

STATE OF MINNESOTA  
COUNTY OF RAMSEY

FILED  
Court Administrator

JUN 29 2011

By    jf    Deputy

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core  
Functions of the Executive Branch of  
the State of Minnesota

Court File No. 62-CV-11-5203

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
MOTION FOR TEMPORARY FUNDING**

On June 15, 2011, this Court issued an Order to Show Cause setting a hearing date of June 23, 2011 on the motion of Petitioner Lori Swanson, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. Since then, various other submissions have been filed with the Court. Appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

**FINDINGS OF FACT**

1. The Governor motioned this Court to order mandatory mediation between the executive and legislative branches. The Court denied the motion orally and in a written order dated June 27, 2011. The Governor opposes the Attorney General's Petition for a court order directing core functions of the State of Minnesota to continue absent a budget agreement between the executive and legislative branches by June 30, 2011. The Governor asks this Court not to issue any further orders at this time arguing the issue is not justiciable. The Governor asserts that he is prepared to use his executive power without an appropriation or court order should the executive and legislative branches fail to reach a budget agreement.

2. The Court finds that the issue has “ripened” to the point where it needs to be ruled upon by the Court. *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc.*, 271 N.W.2d 445 (Minn. 1978).

3. The Attorney General petitioned this Court for an order directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. She also requests the Court appoint a Special Master. The Attorney General took no position on the motion for mediation but informed the Court she would participate if ordered to do so.

4. The Minnesota House opposed the request for court ordered mediation as unconstitutional. At the hearing, counsel for the House stated the House does not oppose the Attorney General’s Petition or the Governor’s position. The House specifically requested the Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The House also took the position that the issue before the Court is justiciable.

5. The Minnesota Senate concurred with the Minnesota House’s position on mediation. It takes no position on the Attorney General’s Petition and does not oppose the Governor or the Attorney General’s requests regarding what functions should be deemed essential. The Senate concurred with the House’s position regarding its request that this Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The Senate asks that this Court treat both legislative bodies the same.

6. Minnesota Senators Roger Chamberlain, Warren Limmer, Scott Newman, and Sean Nienow motioned this Court to intervene as parties. The Governor and the Attorney

General both opposed the motion to intervene. The House and Senate took no position on the issue. The Court denied the motion orally on June 23, 2011. The four senators were allowed to participate as *amicus curiae* regarding the issues raised in the Attorney General's petition.

7. The Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association and Minnesota Habilitation Coalition, Inc. motioned this Court to intervene as parties. The Governor, Minnesota House, Minnesota Senate and the Attorney General had no objection. Therefore, this Court granted intervention orally.

8. The Minnesota Workforce Council Association, the Associated General Contractors of Minnesota and Hennepin County also made motions to intervene. The Attorney General had no objection to the extent that the interveners did not raise new issues. The Governor had no objection to the motions. The House and Senate took no position on the issue. The Court took the motions under advisement.

9. Petitioner Lori Swanson is the Attorney General of the State of Minnesota and in that capacity she represents the public in all legal matters involving the State of Minnesota. She also represents the people of the State in a *parens patriae* capacity.

10. The regular session of the Minnesota Legislature ended on May 23, 2011. No legislation has been enacted appropriating funds for the executive branch officers and agencies (other than the Department of Agriculture, the Board of Animal Health and the Agricultural Utilization Research Institute) for the fiscal year beginning on July 1, 2011.

11. The legislature failed to pass a "lights on" bill that would have continued funding of executive branch core functions beyond 11:59 p.m. on June 30, 2011 before it adjourned.

12. The Governor has not called the legislature into special session in order to have it attempt to pass either a “lights on” bill or funding bills that would either have a two-thirds majority or be signed by the Governor.

13. After the 2005 shutdown, the Minnesota Court of Appeals stated that, “The legislature could prevent another judicially mandated disbursement of public funds without an authorized appropriation by, for example, creating an emergency fund to keep the government functioning during a budgetary impasse or enacting a statute setting forth the procedures to be followed during a budgetary impasse.” *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. App. 2007). The Court of Appeals emphasized that it is “the legislature and not the judiciary that has the institutional competency to devise a prospective plan for resolving future political impasses.” In the five years since the *Sviggum* decision was issued, no plan has become law.

14. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the five executive branch constitutional officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

15. Due to the lack of appropriations, the five constitutional officers of the State of Minnesota and the executive branch agencies will not have sufficient funds to carry out their core functions. The failure to properly fund critical core functions of the executive and legislative branches will violate the constitutional rights of the citizens of Minnesota.

16. In 2001 and 2005, the Attorney General petitioned this Court to preserve the operation of core functions of the executive branch of government after a budget was not enacted to fund state government. In those instances, this Court issued Orders providing for the

continued performance of the core functions of the executive branch constitutional officers, and that the State continue to pay for such functions performed after July 1, 2001 and July 1, 2005, respectively. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C0-05-5928 (Ramsey Co. D.Ct., filed June 23, 2005); *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001). In 2001 and 2005, the Court appointed a Special Master to assist in resolving issues relating to the Orders. The constitutional analysis that resulted in the judges in those cases granting the Attorney General's petition has not been the subject of appellate review. In both the 2001 and the 2005 cases, the Governor agreed with and joined in the Attorney General's request.

17. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

OMB Memorandum, *Agency Operations in Absence of Appropriations* (Nov. 17, 1981), available at [http://www.opm.gov/furlough/OMBGuidance/Attachment\\_A-4.pdf](http://www.opm.gov/furlough/OMBGuidance/Attachment_A-4.pdf) (hereinafter "OMB Memorandum").

18. Pursuant to the criteria referenced in paragraph 14 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

OMB Memorandum.

19. Minnesota Constitution Article III, Section 1, regarding no branch exercising the powers of another, is not found in the United States Constitution. It is found in a number of state constitutions. It is an “unusually forceful command...” *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005).

20. Article I, Section 1, of the Minnesota Constitution states, “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent...” Other sections of the Constitution impose a variety of core functions upon the five constitutional officers which may not be abridged. *State ex rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

21. The Minnesota Constitution requires that the state provide a “general and uniform system of public schools.” Minn. Const. art. XIII, § 1. This requires that the state finance an “adequate” level of education that is uniformly available to all students. This constitutional provision makes funding education a critical core function of government.

22. The Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to an intergovernmental compact agreement or congressional mandate.

23. The State of Minnesota has reserves at this time sufficient to fund core functions of the executive branch, and the executive branch could continue to operate core functions if it had access to those funds.

24. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2011, the State will violate the Supremacy clause of the U.S. Constitution. These agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens.

25. Examples of the federal programs referenced in paragraph 17 include the following: the Supplemental Nutrition Assistance Program (referred to herein as the Food Stamp Program), 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* 7 U.S.C. § 2020(a); (d), (e)(2), (3) & (9); 42 U.S.C. § 602(a)(1), (4); 42 U.S.C. § 1396a(a)(9), (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit

costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g); 42 U.S.C. § 609; 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); 256.01, subd. 2 (Medicaid Program). The Attorney General also has certain obligations under federal law (as well as state law) with respect to the Medicaid Program. *See, e.g.*, 42 U.S.C. § 1396b(q) (investigate and prosecute Medical Assistance fraud); Minn. Stat. § 256B.12 (original jurisdiction for Medicaid fraud). The Supremacy Clause of the United States Constitution requires the State of Minnesota to fulfill these agreements with the United States government requiring the State to make payments to individuals or local governmental units, or to undertake administrative duties on behalf of or in cooperation with the federal government. The duty to fulfill these agreements, et cetera, constitute core functions for state government under the United States Constitution.

26. Budget impasses in the absence of state funding appropriations do not permit a state to forego its obligation to fund certain federal programs. *Coalition for Basic Needs v. King*, 654 F.2d 838 (1st Cir. 1981). The Supremacy Clause of the United States Constitution, Article VI, clause 2, makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386 (1947).

27. The Governor requested in his pleadings that if the Court did decide to issue an order other than to mediate, said order should be based on the Governor's determination of what



priority critical services must be continued. The Governor created a Statewide Contingency Response Team (SCRT) chaired by the Commissioner of the Department of Management and Budget, to establish statewide objectives in the event of a shutdown. The Court agrees with the Governor that the following critical core functions of government should continue to be funded after June 30, 2011 even if there is no resolution of the present funding dispute between the executive and legislative branches:

- 1) Basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans homes, and residential academies and other similar state-operated services.
- 2) Maintenance of public safety and immediate public health concerns.
- 3) Provision of benefit payments and medical services to individuals.
- 4) Preservation of the essential elements of the financial system of the government.
- 5) Necessary administration and supportive services, including but not limited to computer system maintenance, internet security, issuance of payments.

