

## Lessard-Sams Outdoor Heritage Council

### **Agenda Item Memo**

DATE: September 4, 2013

SUBJECT: Legal analyses of Legacy Amendment

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#### **Background:**

Council member Susan Olson's has requested staff consulted with House and Senate counsel on a series of three questions regarding interpretation of Article XI, section 15 of the Minnesota Constitution. LSOHC staff, Chair Hartwell, Member Olson, Janelle Taylor, House Research, Mark Shepard, House Research, and Greg Knopff, Senate Counsel met on August 26 to review Mr. Shepard's memo and analysis. That memo, dated August 19, 2013, is included in the meeting packet.

Also included is a memo from Mr. Shepard addressing the supplement and substitute issues of the same amendment (February 18, 2009).

## **Agenda Item #6**



# Research Department

Patrick J. McCormack, Director

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# Minnesota House of Representatives

February 18, 2009

TO: Interested Legislators

FROM: Mark Shepard, Legislative Analyst

RE: Constitutional Issue: Supplement/Substitute

The new Article XI, section 15 of the Minnesota Constitution increases the sales and use tax rate for 25 years, and dedicates the proceeds of the increased taxes to four newly created funds. The constitutional language also provides that:

*“The money dedicated under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute. “*

This memo analyzes the supplement/substitute language. This memo should be read with the following in mind:

- The constitutional language is not clear. This memo offers my thoughts as a starting point for discussion, recognizing that others may have information or analysis that might lead me to change some of my conclusions. It is likely that interpretation of certain ambiguous language will need to be addressed in the context of particular appropriations or potential appropriations, and in some cases there may not be clear answers until courts interpret the new constitutional language.
- The discussion in this memo is focused only on legal issues and does not discuss policy options that the legislature may consider within the permissible legal boundaries.
- The memo reviews legislative history only from the 2007-2008 biennium. I limited my research to the most recent biennium because of time limitations and because the most recent legislative history seems most directly relevant.
- I did not participate as a staff person in any of the legislative deliberations of H.F. 2285/S.F. 6.

### Overall Conclusions:

- The overall intent and effect of the language is clear—that the newly dedicated funding should provide additional revenue for the specified purposes, not replace prior funding sources. The terms “supplement” and “substitute” should be given their commonly understood meanings, as there is no indication that these constitutional terms have a special technical meaning.
- The exact scope and impact of this language is not clear, either on its face, or based on the legislative history.
- The language likely applies both to legislative decisions and to recipients of legislative appropriations.
- The language has potential application to all traditional sources of funding: general fund, dedicated funds, funds provided by units of local government, and private funds.
- It is not clear what constitutes a “traditional source of funding.” Trying to give effect to both the language and the purpose of the constitutional amendment, a reasonable argument can be made that the “traditional source of funding” is the level of funding that would have occurred if the new 3/8 sales tax money were not available.

### Legislative history

The constitutional amendment eventually proposed to the voters in Laws 2008, Chapter 151 originated as H.F. 2285 (Chief Author, Representative Sertich). S.F. 6 (Chief Author Senator Pogemiller) was the companion bill acted upon in the Senate.<sup>1</sup> The original language of H.F. 2285 with respect to the supplement/substitute issue was identical to the final language of Chapter 151. The original language of S.F. 6 had somewhat different phrasing, but almost identical substance: “The money dedicated under this section... shall not be used as a substitute for traditional funding sources for the purposes specified, but the dedicated money shall supplement traditional sources of funding for those purposes.” Because the original versions of the bill were very similar to the final version of the bill on this issue, there were not amendments adopted to the bill during the legislative process that offer help in interpreting the supplement/substitute issue.

Legislative discussions of this issue may be instructive, but do not appear to be conclusive with respect to the substitute/supplement language. These discussions are summarized below.

The most direct legislative discussion of the substitute/supplement language occurred on the Senate Floor during the debate on the final conference report on H.F. 2285. The following exchange occurred between Senator Robling, Senator Pogemiller, and Senator Hann:<sup>2</sup>

Senator Robling: [Referring to the substitute/supplement language] ...I’m just wondering what the legislative intent on that is....Would the programs that have always received a certain level of

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<sup>1</sup> Originally, S.F. 2146 was the companion to H.F. 2285. But the Senate action on this topic occurred on S.F.6, which eventually became the companion bill to H.F. 2285.

<sup>2</sup> This discussion occurred on February 14, 2008, on the Senate Floor. The discussion can be heard on the Senate video recording, approximately 1 hour and 8 minutes from the beginning of the recording. The discussion reproduced here is an excerpt, not a transcript of the complete remarks of the Senators.

funding have to always continue to receive those in our general fund budget?...And I'm concerned about potential lawsuits about this. What is our traditional funding source that we would need to protect? Would it be the highest level we have ever achieved for funding these programs, or would it be something else?

Senator Pogemiller: ...This is an attempt to say that these are additional revenues that we want to put to these purposes. We don't intend that you go in and now take down fees and so forth that are being used for water programs...The idea here is that this is not supposed to be money that takes over general fund expenditures that we have historically made. It is meant to be over and above that money. And it is not a perfect science how that works. But it is meant to be language to future legislatures to the effect of...don't use this money to do what you typically have been doing. This is meant to provide additional language for legacy activities that we were not doing because we didn't have the money.

Senator Robling: On the issue then of if budgets are being cut, could we do across the board cuts that would include these programs that we are currently saying should not be supplanted with this money?...

Senator Pogemiller: ...This language cannot lock in a future legislature. So if in its wisdom the legislature needs to make reductions for other reasons, a particular water program has become outdated or something, they could do that. This doesn't prevent that. So, again, I think that needs to be viewed as an intent to describe for future legislatures the intent of this revenue, not so much to lock them in as to what they are doing with their current expenditures.

Senator Hann: ...Senator Pogemiller, with all respect, the language that is in the bill doesn't conform with what you just described. What it says here is that you can't reduce those funds at all. And you say "well the future legislature could do that." But not without repealing the law...or amending the law...The law here says you cannot reduce the funds, you can't use this tax to supplement [*sic*] existing funding...Whatever the budget is for these expenditures cannot ever be reduced if this is passed unless we go back and change the law....It says whatever that budget is today can never be reduced...I would recommend that we vote "no," and I think this is a particularly egregious restriction on the power of the legislature to manage budgets..."

[Senator Pogemiller did not respond to Senator Hann.]

There was other discussion of the concept of not supplanting traditional sources of funding during legislative debates on H.F. 2285 and S.F. 6:

- Senator Pogemiller discussed topics relating to this issue in a February 7, 2007 meeting of the Senate Environment and Natural Resources Committee.<sup>3</sup> Senator Pogemiller indicated that the new revenue will not supplant revenue that is already being spent; that the bill was not looking to replace current revenue sources. He stated that one of the challenges is to get an understanding of what we are asking new revenue for versus what it is that the legislature should be funding regularly, and that it would be a mistake to ask voters to do something the legislative was supposed to do in the general budget. He also stated that we should put money into things that fundamentally are legacy things.
- In the same meeting of the Senate Environment and Natural Resources Committee, Senator Gen Olson (as part of a series of remarks on various topics) noted that the bill

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<sup>3</sup> The discussion can be found on the Senate television archive approximately 18 minutes into the meeting.

had language to discourage the supplanting of funds. Senator Olson noted that while the proposed constitutional language stated that the new money was not to be used as a substitute for traditional funding *sources*, it doesn't say anything about *levels* of funding. Senator Olson went on to state that one could reduce the general fund spending substantially without going against the language in the Constitution.<sup>4</sup>

- Senators Neuville and Pogemiller had an exchange on this topic in the Senate Finance committee. Senator Neuville asked what would happen under this language if there were another large budget deficit. He noted that the amendment would guarantee a level of funding, and asked if during a shortfall period it would be true that the dedicated money can't be used to restore cuts that might otherwise happen. Senator Pogemiller responded that in a perfect world no one would do that, but in the real world someone might try to do that. He indicated that the language was intended to say as strongly as you can that the intent is for additional purposes, not to replace the regular budgetary process in the legislature. Senator Neuville asked if the language would not allow the legislature to replace a base spending level for habitat and clean water with the new dedicated money. Senator Pogemiller responded that it should not replace the various fees that are going on now, but that people can fudge around that. He noted his experience that there has been an attempt by legislators to live up to that as best they can.<sup>5</sup>
- Senators Bakk and Pogemiller discussed this issue in a Senate Tax Committee meeting. Senator Bakk expressed a concern that future legislatures would not put new general fund inflationary increases into areas that received newly dedicated funding. Senator Pogemiller said he also was concerned about that. He then pointed to the non-supplantation language in the bill, and noted it is clear that the dedicated funding is not meant to supplant traditional sources of funding.<sup>6</sup>
- A House floor amendment was offered on May 19, which would have added to the end of the supplement/substitute sentence “, *nor may other operating budget items in the environment and arts budgets be reduced because of these newly dedicated funds.*” The amendment was rejected 21-112.<sup>7</sup>

### Comparison to similar statutory language

Minnesota Statutes section 116P.03 governs money deposited in the environment and natural resources trust fund from certain constitutionally dedicated state lottery proceeds. The Legislative-Citizen Commission on Minnesota Resources (LCCMR) makes recommendations to the legislature for expenditure of this money. Section 116P.03 provides, in part:

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<sup>4</sup> The discussion can be found on the Senate television archive approximately 51 minutes into the meeting. Senator Pogemiller responded to other aspects of Senator Olson's remarks, but did not comment on Senator Olson's reading of the “traditional sources” language.

