MEMORANDUM

DATE: May 9, 2019

TO: House Appropriations Subcommittee on Transportation

FROM: William E. Hamilton, Senior Fiscal Analyst

RE: Recreation Improvement Account

Introduction

This paper describes the Recreation Improvement Account, a restricted revenue account administered by the Michigan Department of Natural Resources (DNR). The account would receive additional revenue from the increased motor fuel tax on gasoline under Governor Whitmer's proposed Fix Michigan Roads Plan.

Background

The Motor Fuel Tax Act, Public Act 403 of 2000, establishes taxes on fuel used in 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 uses—for watercraft, off-road vehicles (ORVs), and snowmobiles.

The non-highway use of motor fuels was recognized with the enactment of Public Act 221 of 1987, which established the Recreation Improvement Fund. Public Act 221 repealed a provision in the State Waterways Act (Public Act 320 of 1947) that had credited 1.25% of all gasoline and diesel fuel taxes to the Waterways Fund.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Public Act 221 was repealed effective May 24, 1995 through the enactment Public Act 58 of 1995 which incorporated the provisions of Public Act 221 into the Natural Resources and Environmental Protection Act (Public Act 451 of 1994, also known as "NREPA"). The Recreation Improvement Fund was established and defined in Part 711 of NREPA.

These provisions of NREPA were 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, the 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 Public Act 587 of 2004, 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.[1]

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, 2% of the gasoline tax sold in the 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 to be used for grants to state colleges and universities to implement programs funded by the Recreation Improvement Account.

Recreation Improvement Account – Revenue and Distribution

Section 71102 of NREPA establishes a privilege tax on gasoline and diesel fuel sold for watercraft, off-road vehicles, and snowmobiles. The act 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 sales are for watercraft, ORVs, and snowmobiles.

Section 71106 of NREPA (MCL 324.71106) directs the Michigan Department of Treasury to credit 2% of gasoline tax revenue to the Recreation Improvement Account (MCL 324.2020) within Conservation and Recreation Legacy Fund. In FY 2018-19, this earmark will total an estimated $24.2 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.

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. [2]

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 Public Act 58 of 1995. 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 Public Act 237 of 2018 (Senate Bill 1000, as enacted), a bill repealing a number of outdated or non-essential reporting requirements.

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[1] See http://legislature.mi.gov/doc.aspx?2004-HB-5870

[2] See http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-4-1-ADMINISTRATION-711
And http://legislature.mi.gov/doc.aspx?mcl-324-2020

Impact of the Governor's Proposed Increases in the Motor Fuel Tax on Gasoline
Governor Whitmer has proposed an increase in the motor fuel tax on gasoline, diesel motor fuel, and alternative fuels used to propel motor vehicles on public roads. Specifically, the proposal would increase the current 26.3 cent-per gallon motor fuel tax rate by 45 cents per gallon in three steps: to 41.3 cents-per-gallon on October 1, 2019; to 56.3 cents per gallon starting on April 1, 2020; and to 71.3 cents per gallon effective October 1, 2020. The proposed motor fuel tax increases would generate an estimated $1.3 billion in new revenue in FY 2019-20.

Because part of the additional revenue from the proposed motor fuel tax on gasoline is attributable to non-road uses, part of the gross revenue increase from the motor fuel tax on gasoline would be credited to the Recreation Improvement Account for distribution according to Part 711 of NREPA. The additional revenue for FY 2019-20 would total $21.4 million. This additional revenue is reflected in the Governor's proposed FY 2019-20 DNR budget as follows:

Michigan State Waterways Fund	$17,098,200
Snowmobile Trail Improvement Fund	2,992,200
Recreation Improvement Account	1,282,400
Total	**$21,372,800**

The Governor's budget proposal for the DNR indicates that the $21.4 million in additional revenue would be used as a capital outlay appropriation "Recreation Improvement" for improvements to public recreation infrastructure & facilities (state parks, trails, harbors, boat launches, etc.).

c: Mary Ann Cleary, Director
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