



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

The Legacy Amendment

NOVEMBER 2011

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

November 2011

Members of the Legislative Audit Commission:

The Legacy Amendment to the Minnesota Constitution, approved by voters in 2008, increased the state sales tax by $\frac{3}{8}$ of 1 percent; an increase that will be effective for 25 years. The revenue may only be used for the purposes specified in the Legacy Amendment.

This approach to raising and spending state revenue has presented the Legislature with opportunities to provide additional support to programs and activities voters said are important to the state's natural environment and cultural heritage. However, raising and spending revenue under a constitutional mandate has also presented the Legislature and state agencies with significant challenges.

In this early, general assessment of how the Legacy Amendment has been implemented, we identified the following four "ongoing concerns" facing the Legislature and the state agencies that administer the Legacy funds: (1) complying with the constitutional requirement that Legacy money be used to supplement, and not substitute for, "traditional" sources of funding; (2) finding a workable approach to limiting the use of Legacy money for administrative costs; (3) ensuring that conflict of interest concerns are adequately addressed; and (4) ensuring that the use of Legacy money will achieve the outcomes intended by the Legacy Amendment. We make various recommendations to help address these concerns.

Judy Randall, evaluation manager, and I conducted the evaluation. We received full cooperation from the many state agencies, councils, legislative staff, and private nonprofit organizations involved in implementing the Legacy Amendment. We thank them all for their advice and insights.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Nobles'.

James Nobles
Legislative Auditor

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Summary

The Legacy Amendment annually raises a significant amount of money for certain programs and activities, but implementing the amendment has created challenges and concerns.

Key Facts and Findings:

- The 2008 Legacy Amendment to the Minnesota Constitution authorized a 25-year statewide sales tax increase of 3/8 of 1 percent, which is projected to raise approximately \$240 million each year. (pp. 4-6)
- Legacy money is deposited into four separate funds—Outdoor Heritage, Clean Water, Parks and Trails, and Arts and Cultural Heritage—and may only be used for purposes specified in the Legacy Amendment. (p. 5)
- The structures and procedures used to recommend how money from the four Legacy funds should be appropriated by the Legislature vary significantly. (p. 13)
- The structures and procedures used to monitor and oversee the use of Legacy money after it is appropriated also vary significantly in ways that reflect how the money is allocated, to whom, and for what purposes. (p. 13)
- The Legacy Amendment’s requirement that Legacy money be used to “supplement not substitute for traditional sources of funding” has caused confusion and uncertainty. (p. 46)
- The Legislature has tried to limit the use of Legacy money for administrative expenses, but some organizations that receive Legacy money have expressed concern and confusion about what actions are required to comply. (p. 54)

- There are concerns that some people involved in recommending how Legacy money should be used have conflicts of interest because of their affiliations with organizations that receive Legacy money. (p. 58)
- There are concerns about how some Legacy money has been used and whether the outcomes sought by the Legacy Amendment will be achieved. (p. 68)

Key Recommendations:

- To help legislators and others address concerns about the “supplement not substitute” issue, the Legislature should establish a process to obtain information on past funding sources and levels for programs and projects proposed for Legacy funding. (p. 51)
- Organizations should document how their use of Legacy money will supplement and not substitute for traditional sources of funding. (p. 52)
- The Department of Management and Budget should provide guidance to state agencies on how to comply with restrictions on using Legacy money for administrative costs. (p. 57)
- The Clean Water Council should develop policies and procedures to ensure that its members are aware of and adhere to the conflict of interest requirements that apply to the council. (p. 67)

Report Summary

In 2008, Minnesota voters approved the Outdoor Heritage, Clean Water, Parks and Trails, and Arts and Cultural Heritage Amendment to the Minnesota Constitution. Commonly called the “Legacy Amendment,” it authorized a 25-year statewide sales tax increase of $\frac{3}{8}$ of 1 percent, which will raise approximately \$240 million each year.

Legacy revenues are deposited into four separate funds and may only be used for the purposes specified in the Legacy Amendment.

The Legacy Amendment allocates the sales tax revenue into four separate funds and controls the use of money in each fund. The Outdoor Heritage Fund receives 33 percent, which must be used to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife. The Clean Water Fund receives 33 percent, which must be used to protect, enhance, and restore water quality in lakes, rivers, and streams and protect groundwater from degradation (at least 5 percent of the fund must be used to protect drinking water sources). The Parks and Trails Fund receives 14.25 percent, which must be used to support parks and trails of statewide or regional significance. The Arts and Cultural Heritage Fund receives 19.75 percent, which must be used for arts, arts education, arts access, and to preserve Minnesota’s history and cultural heritage.

The four Legacy funds have been implemented in significantly different ways.

For example, money from the Outdoor Heritage Fund is mostly appropriated for specific projects based on recommendations from the Lessard-Sams Outdoor Heritage Council, and a significant amount of money is granted to private nonprofit

organizations. On the other hand, money from the Parks and Trails Fund is allocated on a percentage basis and is spent almost completely by government agencies. There are also differences in structures and procedures used to monitor and oversee how money from the four funds is being spent. For example, the Outdoor Heritage Council is actively involved in monitoring and oversight, but the Clean Water Council, which recommends how the money in the Clean Water Fund should be used, is not involved in monitoring or oversight.

Legacy money has been used to support a wide range of programs, projects, and activities.

Money from the Outdoor Heritage Fund has been used, for example, to buy land and easements to help restore, protect, and enhance game and fish habitat in prairies, state forests, rivers, and streams. In contrast, money from the Clean Water Fund has been used principally to support existing state programs. For example, Clean Water money has been used to support pesticide monitoring, assessments of surface water quality, and stream flow monitoring. The money is used mostly by state agencies and local watershed organizations.

Money from the Parks and Trails Fund has been used to renew trails, restore native plants in state parks, expand campgrounds, and help local areas develop new parks to serve regional needs. Money from the Arts and Cultural Heritage Fund has been used to support arts organizations, individual artists, historical societies, zoos, museums, and public broadcasting.

There are ongoing concerns about compliance with the Legacy Amendment’s “supplement not substitute” requirement and using Legacy money for administrative costs.

There are also ongoing concerns about potential conflicts of interest.

It is not clear what the Legislature and recipients of Legacy money must do to meet the Legacy Amendment’s “supplement not substitute” requirement.

The amendment says that Legacy money should supplement and not substitute for “traditional sources” of funding. However, there is not a clear understanding of what constitutes a traditional funding source and, thus, there are varying interpretations of what the requirement means and how it should be enforced.

Some advocacy groups have said that to comply, the Legislature should maintain spending levels from traditional sources at a certain historical level. We do not think that is required by the amendment, nor do we think the kind of “benchmarking” approach proposed by the advocacy groups can be enforced within the Legislature’s appropriations process.

As an alternative, we recommend that the Legislature establish a process that legislators could use to obtain program and project-level data on past sources and levels of funding for Legacy-related purposes. While we think this process could provide useful information, it will not resolve questions about the meaning of the “supplement not substitute” provision.

Although questions about its meaning remain, we recommend that recipients of Legacy money take the “supplement not substitute” provision seriously and document how they think their use of Legacy money complies with the requirement.

The Legislature has tried to limit the use of Legacy money for administrative costs, but recipients of Legacy money have questions and concerns about how to comply.

For several of the funds in 2009 and 2010, the Legislature put percentage caps on the amount of Legacy money that could be used for administrative costs. That proved problematic and in the 2011 legislative session, the Legislature adopted the approach previously used for the Outdoor Heritage Fund. It requires that Legacy money be used only for costs that are “directly related to and necessary for” accomplishing the purpose of a specific appropriation of Legacy money.

While this shift away from percentage caps provided organizations with more flexibility and discretion, it also requires them to document how their use of Legacy money complies with this new requirement. Some organizations have expressed concerns about the ambiguity of the requirement and the extra work and costs required to ensure compliance.

Organizations must accept the added requirements that come with constitutionally dedicated money and develop procedures that ensure compliance. We recommend that the Department of Management and Budget provide them with guidance.

There are concerns that some people involved in recommending how Legacy money should be used have conflicts of interest because of their affiliations with organizations that receive Legacy money.

The concern has focused principally on groups, such as the Lessard-Sams Outdoor Heritage Council, that

The most important ongoing concern is whether Legacy money will achieve the amendment's intended results.

advise the Legislature on how Legacy money should be used. The concern arises from the fact that some members of these groups are closely associated with organizations that receive Legacy money.

We found that Minnesota has several conflict of interest laws and policies relevant to the Legacy funds, and most of the organizations covered by these laws and policies have taken steps to ensure compliance from the people affected. However, we found that the Clean Water Council needs to be more diligent in ensuring that its members are aware of and adhere to the conflict of interest requirements. More generally, we recommend that all of the organizations and individuals involved in implementing the Legacy Amendment be vigilant in ensuring that conflict of interest concerns are given serious consideration.

There are concerns and controversy about how Legacy funds should be used to achieve the outcomes called for in the Legacy Amendment.

The concerns are different for each fund. For example, some people, including some legislators, have criticized the use of money from the Outdoor Heritage Fund to purchase more land. They argue that the state, particularly the Department of Natural Resources (DNR), already owns a large amount of land and seems to lack adequate resources to manage it appropriately.

Some environmental organizations and legislators have expressed concern that money from the Clean Water Fund is not being adequately targeted at projects that are likely to produce measureable outcomes. They also argue that the state has

already spent significant amounts of money on research and testing Minnesota's waters, and Legacy money should be focused more on actually reducing pollutants currently in lakes, rivers, and streams, as well as helping prevent additional pollution.

For the Parks and Trails Fund, the major concern is the lack of opportunity for individuals and interest groups to have input into how DNR and the Metropolitan Council are using the money they receive from the fund.

The primary concern regarding the Arts and Cultural Heritage Fund has focused on payments made to individuals. Some payments have been criticized as excessive and others for supporting projects of marginal significance.

During the Legacy Amendment's first three years, the Legislature has put significant trust in state agencies, local units of government, and private nonprofit organizations to ensure that Legacy money is used appropriately and effectively. The Legislature has also recognized the need for accountability and put in place various reporting, monitoring, and oversight requirements related to the use of Legacy money.

Based on this early review, we think those efforts to ensure accountability are generally adequate. But, clearly, the Legacy Amendment is a "work in progress," and there are many more years ahead of decision making, monitoring, and oversight to ensure that the purposes of the Legacy Amendment are achieved.

Introduction

On November 4, 2008, 56 percent of Minnesota voters approved the Outdoor Heritage, Clean Water, Parks and Trails, and Arts and Cultural Heritage Amendment to the Minnesota Constitution. Commonly called the “Legacy Amendment,” it authorizes a 25-year statewide sales tax increase of 3/8 of 1 percent, beginning July 1, 2009, and continuing until June 30, 2034. The amendment requires the state to place the new revenue in four separate dedicated funds and to use the money only for the purposes specified in the amendment for each fund.

Implementation of the Legacy Amendment has been the subject of considerable attention and some controversy during the past three legislative sessions. In addition to appropriating money from the Legacy funds, the Legislature has debated the meaning of certain provisions of the Legacy Amendment and enacted a wide range of measures to ensure accountability for Legacy money.

In May 2011, the Legislative Audit Commission directed the Office of the Legislative Auditor to review how the Legacy Amendment has been implemented, with special consideration for accountability concerns and actions. Specifically, we addressed the following questions:

- **What organizational structures and procedures have been put in place to advise the Legislature on how Legacy money should be used? How is Legacy money being allocated, to whom, and for what purposes?**
- **What mechanisms have been put in place to ensure accountability and oversight of Legacy funds?**
- **What key concerns remain about how the Legacy Amendment has been implemented?**

This was a high-level, general review, encompassing four separate funds that support a wide range of programs, projects, and activities. We did not attempt to assess individual programs, projects, or activities supported with Legacy money. We anticipate that the Office of the Legislative Auditor will be asked in the future to conduct more focused, in-depth evaluations, and this review may help target those efforts.

To conduct this evaluation, we examined documents related to the Legacy Amendment’s history, purpose, and language. We listened to archived audio and video recordings of legislative hearings that occurred in 2009, 2010, and 2011. We conducted group discussions with legislative staff, agency officials, and representatives of numerous private nonprofit organizations involved with the Legacy Amendment. In addition, we conducted individual interviews with

legislative staff, agency officials, and representatives of interest groups, as well as several legislators closely involved with the Legacy Amendment.

Chapter 1 provides a brief history of the Legacy Amendment and how the Legislature has responded to its approval. We identify specific legislative concerns and actions related to accountability and oversight for Legacy money. In Chapter 2, we describe the structures and processes that have been established to advise the Legislature on appropriations of Legacy money, and we describe how Legacy money has been allocated, to whom, and for what purposes. In Chapter 3, we discuss four ongoing concerns, including concerns about how to interpret and apply certain requirements in the Legacy Amendment, how to limit the use of Legacy money for administrative costs, how to address concerns about conflicts of interest, and how to ensure that Legacy money achieves the outcomes intended by the Legacy Amendment.

Background

Approval of the Legacy Amendment was an important event in Minnesota history, and it is having a significant impact on Minnesota state government. Approval affirmed a public willingness to support certain objectives with additional tax revenue and created new opportunities and responsibilities for state officials. In this chapter, we provide a brief history of the Legacy Amendment and how the Legislature has responded to its approval.

LEGACY AMENDMENT HISTORY

The Legacy Amendment was originally envisioned as a way to dedicate more money to certain concerns about the state's natural resources. Historically, the state has supported a wide range of programs and activities related to natural resources with money from several funding sources, including the General Fund and statutorily dedicated funds, such as the Game and Fish Fund.¹ In 1988, the Legislature proposed and voters approved an amendment to the Minnesota Constitution that established an Environment and Natural Resources Fund. In 1990, the Legislature proposed and voters approved allocating 40 percent of the net proceeds of the Minnesota State Lottery to the fund. According to the constitutional amendment that created the fund, money in the fund is dedicated to the "protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources."²

In 1990, the Legislature began to actively consider proposals to create a second constitutional amendment dedicating additional state revenue to Minnesota's natural resources.³ Initial efforts to obtain the second constitutional amendment were supported principally by members of hunting and fishing organizations, who thought not enough state revenue was focused on protecting and enhancing wildlife habitat. They argued that these programs deserved more financial support from the state not only because hunting and fishing are activities that

Initial support for an amendment came from organizations that wanted more public money for wildlife habitat.

¹ *Minnesota Statutes* 2011, 97A.055. For data on state spending for environmental and natural resources activities from all revenue sources, see the Office of Senate Counsel, Research, and Fiscal Analysis, Minnesota Senate, *Fiscal Review*. This is an annual report available at: <http://www.senate.leg.state.mn.us/departments/scr/report/>, accessed September 9, 2011.

² *Minnesota Constitution*, art. XI, sec. 14. In 1998, voters approved extending the allocation of lottery proceeds into the fund until 2025. For more information about the Environment and Natural Resources Trust Fund, see the Web site of the Legislative-Citizen Commission on Minnesota Resources at: <http://www.lccmr.leg.mn/lccmr.htm>, accessed September 20, 2011.

³ For a history of these efforts, see Research Department, Minnesota House of Representatives, *A Chronology of Recent Legislation to Dedicate Funding for Natural Resource Purposes*, Information Brief (St. Paul, 2007); and John Helland, *The Road to Dedicated Conservation Funding* (August 2011), available through the Minnesota Association of Conservation Professionals at the following Web site: <http://mnacp.org/2011/09/08/the-road-to-dedicated-funding-by-john-helland/>, accessed September 4, 2011.

The amendment that was proposed to voters in 2008 raised the state sales tax rate and dedicated the new revenue to purposes related to natural resources, arts, and cultural heritage.

many Minnesotans enjoy but also because spending on these and other outdoor recreation activities support a large number of businesses statewide.⁴

While the proposed amendments varied, they had a similar approach; they typically dedicated a small percentage share of sales tax revenue (3/16 of 1 percent and 1/8 of 1 percent were typical amounts) to projects related to habitat for fish and wildlife. Some proposals dedicated a share of money from existing sales tax revenue, while others proposed to raise the dedicated revenue by increasing the sales tax rate.

The bill that contained what became the Legacy Amendment proposed to increase the sales tax rate and broaden the “public purposes” to include arts, humanities, and cultural heritage. The bill was enacted into law by the Legislature in 2008 and presented voters with the following “ballot question” in the November 2008 general election:

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?⁵

A coalition of groups formed to support the proposed amendment. The “Vote Yes Minnesota” campaign argued that the various public purposes specified in the proposed amendment were of vital importance to the state’s environmental, economic, and cultural health, and they both deserved and needed a dedicated source of funding. Opposition to the proposed Legacy Amendment was based in part on the fact that it raised the sales tax rate, but also on the argument that it was “tying the hands of the Legislature.” Opponents said that setting tax rates and spending priorities is a core function and responsibility of the legislative branch. In their view, the Constitution should set forth broad principles, leaving the elected officials with flexibility to respond to changing circumstances, particularly in establishing budgets for state government.⁶

As noted in the Introduction, the proposed amendment was approved by voters on November 4, 2008. The legislation that authorized the language of the “ballot question” also contained the language of the constitutional amendment itself,

⁴ Research Department, Minnesota House of Representatives, *The 3/16 Bill*, Short Subjects (St. Paul, 2002).

⁵ *Laws of Minnesota* 2008, chapter 151, sec. 2.

⁶ For a summary of the arguments for and against the Legacy Amendment, see *Minnesota Sales Tax Increase, Constitutional Amendment (2008)*, at Ballotpedia.org Web site: http://ballotpedia.org/wiki/index.php/Minnesota_Sales_Tax_Increase_%282008%29, accessed September 20, 2011. It is worth noting that opposition to the Legacy Amendment has continued, with various organizations and individuals calling for the amendment to be repealed. During the 2011 legislative session, House File 1723 proposed a constitutional amendment to repeal the Legacy Amendment.

Legacy revenues are deposited into four separate funds.

which became Article XI, Section 15, of the *Minnesota Constitution*. The complete text of the amendment is in the Appendix. The language specifically related to creation of the four dedicated funds and the purposes for which the money in those funds may be spent is as follows:

33 percent of the receipts shall be deposited in the outdoor heritage fund and may be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife; 33 percent of the receipts shall be deposited in the clean water fund and may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, and at least five percent of the clean water fund must be spent only to protect drinking water sources; 14.25 percent of the receipts shall be deposited in the parks and trails fund and may be spent only to support parks and trails of regional or statewide significance; and 19.75 percent shall be deposited in the arts and cultural heritage fund and may be spent only for arts, arts education, and arts access and to preserve Minnesota’s history and cultural heritage.... The dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute.⁷

In addition to creating four separate dedicated Legacy funds in the state treasury, the amendment also creates a “sustainable drinking water account” for the 5 percent of the Clean Water Fund that is dedicated to “protect drinking water sources.” Table 1.1 shows the percentage of sales tax receipts allocated to each of the four funds and the purposes for which the revenue may be used.

Table 1.1: Overview of Legacy Amendment Funds

	Percentage of Legacy Sales Tax Revenue	Allowable Uses of Revenue
Arts and Cultural Heritage	19.75%	Arts, arts education, arts access, and to preserve Minnesota’s history and cultural heritage
Clean Water	33.00	Protect, enhance, and restore water quality in lakes, rivers, and streams; to protect groundwater from degradation; and to protect drinking water sources ^a
Outdoor Heritage	33.00	Restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife
Parks and Trails	14.25	Support parks and trails of regional or statewide significance

^a At least 5 percent of the Clean Water Fund must be spent only to protect drinking water sources.

SOURCE: *Minnesota Constitution*, art. XI, sec. 15.

⁷ *Minnesota Constitution*, art. XI, sec. 15.

Estimates projected the Legacy Amendment would raise \$240 to \$300 million annually.

When the proposed Legacy Amendment was discussed during the 2008 legislative session, it was estimated that during its 25 years of life the amendment would generate between \$240 million to \$300 million per year, depending on economic conditions. In November 2008, after the amendment was approved, the state's official revenue forecast estimated that \$478 million of Legacy money would be available to appropriate in fiscal years 2010 and 2011. Table 1.2 shows the breakdown of the estimate by fund.

Table 1.2: Projected Revenue from Legacy Amendment Based on November 2008 Forecast

(In thousands)

	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2010-11
Arts and Cultural Heritage	\$ 46,981	\$ 47,349	\$ 94,330
Clean Water	78,500	79,114	157,614
Outdoor Heritage	78,500	79,114	157,614
Parks and Trails	33,898	34,163	68,061
Total all funds	\$237,879	\$239,740	\$477,619

SOURCE: Minnesota Department of Management and Budget, Consolidated Fund Statement, Budgetary Basis, November 2008 Forecast, released on December 9, 2008.

LEGISLATIVE RESPONSE

Approval of the Legacy Amendment provided the Legislature with new money to fund a wide range of public purposes and gave the Legislature significant new responsibilities. The Legislature has to ensure that appropriations of Legacy money comply with the legal requirements of the amendment. In addition, the Legislature must fund programs, projects, and activities that will achieve the results voters were seeking when they approved the Legacy Amendment.

One of the first key decisions the Legislature faced was assigning committee jurisdiction over the four funds created by the Legacy Amendment. In the Senate, the Outdoor Heritage, Parks and Trails, and Clean Water funds were assigned to the Environment, Energy, and Natural Resources Budget Division; and the Arts and Cultural Heritage Fund was assigned to the Economic Development Budget Division. The House of Representatives created a Cultural and Outdoor Resources Finance Division with jurisdiction over all four Legacy funds. At the division's initial meeting, the chair said:

We have to determine the legislation that will make that [Legacy Amendment] work. It's a big, big responsibility. It's not just automatic. None of it is just automatic. This committee is in charge of listening and finding out what the people were saying when they voted "yes." And what are their expectations....

The first thing we have to do is listen and find out why did 56 percent of the people vote "yes." And why did over 350 groups get behind the "Vote Yes" campaign? And what did they think

was going to be different with the addition of 3/8 of 1 cent sales tax?⁸

Each Legacy fund has a constituency eager to offer the Legislature advice on how “their” fund should be spent.

Legislators found that each of the four Legacy funds has a constituency of organizations and interest groups eager to offer advice on how the Legislature should allocate Legacy money from “their” fund. To obtain specific recommendations on how money in the Outdoor Heritage Fund should be appropriated, the 2008 Legislature created the Lessard Outdoor Heritage Council.⁹ For specific advice and recommendations on the other three funds, the Legislature decided to rely on existing state organizations. We discuss the composition and responsibilities of several Legacy-related advisory groups in Chapter 2.

