

CONSERVATION AND RECREATION LEGACY FUND

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House Bill 5870 as passed by the House
House Joint Resolution Z as passed by the House
Sponsor: Rep. Randy Richardville

Committee: Conservation and Outdoor Recreation
Revised Second Analysis (9-2-04)

BRIEF SUMMARY: The bill would amend the Natural Resources and Protection Act to establish the Conservation and Recreation Legacy Fund. Several accounts within the fund would replace similar funds currently established in the act. The joint resolution would establish the Conservation and Recreation Legacy Fund, the Game and Fish Protection Trust Fund, and the Nongame Fish and Wildlife Trust Fund within the state constitution.

FISCAL IMPACT: This joint resolution would preclude the state from transferring funds from the Conservation and Recreation Legacy Fund to other state funds, but there would be no revenue increase or impact on license or fee payers. There would be no fiscal impact on the State or on local governmental units.

THE APPARENT PROBLEM:

The programs of the Department of Natural Resources (DNR) are funded by a combination of federal funds, the state general fund, and several state restricted funds. The restricted funds are primarily funded through user fees, permits, and licenses, and are to be expended only for the support of related programs.

While the use of money from restricted funds is limited to certain related programmatic uses, previous governors and legislatures have often used such funds to support an ailing state budget. For example, in fiscal year 2002-2003, \$7.8 million from the waterways fund was used to support the general fund.

Given the state's recent budget troubles, there is growing concern among the DNR's stakeholders who financially support the restricted funds through the purchase of permits, fees, licenses, and the like that the governor and legislature may turn to these funds as a means of resolving the state's financial troubles. In the past, diversions of restricted DNR funds - most notably the Natural Resources Trust Fund - have prompted the legislature and the voters to place those restricted funds within the state constitution, and strictly limit their allowable uses. It has been suggested that several other DNR-related funds be established within the state constitution to prevent further diversions.

THE CONTENT OF THE BILL AND JOINT RESOLUTION:

House Joint Resolution Z

The joint resolution establishes the Michigan Conservation and Recreation Legacy Fund, and its related accounts (as later described in House Bill 5870) as Article IX, Section 40 of the state constitution. The joint resolution also specifies revenue sources and allowable expenditures, all of which are consistent with current law.

In addition, the joint resolution would also establish the Michigan Game and Fish Protection Trust Fund as Article IX, Section 41 of the state constitution. The trust fund was created by Public Act 73 of 1986, which is now incorporated as Part 437 of the Natural Resources and Environmental Protection Act. Current language related to revenue sources and allowable uses for the trust fund would be placed in the state constitution as Article IX, Section 41.

Finally, the joint resolution would establish the Nongame Fish and Wildlife Trust Fund as Article IX, Section 42 of the state constitution. The trust fund was first created by Public Act 285 of 1986, which is now incorporated as Part 439 of the Natural Resources and Environmental Protection Act. The joint resolution specifies that revenue for the trust fund would be generated from revenue designated by the general public for the benefit of the trust fund (which essentially means money from a now-expired income tax checkoff and money from the sale of the nongame wildlife habitat license plate), as well as any gifts, grants, and bequests and other revenue as authorized by law.

The proposed constitutional amendment would be presented to the voters at the next general election.

House Bill 5870

The bill would create a new Part 20 of the Natural Resources and Environmental Protection Act concerning the Michigan Conservation and Recreation Legacy Trust Fund and numerous accounts within the fund. The bill is tie-barred to HJR Z.

The fund would include 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. In general, these accounts directly replace similar, separate funds already established within the state treasury and, at times, several smaller funds established for the same general purpose. Aside from the added language in Part 20, the bill makes numerous technical amendments throughout the rest of the NREPA that are related to the legacy fund and accounts within it.

