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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1863

02/16/2023 Authored by Klevorn
The bill was read for the first time and referred to the Committee on State and Local Government Finance and Policy

1.1 A bill for an act
1.2 relating to state government; changing provisions for state procurement, finance,
1.3 asset preservation account, and Designer Selection Board; amending Minnesota
1.4 Statutes 2022, sections 16A.15, subdivision 3; 16A.632, subdivision 2; 16B.307,
1.5 subdivision 1; 16B.33, subdivisions 1, 3, 3a, by adding a subdivision; 16C.10,
1.6 subdivision 2; 16C.251; 16C.32, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2022, section 16A.15, subdivision 3, is amended to read:

1.9 Subd. 3. Allotment and encumbrance. (a) A payment may not be made without prior
1.10 obligation. An obligation may not be incurred against any fund, allotment, or appropriation
1.11 unless the commissioner has certified a sufficient unencumbered balance or the accounting
1.12 system shows sufficient allotment or encumbrance balance in the fund, allotment, or
1.13 appropriation to meet it. The commissioner shall determine when the accounting system
1.14 may be used to incur obligations without the commissioner's certification of a sufficient
1.15 unencumbered balance. An expenditure or obligation authorized or incurred in violation of
1.16 this chapter is invalid and ineligible for payment until made valid. A payment made in
1.17 violation of this chapter is illegal. An employee authorizing or making the payment, or
1.18 taking part in it, and a person receiving any part of the payment, are jointly and severally
1.19 liable to the state for the amount paid or received. If an employee knowingly incurs an
1.20 obligation or authorizes or makes an expenditure in violation of this chapter or takes part
1.21 in the violation, the violation is just cause for the employee's removal by the appointing
1.22 authority or by the governor if an appointing authority other than the governor fails to do
1.23 so. In the latter case, the governor shall give notice of the violation and an opportunity to
1.24 be heard on it to the employee and to the appointing authority. A claim presented against

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

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

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

2.15 Sec. 2. Minnesota Statutes 2022, section 16A.632, subdivision 2, is amended to read:

2.16 Subd. 2. **Standards.** (a) Article XI, section 5, clause (a), of the constitution states general  
 2.17 obligation bonds may be issued to finance only the acquisition or betterment of state land,  
 2.18 buildings, and improvements of a capital nature. In interpreting this and applying it to the  
 2.19 purposes of the program contemplated in this section, the following standards are adopted  
 2.20 for the disbursement of money from the capital asset preservation and replacement account:

2.21 (b) ~~No~~ An appropriation under this section may not be used to acquire new land, or  
 2.22 buildings, or major new improvements will be acquired. These projects, including all capital  
 2.23 expenditures required to permit their effective use for the intended purpose on completion,  
 2.24 will be estimated and provided for individually through a direct appropriation for each  
 2.25 project. or to construct new buildings or additions.

2.26 (c) An expenditure will be made from the account only when it is a capital expenditure  
 2.27 on a capital asset previously owned by the state, within the meaning of accepted accounting  
 2.28 principles as applied to public expenditures. The commissioner of administration will consult  
 2.29 with the commissioner of management and budget to the extent necessary to ensure this  
 2.30 and will furnish the commissioner of management and budget a list of projects to be financed  
 2.31 from the account in order of their priority. The commissioner shall also furnish each revision  
 2.32 of the list. The legislature assumes that many provisions for preservation and replacement  
 2.33 of portions of existing capital assets will constitute betterments and capital improvements  
 2.34 within the meaning of the constitution and capital expenditures under correct accounting

3.1 principles, and will be financed more efficiently and economically under the program than  
 3.2 by direct appropriations for specific projects. However, the purpose of the program is to  
 3.3 accumulate data showing how additional costs may be saved by appropriating money from  
 3.4 the general fund for preservation measures, the necessity of which is predictable over short  
 3.5 periods.

3.6 (d) The commissioner of administration will furnish instructions to agencies to apply  
 3.7 for funding of capital expenditures for preservation and replacement from the account, will  
 3.8 review applications, will make initial allocations among types of eligible projects enumerated  
 3.9 below, will determine priorities, and will allocate money in priority order until the available  
 3.10 appropriation has been committed. An appropriation under this section may not be used to  
 3.11 make minor emergency repairs.