After numerous legislative hearings and lengthy floor debates, the Legislature passed the first Legacy appropriations bill on May 21, 2009, and the Governor signed it into law the following day. It authorized the use of \$397 million of Legacy money from the four Legacy funds.¹⁰ The 2009 and subsequent Legacy appropriations laws will be discussed in Chapter 2.

In addition to appropriating money, the 2009 Legacy appropriations law contained several provisions that mandated and funded further planning and accountability measures. For example, the law:

- Mandated the development of 10-year plans and 25-year frameworks to help guide the use of money from the four Legacy funds.¹¹
- Established “Accomplishment Plans” as a mechanism of control and accountability for money allocated from the Outdoor Heritage Fund.¹²
- Required the Outdoor Heritage Council to have a “fair, equitable, and thorough process for reviewing requests for funding and a clear and easily understood process for ranking projects.”¹³
- Required grant agreements to ensure that funds are used to supplement and not substitute for traditional sources of funding.¹⁴

⁸ Representative Mary Murphy, Chair, Cultural and Outdoor Resources Finance Division, Minnesota House of Representatives, at a meeting of the division on January 12, 2009.

⁹ The council was created in anticipation that the Legacy Amendment would be approved by voters; see *Laws of Minnesota* 2008, chapter 368, art. 2, sec. 14. In 2009, the Legislature changed the name of the council to the Lessard-Sams Outdoor Heritage Council; see *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 8.

¹⁰ *Laws of Minnesota* 2009, chapter 172.

¹¹ *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 4(i); art. 2, sec. 30; art. 3, sec. 2(e); and art. 4, sec. 8.

¹² *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 2, subd. 9.

¹³ *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 4(g).

¹⁴ This requirement was inserted in numerous places; for example, see *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 3(c); and art. 4, sec. 2, subds. 2(a), 4(a), and 5(b).

In implementing the Legacy Amendment, the Legislature has paid considerable attention to accountability concerns.

- Imposed various limitations on the use of Legacy money for “administrative expenses.”¹⁵
- Mandated the creation of a Web site with information on projects receiving appropriations from Legacy funds.¹⁶
- Required a significant amount of reporting from recipients of Legacy money and specified that reports must include “outcomes.”¹⁷
- Mandated the development of a “Legislative Guide” for use in implementing the Legacy Amendment.¹⁸

In 2010, the Legislature again received recommendations from the Outdoor Heritage Council and requests to appropriate Legacy money to support various projects and activities. The result was a second Legacy appropriations bill that authorized \$59.4 million in spending.¹⁹

During the 2011 legislative session, the House of Representatives again created a division focused exclusively on implementation of the Legacy Amendment and appropriations from Legacy funds. The Senate assigned jurisdiction for all four Legacy funds to the Environment and Natural Resources Committee. The Legacy appropriations bill that was enacted and signed into law by the Governor appropriated approximately \$450 million in Legacy money for fiscal years 2012 and 2013.²⁰

ACCOUNTABILITY FOR LEGACY MONEY

In each of the three years the Legislature has worked to implement the Legacy Amendment and appropriate Legacy money, legislators have discussed the importance of ensuring strong accountability for the Legacy funds. In reviewing legislative hearings related to implementation of the Legacy Amendment, we

¹⁵ *Laws of Minnesota* 2009, chapter 172, contained various percentage caps on administrative expenses. These provisions are discussed in more detail in Chapter 3.

¹⁶ *Laws of Minnesota* 2009, chapter 172, art. 5, sec. 2.

¹⁷ For example, *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 3(b); and art. 4, sec. 2, subd. 2(c).

¹⁸ *Laws of Minnesota* 2009, chapter 172, art. 5, sec. 8. A legislative guide was developed by the House Cultural and Outdoor Heritage Finance Division and formally adopted on March 24, 2010. The guide was strongly criticized by hunting and fishing interest groups primarily because it used definitions of “restore, protect, and enhance” that were not the same as those used by the Outdoor Heritage Council. In addition, the Senate committees with jurisdiction over Legacy Amendment funds did not participate in the guide’s development. The controversy resulted in the mandate for a legislative guide being deleted from state law during the 2010 legislative session. See *Laws of Minnesota* 2010, chapter 361, art. 3, sec. 4.

¹⁹ The 2009 Legacy appropriations law appropriated money from the other three Legacy Amendment funds for a two-year period, which is the standard for most state appropriations.

²⁰ *Laws of Minnesota* 2011, First Special Session, chapter 6. It is important to note that, except for \$471,000, all of the money appropriated in this appropriations law from the Outdoor Heritage Fund was for fiscal year 2012. As in the past, during the next legislative session, the Legislature is expected to act on appropriations recommendations from the Lessard-Sams Outdoor Heritage Council for the second year of the state’s biennial budget period.

identified concerns about accountability at three levels: legal compliance, financial transparency, and program outcomes.

Legal Compliance. Legislators recognized that Legacy money would require special attention to legal accountability because use of the money is controlled by provisions in the Minnesota Constitution. Typically, legal compliance involves ensuring that state agencies and recipients of state grants adhere to state laws, rules, and grant agreements. With the Legacy Amendment, agencies, grant recipients, and the Legislature must ensure that they act in accordance with the legal requirements of the constitutional provisions of the amendment.

The Legacy Amendment established constitutional requirements that revenues raised by the sales tax increase must be used (1) only for the public purposes specified in the amendment and (2) to “supplement traditional sources of funding for [those] purposes and may not be used as a substitute.”²¹ Unlike provisions in appropriations laws and state statutes which can be repealed or amended by subsequent legislative enactments, the provisions of the Legacy Amendment are legally binding on the Legislature—as well as state agencies and grant recipients—for the 25-year life of the amendment.²²

Both the Legislature and recipients of Legacy money must comply with the amendment’s legal requirements.

Ensuring legal compliance with the requirements of the Legacy Amendment has presented the Legislature, state agencies, and grant recipients with significant challenges. These challenges arise largely from uncertainty over how to interpret and implement certain words in the amendment. Terms such as “culture,” “art,” “enhance,” “restore,” “supplement,” “substitute,” and others are subject to various interpretations, and their application in some circumstances is uncertain. The Legislature has attempted to resolve some of the uncertainty through committee discussions, staff analysis, and public input. In the 2009 Legacy appropriations law, the Legislature also tried to clarify the meaning of some words in the Legacy Amendment by establishing statutory definitions. However, the Legislature’s efforts and actions have not fully resolved some of the uncertainties. We address confusion over the meaning of the Legacy Amendment’s “supplement not substitute” provision in Chapter 3, as one of several “ongoing concerns.”²³

Financial Transparency. Legislative discussions following approval of the Legacy Amendment have also focused on the need for financial transparency. Legislators expressed the need to ensure there will be easily accessible, clear, and detailed information about where, how, and by whom Legacy money is being spent. As noted above, the 2009 Legacy appropriations law mandated that the Legislative Coordinating Commission maintain a Web site with information about Legacy money expenditures. The mandate said in part:

²¹ *Minnesota Constitution*, art. XI, sec. 15.

²² Any provision in the Minnesota Constitution, including the Legacy Amendment, can be repealed or changed through another constitutional amendment. Its application can also be affected by judicial interpretation through a court decision.

²³ The provision of the Legacy Amendment in question says: “The dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute.” *Minnesota Constitution*, art. XI, sec. 15.

The Legislative Coordinating Commission shall develop and maintain a user-friendly, public-oriented Web site that informs, educates, and demonstrates to the public how the constitutionally dedicated funds in the arts and cultural heritage fund, outdoor heritage fund, clean water fund, parks and trails fund, and environment and natural resources trust fund are being expended to meet the requirements established for each fund in the state constitution.²⁴

In the 2011 Legacy appropriations law, the Legislature significantly expanded the amount of detailed information that must be reported to and posted on the Legislative Coordinating Commission Web site.²⁵

Program Outcomes. In hearings about how to implement the Legacy Amendment, legislators and other stakeholders frequently focused on the need to achieve measurable results. Translating the Legacy Amendment’s broad mandate into tangible outcomes is a challenging process. It requires making detailed decisions about what programs and activities to fund, and it requires establishing mechanisms to measure and monitor results.

Translating the Legacy Amendment’s purposes into measureable outcomes is a challenging process.

The Legislature directed organizations to base their funding recommendations on long-range plans and to focus on outcomes. For example:

- The Outdoor Heritage Council was directed in law to “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.”²⁶
- A group of state, metropolitan, and local organizations were mandated to develop “a 10-year strategic parks and trails coordination plan and develop a 25-year, long-range plan for use of the funding that includes goals and measurable outcomes and includes a vision for Minnesotans of what the state and regional parks will look like in 25 years.”²⁷

The Legislature also decided to utilize existing councils, agencies, and other organizations to administer significant amounts of Legacy money and to monitor and report on outcomes. For example, the 2009 Legacy appropriations law contained the following requirements:

- The Outdoor Heritage Council was told that its accomplishment plans “must account for the use of the appropriation and outcomes of the

²⁴ *Laws of Minnesota* 2009, chapter 172, art. 5, sec. 2.

²⁵ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec 1.

²⁶ *Minnesota Statutes* 2011, 97A.056, subd. 3.

²⁷ *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 6, subd. 2(a).

expenditure in measures of wetlands, prairies, forests, and fish, game, and wildlife habitat restored, protected, and enhanced.”²⁸

- The Board of Water and Soil Resources was told to “require grantees to specify the outcomes that will be achieved by the grants prior to any grant awards.”²⁹
- The Commissioner of the Minnesota Pollution Control Agency was told to report on the outcomes achieved from an appropriation to improve monitoring of the state’s water quality testing.³⁰
- The Commissioner of the Minnesota Department of Natural Resources was required to submit an annual report on how an appropriation achieved “outcomes in terms of additional use of parks and trails resources, user satisfaction surveys, and other appropriate outcomes.”³¹

In Chapter 2, we examine more closely—and by fund—the structures and procedures that have been put in place to help direct Legacy money toward the purposes specified in the Legacy Amendment and monitor the results that are being achieved. In Chapter 3, we examine several issues that remain ongoing concerns.

²⁸ *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 2, subd. 9.

²⁹ *Laws of Minnesota* 2009, chapter 172, art. 2, sec. 6(h)(2).

³⁰ *Laws of Minnesota* 2009, chapter 172, art. 2, sec. 4(b).

³¹ *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 2(e).

The Four Legacy Funds

In this chapter, we examine how the money from each of the four Legacy funds—the Outdoor Heritage Fund, the Parks and Trails Fund, the Clean Water Fund, and the Arts and Cultural Heritage Fund—has been appropriated and the accountability mechanisms in place for each. For each fund, we describe how appropriation recommendations are formulated and, specifically, the extent to which an advisory group is involved. We also describe the mechanisms and procedures that are in place to monitor and oversee how Legacy money is used after it is appropriated.

Overall, we found that:

- **The structures and procedures used to recommend how Legacy money should be allocated by the Legislature vary significantly in ways that reflect the different purposes, histories, and stakeholders of each Legacy fund.**

Additionally, we found that:

- **The structures and procedures used to monitor and oversee the use of Legacy money after it is appropriated also vary significantly in ways that reflect how the money is allocated, to whom, and for what purposes.**

The remainder of this chapter discusses the four Legacy funds in more depth.

OUTDOOR HERITAGE FUND

As required by the Minnesota Constitution and discussed in Chapter 1, 33 percent of the revenue raised through the Legacy Amendment is allocated to the Outdoor Heritage Fund.¹ The Constitution requires that this funding “be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.”²

Advisory Group

The Lessard-Sams Outdoor Heritage Council provides advice and makes recommendations to the Legislature regarding the Outdoor Heritage Fund. We found that:

¹ *Minnesota Constitution*, art. XI, sec. 15.

² *Minnesota Constitution*, art. XI, sec. 15. The Constitution also states that “Land acquired by fee with money deposited in the Outdoor Heritage Fund under this section must be open to the public taking of fish and game during the open season unless otherwise provided by law.”

The four Legacy funds have different mechanisms for making appropriations recommendations and overseeing the use of Legacy money.

- **In law and practice, the Lessard-Sams Outdoor Heritage Council has been given a strong role in recommending how money from the Outdoor Heritage Fund should be allocated and in overseeing how money from the fund is used after it is appropriated.**

By law, the Lessard-Sams Outdoor Heritage Council makes recommendations to the Legislature on appropriations from the Outdoor Heritage Fund.

Minnesota statutes establish the Lessard-Sams Outdoor Heritage Council and set forth its membership requirements, as outlined in Table 2.1.³ The council includes legislators and members of the public appointed by the Governor or the Legislature. By law, the council makes recommendations to the Legislature on appropriations from the Outdoor Heritage Fund.⁴ The law requires the council to submit its appropriations recommendations to the Legislature by January 15 each year. The council has the authority—and responsibility—to make recommendations regarding all of the Outdoor Heritage Fund revenue. This is somewhat similar to the Clean Water Fund but different from how recommendations are made for the Parks and Trails Fund and the Arts and Cultural Heritage Fund, as discussed later in this chapter.

Since the first Legacy appropriations bill was considered in 2009, the Legislature has given deference to the council and largely enacted the council’s appropriations recommendations. However, the Legislature has made changes regarding some guiding laws. For example, the 2010 Legislature prohibited the council from adopting definitions of "restore," "protect," or "enhance" that

Table 2.1: Lessard-Sams Outdoor Heritage Council Membership and Eligibility Requirements

Membership Category	Selection	Requirements
Public Members	2 appointed by the Senate ^a 2 appointed by the Speaker of the House 4 appointed by the Governor	<ul style="list-style-type: none"> • Must not be registered lobbyists • Shall have practical experience or expertise or demonstrated knowledge in the science, policy, or practice of restoring, protecting, and enhancing wetlands, prairies, forests, and habitat for fish, game, and wildlife
Legislative Members	2 members of the Senate 2 members of the House of Representatives	<ul style="list-style-type: none"> • Shall include the chairs of the legislative committees with jurisdiction over environment and natural resources finance or their designee, one member from the minority party of the Senate, and one member from the minority party of the House of Representatives

NOTE: In making appointments, the law also requires the Governor, Senate Subcommittee on Committees of the Committee on Rules and Administration, and the Speaker of the House to “consider geographic balance, gender, age, ethnicity, and varying interests including hunting and fishing.” *Minnesota Statutes* 2011, 97A.056, subd. 2(b).

^a The public members appointed by the Senate are appointed by the Senate Subcommittee on Committees of the Committee on Rules and Administration.

SOURCE: *Minnesota Statutes* 2011, 97A.056, subd. 2.

³ *Minnesota Statutes* 2011, 97A.056, subd. 2.

⁴ *Minnesota Statutes* 2011, 97A.056, subd. 3.

The Outdoor Heritage Council is subject to open meeting and conflict of interest laws.

“would limit the council from considering options that are consistent with the Constitution.”⁵ The 2011 Legislature removed this prohibition.⁶

As authorized by law, the Outdoor Heritage Council is administered by full-time nonpartisan legislative staff. The council’s *Operating Procedures* outline the roles and responsibilities of its staff, including administering all council affairs, reviewing current council programs, and reviewing “accomplishment plans” submitted by grantees.⁷ Currently, the Outdoor Heritage Council has three full-time staff people.

The Outdoor Heritage Council is subject to the Minnesota Open Meeting Law.⁸ As a result, council meetings must be publicized in advance and open to the public, members’ votes must be recorded, and materials distributed at meetings must be made available to the public.⁹ A meeting is considered to take place when “a quorum is present and the members receive information or take action on any matter relating to the duties of the council.”¹⁰ Council members are also subject to several conflict of interest provisions, which are discussed in detail in Chapter 3.¹¹

The 2009 Legislature required the Outdoor Heritage Council to develop a 10-year plan and a 25-year framework for how to allocate Outdoor Heritage Fund revenue.¹² In May 2010, the council started the process of developing these two documents and convened a working group of conservation professionals from a variety of state and federal agencies. The council published the plan and framework, which examined possible funding scenarios and their impacts, in December 2010.

Appropriations

Appropriations Recommendations

Each January, the Outdoor Heritage Council must submit to the Legislature its recommendations for appropriations from the Outdoor Heritage Fund. The Legislature may amend or enact the appropriations recommendations. We found that:

⁵ *Laws of Minnesota* 2010, chapter 361, art. 1, sec. 4.

⁶ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1, sec. 6.

⁷ Lessard-Sams Outdoor Heritage Council, *Operating Procedures of the Lessard-Sams Outdoor Heritage Council* (St. Paul, 2011), 7-8. “Accomplishment plans” are discussed later in this chapter.

⁸ *Minnesota Statutes* 2011, 97A.056, subd. 5. The Minnesota Open Meeting Law is in *Minnesota Statutes* 2011, chapter 13D.

⁹ *Minnesota Statutes* 2011, 13D.01 to 13D.05.

¹⁰ *Minnesota Statutes* 2011, 97A.056, subd. 5(a).

¹¹ See, for example, *Minnesota Statutes* 2011, 97A.056, subd. 4; and 16B.98, subd. 3.

¹² *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 4, subd. 3(i).

The Outdoor Heritage Council issues a call for funding requests, reviews and ranks proposals, and makes funding recommendations.

- **The Lessard-Sams Outdoor Heritage Council develops its package of appropriations recommendations by receiving funding requests from government and private nonprofit organizations and using a formal selection process.**

The council starts its recommendation process by posting a call for funding requests. Applicants for Outdoor Heritage Fund money, which include state agencies and private nonprofit organizations, are encouraged to review the funding criteria the council has developed and ensure their funding requests support the vision and priority actions set forth by the council. Table 2.2 lists the council's "Guiding Principles" for the Outdoor Heritage Council's fiscal year 2013 call for funding requests.

Table 2.2: Lessard-Sams Outdoor Heritage Council "Guiding Principles" for Funding Recommendations

Request for proposals will:

- Be transparent, understandable, and accessible by the public for input and review;
- Protect and advance the public interest;
- Support programs that are grounded in science and reflect "best practices" for resource management;
- Take into account existing conservation delivery systems;
- Encourage efficient and effective conservation solutions; and
- Attempt to ensure conservation benefits are broadly distributed across the Lessard-Sams Outdoor Heritage Council Ecological Sections.^a

^a The Lessard-Sams Outdoor Heritage Council has identified five "ecological sections": Metropolitan Urbanizing Area, Northern Forest, Forest/Prairie Transition, Prairie, and Southeast Forest.

SOURCE: Lessard-Sams Outdoor Heritage Council, *FY13 Call for Funding Request*, p. 2; http://www.isohc.leg.mn/FY2013/webform/FY2013_Call.pdf, accessed July 25, 2011.

Once the deadline for funding requests has passed, council members individually rank each proposal based on a set of criteria established by the Outdoor Heritage Council. Council members then meet to discuss their individual rankings and select requests for presentations from certain applicants. Once the presentations have been heard, the council meets to determine its allocation recommendations. Individual appropriation recommendations are determined by vote; at least 9 of the 12 members of the Outdoor Heritage Council must vote to approve the final complete recommendation package.¹³

Successful applicants are required to develop and submit to the council "accomplishment plans," which reflect the recommended appropriation amount and proposed activities. Subsequently, council staff develop recommended appropriations language, which is reviewed and approved by the Outdoor Heritage Council and then presented to the Legislature by January 15, in time to be considered for the upcoming legislative session.

¹³ *Minnesota Statutes* 2011, 97A.056, subd. 3(e).

Recent Appropriations

The appropriations recommendations from the Lessard-Sams Outdoor Heritage Council, and the corresponding appropriations bill passed by the Legislature, are organized by type of land: prairies, forests, wetlands, and habitat. Table 2.3 shows how funding was allocated across these broad categories in fiscal years 2010, 2011, and 2012. In general,

- **The amount of Outdoor Heritage Fund money appropriated each year has increased, from almost \$70 million in fiscal year 2010 to \$86.5 million in fiscal year 2012.**

Additionally, the amount of funding appropriated to each type of land has changed over time. For example, in fiscal year 2010, \$14.2 million (20 percent) of the Outdoor Heritage Fund money was allocated to prairies; in fiscal year 2012, almost \$32.7 million, or almost 38 percent of the funding, was allocated to prairies. The amount of Outdoor Heritage Fund money allocated to wetlands and forests has seen a corollary decrease.

Table 2.3: Outdoor Heritage Fund Appropriations, Fiscal Years 2010 to 2012

For fiscal year 2012, \$86 million of Outdoor Heritage Fund money was allocated for wetlands, forests, prairies, and habitat purposes.

(In thousands)

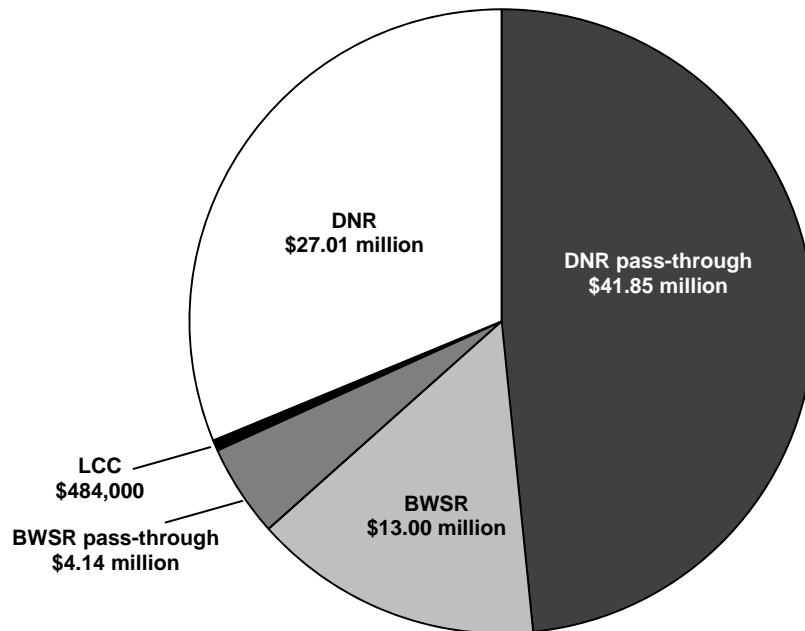
Purpose	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012
Wetlands	\$20,536	\$16,905	\$15,827
Forests	18,000	23,603	14,371
Prairies	14,213	18,093	32,671
Habitat	13,903	17,563	22,914
Forest Protection Reserve	2,000	0	0
Administration and Other	880	775	701
Total	\$69,532	\$76,939	\$86,484

NOTE: "Other" includes the Legislative Coordinating Commission, which received Legacy funds to develop and manage the Legacy funds Web site.

SOURCES: *Laws of Minnesota* 2009, chapter 172, art. 1; *Laws of Minnesota* 2010, chapter 361, art. 1; *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1.