Forest Recreation Account - The forest recreation account would include revenue from (1) the former Forest Recreation Fund created in Part 831, (2) revenue from recreational activities on state forestland, and (3) other sources as authorized by law. Funds in the

account would be expended pursuant to Part 831 of NREPA and for account administration.

Game and Fish Protection Account - The game and fish protection account would include revenue from (1) the former Game and Fish Protection Fund created in Part 435, (2) revenue from hunting and fishing licenses, fees, passbooks, and fees, (3) damages paid for the illegal taking of game and fish, (4) revenue related to game, game areas, and game fish, and (5) other sources as authorized by law. Funds in the account would be expended pursuant to Part 435 of NREPA and account administration, which could include making payments in lieu of taxes on state land purchased with funds from the former Game and Fish Protection Fund or the Game and Fish Protection Account.

Off-Road Vehicle Account - The off-road vehicle account would include revenue from (1) the former Trail Improvement Fund and former Safety Education Fund, both created in Part 811, (2) ORV registration and use fees, (3) transfers from the recreation improvement account, and (4) other sources as authorized by law. Funds in the account would be expended pursuant to Part 811 of NREPA and account administration.

Recreation Improvement Account - The recreation improvement account would include revenue from (1) the former recreation improvement fund created in Part 711, [the reference to the fund in the bill is incorrect], (2) two percent of the gasoline tax sold in the state, and (3) other sources as authorized by law. Funds in the account would be transferred pursuant to Part 711 of NREPA to the waterways account and snowmobile account, and for recreation projects and account administration.

Snowmobile Account - The snowmobile account would include revenue from (1) the former Recreational Snowmobile Trail Improvement Fund and the former Snowmobile Registration Fee Fund, both created in Part 821, (2) snowmobile registration and use fees, (3) revenue from the use of snowmobile trails, (4) transfers from the recreation improvement account, and (5) other sources as authorized by law. Funds in the account would be expended pursuant to Part 821 of NREPA and for account administration, which could include payments in lieu of taxes on state land purchased with funds from the Snowmobile Account or the former Snowmobile Trail Improvement Fund.

State Park Improvement Account - The state park improvement account would include revenue from (1) the former state park improvement fund established in Part 741 of NREPA, (2) activities in state parks and recreation areas, (3) damages paid for illegal activities in state parks and recreation areas, and (4) other sources as authorized by law. Funds in the account would be expended pursuant to Part 741 of NREPA and for account administration.

Waterways Account - The waterways account would include revenue from (1) the former Michigan State Waterways Fund and former Michigan Harbor Development Fund, both established in Part 781, (2) the former Marine Safety Fund established in Part 801, (3) watercraft registration fees, (4) fees for mooring watercraft at state-operated mooring facilities, (5) fees for using state-operated public access sites, (6) transfers from the

recreation improvement account, (7) all tax revenue derived from the sale of diesel fuel in the state that is used for vessels on the waterways of the state, and (8) other sources as authorized by law. Funds in the account would be expended pursuant to Parts 781, 791, and 801, and account administration, which could include payments in lieu of taxes on state land purchased with funds from the Waterways Account or the former Michigan State Waterways Fund.

MCL 324.301

BACKGROUND INFORMATION:

State Park Improvement Fund – The State Park Improvement Fund was originally established with the enactment of Public Act 149 of 1960, and is now established in Part 741 of NREPA. The fund is principally financed by state park use and concession fees and motor vehicle entry permits, and is expended for the operation, maintenance, and improvement of the state park system. According to the DNR, the fund had a balance of approximately \$4.4 million at the end of FY 2002-2003.

Michigan State Waterways Fund - The waterways fund was originally established with the enactment of Public Act 320 of 1947, and is now established in Part 781 of NREPA. The waterways fund receives 17.5 percent of the watercraft registration fees collected under Part 801 of NREPA. In addition, the waterways fund receives at least 80 percent of the money in the Recreation Improvement Fund. The waterways fund is to be expended, according to Part 781, for (1) the construction, operation and maintenance of recreational boating facilities, (2) property acquisition, (3) grants to local governments and public colleges and universities, (4) the development of harbors of refuge, and (5) for the development of public access sites. According to the DNR, the waterways fund had an account balance of approximately \$2.1 million at the end of FY 2002-2003.

