### **Executive Summary**

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 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 and the increasing number and size of projects seeking funding from the Environment and Natural Resources Trust Fund (ENRTF). The LCCMR appointed a subcommittee to discuss and make recommendations to the full commission. The subcommittee met multiple times during the summer of 2022 to discuss and develop recommendations for inclusion in this report that was later adopted by the full commission. In making these recommendations, the commission worked to balance the need for appropriate safeguards to ensure work is completed with the additional burden those safeguards may place on applicants and recipients of trust fund dollars.

The LCCMR recommends that the Legislature enact statutory changes that will allow the commission to better evaluate capital project proposals, make recommendations to the Legislature, and improve the likelihood of the successful spending of state dollars and the timely completion of projects. To this end, the commission is making specific recommendations related to matching funds, full funding, sustainable building guidelines, sale and alteration of use of the capital improvement, and public access. The commission recommends that these new requirements are limited to capital construction projects and include a de minimis exception. The commission also recommends that the Legislature provide additional clarification for existing statutory requirements for capital projects that may apply to certain ENRTF-funded projects.

### **Background**

The Environment and Natural Resources Trust Fund (ENRTF) funds a variety of capital projects related to its constitutional purpose of protecting, conserving, preserving, and enhancing the state's air, water, land, fish, wildlife, and other natural resources. From 2013 to 2021, 163 projects have included some sort of capital activity, and roughly \$169.5 million has gone towards those activities. The following list describes some of the types of capital activities that have been funded through the ENRTF during that period:

**Building Design and/or Construction** – The design and construction of large buildings and facilities. Examples: visitor centers, learning centers

**Conservation Easements** – Acquisition of easements on private land for conservation.

**Educational Exhibits** – The design and installation of educational exhibits. Examples: kiosks, displays

**Land Acquisition** – Fee title acquisition of land for recreation, conservation, or other purposes related to natural resources and the environment. Examples: scientific and natural areas, parks

**Recreational Facilities** – The design and construction of recreational facilities and supporting infrastructure. Examples: campgrounds (and at times associated offices), restrooms, shower facilities, docks, canoe landings, picnic areas, boat wash stations, parking lots, access roads

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**Renewable Energy** – The design and construction of renewable energy systems. Examples: solar gardens, biomass boiler systems

**Research and Demonstration** – The design and construction of research facilities, installation of long-term monitoring equipment, and evaluation and demonstration of innovative technologies. Examples: AIS deterrents, wastewater treatment, renewable energy systems

**Restoration (Large-Scale)** – Restoration involving large-scale earth-moving and placement of materials. Examples: shoreline stabilization, grading, stream restoration.

**Stormwater** – The design and construction of stormwater infrastructure to improve water quality or habitat. Examples: retention basins, rain gardens

**Trails** – The engineering, design, and construction of trails.

The Legislative-Citizen Commission on Minnesota Resources (LCCMR) has received an increasing number of proposals for funding capital projects in the last decade. The number of projects funded that include a capital activity increased from 24% of projects to 36% of projects from 2013 to 2021, and the proportion of ENRTF dollars directed towards capital activities has increased from 22% of ENRTF funding to 48% of ENRTF funding. This increase has primarily been driven by increased funding to construct recreational facilities and trails. In addition, two projects in the last 4 years have been appropriated approximately \$6.7 million from the ENRTF to design and construct buildings.

With the increasing number, size, and complexity of capital projects, the LCCMR has wanted to ensure that it is receiving sufficient information with proposals to make informed funding recommendations to the Legislature, and that, once funded, conditions and requirements are in place that will lead to successful completion of the project. To this end, the LCCMR directed its staff to review and report on the conditions and requirements applied to capital projects funded through general obligation bond proceeds. The LCCMR had some initial discussions on this issue in December 2021.

In June 2022, the Legislature directed the LCCMR to consider whether statutorily requiring additional information to accompany proposals for capital projects would help the commission better evaluate those proposals (M.L. 2022, Chapter 94, Sec. 4). The LCCMR was directed to submit a report, recommendations, and any proposed statutory changes to the Legislature by October 15, 2022.

