

A bill for an act
relating to state government; establishing a grants management process,
governance, and structure; appropriating money; proposing coding for new law
in Minnesota Statutes, chapters 13; 16B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[13.595] GRANTS.**

Subdivision 1. Definitions. For purposes of this section, the following terms have
the meanings given them.

(a) "Completion of the evaluation process" means that the granting agency has
completed negotiating the grant agreement with the selected grantee.

(b) "Grant agreement" means the document that details the responsibilities of the
grantee and the granting agency and the value to be provided to the grantee.

(c) "Grantee" means a person that applies for or receives a grant.

(d) "Granting agency" means the state agency that provides the grant.

(e) "Opened" means the act that occurs once the deadline for submitting a response
to a proposal to the granting agency has been reached.

(f) "Request for proposal" means the data outlining the responsibilities the granting
agency wants the grantee to assume.

(g) "Response" means the data submitted by a grantee as required by a request for
proposal.

Subd. 2. Request for applications. Data created by a granting agency to create a
request for proposal is classified as nonpublic until the request for proposal is published.
To the extent that a granting agency involves persons outside the granting agency to create
the request for proposal, the data remain nonpublic in the hands of all persons who may

not further disseminate any data that are created or reviewed as part of the request for proposal development. At publication, the data in the request for proposal is public.

Subd. 3. **Responses to request for proposals.** (a) Responses submitted by a grantee are private or nonpublic until the responses are opened. Once the responses are opened, the name and address of the grantee and the amount requested is public. All other data in a response is private or nonpublic data until completion of the evaluation process. After a granting agency has completed the evaluation process, all remaining data in the responses is public with the exception of trade secret data as defined and classified in section 13.37.

A statement by a grantee that the response is copyrighted or otherwise protected does not prevent public access to the response.

(b) If all responses are rejected prior to completion of the evaluation process, all data, other than that made public at the opening, remain private or nonpublic until a resolicitation of proposals results in completion of the evaluation process or a determination is made to abandon the grant. If the rejection occurs after the completion of the evaluation process, the data remain public. If a resolicitation of proposals does not occur within one year of the grant opening date, the remaining data become public.

Subd. 4. **Evaluation data.** (a) Data created or maintained by a granting agency as part of the evaluation process referred to in this section are protected nonpublic data until completion of the evaluation process at which time the data are public with the exception of trade secret data as defined and classified in section 13.37.

(b) If a granting agency asks individuals outside the granting agency to assist with the evaluation of the responses, the granting agency may share not public data in the responses with those individuals. The individuals participating in the evaluation may not further disseminate the not public data they review.

Sec. 2. [16B.97] GRANTS MANAGEMENT.

Subdivision 1. **Grant agreement.** (a) A grant agreement is a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the recipient to support a public purpose authorized by law instead of acquiring by professional/technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.

(b) This section does not apply to capital project grants to political subdivisions as defined by section 16A.86.

Subd. 2. **Grants governance.** The commissioner shall provide leadership and direction for policy related to grants management in Minnesota in order to foster more

consistent, streamlined interaction between executive agencies, funders, and grantees that will enhance access to grant opportunities and information and lead to greater program accountability and transparency. The commissioner has the duties and powers stated in this section. An executive agency must do what the commissioner requires under this section.

Subd. 3. **Discretionary powers.** The commissioner has the authority to:

(1) review grants management practices and propose policy and procedure improvements to the governor, legislature, executive agencies, and the federal government;

(2) sponsor, support, and facilitate innovative and collaborative grants management projects with public and private organizations;

(3) review, recommend, and implement alternative strategies for grants management;

(4) collect and disseminate information, issue reports relating to grants management, and sponsor and conduct conferences and studies; and

(5) participate in conferences and other appropriate activities related to grants management issues.

Subd. 4. **Duties.** (a) The commissioner shall:

(1) create general grants management policies and procedures that are applicable to all executive agencies. The commissioner may approve exceptions to these policies and procedures for particular grant programs. Exceptions shall expire or be renewed after five years. Executive agencies shall retain management of individual grants programs;

(2) provide a central point of contact concerning statewide grants management policies and procedures;

(3) serve as a resource to executive agencies in such areas as training, evaluation, collaboration, and best practices in grants management;

(4) ensure grants management needs are considered in the development, upgrade, and use of statewide administrative systems and leverage existing technology wherever possible;

(5) oversee and approve future professional and technical service contracts and other information technology spending related to executive agency grants management activities;

(6) provide a central point of contact for comments about executive agencies violating statewide grants governance policies and about fraud and waste in grants processes;

(7) forward received comments to the appropriate agency for further action, and may follow up as necessary; and

(8) provide a single listing of all available executive agency competitive grant opportunities and resulting grant recipients.

(b) The commissioner may determine that it is cost-effective for agencies to develop and use shared grants management technology systems. This system would be governed under section 16E.01, subdivision 3, paragraph (b).