Michigan Harbor Development Fund – The harbor development fund was originally established with the enactment of Public Act 65 of 1988 as an amendment to the State Waterways Act (Public Act 320 of 1947), and is now established in Part 781 of NREPA. The harbor development fund receives 33.5 percent of watercraft registration fees collected under Part 801, and is expended pursuant to Part 791 of NREPA (formerly Public Act 79 of 1988). Under Part 791, money in the fund is to be expended to acquire land, construct nonrevenue-producing harbor facilities, enter into lease agreements with private entities to construct marinas, and to operate marinas. Ostensibly, the fund and the act were created amid a shortage of boating slips and marinas due, in part, to the high cost of developing waterfront property. The fund and the act were seen as a means to spur private investment in the construction of marinas. According to the DNR, the harbor development fund had an account balance of zero dollars at the end of FY 2002-2003.

Marine Safety Fund – The Marine Safety Fund was established with the enactment of the Marine Safety Act (Public Act 303 of 1967), which replaced the Watercraft Law Enforcement Fund established in 1957, and is now established within Part 801 of NREPA. The fund receives 49 percent of the watercraft registration fees, and is to be

expended for water safety education programs and the regulation of watercraft in the state. According to the DNR, the fund had an account balance of approximately \$818,000 at the end of FY 2002-2003.

Recreational Snowmobile Trail Improvement Fund – The Recreational Snowmobile Trail Improvement Fund was established with the enactment of Public Act 221 of 1980, and is now incorporated into Part 821 of NREPA (formerly Public Act 74 of 1968). Prior to Public Act 221, fee revenue generated from the registration of snowmobiles was deposited into the general fund. Public Act 221 raised registration fees from \$9 to \$15, and placed the additional revenue into the newly created Recreational Snowmobile Trail Improvement Fund. The fund receives \$5 from each \$22 three-year snowmobile registration sold, \$23.50 from each \$25 snowmobile trail permit sticker, and at least 80 percent of the revenue generated by the sale of duplicate and dealer-used temporary registration decals, and at least 14 percent of the funds in the Recreation Improvement Fund. According to the DNR, the fund had an account balance of approximately \$2.8 million at the end of FY 2002-2003.

Snowmobile Registration Fee Fund – The Snowmobile Registration Fee Fund was established with the enactment of Public Act 99 of 1994, and is also now incorporated into Part 821 of NREPA. Prior to Public Act 99, \$9 of the \$15 snowmobile registration fee was deposited into the general fund for use the by DNR for snowmobile trails and facilities and snowmobile training and enforcement, and also to the Department of State for administration of the registration. The fund received money in the general fund from registration fee revenue, and currently receives \$17 from each registration until the fund has an account balance of \$1.6 million, at which point the \$17 is deposited into the Recreational Snowmobile Trail Improvement Fund. The fund then provides \$3 from each registration fee to the Department of State. The balance of money in the fund is used by the DNR for administration and enforcement of the snowmobile program, and for grants to county sheriff departments and local law enforcement agencies for local enforcement and snowmobile safety education and training programs. According to the DNR, the fund had an account balance of approximately \$3 million at the end of FY 2002-2003.

ORV Trail Improvement Fund – The Trail Improvement Fund was established with the enactment of Public Act 71 of 1990, and is now incorporated within Part 811 of NREPA. The fund receives most of the \$16.25 ORV license fee. The fund is used for (1) ORV trail signage, (2) ORV trail maintenance and construction, (3) leasing land, (4) acquiring easements, permits, or other agreement to use land for ORV trails, (5) restoring natural resources damaged by ORV use, and (6) administration and enforcement.