### **Process**

The LCCMR appointed a subcommittee to discuss and make recommendations to the full commission on capital projects. The LCCMR Subcommittee on Capital Projects met XX times on July 25, August 8, August 16, August 17, and August XX. 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 ENRTF. The subcommittee narrowed its focus to capital construction projects rather than all capital projects and activities, although it did still want to include any land acquisitions associated with construction.

The subcommittee followed an iterative process to develop a list of recommendations. The subcommittee reviewed background information on capital projects compiled by LCCMR staff during the previous year. Initially working from a 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 had a discussion on items related to eligibility, assurances, and consultation and review. After that meeting, each subcommittee member independently chose requirements and conditions that it wanted to consider further either as a requirement for more information to be provided by applicants or as a requirement that must be met before or after funding is awarded. Staff compiled the results, and only requirements and conditions selected by at least a majority of members moved forward.

The subcommittee then considered the remaining conditions and requirements along with sample language of how that condition or requirement might look as a requirement for ENRTF funding. It discussed each condition and requirement and made decisions about whether to keep the condition and requirement for further consideration. 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. After this meeting, House and Senate nonpartisan counsel assisted LCCMR staff with drafting proposed statutory language for the first set of recommendations.

The subcommittee discussed the proposed recommendations, considered final questions presented by staff and additional recommendations proposed by members, and voted on each recommendation for the Legislature and for the commission. The subcommittee tasked LCCMR staff with drafting the legislative report for individual comment by the subcommittee members and submittal to the full commission.

LCCMR staff reached out to officials with the MMB, the Department of Administration, the Department of Natural Resources, the State Historic Preservation Office, and the University of Minnesota's Center for Sustainable Building Research (CSBR) for comment on the subcommittee recommendations. Based on feedback, .... The LCCMR adopted this legislative report at its August 30, 2022 meeting.

### **Recommendations to the Legislature**

The LCCMR makes the following recommendations for statutory changes. The LCCMR believes the adoption and implementation of these recommendations will provide appropriate safeguards to help ensure the successful use of state dollars and completion of capital construction projects that support the protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, other natural resources, and outdoor recreation.

The commission was sensitive to not recommend requirements that would create an undue burden on applicants and recipients of trust fund dollars. In particular, the trust fund is a valuable source of funding for smaller local communities and organization that may be more limited in their resources. It is the hope of the commission that these recommendations if enacted will help these smaller communities and organizations and all other recipients of trust fund dollars achieve greater success and meet their goals and the goals of the ENRTF.

#### Match

The LCCMR recommends that the Legislature require any entity requesting money from the ENRTF for a capital construction project provide a 50% match from non-ENRTF sources to ensure the applicant's commitment and readiness to complete the project.

The following amendatory language to MS 116P.08 is offered to implement this recommendation:

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 from non-trust fund sources of at least 50 percent of the total eligible project costs.

### **Full Funding**

The LCCMR recommends that the Legislature require that all funds needed to complete a capital construction project or project phase be committed and secured prior to ENRTF funds being available. This requirement would be similar to current requirements applied to capital projects funded from state general obligation bond proceeds under MS 16A.502. The commission believes adopting this type of requirement for ENRTF-funded projects would avoid scenarios where construction may begin using ENRTF funds but cannot be completed or construction would be significantly delayed because funds originally expected to be available from other sources did not materialize.

The commission recommends the following new section be added to 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 agency administering the appropriation shall not distribute the funds until the commitment is determined to be sufficient. In determining the sufficiency of a commitment under this paragraph, the agency shall apply the standards and principles applied by the commissioner of management and budget under section 16A.502.

### **Sustainable Building Guidelines**

The LCCMR recommends that the Legislature require that capital construction projects for new buildings or major renovations funded in whole or in part from the ENRTF comply with sustainable building guidelines. For over a decade, appropriation rider language that has accompanied appropriations from

the ENRTF has included a provision that a recipient of funding for a capital improvement project "must ensure that the project complies with the applicable energy conservation and sustainable building guidelines and standards contained in law..." The commission believes incorporating the sustainable building guideline requirement into the LCCMR implementing statute will provide greater clarity for entities seeking funding from the trust fund. The proposed requirement would also parallel current requirements for capital projects funded from state general obligation bond proceeds under MS 16B.325, subd. 3.

To implement this recommendation, the commission recommends the following new section be added to 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.