28. The Court has attached as Exhibit A the document entitled, "Recommended Statewide Objectives, 2001 Potential Minnesota Government Shutdown and Recommended Priority 1 and Priority 2 Critical Services." The Court has made some minimal changes in the document submitted by the Governor. The Court agrees with the Governor that the Court's order regarding continuing funding for core functions of the government should focus on the critical services discussed in Exhibit A. It agrees that those functions are critical.

29. Any order of this Court allowing the Commissioner of the Department of Management and Budget to issue checks and process funds to pay for core functions and

obligations that the State has pursuant to the Supremacy Clause of the United States Constitution should limit itself to only the most critical functions of government involving the security, benefit, and protection of the people.

30. There have been numerous motions to intervene and motions to participate as amicus curiae filed because of the issues raised in this case. The briefs and letters submitted represent many programs, agencies, and contracted private businesses that will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws appropriating funds. It has been argued compellingly that many of these programs and entities are beneficial to the people of the State, provide services that may aid citizens in working their way out of poverty, may provide jobs for private industry, may improve the state infrastructure, may result in benefits that help working class people obtain and maintain employment, and provide a myriad of other benefits to the State. In light of Article XI, the Court believes that the negative impact of a government shutdown on these programs does not justify a court in over-extending its authority. In light of Article XI of the Minnesota Constitution, the Court must construe any authority it has to order government spending to maintain critical core functions in a very narrow sense. Discretionary appropriations are the province of the legislature, not the courts.

31. Numerous Minnesota non-profit organizations have filed to either intervene in the proceedings or to participate as amicus curiae. They provide services to vulnerable clients. These clients may suffer hardships and fail to make the progress of which they are capable without the assistance of these non-profits. Some non-profit entities will not survive without state appropriations. Neither the good services they provide nor the fact that they may cease to

exist without state funding is sufficient cause to deem their funding to be a critical core function of government and to overcome the constitutional mandate in Article XI.

32. The Court finds that “core functions” that are critical enough to require court-ordered funding despite Article XI are far less in number and breath than proposed by the Attorney General and those seeking amicus curiae status.

33. Except for TANF programs, the child care assistance programs discussed in the memorandum of the amici Coalition of Child Care Providers and Supporters are not critical core function programs that would justify this Court in ordering funding despite the lack of legislative appropriations as required by Article XI.. Child care programs that are funded under the TANF program should continue to be funded. Not to do so would violate the Supremacy Clause of the United States Constitution. The Court is aware that not funding non-TANF child care assistance may cause extreme hardship to low income working parents, increase the public assistance rolls because some of these people will have to leave the workforce in order to care for their children, and may lessen the opportunities for low income children to succeed in school. These likely consequences can only be avoided by the exercise of legislative and executive branch discretion in settling the budget issues.

34. The Horsemen’s Benevolent and Protective Association brief in support of its motion to intervene or file an amicus curiae brief argues that if they are not able to have racing after June 30, 2011, the race meet will be destroyed, and that the reputation of the Minnesota race meet will be permanently blemished, and future race meets will be jeopardized. Nothing was presented that leads the Court to believe that their assertions are anything less than true. If the Court were to order funding of regulatory activities necessary to allow future race meets to take place, it would, in effect, be ruling that the regulation of horse racing is a core function of

government. Regulation of horse racing is not a core function of government. The Court is granting the motion to intervene so that the Horsemen's Benevolent and Protective Association make seek emergency review by an appellate court. The only practical and legal remedy that would save the Association from the damage caused by the failure of other branches of government to resolve their differences is obtainable only by the governor calling a special session and the legislature passing appropriations bills that are capable of becoming law.

35. The appointment of a Special Master will help promote judicial economy and efficiency. A Special Master creates an orderly process to resolve requests for, or objections to, funding, thereby preventing the necessity for multiple individual lawsuits to be filed and adjudicated. *See, e.g.*, Minn. R. Civ. P. 1 (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); Minn. R. Civ. P. 53.01 (authorizing appointment of special master). *See also* 9C Wright & Miller, Federal Practice and Procedure: Civil §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims).