The Department of Natural Resources (DNR) and the Board of Water and Soil Resources (BWSR) have been the largest recipients of Outdoor Heritage Fund revenue. However, for large portions of their appropriations, DNR and BWSR are required to "pass through" the funding and serve as the fiscal agent for revenue appropriated to nonprofit organizations named in law. Figure 2.1 shows the fiscal year 2012 Outdoor Heritage Fund appropriations by agency and the extent to which the agency is allocated the funding directly or whether it acts as a pass-through agency. As the figure shows, almost one-half of the fiscal year 2012 Outdoor Heritage Fund appropriations was allocated to DNR to serve as a pass-through fiscal agent.

Figure 2.1: Outdoor Heritage Fund Appropriations, by Appropriation Designee, Fiscal Year 2012



For fiscal year 2012, more than half of the Outdoor Heritage Fund money was passed through state agencies to legislatively identified recipients.

NOTES: “BWSR” is the Board of Water and Soil Resources, “DNR” is the Department of Natural Resources, and “LCC” is the Legislative Coordinating Commission. “Pass-through” means the agency serves as the fiscal agent for the funds—the Legislature appropriates the money to the agency, which then awards the revenue, typically through a grant agreement, to a legislatively identified recipient.

SOURCES: *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1; and Office of the Legislative Auditor.

Table 2.4 lists a sample of projects that were appropriated Outdoor Heritage Fund money in fiscal year 2012. As shown in the table, money from the Outdoor Heritage Fund was allocated directly to state agencies or passed through to private nonprofit organizations to acquire land—prairies, forests, and wetlands; restore and enhance land; and provide competitive matching grants for Outdoor Heritage Fund purposes.

Oversight and Monitoring

As mentioned in Chapter 1, the 2011 Legislature enacted a number of accountability measures related to the Legacy funds. For example, the 2011 Legislature placed restrictions on administrative expenses, clarified that the “supplement not substitute” provision of the Legacy Amendment applies to

Table 2.4: Sample of Projects Appropriated Outdoor Heritage Fund Money, Fiscal Year 2012

Recipient	Amount (In thousands)	Purpose
Prairies		
Pheasants Forever via DNR	\$9,815	To accelerate the acquisition of wetlands and grasslands to be added to the waterfowl production area system in Minnesota in cooperation with the United States Fish and Wildlife Service
Pheasants Forever via DNR	5,500	To acquire prairie and other habitat areas for wildlife management area purposes
The Nature Conservancy via DNR	4,500	To acquire native prairie and savanna, and restore and enhance grasslands and savanna
DNR	3,931	To acquire land in fee for wildlife management area purposes and scientific and natural area purposes, and to acquire native prairie bank easements
Pheasants Forever via BWSR	2,249	To acquire permanent conservation easements to enhance habitat by expanding riparian wildlife buffers on private land
The Trust for Public Land via DNR	1,533	To acquire and restore lands in the Cannon River watershed for wildlife management area purposes...or aquatic management areas
Forests		
DNR	\$5,409	To acquire forest and wetland habitat through working forest easements and fee acquisition under the Minnesota forests for the future program
The Trust for Public Land via DNR	4,632	To acquire land adjacent to LaSalle Lake in Hubbard County
DNR	1,205	To acquire land in fee and permanent management access easements for state forests
DNR	826	To restore and enhance lands in state forests
Cass County via DNR	604	To acquire land in fee for forest wildlife habitat
Wetlands		
BWSR	\$13,000	To acquire permanent conservation easements and restore wetlands and associated upland habitat in cooperation with the United States Department of Agriculture Wetlands Reserve Program
Ducks Unlimited via BWSR	1,891	To acquire wild rice lake shoreland habitat in fee and as permanent conservation easements
DNR	936	To develop engineering designs for shallow lakes and wetlands, and restore and enhance shallow lakes
Habitat		
DNR	\$6,500	To acquire interests in land in fee or permanent conservation easements for aquatic management areas
DNR	5,629	To provide competitive, matching grants...for enhancement, restoration, or protection of forests, wetlands, prairies, and habitat for fish, game, or wildlife in Minnesota
Trout Unlimited via DNR	1,533	To restore, enhance, and protect coldwater river and stream habitats in Minnesota

NOTES: "DNR" is the Department of Natural Resources and "BWSR" is the Board of Water and Soil Resources. When funding is designated for a nonprofit organization, the appropriation is made to the state agency "for an agreement with" the nonprofit organization identified. Projects were selected to illustrate a variety of recipients and purposes.

SOURCES: *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1; and Office of the Legislative Auditor.

recipients of Legacy money, and established segregated funds for organizations undertaking easement stewardship activities.¹⁴

Specific to the Outdoor Heritage Fund, recipients are required to complete and submit to the Lessard-Sams Outdoor Heritage Council an accomplishment plan detailing how they intend to use the Outdoor Heritage Fund revenue allocated to them.¹⁵ The law requires all recipients of Outdoor Heritage Fund revenue to submit to the council:

Recipients of Outdoor Heritage Fund money must submit accomplishment plans to the Outdoor Heritage Council.

...an accomplishment plan and periodic accomplishment reports in the form determined by the council. The accomplishment plan must identify the project manager responsible for expending the appropriation and the final product. The accomplishment plan must account for the use of the appropriation and outcomes of the expenditure in measures of wetlands, prairies, forests, and fish, game, and wildlife habitat restored, protected, and enhanced. The plan must include an evaluation of results. None of the money provided in this section may be expended unless the council has approved the pertinent accomplishment plan.¹⁶

Given the council's responsibility with the accomplishment plans and the state agencies' role as fiscal agents, we found that:

- **State agency staff and the Lessard-Sams Outdoor Heritage Council oversee and monitor Outdoor Heritage Fund projects.**

State agencies that receive Outdoor Heritage Fund money are the primary organizations responsible for ensuring compliance with the relevant accountability requirements, including legal compliance, financial transparency, and program outcomes. When the funding is allocated directly to a state agency, the agencies rely on their internal controls and procedures to ensure compliance.¹⁷ When the funding is passed through to another organization, agency staff must ensure that the grantees comply with the Minnesota Constitution, the appropriations law, and the relevant accomplishment plan. Both agency and Lessard-Sams Outdoor Heritage Council staff told us they work as partners to ensure grantee compliance with all of the controlling documents.

We met with agency staff from DNR and BWSR who administer Outdoor Heritage Fund projects; these staff demonstrated attention to and concern about complying with these requirements. Several DNR staff we spoke with said they manage Legacy grants in a similar manner to how they manage other grants.

¹⁴ *Laws of Minnesota* 2011, First Special Session, chapter 6.

¹⁵ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1, sec. 2, subd. 8.

¹⁶ *Ibid.*

¹⁷ The Financial Audit Division of the Office of the Legislative Auditor also provides oversight of these funds. See, for example, Office of the Legislative Auditor, Financial Audit Division, *Legacy Funds: Outdoor Heritage, Clean Water, and Parks and Trails, Internal Controls and Legal Compliance Audit, July 1, 2009, through January 31, 2011* (St. Paul, 2011).

Staff from BWSR told us they applied a higher level of scrutiny to Legacy grants than to other grants they administer. Both DNR and BWSR staff commented that the reporting requirements for Legacy-funded grants were more detailed and specific than for other grant programs they manage.

In addition to oversight provided by agency staff, staff for the Outdoor Heritage Council also ensure Outdoor Heritage Fund recipients comply with the approved accomplishment plans and help monitor the Outdoor Heritage Fund appropriations and recipients. As discussed further in Chapter 3, however, the standards for compliance with some requirements are not clear, particularly those related to the Legacy Amendment’s requirement to not substitute Legacy money for “traditional” sources of funding.

CLEAN WATER FUND

One-third of the revenue raised through the Legacy Amendment is deposited in the Clean Water Fund.¹⁸ As outlined in the Minnesota Constitution, these funds may be spent “only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation.”¹⁹ At least 5 percent of the revenue in the fund must be “spent only to protect drinking water sources.”²⁰ Table 2.5 outlines the allowable uses for the Clean Water Fund.

Table 2.5: Allowable Clean Water Fund Uses

The Clean Water Fund may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams, to protect groundwater from degradation, and to protect drinking water sources by:

- providing grants, loans, and technical assistance to public agencies and others testing waters, identifying impaired waters, developing total maximum daily loads, implementing restoration plans for impaired waters, and evaluating the effectiveness of restoration;
- supporting measures to prevent surface waters from becoming impaired and to improve the quality of waters that are listed as impaired, but do not have an approved total maximum daily load addressing the impairment;
- providing grants and loans for wastewater and storm water treatment projects through the Public Facilities Authority;
- supporting measures to prevent the degradation of groundwater in accordance with the groundwater degradation prevention goal under section 103H.001; and
- providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement.

SOURCE: *Minnesota Statutes* 2011, 114D.50, subd. 3(a).

State law identifies “providing funds to state agencies to carry out their responsibilities” as an allowable purpose of the Clean Water Fund.

¹⁸ *Minnesota Constitution*, art. XI, sec. 15.

¹⁹ *Ibid.*

²⁰ *Ibid.*

The Clean Water Council makes recommendations regarding appropriations from the Clean Water Fund to the Governor and the Legislature.

Advisory Group

In 2006, before the Legacy Amendment was put before Minnesota voters, the Legislature established the Clean Water Legacy Act and the Clean Water Council.²¹ The purpose of the 2006 Clean Water Legacy Act was to protect, restore, and preserve the quality of Minnesota’s *surface* water; the 2008 Legacy Amendment added protection for groundwater and drinking water. In 2006, the role of the Clean Water Council was to recommend a plan for implementing the Clean Water Legacy Act and recommend to the Governor how revenue in the Clean Water Legacy Account (which existed prior to the Clean Water Fund created by the Legacy Amendment) should be appropriated.²²

With the passage of the Legacy Amendment, there was an interest among legislators and stakeholders in using the existing infrastructure as much as possible. As a result,

- **The Clean Water Council, which pre-dates the Legacy Amendment, became the principal source of recommendations on how money from the Clean Water Fund should be allocated.**

There are 19 voting members of the Clean Water Council, as outlined in Table 2.6. All of the voting members are appointed by the Governor and represent different water interests, including agricultural, business, environmental, and local government stakeholders. There are also five representatives of state agencies and four legislative members.²³ The agency and legislative representatives are nonvoting members. Similar to the members of the Lessard-Sams Outdoor Heritage Council, Clean Water Council members are subject to the Open Meeting Law and conflict of interest provisions outlined in law.²⁴

By law, the Clean Water Council is required to recommend a plan for implementing the statutes related to the Clean Water Legacy Act and the provisions of the Constitution relating to clean water.²⁵ The council is also charged with recommending to the Governor and the Legislature the “manner in which money from the Clean Water Fund should be appropriated for the

²¹ *Laws of Minnesota* 2006, chapter 251.

²² *Laws of Minnesota* 2006, chapter 251, sec. 7, subds. 5 and 6.

²³ The 2011 Legislature added legislators and an appointee by the Commissioner of Health as members to the Clean Water Council. The 2011 Legislature also prohibited legislators from being voting members of the Council. See *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, subd. 2.

²⁴ See *Minnesota Statutes* 2011, 114D.30, subd. 3; and 13D.01. As discussed previously, the Open Meeting Law requires that council meetings be publicized in advance and open to the public, members’ votes must be recorded, and materials distributed at meetings must be made available to the public.

²⁵ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, subd. 5.

Clean Water Council members represent a variety of interests.

Table 2.6: Clean Water Council Membership

Members Appointed by the Governor (voting)

- Two members representing statewide farm organizations
- Two members representing business organizations
- Two members representing environmental organizations
- One member representing soil and water conservation districts
- One member representing watershed districts
- One member representing nonprofit organizations focused on improvement of Minnesota lakes or streams
- Two members representing organizations of county governments, one representing the interests of rural counties and one representing the interests of counties in the seven-county metropolitan area
- Two members representing organizations of city governments
- One member representing the Metropolitan Council
- One member representing township officers
- One member representing the interests of tribal governments
- One member representing statewide hunting organizations
- One member representing the University of Minnesota or a Minnesota state university
- One member representing statewide fishing organizations

Members Appointed by Agencies (nonvoting)

- One member appointed by the Commissioner of Natural Resources
- One member appointed by the Commissioner of Agriculture
- One member appointed by the Commissioner of Health
- One member appointed by the Commissioner of the Pollution Control Agency
- One member appointed by the Executive Director of the Board of Water and Soil Resources

Legislative Members (nonvoting)

- Two members of the House of Representatives, one from the majority party and one from the minority party
- Two Senators, one from the majority party and one from the minority party

NOTES: Voting members appointed by the Governor must not be registered lobbyists or legislators. Legislative members from the House of Representatives are appointed by the Speaker of the House; legislative members from the Senate are appointed according to the rules of the Senate.

SOURCE: *Minnesota Statutes* 2011, 114D.30, subd. 2.

purposes stated in” the Constitution.²⁶ Among other things, the Clean Water Council is also required to submit a biennial report to the Legislature on:

...the activities for which money has been or will be spent for the current biennium, the activities for which money is recommended to be spent in the next biennium, and the impact on economic development of the implementation of efforts to

²⁶ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, subds. 5 and 6. When the council was first created in 2006, it was charged with making recommendations to the Governor regarding appropriations from only the Clean Water Legacy Account (see *Laws of Minnesota* 2006, chapter 251, sec. 7, subd. 6). Although the Clean Water Council made appropriations recommendations regarding the Clean Water Fund in 2009 and 2011, the Legislature did not officially give the council this responsibility until the 2011 legislative session.

protect and restore groundwater and the impaired waters program.²⁷

The report must also provide information regarding the progress made in implementing the Clean Water Legacy Act and the related constitutional provisions.

Unlike the Outdoor Heritage Council, the Clean Water Council does not have full-time staff.

Staff from the Minnesota Pollution Control Agency provide administrative support for the Clean Water Council. However, unlike the Lessard-Sams Outdoor Heritage Council, the Clean Water Council does not have full-time staff; instead, the Clean Water Council has the time of one full-time equivalent spread across three staff people from the Minnesota Pollution Control Agency.

In addition to the role played by the Clean Water Council, the 2009 Legislature required the University of Minnesota, in cooperation with several other agencies (including the departments of Natural Resources and Agriculture, the Minnesota Pollution Control Agency, the Board of Water and Soil Resources, the Environmental Quality Board, and others) to develop a:

...comprehensive statewide sustainable water resources detailed framework to protect, conserve, and enhance the quantity and quality of the state's groundwater and surface water. The detailed framework shall be a long-range, 25-year detailed framework, with an implementation schedule and associated benchmarks for policy, research, monitoring, and evaluation in order to achieve sustainable groundwater and surface water use, including the ecological benefits provided by water resources to humans and fish and wildlife habitat....²⁸

The law also required the University of Minnesota to develop a "ten-year plan for sustainable water resources."²⁹ The University released its 25-year framework and 10-year plan in January 2011.³⁰

Appropriations

Appropriations Recommendations

Unlike the Lessard-Sams Outdoor Heritage Council, the Clean Water Council does not issue a call for proposals or rank individual projects to be funded by the Clean Water Fund. Instead, we found that:

²⁷ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, subd. 7.

²⁸ *Laws of Minnesota* 2009, chapter 172, art. 2, sec. 30.

²⁹ *Ibid.*

³⁰ University of Minnesota, Water Resources Center, *Minnesota Water Sustainability Framework* (St. Paul, 2011).

The Clean Water Council's recommendations are typically focused on broad programs, rather than specific projects.

- **Recommendations from the Clean Water Council on how money from the Clean Water Fund should be allocated have been based largely on the advice it has received from state agencies; its recommendations have focused on ongoing programs, not specific projects.**

The council receives technical information provided by state agency staff and uses this information to develop programmatic priorities for the Clean Water Fund. For example, one of the programs identified by the council is to monitor and assess the state's watersheds. In fiscal year 2012, the Legislature appropriated \$7.5 million for "statewide assessments of surface water quality and trends"³¹ and \$9.4 million to "develop total maximum daily load studies."³² The Clean Water Council did not recommend appropriations for specific assessment projects. Instead, the council relied on the relevant state agency to establish the monitoring schedule and identify specific project work. The Chair of the Clean Water Council told us that going forward, the council may rely less on state agencies to develop its priorities. He said the council has developed a better understanding of the clean water programs and, in the future, will likely make a more independent assessment of how the Clean Water Fund money should be used.

Recent Appropriations

As outlined previously in Table 2.5, Minnesota statutes identify providing grants, loans, and funds to public and state agencies for clean water activities as allowable uses of the Clean Water Fund.³³ As a result, the council's recommendations and the Legislature's Clean Water Fund appropriations have largely been to state agencies that already work on clean water issues. In particular, we found that:

- **More than one-half of the Clean Water Fund money has been allocated to the Board of Water and Soil Resources and the Minnesota Pollution Control Agency.**

Table 2.7 shows the Clean Water Fund appropriations for fiscal years 2010 through 2012. Funding appropriated through the Clean Water Fund increased from almost \$70 million for fiscal year 2010 to more than \$90 million for fiscal year 2012.

The Clean Water Fund money has largely been appropriated for broad programmatic purposes; allocation of the money to specific projects happens within the state agencies that oversee the clean water programs. For example, a majority of the fiscal year 2012 Clean Water money allocated to the Pollution Control Agency is for studies of impaired waters and statewide assessments of surface water quality and trends. Half of the funding allocated to BWSR is for pollution reduction and restoration grants to local government units to protect

³¹ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 5(a).

³² *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 5(b).

³³ *Minnesota Statutes* 2011, 114D.50, subd. 3.

Table 2.7: Clean Water Fund Appropriations, Fiscal Years 2010 to 2012

(In thousands)

	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012
Minnesota Pollution Control Agency	\$23,976	\$23,130	\$24,212
Board of Water and Soil Resources	18,705	20,619	27,534
Public Facilities Authority	13,441	19,259	16,710
Department of Natural Resources	6,690	11,835	10,860
Department of Agriculture	3,790	5,170	7,700
Department of Health	1,645	2,105	2,988
University of Minnesota	750	305	0
Metropolitan Council	400	400	500
Legislature	25	0	13
Total	\$69,422	\$82,823	\$90,517

SOURCES: *Laws of Minnesota* 2009, chapter 172, art. 2; *Laws of Minnesota* 2010, chapter 361, art. 2; and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2.

surface, ground, and drinking water. More than 20 percent of the Clean Water Fund revenue appropriated to BWSR is for the board to purchase conservation easements adjacent to public waters. Table 2.8 lists a sample of programs that were appropriated Clean Water Fund money for fiscal year 2012.

Oversight and Monitoring

In contrast to oversight of expenditures from the Outdoor Heritage Fund, which are monitored by both the Lessard-Sams Outdoor Heritage Council and agency staff, we found that:

- **Oversight and monitoring of Clean Water Fund expenditures largely rests with the state agencies that receive Clean Water money.**

There are significant differences between the Clean Water Council and the Outdoor Heritage Council.

The Chair of the Clean Water Council told us that recipients of Clean Water Fund money are accountable to the Legislature, not the Clean Water Council, regarding how they use their Legacy funds. The difference in oversight between the Outdoor Heritage Fund and the Clean Water Fund is likely the result of several factors:

1. **Fewer staff resources.** As noted earlier, the Outdoor Heritage Council has three full-time staff to support its operations. In contrast, the Clean Water Council has a total of one full-time equivalent spread across three Minnesota Pollution Control Agency employees.
2. **Different legislative charge.** In law, recipients are required to submit “accomplishment plans” to the Outdoor Heritage Council. This has the effect of creating a direct line of accountability between Outdoor Heritage Fund recipients and its council. There is no comparable requirement with the Clean Water Fund or the Clean Water Council.

Table 2.8: Sample of Appropriations from the Clean Water Fund, Fiscal Year 2012

Recipient	Amount (In thousands)	Purpose
Department of Agriculture	\$4,500	For the agriculture best management practices loan program
	1,050	For research to quantify agricultural contributions to impaired waters, and for development and evaluation of best management practices to protect and restore water resources while maintaining productivity
Public Facilities Authority	\$11,185	For the total maximum daily load grant program
	4,275	For the clean water legacy phosphorus reduction grant program
	1,250	For small community wastewater treatment grants and loans
Pollution Control Agency	\$9,400	To develop total maximum daily load (TMDL) studies and TMDL implementation plans for waters listed on the United States Environmental Protection Agency approved impaired waters list.... The agency shall complete an average of 10 percent of the TMDL's each year over the biennium
	7,500	For completion of 20 percent of the needed statewide assessments of surface water quality and trends
	1,000	For the clean water partnership program to provide grants to protect and improve the basins and watersheds of the state, and provide financial and technical assistance to study waters with nonpoint source pollution problems
	1,000	For a wild rice standards study
Department of Natural Resources	\$1,825	For the continuation and expansion of stream flow monitoring
	1,725	For shoreland stewardship, TMDL implementation coordination, providing technical assistance to the Drainage Work Group and Drainage Management Team, and maintaining and updating data
	1,500	For water supply planning, aquifer protection, and monitoring activities
	1,350	To acquire and distribute high-resolution digital elevation data using light detection and ranging to aid with impaired waters modeling and TMDL implementation
Board of Water and Soil Resources	\$13,750	For pollution reduction and restoration grants...to protect surface water and drinking water; to keep water on the land; to protect, enhance, and restore water quality in lakes, rivers, and streams; and to protect groundwater and drinking water, including feedlot water quality and subsurface sewage treatment system projects and stream bank, stream channel, and shoreline restoration projects
	6,000	To purchase and restore permanent conservation easements on riparian buffers adjacent to public waters, excluding wetlands, to keep water on the land in order to decrease sediment, pollutant, and nutrient transport; reduce hydrologic impacts to surface waters; and increase infiltration for groundwater recharge
	3,000	For targeted local resource protection and enhancement grants
Department of Health	\$1,415	For protection of drinking water sources
	1,020	For addressing public health concerns related to contaminants found in Minnesota drinking water for which no health-based drinking water standard exists
Metropolitan Council	\$500	For implementation of the master water supply plan

NOTE: Appropriations were selected to illustrate a variety of recipients and purposes.

SOURCES: *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2; and Office of the Legislative Auditor.

3. **Projects vs. programs.** As mentioned above, the Outdoor Heritage Council recommends projects, which by their nature are more likely to have short-term outcomes. The Clean Water Council, in contrast, recommends funding for programs, which are typically implemented over a longer time period.

State agencies that receive Clean Water revenue use some of the money to support agency activities; some of the money is awarded through grant programs.

