



Legislative Review of State Agency Requests to Spend Federal Funds

Money Matters: Number 17.04
November 2017 Update
Bill Marx, Chief Fiscal Analyst 651-296-7176

This paper outlines the process for legislative review of federal funds spending.

A significant portion of the Minnesota state budget is made up of federal funds. According to state law, those funds are deposited in the state treasury and cannot be spent until appropriated. These appropriations are made in legislation and the Legislature has authority to review spending of those funds. This paper outlines the process for legislative review of federal funds spending.

Fiscal Analysis Department
Minnesota House of Representatives

The Legislature has Responsibility to Review Federal Funds

The Governor and state agencies are authorized to apply for and receive federal funds that are made available to the state.¹ However, before those federal funds can be spent they must be appropriated. Language in Minnesota Statutes automatically appropriates some federal funds but for most federal funds a request to spend those federal funds must be submitted to the Legislature for its review before the appropriation becomes effective.²

Federal Funds Expenditure Requests May Be Submitted With Executive Budget Requests

The standard process for review is for the Governor to include a state agency's³ request to spend federal funds as part of a budget request to the Legislature when the Legislature is in session⁴. The request could be part of the biennial budget recommendations, a supplemental budget request, or a budget change order. Requests must be submitted at least 20 days before legislative deadlines for committee action on fiscal bills.⁵ Once that request has been submitted to the Legislature, the Legislature has 20 days to review the request. After the 20 day review period, the agency may spend the federal funds. However, if during the 20 day period certain legislators request further review of the federal fund spending request, the agency may not spend the federal funds until the request for further review is satisfied, the request to spend federal funds is approved in legislation or the Legislature has adjourned for the year. (The request for further review should be made in writing to the Commissioner of Minnesota Management and Budget.)

The legislators who can request further review are the members of the Legislative Advisory Commission (LAC). LAC members in the House are the Speaker, the Chair of the Ways and Means Committee and the Chair of the Finance Committee or Division that handles that agency's accounts. In the Senate, LAC members are the Majority Leader, the Chair of the Finance Committee and the Chair of the Budget Division or Committee that handles that agency's accounts.⁶ A LAC member may designate another member to serve in his or her place.

Federal Fund Spending Approval When the Legislature is Not in Session

¹ Minnesota Statutes, Section 4.07 is the general statute, some agencies have authorization in other sections of statute.

² Minnesota Statutes, Section 3.3005.

³ The definition of state agency for these purposes excludes the Minnesota Historical Society, the University of Minnesota and the Minnesota State Colleges and Universities.

⁴ Minnesota Statutes, Section 3.3005, Subdivision 2.

⁵ Twenty days before the deadline for fiscal bills was April 4 in 2015, April 1 in 2016 and March 11 in 2017.

⁶ Minnesota Statutes, Section 3.30, Subdivision 2.

The law also establishes procedures for the review of the expenditure of federal funds when the Legislature is not in session.

By October 1 of each year, or 100 days before the start of the next legislative session, whichever is later, a request to spend federal funds may be submitted to the Legislative Advisory Commission by the Commissioner of Minnesota Management and Budget. These are considered nonurgent interim requests. Members of the LAC have 20 days to review these requests. If any LAC member makes a negative recommendation or a recommendation for further review of a request, that request may not be approved but could be submitted again as part of a Governor's budget request to the Legislature as described previously. While the law does not specify it, the precedent was set in 2011 for a federal funds spending request submitted by October 1 for which further review was requested to be re-submitted as an urgent request in the process described in the next paragraphs. For nonurgent interim requests, if members of the LAC make positive recommendations or no recommendations, the Commissioner of Minnesota Management and Budget may approve the request and the federal funds may be expended.⁷

