

Minnesota Legislative Update: From the Capitol to the Courtroom

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Following the adjournment of the 2017 regular session and a short special session, the Legislature passed and presented to Governor Dayton a comprehensive and balanced budget for fiscal years 2018 and 2019, including nine appropriation bills and a tax bill. On May 30, notwithstanding numerous concerns with a number of provisions contained in these bills, Governor Dayton signed all of the appropriation bills and the tax bill into law. Letters explaining the Governor's actions and concerns can be found [here](#).

One of the appropriations bills, the State Government Finance Bill, included a provision requiring Governor Dayton to sign the tax bill before funding for the Department of Revenue would take effect. This is the first time a provision of this type had been inserted into a finance bill. Initially, the Governor was planning to allow the tax bill to become law without his signature. This approach would have allowed the Governor to express his concerns with the tax bill's fiscal impact while ensuring the Department of Revenue would not shut down on July 1, 2017. But after receiving an opinion from the Attorney General's Office to the effect that failure to sign would result in a "pocket veto," he signed the tax bill.

Governor Vetoes Funds for House and Senate

Upset by the Legislature's decision to place what he considered a "poison pill" in the State Government Finance Bill, and in an attempt to place pressure on the Legislature to repeal provisions contained in the bills he signed to avoid a partial or total government shut down, Governor Dayton vetoed line item appropriations for the Minnesota House of Representatives and the Minnesota Senate for fiscal years 2018 and 2019 contained in the State Government Finance Bill. The House and Senate had no opportunity to override these line item vetoes since they had adjourned the special session sine die. Unless Governor Dayton calls a special session to repass these appropriations, the House and Senate will be without funding starting July 1, 2017 and will need to rely on reserves, or previous budget carryforwards, to continue operating. Legislative leadership estimates that these carryforwards will allow the Legislature to operate at current levels between two and four months.

Governor Dayton issued a letter accompanying these vetoes setting out the terms under which he would agree to call a special session and reinstate the House and Senate appropriations. He asserts that he will only call a special session if legislative leadership agrees to remove the following provisions:

- **Eliminate Tobacco Tax Breaks.** The tax bill contains provisions repealing the annual inflator on the cigarette excise tax and reducing the maximum tax on premium cigars from \$3.50 to 50 cents per cigar. In addition to fiscal impact, primarily in subsequent biennia, the Governor believes repealing the cigarette tax inflator adversely impacts efforts to reduce youth smoking.
- **Cancel Estate Tax Exemption Increase.** Current state law provides for a \$2 million estate tax exemption for most Minnesotans and a \$5 million exemption for farmers and family owned businesses. The tax bill increases the \$2 million exemption to \$3 million. Governor Dayton believes the additional exemption will only benefit a few Minnesotans while costing the state approximately \$109 million.

- **Reinstate Commercial Industrial Property Tax Inflator.** The tax bill contains two provisions regarding C/I property taxes: excluding the first \$100,000 of business property from the statewide tax and freezing the state general levy at the payable 2018 level for taxes payable in 2019 and thereafter. While the Governor supports the \$100,000 exclusion, he is concerned that freezing the inflator will result in the state losing approximately \$1 billion in revenue over the next decade.
- **Remove Prohibition Against Undocumented Immigrants from Obtaining Driver's Licenses.** The Governor considers this prohibition to be redundant and divisive.
- **Renegotiate Teacher Licensure Provisions.** While the Governor supports improving Minnesota's teacher licensure system, he believes some of the changes contained in the K-12 bill undermine high professional standards.

A copy of Governor Dayton's letter can be found [here](#).

Legislative leaders quickly raised constitutional concerns with the Governor's decision to line item veto the appropriations for the House and Senate. On June 2, 2017 the Legislative Coordinating Commission met and authorized hiring outside counsel. Subsequently, Doug Kelley, a former United States Attorney, was retained to represent the Legislature.

