



Legislative Review of State Agency Requests to Spend Federal Funds

Money Matters: Number 12-01
January 2012 Update
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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 can not be spent until appropriated. These appropriations are made in legislation and the Legislature has authority to review those funds. This paper outlines the process for legislative review of federal funds.

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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 session. 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.⁴ Once that request has been submitted to the Legislature, the Legislature has 20 days to review the request. After the 20 day 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 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 Ways and Means Committee Chair and the Chair of the Finance Division or Committee that handles that agency's accounts. In the Senate, LAC members are the Majority Leader, the Finance Committee Chair and the Chair of the Budget Division or Committee that handles that agency's accounts.⁵ A LAC member may designate another member to serve in his or her place.

Federal Fund Approval When the Legislature is Not in Session

The law also establishes a procedure for the approval of the expenditure of federal funds when the Legislature is not in session.

¹ Minnesota Statutes, Section 4.07.

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 Twenty days before the deadline for fiscal bills was March 5 in 2011, March 9 in 2010 and March 28 in 2009.

⁵ Minnesota Statutes, Section 3.30, Subdivision 1.

By October 1 of each year, a request to spend federal funds may be submitted to the Legislative Advisory Commission by the Commissioner of Minnesota Management and Budget. Members of the LAC have until October 20 to review a request. If any LAC member makes a negative recommendation or a recommendation for further review of a request submitted by October 1, the request may be dropped or submitted again as part of a Governor's budget request to the Legislature as described previously. While the law does not specify if, 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. 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.⁶

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.⁷

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 dropped or submitted to the LAC for review at a meeting of the LAC or held until submitted with a Governor's budget request.⁸

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*

⁶ The process for submission of federal funds spending requests by October 1 is in Minnesota Statutes, Section 3.3005, Subdivision 6.

⁷ 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 Subdivision 3; where the purpose has changed in Subdivision 3a; and where the amount has increased in Subdivision 3b.

⁸ The ten day review process is specified in Minnesota Statutes, Section 3.3005, Subdivision 5.

purposes for which the funds are received."⁹ 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.¹⁰ 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.¹¹

Some appropriations bills contain language approving expenditures of federal funds and appropriating those funds. As an example, the 2009 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.*"¹²

Federal funds received for highway purposes are deposited in the state's trunk highway fund¹³ and are appropriated directly from that fund in the Transportation Finance Bill.¹⁴ 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 divisions. Unappropriated balances may result from the receipt of federal funds.

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

⁹ Minnesota Statutes, Section 4.07, Subdivision 3.

¹⁰ Minnesota Statute, Section 136A.06.

¹¹ Minnesota Statutes, Section 116J.035, Subdivision 1, paragraphs b and c.

¹² 2011 First Special Session Laws, Chapter 11, Article 11, Section 1, Subdivision 2, paragraph (g).

¹³ Minnesota Statutes, Section 161.04, Subdivision.

¹⁴ For an example, see 2011 First Special Session Laws, Chapter 3, Article 1, Section 3, clause (c).

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

¹⁶ See 2011 First Special Session Laws, Chapter 3, Article 1, Section 3, Subdivision 8.

¹⁷ For examples, see 2011 First Special Session Laws, Chapter 9, Article 10, various subdivisions in Sections 3 and 4.

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 hearing 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.

Chart

On the next page is a chart that lays out the process that 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.leg.state.mn.us.

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.

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 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 (March 5 in 2011).

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. dropped, or
- c. submitted later as part of Governor's budget recommendations.

3. **Oct. 1** - By October 1 of each year the Commissioner of Finance may submit requests to spend federal funds. LAC members 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. submitted again as part of a Governor's budget request, or
- b. dropped.