



March 18, 2026

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Dear Senators and Representatives:

As required by Laws of Minnesota 2025, chapter 32, article 4, section 15, I am pleased to present our report summarizing options available under current law for public housing authorities (PHAs) to reposition their public housing projects with U.S. Department of Housing and Urban Development (HUD) while remaining eligible for state general obligation (GO) bonds. The report includes a review of current legal barriers and identification of any unresolved legal questions.

If you have questions, please contact Jen Hassemer, Assistant Commissioner at jennifer.hassemer@state.mn.us.

Sincerely,

A handwritten signature in cursive script that reads 'Erin M. Campbell'.

Erin Campbell
Commissioner



State General Obligation Bonds and Federal Public Housing Repositioning Tools

March 18, 2026

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As requested by Minnesota Statute 3.197: This report cost approximately \$6,000 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, Braille, or audio recording.

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I. Executive Summary

In Laws of Minnesota 2025, chapter 32, the legislature directed Minnesota Management and Budget (MMB) to submit a report summarizing guidance that identifies possible options available under current law for public housing authorities (PHAs) to reposition their public housing projects with U.S. Department of Housing and Urban Development (HUD) while remaining eligible for state general obligation (GO) bonds, including review of current legal barriers and identification of any unresolved legal questions. In preparing this report, MMB consulted with entities that have expertise on HUD repositioning tools, including the Minnesota Housing Finance Agency (MHFA) and representatives from the Minnesota Chapter of the National Association of Housing and Redevelopment Officials.

General obligation bonds are a form of debt financing authorized by the state constitution and backed by the full faith and credit of the state. All projects funded with state GO bonds are subject to a uniform set of requirements governing how funds can be used and what is required of recipients of state GO bond funding. These serve to protect the state's financial interests, certify that the public purpose of the project is carried out and maintained as required, and ensure compliance with federal tax law. A foundational legal requirement for these projects is that they must be publicly owned by a state agency or political subdivision of the state.

The Publicly Owned Housing Program (POHP) was established by the Minnesota Legislature in 2005 to offer assistance to public housing authorities to rehabilitate and preserve public housing units. It has primarily been funded with state GO bonds. Since the program's inception, the legislature has provided \$131 million in state GO bonds to make critical improvements to public housing infrastructure owned by an estimated 118 public housing authorities throughout the state. Eligible projects include, but are not limited to, roof replacement, HVAC system replacement, elevator upgrades, major window replacements, capital improvements that improve accessibility and life safety systems, and other improvements for non-recurring needs that add value or life to a building.

Since federal funding commitments for local public housing have not kept pace with funding needs for many years, HUD has been promoting various legal tools to convert or "reposition" public housing projects to projects with Section 8 rent assistance. With Section 8 assistance, former public housing projects receive a greater amount of monthly subsidy to cover operating costs, and the subsidy is also more predictable from year to year. Because repositioning to Section 8 removes the project's status under HUD's federal public housing program, the action allows projects to operate under a different federal subsidy framework and may permit a broader array of ownership and financing structures to maintain and improve these projects. These repositioning paths include the Rental Assistance Demonstration (RAD) program, Section 22 Voluntary Conversion, Rebuild/Restore, and Section 18 Demolition and Disposition.

In response to these changes in HUD's administration of its federal housing programs, MMB has been engaged on these issues for many years in collaboration with the Minnesota Housing Finance Agency (MHFA) and key housing stakeholders. PHAs seek to maximize all available resources, including state GO bonds and HUD's repositioning tools. MMB has helped identify a limited number of pathways that allow PHAs to reposition projects previously funded with state GO Bonds. Not all pathways are available, however, due to certain legal barriers that prevent GO-bond funded properties from considering every repositioning option offered by HUD.

The barriers cannot be resolved through state agency administrative action or changes to state statute alone, and would require either federal action or changes to the Minnesota constitution.

This report addresses those issues, while also providing additional background and resources on the requirements associated with GO bonds. In addition to the Minnesota Constitution, the use of state GO bond funds is governed by Minnesota statutes, session laws, administrative requirements, and federal tax law applicable to tax-exempt governmental bonds. These overlapping legal authorities constrain ownership, use, and disposition of bond-financed property and limit the state’s ability to independently modify those requirements.

