



STATE OF MINNESOTA

Office of Governor Tim Walz
Lt. Governor Peggy Flanagan

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Blvd. ♦ Saint Paul, MN 55155-1611

July 21, 2020

Via email

Representative Kurt Daudt
Minority Leader
267 State Office Building
St. Paul, MN 55155

Re: Chapter 12 proposal

Minority Leader Daudt:

I write to confirm the discussions that my staff and I have had with you related to your proposal to alter the Minnesota Emergency Management Act's application to the COVID-19 pandemic. To be clear, I disagree with your decision to hold hostage a local jobs and projects bill based on your objections to executive powers needed to protect Minnesotans' health and safety from a pandemic. Nonetheless, for the good of the State and to ensure Minnesotans' health and economic wellbeing, my office has engaged in discussions with you to explore a potential compromise.

You have expressed your view that the Legislature should be more involved in the management of the COVID-19 pandemic. Although I agree with that premise, we have not reached agreement on the way to achieve that result. **My office has engaged in good-faith discussions to explore possibilities and made real concessions.** Nevertheless, you have rejected our compromise proposal and refused to reach an agreement. I am disappointed that you have sought a petty political victory rather than a substantive change that would have benefited the people of Minnesota.

During the first special session in June, we met to review the mechanics of the COVID-19 peacetime emergency. Our June 18 meeting was partly in response to your repeated calls for an immediate end to the peacetime emergency before you would vote for a local jobs and projects bill. In that meeting we reviewed the ways in which the Legislature has delegated certain authority to the Governor for decades, with the goal of allowing the Governor to "protect the public peace, health, and safety." I explained that a peacetime emergency is appropriate when there is an act of nature that threatens lives and property in Minnesota and when local resources are inadequate to address the threat. I noted that those conditions are still met in the COVID-19 pandemic. I also emphasized the important role that the Minnesota Emergency Management Act (Chapter 12) has played in helping the State respond quickly and effectively to a pandemic that has now claimed over half a million lives globally and over 130,000 lives nationally. As I noted in my July 10 letter to you and the other legislative leaders, the peacetime emergency has allowed the State to take swift actions to fight the pandemic and keep Minnesotans safe.

In our June 18 meeting, you expressed a desire to propose a revision of, or alternative to, the emergency authority granted to the Governor under Chapter 12. You expressed your desire to involve the Legislature in managing the emergency. I welcomed receiving a proposal from you. My staff followed up with you on June 18, June 24, July 1, and July 6—each time asking you to share your proposal with us. You failed to respond to the first three of those emails. Finally, on July 7, 2020, you shared a draft bill. My staff met with you and your staff on July 9, 11, 12, 14, 17, and 19. Those discussions helped us understand your proposal and objectives. I appreciate that you made several revisions to your proposal in response to our feedback. For example, your initial proposal removed Chapter 12 emergency authority from local units of government and neglected to include an enforcement mechanism. Your subsequent revisions restored emergency power to localities and included an enforcement mechanism. Unfortunately, your revisions have not addressed our primary concerns or maintained the core principles enshrined by the Legislature in the Minnesota Emergency Management Act, which I believe are critical to our State’s pandemic response. I would also note that the provisions that concern me most do not advance your stated goal of engaging the Legislature in emergency management. Instead, your proposal gives just six legislators the power to end any Executive Order by failing to act and empowers just one body of the Legislature to end the state’s COVID-19 response by simply doing nothing at all. My key concerns are highlighted below:

Your proposal would flip Chapter 12 on its head, reversing the current rules for ending a peacetime emergency, which strike the right balance by requiring both the House and the Senate to affirmatively vote to end an emergency. Your proposal reverses current law by eliminating the requirement that the Legislature must affirmatively act to end a peacetime emergency. The proposed change would mean either chamber of the Legislature could end the State’s entire COVID-19 response by simply failing to act. The existing presumption (that both houses of the Legislative must vote to end a peacetime emergency) cannot give way to this approach. We have learned thus far during the COVID-19 pandemic that lives depend upon the State’s actions, and to jeopardize the State’s entire response to COVID-19—allowing our efforts to evaporate overnight as a result of legislative gridlock—is not an option.

Your proposal would immediately end critical Executive Orders that must continue to protect Minnesotans. As we have discussed, we have identified certain Executive Orders (EOs) that are essential to the State’s COVID-19 response and must not be terminated. These orders achieve critical policy goals to protect Minnesotans. Ending them immediately and abruptly would be reckless and dangerous.

