

Legislative-Citizen Commission on Minnesota Resources

MEMO: Agenda Item #6

DATE: August 26, 2022

SUBJECT: Subcommittee on Capital Projects Recommendations

Overview

M.L. 2022, Chapter 94, Sec. 4 directed the Legislative-Citizen Commission on Minnesota Resources (LCCMR) to submit a report and recommendations to the Legislature by October 15, 2022, on additional information that should be required to accompany LCCMR proposals for capital projects. The legislative charge relates to an ongoing discussion that the LCCMR has had regarding capital projects for the last year or so. At its June 27, 2022 meeting, the LCCMR appointed a subcommittee to discuss and make recommendations to the full commission. The subcommittee met four times and developed the recommendations outlined in this memo and the attached draft legislative report.

Process

The Subcommittee on Capital Projects has met four times on July 25, August 8, August 16, and August 17, with a potential final meeting on August 30. At its first meeting, the subcommittee decided not to limit its recommendations only to additional information to accompany proposals. Therefore, it also considered additional requirements that would need to be met by applicants and recipients as a condition of receiving funding from Environmental and Natural Resources Fund (ENRTF). Working from an initial list of requirements and conditions for bonding and other state-funded capital projects culled by staff from Minnesota Management & Budget (MMB) operating policies, orders, memos, and other documents, the subcommittee discussed and chose requirements and conditions that it wanted to consider further.

During its discussions, the subcommittee decided to split its recommendations into two sections: (1) recommendations for new statutory language to be submitted as part of the report to the Legislature, and (2) recommendations for the commission to incorporate into its current business practices that do not require further legislative action. House and Senate nonpartisan counsel assisted with the drafting of proposed statutory language for the first set of recommendations. The subcommittee voted on each proposed recommendation at its final meetings.

Capital Project Definition

To focus the discussion and clarify when the purchase of capital equipment would be subject to any rules, the subcommittee adopted a definition of capital projects based on an MMB description of authorized capital expenditures using general obligation bond proceeds. However, the subcommittee clarified that a project proposing land acquisition not associated with a future construction project should not be considered a capital project for the purposes of ENRTF-specific requirements and that the purchase of art should not be an eligible expenditure for ENRTF funding. The subcommittee also agreed to a de minimis exclusion of less than \$10,000. To reflect the land acquisition exclusion, the recommendations for new requirements found in the next section have been worded to apply only to capital *construction* projects. In addition, the recommendations to the Legislature include a recommendation that the ENRTF-specific statutory recommendations exclude projects of less than \$10,000 but include any land acquisition associated with construction.

The MMB description of authorized capital expenditures, modified for the LCCMR discussion is as follows:

“Capital Project” means a project that includes expenditures for long lived (10 years or more) fixed assets (land, building, capital equipment, or other improvement to land). A project that includes land acquisition not associated with construction is not a capital project.

Eligible activities include:

- Purchase of land, buildings, easements

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- Predesign and design
- Construction (including environmental testing and site preparation)
- Major renovation, roof reconstruction and replacement, major window replacement (if add to value or life of building)
- Fixtures, furnishings, and equipment, only if installed:
 - Upon initial construction, or
 - During major renovation to make the facility usable for the first time by the state agency or grant recipient
- Staff costs for project management if pursuant to a plan approved by LCCMR

Ineligible activities include:

- Options to purchase land or buildings
- Fixtures, furnishings, and equipment that don't fit into categories above
- General studies to evaluate the need for a capital project
- Educational, promotional, or informational costs incurred for a project not yet sited
- Computer and financial modeling for a project not yet sited
- Master planning
- All relocation and moving costs
- Operating and maintenance costs
- Betterments to leaseholds with less than a 10-year term
- Software and data management systems
- Personal computers
- Marketing expenses

Recommendations

As discussed previously, the Subcommittee on Capital Projects adopted two sets of recommendations for consideration by the full commission. The first set contains recommendations for new statutory language to be submitted as part of the report to the Legislature. The second set contains recommendations for the commission to incorporate into its current business practices without further legislative action.