II. Constitutional and Statutory Framework Governing State GO Bond-Financed Property

A. Constitutional Public Ownership Requirement

The Minnesota Constitution, Article XI, Section 5(a) allows state general obligation bonds to be issued “to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money . . . to any agency or political subdivision of the state for such purposes.” (emphasis added)

In legal opinions dating back to 1989, the state’s bond counsel has opined that without a Minnesota Supreme Court ruling on the meaning of the word “public” in Article XI, Section 5, “state bonds cannot be issued to fund a project to be owned by a person or entity other than the State, either directly or through its agencies and instrumentalities or a political subdivision of the State.”¹ Even when a nonpublic entity will be providing public services, that is not enough to qualify a project for state bond financing. One example of an ineligible ownership interest cited by bond counsel is “grants to private corporations to build or improve sewage treatment works which will serve the public.” To date, there have still been no Minnesota Supreme Court rulings on the meaning of the word “public” in the constitution.

The Minnesota Constitution and relevant case law do not establish a bright-line test qualifying an entity as a “political subdivision” of the state. In practice, some entities clearly meet that definition, such as cities, counties, and school districts, while others clearly do not such as limited liability companies, limited partnerships, and similar private business entities. Between those poles, certain entities require further legal analysis to determine whether they qualify to receive state GO bond funding. That determination is inherently fact-specific and considers the entity’s structure, statutory authority, governance, and exercise of sovereign authority. Courts interpreting political subdivision status and federal tax authorities applying the governmental bond rules have treated the delegation of sovereign powers as a central consideration in this analysis. This analysis considers whether the entity has been delegated sovereign powers of the state, which are generally understood to include the power to tax, the power of eminent domain, and the police power. While no single power is determinative,

¹ April 24, 1989 Letter from Dorsey & Whitney to Peter Sausen, Assistant Commissioner for Cash and Debt Management, Minnesota Department of Finance. https://mn.gov/mmb/assets/Exp-Eligible-for-GO-Bond-Financing_tcm1059-127401.pdf

entities generally need to demonstrate that they exercise more than an insubstantial portion of these sovereign powers.

In applying these constitutional requirements to questions of bond eligibility, MMB must ensure that the state can obtain an unqualified legal opinion from bond counsel that its bonds are valid and binding obligations of the state. Bond counsel's opinion is issued under a high professional standard and requires a conclusion that it would be unreasonable for a court to make a holding to the contrary. This standard reflects the state's obligation to provide certainty to bond investors and informs MMB's careful, fact-specific review of proposed ownership structures. When an entity seeks to receive state GO bond funding or to acquire property financed with state GO bonds, MMB evaluates the entity's legal status to ensure compliance with constitutional and statutory requirements. As appropriate, MMB consults with the state's bond counsel regarding legal considerations raised by the proposed transaction. That evaluation is conducted based on the specific facts and structure presented, and MMB communicates its conclusions directly to the entity involved.

B. Statutory Requirements for Disposition of GO Bond-Financed Property

When property has been financed with state GO bonds, additional state requirements apply to any future disposition or sale of the property. Under Minn. Stat. § 16A.695, if bond financed property is sold to a nonpublic entity, the state's bond-financed grant or loan must be repaid before sale proceeds may be used for other purposes. The sale must be for fair market value and is subject to MMB's approval. Following this sale process will release the property from the state's bonding restrictions. These statutory requirements reflect the state's obligation to structure any disposition of state bond financed property in a manner consistent with federal tax law governing tax-exempt governmental bonds.

C. Federal Tax Law Requirements Applicable to GO Bonds

Federal tax law governing tax-exempt governmental bonds imposes additional restrictions on the use and disposition of bond-financed property. If such property is sold or its use changes, the state must take actions permitted under federal tax regulations and approved by bond counsel to preserve the tax-exempt status of the state's bonds. These federal requirements operate independently of HUD program rules and must be satisfied in any restructuring involving bond-financed property.

