



# The Legacy Amendment

**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  $\frac{3}{8}$  of 1 percent, which is projected to raise approximately \$240 million each year.
- 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.
- The structures and procedures used to recommend how money from the four Legacy funds should be appropriated by the Legislature vary significantly.
- 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 Legacy Amendment's requirement that Legacy money be used to "supplement not substitute for traditional sources of funding" has caused confusion and uncertainty.
- 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.

- 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 concerns about how some Legacy money has been used and whether the outcomes sought by the Legacy Amendment will be achieved.

## 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.
- Organizations should document how their use of Legacy money will supplement and not substitute for traditional sources of funding.
- 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.
- 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.

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

## 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.

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.

**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,

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**There are ongoing concerns about compliance with the Legacy Amendment's "supplement not substitute" requirement and using Legacy money for administrative costs.**

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**There are also ongoing concerns about potential conflicts of interest.**

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 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.

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

**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.

## Summary of Agency Response

*In a letter dated November 15, 2011, Minnesota Management and Budget Commissioner Jim Schowalter wrote that the department is in the process of preparing guidance for state agencies regarding accounting for expenditures of Legacy funds. He said, "The audit findings provide a useful assessment of current practices and this information will be incorporated into our guidance." Additionally, Commissioner Schowalter said, "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."*

The full evaluation report, *The Legacy Amendment*, is available at 651-296-4708 or:  
[www.auditor.leg.state.mn.us/ped/2011/legacy.htm](http://www.auditor.leg.state.mn.us/ped/2011/legacy.htm)