Sec. 3. [16B.98] LIMIT ON ADMINISTRATIVE COSTS.

Subdivision 1. **Limitation.** As a condition of receiving a grant from an appropriation of state funds, the recipient of the grant must agree to minimize administrative costs. The granting agency is responsible for negotiating appropriate limits to these costs so that the state derives the optimum benefit for grant funding.

Subd. 2. **Ethical practices and conflict of interest.** An employee of the executive branch involved directly or indirectly in grants processes, at any level, is subject to the code of ethics in section 43A.38.

Subd. 3. **Conflict of interest.** (a) The commissioner must develop policies regarding code of ethics and conflict of interest designed to prevent conflicts of interest for employees, committee members, or others involved in the recommendation, award, and administration of grants. The policies must apply to employees who are directly or indirectly in the grants process, which may include the following:

(1) developing request for proposals or evaluation criteria;

(2) drafting, recommending, awarding, amending, revising, or entering into grant agreements;

(3) evaluating or monitoring performance; or

(4) authorizing payments.

(b) The policies must include:

(1) a process to make all parties to the grant aware of policies and laws relating to conflict of interest, and training on how to avoid and address potential conflicts; and

(2) a process under which those who have a conflict of interest or a potential conflict of interest must disclose the matter.

(c) If the employee, appointing authority, or commissioner determines that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested personnel shall be notified of the conflict and the employee may proceed with the assignment.

Subd. 4. **Reporting of violations.** A state employee who discovers evidence of violation of laws or rules governing grants is encouraged to report the violation or suspected violation to the employee's supervisor, the commissioner or the commissioner's designee, or the legislative auditor. The legislative auditor shall report to the Legislative

Audit Commission if there are multiple complaints about the same agency. The auditor's report to the Legislative Audit Commission under this section must disclose only the number and type of violations alleged. An employee making a good faith report under this section has the protections provided for under section 181.932, prohibiting the employer from discriminating against the employee.

Subd. 5. **Creation and validity of grant agreements.** (a) A grant agreement is not valid and the state is not bound by the grant unless:

(1) the grant has been executed by the head of the agency or a delegate who is party to the grant; and

(2) the accounting system shows an encumbrance for the amount of the grant in accordance with policy approved by the commissioner.

(b) The combined grant agreement and amendments must not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and standards, or unless the commissioner determines that a longer duration is in the best interest of the state.

(c) A fully executed copy of the grant agreement with all amendments and other required records relating to the grant must be kept on file at the granting agency for a time equal to that required of grantees in subdivision 8.

(d) Grant agreements must comply with policies established by the commissioner for minimum grant agreement standards and practices.

(e) The attorney general may periodically review and evaluate a sample of state agency grants to ensure compliance with applicable laws.

Subd. 6. **Grant administration.** A granting agency shall diligently administer and monitor any grant it has entered into.

Subd. 7. **Grant payments.** Payments to the grantee may not be issued until the grant agreement is fully executed.

Subd. 8. **Audit.** (a) A grant agreement made by an executive agency must include an expressed or implied audit clause that provides that the books, records, documents, and accounting procedures and practices of the grantee or other party that are relevant to the grant or transaction are subject to examination by the granting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years from the grant agreement end date, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

(b) If the granting agency is a local unit of government, and the governing body of the local unit of government requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the grantee or other party

6.1 according to this subdivision, the granting agency shall be liable for the cost of the
6.2 examination. If the granting agency is a local unit of government, and the grantee or other
6.3 party requests that the state auditor examine all books, records, documents, and accounting
6.4 procedures and practices related to the grant, the grantee or other party that requested the
6.5 examination shall be liable for the cost of the examination.

6.6 Subd. 9. **Authority of attorney general.** The attorney general may pursue
6.7 remedies available by law to avoid the obligation of an agency to pay under a grant or to
6.8 recover payments made if activities under the grant are so unsatisfactory, incomplete, or
6.9 inconsistent that payment would involve unjust enrichment. The contrary opinion of the
6.10 granting agency does not affect the power of the attorney general under this subdivision.

6.11 Subd. 10. **Grants with Indian tribes and bands.** Notwithstanding any other law,
6.12 an agency may not require an Indian tribe or band to deny its sovereignty as a requirement
6.13 or condition of a grant with an agency.

6.14 **Sec. 4. APPROPRIATION.**

6.15 \$125,000 is appropriated from the general fund to the commissioner of administration
6.16 for the biennium beginning July 1, 2007, for the purposes in this act. If an appropriation
6.17 for this purpose is enacted more than once, the appropriation is effective only once.

6.18 For the fiscal year beginning July 1, 2008, the commissioner of administration must
6.19 deduct from state grants to nongovernmental entities up to \$125,000, as necessary to fund
6.20 the commissioner's duties under this act. The amount deducted from appropriations for
6.21 these grants is transferred to the commissioner for purposes of administering this act.