

# Feasibility of a Minnesota Fish and Wildlife Foundation

May 26, 2010



The purpose of this report is to comply with Minnesota Session Laws 2009, Chapter 172, Article 1, Section 1, subdivision 5 (a).

“As a condition of proceeding with this appropriation, the commissioner shall report on the feasibility, process, and timeline for creation of a Minnesota fish and wildlife foundation, to be modeled after the National Fish and Wildlife Foundation, and on the possibility of allowing for the administration by this entity of the conservation partners grant program.”

Minnesota Session Laws 2009, Chapter 172, Article 1, Section 1, subdivision 5 (a).

Cost

Required by M.S. 3.19 the costs of producing this report are estimated to be \$2,200.00. Total costs were based on estimated staff time.

In November 2008 the Voters of the state approved a constitutional amendment dedicating a portion of the sales tax to outdoor heritage and conservation, among other things. The Legislature passed Minnesota Statute 97A.056, which established the Lessard-Sams Outdoor Heritage Council (Council) to strategically plan and provide funding recommendations to the Legislature. Minnesota Statutes 97.056, Subdivision 3, (b) states "... the council shall establish a conservation partners program." The Council recommended that the first year of the program be administered by the National Fish and Wildlife Foundation (NFWF). The Legislature disagreed, and directed the Department of Natural Resources (DNR) to administer the program with a requirement to report on the feasibility of creating a Minnesota fish and wildlife foundation (foundation), to be modeled after the National Fish and Wildlife Foundation. The legislation also seeks answers on the possibility of the Foundation to administer the grant program.

In reviewing other state foundations, each has a purpose which includes leveraging money, managing funds, providing financial assistance, supporting conservation projects, or some derivative. A key benefit of a foundation is the ability to leverage funds, whether public or private, in support of projects and programs not otherwise available. Distributions of funds do not have the same restrictions that state funded distribution programs may have.

During the writing of this report, the presence of an existing Minnesota Natural Resource Foundation was identified, which is an active 501(c)(3). Contact was made with Mr. Robert Larson who was instrumental in its formation. Included in this report is a section on the foundation's history and future possibilities.

A staff member at the Missouri Department of Conservation has compiled information on states which have had, or are pursuing a foundation to assist in the delivery of conservation programs. The list includes twenty states with current foundations. Each foundation has a similar, but unique beginning, defined role, organizational structure, and management goals. Information on the existing foundations has been gathered, summarized, and compared. These organizations have been formed in a number of ways including private organization, industrial organization, and language passed in legislation. There are variations on their structure and functionality; however; roles in furthering natural resource conservation through leveraging funds and partnerships is consistent throughout.

The examples shared in the following pages provide a summary of some of the approaches taken by other states.

#### **Formed through Governmental Process or Legislative Acts**

1. National Fish and Wildlife Foundation (NFWF)
2. Kansas Wildscape Foundation—starting with a \$100,000 loan from the state
3. Illinois Conservation Foundation
4. Missouri Conservation Heritage Foundation

## 1. National Fish and Wildlife Foundation (NFWF)

*“The National Fish and Wildlife Foundation (NFWF) is a 501(c)(3) non-profit that preserves and restores our nation’s native wildlife species and habitats. Created by Congress in 1984, NFWF directs public conservation dollars to the most pressing environmental needs and matches those investments with private funds. The Foundation’s method is simple and effective: we work with a full complement of individuals, foundations, government agencies, nonprofits, and corporations to identify and fund the nation’s most intractable conservation challenges.”*

- NFWF.org

The NFWF is the national equivalent of state foundations. The NFWF was formed through an act of Congress. The U.S. Department of Interior and the U.S. Department of Commerce are authorized to receive funds to implement this language. The NFWF gets funds line itemed up to amounts in Sec. 3709 (see below). The NFWF also contracts with agencies to administer funds appropriated to the agencies for specific programs, and uses these funds to leverage private donations in support of projects. Since its inception in 1984 it has distributed \$600 million to 3,500 organizations. Its role is to receive, manage, and distribute funds for the purposes for which they were given.