36. The Governor's Statewide Contingency Response Team decided to recommend that the only critical core functions of the Minnesota Zoological Gardens are feeding the animals, and keeping the animals, the exhibits, and the zoo property safe, secure, and healthy. The Court agrees with that determination and also would add that it is necessary to fund whatever staff is necessary to make sure that none of the animals can escape and become a danger to the public. The Court recognizes that this will cause significant harm to the zoo as the 4<sup>th</sup> of July weekend and the rest of the summer are the busiest times of the year. It further recognizes that this will significantly reduce the receipts of the zoo. Those concerns need to be recognized and resolved by actions of the executive and legislative branches, not by the judicial branch. The operations

of a zoo, even when in large part paid for by admission charges and other receipts, is a critical core function of government sufficient to overcome the requirements of Article XI.

37. The Minnesota Association of General Contractors takes the position that certain construction projects and activities of their members are core functions necessary for the government to continue to fund. This Association asserts the continued funding of all state construction contracts is an essential or critical government function due to the perilous economic condition of the State's construction industry and the general harm to citizens that suspension of design and construction contracts would cause. In its brief, the Association cites the Lafayette Bridge as an example of a critical core government function necessary to protect the life, health, and safety of its citizens. The Court agrees that any part of a contract which keeps the bridge from collapsing does constitute a critical core function that needs to be funded. It does not agree that replacement of the bridge constitute a critical core function necessary to protect the life, health, and safety of its citizens. A government shutdown may result in increased expenses for road projects that may be funded constitutionally in the future. The Court has no reason to disagree with the assertions of the Association that a government shutdown will significantly delay completion of present projects, increase costs and put numbers of employees out of work. The delay in construction and increased costs that will likely happen as a result of a government shutdown will be because of the executive and legislative branches failing to resolve the budget issues. Those things do not justify the Court in ordering the funding of non-critical core functions and thereby violating Article XI of the Minnesota Constitution.

38. Even though the State has promised to pay for certain projects such as road construction, that does not justify the court ordering payment under those contracts without a specific legislative appropriation. As stated in *County of Beltrami v. Marshall*, 135 N.W.2d 749

(Minn. 1965), "A legislative appropriation is always a prerequisite to state liability. The mere creation of a liability on the part of the state, or promise of the state to pay, if the statute may thus be construed, is of no force in the absence of an appropriation of funds from which the liability may be discharged."

39. The court agrees with the position of the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the City of St Paul regarding Local Government Aid legislation. These funds have already been lawfully appropriated and should be paid on schedule. This is also true regarding previously lawfully appropriated payments to School Districts.

#### CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when she determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minnesota Statutes Chapter 484, and venue is proper in this Court pursuant to Minnesota Statutes Section 542.01.

3. The Minnesota Constitution must be read as a whole and each provision interpreted in the context of the entire document and the provisions of the U.S. Constitution. Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." However, the Minnesota Constitution also provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their offices. Article V, Section 1 "implicitly places a limitation on the power of the legislature" so that the core functions of the executive branch officers, and their performance

of those functions, may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Failure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution. See Minn. Const. art. III, § 1 (dividing the powers of government into three distinct departments); *Mattson*, 391 N.W.2d at 782 (holding that implicit limitation on legislative authority prevents abolishment “of the independent functions inherent in an executive office.”). See also *Clerk of Court’s Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another).

4. The core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. All constitutional officers take an oath to support the constitutions of the United States and the State of Minnesota and to discharge faithfully the duties of their constitutional offices. Minn. Const. art. V, § 6. Core functions include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property.

5. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements, continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI,

clause 2, mandates that any funds paid by the State as a result of participation in these federal programs must continue.

6. The Senate and House (Legislative Branch) must be funded sufficiently to allow them to carry out critical core functions necessary to draft, debate, publish, vote on and enact legislation.

### ORDER

1. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for the performance of the critical core functions of government as set forth in this Order.

2. Hennepin and Ramsey Counties motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow them to participate as amicus curiae.

3. Jenni Taylor's motion to intervene is denied as her position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow her to participate as amicus curiae.

4. SEIU Local 284 Kids First MN, Sharon Born, Terry Bicknell, and Rebecca Hall's motion to intervene is granted as their position regarding programs that are not funded as part of federal pass-through funding agreements is not adequately represented by other parties. The federal pass-through funds part of the Minnesota Child Care Assistance program is adequately represented by the petitions of the Attorney General and the Governor. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.



5. The Minnesota Horsemen's Benevolent and Protective Association's motion to intervene is granted as their position is not adequately represented by existing parties.