Federal tax law also limits the extent to which bond-financed property may be used by or benefit private parties. Tax-exempt governmental bonds are subject to restrictions on "private business use," which generally prohibit significant private ownership, control, or economic benefit with respect to bond-financed property. Long-term leases, management agreements, or ownership structures that provide substantial rights or financial returns to private entities may raise private business use concerns and must be evaluated under federal tax regulations. These federal tax constraints apply even if the project otherwise satisfies state constitutional public ownership requirements. State bonding law guidance incorporates these federal tax requirements in order to preserve the tax-exempt status of the state's bonds.

D. Ongoing Compliance Requirements

State GO bond financing is conditioned on continued compliance with the constitutional public ownership requirement over the useful life of the project. The ownership structure reviewed and approved at the time of award forms the basis for that determination. Accordingly, if a PHA has already entered a state GO bond funded POHP agreement with MHFA for a project based on fee ownership, it would not be permitted to subsequently change its ownership structure in a manner that would alter the governmental ownership interest originally approved. A PHA could transfer ownership of its housing assets to another political subdivision of the state, which could be done at no cost if the receiving entity continues to operate the project as affordable housing and acknowledges its continued status as state bond financed property.

Separate from questions of ownership but related to the use of bond financed property, under state bonding law and federal tax private business use regulations, bonding recipients may contract with another party to operate the project. Public owners of state GO bond financed property are allowed to enter into a lease, management contract or other use agreement, subject to MMB's approval under Minn. Stat. § 16A.695, for the purpose of carrying out the governmental program authorized by the legislature. The term of the use agreement must be substantially less than the useful life of the project and may only involve the collection of rent by the project's owner at amounts needed to pay the annual operating costs of the property or to pay debt service on debt related to the property. Any use agreement must be approved by MMB and comply with MMB's [Checklist for Use Agreements](#).

III. Application of State Bonding Requirements to HUD Repositioning Tools

Historically, public housing has been owned by public entities, and the POHP program has provided important funding to PHAs throughout Minnesota.² Housing and redevelopment authorities created under Minn. Stat. Ch. 469 and operating as PHAs are clearly political subdivisions of the state. They have been granted full sovereign powers of the state and thus may own and operate housing acquired or improved with POHP funding. The changes in HUD's administration of federal housing programs have introduced ownership and structural features that must be evaluated under Minnesota's constitutional and statutory bonding requirements and federal tax law applicable to the state's bonds.

While HUD's repositioning paths vary in criteria and complexity, and are outside MMB's core area of expertise, several tools are compatible with state GO bond requirements. However, one tool, Section 18 disposition, directly conflicts with the constitutional public ownership requirement for state bond financed projects. It requires a PHA to "dispose" of its public housing property by transferring the property to another entity, which

² Since at least 2017, MHFA's instructions to PHAs seeking to apply for POHP funding has contained the following notice: "NOTE: Since POHP loans are funded by GO Bonds, the property must remain in public ownership for a 35-year compliance period. As a result, POHP loans are incompatible with Rental Assistance Demonstration (RAD) transactions that involve a transfer of ownership to a non-public owner."

can be public or nonpublic. The nonpublic ownership structures most often cited in HUD materials include limited liability companies (LLCs), limited partnerships (LPs), limited liability partnerships (LLPs), and nonprofit corporations, which are not political subdivisions of the state. While these ownership structures are acceptable for HUD's purposes, they do not meet the state constitutional ownership requirement. Such ownership structures may also raise federal tax concerns, including private business use limitations applicable to governmental bonds. These common features highlight the ways in which federal program design can be incompatible with state GO bond financing requirements.

The following sections describe how the constitutional, statutory, and federal tax requirements outlined above apply to HUD's primary repositioning options. While HUD's programs are designed to provide PHAs with additional flexibility and access to capital, participation in those programs must be structured in a manner that complies with Minnesota's public ownership requirements and related bonding restrictions when also seeking state GO bond funding.

A. HUD Programs That Permit PHAs to Retain Public Ownership

HUD explicitly allows PHAs to retain full ownership over their housing assets and reposition their public housing properties to the Section 8 platform through several tools, including RAD, Restore/Rebuild, and Voluntary Conversion. Many RAD conversions have already happened in Minnesota, including with PHAs that have previously received state GO bond funds through POHP. Retaining full public ownership is an option for both types of Section 8 assistance available under RAD: project based rental assistance ("RAD PBRA") and project based vouchers ("RAD PBV"). For RAD PBV, the vouchers must be administered by a separate legal entity from the PHA, but ownership may still remain with the PHA.