We spoke with agency staff at BWSR, DNR, the Minnesota Pollution Control Agency (MPCA), the Public Facilities Authority, and the departments of Agriculture and Health regarding their oversight of Clean Water Fund expenditures. Most of the Clean Water Fund money appropriated to DNR and MPCA is used by the agency to support agency activities related to clean water. The legal compliance and financial transparency of these expenditures are monitored through internal agency controls, similar to how other agency expenditures are monitored. Some of the funding appropriated to MPCA is allocated by the agency through grants. According to MPCA staff, grants funded through Legacy money are administered the same way non-Legacy grants are administered. Agency staff said they follow the Department of Administration’s Office of Grants Management policies for overseeing all of the grants they administer.³⁴

In contrast to MPCA and DNR, the vast majority of the Clean Water money appropriated to BWSR is distributed by the agency through grants to local government units. BWSR staff told us that there are some differences between the Legacy and non-Legacy grants they administer. Staff said that for the Legacy grants, they issue annual requests-for-proposals, require more detail in the grant proposals submitted, and have an increased focus on outcomes. In general, BWSR staff told us that they “upgraded” their previous grant-management practices for the Legacy grants. BWSR staff acknowledged that there is a high level of scrutiny applied to all of the details of the Legacy grants and thought it was reasonable given the new nature of the funding.

More than half of the Clean Water Fund money appropriated to the Department of Agriculture is for the Agriculture Best Management Practices Loan Program, which is overseen by the department. The remainder of the money appropriated to Agriculture is used for internal projects. The Department of Health uses some of the Clean Water Fund money internally to address public health concerns related to contaminants found in drinking water. The department also awards a large number of grants to help communities protect their drinking water sources. Department staff told us they follow the Office of Grants Management policies when awarding and monitoring these grants.

PARKS AND TRAILS FUND

As outlined in the Minnesota Constitution, 14.25 percent of the revenue raised through the Legacy Amendment must be deposited in the Parks and Trails Fund. This money may be spent “only to support parks and trails of regional or

³⁴ The 2007 Legislature authorized the Office of Grants Management in the Department of Administration. See *Laws of Minnesota 2007*, chapter 148, art. 2, sec. 22; and *Minnesota Statutes 2011*, 16B.97. The office is charged with standardizing, streamlining, and improving state grant-making practices and increasing public information about state grant opportunities.

statewide significance.”³⁵ As appropriations under this fund have evolved, three distinct pots of money have emerged: funding for *state* parks and trails of regional or statewide significance; funding for regional parks and trails of regional or statewide significance in the Twin Cities metropolitan area; and funding for regional parks and trails of regional or statewide significance outside of the Twin Cities area.

Advisory Group

When we examined the role of an advisory group for the Parks and Trails Fund, we found that:

- **Unlike the Outdoor Heritage Fund and the Clean Water Fund, there is not an advisory group that makes recommendations for all appropriations from the Parks and Trails Fund.**

There is not a permanent advisory group created in law for the Parks and Trails Fund.

Instead, DNR has taken the lead on statewide parks and trails and regional parks and trails outside of the Twin Cities metropolitan area; the Metropolitan Council has taken the lead on regional parks in the Twin Cities metropolitan area.³⁶

Instead of an ongoing advisory group, the 2009 Legacy fund appropriations law required DNR, the Office of Explore Minnesota Tourism, the Metropolitan Council, the Central Minnesota Regional Parks and Trails Coordinating Board, and regional parks and trails organizations outside the metropolitan area to:

Prepare a ten-year strategic parks and trails coordination plan and develop a 25-year, long-range plan for use of the funding that includes goals and measurable outcomes and includes a vision for Minnesotans of what the state and regional parks will look like in 25 years.³⁷

The collaborative group published the 25-year framework in February 2011, which sets forth a long-range plan for the use of the Parks and Trails Fund. The 2009 appropriations law also required the Center for Changing Landscapes at the University of Minnesota to “create a long-range framework for an integrated statewide parks and trails system that provides information on the natural resource-based recreational opportunities available throughout the state.”³⁸ This framework provides data on existing regional, state, and federal parks and trails in the state.

³⁵ *Minnesota Constitution*, art. XI, sec. 15.

³⁶ During the 2011 legislative session, the Greater Minnesota Parks and Trails Coalition became the lead stakeholder group for regional parks and trails outside of the Twin Cities metropolitan area.

³⁷ *Laws of Minnesota 2009*, chapter 172, art. 3, sec. 6, subd. 2(a).

³⁸ *Laws of Minnesota 2009*, chapter 172, art. 3, sec. 6, subd. 1(a). This framework was published in January 2011. See University of Minnesota, The Center for Changing Landscapes, College of Design, and Department of Forest Resources College of Food, Agricultural, and Natural Resources Sciences, *Minnesota’s Network of Parks & Trails* (Minneapolis, 2011).

Appropriations

Discussions during the 2011 legislative session regarding appropriations from the Parks and Trails Fund largely focused on how to divide the fund's revenue among the three areas of interest (statewide, metropolitan area, and Greater Minnesota parks and trails). We found that:

- **Money from the Parks and Trails Fund is allocated largely by a formula and is used for the projects and priorities of existing parks and trails systems.**

Table 2.9 shows the appropriations from the Parks and Trails Fund for fiscal years 2010 through 2012. For fiscal year 2012, 38 percent of the revenue from the Parks and Trails Fund was allocated to state parks and trails, 20 percent was allocated for grants to regional parks and trails in Greater Minnesota, and 42 percent was allocated to regional parks and trails in the Twin Cities metropolitan area.

Table 2.9: Parks and Trails Fund Appropriations, Fiscal Years 2010 to 2012

(In thousands)

Purpose	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012
State Parks and Trails	\$12,641	\$15,140	\$14,262
Twin Cities Area Regional Parks and Trails	12,641	15,140	15,763
Grants for Regional Parks and Trails	3,970	4,900	7,506
Other	665	0	2,145
Total	\$29,917	\$35,180	\$39,676

NOTES: "Other" includes the University of Minnesota, the Legislative Coordinating Commission, and specific appropriations for the Department of Natural Resources. In fiscal years 2010 and 2011, grants for regional parks and trails were available statewide; in fiscal year 2012, these grants were only available for regional parks and trails outside of the Twin Cities metropolitan area.

SOURCES: *Laws of Minnesota* 2009, chapter 172, art. 3; and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3.

To a large extent, allocation of the Parks and Trails Fund money relies on existing priorities established by DNR for state parks and trails and by the Metropolitan Council and its regional partners for regional parks and trails in the Twin Cities metropolitan area. The priorities for regional parks in Greater Minnesota are less developed; as a result, the 2011 Legislature appropriated \$175,000 for fiscal year 2012 to the Greater Minnesota Regional Park and Trail

The Commissioner of DNR is assembling a Parks and Trails advisory group to develop appropriations recommendations.

Coalition to develop criteria and a protocol for identifying priorities for park and trail acquisition and development in Greater Minnesota.³⁹

The allocation of money from the Parks and Trails Fund was the subject of significant debate during the 2011 legislative session. As a result, the 2011 Legislature required the Commissioner of DNR to “convene and facilitate a working group of nine members to develop consensus recommendations for the allocation of the parks and trails fund.”⁴⁰ The law requires the working group to include “representatives from metropolitan parks and trails, greater Minnesota parks and trails, and the Department of Natural Resources Parks and Trails Division.”⁴¹ In response to the 2011 law, the Commissioner of DNR is assembling the Park and Trail Legacy Advisory Committee, which will include representation from various parks and trails interests. Initial plans call for a 17-member advisory group and a 9-member funding subcommittee to develop recommendations for allocating Parks and Trails Fund money.

State Parks and Trails Appropriations

As shown in Table 2.9, between fiscal years 2010 and 2012 the Legislature has appropriated amounts ranging from \$12.6 million to \$15.1 million to the Department of Natural Resources for:

...state parks, recreation areas, and trails to: (1) connect people to the outdoors; (2) acquire land and create opportunities; (3) maintain existing holdings; and (4) improve cooperation by coordinating with partners to implement the 25-year long-range parks and trails legacy plan.⁴²

DNR uses Parks and Trails money to create, expand, and restore a variety of state parks and trails projects.

In the first 18 months, DNR used Parks and Trails Fund money to: create new outdoor programs and workshops to enhance traditional programming; add Minnesota Naturalist Corps trainee positions and naturalists; re-establish cross-country ski trails in state forests; restore native plant communities on state park land; and conduct trail renewal projects in several state forests, parks, and trails.⁴³

The Deputy Director of DNR’s Parks and Trails Division told us that he relies on the 10- and 25-year plans to identify both (1) a long-term, strategic vision and (2) key parks and trails priorities to tackle in the near term. Additionally, the deputy director said that the division has a priority list of projects that have been vetted within the division and by the department, which guides their

³⁹ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(c)(2). The law also required the coalition to “establish protocols to determine the origin of visitors, and projection of potential use of greater Minnesota regional parks and trails [and] collect and compile details on the facilities within the greater Minnesota regional park system.”

⁴⁰ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(f).

⁴¹ *Ibid.*

⁴² *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(a).

⁴³ Department of Natural Resources, Parks and Trails Division, *Minnesota State Parks and Trails 18 Month Legacy Report* (St. Paul, 2011). See http://files.dnr.state.mn.us/parks_trails/pat_18month_legacy_report.pdf, accessed September 28, 2011.

Parks and Trails money allocated to regional parks and trails in the Twin Cities area is distributed among park systems in the region.

expenditures. According to the deputy director, DNR uses the Parks and Trails Fund money to support grants and a large number of contracts focused on parks and trails rehabilitation work. DNR staff said they have tried to make the Legacy-grant process as similar as possible to the other grants and contracts they administer.

Metropolitan Area Parks and Trails Appropriations

As shown in Table 2.9, between fiscal years 2010 and 2012 the Legislature has appropriated revenue ranging from \$12.6 million to \$15.8 million from the Parks and Trails Fund to the Metropolitan Council. This appropriation is used to provide grants for metropolitan parks and trails of regional or statewide significance within the Twin Cities metropolitan area.⁴⁴ According to Metropolitan Council staff, 90 percent of this revenue is allocated for projects through a formula to the council's ten regional parks system partners.⁴⁵ The partners have discretion to determine how they spend the funds, as long as it is consistent with the Metropolitan Council's Regional Parks Policy Plan. The remaining 10 percent of the Parks and Trails revenue allocated to the metropolitan area is reserved for land acquisition and is allocated to the regional partners as appropriate opportunities arise.⁴⁶ Parks and Trails Fund money appropriated to the Twin Cities metropolitan area was used in fiscal year 2010 to rehabilitate parks and trails, extend trails, expand campgrounds, develop new parks, and acquire additional park land.

Greater Minnesota Parks and Trails Appropriations

As shown in Table 2.9, for fiscal years 2010 through 2012 the Legislature appropriated amounts ranging from \$4 million to \$7.5 million to DNR for grants to "acquire, develop, improve, and restore parks and trails of regional or statewide significance."⁴⁷ In fiscal years 2010 and 2011, all parks and trails in the state that met the criteria were eligible to apply for these grants. In 2011, the Legislature changed the grant program so that only parks and trails outside of the Twin Cities metropolitan area are eligible for these funds.⁴⁸

⁴⁴ *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 3(a); and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 4(a). See, also, *Minnesota Statutes* 2011, 85.53, subd. 3.

⁴⁵ The ten regional parks system partners are: Anoka County Parks, Bloomington Parks and Recreation, Carver County Parks, Dakota County Parks, Minneapolis Park and Recreation Board, Ramsey County Parks and Recreation, Saint Paul Parks and Recreation, Scott County Parks, Three Rivers Park District, and Washington County Parks.

⁴⁶ According to Metropolitan Council staff, there are limits as to how much acquisition funding a regional partner may receive in a given 12-month period.

⁴⁷ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(c)(1). *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 2(d), states that grants for parks or trails of regional or statewide significance "must be used only for acquisition, development, restoration, and maintenance."

⁴⁸ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(c)(1).

Oversight and Monitoring

Because virtually all of the Parks and Trails Fund revenue is allocated to DNR and the Metropolitan Council, we found that:

- **The Department of Natural Resources and the Metropolitan Council are responsible for ongoing oversight and monitoring of appropriations from the Parks and Trails Fund.**

Because there is not a council or advisory body for the Parks and Trails Fund, the agencies that serve as fiscal agents for this money oversee the expenditures. Their roles are outlined in more detail below.

Department of Natural Resources Oversight

DNR is responsible for overseeing two appropriations from the Parks and Trails Fund: the money appropriated to DNR for state parks and trails, and the money appropriated to DNR to administer as grants for regional parks and trails in Greater Minnesota. The oversight mechanisms for these two appropriations are different. Oversight of the money appropriated for DNR's use is managed through the agency's existing accountability structure, and DNR parks and trails staff said they are accountable to the Legislature, the public, and interest groups. Staff said they measure their progress on outcomes identified in 2009, such as the number or miles of trails improved and the number of park buildings enhanced.

Oversight for the grants for regional parks and trails is provided through the department's grants management process. DNR Parks and Trails staff told us that applicants for the regional parks grants must go through the division's typical grant procedures, which include a competitive application and review process. DNR field staff conduct a site visit at the end of each project to ensure grant requirements have been met and the project is complete.

Metropolitan Council Oversight

As noted earlier, funding appropriated for parks and trails in the Twin Cities metropolitan area is distributed by formula to the ten regional parks system partners. Staff at the Metropolitan Council review the partners' proposals for using the money and ensure that the proposed projects are consistent with the Regional Parks Policy Plan. As long as the projects are consistent with the regional plan, Metropolitan Council staff told us, the regional partners are free to establish their own priorities on how to spend the Parks and Trails Fund money they receive.

The Metropolitan Council develops a grant agreement with each of the regional park partners that describes how they plan to use the Legacy money. The Metropolitan Council ensures financial transparency by providing the funding on a reimbursement basis only. The council also requires funding recipients to submit an annual report that includes an explanation of how the money was spent

DNR and the Metropolitan Council provide oversight of some Parks and Trails Fund appropriations through their grants management processes.

and a contact person. The report is posted on the Metropolitan Council's Web site.⁴⁹

Metropolitan Council staff told us that each project is required to have measurable outcomes, such as the number of visits to the given park or trail. Both DNR and Metropolitan Council staff said the local government entities have ongoing responsibility for the operations and maintenance of the park or facility funded with Parks and Trails revenue.

ARTS AND CULTURAL HERITAGE FUND

The Minnesota Constitution requires that 19.75 percent of the revenue raised through the Legacy Amendment be deposited in the Arts and Cultural Heritage Fund. This money may be “spent only for arts, arts education, and arts access and to preserve Minnesota’s history and cultural heritage.”⁵⁰

Advisory Group

Similar to the Parks and Trails Fund,

- **There is not one central advisory group that advises the Legislature on how money from the Arts and Cultural Heritage Fund should be allocated.**

To develop an overarching vision and long-range framework for how the money should be allocated without an advisory group, the 2009 Legislature stated:

Programs and organizations funded through the arts and cultural heritage fund shall conduct a collaborative project to develop a ten-year plan and a 25-year framework for the use of the money available in the arts and cultural heritage fund.⁵¹

The law identified several organizations to be involved in the project and named the Minnesota Historical Society, the Minnesota State Arts Board, and the Minnesota Center for the Humanities as lead organizations. The Arts and Cultural Heritage Fund 10-year plan and 25-year framework, released in January 2010, identified overarching principles and goals for the fund but left identification of measurable outcomes to the discretion of the fund recipients.⁵²

In part because there is not a single package of funding proposals brought forth to the Legislature for the Arts and Cultural Heritage Fund, the legislative committees with jurisdiction over the fund are presented with numerous

⁴⁹ See, for example, <http://www.metrocouncil.org/parks/ParkTrailsLegisReport2011.pdf>.

⁵⁰ *Minnesota Constitution*, art. XI, sec. 15.

⁵¹ *Laws of Minnesota 2009*, chapter 172, art. 4, sec. 8.

⁵² Arts and Cultural Heritage Fund Planning Committee, *Minnesota State of Innovation: A Twenty-Five Year Vision, Framework, Guiding Principles, and Ten-Year Goals for the Minnesota Arts and Cultural Heritage Fund* (St. Paul, 2010).

Several organizations provide advice to the Legislature on appropriations from the Arts and Cultural Heritage Fund.

Many organizations that receive Arts and Cultural Heritage Fund money are named directly in law.

proposals and requests to fund specific projects. As a result of this process, many projects and organizations are named directly in law to receive money from the Arts and Cultural Heritage Fund. For example, the fiscal year 2012 Arts and Cultural Heritage Fund appropriations included:

- \$3.7 million for the Minnesota Public Television Association;
- \$400,000 for the Disabled Veterans Rest Camp located on Big Marine Lake in Washington County;
- \$200,000 for the Como Park Zoo;
- \$500,000 each for the Minnesota Children’s Museum and the Science Museum of Minnesota; and
- \$500,000 for the Minnesota Film and TV Board.

In addition to naming some recipients of Legacy money in law, the Legislature has also appropriated significant amounts of money from the Arts and Cultural Heritage Fund to the Minnesota State Arts Board and the Minnesota Historical Society to be allocated through competitive grant-making processes. During the 2011 legislative session, there was an effort to move more toward competitive granting, particularly for money allocated to support public broadcasting.

Appropriations

The 2009 and 2011 legislatures named specific entities as recipients of a portion of the Arts and Cultural Heritage Fund revenue but appropriated much larger portions as block grants to the Minnesota State Arts Board, the Minnesota Historical Society, and the Department of Administration. In fact, we found that:

- **The Legislature has appropriated more than half of the Arts and Cultural Heritage Fund money to the Minnesota State Arts Board and the Minnesota Historical Society.**

Table 2.10 outlines the Arts and Cultural Heritage Fund appropriations for fiscal years 2010 through 2012. Table 2.11 provides an explanation of how the fiscal year 2012 appropriations are intended to be used.

As detailed in Table 2.11, the ultimate recipients of many of the Arts and Cultural Heritage Fund appropriations are named in law. This is especially true for funding awarded through the Department of Administration (nonprofit organizations named in the appropriations law) and the Department of Education (funding allocated to the regional library system through an established formula). However, the State Arts Board and Historical Society award large portions of their appropriations to nonprofit organizations and local government units through competitive grants processes, which are further discussed below.

Table 2.10: Arts and Cultural Heritage Fund Appropriations, Fiscal Years 2010 to 2012

(In thousands)

Fiscal Agent	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012
Minnesota State Arts Board	\$21,650	\$21,650	\$22,167
Minnesota Historical Society	9,750	12,250	12,050
Minnesota Department of Administration	6,500	7,900	9,175
Minnesota Department of Education	4,250	4,250	3,000
Minnesota Humanities Center	1,050	1,050	1,575
Minnesota Zoological Garden	0	0	1,500
Minnesota Department of Agricultural	0	0	1,400
Indian Affairs Council	950	950	875
Perpich Center for Arts Education	300	700	850
Legislature	20	0	8
Total	\$44,470	\$48,750	\$52,600

SOURCES: *Laws of Minnesota* 2009, chapter 172, art. 4; and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 4.

State Arts Board Appropriations

The Minnesota State Arts Board awards Arts and Cultural Heritage Fund grants through three broad grant categories: Arts and Arts Access, Arts Education, and Arts and Cultural Heritage.⁵³ Within these three programs, there are seven different grant programs available. Table 2.12 lists a sample of grants awarded by the Minnesota State Arts Board in 2010. Legacy funds are also granted to arts organizations through the board's Operating Support grants.

The State Arts Board and Historical Society use competitive grant processes to award some of the Arts and Cultural Heritage money.

The Board uses the same process for its Legacy grants as it does for its non-Legacy grants. Specifically, the Minnesota State Arts Board posts application materials, criteria, and deadlines on its Web site. As applications are submitted, Arts Board staff screen applications to ensure applicants are eligible for the grant programs. Technical advisory panels review and score grant applications and make award recommendations to the board.⁵⁴ The board has final authority to approve grant awards.

Minnesota Historical Society Appropriations

Although the Minnesota Historical Society (MHS) has administered grants for several decades, the Arts and Cultural Heritage Fund appropriation greatly

⁵³ Minnesota State Arts Board Web site, Grant Opportunities, *Minnesota Arts and Cultural Heritage Fund*, <http://www.arts.state.mn.us/grants/machf.htm>, accessed September 28, 2011. According to the State Arts Board Web site, the Arts and Arts Access grants are for "high quality arts activities and experiences for all Minnesotans"; the Arts Education grants are for "lifelong learning in the arts"; and the Arts and Cultural Heritage Grants are for "building bridges between people via arts traditions."

⁵⁴ Arts Board staff assemble advisory panels to achieve a representative group based on artistic interest, geographic location, and demographic representation, among other factors.

Table 2.11: Arts and Cultural Heritage Appropriations and Allowable Uses, Fiscal Year 2012

Fiscal Agent	Uses	Appropriation (in thousands)
Minnesota State Arts Board	Arts and arts access initiatives	\$17,003
	Arts education	3,276
	Arts and cultural heritage	1,073
	Administration, fiscal oversight, and accountability	815
Minnesota Historical Society	Statewide historic and cultural grants	5,250
	Minnesota Historical Society programs	4,800
	History partnerships	1,500
	Statewide survey of historical and archaeological sites	250
	Digital library	250
Minnesota Department of Administration	Public television	3,700
	Public radio grants	2,650
	State Capitol Preservation Commission	550
	Minnesota Children's Museum	500
	Science Museum of Minnesota	500
	Minnesota Film and TV Board	500
	Veterans camps	475
	Zoos	300
Minnesota Department of Education	Minnesota regional library system	3,000
Minnesota Humanities Center	Children's museums grants	500
	Competitive grants to the Councils of Color	500
	Programs of the Minnesota Humanities Center	325
	Civics education	250
Minnesota Zoological Gardens	Programmatic development	1,500
Department of Agriculture	State county fairs	700
	Arts and cultural heritage competitive grants program for county fairs	700
	Language preservation and education	550
Indian Affairs Council	Language immersion	250
	Working Group on Dakota and Ojibwe Language Revitalization and Preservation	75
	Arts, arts education, arts access, and to preserve Minnesota's history and cultural heritage	850
Perpich Center for Arts Education	Arts, arts education, arts access, and to preserve Minnesota's history and cultural heritage	850
Legislature	Legacy fund Web site	8

SOURCE: *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 4.

expanded its grants program. In response, MHS developed three tiers of Legacy-funded grants: (1) small grants for less than \$5,000, which are granted on a monthly, rolling basis; (2) mid-size grants for between \$5,000 and \$50,000; and (3) grants for more than \$50,000.