Governor Dayton and legislative leaders met on June 13, 2017 to discuss whether a court battle could be avoided, the House and Senate's line-item vetoes, and his conditions for calling the special session. Prior to this meeting, and since, legislative leaders have consistently reiterated that while they are willing to meet with the Governor at any time, they are unwilling to consider repealing any of the provisions contained in the appropriation and tax bills passed by the Legislature and signed by the Governor. In exchange for restoration of the Legislature's funding and to resolve the standoff, legislative leadership offered to pass the omnibus pension bill, which was included in the preemption bill vetoed by Governor Dayton at the end of special session. However, the Governor held firm to his previously stated conditions and no agreement was reached.

Legislature Files Suit

Immediately following legislative leadership's meeting with Governor Dayton, the Legislature filed a Declaratory Judgment action against him and Minnesota Management and Budget Commissioner Myron Frans in Ramsey County District Court. This action, [*Ninetyth Minnesota State Senate and Ninetyth Minnesota State House of Representatives vs. Governor Mark Dayton and Commissioner of the Minnesota Department of Management and Budget Myron Frans*](#) 62-CV-17-3601, seeks a declaration that the Governor's line item vetoes of the Legislature's funding for fiscal years 2018 and 2019 violate the separation of powers clause of the Minnesota Constitution. The Legislature is also asking for injunctive relief directing Commissioner Frans to continue allotting funds that were appropriated to the Legislature for the 2018-2019 Biennium.

The Legislature's Complaint argues it is required to perform certain duties, which have been defined as "core functions" that cannot be abridged by the executive branch. These core functions include drafting, debating, publishing, voting on and enacting legislation, as well as constituent service. Without the ability to pay partisan and non-partisan staff – 437 permanent, full-time and 85 "session only" staff – the Legislature contends it will be unable to perform these core functions.

In addition, the Complaint notes that the Senate subleases the Minnesota Senate Building from the Commissioner of Administration, making monthly lease payments to the Commissioner in the amount of approximately \$683,000. The Commissioner of Administration, in turn, leases the Minnesota Senate Building from MMB. In November 2017, the Commissioner of Administration must make a semi-annual rent payment of \$1,911,000 to MMB for the funds paid by the Senate under its sublease. Another rent payment of \$4,131,000 is due to MMB on May 14, 2018. Under the terms of the lease, failure to make these payments authorizes MMB to remove persons and property from the Minnesota Senate Building.

On Thursday, June 15, 2017, S&P Global Ratings issued a statement that it is monitoring this litigation and failure to resolve it in the next 90 days could result in a lower bond rating. Minnesota's current bonding rating is AAA and a lower rating will make it more expensive for the state to borrow. The firm said, "it reflects unfavorably on the state's willingness to fund all of its debt service payments despite its ability to pay remaining very strong." Other credit agencies have yet to follow suit.



The Governor has yet to respond to the Legislature’s Complaint but has hired former Minnesota Associate Supreme Court Justice Sam Hanson to represent him in this matter. A Show Cause hearing has been scheduled for June 26, 2017 at 10 a.m. All public documents in this case can be accessed [here](#).

Additional Lawsuit Filed

An additional lawsuit has been filed by a watchdog group, the Association for Government Accountability, arguing that a recently enacted constitutional amendment on legislative pay requires the state to pay legislators, even after the Governor’s line-item veto of House and Senate appropriations. This lawsuit contends that an order by Speaker Daudt earlier this session to not obey the constitutionally empowered Legislative Salary Council’s prescribed pay increase from \$31,000 to \$45,000 annually, coupled with the line-item veto, violate the state’s constitution. The lawsuit asks the Court to order the MMB Commissioner to pay the higher salaries to legislators.

All public documents in this case, *Association for Government Accountability vs. Myron Frans, In his official Capacity as Commissioner of Management and Budget, Minnesota House of Representatives Budget and Accounting Office, Minnesota Senate Fiscal Service Department, 62-CV-17-3396*, can be accessed [here](#).

Check back here for updates on the status of this litigation and the resolution of this dispute between the Governor and the Minnesota Legislature.