<sup>5</sup> The discussion can be found on the Senate audio archive of the March 24, 2007 meeting of the Finance Committee, approximately 3 hours and 16 minutes into the meeting.

<sup>6</sup> The discussion can be found on the Senate audio archive of the April 24, 2007 meeting, approximately 1 hour and 22 minutes into the meeting.

<sup>7</sup> This amendment was offered by Representative Mark Olson during the House Floor debate on May 19, 2007. The discussion of the amendment can be found on the House video recording approximately 2 hours and 32 minutes into the recording.

*(a) The trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources, including those sources used to support the criteria in section 116P.08, subdivision 1. The trust fund must be used primarily to support activities whose benefits become available only over an extended period of time.*

*(b) The commission must determine the amount of the state budget spent from traditional sources to fund environmental and natural resources activities before and after the trust fund is established and include a comparison of the amount in the report under section 116P.09, subdivision 7.*

The substance of the supplement/substitute language in section 116P.03 is nearly identical to the language in Article XI, section 15.<sup>8</sup> There is a reasonable argument that the drafters of the constitutional language knew about this statute, and may have intended the constitutional language to have similar effect to the statutory language. Therefore, while interpretation of the statutory language is not binding on interpretation of the constitutional language, the administrative practices and customs of the LCCMR<sup>9</sup> in applying the supplement/substitute language in section 116P.03 may be helpful in interpreting the constitutional language.

The following is my understanding of general LCCMR practices:

- LCCMR does not have a set of written guidelines or principles defining the supplement/substitute language in its governing law.
- There is no case law interpreting the statutory language governing LCCMR.
- LCCMR members have considered this issue on a case-by-case basis. LCCMR requires entities to provide information about past sources of funding.
- LCCMR applies the supplement/substitute language to particular grants, both in evaluating proposals and in overseeing work plans for projects receiving appropriations. For example, LCCMR is concerned with recipients' use of trust fund money to pay for items of overhead or general expenses (e.g. computers, desks) that previously were paid for from another source. In general, trust fund money is not used to pay for general operations or overhead expenses, unless these costs directly relate to a project funded from the trust fund.

Application of the statutory supplement/substitute language to LCCMR is different from applying the same language in the context of the 3/8 sales tax money dedicated under the constitution. Because the LCCMR supplement/substitute language is statutory, the legislature can override it by enacting a new statute. Thus when the legislature appropriates LCCMR money it likely ends the argument about whether the legislature has illegally substituted trust

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<sup>8</sup> Similar language is contained in Minnesota Statutes, section 297A.94(f), which governs proceeds from the in-lieu tax imposed on sale of lottery tickets. Paragraph (f) provides in part that the revenue: ...may not be used as a substitute for traditional sources of funding for the purposes specified, but the dedicated revenue shall supplement traditional sources of funding for those purposes. LCCMR does not make recommendations for this expenditure of this money.

<sup>9</sup> The comments here also apply to the former LCMR, before citizen members were added to form the current LCCMR. These comments are presented as an effort to summarize the collective experience of the LCMR/LCCMR, recognizing that individual members of the groups may have different views.

fund money for traditional sources of funding, because the new, specific appropriation arguably supersedes the general standard in the older law. This analysis does not apply to legislative appropriations of the new 3/8 sales tax money, because an appropriation in a new law cannot override the supplement/substitute language in the Constitution.

Minnesota Statutes, section 114D.45 establishes the Clean Water Legacy Account and provides that money in the account must be made available for implementation of specified statutory purposes “*without supplanting or taking the place of any other funds which are currently available or may become available from any other sources, whether federal, state, local, or private for implementation of those sections*”. This section was enacted in 2006. I am not aware of a history of administrative practices or interpretations of this language. This statutory language is different from the language of Article XI, section 15 of the Constitution in some significant ways:

- Section 114D.45 refers to “funds which are currently available” or “may become available from any other sources” rather than to “traditional” sources of funding.
- Section 114D.45 makes clear that the non-supplantation concept applies to any other sources of money, public or private.

It is not clear what relevance the language in section 114D.45 has to interpreting the 3/8 constitutional language. For example, it could be argued that the references in section 114D.45 to federal, state, local, and private funding clarify that the constitutional provision also includes all of those sources. A contrary argument is that because the drafters of the constitutional provision used more general terms, they meant something different from all of the specific sources of funding listed in section 114D.45.

There also are federal laws that require that federal funding be used to supplement and not supplant non-federal money. Because the language in these federal laws is different from the language in Article XI, section 15, it is not clear the extent to which analysis of the federal laws would be relevant to interpretation of the Minnesota Constitution.<sup>10</sup>

#### To whom does the restriction apply?

The requirement that dedicated money supplement and not substitute for traditional sources of funding clearly applies to legislative appropriations. The language comes immediately after the sentence requiring that dedicated money be appropriated by law, and is contained in the article of the Constitution dealing with appropriations and finances.

There is a good argument that the supplement/substitute requirement also applies to state agencies that receive appropriations from the dedicated funds. The language does not say “*Legislative appropriations must supplement...not substitute.*” Rather, the language is focused on the use of the money. Thus an agency recipient likely would not be allowed to use a legislative appropriation of dedicated money to substitute for traditional sources of funding for an activity.

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<sup>10</sup> For an example of a discussion of such a federal law, see *Bennett v. Kentucky Dept. of Educ.* 470 U.S. 656 (1985).

It also seems likely that the supplement/substitute language applies to other entities, including nonstate entities, that receive grants or other funding from an appropriation of the dedicated money. The constitutional language speaks passively of the purpose for which money “may not be used,” and does not specify who may not use it in the prohibited manner. Arguably, the constitution requires each recipient to use dedicated money to supplement and not substitute for the recipient’s traditional source of funding for an activity.<sup>11</sup>

At what level does the supplement/substitute analysis occur?

It is not completely clear if the supplement/substitute analysis should involve a comparison of:

(1) aggregate spending for all purposes covered by each of the constitutionally created funds (i.e. all spending for outdoor heritage, all spending for clean water, all spending for parks and trails, and all spending for arts, history and cultural heritage;

OR

(2) individual spending for each activity/recipient within each broad purpose;

As discussed above, it is likely that the supplement/substitute language applies to every individual entity that receives funding from the funds created in Article XI, section 15. If the funding for every individual entity meets the supplement/substitute requirement, the aggregate spending for all entities receiving money from each of the dedicated funds also will meet the constitutional requirement. In summary, an analysis showing that aggregate state spending for natural resources purposes increased as a result of use of money appropriated from the outdoor heritage fund likely would not be sufficient, by itself, to overcome an instance of dedicated funding for a particular natural resource activity replacing the prior source of funding for that activity.<sup>12</sup>

To what “sources” of funding does the language apply?

The supplement/substitute language applies to “traditional sources of funding for these purposes” without mentioning any specific sources. Thus the language would potentially seem to apply to any source of funding (other than the newly dedicated sales tax money) if these sources were “traditional.” The other sources could include the state general fund, game and fish funds, trust

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<sup>11</sup> A potential argument against this interpretation, at least with respect to nonstate entities, is that the supplement/substitute language appears in an article of the constitution dealing with public funding, state funds, and legislative appropriations, and thus might not have been intended to apply to nonstate entities. But because the nonstate entities are receiving state funds, the stronger argument appears to be that the supplement/substitute language applies to a nonstate recipient, as well as to the legislature and other public agencies.

<sup>12</sup> There also may be instances in which the aggregate spending for a constitutional purpose could decline in any year, without violating the supplement/substitute language. For example, the legislature might decide to eliminate one or more traditional programs completely. In a given year, it may be possible that additional funds appropriated for completely different activities in that area could be less than the prior appropriation for the eliminated program. Arguably, this would not be an unconstitutional substitution.

fund revenues for which the LCCMR makes recommendations, bonding funds, other state funds, federal funds, local government funds, or private funds. An argument could be made that because the prohibition on substitution is contained in a section of the constitution dealing with public funds, the constitutional language is not intended to deal with substitution for traditional private sources of funding. But a counter-argument is that the constitutional language was focused broadly on best use of the new dedicated money, and was intended to ensure supplementation, not substitution, for any traditional source of funding, private or public.

