

## MEMORANDUM



**DATE:** March 3, 2021  
**TO:** House Appropriations Subcommittee on Transportation  
**FROM:** William E. Hamilton, Senior Fiscal Analyst, Austin Scott, Senior Fiscal Analyst  
**RE:** Use of Motor Fuel Taxes for Non-Road Purposes – the Recreation Improvement Account

### Introduction

The Recreation Improvement Account is a state-restricted revenue account administered by the Michigan Department of Natural Resources (DNR). This memo reviews the sources and distribution of Recreation Improvement Account revenue.

### Background

The Motor Fuel Tax Act, Public Act (PA) 403 of 2000, establishes taxes on fuel used by motor vehicles operated on the public roads or highways of the state. Revenue from motor fuel taxes is constitutionally dedicated for transportation purposes (Article IX, Section 9 of the 1963 Michigan Constitution). The constitutional earmarking of motor fuel taxes for transportation purposes is explicitly tied to the use of those motor fuels “to propel motor vehicles upon highways.” Section 8 (5) of the Motor Fuel Tax Act describes the intent of the act as: “to require persons who operate a motor vehicle on the public roads or highways of this state to pay for the privilege of using those roads or highways.” However, some portion of gasoline sales are for non-highway/recreational uses – for watercraft, off-road vehicles (ORVs), and snowmobiles.

The non-highway/recreational use of motor fuels was recognized with the enactment of 1987 PA 221, which established the Recreation Improvement Fund. Public Act 221 repealed a provision in the State Waterways Act (1947 PA 320) that had credited 1.25% of all gasoline and diesel fuel taxes to the Waterways Fund. Public Act 221 instead earmarked 2.0% of all gasoline taxes collected to the new Recreation Improvement Fund. Money in the fund was divided between the Michigan State Waterways Fund, the Recreational Snowmobile Trail Improvement Fund, and recreational projects, including projects to repair environmental damages related to the use of ORVs.

Public Act 221 was repealed effective May 24, 1995, through the enactment of 1995 PA 58 which incorporated the provisions of Public Act 221 into the Natural Resources and Environmental Protection Act (1994 PA 451, also known as “NREPA”). The Recreation Improvement Fund was established and defined in Part 711 of NREPA. These provisions of NREPA were subsequently affected by HJR Z, a 2004 resolution to amend the 1963 Michigan Constitution which was adopted at the November 2006 general election. Among other things, HJR Z established the Michigan Conservation and Recreation Legacy Fund, and its related accounts, in Article IX, Section 40, of the state constitution. The joint resolution also specified revenue sources and allowable expenditures.

A companion statutory bill, House Bill 5870, enacted as 2004 PA 587, put the constitutional provisions into effect. Public Act 587 created a new Part 20 of NREPA to establish the Michigan Conservation and Recreation Legacy Trust Fund and numerous accounts within the fund, including: the forest recreation account, game and fish protection account, off-road vehicle account, recreation improvement account, snowmobile account, state park improvement account, and waterways account. These accounts generally replaced similar separate funds already established within the state treasury.

Public Act 587 established the Recreation Improvement Account in Section 2020 of NREPA (MCL 324.2020) and stated that the account consist of money from the former Recreation Improvement Fund, revenue from "2% of the gasoline tax sold in this state for consumption in internal combustion engines," and other sources as authorized by law.

Money in the Recreation Improvement Account could only be used as provided in Part 711 of NREPA and for the administration of the Recreation Improvement Account. The act also authorized money in the Recreation Improvement Account be used for grants to state colleges and universities to implement programs funded by the Recreation Improvement Account.

### **Recreation Improvement Account – Revenue Source and Distribution**

Section 71102 of NREPA establishes a privilege tax on gasoline and diesel fuel sold for watercraft, off-road vehicles, and snowmobiles. The section sets this tax at the same rate as the Motor Fuel Tax Act for motor vehicles, currently 26.3 cents per gallon. Rather than requiring service stations to keep track of sales of gasoline for non-road uses, Section 71103 of NREPA establishes a legislative finding that 2% of gasoline sold in the state is used for watercraft, ORVs, and snowmobiles.

Section 71106 of NREPA (MCL 324.71106) directs the Michigan Department of Treasury to credit 2% of all "gasoline tax" revenue to the Recreation Improvement Account (MCL 324.2020) within the Conservation and Recreation Legacy Fund. In FY 2020-21, this earmark totals an estimated \$22.9 million.

