

## Research Department

Patrick J. McCormack, Director

600 State Office Building  
St. Paul, Minnesota 55155-1298  
651-296-6753 [FAX 651-296-9887]  
[www.house.mn/hrd/](http://www.house.mn/hrd/)



## Minnesota House of Representatives

August 19, 2013

TO: Members, Lessard-Sams Outdoor Heritage Council

FROM: Mark Shepard, House Research

RE: Response to Questions Asked by the Council

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

### Issues and Conclusions

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

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

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

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

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

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

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

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

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

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

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

## **Discussion**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS/mk

## APPENDIX

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

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

#### H.F. 2285

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

1.13 Section 1. **CONSTITUTIONAL AMENDMENT.**

1.14 An amendment to the Minnesota Constitution is proposed to the people. If the

1.15 amendment is adopted, a section will be added to article XI, to read:

1.16 Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be

1.17 increased by three-eighths of one percent on sales and uses taxable under the general state

1.18 sales and use tax law. Receipts from the increase, plus penalties and interest and reduced

1.19 by any refunds, are dedicated to the following funds: at least 25 percent of the receipts

1.20 shall be deposited in the natural heritage fund and may be spent only to restore, preserve,

1.21 and enhance fish and wildlife habitat and other natural resources; at least 25 percent of the

1.22 receipts shall be deposited in the clean water fund and may be spent only to protect and

1.23 restore the state's lakes, rivers, streams, wetlands, and groundwater; at least 15 percent

1.24 of the receipts shall be deposited in the parks and trails fund and may be spent only to

1.25 support the state's parks and trails; at least 15 percent of the receipts shall be deposited in

1.26 the sustainable drinking water fund and may be spent only to protect the state's drinking

1.27 water sources; and at least ten percent shall be deposited in the arts and cultural heritage

2.1 fund and may be spent only for arts and cultural heritage purposes. Up to ten percent of

2.2 the remaining funds shall be divided by law among the funds created in this section. A

2.3 natural heritage fund; a parks and trails fund; a clean water fund; a sustainable drinking

2.4 water fund; and an arts and cultural heritage fund are created in the state treasury. The

2.5 money dedicated under this section shall be appropriated by law. The dedicated money

2.6 under this section must supplement traditional sources of funding for these purposes and

2.7 may not be used as a substitute. Land acquired by fee with money deposited in the natural

2.8 heritage fund under this section must be open to public taking of fish and game during the

2.9 open season unless otherwise provided by law.

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

2.11 The proposed amendment must be submitted to the people in the 2008 general

2.12 election. The question submitted shall be:

2.13 "Shall the Minnesota Constitution be amended to provide funding beginning July

2.14 1, 2009, to restore, preserve, and enhance the state's fish and wildlife habitat and other

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

2.19 Yes .....

2.20 No ....."

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

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

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

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

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

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

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

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

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

- No change in the proposed constitutional language

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

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

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

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

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

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

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

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

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

Reported the same back with the following amendments:

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

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

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

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

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

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

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

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

With the recommendation that when so amended the bill pass.

The report was adopted.

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

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

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

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

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

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

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

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

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

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

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Page 3, after line 17 insert:

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

Page 5, after line 29 insert:

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

The motion prevailed and the amendment was adopted.

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

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

**Numerous floor amendments were rejected.**

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

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

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

A roll call was requested and properly seconded.

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

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

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

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

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

Page 3, after line 2, insert:

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

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

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

A roll call was requested and properly seconded.

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

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

Page 2, line 1, delete everything after the period

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

Page 2, line 4, delete everything after the period

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

A roll call was requested and properly seconded.