#### What are “traditional” sources of funding ?

The Constitution does not define “traditional sources of funding.” The answer may be different for different activities, and it may not be possible to come up with clear standards without court interpretation. There is no indication that the word “traditional” was intended to have a special technical meaning for constitutional purposes that would be different from the common understanding of “traditional” to refer to an established custom or practice.

One possibility is that the “traditional” source of funding is the immediately prior level of funding. Under this interpretation, the newly dedicated revenue could not be used to support an activity if the immediately prior amount of funding for that activity had been reduced. This interpretation has some support, based on the plain language of the Constitution. That is, if an activity received a \$100,000 appropriation last year, and the legislature reduces the appropriation to \$90,000 this year, it could be argued that using the newly dedicated money to make up the difference would be an unconstitutional substitution of the new money for the traditional source of funding. However, the Constitution does not refer to a specific funding level from a prior year. In this way the constitutional language is different from some “maintenance of effort” requirements in other statutes.<sup>13</sup>

An alternative reading of “traditional” is that it means some type of average level of funding over a period of time. The difficulty with this interpretation is that the Constitution does not specifically say this. Further, the Constitution does not provide guidance on what time period would be appropriate for determining the “traditional” level.

In the absence of clear constitutional language defining “traditional,” it may be helpful to think about the “traditional sources of funding” in light of the overall purpose of the dedicated funding amendment. A primary purpose of the amendment was to provide additional money for certain purposes. In some cases, it is possible this additional funding may be needed because the “traditional” level of funding is declining. For example, funding for an activity traditionally financed by revenues from sale of game or fish licenses could be declining for a variety of reasons unrelated to legislative decision-making (e.g. if shrinking habitat for game or fish contributed to fewer license sales). Similarly, “traditional” funding could be declining over time because a lower level of federal or private funding was available. Arguably, it would not advance the purposes of the constitutional amendment if “traditional source of funding” were

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<sup>13</sup> For some examples, see Minnesota Statutes, section 245.4835 (spending for certain mental health services); section 254B.03 (chemical dependency spending); 119B.11 (child care programs); 134.34 (libraries).

interpreted to forbid using the newly dedicated money to support an activity any time its prior source of funding had been reduced.<sup>14</sup>

Another way of interpreting the “traditional sources of funding” would be to ask what level of funding would have existed from prior sources if the newly dedicated constitutional money were not available. For example, if the level of federal funding, game and fish funding, or state general fund money for an activity this year would have declined by 10 percent from last year even if the voters had not approved the constitutional amendment, an argument can be made that the “traditional” source of funding is 90 percent of last year’s budget, not 100 percent. Under this interpretation, use of the constitutionally dedicated money to provide funding between the 90 and 100 percent level would be permissible.

This issue is likely to arise in the 2009 session if the legislature makes general, across-the-board reductions in a variety of state programs to address the projected budget deficit.<sup>15</sup> The argument that it is permissible to appropriate the newly dedicated sales tax money to an activity even if the legislature has reduced the general fund appropriation for the activity would seem to be strongest if the general fund reduction for the activity was less than or equal to the amount of the general fund appropriation reduction applied across the board, or applied to activities similar to those funded through the newly dedicated sales tax revenue.<sup>16</sup>

A somewhat different issue is how many times an activity needs to have been funded from a particular source to make that source “traditional.” This too may need to be evaluated on a case-by-case basis. For example, if the legislature or another funding source has begun to provide money for an activity and has indicated that the program is intended to be ongoing, that funding source may be “traditional” after one year. On the other hand, if the legislature (for example, through bonding or Environment and Natural Resources Trust Fund money) has indicated that funding is one-time or otherwise limited in nature, that funding source may not be “traditional” even if it has occurred more than once.

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<sup>14</sup> If “traditional” were interpreted to refer to any prior source of funding, it is not clear how far back to look. There was testimony in at least one legislative committee considering H.F.2285 from an organization stating that the new dedicated funding was needed, in part, because several years ago the legislature had eliminated state general fund appropriations to the organization (Testimony of Minnesota Humanities Commission executive director in the House Heritage Finance Division, May 9, 2007).

<sup>15</sup> In the future, a parallel issue could arise if the legislature made across-the-board increases in state funding. That is, if the legislature increased most agency budgets by 5 percent, but made no increases in activities funded in part with dedicated money, it could be argued that the dedicated money was being used to substitute for the traditional source of funding.

<sup>16</sup> If a court determined that an appropriation from one of the newly-created trust funds to an entity whose general fund budget were reduced constituted an illegal substitution of dedicated money for traditional sources, it is likely that only a portion of the appropriation of dedicated funds would be illegal. For example, if the legislature reduced the general fund appropriation for an activity from \$100,000 to \$90,000 and the legislature appropriated \$50,000 of dedicated money for the activity, \$40,000 of the dedicated fund appropriation would clearly be a supplement, and it is likely that only \$10,000 could be questioned as a potential substitution.

### Remedy for potential violations

It is not clear if the judicial remedy for the legislature substituting newly dedicated money for the traditional source would be to prohibit spending of the dedicated 3/8 money or to order the legislature to appropriate more money from the traditional source. The appropriate remedies may vary, depending on the facts of particular appropriations decisions.

Some thoughts on this issue:

- The language of Article XI, section 15 arguably focuses on the money dedicated under that section; i.e. “The money dedicated under this section...may not be used as a substitute.” This suggests the appropriate remedy for violating this language would be to prohibit expenditure of the dedicated money.
- Courts traditionally have been reluctant to order the legislature to appropriate money from the state treasury. But courts have done this when they have determined such an order is necessary to remedy constitutional violations. In some cases, courts may determine that ordering the legislature to appropriate money is imperative to serve the purposes of the constitutional amendment—that in some cases enjoining expenditure of the 3/8 money would result in less, not more, resources being available for a purpose specified in the constitution.
- In some cases, it may not be practical or possible for the legislature to appropriate money from the traditional source; e.g. if the traditional source of money comes only from declining dedicated fees, from federal funds, or from private sources. This suggests that the remedy for illegally substituting would be to enjoin expenditure of the dedicated money, not to mandate spending from another source.
- It is not clear if the legislature is constitutionally required to appropriate money from the newly dedicated funds in any particular year. The constitution provides that “The money dedicated under this section shall be appropriated by law.” It is not clear if this means that the legislature always must appropriate the available dedicated money, or if it means that the money cannot be spent unless it is appropriated.
- It clearly seems permissible, with respect to any particular activity or program for the legislature to reduce the traditional level of funding and not replace it from any source
- It is not clear if legislation making appropriations could influence the remedy that a court would apply for a constitutional violation (e.g. by stating in an appropriation bill something to the effect of “if a court determines that the appropriation for “.....” would violate the requirement that dedicated money may not be used as a substitute for traditional sources of funding, the appropriation from the [the dedicated 3/8 money] is reduced so as to avoid an unconstitutional substitution.

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# Minnesota House of Representatives

August 19, 2013

TO: Members, Lessard-Sams Outdoor Heritage Council

FROM: Mark Shepard, House Research

RE: Response to Questions Asked by the Council

This memo responds to your request for my thoughts on three legal issues.

## Issues and Conclusions

**ISSUE 1: If a project qualifies for funding from one of the four legacy funds created in Article XI, section 15 of the Minnesota Constitution, is the project eligible to receive money from one of the other legacy funds?**

Conclusion: Yes. There does not appear to be anything in the Constitution that prevents a project from receiving funding from one of the legacy funds even if the project also would fit within the permissible purposes for funding from another legacy fund. I have not found anything in the legislative history that indicates the funds were intended to be exclusive in this manner.

**ISSUE 2: Minnesota Statutes, section 97A.056, subdivision 3, paragraph (a) provides, in part, that:**

The council shall make recommendations to the legislature on appropriations of money from the outdoor heritage fund that are consistent with the Constitution **and** state law **and** that will achieve the outcomes of existing natural resource plans, including, but not limited to, the Minnesota Statewide Conservation and Preservation Plan, that directly relate to the restoration, protection, **and** enhancement of wetlands, prairies, forests, **and** habitat for fish, game, and wildlife, **and** that prevent forest fragmentation, encourage forest consolidation, **and** expand restored native prairie.

**Are any uses of the word “and” in section 97A.056, subdivision 3, paragraph (c) best interpreted to mean “or”?**

Conclusion: Some of the uses of “and” clearly mean that all conditions surrounding the “and” must be met. In other cases, it appears “and” is used to describe a series of permissible uses of money, any one of which by itself would be legal for a recommendation on an individual project.

**ISSUE 3:** Minnesota Statutes, section 97A.056, subdivision 3, paragraph (c) provides that, “The council may work with the Clean Water Council to identify projects that are consistent with both the purpose of the outdoor heritage fund and the purpose of the clean water fund.”

