

A bill for an act
relating to state government; changing provisions for state general obligation
bond proceeds; amending Minnesota Statutes 2006, section 16A.695.

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

Section 1. Minnesota Statutes 2006, section 16A.695, is amended to read:

16A.695 PROPERTY PURCHASED WITH STATE BOND PROCEEDS.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this
section.

(b) "State bond financed property" means property acquired or bettered in whole or
in part with the proceeds of state general obligation bonds ~~authorized to be issued under~~
~~article XI, section 5, clause (a), of the Minnesota Constitution,~~ including any property
that benefits from predesign or design activities funded in any part by the proceeds of state
general obligation bonds even if no additional proceeds of state general obligation bonds
are used in the acquisition or betterment of the property.

(c) "Public officer or agency" means a state officer or agency, the University of
Minnesota, the Minnesota Historical Society, and any county, home rule charter or
statutory city, school district, special purpose district, or other public entity, or any
officer or employee thereof; but does not include the United States or any agency or
instrumentality of the United States.

(d) "Fair market value" means, with respect to the sale of state bond financed
property, the price that would be paid by a willing and qualified buyer to a willing and
qualified seller as determined by an appraisal of the property that assumes that all liens or
encumbrances that negatively affect the value of the property will be paid and released,
or the price bid by a purchaser under a public bid procedure after reasonable public

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notice; on the condition that all liens or encumbrances that negatively affect the value of the property will be paid and released.

(e) ~~"Outstanding state bonds"~~ "Approved debt" means ~~the dollar amount certified debt that is consented to, in writing, by the commissioner, upon the request and the proceeds of a public officer which are used to acquire or agency, to be the principal amount of state bonds, including any refunding bonds, issued with respect to the better state bond-financed property, less the principal amount of state bonds paid or defeased before the date of the request.~~

(f) "General obligation grant" means a grant to a public officer or agency that is funded from the proceeds of state general obligation bonds.

(g) "State bond fund" means the fund created under article XI, section 7, of the Minnesota Constitution.

(h) "State general obligation bonds" means general obligation bonds issued by the state under article XI, section 5, clause (a), of the Minnesota Constitution, or any bonds issued to refund those state general obligation bonds.

Subd. 2. **Leases and management contracts.** (a) A public officer or agency that is authorized by law to lease or enter into a management contract with respect to state bond financed property shall comply with this subdivision.

(b) The lease or management contract may only be entered into for the express purpose of carrying out a governmental program established or authorized by law ~~and,~~ must be established by official action of the contracting public officer or agency, must be in accordance with orders of the commissioner intended to ensure the legality and tax-exempt status of state general obligation bonds issued to finance the property, and ~~with the approval of the~~ must be approved, in writing, by the commissioner. A description of the governmental program, the statutory authority for the creation and operation of the program, and the purpose of the program must be explicitly set forth in the lease or contract.

~~A lease or management contract, including any renewals that are solely at the option of the lessee, must be for a term substantially less than the useful life of the property, but may allow renewal beyond that term upon a determination by the lessor that the use continues to carry out the governmental program.~~ (c) A lease or management contract for state bond-financed property that includes buildings or other structures must be for a total term, including any renewals, that does not exceed 50 percent of the original useful life of the buildings or structures. A lease or management contract for state bond-financed property that consists solely of land must be for a total term, including any renewals, that does not exceed 20 years.

(d) A lease or management contract must be terminable by the contracting public officer or agency if the other contracting party defaults under the lease or contract or if the governmental program is terminated or changed, and ~~must~~ may provide for ~~program~~ notice of default before termination for a specified time that is reasonable under the circumstances.

(e) A lease or management contract must provide for oversight of the state bond-financed property and governmental program by the contracting public officer or agency. This oversight must require the other contracting party to provide to the public officer or agency:

(1) the items needed by the public officer or agency to comply with the requirements in subdivision 5;

(2) between 12 and 15 months after the initial date of the lease or management contract and on approximately the same date of each subsequent calendar year, an annual operating report describing, in detail, what activities the property was used for during the immediately preceding 12 months and what activities the property will be used for during the next 12 months; and

(3) any other information the commissioner may require to ensure the legality and tax-exempt status of the state general obligation bonds.

