



LEGISLATIVE-CITIZEN COMMISSION ON MINNESOTA RESOURCES

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Becca Nash, Director

LCCMR Subcommittee on Capital Projects

MINUTES

Wednesday, August 17, 2022

Time: 15 minutes following LCCMR meeting adjournment (est. 4:00 PM) to 5:00 PM

Location: through electronic means (YouTube)

Subcommittee members present: Rita Albrecht, Sen. Kari Dziedzic, Rep. Rick Hansen, Rep. Dale Lueck, Jeremy Peichel, Michael Reese

Subcommittee members excused: Sen. Torrey Westrom

Chair: Rita Albrecht

Commissioner Albrecht called the meeting to order at 2:45 p.m.

1. Roll call attendance

Diana Griffith took roll call for attendance. There were 5 members present at the time of roll call.

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	excused	
Commissioner Westrom – Sen	excused	

Commissioner Reese joined the meeting.

2. Approve minutes from August 8, 2022

No action needed.

3. Discussion and Possible Action: Additional Information and Requirements for ENRTF- Funded Capital Projects

Chair Albrecht continued the review of the posted document that is titled “Draft Recommendations with Proposed Statutory Language and Questions ” (version 8/15/2022) by starting where the committee left off the previous day.

MOTION: Commissioner Hansen moved to make the following changes to the capital project definition previously adopted:

Rep. Patty Acomb, Rita Albrecht, Sen. Gary Dahms, Sen. Kari Dziedzic, William Faber, Nancy Gibson, Rep. Rick Hansen, Sen. Fong Hawj, Sen. Bill Ingebrigtsen, Rep. Dale Lueck, Seth Moore, Rep. Kelly Morrison, Jeremy Peichel, Michael Reese, Shona Snater, Rep. Tama Theis, Sen. Torrey Westrom

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- Exclude “Art – up to 1% of appropriation for building construction or alteration (M.S. 16B.35)” as an eligible activity for capital project spending using ENRTF funds.
 - Exclude land acquisition not associated with construction.
- motion prevailed (5 Yes / 0 No / 2 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dzedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	excused	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Peichel moved to recommend a de minimis exception from capital project requirements for capital projects \$10,000 or less - motion prevailed (5 Yes / 0 No / 2 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dzedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	excused	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Hansen moved to adopt the recommendation for confirmation of satisfactory completion as a recommendation for implementation by the LCCMR – motion prevailed (5 Yes / 0 No / 2 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dzedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	excused	
Commissioner Westrom – Sen	excused	

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MOTION: Commissioner Hansen moved to recommend the following amendatory language for MS 116P.15 and MS 116P.16 related to the sale, alteration of use, recording property restrictions, and annual reporting as a recommendation for the Legislature:

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

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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:

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(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.

- Motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	Excused	

MOTION: Commissioner Peichel moved to recommend the following new language for Chapter 116P requiring public access as a recommendation for the Legislature:

116P.XX [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 subject to local rules. This section does not apply to capital improvements where public access is incompatible with the intended use, such as a research laboratory, or for public safety reasons. 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.

- Commissioner Peichel withdrew his motion.

There appeared to be consensus to request the Legislature to consider language for ensuring a reasonable amount of public access where appropriate for ENRTF- funded capital projects.

MOTION: Commissioner Hansen moved to recommend that the following statutory references to existing statutory requirements be added to Chapter 116P for capital construction projects:

- Predesign – M.S. 16B.335, subd. 3
 - Accommodation for Hard-of-Hearing – M.S. 16C.054
 - Historic and Archaeological Review – e.g., M.S. 138.40, 138.655, and 138.666
 - Geothermal and Solar Heating and Cooling System – M.S. 16B.326
- motion prevailed (5 Yes / 1 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	

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Commissioner Dziejdzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese		X
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Hansen moved to recommend that the following statutory references to existing statutory requirements be added to Chapter 116P for capital construction projects:

- Competitive Bid – M.S. 16C.28, M.S. 471.345
 - Targeted Group Purchasing – M.S. 16C.16
 - Responsible Contractor – M.S. 16C.285
 - Prevailing Wage– M.S. 177.41 to 177.44
- motion prevailed (5 Yes / 1 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziejdzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese		X
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Hansen moved to recommend that the following statutory reference to existing statutory requirements be added to Chapter 116P for capital construction projects:

- Energy Use – M.S. 16B.32
- motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziejdzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

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MOTION: Commissioner Reese moved to recommend that the following statutory reference to existing statutory requirements be added to Chapter 116P for capital construction projects:

- Energy Conservation Standards– M.S. 16B.335, subd. 4
- motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Hansen moved to recommend the LCCMR review capital project requirements in 4 years - motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Peichel moved to recommend the following additional requirements for capital construction projects be implemented by the LCCMR:

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.

- motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	

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Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Reese moved to recommend the following new point of emphasis for capital construction requirements:

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

- motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

MOTION: Commissioner Peichel moved to approve the recommendations as discussed subject to staff providing a draft report to review - motion prevailed (6 Yes / 0 No / 1 Excused).

Member	Y	N
Commissioner Albrecht	X	
Commissioner Dziedzic - Sen	X	
Commissioner Hansen – Rep	X	
Commissioner Lueck - Rep	X	
Commissioner Peichel	X	
Commissioner Reese	X	
Commissioner Westrom – Sen	excused	

4. Public Testimony

There was no public testimony.

5. Adjourn

Meeting adjourned at 4:05 p.m.