Safety Education Fund – The Safety Education Fund was established with the enactment of Public Act 17 of 1991, which is also now incorporated into Part 811 of NREPA. The fund receives \$1 from the sale of each \$16.25 ORV license. As its name implies, the fund is to be used for ORV safety education and training programs.

Forest Recreation Fund – The Forest Recreation Fund was established with the enactment of Public Act 418 of 1998, which created Part 831 of NREPA. Part 831 requires the DNR to develop, operate, maintain, and promote an integrated recreation system that provides opportunities for hunting, fishing, camping, hiking, snowmobiling, ORV trail riding, boating, and other forms of recreation within the state forests, with a focus on maintaining the integrity of the forest while, at the same time, promoting recreational activities. The fund receives camping fees for state forest campgrounds and concessions in state forests. State forest campground fees are \$10 per day, and between \$35 and \$75 for camping cabins in state forests.

Recreation Improvement Fund – The Recreation Improvement Fund was established with the enactment of Public Act 221 of 1987, which is now incorporated as Part 711 of NREPA. Public Act 221 repealed a provision in the State Waterways Act (Public Act 320 of 1947) that credited 1.25 percent of all gasoline and diesel fuel taxes to the waterways fund and, instead, earmarked two percent of all gasoline taxes collected to the new Recreation Improvement Fund. Money in the fund is divided among 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 off-road vehicles. According to the DNR, the Recreation Improvement Fund had an account balance of approximately \$1.2 million at the end of FY 2002-2003.

Game and Fish Protection Fund – The Game and Fish Protection Fund dates back over 90 years with the establishment of the Game Protection Fund with the enactment of Public Act 108 of 1913. In 1915, the Anglers' Fund was established with the enactment of Public Act 263. The Anglers' Fund received money from the sale of non-resident fishing licenses. The Game and Fish Protection Fund appears to have been established with the enactment of Public Act 267 of 1917. As has been the case throughout its lengthy history, the Game and Fish Protection Fund is primarily financed by the sale of hunting and fishing licenses. In addition, the fund receives any interest and earnings and the \$6 million from the corpus of the Game and Fish Protection Trust Fund. The fund is to be expended for statewide hunting and fishing programs, including management, research, enforcement, and acquisition of land. According to the DNR, the fund had a general purpose balance of \$12.8 million and a total account balance of approximately \$21.9 million at the end of FY 2002-2003.

Game and Fish Protection Trust Fund – The Game and Fish Protection Trust Fund was established with the enactment of Public Act 73 of 1986 (now Part 437 of NREPA) to provide the DNR with a source of income that would help offset inflationary cost increases. (The Game and Fish Protection Fund is largely supported by revenue generated from the sale of hunting and fishing licenses, which have a fixed price. The department cannot continually increase license fees to account for inflationary cost increases and other programmatic cost increases.) Initially, the major source of funds for the trust fund was \$8 million that had been generated under the former Kammer Recreational Land Acquisition Trust Fund Act (Public Act 204 of 1976), which was replaced in 1984 with the establishment of the Michigan Natural Resources Trust Fund. In addition, the trust fund received money in FY 1985-1986 and FY 1986-1987 from oil

and gas royalties from state lands purchased by funds from the Game and Fish Protection Fund that ordinarily would have gone into an account created by the former Kammer Act. Currently, the trust fund receives rentals, bonuses, and royalties from the removal of minerals, coal, oil, gas, timber, and other resources from state-owned lands acquired with funds from the Game and Fish Protection Fund. Any interest and earnings from the trust fund are deposited into the Game and Fish Protection Fund. According to the DNR, the trust fund had an account balance of approximately \$87 million at the end of FY 2002-2003.