As a result of the above provisions, 2% of revenue from the current 26.3 cents per gallon motor fuel tax on gasoline is credited to the Recreation Improvement Account; the remaining 98% is credited to the Michigan Transportation Fund, the primary collection and distribution fund for state-restricted transportation revenue.<sup>1</sup>

Section 71108 provides that 80% of the Recreation Improvement Account be annually transferred to the Waterways Account, and 14% transferred to the Snowmobile Account, established in NREPA Sections 2035 and 2025, respectively. Whatever money remains after these two distributions is earmarked for recreation projects, and for administration of the Recreation Improvement Account, with not less than 25% used to repair damage caused by ORVs.

Note: Section 81149 of NREPA (MCL 324.81149) had required the DNR to make a tri-annual survey of estimated sales tax related to gasoline sales for non-highway use by ORVs. The section had been a part of Public Act 320 of 1975, an act dealing with operation of ORVs. The language was carried into NREPA by 1995 PA 58. The reference to the sales tax, rather than to motor fuel taxes, may have been in error. In any case, the section became an anachronism; the DNR did not make the tri-annual survey required by Section 81149, and the section was subsequently repealed by 2018 PA 237 (Senate Bill 1000, as enacted), a bill repealing a number of outdated or non-essential reporting requirements.

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<sup>1</sup> Part 711 of NREPA is somewhat inconsistent and confusing in establishing and assessing the recreational/non-highway use privilege tax. Section 71102 indicates the tax is imposed on both gasoline and diesel used for specific recreational purposes. However, in calculating the amount for credit to the Recreation Improvement Account, Sections 71103 and 71106 reference only gasoline sales. Section 71102 sets the privilege tax rate as the same rate per gallon tax rate established in the Motor Fuel Tax Act. However, in prescribing how the Michigan Department of Treasury is to calculate tax revenue for credit to the Recreation Improvement Account, Section 71106 simply refers to "gasoline taxes" and not to the tax on gasoline imposed under the Motor Fuel Tax Act.

### **Impact of Changes to Motor Fuel Tax Revenue**

As noted above, Section 71106 of NREPA directs the Michigan Department of Treasury to credit 2% of "gasoline tax" revenue to the Recreation Improvement Account within the Conservation and Recreation Legacy Fund. As a result, 2% of revenue from the motor fuel tax on gasoline, currently 26.3 cents per gallon, is credited each year to the Recreation Improvement Account. For FY 2020-21, this amount is estimated to be \$22.9 million. The remaining 98% of the Motor Fuel Tax on gasoline is credited to the Michigan Transportation Fund, the primary collection and distribution fund for state-restricted transportation.

If the motor fuel tax on gasoline were increased, and additional tax revenue generated, under current provisions of Chapter 711 of NREPA, a portion of any additional revenue, specifically a 2% portion, would be credited to the Recreation Improvement Account for distribution according to Part 711 of NREPA.

### **Uses of Recreation Improvement Account Revenue in the DNR Budget**

The Michigan State Waterways Fund supports the Parks and Recreation Division's Recreational Boating and Forest Recreation and Trail Programs. The Recreational Boating Program manages access points to the Great Lakes, large inland lakes, and navigable rivers throughout the state. The Forest Recreation and Trails Program supports state forest campgrounds and state recreation trails. This program also coordinates recreation trail planning and development statewide, including snowmobile and other motorized trails. The Waterways Fund also provides capital outlay appropriations for boating infrastructure projects and departmental administration as provided in statute.

The Snowmobile Trail Improvement Fund provides grants to local units of government, snowmobile clubs, and other organizations for snowmobile trail maintenance and expansion.

The Recreation Improvement Account has been used by DNR for grants to operate, maintain, and develop recreation trails; restore lands damaged by off-road vehicles; and cleanup inland lakes. This fund also supports the Forest Recreation and Trails Program and DNR departmental administration.

### **References:**

<http://legislature.mi.gov/doc.aspx?2004-HJR-Z>

<http://legislature.mi.gov/doc.aspx?2004-HB-5870>

<http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-4-1-ADMINISTRATION-711>

<http://legislature.mi.gov/doc.aspx?mcl-324-2020>