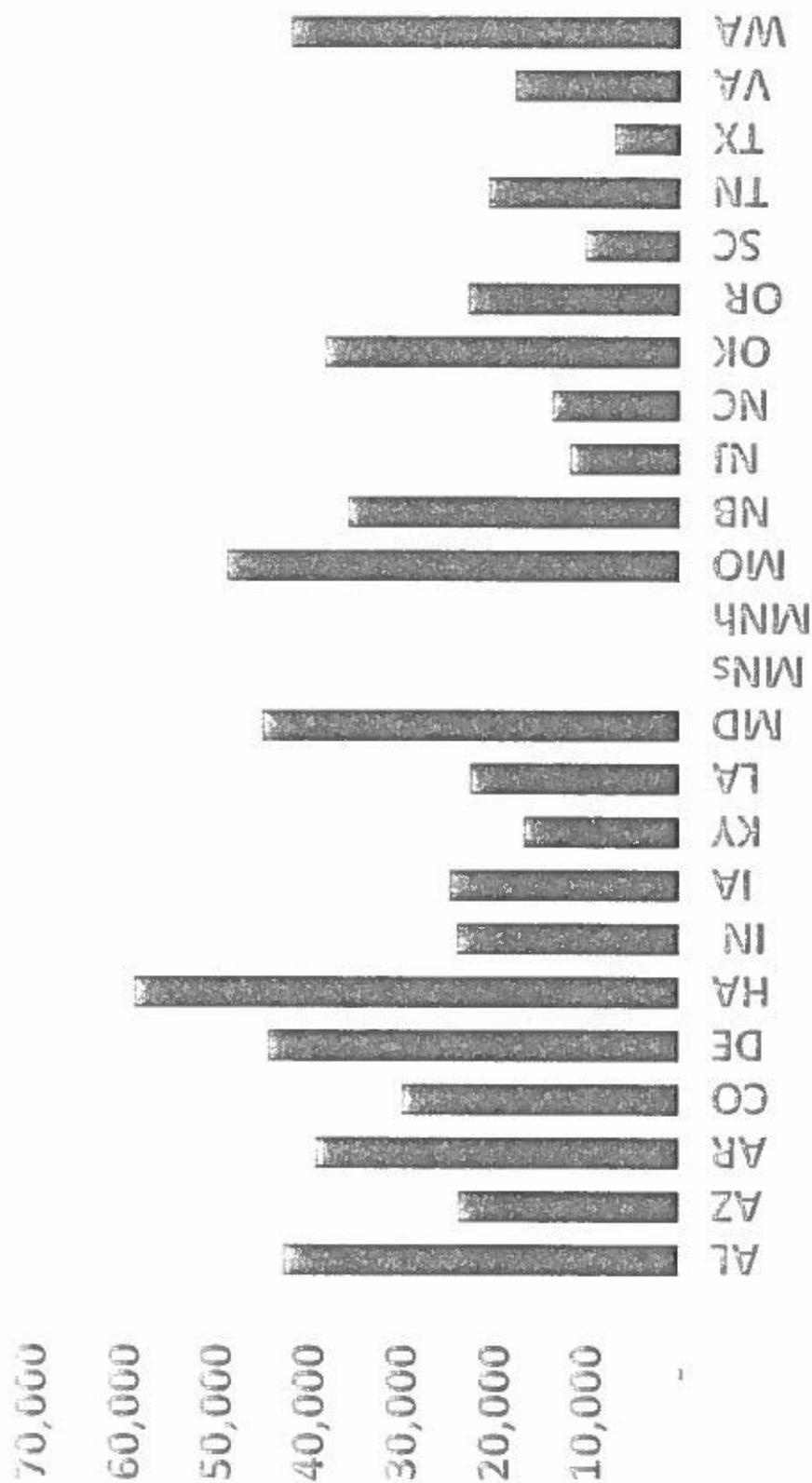


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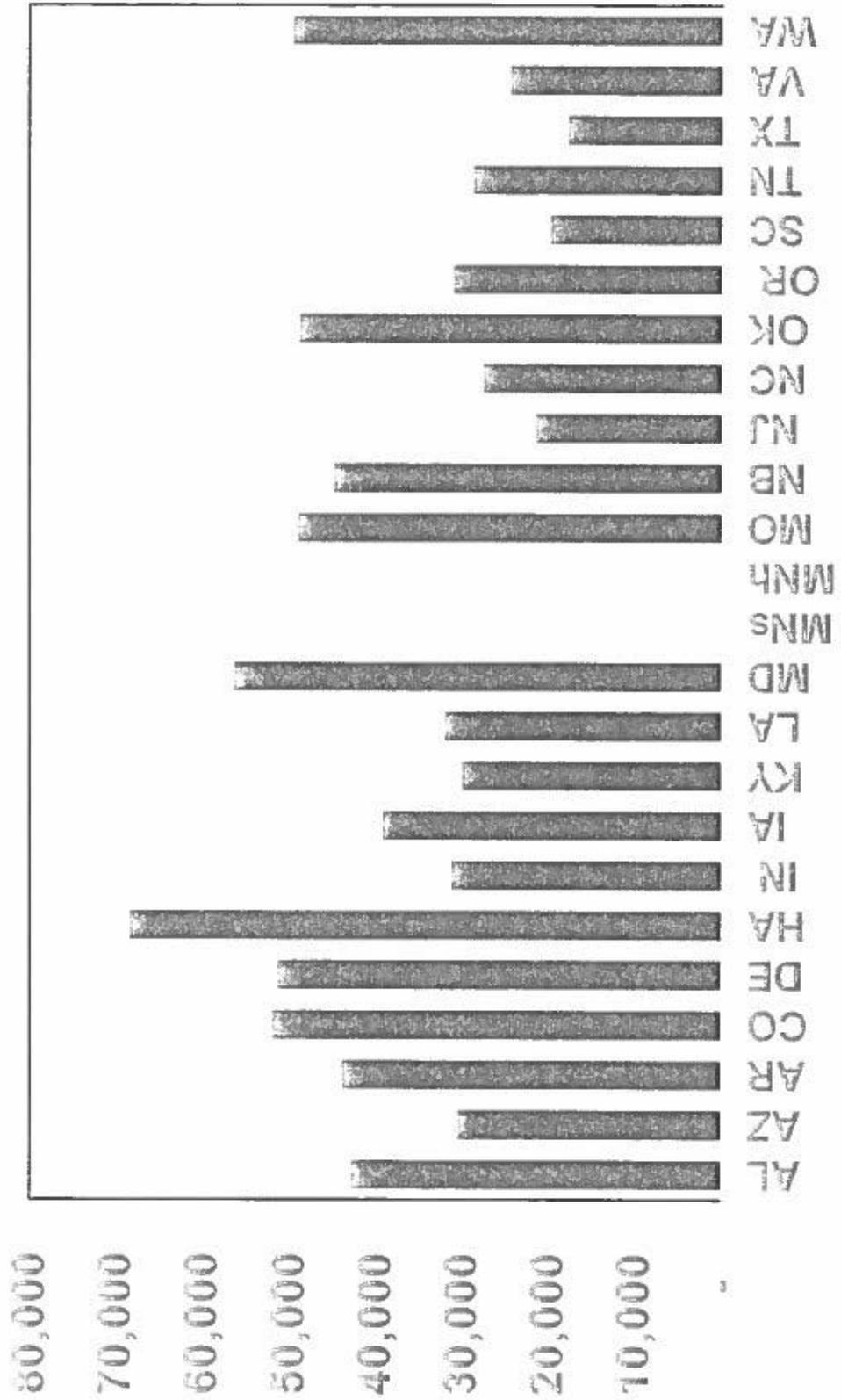
# Salaries and Per Diem Differ in Neighboring States



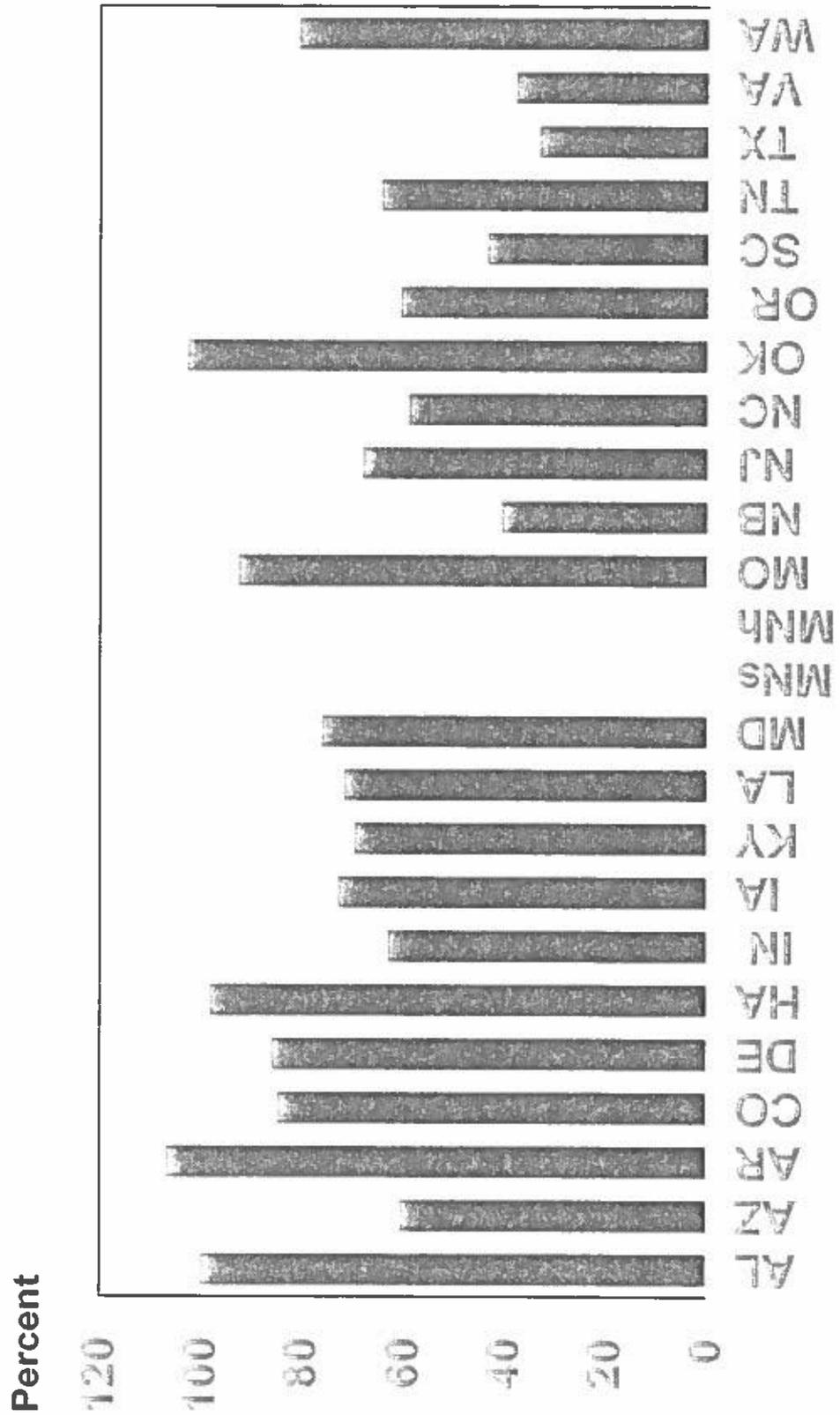
# Minnesota's Legislative Salaries Slightly above Average for "Hybrid" States in 2015



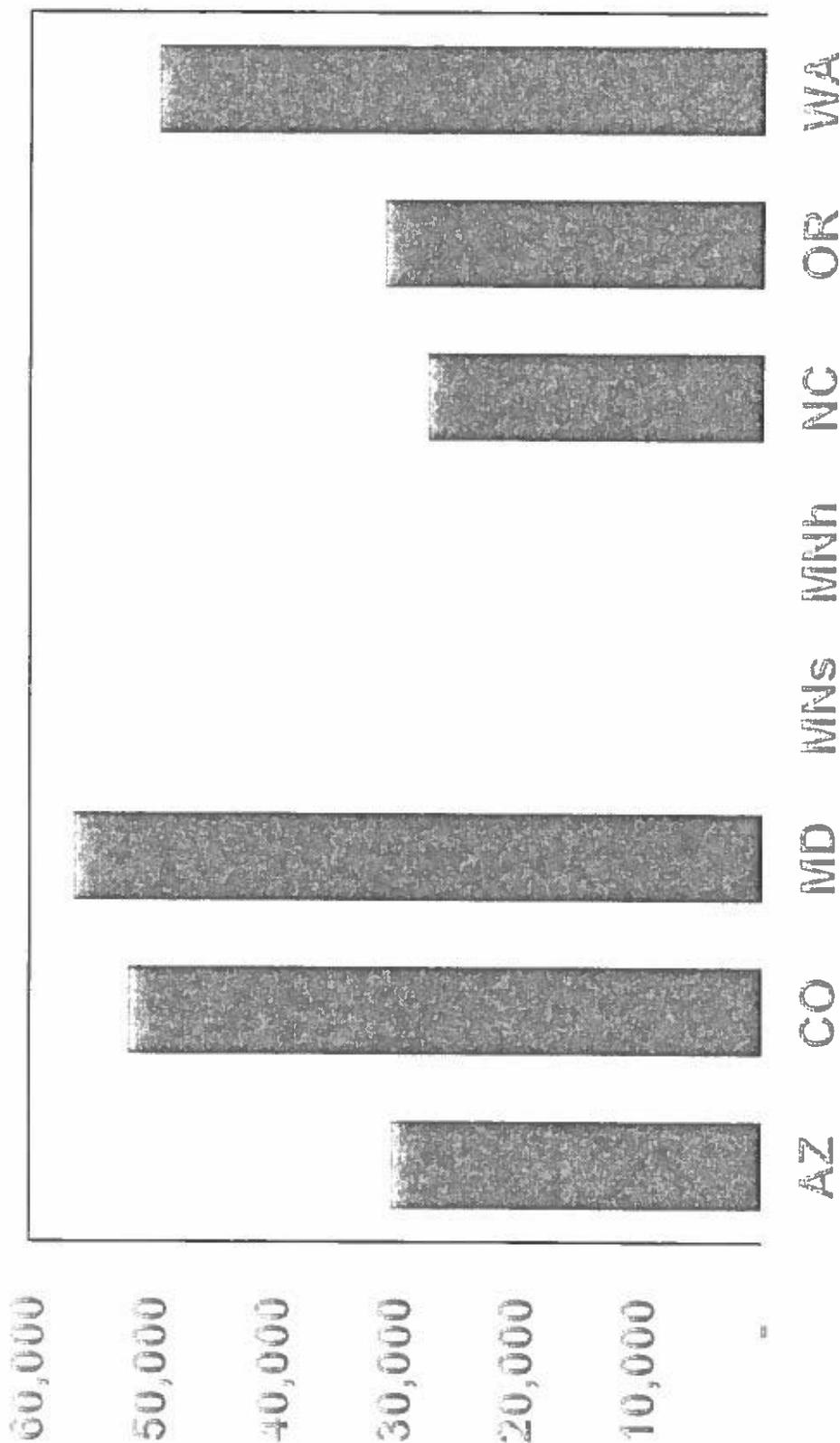
# Minnesota's Salaries and Per Diem above Average for "Hybrid" States