NFWF Enabling Language:

TITLE 16--CONSERVATION

CHAPTER 57--NATIONAL FISH AND WILDLIFE FOUNDATION

### **Sec. 3701. Establishment and purposes of Foundation**

#### (a) Establishment

There is established the National Fish and Wildlife Foundation (hereinafter in this chapter referred to as the “Foundation”). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

#### (b) Purpose

### **Sec. 3702. Board of Directors of Foundation**

The Director of the United States Fish and Wildlife Service and the Under Secretary of Commerce for Oceans and Atmosphere shall be Directors of the Foundation.

### **Sec. 3703. Rights and obligations of Foundation**

#### (c) Powers

(1) to accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein, subject to subsection (e) of this section;

(3) to invest any funds provided to the Foundation by the Federal Government in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States;

(4) to deposit any funds provided to the Foundation by the Federal Government into accounts that are insured by an agency or instrumentality of the United States;

(5) to make use of any interest or investment income that accrues as a consequence of actions taken under paragraph (3) or (4) to carry out the purposes of the Foundation;

(6) to use Federal funds to make payments under cooperative agreements entered into with willing private landowners to provide substantial long-term benefits for the restoration or enhancement of fish, wildlife, plants, and other natural resources on private land;

- (7) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;
- (8) to borrow money and issue bonds, debentures, or other debt instruments;
- (9) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Foundation shall not be personally liable, except for gross negligence;
- (10) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its function; and
- (11) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

**Sec. 3704. Administrative services and support**

(a) Provision of services

The Secretary may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 3702 of this title, not to exceed then current Federal Government per diem rates, for a period of up to five years from March 26, 1984.

(b) Reimbursement

The Foundation may reimburse the Secretary for any administrative service provided under subsection (a) of this section. The Secretary shall deposit any reimbursement received under this subsection into the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services. Notwithstanding any other provision of this section, the Secretary of the Interior is authorized to continue to provide facilities, and necessary support services for such facilities, to the National Fish and Wildlife Foundation after March 26, 1989, on a space available, reimbursable cost basis.

**Sec. 3709. Authorization of appropriations**

There are authorized to be appropriated to carry out this chapter for each of fiscal years 2006 through 2010—

- (A) \$25,000,000 to the Department of the Interior; and
- (B) \$5,000,000 to the Department of Commerce.

**2. Kansas Wildscape Foundation**

*The Kansas Wildscape Foundation is a private, nonprofit organization dedicated to conserving and perpetuating the land, the wild species, and the rich beauty of Kansas for the use and enjoyment of all.*

*- [kansaswildscape.org](http://kansaswildscape.org)*

The state of Kansas did not authorize the foundation in law. However, the Legislature passed language similar to the NFWF authorizing the state agency to assist and use its resources in the creation of a non-profit organization with a mission consistent with their own. As authorized under paragraph (b) of the enabling legislation, the Kansas Department of Wildlife and Parks provided a \$100,000 loan to the foundation as seed money. These funds were paid back with contributions to the foundation.

The foundation works with the state agency as well as conservation partners to identify opportunities on a project-by-project basis. It is staffed with two employees which are 501(c)(3) employees. There are no state funds provided for projects or administration. It is dependent on fundraising and memberships to support administrative costs.

Kansas Wildscape Foundation Enabling Language:

CHAPTER 137 \*  
Senate Bill No. 740

*Be it enacted by the Legislature of the State of Kansas:*

*Section 1. (a) The Kansas department of wildlife and parks is authorized to cooperate with and assist citizen-support organizations.*

*For the purposes of this act, the term "citizen-support organization" means an organization which:*

*(1) Is a bona fide not for profit organization exempt from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as in effect on January 1, 1990;*

*(2) does not engage in, and has no officer, director or member who engages in, any prohibited transaction, as defined by section 503(b) of the internal revenue code of 1986, as in effect on January 1, 1990;*