Similar to the State Arts Board, MHS posts application materials, criteria, and deadlines on its Web site. MHS staff review all grant applications to ensure applicants are eligible and meet the minimum grant criteria. The agency uses an advisory committee, composed of representatives from across the state, to make recommendations for the mid-size and large grants. The Historical Society Board ultimately has final authority to approve grants. Table 2.13 lists a sample of mid-size and large grants awarded by the Minnesota Historical Society in 2010. MHS staff review the smaller grant applications and make recommendations directly to the MHS Board.

Table 2.12: Select Minnesota State Arts Board Grants Funded with Arts and Cultural Heritage Fund Money, Fiscal Year 2010

Arts Access – *Project grants that arts organizations can use to broaden arts opportunities for underserved groups by reducing or eliminating barriers to participation.*

ArtStart, \$19,000	Asian Media Access, \$79,500
Bella Voce Young Women's Choir, \$6,300	Duluth Art Institute, \$5,190
Guthrie Theater, \$122,730	Open Eye Figure Theatre, \$31,800

Arts Learning – *Project grants to support lifelong learning in the arts.*

AchieveMpls, \$134,260	CLIMB Theatre, \$145,352
Eastside Children's Summer Program, \$15,473	Saint Paul Public Schools, \$52,850
Indonesian Performing Arts Association of Minnesota, \$36,573	

Arts Tour Minnesota – *Project grants to support touring performances, exhibitions, and other related activities throughout the state.*

A Center for the Arts, \$99,000	Arts Midwest, \$25,137
The College of Saint Scholastica, \$14,750	Commonweal Theatre Company, \$26,406
James Sewell Ballet, \$55,308	Reif Center, \$26,400

Community Arts Schools and Conservatories – *Operating support grants to organizations that provide open access to arts learning opportunities for people of all ages and abilities.*

Center for Irish Music, \$10,639	Minnesota Conservatory for the Arts, \$22,989
Northern Lights Music Festival, \$18,950	The Saint Paul Conservatory of Music, \$38,255
Weavers Guild of Minnesota, \$30,108	

Folk and Traditional Arts – *Project grants to give Minnesotans more opportunities to experience folk and traditional arts and artists.*

The American Swedish Institute, \$34,942	Dance Revels, \$14,184
Native American Community Development Institute, \$70,200	Native Pride Arts, \$47,732
New Bohemian Flats Cooperative, \$31,100	

Minnesota Festival Support – *Project grants to showcase Minnesota artists through arts festivals and broader community-based festivals.*

Black Storytellers Alliance, \$11,768	Friends of the Lakeville Area Arts Center, \$12,910
Historical and Cultural Society of Clay County, \$16,110	Lao Assistance Center of Minnesota, \$5,000
Millstream Arts Festival, Inc., \$8,000	Northern Lights, \$132,083
Northstar Storytelling League, \$27,912	Vintage Band Music Festival, \$27,667

Partners in Arts Participation – *Project grants to nonprofit or public human service organizations to give underserved individuals or groups opportunities to experience the arts.*

Battered Women's Legal Advocacy Project, \$15,000	Epilepsy Foundation of Minnesota, \$2,500
Jewish Family Service of Saint Paul, \$24,810	Lifeworks Services, Inc., \$25,000
Pillsbury United Communities, \$20,000	Southeast Asian Community Council, \$9,860

NOTE: Projects were selected to illustrate a variety of recipients and purposes.

SOURCE: Minnesota State Arts Board, *FY 2010 Grantees, Arts and Cultural Heritage Fund Programs*, <http://www.arts.state.mn.us/grants/2010/index.htm>, accessed September 27, 2011.

Table 2.13: Select Historical and Cultural Projects Funded with Arts and Cultural Heritage Fund Money, Fiscal Year 2011

Recipient	Amount	Purpose
American Swedish Institute	\$ 94,677	To gain intellectual and physical control over its collection in order to provide better public access to Minnesota's Swedish heritage
Bemidji State University	49,500	To record, transcribe, and translate Ojibwe language oral histories and add the Oshkaabewis Native Journal to the Bemidji State University Web site
Brown County Historical Society	49,513	To provide storage that meets museum standards through purchase of compact shelving for its family research files and art collections storage
City of Coleraine	27,400	To replace the furnace and air conditioner and repair roof on the Coleraine Library, listed in the National Register of Historic Places
Concordia University	21,825	To conduct, transcribe, edit, and archive oral histories on the social and cultural history of Minnesota during the 1970s
Dorothy Molter Foundation and Museum	42,625	To complete an interpretive plan for the museum in order to make more effective use of limited resources to better serve the public
Fillmore County Historical Society	25,940	To broaden public access through a wheelchair lift in the Fillmore County History Center
Friends of the Immigration History Research Center	13,123	To collect data and conduct oral history interviews on congregations and houses of worship in nine neighborhoods in the Twin Cities near the Mississippi River between 1849 and 1924
Greater Litchfield Opera House Association	115,000	To complete exterior masonry preservation and rebuild missing entrance column of the Litchfield Opera House, listed in the National Register of Historic Places
Hamline University	29,926	To conduct oral/video interviews with the people who shaped environmental education in Minnesota
Islamic Resource Group	36,610	To capture and convey the Muslim experience in Minnesota through oral interviews and photographic portraits
Kanabec County Historical Society	11,836	To broaden public access to primary historical records through a microfilm reader-printer and computer
Lake Itasca Region Pioneer Farmers	45,000	To construct a protective overhead canopy to protect and preserve the J. Neils/Red Lake Sawmill and equipment
Lake Superior Railroad Museum	45,000	To conserve the seats, chairs, and sofas in an 1893 business car from the Duluth, Missabe, and Northern Railroad; one set of sofa cushions needs to be recreated using historical methods and materials
Maritime Heritage Minnesota	9,820	To conduct an underwater archaeological imaging sonar survey of the Mississippi River in Aitkin County to locate and identify submerged cultural resources
Minnesota Indian Affairs Council	120,350	To analyze existing archaeological data from two cultural landscapes and interpret it for use among American Indian people through the creation of a manuscript and portal
Minnesota Museum of Mining	50,000	To design and create an interactive exhibit on the daily lives of iron ore miners at work and home from the 1920s to the 1950s
Saint Cloud State University	56,050	To initiate research at five adjacent archaeological sites in the Boundary Waters Canoe Area Wilderness, which will inform an eventual National Register of Historic Places nomination
University of Minnesota-Twin Cities	112,807	To organize, catalog, and make accessible archival material documenting the history of agriculture in Minnesota

NOTES: Projects were selected to illustrate a variety of recipients and purposes.

SOURCE: Minnesota Historical Society, *Minnesota Historical and Cultural Grants-Awards. Mid-Size and Large Grant Recipients – Spring 2010 (FY2011)*, http://www.mnhs.org/legacy/grants/funded/2010_spring.htm, accessed September 27, 2011.

Oversight and Monitoring

As with expenditures from the Clean Water and Parks and Trails funds, we found that:

- **Several state agencies are responsible for monitoring the expenditures from the Arts and Cultural Heritage Fund.**

State agencies are responsible for monitoring these expenditures because there is not an advisory group or other body with overarching responsibility for the Arts and Cultural Heritage Fund. We spoke in detail with three agencies regarding their oversight of expenditures from the Arts and Cultural Heritage Fund: the Minnesota State Arts Board, the Minnesota Historical Society, and the Department of Administration.

As with its non-Legacy grants, State Arts Board staff told us they generally follow the grants management policies set forth by the Minnesota Office of Grants Management. These policies help ensure legal compliance and financial transparency for the grants. Staff told us they enter into formal agreements with their grant recipients and conduct monitoring visits as required by the Office of Grants Management.⁵⁵ All grantees are required to submit a final report, and Arts Board staff told us they retain a percentage of the grant funds until the project is complete.

Almost one-half of the 2011 Arts and Cultural Heritage Fund appropriation directed to the Minnesota Historical Society is for grants. Historical Society staff told us they also followed guidance from the Office of Grants Management regarding grant site visits and reimbursement. In particular, Historical Society staff told us they make grant payments when benchmarks are achieved. Similar to the Arts Board, MHS staff told us they retain a percentage of the grant funds until the project is completed. The remainder of the Legacy fund allocation—the money that is used by the Historical Society directly—is subject to the agency’s internal controls.

As mentioned above, the Legacy-funded grants managed by the Department of Administration are generally for recipients named in law. Nevertheless, the department requires all grantees to comply with the Office of Grants Management policies, including submitting a work plan and budget and having a signed grant agreement. The 2011 appropriations law changed some of the Department of Administration’s grants from legislatively named to competitive awards. As a result, department staff are developing a process to review, award, and oversee competitive grants.

OTHER ACCOUNTABILITY MEASURES

While the appropriations and oversight processes differ for each specific fund, there are some accountability provisions that apply to all four Legacy funds. For

State agencies use their grants management procedures to oversee much of the Arts and Cultural Heritage Fund money.

⁵⁵ Office of Grants Management *Policy 08-10* requires at least one monitoring visit during the grant period for grants of more than \$50,000 and annual visits for grants of more than \$250,000.

example, Minnesota statutes require the Legislative Coordinating Commission to develop and maintain a Web site that provides information about how the Legacy revenue is being used.⁵⁶ Among other things, the information must include all projects that receive Legacy funding, the projects' proposed measurable outcomes, and the plan for measuring and evaluating the results. The Web site is also required to include information regarding how members of the public may apply for revenue from any of the four Legacy funds.⁵⁷

In 2011, the Legislature enacted a number of additional accountability measures, including:

**The 2011
Legislature
enacted a number
of accountability
measures related
to the Legacy
funds.**

- clarifying that all grants funded with Legacy money must comply with the state's grants management requirements;⁵⁸
- requiring recipients that award competitive grants to disclose the names and qualifications of decision makers and advisory group members;
- establishing a firm date by which Legacy fund recipients must report to the Legislative Coordinating Commission the information contained on the Web site reporting expenditures from the Legacy funds; and
- requiring the Commissioner of the Department of Management and Budget to provide guidance and best practices to state agencies regarding accounting for expenditures of Legacy funds.⁵⁹

Additional changes regarding allowable administrative expenses and clarification about the applicability of the constitutional requirement that Legacy fund money be used to supplement and not substitute for "traditional sources" are discussed further in Chapter 3.

The Financial Audit Division of the Office of the Legislative Auditor (OLA) also has a role regarding accountability of the Legacy funds, particularly with respect to the financial transparency and legal compliance of these funds. The Financial Audit Division recently completed its first audit of the three outdoor-related Legacy funds (the Outdoor Heritage, Clean Water, and Parks and Trails funds) and plans to audit the Arts and Cultural Heritage Fund next year.⁶⁰ OLA plans to audit the Legacy funds on a regular basis going forward.

⁵⁶ *Minnesota Statutes* 2011, 3.303, subd. 10.

⁵⁷ A recent news item criticized the Web site saying the information was incomplete. See Elizabeth Dunbar, "Reports to Public Lagging on How Legacy Funds Being Spent," *Minnesota Public Radio*, October 25, 2011, <http://minnesota.publicradio.org/display/web/2011/10/25/reports-lagging-to-public-about-how-legacy-dollars-spent/>, accessed November 14, 2011.

⁵⁸ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 7, subd. 1. *Minnesota Statutes* 2011, 16B.97 and 16B.98, outline the state's grants management requirements.

⁵⁹ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, secs. 1 and 9.

⁶⁰ See Office of the Legislative Auditor, Financial Audit Division, *Legacy Funds: Outdoor Heritage, Clean Water, and Parks and Trails* (St. Paul, 2011).

DISCUSSION

We are not recommending that all four Legacy funds have the same processes for input and oversight. We accept that the purposes and histories of the funds led the Legislature to establish different structures and processes for the funds, and we did not find a basis to recommend changes at this time. Nevertheless, we think it is important for the Legislature to understand and periodically reassess the advantages and disadvantages of these different structures.

As discussed in this chapter and illustrated in Figure 2.2, each Legacy fund has a different process for ensuring accountability. To some extent, these processes reflect varying histories, purposes, constituencies, and approaches to an ongoing struggle between keeping administrative layers to a minimum and ensuring transparency and accountability. The processes also differ in the extent to which interest groups and stakeholders have an official role in providing input.

There are advantages and disadvantages to the structures of the four Legacy funds.

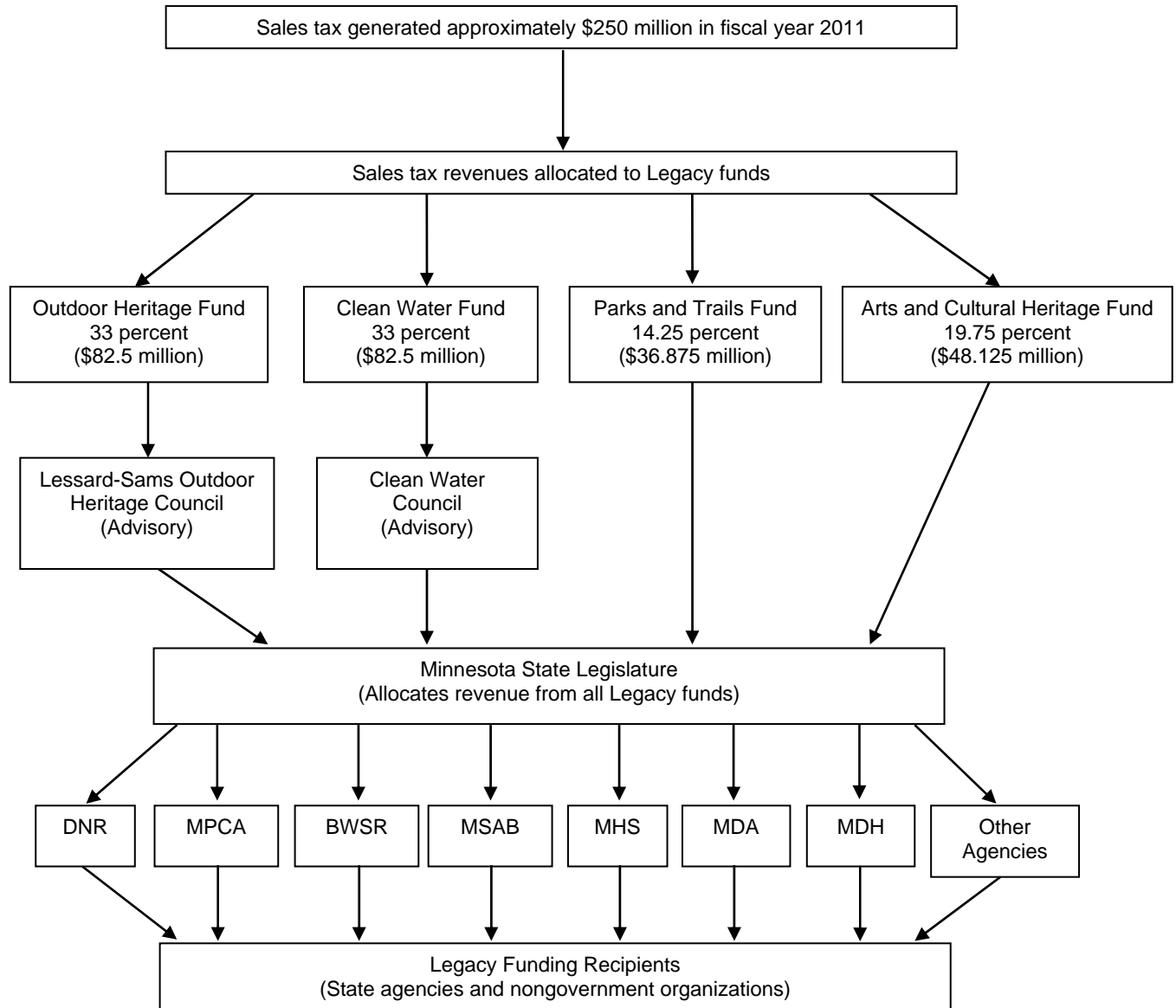
When the Legislature created the Lessard-Sams Outdoor Heritage Council, it provided an opportunity for a variety of stakeholders to have official and ongoing input regarding how Outdoor Heritage Fund money is allocated.⁶¹ Additionally, the council ensures legal compliance and financial transparency, provides guidance to fund recipients on issues such as administrative costs, and focuses on outcome measures. The council also provides a transparent and accessible process for recommending Legacy fund appropriations and provides oversight of the appropriations on an ongoing basis. But the council has additional administrative layers. The Outdoor Heritage Council has three full-time staff and incurs administrative expenses.

The Lessard-Sams Outdoor Heritage Council provides a layer of oversight and accountability for the Outdoor Heritage Fund that is not present for the other three Legacy funds. However, legislators and others have expressed concern that the structure of the Outdoor Heritage Council—having citizens with strong connections to interest groups that receive Outdoor Heritage Fund money serve as members—gives those groups seated at the table more influence than others. In addition to the stronger voice these interest groups have, there is an increased concern about the potential for conflicts of interest. We discuss that issue in more depth in Chapter 3.

In contrast to the Outdoor Heritage Fund, there is not a permanent advisory council for the Parks and Trails Fund. While the Legislature avoided the costs and potential conflicts of interest of an advisory council for the Parks and Trails Fund, there is also less transparency regarding how money from this fund is allocated. Program outcomes resulting from some of the Parks and Trails Fund money are not as clear as they could be and oversight is largely managed by DNR or the Metropolitan Council. Finally, there are not official and recurring

⁶¹ The role of interest groups needs to be monitored, however, to ensure that potential conflicts of interest are disclosed and mitigated. Conflicts of interest are discussed further in Chapter 3.

Figure 2.2: Flow of Legacy Amendment Funding, 2011



NOTES: "DNR" is the Department of Natural Resources, "MPCA" is the Minnesota Pollution Control Agency, "BWSR" is the Board of Water and Soil Resources, "MSAB" is the Minnesota State Arts Board, "MHS" is the Minnesota Historical Society, "MDA" is the Minnesota Department of Agriculture, and "MDH" is the Minnesota Department of Health. "Other Agencies" includes the Humanities Center, Metropolitan Council, Minnesota Department of Administration, Minnesota Department of Education, Perpich Center for Arts Education, and Public Facilities Authority.

SOURCE: Office of the Legislative Auditor.

opportunities for stakeholders to provide input regarding how Parks and Trails money should be appropriated.⁶²

The Clean Water Council is more of a hybrid model. The council gives stakeholders an opportunity to have an official, ongoing role regarding how money from the Clean Water Fund should be allocated. However, the Clean Water Council has minimal staff and is less transparent than the Outdoor Heritage Council regarding its process for recommending appropriations. Additionally, the Clean Water Council does not play an active oversight role to ensure that agencies comply with the law, provide financial transparency, or achieve the desired outcomes. Instead, similar to the Parks and Trails Fund, oversight is largely managed by the state agencies that receive Clean Water Fund money.

The distribution of money from the Arts and Cultural Heritage Fund largely relies on existing state agencies—the Department of Administration, the Minnesota Historical Society, and the Minnesota State Arts Board. These agencies have experience administering and overseeing state grants and already have established and transparent processes. Assurance of legal compliance and financial transparency are generally embedded in their existing internal controls. However, similar to the Parks and Trails Fund, there is not an opportunity for stakeholders to be recognized in an official capacity and provide ongoing insight regarding how Arts and Cultural Heritage Fund money should be appropriated. Instead, Arts and Cultural Heritage Fund stakeholders and constituencies come directly to the Legislature to provide their input.

There was not a basis for us to recommend one approach for all four funds.

The four Legacy funds have different mechanisms for vetting potential programs and projects, making appropriations recommendations, and providing oversight. All of the approaches have the potential to be effective. Some legislators disagree with having citizens on the Outdoor Heritage Fund and Clean Water Fund advisory panels and believe the state should instead establish a commission composed of only legislators for this purpose.⁶³ In contrast, others believe more of the funds, in particular the Clean Water Fund, should have an advisory group in the legislative branch similar to the Outdoor Heritage Council, with citizens and legislators as voting members.⁶⁴ In the end, there was not enough evidence in favor of one model or another for us to recommend that all of the funds follow a single approach.

Regardless of the mechanisms for accountability established for each fund, state agencies and recipients of the Legacy funds will need to ensure compliance with the governing laws. In the next chapter, we discuss four issues that have proven to be difficult for recipients of Legacy money, regardless of the fund.

⁶² The 2011 Legislature did require an *ad hoc* coalition of parks and trails groups to meet to develop consensus recommendations for the allocation of the Parks and Trails Fund. See *Laws of Minnesota 2011, First Special Session*, chapter 6, art. 3, sec. 3(f). Additionally, the Commissioner of DNR is establishing an advisory group to provide input regarding the Parks and Trails Fund.

⁶³ See House File 1073, 2011 Leg., 87th Sess. (MN).

⁶⁴ See Senate File 158, 2011 Leg., 87th Sess. (MN).

Ongoing Concerns

As discussed in Chapter 2, legislators and other state officials have given considerable attention to accountability concerns in implementing the Legacy Amendment. They have put in place structures, policies, procedures, and requirements to help ensure legal compliance, financial transparency, and outcome monitoring in the use of Legacy money. However, implementation of the Legacy Amendment remains a “work in progress,” and ensuring strong accountability will require continuous oversight and, possibly, adjustments in the state’s approach.

In this chapter, we discuss four topics that are likely to remain “ongoing concerns.” They involve the following:

We identified four ongoing concerns.

- Questions about the constitutional requirement that Legacy money be used to “supplement not substitute” for traditional sources of funding for Legacy-related purposes.
- Questions about how to appropriately and effectively limit the use of Legacy money for administrative costs.
- Concerns that some people involved in implementing the Legacy Amendment have conflicts of interest.
- Concerns about how Legacy money should be used to achieve the outcomes intended by the Legacy Amendment.

While we will offer our perspective on these questions and concerns, our purpose is to provide a full discussion that recognizes differing points of view and uncertainties. In fact, we think these issues are “ongoing concerns” because they involve complex questions without easy answers.

“SUPPLEMENT NOT SUBSTITUTE”

One of the most perplexing, unresolved issues is the Legacy Amendment’s “supplement not substitute” provision. Specifically, the amendment states:

The dedicated money under this section [the Legacy Amendment] must supplement traditional sources of funding for these purposes and may not be used as a substitute.¹

However, we found that:

¹ *Minnesota Constitution*, art. XI, sec. 15. In talking about this provision, people often use the word “supplant” rather than “substitute”; thus, they say: “The Legacy money must be used to supplement not supplant traditional sources of funding.”