6. Minnesota Workforce Council Association's motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow the Association to participate as amicus curiae.

7. Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association, and Minnesota Habilitation Coalition, Inc.'s motion to intervene are granted by agreement of the parties. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

8. The motion of the League of Minnesota Cities, Coalition of Greater Minnesota Cities, and the City of St. Paul to intervene is granted because their position that critical government aid (LGA) funds have already been appropriated by action of the Legislature and approval by the Governor is not adequately represented by existing parties.

9. The motion of the Minnesota Zoological Garden to intervene is granted as their position is not adequately represented by existing parties.

10. The motion of Associated General Contractors of Minnesota to intervene is granted as their interests are not adequately represented by existing parties.

11. The Commissioner of the Department of Management and Budget is also authorized to make payments necessary to carry out the critical core functions of the executive and legislative branches consistent with Exhibit A and the findings of fact and conclusions of

law contained in this order. He is also ordered to fund programs where funding is mandated by the Supremacy clause of the U.S. Government and make payments such as LGA payments that have already been lawfully appropriated.

12. Any requests to participate as amicus curiae not previously addressed in this order are granted.

13. The Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, is hereby appointed as Special Master to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application of this Order. The fees and expenses of the Special Master shall be paid by the State of Minnesota, the Commissioner of the Department of Management and Budget. Expenses shall include the costs of whatever staff she deems necessary to fulfill her duties as a Special Master. Information regarding how to set up a hearing before the Special Master will be made available as soon as possible on the State Court and Second Judicial District websites

14. This Order shall be effective until the earliest of the following:

- a. July 31, 2011, which may be extended by the Court;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or
- c. Further Order of this Court.

15. Petitioner shall serve by U.S. Mail a copy of this Order on the persons and entities who were served the Order to Show Cause dated June 15, 2011 and all other persons who have filed submissions in this proceeding.

16. Nothing in this order shall be construed as prohibiting the Commissioner of OMB from funding resources necessary to respond to an unforeseen emergency that would place

the public or public property in immediate danger. The governor may obtain such funds on an emergency basis. If requested by a party, the need for continuation of such emergency funding will be reviewed by the Special Master.

BY THE COURT:

Dated: 6-29-11



The Honorable Kathleen R. Gearin  
Chief Judge  
Ramsey County District Court

# Recommended Statewide Objectives 2011 Potential Minnesota Government Shutdown

Prepared by the Statewide Contingency Response Team  
Commissioner of MMB Jim Schowalter, Chair

June 15, 2011

## I. Planning Assumptions

- Agencies should plan to continue only priority one and two critical services;
- Agencies should plan minimal/necessary staffing levels for the priority one and two critical services.
- Agencies should include in their planning; personnel, resources (financial and others) and those support services that are both directly related to, and absolutely necessary to continue priority one and priority two critical services;

## II. Statewide Priority Service Objectives

The State's Statewide Contingency Response Team (SCRT) has established five statewide objectives that must be met during a government shutdown. In order, they are:

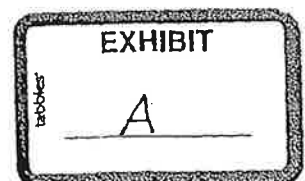
- A. provision of basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans' homes, and residential academies and other state operated services;
- B. maintenance of public safety and immediate public health concerns;
- C. provision of benefit payments to individuals;
- D. preservation of the essential elements of the financial system of the government; and
- E. provision of *necessary* administrative and support services for the above goals.

## III. Priority Service Definitions and Categories

In addition, the SCRT has established four statewide priority service definitions to meet the aforementioned objectives. All agencies must assign their services to the following four priority levels:

- A. **Priority 1 Critical Services**  
(Immediate threat to public health and/or safety)

Services with critical/core activities that must remain uninterrupted. Generally, these would include agencies and facilities that operate 24-hours a day.



Categories:

- 1.0 Providing for security;
- 1.1 Medical care of inpatients and emergency outpatient care;
- 1.2 Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- 1.3 Continuance of transportation safety functions and the protection of transport property;
- 1.4 Protection of lands, buildings, waterways, equipment and other property owned by the government;
- 1.5 Care of prisoners and other persons in the custody of government;
- 1.6 Law enforcement and criminal investigations;
- 1.7 Emergency and disaster response or assistance;
- 1.8 Activities that ensure the production of power and the maintenance of the power distribution system;
- 1.9 A process for maintaining communication with agency personnel and the SCRT
- 2.0 Support/Administrative services to support the Priority 1 Critical Service.