**Does omission of the Parks and Trails Fund and the Arts and Cultural Heritage Fund from section 97A.056, subdivision 3, paragraph (c) mean that projects which are eligible for funding from those two funds are statutorily excluded from receiving money from the Outdoor Heritage Fund?**

Conclusion: Section 97A.056, subdivision 3, paragraph (c) does not appear to prevent Outdoor Heritage funding for projects that may be eligible to receive money from the Parks and Trails Fund or the Arts and Cultural Heritage Fund.

**OVERALL COMMENTS:** There are no court interpretations of the language in question for any of these issues, so there is no definitive answer to any of these questions. I did not work on these issues when the legislature proposed the constitutional amendment to the people in 2008, and have not worked on these issues since the end of the 2010 legislative session. There certainly are others who are more knowledgeable than I am on legislative history. If anyone has interpretations that are different from mine, I would be happy to discuss the issues with them.

In all cases, this memo is meant to comment only on what is legally permissible or prohibited. This memo does not address whether or not funding from certain sources is a desirable policy. Thus the legislature (or a group advising the legislature) could consider whether it is desirable to fund certain types of projects only from one source, even if the Constitution does not require this.

## Discussion

**ISSUE 1. If a project qualifies for funding from one of the four legacy funds created in Article XI, section 15 of the Minnesota Constitution, is the project eligible to receive money from one of the other legacy funds?**

There does not appear to be anything in the Constitution that prevents a project from receiving funding from one of the legacy funds even if the project also would fit within the permissible purposes for funding from another legacy fund. The primary reason for this conclusion is that there is no language in the Constitution providing this type of limit. I have not found anything in the legislative history that indicates the funds were intended to be exclusive in this manner.

Article XI, section 15 of the Minnesota Constitution increases the sales and use tax by three-eighths of one percent until June 30, 2034, and dedicates the receipts from the increase to four new funds: the Outdoor Heritage Fund, the Clean Water Fund, the Parks and Trails Fund, and

the Arts and Cultural Heritage Fund. Article XI, section 15 imposes various restrictions on use of money from these funds:

- Money from each fund may be spent only for the purposes specified for each fund.
- Money from each fund must be appropriated by law.
- Money dedicated under this section must supplement traditional sources of funding and may not be used as a substitute.

These constitutional restrictions demonstrate that in proposing the amendment to people, the legislature considered restrictions on use of the funding. There is no constitutional language that prohibits a project from receiving funding from one of the funds if it would be eligible for funding from another fund. The fact that the Constitution contains various restrictions on uses of these funds provides an argument that these are the only restrictions that the Constitution imposes. The Constitution requires that funds be appropriated by law. Appropriations often contain restrictions, in addition to providing authorization for funding. Thus it is likely that the legislature can impose additional conditions on use of the funds, even if these conditions are not constitutionally mandated.

The ballot question submitted to the voters in 2008 also does not contain language indicating an intent to prohibit a project from receiving money from one fund if the project would be eligible to receive money from another fund.<sup>1</sup>

At the end of this memo are notes that I compiled at the end of the year in 2008, reviewing the legislative history of the bills that proposed the constitutional amendment that was adopted by the voters in 2008. These notes do not show anything that would indicate legislative intent for projects to receive funding only from one of the legacy funds. At the end of the year in 2008, I also listened to audio recordings of most of the legislative proceedings on these bills. I was not listening to these proceedings with the current issue in mind. However, I have reviewed my 2008 notes, and also have not found anything relevant to the current issues.

There were a number of efforts before the 2007-2008 legislative sessions to dedicate a portion of the sales tax to natural resources and other purposes. These bills never became law. They are summarized in a 2007 House Research publication “A Chronology of Recent Legislation to Dedicate Funding for Natural Resource Purposes”:

<http://www.house.leg.state.mn.us/hrd/pubs/dedfund.pdf>

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<sup>1</sup> The ballot question was:

"Shall the Minnesota Constitution be amended to dedicate funding to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater by increasing the sales and use tax rate beginning July 1, 2009, by three-eighths of one percent on taxable sales until the year 2034?"

This paper contains links to bills introduced from 2000 to 2006. I have reviewed regular session bills from each of these years (although not all the versions of each bill). I have not found anything relevant to the issue of whether a project can receive money from one of the legacy funds if it is eligible for funding from another of the funds.

In the absence of specific constitutional language specifying that a project eligible for funding from one of the legacy funds cannot receive money from another, there also is a logical problem. That is, which fund would be primary? For example, if a project would both enhance habitat for fish (an eligible purpose under the Outdoor Heritage Fund), and restore water quality in a lake (an eligible purpose under the Clean Water Fund), would the project be eligible for exclusive funding from the Outdoor Heritage Fund or for exclusive funding from the Clean Water Fund?

As indicated above, my opinion is that there is nothing in the Constitution that prevents a project from receiving funding from one of the legacy funds even if the project also would fit within the permissible purposes for funding from another legacy fund. Because there is no such language, I do not consider the Constitution to be ambiguous on this point.

In general, if a statute is unambiguous on its face, a court will apply the plain meaning of the statute, and will not use tools of statutory construction to determine the meaning of the statute. Courts generally will not add to a statute something that the legislature deliberately or inadvertently omitted.

If there were need to construe a potential ambiguity, the Minnesota Supreme Court has summarized the general principles of plain language construction that apply to examination of constitutional provisions:

“On the numerous occasions we have been required to examine constitutional provisions, we have repeatedly observed that it is our task to give effect to the clear, explicit, unambiguous and ordinary meaning of language. *State ex rel. Gardner v. Holm*, 241 Minn. 125, 62 N.W.2d 52, 55 (1954). If the language of the provision is unambiguous, it must be given its literal meaning—there is neither the opportunity nor the responsibility to engage in creative construction.... The rules limiting our construction have not changed since we enunciated them in *State ex rel. Chase v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928):

“The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and people in adopting the article in question. If the language used is unambiguous, it must be taken as it reads, and in that case there is no room for construction. The entire article is to be construed as a whole, and receive a practical, common sense construction. It should be construed in the light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.”

*Rice v. Connolly*, 488 N.W.2d 241, 246-47 (Minn. 1992) (construing the meaning of a constitutional amendment authorizing on-track betting on horseracing).<sup>2</sup>

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<sup>2</sup> See also, *Clark v. Ritchie*, 787 N.W.2d 142, 146 (Minn. 2010); *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005).

Courts will use rules of construction when a provision is ambiguous.<sup>3</sup> When applying rules of construction to interpretation of the Constitution, the Minnesota Supreme Court has articulated several principles:

- The fundamental aim is to ascertain and give effect to the intent of the people.<sup>4</sup>
- Courts may examine the history of the constitutional provision, including the prior condition of the law, and the occasion, object and necessity of change. Courts may look to the history of the times and the state of things existing when the provision was adopted.<sup>5</sup>
- If the meaning of a provision is doubtful, the doubt should be resolved in a way to forward the evident purpose with which the provision was adopted.<sup>6</sup>
- “The Constitution belongs to the people. They have adopted it and they alone can amend it. Neither the Legislature nor [the] court [can] bypass the people under the guise of a liberal interpretation which in effect would amend the constitution, no matter how desirable the amendment might be.”<sup>7</sup>
- “The rules applicable to the construction of statutes are equally applicable to the constitution.”<sup>8</sup>
- The Minnesota Supreme Court has questioned whether the rule of *expressio unius* applies with the same force to a constitution as to a statute. (Under this rule of statutory construction, the expression of one thing is the exclusion of another). In *Reed v. Bjornson*, the court held that enumeration of compulsory tax exemptions in the constitution did not prevent the legislature from enacting other exemptions. The *Reed* court cited with approval an Arkansas ruling that, when construing a constitution, “only those things expressed in such positive affirmative terms as plainly imply the negative of what is not mentioned will be considered as inhibiting the powers of the legislature. The reason is that the constitution of a state is not a grant of enumerated power, but its chief object is to impose limitations upon the several departments of government. If a

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<sup>3</sup> *Clark v. Pawlenty*, 755 N.W.2d 293, 304 (Minn. 2008), citing *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005); *State v. Finnegan*, 188 Minn. 54, 58-60, 246 N.W. 521 (1933) (differing from some other cases interpreting constitutional amendments, in that the court noted that language which appeared plain on its face became ambiguous when applied, and thus was a proper subject of construction by the court).

<sup>4</sup> *Clark v. Pawlenty*, 755 N.W.2d 293 (Minn. 2008); *Lyons v. Spaeth*, 220 Minn. 563, 567, 20 N.W.2d 481 (1945); *Chase v. Babcock*, 175 Minn. 103, 107, 220 N.W.408 (1928).

<sup>5</sup> *Reed v. Bjornson*, 191 Minn. 254, 253 N.W. 102 (1934). In interpreting constitutional amendments, courts have considered the text of the constitution before the amendment and judicial construction of that prior text. *Page v. Carlson*, 488 N.W.2d 274 (Minn. 1992); *In re Kirby*, 350 N.W.2d 344, 346-49 (Minn. 1984).