- **The Legacy Amendment’s requirement that Legacy money be used to supplement not substitute for traditional sources of funding has caused confusion and uncertainty.**

The confusion and uncertainty result in part from the language of the provision itself. A memorandum from the Minnesota House of Representatives Research Department (House Research) dated February 18, 2009, put the issue succinctly. It said:

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.... [However,] the exact scope and impact of this language is not clear on its face, or based on the legislative history.²

In this section, we discuss the impact of the “supplement not substitute” provision on both the Legislature and recipients of Legacy money. We conclude that questions about the meaning and impact of the “supplement not substitute” provision are likely to remain, and we offer some observations on how the Legislature and recipients of Legacy money might cope with this ongoing concern.

Impact on Legislature

Since it was first presented as part of the proposed Legacy Amendment, the “supplement not substitute” provision has been the subject of differing interpretations among legislators. Some legislators have argued that the “supplement not substitute” provision was inserted into the Legacy Amendment simply as a guide for future legislative decision making and not as a restriction on the authority of future legislatures to establish budgets for state government. Other legislators have said that the provision restricts the Legislature’s ability to reduce funding from “traditional” sources to support Legacy-related activities. They also have expressed concern that the provision could result in a lawsuit against the state if the Legislature appropriated Legacy money to programs or projects that experienced reductions in their appropriations from other revenue sources.

During legislative debates in 2008, the Senate chief author of the proposed Legacy Amendment explained the “supplement not substitute” provision as follows:

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 [the “supplement not substitute” provision] needs to be viewed as an attempt to describe for future

The scope and impact of the Legacy Amendment’s “supplement not substitute” requirement is not clear.

The requirement says not to substitute Legacy money for “traditional” sources of funding.

² Mark Shepard, Research Department, Minnesota House of Representatives, Memo to Interested Legislators, *Constitutional Issue: Supplement/Substitute*, February 18, 2009.

legislatures the intent of this [new] revenue, not so much to lock them in as to what they are doing with their current expenditures.³

Despite assurances from the Senate chief author, other legislators expressed concern about the “supplement not substitute” provision. In responding to the chief author’s explanation, one senator said:

...with all respect, the language that is in the bill doesn’t conform with what you just described. What it says here is that [the Legislature] can’t reduce those funds at all.⁴

Another senator also raised questions about the provision’s impact and expressed concern that it could result in a lawsuit if the Legislature reduced the level of funding from traditional sources for certain programs. She said:

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?⁵

Legislators had different interpretations of the requirement when it was first proposed.

The same concern was expressed during the 2011 legislative session. For example, the chair of the Senate Finance Committee said: “I think there are a lot of us concerned about it. We definitely want to understand what would put us into a court situation. We can’t be afraid of somebody filing a suit, but we can be worried about them winning it.”⁶

Understanding what the Legacy Amendment’s “supplement not substitute” provision requires of the Legislature is far from a simple matter. As the discussion above illustrates, legislators had questions and varying interpretations of what the provision would require of the Legislature before the Legacy Amendment was approved. Now, after three legislative sessions, additional debates, analysis, and experience, there are even more—and more specific—questions about what the provision requires. For example:

- **When does a funding source become “traditional”?** The provision says that Legacy revenue should not be used to substitute for “traditional sources of funding” for the purposes specified in the Legacy Amendment. “Traditional” implies some level of historical consistency, but exactly how many years of continuous funding would be required from a particular source for it to be considered traditional?

³ Mark Shepard, Research Department, Minnesota House of Representatives, Memo to Interested Legislators, *Constitutional Issue: Supplement/Substitute*, February 18, 2009, 3. The debate took place on the floor of the Minnesota Senate on February 14, 2008.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Briana Bierschbach, “Can Legacy dollars allay state budget woes,” *Politics in Minnesota*, January 21, 2011.

- **Does frequency alone define “traditional”?** For example, the Legislature may have used revenue from bond proceeds to fund certain projects for several years but without the intention of maintaining that approach for a more extended period of time. Nevertheless, based on history rather than intention, have bond proceeds now become a traditional source of funding for those types of projects?
- **What happens when a “traditional” source is no longer available?** The Legislature may have used federal funds to support certain programs and projects over several years. But now, some of those funds are not available from the federal government. To maintain those programs and projects, the Legislature might use Legacy revenues. Would that violate the Legacy amendment’s “supplement not substitute” provision?
- **Does the provision allow the Legislature to reduce but not eliminate a traditional funding source?** For example, if the Legislature reduced state park permit and fishing license fees (“traditional” funding sources for certain programs administered by the Department of Natural Resources) to encourage greater public participation in outdoor activities and simultaneously increased Legacy funding for these programs, would that violate the “supplement not substitute” provision?

These and other questions about what the “supplement not substitute” provision requires makes it difficult for the Legislature to ensure that it is complying. That difficulty is compounded by the fact that compliance with the provision may rest more on the allocation of non-Legacy money than on revenue raised by the Legacy Amendment itself.

Impact on Recipients

Recipients of Legacy money have also struggled to understand the meaning and impact of the “supplement not substitute” requirement.

Recipients of Legacy money have also had to struggle with questions and concerns about the “supplement not substitute” provision. Initially, the question was simply: Does the “supplement not substitute” provision apply to recipients of Legacy money?⁷ The 2011 law that appropriated money from Legacy Amendment funds resolved any doubt about the application of the “supplement not substitute” provision to state agencies and other recipients of Legacy money, at least from the Legislature’s perspective. The 2011 appropriations law says: “A recipient of money from a Legacy fund must comply with the Minnesota Constitution, article XI, section 15, and may not substitute money received from a Legacy fund for a traditional source of funding.”⁸

Although the application of the “supplement not substitute” provision to Legacy fund recipients has been clarified, other questions remain. In effect, recipients of Legacy money must consider the same questions the Legislature has asked. The

⁷ That question was addressed in the House Research memorandum cited in footnote 2. The memo concluded that “there is a good argument that the supplement/substitute requirement also applies to state agencies...[and] other entities, including nonstate entities, that receive grants or other funding from an appropriation of the dedicated [Legacy] money.”

⁸ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 7, subd. 2.

A central question is: What constitutes a “traditional” source of funding?

principal question is: What constitutes a “traditional” source of funding? This question is particularly difficult for state agencies and private nonprofit organizations that receive funding from multiple sources to support their programs and projects. For example, officials at the Minnesota Pollution Control Agency pointed out to us that certain lake monitoring activities have been supported over the years with money from the state’s General Fund, federal funds, the Environment and Natural Resources Trust Fund, and now money from the Legacy Amendment’s Clean Water Fund. In their view, none of these funding sources are “traditional” in that they are all subject to change and even termination, given the annual and biennial budget cycles used in government.

Some of the private nonprofit organizations we talked with made similar observations. For example, one organization told us that a large grant they had previously received from a foundation and used to support their conservation easement program was no longer available because the foundation changed the focus of its grant making. The nonprofit organization wanted to continue its work on conservation easements with Legacy money it had received from the state but was concerned it would be criticized for “substituting” Legacy money for the foundation grant.

To avoid allegations of “substituting,” the most common approach by state agencies and nonprofit organizations is to fund projects that are new, or at least somewhat different, from projects previously funded with non-Legacy money. However, we were also told that this approach can potentially lead to a perverse result, as organizations use Legacy money to support new activities but do not have enough money from traditional sources to support their core programs.

Another concern for recipients is using Legacy money to pay for administrative and overhead costs. The most common examples recipients cite are the costs associated with providing office space for staff working on Legacy-funded programs and projects. As we will discuss in the next section, state law authorizes the use of Legacy money for these costs—and all other costs—if they are “directly related to and necessary for” implementation of a specific appropriation of Legacy money. However, some agency staff expressed concern that if they use Legacy money to pay costs associated with office space (rent or lease payments, utilities, security, etc.) they will be criticized for violating the “supplement not substitute” provision since the agency has paid those costs from other revenue sources in the past. From the agency’s perspective, however, this criticism would not be justified since they would not be occupying the space and incurring the costs except for the fact they are administering Legacy-funded programs and projects.

Discussion

Given the many unresolved questions about the meaning and impact of the Legacy Amendment’s “supplement not substitute” provision, our ability to offer clear conclusions is limited. We know that some legislators, agency officials, and other stakeholders were expecting that, through this evaluation and our financial audits, the Office of the Legislative Auditor would provide detailed guidance on what the Legislature and recipients of Legacy money must do—and

not do—to comply with the “supplement not substitute” provision. We found no basis from which to offer that kind of guidance.

Despite the questions and uncertainties about the Legacy Amendment’s “supplement not substitute” provision, it should not be ignored. The provision is in the Minnesota Constitution, and it must be given consideration in both the appropriations process and the administration of public agencies and programs. In the discussion that follows, we assess one suggestion—benchmarking—that has been made by advocacy groups for judging the Legislature’s compliance with the “supplement not substitute” provision. We then offer an alternative approach that we think would be more workable. Finally, we offer some suggestions to recipients of Legacy money on how they might address their obligation to comply with the “supplement not substitute” provision.

Budget Benchmarking

Some advocacy groups offered an overall spending benchmark from the past to judge state compliance with the “supplement not substitute” requirement.

On June 23, 2011, 30 environmental and conservation organizations sent a letter to Governor Dayton and legislative leaders concerning the state’s compliance with the “supplement not substitute” provision. In the letter, they questioned whether the state was adequately supporting Legacy-related purposes with revenue from “traditional sources.”⁹ They suggested that to comply with the “supplement not substitute” provision, the Legislature must maintain a certain level of funding for Legacy-related purposes from non-Legacy—“traditional”—revenue sources. The groups that signed the letter proposed that compliance should be judged by measuring in percentage terms how much financial support is being provided to “Minnesota’s Great Outdoors” from the state’s General Fund and Bond Fund.

The letter said that compliance with the “supplement not substitute” provision should be judged by three “simple guide posts,” as follows:

- (1) “Minnesota’s Great Outdoors” must maintain its traditional 1-percent share of the total state general fund budget;
- (2) statutorily dedicated funds already in place for the “Great Outdoors” cannot be used to pay for other budget items;
- and (3) capital investments for the “Great Outdoors” must be at least 22 percent of the total general obligation bonds—a level equal to the 10-year average.¹⁰

While this type of budget benchmarking may be a useful tool for policy advocates, we do not think it would be a workable mechanism to establish within

⁹ Steve Morse, Executive Director, Minnesota Environmental Partnership, et al., letter to The Honorable Mark Dayton [and ten named legislative leaders], *Protecting Minnesota’s Great Outdoors in the Special Session*, June 23, 2011.

¹⁰ *Ibid.*

the appropriations process.¹¹ First, the budget benchmarking approach that was proposed by the advocacy groups presumes that the Legacy Amendment’s “supplement not substitute” provision requires the state to maintain spending on certain programs and activities (in this case, related to the “Minnesota Great Outdoors”) at a fixed proportion to spending on other programs and activities (education, public safety, health, human services, etc.). That presumption reads into the “supplement not substitute” provision a requirement that is not there. The provision only requires that Legacy money not be substituted for a traditional funding *source*; it does not explicitly require that a certain *level* of support from a source be maintained. More specifically, nothing in the provision’s language or legislative history suggests any intent to freeze the proportions of the state budget allocated to various state responsibilities for 25 years regardless of changing needs, priorities, or requirements.

In addition, any effort to establish budget benchmarking as a measure of the Legislature’s compliance with the “supplement not substitute” provision would face a range of questions. There would, for example, be questions about what to include within particular budget categories. In addition, there would be questions about which funds to include; specifically, whether to include federal funds and bond funds. And, there would be questions about what time period to use in setting benchmarks and how to address fluctuations in spending levels during that time period.

Legacy Funding Reviews

For the reasons noted above, we do not recommend that the Legislature institute the kind of aggregate budget benchmarking that was presented by the environmental and conservation groups in June 2011. On the other hand, we think some amount of historical budget information could be useful to legislators attempting to monitor and assess whether Legacy money is being used to supplement and not substitute for traditional sources of funding. To provide that kind of information, we recommend:

We think a review of past funding sources and levels for specific programs and projects would be more workable and meaningful.

RECOMMENDATION

The Legislature should consider establishing a process that legislators could use to obtain information on past funding sources and levels for programs and projects being considered for funding with Legacy money.

¹¹ By law, spending from the Environment and Natural Resources Trust Fund is also required to “supplement not substitute” spending from traditional sources; see *Minnesota Statutes* 2011, 116P.03. In an early attempt to monitor compliance with this requirement through benchmarking, the 1988 law that established the “supplement not substitute” mandate also required the Legislative-Citizen Commission on Minnesota Resources (LCCMR) to “determine the amount of the state budget spent from traditional sources to fund environmental and natural resources activities before and after the trust fund [was] established and include a comparison of the amount in the [annual] report....” According to LCCMR staff, the commission has not been able to fully implement this requirement because of the complexities associated with changing budgets and budget categories. The LCCMR’s annual report simply contains the section on environment, energy, and natural resources spending contained in the document, *Fiscal Review*, annually prepared by the Office of Senate Counsel, Research, and Fiscal Analysis, and cited in Chapter 1, footnote 1.

We think the kind of limited funding reviews we are recommending would be more manageable and meaningful than the aggregate budget benchmarking approach proposed by the environmental and conservation organizations. The reviews would be limited to appropriations requests being considered before committees with jurisdiction over Legacy funds, and they would focus on specific programs or projects. The objective would be to inform, not to trigger, an enforcement mechanism for compliance with the Legacy Amendment’s “supplement not substitute” provision.

Similar to the fiscal note process, executive branch agencies would be the primary source for data and analysis for the Legacy-related funding reviews, and the Department of Management and Budget would coordinate the process and provide guidance and quality control. To the degree data are available, we think all funding sources, including federal funds and other dedicated funds, should be included in a review. The timeframe to be covered would be specified in the legislative request. However, we do not think it would be practical for a review to take account of contemporaneous budget deliberations and decisions; the appropriations process during a legislative session is simply too fluid to expect that type of assessment.

We have no expectation that providing the funding reviews we are recommending will resolve questions about the meaning and requirements of the Legacy Amendment’s “supplement not substitute” provision. But providing historical information at a detailed level will, we think, facilitate a more focused and productive discussion about the “supplement not substitute” issue.

Recipients of Legacy Money

Our observations—and advice—on how recipients of Legacy money might cope with the uncertain meaning and application of the “supplement not substitute” provision is also limited. We sympathize with the difficult situation they face and appreciate the consideration they have already given this issue. However, like the Legislature, recipients of Legacy money cannot ignore the “supplement not substitute” provision or diminish its importance because its meaning and application are uncertain. At the very least, they must make good faith efforts to comply as fully as possible, document their decision criteria, and be prepared to defend their decisions. Therefore, we recommend the following:

RECOMMENDATIONS

Recipients of Legacy money should document their consideration of the “supplement not substitute” provision and how their allocations comply with the provision. They should also establish accounting structures and procedures to ensure they can demonstrate in detail that the ultimate use of the Legacy money was appropriate in terms of supplementing and not substituting for traditional sources of funding.

Despite uncertainties, recipients of Legacy money should be prepared to demonstrate their compliance with the “supplement not substitute” requirement.

Some recipients of Legacy money have expressed concern that this type of extra documentation, segregated accounting, and special reporting adds administrative

Legacy money comes with “strings attached.”

costs and takes staff time away from the substance of programs and projects funded with Legacy money. On the other hand, the extra accounting, documentation, and reporting requirements related to the use of Legacy funds are similar to those for other dedicated funds (e.g., money from the Environment and Natural Resources Trust Fund, General Obligation Bond Fund, Game and Fish Fund, and various federal funds).¹² For some agencies, the methods they have developed to ensure compliance with the requirements of using these other dedicated funds may be adequate for their use of Legacy funds. However, some agencies may have to modify their methods or develop ones specific to their use of Legacy money. In the final analysis, recipients must accept that Legacy money comes with “strings attached,” including the requirement to comply with the Legacy Amendment’s “supplement not substitute” provision—and the willingness to demonstrate compliance as fully as possible.

ADMINISTRATIVE COSTS

Administrative costs are a part of every organization, whether it is in the public, private nonprofit, or private for-profit sector.¹³ In fact, they are often essential to an organization’s ability to plan, develop, and deliver its goods and services. Table 3.1 lists some examples of common administrative costs.

Table 3.1: Examples of Common Administrative Costs

- Accounting
- Clerical Support
- Executive and Supervisory Personnel
- Facilities Management
- General Office Equipment and Supplies
- Human Resources
- Information Technology
- Insurance
- Legal Services
- Purchasing
- Rent/Lease
- Security

SOURCE: Office of the Legislative Auditor.

¹² Through an annual audit of the State of Minnesota’s use of federal funds, OLA has an understanding of the accounting and documentation required of state agencies that receive grants from the federal government. Through periodic audits and evaluations, we have also gained an understanding of the accounting and documentation requirements imposed by various state dedicated funds. For example, see Office of the Legislative Auditor, Financial Audit Division, *General Obligation Bond Expenditures* (St. Paul, 2008); and Office of the Legislative Auditor, Program Evaluation Division, *Game and Fish Fund Special Stamps and Surcharges* (St. Paul, 1994).

¹³ In this discussion, we use the term “administrative costs” to include all support costs, including costs that are referred to as “indirect,” “overhead,” or “institutional” costs.

Though necessary, there are still pressures in both the public and private sectors to limit administrative expenses. We found:

- **The Legislature has tried to limit the use of Legacy money for administrative expenses, but some organizations that receive Legacy money have expressed concern and confusion about what actions are required to comply.**

The Legislature has taken two approaches to limiting administrative costs.

The Legislature's objective has been to have as much Legacy money as possible applied to the "direct costs" associated with Legacy-funded projects and to limit administrative costs as much as possible.¹⁴ To achieve that objective, the Legislature has tried two different approaches and both have been met with questions and concern from some organizations that receive Legacy money.

Legislative Actions

The Legislature's first approach to minimize administrative costs was to put percentage caps on the share of a Legacy appropriation that could be spent on these expenses. For example:

- The 2009 Legacy law appropriated money to the Board of Water and Soil Resources to purchase and restore permanent conservation easements on riparian buffers and allowed the board to use "up to 5 percent" of the money for administration of the program.¹⁵
- The 2009 Legacy law appropriated money for grants to the regional library systems to provide educational opportunities in the arts, history, literary arts, and cultural heritage of Minnesota and directed the library systems to use "no more than 2.5 percent" of their grant for administration.¹⁶
- The 2010 Legacy law appropriated money to the Department of Natural Resources for grants to enhance, restore, or protect forests, wetlands, prairies, and habitat for fish, game, or wildlife in Minnesota and allowed the department to use "up to 4 percent" of the appropriation for administering the grant program.¹⁷

¹⁴ The line that separates direct and administrative (indirect) costs is not always clear. However, in the context of Legacy funds, direct costs are those most closely associated with a specific appropriation of Legacy money. For example, they are the costs for the personnel and equipment needed to build a buffer strip near a river or for the personnel and equipment needed to restore and preserve a historical document. In contrast, administrative costs are incurred to provide general support to these activities. However, given the wide variation in the type of programs, projects, and activities supported with Legacy money, what would be a "direct" cost in one situation could be an "administrative" cost in another.

¹⁵ *Laws of Minnesota* 2009, chapter 172, art. 2, sec. 6(a).

¹⁶ *Laws of Minnesota* 2009, chapter 172, art. 4, sec. 2, subd. 3.

¹⁷ *Laws of Minnesota* 2010, chapter 361, art. 1, sec. 2, subd. 5(i).

The percentage shares specified using this approach have ranged from a low of “up to 1 percent” (for the Department of Administration to administer grants) to a high of “up to 6.5 percent” (for the Department of Natural Resources to administer grants). It is important to note, however, that many appropriations of Legacy money have not included any language related to administrative costs; there was neither an authorization nor a limit in those cases.

The Legislature’s second approach started in the 2010 Legacy appropriations law and involved appropriations from the Outdoor Heritage Fund. This approach did not specify an allowable percentage but stated the following:

Money appropriated in this section may not be spent on activities unless they are directly related to and necessary for a specific appropriation and are specified in the accomplishment plan.¹⁸

During the 2011 legislative session, the advantages and disadvantages of the “percentage cap” approach and the “directly related to and necessary for” approach were discussed by the House Legacy Funding Division.¹⁹ Those discussions resulted in legislators agreeing to use the “directly related to and necessary for” language for all Legacy appropriations, rather than the percentage-cap approach. Legislators noted that this approach offered more discretion in using Legacy money for administrative costs but cautioned recipients not to misuse this flexibility or the Legislature would revert to a more prescriptive percentage-cap approach.

Reaction to Limitations

Recipients of Legacy money have questioned whether some limitations on administrative costs are reasonable.

While accepting the need to minimize administrative costs, officials from state agencies and nonprofit organizations that receive Legacy money have called for a “reasonable” approach. They have pointed out that the outcomes the Legacy Amendment is seeking to achieve can only be accomplished through programs and projects, which necessarily have administrative costs. They acknowledge that organizations, particularly larger ones, may be able to absorb some level of added administrative costs without using Legacy money for those costs. However, they argue that as Legacy-related programs and projects become a larger part of their operations, it is unreasonable—even unfair to other funds and programs—not to use Legacy money for those costs. Recipients of Legacy money have also noted that the Legislature added to their administrative costs by requiring extra accounting, oversight, and reporting requirements for every appropriation of Legacy money.

The recipients of Legacy money we talked with generally welcomed the move away from percentage caps on administrative costs that was taken in the 2011

¹⁸ *Laws of Minnesota* 2010, chapter 361, art. 1, sec. 2, subd. 7. The provision also said that money appropriated from the Outdoor Heritage Fund “must not be spent on indirect costs or other institutional overhead charges,” but this restriction was modified in the 2011 appropriations law to allow those costs to be paid for with the Legacy appropriation if they were “directly related to and necessary for” the specific appropriation. See *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1, sec. 2, subd. 7.

¹⁹ Legacy Funding Division, Minnesota House of Representatives, meeting on February 9, 2011.

Legacy appropriations law. However, they expressed concern that the “directly related to and necessary for” standard is open to interpretation and noted that they have not received guidance from the Department of Management and Budget on what administrative costs are allowed. Each organization that receives Legacy money has been left to decide for themselves what costs they think are allowed under the “direct and necessary” standard.

