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Minnesota House of Representatives

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TO: Representative Mary Murphy
FROM: Mark Shepard, Legislative Analyst
RE: Terms Used in Article XI, Section 15 of the Constitution

You asked for thoughts on interpretation of some of the terms used in Article XI, Section 15 of the Constitution. This memo does that, primarily by reviewing legislative history. In some cases, there is not much legislative history that offers guidance on the meaning of a term.

The thoughts in this memo are organized according to the four new funds created in the constitution. A separate memo deals with the constitutional language on the supplantation issue.

Cultural heritage fund

The new constitutional language provides that money from the cultural heritage fund may be spent:

“...only for arts, arts education, and arts access and to preserve Minnesota’s history and cultural heritage.”

- The original version of H.F. 2285 said “for arts and cultural heritage purposes.”
- The original version of S.F. 6 referred to “arts, humanities, history, museums, and public broadcasting.”

Senator Limmer and Senator Pogemiller discussed the interpretation of “cultural heritage” on the Senate floor during the final debate on the conference committee reported. Senator Limmer asked Senator Pogemiller about the meaning of “cultural heritage.” Senator Pogemiller responded first by referencing festivals and arts, and later by stating that culture is about our way

of life, the way we live, the things we treasure, our values. Senator Limmer stated his belief that this could be just about anything.¹

It is not completely clear the extent to which the deletion from the Senate bill of specific references to humanities, museums, and public broadcasting was intended to affect the eligibility of those activities for funding, or if it was assumed that some or all of these activities would be eligible for funding under the general language of “arts” or “cultural heritage.” My overall sense is that deleting the specific references was intended to remove any guarantee that humanities, museums, and public broadcasting would be funded, but to leave these activities eligible to compete for funding with other arts and cultural heritage activities.

The description below of some legislative deliberations on this issue may be relevant to this issue, and more generally to the understanding of “arts” and “cultural heritage.”

- ▶ In the Senate Finance committee, Senator Pogemiller discussed this issue in the context of an amendment he offered to the committee.² In general, it appears that Senator Pogemiller’s remarks indicate a possibility that even though activities such as zoos, historical societies, humanities, public broadcasting, and museums were no longer specifically mentioned in the text of his proposed constitutional amendment, these activities still might receive funding through one of the broader dedicated funding categories in the language of his proposed constitutional amendment. Senator Pogemiller gave an example of public television applying for dedicated money to produce a series on hunting and fishing. Senator Pogemiller later implied that activities such as public broadcasting could get access to this money as long as their context is great outdoors, cultural legacy or heritage.³
- ▶ In questions to Senator Pogemiller in the Senate Finance Committee, Senator Pappas stated that she felt “culture” is broader than “arts” and that culture would include things such as the Historical Society, Humanities Commission, children’s museums, and science museums. In response, Senator Pogemiller noted (among other responsive remarks) that the reason for calling the fund in his amendment a cultural legacy fund was that broader intent, and that certain specifics were better decided by legislative enactment. Senator Pogemiller referred to the College of Liberal Arts at

¹ This is a summary of more extensive remarks of Senator Limmer and Senator Pogemiller on the Senate Floor on February 14, 2008. These remarks can be heard approximately 56 minutes from the start of the video recording of this floor session.

² Remarks of Senator Pogemiller in Senate Finance Committee, March 24, 2007. These remarks can be heard at approximately 2 hours 18 minutes from the start of the audio recording of this meeting. The proposed statutory language to implement the constitutional dedication also changed. The prior version of the bill had created an “arts, humanities, museum, and public broadcasting fund” and the proposed statutory language had allocated specific amounts of the fund to the arts board, the Minnesota Historical Society, public broadcasting, the Science Museum, the Humanities Commission, the Film Board, and Children’s Museums. The new version proposed a constitutional “cultural legacy” fund, and the proposed statutory language divided the expenditures between Arts Board grants (43 percent) and access to arts education (57 percent).

³ Remarks of Senator Pogemiller in Senate Finance Committee, March 24, 2007. These remarks can be heard at approximately 2 hours 30 minutes from the start of the audio recording of this meeting.