Recommendations to the Legislature

The detailed recommendations to the Legislature can be found in the attached draft legislative report but are summarized as follows:

1. **Match** – Recommend that a 50% match be required for ENRTF-funded capital construction projects submitted by any entity and that the match must be from non-ENRTF sources.
2. **Full Funding** – Recommend that all funds needed to complete an ENRTF-funded capital construction project or project phase must be committed and secured prior to ENRTF funds being available.
3. **Sustainable Building Guidelines** – Recommend that ENRTF-funded capital construction projects for new buildings or major renovations must ensure compliance with sustainable building guidelines.
4. **Sale and Alteration of Use** – Recommend the adoption of protections to ensure that buildings and other capital assets constructed with ENRTF funds continue to be used for their intended purpose, including approval from the LCCMR for alterations in the use or sale for 25 years, repayment to the ENRTF unless waived, the filing of a notice of funding restriction, and annual reporting to the LCCMR.
5. **Public Access** – Recommend consideration of a requirement for appropriate public access to capital improvements constructed using ENRTF dollars.
6. **References to Existing Requirements** – Recommend adding references to the following existing statutory requirements into Chapter 116P for ENRTF-funded capital construction projects for clarity and transparency purposes:

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- Predesign - MS 16B.335, subd. 3
 - Accommodation for Hard-of-Hearing – MS 16C.054
 - Historic and Archaeological Review –MS 138.40, MC 138.665, and MS 138.666
 - Geothermal and Solar Heating and Cooling System – MS 16B.326
 - Competitive Bid – MS 16C.28, MS 471.345
 - Targeted Group Purchasing - MS 16C.16
 - Responsible Contractor – MS 16C.285
 - Prevailing Wage– MS 177.41 to 177.44
 - Energy Use – MS 16B.32
 - Energy Conservation Standards– MS 16B.335, subd. 4
7. **Applicability** – Recommend that capital construction projects of less than \$10,000 be excluded from any new ENRTF-specific statutory requirements for capital construction but that land acquisition associated with construction be considered part of the capital construction project.
8. **Effective Date** – Recommend an effective date of July 1, 2023, for any statutory changes such that any new statutory requirements apply to proposals for capital construction projects received after that date.

Recommendations to the Commission

1. The subcommittee recommends the commission implement the following requirements for ENRTF-funded capital construction projects:
 - A. **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.
 - B. **Operational Funding** - Incorporate into the requirement for a resolution or documentation of support from non-state entities that operational funding has also been committed.
 - C. **Construction Assurances** - Evidence that a recipient of funding for a capital construction project has in place appropriate assurances from contractors, including but not limited to, fixed price contracts or performance bonds, that construction will be completed in a manner consistent with the approved work plan and design.
 - D. **Confirmation of Satisfactory Completion** - Evidence that ENRTF-funded capital construction projects have been successfully inspected or approved by appropriate entities. 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.
2. The subcommittee recommends that existing requirements for recycling of construction and demolition waste are referenced in the LCCMR request for proposals (RFP).

In addition, new or existing requirements adopted or identified during the capital project review process would also be referenced in the LCCMR request for proposals (RFP) to ensure that applicants are aware of requirements related to capital construction projects and that the commission receives sufficient information to assess capital construction projects during the proposal review, selection, and recommendation process.
3. The subcommittee recommends that the commission commit to revisit and review capital project requirements in 4 years.

Effective date: These recommendations would be fully operationalized by the next RFP round.

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Attachments

“Capital Projects Funded from the Environment and Natural Resources Trust Fund – Report to the Legislature - FOR LCCMR CONSIDERATION”, dated August 26, 2022

Actions Needed

1. Move to approve the report titled, “Capital Projects Funded from the Environment and Natural Resources Trust Fund – Report to the Legislature – FOR LCCMR CONSIDERATION”, dated August 26, 2022 [optional: with the following amendments.....]
2. Move to approve the items under Recommendations to the Commission in the memo titled, “Subcommittee on Capital Projects Recommendations”, dated August 26, 2022 [optional: with the following amendments...]