<sup>6</sup> The Minnesota Supreme Court, in both *Reed v. Bjornson* and in *Lyons v. Spaeth* cited United States Supreme Court Justice Sutherland for this proposition. *Home B. & L. Ass'n v. Blaisdell*, 290 U.S. 398 (1934) (Sutherland, J., dissenting).

<sup>7</sup> *Knapp v. O'Brien*, 288 Minn. 103, 106, 179 N.W.2d 88 (1970).

<sup>8</sup> *Clark v. Pawlenty*, 755 N.W.2d 293, 304 (Minn. 2008).

contested enactment is not prohibited either by the letter or the spirit of the constitution, it is authorized.”<sup>9</sup>

- In some contexts, the Minnesota Supreme Court has stated that provisions in state constitutions are expressions of limitations on the powers of government.<sup>10</sup>

**ISSUE 2. Are any uses of the word “and” in Minnesota Statutes, section 97A.056, subdivision 3, paragraph (c) best interpreted to mean “or”?**

Minnesota Statutes, section 97A.056, subdivision 3, paragraph (a) provides, in part, that:

The council shall make recommendations to the legislature on appropriations of money from the outdoor heritage fund that are consistent with the Constitution **and**<sup>1</sup> state law **and**<sup>2</sup> that will achieve the outcomes of existing natural resource plans, including, but not limited to, the Minnesota Statewide Conservation and Preservation Plan, that directly relate to the restoration, protection, **and**<sup>3</sup> enhancement of wetlands, prairies, forests, **and**<sup>4</sup> habitat for fish, game, and wildlife, **and**<sup>5</sup> that prevent forest fragmentation, encourage forest consolidation, **and**<sup>6</sup> expand restored native prairie. *[The superscript numbers added after each “and” are used below to distinguish the various uses of the word “and”].*

Some of the uses of “and” clearly mean that all conditions surrounding the “and” must be met. In other cases, it appears “and” is used to describe a series of permissible uses of money, any one of which by itself would be legal. In the discussion below, I refer to the superscript numbers in the excerpt from section 97A.056 reproduced above to distinguish which use of the word “and” I am referring to.

The first two uses of the word “and” clearly mean that all of the conditions must be met:

- The Council’s recommendations clearly must be consistent with both the Constitution and with state law. This is the plain statutory language, and also makes sense when the context is considered.
- In addition to being consistent with constitutional and statutory requirements, the council’s recommendations must achieve outcomes of existing natural resource plans. Clearly, it is not possible for the Council to achieve outcomes of natural resource plans as an alternative to being consistent with the Constitution and the statutes, so the language should be construed to require compliance with conditions that precede and follow the word “and.”

Uses 3 to 6 of the word “and” are more ambiguous:

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<sup>9</sup> *Reed v. Bjornson*, 191 Minn. 254, 269, 253 N.W. 102 (1934) (quoting *Stanley v. Gates*, 179 Ark. 886, 892, 19 S.W.2d 1000, 1002 (1929)).

<sup>10</sup> *Page v. Carlson*, 488 N.W.2d 274, 281 (Minn. 1992); *Rice v. Connolly*, 488 N.W.2d 241, 248 (Minn. 1992); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986).

The council shall make recommendations....that directly relate to the restoration, protection, **and**<sup>3</sup> enhancement of wetlands, prairies, forests, **and**<sup>4</sup> habitat for fish, game, and wildlife, **and**<sup>5</sup> that prevent forest fragmentation, encourage forest consolidation, **and**<sup>6</sup> expand restored native prairie.

While the plain meaning of the word “and” could be construed to mean all of the conditions surrounding “and” must be met, it is not clear if this phrase means that *each* recommendation must meet all of the conditions, or that the Council recommendations *collectively* must meet all of the conditions. It is unlikely that many projects could accomplish all of the goals listed in this part of section 97A.056, and I am not aware of any legislative history that would suggest that a project must meet all of the goals to receive funding. Therefore, it would make most sense to interpret this language as applying to the Council recommendations collectively, and not to each individual recommendation.

**ISSUE 3. Does omission of the Parks and Trails Fund and the Arts and Cultural Heritage Fund from section 97A.056, subdivision 3, paragraph (c) mean that projects which are eligible for funding from those two funds are statutorily excluded from receiving money from the Outdoor Heritage Fund?**

Minnesota Statutes, section 97A.056, subdivision 3, paragraph (c) provides that:

“The council may work with the Clean Water Council to identify projects that are consistent with both the purpose of the outdoor heritage fund and the purpose of the clean water fund.”

Section 97A.056, subdivision 3, paragraph (c) does not appear to prevent Outdoor Heritage funding for projects that may be eligible to receive money from the Parks and Trails Fund or the Arts and Cultural Heritage Fund. I reach this conclusion because:

- There is no language precluding funding from the Parks and Trails Fund or the Arts and Cultural Heritage Fund.
- The potential for some overlap between the Outdoor Heritage Fund and the Clean Water Fund seems apparent from the language of the Constitution. For example, the Outdoor Heritage Fund can be used to restore, protect, and enhance habitat for fish, and the Clean Water Fund can be used to protect, enhance, and restore water quality in lakes, rivers, and streams. It seems possible that the legislature may have adopted the language in section 96A.056, subdivision 3, paragraph (c) to encourage the two advisory councils to work together on issues of possible overlap. It is possible the legislature did not mention the other two constitutional funds in this section because the substantive areas of overlap did not seem as great, or because there are no single councils with jurisdiction over the entire scope of the other two funds. (The legislature created the Greater Minnesota Parks and Trails Commission in 2013, so this group did not exist when section 97A.056, subdivision 3 was enacted).

Note that this issue of statutory interpretation could be resolved in a different manner from constitutional issues. If the legislature enacts appropriations from the Outdoor Heritage Fund for purposes that might also qualify for funding from the Parks and Trails Fund or the Arts and

Cultural Heritage Fund, that appropriation likely would end any legal questions about application of the language in section 97A.056, subdivision 3 (c) to that project. That is, the legislative appropriation would be later enacted and more specific than the general language in section 97A.056, so would be construed to supersede the general language of section 97A.056 if there were a legal challenge.

MS/mk

## APPENDIX

### Notes on legislative history of bills proposing Article XI, section 15

*[These notes were taken during a review of these bills in December, 2008]*

## H.F. 2285

**As introduced on 3/21/07 and Referred to Environment and Natural Resources Committee**

1.13 Section 1. **CONSTITUTIONAL AMENDMENT.**

1.14 An amendment to the Minnesota Constitution is proposed to the people. If the  
1.15 amendment is adopted, a section will be added to article XI, to read:  
1.16 Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be  
1.17 increased by three-eighths of one percent on sales and uses taxable under the general state  
1.18 sales and use tax law. Receipts from the increase, plus penalties and interest and reduced  
1.19 by any refunds, are dedicated to the following funds: at least 25 percent of the receipts  
1.20 shall be deposited in the natural heritage fund and may be spent only to restore, preserve,  
1.21 and enhance fish and wildlife habitat and other natural resources; at least 25 percent of the  
1.22 receipts shall be deposited in the clean water fund and may be spent only to protect and  
1.23 restore the state's lakes, rivers, streams, wetlands, and groundwater; at least 15 percent  
1.24 of the receipts shall be deposited in the parks and trails fund and may be spent only to  
1.25 support the state's parks and trails; at least 15 percent of the receipts shall be deposited in  
1.26 the sustainable drinking water fund and may be spent only to protect the state's drinking  
1.27 water sources; and at least ten percent shall be deposited in the arts and cultural heritage  
2.1 fund and may be spent only for arts and cultural heritage purposes. Up to ten percent of  
2.2 the remaining funds shall be divided by law among the funds created in this section. A  
2.3 natural heritage fund; a parks and trails fund; a clean water fund; a sustainable drinking  
2.4 water fund; and an arts and cultural heritage fund are created in the state treasury. The  
2.5 money dedicated under this section shall be appropriated by law. The dedicated money  
2.6 under this section must supplement traditional sources of funding for these purposes and  
2.7 may not be used as a substitute. Land acquired by fee with money deposited in the natural  
2.8 heritage fund under this section must be open to public taking of fish and game during the  
2.9 open season unless otherwise provided by law.

2.10 Sec. 2. **SUBMISSION TO VOTERS.**

2.11 The proposed amendment must be submitted to the people in the 2008 general  
2.12 election. The question submitted shall be:  
2.13 "Shall the Minnesota Constitution be amended to provide funding beginning July  
2.14 1, 2009, to restore, preserve, and enhance the state's fish and wildlife habitat and other

2.15 natural resources; to protect the state's drinking water sources; to protect and restore the  
2.16 state's lakes, rivers, streams, wetlands and groundwater; to support the state's parks and  
2.17 trails; and to support the arts and cultural heritage of the state by increasing the sales and  
2.18 use tax rate by three-eighths of one percent on taxable sales until the year 2034?