- the University as an example of his understanding of a broad meaning of “arts,” and Senator Pappas noted legislative intent that “arts” was meant in a very broad way.⁴
- ▶ Senator Pogemiller also discussed this issue at a hearing in the Senate Tax Committee. He noted that the bill had been tightened by deleting references to specific activities. He noted that he supported activities such as the historical society, public broadcasting, science museum, Humanities Commission, children’s museums, and zoos. But he stated that he thought these activities should be funded in a finance bill, not in a constitutional amendment. He stated that all of these activities could get dedicated funds if they were doing something that came within one of the other categories specified in the constitution, such as cultural legacy or heritage enhancement. He gave an example of public television seeking funding for a series on water resources.⁵
 - ▶ On the Senate floor, Senator Neuville (arguing against certain portions of the bill) noted that the bill doesn’t define “arts,” and stated that money could go to public television and public radio to foster arts access and arts program or for things that could loosely be defined as arts.⁶
 - ▶ Representatives of public broadcasting testified in support of the House version of the bill at a point in the process at which H.F. 2285 referred to “arts and cultural heritage.” The public broadcasting advocates supported the bill, clearly believing that public broadcasting (or at least some elements of public broadcasting) is part of “arts and cultural heritage.” There was no testimony in House committees indicating a contrary position.⁷
 - ▶ In an exchange between Representative Emmer and Representative Sertich on the House floor debate on H.F. 2285, Representative Emmer noted that the term “arts” seemed general, and asked Representative Sertich if it could be applied to public radio. Representative Sertich responded⁸ “Actually, it is up to the legislature.”
 - ▶ Public broadcasting also was discussed on the House floor on February 14, 2008, when the House considered the adoption of the final conference committee report. Representative Howes stated that he wanted to make sure that in the arts portion of the bill, public television in rural Minnesota is adequately funded. Representative

⁴ Note that at this point, the constitutional language under discussion referred only to “arts, arts education, and arts access,” and did not include the language eventually adopted in the Constitution that authorizes funding for “Minnesota’s history and cultural heritage.”

⁵ Remarks of Senator Pogemiller in Senate Tax Committee, April 24, 2007. These remarks can be heard at approximately 1 hour from the start of the audio recording of this meeting.

⁶ Remarks of Senator Neuville on Senate floor, May 11, 2007. These remarks can be heard at approximately 1 hour 48 minutes from the start of the audio recording of this Senate floor session.

⁷ See, e.g. testimony of Bill Strusinski, Jennifer Johnson, and Barry Tilley in the House Heritage Finance Division, May 9, 2007. Also, in response to a question in the State Government Finance Division meeting on May 11, 2007, House chief author Representative Tony Sertich, referred to public broadcasting as an example of something that would benefit from funding under the proposed constitutional amendment.

⁸ House floor debate, May 19, 2007. This exchange can be found on the House television archive at approximately 2 hours and 56 minutes into the debate. There is other context for this exchange that is not reproduced here.

Sertich responded that “They are under the umbrella and can be included in here and I think that is very important...they do fall under that umbrella.”⁹

An analysis of other Minnesota laws dealing with culture and cultural heritage does not seem particularly helpful to the interpretation of “cultural heritage” under the new constitutional language.¹⁰

Outdoor Heritage fund

The new constitutional language provides that money from the outdoor heritage fund may be spent:

“only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.”

Some observations on these restrictions:

- Money must be used only to “restore, protect, and enhance” (i.e. not serve a purpose other than “restore, protect, and enhance”) wetlands, prairies, forests, and habitat for fish, game, and wildlife.

⁹ House floor debate, February 14, 2008. This exchange can be found on the House television archive at approximately 1 hour and 10 minutes into the debate. There is other context for this exchange that is not reproduced here.