# Minnesota Salaries and Per Diem<sup>39</sup> Below Hybrid Average as Percent of Median Income



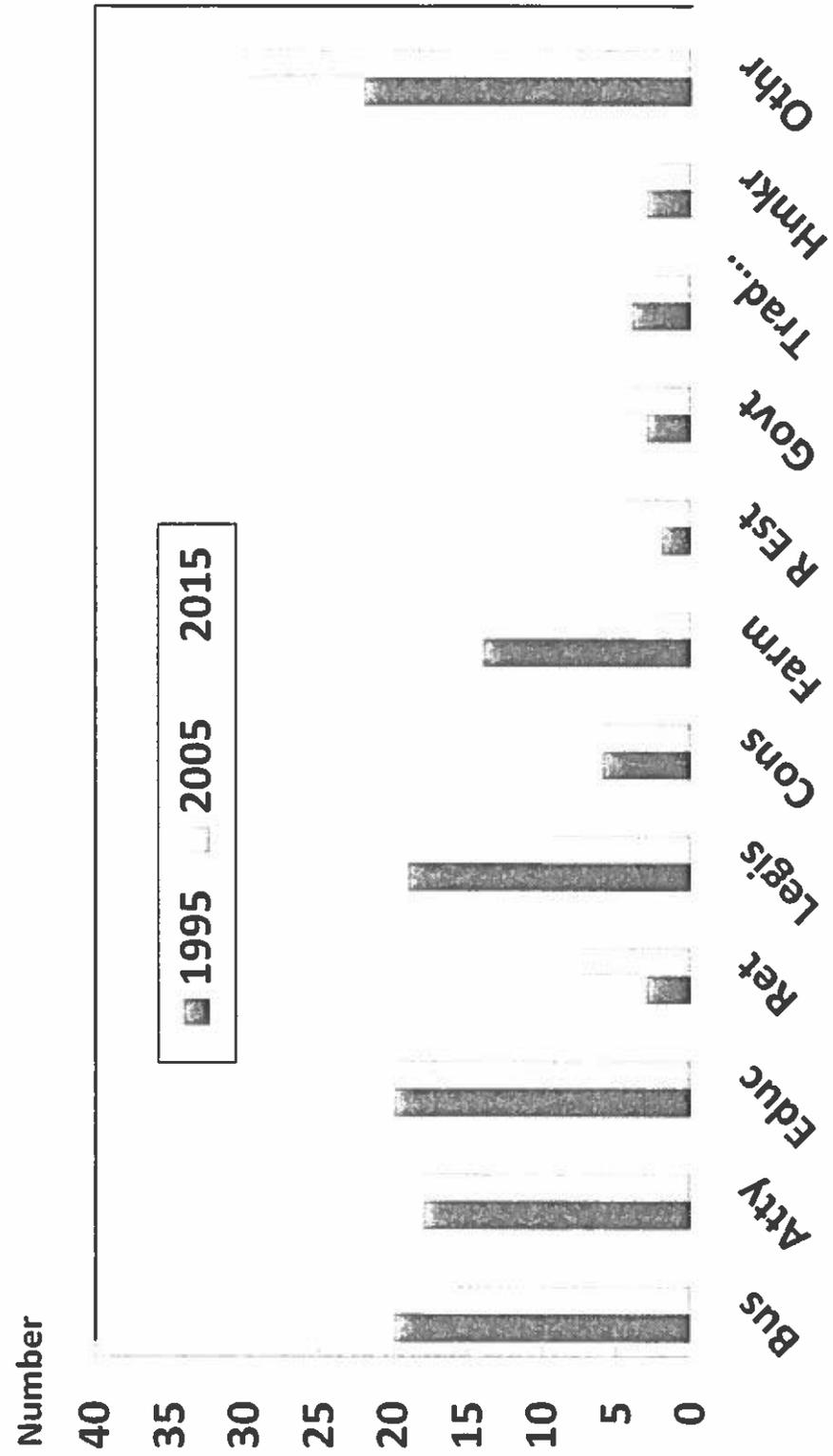
# Minnesota Salaries and Per Diem in Mid Range of Competitive States



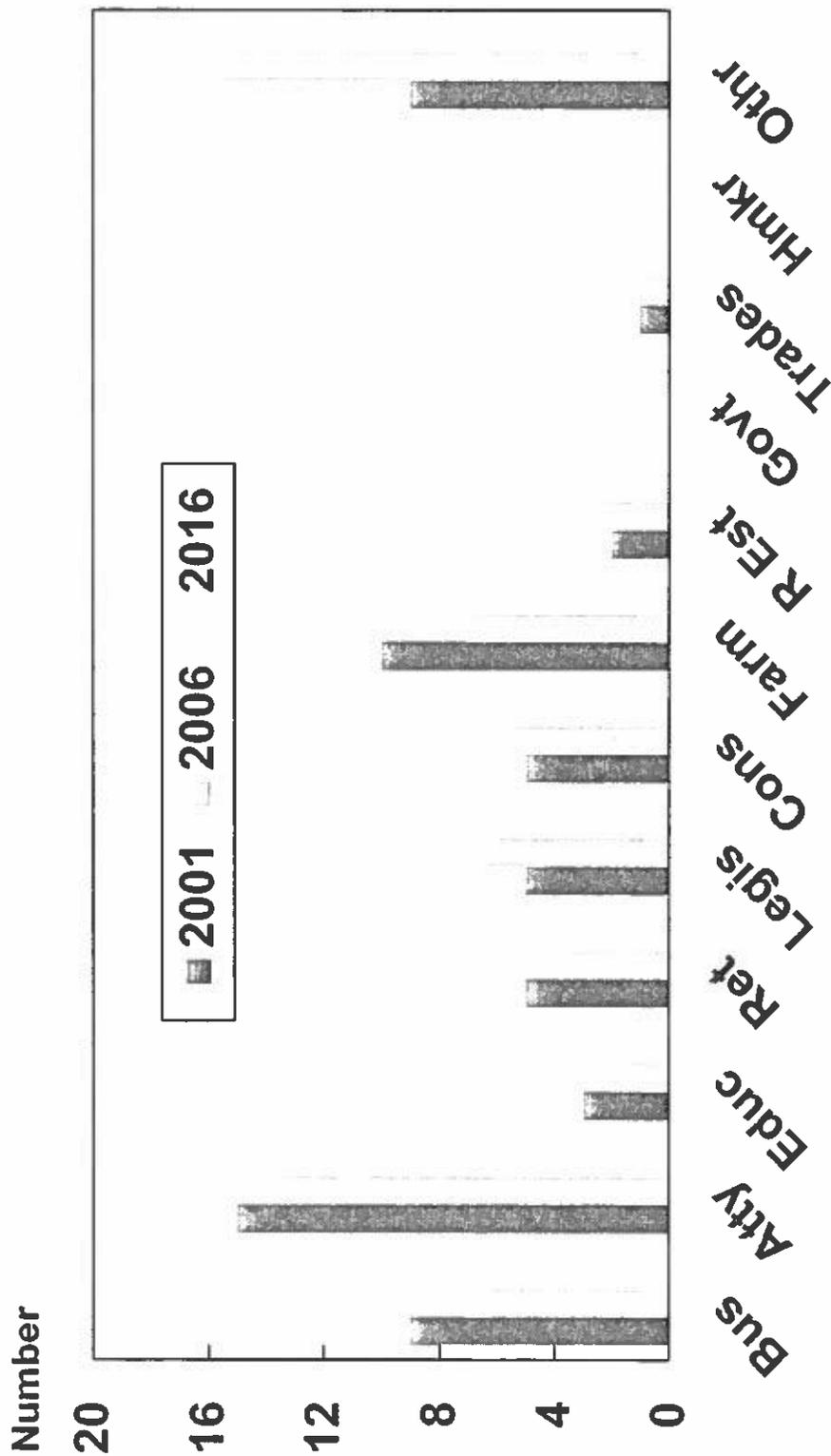
# **Appendix H**

## **Demographics: Stinson**

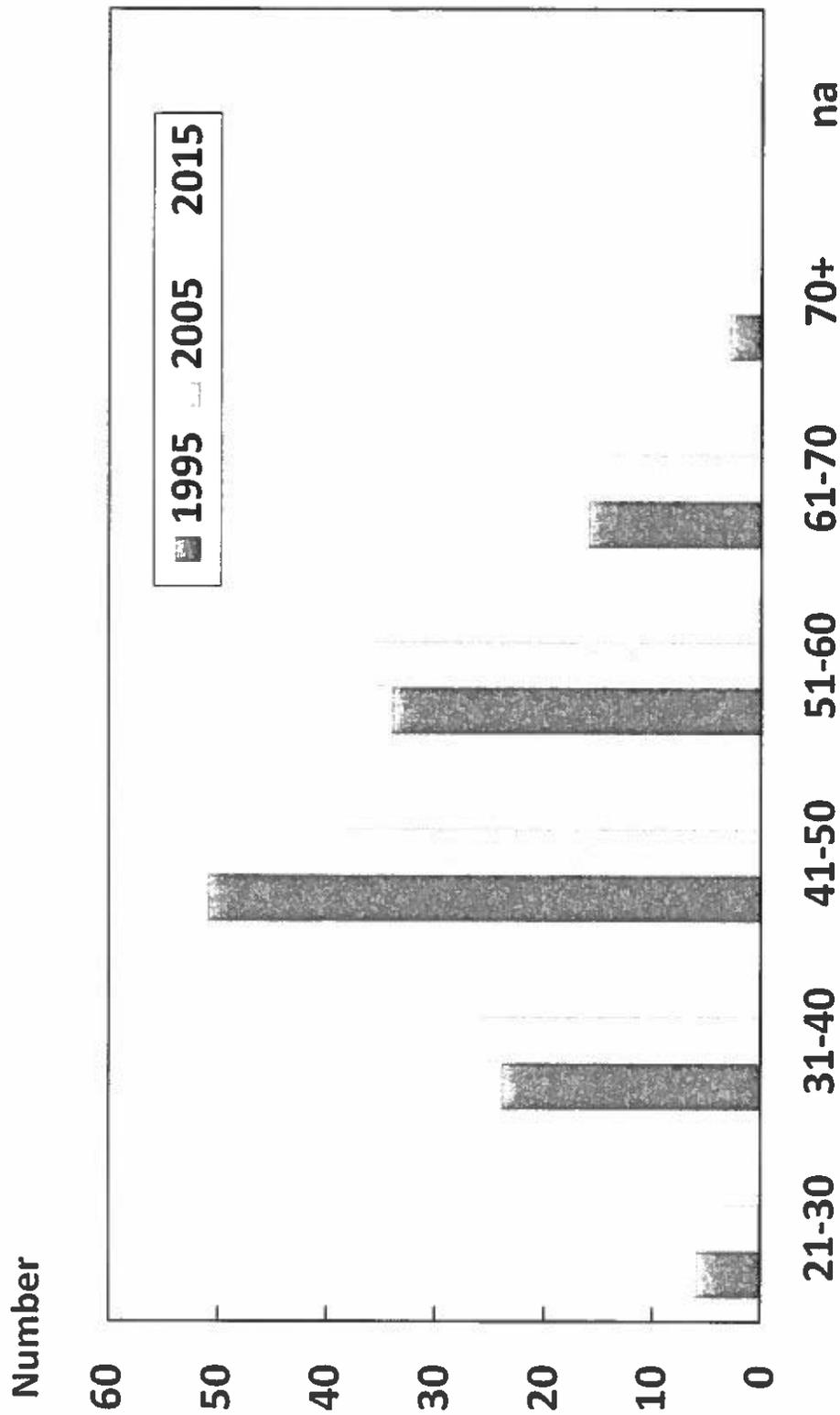
# Minnesota State Representatives by Occupation, 1995, 2005, 2015



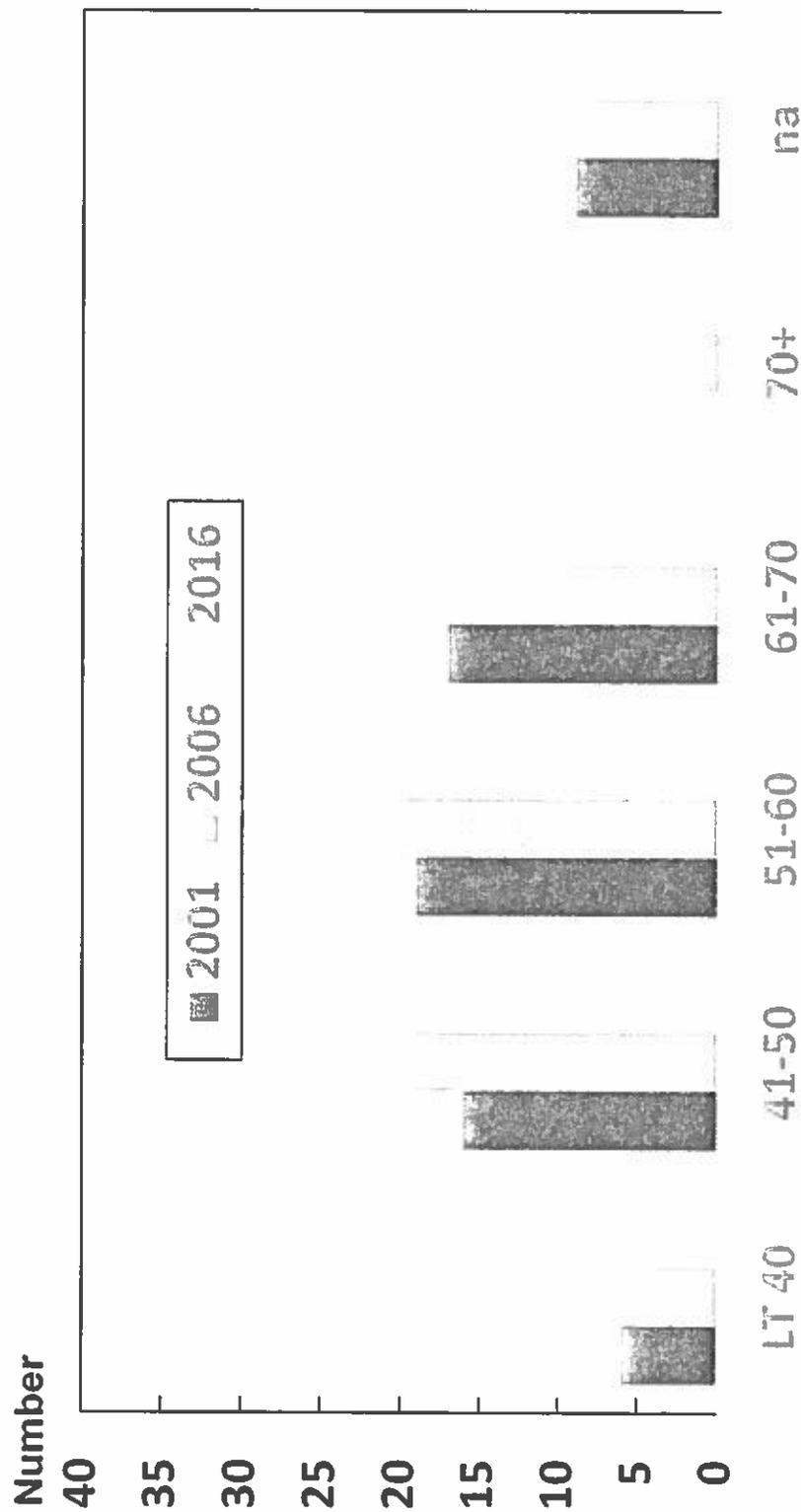
# Minnesota State Senators by Occupation, 2001, 2006, 2016



# Minnesota State Representatives by Age, 1995, 2005, 2015



# Minnesota State Senators by Age, 2001, 2006, 2016



**Appendix I**  
**Comparison of Alternative Measures for Setting  
Legislative Salaries: Stinson**

# Comparison of Alternative Measures for Setting Legislative Salaries

## Salary and Per Diem Minnesota House and Senate

- Current Level
  - Salary = \$31,141
  - Per Diem = \$7,686 (H), \$10,014 (S)
  - Total = \$38,827(H), \$41,155 (S)

*Total Senate salary and per diem exceeds House salary and per diem by \$2,328 per year because Senate per diem rate is \$86 per day while House rate is \$66 per day*

*Per diem calculated using average number of days in regular session since 1999. No adjustment was made for special sessions or post session activities.*

## **Other Benefits for Minnesota House and Senate Members**

- Pension Contribution – Defined Contribution 6%
- Health Insurance
- Group Life Insurance
- Lodging expenses for members residing more than 50 miles from the Capitol
- Auto expenses

## **Assumptions for Comparisons**

- Compare only total (salary plus per diem)
- Per diem rates continue at 2016 levels
- Comparisons based on House level -- Senate level can be estimated by adding \$2,328 per year
- Auto expenses and communications expenses reflect actual costs of services
- Lodging reimbursements reflect actual costs
- Health and life insurance benefits in Minnesota are similar to those in other states
- Pension benefits similar to those in other states

## **Adjust Only for Inflation**

- Adjust for CPI inflation from 1999 levels
  - New Salary & Per Diem = \$54,257
  - New Salary = \$46,570
  - Salary Increase = \$15,429
  - Pct Change = 49.5%
- Adjust for PCE inflation from 1999 levels
  - New Salary & Per Diem = \$51,416
  - New Salary = \$43,779
  - Salary Increase = \$12,589
  - Pct Change = 40.4%

## **Problems With Inflation Adjustments**

- Assumes base year level (1999) is correct
- Legislators' wages as a proportion of average wage in state decrease over time because there is no adjustment for productivity increases, only changes in cost-of-living

## Hold the Percentage of Median Household Income Constant

- Median Household Income
  - 1999 \$47,035
  - 2015 \$68,730
  - 46.1% Change (1999-2015)
- Adjust for increase in Median Household Income from 1999
  - New Salary & Per Diem = \$55,030
  - New Salary = \$47,344
  - Salary Increase = \$16,203
  - Pct Change = 52.0%

## Problems with Income Based Adjustments

- Assumes base year level (1999) is correct
- Assumes legislative productivity tracks average productivity

## Adjust to Keep Same Percentage of U.S. Congressional Salaries

- U.S. Congressional Salaries
  - 1999 -- \$136,700
  - 2016 -- \$174,000
  - 27.29%
  - Last increase was in 2009
- Adjust for increase in Congressional Salaries
  - New Salary & Per Diem = \$47,938
  - New Salary = \$40,252
  - Salary Increase = \$9,111
  - Pct Change = 29.3%

## **One-third of Governor's Salary**

- Current Governor's Salary = \$127,629
- New Legislative Salary & Per Diem = \$42,543
  - New Salary = \$34,857
  - Salary Increase = \$3,716
  - Pct Change = 11.9%

## Set at Average for County Commissioners in Large Counties

### 5 TC Metro Counties (avg) = \$62,741

- New Legislative Salary & Per Diem = \$62,741
- New Salary = \$55,095
- Salary Increase = \$23,594
- Pct Change = 76.9%

### 5 Regional Center Counties (avg) = \$40,972

- New Legislative Salary & Per Diem = \$40,972
- New Salary = \$33,286
- Salary Increase = \$2,145
- Pct Change = 6.9%