3.12 (e) Categories of projects considered likely to be most needed and appropriate for  
 3.13 financing are the following:

3.14 (1) ~~unanticipated emergencies of all kinds, for which a relatively small amount should~~  
 3.15 ~~be initially reserved, replaced from money allocated to low-priority projects, if possible, as~~  
 3.16 ~~emergencies occur, and used for stabilization rather than replacement if the cost would~~  
 3.17 ~~exhaust the account and should be specially appropriated~~ involving impacts to state-owned  
 3.18 property;

3.19 (2) major projects to remove address life safety hazards, like for existing buildings and  
 3.20 sites, including but not limited to security, replacement of mechanical and other building  
 3.21 systems, building code violations, or structural defects, at costs not large enough to require  
 3.22 major capital requests to the legislature;

3.23 (3) ~~elimination~~ removal or containment of hazardous substances like asbestos or PCBs;

3.24 (4) ~~moderate cost replacement~~ major projects to replace and repair of roofs, windows,  
 3.25 tuckpointing, and structural members necessary to preserve the exterior and interior of  
 3.26 existing buildings; and

3.27 (5) up to ten percent of an appropriation awarded under this section may be used for  
 3.28 design costs for projects eligible to be funded from this account in anticipation of future  
 3.29 funding from the account.

3.30 Sec. 3. Minnesota Statutes 2022, section 16B.307, subdivision 1, is amended to read:

3.31 Subdivision 1. **Standards.** (a) Article XI, section 5, clause (a), of the constitution requires  
 3.32 that state general obligation bonds be issued to finance only the acquisition or betterment  
 3.33 of public land, buildings, and other public improvements of a capital nature. Money

4.1 appropriated for asset preservation, whether from state bond proceeds or from other revenue,  
4.2 is subject to the following additional limitations:

4.3 (b) An appropriation for asset preservation may not be used to acquire new land nor to  
4.4 acquire or construct new buildings, or additions to buildings, ~~or major new improvements.~~

4.5 (c) An appropriation for asset preservation may be used only for a capital expenditure  
4.6 on a capital asset previously owned by the state, within the meaning of generally accepted  
4.7 accounting principles as applied to public expenditures. The commissioner of administration  
4.8 will consult with the commissioner of management and budget to the extent necessary to  
4.9 ensure this and will furnish the commissioner of management and budget a list of projects  
4.10 to be financed from the account in order of their priority. The legislature assumes that many  
4.11 projects for preservation and replacement of portions of existing capital assets will constitute  
4.12 betterments and capital improvements within the meaning of the constitution and capital  
4.13 expenditures under generally accepted accounting principles, and will be financed more  
4.14 efficiently and economically under this section than by direct appropriations for specific  
4.15 projects.

4.16 (d) Categories of projects considered likely to be most needed and appropriate for asset  
4.17 preservation appropriations are the following:

4.18 (1) major projects to remove address life safety hazards, like for existing buildings and  
4.19 sites, including but not limited to security, building code violations, or structural defects.  
4.20 Notwithstanding paragraph (b), a project in this category may include an addition to an  
4.21 existing building if it is a required component of the hazard ~~removal~~ abatement project;

4.22 (2) projects to eliminate or contain hazardous substances like asbestos or lead paint;

4.23 (3) major projects to address accessibility and building code violations; replace or repair  
4.24 roofs, windows, tuckpointing, mechanical ~~or~~ electrical, plumbing or other building systems,  
4.25 utility infrastructure, and tunnels; make site renovations improvements necessary to support  
4.26 building use; and repair structural components necessary to preserve the exterior and interior  
4.27 of existing buildings; and

4.28 (4) major projects to renovate repair parking structures facilities and surface lots.

4.29 (e) Up to ten percent of an appropriation subject to this section may be used for design  
4.30 costs for projects eligible to be funded under this section in anticipation of future asset  
4.31 preservation appropriations.

5.1 Sec. 4. Minnesota Statutes 2022, section 16B.33, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

5.23 (k) "Project" means an undertaking to construct, erect, or remodel a building by or for  
5.24 the state or an agency. Capital projects exempt from the requirements of this section include  
5.25 demolition or decommissioning of state assets; hazardous materials abatement; repair and  
5.26 replacement of utility infrastructure, parking lots, and parking structures; security upgrades;  
5.27 building systems replacement or repair including alterations to building interiors needed to  
5.28 accommodate the systems; and other asset preservation work not involving remodeling of  
5.29 occupied space.