¹⁰ Some examples of statutory provisions referring to culture:

- Article XIII, section 12 of the Minnesota Constitution states that “Hunting and fishing and the taking of game and fish are a valued part of our heritage...” Minnesota Statutes, section 10.51 references “the state’s valued heritage of hunting game animals,” and “hunting as an expression of our culture and heritage.”
- Section 86A.02: The legislature finds that the unique natural, cultural, and historical resources of Minnesota provide abundant opportunities for outdoor recreation and education, and finds that these opportunities should be made available to all citizens of Minnesota now and in the future....an outdoor recreational system which will (1) preserve an accurate representation of Minnesota's natural and historical heritage for public understanding and enjoyment...
- Section 116D.02 (Environmental Rights Act): “...preserve important historic, cultural, and natural aspects of our national heritage...”
- Section 124D.74: “American Indian education programs are programs...designed to... make the curriculum more relevant to the needs, interests, and cultural heritage of American Indian pupils...”
- Section 138.054: The legislature of the state of Minnesota hereby declares that it is an important purpose and function of state government to preserve the people's appreciation of the heritage of the state.... There is hereby established a Minnesota History and Government Learning Center.
- Section 138.83: "Minnesota folklife" means the traditional customs and expressions of the spirit common to a group of people within any area of the state and includes ...skills related to the preservation, presentation, performance, and exhibition of the cultural heritage of any family, ethnic, religious, occupational, racial, regional, or other grouping of Minnesota people.
- 138.663: It is in the public interest to provide a register of these historic properties which represent and reflect elements of the state's cultural, social, economic, religious, political, architectural, and aesthetic heritage.
- Section 471.193: The legislature finds that the historical, architectural, archaeological, engineering, and cultural heritage of this state is among its most important assets. Therefore, the purpose of this section is to authorize local governing bodies to engage in a comprehensive program of historic preservation

- It is not clear from the text of Article XI, section 15 if this language means:
(A) “restore, protect, and enhance: (1) wetlands; (2) prairies; (3) forests; and (4) habitat for fish, game, and wildlife.

OR

- (B) “restore protect and enhance for fish, game, and wildlife: (1) wetlands; (2) prairies; (3) forests; and (4) habitat.

Referring to the text of the question submitted to the voters helps to clarify this language. The question asked in part, if the funds should be used to “...to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat...” The phrasing of the question suggests a stronger argument for interpretation (A) than interpretation (B).

- There were various changes from the original version of H.F. 2285 and S.F. 6 and the final version of the constitutional language. The original H.F. 2285 used the word “preserve,” while the final language used the word “protect.” The original H.F. 2285 referred to “fish and wildlife habitat and other natural resources.” The final language refers to “wetlands, prairies, forests, and habitat for fish, game, and wildlife.” The original version of S.F. 6 referred to “improve, enhance, or protect the state’s fish, wildlife, habitat, and fish and wildlife tourism.” It is not clear if or how the changes between the original versions and the final versions of this language should affect legislative interpretation of the final language.

Clean water fund

The new constitutional language provides that money from the clean water fund 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.”

- The original version of H.F. 2285 said “protect and restore,” while the final language says “protect, *enhance*, and restore.” The final version refers to “water quality” in lakes, etc., while the original bill referred to “lakes...etc.” without referring to water quality.¹¹ The original bill referred to “the state’s” lakes, etc., while the final bill refers just to lakes, etc. (This change was made in House Rules Committee, in a report of May 17, 2007.) The original bill referred to “lakes, rivers, streams, *wetlands*, and groundwater.” The final language refers to “lakes, rivers, and streams, and to protect groundwater from degradation.”
- The original language of S.F. 6 referred to “protection and restoration of the state’s lakes, rivers, streams, wetlands, and groundwater.”

¹¹ This may suggest that money can be used only for water quality, not for other protection, enhancement, and restoration that does not involve water quality.

- The final constitutional language provides that 5 percent of the 33 percent can be spent only “to protect drinking water sources.” It is not clear how this might relate to general protection of lakes and rivers that serve as drinking water sources.

Parks and trails fund

The new constitutional language provides that money from the parks and trails fund may be spent:

“...only to support parks and trails of regional or statewide significance...”

- The original version of H.F. 2285 said “may be spent only to support the *state’s* parks and trails.” The final language says “...to support parks and trails of regional or statewide significance.” This helps clarify that the final language does not mean any parks or trails in the state, but is not restricted to parks and trails owned by the state.
- Note that a House floor amendment that was adopted on May 19 added “state, regional, and county” to modify “parks and trails.” This exact language was not accepted in the final conference report.
- The original version of S.F. 6 said “may be spent only on parks, trails, and zoos in the state.”

MS/jlh