### Sale and Alteration of Use

The LCCMR recommends that the Legislature create protections to ensure that buildings or other capital assets constructed in whole or in part with ENRTF funds continue to be used for their intended purpose. Specifically, the LCCMR recommends:

- Any alteration in use or conveyance of an interest in the capital asset, such as sale, should require LCCMR approval and notification of the legislative committees with jurisdiction over the trust fund.
- The following conditions be met for LCCMR approval: a sale price of at least fair market value and repayment to the trust fund proportional to the funds originally contributed to the construction project.
- The approval conditions be waived if recommended by the LCCMR and approved by the Legislature to account for potential situations where the capital asset may be conveyed but the use maintained, the proposed altered use may be different than the original intended purpose but still consistent with the purposes of the trust fund, or some other unforeseen circumstance.
- The restrictions remain in place for 25 years.

In addition, to help maintain awareness of the associated restrictions, the LCCMR recommends the inclusion of requirements for recording notices of funding restrictions in the appropriate local government office and annual reporting to the LCCMR certifying the property status and its continued use for its intended purpose. These recommendations parallel current statutory restrictions for land acquired using ENRTF dollars and are similar to requirements for capital projects funded using state general obligation bond proceeds.

To implement this recommendation, the commission recommends the following amendatory language for MS § 116P.15 and MS § 116P.16:

#### 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 a capital construction project 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 its successor through recommendation to the legislature if the transfer allows for a continued use of the asset in a manner consistent with the original appropriation purpose or with the 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 restrictions 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 improvement of the property. The interest in real property, or any portion of the interest in real property, shall not altered from its intended use or 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.

## **Public Access**

The LCCMR recommends that the Legislature consider a requirement for appropriate public access to capital improvements constructed using ENRTF dollars but is not proposing any specific statutory language for adoption by the Legislature. The LCCMR believes the public should have access to capital improvements constructed in whole or in part with public dollars. However, the ENRTF funds a wide variety of projects that support the protection, conservation, preservation, and enhancement of the

state's air, water, land, fish, wildlife, other natural resources, and outdoor recreation. The LCCMR can envision scenarios where capital construction projects funded by the ENRTF may have public benefit but public access may not be appropriate, whether due to incompatibility (e.g., small building constructed to support research or a demonstration project for a new renewable energy system), public safety concerns (e.g., a water control structure), or another reason. Restrictions on all public access or allowing public access to be limited by time of day, number of people, fees, or other means may be appropriate under different circumstances.

### **References to Existing Requirements**

The LCCMR recommends adding references to existing statutory requirements related to predesign, historic and archaeological review, accommodations for hard-of-hearing, energy conservation standards, energy use, geothermal and solar heating and cooling systems, competitive bids, targeted group purchasing, responsible contractors, and prevailing wage into Chapter 116P. The LCCMR's intent is not to create new requirements for projects with this recommendation but to provide greater clarity for LCCMR staff and ENRTF applicants that certain existing statutory requirements apply to ENRTF-funded projects. Many of these requirements are currently outlined in ENRTF appropriation rider language or grant agreements for pass through ENRTF appropriations.

The following amendatory language is offered to implement this recommendation:

116P.XX [ADDITIONAL REQUIREMENTS FOR CAPITAL PROJECTS]

The following statutes apply to recipients of appropriations from the trust fund:

MS 16B.32; MS 16B.326; MS 16B.335, subd. 3 and subd. 4; MS 16C.16, MS 16C.28 and MS 471.345; MS 16C.054; MS 16C.285; MS 138.40, 138.665, and 138.666; and MS 177.41 to 177.44.

### **Applicability**

The LCCMR recommends 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.

The following amendatory language is offered to implement this recommendation:

(a) Sections X [match], Y [full funding], Z [sustainable building guidelines], XX [sale and alteration of use], and YY [public access] do not apply to:

- (1) a capital construction project with a total cost of less than \$10,000; or
- (2) a land acquisition project.

(b) If land is acquired with environment and natural resources trust fund money for the purpose of capital construction, the land acquisition is not exempted under this subdivision/section paragraph (a)(2).

### **Effective Date**

The LCCMR recommends that any enacted statutory changes take effect July 1, 2023, and apply to proposals for capital construction projects received after that date to ensure applicants have sufficient notice and time to account for any new requirements.