## Set at Average for County Commissioners in Large Counties

10 Counties (avg) = \$51,856

- New Legislative Salary & Per Diem = \$51,856
  - New Salary = \$44,170
  - Salary Increase = \$13,029
  - Pct Change = 41.8%

## **Set Salary and Per Diem at a Percentage of State Policy Managers**

- Average Salary for 11 High Level Policy Managers was \$116,222 in 2015
- Salary & Per Diem at 70 percent of Managers' salary
  - New Salary and Per Diem = \$81,355
  - New Salary = \$73,669
  - Salary increase = \$42,528
  - Percent change = 136.6%

## Set Salary and Per Diem at a Percentage of State Policy Managers

- Average Salary for 11 High Level Policy Managers was \$116,222 in 2015
- Salary & Per Diem at 60 percent of Managers' salary
  - New Salary and Per Diem = \$69,233
  - New Salary = \$62,047
  - Salary increase = \$30,906
  - Percent change = 99.2%

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## Set Salary and Per Diem at Level Paid in Other Similar States

### Iowa

- Salary = \$25,000
- Per Diem = \$160 per day (\$120 per day for Polk County residents) for 105 days = \$12,600
  - Assume difference reflects lodging costs
- Salary and Per Diem = \$37,600
  - New Salary = \$29,914
  - Salary increase = (\$1,227)
  - Percent change = (3.9%)

## Set Salary and Per Diem at Level Paid in other Similar States

### Wisconsin

- Salary = \$50,950
- Per Diem = \$88/day Senate (\$44 Dane County residents) \$138/day Assembly if overnight (\$69 no overnight) limit 90 days
- Assume higher rates reflect actual lodging costs
- Non lodging per diem is \$3,960 Senate and \$6,210 House

## **Wisconsin (continued)**

- Total Wisconsin Salary and Per Diem
- Senate = \$54,910
- New Salary and Per Diem = \$54,910
  - New Salary = \$47,224
  - Salary increase = \$16,083
  - Percent change = 51.6%

## **Wisconsin (continued)**

- Total Wisconsin Salary and Per Diem
- Assembly = \$57,160
- New Salary and Per Diem = \$57,160
  - New Salary = \$49,474
  - Salary increase = \$18,333
  - Percent change = 58.9%

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## **Set Salary and Per Diem at Level Paid in other Similar States**

### **Washington**

- Salary = \$46,839
- Per Diem \$120 per day, average \$9,900
- Total salary and per diem \$56,739
- No adjustment for lodging expenses

## **Washington (continued)**

### **Assume lodging cost is \$44 per night**

- Non lodging per diem is \$76 per day
- Salary + non lodging per diem = \$53,109
- New Minnesota Salary and per diem = \$53,109
- New Salary = \$45,423
- Salary increase = \$14,282
- Percent change = 45.9%

## **Washington (continued)**

### **Assume lodging cost is \$60 per night**

- Non lodging per diem is \$60 per day
- Salary + non lodging per diem = \$51,789
- New Minnesota Salary and per diem = \$51,789
- New Salary = \$44,103
- Salary increase = \$12,962
- Percent change = 41.6%

## Summary

<b>Item</b>	<b>Salary</b>	<b>Percent Change</b>
Current	\$31,140	N.A.
CPI	\$46,750	49.5%
PCE	\$43,779	40.4%
Med Hhold Income	\$47,334	52.0%
Congress	\$40,252	29.3%
1/3 Governor (\$127k)	\$34,857	11.9%

## Summary (continued)

Item	New Salary	Percent change
County Comm (Metro)	\$55,095	76.9%
County Comm (Reg'l Ctr)	\$33,286	6.9%
County Comm (Met & Reg'l)	\$44,170	41.8%
Iowa	\$29,914	(3.9)%
Wisconsin (A)	\$49,474	58.9%
Wisconsin (S)	\$47,224	51.6%
Washington (44)	\$45,423	45.9%
Washington (60)	\$44,103	41.6%

# **Appendix J**

## **NCSL National Survey Data**

NATIONAL CONFERENCE  
of STATE LEGISLATURES  
*The Forum for America's Ideas*

2016 Survey:  
State Legislative Compensation, Session Per Diem and Mileage

State or other jurisdiction	Salaries				Mileage cents per mile	Session per diem rate
	Per diem salary	Limit on days	Annual salary	Regular sessions		
Alabama	...	...	\$42,830 (a)	...	54/mile.	(b)
Alaska	...	...	\$50,400	...	54/mile.	\$223 or \$249 a day (depending on the time of year). Tied to the federal rate. Legislators who reside in the capitol area receive 75% of the federal rate.
Arizona	...	...	\$24,000	...	44.5/mile.	\$35 a day for the first 120 days of the regular session and for special sessions and \$10 a day thereafter; members residing outside Maricopa County receive an additional \$25 a day for the first 120 days of the regular session and for special sessions and an additional \$10 a day thereafter (V). Set by statute.
Arkansas	...	...	\$39,400	...	54/mile.	\$150 a day plus mileage (V). Tied to the federal rate.
California	...	...	\$100,113	...	53/mile.	\$176 a day for each day in session.
Colorado	...	...	\$30,000	...	49/mile.	\$99 a day for members living outside Denver; \$45 a day for members who live 50 or fewer miles from the capitol (V). Set by the legislature.
Connecticut	...	...	\$28,000	...	54/mile.	No per diem is paid.
Delaware	...	...	\$44,541	...	40/mile.	No per diem is paid.
Florida	...	...	\$29,697	...	44.5/mile.	\$152 a day based on the number of days in Tallahassee (V).
Georgia	...	...	\$17,342	...	54/mile. Tied to federal rate.	\$173 a day (U). Set by the Legislative Services Committee.
Hawaii	...	...	\$60,180	...	(c)	\$175 a day throughout session for members who do not reside on the island of Oahu; \$10 a day for members living on Oahu during the mandatory five-day recess only.
Idaho	...	...	\$16,684	...	54/mile. One roundtrip per week	\$129 a day for members establishing a second residence in Boise; \$49 a day if no second residence is established and up to \$25 a day travel (V). Set by the compensation commission.
Illinois	...	...	\$67,836	...	39/mile	\$111 a session day.
Indiana	...	...	\$24,671	...	54/mile. Tied to federal rate.	\$161 a day (U). Tied to federal rate.
Iowa	...	...	\$25,000	...	39/mile.	\$160 a day; \$120 a day for Polk County legislators (U). Set by the legislature to coincide with the federal rate.
Kansas	\$88.66 a day (C)	...	...	...	54/mile.	\$140 a day.
Kentucky	\$188.22 a day	...	...	...	54/mile.	\$154 a day.
Louisiana	...	...	\$16,800	...	54/mile. Tied to federal rate.	\$157 a day (U). Tied to federal rate.

Salaries						
Regular sessions						
State or other jurisdiction	Per diem salary	Limit on days	Annual salary	Mileage cents per mile	Session per diem rate	
Maine	...	...	\$14,074 a year first regular session; \$9,982 a year second regular session. (d)	44/mile.	\$38 a day lodging for mileage and tolls up to \$38 a day in lieu of housing. \$32 a day meals. Set by statute.	
Maryland	...	...	\$46,061	54/mile. (e)	\$45 a day meals. \$101 a day lodging.	
Massachusetts	...	...	\$60,032	(f)		
Michigan	...	...	\$71,685	54/mile.	\$10,800 a year expense allowance for session and interim (V). Set by the compensation commission.	
Minnesota	...	...	\$31,141	Tied to federal rate. (g)	\$86 a day for senators; \$66 a day for representatives.	
Mississippi	...	...	\$10,000	54/mile.	\$140 a day (U). Tied to federal rate.	
Missouri	...	...	\$35,915	37.5/mile.	\$112 a day (U). Tied to federal rate.	
Montana	\$82.64 a day (L)	...	...	54/mile. Tied to federal rate.	\$112.85 a day (U).	
Nebraska	...	...	\$12,000	54/mile. Tied to federal rate.	\$140 a day for members residing 50 miles or more from the capitol; \$51 a day for members residing inside the 50-mile radius.	
Nevada	\$146.29 a day (C)	Up to 60	...	54/mile. Tied to federal rate.	\$140 a day.	
New Hampshire	...	...	\$200 per 2-year term. (h)	None	No per diem is paid.	
New Jersey	...	...	\$49,000	None	No per diem is paid.	
New Mexico	...	...	...	54/mile. Tied to federal rate.	\$163 a day (V). Tied to federal rate.	
New York	...	...	\$79,500	54/mile. Tied to federal rate.	\$174 a day (including overnight) or \$59 a day (no overnight).	
North Carolina	...	...	\$13,951	29/mile. One roundtrip per week.	\$104 a day (U). Set by statute.	
North Dakota	\$172 a day (C)	...	...	54/mile. One roundtrip per week. Tied to federal rate.	Up to \$1,682 a month lodging (V).	
Ohio	...	...	\$60,584	52/mile. (i)	No per diem is paid.	
Oklahoma	...	...	\$38,400	54/mile. Tied to federal rate.	\$157 a day (U). Tied to federal rate.	
Oregon	...	...	\$23,568	54/mile.	\$140 a day.	
Pennsylvania	...	...	\$85,339	54/mile. Tied to federal rate.	\$175 a day. Tied to federal rate.	
Rhode Island	...	...	\$15,414	57.5/mile.	No per diem is paid.	
South Carolina	...	...	\$10,400	54/mile. Tied to federal rate.	\$140 a day. Tied to federal rate.	
South Dakota	...	...	\$6,000/session	(j)	\$140 a day (L) (U).	
Tennessee	...	...	\$20,884	47/mile.	\$204 a day (L) (U). Tied to federal rate.	
Texas	...	...	\$7,200	50/mile. \$1.24/mile for single, twin and turbo engine airplanes. Set by general appropriations bill.	\$190 a day (U). Set by ethics commission.	
Utah	\$273 a day (C)	...	...	56/mile.	Up to \$100 plus tax a day (C) lodging; up to \$39/date meals (V). Tied to in-state lodging and meal reimbursement rates.	
Vermont	...	...	\$693.74/w during session.	54/mile. Tied to federal rate.	\$115 a day lodging (including overnight) or \$74 a day (no overnight).	
Virginia	...	...	\$18,000 a year Senate; \$17,640 a year House.	54/mile.	\$185 a day senators; \$185 a day delegates.	
Washington	...	...	\$45,474 a year; increases to \$46,839 a year eff. 9/1/2016.	54/mile.	\$120 a day.	

Salaries

Regular sessions

State or other jurisdiction	Per diem salary	Limit on days	Annual salary	Mileage cents per mile	Session per diem rate
West Virginia	...	...	\$20,000	48.5/mile.	\$131 a day (U). Set by compensation commission.
Wisconsin	...	...	\$50,950	51/mile. One roundtrip per week	Senate - up to \$88 a day (\$44 a day legislators living in Dane County). Assembly - up to \$138 a day (including overnight) or up to \$69 a day (no overnight). The maximum number of days per year that per diem can be claimed is 80 days.
Wyoming	\$150 a day	...	...	51/mile.	\$109 a day (V). Set by legislature.

Source : National Conference of State Legislatures, 2016.

Key:

- C — Calendar day
- L — Legislative day
- (U) — Unvouchered
- (V) — Vouchered
- ... — Not applicable

Notes:

- (a) Alabama. The State Personnel Board met on Oct. 27, 2015, and set the median annual household income amount at \$42,830. This current median annual household amount will begin on January 1, 2016 and will continue through December 31, 2016.
- (b) Alabama. Legislators no longer receive a set per diem rate while in session. Legislators are reimbursed for in-state travel expenses which include mileage and per diem in accordance with rates and procedures applicable to state employees. All out-of-district reimbursable travel must be for official business and in the interests of the state or in the performance of official duties, as approved by the applicable presiding officer.
- (c) Hawaii. Members may claim a mileage reimbursement for reasonable and necessary use of a personal automobile in the conduct of official legislative business and discharge of duties when meeting certain criteria.
- (d) Maine. Annual cost of living adjustments apply. In addition, legislators receive a constituent service allowance (\$2,000 a year for senators and \$1,500 a year for representatives).
- (e) Maryland. \$750 annual allowance for in-district travel as taxable income. Members may decline the allowance.
- (f) Massachusetts. \$10-\$100 a day depending on distance from State House (V). Set by the legislature.
- (g) Minnesota. Senate: a reasonable allowance. House: range of \$100-\$1,650 a month for mileage reimbursement for travel in the legislative district during interim. During session, House members can request up to one round trip per week if they live more than 50 miles from the capitol.
- (h) New Hampshire. Round trip home to the State House at 38 cents/mile for the first 45 miles and 19 cents/mile thereafter, or members will be reimbursed for actual expenses and mileage will be paid at the federal rate.
- (i) Ohio. One roundtrip per week from home to the State House for legislators outside Franklin County only.
- (j) South Dakota. 42 cents/mile for one roundtrip from capital to home each weekend. One trip is paid at 5 cents/mile.

**Appendix K**  
**Per Diem, Salary History**  
**Legislative Reference Library**

# Minnesota Legislative Reference Library

## Compensation of Minnesota Legislators, 1872 - present

Until recently, the [Minnesota Constitution](#) provided that legislators' compensation was set by law and that the House and Senate could designate three leadership positions to receive up to 140 percent of the compensation of other members of the legislature. The annual salary for representatives and senators has been \$31,140 since January 1999.

A constitutional amendment regarding how legislators' salaries are set was on the ballot during the 2016 election. The amendment was adopted; legislator salaries will now be determined by the [Minnesota Constitution](#). The sixteen Council members are appointed by the governor and the chief justice of the Supreme Court. In March 2017, the Legislative Salary Council recommended an annual salary of \$45,000 beginning July 1, 2017.

Frequent requests are made for historical legislative salary and per diem information. This chart seeks to compile the information in one place.

These data on legislator salary, leadership salary, and per diem compensation are taken from a variety of sources: House and Senate Rules Committee books, House and Senate Journals, Session Laws, Statutes, [charts of the Minnesota State Compensation Council](#), and periodical sources. Individual data points link to their source of authority. Unique circumstances and other necessary details are included as footnotes to further explain the data.

For leadership salary and per diem data in particular, most data were found in materials from House or Senate Rules Committees, where resolutions on these matters are typically passed. Meeting minutes and the text of the resolutions are included.

While efforts have been made to verify this information, errors are possible. Please report any errors to the library staff.

Years	Legislator Salary	Session Law	Effective Date of Session Law	House Leadership Salary <sup>1</sup>	Senate Leadership Salary <sup>2</sup>	House Per Diem ("\$/\$/y" indicates "outstate/metro" per diem) <sup>3</sup>	Senate Per Diem ("\$/\$/y" indicates "outstate/metro" per diem) <sup>3</sup>
2017-2018	\$31,140		1/4/1999		140%		
2015-2016	\$31,140		1/4/1999		140%		\$86--
2013-2014	\$31,140		1/4/1999		140%		\$86--
2011-2012	\$31,140		1/4/1999		140%		--
2009-2010	\$31,140		1/4/1999		140%		\$96--
2007-2008	\$31,140		1/4/1999		140%		--
2005-2006	\$31,140		1/4/1999		140%		--
2003-2004	\$31,140		1/4/1999		140%		--
2001-2002	\$31,140		1/4/1999		140%		--
1999-2000	\$31,140		1/4/1999		140%		--
1997-1998	\$29,657		1/2/1995		140%		--
1995-1996	\$29,657		1/2/1995		140%		--
1993-1994	\$27,979	The Minnesota State Compensation Council	1/4/1993		140%		--
		There does not appear to be a corresponding law.					
1991-1992	\$17,979	The Minnesota State Compensation Council	1/7/1991		<b>140%</b>		--

3/23/2017 Compensation of Minnesota Legislators - Minnesota Legislative Reference Library

Year	Amount	Effective Date	Notes
1990	\$26,395	1/1/1990	
1989	\$25,138	1/1/1989	
1988	\$23,941	1/1/1988	
1987	\$23,244	1/1/1987	
1986	\$22,350	1/1/1986	
1985	\$21,140	1/1/1985	
1983-1984	\$18,500	1/1/1980	
1981-1982	\$18,500	1/1/1980	
1980	\$18,500	1/1/1980	
1979	\$16,500	1/1/1979	
1977-1978	\$8,400	1/2/1973	
1975-1976	\$8,400	1/2/1973	
1973-1974	\$8,400	1/2/1973	
1971-1972	\$4,800	1/1/1967	
1969-1970	\$4,800	1/1/1967	
1967-1968	\$4,800	1/1/1967	
1957-1958	\$2,400.00	1/1/1957	
1953-1956	\$1,500.00	1/1/1953	
1945-1952	\$1,000.00	1/2/1945	
1909-1944	\$500.00	1/1/1909	
1872	\$5.00/day	1/1/1872	"The senators and representatives are paid five dollars a day, and they receive free travel back and forth and about twenty dollars for stationery." "A Swedish Visitor of the Early Seventies," Minnesota History Vol. 8, no. 4, December, 1927, p. 419.
1908?			"The president of the Senate and the speaker of the House each receive ten dollars a day and traveling expenses to and from the legislature." "A Swedish Visitor of the Early Seventies," Minnesota History Vol. 8, no. 4, December, 1927, p. 419.

