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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3091

02/03/2022 Authored by Nelson, M., The bill was read for the first time and referred to the Committee on State Government Finance and Elections

1.1 A bill for an act
1.2 relating to state government; changing certain provisions under the Department
1.3 of Administration; amending Minnesota Statutes 2020, sections 16A.15, subdivision
1.4 3; 16B.33, subdivisions 1, 3, 3a, by adding a subdivision; 16C.10, subdivision 2;
1.5 16C.32, subdivision 1; 138.081, subdivision 3; 138.665, subdivision 2; proposing
1.6 coding for new law in Minnesota Statutes, chapter 16B; repealing Minnesota
1.7 Statutes 2020, sections 179.90; 179.91.

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

1.9 Section 1. Minnesota Statutes 2020, section 16A.15, subdivision 3, is amended to read:

1.10 Subd. 3. Allotment and encumbrance. (a) A payment may not be made without prior
1.11 obligation. An obligation may not be incurred against any fund, allotment, or appropriation
1.12 unless the commissioner has certified a sufficient unencumbered balance or the accounting
1.13 system shows sufficient allotment or encumbrance balance in the fund, allotment, or
1.14 appropriation to meet it. The commissioner shall determine when the accounting system
1.15 may be used to incur obligations without the commissioner's certification of a sufficient
1.16 unencumbered balance. An expenditure or obligation authorized or incurred in violation of
1.17 this chapter is invalid and ineligible for payment until made valid. A payment made in
1.18 violation of this chapter is illegal. An employee authorizing or making the payment, or
1.19 taking part in it, and a person receiving any part of the payment, are jointly and severally
1.20 liable to the state for the amount paid or received. If an employee knowingly incurs an
1.21 obligation or authorizes or makes an expenditure in violation of this chapter or takes part
1.22 in the violation, the violation is just cause for the employee's removal by the appointing
1.23 authority or by the governor if an appointing authority other than the governor fails to do
1.24 so. In the latter case, the governor shall give notice of the violation and an opportunity to
1.25 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 2020, section 16B.33, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

2.31 (i) "Person" includes an individual, corporation, partnership, association, or any other
2.32 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 lots, and parking structures; security upgrades;
 3.9 building systems replacement or repair, including alterations to building interiors needed
 3.10 to accommodate the systems; and other asset preservation work not involving remodeling
 3.11 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 2020, 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 Sec. 4. Minnesota Statutes 2020, section 16B.33, subdivision 3a, is amended to read:

4.6 Subd. 3a. **Higher education projects.** (a) When the University of Minnesota or the
 4.7 Minnesota State Colleges and Universities undertakes a project involving construction or
 4.8 major remodeling, as defined in section 16B.335, subdivision 1, with an estimated cost
 4.9 greater than ~~\$2,000,000~~ \$4,000,000 or a planning project with estimated fees greater than
 4.10 ~~\$200,000~~ \$400,000, the system shall submit a written request for a primary designer to the
 4.11 commissioner, as provided in subdivision 3.

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

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

4.21 Sec. 5. Minnesota Statutes 2020, section 16B.33, is amended by adding a subdivision to
 4.22 read:

4.23 Subd. 6. **Rate of inflation.** No later than December 31 of every fifth year starting in
 4.24 2025, the commissioner shall determine the percentage increase in the rate of inflation, as
 4.25 measured by the means quarterly construction cost index, during the four-year period
 4.26 preceding that year. The thresholds in subdivisions 3, paragraph (a); and 3a, paragraph (a),
 4.27 shall be increased by the percentage calculated by the commissioner to the nearest
 4.28 ten-thousandth dollar.