2.19 Yes .....

2.20 No ....."

**Key Features of proposed constitutional language in the original bill:**

- at least 25 percent in the natural heritage fund only to restore, preserve, and enhance fish and wildlife habitat and other natural resources;
- at least 25 percent of the in the clean water fund only to protect and restore the state's lakes, rivers, streams, wetlands, and groundwater;
- at least 15 percent of the receipts in the parks and trails fund only to support the state's parks and trails;
- at least 15 percent of the receipts shall be deposited in the sustainable drinking water fund only to protect the state's drinking water sources;
- at least 10 percent in the arts and cultural heritage fund only for arts and cultural heritage purposes.
- Up to 10 percent of the remaining funds shall be divided by law among the funds created in this section.
- Must supplement traditional sources of funding and may not be used as a substitute.

**The proposed constitutional language did not change as the bill moved through these phases in the legislative process:**

3/21/07: Referred by Chair to Game, Fish, and Forestry Division

4/25/07: Division: to pass and return to Environment and Natural Resources (not amended)

5/08/07: Committee: to pass and re-refer to Rules and Legislative Administration (not amended)

5/09/08: Rules Committee: to pass and re-refer to Finance (not amended)

5/09/07: Referred by Chair to Heritage Finance Division

5/09/07: Division: to pass as amended and return to Finance

- No change in the proposed constitutional language

5/10/07: Referred by Chair to State Govt. Finance

5/11/07: Division: to pass and return to Finance (no amendments)

5/14/07: Finance Committee: to pass, as amended, and refer to Taxes

- No change in the proposed constitutional language; still identical to original bill

5/16/07: Tax Committee: to pass and refer to Ways and Means (no amendments)

5/16/07: Ways/Means Committee: to pass and refer to Rules

**As reported out of Rules Committee, on May 17, 2007, the proposed constitutional language was changed.**

Sertich from the Committee on Rules and Legislative Administration to which was referred:

H. F. No. 2285, A bill for an act relating to constitutional amendments; proposing an amendment to the Minnesota Constitution, article XI; increasing the sales tax rate by three-eighths of one percent and dedicating the receipts for natural resource and cultural heritage purposes; creating a natural heritage fund; creating a parks and trails fund; creating a clean water fund; creating a sustainable drinking water fund; creating an arts and cultural heritage fund; amending Minnesota Statutes 2006, sections 114D.20, subdivision 6; 114D.30, subdivision 6; 114D.45; 297A.62, subdivision 1; 297A.94; 297B.02, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 85; 97A; 103H; 129D.

Reported the same back with the following amendments:

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**Journal of the House - 71st Day - Thursday, May 17, 2007 - Top of Page 6853**

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Page 1, line 18, after "dedicated" insert ", for the benefit of Minnesotans,"

Page 1, lines 22, 24, and 25, delete "the state's"

Page 2, line 14, delete "the" and insert "our"

Page 2, line 15, delete the first "the" and insert "our" and delete "to protect and restore the"

Page 2, line 16, delete "state's lakes, rivers, streams, wetlands and groundwater;" and delete "the state's" and insert "our"

Page 2, line 17, delete the first "and" and delete the second "the" and insert "our" and after "state" insert "; and to protect and restore our state's lakes, rivers, streams, wetlands, and groundwater"

Page 2, line 26, delete "state and regional"

Page 3, lines 2 and 13, delete "the state's"

With the recommendation that when so amended the bill pass.

The report was adopted.

**Key changes in Rules Committee in proposed constitutional language:**

- Receipts from the increase are dedicated “for the benefit of Minnesotans”
- “the state’s” was deleted when referring to: lakes, rivers, streams, wetlands, and groundwater; parks and trails; and drinking water sources
- Language of the constitutional question was changed to refer to read:

“...to restore, preserve, and enhance our state's fish and wildlife habitat and other natural resources; to protect our state's drinking water sources; to support our parks and trails; to support the arts and cultural heritage of our state; and to protect and restore our state's lakes, rivers, streams, wetlands, and groundwater....”

**H.F. 2285 was amended on the House floor on May 19, 2007**

H. F. No. 2285 was reported to the House.

Sertich, Howes and Moe moved to amend H. F. No. 2285, the second engrossment, as follows:

Page 1, line 24, after "support" insert "state, regional, and county"

Page 2, line 7, after the period, insert "The dedicated money under this section may be used to provide matching grants."

Page 2, line 25, after "on" insert "state, regional, and county"

Page 3, line 7, delete "November 15, 2008" and insert "July 1, 2009"

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**Journal of the House - 73rd Day - Saturday, May 19, 2007 - Top of Page 7230**

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Page 3, after line 17 insert:

**"EFFECTIVE DATE.** This section is effective July 1, 2009, if the constitutional amendment proposed in section 1 is adopted by the people."

Page 5, after line 29 insert:

**"EFFECTIVE DATE.** This section is effective July 1, 2009, if the constitutional amendment proposed in section 1 is adopted by the people."

The motion prevailed and the amendment was adopted.

**The House floor amendment affected the constitutional language as follows:**

- The term "state, regional, and county" was added to modify "parks and trails"
- The following sentence was added, and was applicable to funding for all of the purposes specified in the constitutional language: "The dedicated money under this section may be used to provide matching grants."

**Numerous floor amendments were rejected.**

- Some would have taken the 3/8 (or a different percentage) out of existing sales tax receipts instead of increasing the tax. One inserted hunter and angler access as an authorized purpose. One would have deleted the arts and cultural heritage funding. Others would have changed percentages dedicated to various purposes.
- One amendment (drafted to the 2<sup>nd</sup> engrossment) proposed new language at the end of the sentence containing "must supplement...and may not be used as a substitute" language, and may be relevant to its interpretation:

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**Journal of the House - 73rd Day - Saturday, May 19, 2007 - Top of Page 7248**

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Olson, Heidgerken and Hackbarth moved to amend H. F. No. 2285, the second engrossment, as amended, as follows:

Page 2, line 7, delete the period and insert ". nor may other operating budget items in the environment and arts budgets be reduced because of these newly dedicated funds."

A roll call was requested and properly seconded.

The question was taken on the Olson et al amendment and the roll was called. There were 21 yeas and 112 nays as follows:

- Two amendments, which were not adopted, attempted to provide funding specifically for matching grants to sporting and conservation clubs

Paulsen moved to amend H. F. No. 2285, the second engrossment, as amended, as follows:

Page 1, line 19, delete "25" and insert "27"

Page 2, line 1, delete "ten" and insert "eight"

Page 3, after line 2, insert:

"(b) The commissioner of natural resources shall develop a biennial budget plan to include up to \$5,000,000 in each fiscal year for a conservation partners program to provide matching grants of up to \$20,000 to local sporting and conservation clubs for the improvement, enhancement, and protection of fish, game, wildlife, habitat, forestry, and land conservation."

Page 3, line 3, delete "(b)" and insert "(c)"

Page 3, line 5, delete "(c)" and insert "(d)"

A roll call was requested and properly seconded.

The question was taken on the Paulsen amendment and the roll was called. There were 59 yeas and 73 nays as follows:

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Brod moved to amend H. F. No. 2285, the second engrossment, as amended, as follows:

Page 2, line 1, delete everything after the period

Page 2, line 2, delete everything before the period and insert "Ten percent of the receipts shall be used by the commissioner of natural resources to develop a biennial budget plan in each fiscal year for a conservation partners program to provide matching grants of up to \$20,000 to local sporting and conservation clubs for the improvement, enhancement, and protection of fish, game, wildlife, habitat, forestry, and land conservation."

Page 2, line 4, delete everything after the period

Page 2, line 5, delete everything before "The"

A roll call was requested and properly seconded.

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The question was taken on the Brod amendment and the roll was called. There were 49 yeas and 82 nays as follows:-----

**The bill was sent to conference committee, and a draft conference committee report came back to the House, dated May 21, 2007. The House did not vote on this conference report. This report appears to be identical to the report later adopted in 2008. Some key features of this conference report were:**

- 33% in the outdoor heritage fund, with language identical to the eventual final language of the constitutional amendment;
- 33% in the clean water fund, with language identical to the eventual final language of the constitutional amendment;
- 14.25% in the parks and trails fund, with language identical to the eventual final language of the constitutional amendment;
- 19.75% in the arts and cultural heritage fund, with language identical to the eventual final language of the constitutional amendment;
- Supplement/not substitute language, with language identical to the eventual final language of the constitutional amendment.

## S.F. 6

[When originally introduced, the companion to HF2285 was SF 2146, which was introduced on March 24, 2007. SF 6 later became the companion to HF 2285.]