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

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

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

## S.F. 6

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

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

#### Section 1. CONSTITUTIONAL AMENDMENT.

1. 14 An amendment to the Minnesota Constitution is proposed to the people. If the  
1. 15 amendment is adopted, a section will be added to article XI, to read:  
1. 16 Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be  
1. 17 increased by three-eighths of one percent on sales and uses taxable under the general state  
1. 18 sales and use tax law. Receipts from the increase, plus penalties and interest and reduced  
1. 19 by any refunds, are dedicated as follows: 34 percent of the receipts shall be deposited in  
1. 20 the heritage enhancement fund and may be spent only to improve, enhance, or protect the  
1. 21 state's fish, wildlife, habitat, and fish and wildlife tourism; 22 percent of the receipts shall  
1. 22 be deposited in the parks and trails fund and may be spent only on parks, trails, and zoos  
1. 23 in the state; 22 percent of the receipts shall be deposited in the clean water fund and may  
1. 24 be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands,  
1. 25 and groundwater; and 22 percent of the receipts shall be deposited in the arts, humanities,  
1. 26 museum, and public broadcasting fund and may be spent only on arts, humanities, history,  
1. 27 museums, and public broadcasting. An arts, humanities, museum, and public broadcasting  
2. 28 fund; a heritage enhancement fund; a parks and trails fund; and a clean water fund are  
2. 29 created in the state treasury. The money dedicated under this section shall be appropriated  
2. 30 by law. The money dedicated under this section for fish, wildlife, habitat, fish and wildlife  
2. 31 tourism, parks, trails, zoos, protection and restoration of waters, arts, and history shall  
2. 32 not be used as a substitute for traditional funding sources for the purposes specified, but  
2. 33 the dedicated money shall supplement traditional sources of funding for those purposes.  
2. 34 Land acquired by fee with money deposited in the heritage enhancement fund under this  
2. 35 section must be open to public taking of fish and game during the open season unless  
2. 36 otherwise provided by law.

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

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

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

2.18 Yes .....

2.19 No ....."

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

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

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

The amendments were as follows:

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

Page 4, after line 14, insert:

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

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

The amendment was as follows:

Delete section 5, and insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 1, delete section 2

Page 2, delete section 3

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

Page 3, delete line 23

Page 3, line 25, delete "the Minnesota Constitution," and insert "section 297A.94"  
Page 3, line 26, delete everything before the period  
Page 3, line 31, delete ", if the constitutional" and insert a period  
Page 3, delete line 32  
Page 4, line 4, delete "the Minnesota Constitution, article XI, section 15" and insert "section 297A.94"  
Page 4, line 10, delete everything before "25" and insert "section 297A.94,"  
Page 6, line 13, delete ", if the" and insert a period  
Page 6, delete line 14  
Page 6, line 16, delete "the Minnesota" and insert "section 297A.94"  
Page 6, line 17, delete everything before the period  
Page 6, line 25, delete ", if the constitutional" and insert a period  
Page 6, delete line 26  
Page 6, line 28, after "in" insert "this subdivision or in"  
Page 7, delete lines 1 and 2 and insert:  
"(b) Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be increased by three-eighths of one percent on sales and uses taxable under the general state sales and use tax law."  
Page 7, line 3, delete ", if the constitutional" and insert a period  
Page 7, delete line 4  
Page 7, line 7, delete the new language and insert "and in section 297A.62, subdivision 1, paragraph (b)"  
Page 7, line 8, delete the new language  
Page 8, after line 26, insert:  
"(g) Receipts from the sales tax imposed in section 297A.62, subdivision 1, paragraph (b), plus penalties and interest and reduced by any refunds, are dedicated as follows: 33 percent of the receipts shall be deposited in the heritage enhancement fund and may be spent only to preserve, enhance, or protect the state's fish, wildlife, habitat, and land resources; 43 percent of the receipts shall be deposited in the great outdoors Minnesota fund and may be spent only on protection and restoration of the state's lakes, rivers, streams, wetlands, groundwater, parks, trails, natural areas, and historic sites; and 24 percent of the receipts shall be deposited in the cultural legacy fund and may be spent only on arts, arts education, and arts access. A cultural legacy fund; a heritage enhancement fund; and a great outdoors Minnesota fund are created in the state treasury. The money dedicated under this section shall be appropriated by law. The money dedicated under this section shall not be used as a substitute for traditional funding sources for the purposes specified, but the dedicated money shall supplement traditional sources of funding for those purposes. Land acquired by fee with money deposited in the heritage enhancement fund under this section must be open to public taking of fish and game during the open season unless otherwise provided by law."  
Page 8, line 27, delete ", if the constitutional" and insert a period  
Page 8, delete line 28  
Page 9, line 4, delete ", if the constitutional" and insert a period  
Page 9, delete line 5  
Renumber the sections in sequence  
Amend the title as follows:  
Page 1, line 2, delete everything after the semicolon  
Page 1, line 3, delete everything before "increasing"  
And when so amended the bill do pass and be re-referred to the Committee on Rules..

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

Page 1, after line 12, insert:

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

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

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

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

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

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

Yes .....

No .....

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

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

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

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

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

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

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

Page 2, line 18, delete "historic"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amend the title as follows:

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

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

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

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

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

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

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

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