




Office Memorandum

Date: January 3, 2017

To: Representative Kurt Daudt, Speaker of the House
Senator Paul Gazelka, Senate Majority Leader
Representative Melissa Hortman, House Minority Leader
Senator Tom Bakk, Senate Minority Leader

From: Commissioner Myron Frans 

Phone: 651-201-8011

The purpose of this memo is to recommend federal funds that should not be subject to review by the Legislative Advisory Commission (LAC). The recommendation was a legislative requirement in the Laws of 2016, Ch. 189, Article 13, Section 65. The relevant session law is:

The commissioner of management and budget, in consultation with legislative nonpartisan fiscal staff, shall review and recommend the federal funds that should not be subject to review by the Legislative Advisory Commission, under Minnesota Statutes, section 3.3005. The commissioner shall make this recommendation before the 2017 regular legislative session.

Background

MMB facilitates agency submissions to the LAC for review of federal funds in October, in the Governor's biennial budget, and during each legislative session. Occasionally, an urgent request is made where federal funds are unanticipated and must be encumbered before the next scheduled LAC approval opportunity. In general, agencies include the federal funds they receive or expect to receive in the federal funds summary in the Governor's budget, regardless of whether LAC approval is required. They are included to create the most complete inventory of federal funds and to make that inventory available to legislators and the general public in a transparent way.

Consultation

MMB has gathered and reviewed information on the legal authority for agencies to accept and expend federal funds in current law. That information has been shared and discussed with lead fiscal staff in both the House of Representatives and in the Senate.

Recommendations

Relying on current law for agencies to accept and expend federal funds, MMB recommends that the following should not be subject to LAC review. All other federal funds should be subject to LAC review in accordance with M.S. 3.3005.

1. **Agency Federal Funds Exempted in Statute** - Some agencies, including the Minnesota Historical Society, the University of Minnesota, and the Minnesota State Colleges and Universities have authority in M.S. 3.3005, Subd. 1 or in other sections of statute or session law explicitly exempting them from LAC review. The legislature has made it clear in law already that these agencies are exempted. As such, MMB recommends that where that exemption exists, and where funds from these entities are passed through to other state agencies, that federal funds for those agencies continue to be excluded from LAC review.
2. **Agency Authority to Expend Federal Funds Already Exists** - Some agencies have authority in their governing statutes allowing them to accept and expend federal funds, apart from the LAC review process defined in M.S. 3.3005. For example, the Board of Water and Soil Resources may accept and expend funds as follows in M.S. 103B.101, Subd. 9:

The board may accept grants, gifts, donations, or contributions in money, services, materials, or otherwise from the United States, a state agency, or other source to achieve an authorized or delegated purpose. The board may enter into a contract or agreement necessary or appropriate to accomplish the transfer. The board may conduct or participate in local, state, or federal programs or projects that have as one purpose or effect the preservation or enhancement of water and soil resources and may enter into and administer agreements with local governments or landowners or their designated agents as part of those programs or projects. The board may receive and expend money to acquire conservation easements, as defined in chapter 84C, on behalf of the state and federal government consistent with the Camp Ripley's Army Compatible Use Buffer Project. Any money received is hereby deposited in an account in a fund other than the general fund and appropriated and dedicated for the purpose for which it is granted.

Reading this statute in concert with the LAC review described in M.S. 3.3005 may lead to conflicting results because the agency may be able to expend federal funds per their own governing statute, but may not in the event of a contrary LAC recommendation. M.S. 645.26 provides that in the event of a conflict, the particular or specific law prevails over the general law and that the later law enacted prevails over the earlier. Section 3.3005 was initially enacted in 1979 and provides the general rule. The example included here for the Board was enacted in 1997, and as such has more specific and more recent authority to expend federal funds. In cases like this, where agencies have language that is more recently enacted in law and is more specific than the general rule, federal funds both received by the agency and passed through to other entities are excluded from the LAC review process.

3. **State Share is Direct Appropriated by the Legislature** - Some agencies receive a state appropriation for the state's share of federal-state jointly funded programs. For example, the Department of Human Services receives a general fund appropriation for nearly all of its

forecasted programs, which constitutes the state share of those programs. The agency also has specific authority in state law, which appropriates federal funds to them in M.S. 256.011, Subd. 3:

The commissioner of human services shall negotiate with the federal government, or any agency, bureau, or department thereof, for the purpose of securing or obtaining any grants or aids. Any grants or aids thus secured or received are appropriated to the commissioner of human services and made available for the uses and purposes for which they were received but shall be used to reduce the direct appropriations provided by law unless federal law prohibits such action or unless the commissioner of human services obtains approval of the governor who shall seek the advice of the Legislative Advisory Commission.

Consistent with current law and practice, MMB recommends in circumstances where a state appropriation is required to match federal funding in order to pay for the entire cost of the program, that those federal funds be excluded from the LAC review process. The legislature already approves the federal funds by virtue of appropriating the matching state funds.

4. **Federal Funds Received from Non-state Entities** - Various agencies receive federal funding that is passed through from non-state entities. For example, the Department of Education has authority in M.S. 127A.08, Subd. 5 to receive federal money from a non-state entity.

The commissioner may apply for and receive grants and gifts administered by agencies of the state and other government or nongovernment sources. Any money received is hereby appropriated and dedicated for the purpose for which it is granted. The commissioner must annually report to the education policy and finance committees of the legislature by February 15 a list of all grants and gifts received and applied for under this subdivision.

Agencies may be able to access resources through foundations, local governments, etc. where the originating funding was from the federal government. Amounts received may be a combination of federal and other funds, received from the same entity. In those cases, the state may not have transparency to the origin of those funds, but only to the final award from the grantor. Agencies that have already been provided authority by the legislature to accept and spend such funds in should be exempt from the LAC review in M.S. 3.3005.

5. **Federal Funds Received Through Contract Arrangements** - Various agencies contract for work with the federal government or other entities and receive federal funds in payment. For example, the Department of Agriculture has the authority as follows in M.S. 17.03, Subd. 3(b):

The commissioner may apply for, receive, and disburse federal funds made available to the state by federal law or regulation for any purpose related to the powers and duties of the commissioner. All money received by the commissioner under this paragraph shall be deposited in the state treasury and is appropriated to the commissioner for the purposes for which it was received. Money made available under this paragraph may be paid pursuant to applicable federal regulations and rate structures. Money received under this paragraph does not cancel and is available for expenditure according to federal law. The commissioner may contract with and enter into grant agreements with persons, organizations, educational institutions, firms,

corporations, other state agencies, and any agency or instrumentality of the federal government to carry out agreements made with the federal government relating to the expenditure of money under this paragraph. Bid requirements under chapter 16C do not apply to contracts under this paragraph.

In this case, federal funds are received through a contract for work, and the Legislature has already provided the authority to contract in state law. In this and other situations where those same criteria exist, MMB recommends such funds be exempt from LAC review in M.S. 3.3005.

We thank you for the opportunity to provide our recommendations. Please contact Angela Vogt (651-201-8036) from my staff if you have any questions regarding this analysis.

cc: Julie Rosen, Senate Finance Chair
Representative Jim Knobloch, House Ways and Means Chair
Bill Marx, House Chief Fiscal Analyst
Eric Nauman, Senate Chief Fiscal Analyst