- **Your demand to end EO 20-74 would threaten an outbreak similar to those seen in other States that have lifted protections too quickly.** EO 20-74 implements Phase III of the Stay Safe MN plan. This is the backbone of our COVID-19 prevention strategy, and it is consistent with the approach that Democratic and Republican governors are taking across the country. Although it does put critical rules in place to ensure social distancing, it has also opened nearly all sectors of Minnesota’s economy. It is a balanced approach, and one that is keeping us from having to implement more stringent measures, as other states have been forced to do in the past few weeks. A complete lifting of all restrictions on public gatherings and public venues would be reckless and inconsistent with the approach that many Democratic and Republican governors are taking. Even the federal government would

presumably advise against this approach. The first recommendation in the White House’s July 14, 2020 Minnesota State Report encourages Minnesota to “[e]nsure compliance with current Minnesota StaySafe Plan occupancy restrictions” and “[c]onsider further limitations on occupancy or closure of certain businesses (bars, restaurants).” What is most concerning to me is that you are insisting on ending an EO that you candidly admitted you and your caucus have not read. This makes it hard to trust you as a good-faith partner in the fight against COVID-19 and for our health and economic well-being. Despite all the hard and good-faith work my team has done with you, this comment makes me question whether your objections are motivated by political objectives rather than a desire to protect the health, safety, and well-being of Minnesotans.

- **The evictions moratorium cannot be ended abruptly as you propose.** Your proposals would eliminate EOs 20-14 and 20-73 immediately. Those EOs have been rescinded and replaced with EO 20-79 (effective August 4). We presume that you would also seek to revoke EO 20-79. The eviction moratorium, which has always allowed for evictions under certain limited circumstances, is providing critical protection and shelter to tenants in extraordinarily difficult times. Ending this protection immediately would cause displacement and upheaval which would be harmful to our COVID-19 response.

Your proposed LCC review and approval process is unworkable. Your proposal requires affirmative majority votes of the LCC for each EO to be extended beyond 30 days. If the LCC votes against the order, deadlocks, or fails to vote, then the order expires. Inaction by the Legislature should not be allowed to impede the State’s response to COVID-19. Your proposed process is the opposite of what is needed to address a rapidly evolving pandemic. To be clear, I have never said that I disagree with legislative hearings or other review. The Legislature is always free to hold hearings about executive actions. We welcome enhanced transparency and legislative involvement, but such hearings cannot be substituted for a vote of the House and Senate. Only action by the full House and the full Senate can constitute an “action” that can end critical executive-branch pandemic response measures.

The Executive Council should not be replaced by the LCC. Under Chapters 9 and 12, the five statewide elected officials of the Executive Council are given authority over the state’s emergency management. It makes sense for statewide elected officials to have a say in emergency management, given that they—unlike legislators—have statewide constituencies. The proposal would remove the Executive Council from the decision-making process and replace the executive council with the LCC—a body comprised of 12 legislators with regional interests.

Governor’s Office Proposed Compromise:

As you know, we have proposed an earnest and good-faith alternative that we believe would help you achieve your goal of increased legislative involvement without eliminating the State’s ability to quickly respond to a rapidly evolving global pandemic that threatens lives and health. Our proposal is set forth below. It represents a change to the existing emergency management structure and a meaningful concession. It would allow substantive legislative review and voting on each COVID-19 EO, which goes far beyond the current structure.

1. **Legislative Emergency Executive Order Review Procedure.** After enactment of the bill, subsequent COVID-19 related EOs issued under Section 12.21, subd. 3(1) would be subject to the following procedures:
 - a. The established Chapter 12 procedure would remain. Emergency EOs would go into effect immediately and would have the full force and effect of law upon approval of the Executive Council.
 - b. We will continue to engage relevant stakeholders and are willing to require that, whenever practicable, the Governor consult with local government units, relevant stakeholders, and relevant committee chairs and leads before issuing an EO under Section 12.21, subd. 3(1).
 - c. Thirty days after an emergency EO is approved by the Executive Council, the Legislative COVID-19 Response Commission (LCRC) could end the EO using the same voting rules adopted by the Legislature for expenditures from the COVID-19 Minnesota Fund. In other words, if a majority of the commission members from the Senate and a majority of the commission members from the House of Representatives vote against the EO, the EO is terminated. If a majority of the commission members from the Senate and a majority of the commission members from the House of Representatives do not vote against the EO, or if the commission does not vote, the EO continues.
 - d. The LCRC as passed by the Legislature during regular session is comprised of the Speaker of the House, House Majority Leader, House Minority Leader, Ways and Means Chair and Minority Lead; and the Senate Majority Leader, Senate President, Senate Minority Leader, Senate Finance Chair and Minority Lead. The LCRC—a **bipartisan structure already approved by all four caucuses for the management of COVID-19**—operated efficiently during the last four months in oversight of the \$200 million COVID-19 Minnesota Fund and has approved all major funding proposals presented by the administration.
 - e. During the 30-day period (and beyond), the LCRC or the relevant legislative committee may hold hearings and issue reports and recommendations to the Legislature, the Governor, and the Executive Council.
 - f. Relevant agency leadership will be available for hearings on the EOs and will provide information relied upon in drafting the EO.
2. **Termination of Existing Executive Orders.** We would agree to codify the termination of many of the EOs on your proposed termination list (many of which are already expired or rescinded), effective August 4. Below are the EOs that we would be willing to agree to terminate. For consistency, we have also added some EOs that have already expired but were on your continuation list (marked with an asterisk). All other EOs would remain in effect.