A second process for reviewing federal funds when the Legislature is not in session may be used at any time during the interim in two different situations: (1) when federal funds become available when the Legislature is not in session, the availability of those funds could not have been anticipated and included in a Governor's budget request, and an urgency exists that requires that the money be allotted before the Legislature reconvenes, or (2) a request to spend federal money was previously approved but (a) a greater state match is now required than was included in the Governor's budget request, (b) the purpose for which a Governor's budget request to spend federal money was submitted has changed, or (c) the amount of federal funds included in a previous Governor's budget request or urgent request has increased.⁸

Under this second process, the request to spend federal funds is also submitted to the members of the LAC. Members of the LAC have ten calendar days to review the request. If no recommendation for further review is made by LAC members within the ten day period, no further review is required and the Commissioner of Minnesota Management and Budget may make the decision to approve the federal funds request. If a LAC member requests further review, the request may be withdrawn or submitted to the LAC for review at a meeting of the LAC or submitted later as a part of a Governor's budget request.⁹ If the LAC makes a negative recommendation at a meeting that recommendation is advisory and the Governor may still approved the federal funds spending request.

⁷ The process for submission of nonurgent federal funds spending requests is in Minnesota Statutes, Section 3.3005, Subdivision 6.

⁸ The process for urgent requests is in Minnesota Statutes, Section 3.3005, Subdivision 4. The process for requests where the state match has increased are in the same section but in Subdivision 3; where the purpose has changed is in Subdivision 3a; and where the amount has increased in Subdivision 3b.

⁹ The ten day review process is specified in Minnesota Statutes, Section 3.3005, Subdivision 5.

Federal Funds Are Appropriated in Several Ways

Federal funds received by a state agency are deposited in the state treasury and must be appropriated in law before spent. Article XI, section 1 of the Minnesota Constitution states that “no money shall be paid out of the state treasury...except in pursuance of an appropriation by law”. Appropriation of federal funds may be accomplished in several ways. There is general language in the statute appropriating federal funds received by a state agency “to carry out the purposes for which the funds are received.”¹⁰ This is an ongoing statutory appropriation of federal funds and most federal funds are appropriated under this language.

However, some federal funds are specifically appropriated in other language. As an example, federal funds received by the Higher Education Services Office are specifically appropriated in statute for the purposes for which they are received after the legislative review described earlier in this paper.¹¹ Another example is that federal funds available to the commissioner of the Department of Employment and Economic Development are appropriated for the purpose for which they are received after legislative review.¹²

Some appropriations bills contain language approving expenditures of federal funds and appropriating those funds. As an example, the 2017 Education Finance bill contains language that states: “The expenditure of federal grants and aids as shown in the biennial budget document and its supplements are approved and appropriated and shall be spent as indicated.”¹³

Federal funds received for highway purposes are deposited in the state's trunk highway fund¹⁴ and are appropriated as part of the appropriations from that fund in the Transportation Finance Bill. In a number of other cases federal funds are deposited directly into a fund other than the "federal fund" and spent from that other fund.¹⁵

A special process in law¹⁶ allows the expenditure of unappropriated balances in the trunk highway fund with the approval of the governor and at least five of eight members of a group that includes the LAC members (as described earlier in this paper) plus the ranking minority members of the House and Senate Transportation funding committees. Unappropriated balances may result from the receipt of federal funds.

¹⁰ Minnesota Statutes, Section 4.07, Subdivision 3.

¹¹ Minnesota Statute, Section 136A.06.

¹² Minnesota Statutes, Section 116J.035, Subdivision 1, paragraphs b and c.

¹³ 2017 First Special Session Laws, Chapter 5, Article 11, Section 9, Subdivision 2, paragraph (d).

¹⁴ Minnesota Statutes, Section 161.04, Subdivision 1.

¹⁵ Other funds that receive federal funds include Health Care Access, Game and Fish, Natural Resources, Special Revenue and Medical Education.

¹⁶ See 2017 First Special Session Laws, Chapter 3, Article 1, Section 2, Subdivision 8.