HUD also allows PHAs to retain full ownership under Section 22 Voluntary Conversion. As long as the PHA retains full ownership of the state bond financed property and continues to use it for its intended public purpose, Section 22 voluntary conversion may be allowed and has been used for POHP-funded properties by more than one PHA in Minnesota.

Finally, HUD's Restore/Rebuild tool (formerly known as "Faircloth to RAD") provides another path for PHAs to reposition while retaining full ownership of a POHP project. Restore/Rebuild is a set of procedures that allows PHAs to construct new public housing units and immediately convert the units to Section 8 upon construction completion through a streamlined RAD process. At least one PHA in Minnesota has already used Restore/Rebuild to construct new additional units on an existing POHP-funded property.

B. HUD Programs Involving Disposition of Assets

1. Section 18 Dispositions

Section 18 of the United States Housing Act of 1937 establishes HUD's authority to allow a PHA to demolish or dispose of public housing real estate property if certain legal requirements are met. The demolition or disposition action generally results in removal of that property or property interest from HUD's public housing inventory.

Demolition permitted under Section 18 is “the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development.” 24 CFR part 970. Because this results in destruction of housing units, it is incompatible with state bonding requirements.

By contrast, disposition is a much more common tool for repositioning public housing to a Section 8 platform. Under Section 18, disposition is “the conveyance or other transfer by the PHA, by sale or other transaction, of any interest in the real estate of a public housing development [subject to certain exceptions].” In most cases, dispositions allow the PHA to receive Section 8 Tenant Protection Vouchers from HUD and “project-base” the vouchers to the units. As a result, the former public housing property becomes a Section 8 PBV property. The benefit to PHAs is that PBV provides a more reliable subsidy for operating costs and for a greater amount—it is much more likely to fully cover the costs of operating the building.

Because Section 18 disposition is a transfer to a new entity, the action is also used by some PHAs to qualify for capital financing or equity investment typically used by nonpublic entities for repairs and rehab, such as Low-Income Housing Tax Credits.

Federal regulations governing Section 18, codified at 24 CFR Part 970, require PHAs to retain disposition proceeds after deductions for certain required or permitted costs and use them for future low-income housing or other HUD-approved purposes. HUD also allows projects to be sold or transferred for less than fair market value if the new owner agrees to record a Use Agreement against the project, restricting use to affordable low-income rental housing. Repositioning via Section 18 often involves this less than fair market option, since it allows for preservation of the project without the need for capital funding.

State GO bond financing introduces additional constraints. When a property has been financed with state GO bonds, the constitutional, statutory, and federal tax requirements described in Section I apply to any proposed disposition. Under Minn. Stat. § 16A.695, bond financed property sold to a nonpublic entity must be sold for fair market value, subject to MMB’s approval, and the state’s bond investment must be repaid before proceeds can be used for other purposes. These statutory requirements operate within, and are informed by, the state’s constitutional public ownership requirements and its obligations under federal tax law, and any disposition must be structured in a manner that preserves the tax-exempt status of the state’s bonds.

A primary tension arises because Section 18 disposition requires transfer of the public housing property to another entity and does not require the new owner to be a political subdivision of the state. Section 18 repositioning strategies often involve fee ownership transfer to PHA-affiliated entities structured as limited liability companies, limited partnerships, or nonprofit corporations at less than fair market value. This allows the PHA to continue to control and operate the project, while using the sale to qualify for the Section 8 vouchers. Minnesota’s constitutional public ownership requirement, however, limits GO bond financing to projects owned by a political subdivision of the state. Whether a proposed transferee entity qualifies as a political subdivision requires a fact-specific legal analysis, and many commonly proposed affiliate structures do not meet this standard. If a transferee entity does not meet the state’s constitutional ownership requirement, then the PHA must follow the process outlined in state statute for sales of bond financed property.