20-76*	Emergency Executive Order 20-76 Extending the Relief from Regulations for Motor Carriers and Drivers Operating in Minnesota Declared in Executive Orders 20-24, 20-44, and 20-60
20-73	Clarifying Executive Order 20-14 Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency
20-66*	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-63	Continuing to Safely Reopen Minnesota's Economy and Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency
20-62	Amending Executive Order 20-56 to Allow Worship, Weddings, and Funerals to Proceed as Safely as Possible during the COVID-19 Peacetime Emergency
20-61*	Extending the Relief from Regulations for Motor Carriers and Drivers Operating in Minnesota Declared in Executive Order 20-45
20-60	Extending the Relief from Regulations for Motor Carriers and Drivers Operating in Minnesota Declared in Executive Orders 20-24 and 20-44
20-59*	Extending the Relief from Regulations for Motor Carriers and Drivers Operating in Minnesota Declared in Executive Orders 20-06 and 20-37
20-56	Safely Reopening Minnesota's Economy and Ensuring Safe Non-Work Activities during the COVID-19 Peacetime Emergency
20-52	Authorizing Students in Critical Sectors to Return to Safe Higher Education Institutions for Completion of a Postsecondary Credential
20-49	Allowing Commercial Food Trucks to Operate at Highway Rest Areas in Minnesota During the COVID-19 Peacetime Emergency
20-48	Extending and Modifying Stay at Home Order, Continuing Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation, and Allowing Additional Workers in Certain Non-Critical Sectors to Return to Safe Workplaces
20-47	Clarifying Application of Executive Order 20-33 to Homeless Encampments
20-45	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-44	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-40	Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces
20-38	Allowing for Safe Outdoor Recreation

20-37	Extending the Relief from Regulations for Motor Carriers and Drivers Operating in Minnesota Declared in Executive Order 20-06
20-33	Extending Stay at Home Order and Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation
20-32	Ensuring that Healthcare Providers Can Respond Quickly and Safely During the COVID-19 Peacetime Emergency
20-31	Providing for Relief from Regulations to Certain Motor Carriers and Drivers Operating in Minnesota
20-27	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-24	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-20	Directing Minnesotans to Stay at Home
20-19	Authorizing and Directing the Commissioner of Education to Implement a Distance Learning Period and Continue to Provide a Safe Learning Environment for Minnesota's Students
20-18	Continuing the Closure of Bars, Restaurants, and Other Places of Public Accommodation
20-17	Clarifying Application of Executive Order 20-09 to Veterinary Surgeries and Procedures
20-14	Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency
20-09	Directing Delay of Inpatient and Outpatient Elective Surgery and Procedural Cases during COVID-19 Peacetime Emergency
20-08	Clarifying Public Accommodations Subject to Executive Order 20-04
20-06	Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota
20-04	Providing for Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation
20-02	Authorizing and Directing the Commissioner of Education to Temporarily Close Schools to Plan for a Safe Educational Environment

3. **Minnesota Emergency Management Act authorities.** My general and specific authorities and the general and specific authorities of the director of emergency management and localities would be the same as they are currently under Chapter 12. We do not agree to eliminating powers over matters such as the closure of schools (authority that was granted to Minnesota Governors over 40 years ago).

4. **Voting rules for ending the peacetime emergency.** The voting rules for ending a peacetime emergency would remain the same. I would continue to call the Legislature into special session every 30 days to provide an opportunity for them to vote to end the peacetime emergency under the current rules. You have expressed interest in extending this time period beyond 30 days (and perhaps as long as until the next regular session). This is not part of our proposal, but we are open to exploring that possibility, if that change is of interest to you and the other caucuses.
5. **Severability.** Any change to the status quo would need to include a clause making clear that if any provisions of this compromise proposal were to be invalidated by a court, Chapter 12 and the COVID-19 EOs would remain in full force and effect.

Although this proposal provides an opportunity for increased legislative involvement and an opportunity for the Legislature to review and end every Executive Order going forward, it appears that you are not amenable to this compromise. Without agreement on the core principles and provisions set forth above, I am afraid that we find ourselves at an impasse. I am troubled that, despite our good faith efforts to reach a compromise, you have politicized this issue by rejecting a local jobs and projects bill on the House floor last night. That bill would have benefited communities in every corner of the state. Minnesotans deserved better.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Walz", written in a cursive style.

Tim Walz
Governor