5.30 (l) "User agency" means the agency undertaking a specific project. For projects  
5.31 undertaken by the state of Minnesota, "user agency" means the Department of Administration

6.1 or a state agency with an appropriate delegation to act on behalf of the Department of  
6.2 Administration.

6.3 Sec. 5. Minnesota Statutes 2022, section 16B.33, subdivision 3, is amended to read:

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

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

6.19 (c) **Fee limit reached after designer selected.** If a project initially estimated to be below  
6.20 the cost and planning fee limits of this subdivision has its cost or planning fees revised so  
6.21 that the limits are exceeded, the project must be referred to the board for designer selection  
6.22 even if a primary designer has already been selected. In this event, the board may, without  
6.23 conducting interviews, elect to retain the previously selected designer if it determines that  
6.24 the interests of the state are best served by that decision and shall notify the commissioner  
6.25 of its determination.

6.26 Sec. 6. Minnesota Statutes 2022, section 16B.33, subdivision 3a, is amended to read:

6.27 Subd. 3a. **Higher education projects.** (a) When the University of Minnesota or the  
6.28 Minnesota State Colleges and Universities undertakes a project involving construction or  
6.29 major remodeling, as defined in section 16B.335, subdivision 1, with an estimated cost  
6.30 greater than ~~\$2,000,000~~ \$4,000,000 or a planning project with estimated fees greater than  
6.31 ~~\$200,000~~ \$400,000, the system shall submit a written request for a primary designer to the  
6.32 commissioner, as provided in subdivision 3.

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

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

7.10 Sec. 7. Minnesota Statutes 2022, section 16B.33, is amended by adding a subdivision to  
 7.11 read:

7.12 Subd. 6. **Rate of inflation.** No later than December 31 of every fifth year starting in  
 7.13 2025, the commissioner shall determine the percentage increase in the rate of inflation, as  
 7.14 measured by the Means Quarterly Construction Cost Index, during the four-year period  
 7.15 preceding that year. The thresholds in subdivisions 3, paragraph (a); and 3a, paragraph (a),  
 7.16 shall be increased by the percentage calculated by the commissioner to the nearest  
 7.17 ten-thousandth dollar.

7.18 Sec. 8. Minnesota Statutes 2022, section 16C.10, subdivision 2, is amended to read:

7.19 Subd. 2. **Emergency acquisition.** The solicitation process described in this chapter and  
 7.20 chapter 16B is not required in emergencies. In emergencies, the commissioner may make  
 7.21 or authorize any purchases necessary for the design, construction, repair, rehabilitation, and  
 7.22 improvement of a ~~state-owned~~ publicly owned structure or may make or authorize an agency  
 7.23 to do so and may purchase, or may authorize an agency to purchase, any goods, services,  
 7.24 or utility services directly for immediate use. This provision applies to projects conducted  
 7.25 by Minnesota State Colleges and Universities.

7.26 Sec. 9. Minnesota Statutes 2022, section 16C.251, is amended to read:

7.27 **16C.251 BEST AND FINAL OFFER.**

7.28 A "best and final offer" solicitation process may not be used for building and construction  
 7.29 contracts awarded based on competitive bids.

8.1 Sec. 10. Minnesota Statutes 2022, section 16C.32, subdivision 1, is amended to read:

8.2 Subdivision 1. **Definitions.** As used in sections 16C.32 to 16C.35, the following terms  
8.3 have the meanings given them, unless the context clearly indicates otherwise:

8.4 (1) "acceptance" means a formal resolution of the commissioner authorizing the execution  
8.5 of a design-build, construction manager at risk, or job order contracting contract;

8.6 (2) "agency" means any state officer, employee, board, commission, authority,  
8.7 department, or other agency of the executive branch of state government. Unless specifically  
8.8 indicated otherwise, as used in sections 16C.32 to 16C.35, agency also includes the Minnesota  
8.9 State Colleges and Universities;

8.10 (3) "architect" means an architect or landscape architect registered to practice under  
8.11 sections 326.02 to 326.15;