### Appendix 1 - Compiled proposed statutory changes from main report

[Will be added once language in body of the report is approved.]

# Appendix 2 - Staff Memo to LCCMR titled "Requirements for Bond and Other State-Funded Capital Projects", December 15, 2021 (with attachment)

https://www.lccmr.mn.gov/calendar/2022/2022-07-25-mtg\_subcomittee/attachments/item01\_2021-11-14\_memo\_requirements\_state-funded\_capital\_projects.pdf

https://www.lccmr.mn.gov/calendar/2022/2022-07-25-mtg\_subcomittee/attachments/item02\_2021-12-14\_table\_requirements\_conditions\_state-funded\_capital\_projects.pdf

# Appendix 3 - Staff Memo to LCCMR titled "ENRTF-Funded Activities to Acquire or Improve Land or Buildings (Capital Projects", March 14, 2022 (with attachments)

https://www.lccmr.mn.gov/calendar/2022/2022-07-25mtg\_subcomittee/attachments/item03a\_memo\_enrtffunded\_activities\_acquire\_improve\_land\_buildings\_2013-2021.pdf

https://www.lccmr.mn.gov/calendar/2022/2022-07-25mtg\_subcomittee/attachments/item03b\_table\_1\_enrtf\_dollars\_allocated\_2013-2021.pdf

https://www.lccmr.mn.gov/calendar/2022/2022-07-25mtg subcomittee/attachments/item03c table 2 to 4 and figure 1 summary tables and figure rem ediated.pdf

## Appendix 4 – LCCMR and ENRTF

#### About the LCCMR

The Legislative-Citizen Commission on Minnesota Resources (LCCMR) is a commission of legislators and citizens whose primary function is to make funding recommendations to the Minnesota Legislature for special environmental and natural resources protection and enhancement projects, primarily from the Environment and Natural Resources Trust Fund (ENRTF). Additionally, the LCCMR tracks all projects funded through its proposal process to ensure outcome achievement. Since 1963, approximately \$1.0 billion from multiple funding sources has been awarded to more than 2,400 projects recommended to the legislature by the commission.

The LCCMR is composed of 17 members: five senators, five representatives, five citizens appointed by the governor, one citizen appointed by the Senate, and one citizen appointed by the House. Legislative members are appointed by legislative leadership and must include representation from both majority and minority parties. The citizen members appointed to the LCCMR must have experience or expertise in the

science, policy, or practice of the protection, conservation, preservation, and enhancement of the state's environment and natural resources.

LCCMR developed from a program initiated in 1963 to preserve, develop, and maintain the natural resources of Minnesota. The name and funding sources have changed over the years, with the most recent change in 2006, when the commission was restructured into its current form, the Legislative-Citizen Commission on Minnesota Resources, with the addition of non-legislative citizen members in order to include citizen input more directly in the decision-making process.

#### About the ENRTF

The Environment and Natural Resources Trust Fund (ENRTF) is a permanent fund in the Minnesota state treasury dedicated to funding activities that protect, conserve, preserve, and enhance the state's air, water, land, fish, wildlife, and other natural resources. The ENRTF was created in 1988 when 77% of Minnesota voters approved an amendment to the Minnesota Constitution (Art. XI, Sec.14). The ENRTF provides a long-term, consistent, and stable source of funding for Minnesota's environment and natural resources for the benefit of current and future generations.

Money in the ENRTF originates from a combination of contributions and investment income. Forty percent of the net proceeds from the Minnesota State Lottery, or approximately seven cents of every dollar spent on playing the lottery, goes into the ENRTF, which is then managed and invested for continued growth by the State Board of Investment. Up to 5.5% of the market value of the ENRTF is available to spend on projects each year. The LCCMR makes annual project funding recommendations to the Minnesota Legislature based on a competitive, multi-step proposal and selection process.

#### **Appendix 5 - LCCMR Members**

https://www.lccmr.mn.gov/about/members/list/2022-08-23\_members\_with\_photo.pdf

#### **Appendix 6 – Subcommittee Members**

### **LCCMR Subcommittee on Capital Projects**

Rita Albrecht, Chair

Jeremy Peichel, Vice Chair

Sen. Kari Dziedzic

Rep. Rick Hansen

Rep. Dale Lueck

Michael Reese

Sen. Torrey Westrom