**B. Priority 2 Critical Services**

**(Disorder or a severe, statewide economic impact may develop if not delivered in a few days)**

Services with critical/core activities that have a recovery time of 25 hours to five days that can be disrupted temporarily or might be periodic in nature, but must be re-established within a few days.

Categories:

- 2.0 Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government and systems to support these activities;
- 2.1 Contract performance where a suspension or termination could be regarded a material default, and that could result in substantial money damages against the state, and there is no dependency on substantial support from state resources that are not funded ("substantial" means something more than merely cutting a check for payment, but rather entail the need for continued full time activity on the part of three or more full time employees);
- 2.2 Activities having a severe and permanent negative financial impact to business or vulnerable populations or groups of individuals within Minnesota.
- 2.3 Support/Administrative services to support the Priority 2 Critical Service.

**C. Priority 3 Critical Services**

**(Services required by law or rule that can be suspended by law or rule during an emergency)**

Activities with a recovery time objective of six days to 30 days that can be disrupted temporarily but must be re-established sometime before the emergency or disruptive event is over (<6 weeks).

**D. Priority 4 Critical Services**

**(Services that could be suspended during an emergency and are not required by law or rule)**

Activities with a recovery time objective of 30+ days which can be deferred for the duration of a long-term event (6-8 weeks).

**Recommended Priority One and Priority Two Critical Services**  
**2011 Potential Minnesota Government Shutdown**

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.  
 All others are recommended to close.

	Estimated # Critical
	FTE
<b>DEED and Public Facilities Authority</b>	<b>696</b>
<b>Activities Recommended to Continue</b>	
Unemployment Insurance claims, benefit payments and collections	
Public Facilities Authority bond payments and collections	
Disability Determination Services claims	
Warrant Printing	
Incident command and support for critical services	

	Estimated # Critical
	FTE
<b>Dentistry Board</b>	<b>6.5</b>
<b>Activities Recommended to Continue</b>	
Health Professional Services Program - monitoring treatment of healthcare professionals	

	Estimated # Critical
	FTE
<b>Education</b>	<b>6</b>
<b>Activities Recommended to Continue</b>	
Maltreatment of Minors Reporting	
Building Security Contract	
Incident command and support for critical services	

	Estimated # Critical
	FTE
<b>Governor's Office</b>	<b>21</b>
<b>Activities Recommended to Continue</b>	
Public Information	
Emergency management	
Executive order and extradition processing	
Budget and policy development	
Governor's residence	
Incident command and support for critical services	

## Recommended Priority One and Priority Two Critical Services

2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.  
All others are recommended to close.

Estimated # Critical

FTE

189

### Health

#### Activities Recommended to Continue

- Newborn screening
- Vaccine distribution
- Core public health laboratory capacity
- Respond to public health emergencies
- Health & safety inspections of health care facilities
- Food inspection, safety, and security
- Drinking water supply protection
- Issuance of birth and death certificates
- WIC (Women, Infants, and Children) program
- Facility security
- Incident command and support for critical services

Estimated # Critical

FTE

160

### Housing Finance Agency

#### Activities Recommended to Continue

- Multi-family asset management, compliance and loans
- Minimum HUD-required administrative activity
- Homeownership 1st mortgage lending, foreclosure remediation and related services
- Essential financial management activities
- Minimal support of housing assistance programs
- Disaster remediation for recently declared Presidentially established disaster areas
- Incident command and support for critical services

Estimated # Critical

FTE

5,165

### Human Services

#### Activities Recommended to Continue

- Minnesota Sex Offender Program (MSOP) – Prioritize security and treatment
- State Operated Services (SOS) – Prioritize critical service & treatment
- Entitlement to cash, food, & health care assistance to recipients ~~eligibles as of 6/30/2011~~ *by*
- Programs include: Medicaid, MFIP/DWP, General Assistance, & Minnesota Supplemental Aid and refugee cash assistance, Group Residential Housing, MinnesotaCare, Food Support, MN Food Assistance Program, Adoption Assistance
- ~~Related vendor/provider payments will not continue~~ *by*
- Continue critical child support payment services
- System support for county child protection workers
- Process pharmacy payments authorizations – prioritize cases of life & safety
- Authorize oxygen tanks & methadone for patients
- Authorize Do Not Resuscitate/Intubate determinations for people under state guardianship
- Incident command & operational support for critical services



# Recommended Priority One and Priority Two Critical Services

## 2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.

All others are recommended to close.