1 - House Leadership: In 1977, the House Leadership Act provides that the House and Senate Rules Committees may each designate for their respective body up to three leadership positions to receive up to 140 percent of the compensation of other members." This statutory language was added by Laws of Minn., 1977, chapter 35, section 1.1.3. Except in 1979, the House Rules Committee has designated the Speaker of the House, the Chair of the Committee on Rules and Legislative Administration, and the House Minority Leader as the three leaders to receive the leadership salary.

2 - Senate Leadership: In 1977, the Senate Leadership Act provides that the House and Senate Rules Committees may each designate for their respective body up to three leadership positions to receive up to 140 percent of the compensation of other members." This statutory language was added by Laws of Minnesota 1977, chapter 35, section 10, subd. 3. The Senate has not passed resolutions related to leadership salaries since 1983.

3 - Per Diem: In some years, the House and Senate passed per diem resolutions assigning different rates to outstate and local legislators. See individual resolutions for clarity on how these determinations were made. Additionally, an attempt has been made to include information about interim per diem rates in footnoted material.

4 - Senate 2013-2014: In recent years, it is the custom of the Senate that when a per diem rate is set, it continues at that rate until such a time as it is explicitly changed. This figure reflects the rate set in 2011.

5 - Senate 2015-2016: In recent years, it is the custom of the Senate that when a per diem rate is set, it continues at that rate until such a time as it is explicitly changed. This figure reflects the rate set in 2011. Per diem was \$24/\$16 during the biennium.

- 6 - Senate 2009-2010: In recent years, it is the custom of the Senate that when a per diem rate is set, it continues at that rate until such a time as it is explicitly changed. This figure reflects the rate set in 2007. Per diem was discussed in committee several other times during the biennium.
- 7 - Senate 2007-2008: Per diem was discussed in the floor several other times during the biennium.
- 8 - Senate 2005-2006: Per diem was discussed in committee several other times during the biennium.
- 9 - Senate 2003-2004: Per diem was discussed in committee several other times during the biennium.
- 10 - Senate 2001-2002: Per diem was discussed in committee several other times during the biennium.
- 11 - Senate 1999-2000: Per diem was discussed in committee several other times during the biennium.
- 12 - Senate 1987-1988: Per diem was discussed in committee several other times during the biennium.
- 13 - House 1985-1986: In committee, the House passed a resolution to establish per diem rates. That resolution refers to these pages of the Journal of the House.
- 14 - Senate 1985-1986: Per diem was discussed in committee several other times during the biennium.
- 15 - House 1983-1984: After committee discussion, the House passed a resolution on the floor to establish per diem rates.
- 16 - Senate 1983-1984: After committee discussion, the Senate passed Senate Resolution 1013 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 17 - House 1981-1982: The leadership salary was reinstated for House leadership in 1981.
- 18 - House 1981-1982: After committee discussion, the House passed a resolution on the floor to establish per diem rates.
- 19 - Senate 1981-1982: After committee discussion, the Senate passed Senate Resolution 1013 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 20 - Senate 1979-1980, 1981-1982, 1983-1984: The Senate determined in committee that the Majority and Minority Leaders would both receive the leadership salary each month. They designated the Chair of the Finance Committee and the Chair of the Committee on Taxes and Tax Laws to receive the pay differential on alternating months, starting with the Chair of Finance in January of the first year of the biennium.
- 21 - House 1979: A salary of 140% that of other members was given to the Speaker and the Chair of Rules. The House Floor Leader and the I-R Caucus Leader received 140% of the compensation of other members on alternate months, starting with the House Floor Leader in January 1979.
- 22 - House 1979-1980: After committee discussion, the House passed House Resolution 1013 on the floor to establish per diem rates. It stated that House members were to submit their requested per diem rate in writing. Minnesota Statutes 1978, 1979 specified the maximum rate.
- 23 - Senate 1979-1980: After committee discussion, the Senate passed Senate Resolution 1013 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 24 - House 1977-1978: After committee discussion, the House passed House Resolution 1012 on the floor to establish per diem rates.
- 25 - Senate 1977-1978: After committee discussion, the Senate passed Senate Resolution 1017 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 26 - House 1975-1976: After committee discussion, the House passed House Resolution 1014 on the floor to establish per diem rates.
- 27 - Senate 1975-1976: After committee discussion, the Senate passed Senate Resolution 1015 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 28 - House 1973-1974: After committee discussion, the House passed House Resolution 1018 on the floor to establish per diem rates.
- 29 - Senate 1973-1974: After committee discussion, the Senate passed Senate Resolution 1017 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 30 - House 1971-1972: After committee discussion, the House passed Senate Concurrent Resolution 1016 on the floor to establish per diem rates.
- 31 - Senate 1971-1972: After committee discussion, the Senate passed Senate Concurrent Resolution 1016 on the floor to establish per diem rates. Per diem was discussed in committee several other times during the biennium.
- 32 - House 1969-1970: After committee discussion, the House passed House Concurrent Resolution 1016 on the floor to establish per diem rates.
- 33 - Senate 1969-1970: The Senate passed House Concurrent Resolution 1016 on the floor to establish per diem rates. No related committee documents were found.
- 34 - House 1967-1968: After committee discussion, the House passed Senate Concurrent Resolution 1016 on the floor to establish per diem rates.
- 35 - Senate 1967-1968: After committee discussion, the Senate passed Senate Concurrent Resolution 1016 on the floor to establish per diem rates.

# **Appendix L**

## **NCSL Tax Home Advisory**

## NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas***Legislator Tax Home Advisory**

(January 2016)

***The National Conference of State Legislatures does not provide tax advice or opinions to state legislatures or to state legislators. This overview is for purposes of general guidance only.***

**Summary**

State legislators who live more than 50 miles from the state capitol may choose to claim their district residence as their "tax home." In doing so, legislators may claim the expenses they incur while conducting official legislative business as a tax deduction on their federal income tax return. This deduction is known as the "legislator tax home deduction." It was created as part of the 1981 Economic Recovery Tax Act (Public Law 97-34) and is Section 162(h) in the Internal Revenue Service Code.

**State Legislator Travel Fact Sheet** (Source: United States Internal Revenue Service)

Section 162(a) (2) of the Internal Revenue Code allows a deduction for the ordinary and necessary expenses incurred in a trade or business, including travel expenses while away from the individual's tax home.

Generally, the taxpayer's tax home is the principal place of activity for the business. However, Section 162(h) provides a special election for state legislators who attend legislative sessions away from the area of their residence. This election allows a state legislator to designate his or her personal residence as his or her home with respect to the trade or business of being a legislator. This means that when the legislator is at the state capital, he or she will be traveling away from home and incur deductible expenses.

The election is only available to legislators whose place of residence is more than 50 miles from the state capitol.

By making the election, the legislator is deemed to have expended for living expenses an amount determined by multiplying the number of legislative days of the taxpayer during the taxable year by the greater of:

1. The amount generally allowable for those days to employees of the legislator's state for per diem while away from home, to the extent the amount does not exceed 110 percent of the Federal employee per diem; or
2. The Federal employee per diem during those days for the legislator's state capital.

A "legislative day" includes any day the legislature is in session. This includes any day when the members are expected to attend, regardless of whether the electing legislator actually does attend. A legislative day also includes any day the legislature is not in session but the physical presence of the electing legislator is formally recorded at a meeting of a committee of the legislature.

The legislature is considered "in session" when it is not in session for a period of 4 days or less.

"Living expenses" include expenses for lodging, meals, laundry, and other incidental expenses, but does not include expenses for travel fares, local transportation, or telephone calls.

No deduction is allowed for any expenses to the extent that the legislator receives reimbursement for them.

A legislator makes the election by attaching a statement to the legislator income tax return (or amended return) for the taxable year for which the election is effective.

The IRS issued Treasury Decision 9481 on April 26, 2010, to incorporate these rules into final regulation 1.162-24.

**Appendix M**  
**Special Tax Rules Applicable to State Legislators**  
**Joel Michael**

# Special Tax Rules Applicable to State Legislators

JOEL MICHAEL

RESEARCH DEPARTMENT

MINNHOJJE OF REPRESENTATIVES

## General rules and principles

Legislators are generally treated for federal and state income tax purposes like any other state government employee. This is particularly true for members who live in the metropolitan area.

One special “tax home” rule applies under section 162(h) of the I.R.C. This rule affects members:

Whose in-district residence is more than 50 miles from the state capitol; and

Who make an annual election under its provisions.

## Tax home

The location of your tax home is critical because living expenses while on business “away from home” (overnight stay or meeting the substantial sleep and rest rule) are deductible. Otherwise, living expenses are not.

The IRS has generally considered the tax homes of legislators to be the state capitol – i.e., the place where they (under normal tax principles) conduct most of their business.

The IRS won a case in 1976 involving a Michigan legislator who contended his tax home was in his legislative district (Detroit), although he spent most of his time in Lansing. *Montgomery v. Comm’r of Internal Revenue*, 532 F.2d 1088 (6<sup>th</sup> cir. 1976).

## Section 162(h)

Congress responded to the IRS's victory in *Montgomery* by enacting section 162(h) in 1981.

Section 162(h) does two separate and important things:

- It provides special tax home rules for certain state legislators.

- It allows a flat dollar amount per day deduction for legislators who qualify under its terms and who elect to use it.

Policy basis likely is to make sure that the tax system reflects the higher out-of-pocket costs incurred by legislators who must maintain two residences to serve and to do this in a relatively easy-to-administer way.

Longstanding rule (dating back to the 1954 Code) deemed the tax homes of members of Congress to be in their districts. Section 162(h) provides a sort of parity for state legislators.

## Which legislators qualify?

To qualify for section 162(h) treatment, a member's in-district residence must be more than 50 miles from the state capitol (i.e., the building).

Distance is measured by "shortest of the more commonly traveled routes between the two points."

Status as a member starts when the member takes the oath of office and ends when the term ends.

Members must elect section 162(h) treatment. This is done when filing their returns for the taxable year by attaching a statement.

## What does section 162(h) allow?

A qualified state legislator is allowed to treat their in-district residence as his or her “tax home.” This has the potential to make expenses incurred while attending to legislative business in St. Paul as expenses that are “away from home” – i.e., they may (likely will be) deductible travel expenses, rather than non-deductible personal consumption or living expenses.

It provides a fixed, flat dollar amount deduction for each defined legislative day. This amount is based on the per diem allowance that the General Services Administration (GSA) sets for the state capital city (St. Paul) for federal employees who are in travel status.

Federal law allows a state to set a slightly higher per diem (10% > than the GSA amount); Minnesota has never done that.

The per diem approach simplifies record keeping.

# What days qualify as legislative days?

The legislature meets in session.

The legislature is in session and has not adjourned for longer than four days.

The legislator's presence is formally recorded at a meeting of a committee of the legislature (e.g., during interim).

Committees are defined as committees that are charged with conducting the business of the legislature (e.g., to which bills are referred or which are authorized to conduct inquiries into matters of public concern).

Special rules apply for pro forma legislative sessions, which Minnesota does not do.

## What are the MN per diem amounts?

The GSA has set the federal employees per diem for St. Paul and Minneapolis for FY 2017 at \$209. The amount is adjusted each federal fiscal year (starts October 1<sup>st</sup>). The amount for FY 2016 was \$204.

This amount is divided into two separate parts, one for lodging and one for meals and incidental expenses. The respective amounts for CY 2017 for St. Paul are \$145 and \$64.

The separate amounts are important for legislators who claim the deduction, since only one-half of the amount for meals and entertainment can be claimed as a business expense deduction.

## How are section 162(h) amounts claimed?

State legislators would typically claim the per diem amount for their legislative days as employee business expenses.

To use this deduction, a member must:

- Itemize deductions (i.e., have total itemized deductions, such as mortgage interest, charitable contributions, state and local taxes and so forth that exceed the applicable standard deduction allowance).
- Have total miscellaneous itemized deductions (such as employee business expenses) that exceed 2% of their adjusted gross income.
- Deduct only one-half of the allowance for meals (federal law assumes that one-half of meal expenses are essentially personal consumption and should not be deducted).

## Accountable plan option

An employer with an accountable plan for providing employee fringe benefits can treat expenses reimbursing section 162(h) electing and qualifying members as nontaxable fringe benefits under its accountable plan.

The House of Representatives has done this since the middle 1990s based on recommendations provided by a CPA firm that the legislature retained to evaluate this issue.

Under this approach, the limitations on itemized deductions are avoided and members also do not pay FICA tax on the amounts – if their expense payments (i.e., per diem and housing) do not exceed their section 162(h) allowances.

Creates additional administrative tasks for the employer – i.e., the need to monitor the number of legislative days for each electing member, determine that the amounts paid do not exceed the federal limits, and then report year-end amounts to members so they can claim deductions for the balance of section 162(h) amounts.

Done 2017\_03\_16\_DaudtMemotoHouseCo...

Kurt Daudt  
Speaker of the House



Minnesota  
House of  
Representatives

TO: Jim Reinholdz, Controller for the Minnesota House of Representatives  
FROM: Kurt Daudt, Speaker of the House *KD*  
RE: Legislator Salary Increases  
DATE: March 16, 2017

In response to the salary recommendation from the Legislative Salary Council (Council) published in the report released on Friday, March 17, 2017, regarding the 2017-2018 legislative salary levels for all members of the House of Representatives. Specifically, you are directed to not implement the salary recommendation of the Council.

Article II, Section 1 of the Minnesota Constitution prohibits payment of any money out of the state treasury except by appropriation by law.

ARTICLE XI  
APPROPRIATIONS AND FINANCES

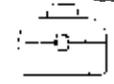
Section 1. Money paid from state treasury.

No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

The Constitution solely empowers the Legislature to enact appropriation. Until a law is enacted appropriating money for any pay increase by the Legislative Salary Council, it is not to pay that increase.

CC: All Members of the House of Representatives

EXHIBIT  
*D*



6/5/2017

# House lawmakers won't get a big pay raise after all, Daudt says

by Josette Elieff March 16, 2017 8:12 pm



**EXHIBIT**  
tabbies **E** 110

6/5/2017

House lawmakers won't get a big pay raise after all, Daudt says - GoMN

Last week, the **Legislative Salary Council** voted to increase lawmakers' pay from \$31,140 to \$45,000, marking their first raise since 1999. But Minnesota House Speaker Kurt Daudt wants nothing to do with that.

The salary increase is in response to a **constitutional amendment** that was on the November ballot. Minnesotans approved the amendment, which gave the 16-member Legislative Salary Council the authority to decide legislator pay every two years.

But according to the **Pioneer Press**, Daudt said the Minnesota House won't fund the 45 percent salary increase.

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## Priyanka Chopra Chooses Between Zac Efron and The Rock

by Glamour



"We are choosing not to fund the Council's recommendation to increase salaries for members of the House," the Republican said.

Earlier this week, the **Associated Press** reported Daudt was looking into whether the House could legally opt out of the raises.

And by the looks of a **letter** sent out Thursday, Daudt seems to have deemed it acceptable. The letter specifically instructs the House not to adopt the recommended pay raises.

"I have made that decision. We will not be accepting the pay recommendations of the Council," **Daudt told reporters**. "For us to accept that pay when others are not getting that sort of pay increase ... would be wrong."

However, the Senate sees things differently.

"That's what the Constitution directs," Republican Senate Majority Leader Paul Gazelka **told WCCO**. "I don't know how you can possibly get around that."

The Legislative Salary Council is set to vote Friday to finalize the pay hikes. The raises are supposed to go into effect July 1.

For more information on the raises, **click here**.



# STATE OF MINNESOTA

## Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 30, 2017

The Honorable Michelle L. Fischbach  
President of the Senate  
Room 2113, Minnesota Senate Building  
St. Paul, Minnesota 55155

Dear Madam President:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State, Chapter 4, Senate File 1, with the exception of the line-item vetoes listed below:

- Page 2, Line 24: "Subd. 2 Senate 32,299,000 32,105,000"
- Page 2, Line 25: "Subd. 3 House of Representatives 32,383,000 32,383,000"

At the last minute, the Legislature snuck language into the State Government bill that would hold hostage the Department of Revenue appropriation in this bill to my signature on the Taxes bill. I am unwilling to put the jobs of 1,300 Department of Revenue employees at risk. As a result of this action, I am line-item vetoing the appropriations for the Senate and House of Representatives to bring the Leaders back to the table to negotiate provisions in the Tax, Education and Public Safety bills that I cannot accept. Attached is my letter to Speaker Daudt and Majority Leader Gazelka explaining my reasoning for line-item vetoing the Senate and House of Representatives' appropriations.

Minnesotans expect state government to provide high-quality services. SF 1 provides the needed operating adjustments for state agencies and constitutional offices to maintain these services. Providing the adjustments will help to ensure that our state can address the challenges presented with rising costs over the next biennium as well as population growth and increased demand for services.

There are other investments in this bill that will also benefit Minnesotans, such as: funding to ensure every Minnesotan is counted in the 2020 census; moving the state historic preservation office to the Department of Administration to benefit businesses, and additional funding for tuition incentives that the men and women who join our national guard can take advantage of.

However, there are provisions in this bill that cause concern. The bill intrudes upon my authority to manage the executive branch of state government. It places onerous reporting requirements on state agencies and limits the flexibility of commissioners to manage their agencies.



