

I. DRAFT RECOMMENDATIONS FOR THE LEGISLATURE (8/15/22)
(To be included in a report to the Legislature)

(1) Match - Create 50% matching requirement for ENRTF-funded capital construction projects (including in-kind), with the LCCMR able to recommend waiving or reducing the match requirement to the Legislature, such as for research projects.

Sample Language (Amendment to MS § 116P.08):

Subd. 8. A recipient of money appropriated from the trust fund for a capital construction project must provide a cash or in-kind match of at least 50 percent of the total eligible project costs.

Questions and Considerations for Subcommittee:

- Should the match requirement apply to non-state entities only or all state entities?
- Should the match be a non-state match or just non- ENRTF?
- What, if any, type of a dollar amount threshold should be applied to the matching requirement?
- How should unique situations where the commission wants to waive a match be handled? For example, the commission could recommend the match requirement be waived as part of the recommendations to the legislature. Should this process be reflected in the underlying statute? Does this defeat the purpose of having a statutory match requirement? Does this defeat the purpose of only having those with a plan for match apply to LCCMR?

(2) Full Funding - Require all funds needed to complete a capital construction project or project phase be committed and secured prior to ENRTF funds being available.

Sample Language (New section in chapter 116P):

116P.XX [FULL FUNDING REQUIRED]

(a) If an appropriation from the trust fund for a capital construction project or project phase is not sufficient, by itself, to complete the project or project phase, and thus requires a commitment from sources other than the trust fund:

(1) the commitment must be in an amount that, when added to the appropriation, is sufficient to complete the project or project phase; and

(2) the appropriation for a project or project phase is not available until the commitment is determined to be sufficient.

(b) The commitment under this section must be demonstrated in the work plan in accordance with the standards and principles applied by the commissioner of management and budget under section 16A.502.

(3) Sustainable Building Guidelines - Require ENRTF capital projects for new buildings or major renovations to follow sustainable building guidelines.

Sample Language (new section in chapter 116P):

116P.XX [SUSTAINABLE BUILDING GUIDELINES]

The sustainable building guidelines established under sections 16B.325 and 216B.241, subdivision 9, apply to new buildings and major renovations receiving funding from the environment and natural resources trust fund. A recipient of money appropriated from the trust fund for a new building or major renovation must ensure that the project complies with the guidelines.

(4) Construction Assurances - Require entities receiving ENRTF funds for capital construction projects to have assurances in place with contractors, such as fixed price contracts or performance bonds.

Sample Language (Amendment to MS § 116P.05, subd. 2, paragraph (b)):

(b) It is a condition of acceptance of the appropriations made from the Minnesota environment and natural resources trust fund, and oil overcharge money under section 4.071, subdivision 2, that the agency or entity receiving the appropriation must submit a work plan and annual or semiannual progress reports in the form determined by the Legislative-Citizen Commission on Minnesota Resources and comply with applicable reporting requirements under section 116P.16. None of the money provided may be spent unless the commission has approved the pertinent work plan. A work plan for a capital construction project must provide appropriate assurances that construction will be completed in a manner that is consistent with the approved work plan and design. Modifications to the approved work plan and budget expenditures shall be made through the amendment process established by the commission. The commission shall ensure that the expenditures and outcomes described in the work plan for appropriations funded by the environment and natural resources trust fund are met.

Questions and Considerations for Subcommittee:

- Existing law authorizes the LCCMR to ensure that outcomes described in the work plan are met so further statutory authority may not be required. Does the subcommittee therefore want to shift this recommendation to the section for recommendations to the commission for implementation?

(5) Confirmation of Satisfactory Completion - Require evidence that ENRTF-funded capital construction projects have been successfully inspected or approved by appropriate entities.

Sample Language (New section in chapter 116P):

116P.XX [SATISFACTORY COMPLETION]

Prior to receiving final payment, a recipient of money appropriated from the trust fund for a capital construction project must provide satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by the applicable authorities and that all required certificates of occupancy or similar approvals have been issued.

Questions and Considerations for Subcommittee:

- What type of capital projects should this apply to (certain types, those over a certain dollar amount, etc.)?
- Should this apply to state entities?
- Existing law authorizes the LCCMR to ensure that outcomes described in the work plan are met so further statutory authority may not be required. For non-state entities, final payment is contingent on approval of the final report. Does the subcommittee therefore want to shift this recommendation to the section for recommendations to the commission for implementation?

