

**SENATE**  
**STATE OF MINNESOTA**  
**NINETY-FIRST SESSION**

**S.F. No. 4139**

(SENATE AUTHORS: CARLSON)

DATE  
03/09/2020

D-PG  
5342

OFFICIAL STATUS  
Introduction and first reading  
Referred to State Government Finance and Policy and Elections

- 1.1 A bill for an act
- 1.2 relating to state government; changing designer selection board provisions;
- 1.3 amending Minnesota Statutes 2018, section 16B.33, subdivisions 1, 3, 3a;
- 1.4 Minnesota Statutes 2019 Supplement, section 16A.15, subdivision 3.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2019 Supplement, section 16A.15, subdivision 3, is amended
- 1.7 to read:
- 1.8 Subd. 3. **Allotment and encumbrance.** (a) A payment may not be made without prior
- 1.9 obligation. An obligation may not be incurred against any fund, allotment, or appropriation
- 1.10 unless the commissioner has certified a sufficient unencumbered balance or the accounting
- 1.11 system shows sufficient allotment or encumbrance balance in the fund, allotment, or
- 1.12 appropriation to meet it. The commissioner shall determine when the accounting system
- 1.13 may be used to incur obligations without the commissioner's certification of a sufficient
- 1.14 unencumbered balance. An expenditure or obligation authorized or incurred in violation of
- 1.15 this chapter is invalid and ineligible for payment until made valid. A payment made in
- 1.16 violation of this chapter is illegal. An employee authorizing or making the payment, or
- 1.17 taking part in it, and a person receiving any part of the payment, are jointly and severally
- 1.18 liable to the state for the amount paid or received. If an employee knowingly incurs an
- 1.19 obligation or authorizes or makes an expenditure in violation of this chapter or takes part
- 1.20 in the violation, the violation is just cause for the employee's removal by the appointing
- 1.21 authority or by the governor if an appointing authority other than the governor fails to do
- 1.22 so. In the latter case, the governor shall give notice of the violation and an opportunity to
- 1.23 be heard on it to the employee and to the appointing authority. A claim presented against
- 1.24 an appropriation without prior allotment or encumbrance may be made valid on investigation,

2.1 review, and approval by the agency head in accordance with the commissioner's policy, if  
2.2 the services, materials, or supplies to be paid for were actually furnished in good faith  
2.3 without collusion and without intent to defraud. The commissioner may then pay the claim  
2.4 just as properly allotted and encumbered claims are paid.

2.5 (b) The commissioner may approve payment for materials and supplies in excess of the  
2.6 obligation amount when increases are authorized by section 16C.03, subdivision 3.

2.7 (c) To minimize potential construction delay claims, an agency with a project funded  
2.8 by a building appropriation may allow a consultant or contractor to proceed with  
2.9 supplemental work within the limits of the appropriation before money is encumbered.  
2.10 Under this circumstance, the agency may requisition funds and allow consultants or  
2.11 contractors to expeditiously proceed with services or a construction sequence. While the  
2.12 consultant or contractor is proceeding, the agency shall immediately act to encumber the  
2.13 required funds.

2.14 Sec. 2. Minnesota Statutes 2018, section 16B.33, subdivision 1, is amended to read:

2.15 Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the  
2.16 meanings given them:

2.17 (b) "Agency" has the meaning given in section 16B.01.

2.18 (c) "Architect" means an architect or landscape architect registered to practice under  
2.19 sections 326.02 to 326.15.

2.20 (d) "Board" means the state Designer Selection Board.

2.21 (e) "Design-build" means the process of entering into and managing a single contract  
2.22 between the commissioner and the design-builder in which the design-builder agrees to  
2.23 both design and construct a project as specified in the contract at a guaranteed maximum  
2.24 or a fixed price.

2.25 (f) "Design-builder" means a person who proposes to design and construct a project in  
2.26 accordance with the requirements of section 16C.33.

2.27 (g) "Designer" means an architect or engineer, or a partnership, association, or corporation  
2.28 comprised primarily of architects or engineers or of both architects and engineers.

2.29 (h) "Engineer" means an engineer registered to practice under sections 326.02 to 326.15.

2.30 (i) "Person" includes an individual, corporation, partnership, association, or any other  
2.31 legal entity.

3.1 (j) "Primary designer" means the designer who is to have primary design responsibility  
3.2 for a project, and does not include designers who are merely consulted by the user agency  
3.3 and do not have substantial design responsibility, or designers who will or may be employed  
3.4 or consulted by the primary designer.