### **As introduced on January 4, 2007 and referred to the committee on Environment and Natural Resources:**

#### Section 1. CONSTITUTIONAL AMENDMENT.

1. 14 An amendment to the Minnesota Constitution is proposed to the people. If the  
1. 15 amendment is adopted, a section will be added to article XI, to read:  
1. 16 Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be  
1. 17 increased by three-eighths of one percent on sales and uses taxable under the general state  
1. 18 sales and use tax law. Receipts from the increase, plus penalties and interest and reduced  
1. 19 by any refunds, are dedicated as follows: 34 percent of the receipts shall be deposited in  
1. 20 the heritage enhancement fund and may be spent only to improve, enhance, or protect the  
1. 21 state's fish, wildlife, habitat, and fish and wildlife tourism; 22 percent of the receipts shall  
1. 22 be deposited in the parks and trails fund and may be spent only on parks, trails, and zoos  
1. 23 in the state; 22 percent of the receipts shall be deposited in the clean water fund and may  
1. 24 be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands,  
1. 25 and groundwater; and 22 percent of the receipts shall be deposited in the arts, humanities,  
1. 26 museum, and public broadcasting fund and may be spent only on arts, humanities, history,  
1. 27 museums, and public broadcasting. An arts, humanities, museum, and public broadcasting  
2. 1 fund; a heritage enhancement fund; a parks and trails fund; and a clean water fund are  
2. 2 created in the state treasury. The money dedicated under this section shall be appropriated  
2. 3 by law. The money dedicated under this section for fish, wildlife, habitat, fish and wildlife  
2. 4 tourism, parks, trails, zoos, protection and restoration of waters, arts, and history shall  
2. 5 not be used as a substitute for traditional funding sources for the purposes specified, but  
2. 6 the dedicated money shall supplement traditional sources of funding for those purposes.  
2. 7 Land acquired by fee with money deposited in the heritage enhancement fund under this  
2. 8 section must be open to public taking of fish and game during the open season unless  
2. 9 otherwise provided by law.

#### 2. 10 Sec. 2. SUBMISSION TO VOTERS.

2. 11 The proposed amendment shall be submitted to the people at the 2008 general  
2. 12 election. The question submitted shall be:  
2. 13 "Shall the Minnesota Constitution be amended to provide funding beginning July 1,

2.14 2009, to improve, enhance, or protect the state's fish, wildlife, habitat, and fish and wildlife  
2.15 tourism; its parks, trails, and zoos; its lakes, rivers, streams, wetlands, and groundwater;  
2.16 and its arts, humanities, history, museums, and public broadcasting by increasing the sales  
2.17 and use tax rate by three-eighths of one percent on taxable sales until the year 2034?

2.18 Yes .....

2.19 No ....."

**Key Features of proposed constitutional language in the original bill:**

- 34% to heritage enhancement fund and may be spent only to improve, enhance, or protect the state's fish, wildlife, habitat, and fish and wildlife tourism;
- 22% in the parks and trails fund, may be spent only on parks, trails, and zoos;
- 22% in the clean water fund, may be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands, and groundwater;
- 22% in the arts, humanities, museum, and public broadcasting fund and may be spent only on arts, humanities, history, museums, and public broadcasting.
- Money dedicated under this section shall not be used as a substitute for traditional funding sources but shall supplemental traditional sources of funding
- Statutory language had detailed break-down for parks and trails and for arts, humanities, etc.. Statutory language for heritage fund required that at least 97 percent be spent on specific fish, wildlife, habitat, and fish and wildlife tourism projects.

**The report from Environment and Natural Resources committee on February 12, 2007 recommended that the bill be amended and be referred to State and Local Government.**

The amendments were as follows:

Page 4, line 10, before "The" insert "(a)"

Page 4, after line 14, insert:

"(b) A forest legacy and forest consolidation account is created within the heritage enhancement fund. From the receipts deposited in the heritage enhancement fund under the Minnesota Constitution, article XI, section 15, 25 percent each fiscal year must be credited to the forest legacy and forest consolidation account. Money in the account may be spent only for the acquisition of permanent easements on private forest land or for the acquisition of land for forest consolidation." And when so amended the bill do pass and be re-referred to the Committee on State and Local Government Operations and Oversight. Amendments adopted. Report adopted.

**The report from the State and Local Government committee on February 28, 2007 recommended that the bill pass and be referred to Finance.**

The amendment was as follows:

Delete section 5, and insert:

“ Sec. 5. **[97A.056]HERITAGE ENHANCEMENT FUND; HERITAGE ENHANCEMENT COUNCIL.**

Subdivision 1. **Heritage enhancement fund.** (a) The heritage enhancement fund is established in the Minnesota Constitution, article XI, section 15. All money earned by the heritage enhancement fund must be credited to the fund. At least 97 percent of the money appropriated from the fund must be spent on specific fish, wildlife, habitat, and fish and wildlife tourism projects.

(b) A forest legacy and forest consolidation account is created within the heritage enhancement fund. From the receipts deposited in the heritage enhancement fund under the Minnesota Constitution, article XI, section 15, 25 percent each fiscal year must be credited to the forest legacy and forest consolidation account. Money in the account may be spent only for the acquisition of permanent easements on private forest land or for the acquisition of land for forest consolidation.

Subd. 2. **Heritage Enhancement Council.** (a) A Heritage Enhancement Council of 16 members is created in the legislative branch, consisting of:

(1) three members of the senate appointed by the senate Subcommittee on Committees of the Committee on Rules and Administration;

(2) three members of the house of representatives appointed by the speaker of the house;

(3) three public members representing hunting, fishing, and wildlife interests appointed by the senate Subcommittee on Committees of the Committee on Rules and Administration;

(4) three public members representing hunting, fishing, and wildlife interests appointed by the speaker of the house; and

(5) four public members representing hunting, fishing, and wildlife interests appointed by the governor.

(b) One member from the senate and one member from the house of representatives must be from the minority caucus.

(c) In making appointments to the council, appointing authorities shall consult with hunting, fishing, and wildlife groups and shall consider geographic balance. Appointments to the council shall be made by February 1, 2009.

(d) Legislative members are entitled to reimbursement for per diem expenses plus travel expenses incurred in the services of the council. The removal and, beginning July 1, 2009, the compensation of public members is as provided in section 15.0575.

(e) The first meeting of the council shall be convened by the chair of the Legislative Coordinating Commission. Members shall elect a chair, vice chair, secretary, and other officers as determined by the council. The chair may convene meetings as necessary to conduct the duties prescribed by this section.

(f) Public membership terms are coterminous with the appointing authority and legislative membership terms are at the pleasure of the appointing authority, except that members shall serve on the council until their successors are appointed.

(g) Vacancies occurring on the council do not affect the authority of the remaining members of the council to carry out their duties. Vacancies shall be filled in the same manner as under paragraph (a).

(h) The governor's appointments to the council are subject to the advice and consent of the senate.

Subd. 3. **Duties of council.** (a) The council, in consultation with statewide and local fishing, forestry, hunting, and wildlife groups, shall develop a biennial budget plan to recommend expenditures from the heritage enhancement fund to the legislature and the governor. The biennial budget plan shall include at least \$5,000,000 in each fiscal year for a conservation partners program to provide matching grants of up to \$20,000 to local sporting and conservation clubs for the improvement, enhancement, and protection of fish, game, and wildlife habitat. Approval of the biennial budget plan for the heritage enhancement fund requires an affirmative vote of at least 11 members of the council.

(b) In the biennial budget submitted to the legislature, the governor shall submit separate budget detail for planned expenditures from the heritage enhancement fund as recommended by the council.

(c) As a condition of acceptance of an appropriation from the heritage enhancement fund, an agency or entity receiving an appropriation shall submit a work program and quarterly progress reports for appropriations from the heritage enhancement fund to the members of the Heritage Enhancement Council in the form determined by the council.

Subd. 4. **Council administration.** (a) The council may employ personnel and contract with consultants as necessary to carry out functions and duties of the council. Permanent employees shall be in the unclassified service. The council may request staff assistance, legal opinion, and data from agencies of state government as needed for the execution of the responsibilities of the council.

(b) Beginning July 1, 2009, the administrative expenses of the council shall be paid from the heritage enhancement fund, as appropriated by law.

(c) A council member or an employee of the council may not participate in or vote on a decision of the council relating to an organization in which the member or employee has either a direct or indirect personal financial interest. While serving on or employed by the council, a person shall avoid any potential conflict of interest.

Subd. 5. **Open meetings.** (a) Meetings of the council and other groups the council may establish must be open to the public. Except where prohibited by law, the council shall establish additional processes to broaden public involvement in all aspects of its deliberations. For the purposes of this subdivision, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the council.

(b) For legislative members of the council, enforcement of this subdivision shall be governed by section 3.055, subdivision 2. For nonlegislative members of the council, enforcement of this subdivision shall be governed by section 13D.06, subdivisions 1 and 2.

Subd. 6. **Council expiration.** Subdivisions 2 to 5 expire on June 30, 2013, unless extended by law.