In addition to ownership considerations, Section 18 permits PHAs to deduct outstanding debts and certain programmatic costs from sale proceeds and requires restriction of remaining proceeds for housing purposes. By contrast, state law requires that sale proceeds attributable to the bond-financed investment be applied first to

repay the state, with limited deductions allowed for transaction-related costs. As a result, PHAs seeking to use Section 18 for property that has received state GO bond funding must ensure that state-law repayment and federal tax compliance obligations are satisfied before proceeds are applied to other HUD-approved uses.

One potential path for PHAs electing to transfer bond financed property to a nonpublic entity under Section 18 is to follow the statutory disposition process described above, repay the state's bond investment, and remove the state bonding restrictions from the property. HUD's treatment of and requirements for disposition proceeds would need to be reviewed in each case to confirm that required state-law repayment can occur before proceeds are applied to other housing purposes. Apart from reconciling sale proceed requirements, this may not be a practical option for transactions that do not involve capital funding to cover a fair market value acquisition cost.

Alternatively, if a Section 18 repositioning can be structured so that ownership remains with the PHA or another qualifying political subdivision of the state and the property continues to be used for its authorized public purpose, the transaction may align with state bonding requirements. Recent HUD guidance has clarified that a property can reposition using a Section 18 disposition of leasehold interests (while the PHA retains fee ownership), but the leasehold interests would need to be limited to the state requirements governing lease, management contracts, or other use agreements, and is subject to MMB's approval under Minn. Stat. § 16A.695. We are not aware of any projects that have received HUD approval for this path to date.

2. Section 22 Tenant-Based Conversions Involving Sale

Section 22 Voluntary Conversion permits PHAs to convert their public housing to tenant-based assistance, allowing residents to remain in their units using a voucher or relocate with their voucher to other properties, and vouchers can be converted to PBV with tenant consent. Post-conversion, HUD allows the PHA to either retain the property with use restrictions, or to sell or transfer the property with the same restrictions on proceeds as a Section 18 disposition.

If the PHA wishes to sell a state GO bond financed property after Section 22 conversion, the statutory disposition requirements described in Section I apply. The sale must comply with Minn. Stat. § 16A.695 and MMB's [Checklist for Sale of GO Bond Financed Property](#), and sale proceeds attributable to the state's bond financed investment must be used first to repay the state. Upon completion of such a sale and repayment, the property would no longer be subject to state bonding restrictions, and future use of state GO bond funds for the property would not be available.

C. Affiliate Entities and Political Subdivision Status

Ownership considerations have been the primary focus of MMB's evaluation of the HUD repositioning tools because HUD's various repositioning requirements permit a broader range of ownership entities than those that qualify as political subdivisions under Minnesota constitutional principles. HUD guidance permits, and PHAs have explored, the creation of affiliated entities—such as nonprofit corporations, limited liability companies, limited partnerships, or public corporations—to facilitate participation in HUD programs while seeking to preserve eligibility for state GO bond funding.

Whether an affiliated entity qualifies as a political subdivision of the state is a fact-specific legal determination, as described in Section I. Entities that are not clearly established political subdivisions and that do not exercise delegated sovereign powers of the state, such as the power to tax, exercise eminent domain, or exercise police power, do not satisfy this constitutional standard. Affiliate entities structured primarily to facilitate private investment or to replicate limited partnership or limited liability company models commonly used in HUD repositioning transactions also do not meet this requirement.

MMB evaluates proposed ownership structures on a case-by-case basis in consultation with bond counsel to ensure compliance with the constitutional public ownership requirement and preserve the tax-exempt status of the state's bonds.

IV. Structural Considerations When Combining GO Bonds with Other Financing Sources

A. Conventional Debt Limitations

PHAs seeking to leverage private commercial loans to improve property financed with state GO bonds must ensure that any proposed financing structure complies with state bonding requirements. POHP loan agreements require the recording of a GO Bond Declaration on the real property, which must have priority over other liens and preserves the state's right to repayment upon any future disposition.

Private lenders may seek a first-priority mortgage or other security interests that are inconsistent with these existing state encumbrances. In such cases, the proposed financing structure may not be compatible with ongoing state bond restrictions. Any additional debt must be structured so that it does not impair the state's priority interest or undermine the constitutional and statutory requirements described in Section I.