The Honorable Michelle L. Fischbach  
May 30, 2017  
Page 2

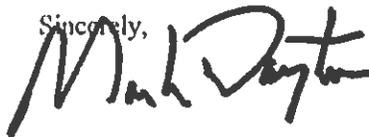
Minnesota has a long history of checks and balances between the executive and legislative branches and having Minnesota Management and Budget keep track of the cost of legislation has served us well. SF 1 transfers the responsibility for fiscal notes from Minnesota Management and Budget to the Legislature. Putting this work under the authority of the legislature creates redundancies and inefficiencies and unnecessarily grows government.

The bill reneges on our commitment by \$10 million each year beginning in 2020, to fund the Minneapolis Employees Retirement Fund (MERF) placing that state obligation onto the taxpayers of Minneapolis.

I am extremely disappointed by what is not in this bill. In my budget I prioritized investments in technology, specifically cyber security. I prioritized these not for the benefit of state agencies, but for the benefit of Minnesotans. We need to ensure we can protect our data and systems from cyber-attacks. And, we need to do so while still ensuring that state agencies have the operations capability to responsibly serve our state's citizens. This is not an either/or proposition and I continuously sought both. In addition, we need to ensure that the backbone of our government -- how we pay our bills and keep track of our finances -- is running smoothly. Critical improvements are needed to these systems to keep them operating. Our procurement systems likewise can use updating. Funding those improvements is not in this bill.

Minnesotans deserve a transparent, fiscally responsible budget. We must make investments to build a more competitive state workforce, ensure efficient and accountable outcomes in state programs, secure our IT infrastructure, and deliver the high quality of state services that Minnesotans deserve.

Sincerely,



Mark Dayton  
Governor

cc: Senator Paul E. Gazelka, Senate Majority Leader  
Senator Thomas M. Bakk, Senate Minority Leader  
Senator Mary Kiffmeyer, Minnesota Senate  
Representative Kurt Daudt, Speaker of the House  
Representative Melissa Hortman, House Minority Leader  
Representative Sarah Anderson, House of Representatives  
The Honorable Steve Simon, Secretary of State  
Mr. Cal R. Ludeman, Secretary of the Senate  
Mr. Patrick Murphy, Chief Clerk of the House of Representatives  
Mr. Paul Marinac, Revisor of Statutes

Attachment



# STATE OF MINNESOTA

## Office of Governor Mark Dayton

130 State Capitol • 75 Rev. Dr. Martin Luther King Jr. Boulevard • Saint Paul, MN 55155

May 30, 2017

The Honorable Kurt Daudt  
Speaker of the House  
Room 463, State Office Building  
St. Paul, Minnesota 55155

The Honorable Paul E. Gazelka  
Senate Majority Leader  
Room 3113, Minnesota Senate Building  
St. Paul, Minnesota 55155

Dear Speaker Daudt and Majority Leader Gazelka:

I am signing into law the nine so-called "Budget Bills," in order to forestall a bitter June showdown over a State Government shutdown. I have strong disagreements with certain provisions in every one of those bills. However, having been through twenty tumultuous days in July 2011, I understand the enormous uncertainties and disruptions that even the threat of another shutdown would cause for many thousands of Minnesotans. I also know from prior experience that it is extremely unrealistic for any of us to imagine we would achieve any better results from protracted budget negotiations well into June.

I will allow the tax bill to become law without my signature. I will not sign it, because of very major objections I have with certain provisions in it. However, I cannot veto it, because of the "poison pill" provision you snuck into the State Government bill, which attempts to eliminate all funding for the Minnesota Department of Revenue in Fiscal Years 2018 and 2019, if the tax bill were not enacted.

I consider this provision, snuck into the State Government bill without my knowledge, to be a reprehensible sneak attack, which shatters whatever trust we achieved during the Session. Now I understand why you made it almost impossible for my staff and me to obtain drafts of your bills' language, sometimes not until minutes before they were brought to the floor for passage.

I will not risk a legal challenge to the Department of Revenue's budget and cause uncertainty for its over 1,300 employees. Because of your action, which attempts to restrict my executive power, I am left with only the following means to raise my strong objections to your tax bill, which favors wealthy individuals, large corporations, and moneyed special interests at the expense of the State of Minnesota's fiscal stability in the years ahead.

Thus, I am line-item vetoing the appropriations for the House and Senate in FY 18/19 and FY 20/21. Your job has not been satisfactorily completed, so I am calling on you to finish your work. However, I will allow a Special Session only if you agree to remove the following provisions, which are extremely destructive to Minnesota's future:

1. Eliminate the Tobacco Tax Breaks. In 2013 I proposed, and the Legislature passed, an increase in cigarettes and other tobacco products, first to help resolve a projected \$623 million deficit in the coming biennium; and second, to discourage people from smoking; and, especially, to discourage young people from beginning to smoke. The tax increases achieved both intended results.

EXHIBIT

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The Honorable Kurt Daudt and Paul Gazelka  
May 30, 2017  
Page 2

This bill's tax breaks for tobacco would cost the State Treasury an estimated \$13.8 million in the FY 18/19 biennium, \$39.7 million in FY 20/21, and even more in subsequent years.

Especially galling, and indefensible, is the tax break for premium cigars, at a cost of \$6.9 million over the next two bienniums. I am appalled that there was not enough money left after you satisfied your priorities to expand the Working Family Credit in FY 18/19 or to further increase the Child Care Tax Credit for working parents; yet, you could find room to sneak in a special tax break for premium cigars for some special, moneyed friends.

2. Cancel the Estate Tax Exclusion Increase. There is already a \$2 million tax exemption for the estates of the wealthiest Minnesotans and a \$5 million tax exemption for farmers and family-owned businesses. Increasing the regular exclusion by another \$1 million would benefit only a handful of the richest people in Minnesota at a cost to the State of \$34.8 million in FY 18/19, \$74.5 million in FY in FY 20/21, and even more in years following.

Whether the State Exclusion is \$2 million or \$3 million, those millionaires, whose preoccupations are to avoid paying taxes, will continue to find other states, who offer them better Estate Tax avoidance. It would require raising the exclusion to the federal level of \$5 million to achieve parity, and that cost would be prohibitive. Reducing state revenues by \$109.3 million from the richest Minnesotans to little public benefit is extremely ill-advised.

3. C-I Property Tax Freeze. I support excluding the first \$100,000 of business property from statewide property taxes despite its high cost of over \$85 million in the next biennium. However, freezing the levy has disastrous effects in future years, costing the State almost \$85 million in FY 20/21 and even more in years following. Over the next ten years, the total revenue loss to the State would be over \$1 billion.

Look at the attached analysis of forecast uncertainties, prepared by the Department of Management and Budget. Even a moderate national recession would reverse Minnesota's hard-earned fiscal stability. That billion dollars in revenue is essential to our State's financial security.

Tax cuts are politically appealing and much appreciated by those who receive them. However, their total cost to the State must be responsible, not just for tomorrow but also for the days, weeks, and years that will follow. This principle was violated with tax breaks in 2000 and 2001, which helped cast State Government into serious and repeated budget deficits soon thereafter.

When I became Governor in January 2011, the State faced a projected \$6.2 billion deficit over the coming biennium. Over the next four years, we went through a very difficult and often painful process to restore our fiscal integrity: to re-establish structural budget surpluses, to pay back the over \$2 billion owed our school districts, and to eliminate many shifts and other gimmicks. I refuse to allow the State's financial security to be jeopardized by excessive tax giveaways, which do not benefit most Minnesotans.

The Honorable Kurt Daudt and Paul Gazelka  
May 30, 2017  
Page 3

It is unfortunate that your last-minute legislative treachery has left me no other option but either to passively permit those tax provisions to become law and decimate our future financial solvency, or to take this action. However, the future well-being of our children and our grandchildren is at stake. I will not willingly allow their futures to be jeopardized.

4. Driver's License Provision. There is another provision, which I insist you agree to remove, before I will call a Special Session. The new language in HF 470, which prohibits undocumented immigrants from obtaining drivers licenses is, as I have said repeatedly, completely redundant and, therefore, unnecessary. Several different legal opinions have stated to me that current law does not allow my Administration to make such a change, without action by the Legislature.

Thus, this provision is nothing more than a strategic attack against people, many of whom have lived in this country for a long time, and most of whom are living responsible lives and contributing to our growing state economy. Your intent to further divide our evermore diverse population might be politically advantageous to you (it must be, or you wouldn't have done it); but it is destructive to the future well-being of the people of Minnesota.

5. Teacher Licensure Provision. I also insist that you re-open and re-negotiate the Teacher Licensure provisions in IIF 2. The integrity of Minnesota's professional teaching standards is of paramount importance to all of our state's licensed teachers and to ensuring the quality of teachers, educating all of our children. While I support improving Minnesota's system of teacher licensure, some provisions undermine the high professional standards that have served Minnesota's schoolchildren extremely well.

I will await your response.

Sincerely,



Mark Dayton  
Governor

cc: Senator Thomas M. Bakk, Senate Minority Leader  
Representative Melissa Hortman, House Minority Leader  
Representative Greg Davids  
Senator Roger Chamberlain

Attachment



## Notes on Risk and Uncertainty for Minnesota FY 2018-19 Revenues

May 15, 2017

### What happens to the revenue forecast if a recession starts?

- During the last two relatively mild and short (8 months each) U.S. recessions, we lowered our revenue forecast for the current biennium on average 4.5 percent from one February to the next (so, over 12 months).
  - We lowered our revenue forecast by 0.5 percent in the 1990-91 recession and by 8.6 percent in the 2001 recession.
  - The Great Recession of 2007-09 is too much of an outlier to use as a comparison here.
- If *this year* we were to face an experience similar to the average of those two recessions, we might lower our forecast for FY 2018-19 revenues by about \$1.9 billion (4.1 percent) in November 2017, and then by another \$200 million (0.5 percent) in February 2018. That would be a \$2.1 billion (4.5 percent) forecast reduction over 12 months.
  - With significant impacts on financial income, especially capital gains, the 2001 recession was much harder on Minnesota revenues than the 1990-91 recession. If this year we were to face a similar experience to the 2001 recession, we might lower our forecast for FY 2018-19 revenues by about \$3.4 billion (7.5 percent) in November 2017, and then by another \$500 million (1.2 percent) in February 2018. That would be a \$3.9 billion (8.6 percent) forecast reduction over 12 months.
  - If this year we were to face a similar experience to the 1990-91 recession, we might lower our forecast for FY 2018-19 revenues by about \$230 million (0.5 percent) by February 2018.
  - These estimates include all sources of revenue forecast risk, including both economic risk and our own forecast error.
  - These estimates *do not include* the impact of a recession on expenditures. Demand for public services tends to increase during an economic downturn, putting pressure on state government spending.

### How far off can revenues be by then end of the biennium?

- In February, we forecast total FY 2018-19 revenues to be roughly \$45.7 billion. If our February 2017 forecast is about as accurate as our average forecast, the range of closing values for FY 2018-19 total revenues is \$45.7 billion plus or minus \$2.4 billion (5.4 percent). That is, revenues



could end up as low as \$43.2 billion or as high as \$48.1 billion. (Values do not add due to rounding.)

- Our average error for 29-months-ahead forecasts is plus or minus 5.4 percent of non-dedicated revenues. We calculated the average over 13 biennia.
- More information is in our March 2017 *Revenue Forecast Uncertainty Report*:  
<https://mn.gov/mmb-stat/000/az/forecast/2017/february-forecast/forecast-uncertainty-report-full.pdf>

Distinguished by State ex rel. Svigginn v. Hanson, Minn.App., May 22, 2007

Original Image of 01 N.W.2d 777 (PDF)

State ex rel. Mattson v. Kiedrowski Supreme Court of Minnesota. August 8, 1986 391 N.W.2d 777 (Appendix 17 pages)

STATE of Minnesota ex rel. Robert W. MATTSON, Treasurer of the State of Minnesota, Petitioner, v. Peter J. KIEDROWSKI, Commissioner of Finance of the State of Minnesota, Respondent.

No. CX-85-1952. Aug. 8, 1986.

Original proceeding was instituted on a petition by the State Treasurer for a writ of quo warranto to require the Commissioner of Finance to cease and desist usurping duties of State Treasurer. The Supreme Court, Scott, J., held that statute by which the legislature, in special session, transferred most of the responsibilities of the State Treasurer, an executive officer, to the Commissioner of Finance, a statutory position, though allowing the State Treasurer to retain certain miscellaneous duties, operated to transfer all of the State Treasurer's independent power over the receipt, care and disbursement of state monies, functions that constituted the very core of the office, and was unconstitutional as amounting to a transfer of inherent or core functions of an executive officer to an appointed official.

Writ issued.

Yetka, J., concurred specially and filed opinion in which Simonett, J., joined.

West Headnotes (5)

Change View

- 1 Constitutional Law Encroachment on Executive Provision of the Constitution to effect that the duties of the state executive offices "shall be prescribed by law" does not allow the legislature to transfer inherent or core functions of executive officers to appointed officials. M.S.A. Const. Art. 5, § 4. 5 Cases that cite this headnote
2 Constitutional Law Encroachment on Executive Authority of the legislature to prescribe duties for the executive officers, though including the power to change, from time to time, such duties as the public health and welfare demand, does not include the power to transfer functions of executive officers that constitute the very core of their offices. M.S.A. Const. Art. 5, § 4.
3 Constitutional Law Encroachment on Executive Mandate in the Constitution that the executive department consist of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general implicitly places a limitation on the power of the legislature to prescribe the duties of such offices. M.S.A. Const. Art. 5, §§ 1, 4. 1 Cases that cite this headnote

SELECTED TOPICS

- Separation of Powers
Charter Fund Appropriation
States
Government and Officers
Power of Constitutionally Created Executive Agency

Secondary Sources

APPENDIX IV: ADMINISTRATIVE LETTER RULINGS: DOL, WAGE AND HOUR DIVISION

FLSA Emp. Exemption Hdbk Appendix IV
(The following article appeared in the July 1995 update to the Employer's Guide to the Fair Labor Standards Act, published by the Thompson Publishing Group. It is intended to provide basic information on e..

F820 PRIVACY SAFEGUARDS

Employer's Guide to the Health Insurance Portability and Accountability Act §820
HIPAA's privacy rules, originally issued in 2000 and amended in 2002, forced changes to the way employers' group health plans, as well as their service providers and insurers, handle and transmit infor..

APPENDIX II - FEDERAL REGULATIONS

Guide to Good Clinical Prac, Appendix I
(a) The regulations in this part set forth the criteria under which the agency considers electronic records, electronic signatures, and handwritten signatures executed to electronic records to be trust..

See More Secondary Sources

Briefs

BRIEF FOR PETITIONERS

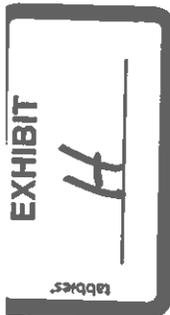
1999 WL 1079965
In Matter of Visitation of Natalee Anne Troxel, Isabelle Rose Troxel, Minors, Jenifer Troxel, Gary Troxel, v. Tommie Granville
Supreme Court of the United States
Nov. 12, 1999
The opinion of the Supreme Court of Washington, which is reported at 137 Wn. 2d 1, 959 P.2d 21 (1998), is reprinted in the appendix to the petition for writ of certiorari ("Pet. App.") at pp. 1a-54a. T..

JOINT APPENDIX, VOL. I

2015 WL 881797
James Obergfell, et al., and Britani Henry, et al., Petitioners, v. Richard Hodges, Director, Ohio Department of Health, et al., Respondents, Vitoria Tanco, et al., Petitioners, v. William Edward Bill Haslam, Governor of Tennessee et al. Respondents, Gregory Bourke, et al., and Timothy Love, et al., Petitioners, v. Steve Beshear, Governor of Kentucky, et al., Respondents
Supreme Court of the United States
Feb. 27, 2015

FN\* Counsel of Record FN\* Not admitted in D.C., supervised by Ropes & Gray partners who are members of the D.C. Bar [Filed: 1/7/19/13] I, James Obergfell, under 28 U.S.C. §1746, declare under the penal..

Joint Appendix



**4 Constitutional Law** Encroachment on Executive States Particular executive officers  
 Statute by which the legislature, in special session, transferred most of the responsibilities of the State Treasurer, an executive officer, to the Commissioner of Finance, a statutory position, though allowing the State Treasurer to retain certain miscellaneous duties, operated to transfer all of the State Treasurer's independent power over the receipt, care and disbursement of state monies, functions that constituted the very core of the office, and was unconstitutional as amounting to a transfer of inherent or core functions of an executive officer to an appointed official. Laws 1985, 1st Sp.Sess., c. 13, § 1 et seq.; M.S.A. Const. Art. 5, §§ 1, 4; Art. 9, § 1 et seq.

7 Cases that cite this headnote

**5 States** Transfer  
 Funds appropriated for functions and positions of the State Treasurer's office, invalidly transferred by statute to the Commissioner of Finance, were to be added to the appropriation of the State Treasurer's office for the fiscal year in question upon return of the functions and positions to the State Treasurer. Laws 1985, 1st Sp.Sess., c. 13, § 1 et seq.; M.S.A. Const. Art. 5, §§ 1, 4; Art. 9 § 1 et seq.