**EFFECTIVE DATE.** This section is effective November 15, 2008, if the constitutional amendment proposed in section 1 is adopted by the voters."

And when so amended the bill do pass and be re-referred to the Committee on Finance.

**The report from the Finance Committee on March 24, 2007 recommended that the bill pass and be referred to Taxes.**

There was a delete-everything amendment. Key features of the constitutional part of the bill as amended:

- 33 percent of the receipts shall be deposited in the heritage enhancement fund and may be spent only to preserve, enhance, or protect the state's fish, wildlife, habitat, and land resources;
- 43 percent of the receipts shall be deposited in the great outdoors Minnesota fund and may be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands, groundwater, parks, trails, natural areas, and historic sites; and
- 24 percent of the receipts shall be deposited in the cultural legacy fund and may be spent only on arts, arts education, and arts access.

**The report from Taxes on May 9, 2007 recommended that the bill pass and be referred to Rules.**

Amendments (to the third engrossment) deleted the proposed constitutional amendment and inserted statutory language increasing the sales tax and dedicating the proceeds.

Page 1, delete section 2

Page 2, delete section 3

Page 3, line 22, delete ", if the" and insert a period

Page 3, delete line 23

Page 3, line 25, delete "the Minnesota Constitution," and insert "section 297A.94"

Page 3, line 26, delete everything before the period

Page 3, line 31, delete ", if the constitutional" and insert a period

Page 3, delete line 32

Page 4, line 4, delete "the Minnesota Constitution, article XI, section 15" and insert "section 297A.94"

Page 4, line 10, delete everything before "25" and insert "section 297A.94,"

Page 6, line 13, delete ", if the" and insert a period

Page 6, delete line 14

Page 6, line 16, delete "the Minnesota" and insert "section 297A.94"

Page 6, line 17, delete everything before the period

Page 6, line 25, delete ", if the constitutional" and insert a period

Page 6, delete line 26

Page 6, line 28, after "in" insert "this subdivision or in"

Page 7, delete lines 1 and 2 and insert:

"(b) Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be increased by three-eighths of one percent on sales and uses taxable under the general state sales and use tax law."

Page 7, line 3, delete ", if the constitutional" and insert a period

Page 7, delete line 4

Page 7, line 7, delete the new language and insert "and in section 297A.62, subdivision 1, paragraph (b)"

Page 7, line 8, delete the new language

Page 8, after line 26, insert:

"(g) Receipts from the sales tax imposed in section 297A.62, subdivision 1, paragraph (b), plus penalties and interest and reduced by any refunds, are dedicated as follows: 33 percent of the receipts shall be deposited in the heritage enhancement fund and may be spent only to preserve, enhance, or protect the state's fish, wildlife, habitat, and land resources; 43 percent of the receipts shall be deposited in the great outdoors Minnesota fund and may be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands, groundwater, parks, trails, natural areas, and historic sites; and 24 percent of the receipts shall be deposited in the cultural legacy fund and may be spent only on arts, arts education, and arts access. A cultural legacy fund; a heritage enhancement fund; and a great outdoors Minnesota fund are created in the state treasury. The money dedicated under this section shall be appropriated by law. The money dedicated under this section shall not be used as a substitute for traditional funding sources for the purposes specified, but the dedicated money shall supplement traditional sources of funding for those purposes. Land acquired by fee with money deposited in the heritage enhancement fund under this section must be open to public taking of fish and game during the open season unless otherwise provided by law."

Page 8, line 27, delete ", if the constitutional" and insert a period

Page 8, delete line 28

Page 9, line 4, delete ", if the constitutional" and insert a period

Page 9, delete line 5

Renumber the sections in sequence

Amend the title as follows:

Page 1, line 2, delete everything after the semicolon

Page 1, line 3, delete everything before "increasing"

And when so amended the bill do pass and be re-referred to the Committee on Rules..

**The Rules Committee report on May 9, 2007 recommended the bill pass and reinstated language proposing the following constitutional amendment, with the 33/43/24% breakdowns.**

Page 1, after line 12, insert:

**"Sec. 2. CONSTITUTIONAL AMENDMENT.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section will be added to article XI, to read:

Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be increased by three-eighths of one percent on sales and uses taxable under the general state sales and use tax law. Receipts from the increase, plus penalties and interest and reduced by any refunds, are dedicated as follows: 33 percent of the receipts shall be deposited in the heritage enhancement fund and may be spent only to preserve, enhance, or protect the state's fish, wildlife, habitat, land, and forest resources; 43 percent of the receipts shall be deposited in the great outdoors Minnesota fund and may be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands, groundwater, parks, trails, natural areas, and historic sites; and 24 percent of the receipts shall be deposited in the cultural legacy fund and may be spent only on arts, arts education, and arts access. A cultural legacy fund; a heritage enhancement fund; and a great outdoors Minnesota fund are created in the state treasury. The money dedicated under this section shall be appropriated by law. The money dedicated under this section shall not be used as a substitute for traditional funding sources for the purposes specified, but the dedicated money shall supplement traditional sources of funding for those purposes. Land acquired by fee with money deposited in the heritage enhancement fund under this section must be open to public taking of fish and game during the open season unless otherwise provided by law. If the base of the sales and use tax is changed, the legislature may proportionally adjust the sales and use tax rate in this section to within one-tenth of one percent in order to provide the same amount of revenue as practicable for each fund as existed before the change to the sales and use tax.

**Sec. 3. SUBMISSION TO VOTERS.**

The proposed amendment shall be submitted to the people at the 2008 general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to provide funding beginning July 1, 2009, to protect the state's water quality and groundwater; to preserve and enhance its fish, wildlife, habitat, natural land, and forest resources; to support its parks, trails, historic sites, and natural areas; to increase access to its arts and cultural heritage; and to protect and restore its lakes, rivers, streams, and wetlands by increasing the sales and use tax rate by three-eighths of one percent on taxable sales until the year 2034?

Yes .....

No ..... ""

**The bill was taken up on the Senate Floor on May 11. It was amended and passed.**

Amendments to the 5<sup>th</sup> engrossment:

1. Pariseau: Dedicate 1/8 of existing tax to provide hunter and angler access and to improve, preserve, or protect game and fish habitat. *Not adopted.*

2. Senator Olson, G. moved to amend S.F. No. 6 as follows:

Page 1, line 25, after the second comma, insert "and" and delete ", and historic sites"

Page 2, line 1, delete the second "and"

Page 2, line 2, after "access" insert ", and historic sites"

Page 2, line 18, delete "historic"

Page 2, line 19, delete "sites," and after "heritage" insert "and history"

Page 3, line 34, before "natural" insert "and"

Page 4, line 1, delete ", and historic sites"

Page 6, line 28, before the period, insert "and to Minnesota historic sites"

The motion prevailed. So **the amendment was adopted.**

[This amendment moved the historic sites from the 43% lakes, rivers, etc. part of the amendment to the 24% cultural legacy part.]

3. Limmer: 5/16, with a 40/60% split between two specific natural resources, trails, historic sites purposes, with a separate 2/16 amendment for arts, etc.. *Not adopted*

4. Senator Dibble moved to amend S.F. No. 6 as follows:

Page 1, line 24, delete "the state's"

Page 1, line 25, after "sites" insert "in Minnesota"

Page 3, line 34, delete "the state's"

Page 4, line 1, after "sites" insert "in Minnesota"

The motion prevailed. So **the amendment was adopted.**

[changed references in the 43% section to refer to lakes, rivers....sites in Minnesota, instead of "the states"]

5. Senator Chaudhary moved to amend S.F. No. 6 as follows:

Page 1, line 21, before "heritage" insert "Lessard-"

Page 2, lines 2 and 7, before "heritage" insert "Lessard-"

Page 4, line 5, before "HERITAGE" insert "LESSARD-"

Page 4, line 7, before "Heritage" insert "Lessard-" and before "heritage" insert "Lessard-"

Page 4, lines 9, 12, and 13, before "heritage" insert "Lessard-"

Page 5, lines 18, 23, 26, 28, and 30, before "heritage" insert "Lessard-"

Page 6, line 2, before "heritage" insert "Lessard-"

Amend the title as follows:

Page 1, line 5, before "heritage" insert "Lessard-"

The motion prevailed. So **the amendment was adopted.**

6. Senator Robling moved to amend S.F. No. 6 as follows:

Page 1, line 25, delete "24" and insert "ten"

Page 2, line 2, after the period, insert "The remaining 14 percent of the receipts shall be divided by law among the funds created in this section."

*Not adopted.* Would have reduced the cultural legacy share from 24 to 10%

7. Marty: Would have deleted the constitutional amendment and done a statutory dedication of the sales tax. *Not adopted.*

**On May 20, 2007, HF 2285 was substituted for SF6. The language of SF6, the sixth engrossment, was then put into HF2285, and the Senate passed HF2285 on May 20, 2007.**