If a financing structure cannot be aligned with those requirements, a PHA may consider whether a sale structured in compliance with Minn. Stat. § 16A.695, including repayment of the state's bond-financed investment, would better accommodate the proposed transaction.

B. Low-Income Housing Tax Credits (LIHTC) Incompatibility

State GO bonds cannot be combined with low-income housing tax credits (LIHTC) because LIHTC transactions require private investor ownership that conflicts with Minnesota's constitutional public ownership requirement. Both 4% and 9% low-income housing tax credits are often used to generate equity for projects with significant capital needs. However, LIHTC structures typically require the tax credit investor to hold a 99.99% ownership interest in the project through a limited partnership or limited liability company. The resulting ownership structure would not satisfy the constitutional requirement that projects financed with state GO bonds be publicly owned by a political subdivision of the state.

If a project previously funded with state GO bonds seeks to pursue LIHTC financing, the transaction would need to be structured as a sale that complies with Minn. Stat. § 16A.695, including repayment of the state's bond-financed investment, before the property could be placed into a LIHTC ownership structure.

V. Conclusion

As described in this report, PHAs have options for utilizing both state GO bond funding through POHP and repositioning their public housing assets through HUD. Many Minnesota PHAs have successfully converted POHP-funded properties to Section 8 platforms using HUD repositioning tools that allow the PHA to retain ownership of the property. These tools include RAD conversion (both RAD PBRA and RAD PBV), Section 22 Voluntary Conversion, and Restore/Rebuild.

When PHAs seek repositioning tools that require a transfer of ownership, it is much less likely to be compatible with the state constitutional and statutory restrictions and federal tax-exempt requirements that govern state GO bonds, as well as the state's obligations to bondholders. Specifically, there are significant legal barriers to using a Section 18 disposition action to reposition a GO bond financed property without triggering repayment of the bond investment. While there may be a possibility of HUD approving a Section 18 lease structure that complies with the state constitutional and statutory requirements and federal tax law governing the GO Bonds, we are not aware of PHAs opting to use this tool.

The unresolved legal barriers described in this report stem from higher legal authority and cannot be remedied through agency administrative interpretation or changes to state statute alone.

Most significantly, Minnesota's constitutional requirement that projects financed with state general obligation bonds be publicly owned limits a PHA's ability to reposition using Section 18 disposition without repaying the bond investment. Absent a Minnesota Supreme Court ruling further defining the scope of "public ownership" under Article XI, Section 5 of the Minnesota Constitution, or a constitutional amendment, MMB and state bond counsel must continue to apply a conservative interpretation of this requirement to protect the state's financial and legal interests.

Because these conflicts arise from federal public housing law, federal tax law governing tax-exempt bonds, and state constitutional requirements, they cannot be resolved through state legislation or state agency administrative guidance alone. Rather, resolution would likely require action at the federal level. This could include discussions with HUD regarding alternative program structures, waivers, or clarifications that would allow PHAs to retain public ownership or otherwise align federal requirements with Minnesota's constitutional and statutory framework.

Considering the complexities outlined in this report, PHAs will need to carefully consider their options when making decisions on accepting POHP funds and repositioning their public housing with HUD. Many PHAs combine state GO bond proceeds with HUD repositioning under current legal frameworks. However, some repositioning structures will remain unavailable or impractical unless and until changes occur at the federal level or through state constitutional law developments. Where eligibility questions continue to exist, MMB and MHFA will review those on a case-by-case basis within the framework of state GO bonding rules.

Additional Resources on GO Requirements

The requirements described in this report apply uniformly to all recipients of state general obligation bond funds. Additional publicly available resources describing these requirements are included for reference.

Minnesota State Constitution Article XI

https://www.revisor.mn.gov/constitution/#article_11

Minn. Statute 16A.695

<https://www.revisor.mn.gov/statutes/cite/16A.695>

Legal information regarding the use of general obligation bonds and bond financed property:

<https://mn.gov/mmb/debt-management/capital-projects/legal-information/>

- *Fourth Order Amending Order of Commissioner of Finance* dated July 30, 2012
- Bond counsel opinions on qualified capital expenditures
- Tax compliance policies and procedures

State bond financed property checklists:

<https://mn.gov/mmb/debt-management/capital-projects/grant-agreements/checklists.jsp>