Public Act 50 of 2001 amended Part 437 to permit the legislature to annually appropriate and transfer up to \$6 million from the corpus of the Game and Fish Protection Trust Fund to the Game and Fish Protection Fund. At the time, it was ostensibly argued that the diversion of funds was necessary to maintain the solvency of the Game and Fish Protection Fund. Public Act 50 also established a legislative work group to review game and fish program revenue. The work group never met, however, and Senate Bill 927 of the current legislative session has again called for the creation of the work group.

Nongame Fish and Wildlife Trust Fund - The Nongame Fish and Wildlife Trust Fund was established with the enactment of Public Act 285 of 1985, which is now incorporated as Part 439 of NREPA. Today, the trust fund receives revenue generated from the sale of the wildlife habitat license plate and is expended for the management of the state's nongame fish and wildlife resources.

The trust fund actually dates back to Public Act 241 of 1983, which established the Nongame Fish and Wildlife Fund. The fund received revenue generated by an income tax checkoff created by Public Act 189 of 1983, which allowed taxpayers entitled to a refund to designate at least \$2 to the fund during tax years 1983 and 1984. Public Act 145 of 1985 later extended the checkoff through tax year 1994 or until the fund reached a balance of \$6 million, whichever occurred first. That following year, Public Act 285 of 1986 replaced the Nongame Fish and Wildlife Fund with the Nongame Fish and Wildlife Trust Fund. Like the previous fund, the trust fund received revenue from the income tax checkoff until it reached a balance of \$6 million or through the 1994 tax year. However, Public Act 285 also specified that at least 20 percent of the revenue from the income tax checkoff shall be retained in the trust fund on a permanent basis. Public Act 162 of 1993 removed the 1994 limitation on the income tax checkoff check-off, thus enabling it to continue until the trust fund reached a balance of \$6 million. Public Act 484 of 1996 amended the Income Tax Act to permit taxpayers not receiving a refund to contribute to the trust fund. The trust fund finally reached a balance of \$6 million (which ended the income tax check-off) with a \$2.4 million (GF/GP) appropriation through Public Act 291 of 2000.

ARGUMENTS:

For:

The funds that are the subject of the bill and joint resolution are principally financed by users of the state's vast system of natural resources. The user fees, like other user fees,

are intended to make the primary beneficiaries of the DNR's recreation programs pay for those programs. Correspondingly, the users of these programs pay fees with the expectation that the money will flow to the appropriate funds and be used for the intended purposes. However, when money from these funds is used for purposes unrelated to their primary intent, and more for the benefit of the general public, the user fees become more akin to a tax imposed on a certain segment of the population. This is analogous to a tax being imposed on, say, only 10 percent of the population to support the operations of the state police or the attorney general's office. This is unfair. Putting these funds within the state constitution ensures that they will serve the purposes for which they were originally established.

Against:

While the total dollar amount included in these funds isn't particularly large given the magnitude of the state budget, the ability of the legislature and governor to respond to state budgetary troubles is compromised when the use of the funds is restricted by the state constitution. In the past, the use of these funds has helped stave off budget cuts that might otherwise have decimated state programs or resulted in broad-based tax increases.

Response:

The state constitution, by its very nature, is a limit on the power of the state legislature and the governor. If establishing these funds within the state constitution limits the ability of the legislature and the governor to use them for purposes other than those for which they are intended, that is precisely the point of the joint resolution.

POSITIONS:

The Department of Natural Resources has indicated support for the bill and joint resolution. (6-30-04)

The Michigan United Conservation Clubs has indicated support for the bill and joint resolution. (6-30-04)

The Michigan ATV Association has indicated support for the bill and joint resolution. (6-30-04)

The Michigan Boating Industries Association has indicated support for the bill and joint resolution. (6-30-04)

The Michigan Snowmobile Association has indicated support for the bill and the joint resolution. (6-30-04)

Lake Fenton Marina has indicated support for the bill and joint resolution. (6-30-04)

Legislative Analyst: Mark Wolf
Fiscal Analyst: Kirk Lindquist

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.