*(3) is domiciled in this state;*

*(4) the secretary determines its activities are conducted in a manner consistent with the goals, objectives and programs, of the department and state policies as established by K.S.A. 1989 Supp. 32702 and amendments thereto; and*

*(5) provide equal employment and membership opportunities to all persons regardless of race, color, national origin, religion, sex or age.*

*(b) The secretary may assist organizers of a citizen-support organization with its creation. The secretary may authorize any citizen support organization to use under such conditions as the secretary may prescribe, department property, facilities or personnel to pursue the goals, objectives and purposes of the department.*

*(c) A citizen-support organization which uses department property, facilities or personnel shall provide for and disclose to the secretary an annual audit of its financial records and accounts in such manner and at such times as may be required by the secretary.*

*(d) A citizen-support organization which receives funding from the department shall not use such funding for purposes of lobbying defined by K.S.A. 46-225 and amendments thereto.*

*Sec. 2. This act shall take effect and be in force from and after publication in the Kansas register.*

*Approved May 9, 1990.*

*Published in the Kansas Register May 17, 1990.*

### **3. Illinois Conservation Foundation**

*The role of the Illinois Conservation Foundation and its partners is to preserve and enhance our precious natural resources by supporting and fostering ecological, educational, and recreational programs for the benefit of all citizens of Illinois and for future generations to come.*

*- ilcf.org*

The Illinois Conservation Foundation provides an example of a foundation formed through legislative language, and also an example of a foundation founded within state government which receives funding directly to the foundation from state appropriated dollars.

The Illinois Conservation Congress began in 1993 as a group of interested stakeholders. This body was instrumental in working with the Illinois legislature in establishing the founding legislation.

Illinois Conservation Foundation Enabling Language:

- (20 ILCS 880/5)

Sec. 5. Creation of Foundation. The General Assembly authorizes the Department of Natural Resources, in accordance with Section 10 of the State Agency Entity Creation Act, to create the Illinois Conservation Foundation. Under this authority, the Department of Natural Resources shall create the Illinois Conservation Foundation as a not-for-profit foundation. The Department shall file articles of incorporation as required under the General Not For Profit Corporation Act of 1986 to create the Foundation. The Foundation's Board of Directors shall be appointed as follows: 2 by the President of the Illinois Senate; 2 by the Minority Leader of the Illinois Senate; 2 by the Speaker of the Illinois House of Representatives; 2 by the Minority Leader of the Illinois House of Representatives; and 4 by the Governor. Vacancies shall be filled by the official who made the recommendation for the vacated appointment. The Director of Natural Resources shall chair the Board of Directors of the Foundation. No member of the Board of Directors may receive compensation for his or her services to the Foundation.

(Source: P.A. 88-591, eff. 8-20-94; 89-445, eff. 2-7-96.)

The foundation was started as a part of the state agency with state employees. As the foundation was established, the non-profit assumed the cost of the employees. Currently, the foundation is housed within the state building and state resources are used to support activity, including one full-time position.

The most interesting aspect of the Illinois foundation is that it is earmarked appropriations in spending legislation. The example below gives funds for a specific project for the transfer to the foundation.

- *Section 70. The following named sums, or so much thereof as may be necessary, respectively, for the objects and purposes hereinafter named, are appropriated to meet the ordinary and contingent expenses of the Department of Natural Resources:*
- *For the implementation of the Camping/Lodging Reservation System:*
- *Payable from the State Parks Fund* *130,000*
- *For the transfer of check-off dollars to the Illinois Conservation Foundation*

#### 4. Missouri Conservation Heritage Foundation

*The Missouri Conservation Heritage Foundation is a nonprofit, charitable organization created in 1997 to meet financial demands placed on Missouri's natural resources. Its mission is to advance the conservation and appreciation of Missouri's forest, fish, and wildlife resources by matching financial resources with the priorities of donors, the Foundation and the Missouri Department of Conservation.*

The Missouri Conservation Heritage Foundation (MCHF) was founded in September 1997 as a 501(c)(3) to meet the increasing demand placed on Missouri's natural resources. Public demand for development of areas for outdoor activities exceeded the Missouri Department of Conservation's funding capability. The MCHF's priority is to stimulate partnerships where local and MCHF funds can provide the necessary resources to meet local conservation needs.