4.29 Sec. 6. **[16B.361] OFFICE OF COLLABORATION AND DISPUTE RESOLUTION.**

4.30 Subdivision 1. **Duties of the office.** The commissioner of administration shall maintain
 4.31 the Office of Collaboration and Dispute Resolution, formerly codified at sections 179.90
 4.32 and 179.91 within the Department of Administration. The office must:

5.1 (1) assist state agencies; offices of the executive, legislative, and judicial branches; Tribal
5.2 governments; and units of local government in improving collaboration, dispute resolution,
5.3 and public engagement;

5.4 (2) promote and utilize collaborative dispute resolution models and processes based on
5.5 documented best practices, including but not limited to:

5.6 (i) establishing criteria and procedures for identifying and assessing collaborative dispute
5.7 resolution projects;

5.8 (ii) designing collaborative dispute resolution processes to foster trust, relationships,
5.9 mutual understanding, and consensus-based solutions;

5.10 (iii) preparing and training participants; and

5.11 (iv) utilizing collaborative techniques, processes, and standards through facilitated
5.12 meetings to develop wise and durable solutions;

5.13 (3) support collaboration and dispute resolution in the public and private sector by
5.14 providing technical assistance and information on best practices and new developments in
5.15 dispute resolution options;

5.16 (4) promote the broad use of community mediation in the state;

5.17 (5) ensure that all areas of the state have access to services by providing grants to private
5.18 nonprofit entities certified by the state court administrator under chapter 494 that assist in
5.19 resolution of disputes; and

5.20 (6) educate the public and government entities on collaboration, dispute resolution
5.21 options, and public engagement.

5.22 Subd. 2. **Grant applications; appropriation.** The commissioner may apply for and
5.23 receive money made available from federal, state, or other sources for the purposes of
5.24 carrying out the mission of the Office of Collaboration and Dispute Resolution. Funds
5.25 received under this subdivision are appropriated to the commissioner for their intended
5.26 purpose.

5.27 Subd. 3. **Grant awards.** The commissioner shall to the extent funds are appropriated
5.28 for this purpose make grants to private nonprofit community mediation entities certified by
5.29 the state court administrator under chapter 494 that assist in resolution of disputes. The
5.30 commissioner shall establish a grant review committee to assist in the review of grant
5.31 applications and the allocation of grants under this section.

6.1 Subd. 4. **Eligibility.** To be eligible for a grant under this section, a nonprofit organization
 6.2 must meet the requirements of section 494.05, subdivision 1, clauses (1), (2), (4), and (5).

6.3 Subd. 5. **Conditions and exclusions.** A nonprofit entity receiving a grant must agree to
 6.4 comply with guidelines adopted by the state court administrator under section 494.015,
 6.5 subdivision 1. Policies adopted under sections 16B.97 and 16B.98 apply to grants under
 6.6 this section. The exclusions in section 494.03 apply to grants under this section.

6.7 Subd. 6. **Reporting.** Grantees must report data required under chapter 494 to evaluate
 6.8 quality and outcomes.

6.9 Sec. 7. Minnesota Statutes 2020, section 16C.10, subdivision 2, is amended to read:

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

6.17 Sec. 8. Minnesota Statutes 2020, section 16C.32, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

7.9 (8) "construction manager at risk contract" means a contract for construction of a project
7.10 between a construction manager at risk and the commissioner, which contract shall include
7.11 a guaranteed maximum price, construction schedule, and workmanship of the construction
7.12 performed;

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

7.16 (10) "design and price-based proposal" means the proposal to be submitted by a
7.17 design-builder in the design and price-based selection process, as described in section
7.18 16C.33, which proposal meets the requirements of section 16C.33, subdivision 7, paragraph
7.19 (c), in such detail as required in the request for proposals;

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

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

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

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

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

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

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

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

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

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

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

8.20 (22) "request for proposals" means the document or publication soliciting proposals for
8.21 a design-build or construction manager at risk contract as provided in sections 16C.33 and
8.22 16C.34; and

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

8.27 Sec. 9. Minnesota Statutes 2020, section 138.081, subdivision 3, is amended to read:

8.28 Subd. 3. **Administration of federal act.** The ~~Department of Administration~~ Minnesota
8.29 Historical Society is designated as the state agency to administer the provisions of the federal
8.30 act providing for the preservation of historical and archaeological data, United States Code,
8.31 title 46 54, ~~sections 469 to 469C~~ section 312501, as amended, insofar as the provisions of
8.32 the act provide for implementation by the state.