(f) Money received by the public officer or agency under the lease or management contract that is not needed to pay and not authorized to be used to pay operating costs of the property, or to pay the principal, interest, redemption premiums, and other expenses when due on approved debt related to the property other than state general obligation bonds, must be:

(1) paid to the commissioner in the same proportion as the state bond financing is to the total public debt financing for the property, excluding debt issued by a unit of government for which it has no financial liability;

(2) deposited in the state bond fund; and

(3) used to pay or redeem or defease state general obligation bonds issued to finance the property in accordance with the commissioner's order authorizing their issuance.

The money paid to the commissioner is appropriated for this purpose.

~~(c)~~ (g) With the approval of the commissioner, a lease or management contract between a city and a nonprofit corporation under section 471.191, subdivision 1, need not require the lessee to pay rentals sufficient to pay the principal, interest, redemption premiums, and other expenses when due with respect to state general obligation bonds issued to acquire and better the facilities.

4.1 (h) A lease or management contract must require the other contracting party to take
4.2 whatever actions and furnish to the commissioner whatever documents and information
4.3 the commissioner determines necessary to ensure the legality and tax-exempt status of the
4.4 state general obligation bonds.

4.5 (i) At the end of the term of a lease or management contract or its earlier termination,
4.6 the public officer or agency may take over the operation and management of the state
4.7 bond-financed property or, upon compliance with this section, enter into a new lease or
4.8 management contract with a different contracting party or the same contracting party.

4.9 (j) A lease or management contract must require the contracting party to pay all
4.10 costs of operation and maintenance of the state bond-financed property unless the public
4.11 officer or agency is authorized by state law to pay and agrees to pay these costs. A lease or
4.12 management contract need not require the contracting party to pay any compensation to
4.13 the public officer or agency unless required by a state law other than this section or any
4.14 order of the commissioner intended to ensure the legality and tax-exempt status of the
4.15 state general obligation bonds.

4.16 (k) A lease or management contract must comply with this section, the state law
4.17 under which it is authorized, and any orders of the commissioner intended to ensure the
4.18 legality and tax-exempt status of the state general obligation bonds.

4.19 (l) The public officer or agency is responsible for the management and operation of
4.20 state bond-financed property and operation of the governmental program, and entering
4.21 into a lease or management contract does not abolish or alter this responsibility. If a
4.22 contracting party fails to properly manage and operate state bond-financed property or
4.23 operate the governmental program, the public officer or agency must either enter into
4.24 a new lease or management contract or directly manage and operate the property and
4.25 program and provide the money necessary to do so.

4.26 (m) A reference to a lease or management contract in this section includes any
4.27 amendments, modifications, or alterations to the referenced lease or management contract.

4.28 Subd. 3. **Sale of property.** A public officer or agency shall not sell any part of state
4.29 bond-financed property unless the public officer or agency determines by official action
4.30 that the property is no longer usable or needed by the public officer or agency to carry
4.31 out the governmental program for which it was acquired or ~~constructed~~ bettered, the sale
4.32 is made as authorized by state law, the sale is made for fair market value, and the sale is
4.33 approved in writing by the commissioner. ~~If any state bonds issued to purchase or better~~
4.34 ~~the state bond-financed property that is sold remain outstanding on the date of sale, The~~
4.35 net proceeds of sale must be applied as follows:

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(1) if the state bond-financed property was acquired ~~and~~ or bettered solely with state general obligation bond proceeds, the net proceeds of sale must be paid to the commissioner, and deposited in the state bond fund, ~~and used to pay or redeem or defease the outstanding state bonds in accordance with the commissioner's order authorizing their issuance,~~ and the proceeds are appropriated for this purpose; or