The Missouri Department of Conservation has a Governor appointed set of commissioners. These commissioners were instrumental in the formation of the foundation as a 501(c)(3). The articles of

incorporation give the foundation's focus, "... for the benefit of the state department..." Upon creation, an executive director was appointed, which, at the time, was a state employee. In 2001 the foundation was able to hire its own executive director, making it an independent entity. The foundation still receives administrative support from the department; however, these costs are paid back by the foundation. The foundation employees are physically located within the same space as the Department of Conservation.

### **Independently Formed 501(c)(3)**

#### **1. Minnesota Natural Resource Foundation**

*"... this corporation is organized and shall be operated to (1) raise funds and provide grants to the Minnesota Department of Natural Resources for research, education, and management of the natural resources of the State of Minnesota, and (2) enhance, protect, restore, and preserve the state of Minnesota's ecosystems and their diverse natural resources."*

*- Articles of Incorporation of Minnesota Natural Resource Foundation*

The Minnesota Natural Resource Foundation, a 501 (c)(3) organization, was recognized by the Minnesota Secretary of State on December 14, 1994. It began with Mr. Bob Larson and then Minnesota DNR Commissioner Rod Sando. The two grouse hunting friends discussed the conservation needs of Minnesota and came up with the mission of the foundation described in the articles of incorporation (above). The concept was originally to help the DNR leverage funds for natural resource work within the DNR [see (1) above]; and also, assist in the state's efforts to enhance, protect, and preserve natural resources [see (2) above].

The Foundation raised funds and made distributions to educational programs. It has been inactive for about five years. Assets include \$8,000 cash.

The current holder of the foundation is Mr. Bob Larson.

#### **2. Colorado Wildlife Heritage Foundation**

A governor appointed task force reported on the financial needs of the Colorado Department of Natural Resources in 1989 in a report known as *Wildlife 21*. One of the goals set forth in the report was the formation of a foundation in support of the mission. A conservation enthusiast took the recommendation and formed a non-profit to fill the niche. The Foundation works with partners to get projects completed. Two part-time employees are employed by the Foundation, but are housed in the same space as the state agency. A cooperative agreement allows them to use the space as long as project funding goals are met. Administration is funded with fundraising events and contributors.



## Conclusions

Overall, the majority of the foundations reviewed are non-profit 501(c)(3) organizations, with missions that leverage state, federal, and private funds for the purposes of conservation. The major difference between states is how the foundation was originated and formed. Board formation also differs from state to state. Most states have non-profit employees. Seven states have non-profit organizations, but have some level of support from governmental employees. There is not a state model which executes a grant program on behalf of the state as the NFWF does on a federal level.

States have found that an external, not-for-profit entity provides freedom and flexibility to aggressively seek and leverage funds for conservation projects. On a federal level, the NFWF was established and is currently being used to implement grant programs, fund conservation projects, and leverage funds. The mission of foundations in some cases mirror state objectives; yet in others, the state mission is only a subset of the scope of the foundation. A foundation could also be of value in receiving and disbursing gifts, court settlements, proceeds from wills that direct funds to natural resource purposes, and other sources.

### Options for Minnesota:

- 1) Re-invigorate the existing foundation. Form a board of directors and hire an executive director.
- 2) Pass legislation to create and recognize a foundation. Any of the following aspects could be included in the act:
  - Formal recognition
  - Role definition (to include management of grant programs)
  - Board formation
  - Powers
  - Support from governmental agency resources
  - Receipt of legislative appropriation
  - Fund establishment
- 3) Charge the DNR or another entity with creation of a foundation.
- 4) Encourage the creation of a foundation by business or interest groups.
- 5) Charge the Lessard-Sams Outdoor Heritage Council with the creation of a foundation. This may require that the Council be moved from the legislative to the executive branch.