9.1 Sec. 10. Minnesota Statutes 2020, section 138.665, subdivision 2, is amended to read:

9.2 Subd. 2. **Mediation Consultation.** The state, state departments, agencies, and political
9.3 subdivisions, including the Board of Regents of the University of Minnesota, have a
9.4 responsibility to protect the physical features and historic character of properties designated
9.5 in sections 138.662 and 138.664 or listed on the National Register of Historic Places created
9.6 by Public Law 89-665. Before carrying out any undertaking that will affect designated or
9.7 listed properties, or funding or licensing an undertaking by other parties, the state department
9.8 or agency shall consult with the State Historic Preservation Office pursuant to the ~~society's~~
9.9 State Historic Preservation Office's established procedures to determine appropriate
9.10 treatments and to seek ways to avoid and mitigate any adverse effects on designated or
9.11 listed properties. If the state department or agency and the State Historic Preservation Office
9.12 agree in writing on a suitable course of action, the project may proceed. If the parties cannot
9.13 agree, any one of the parties may request that the governor appoint and convene a mediation
9.14 task force consisting of five members, two appointed by the governor, the chair of the State
9.15 Review Board of the State Historic Preservation Office, the commissioner of administration
9.16 or the commissioner's designee, and one member ~~who is not an employee of the Minnesota~~
9.17 ~~Historical Society~~ appointed by the director of the Minnesota Historical Society. The two
9.18 appointees of the governor and ~~the one~~ of the director of the society shall be qualified by
9.19 training or experience in one or more of the following disciplines: (1) history; (2)
9.20 archaeology; and (3) architectural history. The mediation task force is not subject to the
9.21 conditions of section 15.059. This subdivision does not apply to section 138.662, subdivision
9.22 24, and section 138.664, subdivisions 8 and 111.

9.23 Sec. 11. **REPEALER.**

9.24 Minnesota Statutes 2020, sections 179.90; and 179.91, are repealed.

179.90 OFFICE OF COLLABORATION AND DISPUTE RESOLUTION.

The commissioner of mediation services shall establish an Office of Collaboration and Dispute Resolution within the bureau. The office must:

- (1) promote the broad use of community mediation in the state, ensuring that all areas of the state have access to services by providing grants to private nonprofit entities certified by the state court administrator under chapter 494 that assist in resolution of disputes;
- (2) assist state agencies, offices of the executive, legislative, and judicial branches, and units of local government in improving collaboration and dispute resolution;
- (3) support collaboration and dispute resolution in the public and private sector by providing technical assistance and information on best practices and new developments in dispute resolution options;
- (4) educate the public and governmental entities on dispute resolution options; and
- (5) promote and utilize collaborative dispute resolution models and processes based on documented best practices including, but not limited to, the Minnesota Solutions model:
 - (i) establishing criteria and procedures for identification and assessment of dispute resolution projects;
 - (ii) designating projects and appointing impartial convenors by the commissioner or the commissioner's designee;
 - (iii) forming multidisciplinary conflict resolution teams; and
 - (iv) utilizing collaborative techniques, processes, and standards through facilitated meetings until consensus among parties is reached in resolving a dispute.

179.91 GRANTS.

Subdivision 1. **Authority.** The commissioner of mediation services shall to the extent funds are appropriated for this purpose, make grants to private nonprofit community mediation entities certified by the state court administrator under chapter 494 that assist in resolution of disputes. The commissioner shall establish a grant review committee to assist in the review of grant applications and the allocation of grants under this section.

Subd. 2. **Eligibility.** To be eligible for a grant under this section, a nonprofit organization must meet the requirements of section 494.05, subdivision 1, clauses (1), (2), (4), and (5).

Subd. 3. **Conditions and exclusions.** A nonprofit entity receiving a grant must agree to comply with guidelines adopted by the state court administrator under section 494.015, subdivision 1. Sections 16B.97 and 16B.98 and policies adopted under those sections apply to grants under this section. The exclusions in section 494.03 apply to grants under this section.

Subd. 4. **Reporting.** Grantees must report data required under chapter 494 to evaluate quality and outcomes.