Some recipients are particularly unsure how to comply with a provision in the 2011 legislation that says Legacy money “must not be spent on indirect or other institutional overhead charges that are not directly related to and necessary for a specific appropriation.”²⁰ They point out that the language of the law itself is confusing, if not contradictory, in that it requires organizations to justify that “indirect” costs are “directly related” to a specific project or activity. More specifically, agencies such as the Department of Health and the Minnesota Pollution Control Agency are concerned that they will not be allowed to use the cost allocation methods they have used over the years to charge other dedicated revenue accounts for their agencies’ indirect costs. That concern was expressed during the 2011 legislative session by the Commissioner of the Minnesota Pollution Control Agency in a letter to legislators. He said the proposed language requiring special justification to charge Legacy appropriations for an agency’s indirect costs would “unnecessarily prohibit the use of an indirect rate to capture the cost of essential expenses, such as internet services or human resources support, needed to sustain our approved clean water activities and staff.” He went on to point out that:

These expenses accrued due to activities linked to Clean Water Funds need to be covered with a system that is not over burdensome nor results in increased costs solely to meet reporting requirements. In addition, agencies cannot be expected to cover these expenses with other funds thus resulting in a de facto cut to other programs.²¹

This concern was repeated and amplified when we interviewed key budget and operational staff at the Minnesota Pollution Control Agency. They expressed frustration that the restrictions on using Legacy money for administrative costs had increased administrative costs by requiring the agency to identify, segregate, document, justify, and report on Legacy-related administrative costs. They also again raised concern that the “directly related to and necessary for” language would potentially require the agency to establish a separate way to allocate indirect costs associated with Legacy projects, which in their view would be inefficient and unnecessary.

Recipients have also argued that Legacy-funded programs and projects cost more to administer because of added accounting and reporting requirements.

²⁰ See, for example, *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 1, sec. 2, subd. 7.

²¹ Paul W. Aasen, Commissioner, Minnesota Pollution Control Agency, letter to Representative Dean Urdahl and Senator Bill Ingebrigtsen, May 18, 2011.

Discussion

In shifting to the “directly related to and necessary for” language, the Legislature provided organizations that receive Legacy money more discretion and flexibility. Legislators recognized that the percentage caps that had been mandated in law did not adequately reflect the significant cost variations among the organizations, programs, and projects that are funded with Legacy money. But the added discretion and flexibility was not granted unconditionally; it came with a clear requirement that organizations justify their use of Legacy money for all costs, both direct and indirect. This is an “ongoing concern” largely because some organizations that receive Legacy money are uncertain what policies and procedures they must follow to comply with the requirement.

Based on what we learned during this evaluation and through a recently completed financial audit of Legacy funds, it is clear that some state agencies have not implemented policies and procedures that will ensure compliance with the “directly related to and necessary for” requirement.²² We understand that justifying the use of Legacy money on a detailed level will require staff time and involve costs. But, in our view, that greater level of effort and documentation is what the law requires. Organizations that receive Legacy money must be able to show that all costs—including administrative costs—charged to a Legacy appropriation are “directly related to and necessary for” the specific appropriation they received. To help state agencies and other organizations that receive Legacy money meet this requirement, we recommend:

We think the Department of Management and Budget needs to provide more guidance on allocating administrative costs.

RECOMMENDATION

The Department of Management and Budget should develop policies on allowable administrative costs for programs, projects, and activities supported with money from Legacy funds.

This recommendation is consistent with both the department’s general responsibilities as state government’s chief financial adviser and controller, as well as the specific mandate the department was given in the 2011 Legacy appropriations law, which said:

No later than January 1, 2012, the commissioner of management and budget shall finalize guidance and best practices to assist state agencies in uniformly accounting for their expenditure of legacy funds. The commissioner shall make this information available to all state agencies identified in this act.²³

We suggest that the department not view this mandate narrowly and respond simply with a set of accounting codes. What is needed is a framework of principles, policies, and procedures that state agencies (and other recipients of

²² Office of the Legislative Auditor, Financial Audit Division, *Legacy Funds: Outdoor Heritage, Clean Water, and Parks and Trails* (St. Paul, 2011).

²³ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 9.

Legacy money) can apply to their specific situations. The kind of framework we suggest would help organizations conduct the type of specific analysis and documentation required to comply with the “directly related to and necessary for” requirement state law has placed on using Legacy money.

Finally, we suggest the department follow the process used by the Department of Administration, Office of Grants Management, in developing the state’s grants management policies and best practices. We think that approach produced documents that have been particularly helpful to state agencies and nonprofit agencies that compete for and administer state grants.

CONFLICTS OF INTEREST

Conflicts of interest are a persistent concern in the public sector. In general terms, a conflict of interest in the public sector exists when a person has a personal relationship, organizational affiliation, or other interest—for example, a financial interest—that inappropriately influences the person’s performance of a public responsibility. The most common concern is that a person will use a public position to inappropriately obtain a personal financial benefit.

In contrast, we found that:

- **There are concerns that some people involved in recommending how Legacy money should be used have conflicts of interest because of their affiliations with organizations that receive Legacy money.**

There are varying opinions about what constitutes a conflict of interest.

The issue raised relative to the Legacy Amendment illustrates that there can be significant differences of opinion about what constitutes a conflict of interest. These differences, in part, reflect the fact that most people have a general concept of what they believe constitutes a conflict of interest. However, determining whether a conflict actually exists for a specific person in a specific situation often requires a detailed assessment of the conflict of interest laws and policies that are applicable to that person, as well as a detailed assessment of the relationship, affiliation, or interest that allegedly has created the conflict. The fact that Minnesota’s conflict of interest laws and policies themselves vary to some degree also contributes to differences of opinion—and confusion—about whether a conflict exists for a specific person in a specific situation.

For the discussion that follows, we define three types of conflicts of interest as follows:

- **A potential conflict of interest** occurs when a person in a public position has a relationship, affiliation, or other interest that, according to applicable laws and/or policies, would create an inappropriate influence *if the person is called on to make a decision or recommendation* that would affect one or more of those relationships, affiliations, or interests. Conflict of interest laws and policies typically provide a process—such as recusal from a decision or recommendation—to ensure that a potential conflict does not become an actual conflict.

- **An actual conflict of interest** occurs when a person in a public position *makes a decision or recommendation* even though they have a relationship, affiliation, or other interest that, according to the applicable law and/or official policy, constitutes an inappropriate influence on the person making the decision or recommendation.
- **The appearance of a conflict of interest** typically includes what the applicable law and/or policy defines as a conflict or potential conflict of interest, but it may also include other relationships, affiliations, or interests that, although not specified in an applicable law or policy, a “reasonable person” believes would inappropriately influence a person making a decision or recommendation.

It is important to keep in mind that when a person in a public position declares that he or she has a potential conflict of interest it does not mean the person has done something wrong. In fact, some potential conflicts are not created by the person in a public position but by others, such as a family member accepting employment or a position on a board of directors. Moreover, when a person in a public position declares a potential conflict of interest and acts appropriately to resolve it, the person is upholding important principles of good government.

It is also important to keep in mind that, as mentioned above, Minnesota’s conflict of interest laws and policies differ to some degree in what they define as a conflict or potential conflict. They also differ in terms of their expectation about avoiding even “the appearance of a conflict.”²⁴ In addition, they vary as to the consequence they provide for noncompliance. For example, the conflict of interest law that applies to employees in the executive branch of state government provides for disciplinary action for noncompliance, but other state laws and policies are silent on the consequences for noncompliance.²⁵ However, to a large extent, all conflict of interest laws and policies are effective only to the degree that people subject to them reveal the relationships, affiliations, and interests that could create a conflict.

Minnesota’s conflict of interest laws and policies also differ some in defining what constitutes a conflict.

Legacy Amendment Concerns

As noted previously, conflict of interest concerns have been raised about the way the Legacy Amendment is being implemented. For example, an editorial in the *StarTribune* on January 16, 2010, criticized the role and composition of an advisory group formed to create a vision, plan, and goals for the Arts and Cultural Heritage Fund. The editorial said: “...the presence of a high-powered lobbyist sitting on [the group] has understandably led to conflict-of-interest concerns and speculation that panel members set up the rules to steer money to

²⁴ For example, the state’s *Conflict of Interest Policy for State Grant-Making* says: “Minnesota state agencies must work to deliberately avoid both actual and perceived conflicts of interest related to grant-making at both the individual and organizational levels.” See Department of Administration, Office of Grants Management, *Policy 08-01*.

²⁵ Of course, even without a conflicts of interest law or policy stating a consequence, it is possible that the most serious conflict of interest violation—using a public position to obtain unauthorized personal gain—could constitute a crime and be subject to criminal prosecution.

In this evaluation, we examine the conflict of interest issue generally and did not investigate allegations concerning individuals.

their organizations.”²⁶ In addition, articles in the *StarTribune* on February 27, 2011, and September 24, 2011, raised concerns about organizational affiliations some members of the Lessard-Sams Outdoor Heritage Council have with organizations that periodically ask the council to endorse their requests for money from the Outdoor Heritage Fund.²⁷

It is within the OLA’s authority and responsibility to investigate alleged conflicts of interest. However, consistent with the scope and purpose of this evaluation, we examined the conflict of interest issue broadly and did not assess concerns about individuals. We examined the state’s conflict of interest laws, policies, and procedures and how they are being applied within the organizations involved in implementing the Legacy Amendment.

Conflict of Interest Laws, Policies, and Procedures

Overall, we found that:

- **Minnesota has several conflict of interest laws and policies relevant to Legacy-related concerns, and most of the organizations covered by these laws and policies have taken steps to obtain compliance from the people affected.**

Some of the laws and policies apply to public employees and officials generally and some apply specifically to people serving on a board, council, or other organization involved with the Legacy funds. We summarize both types below.

Generally Applicable Laws, Policies, and Procedures

Minnesota Statutes 2011, 10A.07, applies to public officials generally, and specifically to legislators and citizen members of the Lessard-Sams Outdoor Heritage Council, Clean Water Council, Minnesota State Arts Board, and Board of Water and Soil Resources.²⁸

²⁶ Editorial, “Artful dodging on Legacy funding,” *StarTribune*, January 16, 2010.

²⁷ Mike Kaszuba, “Conflict of interest questions arise on Legacy panel,” *StarTribune*, February 27, 2011; Mike Kaszuba, “State panel member has ties to group getting funds,” *StarTribune*, September 24, 2011.

²⁸ The law provides that legislators make conflict of interest disclosures “to the presiding officer of the body of service” and provides that resolution of a conflict will be decided within the body of service. Legislators are also subject to the ethical standards established by the body in which they serve. Beyond noting that *Minnesota Statutes 2011, 10A.07*, applies to legislators, we did not address conflict of interest concerns related to legislators during this evaluation. Citizen members of the Clean Water Council were made subject to the law by a provision enacted in 2011. See *Laws of Minnesota 2011, First Special Session*, chapter 6, art. 2, sec. 12. Members of the Minnesota State Arts Board and Board of Water and Soil Resources are subject to the law because it applies to “a state board or commission that has either the power to adopt, amend, or repeal [administrative] rules.” See *Minnesota Statutes 2011, 10A.01*, subd. 35(6).

According to the law, a conflict of interest exists when:

...a public official...who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation....

The law requires the public official to acknowledge the conflict and resolve it by not voting on the matter in question if possible.

Minnesota Statutes 2011, 43A.38, is the state's *Code of Conduct for Employees in the Executive Branch*. In addition to defining various actions as allowed or not allowed, the law outlines what constitutes a conflict of interest for an employee in the executive branch and what is required to resolve the conflict. The law's most relevant provision identifies the following as a conflict for an employee in the executive branch of state government:

Use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public.

Minnesota Statutes 2011, 16B.98, mandated the commissioner of the Department of Administration to develop a policy "to prevent conflicts of interest for employees, committee members, or others involved in the recommendation, awarding, and administration of grants." The resulting policy, produced by the Department of Administration, Office of Grants Management, contains the following statement:

Minnesota state agencies must work to deliberately avoid both actual and perceived conflicts of interest related to grant-making at both the individual and organizational levels. When a conflict of interest concerning state grant-making exists, transparency shall be the guiding principle in addressing it. Every state employee and grant reviewer shall be responsible for identifying where an actual or perceived conflict of interest exists and for informing appropriate parties. State agencies and employees must take affirmative actions to avoid, minimize or otherwise mitigate the impacts of actual or perceived conflicts of interest.²⁹

The policy establishes definitions for individual and organizational conflicts of interest and procedures for avoiding both.

Some state laws and policies encourage people to avoid even the "appearance" of a conflict of interest.

²⁹ Minnesota Department of Administration, Office of Grants Management, *Policy 08-01*.

Laws and Policies Applicable to Specific Legacy Organizations

To examine how conflicts of interest specifically related to Legacy funds are handled, we reviewed the conflict of interest policies for four organizations that allocate Legacy funds: the Lessard-Sams Outdoor Heritage Council, Minnesota State Arts Board, Clean Water Council, and the Department of Natural Resources Parks and Trails Division. Table 3.2 outlines the conflict of interest laws and policies that apply to these four organizations, which are further discussed below.

Table 3.2: Conflict of Interest Provisions for Select Organizations

Organization	Conflict of Interest Provisions that Apply
Lessard-Sams Outdoor Heritage Council	<i>Minnesota Statutes</i> , 10A.01, subd. 35, and 10A.07 <i>Minnesota Statutes</i> , 16B.98 <i>Minnesota Statutes</i> , 97A.056 Council Policies Council Practices
Clean Water Council	<i>Minnesota Statutes</i> , 10A.01, subd. 35, and 10A.07 <i>Minnesota Statutes</i> , 114D.30
Department of Natural Resources	<i>Minnesota Statutes</i> , 10A.01, subd. 35, and 10A.07 <i>Minnesota Statutes</i> , 16B.98 <i>Minnesota Statutes</i> , 43A.38 Office of Grants Management <i>Policy 08-01</i> Agency Practices
Minnesota State Arts Board	<i>Minnesota Statutes</i> , 10A.01, subd. 35, and 10A.07 <i>Minnesota Statutes</i> , 16B.98 <i>Minnesota Statutes</i> , 43A.38 <i>Minnesota Statutes</i> , 129D Office of Grants Management <i>Policy 08-01</i> Board Policies Board Practices

SOURCE: Office of the Legislative Auditor.

Lessard-Sams Outdoor Heritage Council. The law that created the council states the following:

Conflict of interest. (a) A council member may not be an advocate for or against a council action or vote on any action that may be a conflict of interest. A conflict of interest must be disclosed as soon as it is discovered. The council shall follow the policies and requirements related to conflicts of interest developed by the Office of Grants Management under section 16B.98. (b) For the purposes of this section, a conflict of interest exists when a person has an organizational conflict of interest or direct financial interests and those interests present the appearance that it will be difficult for the person to impartially fulfill the person's duty. An organizational conflict of interest exists when a person has an affiliation with an organization that

is subject to council activities, which presents the appearance of a conflict between organizational interests and council member duties. An organizational conflict of interest does not exist if the person's only affiliation with an organization is being a member of the organization.³⁰

There are several conflict of interest laws and policies that apply to the Outdoor Heritage Council and Arts Board.

To facilitate compliance with these requirements, the Lessard-Sams Outdoor Heritage Council developed a conflict of interest notification form that all members must complete prior to evaluating projects seeking support from the Outdoor Heritage Fund. The completed forms are posted on the council's Web site. Additionally, there is dedicated time at every council meeting for members to disclose any potential or actual conflict of interest. According to legislative staff, members who have an actual or perceived conflict of interest with a given applicant have typically recused themselves when the council has discussed the related organization.

Minnesota State Arts Board. As noted above, members of the Arts Board are subject to one of the state's general conflict of interest laws (*Minnesota Statutes* 2011, 10A.07). But, according to its executive director, the board uses other provisions of law, as well as board policies and practices, to address conflict of interest concerns.

For example, *Minnesota Statutes* 2011, 129D.02, subdivision 1, provides the following:

No member [of the board] shall within two years prior to appointment have received or applied for, in the member's name, a grant, loan or other form of assistance from the board or its predecessor, the State Arts Council. No more than four of the members shall during their terms of office be officers, directors or employees of recipient sponsoring organizations.

The provision addresses potential conflicts of interest for board members with both a retrospective and a prospective requirement. That is, board members' associations—both currently and two years prior—are considered when determining whether a conflict of interest exists.

According to board practice, members who have a conflict of interest must declare the conflict and abstain from the relevant vote, and the conflict is recorded in the board minutes. Additionally, the board's annual report includes a list of members and their associated conflicts of interest. Consistent with the law stated above, if a person received a State Arts Board grant *in their own name* within the previous two years, he or she is not eligible to serve on the board. However, a person who was part of an organization that received a grant may serve on the board, but by board practice, that member cannot vote on grants for that organization.

³⁰ *Minnesota Statutes* 2011, 97A.056, subd. 4.

The Arts Board also has rules that apply to its advisory panels.

The board does not currently require members to sign a conflict of interest statement. However, the executive director told us the board plans to start a process that will require members to declare, review, and annually verify their conflicts. The process will encompass the current practice of requiring board members to consider the affiliations of a spouse or child in determining whether they have a potential conflict. The executive director told us it would also be considered a conflict of interest if a board member was providing consulting service—paid or unpaid—to an organization that is seeking a grant from the board, and it might be considered a conflict if a board member simply had a “significant relationship” with the organization (for example, the board member was a “founder” of the organization).

In addition to the laws and practices that address conflicts of interest of board members, the board has adopted administrative rules that address potential conflicts of people appointed to its advisory panels. As discussed in Chapter 2, the board’s advisory panels play an important role in reviewing grant applications and recommending grant recipients.

According to the board’s administrative rules, panel members “shall have expertise and experience in a particular area of the arts, arts funding, or administration; in-depth knowledge of the Minnesota arts community....”³¹ To address the potential for conflicts of interest, state law says “no member of an [Arts Board] advisory committee shall serve on a committee to which the member has an application pending for a grant, loan, or other form of assistance from the board....”³² In addition, the board’s administrative rules define in considerable detail what would constitute a conflict of interest for a member of an advisory panel and what action would be required if a conflict exists. Specifically, it says: “The panel member may not be present for any discussion or vote on those applicants with which the conflict exists.”³³

Speaking generally about the conflicts of interest issue, the board’s executive director noted that the allocation of public resources for the arts is well served by having people involved who are knowledgeable, experienced, and committed. It would, she said, be harmful to exclude them; instead, the solution is to rigorously apply conflict of interest laws, policies, and procedures.

Clean Water Council. The statute that governs the Clean Water Council contains the following provision related to conflicts of interest:

A Clean Water Council member may not participate in or vote on a decision of the council relating to an organization in which the member has either a direct or indirect personal financial interest. While serving on the Clean Water Council, a member shall avoid any potential conflict of interest.³⁴

³¹ *Minnesota Rules* 1900.0410, subp. 3.

³² *Minnesota Statutes* 2011, 129D.04, subd. 1(8).

³³ *Minnesota Rules* 1900.0410, subp. 6.

³⁴ *Minnesota Statutes* 2011, 114D.30, subd. 3.

The Clean Water Council was the only organization we reviewed that had not paid close attention to conflict of interest concerns.

However, representatives of the Clean Water Council told us the council has not discussed conflict of interest concerns. They indicated that the council does not set aside time on its agenda for members to identify potential conflicts of interest, nor does the council require members to sign a conflict of interest declaration form. In addition, they asserted that conflict of interest concerns are not relevant for the Clean Water Council because they are not making recommendations to fund specific organizations or for specific projects; rather, the council's funding recommendations focus on broad programs. Additionally, they noted that the agency representatives on the council are nonvoting and are not members of the recommending subcommittee. In summary, they told us that conflicts of interest are simply not an issue for the council.

Department of Natural Resources / Parks and Trails Division. As discussed in Chapter 2, the Department of Natural Resources (DNR) is responsible for administering some of the money from the Parks and Trails Fund. One of DNR's roles is to grant money to various local governments and private nonprofit organizations for parks and trails of regional significance outside of the Twin Cities metropolitan area.³⁵

Officials and employees in DNR's Parks and Trails Division are principally responsible for the grant making process that distributes this Legacy money. Like other state officials in the executive branch of state government, they are subject to *Minnesota Statutes 2011, 43A.38, the Code of Conduct*, and the state's *Conflict of Interest Policy for State Grant-Making*, established by the Office of Grants Management in the Department of Administration. The definitions and requirements of the law and policy were discussed above.

The division has developed practices to implement the state law and policy. Specifically, all of the officials and employees involved in reviewing and awarding Legacy grants must annually complete a form prescribed by the Office of Grants Management. On the form, officials and employees must disclose any actual or potential conflicts of interest and indicate whether they will abstain from participating in some or all of the grant review process.

Discussion

As demonstrated by the information above, the organizations and people involved in implementing the Legacy Amendment are subject to various conflict of interest laws, policies, and procedures. In Table 3.3, we illustrate some of the differences among these various laws, policies, and procedures by analyzing three hypothetical conflict of interest situations. We designed these scenarios to illustrate how different conflict of interest laws and policies apply in different situations.

³⁵ By law, DNR is not eligible for these funds.

Table 3.3: Conflict of Interest Hypothetical Situations

Hypothetical Situation 1: Pro Bono Consultant

Mary Jones is a retired CEO of a Minnesota company and, for the past several years, she has been a pro bono consultant to Citizen Action, a nonprofit organization. Ms. Jones serves on a state panel that recommends funding for programs and projects. At its next meeting, the panel will consider an application for Legacy funding from Citizen Action. Based on the applicable laws and policies, the relationship between Ms. Jones and Citizen Action:

- Would not be considered a conflict of interest if Ms. Jones was a member of the Lessard-Sams Outdoor Heritage Council.
- Would not be considered a conflict of interest if Ms. Jones was a member of the Clean Water Council.
- Would be considered a conflict of interest if Ms. Jones served on an advisory panel of the State Arts Board.
- Would probably be considered at least the appearance of a conflict of interest by some people if Ms. Jones was a member of any of the panels listed above.

Hypothetical Situation 2: Board Member

Dr. Roger Smith is a respected professor at the University of Minnesota and a board member on TrueNorth, a nonprofit organization. Dr. Smith is also on a state council that recommends Legacy funding, and TrueNorth has a funding request before the council. Based on the applicable laws and policies, Dr. Smith's affiliation with TrueNorth:

- Would be considered a conflict of interest if Dr. Smith was a member of the Lessard-Sams Outdoor Heritage Council.
- Would not be considered a conflict of interest if Dr. Smith was a member of the Clean Water Council.
- Would be considered a conflict of interest if Dr. Smith was a member of the Minnesota State Arts Board.
- Would probably be considered at least the appearance of a conflict of interest by some people if Dr. Smith was a member of any of the panels listed above.