(2) if the state bond-financed property was acquired or bettered partly with state general obligation bond proceeds and partly with other money, the net proceeds of sale must be used: first, to pay to the state the amount of state general obligation bond proceeds used to acquire or better the property; second, to pay in full any outstanding public or private approved debt incurred to acquire or better the property; and third, any excess over the amount needed for those purposes must be divided in proportion to the shares contributed to the acquisition or betterment of the property and paid to the interested public and private entities, other than any private lender already paid in full, and the proceeds are appropriated for this purpose. ~~In calculating the share contributed by each entity, In those instances where state general obligation bonds were used to better property already owned by the recipient of the general obligation grant, the amount to be attributed to the owner of the property shall be include the fair market value of the property that was bettered by state bond proceeds at the time the betterment began.~~

~~When all of the net proceeds of sale have been applied as provided in this subdivision, this section no longer applies to the property.~~

This subdivision does not authorize any public officer or agency to sell any state bond-financed property and only regulates those sales. All sales of state bond-financed property must comply with this subdivision, the state law that authorizes the sale, and any orders of the commissioner intended to ensure the legality and tax-exempt status of the state general obligation bonds.

Subd. 3a. **Involuntary sale of property.** Notwithstanding subdivision 3, this subdivision applies to the sale of state bond-financed property by a lender that has provided money to acquire or better the property. Purchase by the lender in a foreclosure sale, acceptance of a deed in lieu of foreclosure, or enforcement of a security interest in personal property, by the lender, is not a sale. Following purchase by the lender, the lender shall not operate the property in a manner inconsistent with the governmental program established as provided in subdivision 2, paragraph (b). The lender shall exercise its best efforts to sell the property to a third party as soon as feasible following acquisition of marketable title to the property by the lender. A sale by the lender must be made as authorized by law ~~and~~, must be made for fair market value, and the proceeds must be applied as specified in subdivision 3.

Subd. 4. **Relation to other laws.** This section applies to all state bond financed property unless otherwise provided by law.

Subd. 5. **Program and property funding.** Recipients of general obligation grants from money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the recipient has the ability and a plan to fund the operation of the state bond-financed property and the program intended for the facility. A private nonprofit organization that leases or manages state bond-financed property, and must, before receipt of a facility acquired or bettered with general obligation grant money appropriated from the bond proceeds fund must demonstrate, provide to the commissioner of the agency making the grant an initial program implementation plan that establishes that the organization has the ability and there will be sufficient money to cover the cost of operation of the property and the program for a plan to fund the program intended for the facility. three-year period either from revenues generated by the state bond-financed property and the program or from other sources. Between 12 and 15 months after the receipt of a general obligation grant and on approximately the same date of each subsequent calendar year, the recipient of the general obligation grant must provide to the commissioner of the agency making the grant:

(1) a financial report and budget showing actual revenues and expenses associated with the operation of the property and program for the immediately preceding 12 months; and

(2) a projected budget for the next 12 months that shows that projected revenues will exceed projected expenses for the operation of the property and program during this period.

Subd. 6. **General applicability.** This section establishes requirements for the receipt and use of general obligation grants and the ownership and operation of state bond-financed property. General obligation grants may only be issued and used to finance the acquisition and betterment of public lands and buildings and other public improvements of a capital nature that are used to operate a governmental program, and for predesign and design activities for specifically identified projects that involve the operation of a governmental program or activity. A general obligation grant may not be used for general operating expenses, staffing, or general master planning. A public officer or agency that is the recipient of a general obligation grant must comply with this section in its use of the general obligation grant and operation, management, lease, and sale of state bond-financed property. A public officer or agency that uses the proceeds of a general obligation grant for any unauthorized purpose or in violation of this section must immediately repay the outstanding balance of the grant to the commissioner, and a failure

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to comply authorizes the commissioner to recover the outstanding balance as a setoff against any state aid provided to the public officer or agency.

This section does not create any new authority regarding the ownership, construction, rehabilitation, use, operation, lease, management, or sale of state bond-financed property, or the operation of the governmental program that will be operated on the property. Any authority that is needed to enter into a management contract or lease of property, to sell property, or to operate a governmental program or carry out any activity contained in the law that appropriates money for a general obligation grant must be provided by and contained in some other law.

This section applies to transactions involving state bond-financed property regardless of when acquired or bettered, unless otherwise provided by state law or unless the application would impair a legal obligation that was in effect on the effective date of this section as amended.