Estimated # Critical

FTE

4

### Iron Range Resources

#### Activities Recommended to Continue

- Bond payments and related activities
- Minimum maintenance contract for Giants Ridge
- Incident command and support for critical services

### Judicial Branch

#### Activities Recommended to Continue

- Supreme Court
- Trial Courts
- Court of Appeals
- Public Defense Board
- Guardian Ad Litem Board
- Judicial Standards Board

Estimated # Critical

FTE

32

### Labor and Industry

#### Activities Recommended to Continue

- Construction industry inspection services and support staff
- Workers' compensation claims and benefits activities, approval of medical treatment
- OSHA compliance for high risk activities
- Incident command, technology security and support for critical services

Estimated # Critical

FTE

150

### Military Affairs

#### Activities Recommended to Continue

- Duluth and Minneapolis airbase security, fire fighting and operations
- Military training and operations at Camp Ripley
- Security for military arms and equipment statewide
- Management of National Guard public safety programs
- Utilities at National Guard armories
- Incident command and support for critical services

## Recommended Priority One and Priority Two Critical Services

### 2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.

All others are recommended to close.

	Estimated # Critical
	FTE
<b>Minnesota Management and Budget</b>	<b>183</b>
<b>Activities Recommended to Continue</b>	
Statewide incident management team and support for critical services	
Employee insurance admin/support	
Statewide payroll/HR management/systems/support	
Statewide accounting systems/financial reporting support (including implementation of SWIFT)	
Treasury critical svcs/cash management	
Debt payments/management	
Budget support/analysis	
Critical information services/systems	

	Estimated # Critical
	FTE
<b>Minnesota Zoological Gardens</b>	<b>150</b>
<b>Activities Recommended to Continue</b>	
Staffing sufficient to keep animals, exhibits and property safe, secure and healthy	

	Estimated # Critical
	FTE
<b>Natural Resources</b>	<b>220</b>
<b>Activities Recommended to Continue</b>	
Conservation law enforcement	
Water treatment	
Bison herd care	
Hatchery maintenance and tree nursery	
Soudan mine maintenance	
Pathology lab testing	
Dam safety and operations	
Dike/water control structure management	
Incident command team including disaster response coordination	
Support for critical services	

**Recommended Priority One and Priority Two Critical Services**  
 2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.  
 All others are recommended to close.

	Estimated # Critical
	FTE
<b>Office of Enterprise Technology</b>	<b>95</b>
<b>Activities Recommended to Continue</b>	

- Critical Infrastructure Support
- Communication Services for critical employees (i.e. telephones, email, network)
- Hosting Services for critical Business Applications
- Cyber Security
- Incident command and support for critical services

	Estimated # Critical
	FTE
<b>Ombudsman for Mental Health &amp; Dev. Disab.</b>	<b>16</b>
<b>Activities Recommended to Continue</b>	

- Assess complaints of abuse & neglect of vulnerable populations in residential settings
- Respond to highest priority death and serious injury cases
- Maintain minimum agency operations to support critical services

	Estimated # Critical
	FTE
<b>Office of Higher Education</b>	<b>2</b>
<b>Activities Recommended to Continue</b>	

- SELF Loan Program Administration
- Incident command and support for critical services

	Estimated # Critical
	FTE
<b>Perpich Center for Arts Education</b>	<b>3</b>
<b>Activities Recommended to Continue</b>	

- Building and Grounds Security
- Building and Grounds Maintenance
- Support for critical services

*DA MINIMUM*

## Recommended Priority One and Priority Two Critical Services

### 2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.

All others are recommended to close.