Hypothetical Situation 3: Different Disclosure Requirements

Betty Nelson is on a panel reviewing applications for Legacy funding. Her husband works for Minnesota Forever, a nonprofit organization that is requesting Legacy funding. Ms. Nelson is not certain whether her husband's employment with this organization creates a conflict of interest for her. Based on the applicable laws and policies:

- If Ms. Nelson was a citizen appointed to the Lessard-Sams Outdoor Heritage Council, she would be required to disclose in writing this potential conflict of interest.
- If Ms. Nelson was a citizen appointed to the Clean Water Council she would not be required to disclose this potential conflict of interest.
- If Ms. Nelson was a citizen appointed to the Minnesota State Arts Board, she would be required to disclose (but not in writing) this potential conflict of interest.
- If Ms. Nelson was an employee of the Parks and Trails Division in the Department of Natural Resources, she would be required to disclose in writing this potential conflict of interest.
- If Ms. Nelson was a member of any of the panels listed above, she would probably be considered by some people to have at least the appearance of a conflict of interest.

SOURCE: Office of the Legislative Auditor.

Except for the Clean Water Council, we found that the organizations we reviewed have paid considerable attention to conflict of interest concerns. As noted above, the representatives of the Clean Water Council we interviewed simply did not think they needed to address conflict of interest concerns given the council's broad programmatic recommendations. We disagree with that perspective and recommend the following:

RECOMMENDATION

The Clean Water Council should develop policies and procedures to ensure that its members are aware of and adhere to Minnesota Statutes 2011, 114D.30, subdivision 3, concerning conflicts of interest.

We make this recommendation not because we are aware of any conflict of interest violations—or allegations—concerning any member of the council, but because conflicts of interest are a serious and persistent concern. Avoiding conflicts of interest always deserve a high level of attention, especially by organizations and citizens that have been vested with legal authority to advise on the allocation of public money.

On that basis, we also recommend the following:

RECOMMENDATION

All of the organizations and individuals involved in implementing the Legacy Amendment should be vigilant in ensuring that conflict of interest concerns are given serious consideration.

We recognize, however, that vigilance will not completely eliminate conflict of interest concerns. In fact, we anticipate that conflicts of interest will remain an “ongoing concern” throughout the life of the Legacy Amendment. In part, that reflects a general concern about conflicts of interest in the public sector, particularly when large amounts of public money are involved. But it also reflects the history of the Legacy Amendment. The amendment was proposed and supported by many of the organizations that are now closely involved in its implementation; some of them have representatives on Legacy-related advisory panels, and some receive Legacy money. That will continue to raise conflict of interest concerns.

Some people might suggest that the best solution would be to eliminate even the appearance of conflicts by not appointing people to state-created, Legacy-related councils, boards, and task forces who have affiliations or relationships with Legacy-related organizations. However, we accept that there is value to the state in having people on Legacy-related groups who are knowledgeable about and committed to the public purposes supported by the Legacy Amendment. We acknowledge that they are likely to have relationships and affiliations that will

create at least the appearance of conflicts. While some people find that inappropriate and unacceptable, we think the best resolution is for the state to maintain strong conflict of interest policies and procedures and, as we recommend above, for the affected organizations and individuals to vigorously adhere to them. It will also be important for the state to use other mechanisms, such as the Open Meetings Law, to help ensure transparency and accountability in the application of the conflict of interest laws, policies, and procedures.³⁶

LEGACY OUTCOMES

The ultimate Legacy-related ongoing concern is whether money is being used in ways that will achieve the outcomes sought by the Legacy Amendment.

Concerns about “supplement not substitute,” administrative costs, and conflicts of interest are important, but for most people the ultimate concern is whether Legacy money is used to achieve the outcomes proposed in the Legacy Amendment. As mentioned in the Introduction, we did not design this evaluation to assess what outcomes have been achieved so far with Legacy money. That kind of evaluation would have to focus on specific programs and projects being supported with money from Legacy funds. This evaluation was designed to provide an initial overall assessment of how the Legacy Amendment has been implemented. Given the amount of money being raised by the Legacy Amendment and high expectations that Legacy money will have a significant impact, we anticipate that requests for in-depth evaluations will be forthcoming. In fact, as a result of conducting this assessment, we will be better prepared to help the Legislative Audit Commission identify Legacy-funded programs, projects, and activities that need a more in-depth evaluation.³⁷

However, in conducting this evaluation, we could not completely avoid the issue of how Legacy money is being used and whether those uses are likely to achieve the outcomes intended by the Legacy Amendment. Media reports have frequently raised the issue, as did people we interviewed. We heard testimonials that Legacy money is accomplishing great things, assertions that the money is being wasted, and many opinions in between. Some of what we heard—and what is in media reports—simply reflects attitudes about the Legacy Amendment itself, both for and against. Regardless of the point of view, it is always appropriate to raise concerns and questions about the effectiveness of public expenditures, and we found:

- **Concerns have been raised about how some Legacy money is being used and whether those uses will achieve the results called for in the Legacy Amendment.**

In this section, we highlight four concerns—one for each fund—about how Legacy money is being used. The concerns involve (1) purchasing land, (2) improving water quality, (3) supporting parks and trails, and (4) funding arts and cultural heritage projects.

³⁶ *Minnesota Statutes* 2011, chapter 13D.

³⁷ As provided for in *Minnesota Statutes* 2011, 3.97, subd. 3a, evaluation topics addressed by the Office of the Legislative Auditor are approved by the Legislative Audit Commission. For more information about the commission’s topic identification and selection process, see the OLA Web site at <http://www.auditor.leg.state.mn.us/ped/topsel2.htm>.

Purchasing Land

Government land ownership has been a controversial issue in Minnesota for many years. In part, the controversy reflects the fact that roughly one-fourth of the land in Minnesota is owned by a government agency, about 11 percent by DNR. Concern about government land ownership is particularly strong in northern Minnesota, where there is a high concentration of government-owned land. Adding to the controversy, OLA issued an evaluation report in 2010 that said DNR appeared to lack adequate resources to manage its current land holding.³⁸

Given this context, it is not surprising that some people, including some legislators, have criticized the use of money from the Outdoor Heritage Fund to purchase more land.³⁹ The concern has resulted in bills and amendments to bills that would either prohibit or restrict the state from purchasing more land with money from the Outdoor Heritage Fund, but none have been enacted into law.

Using money from the Outdoor Heritage Fund to purchase more land has both supporters and critics.

The Lessard-Sams Outdoor Heritage Council and various conservation and outdoor recreation groups have defended the use of money from the Outdoor Heritage Fund to purchase private land for public use. For example, in a commentary on the issue, the president of Conservation Minnesota, who was also a member of the Lessard-Sams Outdoor Heritage Council at the time, wrote the following:

Why is it important to purchase land as part of the overall goal of improving habitat? It: provides for public access for recreation purposes unlike easements; enables DNR to use new land acquisitions to aggregate larger, more functional ecological units to be offset by selling small scattered and isolated units that provide less desirable habitat; protects in perpetuity unique high quality habitats important for a variety of wildlife; [and] enables landowners who feel strongly about leaving a pristine piece of prairie or forest or wetland for posterity to enjoy to do just that.⁴⁰

As money from the Outdoor Heritage Fund has continued to be used to purchase private land, some legislators have proposed also using money from the fund to provide payments to local governments affected by the land purchases. The payments would include what are known as “payments in lieu of taxes” (PILT). However, those efforts too have been controversial. Some outdoor and conservation groups, as well as some legislators, have argued that using money from the Outdoor Heritage Fund to make PILT payments would violate the

³⁸ Office of the Legislative Auditor, Program Evaluation Division, *Natural Resource Land* (St. Paul, 2010).

³⁹ See, for example, Tom Roberson, “As state buys land, counties lose tax revenue,” *Minnesota Public Radio*, October 8, 2010; and Doug Smith, “Debate focuses on land acquisition: Should money from the Clean Water, Land and Legacy Amendment be used to buy more land, including public hunting land?,” *StarTribune*, March 20, 2011.

⁴⁰ Darby Nelson, “Buying Public Land,” *Conservation Minnesota Newsroom* (February 12, 2010), <http://www.mnweathercenter.org/news/?id=4499>, accessed September 4, 2011.

Legacy Amendment's requirement that money from the fund "may be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife." They cite a letter from an assistant attorney general as supporting their view.⁴¹

We think that using money from the Outdoor Heritage Fund to purchase land will remain an ongoing concern. Opposition to increased public land ownership is unlikely to diminish and proposals for additional land purchases are likely to continue to be presented to the Lessard-Sams Outdoor Heritage Council. Purchase proposals will likely continue to come from DNR that reflect the department's long-range plans, developed before the Legacy Amendment was approved. Purchase proposals will also likely continue to come from various private nonprofit conservation organizations.⁴²

Improving Water Quality

Some environmental organizations have questioned whether money from the Clean Water Fund is being used effectively.

Some environmental organizations and legislators have expressed concern that money from the Clean Water Fund is not being adequately targeted at projects that are likely to produce measureable outcomes. That was, for example, the focus of a report released in January 2011 by the Minnesota Center for Environmental Advocacy. The report was based on a review of 123 grants made by the Board of Water and Soil Resources (BWSR) with money, in part, from the Clean Water Fund. While the review found that most of the grants supported projects that aimed to address a monitored water quality problem, only 1 of 70 project applications to BWSR clearly identified the source and magnitude of the pollution it was aiming to mitigate. The report concluded: "This lack of pollution source assessment in water cleanup plans makes it impossible to target work for maximum benefit, and makes it impossible to measure progress in achieving water quality goals."⁴³ In a news article about the report, a BSWR official reportedly acknowledged the need for better targeting data and said progress is being made. However, the official was also quoted as saying: "Legacy money is coming in faster than the data needed to identify projects that provide the biggest bang for the buck."⁴⁴

⁴¹ Christie B. Eller, Deputy Attorney General, letter to William H. Becker, Acting Executive Director, Lessard Outdoor Heritage Council, April 7, 2009. It is important to note that in her letter, Ms. Eller clearly stated that she was not rendering an official Attorney General's Opinion but simply offering references to how courts have addressed questions about using money from other constitutionally dedicated funds to support general government services. She speculated that "a court might be willing to sustain the constitutionality of payments to reimburse local governments for activities that directly 'restore, protect and enhance wetlands, prairies, forests, and habitat for fish, game and wildlife.'" But she went on to suggest that a court might not allow money from the Outdoor Heritage Fund to be used to simply support "the cost of local government generally."

⁴² As noted in Table 2.4, the state has granted money from the Outdoor Heritage Fund to private nonprofit organizations to purchase land for the purposes specified in the Legacy Amendment. The organizations' use of the money and the land they purchase are controlled by agreements with the state.

⁴³ Minnesota Center for Environmental Advocacy, *Clean Water Grants for Nonpoint Source Protection and Restoration by the Board of Water and Soil Resources, Fiscal Years 2007-2010* (January 2011), 2.

⁴⁴ Josephine Marcotty, "Are Legacy funds being spent well?," *StarTribune*, January 20, 2011.

The President of The Freshwater Society has also expressed concern about how money from the Clean Water Fund is being spent. In a letter to the Office of the Legislative Auditor, he suggested there is a need to “evaluate whether the money is being spent where it will do the most good, or merely [being] spread around so everyone gets a share.”⁴⁵ And, in a news article about the Clean Water Fund, he reportedly said: “There are a lot of things to be concerned about, and I worry a lot. This is a lot of money. I’m concerned that little or nothing comes of it.”⁴⁶

Finally, in our review of legislative hearings and floor debates, we found concerns being expressed about how money from the Clean Water Fund is being used. Most of the concern was focused on the need to move beyond testing and data collection toward more actions that mitigate and prevent water contamination.

Supporting Parks and Trails

One of the most visible Legacy-related controversies during the 2011 legislative session concerned how money from the Parks and Trails Fund is legislatively allocated among (1) parks and trails of statewide significance, (2) parks and trails of regional significance in the Twin Cities metropolitan area, and (3) parks and trails of regional significance outside of the Twin Cities area. We consider the issue primarily a policy choice for the Legislature to decide, and we did not address it in this evaluation.

We heard concern that too much money from the Parks and Trails Fund will be used to maintain existing systems.

We did hear two other concerns about the Parks and Trails Fund. First, we heard concern that there is too little opportunity for nongovernment individuals and groups to have input into how DNR and the Metropolitan Council are using money from the Parks and Trails Fund. Second, and connected to the desire for more outside input, is concern that DNR and the Metropolitan Council will use too much money from the Parks and Trails Fund to maintain and operate the existing parks and trails systems, with little left for significant enhancements.

As was noted in Chapter 2, the Legislature required DNR to develop a 25-year plan for its use of money from the Parks and Trails Fund. The plan, issued in February 2011, was developed with extensive outside input and set forth both a long-term vision and shorter-term priorities. However, we heard concern that the Legislature did not establish an ongoing advisory group for the Parks and Trails Fund. Absent a group established in law—similar to the Lessard-Sams Outdoor Heritage Council or Clean Water Council—some people are concerned that decisions on how to spend the Parks and Trails Fund revenue will not be transparent, nor will they reflect the full range of needs for parks and trails across the state.

The 2011 Legislature did require an *ad hoc* “working group of nine members to develop consensus recommendations for the allocation of the parks and trails

⁴⁵ Gene Merriam, President, The Freshwater Society, letter to Jim Nobles, Office of the Legislative Auditor (undated).

⁴⁶ Dennis Lien, “Clean water may be murkiest Legacy fund goal,” *Pioneer Press*, October 30, 2011.

fund.”⁴⁷ However, there is no requirement that this working group continue beyond 2012. Responding to the “working group” charge in the 2011 Legacy bill, the commissioner of DNR formed a 17-member Park and Trail Legacy Advisory Committee with a 9-member Legacy Funding Subcommittee. While the creation of this advisory group provides an opportunity for stakeholders to provide input and ongoing feedback, there is no certainty that it will continue.

Arts and Cultural Heritage Projects

The most negative reaction so far to how money from a Legacy fund has been used involved a \$45,000 fee paid to a book author to speak for a few hours at a local public library in 2010. The fee came from money allocated to the state’s Regional Public Library System from the Arts and Cultural Heritage Fund. The payment to the author was widely criticized as excessive and inappropriate, but it was defended by the director of the Metropolitan Library Services Agency as a metro-wide “once-in-a-life-time opportunity.”⁴⁸

More recently, projects supported with money from the Arts and Cultural Heritage Fund have been criticized for having marginal significance or being undeserving of any level of support with public money. For example, a recent newspaper headline said: “From comics to missiles, Legacy funds land far afield.”⁴⁹ The article cited examples such as \$2,914 paid to a person to develop an oral history of psychiatry in Minnesota and \$14,000 to document the history of a Cold War-era Nike missile located in a park in the city of St. Bonifacius, Minnesota. In defense of the grants, an official of the Minnesota Historical Society pointed out that grant recipients go through a competitive process in which they must demonstrate “identifiable standards” and show a “clear need and rationale.” According to the article, the official acknowledged that Legacy money is supporting projects that otherwise might not be considered a priority.

In each legislative session since the Legacy Amendment was approved, some legislators and others have pointed to the “open-ended” language related to the purposes of the Arts and Cultural Heritage Fund as a concern.⁵⁰ As with other Legacy funds, the 2009 Legislature attempted to provide more clarity and focus for the Arts and Cultural Heritage Fund by requiring the development of a 25-year framework and 10-year plan. However, the document that was produced offered only a broad vision and general goals. It also acknowledged the following:

More time and baseline data are needed to establish measurable outcomes in the goal areas and to develop strategies for

Concerns have been expressed that the terms defining the purpose of the Arts and Cultural Heritage Fund are too vague and open ended.

⁴⁷ *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 3, sec. 3(f).

⁴⁸ For the criticism, see Editorial, “Legacy funds and fat paychecks,” *StarTribune*, May 13, 2011. For the defense, see Betsy Sundquist, “‘Club Book’ organizers defend pricey allocation,” *Politics in Minnesota*, April 23, 2010.

⁴⁹ Mike Kaszuba, “From comics to missiles, Legacy funds land far afield,” *StarTribune*, October 1, 2011.

⁵⁰ See, for example, Casey Selix, “What qualifies as Minnesota’s ‘culture’?,” *MinnPost*, May 8, 2009.

achieving them and tracking overall progress of the Arts and Cultural Heritage Fund.⁵¹

It is, of course, possible that more time and better baseline data will not produce measurable outcomes. Given the subjective nature of many of the projects and activities that are supported with money from the fund, defining objective outcome measures can be particularly challenging. Moreover, for some people it will simply remain unacceptable to spend public money on arts and cultural events and activities, particularly during a time when money for basic government services and programs are cut significantly. However, money is available for these projects because voters approved the Legacy Amendment. Thus, the debate about the Arts and Cultural Heritage Fund is part of a larger debate about creating constitutionally dedicated funds for certain select purposes.

As we noted in Chapter 2, the Legislature took additional steps in the 2011 Legacy appropriations law to require even greater use of competitive grant-making procedures to allocate money from the Arts and Cultural Heritage Fund. While that will probably not eliminate all criticism of the projects that are supported with money from the fund, it will provide for a more open, transparent, and accountable process for determining how the money is used.

Discussion

The Legacy Amendment does not have a single unifying objective or common set of desired outcomes. The amendment was a mechanism to obtain additional public money for a collection of programs and activities with a wide range of purposes and objectives. Paralleling the amendment's diversity of purposes and objectives, various structures and procedures have been put in place to recommend and decide how Legacy money is used and monitored.

The Legislature has shown significant deference to constituencies that offer advice on how money in “their” fund should be spent.

Each Legacy fund has a constituency of supporters with strong ideas about how the money in “their” fund should be used and what outcomes they think should be achieved. When the members of a particular Legacy-fund constituency have a shared vision and common set of priorities, the Legislature has shown significant deference to their recommendations. That is particularly true of appropriations recommendations from the Lessard-Sams Outdoor Heritage Council and, to some extent, from the Clean Water Council. When there have been divisions within a constituency of a particular fund, the Legislature has tried to resolve, or at least mitigate, the differences by encouraging members of the constituency to work collaboratively. For example, as we mentioned earlier, when there were conflicts during the 2011 legislative session over how money from the Parks and Trails Fund should be allocated, the Legislature mandated that the Commissioner of DNR convene and facilitate a working group to develop “consensus recommendations” for the Parks and Trails Fund 2013 legislative appropriations.

⁵¹ Arts and Cultural Heritage Fund Planning Committee, *Minnesota State of Innovation: A Twenty-Five Year Vision, Framework, Guiding Principles, and Ten-Year Goals for the Minnesota Arts and Cultural Heritage Fund* (St. Paul, 2010).

The Legislature has also shown considerable concern about ensuring accountability for money from Legacy funds.

Each fund's constituency sees itself as the best resource for helping the Legislature ensure that Legacy money achieves the results voters wanted when they approved the Legacy Amendment. Generally, the Legislature has agreed and put significant trust in state agencies, local units of government, and private nonprofit organizations to ensure that Legacy money is used appropriately and effectively. So far, missteps, like paying an author an excessive speaking fee, have not caused the Legislature to alter that approach.

However, the Legislature has also recognized the need for accountability and, as detailed in Chapter 2, it put in place various reporting, monitoring, and oversight requirements related to the use of Legacy money. Based on this early assessment, we think those efforts to ensure accountability are generally adequate. But, clearly, the Legacy Amendment is a "work in progress," and there are many more years ahead of decision making, monitoring, and oversight to ensure that the purposes of the Legacy Amendment are achieved.

List of Recommendations

- The Legislature should consider establishing a process that legislators could use to obtain information on past funding sources and levels for programs and projects being considered for funding with Legacy money. (p. 51)
- Recipients of Legacy money should document their consideration of the “supplement not substitute” provision and how their allocations comply with the provision. They should also establish accounting structures and procedures to ensure they can demonstrate in detail that the ultimate use of the Legacy money was appropriate in terms of supplementing and not substituting for traditional sources of funding. (p. 52)
- The Department of Management and Budget should develop policies on allowable administrative costs for programs, projects, and activities supported with money from Legacy funds. (p. 57)
- The Clean Water Council should develop policies and procedures to ensure that its members are aware of and adhere to *Minnesota Statutes* 2011, 114D.30, subdivision 3, concerning conflicts of interest. (p. 67)
- All of the organizations and individuals involved in implementing the Legacy Amendment should be vigilant in ensuring that conflict of interest concerns are given serious consideration. (p. 67)

The Legacy Amendment

APPENDIX

The November 2008 amendment to the *Minnesota Constitution*, Article XI, Section 15, states:

Outdoor heritage, clean water, parks and trails, and arts and cultural heritage; sales tax dedicated funds. 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, for the benefit of Minnesotans, to the following funds: 33 percent of the receipts shall be deposited in the outdoor heritage fund and may be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife; 33 percent of the receipts shall be deposited in the clean water fund and may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, and at least five percent of the clean water fund must be spent only to protect drinking water sources; 14.25 percent of the receipts shall be deposited in the parks and trails fund and may be spent only to support parks and trails of regional or statewide significance; and 19.75 percent shall be deposited in the arts and cultural heritage fund and may be spent only for arts, arts education, and arts access and to preserve Minnesota's history and cultural heritage. An outdoor heritage fund; a parks and trails fund; a clean water fund and a sustainable drinking water account; and an arts and cultural heritage fund are created in the state treasury. The money dedicated under this section shall be appropriated by law. The dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute. Land acquired by fee with money deposited in the outdoor heritage fund under this section must be open to the 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 sales and use tax rate in this section may be proportionally adjusted by law to within one-thousandth of one percent in order to provide as close to the same amount of revenue as practicable for each fund as existed before the change to the sales and use tax. [Adopted, November 4, 2008]



November 15, 2011

James R. Nobles, Legislative Auditor
Office of the Legislative Auditor
140 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to review and discuss your audit findings as found in the Legacy Amendment Program Evaluation. As your report points out, the new dedicated funding creates issues that the Legislative and Executive branches are still striving to resolve through more consistent interpretation and more specific practices.

As noted in the audit, Minnesota Management & Budget (MMB) can have a role in identifying standards for how operating costs are allocated. We intend to fulfill that role and are in the process of completing a separate report as required in the Laws of 2011. The audit findings provide a useful assessment of current practices and this information will be incorporated into our guidance. Based on a preliminary review of the issues, we believe that it is appropriate for agencies to charge some administrative costs to Legacy Funds and will work to create necessary guidance and policy direction to bring greater consistency and accountability to agency activities.

Recommendation

Recommendation on administrative costs: The Department of Management and Budget should develop policies on allowable administrative costs for programs, projects, and activities supported with money from Legacy funds.

Response: As noted in the report, the Laws of 2011 directed MMB to provide guidance and best practices to assist state agencies in uniformly accounting for their expenditure of legacy funds. We are in the process of preparing this guidance. We will take your suggestions (to provide agencies with a broad framework of principles, policies and procedures similar to that of the Department of Administration's Office of Grants Management) under advisement as we complete our guidance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Schowalter", is written over a light blue horizontal line.

Jim Schowalter
Commissioner

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