Subd. 7. **Grant agreement.** All general obligation grants must be evidenced by a grant agreement that specifies:

(1) how the general obligation grant will be used;

(2) the governmental program that will be operated on the state bond-financed property; and

(3) that the state bond-financed property must be operated in compliance with this section, all state and federal laws, and in a manner that will not cause the interest on the state general obligation bonds to be or become subject to federal income taxation for any reason. A grant agreement must comply with this section, the Minnesota Constitution, and all commissioner's orders, and also contain other provisions the commissioner of the agency making the grant deems appropriate. The commissioner shall draft and make available forms of grant agreements that satisfy the requirements of this subdivision.

Subd. 8. **Title records.** Every public officer or agency that is the recipient of a general obligation grant must promptly cause to be recorded in the official real estate title records maintained by the county recorder for the county or counties in which the state bond-financed property is located a declaration or other appropriate instrument in a form prescribed by the commissioner. Upon request and full compliance with this section and the applicable grant agreement, the commissioner and the commissioner of the agency making the grant shall execute and deliver to the requesting party a written release evidencing the release of the state bond-financed property from the provisions of this section, the grant agreement, and the declaration or other appropriate instrument.

8.1 Subd. 9. **Fund availability.** A general obligation grant is not available until there
8.2 has been full compliance with section 16A.502, any other applicable state and federal
8.3 laws, and any additional requirements in the law that appropriates money for the grant.

8.4 Subd. 10. **Match.** Where an appropriation of state bond proceeds requires that it be
8.5 matched, the match must be in the form of proceeds of general obligation bonds issued by
8.6 the public officer or agency, cash money that is not the proceeds of a borrowing, or in-kind
8.7 contributions approved by the commissioner, unless otherwise specifically authorized by
8.8 law, including the law that appropriates money for the general obligation grant.

8.9 Subd. 11. **Transfer between public officers and agencies.** (a) Where authorized by
8.10 state law, other than this section, and notwithstanding anything to the contrary contained in
8.11 this section, upon compliance with the following paragraphs, state bond-financed property
8.12 may be transferred between public officers and agencies for a nominal consideration.

8.13 (b) The transferor public officer or agency must determine by official action that the
8.14 state bond-financed property to be transferred is no longer useable or needed to carry out
8.15 the governmental program for which it was acquired or constructed.

8.16 (c) The transferee public officer or agency must determine by official action that the
8.17 property is needed or useful for a governmental program of the transferee.

8.18 (d) The transferee public officer or agency must enter into a new grant agreement
8.19 that will control the operation, management, and sale of the state bond-financed property
8.20 and the operation of the new public program that the transferee public officer or agency
8.21 will operate on the state bond-financed property.

8.22 (e) The new grant agreement and the official actions of the transferor public officer
8.23 or agency and the transferee public officer or agency must be filed with the commissioner.

8.24 (f) The transferee public officer or agency must execute a document in recordable
8.25 form in which the public officer or agency acknowledges that the use, operation,
8.26 management, lease, and sale of the state bond-financed property by the transferee public
8.27 officer or agency is subject to this section and the new grant agreement.

8.28 (g) The transfer must be consented to, in writing, by the commissioner and the
8.29 commissioner of the agency making the grant.

8.30 Subd. 12. **Termination.** State bond-financed property is subject to this section
8.31 and the applicable grant agreement until a sale occurs that complies with subdivision
8.32 3, after which the state bond-financed property is no longer subject to this section or
8.33 the applicable grant agreement.

8.34 Subd. 13. **Documentation.** A public officer or agency shall supply to the
8.35 commissioner whatever information and documentation the commissioner requests
8.36 in order to determine compliance with this section, any state or federal laws, and any

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9.1 additional requirements in the law that appropriated money for the grant used to acquire or
9.2 better state bond-financed property, and to ensure the legality and tax-exempt status of the
9.3 state general obligation bonds.

9.4 Subd. 14. **Actions by public officer or agency.** Any action or determination that
9.5 a public officer or agency is required to take or make under this section must be taken
9.6 or made by the body that establishes and votes on policy matters for the public officer
9.7 or agency. The public officer or agency may not delegate this responsibility to any other
9.8 entity or body.