1 Case that cites this headnote

*778 Syllabus by the Court*

As it relates to the State Treasurer, Chapter 13 of the 1985 Minnesota Special Session Laws violates Section 1 of Article V and Section 1 of Article IX of the Minnesota Constitution. The functions and positions of the State Treasurer's Office transferred by the statute to the Department of Finance are to be returned to the State Treasurer and the funds appropriated for such transferred functions and positions are to be added to the appropriation of the State Treasurer's Office for fiscal year 1987.

**Attorneys and Law Firms**

Wayne Olson, Minneapolis, for petitioner.

Hubert H. Humphrey, III, Atty. Gen., Kent G. Herbison, Chief Deputy Atty. Gen., St. Paul, for respondent.

Heard, considered and decided by the court en banc.

**Opinion**

SCOTT, Justice.

Robert W. Mattson, Treasurer of the State of Minnesota, petitions this court to issue a writ of quo warranto to Peter J. Kiedrowski, State Commissioner of Finance, directing the Commissioner to cease and desist usurping the duties of the State Treasurer under the color of authority of Chapter 13 of the 1985 Minnesota Special Session Laws. Mattson contends that, as it relates to the State Treasurer's Office, Chapter 13 is unconstitutional in that it abolishes, in effect, his executive office. We agree and, accordingly, issue the writ to the Commissioner.<sup>1</sup>

In 1985, the legislature, in special session, enacted a statute, several provisions of which transferred most of the responsibilities of the State Treasurer, an executive officer, to the Commissioner of Finance, a statutory position. Act of June 27, 1985, ch. 13, § 13, 1985 Minn.Laws 2082.<sup>2</sup> The legislature, by this act, did not disturb the State Treasurer's position on the State Board of Investment, the composition of which is mandated in Article 11 of the Minnesota Constitution, nor did it strip the State Treasurer of the power, also prescribed in Article 11 of the constitution, to keep a separate record of the state bond fund. The legislature retained the State Treasurer's position on the State Executive Council, a body organized pursuant to state statute, and allowed the State Treasurer to receive a daily cash reconciliation report from the Commissioner of Finance. All other duties of the State Treasurer, however, were transferred to the Commissioner of Finance.

2013 WL 4761476  
Manuel Jose Lozano, Petitioner, v. Diana Lucia Montoya Alvarez, Respondent, Supreme Court of the United States Aug. 30, 2013

...The Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980; International Child Abduction Remedies Act, 42 U.S.C. § 11601 et seq. 1. This petition arises...

See: More Briefs

**Trial Court Documents**

**U.S. v. Fernandez-Navarro**

2016 WL 8468046  
UNITED STATES OF AMERICA, v. Manuel FERNANDEZ-NAVARRO. United States District Court, N.D. Illinois. Dec. 06, 2016

... pleaded guilty to count(s) 1 pleaded nolo contendere to count(s) \_ which was accepted by the court, was found guilty on count(s) \_ after a plea of not guilty. The defendant is adjudicated guilty of ...

**U.S. v. Williams**

2016 WL 8787424  
UNITED STATES OF AMERICA, v. Justin WILLIAMS. United States District Court, N.D. Illinois. Sep. 26, 2016

... pleaded guilty to count(s) 1 2 pleaded nolo contendere to count(s) which was accepted by the court, was found guilty on count(s) after a plea of not guilty. The defendant is adjudicated guilty of th...

**U.S. v. George**

2017 WL 1427326  
UNITED STATES OF AMERICA, v. Janelle GEORGE. United States District Court, N.D. Illinois. Mar. 23, 2017

... pleaded guilty to count(s) pleaded nolo contendere to count(s) which was accepted by the court, was found guilty on count(s) : 6, 18, 21 after a plea of not guilty. The defendant is adjudicated guilty ...

See More Trial Court Documents

The duties the legislature transferred to the Commissioner included several functions relating to the receipt of state monies. Prior to the passage of Chapter 13, monies \*779 received by state agencies, which included tax revenues, federal aids, sales of services, debt instrument sales, and license plate fees, were batched together by the recipient agency and forwarded to the State Treasurer's Office, along with a tape calculation of the amount of the items in each batch. The State Treasurer issued a receipt to each agency that forwarded such batches and verified the total of each batch by recalculating the tape totals. The State Treasurer's Office recounted the cash in each batch to verify the agency's totals and placed the cash in the State Treasurer's statutory revolving fund. Checks found in the batches were not separately counted by the State Treasurer's Office; however, checks in the amount of \$500,000 or more drawn on local banks were made available by the State Treasurer's staff for immediate investment. Deposits of such checks were made three times daily. The bank deposit slips were then fed into the State Treasurer's computer, which printed out trial balance reports. These trial balance reports were forwarded to the Department of Finance, which used such information for budget and accounting purposes.

Some of the monies received by state agencies were not forwarded to the State Treasurer, but were directly deposited in private banking institutions. The State Treasurer, however, received the monthly statements of these and all other bank accounts and reconciled the bank statements with records compiled by his staff. These reconciliation reports were then balanced against information kept by the Department of Finance. The State Treasurer also opened all of the state's accounts with private banking institutions, which were designated by the State Executive Council as depositories of state funds. The State Treasurer's Office also approved the collateral pledged by custodian banks.

Apart from these functions relating to the receipt of state monies, the \*legislature, in Chapter 13, transferred from the State Treasurer's Office authority over the disbursement of some state funds. Prior to the act, the State Treasurer verified payments of some state funds to private vendors and state employees. As warrants were presented by individual banking institutions for payment, the State Treasurer compared the amounts of the warrants to information forwarded by the Department of Finance. Warrants not consistent with the State Treasurer's computer data were not honored. Any corrections or adjustments were made by the State Treasurer, who then directed the payment of the warrants. In addition, the State Treasurer had responsibility for determining the amount of state funds available for investment. The State Treasurer's decision was typically based on the amount of state funds in private banking institutions, as well as information forwarded by the Department of Finance. Two or three times each day the State Treasurer notified the staff of the State Board of Investment of the amount of funds available for investment. The Board decided how to invest the funds and the State Treasurer then distributed the funds in accordance with the Board's wishes. Prior to Chapter 13, the State Treasurer also managed the debt service function on all state bond issues, regularly calculating the amount of payments of principal and interest and directing payment on the due dates.

In addition to the transfer of duties, the legislature, in Chapter 13, transferred several positions from the State Treasurer's Office to the Department of Finance. Currently, nine employees perform duties in the Department of Finance similar to those they previously performed in the State Treasurer's Office. The legislature assigned three full-time employees and one part-time employee to the reorganized State Treasurer's Office and abolished seven and one-half positions that were, prior to Chapter 13, assigned to the State Treasurer's Office.<sup>3</sup>

\*780 On October 17, 1985, the State Treasurer petitioned this court for a writ of quo warranto, contending that the legislature's transfer of his office's duties and positions was unconstitutional. We remanded the proceeding to the Ramsey County District Court for findings of fact. In district court, the State Treasurer and Commissioner of Finance stipulated to facts concerning the transfer of duties and positions, and the district court incorporated the stipulated facts into its final findings of fact, dated March 18, 1986.

Afforded with these findings of fact, we are now asked to determine the constitutionality of Chapter 13 of the 1985 Minnesota Special Session Laws as it relates to the State Treasurer's Office.

Our state constitution, in Article III, discusses the distribution of the powers of state government. It provides:

6/5/2017

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Minn. Const. art. III § 1. Article V of the constitution establishes the executive department of state government. It states that the department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, all of whom are to serve at the will of the electorate. Minn. Const. art. V, § 1. Although Article V prescribes the terms of each of the offices, it does not expressly detail, with the exception of the governor, the duties of the officers. Section 4 of Article V merely provides: "The duties and salaries of the executive officers shall be prescribed by law."<sup>4</sup>

The provision in Article V providing that the duties of the state executive officers "shall be prescribed by law" is present in several other state constitutions. Appellate courts in these jurisdictions have consistently held that the prescribed-by-law provision does not allow a state legislature to transfer inherent or core functions of executive officers to appointed officials.

The Arizona Supreme Court, in *Hudson v. Kelly*, 76 Ariz. 255, 263 P.2d 362 (1953), held that a state statute that transferred duties of the state auditor, an executive officer, to the state controller, an appointed official, was unconstitutional. Although the duties of the state auditor were not detailed in the constitution, the Arizona court noted that at the time of the adoption of the state constitution the term "state auditor" was commonly understood to connote a person who was an accountant of the state. These accounting duties, which constituted the core function of the constitutional office, could not be transferred to an appointed officer. The Arizona court noted:

In the instant case it appears that the legislature should have known that it "781 could not denude the office of its inherent powers and duties, even though they had been prescribed by statute, and leave the office as an empty shell. Such attempts have uniformly been denounced by courts of last resort.

at ¶65, 263 P.2d at 368.

The California Supreme Court, in *Love v. Baehr*, 47 Cal. 364, 367-68 (1874), stated:

It is admitted that the Constitution contains no express limitation on the power of the Legislature in this particular. But we think a limitation is necessarily implied from the definition of the office. From the earliest period of our history as a nation, almost every State in the Union had a Secretary of State, Controller, Treasurer, and Attorney-General; and the general nature of the duties pertaining to each were perfectly well known to the framers of our Constitution. It is clear beyond controversy, that in establishing similar offices here, the framers of that instrument had reference to the same general class of duties, which it was well known pertained to such offices elsewhere.

The Illinois Supreme Court noted in *American Legion Post No. 279 v. Barrett*, 371 Ill. 78, 31 20 N.E.2d 45, 51 (1939):

It is a rule frequently stated by this court, that the General Assembly may not take away from a constitutional officer the powers or duties given him by the constitution. The constitution, by section 1 of article 5 provides that public officers, including the State Treasurer, shall perform such duties as may be required by law. Nothing in the constitution further defines the duties of the State Treasurer. This court has held that those duties are such as are to be implied from the nature of the office and of them he may not be deprived or relieved.

(Citations omitted.)

The Supreme Court of North Dakota noted in *Ex Parte Criliss*, 16 N.D. 470, 476-77, 114 N.W. 962, 965 (1907):

We do not deny the power of the Legislature to prescribe duties for these officers, which power carries with it by implication the right to change such

duties from time to time as the public welfare may demand, but we deny its power to strip such offices, even temporarily, of a portion of their inherent functions and transfer them to officers appointed by central authority.

1 These decisions of other jurisdictions are not, of course, binding on us in this case. They do, however, represent a majority position on the issue presented to us here. We conclude that the determination of these courts that state executive officers possess core functions applies equally to our own state constitutional framework of the executive department.

Under the prescribed-by-law provision of Article V, the legislature has the authority to prescribe duties for the executive officers, and this authority includes the power to change, from time to time, such duties as the public health and welfare demand. Indeed, since the time of statehood the legislature has changed the duties of state executive officers, including those of the State Treasurer. In 1858, for example, the legislature required that the State Treasurer "safely keep all public moneys." Act of August 12, 1858, ch. 59, § 2, 1858 Minn.Laws 136. In 1874, however, the legislature enacted a law providing for the transfer of the state depository from the State Treasurer's Office to depository accounts in private banking institutions, such institutions to be designated by the State Treasurer. Act of March 9, 1874, ch. 11, § 1, 1874 Minn.Laws 125–26. In 1901, the legislature created a board of deposit to designate the banking institutions in which state funds were to be deposited. Act of April 4, 1901, ch. 140, § 2, 1901 Minn.Laws 176. The 1925 legislature transferred this duty of the board of deposit to a newly-created executive council, of which the State Treasurer was a member. Act of April 25, 1925, ch. 426, art. II, 1925 Minn.Laws 756–57.

2 It is argued that, like the statutes that have previously changed the duties of the State Treasurer, Chapter 13 is a valid exercise of the legislature's power to change the duties of state executive officers in light of public health and welfare demands. We cannot agree. The previous statutes changing the duties of the State Treasurer, including the comprehensive 1973 act creating the Department of Finance, see Act of May 21, 1973, ch. 492, 1973 Minn.Laws 1081 (codified at Minn.Stat. § 16A.01–.80 (1984)), merely modified certain functions of the State Treasurer's Office. Chapter 13 goes much further. It transfers all of the State Treasurer's independent power over the receipt, care and disbursement of state monies, functions that constitute the very core of the office.

Functions relating to the receipt, care and disbursement of state monies define the treasurer position and separate it from the other executive offices of state government established in our constitution. In creating the office in Section 1 of Article V, the drafters of our constitution must have had these core functions in mind, for nearly every state in the union in 1857 had a state treasurer and the nature of the duties pertaining to the office was well-known.

3 Although the prescribed-by-law provision of Article V affords the legislature the power, in light of public health and welfare concerns, to modify the duties of the state executive officers, it does not authorize legislation, such as Chapter 13, that strips such an office of all its independent core functions. The mandate in Section 1 of Article V, that the executive department consist of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, implicitly places a limitation on the power of the legislature, under Section 4 of Article V, to prescribe the duties of such offices. The limitation is implicit in the specific titles the drafters gave to the individual offices.<sup>5</sup>

This is not to say that the legislature could not name officials to perform some of the core functions of an executive office; core functions of such offices can be shared with statutory officials. The limitation implicit in Section 1 of Article V serves only to prevent the legislature from abolishing all of the independent functions inherent in an executive office. To allow the legislature to abolish all such functions of an executive office is to allow it to do violence to the title the drafters afforded the office and the core functions necessarily implied therefrom.

4 Rather than conferring all executive authority upon a governor, the drafters of our constitution divided the executive powers of state government among six elected officers. This was a conscious effort on the part of the drafters, who were well aware of the colonial aversion to royal governors who possessed unified executive powers. In granting the legislature the power to prescribe the duties of such executive officers in Article V, the drafters could not have intended to afford the legislature the power to abolish these offices by statute. In Article IX, the drafters enumerated the only procedure by which such offices could be eliminated: the constitutional amendment process. By statutorily

abolishing all of the independent core functions of a state executive office, the legislature, in effect, abolishes that office, and the will of the drafters, as expressed in Article IX, is thereby thwarted.

Admittedly, the State Treasurer still has some miscellaneous duties under Chapter 13. He is a member of the State Executive Council and the State Board of Investment. He also is required to keep a separate record of the state bond fund, although this duty may be somewhat difficult to carry out in light of the fact that most, if not all, of the financial information formerly kept by the State Treasurer's Office has been transferred to the Department of Finance. These very minor duties aside, there is little doubt that the Office of State Treasurer now stands as an empty shell. \*783 Although the office has never been a major policy-making position, it did, prior to the effective date of Chapter 13, encompass independent functions relating to the receipt, care and disbursement of state monies; its core functions were left intact.

We must give meaning to Section 1 of Article V, as well as Article IX. We stated in *State ex rel. Chase v. Babcock*, 175 Minn. 103-107, 220 N.W. 408, 410 (1928): "The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and the people in adopting the article in question." To permit the legislature to gut an executive office as it did in Chapter 13 is to hold that our state constitution is devoid of any meaningful limitation on legislative discretion in this area.

It is evident from the legislative history of Chapter 13 that the provision transferring most of the functions and positions of the State Treasurer's Office to the Department of Finance was not a product of serious discussion of the role of a state treasurer in modern state government. No constitutional study was commissioned, as has been done in the past,<sup>6</sup> nor were any data gathered on the financial operations of state government and the state treasurer's role, if any, in that process.<sup>7</sup> It appears that Chapter 13 was precipitated by the actions of the individual occupying the state treasurer position. The individual, however, was duly elected by the people of this state in accordance with Article V of our state constitution. If the individual occupying the office should be removed, the legislature has at its disposal the impeachment process of Article VIII. If the position is no longer warranted for the efficient administration of state government, the legislature can present to the people, in accordance with Article IX, a constitutional amendment eliminating the office. The drafters did not, however, give the legislature the option of statutorily abolishing this state executive office. Such a remedy lies only with the people.

5 We hold that Chapter 13, as it relates to the State Treasurer, violates Section 1 of Article V and Section 1 of Article IX of the Minnesota Constitution. The functions and positions of the State Treasurer's Office that were transferred by the 1985 act to the Department of Finance are to be returned to the State Treasurer and the funds appropriated to the Department of Finance for such transferred functions and positions are to be added to the appropriation of the State Treasurer's Office for the fiscal year 1987.<sup>8</sup>

Let the writ issue.<sup>9</sup>

YETKA and SIMONETT, JJ., concur specially.

YETKA, Justice (concurring specially).

I concur in the majority decision and agree that, having decided the case on the division of powers doctrine, it is not necessary to decide the second issue, namely, whether Chapter 13 special laws of 1985 violates Minn. Const. art. IX, § 17, which states: "No law shall embrace more than one subject, which shall be expressed in its title."

This court should, and has, extended great deference to the legislature and has indicated that this provision should be liberally construed in favor of upholding the constitutionality of an act.

\*784 Early cases decided in the 19th century explain the purpose of the aforesaid provision in the constitution. The function of the title requirement is to provide notice of the interest likely to be affected by the law in order to prevent surprise and fraud upon the people and the legislature so that provisions in a bill are not written in such a way that the title gives no suggestion of the nature of the proposed legislation. See *Johnson v. Johnson*, 47 Minn. 515, 50 N.W. 923 (1891). We have also set out the reason behind the requirement that each law embrace but a single subject. In *State v. Cassidy*, 22 Minn. 312 (1875), we said:

The well-known object of this section of the constitution, which declares that "no law shall embrace more than one subject, which shall be expressed in its title," was to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign, and in no way related to or connected with its subject, and by preventing the combination of different measures, dissimilar in character, purposes and objects, but united together with the sole view, by this means, of compelling the requisite support to secure their passage.