(6) Sale, Alteration of Use, and Recording Property Restrictions – Require approval from the LCCMR for alterations in the use or sale of a capital project constructed with ENRTF funds for 25 years and provide for paying back the ENRTF for an alteration in use, with the flexibility to waive full payback. Require the filing of notice of funding restriction and annual reporting to the LCCMR.

Sample Language (Amendment to MS § 116P.15):

116P.15 CAPITAL CONSTRUCTION AND LAND ACQUISITION; RESTRICTIONS.

Subdivision 1. **Scope.** A recipient of an appropriation from the trust fund ~~or the Minnesota future resources fund~~ who uses any portion of the appropriation for capital construction must comply with subdivision 3 of this section. A recipient of an appropriation from the trust fund or the Minnesota future resources fund who acquires any other interest in real property with the appropriation must comply with subdivision 2 of this section. ~~For the purposes of this section, "interest in real property" includes, but is not limited to, an easement or fee title to property.~~

Subd. 2. ~~Restrictions; modification procedure~~ **Land acquisitions.** (a) An easement, fee title, or other interest in real property acquired with an appropriation from the trust fund or the Minnesota future resources fund must be used in perpetuity or for the specific term of an easement interest for the purpose for which the appropriation was made. The ownership of the interest in real property transfers to the state if:

- (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or work plan; or
- (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.

(b) A recipient of funding who acquires an interest in real property subject to this section may not alter the intended use of the interest in real property or convey any interest in the real property acquired with the appropriation without the prior review and approval of the commission or its successor. The commission shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the trust fund or Minnesota future resources fund at least 15 business days before approval under this paragraph. The commission shall establish procedures to review requests from recipients to alter the use of or convey an interest in real property. These procedures shall allow for the replacement of the interest in real property with another interest in real property meeting the following criteria:

- (1) the interest must be at least equal in fair market value, as certified by the commissioner of natural resources, to the interest being replaced; and
- (2) the interest must be in a reasonably equivalent location, and have a reasonably equivalent useful conservation purpose compared to the interest being replaced, taking into consideration all effects from fragmentation of the whole habitat.

(c) A recipient of funding who acquires an interest in real property under paragraph (a)

must separately record a notice of funding restrictions in the appropriate local government office where the conveyance of the interest in real property is filed. The notice of funding agreement must contain:

- (1) a legal description of the interest in real property covered by the funding agreement;
- (2) a reference to the underlying funding agreement;
- (3) a reference to this section; and
- (4) the following statement:

"This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Legislative-Citizen Commission on Minnesota Resources or its successor. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or work plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.

Subd. 3. **Capital Construction.** (a) A recipient of an appropriation from the trust fund who uses the appropriation to wholly or partially construct a building, trail, campground, or other capital asset may not alter the intended use of the capital asset or convey any interest in the capital asset for 25 years from the date of project completion without the prior review and approval of the commission or its successor. The commission shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the trust fund at least 15 business days before approval under this paragraph. The commission shall establish procedures to review requests from recipients to alter the use of or convey an interest in a capital asset under this paragraph. These procedures must require that:

- (1) the sale price must be at least fair market value; and
- (2) the trust fund must be repaid a proportion of the sale price equal to the percentage of the total funding provided by the fund for constructing the capital asset.

(b) Requirements under clause (1) and (2) above may be waived by the commission or successor through recommendation to the legislature if the transfer allows for a continued use of the asset in a manner consistent with original appropriation purpose or with purposes of the trust fund.

(c) If both a capital asset and the real property on which it sits were wholly or partially purchased with an appropriation from the trust fund and the commission approves a request to alter the use of or convey an interest in the real property under subdivision 2, a separate approval under this subdivision to alter the use of the capital asset is not required.

(d) A recipient of an appropriation from the trust fund who uses the appropriation to wholly or partially construct a building, trail, campground, or other capital asset must separately record a notice of funding restrictions in the appropriate local government office. The notice of funding restriction must contain:

- (1) a legal description of the interest in real property covered by the funding agreement;
- (2) a reference to the underlying funding agreement;
- (3) a reference to this subdivision; and
- (4) the following statement:

"This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written

approval of the Legislative-Citizen Commission on Minnesota Resources or its successor.”

116P.16 REAL PROPERTY INTERESTS; REPORT.