	Estimated # Critical
	FTE
<b>Pollution Control Agency</b>	13

#### Activities Recommended to Continue

- Petroleum remediation at four sites
- Air quality index monitoring
- BioWatch monitoring services
- Four closed landfill sites (gas collection, leachate prevention)
- Seven superfund sites (active management & protection)
- Emergency response
- Incident command and support for critical services

	Estimated # Critical
	FTE
<b>Public Safety</b>	1,031

#### Activities Recommended to Continue

- State Patrol - Highways, Security, 911 Service
- Security of Capitol Complex
- Bureau of Criminal Apprehension Labs - Crime Scenes, Testing, Justice Information Systems
- Homeland Security - Emergency Communications
- Office of Justice Programs - reparations, payments to crime victims
- Incident command and support for critical services

	Estimated # Critical
	FTE
<b>Public Utilities Commission</b>	3

#### Activities Recommended to Continue

- Utility rate case processing (time sensitive case pending)
- Incident command and support for critical services

	Estimated # Critical
	FTE
<b>Revenue Department</b>	43

#### Activities Recommended to Continue

- Processing and Making Deposits
- Tax Financial Reconciliation
- Building Security
- Gentax/Network Support (Tax Processing System)
- Minimal Legal and Tax Research Support for Governor and Legislature
- Incident command and support for critical services

**Recommended Priority One and Priority Two Critical Services**  
 2011 Potential Minnesota Government Shutdown

Only minimal levels of staff and operating expenses that are necessary to continue, secure, or support these operations are requested to continue in the event of a government shutdown.  
 All others are recommended to close.

	Estimated # Critical
	FTE
<b>Sentencing Guidelines Commission</b>	<b>1</b>
<b>Activities Recommended to Continue</b>	
Review criminal sentencing worksheets	
Apply Sentencing Guidelines in specific cases	

	Estimated # Critical
	FTE
<b>State Academies</b>	<b>110</b>
<b>Activities Recommended to Continue</b>	
Security of Building and Grounds	
Minimal Staff for Critical Services Support	
Summer Programs at State Academies for the Deaf and State Academies for the Blind	
Incident command and support for critical services	

	Estimated # Critical
	FTE
<b>Transportation</b>	<b>217</b>
<b>Activities Recommended to Continue</b>	
Emergency Highway Repair	
Aeronautic Navigation	
Emergency Communication Networks	
Truck Permitting	
Incident command and support for critical services	

	Estimated # Critical
	FTE
<b>Veterans Affairs</b>	<b>980</b>
<b>Activities Recommended to Continue</b>	
Veterans homes operations	
Critical assistance programs for veterans	
Limited veterans claims services	
State Veterans Cemetery	
Incident command and support for critical services	

Recommended Priority One and Priority Two Critical Services  
2011 Potential Minnesota Government Shutdown

Agencies recommended to close

Accountancy Board  
Administrative Hearings  
Amateur Sports Comm  
Architecture, Engineering Bd  
Arts Board  
Asian-Pacific Council  
Barber Examiners Board  
Behavioral Health & Therapy Bd  
Black Minnesotans Council  
Bureau of Mediation Services  
Campaign Fin & Public Discl Bd  
Capitol Area Architect  
Chicano/Latino Affairs Council  
Chiropractors Board  
Combative Sports Commission  
Cosmetologist Exam Board  
Dietetics & Nutrition Practice  
Disability Council  
Emergency Medical Services Bd  
Explore Minnesota Tourism  
Gambling Control Board  
Higher Ed Facilities Authority  
Human Rights Dept  
Humanities Commission  
Indian Affairs Council  
Lottery  
Marriage & Family Therapy  
Medical Practice Board  
Minn Conservation Corps  
Nursing Board  
Nursing Home Admin Board  
Ombudsperson for Families  
Optometry Board  
Peace Officers Board (POST)  
Pharmacy Board  
Physical Therapy Board  
Podiatric Medicine Board  
Private Detective Board  
Psychology Board  
Racing Commission  
Social Work Board  
Tax Court  
Uniform Laws Commission  
Veterinary Medicine Board  
Water & Soil Resources Board  
Workers Comp Court of Appeals

Note: Operations of the Minnesota State Colleges and Universities will continue based on its statutory and practical financial autonomy and its balance carry-over authority.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core  
Functions of the Executive Branch of  
the State of Minnesota

Court File No. 62-CV-11-5203

**ORDER AMENDING FINDING  
OF FACT NUMBER 36**

The Order issued this morning, June 29, 2011, is amended as follows:

The last sentence in the Finding of Fact, in paragraph 36, shall read: "Any additional operations of a zoo, even when in large part paid for by admission charges and other receipts, are not critical core functions of government sufficient to overcome the requirements of Article XI."

BY THE COURT:

Dated: \_\_\_\_\_

6-29-11



The Honorable Kathleen R. Gearin  
Chief Judge  
Ramsey County District Court