*Id.* at 322.

For years following these earlier decisions, the legislature stayed within these restraints; however, beginning with post-World War II, the legislature was faced with an increasing volume of business and an inability to complete its work within a legislative session. It commenced almost regular special sessions, and it was then that large tax and appropriation measures in conference committees began to have different provisions added thereto. Although the legislature did, for a time, at least in tax and appropriation conference committees, attempt to restrict amendments to revenue-raising or appropriation matters, even though those matters may not have risen on the floor of either house, now all bounds of reason and restraint seem to have been abandoned. For example, Chapter 13, the subject of this appeal, is an act which contains 378 sections and is 273 pages long. Its title alone covers two pages. It deals with a number of disparate subjects: appropriation provisions, a section creating a council on Asian-Pacific Minnesotans, a section dealing with the revisor of statutes, one relating to agricultural land, one containing amendments to the Minnesota Zoological Garden, one establishing an Aspen recycling program, and many others. In *Johnson v. Harrison* 47 Minn. at 577, 50 N.W. at 924, we said: "[A]ll matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject." It is very difficult to see how this act complies with that restraint. We can certainly visualize, in modern life with the complexity of the legislation appearing before the legislature, the necessity of tax conference committees to consider many different revenue-making measures to balance the budget properly. We can visualize the same situation occurring in appropriations where last-minute measures may come up where it is necessary to amend the bill to provide for matters left unattended, but to add matters totally unrelated to either taxes or appropriations seems to me a clear violation of the constitution which this court should not tolerate. The worm that was merely vexatious in the 19th century has become a monster eating the constitution in the 20th.

Perhaps this court has been far too lax in permitting the slippage to occur or perhaps the right case had not yet reached this court until now. It is noteworthy that none of the parties has asked us to declare Chapter 13 unconstitutional in its entirety. Even the treasurer asked that only that portion dealing with the abolishment of his office should be so declared. It does seem to be particularly offensive that the legislature would attempt to all but demolish the treasurer's office not by a constitutional amendment or even by separate statute, but, rather, by resorting to the use of a "785 section of a so-called garbage or Christmas tree bill to do so.

Parties refer to Chapter 13 as a garbage bill. This designation has been given to that type of legislation where, near the tail end of a session, a group of individual ideas will be combined into one bill to wrap up the legislative business to avoid acting separately on each. A Christmas tree bill has normally been referred to, in legislative jargon, as a bill so drafted as to give a number of legislators approval of their separate or pet projects in order to gather sufficient votes to pass it. It seems to me that Chapter 13 presents all the objections that the constitution originally intended to prohibit. It contains a number of proposals which, if voted upon separately, might have failed and encourages votes from those who strongly support some features, but might oppose others. It all but bribes members of the public, as well as public officials, to support the measure in order to see their proposals result in fulfillment.

What then should our answer be? Have the courts also been blinded by features contained in various garbage or Christmas tree bills or simply has not the proper challenge come before us? I hope it is the latter and not the former. Regardless, we should send a clear signal to the legislature that this type of act will not be condoned in the future. Garbage or Christmas tree bills appear to be a direct, cynical violation of our constitution and however enticingly they may be drafted and whatever promises they may contain, we must have the will and the courage to resist the temptation to affirm the

legislative action. It is clear to me that the more deference shown by the courts to the legislature and the more timid the courts are in acting against constitutional infringements, the bolder become those who would violate them. The courts of this nation and of the state were uniquely given the authority to prohibit infringements by either the legislative or executive branch of the government of constitutional rights vested in the people and denied those branches of the government. If we do not act to protect the public, who will? It is our constitutional duty to do so. It has been said that former President Harry S. Truman had a plaque on his desk which said, "The buck stops here." We would do well to follow his example.

I declare that, while we recognize that modern times require modern methods of legislating, it was never intended by our founding fathers that the legislature be able to combine into one act a number of totally unrelated subjects. Thus, we should publicly warn the legislature that if it does hereafter enact legislation similar to Chapter 13, which clearly violates Minn. Const. art. IV § 17, we will not hesitate to strike it down regardless of the consequences to the legislature, the public, or the courts generally. After all, the legislature has, within its given powers, the right to prepare proper constitutional amendments to submit to the people if it finds that existing constitutional restraints offer severe impediments to its ability to perform efficiently, but it should not and cannot be given the fiat to ignore the constitution, for then we will surely have despotism, a tyranny the founders sought to prevent—a system not of laws, but of men.

SIMONETT, Justice (concurring specially).

I join in the special concurrence of Justice Yetka.

#### All Citations

391 N.W.2d 777

#### Footnotes

1 Section 2 of Article VI of the Minnesota Constitution provides that this court shall have original jurisdiction in remedial cases that are prescribed by law. Minn Stat. § 480.04 (1984) confers original jurisdiction on this court for the issuance of writs of quo warranto. We have used such powers in the past. See, e.g., *State ex rel. Palmer v. Perpich*, 289 Minn. 149, 182 N.W.2d 182 (1971); *State ex rel. Douglas v. Westfall*, 85 Minn. 437, 89 N.W. 175 (1902).

2 Section 13 of Chapter 13 provides, in part:

Except as provided in the Minnesota Constitution, article V; article XI, sections 7 and 8; and Minnesota Statutes, sections 9.011; 11A.03; and 16A.27, subdivision 2, the responsibilities of the state treasurer are transferred to the commissioner of finance under Minnesota Statutes, section 15.039.

3 Prior to July 1, 1985, the effective date of Chapter 13, the State Treasurer's Office employed 17 people: the State Treasurer; a deputy state treasurer; a fiscal activities officer, an executive secretary; a senior accounting officer; a clerk-typist; two senior accounting clerks; an EDP operations technician; a data entry operator; two cashiers; an EDP operations supervisor; a senior accounting technician; a senior accounting clerk; an office services supervisor; and an executive. In addition, three positions were assigned to the State Treasurer's Office, positions that were vacant on July 1, 1985. Of these 20 positions that comprised the State Treasurer's Office on June 30, 1985, 9 were transferred to the Finance Department and 3 ½ positions were assigned to the reorganized State Treasurer's Office: the state treasurer; an executive assistant principal, a fiscal activities officer and a part-time executive secretary. Accordingly, 7 ½ positions were abolished by Chapter 13, although Section 13 of the law states that 7 positions in the office were abolished. See Act of June 27, 1985, ch. 13, § 13, 1985 Minn.Laws 2082.

In addition to the abolition and transfer of positions, the legislature, in Chapter 13, reduced the State Treasurer's budget from \$584,600 appropriated for FY (fiscal year) 1985 (see Act of June 8, 1983, ch. 301, § 12, 1983 Minn.Laws 1568), to \$162,600 appropriated for FY 1986. For FY 1987, \$163,700 was appropriated. See Act of June 27, 1985, ch. 13, § 13, 1985 Minn.Laws 2082.

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State ex rel. Mattson v. Kiedrowski | Cases | Minnesota | Westlaw

- 4 This language is from the Revised State Constitution of 1974. The corresponding provision in the original Constitution of 1857 (article V section 5) stated: "And the further duties and salaries of said executive officers shall each thereafter be prescribed by law."
- 5 The first legislature, meeting in 1858, was well aware of the functions inherent in any treasurer position. In prescribing the duties of the office, it stated that the State Treasurer was to "keep an accurate account of the receipts and disbursements at the treasury \* \* \*." Act of August 12, 1858, ch. 59, § 6, 1858 Minn.Laws 137.
- 6 A constitutional study commission was formed in the early 1970's to propose changes to the 1857 state constitution. A similar commission was created in 1945.
- 7 Such a study was conducted in 1971 to analyze the financial operations of the state. The result of this study was the creation of the Department of Finance in 1973. See Act of May 21, 1973, ch. 492, 1973 Minn.Laws 1081.
- 8 For fiscal year 1987, \$373,300 was appropriated to the Department of Finance to cover the cost of such transferred functions and positions.
- 9 Because we issue the writ based on our conclusion that the statute violates Minn. Const. art. V, § 1, and Minn. Const. art. IX, we need not discuss the other challenges to the statute raised by the State Treasurer.

**End of  
Document**

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## Minnesota Management & Budget Statewide Operating Policy

Minnesota Management and Budget, Budget Division  
Issued: March 14, 2014

Number 0301-01  
Revised: July 10, 2014

### Establishing Budgets

#### Objective

To establish or modify legally authorized spending or collection of receipts in the Statewide Integrated Financial Tools (SWIFT). Topics within this policy include:

- Appropriations
- Expense Budgets and Allotments
- Revenue Budgets
- Roll Forward Authority and Budgeting
- Cash Flow Assistance
- Temporary Budgets for Direct Appropriations

Statute	Statute Name
16A.14	<u>Allotment and Encumbrance System</u> ( <a href="https://www.revisor.mn.gov/statutes/?id=16A.14">https://www.revisor.mn.gov/statutes/?id=16A.14</a> )
16A.15	<u>Accounting System; Allotment and Encumbrance</u> ( <a href="https://www.revisor.mn.gov/statutes/?id=16A.15">https://www.revisor.mn.gov/statutes/?id=16A.15</a> )
16A.28	<u>Treatment of Unused Appropriations</u> ( <a href="https://www.revisor.mn.gov/statutes/?id=16A.28">https://www.revisor.mn.gov/statutes/?id=16A.28</a> )
16A.129	<u>Cash Flow Assistance</u> ( <a href="https://www.revisor.mn.gov/statutes/?id=16A.129">https://www.revisor.mn.gov/statutes/?id=16A.129</a> )

#### Policy

Session law or state statute provide the authority for state spending. An appropriation gives an agency the authority to spend. The sources of funding for an appropriation are typically: state direct appropriation, federal grants, dedicated receipts, or bond proceeds. Spending is controlled at the appropriation level and managed through expense budgets. Appropriation accounts are established prior to the beginning of each biennium. Some appropriation accounts (i.e., dedicated appropriation accounts without spending limits, open appropriations and appropriations for carryforward funds) can be established prior to the enacted budget. Other appropriation accounts (i.e., dedicated appropriations with spending limits, conditional appropriations, capital appropriations and direct appropriations) must be established after the budget is enacted. Throughout the biennium, new appropriation accounts or changes to appropriation accounts may be required as the result of legislation, new federal grants or other agreements. Central guidance on establishing appropriations is typically disseminated by MMB at certain points of the biennium, including but not limited to the beginning of the new biennium and after each legislative session.

Any adjustment to an appropriation after the budget was officially approved should be made to the Current Appropriation Amount. To ensure that the change is reflected in the Current field of the Appropriation Overview, the Budget Entry Type must be set to Adjustment in header of the SWIFT budget journal otherwise the change will be made to the Original Appropriation.



The estimated and actual amounts in Appropriation Sources and Uses should be set-up as soon as is possible and kept current with expectations.

**Appropriation Sources and Uses:**

Sources:	Appropriated, Estimated Receipts, Collected Receipts, Roll Forward In, Anticipated Transfers In, Actual Transfers In
Uses:	Roll Forward Out, Anticipated Transfers Out, Actual Transfers Out, Allotted, Pre-Encumbered, Encumbered, Expended, Reduction, Cancellation

Establishing an appropriation not currently in SWIFT requires an agency to submit an appropriation form. The form, completed by the agency, is reviewed and approved by an Executive Budget Officer (EBO) and is entered into SWIFT by Agency Assistance. Any increases or decreases (including cancellations and reductions) in established appropriations do not require submitting a form to MMB and can be entered and approved electronically in SWIFT; however, agencies do need to submit a form to update the legal citation field. Once an agency's direct appropriations have been established and confirmed in the SWIFT by July 31 of each odd-numbered year, any subsequent changes to the appropriation amount should be made as an 'adjustment,' rather than a change to the 'original' amount.

Where applicable, the following conditions must be met when establishing appropriation accounts:

- All appropriations must have the correct legal authority in session law, state statute or court ruling.
- Each federal program must have at least one separate appropriation (i.e. each appropriations account must have a unique CFDA number). If more than one appropriation is required for a federal program, the Appropriation ID's (AppropID) name should indicate a relationship.
- Agencies are required to create separate appropriation accounts in order to distinguish dollars eligible for carry forward from those that cancel at fiscal year-end.
- Agencies must create at least one separate appropriation account for each law or statute that authorizes spending of dedicated receipts.
- Agencies with dedicated revenues that are direct appropriated must create two appropriations. A control appropriation that collects the revenue and an expenditure appropriation. The control appropriation will transfer the direct appropriated amount into the expenditure appropriation. These types of appropriations are very unique.
- If an agency's direct appropriation amount is to be split into several appropriation accounts, the sum of all individual accounts must equal the total appropriated amount for the specific legal citation.
- All appropriation accounts must be entered into the accounting system in the fiscal year in which the funds are appropriated by law.
- Session law or state statute may limit the spending of dedicated receipts. When establishing these accounts, agencies must indicate that a dedicated receipt cap is required.
- Legislation with riders with specific line item appropriation amounts stated under and apart from the main subdivision amounts must be established as separate appropriation accounts in order to establish the correct legal level of budgetary control.
- Appropriations for programs or projects that have been funded previously, but have a different availability of funds, must be established in a separate appropriation account in order to better manage end dates of accounts.

All appropriations must have certain attributes in order to be established:

- Each appropriation account must have budget authority in order to limit authority on budgeting, pre-encumbrance and encumbrance. In addition, the budget authority option limits the spending authority on expenditures and transfers.

- Appropriation accounts are required to have type codes to determine treatment of funds at the end of the fiscal year.
- Depending on the fund in which the appropriation account is being established, the account may need a legal level of budgetary control code. Generally Accepted Accounting Principles (GAAP) requires a Legal Level of Budgetary Control (LLBC) report that demonstrates that spending by agencies is within authorized limits and is in compliance with appropriate laws.
- Dedicated revenue, direct appropriated accounts must include the 'Ded Rev Dir Approp' attribute. The code 'C' is for the control/revenue appropriation. Code 'E' is for the expenditure appropriation.
- Every appropriation account must have a Budget Program and Budget Activity code assigned to it.
- An appropriation must contain at least one valid legal citation.
- The same AppropID may not be set up more than once in the same budget fiscal year and fund.

### Appropriation Structure

Two required fields of an appropriation are an AppropID and a Financial Department ID (Fin DeptID). An Approp ID is made up of 7 characters. The first three are the agency code and the remaining four characters are up to the discretion of the agency. AppropID must be unique by fund, Fin DeptID, budget program and budget activity. The Fin DeptID is made up of 8 characters. Like the AppropID, the first three characters are also the agency code. The fourth character is the budgetary level indicator and is always a "1" at the appropriation level. The remaining four characters are also up to agency discretion. A main objective of the Fin DeptID is that it is used to establish organization level.

The timing of establishing appropriations can be categorized into two types:

1. Appropriations established prior to the enacted budget (i.e., dedicated appropriation accounts without spending limits, open appropriations, and appropriations for roll forward funds); and
2. Appropriations established after the budget is enacted (i.e., dedicated appropriations with spending limits, conditional appropriations, capital appropriations and direct appropriations).

Some of the important attributes of an Appropriation that are defined below are: appropriation type code, budget authority option, and LLBC Codes.

The appropriation type of the appropriation determines treatment at year-end closing.

Appropriation Type Code	Year-End Treatment
01 – Regular	Direct appropriation that cancels at the end of the year. Use could be for a grant with only one year of availability.
02 – Continuing	This appropriation doesn't close or carry forward funds from one Budget Fiscal Year to another. Budget Fiscal Year remains open until end date. Primarily, used for capital projects (e.g., bonding).
03- Special Direct	Direct appropriation that carries forward past the second year of the biennium. (An example of use is for a General Fund appropriation that is available until expended.) If the appropriation has an end date, the final year is converted into a type 01.
04 - Special Dedicated	Used for appropriations not limited to the fiscal year. Typically used for federal grants and dedicated receipts with no direct appropriated amounts. Unobligated balances are rolled forward into the next year. The legal citation is usually a Minnesota

Appropriation Type Code	Year-End Treatment
	Statute.
05 – Biennial	Typically, legal citation is from Session Law and it is a direct appropriation. Rolls forward from the first year of the biennium and in the second year of biennium any remaining unobligated balance cancels.
06 – Open	Intended to provide funding to allow expenditures to meet program requirements. Appropriation will be reduced to equal actual expenditures at the end of the year. Clear legal authority must be provided.
07 - MnSCU Alternate Close	Appropriation type that allows MnSCU to post to prior pay period after fiscal close. Used for MnSCU campuses with faculty that needs this authority.
08 - Education Aids Alternate Budget Close	Appropriation type allows the Department of Education to keep open their Education Aid appropriations past fiscal year close. Education aids are paid out based on pupil and demographic data collected from school districts; therefore, MDE is provided an additional 15 months after fiscal year end (June 30th) to make clean-up payments or collect overpayments from districts.
99 - Non Dedicated Receipt	This AppropID is used for Non-dedicated ("Un-appropriated") Fund level deposits. Requires filling out an AP form to identify budget program and budget activity. This AppropID is unaffected by close and once a form is filled out for a current Budget Fiscal Year, it does not need to be filled out again in the following years.