Federal funds received for the temporary assistance for needy families (TANF) program are directly appropriated in the Health and Human Services Finance Bill.¹⁷ The direct appropriation of federal TANF is consistent with intent expressed in the federal law authorizing the TANF program.¹⁸

Legislative Review of Federal Funds

Fiscal committees have the opportunity to review federal fund spending requests submitted by state agencies in the Governor's budget in the 20 day period after Governor's budget recommendations are submitted to the Legislature. If the committee has concerns about a federal fund spending request, the fiscal committee chair may use the review process to gain more time for committee review. In some cases a fiscal committee has held a hearings on federal funds spending requests with agencies presenting information on those requests. Information is also available for requests submitted during the interim using the LAC review process. Legislators who want more information on the availability and use of federal funds should contact the appropriate House Fiscal Staff.

Not All Federal Funds Are Deposited in the State Treasury

The process in this paper describes the process for appropriation and review of federal funds that are deposited in the state treasury. Not all federal funds are deposited in the state treasury. For example, federal funds for Headstart programs are sent directly to community action councils by the U.S. Department of Health and Human Services. Federal funds received by the University of Minnesota are often sent directly to the University. Also, federal funds received by individuals may be sent directly by the federal government to those individuals. Examples would be farm program payments and social security payments.

Chart

On the next page is a chart that describes the process to be followed for federal funds appropriated under Minnesota Statutes, Section 4.07, Subdivision 3.

For more information on legislative review of federal funds, contact Bill Marx, Chief Fiscal Analyst, at 651-296-7176 or bill.marx@house.mn.

¹⁷ For examples, see 2017 First Special Laws, Chapter 6, Article 13, various subdivisions in Sections 2 and 3.

¹⁸ Section 901 of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 states: "Any funds received by a State under the provisions of law specified in subsection (b) shall be subject to appropriation by the State legislature...". Subsection (b) includes TANF.

Appropriation of Federal Funds

Federal funds are appropriated by statute in M.S. 4.07, Subd. 3 or other statutes specific to an agency.

Prior to an agency spending federal money under this appropriation authority, the Legislature has an opportunity for review. Review is by the six members of the Legislative Advisory Commission (LAC): the House Speaker, the House Ways & Means Committee Chair, the Senate Majority Leader, the Senate Finance Committee Chair, and the House and Senate Chairs of the Finance Committees or Budget Divisions that have jurisdiction of the affected account. (M.S. 3.3005)

1. **Governor's Budget** - Most requests to spend federal funds are submitted as part of a Governor's budget request. These requests must be submitted at least 20 days before the deadline for fiscal divisions to act on bills (April 4 in 2015).

After the Governor submits a request to spend federal funds, LAC members have 20 days to request further review.



If no request for further review, funds may be spent after the 20 day period.

If a request is made by a LAC member for further review, funds may not be spent until:

- a. the request for further review is withdrawn,
- b. the spending request is approved in legislation, or
- c. the regular legislative session ends.

2. **Urgency** - When federal funds become available when the Legislature is not in session or after the deadline to submit a Governor's budget request and an urgency exists, a request may be submitted to the LAC at any time. LAC members have 10 days to review the request.



If no request for further review, funds may be spent after the 10 day period.

If a LAC member makes a negative recommendation or a recommendation for further review, the spending request may be:

- a. submitted to the LAC for review at a meeting,
- b. withdrawn, or
- c. submitted later as part of Governor's budget recommendations.

3. **Nonurgent** - By the later of October 1 or 100 days before the next legislative session, the commissioner of Minnesota Management & Budget (MMB) may submit requests to spend federal Funds. LAC member have 20 days to review requests.



If no request for further review or no negative recommendation, funds may be spent after the 20 day period.

If a LAC member makes a negative recommendation or a recommendation for further review, the spending request may be:

- a. withdrawn, or
- b. submitted later as part of Governor's budget recommendations.