(a) By December 1 each year, a recipient of an appropriation from the trust fund, that is used for the acquisition of an interest in real property, including, but not limited to, an easement or fee title, or the construction of a building, trail, campground, or other capital asset must submit annual reports on the status of the real property to the Legislative-Citizen Commission on Minnesota Resources or its successor in a form determined by the commission. The responsibility for reporting under this section may be transferred by the recipient of the appropriation to another person who holds the interest in the real property. To complete the transfer of reporting responsibility, the recipient of the appropriation must:

- (1) inform the person to whom the responsibility is transferred of that person's reporting responsibility;
- (2) inform the person to whom the responsibility is transferred of the property restrictions under section 116P.15; and
- (3) provide written notice to the commission of the transfer of reporting responsibility, including contact information for the person to whom the responsibility is transferred.

(b) After the transfer, the person who holds the interest in the real property is responsible for reporting requirements under this section.

Questions and Considerations for Subcommittee:

- The proposed language contains a provision for a waiver from fair market value sale and fully paying back the fund with an alteration of use if the use is still consistent with the purposes of the ENRTF. Is this what the subcommittee wants?

(7) Public Access - Require public access for ENRTF-funded capital projects once completed, with exceptions for incompatible uses, such as research.

Sample Language (New section in chapter 116P):

116P.22 [PUBLIC ACCESS]

A recipient of an appropriation from the trust fund for a capital improvement to real property must ensure the property is open to the public for free or at a reasonable cost during reasonable hours. This section does not apply to capital improvements where public access is incompatible with the intended use, such as a research laboratory. The recipient must include a plan for providing public access or provide evidence public access is incompatible with the intended use in the work plan.

Questions and Considerations for Subcommittee:

- What type of capital improvements should this apply to (certain types, those over a certain dollar amount, etc.)?
- Do you want more formal language on how it is determined that public access is incompatible?

(8) Proposed New References to Existing Statutory Requirements for Capital Construction Projects - Add new language to chapter 116P referencing the following existing statutory requirements that may apply to capital projects funded with ENRTF money. (Staff have placed the statutes into different categories for discussion purpose only.)

A. Clarification that these statutes apply to ENRTF may be helpful:

Predesign - MS 16B.335, subd. 3

Accommodation for Hard-of-Hearing – MS 16C.054

Historic and Archaeological Review – e.g., Minnesota Statutes 138.40, 138.655, and 138.666

Geothermal and Solar Heating and Cooling System – MS 16B.326

B. These statutes apply and are already being operationalized:

Competitive Bid – MS 16C.28, MS 471.345

Targeted Group Purchasing - MS 16C.16

Responsible Contractor – MC 16C.285

Prevailing Wage– MS 177.41 to 177.44

**C. Applies to state agencies, and in some cases higher education, regardless of funding source.
Likely already being implemented outside of ENRTF:**

Energy Use – MS 16B.32

D. Applies but has not been operationalized:

Energy Conservation Standards– MS 16B.335, subd. 4

Questions and Considerations for Subcommittee:

- The references above are not intended to create new statutory requirements on projects. All the requirements above with the exception of those in Category A (pre-design; accommodation for hard-of-hearing, geothermal and solar heating and cooling systems, and historical and archeological review) are clear and in several cases are already being implemented and operationalized, although references to the requirements contained in Category A could provide greater clarity. Does the subcommittee therefore want to shift any of these to the section for recommendations to the commission for implementation?

(9) Effective Date

We assume that the subcommittee wants to make all of these changes prospective in effect. Is this correct?

**II. DRAFT RECOMMENDATIONS FOR COMMISSION IMPLEMENTATION
(No legislative action required)**

All requirements shown below would be communicated to applicants in RFP, proposal, and /or work plan materials, as appropriate, to improve transparency and clarity to applicants about expectations for funded projects.

Proposed New Non-Statutory Requirements:

Resolution for Fiscal Agents - Expand the current requirement for non-state entities to submit a resolution or documentation of support for a project to also apply to fiscal agents.

Operational Funding - Incorporate into the requirement for a resolution or documentation of support from non-state entities that operational funding has also been committed.

Proposed Operationalization of Current Statutory Requirements:

(if any moved from new statute section, above)

Proposed New Points of Emphasis:

Recycling and Construction of Demolition Waste – Make clear in RFP/Proposal stage that sustainable building guidelines contain standards for recycling and construction of demolition waste.