#### Budget Authority Option:

This field is used to limit authority on budgeting, pre-encumbrance and encumbrance. In addition, it limits the spending authority on expenditures and transfers.

A = Appropriation only, C = Collected Revenue, G = Greater of Budgeted or Collected Revenue, L = Lesser of Budgeted or Collected Revenue, and E = Encumber Budget/Spend Collected.

#### Legal Level of Budgetary Control (LLBC):

Generally Accepted Accounting Principles (GAAP) requires a LLBC report that demonstrates that spending by agencies is within authorized limits and is in compliance with appropriate laws. The legal level of budgetary control (LLBC) is defined as: "The level at which an agency's management may not reallocate resources without special approval." An LLBC code is required on every new appropriation regardless of the fund that it is created in. (Use "08" and "09" for non-LLBC funds.) The LLBC reports only those funds for which annual spending limits are established in law. Funds included in this report: 1000, 1300, 2350, 1200, 1201, 2100 – 2104, 2106 – 2119, 2360, 2720, 2721, 2722, 2200 – 2211, 2390, 2700, 2710, 2830, 2800, 2801, 1050, 2300 – 2303.

A LLBC code value of 00 thru 03 must be provided for all appropriations established in these LLBC funds; however, all appropriations must have an LLBC code. LLBC codes and their impact of funds are as follows (top of the next page):

Code	Impact of Use of Funds
00 – Agency	Unrestricted money that agencies can move between appropriations
01 – Program	Money restricted at the program level
02 - Budget Activity	Money is restricted within a program and budget activity
03 – Appropriation	Rider language or statutes prohibit movement of money out of the appropriation
08 - Non-LLBC Fund	MMB approval required for transfer
09 - Non-LLBC Fund	No MMB approval required for transfers

The LLBC coding also drives the approval workflow for appropriation transfers. MMB approval is required if:

1. Dollars are being transferred from one agency to another agency;
2. Dollars are being transferred from one fund to another fund;
3. Dollars are being transferred from an appropriation with LLBC code '01' (Program Restricted) if the 'transfer out' program code does not equal the 'transfer in' program code;
4. Dollars are being transferred from an appropriation with LLBC code '02' (Budget Activity Restricted) if the 'transfer out' program and budget activity coding does not equal the 'transfer in' program and budget activity coding;
5. Dollars are being transferred from an appropriation coded '03' (Appropriation--rider language or statute prohibits movement out of the appropriation) or '08' (Non-LLBC fund--EBO approval required on transfer); or
6. Dollars are being transferred from or within a prior fiscal year. SWIFT will allow for transfers to occur in closed fiscal years. All such transfers will need to be reviewed by MMB.

See Transfer Policy 0304-01 for more information about transfers.

#### **Fund Balance Classification:**

GASB (Government Accounting Standards Board) Statement 54 'Fund Balance Reporting and Governmental Fund Type Definitions' requires the reporting of fund balance for governmental funds in classifications based primarily on the extent to which the government is bound to honor specific purposes with the balances.

For financial reporting purposes only, the classification is required on all appropriations in funds 1000 through 2999. A fund balance is restricted, committed or assigned. More information about the fund balance classification is found on the appropriation (AP) form and in the 'definitions' section at the end of this policy.

#### **Expense Budgets and Allotments**

An expense budget needs to be present in order to process a transaction since spending control is facilitated at the allotment level. Once appropriation sources of funding have been established expense budgets can be posted. Allotments are created when expense budgets are posted. An allotment establishes maximum spending for a group of expense budgets. Expense budgets should be monitored

ongoing so adjustments to variations can be made throughout the fiscal year. A SWIFT expense budget is a 5-digit account where the fourth Fin DeptID character is a "3." An allotment is created as payroll if the first three digits of an Account are 410 (salary related). Otherwise a non-payroll allotment is established.

SWIFT has two distinct types of allotments – payroll and non-payroll. For an allotment, the FinDeptID will always have a "2" as the fourth character. Payroll allotments are created when expense budgets are entered against salary accounts. Payroll allotments are considered reserved (encumbered) when allotted. Non-payroll allotments are created when expense budgets are established against non-payroll accounts. Agencies can exceed an expense budget within non-payroll allotments as long as unobligated amounts exist at the non-payroll allotment level. However, budgeted amounts cannot be shared between payroll and non-payroll allotments. In addition, payroll transactions can drive allotments negative. Adjustments will be needed to make negative allotments zero or positive.

Accurate statewide accounting and management reporting is dependent on up-to-date projections in the accounting system. Ensure that all direct and dedicated appropriation accounts are established and fully allotted by July 31st. Appropriation accounts should be fully allotted unless there are restrictions on allotting the funds based on law or budget policy. An agency may create expense budgets up to the budget/encumbrance authority limit on the appropriation account. The sum of the expense budgets within an allotment account becomes its control total. Agencies should coordinate with their Executive Budget Officer (EBO) to review annual operating budget amounts so that spending complies with legal intent.

### **Revenue Budgets**

Revenue budgets are used to budget and record all dedicated and non-dedicated revenues earned for a given fiscal year. All Approp IDs used by Revenue Budgets must have the correct legal citation assigned to it. Revenues are both cash receipts and accounts receivable. Revenue budgets are a forecast of expected receipts for the fiscal year and are critical to budget management because they define spending constraints. Agencies must review prior fiscal year's actual revenues and forecast assumptions to ensure that revenue budgets for both dedicated and non-dedicated receipts are complete and represent estimates of revenues expected for the given fiscal year.

Minnesota Management & Budget (MMB) has designated statewide "presence" control over revenue budgets. On a statewide basis, individual agency revenue budget estimates are aggregated to prepare the official state forecasts of all tax and non-tax revenues for the general fund and other operating funds. For tax receipts and other major revenues, the amounts projected should be based on the most recent economic forecast and include any updates due to legislative action. By July 31 of each fiscal year agencies should have fully budgeted their dedicated and non-dedicated revenues.

Revenue budgets in SWIFT are set up with a 6-digit account requiring an AppropID and Fin DeptID. The account will begin with a 5 or 6. The 8-digit Fin DeptID starts with an agency code and the fourth character (budget level indicator) can be a 1, 2, 3 or 8. Non-dedicated revenues are also required to have an AppropID with an appropriation type of "99," and a legal citation. Non-dedicated revenues are not subject to the annual fiscal year closing process.

MMB requires agencies to estimate and update annual revenues as part of the budgeting and forecast process. Individual agency revenue budget estimates are used to prepare official state forecasts of all revenues for the general fund and other state funds. It is important that agencies keep revenue budget estimates current; therefore, adjustments are required if actual revenue collections differ materially from previous estimates. It is strongly recommended that agencies prepare monthly revenue budget estimates for internal monitoring.

In order to ensure that all revenues are accurately recorded and reported, revenue budgets must be established using the correct revenue account code. In addition, improper use can lead to a misstatement

on the audited financial statements. MMB Budget Operations should be contacted if any assistance is needed on setting up or deleting Revenue account codes.

#### Budgeting for Revenue Refunds

A refund (over-collection of revenue) must be budgeted separately by setting up a negative revenue budget with the relevant refund revenue account code if:

1. the expected receipt is a tax or tuition or
2. the expected refund is greater than \$100,000

Otherwise, the agency must adjust the revenue budget by the expected refund. (ie. Revenue budget should equal Revenue expected – Refunds expected.)

#### Interest Earned on Appropriations

A separate revenue budget must be established for each appropriation that earns interest as authorized in Minnesota Statutes. When defining revenue source codes for interest earnings, invested treasurer's cash (ITC) should be coded as ITC Interest Earnings (SWIFT Account Codes 512001 - 512009). Using Account Codes 512001-512009 will still allow interest earnings to be included in the Departmental Earnings Report for cost recovery calculation of fee-supported activities. Agencies must communicate any changes in accounts that will have authority to earn interest by filling out form FI-00597 and submitting to GeneralAcctg.MMB@state.mn.us.

#### Dedicated Receipt Cap

If an appropriation has a dedicated receipt cap, then the SWIFT revenue budget entry will require entry in the dedicated receipt cap field. The dedicated receipt cap limits the spending of receipts for the restricted appropriation as intended by law. Without a dedicated receipt cap, a revenue budget does not limit spending of receipts.

#### Reimbursements

In regards to setting up revenue budgets for reimbursements, ensure that you are using the correct revenue account code for internal sources (other agencies) vs. external sources (non-agencies). The correct external revenue account code is 553090 (All Other Reimb – External) and the correct internal revenue account code is 512606 (All Other Reimb – Internal).

#### **Roll Forward**

All available unexpended and unobligated appropriation balances will automatically "roll" into the new fiscal year at close for specific appropriation accounts. If the appropriation type is:

- 03 (Special Direct)
- 04 (Dedicated)
- 05 (Biennial – if it is the first year of the biennium)

In addition, if in the future any obligated balances from these appropriation types becomes unobligated followed by a reduction in the allotment, the balance will automatically roll forward with the SWIFT roll forward process.

Funds cannot roll forward (RFW) before July 1 so that un-obligated funds can be clearly identified. If authorized and necessary to agency operations, after July 1 of the new budget fiscal year, agencies may do a "manual" RFW in SWIFT to move allotment free cash balances into the next fiscal year. SWIFT does not require EBO approval on RFWs. Only unencumbered and un-allotted balances within an appropriation account can be carried forward. The agency should consider the impact of future payroll transactions that could impact the estimate for balance forward amounts. A minimum amount necessary to conduct business may be balanced forward for appropriation accounts with dedicated receipts. The roll forward process occurs automatically on hard close (mid-August each year).

In situations where statute or session law prohibits balance forward of funds, agencies should not complete an RFW. Authority to balance forward will be determined by agencies and MMB by selecting the appropriation type when setting up the appropriation accounts.

An agency with appropriation accounts having a budget authority code of 'G' (greater of actual or estimated receipts), or 'E' (Encumber Est/Spend Actual) may estimate a balance forward amount by establishing revenue budgets and using the account number 514223 (Estimated Balance Forward In). This amount becomes available for allotment and encumbrance; however, the agency can only obligate this money and not spend it until the actual balance is carried forward into the new fiscal year. This will allow an agency to incur obligations for the next budget fiscal year prior to July 1.

After the actual balance forward has been processed or the fiscal year closing is completed, agencies must decrease their revenue budgets with account number 514223 to zero to avoid overstating the amount available for allotment and encumbrances.

#### **Cash Flow Assistance**

When agencies or other branches of government do not have sufficient cash flow to pay ordinary and necessary expenses for a new program or cash receipts do not match purchasing or payment needs, MMB can authorize payments through SWIFT under Minnesota Statutes Section 16A.129, Subdivision 3.

Cash flow problems complicate the payment of obligations through dedicated appropriations and funds because SWIFT will not allow payments to be made before the deposit of cash receipts. In these cases, MMB can modify appropriation budget authority (from type 'E' to 'G') to authorize payments to be made prior to receiving cash receipts.

Requesting cash flow assistance should be the action of last resort. Cash flow assistance is not typically approved for internal service, enterprise, or special revenue fund appropriations. During the legislative process for a new program or when establishing interagency agreements or other financing arrangements agencies should consider options to alleviate cash flow issues. For a new program, agencies are encouraged to investigate the possibility of receiving startup cash as part of the legislation. For interagency agreements, negotiate up-front cash and monthly or periodic payments rather than infrequent or lump sum one-time payments at the end of the project.

Agencies request cash flow assistance by completing a cash flow request form and a cash flow analysis spreadsheet. Cash flow requests and analyses are not required for federal fund appropriations. All federal fund appropriation budget authority type will be set to and remain as 'G' (greater of budgeted or collected revenue). MMB strongly urges agencies to drawdown or claim for reimbursement federal grant monies as often as possible to mitigate negative balances created by spending estimated revenues.

#### **Temporary Budgets for Direct Appropriations**

Temporary budgets are very rare and are typically used for direct appropriated accounts. Generally, the process for establishing temporary budgets will be used only for budgets needed prior to the beginning of

the first year of the biennium, or for appropriations made in the off-year legislative session (for the second year of the biennium) that require immediate action.

All agreements that require the use of temporary budgets or obligate state funds before the beginning of the fiscal year must include language stating that the goods or services must not be delivered before July 1 of the new fiscal year. The agreement must also include language that releases the State of Minnesota from the agreement if the necessary funds are not appropriated or otherwise not made available to meet the obligation.

Agencies must request authority from MMB to process requisitions or encumbrances in SWIFT before an appropriation becomes available. Temporary budgets will be based on AP transactions with a legal citation of 'TEMP BUDG'. After permanent direct appropriations are enacted the appropriation must be modified to change the legal citation to the enacted appropriations bill.

## **Definitions**

The following are definitions of fund balance to be utilized when classifying appropriations in funds 1000 through 2999.

### **Restricted Fund Balance**

Fund balance should be reported as restricted when constraints placed on the use of the resources are either externally imposed by creditors, grantors, contributors, or law or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. "Enabling legislation" authorizes the government to assess, levy, charge, or otherwise mandate payment of resources and includes a legally enforceable requirement that those resources be used only for the specific purposes stated in the legislation. Legal enforceability means that a government can be compelled by an external party to use resources created by enabling legislation only for the purposes specified by the legislation. In addition, the restriction must be established at the same time the revenue stream is created. Examples include gifts required to be used for specific purposes and the Legacy Amendment to the Minnesota Constitution, which increased the state sales tax and specified that those taxes be used for clean water, arts and cultural heritage, and outdoors.

### **Committed Fund Balance**

Amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the state's highest level of decision-making authority (legislation) are reported as committed fund balance. These amounts cannot be used for any other purpose unless the government removes or changes the specified use by taking legislative action. Committed fund balance also should incorporate contractual obligations to the extent that existing resources in the fund have been specifically committed for use in satisfying those contractual requirements. One example is taconite taxes that were established prior to the time a fund was established. Later, the legislature committed a portion of the taconite taxes for rehabilitation and diversification of industrial enterprises.

### **Assigned Fund Balance**

Amounts that are constrained by the state's intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. Intent should be expressed by the governing body itself or a body or official to which the governing body has delegated the authority to assign amounts to be used for specific purposes. One example is a commissioner of an agency who budgets a certain amount to be used for a specific purpose.

## Forms

[SWIFT Appropriation Form](https://mn.gov/mmb/accounting/swift/forms/) (<https://mn.gov/mmb/accounting/swift/forms/>)

[Annual Budget and Accounting Instructions](https://mn.gov/mmb/accounting/swift/budg-acct-instr/) (<https://mn.gov/mmb/accounting/swift/budg-acct-instr/>)

[SWIFT Training Manuals – BC1 and BC2](https://mn.gov/mmb/accounting/swift/training-support/reference-guides/budget.jsp) (<https://mn.gov/mmb/accounting/swift/training-support/reference-guides/budget.jsp>)

## Related Policies and Procedures

[MMB Statewide Operating Procedure 0301-01.1 – Establishing Appropriation Accounts](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-01-establish-approp-accounts-procedure.pdf)  
(<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-01-establish-approp-accounts-procedure.pdf>)

[MMB Statewide Operating Procedure 0301-01.2 – Modifying an Appropriation Account](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-02-modify-approp-account-procedure.pdf)  
(<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-02-modify-approp-account-procedure.pdf>)

MMB Statewide Operating Procedure 0301-01.3 – Dedicated Receipt Cap Appropriations (Document Forthcoming)

MMB Statewide Operating Procedure 0301-01.4 – Allotment Accounts (Document Forthcoming)

[MMB Statewide Operating Procedure 0301-01.5 – Cash Flow Assistance](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-05-cash-flow-assistance-procedure.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0301-01-05-cash-flow-assistance-procedure.pdf>)

[MMB Statewide Operating Policy 0204-01 Program Structure](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0204-01-program-structure-policy.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0204-01-program-structure-policy.pdf>)

[MMB Statewide Operating Policy 0207-01 Object Codes – MAPS-Era](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0207-01-maps-object-codes.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0207-01-maps-object-codes.pdf>)

[MMB Statewide Operating Policy 0208-01 Revenue Source Codes – MAPS-era](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0208-01-maps-revenue-codes.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-2/0208-01-maps-revenue-codes.pdf>)

[MMB Statewide Operating Policy 0302-01 Capital Budgets](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0302-01-capital-budgets-policy.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0302-01-capital-budgets-policy.pdf>)

[MMB Statewide Operating Policy 0303-01 Federal Funds](http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0303-01-01-federal-funds-review-procedure.pdf) (<http://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-3/0303-01-01-federal-funds-review-procedure.pdf>)

MMB Statewide Operating Policy 0304-01 Transfers (Document Forthcoming)

## See also

[GASB Statement 54, Fund Balance Reporting and Governmental Fund Type Definitions](http://www.gasb.org/cs/ContentServer?site=GASB&c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176159972156)  
([http://www.gasb.org/cs/ContentServer?site=GASB&c=Document\\_C&pagename=GASB%2FDocument\\_C%2FGASBDocumentPage&cid=1176159972156](http://www.gasb.org/cs/ContentServer?site=GASB&c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176159972156))