

Legislative-Citizen Commission on Minnesota Resources

MEMO Agenda Item 4d

DATE: December 15, 2021

SUBJECT: Requirements for Bond and Other State-Funded Capital Projects

Executive Summary

In response to a request from Legislative-Citizen Commission on Minnesota Resources (LCCMR) members, staff researched state bond-funding requirements of capital projects. Given the number of variables we discovered, staff narrowed its focus for purposes of this memo to a certain type of capital project: large construction projects for buildings over a certain cost threshold. We provide a summary of these state-funded project requirements below and attached. Some of these requirements are already incorporated in 116P or in the Environment and Natural Resources Trust Fund (ENRTF) standard bill rider language. Others are not but may still apply to ENRTF as the laws may refer to any state-funded capital project. Communications to ENRTF recipients by LCCMR about these requirements, as well as systems to facilitate the requirements being followed, are not currently consistent across requirements. These are noted as such in the “current ENRTF conditions” column on the attached table.

Background

Capital projects encompass a wide range of activities to acquire or better land or buildings in whole or in part. Minnesota statutes pertaining to capital projects (notably, those statutes found in [Ch. 16A](#) and [Ch. 16B](#)) address projects funded by general obligation (GO) bonds, which are the most common funding source for state-funded capital projects, as well as other sources of state funds. The statutes apply different requirements to a project depending on the type of project, the type of entity receiving the funding, and the funding source. For example, different requirements may apply to local projects versus projects conducted by state agencies. Some requirements only apply if the project is over a certain dollar threshold. Some requirements may apply to capital projects funded by GO bonds; others appear to apply for any state source of funding - even ENRTF.

Given the complexity in the variables described above and given this request from members for information appears to have been prompted by several recent requests from non-state entities to use ENRTF monies to construct buildings, LCCMR staff is providing a list and overview of requirements that most likely apply to **large-scale projects involving the design, construction, renovation, or repair of buildings**. Several of these requirements only apply if a project is over a certain threshold, for example at least \$1.5 million for local government projects or \$750,000 for state government or state university and college projects.

While we can provide information for other types of capital projects and expand the discussion, the requirements provided in this memo **do not necessarily apply (or apply uniformly) to** the following types of capital projects (unless they are part of a larger project meeting the criteria above):

- Acquisition of land for protection, restoration, or enhancement of air, land, water, fish, and wildlife
- Campgrounds
- Trails & paths
- Parking lots
- Boat ramps & docks
- Dams
- Design, construction, renovation, or repair of buildings by private entities

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Existing LCCMR Requirements for Capital Projects

The constitution, MS 116P, LCCMR's strategic plan, and the annual request for proposals all touch on various types of capital projects that may or may not be eligible for ENRTF funding and that may or may not be prioritized for ENRTF funding. This memo does not address these authorizations, restrictions, or emphases.

There are some standard conditions on ENRTF funding, however, that are consistent with some of the requirements for GO bond and other state-funded capital projects. For example, for more than a decade, the following conditions have been included in LCCMR's standard appropriation rider language and would apply to the type of capital project addressed in this memo:

- Applicable energy conservation and sustainable building guidelines
- Americans with Disability Act (ADA) accessibility guidelines¹

In addition, pass-through grant agreements to recipients of ENRTF money require compliance with the following conditions related to contracting, purchasing, and wages, and therefore, these conditions would apply to the type of capital project addressed in this memo:

- Competitive Bidding
- Responsible Contractor
- Targeted Group Purchasing
- Prevailing Wage

In the attached list of likely requirements for GO bond and other state funded **large-scale projects involving the design, construction, renovation, or repair of buildings**, we have noted which may already apply to ENRTF-funded projects as well as the status of LCCMR operationalizing the requirement.

Bonding and Other State-Funded Capital Project Requirements

The attached table provides a list of GO bond and other state funding requirements for large-scale building construction projects. We also provide a brief description and link to the relevant statutory citation. Below is additional discussion of some of these requirements, the general process of vetting bond-funded requests, and acknowledgement that systems of oversight exist for most of these requirements.

Eligibility

Unlike ENRTF-funded projects, GO bond-funded capital projects must be publicly owned (a long-term lease may qualify) and used to operate a governmental program or activity. Private use is restricted, although a private entity may be contracted to operate the governmental program.

Requirements

Numerous additional requirements apply to both the review and the implementation of state-funded capital projects. For example, funding recipients may need to:

- Demonstrate fiscal capacity both to complete a project and fund ongoing operations of its state-funded purpose.
- Provide 50% match for local projects.
- Incorporate or consider incorporating certain elements into their project design, such as geothermal and solar thermal heating and cooling systems or accommodations for the hard-of-hearing.
- Have their project design and budget reviewed for compliance with various requirements and approved by different state agencies or legislative committees.
- Comply with certain contracting, purchasing, and labor requirements.
- Commit to restrictions on property use and sale that ensure the improved property continues to be used for the state-funded purpose.
- Provide assurances, in some cases through a construction bond, that the project will be completed as approved.

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Process

GO bond funding requests, and most other requests for state funding of capital projects, are submitted in odd-numbered years to Minnesota Management and Budget (MMB) through the online Capital Budget System. The MMB reviews and ranks the projects based on need, eligibility, availability of alternative funding sources, capacity, and other criteria. The Department of Administration also reviews projects that require a state pre-design review prior to design or construction. The Governor recommends projects and incorporates them into a capital budget that is submitted for consideration by the Legislature in January of even-numbered years.

The requirements discussed here and provided on the attached table apply whether a project is funded through the standard process or added by the Legislature.

Once funded, systems exist within the various state agencies for review and monitoring of projects to ensure consistency with the funding requirements.

Attachments

- Requirements and Conditions Associated with State-Funded Capital Projects (table) dated 12/14/21

Action

This information is being provided for purposes of future discussion. No action is needed at this time.

ⁱ See [M.L. 2021, First Special Session, Chapter 6](#), Article 6, Subdivision 16 and 17