8.12 (4) "board" means the state Designer Selection Board, unless the estimated cost of the  
8.13 project is less than ~~\$2,000,000~~ the amount specified in section 16B.33, subdivision 3, in  
8.14 which case the commissioner may act as the board;

8.15 (5) "Capitol Area Architectural and Planning Board" means the board established to  
8.16 govern the Capitol Area under chapter 15B;

8.17 (6) "commissioner" means the commissioner of administration or the Board of Trustees  
8.18 of the Minnesota State Colleges and Universities, whichever controls a project;

8.19 (7) "construction manager at risk" means a person who is selected by the commissioner  
8.20 to act as a construction manager to manage the construction process, which includes, but  
8.21 is not limited to, responsibility for the price, schedule, and workmanship of the construction  
8.22 performed in accordance with the procedures of section 16C.34;

8.23 (8) "construction manager at risk contract" means a contract for construction of a project  
8.24 between a construction manager at risk and the commissioner, which contract shall include  
8.25 a guaranteed maximum price, construction schedule, and workmanship of the construction  
8.26 performed;

8.27 (9) "design-build contract" means a contract between the commissioner and a  
8.28 design-builder to furnish the architectural, engineering, and related design services as well  
8.29 as the labor, materials, supplies, equipment, and construction services for a project;

8.30 (10) "design and price-based proposal" means the proposal to be submitted by a  
8.31 design-builder in the design and price-based selection process, as described in section

9.1 16C.33, which proposal meets the requirements of section 16C.33, subdivision 7, paragraph  
9.2 (c), in such detail as required in the request for proposals;

9.3 (11) "design and price-based selection" means the selection of a design-builder as  
9.4 described in section 16C.33, subdivision 8;

9.5 (12) "design criteria package" means performance criteria prepared by a design criteria  
9.6 professional who shall be either an employee of the commissioner or shall be selected in  
9.7 compliance with section 16B.33, 16C.08, or 16C.087;

9.8 (13) "design criteria professional" means a person licensed under chapter 326, or a person  
9.9 who employs an individual or individuals licensed under chapter 326, required to design a  
9.10 project, and who is employed by or under contract to the commissioner to provide  
9.11 professional, architectural, or engineering services in connection with the preparation of  
9.12 the design criteria package;

9.13 (14) "guaranteed maximum price" means the maximum amount that a design-builder,  
9.14 construction manager at risk, or subcontractor will be paid pursuant to a contract to perform  
9.15 a defined scope of work;

9.16 (15) "guaranteed maximum price contract" means a contract under which a design-builder,  
9.17 construction manager, or subcontractor is paid on the basis of their actual cost to perform  
9.18 the work specified in the contract plus an amount for overhead and profit, the sum of which  
9.19 must not exceed the guaranteed maximum price set forth in the contract;

9.20 (16) "job order contracting" means a project delivery method that requests a limited  
9.21 number of bids from a list of qualified contractors, selected from a registry of qualified  
9.22 contractors who have been prescreened and who have entered into master contracts with  
9.23 the commissioner, as provided in section 16C.35;

9.24 (17) "past performance" or "experience" does not include the exercise or assertion of a  
9.25 person's legal rights;

9.26 (18) "person" includes an individual, corporation, partnership, association, or any other  
9.27 legal entity;

9.28 (19) "project" means an undertaking to construct, alter, or enlarge a building, structure,  
9.29 or other improvements, except highways and bridges, by or for the state or an agency;

9.30 (20) "qualifications-based selection" means the selection of a design-builder as provided  
9.31 in section 16C.33;

10.1 (21) "request for qualifications" means the document or publication soliciting  
10.2 qualifications for a design-build, construction manager at risk, or job order contracting  
10.3 contract as provided in sections 16C.33 to 16C.35;

10.4 (22) "request for proposals" means the document or publication soliciting proposals for  
10.5 a design-build or construction manager at risk contract as provided in sections 16C.33 and  
10.6 16C.34; and

10.7 (23) "trade contract work" means the furnishing of labor, materials, or equipment by  
10.8 contractors or vendors that are incorporated into the completed project or are major  
10.9 components of the means of construction. Work performed by trade contractors involves  
10.10 specific portions of the project, but not the entire project.