3.5 (k) "Project" means an undertaking to construct, erect, or remodel a building by or for  
3.6 the state or an agency. Capital projects exempt from the requirements of this section include  
3.7 demolition or decommissioning of state assets, hazardous materials abatement, repair and  
3.8 replacement of utility infrastructure, parking lot repairs, parking structure repairs, security  
3.9 upgrades, building systems replacement or repair including alterations to building interiors  
3.10 needed to accommodate the systems, and other asset preservation work not involving  
3.11 remodeling of occupied space.

3.12 (l) "User agency" means the agency undertaking a specific project. For projects  
3.13 undertaken by the state of Minnesota, "user agency" means the Department of Administration  
3.14 or a state agency with an appropriate delegation to act on behalf of the Department of  
3.15 Administration.

3.16 Sec. 3. Minnesota Statutes 2018, section 16B.33, subdivision 3, is amended to read:

3.17 Subd. 3. **Agencies must request designer.** (a) **Application.** Upon undertaking a project  
3.18 with an estimated cost greater than ~~\$2,000,000~~ \$4,000,000 or a planning project with  
3.19 estimated fees greater than ~~\$200,000~~ \$400,000, every user agency, except the Capitol Area  
3.20 Architectural and Planning Board, shall submit a written request for a primary designer for  
3.21 its project to the commissioner, who shall forward the request to the board. The University  
3.22 of Minnesota and the Minnesota State Colleges and Universities shall follow the process  
3.23 in subdivision 3a to select designers for their projects. The written request must include a  
3.24 description of the project, the estimated cost of completing the project, a description of any  
3.25 special requirements or unique features of the proposed project, and other information which  
3.26 will assist the board in carrying out its duties and responsibilities set forth in this section.

3.27 (b) **Reactivated project.** If a project for which a designer has been selected by the board  
3.28 becomes inactive, lapses, or changes as a result of project phasing, insufficient appropriations,  
3.29 or other reasons, the commissioner, the Minnesota State Colleges and Universities, or the  
3.30 University of Minnesota may, if the project is reactivated, retain the same designer to  
3.31 complete the project.

3.32 (c) **Fee limit reached after designer selected.** If a project initially estimated to be below  
3.33 the cost and planning fee limits of this subdivision has its cost or planning fees revised so  
3.34 that the limits are exceeded, the project must be referred to the board for designer selection

4.1 even if a primary designer has already been selected. In this event, the board may, without  
4.2 conducting interviews, elect to retain the previously selected designer if it determines that  
4.3 the interests of the state are best served by that decision and shall notify the commissioner  
4.4 of its determination.

4.5 (d) **Rate of inflation.** No later than December 31 of every fifth year, beginning in 2025,  
4.6 the commissioner shall determine the percentage increase in the rate of inflation, as measured  
4.7 by the Means Quarterly Construction Cost Index, during the four-year period preceding  
4.8 that year. The thresholds in paragraph (a) and subdivision 3a, paragraph (a), shall be increased  
4.9 by the percentage calculated by the commissioner to the nearest ten thousandth dollar.

4.10 Sec. 4. Minnesota Statutes 2018, section 16B.33, subdivision 3a, is amended to read:

4.11 Subd. 3a. **Higher education projects.** (a) When the University of Minnesota or the  
4.12 Minnesota State Colleges and Universities undertakes a project involving construction or  
4.13 major remodeling, as defined in section 16B.335, subdivision 1, with an estimated cost  
4.14 greater than ~~\$2,000,000~~ \$4,000,000 or a planning project with estimated fees greater than  
4.15 ~~\$200,000~~ \$400,000, the system shall submit a written request for a primary designer to the  
4.16 commissioner, as provided in subdivision 3.

4.17 (b) When the University of Minnesota or the Minnesota State Colleges and Universities  
4.18 undertakes a project involving renovation, repair, replacement, or rehabilitation, the system  
4.19 office may submit a written request for a primary designer to the commissioner as provided  
4.20 in subdivision 3.

4.21 (c) For projects at the University of Minnesota or the State Colleges and Universities,  
4.22 the board shall select at least two primary designers under subdivision 4 for recommendation  
4.23 to the Board of Regents or the Board of Trustees. Meeting records or written evaluations  
4.24 that document the final selection are public records. The Board of Regents or the Board of  
4.25 Trustees shall notify the commissioner of the designer selected from the recommendations.